

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT (“Commitment”) is made as of this ___ day of June, 2015 by **AMBASSADOR CAMPUS PROPERTIES, LLC**, an Indiana limited liability company (herein, the “Declarant”), and **COMMUNITY ACTION OF NORTHEAST INDIANA, INC., DOING BUSINESS AS BRIGHTPOINT**, an Indiana non-profit corporation (herein, the “Applicant”), under the following circumstances:

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 3.55 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit “A” (herein, the “Real Estate ”); and

WHEREAS, Declarant and Applicant have sought to rezone the Real Estate, pursuant to Zoning Map Amendment REZ-2015-0022 and Bill No. Z-15-05-14 (“Zone Map Amendment”) from R-1 to C-2, pursuant to the City of Fort Wayne Zoning Ordinance (the “Zoning Ordinance”), which permits development upon the Real Estate of certain limited commercial uses; and

WHEREAS, Declarant and Applicant applied to the Fort Wayne Plan Commission (“Plan Commission”) and obtained conditional approval of a primary development plan for a multi-family housing development intended to provide both housing and business resources to entrepreneurs, small business owners, makers, artisans and artists on the Real Estate (“Development Plan”); and

WHEREAS, Declarant and Applicant previously submitted a written commitment, voluntarily, pursuant to the Zoning Ordinance and Indiana Code 36-7-4-1015 for the purpose of limiting certain off site impacts and certain uses arising from development upon the Real Estate; and

WHEREAS, Indiana Code 36-7-4-1015(b)(6) allows the Declarant, as owner of the Real Estate, to provide a new written commitment for the benefit of the legislative body considering the rezoning of the Real Estate;

WHEREAS, Declarant and Applicant are providing this Commitment pursuant to Indiana Code 36-7-4-1015(b)(6) to satisfy the requirements of the Plan Commission as well as address additional matters for the benefit of the Common Council of the City of Fort Wayne’s (“Common Council”) consideration of the Zone Map Amendment.

NOW, THEREFORE, in consideration of the above and foregoing recitals, Declarant hereby impresses upon the Real Estate, with the consent and agreement of Applicant, certain restrictions and covenants which shall run with the Real Estate and be binding upon Declarant and all future owners and occupiers of the Real Estate, and all lessees of all or a portion of the Real Estate.

1. Permitted Uses. Subject to the terms and conditions herein contained, the use of the Real Estate shall be limited to the construction, maintenance, operation and use of a multi-family residential development (the “Apartments”), including all customary accessory and related uses, and subject to the following:

- a. Each dwelling unit within the Apartments (each, a “Dwelling Unit”) may be used as an integrated living and business workspace for the operation of a Permitted Business (as herein defined), including display areas and showrooms, provided that (1) the owner of the Permitted Business lives in such Dwelling Unit; (2) no more than 50% of the gross floor area of the Dwelling Unit shall be devoted to the operation of a Permitted Business; and (3) no more than three (3) employees shall be permitted to work at the Dwelling Unit.
- b. Clients or customers shall be permitted to come to an individual Dwelling Unit, and on-site sales of items either produced or value-added at the Dwelling Unit, along with accessory retail sales or services, shall be permitted.
- c. The Applicant may also devote common areas within the buildings located upon the Real Estate for use as common workspace for residents of the Apartments, including without limitation office space, studios, meeting areas, retail space, and indoor storage areas.
- d. For purposes of this Commitment, a “Permitted Business” shall be defined to include, but not be limited to, (1) uses and activities generally focusing on business, professional, consulting, technological, insurance, financial or similar type services; (2) personal service uses wherein the resident of such Dwelling Unit engages in providing services generally involving the care of the person or his or her personal goods or apparel, such as barber shops, beauty salons, nail salons, boutique style businesses of goods and services, health and fitness studios, music schools, informational and instructional services, and portrait studios; (3) employment or instruction in painting, drawing, costume design, architecture, sculpture, education, photography, music, dancing, dramatics, literature, or similar activities, including the display and sale of works of art; (4) the creation of functional art for sale or display, including but not limited to jewelry, rugs, decorative screens and grates, furniture, pottery, toys and quilts; and (5) any other similar low

intensity use that meets the requirements of Section 1(a) above, does not create noises or odors perceivable beyond the Dwelling Unit.

For the five (5) year period beginning with the date of issuance of a certificate of compliance for the first Dwelling Unit upon the Real Estate, the Applicant and the Declarant shall provide the Plan Commission Staff with a written yearly report demonstrating the number of Dwelling Units that are leased and occupied on the Real Estate and the nature of the commercial use occurring within each leased and occupied Dwelling Unit, if any, as of the date of the report.

