AN ORDINANCE of the City Council of the City of Kent, Washington, granting to the Union Pacific Railroad Company, a Delaware corporation, its successors and assigns, the right, privilege and authority to construct, maintain and operate a railroad spur track upon and across South 196th Street in the City of Kent, King County, Washington.

WHEREAS, pursuant to the terms of a franchise ordinance of the City of Kent (Ordinance 2309), passed on September 8, 1981, the Union Pacific Railroad Company, a Delaware Corporation ("UPRR") constructed, maintained and operated a railroad spur track at common grade upon and across South 196th Street in the City of Kent, the centerline of said street in the North 1/2 of Section 2, Township 22 North, Range 4 East, W.M., located in King County, Washington; and

WHEREAS, Ordinance 2309, by the terms of its Section 10, was effective as a franchise grant to UPRR for ten years; and

WHEREAS, on or about October 13, 1991, the franchise granted in Ordinance 2309 expired by the terms of Section 10 of that Ordinance; and

WHEREAS, the City of Kent is willing to grant a franchise for a period of twenty years from the date of passage of this Ordinance, on the terms set forth herein; and

WHEREAS, passage of this franchise ordinance is now appropriate; and

WHEREAS, a separation of grade of said crossing is neither practicable or justified;
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated into this Ordinance as if fully set forth herein.

SECTION 2. The City of Kent, Washington, ("City") grants to the Union Pacific Railroad Company, a Delaware Corporation, its successors and assigns ("UPRR"), subject to all conditions contained in this ordinance, the franchise and privilege of maintaining and operating one railroad spur track and crossing at common grade upon and across South 196th Street in the City of Kent, Washington, at the location described in Exhibit A (the "franchise area"), provided that the maintenance and operation of this track and crossing within the franchise area shall be performed in a manner consistent with the terms and conditions of this franchise ordinance and satisfactory to the City's Public Works Director and any other applicable authority.

SECTION 3. UPRR, throughout the twenty-year franchise term and at no cost to the City, shall maintain and operate the track and crossing within the franchise area subject to the following:

(a) UPRR shall pay the entire cost and expense of maintaining, and/or operating said track within the limits of the street as it now exists or as it may be changed from time to time. However, this franchise shall not prevent UPRR from charging any other party to which UPRR may have granted or assigned an interest in this track, crossing or franchise all or a portion of the cost of maintaining, and/or operating said track.

(b) The City does not presently plan or anticipate any modifications to the street that would require alteration or reconstruction of the tracks or crossing, except for modifications presently underway (and planned for completion in the vicinity of the crossing in the Spring of 1999) as part of the City's South 196th Street Project. Union Pacific is responsible for all costs of track and crossing modifications in connection with the City's South 196th Street Project, except that this provision shall not prevent UPRR from charging any other party, including its only customer, Toys "R" Us, for all or a part of such costs: it is the City's understanding that Union Pacific has in fact reached an agreement with Toys "R" Us pursuant to which Toys
“R” Us is paying a portion of such costs. To the extent there occur any other modifications to the street during the first five years of the twenty-year franchise term, however, the City will pay for any track and crossing alterations made necessary as a result of such modifications. The City does not presently contemplate any changes to the street or grade during the last fifteen years of the franchise, and no such plans have been prepared or requested by the City, but if necessary at any time during the last fifteen years of the twenty year franchise term, UPRR agrees to alter the track and crossing within the franchise area to maintain the common grade should the City determine to change the street or grade in any manner. If the City decides to change the street or grade in any substantial way that would impact UPRR’s tracks, the City shall include UPRR early on in the design phase of the Project. The City and UPRR each acknowledge that future changes to the street could require alteration of the track(s) beyond the limits of the street, and that any such alterations that may become necessary beyond the limits of the street shall be at no cost to the City, although nothing in this franchise shall prevent UPRR from charging any other party to which UPRR may have granted or assigned an interest in the track. The City and UPRR each further acknowledge that in the event that changes to the street require substantial modification of the tracks either within the street or beyond the limits of the street, UPRR will make an economic decision whether to modify its tracks at no cost to the City, or in the alternative to abandon its franchise consistent with its customer service contracts, in which event UPRR’s tracks would be removed during the course of construction of the changes to the street.

