

<i>Project Name:</i>	Campus Academy
<i>Proponent / Owner:</i>	Nate Whittaker / BGN Enterprises/Nathan Whittaker
<i>Project Address:</i>	675 E 400 N
<i>Request:</i>	Conditional Use Permit
<i>Current Zoning:</i>	Campus Residential (CR)
<i>Type of Action:</i>	Quasi-Judicial
<i>Hearing Date</i>	December 15 th 2022
<i>Submitted By:</i>	Russ Holley, Senior Planner

Staff recommends that the Planning Commission **conditionally approve** a Conditional Use Permit for project #22-069, Campus Academy, in the Campus Residential (CR) zone located at 675 E 400 N. TIN #06-058-0005.

<i>North:</i>	CR: Vacant	<i>East:</i>	CR: Residential Uses
<i>South:</i>	CR: Vacant	<i>West:</i>	CR: Residential Uses

The existing 0.34-acre property has an existing multi-family residential structure that was built in 2006 and currently being used as a student housing complex. This proposal is for a new licensed adolescent residential treatment home for up to 48 girls and boys, ages from 12-17, suffering from various mental illnesses. The existing three-story building is configured with (3) three dwelling units and 24 bedrooms and bathrooms was approved as student group living with the 2005 Conditional Use Permit PC#05-028. An open-air ground floor parking structure is topped-off with two levels of residential floors above. The treatment home is planned to have up to 12 licensed staff members during daytime hours and two overnight. Visitors will be very limited and will mainly consist of patient pick-up and transport to off-site locations.



Land Use & Density

The Land Development Code (LDC) Table 17.11.030 indicates that treatment land uses are only permitted in the CR zone if federal laws supersede and specifically allow for these types of uses. Conditional Use Permits are required for occupancy of a property of up to 240 people per acre in the Campus Residential (CR) zoning district. At 0.34-acres, this property could have a maximum occupancy (density) of 81 people. The request is for up to 48 full-time residents and associated staff members.

Conditional Use Permit

Conditional Use Permits are reviewed and approved by the Logan City Planning Commission in accordance with the LDC Section 17.42. Conditional Use Permits give the land use authority an opportunity to appropriately mitigate any unique adverse impacts created by the land use and specific proposal. Section 17.42.05 states:

The Commission may approve or conditionally approve a conditional use permit that is based on an objective standard in compliance with Utah Code (10-9a-507) and only upon substantiating the following findings:

- A. The proposed use is consistent with the allowable maximum densities of the underlying zone.
- B. The proposed use is consistent with the requirements of the Land Development Code.
- C. The use is compatible with surrounding land uses and will not interfere with the use and enjoyment of adjoining properties.
- D. The site will be served by infrastructure having sufficient capacities to meet the service demands of the proposed use.
- E. The proposed use is compatible with the surrounding neighborhood character as defined in Section 17.62.
- F. The proposed access is consistent with Logan City access and roadway standards and Utah Department of Transportation requirements where applicable.
- G. The conditional use is aimed at mitigating the possible negative impacts of excessive light, noise, and traffic.

For review and approval of this proposal, the surrounding neighborhood character and land uses need to be considered. Surrounding properties would have similar occupancies and densities, except for the licensed staff members. Staff and their typical day-to-day duties, other than the additional parking demand created, should have similar impacts associated with typical residential uses. It is indicated that none of the treatment center residents will be allowed to drive or park a personal car. Based on this parking and traffic demand would be less than that of typical multi-family residential use. No non-typical outdoor activities, noises, lighting, or other abnormal impacts are indicated in the application. The land use should have similar impacts and would be similar in intensity and use as standard multi-family uses.

Setbacks

The Land Development Code (LDC) requirements for setbacks in the CR zone are as follows (as measured from property lines):

Front:	10'
Front (adj. to NR):	25'
Side:	8'
Rear:	10'
Parking (Front):	10'
Parking (Side):	5'

The existing building is placed at the following setbacks:

Front (south):	~42'
Sides:	~21-31'

Rear (north): ~10'

Parking (front & side): ~3'

Being an existing structure with no proposed physical changes, the existing setbacks are considered legally established and permitted to remain.

Lot Coverage

The LDC 17.10.080 establishes a maximum lot coverage of 60% (building(s) footprint) in the CR zone. The existing lot coverage is approximately 35% for the ~5200 SF building footprint on a 0.34-acre lot. As existing, the lot coverage complies with the allowance in the LDC.

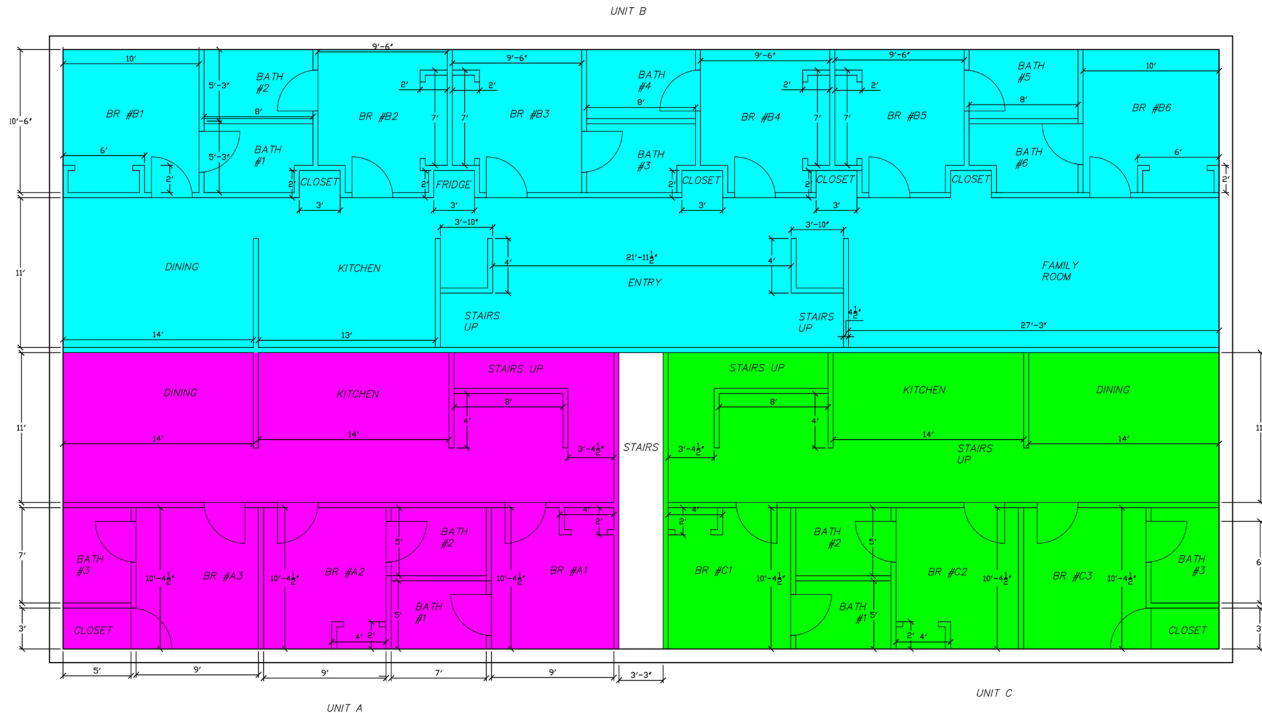


Figure 2 shows the floorplans for the lower level residential

Building Design

The existing three-story building, constructed in 2006, consists of a variety of roof pitches and forms with earth-toned horizontal lap siding and cultured stone materials. Exterior stairways and second floor walkways connect the ground floor parking areas to the second-floor entryways of the residential units. The proposal does not request changes to the building's exterior materials or appearance.

Parking Requirements

The LDC requires one (1) parking stall per every (1) occupant in the CR zone. This proposal is not standard residential use and is requesting a different parking standard based on its unique parking demand. None of the up-to 48 treatment center patients will be allowed to bring a car. Only staff and limited visitors will create on-site parking demands. The application indicates the use of two 15-passenger vans being parked on-site for facility usage. Staff members, indicated at a 1-4 (staff to resident) ratio, would mean a maximum of 12 staff onsite at any given time. The number and frequency of visitors is not indicated but will likely be limited and should not generate high parking demands at similar times. With the submitted site plans indicating 25 parking stalls on-site and available for this proposed use, The total parking demand should be approximately 14-20 spaces (staff + vans + visitors). As proposed with 25 on-site parking stalls and parking demands well below this number, parking should be considered sufficient for this use and occupancy.

Open Space and Landscaping

The LDC 17.10.030 requires 20% open space and an additional 10% useable outdoor space in the CR zone. The LDC 17.35 generally describes open space as vegetation or landscaped areas. While useable outdoor space could be additional green space, these areas are typically decks, patios and other similar outdoor amenities. The 0.34-acre site would require 4,443 SF of open space and outdoor space. The existing property is configured with approximately 5,000 SF of landscaping, open space and outdoor space and in compliance with LDC standards.

Summary

Being a proposed land use that is listed at “N¹” in the LDC land use table 17.08.040 meaning it is not normally allowed but the city must refer to the federal laws and fair housing act which extends certain protections against housing discrimination to individuals with physical or mental disabilities. Local zoning cannot limit the ability of a disabled person to live in the residence of their choice, if the zoning district fundamentally permits residential uses. This application claims that Campus Academy’s residents are “handicapped” and that the requested reasonable accommodation is “necessary” and would avoid unfair discrimination and un-equal treatment. The residents of Campus Academy and their disabilities require housing in residential treatment settings at two per bedroom for optimal support, accountability, and positive reinforcement.

This request does not exceed maximum occupancy, density and will be a similar residential use to that in surrounding properties except for on-site staff members. With the unique smaller parking demand, the existing 25 stalls indicated on the submission should be more than adequate for this proposal. Building code compliance for the converted treatment facility will ensure better access for all types of patients and will result in less scrutiny of potential applicants.

