NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of the 9th day of May, 2005 ("Effective Date"), by and among **Middlesex Savings Bank**, a mutual savings bank with an address of 6 Main Street, Natick, MA 01760 (hereinafter referred to as "Lender"), 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"), and **Robert E. Anderson, Trustee 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").

WITNESSETH:

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"), all as more fully described on Exhibit A, attached hereto and incorporated herein by reference.

WHEREAS, Owner owns those portions of the Locus shown as Parcel 32 and 35 on Assessor's Map I-2 by Certificate of Title No. 169451 filed with the Middlesex South Registry District of the Land Court in Book 977, Page 101.

WHEREAS, Owner owns those portions of the Locus shown as Parcel 20 on Assessor's Map I-2 by a deed filed with the Middlesex South Registry of Deeds in Book 15316, Page 533.

WHEREAS, Owner owns those portions of the Locus shown as Parcel 21-3, 33, 48 and 57 on Assessor's Map I-2 by a deed filed with the Middlesex South Registry of Deeds in Book 15114, Page 250.

WHEREAS, Owner owns those portions of the Locus shown as Parcel 83 on Assessor's Map I-2 by a deed filed with the Middlesex South Registry of Deeds in Book 15316, Page 533.

WHEREAS, Owner owns those portions of the Locus shown as Parcel 84 on Assessor's Map I-2 by a deed filed with the Middlesex South Registry of Deeds in Book 17178, Page 196.

WHEREAS, the Town and the Owner have entered into that certain Contract (the "Contract") dated July, 12 2004, requiring the Owner, *inter alia*, to grant easements to the Town affecting portions of the Locus for rail-trail purposes.

WHEREAS, by a Declaration of Covenants and Grant of Easements (the "Easement") dated as of the ____ day of May, 2005, recorded with the Middlesex South Registry of Deeds filed with Middlesex South Land Court contemporaneously herewith, the Owner has granted an easement to the Town affecting portions of the Locus for rail-trail purposes.

WHEREAS, the Lender has made a loan in the original principal sum of Three Million Five Hundred Thousand and No/100 Dollars ($3,500,000.00) (such loan and any renewal, substitution, extension or replacement thereof being herein called the "Loan") secured *inter alia* by (i) a Commercial Mortgage and Security Agreement on the Locus April 22, 2004, between the Owner and the Lender recorded with the Middlesex South Registry of Deeds as in Book 42584, Page 28, and registered with Middlesex South Land Court on Certificate 189451 as Document 2004-01321448 filed on April 23, 2004; (ii) a Collateral Assignment of Leases and Rents with respect to the Locus dated April 22, 2004, between the Owner and the Lender recorded with Middlesex South Registry of Deeds in Book 42584, Page 47, and registered with Middlesex South Land Court on Certificate 189451 as Document 2004-01321449 filed on April 23, 2004; and (iii) a UCC Financing Statement with respect to the Locus dated April 22, 2004, between the Owner and the Lender recorded with Middlesex South Registry of Deeds in Book 42584, Page 57, and registered with Middlesex South Land Court on Certificate 189451 as Document 2004-1321450 (being collectively referred to herein as the "Mortgage").

A True Copy. Attest:
TOWN CLERK, ACTON, MASS

WHEREAS, the parties hereto desire to enter into this Agreement.

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

1. Non-Disturbance. The Town's use, possession and enjoyment of the Easement shall not be interfered with nor shall the Easement be affected in any other manner, by any exercise of any power of sale in the Mortgage, or by foreclosure or any action or proceeding instituted under or in connection with the Mortgage, except that the person or entity acquiring the interest of the Owner of the Locus as a result of any such action or proceeding, and the successors and assigns thereof (hereinafter referred to as the "Purchaser") shall not be (a) liable for any act or omission of any prior Owner of the Locus; or (b) bound by any amendment or modification to the Easement made without Lender's prior written consent.

2. The Town Shall Not Be Joined In Foreclosure. Lender shall not join the Town as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Easement and in such event Lender shall reimburse the Town for all reasonable expenses incurred by the Town in connection therewith.