2. Prohibited Uses. Any use otherwise permitted in a C-2 zoning district, which does not qualify as a “Permitted Use” under Section 1 above, shall be prohibited upon the Real Estate. “Prohibited Uses” shall include, but shall not be limited to, the following uses:

- a. Adult care center;
- b. Adult care home;
- c. Air conditioning sales;
- d. Animal grooming;
- e. Animal hospital;
- f. Animal kennel;
- g. Animal obedience school;
- h. Antique shop;
- i. Arcade;
- j. Assisted living facility;
- k. Audiologist;
- l. Audio-visual store;
- m. Automobile accessory store;
- n. Bait sales;
- o. Bar or tavern;
- p. Bed and breakfast;
- q. Billiard or pool hall;
- r. Bingo establishment;
- s. Blood bank;
- t. Blood or plasma donor facility;
- u. Boarding / lodging house;
- v. Bowling alley;
- w. Catalog showroom;
- x. Child care center;
- y. Child care home (Class I or II);
- z. Cigarette/ tobacco/ cigar store;
- aa. Clinic;
- bb. Private club;
- cc. Coin shop;
- dd. Collection agency;
- ee. Commercial communications tower;
- ff. Consumer electronic sales / service;
- gg. Convenience store;

hh.	Correctional services facility;
ii.	Costume and clothing rental;
jj.	Costumer service facility;
kk.	Credit union;
ll.	Day care;
mm.	Department store;
nn.	Diagnostic center;
oo.	Dialysis center;
pp.	Diaper service facility;
qq.	Dinner theater;
rr.	Driving instruction;
ss.	Drug store;
tt.	Dry cleaning store;
uu.	Firearm sales and service;
vv.	Firework sales;
ww.	Flea market;
xx.	Floor covering store;
yy.	Fraternity house;
zz.	Funeral home;
aaa.	Furrier;
bbb.	Gas station;
ccc.	Grocery store or supermarket;
ddd.	Group residential facility (small or large);
eee.	Hardware store;
fff.	Haunted house;
ggg.	Health center;
hhh.	Health club;
iii.	Heating sales;
jjj.	Hobby shop;
kkk.	Homeless / emergency shelter;
lll.	Hospice care center;
mmm.	Hospital;
nnn.	Hotel;
ooo.	Laundromat or coin operated laundry;
ppp.	Meat or fish market;
qqq.	Micro or mini-brewery / brewpub;
rrr.	Motel;
sss.	Movie and game sales and rental;
ttt.	Museum;
uuu.	Neighborhood facility;
vvv.	Nursing home;
www.	Ophthalmologist;
xxx.	Optician;
yyy.	Optometrist;
zzz.	Package liquor store;
aaaa.	Parking structure;

- bbbb. Pet store;
- cccc. Pharmacy;
- dddd. Planetarium;
- eeee. Podiatrist;
- ffff. Radio station;
- gggg. Reception / banquet hall;
- hhhh. Rehabilitation facility;
- iiii. Rental and leasing store;
- jjjj. Rescue mission;
- kkkk. Residential facility for homeless individuals;
- llll. Retirement facility;
- mmmm. Security service;
- nnnn. Sign sales store;
- oooo. Skating rink;
- pppp. Sleep disorder facility;
- qqqq. Sorority house;
- rrrr. Sporting goods sales and rentals;
- ssss. Surgery center;
- tttt. Swim club;
- uuuu. Swimming pool / hot tub sales;
- vvvv. Tanning salon;
- wwww. Tattoo establishment;
- xxxx. Taxi service;
- yyyy. Telephone sales and service;
- zzzz. Television station;
- aaaaa. Tennis club;
- bbbbb. Tire sales;
- ccccc. Treatment center;
- ddddd. Variety store;
- eeeee. Veterinary clinic;
- fffff. Window sales;
- ggggg. Zoo;
- hhhhh. Bank or Savings and Loan business; stand along parking area business; drive-through restaurant; outdoor automatic bank teller machine; automobile sales and service; general goods or hardware store; household appliance store or a residential facility for a group home or court-ordered re-entry program unless otherwise required by applicable law or ordinance;
- iiiiii. All Special Uses in the C-2 zoning district.