AGENCY AND CITY DEPARTMENT COMMENTS

Comments were solicited from the following departments or agencies:

• Environmental	• Water
• Engineering	• Fire
• Building	

PUBLIC COMMENTS

Notices were mailed to property owners within 300 feet of the subject property. As of the time of this report, no comments have been received.

PUBLIC NOTIFICATION

Legal notices were published in the Herald Journal on 12/3/22, posted on the City’s website and the Utah Public Meeting website on 12/5/22, and mailed to property owners within 300 feet on 11/28/22.

RECOMMENDED CONDITIONS OF APPROVAL

This project is subject to the proponent or property owner agreeing to comply with the following conditions as written, or as may be amended by the Planning Commission.

1. All standard conditions of approval will be recorded with the Design Review and are available in the Community Development Department.
2. The Conditional Use Permit authorizes Campus Academy up to 48 residents between the ages of 12-17 and in conjunction with the proposed residential treatment facility.
3. Because of the unique parking demand, the existing 25 parking stall located in-site is acceptable for this use. The Planning Commission will need to review and approve any future parking changes to this property.
4. Outdoor activities and noises shall be done between the hours of 7:00 AM-10:00 PM and in accordance to Logan City noise ordinances.
5. New exterior lighting shall be concealed source, down-cast and shall not illuminate or cast light onto adjacent properties. No signs are approved with this Design Review

Permit. All signage shall be approved and permitted by staff in accordance with the Land Development Code.

6. No fences are approved with this Design Review Permit. All fences shall be approved and permitted by staff in accordance with the Land Development Code.
7. Surface storm-water retention and detention facilities shall not be located in front yard areas unless landscaped in a manner that entirely screens and buffers the pond areas. If located in rear-yard or areas out of view from the public, landscaping and buffering is not necessary.
8. Prior to issuance of a Building Permit, the Director of Community Development shall receive a written memorandum from each of the following departments or agencies indicating that their requirements have been satisfied:
 - a. *Building Safety—contact 716-9760*
 - This use will change the occupancy classification of the building. An architect needs to provide a code analysis showing the city how the use will meet the building and fire codes in this space.
 - b. *Engineering —contact 716-9160*
 - Include a discussion in the information packet regarding the recent submittal of additional units proposed to be located on the property.
 - Provide water shares or in-lieu fee for indoor and outdoor increased demands to the City system. This requirement shall be per City Code and Utah Administrative Rule R509-519-7
 - All utilities outside of the public right-of-way way shall be private lines and shall be owned, maintained, repaired/replaced by Homeowners Association. All infrastructure shall be installed, maintained, and repaired/replaced in accordance with Logan City Standards.
 - Provide City with private Water Utility agreement for all private water and sewer lines (including fire lines) not located withing a Public Right of Way. The agreement shall be recorded with the County Recorder.
 - All lots shall have separate water service and sewer service connections to water distribution and sewer collection systems.
 - Show all existing easements on the plat and reference the recording information for each on the plat, where non-existent or insufficient, provide a 10' Public Utility Easement along all frontages and perimeter property lines, and provide a 5' Public Utility Easement along each side of all interior property lines.
 - Provide storm water detention/retention per Logan City Design standards. This includes the onsite retention of the 90% storm event through the use of Low Impact design methods
 - Provide a stormwater maintenance agreement for City Review, approval and recordation at County Recorder's Office.
 - Identify all drainage from site and track drainage route from site to final discharge location. Obtain written approval from ditch users, City and canal companies as required for use.
 - Area is less than 1 acre so compliance with State Storm Water Permit is not required. Development shall comply with Logan City design standards for storm water detention/retention. Development shall also provide a sediment and erosion control plan for all construction activities.
 - All development accesses shall be in accordance with Logan and UDOT Design Standards
 - Construct ADA handicap accessible ramps at each corner per City Standards and Specs. All sidewalks through drive approaches must comply with ADA and City Standards & Spec's
 - Construct and/or repair curb, gutter and sidewalk in accordance with City standards and specifications.

- Provide Development Agreement and financial surety of at least 110% of the cost to construct all infrastructure & storm water improvements. Financial assurances shall not expire for a minimum of 2 years from date of City acceptance.
 - Provide all necessary cross access easements/agreements for private road and private utilities across all properties.
- c. *Fire* —contact 716-9515
- I-2 Treatment facilities will also require approval by the state fire marshal's office.
 - Concerns about adequate ambulance access.
 - I-2 occupancies are required to have fire sprinklers and fire alarms throughout. A fire hydrant will be required within 100 ft of the FDC. Fire apparatus access required to the building to use the FDC.
 - Several concerns with this type of occupancy in this building as it is located in the center block with limited emergency access and with plans to build a major parking structure and building in front of this building.
- d. *Environmental* —contact 716-9761
- Minimum 60 ft. straight on clear access required. Approach must be level, no down or uphill slopes and no parking spaces or curb blocking access.
 - Minimum inside measurement for a double enclosure is 24 ft. wide by 10 ft. deep. Minimum inside measurement for a single enclosure is 12 ft. wide by 10 ft. deep.
 - Place bollards in the back of the enclosure to protect walls.
 - Gates are not required, however if desired, they must be designed to stay open during the collection process.
 - Barrel hinges are suggested for the gates. We need the full 12 ft. clearance so gates must be designed to open completely.
 - Operators cannot back up more than 150 ft. or onto a highway. If it is more than 150 ft. a turnaround will need to be provided.
- e. *Water* —contact 716-9627
- The buildings water main needs to have a RP (ASSE1013) installed and tested on the water main as it enters the building before any branch offs or possible connections. Properly sized drain required to serve the backflow assemblies dump port.
 - All landscape irrigation system's fed from Logan City water must have a high hazard rated backflow assembly installed and tested. All backflow assemblies must be tested within 10 days of turning in water to them and annually thereafter.
 - Fire suppression systems that are connected to Logan City water (with no added chemicals) must have a minimum DC (ASSE1015) installed and tested. Fire risers and B/F assemblies must be installed as per Logan City standards.
 - All points of use of water must comply with the 2018 IPC and State of Utah Amendments and the Utah Admin Code 309-305 during and after construction. (cooling, heating, processing, treating etc.). Project shall comply with all current plumbing codes, Utah State Amendments, Utah Division of Drinking Water rules and regulations including, but not limited to, those pertaining to backflow protection and cross connection prevention.

RECOMMENDED FINDINGS FOR APPROVAL FOR THE CONDITIONAL USE PERMIT

The Planning Commission bases its decisions on the following findings supported in the administrative record for this project:

1. The proposed project is compatible with surrounding land uses and will not interfere with the use and enjoyment of adjacent properties because of the proposed use, building design, landscaping, open space, and site layout.
2. The proposed project provides enough off-street parking for the proposed unique use.
3. The proposed project complies with maximum occupancy and density and is in conformance with Title 17.
4. The project met the minimum public noticing requirements of the Land Development Code

and the Municipal Code.

5. 400 North provide access and is adequate in size and design to sufficiently handle all traffic modes and infrastructure related to the land use.

This staff report is an analysis of the application based on adopted city documents, standard city development practices, and available information. The report is to be used to review and consider the merits of the application prior to and during the course of the Planning Commission meeting. Additional information may be revealed by participants at the Planning Commission meeting which may modify the staff report and become the Certificate of Decision. The Director of Community Development reserves the right to supplement the material in the report with additional information at the Planning Commission meeting.

Campus Academy

675 E 400 N



December 15, 2022

Campus Academy

675 E 400 N



Existing Zoning

December 15, 2022

Campus Academy

675 E 400 N



FLUP

December 15, 2022



APPLICATION FOR PROJECT REVIEW

For Staff Only					
<input type="checkbox"/> Planning Commission		<input type="checkbox"/> Land Use Appeal Board		<input type="checkbox"/> Administrative Review	
Date Received 11/7/22	Planner CK/ADAMS	Zone/Neighborhood CK/ADAMS	Scheduled Meeting Date DEC. 15	Application Number PC 22-0069	
Type of Application (Check all that apply):					
<input type="checkbox"/> Design Review		<input checked="" type="checkbox"/> Conditional Use	<input type="checkbox"/> Subdivision	<input type="checkbox"/> Administrative Design Review	
<input type="checkbox"/> Code Amendment		<input type="checkbox"/> Appeal	<input type="checkbox"/> Zone Change	<input type="checkbox"/> Other	
PROJECT NAME Campus Academy					
PROJECT ADDRESS 675 E 400 N				COUNTY PLAT TAX ID # 06-058-0005	
AUTHORIZED PROJECT REPRESENTATIVE FOR OWNER Nathan Whittaker				PHONE # 435-881-4334	
MAILING ADDRESS 3414 N 1800 E		CITY North Logan	STATE UT	ZIP 84341	
EMAIL ADDRESS Nate@whittprops.com					
PROPERTY OWNER OF RECORD GBN Enterprises / Nathan Whittaker				PHONE #	
MAILING ADDRESS AS Above		CITY	STATE	ZIP	
EMAIL ADDRESS					
DESCRIBE THE PROPOSED PROJECT AS IT SHOULD BE NOTICED AND PRESENTED (Include as much detail as possible - attach a separate sheet if needed) The operation of a licensed adolescent residential treatment home for up to 48 girls suffering from mental illness in the property's 3 Existing, 24 Bed/Bath, Units.					
See Attachments				Total Lot Size (acres) 0.34	
				Size of Proposed New Building (square feet) Existing - 7768	
				Number of Proposed New Units/Lots 3 Existing Units	
I certify that the information contained in this application and all supporting plans are correct and accurate. I also certify that I am authorized to sign all further legal documents and permit on behalf of the property owner.			Signature of Property Owner's Authorized Project Representative 		
I certify that I am the property owner on record of the subject property and that I consent to the submittal of this project. I understand that all further legal documents and permits will be sent to my authorized agent listed above.			Signature of Property Owner 		

APPLICATION MUST BE ACCURATE AND COMPLETE
NO SITE ACTIVITY MAY OCCUR UNTIL AFTER APPROPRIATE COMMITTEE APPROVAL.