3. Attornment. In the event the exercise of the power of sale in the Mortgage, or in the event of foreclosure of the Mortgage, or in event of a conveyance of the Owner's Property constituting the Locus in lieu of foreclosure, the Town agrees to attorn to and accept the purchaser at the foreclosure sale or the grantee under the conveyance in lieu of foreclosure as the Owner of the fee in the Locus underlying the Easement, subject to all terms and conditions of said Easement and the terms of this Agreement. Said attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of Owner. The respective rights and obligations of the Town and the Purchaser upon such attornment, shall be and are the same as now set forth in the Easement as between the Town and the Owner.

4. The Town's Rail-Trail. Lender hereby acknowledges and agrees that the Mortgage does not apply to the Town's improvements now or hereafter made within the Easement under the terms of the Easement.

5. As to Owner and the Town. As between the Owner and the Town, the Owner and the Town covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Easement.

6. As to Owner and Lender. As between the Owner and the Lender, the Owner and the Lender covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Mortgage.

7. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their respective heirs, administrators, representatives, successors and assigns, including without limitation each and every holder of the Easement or any other person having an interest therein and each and every purchaser of the Owner's Property, including without limitation at or after a foreclosure sale or conveyance in lieu of foreclosure.

8. Title of Paragraphs. The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

9. Provisions Binding. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns, respectively, of the Lender, the Town and the Owner.

10. Governing Law. This Agreement shall be interpreted and governed by the laws of the Commonwealth of Massachusetts.

11. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the addresses as set forth in the opening paragraph above. Notice so mailed shall be deemed effective upon its deposit. Notice given in any other manner shall be deemed effective only if and when delivered to the addressee.

12. Counterparts. This Agreement may be signed in multiple counterparts, each of which is an original, but all of which comprise one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

OWNER:
Wedgewood Realty Trust

By: Robert E. Anderson
Name: Robert E. Anderson, Trustee
Title: Trustee and Not Individually

Commonwealth of Massachusetts)
)
County of Middlesex)

On this 19th day of May, 2005, before me, Robert E. Anderson the undersigned Notary Public, personally appeared Robert E. Anderson, Trustee of the Wedgewood Realty Trust, proved to me through satisfactory evidence of identity, which was/were Massachusetts Drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Signature of Notary Public
Paula Copley
Printed name of Notary

Place Notary Seal and/or Stamp Above

My Commission Expires 4/12/07.

"LENDER"
Middlesex Savings Bank

By: MARK D. MILLER
Name:
Title: V.P.

STATE OF MASSACHUSETTS)
) ss.
COUNTY OF Middlesex)

On this 9th day of May, 2005, before me, Bruce Mizzile the undersigned Notary Public, personally appeared MARK Miller, the Vice President of Middlesex Savings Bank, proved to me through satisfactory evidence of identity, which was/were Savings Bank, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose for and on behalf of said Middlesex Savings Bank, and with full authority to do so.

Signature of Notary Public
Bruce A. Mizzile
Printed name of Notary
My Commission Expires June 18, 2010

Place Notary Seal and/or Stamp Above

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

Peter K. Ashton, Chairman

F. Doré Hunter

Lauren S. Rosenzweig

Walter M. Foster

Robert A. Johnson

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ___ day of _____, 2005, 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.

Signature of Notary Public

Printed name of Notary

Place Notary Seal and/or Stamp Above

My Commission Expires_____

EXHIBIT A
Description of the Locus

Parcel 20:

A certain parcel of land with the buildings and improvements thereon situated in the Southerly part of said Acton, containing about seven (7) acres, bounded and described as follows:

Beginning at the Southeasterly corner thereof at land now or formerly of Birch and the Marlborough Branch of the Fitchburg Division of the Boston and Maine Railroad; thence

Northerly	- along said Railroad, three hundred forty-five (345) feet to a stone bound at land of Day; thence
Northerly	- 71° 44' Westerly, one hundred ninety-six (196) feet to a stone bound; thence
Northerly	- 8°03' Easterly, one hundred seventy-two (172) feet by other land of Day to a stone wall; thence
Westerly	- along said wall about two hundred twenty-two (222) feet to the end thereof; thence
Southwesterly	- about five hundred sixty (560) feet to a stone bound at other land of Day; thence
Southeasterly	- by land formerly of Paul Litchfield, five hundred fifty-two (552) feet to an iron pipe at land of Alfred Birch et ux; thence
Northeasterly	- by land of Birch, two hundred eighty (280) feet to a stone bound; thence
Southeasterly	- about four hundred thirty-three (433) feet by land of Birch to place of beginning.

