

RESTATEMENT AND FIRST AMENDMENT TO DEED OF
TRUST FROM PERCY PARKER, TRUSTEE TO HERMAN F. STRAW,
SAID DEED DATED NOVEMBER 1, 1901, RECORDED AT BOOK 583, PAGE 340

WHEREAS, a certain trust in regards to real property located at Straws Point, Town of Rye, County of Rockingham, State of New Hampshire was established by Percy Parker, Trustee to Herman F. Straw by deed of trust dated November 1, 1901, recorded at Book 583, Page 340 of the Rockingham County Registry of Deeds.

WHEREAS, the Undersigned, are the present Trustee and the present successors in title to the tracts of land which are stated in said Trust instrument as benefited lands.

We, the Undersigned, now therefore, approve and restate the following, it being a true copy of the handwritten original instrument.

Know all Men by these Presents

That I, Percy Parker, of Lowell, County of Middlesex, Commonwealth of Massachusetts, Trustee under Deed of Carrie Celeste Meigs, then of Lawrence, County of Essex, Commonwealth of Massachusetts, but now of said Lowell, dated the 13th day of January in the year 1898, and recorded in the County of Rockingham, State of New Hampshire at Book 562, Page 399 by virtue and in execution of the power and authority given me by said deed and of every other power and authority given to me hereto and in consideration of the sum of One (\$1.00) Dollar and other valuable consideration to me, paid by Herman F. Straw of Manchester, County of Hillsborough, State of New Hampshire, the receipt hereby acknowledged, do hereby grant, demise, release and forever quitclaim onto the said Herman F. Straw and his heirs and assigns, a certain tract or parcel of land containing 150,000 square feet, more or less, situated on the southerly side of Ocean Street, at Straws Point (so-called), in the Town of Rye, County of Rockingham shown on Plan of said "Straws Point," made by J. Arthur Brown, surveyor, August 1901, to be recorded herewith and bounded as follows, namely,

Beginning at the northerly corner of the tract on said Ocean Street at land formerly of Elizabeth P. Adams at the center of the westerly gate post by a forty-foot passageway, thence running South $83\frac{1}{2}^{\circ}$ East about Five Hundred Eighty-seven (587) feet, more or less to the Atlantic Ocean; thence by said Ocean southwesterly Three Hundred Seventy-five (375) feet, more or less, to a point where the southerly line of a proposed new street forty-foot wide shown on said plan extended easterly would intersect the coastline; thence westerly by the southerly line of said proposed street, extended easterly and by said southerly line Four Hundred Twenty (420) feet, more or less, to a point where the westerly line of the forty-foot passageway first above mentioned, extended southerly, intersects said southerly line of said proposed street; thence northerly by said westerly line

of said forty-foot passageway extended southerly and by said westerly line Two Hundred Sixty (260) feet, more or less to the point of beginning.¹

Also, all the privileges, rights and easements in the shore beach and ocean adjoining all the above described premises, which belonged to or appurtenant to the same. But there is excepted from the tract above that describes such right of passage as the said Elizabeth P. Adams and one Sarah W. Cheney, their heirs or assigns may have in said forty-foot passageway, which leads from Ocean Street by their land.

Reserving unto myself, my heirs, successors and assigns, the right, privilege and easement, as appurtenant to my remaining land, of having three strips of land each being forty-foot wide, parcel of the above described tract and all shown on said plan, forever kept open as streets or roads that is to say, a strip forty feet wide along the whole westerly side of said tract and including within its limits said forty-foot passageway a strip forty-foot wide extending from Ocean Street southwesterly to the southerly side of said tract, generally parallel to the coast line and about forty feet distance therefrom and a strip forty feet wide along the southerly boundary line of said tract from the southerly end of the strip first above described to the southerly end of the strip second above described.

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging to the said Herman F. Straw and his heirs, successors and assigns, to the uses and upon the special trust and confidence, as follows, and for no other purpose whatsoever; that is to say:

- 1) Grantees to hold, manage, improve and dispose of the granted premises exclusively for the benefit of lands hereinafter described, which are near or upon said premises on the north, west and south sides thereof, and of the respective owners thereof and their respective heirs and assigns;
- 2) Said lands and the owners thereof are declared to be the following and none other, to wit: a lot of land situated on the northerly side of said Ocean Street, bounded southerly on said street Three Hundred Seventy-four (374) feet; westerly on land of Frank C. Carpenter; northerly on land now or formerly of

¹ The above described property is hereinafter referred to as the granted premises or the Trust Property. The descriptions of the Trust Property and the benefited lands are simply a restatement from the original Declaration of Trust of 1898 and the original referenced survey of 1901. This is not to be construed as an admission or acquiescence to any of the stated boundaries or dimensions by the Trustee or any of the beneficiaries which are, at all times, subject to an accurate survey of the Trust Property and each of the benefited lots.

