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CONTRACT

RE ART. 24

THIS AGREEMENT is made this 12th day of April, 2004, by, between and among Robert E. Anderson and John M. Anderson, Trustees of the Wedgewood Realty Trust, a Massachusetts realty trust created under a Declaration of Trust dated July 6, 1983, and recorded in the Middlesex South Registry of Deeds at Book 15114, Page 247, with its principal place of business at 20 Main Street, Acton, MA (hereinafter referred to as the "Owner"), individually and on behalf of the Trust and its trustees, beneficiaries, successors and assigns, and the Town of Acton, a municipal corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 (hereinafter referred to as the "Town").

WHEREAS the Owner owns the real property located at and known as 18-22 Main Street, Acton, MA, which consists of Parcels 21-3, 33, 48, 20, 32, 35, 57, 83 and 84 on Assessors' Map I-2 "as shown on the January 2003 edition of the Town Atlas (collectively the "Locus").

WHEREAS Parcels 21-3, 33, and 48 are zoned LI - Light Industrial under the Acton Zoning Bylaw.

WHEREAS Parcels 20, 32, 35, 57, 83 and 84 are zoned R-8/4 - Residential under the Acton Zoning Bylaw.

WHEREAS by Decision 84-29 dated December 5, 1984, and filed with the Acton Town Clerk on the same date, and Decision 87-8 dated March 26, 1987, and filed with the Acton Town Clerk on the same date, the Acton Board of Appeals granted a variance to Beacon Communications from the requirements of Section 3 of the Acton Zoning Bylaw to allow a business/industrial use, subject to certain conditions, on land zoned for residential use contiguous to a light industrial district on certain portions of the Locus.

WHEREAS by Citizens' Petition, the Owner has petitioned the Town to amend section 3.8.2 (ACCESSORY USES permitted in the Office, Business, and Industrial Districts) of the Zoning Bylaw to allow in the Light Industrial District and on contiguous adjacent land for which the Board of Appeals has previously granted a USE variance permitting a USE allowed in the Light Industrial District, the purchase of new vehicles; the wholesale, but not retail sale, of used vehicles; and the temporary outdoor storage of such new and used vehicles provided that:

- The LOT, or the property consisting of two or more contiguous LOTS in single ownership, contains at least 15 acres.
- Such USE is accessory to an operations center and offices of a vehicle rental or leasing company.
- Such vehicles are at all times registered with the Commonwealth of Massachusetts Registry of Motor Vehicles while on the premises.
- No such vehicle exceeds a gross vehicle weight of 10,000 pounds and a wheel base of 135 inches.

- All such vehicles are stored in the rear yard out of sight and fully screened from view from any STREET.
- All such vehicles are stored at least 200 feet away and fully screened from view from any pre-existing dwelling that is not on the same LOT or property.
- The transport and loading/unloading of such vehicles to and from the LOT or property occurs only on weekdays between the hours of 6:00 AM and 9:00 PM.
- The storage of such vehicles may use vacant or excess parking capacity that, regardless of the requirements of section 6 of this bylaw, is not needed for employees and customers of the businesses on the LOT or property.

, or to take any other action relative thereto (collectively “the Citizens’ Petition”).

WHEREAS the purpose of the Citizens’ Petition is to allow the incidental and temporary storage and the incidental wholesale of automobiles as part of the regional headquarters of a car rental and leasing company on the Locus, subject to proper screening of the vehicle storage areas, limitations on the loading and unloading of vehicles to weekday daytime hours, and the prohibition of retail sales.

WHEREAS for approximately 2 ½ years, Enterprise Rent-A-Car’s Regional Headquarters has been based at the Locus, and Enterprise desires to consolidate its wholesale division with its main offices whose functions include Human Resources, Facility Management and Accounting, on premises which can accommodate the storage of up to 200 cars.

WHEREAS the Citizens’ Petition proposes to accommodate this use on the Locus.

WHEREAS as an inducement to the Town’s Board of Selectmen to support at the 2004 Annual Town Meeting the proposed re-zoning that is the subject of the Citizens’ Petition, the Owner has represented that the Town will realize a substantial amount of additional excise tax revenue each year from vehicles stored at or allocated to the Locus, which would not exceed 200 vehicles stored at the Locus at any given time.

WHEREAS a portion of the Locus consists of premises conveyed to the Owner’s predecessor in title by the Massachusetts Bay Transportation Authority by deeds dated August 29, 1983, and February 13, 1985, and recorded in the Middlesex South Registry of Deeds respectively at Book 15194, Page 467, and Book 16042, Page 529, and consisting respectively of approximately 65,996 square feet and 11,814 square feet of land in the former Boston & Maine railroad right-of-way (collectively the “ROW Strip”).

