

8/9/00
49-Acre CR

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CONSERVATION RESTRICTION

I. GRANTOR CLAUSE:

Société Générale Financial Corporation, a Delaware corporation, with a principal place of business at 1221 Avenue of the Americas, New York, New York 10020 ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, and in consideration of One Dollar (\$1.00) and other good and valuable consideration paid, hereby grants to the Town of Boxborough, a Massachusetts municipal corporation, acting by and through the Boxborough Conservation Commission, Town Hall, 29 Middle Road, Boxborough, Massachusetts 01719, and their successors and permitted assigns ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction (hereinafter referred to as the "Conservation Restriction") on the parcels of land located in Boxborough, Middlesex County, Massachusetts, which parcels are shown as "Open Space/Passive Recreation Area (1,698,693± sf, 39 ± AC)" and "Open Space/Active Recreation Area (434,403± sf, 9.97 ± AC)" on a plan entitled "Restriction Plan, Towermarc Business Park, Boxborough, MA," dated April 5, 2000, last revised May 5, 2000, prepared by Beals & Thomas, Inc., and recorded herewith (the "Plan"), and are more particularly described on Exhibit A attached hereto (collectively, the "Premises"). For Grantor's title see deed from The EqMarc Joint Venture recorded with Middlesex South Registry of Deeds in Book 51641, Page 26.

II. PURPOSES:A. Preservation of Conservation Values.

The Premises which are the subject of this Conservation Restriction have certain unusual, unique or outstanding qualities, the preservation of which in their predominantly natural or open condition (subject to the rights of the Grantor as reserved hereunder) will be of benefit to the public. Such qualities (hereinafter collectively referred to as the "Conservation Values") include following:

The Premises contain upland habitat potentially used by two state-listed species of turtles protected under the Massachusetts Endangered Species Act, Chapter 131A of the Massachusetts General Laws, the Blanding's turtle (*Emydoidea blandingi*) and the Eastern Box turtle (*Terrapene carolina*). Granting this Conservation Restriction serves to satisfy the requirements set forth in Conservation Permit No.00-009.DFW issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife dated March 1, 2000.

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09/06/00 PLAN Towermarc Business Park, Boxborough
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The Premises also contain areas of wetlands, which contribute to the protection of public and private water supply, the prevention of pollution, flood control and storm damage protection; and provide habitat for a variety of birds, fish, reptiles and mammals.

B. Compliance with Open Space Commercial Development Special Permit.

Grantor and Grantee acknowledge that this Conservation Restriction is required pursuant to the provisions of an Open Space Commercial Development Special Permit (Decision No. 97-01) issued by the Town of Boxborough Planning Board on January 19, 1997 (the "Special Permit"). Under the terms of the Special Permit, the Planning Board granted its approval to build 900,000 square feet of office, research and development and other commercial uses on the property shown on the Plan (the "Commercial Development"), subject to satisfaction of certain conditions, including the following:

1. Preservation of an area of land as an "Open Space/Recreation Area," which condition may, under the terms of the Special Permit, be satisfied by constructing and operating a golf course on the Premises; and
2. Providing area residents with reasonable access to the Premises for passive recreational purposes such as hiking, jogging and cross-country skiing, provided that a golf course is not in operation on the Premises.

Granting this Conservation Restriction to the Town of Boxborough serves to satisfy the conditions set forth above.

C. Promoting the Goals and Objectives of the Town of Boxborough's Conservation and Recreation Plan.

The designation of the Premises as Open Space/Recreation Area complies with the Town of Boxborough's Conservation and Recreation Plan which sets forth the following goals/objectives:

Goal: To acquire additional land for Conservation and Recreation purposes.

Objectives: To encourage developers of residential, commercial and industrial properties to include recreational facilities and open space in their developments and to provide linkages to existing conservation or recreational properties. To explore alternatives for funding open space acquisition including private foundations and land gifts.

III. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES.

