

# City of Cincinnati

CHM

EESW

## An Ordinance No. \_\_\_\_\_ - 2023

**AUTHORIZING** the City Manager to execute a *Grant of Easement* in favor of Barrister Apartments, LLC, pursuant to which the City of Cincinnati will grant encroachment easements upon portions of Pancoast Alley and Crow Alley in the Central Business District.

WHEREAS, Barrister Apartments, LLC, an Ohio limited liability company (“Grantee”), owns certain real property located at 214-216 East Ninth Street in the Central Business District; and

WHEREAS, the City of Cincinnati owns the adjoining real property designated as the public rights-of-way known as Pancoast Alley and Crow Alley (“Property”), which Property is under the management of the City’s Department of Transportation and Engineering (“DOT”); and

WHEREAS, Grantee has requested easements from the City for encroachments upon portions of the Property, namely, two fire escapes, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference (“Easement”); and

WHEREAS, the City Manager, in consultation with DOTE, has determined (i) that granting the Easement to Grantee is not adverse to the City’s retained interest in the Property and; (ii) that granting the Easement will not have an adverse effect on the usability or accessibility of any existing transportation facilities located on the Property; and

WHEREAS, pursuant to Cincinnati Municipal Code Sec. 331-5, Council may authorize the encumbrance of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City’s Real Estate Services Division has determined by a professional appraisal that the fair market value of the Easement is approximately \$1,700, which Grantee has agreed to pay; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the Easement at its meeting on November 18, 2022; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Grant of Easement* in favor of Barrister Apartments, LLC, an Ohio limited liability company (“Grantee”), owner of the property located at 214-216 East Ninth Street in the Central Business District, in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will grant to Grantee easements to install and maintain two encroachments (“Easement”) upon portions of certain real property designated as the public rights-of-way known as Pancoast Alley and Crow Alley (“Property”), as more particularly described on Attachment A.

Section 2. That granting the Easement to Grantee (i) is not adverse to the City’s retained interest in the Property; and (ii) will not have an adverse effect on the usability or accessibility of any existing transportation facilities located on the Property.

Section 3. That it is in the best interest of the City to grant the Easement without competitive bidding because, as a practical matter, no one other than Grantee, an adjoining property owner, would have any use for the Easement.

Section 4. That the fair market value of the Easement, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$1,700, which Grantee has agreed to pay.

Section 5. That the proceeds from the *Grant of Easement* shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the *Grant of Easement*, and that the City’s Finance Director is hereby authorized to deposit amounts in excess thereof, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City’s Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, “Street Improvements,” in which “YY” represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 7. That the City Manager and other City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance and to fulfill the terms of the *Grant of Easement*; including, without limitation, executing any and all ancillary agreements, plats, and other real estate documents.

Section 8. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2023

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

**ATTACHMENT A**

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[SPACE ABOVE FOR RECORDER'S USE]

## GRANT OF EASEMENT

(encroachment upon portions of Pancoast Alley and Crow Alley)

This Grant of Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in favor of **BARRISTER APARTMENTS, LLC**, an Ohio limited liability company, with a tax mailing address of 114 W 14th Street, Cincinnati, OH 45202 ("**Grantee**").

### Recitals:

A. By virtue of a *General Warranty Deed* recorded on August 26, 2022, in OR 14739, Page 303, Hamilton County, Ohio Records, Grantee holds title to certain real property located at 214-216 E. 9<sup>th</sup> Street, Cincinnati, OH 45202, as more particularly described on Exhibit A (*Legal Description – Benefitted Properties*) and depicted on Exhibit B (*Survey*) hereto (the "**Benefitted Properties**").

B. The City owns certain real property abutting the Benefitted Properties designated as the public rights-of-way known as Pancoast Alley and Crow Alley, as more particularly depicted on Exhibit B hereto (the "**Property**"). The Property is under the management of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant encroachment easements for two fire escape encroachments above portions of the Property, as more particularly depicted on Exhibit B and described on Exhibit C (*Legal Description – Easement Areas*) hereto (the "**Encroachments**").