SECTION 4. UPRR, at no cost to the City, shall maintain in good repair (as determined by the City Public Works Director), and replace, when requested by the City, the crossing pad across the entire right of way, including sidewalks. UPRR shall plank between the rails and for one foot on either side thereof, and shall use either prefabricated hardwood, asphalt with metal guardrails, concrete or rubber panels, or other crossing pad of a type and design approved by the City Public Works Director. Maintenance of the crossing will be at UPRR’s expense, but if resurfacing is needed due to heavy vehicular traffic over the crossing, the City shall use its best efforts to obtain any state or federal funding that might be available to improve the surface of the crossing. At no cost to the City, UPRR shall also install and maintain any crossing and protective devices required by applicable public authorities including but not limited to the City, provided, however, that the City shall
use its best efforts to obtain any available state or federal funding for such protective devices. UPRR shall install any requested crossing pad or protective devices within twelve (12) months from the date it receives notification from the City to make such changes; however, if these changes are subject to prior authorization from the Washington Utilities and Transportation Commission ("WUTC"), then this twelve (12) month time period shall apply from the date of WUTC authorization or approval.

**SECTION 5.** UPRR shall not store railroad cars within the franchise area, nor shall UPRR stop cars within the franchise area for switching operations, nor shall UPRR use the franchise area in any manner that unreasonably interferes with travel within the City's right of way.

**SECTION 6.** The City maintains the same control over South 196th Street within this franchise area as it has over other public streets within the City's jurisdiction. This franchise shall not restrict the rights of the City or other franchise holders in the City to enter upon South 196th Street within the franchise area for the purpose of locating, relocating, constructing, maintaining, repairing, or removing any public works, utilities, or facilities within, under or over the franchise area, but this work shall not unnecessarily interfere with the movements of railroad traffic over the franchise area.

**SECTION 7.** UPRR shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this franchise ordinance, but only to the extent of UPRR's negligence or comparative fault. This indemnification includes liability for crossing design, signalization design, and/or maintenance, and road maintenance within the crossing area. It also includes any failure or omission on the part of UPRR to perform any action required by this franchise. The City's inspection or acceptance of any of UPRR's work when completed shall not be grounds to avoid any of these covenants of indemnification. No act, inspection, approval or omission by the City shall affect UPRR's obligation to fully defend, indemnify and hold harmless the City, its officials, officers, employees, agents and volunteers. In addition, UPRR's obligation to defend, indemnify and hold the City harmless shall survive the expiration or termination of this franchise ordinance.
SECTION 8. Nothing granted in this franchise shall release UPRR from obtaining all permits or other authorizations required by the City to maintain, operate, repair or alter the track and crossing either within or without the franchise area or to do any of the work contemplated by this franchise ordinance.

SECTION 9. In the event that UPRR breaches this franchise agreement, the City may revoke this franchise after giving UPRR sixty (60) calendar days prior written notice, which shall state the grounds for revocation. Once revoked, UPRR, its customers, agents and assigns, shall immediately lose all right and authority to use this crossing, and the City may, at its option, restrict, block, close or remove the track and crossing within the franchise area.

SECTION 10. If the spur crossing that is the subject of this franchise has not been in use for one (1) year or longer, this franchise may be revoked by the City after 30 days written notice to UPRR. Such notice of revocation shall be provided to:

Mr. John W. Trumbull
Manager, Industry and Public Projects
Union Pacific Railroad Company
5424 S.E. McLaughlin
Portland, OR 97202

If use of the crossing by UPRR and/or its agents or assigns commences again within that 30-day period, then the notice of revocation shall be ineffective and this franchise shall remain in effect. Once effectively revoked, UPRR, its customers, agents and assigns, shall immediately lose all right and authority to enter or use the franchise area, and the City may, at its sole option, restrict, block, close or remove the track and crossing within the franchise area.