3. Use Determination. The Zoning Administrator shall have the authority to make a written determination under this Commitment whether a proposed use, which is not expressly allowed under Section 1 above and which is not expressly prohibited under Section 2 above, is a “Permitted Use” or a “Prohibited Use.” Notice of the Zoning Administrator’s shall be provided to Applicant, Declarant, and all landowners of record within 200 feet of property lines of the Real Estate and mailed within five (5) days of the determination. If the Applicant, Declarant, or

other aggrieved party disagrees with the Zoning Administrator's determination under this Section 3, then a request may be filed with the Plan Commission to review the Zoning Administrator's determination under this Commitment, and the Plan Commission shall have the authority to make the final determination.

4. Downzoning Agreement. Within thirty (30) days of a "Downzoning Triggering Event", Declarant and Applicant shall jointly file an application with the Plan Commission to a) rezone the Real Estate to an R1 – Single Family Residential zoning district pursuant to the Zoning Ordinance and b) terminate the terms and conditions of this Commitment. A Downzoning Triggering Event shall be defined to include any one of the following:

- a. failure to obtain an award of low income tax credits for the improvements contemplated by the Development Plan to Applicant or its designee by the Indiana Housing and Community Development Authority in such amount and with such conditions as are acceptable to Applicant on or before March 31, 2016; or
- b. failure to substantially complete the improvements represented and contemplated by the approved secondary of the Development Plan within four (4) years of the Effective Date of this Commitment; or
- c. cessation of leasing and business use of the Real Estate, as permitted by Section 1 above, for a continuous period of twelve (12) months following substantial completion of the improvements represented and contemplated by the approved secondary of the Development Plan; provided, however, that the cessation period shall be for a continuous period of twenty-four (24) months if the cessation is caused by a casualty or similar event to the Real Estate and improvements thereon and the Declarant and Applicant use commercially reasonable efforts to repair, replace or restore the improvements lost or damaged by the casualty or similar event.

5. Building Height Limitation. Any building improvement constructed upon the Real Estate shall have a building height, as determined by the Zoning Ordinance, of no more than thirty-five feet (35') (the "Building Height Limitation").

6. Outside Storage. Outside storage of trash and trash receptacles must be visually screened on three sides with a wood or vinyl fence or masonry structure, with a gate enclosure on the fourth side. Except as otherwise provided herein, outside storage of any inventory, display, work or business related materials is prohibited.

7. Hours of Operation and Deliveries. No business upon the Real Estate shall have hours of operation open to the general public prior to 8:00 a.m. or after 8:00 p.m. No truck deliveries will be made to any business or use upon the Real Estate prior to 8:00 a.m. or after 8:00 p.m.

8. Landscaping and Buffering. A buffer area will be maintained along the northern boundary of the Real Estate and will include evergreen and/or deciduous plantings and a six (6) foot tall fence of either solid material or wrought-iron design (collectively, the "Buffer Improvements"). All landscaping planted and fencing installed by Declarant and/or Applicant

upon the Real Estate shall be maintained, watered and fertilized by Declarant and/or Applicant pursuant to a commercially reasonable standard for similar landscaping and fencing in Allen County, Indiana and shall be replaced within a commercially reasonable time in the event of decay, disease or death of said landscaping or vandalism, casualty or other non-repairable condition to said fencing.

9. Signage. There may be located upon the Real Estate (a) one (1) ground mounted sign not to exceed eight (8) feet in height and eighty (80) square feet in area, which sign shall be located along Rudisill Boulevard at the entrance to the Real Estate and as otherwise depicted on the approved Development Plan; and (b) building directory signage on each of the buildings located or to be constructed upon the Real Estate. No changeable copy signs, wall signs or temporary signs (including but not limited to banners, mobile or trailer signs, commercial flags, pennants, or balloons) shall be permitted.

10. Lighting. Site lighting shall be of a type to minimize light pollution onto any adjacent residential property by utilizing only full “cut-off” style lighting fixtures of “shoebox” designed housings, and shall have a maximum pole height of fifteen (15) feet. The Real Estate may also be improved with bollard style lighting along the internal walkways and wall pack lighting on exterior building facades.