D. The City Manager, in consultation with DOTE, has determined that (i) the easements will not have an adverse effect on the City's retained interest in the Property, and (ii) granting the easements will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the easement, as determined by professional appraisal, is \$1,700, which Grantee has agreed to pay.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the easements at its meeting on November 18, 2022.

G. Cincinnati City Council approved the easement by Ordinance No. [\_\_\_\_]-2022, passed on [\_\_\_\_], 2022.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Properties, two non-exclusive easements to construct, install, use, maintain, repair, reconstruct, replace, and remove the Encroachments, as more particularly identified and depicted on Exhibit B and described on Exhibit C hereto (the "Easements" or the "Easement Areas", as applicable). Once installed, Grantee shall not make any alterations, additions, enlargements, or modifications to the Encroachments within the Easement Areas without the prior written consent of the City. Grantee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the condition and characteristics of the Easement Areas. The City has not made any representations or warranties concerning the title, condition, or characteristics of the Easement Areas or the suitability or fitness of the Easement Areas for any purpose. Grantee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Easement Areas.

2. Permitted Use. Grantee, its agents, tenants, licensees, and invitees shall have the non-exclusive right to use the Easement Areas for the sole and limited purpose of emergency pedestrian ingress and egress from the Benefitted Properties to the adjoining public rights-of-way. Grantee shall not use or permit the use of the Easement Areas in any manner that is inconsistent with the rights granted herein or in a manner that impairs or unreasonably interferes with the rights of the City or others permitted by the City to the full use and enjoyment of the Property, as determined by the City.

3. Termination. Notwithstanding anything herein to the contrary, the Easements shall automatically terminate (i) upon the complete or respective partial demolition, without rebuilding within 1 year of such demolition, of the Encroachments within the Easement Areas, such that the Easements would be rendered unnecessary; (ii) upon written notice from the City if the City determines that it needs the Easement Area or any portion thereof for a municipal purpose, including, without limitation, to comply with Americans with Disabilities Act ("ADA") regulations or accessibility standards; or (iii) upon written notice from the City if the City determines that the Encroachments are creating a public safety issue, such as noncompliance with ADA accessibility regulations, or contributing to adverse impacts on the usability or accessibility of the Property, if Grantee does not abate or begin to take efforts to mitigate the public safety issue in a timely manner consistent with the degree of harm posed by the public safety issue.

4. Maintenance and Repairs. At no cost to the City, Grantee shall maintain the Encroachments in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easements, utility lines, and related facilities in the vicinity of the Easement Areas ("**Third-Party Utility Lines**"). In connection with Grantee's maintenance, repair, and use of the Encroachments, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee's expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the construction, maintenance, repair, reconstruction, or removal of the Encroachments under this instrument shall be handled entirely at Grantee's expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements.

5. Insurance: Indemnification. At all times, and in addition to whatever other insurance and bond requirements the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request and, in any event, prior to undertaking any construction activities within the Easement Areas. Grantee hereby waives all claims and rights of recovery against the City, and on behalf

of Grantee's insurers, rights of subrogation, in connection with any damage to the Encroachments, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including, without limitation, reasonable attorneys' fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the use, construction, maintenance, repair, and all other matters associated with the Encroachments.

6. Access by City Departments. Grantee shall ensure continuous, unrestricted access to the Easement Areas (24 hours/day, 7 days/week, 52 weeks/year) for DOTE for inspection and any other purpose, and for the City's Police and Fire Departments.

7. No Liens. Grantee shall not permit any mechanics liens to attach to the Easement Areas in connection with the construction, installation, use, operation, maintenance, repair, reconstruction, removal, or replacement of the Encroachments.