Chandler E. Trafton, and easterly by a street or road near the ocean, owned by said Carrie C. Meigs above-mentioned.²

Also a lot of land situated on the northerly side of said Ocean Street, bounded southerly on said street Eighty-six (86) feet, easterly on said Meigs land, northerly on land of said Trafton, and westerly on lands of said Herman F. Straw, owned by Frank C. Carpenter of Manchester.³

Also a lot of land situated on the northerly side of said Ocean Street, bounded southerly on said street Eighty-six (86) feet, easterly on said Carpenter land, northerly on land of said Trafton and westerly on land of Josephine B. Giles owned by said Herman F. Straw.⁴

Also a lot of land situated on the northerly side of said Ocean Street, bounded southerly on said street One Hundred Sixteen (116) feet, easterly on said land by said Straw, northerly on land of said Trafton and westerly on land of one Parsons, owned by Josephine B. Giles.⁵

Also a lot land situated on the westerly side of forty-foot street first above reserved and described land bounded easterly thereon Two Hundred Twenty (220) feet and westerly on land of Annie G. Parker, owned by Agnes Chaney Fish.⁶

Also lots number 2, 3, and 4 on said land bounded northerly 583 feet in part on the proposed forty-foot street last above reserved and described and in part on portion of the granted premises near

² This lot divided October 5, 1960 at Book 1564, Page 401 to form two lots and thus, an additional, ninth (9th) lot. The lot on the easterly portion of this original lot is now owned by the Kevin M. King and Sandra L. King Revocable Trust of 2001 and lot on the westerly portion of said original lot is now owned by the Arneson, Arneson, Parsons and Pourciau II Partnership.

³ This lot is now owned by CEM Trust #1.

⁴ This lot is now owned by the Pamela T.W. Anthony Revocable Trust u/t/d 1/6/93.

⁵ This lot is now owned by Timothy P. Horne.

⁶ This original lot consisted of two lots of record each having 100 feet of frontage. The northerly lot is now owned by the G Williamson Whittemore Family Trust GST Exempt Trust F/B/O Gayle Whittemore, the Gayle Williamson GST Exempt Trust F/B/O Gayle Whittemore and the Glickman Whittemore Community Property Trust and the southerly lot is now owned by Scott Burkham and Elizabeth B. Kenny as tenants in common.

the ocean and not within the limits of any street owned by said Percy Parker, Trustee.⁷

The total frontage of all the lots to be benefited by this conveyance being One Thousand Four Hundred Sixty-five (1,465) feet and the beneficial interest or equitable estate of said owners in the granted premises, and in the proceeds thereof in case the same shall ever be sold or conveyed by said Trustee, is declared to be in the proportion which the frontage above-stated, of their respective lots, above-described bears to the whole frontage so stated.⁸

- 3) Said grantee is to hold and manage and improve the granted premises in the manner and for the purpose in and for which he shall be directed from time to time by the owners aforesaid and by the owners of four fifths ($4/5^{\text{ths}}$) of the total frontage, above stated, provided said grantee shall not convey said premises or any part thereof or interest therein, without the written consent of all said owners, their heirs and assigns, except as hereinafter provided.
- 4) Said Grantee is to pay all taxes and public assessments laid or assessed on the granted premises or any part thereof during the continuance of this Trust, and for all such taxes and assessments and for all authorized expenses incurred in the execution of this Trust and for his reasonable compensation for his services hereunder, he shall be reimbursed by said owners in proportion to their respective interest in the granted premises.
- 5) Said grantee may recover all sums owing him from said owners or either of them, for taxes, assessments, expenses, and compensation as aforesaid, by action at law and he shall also have a lien therefore upon said premises and the proceeds thereof and upon the respective interests of said owners or either of them, therein, which may be enforced by sale of the interest or estate of the owner or owners in default at public auction in the manner provided in the public statutes of New Hampshire for the sale of personal property upon which a lien exists, or by suit in equity and we, the owners of the above-described lots to be benefited by this conveyance for ourselves, and our respective

⁷ Lot 2 is now owned by the Kurt M. Swenson Revocable Trust of 2000, Lot 3 and the applicable portion of former Lot 4 plus a small pie shaped piece at the most southerly portion of a lot formerly owned by Fish are now owned by 24 Straws Point LLC.