11. Vehicles and Parking.

a. Prohibited Vehicles or Items. This Section 11(a) references prohibited vehicles or items which shall not be entitled to park anywhere within the Real Estate. The prohibited vehicles and items are as follows: box trucks; recreation vehicles, mobile homes, motor homes, campers, buses, all-terrain vehicles, off-road vehicles, go carts, three-wheel motorized vehicles, commercial vehicles, limousines, mopeds, dirt bikes, and other such motor vehicles, and boats and trailers, with the exception of being permitted to be parked upon the Real Estate for periods not to exceed 48 hours, or for a period not in excess of eight days per any twelve month period.

b. Exception to 11(a) Above. The following vehicles shall not be subject to the parking restrictions contained in Section 11(a) above, and shall be entitled to park within the designated areas for parking in the Real Estate, subject to the restrictions and provisions contained in Sections 11(b)(i) through 11(b)(v) below.

i. A moving van, but only for the purpose of loading and unloading and at no time shall same park during the hours of 9:00 p.m. to 6:00 a.m.

ii. Vehicles, regardless of classification, necessary for the maintenance, care or protection of the Real Estate or any portion thereof, and only for the time period during which the maintenance, care or protection is being provided.

iii. Service and delivery vehicles, regardless of classification, but only for that period of time to render the service or delivery in question.

iv. Vehicles for the handicapped bearing identification as such by an applicable governmental authority.

v. Certain vans described as follows: Subject to that provided above, a two-axle van as defined below which does not exceed the manufacturers' standard length, height and width of the particular van in a customized converted condition; used for family or personal transportation and which is not a commercial vehicle as defined below; which contains at least two (2) rows of seating and windows on each side of the vehicle adjacent to at least each of the first two (2) rows of seating; and which is or would be registered in the State of Indiana as a passenger station wagon or equivalent shall be permitted to park on the Real Estate.

c. Classifications and Definitions.

i. The most current edition of the N.A.D.A. Official Used Car Guide ("Guide") shall determine the classification of whether a vehicle is in fact a truck or van, or whether it is a passenger automobile. If the Guide does not contain reference to a particular vehicle, then the manufacturer's classification shall control. If publication of the Guide shall be discontinued, an equivalent publication shall be used to determine vehicle classifications hereunder. Except as otherwise provided as to certain vans under Section 9(b)(v) above, a State registration or title classification shall have no bearing on determination of the classifications under this Section 9(c)(i).

ii. A "commercial vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, such as: the vehicle displays work equipment to view and/or is commercially lettered or contains a commercial or business logo. Vehicles that are considered company cars will not be considered a commercial vehicle if it is the residents primary vehicle.

iii. A "box truck" shall mean any motor vehicle which is classified as a box truck in accordance with Section 11(c)(i) above.

iv. A "van" shall mean any motor vehicle which is classified as a van in accordance with Section 11(c)(i) above and which is recognized by the manufacturer to be a type of a van, and which has two (2) axles. Notwithstanding the foregoing to the contrary, a pickup truck shall not be considered to be a van by the addition of a camper top or similar topping.

d. Additional Restrictions:

i. No repair of a vehicle shall be made within the Real Estate except for minor repairs necessary to permit removal of a vehicle. However, washing or waxing of a vehicle is permitted. No repairs allowed hereunder shall violate any local, state or federal law or regulation regarding the handling, storage or handling of environmental substances.

ii. All personal vehicles which can be appropriately parked within a standard-size parking stall may be parked on the Real Estate. No vehicles of any nature shall be parked on any portion of the Real Estate except on the surfaced parking area thereof.

12. Successors and Assigns. This Commitment and the restrictions set forth above shall inure to the benefit of all persons who own property comprising the Real Estate, their successors and assigns, and shall also inure to the benefit of the Plan Commission, the City of Fort Wayne Zoning Enforcement Officer (“ZEO”), or any other duly authorized enforcement official designated by the Plan Commission. This Commitment and the restrictions and limitations set forth herein shall run with the Real Estate, and any conveyance thereof, and shall be binding upon Declarant, as the owners of the Real Estate, and the Applicant, and their successors and assigns. The Recitals are incorporated herein by reference.

13. Compatibility of the Development Plan with the Rudisill Boulevard Cultural Landscape Report. The Plan Commission shall review and approve the secondary for the Development Plan to ensure compatibility of the stormwater detention and tree preservation on the Real Estate with the Rudisill Boulevard Cultural Landscape Report.

14. Amendment or Termination. This Commitment may be amended or terminated upon application by an owner of the Real Estate and only with the prior written consent of all owners of the Real Estate and the Plan Commission, following a public hearing to consider said amendment or termination. Written notice of the public hearing shall be given by the owner seeking the amendment or termination, at such owner’s expense, to all landowners of record within 200 feet of the property lines of the Real Estate with said notice being based on the then available tax records of Allen County and being mailed no later than the date application is made to the Plan Commission for said amendment or termination.