For title, see deed of Joseph V. Stuart and Robert E. Anderson dated November 15, 1983 recorded in the Middlesex South Registry of Deeds in Book 15316, Page 533.

Parcel 35:

That certain parcel of land situate in Acton in the County of Middlesex and of the Commonwealth of Massachusetts, bounded and described as follows:

Easterly	- by land now or formerly of the Boston and Maine Railroad, ninety-five feet;
Southerly	- One hundred forty-seven and 70/100 feet;
Southwesterly	- Ninety eight and 84/100 feet, and;
Northerly	- One hundred and seventy-five feet, by land now or formerly of Alfred Birch.

Said parcel is shown as Lot A on Plan Number 13293B filed with the Middlesex Registry District of the Land Court on Certificate of Title Number 32316 in Book 216, Page 217.

Parcel 83:

The land in Acton, County of Middlesex, Commonwealth of Massachusetts, described as follows:

approximately 65,996 square feet of land in the former Boston & Maine railroad right of way, shown as Parcel A on "Plan of Land in Acton, Mass." dated June 6, 1983, revised August 19, 1983, by Acton Survey & Engineering, Inc. recorded with the Middlesex South Registry of Deeds in Book 15194, Page 467.

For title reference see deed of Joseph V. Stuart and Robert E. Anderson in the Middlesex South Registry of Deeds in Book 15316, Page 533.

Parcel 21 – 3:

That certain lot of land in the southerly part of Acton, usually known as South Acton, Middlesex County, Massachusetts bounded and described as follows:

Easterly: by Main Street (Route 27) as shown on a plan of land hereinafter mentioned, one hundred and 00/100 (100.00) Feet

Southerly: by land shown on said plan to be owned by Earl W. and Beverlie B. Tuttle, three hundred thirty six and 55/100 (336.55) Feet; and thence by land of said Tuttles, twenty and 78/100 (20.78) Feet

Westerly: by land shown on the said plan to be owned by Boston and Maine Railroad, fifteen and 65/100 (15.65) Feet;

Northerly: by land shown on the said plan to be owned by Boston and Maine Railroad eight and 43/100 (8.43) Feet;

Westerly: by land shown on the said plan to be owned by Boston and Maine Railroad three hundred fifty seven and 77/100 (357.77) Feet;

Northerly: by a parcel of land shown as Lot B on said plan three hundred sixty three and 29/100 (363.29) Feet.

Being shown as Lot A on a Plan entitled: "Plan of Land in Acton, Mass. Owned by Joseph A. and Nancy Nastasi", dated February 24, 1969, Acton Survey and Engineering, Inc. and recorded with the Middlesex South District Registry of Deeds as Plan Number 302 of 1969 in Book 11664 End.

Parcel 33 and 48:

That certain lot of land situated in the Southerly part of Acton, Middlesex County, Massachusetts and on the Westerly side of the road leading from Maynard to South Acton and bounded and described as follows:

The first parcel contains three acres and eighty-two rods, more or less, bounded and described as follows:

Beginning at the Southeasterly corner of the premises at a bound at land now or formerly of Joel F. Parmenter and said road;

Thence running Northerly by said road to land now or formerly of the Town of Maynard;

Thence turning and running Westerly by land of said Maynard, eight (8) rods to a bound;

Thence turning and running Northerly by land of said Town of Maynard and land now or formerly of the Town of Acton, Ten (10) rods to a bound;

Thence turning and running Easterly by land of said Town of Acton eight (8) rods to said road;

Thence Northerly by said road to a stake and stones at land now or formerly of Isaiah Reed;

Thence South 53° West by land of said Reed, twenty-two (22) rods and sixteen (16) links to a stake and stones at land of said Reed;

Thence by land of said Reed, North 51° - 55' West, about one (1) rod and five (5) links to land now or formerly of the Marlboro Branch Railroad;

Thence Southerly by said Railroad, about sixty-two (62) rods and eighteen (18) links to land now or formerly of Joel F. Parmenter ;

Thence South 50° - 4' East one (1) rod and eight (8) links to the point of beginning.

For title reference see Middlesex South Registry of Deeds, Book 15114, Page 250.