Campus Academy's Operations and Desired Use

Campus Academy is a youth residential treatment program overseen by Dr. Nathan Whittaker, a retired emergency room physician, and other clinical professionals. Its mission is to provide housing and treatment for boys and girls aged 12-17 suffering from the following qualifying handicaps or disabilities:

- a. Drug addiction (other than addiction caused by current, illegal use of a controlled substance) and/or alcoholism;
- b. Mood disorders within the meaning of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), such as major depression, dysthymia, bipolar disorder, and substance-induced mood disorder;
- c. Minor personality disorders within the meaning of the DSM-5, such as borderline personality disorder, histrionic personality disorder, narcissistic personality disorder, avoidant personality disorder, dependent personality disorder, obsessive compulsive personality disorder, etc.;
- d. Post-traumatic stress disorder;
- e. Anxiety disorders;
- f. Disorders along the autism spectrum
- g. Oppositional-defiant disorder; and
- h. Attachment disorder.

Under Campus Academy's admissions criteria, each resident must have one or more of these conditions and meet other stringent admissions criteria and program guidelines, thereby, qualifying for residential treatment. Each resident must have one of these qualifying handicaps or disabilities.

Campus Academy's admissions criteria will exclude residents with the following:

- Criminal record
- Communicable disease
- History of violence, sexually aggressive, presents a security risk
- Acutely severe clinical or behavioral needs requiring inpatient evaluation and treatment – (acute psychosis, unstable mental illness, or severe depression, acting on suicidal ideation)
- No consent from parent or legal guardian
- Severe mental retardation or IQ<80
- Requires medical detoxification
- Exhibits severe impaired judgment
- History of repeated runaway attempts
- Deaf, mute or blind
- Inability to evacuate the home within 5 minutes, in the event of fire or other catastrophe
- Younger than 12 and older than 17
- Sex offender registrant
- Direct threat to persons or property

Campus Academy's admissions processes include a comprehensive evaluation prior to admission by a licensed graduate-level provider to ensure that each resident meets the admissions criteria and does not fall within the exclusion criteria. Its admission processes ensure that each resident has a documented current DSM diagnosis and evidence of significant handicap/disability. Its admission processes ensure a review and approval of the admission by a psychiatric provider for appropriateness and safety of the program. (See Ex. 5 at ¶¶ 15-16.)

Campus Academy will be licensed for “residential treatment” by the Utah Department of Health and Human Services (“DHHS”). By statute, “residential treatment” “means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.” Utah Code Ann. § 62A-2-101(41) (2022). (Ex. 5 at ¶¶ 17-18.) Daytime staff-to-resident ratios will be 1 (staff) to 4 (residents) from 7a.m. to 10 p.m. Nighttime staff will consist of 2 awake staff members during sleeping hours.

The three-story, 24-bedroom structure, which sits on a .34 acre lot, is more than adequate to accommodate Campus Academy’s requested census. The first floor of the structure is an underground parking lot. The residential portions of the structure (2nd and 3rd floors) contain three units. One unit has 10 bedrooms. The other two units have 7 bedrooms each. Renderings of the floor plan are shown in Exhibit 1. Pictures of the site and vicinity are shown in Exhibit 2.

It is our understanding that the most recent use of the property was as student housing approved as a conditional use for group living under a conditional use permit issued in 2005. It is also our understanding that the prior conditional use permit authorized up to 24 unrelated persons to use the property for their dwelling.



Dan McDonald
P.O. Box 1184
Pleasant Grove, Utah 84062
Email: dan@mcdonaldfielding.com
Telephone: (801) 372-0055
www.mcdonaldfielding.com

October 26, 2022

Mike DeSimone
Director of Community Development
Logan City
Logan City Hall
290 N 100 W
Logan, UT 84321
Via Email: mike.desimone@loganutah.org

**Re: Reasonable Accommodation Application
Campus Academy, LLC dba "Campus Academy"
Residential Treatment Home – 675 East 400 North
Tax Parcel No. 06-058-0005**

Dear Mr. DeSimone:

This firm represents Campus Academy, LLC dba "Campus Academy." Campus Academy would like to operate a licensed adolescent residential treatment home for 48 handicapped girls at the above-referenced Property. However, there are certain barriers to doing so imposed by the Logan City Code ("LDC"). The purpose of this letter is to explain, in more detail, Campus Academy's operations and desired use of the Property, the barriers imposed by the LDC, and why Campus Academy believes it is entitled to a reasonable accommodation from those barriers under federal and state law.

I. Campus Academy's Operations and Desired Use

Campus Academy is a youth residential treatment program overseen by Dr. Nathan Whittaker, a retired emergency room physician, and other clinical professionals. Its mission is to provide housing and treatment for boys and girls aged 12-17 suffering from the following qualifying handicaps or disabilities:

- a. Drug addiction (other than addiction caused by current, illegal use of a controlled substance) and/or alcoholism;

- b. Mood disorders within the meaning of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5),¹ such as major depression, dysthymia, bipolar disorder, and substance-induced mood disorder;
- c. Minor personality disorders within the meaning of the DSM-5, such as borderline personality disorder, histrionic personality disorder, narcissistic personality disorder, avoidant personality disorder, dependent personality disorder, obsessive compulsive personality disorder, etc.;
- d. Post-traumatic stress disorder;
- e. Anxiety disorders;
- f. Disorders along the autism spectrum
- g. Oppositional-defiant disorder; and
- h. Attachment disorder.

(See Exhibit 5 at ¶ 11; Exhibit 6 at ¶ 30.)

Under Campus Academy's admissions criteria, each resident must have one or more of these conditions and meet other stringent admissions criteria and program guidelines, thereby, qualifying for residential treatment. Each resident must have one of these qualifying handicaps or disabilities.

Campus Academy's admissions criteria will **exclude** residents with the following:

- Criminal record
- Communicable disease
- History of violence, sexually aggressive, presents a security risk
- Acutely severe clinical or behavioral needs requiring inpatient evaluation and treatment – (acute psychosis, unstable mental illness, or severe depression, acting on suicidal ideation)
- No consent from parent or legal guardian
- Severe mental retardation or IQ<80
- Requires medical detoxification
- Exhibits severe impaired judgment
- History of repeated runaway attempts
- Deaf, mute or blind
- Inability to evacuate the home within 5 minutes, in the event of fire or other catastrophe

¹ The DSM-5 was published by the American Psychiatric Association (APA) in May 2013 and is commonly used by psychiatrists, psychologists and other mental health professionals as a diagnostic and evaluation tool.

- Younger than 12 and older than 17
- Sex offender registrant
- Direct threat to persons or property

(Ex. 5 at ¶ 31; Ex. 6 at ¶ 14.)

Campus Academy's admissions processes include a comprehensive evaluation prior to admission by a licensed graduate-level provider to ensure that each resident meets the admissions criteria and does not fall within the exclusion criteria. Its admission processes ensure that each resident has a documented current DSM diagnosis and evidence of significant handicap/disability. Its admission processes ensure a review and approval of the admission by a psychiatric provider for appropriateness and safety of the program. (See Ex. 5 at ¶¶ 15-16.)

Campus Academy will be licensed for "residential treatment" by the Utah Department of Health and Human Services ("DHHS"). By statute, "residential treatment" "means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies." Utah Code Ann. § 62A-2-101(41) (2022). (Ex. 5 at ¶¶ 17-18.) Daytime staff-to-resident ratios will be 1 (staff) to 4 (residents) from 7a.m. to 10 p.m. Nighttime staff will consist of 2 awake staff members during sleeping hours. (Ex. 5 at ¶ 19; Ex. 6 at ¶ 50.)

The three-story, 24-bedroom structure, which sits on a .34 acre lot, is more than adequate to accommodate Campus Academy's requested census. The first floor of the structure is an underground parking lot. The residential portions of the structure (2nd and 3rd floors) contain three units. One unit has 10 bedrooms. The other two units have 7 bedrooms each. Renderings of the floor plan are shown in **Exhibit 1**. Pictures of the site and vicinity are shown in **Exhibit 2**.

It is our understanding that the most recent use of the property was as student housing approved as a conditional use for group living under a conditional use permit issued in 2005. It is also our understanding that the prior conditional use permit authorized up to 24 unrelated persons to use the property for their dwelling. See also **Exhibit 3**.

II. Barriers to Housing Imposed by the LDC

According to the official Logan City Zoning Map, **Exhibit 4**, and Occupancy Map (**Ex. 3**), the property is in the Campus Residential or "CR-40" zone. The City's land use matrix classifies uses as follows: "P" is a permitted use that requires no special approval process; "C" is a conditional use that requires a special application, review, and approval by the City before the use can commence; and "N" is a use that is not allowed:

§17.08.020 Neighborhood Residential Land Use: Classification

- A. Primary Uses. Land use shall conform to the designations in Tables 17.08.030 (Structure Type) and Table 17.08.040 (Land Use). Land uses are designated as follows:
1. **Permitted Uses.** A “P” indicates that a use is allowed in the respective zoning district. Permitted uses must conform to the applicable requirements of the Land Development Code. Permitted uses requiring a public hearing are subject to the Procedures for Processing Applications contained in Chapter 17.48.
 2. **Conditional Uses.** A “C” indicates that a use is allowed as a Conditional Use in the respective zoning district and is subject to review and approval under the provisions of Chapter 17.42, Conditional Use Permits, and the Procedures for Processing Applications contained in Chapter 17.48.
 3. **Uses Not Allowed.** An “N” indicates that a use is not allowed in the respective zoning district, except where State or Federal law otherwise preempts local land use regulation.

