

ORDINANCE NO. 2022-26-OA³

AN ORDINANCE OF THE TOWNSHIP OF BERKELEY, COUNTY OF OCEAN, STATE OF NEW JERSEY AUTHORIZING THE GRANT OF AN EASEMENT OVER LAKESIDE AVENUE TO CRYSTAL CARE REALTY, LLC IN ACCORDANCE WITH N.J.S.A. 40A:12-13

June 27, 2022

WHEREAS, Crystal Care Realty, LLC has requested an easement over Lakeside Avenue from the Township of Berkeley, as more fully described in Schedule A attached hereto and made a part hereof, via the execution of a deed of easement, to allow for the repair, reconstruction and maintenance of its pedestrian walkway; and

WHEREAS, N.J.S.A. 40A:12-13 authorizes a municipality to grant property rights by the adoption of an ordinance authorizing same.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Township of Berkeley, County of Ocean, State of New Jersey as follows:

SECTION 1. That the governing body does hereby authorize the grant of a deed of easement, as more fully described in Schedule A attached hereto and made a part hereof.

SECTION 2. That the Mayor and Municipal Clerk are hereby authorized to execute any and all documents necessary for the grant of easement of the subject property to the County of Ocean.

SECTION 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of

competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. This ordinance shall take effect after second reading and

publication as required by law.

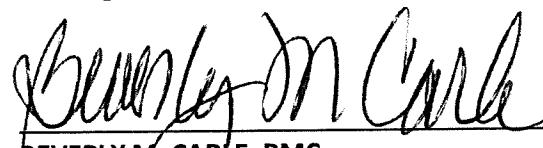
CARMEN F. AMATO, JR., Mayor


SOPHIA GINGRICH, Council President

JOHN BACCHIONE, Council Vice President

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of Berkeley, in the County of Ocean, State of New Jersey, held on June 27, 2022, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the 25th day of July 2022, at 6:00 p.m., or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at 627 Pinewald-Keswick Road, Bayville, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.


BEVERLY M. CARLE, RMC
Township Clerk, Township of Berkeley

FIRST ORDER, LLC

4383 Hecktown Road, Suite B
Bethlehem, PA 18020
(610) 365-2907 * fax (610) 365-2958
NJ Certificate of Authorization: 24GA28154900

Pedestrian Bridge Easement
Located Above Lakeside Avenue
Township of Berkeley
Ocean County, State of New Jersey

The pedestrian walkway located in the space above the following described tract, parcel or piece of land situate in the Township of Berkeley, County of Ocean and State of New Jersey, being further bounded and described as follows:

Beginning at a point in the westerly right-of-way line of Lakeside Avenue (100' wide). Said point being South 02°52'00" West a distance of 415.66 feet from a rebar found at the intersection of the southerly right-of-way line of Hayden Street (50' wide) and the westerly right-of-way line of the aforementioned Lakeside Avenue. Said point also being the northeasterly corner of Block 409 Lot 1, lands n/f BNJ Realty LLC. Running thence,

1. Crossing over a portion of the bed of Lakeside Avenue, South 86°50'30" East a distance of 65.69 feet to a point. Thence,
2. South 03°27'14" West a distance of 13.53 feet to a point. Thence,
3. North 86°53'36" West a distance of 11.74 feet to a point. Thence,
4. South 03°41'45" West a distance of 43.55 feet to a point. Thence,
5. South 86°50'51" East a distance of 12.35 feet to a point. Thence,
6. South 03°11'46" West a distance of 13.28 feet to a point. Thence,
7. Crossing back over a portion of the bed of Lakeside Avenue, North 86°33'02" West a distance of 68.30 feet to a point in the easterly line of aforementioned lands of BNJ Realty LLC. Thence,
8. Continuing along lands of BNJ Realty LLC, North 03°11'13" East a distance of 70.03 feet to the point or place of beginning.

Containing 4,077 square feet or 0.0936 acres of land.

Jack W. Shoemaker
New Jersey Professional Land Surveyor GS 035878

Prepared by: Edmund F. Fitterer, Jr., Esq.
McOmber McOmber & Luber

DEED OF EASEMENT FOR PEDESTRIAN BRIDGE

This Deed of Easement is made on June 27, 2023, by and between:

THE TOWNSHIP OF BERKELEY, a municipal corporation having a mailing address of P.O. Box B, 627 Pinewald-Keswick Road, Bayville NJ 08721 (hereinafter referred to as "Grantor")

AND

CRYSTAL CARE REALTY LLC, a New Jersey Limited Liability Company, having an address of 630 Herman Road, Jackson, NJ 08527 (hereinafter referred to as "Grantee").