SECTION 11. The franchise privileges granted in this ordinance shall be effective for twenty (20) years from and after the effective date of this ordinance. At the end of this twenty-year franchise term, all of UPRR's franchise rights shall expire, and, if the franchise is not renewed, the City may, at its sole option, restrict, block, close or remove the track and crossing within the franchise area.
**SECTION 12.** UPRR shall have no right to receive any award in condemnation, whether direct or inverse, as a result of this franchise.

**SECTION 13.** No waiver, alteration, or modification of any of the provisions of this franchise ordinance shall be binding unless in writing and signed by a duly authorized representative of the City and UPRR.

**SECTION 14.** If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 15.** UPRR shall, within seven (7) calendar days from the date of passage of this ordinance, file with the City Clerk its written acceptance of the terms, provisions and conditions of this franchise. If UPRR fails to file its written acceptance of this franchise, without additional conditions, by the end of this seven (7) calendar day period, this ordinance will be void and of no further force or effect.

**SECTION 16.** This ordinance shall not take effect until accepted by UPRR within the time provided in Section 15. If accepted by UPRR within the time provided in Section 15, this ordinance shall become effective five (5) days from the time of its passage and publication as provided by law or when accepted by UPRR, whichever is later.

ATTEST:

_Brenda Jacober, City Clerk_

JIM WHITE, MAYOR

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10/12/1999 09:40
KING COUNTY, WA
APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

PASSED: 6 day of April, 1999.
APPROVED: 7 day of April, 1999.
PUBLISHED: 9 day of April, 1999.

I hereby certify that this is a true copy of Ordinance No. 3445, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK

THE CITY OF KENT
CORPORATE SEAL

-7-
EXHIBIT A
UPRR FRANCHISE AREA

That portion of the North 1/2 of Section 2, Township 22 North, Range 4 East, W.M., described as follows:

Commencing at the North Quarter Corner of said Section 2;

Thence South 0°17’19” West 1355.13 feet along the North-South centerline of said Section 2 to its intersection with the Northerly margin of South 196th Street and the POINT OF BEGINNING;

Thence South 88°59’58” East along said Northerly margin 20.00 feet;

Thence South 0°17’19” West 85.96 feet to the South margin of S. 196th St. and a point on a non-tangent curve from which the radial center bears South 5°46’09” East 710.00 feet;

Thence Westerly along the arc of said curve concave to the South 40.37 feet;

Thence North 0°17’19” East 91.85 feet to an intersection with the said Northerly margin of South 196th Street;

Thence South 88°59’58” East along said Northerly margin 20.00 feet to the POINT OF BEGINNING.
Return Address:

Attn: City Clerk
City of Kent
220 Fourth Ave. S.
Kent, WA 98032

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S COVER SHEET

Document Title: City of Kent Ordinance No. 3448

Reference Number(s): N/A

Grantor(s): Last, First, Middle Initial

1. City of Kent, a Washington municipal corporation
2. 
3. 
4. 
[ ] Additional names on page ___ of document.

Grantee(s): Last, First, Middle Initial

1. Union Pacific Railroad Company, a Delaware corporation
2. 
3. 
4. 
[ ] Additional names on page ___ of document.

Legal Description: (abbreviated: i.e. lot, block, plat, or section, township, range)

N½ of Section 2, TWP 22N, R4E, W.M.

Full legal description contained on Exhibit “A” attached.

Assessor’s Property Tax Parcel/Account Number(s): N/A
After

a railroad open track across street 196th
authority to construct, maintain, and operate
Shunting Union Pacific Railroad Company

No. 3448