Parcel 32:

A certain parcel of land with the buildings thereon, situated in Acton, Middlesex County, Massachusetts more fully bounded and described as follows:

Easterly - by land now or formerly of the Boston & Maine Railroad, seven hundred five and 90/100 feet;

Southeasterly - by land now or formerly of K. Paul Hilander, two hundred thirty-nine and 20/100 feet;

Southwesterly - by land now or formerly of Otto Hanson et al, nine hundred and thirty-four feet;

Northwesterly - six hundred eighty-four and 75/100 feet, and

Northeasterly - four hundred twenty-nine and 02/100 feet, by land now or formerly of Sewall A. Small.

All of said boundaries are determined by the Court to be located as shown on a plan, as modified and approved by the Court, filed in the Land Registration Office, a copy of a portion of which is filed in the Registry of Deeds, for the South Registry District of Middlesex County in Registration Book 184, Page 597, with Certificate 29061.

There is excepted and excluded from the above described land, lot A shown on plan filed in Registration Book 216, Page 217.

For title reference see Middlesex South Registry District, Certificate of Title No. 163369 in Book 947, Page 19.

Parcel 57:

A parcel containing one hundred and twenty-eight (128) rods, more or less, situated on the Westerly side of said Railroad and nearly opposite the above described parcel, bounded as follows:

Beginning at the Southeasterly corner of the premises at a stake and stones at the Maynard Town Line and said Railroad;

Thence North 50° - 4' West by land now or formerly of Joel F. Parmenter, seventeen (17) rods and fourteen and one-half (14 ½) links to the center of a ditch at land formerly of Henry Fowler;

Thence Northeasterly by said ditch and land formerly of said Fowler, fourteen and one-half (14 ½) rods to said Railroad;

Thence Southerly by said Railroad to the point of beginning.

For title reference see Middlesex South Registry of Deeds, Book 15316, Page 534.

Parcel 84:

The land in Acton, County of Middlesex, Commonwealth of Massachusetts, shown as Parcel B on a "Plan of Land in Acton, Mass.", dated September 13, 1983, by Acton Survey & Engineering, Inc. recorded with the Middlesex South Registry of Deeds as Plan Number 240 of 1985 in Book 16042, Page 529; and containing approximately 11,814 square feet of land.

For title reference see Middlesex South Registry of Deeds, Book 16042, Page 529.

EXCERPT OF THE ANNUAL TOWN MEETING HELD APRIL 6, 1998
WITH ADJOURNED SESSIONS HELD APRIL 7, AND APRIL 8, 1998

ARTICLE 4 ASSABET RIVER RAIL TRAIL
(2/3 VOTE REQUIRED)

To see if the Town of Acton, for the purpose of establishing a route for the Assabet River Rail Trail, will vote to take by eminent domain, purchase in fee simple, accept as a gift, or acquire by lease, easement, license or otherwise certain parcels of land, or portions thereof, consisting of:

- the former or present railroad right of way that leads from the Maynard town line just west of Main Street to the intersection of Maple Street with Main Street in South Acton;
- a parcel of land at 20 Main Street;
- a parcel of land between the railroad right of way, Stow Street and Mill Pond; and
- a parcel of land between Maple Street and the MBTA commuter rail right of way in the vicinity of the South Acton train station;

Said parcels are also shown in the 1997 Acton Town Atlas on map I-2 as the B & M Railroad and parcels 20, 21-3, 32, 33, 35, 83, and 84, and on map H-2A as B & M RR Marlboro Branch, and parcels 37, 42, 42-1 and 62; and further, to appropriate $150,000 or any other sum of money, to be expended by the Town Manager for costs incurred for these land acquisitions, and to determine whether to raise this appropriation by borrowing or otherwise, and to authorize the Selectmen to apply for, accept, expend and borrow in anticipation of Federal and State aid; or take any other action relative thereto.

MOTION: **MR. FRIEDRICHS** moves that the Town appropriate $150,000 to be expended by the Town Manager for the purpose of acquiring certain parcels of land, as set forth in the article, for establishing a route for the Assabet River Rail Trail, and that to raise such amount, the Town Manager is authorized to apply for, accept, expend and borrow in anticipation of any Federal and State Grants available for these purposes.

MOTION: **Mr. Codyer** moves that the Town postpone discussion of this article indefinitely

MOTION LOST

ORIGINAL MOTION CARRIES

TOTAL VOTE 489 YES 335 NO 154

A True Copy. Attest:
Edward J Ellis
OWN CLERK ACTON, MASS.