8. Default. If Grantee, its successors-in-interest, or assigns fail to perform any required work under this instrument and fail to address the same to DOTE's satisfaction within thirty (30) days after receiving written notice thereof from DOTE, the City shall have right to perform such work, at Grantee's expense, payable within ten (10) days after receiving an invoice from DOTE evidencing the amount due. Grantee, its successors-in-interest, or assigns shall be liable to DOTE for the payment of such work. Any outstanding amount due under this instrument shall create a lien on the respective Benefitted Properties until fully paid. At the City's option, the City may file an affidavit in the Hamilton County, Ohio Recorder's office to memorialize any outstanding amounts due under this instrument.

9. Covenants Running with the Land. The provisions hereof shall run with the land and shall inure to the benefit of and be binding upon the City, Grantee, and their respective successors-in-interest and assigns.

10. Governing Law; Severability. This instrument shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. If any provisions hereof are determined to be invalid or unenforceable by a court of law, the remainder of this instrument shall not be affected thereby, and all other provisions of this instrument shall be valid and enforceable to the fullest extent permitted by law.

11. Notices. All notices given hereunder shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, or delivered by a recognized courier service, or by personal delivery, to the parties at their respective addresses set forth in the introductory paragraph hereof, or such other address as either party may specify from time to time by notice given in the manner prescribed herein. All notices to the City shall be addressed to the Office of the City Manager, and a copy of each such notice shall simultaneously be delivered to: Department of Transportation and Engineering, Attn: Director, Room 450. In the event of an alleged breach by the City of this instrument, a copy of each notice of breach shall simultaneously be delivered to the Office of the City Solicitor, 801 Plum Street, Room 214, Cincinnati, OH 45202.

12. Coordinated Report Conditions (CR #37-2022). The following additional conditions shall apply:

a. DOTE:

i. Construction drawings for the Encroachments must be prepared and sealed by a professional engineer or architect registered in the State of Ohio. The design loads must be in accordance with the appropriate Building Code standards and be stated on the drawings. Drawings must include mounting and framing details.

- ii. The Encroachments must be:
  - a. vertically at least 14 feet above the sidewalk;
  - b. within the curb area, not to extend into street pavement area;
  - c. fully supported from the building with no supports extending below;
  - d. compliant with clearance requirements for overhead utility lines;
  - e. horizontally no closer than five feet from a utility pole.
- iii. Prior to installation of the Encroachments, Grantee must obtain all applicable permits and permissions from the Department of Buildings and Inspection, without limitation to a Certificate of Appropriateness from the Urban Conservator or Historic Conservation Board, as applicable.
- b. GCWW: Grantee shall be solely responsible for the replacement or repair of all improvements within the Easement Areas if they are damaged by the failure, repair, operation, or replacement of the existing public water system within the public rights-of-way.
- c. Altafiber: Altafiber has existing underground telephone facilities located within the public rights-of-way. The existing facilities must remain in place, in service, and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as result of the Encroachments will be handled entirely at Grantee's cost.

13. Counterparts and Electronic Signatures. This instrument may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This instrument may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered as soon as reasonably possible.

14. Exhibits. The following exhibits are attached hereto and made a part hereof:  
Exhibit A – *Legal Description - Benefitted Properties*  
Exhibit B – *Survey*  
Exhibit C – *Legal Description—Easement Areas*



Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

**CITY OF CINCINNATI**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, the \_\_\_\_\_ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
John S. Brazina, Director  
Department of Transportation and Engineering

Approved as to Form by:

\_\_\_\_\_  
Assistant City Solicitor

[ Grantee Signature Page Follows ]

ACCEPTED AND AGREED TO BY:

**BARRISTER APARTMENTS, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, the \_\_\_\_\_ of **BARRISTER APARTMENTS, LLC**, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

This instrument prepared by:  
City of Cincinnati Law Department  
801 Plum Street, Suite 214  
Cincinnati, OH 45202