WHEREAS the Owner or its predecessors in interest have constructed a building across the ROW Strip.

WHEREAS the Town is in the process of designing, acquiring real property for and constructing a portion of the Assabet River Rail Trail along a portion of the former Boston & Maine railroad right-of-way in Acton.

WHEREAS as an inducement to the Town's Board of Selectmen to support at the 2004 Annual Town Meeting the proposed re-zoning that is the subject of the Citizens' Petition, the Owner has agreed to convey to the Town of Acton and its successors and assigns, for no consideration, in a form reasonably satisfactory to Town Counsel, a perpetual easement across the ROW Strip and across a portion of the Locus for all purposes for which rail-trail corridors are used in the Commonwealth of Massachusetts including, without limitation, all forms of pedestrian, bicycle, and other non-motorized recreational use, and a temporary easement across the remainder of the Locus for design and construction purposes with respect thereto.

WHEREAS the 2004 Annual Town Meeting will consider the Citizens' Petition and the recommendation of the Board of Selectmen with respect thereto.

WHEREAS the Supreme Judicial Court has held in Durand v. IDC Bellingham, 440 Mass. 45, 55 (2003), that "conditioning otherwise valid zoning enactments on agreements reached between municipalities and landowners that include limitations on the use of their land or other forms of mitigation for the adverse impacts of its development" does not constitute illegal contract zoning.

NOW THEREFORE, for one dollar and other adequate consideration the receipt and sufficiency of which are hereby acknowledged, the Owner and the Town agree as follows:

1. In the event that the Citizens' Petition is adopted or substantially adopted at the April 2004 Annual Town Meeting, the Owner agrees as follows:
 - a. Within 60 days after the Attorney General approves or substantially approves the re-zoning adopted by the Citizens' Petition or such further time as the Town Manager shall designate in writing to the Owner, the Owner shall convey to the Town of Acton and its successors and assigns, for no consideration, a perpetual easement, substantially in the form attached hereto as Exhibit 1 with any changes as are satisfactory to Town Counsel: (i) across the ROW Strip over Parcel 83 from the Maynard-Acton Town Line to and joining up with the easement area described in paragraph 1(a)(ii) hereof, such easement at its northerly terminus, to be coincident with and include the western boundary of the ROW Strip for the entire length of 98.55' along the radius shown on the plan prepared by Earth Tech for the Town attached hereto as Exhibit 2, and (ii) across the Locus substantially in the location shown on the plan prepared by Earth Tech for the Town attached hereto as Exhibit 2 with any changes to said location as are satisfactory to the Board of Selectmen, and (iii) across the remainder of the Locus for access from the nearest public way for design, construction and maintenance purposes with respect thereto. Said easement shall be for all purposes for which

rail-trail corridors are used in the Commonwealth of Massachusetts including, without limitation, all forms of pedestrian, bicycle, and other non-motorized recreational and transportation uses.

b. The foregoing obligations shall run with the Locus for the benefit of the Town of Acton and shall bind the Owner's successors and assigns. The Owner shall, within 30 days of written request from the Town Manager, execute and deliver to the Town Manager all necessary recordable Notices and Instruments providing notice of and/or effectuating these obligations. Pending execution and delivery of such Notices and Instruments to the Town, the Town may record this Agreement, the validity and enforceability of which shall in no way be diminished by the act of recording by the Town. The Owner hereby releases and holds harmless the Town for any claim, liability, cost or expense arising out of the Town's recording this Agreement or any notice or instrument relating hereto. Any person using or occupying the Locus shall be deemed to have notice of and shall be bound by the obligations of paragraph 1 hereof by virtue of said recorded Notice and/or Instrument, regardless of whether said person has signed an easement containing the language set forth in subparagraph 1(a) hereof.

c. The use of the Locus shall conform to the Acton Zoning Bylaw.

d. In the event that the Owner fails to perform any of the foregoing in a timely manner, the Owner consents to jurisdiction of the Middlesex Superior Court in an action by the Town for specific performance of the Owner's obligations hereunder, and the Owner acknowledges that there is no adequate remedy at law with respect thereto.

2. In return for the foregoing undertakings, the Board of Selectmen of the Town of Acton agrees to recommend in favor of the re-zoning proposed by the Citizens' Petition at the April 2004, Annual Town Meeting.

3. The Owner acknowledges and understands that the recommendation of the Board of Selectmen is not binding upon Town Meeting and that a 2/3 affirmative vote of Town Meeting is required for the re-zoning article to pass.