Although the City’s definitions do not perfectly encompass Campus Academy’s operations, Campus Academy’s proposed use likely falls within the City’s definition for a “Residential Treatment Program” because part of Campus Academy’s program includes on site treatment. Consequently, Campus Academy’s proposed use is a banned “N” use, according to the following land use matrix:

Table 17.08.040: Allowed Uses in Neighborhood Residential Zones

LAND USE	Neighborhood Zones									
	NR-2	NR-4	NR-6	MR-9	MR-12	MR-20	MR-30	CR-40	NC	RC
Residential Uses										
Assisted Living Center	N ¹	N ¹	N ¹	N ¹	P	P	P	N ¹	N ¹	N ¹
Dormitories, Fraternities, Sororities	N	N	N	N	N	N	N	C	N	N
Nursing Home, Convalescent Home	N ¹	N ¹	N ¹	N ¹	P	P	P	N ¹	N ¹	N ¹
Residential Group Homes for individuals with disabilities	C ¹	C ¹	C ¹	C ¹	C ¹	C ¹	C ¹	C ¹	C ¹	C ¹
Residential Group Homes (communal living exceeding occupancy limits)	N ²	N ²	N ²	N ²	N ²	N ²	N ²	N ²	N ²	N ²
Residential Treatment Programs where care, training, or treatment is provided on site	N ¹	N ¹	N ¹	N ¹	N ¹	N ¹	N ¹	N ¹	N ¹	N ¹
Residential occupancy of a dwelling unit by a family, or no more than three (3) individuals	P	P	P	P	P	P	P	P	P	P
Residential occupancy of a dwelling unit by no more than six (6) individuals and not to exceed two (2) persons per bedroom	N	N	N	N	N	N	N	P	N	N
Accessory Dwelling Units (Internal) (See Ch.17.37 for Areas of Exclusion)	P	P	P	P	P	P	P	P	P	P
Short Term Rentals	C	C	C	C	C	C	C	C	C	C

These are the relevant definitions from Chapter 17.62 of the City’s land use code:

“Residential Treatment Program” means a nonprofit or for-profit group home for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation.

“Shelter” means a building serving as a residence for designated persons or special classes of persons such as a homeless shelter or a transitional shelter, or a building serving as a temporary refuge such as an emergency shelter.

LDC § 17.62.

Other forms of unrelated group living are allowed in the CR-40 zone. For example, dormitories, fraternities, and sororities are allowed as a conditional use. *See* LDC § 17-08-040. Group homes are allowed as a conditional use. *Id.* Importantly, residential occupancy of a dwelling unit by a family or no more than three unrelated persons is allowed as a permitted use. *See id.*

The LDC defines a **“Family”** as follows:

“Family” means persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants; or a number of unrelated adult persons, but not exceeding two and their children related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, shall be deemed to constitute a family. Students who are visiting a family for the purpose of attending grades kindergarten through high school are considered temporary family members and therefore part of a family even though they may or may not be related by blood, adoption, or marriage. Students must be actively attending a school grade K-12 and living with a family related by blood, adoption, or marriage.

LDC § 17.62.

In short, the ban on residential treatment programs found in LDC § 17.08.040 and the definition of “family” in LDC § 17.62 prohibit Campus Academy’s residents from using and enjoying the property as a residence. As the following analysis will explain more fully, but for their handicaps and disabilities, Campus Academy’s residents could otherwise live in the City’s CR-40 zone either in an unrelated group living setting or with their “family.” Their handicaps prevent them from enjoy those housing opportunities that others, without handicaps, can automatically enjoy in the CR-40 zone. Consequently, an accommodation from LDC §§ 17.08.040 and 17.62 is required by federal law.²

² City Code § 17.39.060 also requires an accommodation. It provides, “[n]one of the requirements of this Title shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.” *Id.*

III. The Requirements of Federal Law

A. ***The LDC should not facially discriminate against the handicapped, but it does so in violation of federal law.***

“In amending the Fair Housing Act, or Title VIII of the Civil Rights Act of 1968, in 1988, one of Congress’s explicit motivations was to extend federal protections against housing discrimination to individuals with physical or mental handicaps.” *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1498 (10th Cir. 1995) (citing 42 U.S.C. §§ 3602, -3604). “Furthermore, the FHAA’s prohibitions clearly extend to discriminatory zoning practices. The House Committee Report accompanying the FHAA states that the FHAA ‘is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of [the handicapped] to live in the residence of their choice in the community.’” *Id.* (quoting H.R.Rep. No. 100-711, 100th Cong., 2d Sess. 24 (1988) U.S.Code Cong. & Admin.News 1988, pp. 2173, 2185). “Congress intended the FHA[] to protect the right of handicapped persons to live in the residence *of their choice* in the community.” *City of Edmonds v. Washington State Building Code Council*, 18 F.3d 802, 806 (9th Cir. 1994) (emphasis added).

Like the Orem City ordinance at issue in the *Bangerter* case, Logan’s zoning ordinances “facially single out the handicapped and apply different rules to them[,]” which is illegal under federal law. *Id.* at 1500. “[A] plaintiff makes out a prima facie case of intentional discrimination under the FHAA merely by showing that a protected group has been subjected to explicitly differential—i.e. discriminatory—treatment.” *Id.* at 1501. Thus, under the authority of *Bangerter*, Campus Academy could “state[] a direct claim of facially discriminatory treatment of handicapped persons[,]” *id.* at 1502, because the LDC facially discriminates against residential treatment homes by banning them when it allows other forms of group living as a conditional use and “family” living as a permitted use in this zone.

The City’s zoning scheme has effectively “denied to [Campus Academy] zoning relief granted to similarly situated applicants without disabilities” or available to similarly situated non-disabled persons under the LDC. *Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City*, 685 F.3d 917, 920 (10th Cir. 2012). Also, if the City fails to grant the reasonable accommodation requested herein it will have “subjected [Campus Academy] to conditions not imposed on other group homes in [Logan City]” *Bangerter*, 46 F.3d at 1502. *See also* 42 U.S.C. 3604(4)(1) and –(2); 42 U.S.C. § 12132 (“no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity”); 29 U.S.C. § 794(a) (“[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from

the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance").³

In short, the City has enacted a facially discriminatory zoning scheme and if it applies it to Campus Academy in a discriminatory manner, it will give rise to claims for disparate treatment discrimination. *See id.* *See also* 42 U.S.C. § 12132; 42 U.S.C. § 3604(f)(1); 42 U.S.C. § 3604(f)(2); 29 U.S.C. § 794(a).

Section 3613(a)(1)(A) of the Fair Housing Act authorizes private parties to bring a civil action for such discriminatory housing practices. 42 U.S.C. § 3613(a)(1)(A). The relief available to Campus Academy in such an action is as follows:

(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

42 U.S.C. § 3613(c). Similar relief is available for equal protection violations under 42 U.S.C. §§ 1983 & 1988.

A local government can be sued like any other defendant and is liable for monetary damages suffered by the plaintiff. *See, e.g., San Pedro Hotel Co. v. City of Los Angeles*, 159 F.3d 470, 475 (9th Cir. 1998); *Keith v. Volpe*, 858 F.2d 467 (9th Cir. 1988). Such damages include the plaintiff's lost profits. For example, in *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 825 (9th Cir. 2001), the court held that developers, syndicators and brokers were entitled to damages in the amount of \$3.04 million for a municipality's violation of the Act—even if the amount of the developer's damages included lost profits that were incapable of exact measurement. The Court specifically held that lost profits could be recovered and that damages could be proved by the testimony of an expert witness. Further, the court suggested that, unlike the requirements of other civil rights statutes, under the FHA, the plaintiffs had no duty to mitigate the damages caused by the city by undertaking some other real estate opportunity. *Id.* at 824-25.

³ The FHA, ADA and Rehabilitation Act have such similar origins, contain such similar wording, and are so interrelated, that they are, for the most part, interpreted in the same way by the courts. *See Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 748, 750-53 (7th Cir. 2006) (*en banc*). The Tenth Circuit generally interprets these statutes the same way, unless expressly noted otherwise. *See Cinnamon Hills*, 685 F.3d at 919 & n.1.

My client, Alamar Ranch, LLC, an Idaho limited liability company obtained a \$5.4 million judgment against the County of Boise, Idaho, in 2011, for its violations of the Fair Housing Act under very similar circumstances where the county forced my clients to go through a discriminatory conditional use process. *See, e.g., Alamar Ranch, LLC v. County of Boise*, Case No. 1:09-cv-004-BLW (D. Idaho November 10, 2011 Order for Payment of Judgment). I have helped my clients obtain judgments against and settlements from local governments throughout the United States for the local governments' violations under the FHA, ADA, and Rehabilitation Act.

Consequently, Campus Academy would urge the City to waive its facially discriminatory ban on residential treatment to avoid unlawfully discriminating against Campus Academy in violation of the law. The City's zoning scheme is unlawful and discriminatory on its face and thus does not require Campus Academy to make any showing that an accommodation from them is necessary or reasonable. They are simply illegal, shouldn't exist, and most certainly shouldn't be enforced against Campus Academy.

But if the City is not willing to waive its ban or find it preempted by federal law, as contemplated by the LDC, at the very least, the City must engage in a "good-faith exploration of possible accommodations" that it can grant to Campus Academy. *Humphrey v. Mem'l Hosps. Ass'n*, 239 F.3d 1128, 1137 (9th Cir. 2001).⁴ Consequently, I will discuss the possible accommodations that could be made in the following section.