**EXHIBIT A**  
to Grant of Easement  
*LEGAL DESCRIPTION - BENEFITTED PROPERTIES*

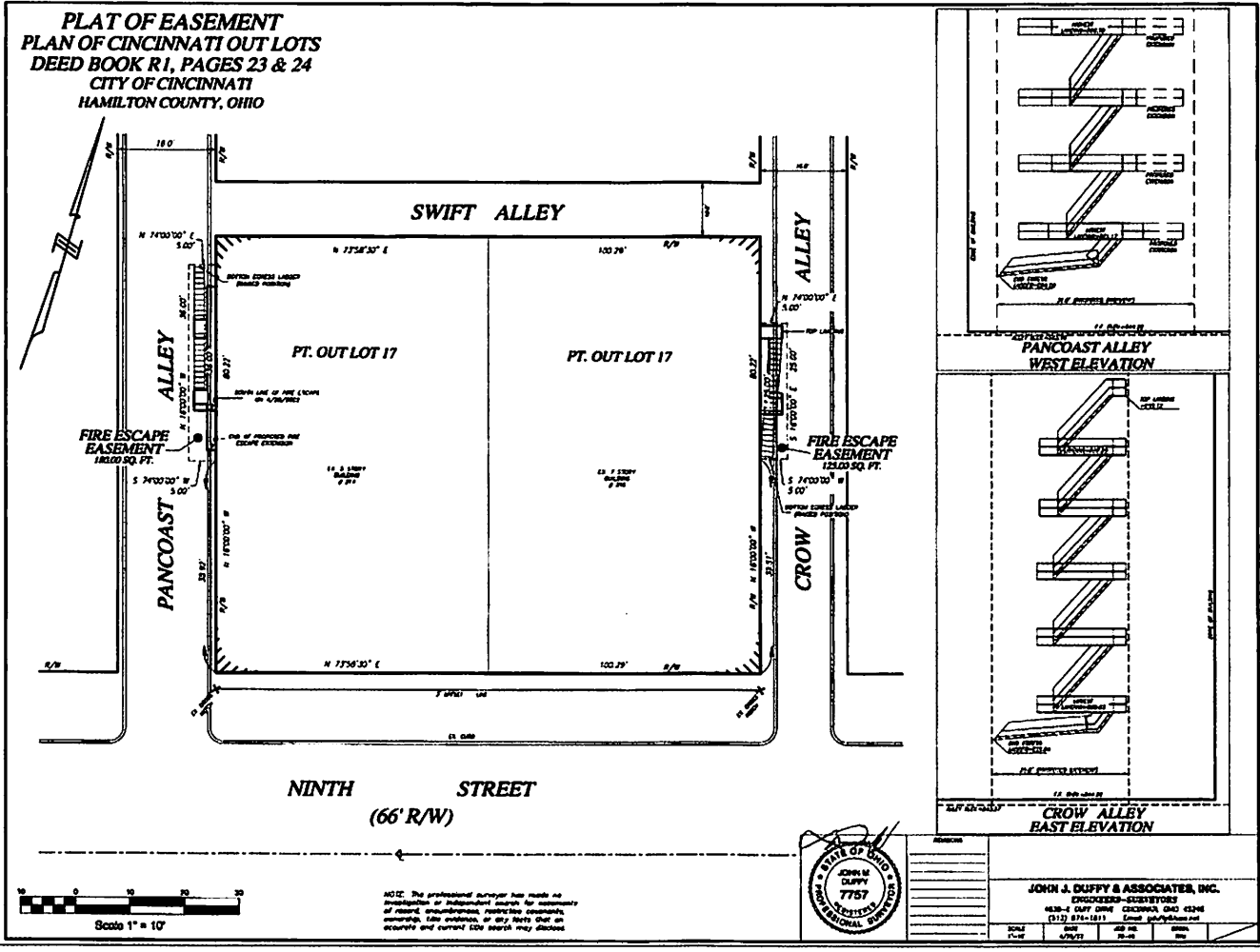
**Property Address:** 214-216 E. 9<sup>th</sup> Street  
**Auditor's Parcel No.:** 079-0002-0005