A. Prohibited Acts and Uses.

Subject to the exceptions and rights reserved to Grantor, its successors and assigns pursuant to Section B, below, the following acts and uses are prohibited on the Premises:

1. Constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, below or above the Premises except as necessary to permit the use of the Premises as set forth in Section B, below;
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, except as necessary for proper drainage, wastewater treatment or soil conservation and as necessary to permit the use of the Premises as set forth in Section B, below;
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other similar substance or material whatsoever or the installation of underground storage tanks, except as necessary to permit use of the Premises as set forth in Section B, below;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation, except as permitted in Section B, below;
5. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation or wildlife habitat; and
6. Any other use of the Premises which is materially inconsistent with the purposes of this Conservation Restriction and which would materially impair significant conservation values, unless necessary for the protection of the conservation values that are the subject of this Conservation Restriction or otherwise permitted in Section B below.
7. With exception of the Open Space/Active Recreation Area shown on the Plan, any conveyance of a part or portion of the Premises alone or the division or subdivision of the Premises (as compared to the conveyance of the Premises in its entirety which shall be

permitted) that would impair or affect the enforceability of this Conservation Restriction on a successor in interest to the Grantor, without the prior written consent of the Grantee.

B. Exceptions to Otherwise Prohibited Uses.

All acts and uses not prohibited in Section A are permissible and are reserved to the Grantor, its successors and assigns. Further, notwithstanding the provisions of Section A, above, the following acts and uses are also permitted:

1. Grantor reserves all rights necessary to develop, maintain, renovate and operate an 18-hole golf course or other recreational/open space use, including but not limited to the rights to develop ponds, water supply wells and leaching fields for sanitary septage; grade and regrade topography; construct golf tees, bunkers and traps, clubhouse and maintenance facilities (together with associated parking, related office and exhibit facilities, and complementary recreational facilities), fairways and greens, cart paths and boardwalks; install benches, tee, yardage and directional markers and signs; ball washing devices and similar customary golf course accessories, all strictly in accordance with and limited by applicable state and local approvals and regulations, as the same may be amended from time to time, including but not limited to the provisions of a Conservation Permit March 1, 2000, or as it may be subsequently amended, issued by the Natural Heritage and Endangered Species Program of the Massachusetts Division of Fisheries and Wildlife. Without limiting the generality of the foregoing, Grantor reserves the following specific rights:
 - (a) To maintain any areas as necessary by watering methods, landscaping, applying fertilizer, herbicides or pesticides or otherwise as is incidental to the operation of a golf course or other recreational use of the Premises, including the right to plant and selectively cut or prune trees, brush or other vegetation or in accordance with course's Integrated Pest Management Program.
 - (b) To erect small accessory structures such as pumphouses, sprinkler control boxes, toilet facilities, and open shelters, subject to all applicable state and local regulatory requirements.
 - (c) To construct paved or unpaved paths and boardwalks for pedestrian and/or golf cart traffic.

- (d) To install, maintain and use underground utility lines, including but not limited to, irrigation lines, provided the surface of the ground is restored to its natural state.
 - (e) To excavate and remove from the Premises soil, gravel or other mineral resources or natural deposits as may be incidental to the installation or maintenance or removal of septic systems, utilities, and other underground structures or the maintenance of good drainage, soil conservation practices or other permissible uses of the Premises or for construction, maintenance, or operation of the golf course or other recreational use.
 - (f) To dig, drill and operate water wells and associated utility lines.
 - (g) To selectively cut trees for fire protection, unpaved trail and road maintenance, tick control or otherwise to preserve the conservation values of the Premises, including vistas.
2. Grantor reserves all rights necessary to allow use of the Premises for passive outdoor recreational purposes, such as hiking, jogging and cross-country skiing, and other similar outdoor recreational activities not involving motorized vehicles (collectively, the "Passive Recreational Uses"), as more particularly provided in Section V below. Grantor and Grantee acknowledge and agree that use of the Premises for the Passive Recreational Uses will be permitted only during daylight hours and will be subject to rules and regulations established and agreed upon by Grantor and Grantee.
 3. Grantor reserves all rights necessary to allow any recreational use of the Open Space/Active Recreation Area shown on the Plan, including, but not limited to, a recreational playing field and associated parking, access driveways and accessory structures related thereto, whether or not such use requires alteration of the topography of such area, as more particularly provided in Section V below. The surface of such parking areas and access driveways shall be made of gravel or other comparable pervious surface.
 4. The Grantor reserves all rights necessary to construct and maintain a subdivision roadway connecting Swanson Road and Littleton County Road, and to construct and maintain drainage and stormwater management systems appurtenant to such roadway. The roadway will be constructed in the approximate location shown on the Plan.