B. Federal law requires the City to make a reasonable accommodation by waiving its zoning requirements.

The FHA provides that discrimination against the handicapped includes "a refusal to make **reasonable** accommodations ... when such accommodations may be **necessary** to afford such person equal opportunity to use and enjoy a dwelling," 42 U.S.C.A. § 3604(f)(3)(B) (emphasis added). *See also Olmstead v. L.C.*, 527 U.S. 581, 592 (1999) (Title II of the ADA "requires public

⁴ The case of *Giebler v. M&B Associates*, 343 F.3d 1143 (9th Cir. 2003) acknowledges, "we have applied [Rehabilitation Act] regulations and case law when interpreting the FHAA's reasonable accommodation provisions." *Id.* at 1149. The Ninth Circuit has said that "since the enactment of the Americans with Disabilities Act (ADA) ... we have relied on ADA cases in applying the RA, because, as a general matter, 'there is no significant difference in the analysis or rights and obligations created by the two Acts.'" *Id.* (quoting *Vinson v. Thomas*, 288 F.3d 1145, 1152 n. 7 (9th Cir. 1999)). Consequently, the Ninth Circuit has concluded, "We ... look to both RA and ADA interpretations of 'accommodation' of disabled individuals as indicative of the scope of 'accommodation' under the FHAA." *Id.*

In *Dark v. Curry County*, 451 F.3d 1078, 1088 (9th Cir. 2006), the Ninth Circuit stated, "our cases make clear that the County bore an affirmative obligation to engage in an interactive process in order to identify, if possible, a reasonable accommodation . . ." *Id.* *See also, e.g., Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1111-12 (9th Cir.2000) (en banc) (applying the interactive process requirement in a Title III case under the ADA), *rev'd on other grounds*, 535 U.S. 391, 122 S.Ct. 1516, 152 L.Ed.2d 589 (2002); *see also Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir.2002) (applying the interactive process requirement in a Rehabilitation Act case).

entities to ‘make reasonable modifications’ to avoid ‘discrimination on the basis of disability,’ unless those modifications would entail a ‘fundamenta[l] alter[ation]’[.]” (quoting 28 C.F.R. § 35.130(b)(7)(i)).

As the United States Court of Appeals for the Tenth Circuit explained in *Bangerter*, 46 F.3d at 1502, “the thrust of a reasonable accommodation claim is that a defendant must make an affirmative change in an otherwise valid law or policy.” *Id.* at 1502. By definition, “a ‘reasonable accommodation’ involves ‘changing some rule that is generally applicable so as to make its burden less onerous on the handicapped individual.’” *Id.* at 1502. Waiving otherwise enforceable code provisions is precisely what a reasonable accommodation contemplates. *Cinnamon Hills*, 685 F.3d at 923. (“And that is precisely the point of the reasonable accommodation mandate: to require changes in otherwise neutral policies that preclude the disabled from obtaining ‘the same ... opportunities that those without disabilities automatically enjoy.’”).

The FHA’s “‘reasonable accommodations’ provision prohibits the enforcement of ‘zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled.’” *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1104 (3d Cir. 1996) (quoting Laurie C. Malkin, *Troubles at the Doorstep: The Fair Housing Amendments Act of 1988 and Group Homes for Recovering Substance Abusers*, 144 U. Pa. L.Rev. 757, 804 (1995)).

If a local government’s laws, ordinances or practices would otherwise prohibit the type of housing proposed, then the FHA imposes “‘an affirmative duty’ to make reasonable accommodations on behalf of handicapped persons.” *Id.* Hence, courts interpreting the reasonable accommodation provision of the FHA have ruled that municipalities “must change, waive, or make exceptions in their zoning rules to afford people with disabilities the same opportunity to housing as those who are without disabilities.” *Horizon House Developmental Servs., Inc. v. Township of Upper Southampton*, 804 F. Supp. 683, 699-700 (E.D. Pa. 1992).

When considering a request for accommodation under federal law, it is the applicant’s burden “to demonstrate its ... need for the accommodation” *Keys Youth Servs., Inc. v. City of Olathe*, 248 F.3d 1267, 1275 (10th Cir. 2001). The language of the FHA guides the analysis. First, the applicant must demonstrate that its residents suffer from a disability or handicap within the meaning of 42 U.S.C. § 3602(h). Second, the applicant must show that the accommodation is “necessary” within the meaning of 42 U.S.C. § 3604(f)(3)(B). Third, if the applicant can establish the first two elements it must show that the accommodation is “reasonable” within the meaning of 42 U.S.C. § 3604(f)(3)(B).

I will now discuss each those three elements in the following subsections.

1. Campus Academy’s residents are “handicapped.”

As explained in Section I, above, Campus Academy’s admissions criteria and admissions policies will ensure that its residents have qualifying handicaps substantially limiting one or more

major life activities within the meaning of 42 U.S.C. §§ 3602(h) & -3604(f)(1)-(3)(B) and 24 C.F.R. § 100-201(a)-(b).

The federal regulations promulgated under the federal Fair Housing Act further define “handicap” as including a “drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.” 24 C.F.R. § 100.201(a)(2). The residents of Campus Academy will not be engaged in the “current, illegal use of or addiction to a controlled substance” 42 U.S.C. § 3602(h). Campus Academy’s residents will also each have a “disability” under the Rehabilitation Act and the ADA. *See also* 29 U.S.C. § 705(9) (definition of disability under the Rehabilitation Act); 42 U.S.C. § 12102 (definition of disability under the ADA).

For more information about the handicaps of Campus Academy’s residents see the declarations of Nathan D. Whittaker, M.D., attached as **Exhibit 5**; Amy Whittaker, LCSW, attached as **Exhibit 6**; and Kira N. Bettinger, LCSW, attached as **Exhibit 7**.

2. *The requested accommodation is “necessary.”*

“[T]he FHA’s necessity requirement doesn’t appear in a statutory vacuum, but is expressly linked to the goal of ‘afford[ing] ... equal opportunity to use and enjoy a dwelling.’” *Cinnamon Hills*, 685 F.3d at 923. “And this makes clear that the object of the statute’s necessity requirement is a level playing field in housing for the disabled. Put simply, the statute requires accommodations that are necessary (or indispensable or essential) to achieving the objective of equal housing opportunities between those with disabilities and those without.” *Id.*

Under the *Cinnamon Hills* reasonable accommodation analysis, accommodations can only be granted to the handicapped “*because of* conditions created by their disabilities.” *Id.* (emphasis in original). There must be “evidence that the disabled, *because of* their disabilities, are ... less able to take advantage of [housing opportunities] than the non-disabled.” *Id.* at 924 (emphasis in original). Decisionmakers must consider “barriers, imposed by the disability, that prevent the disabled from obtaining a housing opportunity others can access.” *Id.* (emphasis added).

An application seeking an accommodation is required to show the residents’ disabilities require them to live and receive treatment in a group living arrangement and with the group census size requested. *See, e.g., Recovery Land Holdings, LLC v. City of South Ogden*, 2019 U.S. Dist. LEXIS 58499 , *15 (D. Utah April 4, 2019) (“Brighton has not pointed to any evidence that all of these individuals require treatment in residential group settings, nor has it provided evidence that such treatment must occur in groups of thirty-two as opposed to twenty.”).

When an applicant comes forward with “substantial evidence” of “their need to live in a group home setting in a residential neighborhood, in order to facilitate their continued recovery” or for other reasons necessary to address their handicaps, then such ordinances must yield to the reasonable requirements of the disabled. *Tsombanidis v. West Haven Fire Dept.*, 352 F.3d 565, 577-78 (2d Cir. 2003). When the “disabled who want to live in a residential neighborhood may have no choice” but to live in such a setting as that provided by a provider such as Campus

Academy, the City's maximum occupancy restriction must yield to the reasonable needs of the disabled. *Lewis v. Draper City*, No. 2:09-CV-589 (September 21, 2010).

a. The residents' handicaps require housing in a residential treatment setting.

The requested census is necessary because, due to their handicaps, the residents must live in a group setting in a residential neighborhood. They cannot have their own bedrooms. The requested census is also necessary to create a therapeutic community. It is necessary to maintain Campus Academy's needed therapeutic subgroups, its phase level program design, and to address resident attrition.

i. Group living in a residential setting is necessary.

The residents of Campus Academy have acute disabilities and badly need to live in a residential treatment setting. Sometimes children need care that cannot be provided in the home or through outpatient services alone. Residential treatment such as that provided by Campus Academy is on the continuum of care, sitting somewhere between outpatient treatment and full-blown hospitalization or institutionalization. The need for such care and treatment settings is well-recognized in the therapeutic literature.

For example, the Child Welfare League of America, the largest children's advocacy organization in the United States, has surveyed the scholarly research and, based thereon, its Position Statement on Residential Services stated that it "strongly endorses a system of care that includes residential services as an integral component of the continuum of services." *Position Statement on Residential Services*, p. 3 (CWLA 2005), attached as **Exhibit 8**. According to the CWLA, residential services, such as residential treatment are necessary "to address the unique needs of children and youth who require more intensive services than a family setting can provide." *Id.*

The American Academy of Child & Adolescent Psychiatry has stated the following about the necessity of a residential living environment for youth that need treatment:

The living environment for children residing in a residential treatment center is an integral part of the overall treatment experience. The space arrangement, size, appearance and maintenance of the facility should communicate messages of caring, comfort and safety. Children making the transition from home often form their initial impressions of the facility from its physical presentation. The physical layout of sleeping rooms and living areas impact the effectiveness of staff supervision and of resident interaction. Adequate, well-maintained space and furnishings contribute to the exercise of self-control in the residents.

Principles of Care for Treatment of Children and Adolescents with Mental Illnesses in Residential Treatment Centers, American Academy of Child & Adolescent Psychiatry at p. 8 (June 2010),

attached as **Exhibit 9**. In short, children do not do well in institutional settings. The more the setting can look and feel like a residence or residential setting, the better.

Those principles apply to the need for group living for children suffering from emotional and mental illnesses, in general. However, when children suffer from dual or multiple diagnoses that may include addiction—like the children at Campus Academy—the need for group living in a residential setting becomes even more acute.