⁸ As previously noted in footnote 1, the above descriptions of the Trust Property and each of the benefited lands are simply the restatement from the original Declaration of Trust of 1898 and the original referenced survey of 1901. This is not to be construed as an admission or acquiescence by the trustee or any beneficiary to any of the stated boundaries or dimensions which are, at all times, subject to an accurate survey of the common land and all benefited lots.

heirs, executors, administrators and assigns to severally assent to all and singular the terms of this instrument, and consideration of the premises, do generally covenant with said grantee and his successors in the Trust hereby created, that we will and our heirs, executors, administrators and assigns shall pay onto the said grantee, and his successors, assigns when the same shall become due and payable, our several and respective shares of all monies paid out by him or them, in accordance with the terms of this instrument for taxes, public assessments, and expenses and also our several and respective shares of such reasonable compensation as may become due him or them hereunder.

And I, the said Grantor, do hereby covenant with the said Herman F. Straw that I will warrant and defend the granted premises to him, the said Herman F. Straw and his heirs, successors and assigns, against the lawful claims and demands of all persons claiming by, from or under me in the capacity of Trustee under the deed first above-described, but against none other.

In witness whereof, we, the said Percy Parker, Trustee as aforesaid, Carrie Celeste Meigs, Frank P. Carpenter, Josephine B. Gile and Agnes Cheney Fish have hereinto set our hands and seals this first day of November, 1901.

The above language (with the sole exception of all the footnotes) is taken from the first deed of Trust from Percy Parker, Trustee, to Herman F. Straw dated November 1, 1901, recorded at Book 583, Page 340, also see deed of Carrie Celeste Meigs to Percy Parker dated January 13, 1898, recorded at Book 562, Page 399 and we enter into same to attest to the conformed copy.

The undersigned further state as follows:

WHEREAS, the Undersigned are the successors in title in interest to Herman F. Straw as Trustee and the owners of the benefited lands under said Deed of Trust above referred (hereinafter "Trust") which though not named in the original document, has been commonly referred to as "the Straws Point Trust."

WHEREAS, under the terms of the Trust, the owners of the benefited lands were authorized to direct the Trustee to hold, manage, improve, and dispose of the Trust Property, exclusively for the benefit of the benefited lands, including the ultimate disposition and conveyance of the Trust Property with the distribution of any sales proceeds to the owners of the benefited lands.

WHEREAS, in Clause designated 2) on page 2 of this Restatement and First Amendment to Deed of Trust, voting rights, obligations to share in expenses and the right of expectation upon a sale of the property was declared to be in proportion with the frontage of each lot on existing streets.

WHEREAS, in Clause designated 3) on page 4 of this Restatement and First Amendment to Deed of Trust, the Trustee could be directed from time to time by the owners of the benefited lands by a four-fifths (4/5th) vote of the total frontage.

WHEREAS, given the broad authority allowed to the Trustee with the direction and consent of the beneficiaries, it is hereby deemed that the intent of the original Trust was that the beneficiaries and Trustee had the authority regards the interpretation or construction of the terms of the Trust and the ability to amend and modify the Trust language for further clarification and amendment and modification.

WHEREAS, the parties recognize that the New Hampshire legislature has adopted RSA 564-B, commonly referred to as the Uniform Trust Code and that pursuant to RSA 564-B:11-1104 said code is applicable to all trusts created before, on, or after the effective date of the Code, which was 2004.

WHEREAS, it is recognized that under RSA 564-B:4-410 through RSA 564-B:4-416, the Uniform Trust Code may require, in certain instances, that a petition to the Court be necessary in order to modify said Trust.

WHEREAS, it is recognized however, that RSA 564-B:1-111, in part, states that “interested persons,” which in this case, would include be owners of the benefited land and the Trustee, may enter into an agreement in regards to the trust without court authority in regards to the interpretation or construction of the terms of the Trust.

WHEREAS, by unanimous consent of all owners of benefited land and the Trustee, it has been determined that action by the Trustee and owners of benefited land is necessary for the further interpretation and construction of the Trust.

WHEREAS, the original Deed of Trust did not reflect any intention that the erection of any additional structures or improvements upon the Trust property would be allowed.

NOW THEREFORE COMES, by unanimous consent, all of the owners of all benefited lands and the Trustee who enter into the following in regards to the interpretation and amendment of said Trust:

1. That both for convenience and based upon longstanding custom, the owners of the benefited lands shall have equal voting interests, equal obligations to contribute to common expenses and equal beneficial ownership interests in the Trust Property based upon an equal one-ninth (1/9th) share basis, reflecting the nine benefited lots, and Clause 2 of the original Deed of Trust is hereby amended.

2. That the requirement of a four-fifths (4/5th) vote of the total frontage is hereby amended in that in lieu of the 4/5th vote by frontage, the Trustee shall be directed by the approval of seven (7) of the nine (9) benefited lots and Clause 3 of the original Deed of Trust is hereby amended.