5. In accordance with generally accepted forest management practices (a) pruning and cutting to prevent, control or remove hazards, disease or insect damage, fire, or to preserve the present condition of the Premises, including vistas, and road maintenance; and (b) the cutting of trees for designated purposes, in accordance with a plan, prepared by a professional forester and approved by the Grantee, that is designed to protect the conservation values of the Premises including, without limitation, scenic and wildlife habitat values.
6. Measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species.
7. The erection, maintenance and replacement of signs of a reasonable size to identify interests of the Grantor and Grantee, respectively, in the Premises, educational, interpretive and regulatory signs (such as "no hunting") or such other signs as Grantor may deem necessary and desirable to educate the public about the conservation values protected and any limitations related to public access.
8. The placing of fences that do not interfere with the conservation values of the Premises and which allow for the passage of small animals.
9. The use of motor vehicles reasonably related to the exercise by the Grantor, its successors and assigns of the rights reserved hereunder and emergency vehicles.
10. The installation of monitoring wells as required for the waste water and storm water management systems.
11. Construction, operation and maintenance on the Premises of water supply wells, including without limitation, any and all appurtenances thereto, as part of a public water supply system or as part of the irrigation landscaping system.

The exercise of any right reserved or permitted to the Grantor under this Section B shall be in compliance with the then current Zoning Bylaw of the Town of Boxborough, Massachusetts General Laws Chapter 131, Section 40 (the "Wetlands Protection Act"), Massachusetts General Laws Chapter 131A (the "Massachusetts Endangered Species Act"), and all other applicable federal, state and local laws.

IV. LEGAL REMEDIES OF THE GRANTEE:A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

B. Reimbursement of Costs of Enforcement.

The Grantor, its successors and assigns, covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including, without limitation, reasonable counsel fees) incurred in enforcing this Conservation Restriction or in remedying or abating any willful and knowing violation thereof by Grantor. Grantee covenants and agrees to reimburse Grantor for all reasonable costs and expenses (including, without limitation, reasonable counsel fees) incurred in defending against an enforcement action prosecuted by Grantee upon a determination by a court of competent jurisdiction (or acknowledgment by Grantee) that Grantee willfully or knowingly prosecuted a frivolous enforcement action.

C. Grantee's Disclaimer of Liability.

By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises.

D. Grantor's Rights.

Notwithstanding anything to the contrary provided herein, Grantor shall not have any obligation to maintain the Premises but shall have the right to do so if it so elects.

E. Severability Clause.

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

F. Non-Waiver.

Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

V. ACCESS:

The Conservation Restriction hereby conveyed grants to the Grantee and the Natural Heritage and Endangered Species Program the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of (i) inspecting the Premises to determine compliance with this Conservation Restriction; and (ii) conducting scientific research and habitat preservation activities, provided that activities in this Article V do not unreasonably disrupt the operation of a golf course or other activity permitted herein; and, for Grantee, the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of exercising Grantee's rights pursuant to Article IV above. In addition, and subject to the next ensuing provisions of this Section V, if a golf course is not developed on the Premises, this Conservation Restriction also grants to Grantee and to the public (a) the right to enter the Premises for the Passive Recreational Uses without obtaining the prior permission of the Grantor; and (b) the right to enter the Open Space/Active Recreation Area shown on the Plan for the Active Recreational Uses, but only after having obtained the prior permission of the Grantor. If a golf course is developed on the Premises, the rights of the Grantee and the public set forth in subparagraphs V(a) and V(b) above shall still be permitted, but only during those times of the year that the golf course is not in operation on the Premises. Any public access authorized by Grantor shall be permitted only during daylight hours and shall be subject to rules and regulations established and agreed upon by Grantor and Grantee. The liability of Grantor with respect to any such access to said Premises shall be subject to the provisions of Section 17C of Chapter 21 of the General Laws.