The scholarly research on this point is clear and unequivocal. Group living with other addicts is medically and therapeutically necessary for persons recovering from drug and alcohol addictions. “Individuals recovering from addiction should be surrounded by a community in which they feel they belong and are able to obtain sobriety goals (Jason & Kobayashi, 1995).” *Counteracting “Not in My Backyard”: The Positive Effects of Greater Occupancy with Mutual-help Recovery Homes*, J. Community Psychol., Jason, Groh et al. at p.3 (September 1, 2008) (attached as **Exhibit 10**.) Studies have shown that a sufficient number of residents is “a necessary component in the effectiveness [of the treatment model] through the mechanism of social support.” *Id.*

Group living in a clean and sober environment is essential to recovery. “An important component of relapse appears to be immediate re-exposure to risks associated with one’s ongoing living situation (e.g., high substance availability, family and peers non-supportive of recovery, interpersonal conflict, poorly structured time). Drug-free housing that supports recovery, risk avoidance, and employment ... heighten one’s chances of recovery (Jason, Olson, Ferrari, & Davis, 2004).” *The Need for Substance Abuse After-Care: Longitudinal Analysis of Oxford House*, Addictive Behaviors 32 at p. 804 (2007) (Jason, Davis, & Ferrari), attached as **Exhibit 11**.

ii. Residents must share a bedroom.

But for their handicaps and disabilities, Campus Academy’s residents could have their own bedrooms like the 24 non-handicapped residents that the property is currently approved for by the City. Because of their handicaps and disabilities Campus Academy’s residents must share a bedroom with at least one other person to prevent the loneliness and isolation that can lead to negative outcomes. (Ex. 7 at ¶¶ 15-17.) Sharing a bedroom is also necessary to provide the type of social support, protection, accountability, and positive reinforcement necessary to ameliorate the residents’ handicaps. (*See id.*; *see also* Ex. 6 at ¶¶ 37-39.)

Hence to have the same housing opportunity that 24 non-handicapped persons currently have at the property, an accommodation must be made for Campus Academy’s residents. Having a roommate is as essential for these residents as a wheelchair would be to a paraplegic or a seeing eye dog to a blind person. At this stage of their lives, these individuals simply cannot get by without a roommate.

iii. The census of 48 is necessary for a therapeutic community.

The requested census is also necessary to create a therapeutic community. To create a therapeutic community requires a critical mass of at least 48 residents to create the overarching culture of recovery/therapeutic community within which Campus Academy's therapeutic subgroups (discussed below) can function. (See Ex. 7 at ¶¶ 19-33.) It also necessary to create a trauma-informed community. (See Ex. 6 at ¶¶ 23-25.)

The size of the larger social group(s) within which therapy is deployed is a critical aspect of treatment/recovery. As one scholarly study recognized (as it pertains to addiction recovery):

Research continues to document the important role of social factors in recovery outcome (Polcin, Korcha, Bond, Galloway & Lapp, in press). For example, in a study of problem and dependent drinkers Beattie and Longabaugh (1999) found that social support was associated with drinking outcome. Not surprising, the best outcomes were predicted by ... social support that discouraged drinking. Similarly, Zywiak, Longabaugh and Wirtz (2002) found that clients who had social networks with a higher number of abstainers and recovering alcoholics had better outcome 3 years after treatment completion.

What Did We Learn From Our Study on Sober Living Houses and Where Do We Go From Here?, J. Psychoactive Drugs, at p. 1 (Polcin et al., 2010), attached as **Exhibit 12**. "A critically important aspect of one's social network is their living environment." *Id.* at p. 2. "Lack of a stable, alcohol and drug free living environment can be a serious obstacle to sustained abstinence." *Id.* at p. 1. "Destructive living environments can derail recovery for even highly motivated individuals." *Id.*

The requested census size is necessary because, "Larger homes ... offer more opportunities to exchange positive social support" **Exhibit 10** at p. 1. Studies indicate that "larger Houses will promote recovery through their ability to promote larger (Zywiak, Longabaugh, & Wirtz, 2002), more supportive social networks (MacDonald, 1987), that include sober others in recovery (Hawkins & Fraser, 1987, Zywiak et al.), constructs linked to sober living." *Id.* at p. 3.

"[L]arger social networks" are correlated with "stronger improvement on abstinence." *Interaction of Motivation and Social Support on Abstinence among Recovery Home Residents*, J. Drug Issues at p. 9 (Korcha, Polcin & Bond, 2016) (attached as **Exhibit 13**). "Given the widespread finding that social contact and social support facilitates health and well-being," the experts urge that "recovery home service providers ... consider ways to increase social support for socially isolated residents through structured recreational and social activities within the home" among other things. *Id.* at pp. 9-10. See also *Benefits of Peer Support Groups in the Treatment of Addiction, Substance Abuse and Rehabilitation* at pp. 144-45 (Tracy & Wallace, 2016), attached as **Exhibit 14**; *Social Networks Among Residents in Recovery Homes*, Adv. Psychol. Study (May 2012) at p. 8 (Jason et al., 2012), attached as **Exhibit 15** ("studies suggest a strong relationship between an individual's social connection ... and their own likelihood of remaining abstinent" and that "the overall size of the important person network was materially significant").

In short, the size of the overarching social network within which the individual therapies are deployed and within which the therapeutic subgroups operate is essential to ameliorate the handicaps of Campus Academy's residents. The requested census size is the minimum necessary to create the type of culture/community within which the residents are required to live due to their handicaps.

iv. The census is needed to maintain therapeutic subgroups.

While the larger social networks and peer support networks discussed above are essential to creating a recovery culture/therapeutic community, treating the residents' handicaps and disabilities also requires specialized treatment in more individualized settings and homogenous therapy groups that function as fictive kin groups. (See Ex. 7 at ¶¶ 34-43.) The residential treatment residence's therapeutic culture or community functions as a small microcosm of society with more diversity and more complex social networks occurring at the affinity level of social interaction whereas the smaller therapy subgroups function within that culture or community as surrogate families of fictive kin. It is necessary for each of these subgroups to function at the sympathy level within that larger trauma-informed culture/therapeutic community. And to function, each necessary subgroup must have its own critical mass. (See *id.*; see also Ex. 7 at ¶¶ 41-48, 58.)

Due to the complex nature of the residents' disabilities and their disability-created needs, it is necessary for Campus Academy to employ or contract with highly-trained professional staff including psychiatrists, clinical psychologists, marriage and family therapists, medical doctors and nurses, social workers, certified teachers, licensed professional counselors, addiction counselors, recreation therapists, registered dietitians, physicians assistants, and many others. (Ex. 6 at ¶ 51.)

As the American Academy of Child & Adolescent Psychiatry's Principles of Care recognizes, "[t]he best intervention for serious mental health issues that cannot be treated in the child's home environment is a facility that has a multidisciplinary treatment team providing safe, evidence-based care that is medically monitored." (Ex. 9 at p. 2.) This is precisely what Campus Academy provides.

The studies that discuss the ideal group size for psychotherapy, different modalities of group therapy and treatment, as well as group dynamics in general, conclude that each subgroup must have a minimum of 6-8 participants. *A Review of Optimal Group Size and Modularisation or Continuous Entry Format for Program Delivery* (Stewart, Usher & Allenby, 2009) (attached as **Exhibit 16**).

Irvin D. Yalom's *The Theory and Practice of Group Psychotherapy*, long recognized as one of the most authoritative works on group psychotherapy, (see Exs. 3 & 4), makes the following conclusions about optimal group size for psychotherapeutic treatment:

My own experience and a consensus of the clinical literature suggest that the ideal size of an interactional therapy group is seven or eight members, with an

acceptable range of five to ten members. The lower limit of the group is determined by the fact that a critical mass is required for an aggregation of individuals to become an interacting group. When a group is reduced to four or three members, it often ceases to operate as a group; member interaction diminishes, and therapists often find themselves engaged in individual therapy within the group. The groups lack cohesiveness Many of the advantages of a group, especially the opportunity to interact and analyze one's interaction with a large variety of individuals, are compromised as the groups size diminishes. Furthermore, smaller groups become passive, suffer from stunted development, and frequently develop a negative group image.....

The Theory and Practice of Group Psychotherapy at p. 292 (Yalom, 5th ed. 2005) (attached as **Exhibit 17**).

Campus Academy's specialty subgroups will be Depression and Anxiety, Attachment, Substance Abuse, and Trauma. (Ex. 6 at ¶ 41.) Campus Academy also provides psycho-education group treatment (Ex. 6 at ¶ 48.) It will also provide Dialectical Behavioral Therapy, Cognitive Behavioral Therapy, Moral Recognition Therapy ("MRT"), and other therapeutic modalities. (Ex. 7 at ¶ 40.) A critical mass of 6-8 residents in each subgroup is essential for them to properly function. (Ex. 6 at ¶ 43; Ex. 7 at ¶ 43.)

v. *The census is needed for phase level mentoring.*

The residents' disabilities also necessitate that Campus Academy utilize a phase-system approach to resident progress and development. (See Ex. 6 at ¶¶ 53-56; Ex. 7 at ¶¶ 44-49.) The living experience at Campus Academy is divided into the following five phases:

Stage of Change	Program Phase
<i>Pre-contemplation</i> <i>In this stage residents don't realize they have a problem and don't feel like they need or want to change.</i>	<i>One</i>
<i>Contemplation</i> <i>In this stage residents are aware they have a problem. They are starting to think about change, but they are not ready to act on those thoughts yet.</i>	<i>Two</i>
<i>Preparation</i> <i>In this stage residents are beginning to make "small" changes for problems they have identified. They are using the</i>	<i>Three</i>

<i>support of their team for problem solving and feedback.</i>	
Action <i>In this stage residents are actively making changes to their behavior, choices and interactions.</i>	Four
Maintenance <i>In this stage residents are confident and determined to work and sustain the change. They have new behaviors that have replaced old behaviors.</i>	Five

(Ex. 6 at ¶ 53; Ex. 7 at ¶ 45.)