4. The Owner further acknowledges and understands that the approval of the Attorney General is required before the re-zoning article can take effect

5. In the event that a subsequent Acton Town Meeting rescinds the zoning amendment that is the subject of the Citizens' Petition, the Owner's obligations under paragraph 1 shall remain in full force and effect. The Board of Selectmen shall have the right to propose and/or to support such action to rescind in the event that the Owner materially breaches its obligations under this Agreement and/or fails to substantially begin the use contemplated by the Citizens Petition amendment within one year of the Town Meeting approval thereof.

6. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party (or its successor) may from time to time designate by written notice:

Owner:

John M. Anderson
Wedgewood Realty Trust
20 Main Street
Acton, MA 01720

with a copy to:

Paul Alphen, Esq.
200 Littleton Road
Westford, MA 01886

Town:

Don P. Johnson
Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

with a copy to:

Stephen D. Anderson, Esq.
Anderson & Kreiger, LLP
43 Thorndike Street
Cambridge, MA 02141

7. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall in all respects be construed as a Massachusetts contract and shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts. Owner and Town hereby irrevocably submit to the non-exclusive jurisdiction of any State or Federal court sitting in Massachusetts over any suit, action or proceeding arising out of or relating to this Agreement.

8. Partial Invalidity. If any provision of this Agreement shall be determined to be unenforceable in any circumstances by a court of competent jurisdiction, then at the option of the

Town the balance of this Agreement shall be enforceable nonetheless, and the subject provision shall be enforceable in all other circumstances.

9. Authority. Each individual signing this Agreement on behalf of Owner warrants and represents to Town that he or she is authorized to do so by all requisite action of Owner. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

10. No Waiver. Failure of any party to this Agreement to avail itself or any of the terms, covenants and conditions of this Agreement for a period of time or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder.

11. Amendments. No change, amendment modification, cancellation or termination of this Agreement hereof, or any part of this Agreement shall be valid unless all parties to this Agreement consent thereto in writing.

12. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on all of the parties hereto.

13. Entire Agreement. This Agreement embodies the entire Agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed this 12th day of April, 2004.

TOWN OF ACTON, MASSACHUSETTS,
By its Board of Selectmen,

Walter H. Foster, Chairman

Peter K. Ashton

William H. Shupert, III

F. Dore' Hunter

Robert A. Johnson

WEDGEWOOD REALTY TRUST

By: John M. Anderson, Trustee

By: Robert E. Anderson , Trustee

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March, 2004, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton , proved to me through satisfactory evidence of identification, which was: examination of _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

(official signature and seal of notary)

My commission expires _____

OWNER ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of ____ March, 2004, before me, the undersigned Notary Public, personally appeared John M. Anderson and Robert E. Anderson, proved to me through satisfactory evidence of identification, which were _____, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose as a Trustee of the Wedgewood Realty Trust.

(official signature and seal of notary)

My commission expires _____

CERTIFICATE OF TRUSTEE(S)

John M. Anderson and Robert E. Anderson, Trustees of Wedgewood Realty Trust, under Declaration of Trust dated July 6, 1983, and recorded in the Middlesex South Registry of Deeds at Book 15114, Page 247, hereby certify that John M. Anderson and Robert E. Anderson are the sole Trustees of said Trust; that said Trust has not been altered, amended, revoked or terminated; that the Beneficiaries of said Trust are of legal age; that the Beneficiaries of said Trust are not deceased, under legal incapacity, or a party to any bankruptcy or other insolvency proceeding; and that the Beneficiaries of said Trust have, by written instrument of even date herewith, authorized and directed the Trustee(s) to execute a Contract with the Town of Acton, MA, concerning the real property located at and known as 20 Main Street, Acton, MA, which is shown as Parcels 21-3, 33, 48, 20, 32, 35, 57, 83 and 84 on Assessors' Map I-2 (collectively, the "Property"), and to do all acts and to execute and deliver any and all documents and instruments necessary or required to comply with the terms and conditions thereof; that the Trust is the sole owner of the Property; that the sole Trustee of the Trust is not the sole beneficiary of the Trust and that the joint Trustees of the Trust are not the joint beneficiaries of the Trust; and that John M. Anderson hereby accepts appointment as Trustee of the Trust.

Executed under seal this _____ day of _____, 2004.

John M. Anderson, Trustee

Robert E. Anderson , Trustee

Commonwealth of Massachusetts

Middlesex, SS. _____, 2004

On this ____ day of ____ March, 2004, before me, the undersigned Notary Public, personally appeared John M. Anderson and Robert E. Anderson, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose as Trustee of the Wedgewood Realty Trust.

(official signature and seal of notary)

My commission expires _____