VI. ASSIGNABILITY:

A. Running of the Burden.

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Running of the Benefit.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instance:

- (i) As a condition of any assignment, the Grantee requires that the purposes of this Conservation Restriction continue to be carried out; and
- (ii) The assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws as a qualified organization to receive this Conservation Restriction directly; and
- (iii) The Grantee complies with the provisions required by Article 97 of the Amendments to the Massachusetts Constitution.

VII. SUBSEQUENT TRANSFERS:

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises including a leasehold interest. Notwithstanding anything to the contrary contained herein to the extent permitted under applicable law, upon the transfer by a party of its entire interest in the Premises, the rights and obligations of such party under this Conservation Restriction shall terminate. In the event of a transfer by a party of a partial interest in the Premises, the rights and obligations of such party under this Conservation Restriction shall terminate with respect to the portion transferred.

VIII. ESTOPPEL CERTIFICATES:

Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction and which otherwise evidences the status of this Conservation Restriction as may be required by Grantor.

IX. EFFECTIVE DATE:

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded with Middlesex South Registry of Deeds and with Worcester County Registry of Deeds.

X. RECORDATION:

The Grantor shall record this instrument in timely fashion with Middlesex South Registry of Deeds.

This instrument is exempt from documentary stamp excise taxes pursuant to Section 1 of Chapter 64D of the General Laws.

[Signature Pages Follow]

Executed under seal as of this 21 day of July, 2000.

Executed this

20 day of July, 2000

Société Générale Financial Corporation
a Delaware Corporation

By:

Robert W. Vandervalk
Robert W. Vandervalk

County of New York
State of New York
Suffolk, ss.

COMMONWEALTH OF MASSACHUSETTS

July 20, 2000

Then personally appeared the above named R.W. Vandervalk of Société Générale Financial Corporation, and acknowledged the foregoing instrument to be his free act and deed, before me,

[Signature]
Notary Public

My commission expires:

Notary Public
Notary Public for New York
Notary Public for New York
Commission Expires Dec. 26, 2001

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 7 day of June, 2000.

BOXBOROUGH CONSERVATION
COMMISSION

By: Charlene G. Golder

By: M. Hanover

By: David M. Hanover

By: Paul A. Key

By: Heaven M. Galka

By: Linda C. Coe

David M. Hanover

COMMONWEALTH OF MASSACHUSETTS

Middlebury, ss.

June 7, 2000

Then personal appeared before me the above named Charlene G. Golder, M. Hanover and David M. Hanover and acknowledged the foregoing instrument to be their free acts and deeds and the free act and deed of Boxborough Conservation Commission.

Patricia E. White

Notary Public

My Commission Expires: 11-2-2001

APPROVAL BY SELECTMEN

We, the undersigned, being a majority of the Selectmen of the Town of
 Boxborough, Middlesex County, Massachusetts, hereby certify that at a meeting duly
 held on the 12 day of June, 2000, the Selectmen voted to approve the
 foregoing Conservation Restriction to the Town of Boxborough, Massachusetts, pursuant
 to M.G.L. c. 40, §8(c) and M.G.L. c. 184, §32.

SELECTMEN

By: [Signature]
 By: [Signature]
 By: [Signature]
 By: [Signature]

12 JUN 00

COMMONWEALTH OF MASSACHUSETTS

[Signature], SS.

June 12, 2000

Then personal appeared before me the above named Donald R. Williams
 and acknowledged the foregoing instrument to be their free
 acts and deeds and the free act and deed of the Town of Boxborough.