15. Remedies. As a condition precedent to the bringing of any lawsuit or initiating any action for injunctive relief, the Zoning Administrator and/or the Plan Commission shall first provide Declarant, the Applicant, and/or the then existing owner(s)/occupiers of the Real Estate, with thirty (30) days prior written notice of the breach or violation, or threatened breach or violation, of the terms, restrictions or covenants of this Commitment. If the Declarant, the Applicant, and/or the then existing owner(s)/occupiers of the Real Estate fail to cure the violation, or the threatened breach or violation, within such 30 day period to the satisfaction of the Zoning Administrator and/or the Plan Commission, then the Zoning Administrator and/or the Plan Commission each shall have the option (but not the obligation) to enforce this Commitment, at law or in equity. In the event an enforcement action is commenced, the ZEO and/or the Plan Commission (as applicable) shall have the remedies allowed by the Zoning Ordinance (or the ordinance governing the Real Estate at the time of the enforcement action) and I.C. §36-7-4-1015, which remedies shall be cumulative and not exclusive. A violation of this Commitment shall be deemed a violation of the Zoning Ordinance, or the ordinance governing the Real Estate at the time of the violation; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of the Commitment by the Zoning Administrator and/or the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate. In addition to the foregoing and the rights and remedies afforded the Zoning Administrator and Plan Commission, in the event of a breach or violation of Section 5 above, and after applicable notice as required above, the Plan Commission shall have the additional remedy of initiating a rezoning of the Real Estate to R1 – Single Family Residential, pursuant to Indiana Code 36-7-4-602(c)(1)(A).

16. Effective Date. This Commitment shall be effective upon recording in the Office of the Recorder of Allen County, Indiana. This Commitment shall be recorded by either the Declarant or the Applicant within thirty (30) days of the approval by the Fort Wayne Common Council's enactment of the Zone Map Amendment, rezoning the Real Estate to C-2. If either Declarant or the Applicant fail to record this Commitment within such 30-day period, then the Plan Commission staff shall be entitled to record this Commitment.

17. Severability. Each covenant or restriction contained in any paragraph of this Commitment shall be severable and separate, and if any court shall rule that any particular restriction or covenant is unenforceable, such ruling shall not affect the enforceability of any other restriction or covenant under this Commitment, and such other restriction or covenant shall be enforced.

18. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

19. Authority to Sign. The person signing this Commitment in a representative capacity on behalf of Declarant and Applicant warrants and represents that: (a) the person has the actual authority and power to so sign, and to bind the respective entity to the provisions of this Commitment; and (b) all corporate or other entity action necessary for the making of this Commitment has been duly taken.

20. Last Deeds of Record. The most recent deeds of record for the Real Estate was recorded in the Office of the Recorder of Allen County, Indiana on May 11, 2012 at Document Number 2012025899.

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“DECLARANT”

AMBASSADOR CAMPUS PROPERTIES, LLC
an Indiana limited liability company

By: _____
Garrett W. Cooper
Its: Manager

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this 15th day of June, 2015 personally appeared Garrett W. Cooper, the Manager of Ambassador Campus Properties, LLC, an Indiana limited liability company and acknowledged the execution of the foregoing.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

, Notary Public

My Commission Expires: _____

My County of Residence: _____

“APPLICANT”

COMMUNITY ACTION OF NORTHEAST INDIANA,
INC., DOING BUSINESS AS BRIGHTPOINT, an
Indiana nonprofit corporation

By: _____
Stephen Hoffman, Executive Director

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this 15th day of June, 2015 personally appeared Stephen Hoffman, the Executive Director of Community Action of Northeast Indiana, Inc., doing business as BrightPoint, an Indiana nonprofit corporation and acknowledged the execution of the foregoing.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

, Notary Public

My Commission Expires: _____

My County of Residence: _____

THIS INSTRUMENT prepared by Joshua C. Neal, Attorney at Law, Atty. No. 23697-02, Barrett & McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Joshua C. Neal

When recorded, return to: Joshua C. Neal, Barrett & McNagny LLP, Courthouse Box No. 3, 215 East Berry Street, Fort Wayne, Indiana 46802.

EXHIBIT "A"**LEGAL DESCRIPTION OF REAL ESTATE**

Lot Number 12 Ewing's Out Lots in the Southwest Quarter of Section 14, Township 30 North, Range 12 East, according to the plat thereof, as recorded in Deed Record 31, pages 404-408, except that part appropriated for the widening of Rudisill Boulevard, Boulevard Resolution No. 5-1913, as shown by Plat recorded in Plat Book 7, pages 86 to 89 in the Office of the Recorder of Allen County, Indiana.