Residents work towards earning a graduation or advancement to each of the next progressive phases. Each phase builds off the prior phase(s) and includes progressively more advanced freedoms and responsibilities. Residents living at more advanced phases model appropriate behavior for newer residents or residents at lower phases. (Ex. 6 at ¶ 54; Ex. 7 at ¶ 45-46.) Campus Academy does not have static enrollment, meaning that it starts with one class or group of residents and moves that entire group through each phase. (Ex. 7 at ¶ 48.) Rather, Campus Academy has continuous or ongoing enrollment, which means that residents are continually entering and exiting the treatment program. (*Id.*)

This phased approach is necessitated by the residents' disabilities. (Ex. 6 at ¶ 55.) In order for the freedom-accountability paradigm inherent in the phase system to work there must be a sufficient number of residents living at each phase. For example, if there are no residents at the maintenance phase then there is no one to model appropriate behavior or to incentivize the lower phases. They have no one or nothing concrete to look to in order to progress. As a consequence, residents at the lower phases lose motivation to change or improve, among other things. The nature of the residents' disabilities necessitates that they have concrete, tangible role models, as well as concrete, tangible and attainable therapeutic and life skills goals. Consequently, for each gender group, it is necessary that there are enough residents living each phase of the five-phase model, hence the requested census. (Ex. 6 at ¶ 56; *see also* Ex. 7 at ¶ 47.)

vi. The census is needed to address attrition/shrinkage.

Additionally, the requested census is necessary to address the attrition and turnover that is typical with these type of homes and therapeutic groups, in general. (*See* Ex. 6 at ¶¶ 57-58; Ex. 7 at ¶¶ 50-53.) As explained above, residents move on from the program. Other residents may drop out for a variety of reasons. The normal and expected attrition rate for such a home is usually around 20% of the approved census. (Ex. 7 at ¶ 52.) Consequently, approval at 48

residents means that, as a practical matter, there may actually only be 37-38 total residents in the home at any given time. (*See id.*; *see also* Ex. 6 at ¶ 57.)

For example, Yalom writes, “Since it is likely that one or possibly two clients will drop out of the group in the course of the initial meetings, it is advisable to start with a group slightly larger than the preferred size; thus, to obtain a group of seven or eight members, many therapists start a new group with eight or nine.” (Ex. 17, *The Theory and Practice of Group Psychotherapy* at p. 292 (Yalom, 5th ed. 2005).)

This natural attrition has an even more significant impact upon each level of the phase system and therapeutic subgroups, as discussed above. That is why the requested census is the minimum necessary to meet the needs created by these residents’ handicaps and disabilities.

3. *The accommodations requested are reasonable.*

To be “reasonable” within the meaning of 42 U.S.C. § 3604(f)(3)(B), the ADA and/or the Rehabilitation Act, the requested accommodation simply must not “fundamentally alter the nature of” the City’s zoning “service, program, or activity.” *Olmstead*, 527 U.S. at 592 (quoting 28 C.F.R. § 35.130(b)(7)(i)). Specifically, “An ‘[a]ccommodation is not reasonable if it either (1) imposes undue financial and administrative burdens on a [city] or (2) requires a fundamental alteration in the nature of [a city] program.’” *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1220 (11th Cir. 2008) (quoting *Sch. Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 288 n. 17, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1987) (quotation marks, alteration, and citations omitted)).

a. There is no undue burden.

There is absolutely no evidence or indication whatsoever that the home would impose an undue administrative or financial burden upon the City at its requested censuses. Reviewing and granting accommodation requests is not an “undue” burden because it is required by federal law. And there will not be any financial burdens upon the City created by Campus Academy’s proposal, either. If there are any it would be the City’s obligation to come forward with substantial evidence to prove it. Indeed, since this use will replace the existing use of student housing it will actually bring jobs to the City and employ people, an economic benefit that did not exist with the prior use.. Highly-trained professionals and staff will be needed to staff Campus Academy’s programs.

b. There is no fundamental alteration of the City’s zoning program.

The basic purpose of zoning is to bring complementary land uses together, while separating incompatible ones. *See Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 71 L.Ed. 303 (1926) (“A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.”). “Thus, ordering a municipality to waive a zoning rule ordinarily would cause a ‘fundamental alteration’ of its zoning scheme if the proposed use was incompatible with surrounding land uses.” *Schwarz*, 544 F.3d at 1221. “On the other hand, if the proposed use is quite similar to surrounding uses expressly permitted by the zoning code, it will be more difficult

to show that a waiver of the rule would cause a ‘fundamental alteration’ of the zoning scheme.” *Id.*⁵

In assessing whether an accommodation is reasonable, “a court may consider as factors the extent to which the accommodation would undermine the legitimate *purposes* and *effects* of existing zoning regulations” *Bryant Woods Inn, Inc. v. Howard Cty.*, 124 F.3d 597, 604 (4th Cir. 1997) (emphasis added). In other words, the analysis of reasonableness is both aspirational/normative (evaluating purposes and goals) and actual/descriptive (taking into consideration the actual “effects” of existing zoning regulations). *Id.* Consequently, I will now discuss how Campus Academy’s request is consistent with both the City’s normative zoning goals and the effects of the City’s existing zoning regulations.

“The Land Development Code is enacted for the purpose of preserving and improving the public health, safety and general welfare of the citizens and businesses of the City of Logan.” LDC § 17.01.020. The LDC operates in conjunction with the City’s General Plan, which “incorporates long range goals, identified policies, and actions to be taken.” LDC § 17.01.040. “The content of the General Plan may be cited as a basis for making decisions or as a part of the findings supporting actions initiated by this Land Development Code.” *Id.* “The General Plan provides the policies that enable the specific regulations of the Land Development Code to be accomplished.” *Id.* “When there is a conflict between the General Plan and the Land Development Code, the Land Development Code’s specific measures are to prevail.” *Id.*

“The Campus Residential Zone is located adjacent to Utah State University and permits the highest residential density in the city.” LDC § 17.07.110. “The intent of this zone is to consolidate student housing adjacent to the university to relieve student housing pressure on traditional single-family neighborhoods in the core areas.” *Id.* “Campus Residential developments may develop at a maximum density of 40 dwelling units per acre or may choose to develop at a maximum density of 240 occupants per acre with a Conditional Use Permit.” *Id.* Campus Academy’s .34-acre lot will house a total of 40 occupants, which is roughly 120 occupants per acre.

⁵ A few examples help make sense of these general principles. In *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096 (3rd Cir. 1996), the Third Circuit concluded that allowing the developer to build a nursing home in a residential zone would not be a “fundamental alteration” of the zoning code because the proposed facility was “similar to that of the local planned residential retirement communities” already allowed in that zone. *Id.* at 1105.

By contrast, in *Bryant Woods Inn* the operator of a group home for elderly residents suffering from Alzheimer’s and dementia was denied an accommodation allowing it to expand the home from 8 to 15 residents because the expansion would only worsen already-prevalent parking congestion on streets near the facility. *See* 124 F.3d at 604. In other words, the proposed expansion was incompatible with the surrounding area because of the congestion it would cause.

Finally, in *Schwarz*, 544 F.3d at 1223, the court held that relaxing an occupancy-turnover rule to accommodate two halfway houses in a residential zone would amount to a fundamental alteration of the City’s zoning scheme because it would undermine the city’s legitimate goal of promoting stability in single-family residential neighborhoods. *Id.*

According to the General Plan, attached as **Exhibit 18**, the CR designation “permits the highest density development in the city.” Ex. 18, p. 3-3. The City is already characterized by high-density multi-family uses similar to the use proposed by Campus Academy. For example, “only 41% of housing within the City is detached single family homes while 49% of the units are within multi-family structures.” Ex. 18, p. 9-1, § 9.1. In short, Logan City is a college town that already houses large groups of unrelated, non-handicapped persons. This means that the neighborhoods that provide student housing already experience a high degree of transiency. Indeed, in such areas the vacancy rate “remains above 10%.” Ex. 18, p. 9-1, § 9.2.

Granting this accommodation is consistent with the reality recognized by the General Plan that “[h]ousing developments must use the remaining residential land more efficiently” because uses like Campus Academy “contain compact, high-quality” housing. Ex. 18, p. 9-1. Campus Academy is redeveloping an underutilized site through development infill within an existing structure, which is consistent with the goals of the General Plan. *Id.*

Granting this accommodation is consistent with the need recognized by the General Plan to provide more diversity in housing choices. “Housing choices and housing affordability are quality of life priorities and the City should cooperate with the private sector to encourage both.” Ex. 18, p. 9-1, § 9.3. Indeed, the City’s zoning ban on housing in residential treatment could be said to be in conflict with this “priority” of the General Plan. The City needs to provide more housing opportunities for the handicapped and disabled. *See also id.*, p. 9-2 (“Housing Goals”). Campus Academy’s proposal supports the General Plan because policies that exclude the handicapped and disabled do not achieve the General Plan’s policies to “[p]rovide a thorough housing mix,” and “promote compact housing.” *Id.* (“Housing Policies”).

The property is located in the City’s “Adams” neighborhood. *See* Ex. 18, p. 10-1. This neighborhood is characterized by “a high concentration of rental units.” *Id.* at p. 10-3, § 10.1.4. According to the Adams Neighborhood Specific Plan, attached as **Exhibit 19**, the “Adams Neighborhood is one of Logan City’s oldest, most densely populated and diverse neighborhoods.” *Id.* at p. 3. Indeed, as the Adams Neighborhood Specific Plan states, “[t]he Adams neighborhood is likely the densest neighborhood in the City” *Id.* at p. 5.

Thus, granting Campus Academy’s reasonable accommodation request will do nothing to detract from existing neighborhood realities. For example, as the Adams Neighborhood Specific Plan acknowledges:

Inconsistent zoning has promoted the construction of multi-family structures as infill projects. Stately homes have given way to apartments and parking lots as property owners responded to the demand for additional rental housing. These factors have led to significant changes in the character and appearance of the Adams Neighborhood while fueling concerns over increased parking problems, incompatible land uses and a general lack of property maintenance.

Id. at p. 5. The Adams neighborhood is already a very dense, transitory neighborhood characterized mainly by high-density, temporary student housing where groups of unrelated students live together in single dwellings. Indeed, it contains the “vast majority of the City’s off-campus student housing.” *Id.* at p. 6. *See also id.* at p. 16. Campus Academy’s proposed use is thus very consistent with existing neighborhood realities and existing uses. It will not fundamentally alter them.

Campus Academy will have no impact upon traffic or parking in the area.

As the Adams Neighborhood Specific Plan acknowledges, the area is already characterized by high-parking, high-traffic uses such as student housing and commercial uses:

A wide range of commercial services can be found within the boundaries of the Adams Neighborhood. The historical downtown commercial core, which has historically been the center of commerce for both Logan and Cache Valley, the commercial strip on Main Street, the Cache Valley Mall, all large grocery stores, several large national retailers, and numerous smaller retail, professional and general commercial services are all located within the Adams Neighborhood.

Id. at p. 5.

The property is situated immediately north of 4th North (SR 89), which the Adams Neighborhood Specific Plan describes as a “major transportation corridor” *id.* at p. 5, and a “major arterial road[] ... that serve[s] regional populations and transportation systems[.]” *Id.* at p. 37; *id.* at p. 40. The property is saddled between 600 East and 800 East, which the Adams Neighborhood Specific Plan describe as “Collectors.” *Id.* at p. 37. *See also id.* at p. 38.

Therefore, the existing road infrastructure will not be impacted or overburdened in any way. This is not a situation where a more intense and higher-density use is being injected into a characteristically subdued and quiet residential neighborhood served by local streets. Instead, the proposed use is consistent with existing uses in a neighborhood that is straddled by major arteries and collectors. Indeed, Campus Academy’s proposed use will *relieve* neighborhood traffic and parking concerns.

This is because, unlike the students who used to live at the property, Campus Academy’s residents do not have vehicles on the premises, but are transported by staff with facility vehicles. *See Ex. 5* at ¶ 20. Campus Academy will have two, 15-passenger transportation vans, which will usually be parked inside the two-car garage and will not be visible to the public. *Id.* The facility also has 25 off street parking stalls, the majority of which are underground and out of view. *See Ex. 2* at pp. 2-8. The structure is thus compliant with the General Plan’s goal for CR uses to use “screened parking,” and “parking terraces.” *Ex. 18*, p. 3-3.

Traffic and parking are also mitigated by the fact that there is a strict no visitors policy. *See* Ex. 5 at ¶ 21. All away visits must be pre-approved by the treatment team. Visits are limited in both time per visit and frequency per month and are strictly controlled by the treatment team, who will ensure that resident visits are coordinated to avoid traffic or parking concerns. *See* Ex. 5 at ¶ 21.

Finally, the scholarly studies show that “group homes actually have very little impact on their surrounding neighborhoods and generally blend into the community (Cook, 1997).” *Counteracting “Not in My Backyard”: The Positive Effects of Greater Occupancy with Mutual-help Recovery Homes*, J. Community Psychol., Jason, Groh et al. at p. 2 (September 1, 2008) (attached as **Exhibit 10**). “[R]esidential facilities do not tend to negatively affect public safety (Center for Community Corrections, 2002).” *Id.* “[N]o evidence of property devaluation was found ... [;]’ in fact ... literature reviews suggest that these settings may actually increase property values in their neighborhoods (Aamodty & Chiglinsky, 1989; Center for Community Corrections).” *Id.* Studies have shown that these facilities “blended well into the neighborhood and made good neighbors (Jason, Roberts, & Olson, 2005).” *Id.* (Ex. 10).

IV. **Conclusion**

The requested census of 48 residents “is the minimum amount necessary to provide one or more persons with a disability an equal opportunity to enjoy housing of their choice.” LDC § 17.39.060.B.3. This census is necessary because, due to their handicaps, the residents must live in a group setting in a residential neighborhood. It is necessary because, due to their handicaps and disabilities, they cannot have their own bedrooms. The requested census is also necessary to create a therapeutic community. It is necessary to maintain Campus Academy’s essential therapeutic subgroups, its phase level program design, and to address resident attrition. And, as explained above, “but for the accommodation, one or more persons with a disability likely will be denied an equal opportunity to enjoy housing of their choice” within the community. LDC § 17.39.060.B.2.

The requested accommodation is reasonable because granting it would impose no undue burden on the City and would not result in a **fundamental alteration in the nature of the City’s zoning program**. Campus Academy’s proposed use is consistent with the General Plan and is very similar to existing surrounding uses. It will have little or no impact on the surrounding neighborhood. Accordingly, it “**will not undermine the legitimate purposes of existing zoning regulations**” LDC § 17.39.060.B.1.

There is substantial evidence and testimony in the record supporting this application. Campus Academy has more than met its burden of demonstrating that an accommodation is necessary and reasonable under federal law. **Consequently, we respectfully request that you issue a decision granting the accommodation at your earliest possible convenience.**

Logan City
October 26, 2022
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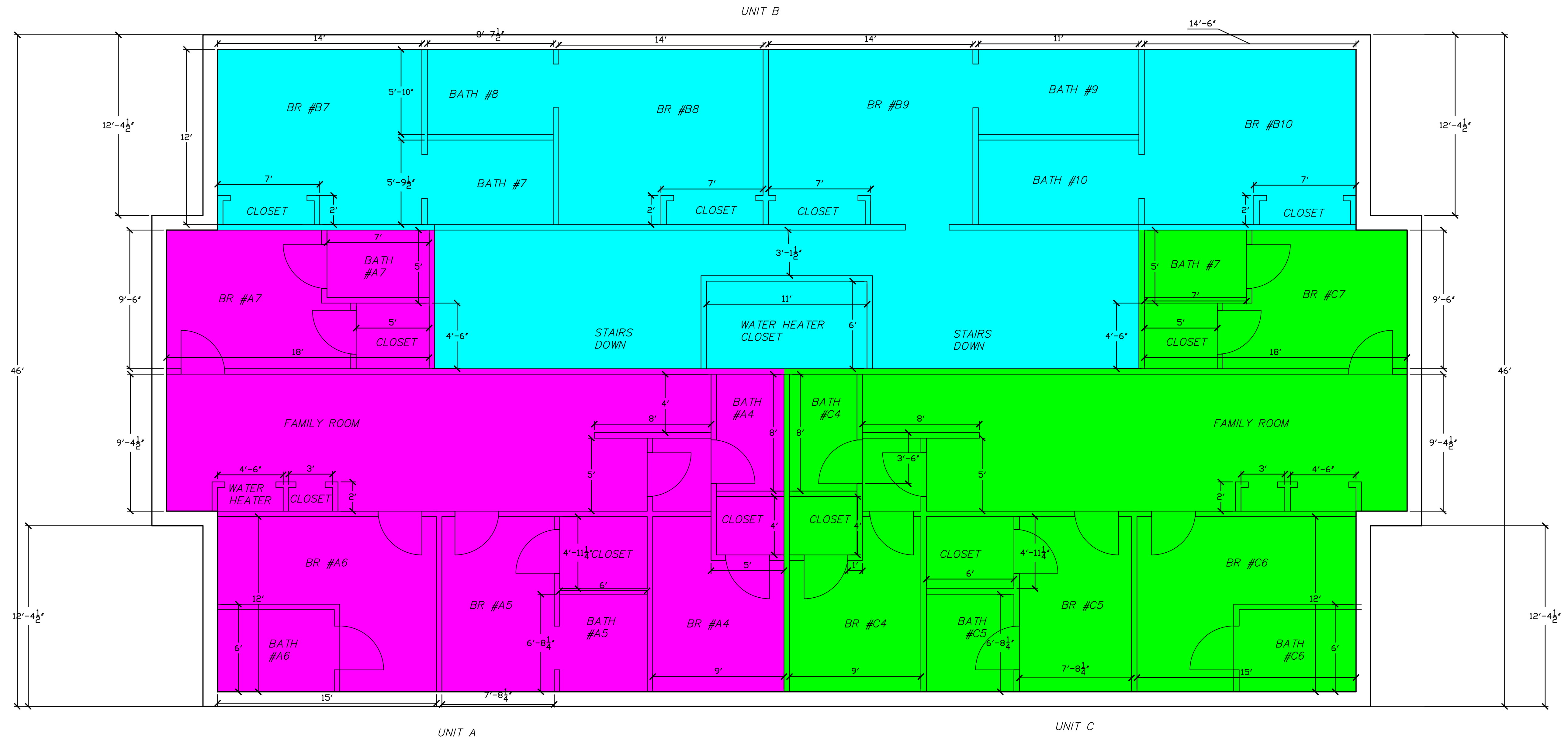
Sincerely,


MCDONALD FIELDING PLLC

A handwritten signature in blue ink, appearing to read "D J McDonald", is written over a light blue rectangular background.

Daniel J. McDonald

Encl. (Exhibits 1-19)
C: Campus Academy, LLC



DESCRIPTION:		NO.:		DATE:	
SHEET DESCRIPTION:					
2ND FLOOR					
OLD EPHRAIM TOWNHOUSES					
675 EAST 400 NORTH					
LOGAN, UTAH					
					
Cache • Landmark					
Engineers					
Surveyors					
Planners					
95 Golf Course Rd.					
Suite 101					
Logan, UT 84321					
435.713.0099					
DATE:					
15 SEPTEMBER 2022					
SCALE:					
NA					
DESIGN BY:					
W. HENDRICKSON					
CHECKED BY:					
L. ANDERSON					
APPROVED BY:					
L. ANDERSON					
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