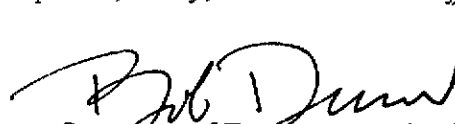
[Signature]
 Notary Public
 My Commission Expires: 11-2-2001

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS,
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of Boxborough has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32. Said approval is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

Date:

9/29/00



Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Aug. 29, 2000

Then personal appeared before me the above named
Bob O'Quinn, the Secretary of Environmental Affairs for the
Commonwealth of Massachusetts and acknowledged the foregoing instrument to be his
~~or her~~ free act and deed, before me.


Notary Public
My Commission expires

NICOLE SICARD
Notary Public
My Commission Expires December 31, 2004

Exhibit A

METES AND BOUNDS DESCRIPTION

Open Space/Passive Recreation Area
Boxborough, MassachusettsParcel 1

A certain Open Space/Passive Recreation Area in the Commonwealth of Massachusetts, County of Middlesex, Town of Boxborough, and shown as Open Space/Passive Recreation Area on a plan entitled "Restriction Plan, Towermarc Business Park, Boxborough, MA, Middlesex County dated February 15, 2000, last revised May 5, 2000, prepared by Beals and Thomas, Inc., more particularly bounded and described as follows:

Beginning at the most southerly corner of said Open Space/Passive Recreation Area, on the northerly side of Beaver Brook Road, thence running;

N 49 14 57 W 1291.88 feet to a point, said course being bounded in part by the Conservation Restriction Area and by other land of the Grantor, thence turning and running;

N 41 08 48 E 1064.28 feet to a point. Said course being by the Boxborough/Harvard Town Line, thence turning and running;

N 82 07 29 E 136.30 feet to a point, said last two courses being bound by land now or formerly of D & M/Chue Technology, Inc., thence turning and running;

S 00 38 38 E 355.17 feet to a point, thence turning and running;

S 77 59 30 E 770.00 feet to a point, thence turning and running;

N 32 51 55 E 275.00 feet to a point, said last three courses being bounded by Open Space/Active Recreation Area, thence turning and running;

S 10 45 13 E 275.59 feet to a point of curvature, thence turning and running;

Southerly by a curve to the right having a radius of 950.00 and a length of 400.91 feet to a point of compound curvature, thence turning and running;

Southerly by a curve to the right having a radius of 925.00 and a length of 1045.40 to a point of tangency, thence turning and running;

S 78 10 47 W 96.96 feet, said last four courses being bounded by the northerly side of Beaver Brook Road, to the point of beginning.

Containing 1,698,693 square feet more or less, or 39.0 acres, more or less.

Subject to any and all existing rights and easements of record.

Parcel 2

A certain Open Space/Active Recreation Area in the Commonwealth of Massachusetts, County of Middlesex, Town of Boxborough, and shown as Open Space/Active Recreation on a plan entitled "Restriction Plan, Towermarc Business Park, Boxborough, MA, Middlesex County" dated February 15, 2000, last revised May 5, 2000, prepared by Beals and Thomas, Inc., more particularly bounded and described as follows:

Beginning at the most southerly corner of said Open Space/Active Recreation Area, on the northerly side of Beaver Brook Road, thence running;

S 32 51 55 W 275.00 feet to a point, thence turning and running;

N 77 59 30 W 770.00 feet to a point, thence turning and running;

N 00 38 38 W 355.17 feet to a point, said last three courses being bounded by Open Space/Passive Recreation Area, thence turning and running;

N 82 07 29 E 880.29 feet to a point, said course being bound by land now or formerly of D & M/Chu Technology, Inc., thence turning and running;

S 01 59 01 E 54.00 feet to a point, thence turning and running;

S 04 42 19 W 46.56 feet to a point, thence turning and running;

S 03 03 21 E 157.81 feet, to a point, thence turning and running;

S 10 45 13 E 149.65 feet, said last four courses being bounded by the northerly side of Beaver Brook Road, to the point of beginning.

Containing 434,403 square feet more or less, or 9.97 acres, more or less.

Subject to any and all existing rights and easements of record.

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