The Grantor does hereby give, grant, and convey the space above that portion of the tract, parcel or piece of land known as Lakeside Avenue and as more particularly set forth and described in the metes and bounds description identified as Schedule "A" and the Survey identified as Schedule "B" attached hereto and made a part hereof, to the Grantee, its successors and assigns forever, for purposes of maintaining, inspecting, operating, using, rebuilding, reengineering, improving, or reconstructing the pedestrian walkway and bridge presently existing thereover.

This transfer is made for the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

The Grantor gives, grants, and conveys a permanent Easement and right-of-way located in the space over property of the Grantor, situated in the Township of Berkeley, County of Ocean, State of New Jersey, being known and designated as Lakeside Avenue as it abuts portions of:

Block 409, Lot1
and as more particularly described in Schedule "A".

Being and intended to describe a portion of space above the described property as an easement for maintenance, inspection, operation, use, rebuilding, reengineering, improving, or reconstruction of the pedestrian walkway and bridge presently existing over Lakeside Avenue, and for doing anything necessary, useful or convenient for the enjoyment of the Easement herein granted.

In addition to and not in limitation of the foregoing or any other obligations of Grantee set forth in this Deed of Easement, the following provisions shall apply to the pedestrian bridge:

1. Grantee will own and maintain, at its sole cost and expense, the pedestrian bridge, the approaches and points of access and appurtenances thereto, lighting, signage, and drainage.

2. Grantee, prior to performing any maintenance, repairs, replacement, or removal of the pedestrian bridge, which may be reasonably expected to impact the public roadway below, will notify Grantor of such proposed work and coordinate such activities with Grantor as may be necessary to ensure maximum safety and minimum inconvenience to roadway users or the public at large.
3. The Bridge shall be constructed, owned, maintained, and repaired by Grantee, and Grantee hereby assumes any and all responsibility and liability with respect to, or arising from, or in any way associated with the construction, operation, and maintenance of the pedestrian bridge. Grantee shall comply with all applicable laws, rules, and regulations, including environmental requirements, in its maintenance, repair and operation of the pedestrian bridge. The Grantor has the right, but not the duty or obligation, to inspect the pedestrian bridge at any time, so long as Grantee is provided prior notice and said inspection activities do not unreasonably interfere with the exercise of Grantee's rights hereunder. In the event Grantee fails to maintain the pedestrian bridge in good condition and in accordance with applicable laws and regulations, Grantor may give Grantee written notice thereof and Grantee shall be obligated to conduct such maintenance and correct such deficiency within a reasonable period of time. In the event Grantee fails to maintain the pedestrian bridge and correct any such deficiency within a reasonable time after such written notice by the Grantor, then Grantor shall have the right, but not the obligation, to correct any such deficiency and Grantee shall then reimburse the Grantor for the Grantor's reasonable expenses in connection therewith, no less than sixty (60) days after written request by Grantor, failing which the full amount shall bear interest at the highest rate allowed by law and shall become a lien in favor of the Grantor upon the adjacent property owned by Grantee. Such liens shall become effective upon the filing of a Claim of Lien by Grantor in the public records maintained by Clerk of the County. The Grantor's conduct of remedial action shall not operate to impose any obligation, responsibility, or liability whatsoever upon the Grantor. Furthermore, nothing herein operates to impose any obligation, responsibility, or liability upon the Grantor with respect to the pedestrian bridge or this Deed of Easement or the construction, operation, repair, or maintenance of the pedestrian bridge.
4. To the extent permitted by law, Grantee shall indemnify, release and hold harmless the Grantor, its agents, employees and elected and appointed officials, from and against all liability, claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), arising out of or resulting from this Deed of Easement, construction, operation, repair or maintenance of the pedestrian bridge, or which are caused in whole or in part, directly or indirectly, by Grantee or any of its contractors, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. This provision shall survive termination of this Deed of Easement.

To Have and To Hold the above granted Easement unto the said Grantee, its successors and assigns forever.

And the said Grantor does covenant with the said Grantee as follows:

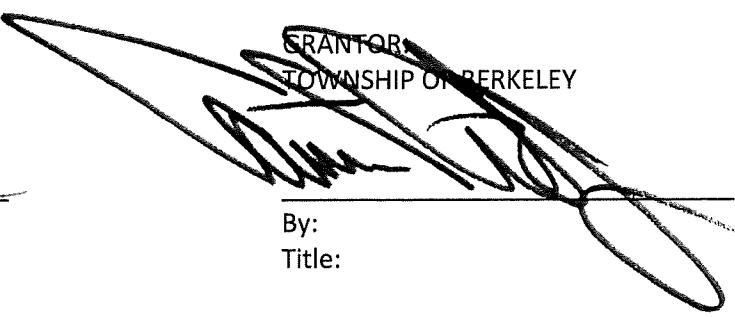
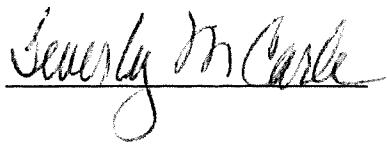
1. The Grantor covenants that it is lawfully seized of the Easement Area (identified herein and as described in the attached as Schedule "A") and has the right to grant the within Easement.

2. All the terms, covenants and conditions contained herein shall be for and shall inure to the benefit of and shall bind the respective parties hereto and their heirs, executors, administrators, personal or legal representatives, successors, and assigns.
3. It is the intent and purpose of this Easement to grant unto the Grantee an exclusive Easement, in perpetuity, allowing the Grantee the right to utilize the space above those portions of Lakeside Avenue as more particularly described herein. It being the intention of the parties that this Easement and its terms and conditions shall become part of the chain of title and shall run with the land.
4. This Easement shall in all respects be governed by and construed in accordance with the laws of the State of New Jersey.
5. That the Grantee shall quietly enjoy the said Easement and right-of-way.
6. That the Grantee shall have quiet possession of the Easement free from all encumbrances.
7. The Grantor will execute such further assurances of the said lands as may be requisite by Grantee to correct any title defect.
8. Grantee and Grantor shall execute and deliver to each other, within fifteen (15) days of any written request therefore by the other party, a certificate addressed as indicated by the requesting party and stating: (i) whether this Deed of Easement is in full force and effect; (ii) whether this Deed of Easement has been modified or amended in any respect; (iii) whether there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof; and (iv) such other matters as may be reasonably requested.
9. The Grantor will warrant generally the Easement hereby conveyed.
10. That Grantor does hereby expressly permit entry by the Grantee, its agents, servants and employees for any purpose as set forth herein upon said Easement with notice of said entry to Grantor.

The Grantor promises that the Grantor has done no act to encumber the Easement Area or the Easement. This promise is called a "Covenant as to Grantor's Acts." This promise means that the Grantor has not let anyone else obtain any legal rights which affect the Easement Area (such as making a mortgage or allowing a judgment to be entered against the Grantor).

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Easement on the day and year first above written.

WITNESS:



GRANTOR
TOWNSHIP OF BERKELEY

By:
Title:

GRANTEE:
CRYSTAL CARE REALTY LLC

WITNESS: _____

By:
Title:

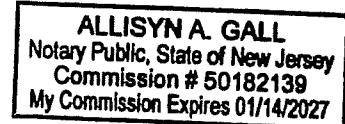
State of New Jersey)
) ss
County of Ocean)

PERSONALLY APPEARED before me, the undersigned authority, Carmen F. Amato, Jr. and, Beverly M. Carle, known to me and known by me to be Mayor and Township Clerk, respectively, of the Township of Berkeley, County of Ocean and State of New Jersey, and acknowledged before me that they executed the foregoing instrument on behalf of the Township of Berkeley as its true act and deed, and that they were duly authorized so to do. This Deed of Easement is being made for \$1.00 as full and actual consideration paid or to be paid for the transfer. (Such consideration is defined in N.J.S.A. 46:15-5).

WITNESS my hand and official seal this ist day of July, 2022.

Open Open
Notary Public

State of New Jersey)
) ss
County of)



I CERTIFY that on _____, 20_____, _____, authorized representative of CRYSTAL CARE REALTY LLC personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person);

- (a) is named in and personally signed this Deed of Easement,
- (b) signed, sealed and delivered this Deed of Easement as his or her act and deed as _____ of the limited liability company; and
- (c) made this Deed for \$1.00 as full and actual consideration paid or to be paid for the transfer. (Such consideration is defined in N.J.S.A. 46:15-5).

Notary Public

Record and Return:

Edmund F. Fitterer, Jr., Esq.
McOmber McOmber & Luber
54 Shrewsbury Ave.
Red Bank, NJ 07701

Schedule "A"

Schedule "B"