**Situated in the County of Hamilton, State of Ohio, and in the City of Cincinnati, and being a Part of Out Lot 17 of The City of Cincinnati as platted in Deed Book R1, Pages 23-24 and Plat at E2, Page 62, and bounded and described as follows: Beginning at a point in intersection of the north line of Ninth Street and the east line of the first alley east of Main Street (Pancost), thence eastwardly with Ninth Street 50 feet; thence northwardly at right angles to Ninth Street 80 feet and three inches to an alley; thence westwardly and parallel to Ninth street 50 feet to an alley; thence southwardly with said alley 80 feet and three inches to Ninth Street, the Place of beginning.**

**Property Address:** 214-216 E. 9<sup>th</sup> Street  
**Auditor's Parcel No.:** 079-0002-0006

**Situated in the City of Cincinnati, Hamilton County, Ohio and being a part of Out Lot 17 of the City of Cincinnati as shown at Plat in Deed Book R1, Pages 23-24 and Plat at E2, Page 62, and being more particularly described as follows: Beginning at a point in the north side of Ninth Street 50 feet of the first alley (Pancost) east of Main Street in the City of Cincinnati, County of Hamilton and State of Ohio. Thence east with the north line of Ninth Street 50 feet to an alley; thence north with said alley 80 feet, more or less, to an alley; thence west with the last mentioned alley 50 feet; thence south at right alley to Ninth Street 80 feet, more or less, to Ninth Street and the place of beginning.**

**EXHIBIT B**  
to Grant of Easement  
Survey



**EXHIBIT C**  
to Grant of Easement  
*LEGAL DESCRIPTION—EASEMENT AREAS*

**Crow Alley Easement Area**

**Situate in the Plan of Cincinnati Out Lots as recorded in Deed Book R1, Pages 23 & 24 of the Hamilton County, Ohio Deed Records, being an easement for fire escape purposes over Crow Alley and being more particularly described as follows:**

**Commencing at the intersection of the westerly right of way line of Crow Alley and the northerly right of way line of Ninth Street; thence North 16° 00' 00" West along said westerly right of way line of Crow Alley, a distance of 39.51 feet to the **REAL PLACE OF BEGINNING** for the following described easement; thence continuing North 16° 00' 00" West along said westerly right of way line, a distance of 25.00 feet; thence through said Crow Alley the following courses and distances:**

**North 74° 00' 00" East, a distance of 5.00 feet;**

**South 16° 00' 00" East, a distance of 25.00 feet and**

**South 74° 00' 00" West, a distance of 5.00 feet to the place of beginning.**

**Containing 125.00 square feet of land.**

**The lowest elevation of the fire escape is 543.27 A.M.S.L. The elevation of the highest landing of said fire escape is 618.12 A.M.S.L.**

**EXHIBIT C**  
to Grant of Easement  
*LEGAL DESCRIPTION-EASEMENT AREAS (CONT.)*

**Pancoast Alley Easement Area**

Situate in the Plan of Cincinnati Out Lots as recorded in Deed Book R1, Pages 23 & 24 of the Hamilton County, Ohio Deed Records, being an easement for fire escape purposes over Pancoast Alley and being more particularly described as follows:

Commencing at the intersection of the easterly right of way line of said Pancoast Alley and the northerly right of way line of Ninth Street; thence North 16° 00' 00" West along said easterly right of way line of Pancoast Alley, a distance of 38.92 feet to the **REAL PLACE OF BEGINNING** for the following described easement; thence through said Pancoast Alley the following courses and distances:

South 74° 00' 00" West, a distance of 5.00 feet;

North 16° 00' 00" West, a distance of 36.00 feet and

North 74° 00' 00" East, a distance of 5.00 feet to the aforementioned easterly right of way line of Pancoast Alley; thence South 16° 00' 00" East along said easterly right of way line, a distance of 36.00 feet to the place of beginning.

Containing 180.00 square feet of land.

The lowest elevation of the fire escape is 543.76 A.M.S.L. The elevation of the highest landing of said fire escape is 598.70 A.M.S.L.