3. That no new structures or improvements will be allowed upon the Trust Property, at any time whatsoever, except for the repair, maintenance and replacement, in their approximate present locations if feasible, of the existing gazebo, flag pole, seawall and roads.

4. That the Trust was and is now intended to be perpetual and that the Trust Property is not to be sold and is to be forever maintained in its present state for the benefit of the owners of the benefited lands.

5. That the Trust hereby adopts the name "The Straws Point Trust."

6. That the Trust shall not be further interpreted, construed, amended or modified without the unanimous consent of the Trustee and all owners of benefited lands and if deemed necessary by the Trustee and at least 7 of the 9 benefited lots, then by the approval of the Court pursuant to RSA 564-B.

7. That in all other respects the original Deed of Trust and its terms remain in full force and effect, however, when the terms of the provisions of this Restatement and First Amendment to Deed of Trust conflict with the original Deed of Trust provisions, the terms of the Restatement shall control.

WITNESS our hands this _____ day of _____, 2015

Witness

Kurt M. Swenson, Trustee of the
Kurt M. Swenson Revocable Trust of 2000

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Personally appeared before me, Kevin M. Swenson, Trustee of the Kurt M. Swenson Revocable Trust of 2000, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be his free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Kurt M. Swenson, Trustee of the
Straws Point Trust

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Personally appeared before me, Kurt M. Swenson, Trustee of the Straws Point Trust, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be his free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Kevin M. King, Trustee of the Kevin M.
King and Sandra L. King Revocable Trust of 2001

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared before me, Kevin M. King, Trustee of the Kevin M. King and Sandra L. King Revocable Trust of 2001, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be his free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Sandra L. King, Trustee of the Kevin M.
King and Sandra L. King Revocable Trust of 2001

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared before me, Sandra L. King, Trustees of the Kevin M. King and Sandra L. King Revocable Trust of 2001, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be her free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Arneson, Arneson, Parsons & Pourciau, II
By: Jon E. Arneson, General Partner

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA

Personally appeared before me, Arneson, Arneson, Parsons & Pourciau, II, by Jon E. Arneson, General Partner, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be his free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Steven Ackerman, Trustee of the
CEM Trust #1

STATE OF NEW YORK
COUNTY OF NEW YORK

Personally appeared before me, Steven Ackerman, Trustee of the CEM Trust #1, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be his free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Pamela T.W. Anthony, Trustee of the
Pamela T. W. Anthony Revocable Trust u/t/d 1/6/93

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared before me, Pamela T.W. Anthony, Trustee of the Pamela T. W. Anthony Revocable Trust u/t/d 1/6/93, personally known to me or proven to be the person whose names is subscribed to the foregoing instrument on _____, 2015, to be her free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Timothy P. Horne

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF ESSEX

Personally appeared before me, Timothy P. Horne, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be his free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Gayle Whittemore, Trustee of
The G Williamson Whittemore Family Trust
GST Exempt Trust F/B/O Gayle Whittemore

Witness

Gayle Whittemore, Trustee of
Trustee of The Gayle Williamson GST Exempt
Trust F/B/O Gayle Whittemore

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Personally appeared before me, Gayle Whittemore Trustee of The G Williamson Whittemore Family Trust GST Exempt Trust F/B/O Gayle Whittemore and Trustee of The Gayle Williamson GST Exempt Trust F/B/O Gayle Whittemore, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be her free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Gayle Whittemore, Co-Trustee of The Glickman
Whittemore Community Property Trust

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Personally appeared before me, Gayle Whittemore Co-Trustee of The Glickman Whittemore Community Property Trust, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be her free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Alexandra Glickman, Co-Trustee of The Glickman
Whittemore Community Property Trust

STATE OF
COUNTY OF

Personally appeared before me, Alexandra Glickman, Co-Trustee of The Glickman Whittemore Community Property Trust, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be her free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Elizabeth B. Kenney

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF ESSEX

Personally appeared before me, Elizabeth B. Kenney, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be her free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

Scott C. Burkham

STATE OF MISSOURI
COUNTY OF ST. LOUIS

Personally appeared before me, Scott C. Burkham, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be his free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires:

Witness

24 Straws Point, LLC
By: Karen M. Swartz, Member

STATE OF FLORIDA
COUNTY OF PALM BEACH

Personally appeared before me, Karen M. Swartz, Member of 234 Straws Point, LLC, personally known to me or proven to be the person whose name is subscribed to the foregoing instrument on _____, 2015, to be her free act and deed. Before me,

Notary Public / Justice of the Peace
My Commission Expires: