

**ANC 3/4G RESOLUTION APPLYING CONDITIONS
FOR APPROVAL OF INGLESIDE ROCK CREEK'S
BZA APPLICATION NO. 18898**

WHEREAS, Ingleside at Rock Creek (“Ingleside”) has applied to the District of Columbia Board of Zoning Adjustments (“BZA”) for approval of plans to expand its facilities (the “Expansion Project”) located at 3050 Military Rd NW, Washington, DC (Application No. 18898); and

WHEREAS, Ingleside, under the ANC’s sponsorship, held public meetings in May, June, July, September, and ~~October~~November 2014, where Ingleside presented the plans for its Expansion Project and where Ingleside residents and neighbors or institutions in the community surrounding Ingleside asked questions, made comments, and offered suggestions; and

WHEREAS, Ingleside has contracted with Whiting-Turner Contracting Company (“Whiting-Turner”) to be the construction planning contractors for the Expansion Project; and

WHEREAS, Ingleside proposes to complete construction of the Expansion Project on an accelerated basis, but this proposed schedule will require it to use the house it owns at 5314 29th Street, N.W. (Square 2290, Lot 30) (the “Temporary Facility”) to accommodate approximately no more than ten assisted-living residents on a temporary basis while the new assisted-living building is being constructed; and

WHEREAS, actual construction on the Expansion Project is not expected to begin until late-2016, and Whiting-Turner will be developing much of the pre-construction planning over the next year or more; and

WHEREAS, the ANC and the community surrounding Ingleside have raised a number of legitimate concerns relating to how the Expansion Project will be planned and executed, and the ANC and ~~nearby~~ residents or institutions in the community surrounding Ingleside have suggested mechanisms and approaches that could ameliorate the impact of construction on the community; and

WHEREAS, Ingleside has made a number of accommodations to the concerns raised by the ANC and the community, including elimination of an initially proposed new delivery drive entrance on Military Road, N.W. at 30th Place, N.W., reduction in the height of some buildings in the Expansion Project, and shortening the projected duration of construction; and

WHEREAS, the Expansion Project constitutes a large construction project in an established residential neighborhood in Chevy Chase D.C. that has an old and potentially fragile infrastructure without convenient access to the construction site for Ingleside residents, construction vehicles, and construction personnel for the duration of the project;

WHEREAS, other large projects may be underway, planned, or scheduled to begin during the proposed time frame for Ingleside's Expansion Project (e.g., reconstruction of Broad Branch Road, NW, rebuilding of Oregon Avenue, NW, reconstruction of the 16th Street bridge over Military Road, N.W., other possible repairs of Military Road, and expansion of Lafayette Elementary School) that may also impact the surrounding neighborhood;

WHEREAS, some crucial aspects of the Expansion Project (e.g., the approximate quantity and weight of building materials, construction equipment, construction vehicles, and rubble that will be transported into or from the project site) are not known but will affect the surrounding neighborhood;

WHEREAS, gaining access to the construction site for the Expansion Project involves potential risks to the surrounding neighborhood including:

- a. diversion of vehicular traffic (both project and non-project related) from an already overburdened Military Road on to residential streets;
- b. a threat of heavy traffic to pedestrians – including children from Lafayette Elementary School, St. John's College High School – and parked cars on already congested local streets;
- c. environmental pollution by exhaust gases, dirt, dust, material spills or leaks, noise, trash, vibration, construction related light, pests (including rats), and wildlife disturbed from their normal habitat;
- d. damage to old, potentially fragile infrastructure including roads, alleys, gas lines, water and sewer lines, electrical and digital services from heavy vehicles traveling over streets not designed to support them;
- e. damage to buildings caused by blasting and vibration caused by piledriving, drilling, or heavy construction vehicles; and
- f. increased stormwater runoff that may be exacerbated by the addition of new structures or by construction.

WHEREAS, the Application neither identifies some of the risks that the construction poses for the surrounding neighborhood nor identifies necessary measures to protect the surrounding neighborhood from those risks;

WHEREAS, the Application does not provide a mechanism to enforce commitments to protect the surrounding neighborhood while the construction of the Expansion Project is ongoing;

WHEREAS, the ANC held duly scheduled meetings on November ~~17~~, 2014, and _____, 2014, attended by __ commissioners (a quorum being four) to hear both Ingleside's presentation on its BZA Application No. 18898 and comments from members of the community's about the application and proposed Expansion Project;

WHEREAS, the ANC posted on its website and on the Chevy Chase Listserv a proposed set of conditions that it would consider requiring before it would support Ingleside’s BZA application, and the ANC solicited input and comment from the community and from Ingleside on that proposed set of conditions; and

WHEREAS, the ANC and the ~~nearby residents~~ residents and institutions in the neighborhood surrounding Ingleside consider these Conditions to be essential if the Expansion Project is to proceed consistent with the program goals and objectives of the District of Columbia, to comply with the District of Columbia’s zoning regulations, and to avoid an adverse impact on the neighborhood surrounding Ingleside because of traffic, noise, or operations;

WHEREAS, Ingleside has agreed to the inclusion of these conditions on its Application;

NOW THEREFORE, the ANC hereby conditions its approval of Application No. 18898 on Ingleside’s agreement to and/or the BZA’s imposition of the following provisions (the “Conditions”;) and expressly objects to approval of the Application without each of these conditions;

1. **Communications**

- a. The ANC shall establish an Ingleside Expansion Task Force (~~the~~ “Task Force”) of ~~at least five-seven~~ and no more than ~~seventy-nine~~ stakeholder residents and neighbors representatives to advise Ingleside throughout the pre-construction and construction of the Expansion Project. The chair of this Task Force shall be the ANC Commissioner representing the Single Member District containing Ingleside. The Ingleside Project Manager for the construction shall also be a member of the Task Force. ~~and~~ The remaining members of the Task Force shall reflect the views of residents at Ingleside or, residents in the neighborhood surrounding Ingleside, or of nearby institutions. Ingleside shall meet with the Task Force monthly, or as frequently as the Task Force deems necessary, to address any issues that may arise related to the design and construction planning or execution of the Expansion Project. Ingleside will provide or arrange for meeting space for meetings of the Task Force at times specified by the Task Force as necessary. The chair of the Task Force will be responsible for notifying task force members of upcoming meetings and, to the extent possible, these meetings shall be held open to the public. Notice of such meetings shall be provided to the Chevy Chase Listserv and other regular means used by the ANC to communicate its meeting times and locations to the public. The Task Force will continue to function at least until 60 days after Ingleside receives a certificate of occupancy for all of its expansion facilities, but the Task Force or the ANC may extend its functions for as much as an additional 180 days.
- b. Ingleside has established a page on its website devoted to communications related to the Expansion Project (<http://ircdc.org/planning/index.html>), and it will keep this web page (“Expansion Project Webpage”) current with at least the following information that will be organized in a way that it will be easily identified and

Comment [s1]: We are hopeful that the conditions can be submitted based on the ANC’s and Ingleside’s agreement. If there is no agreement on some proposed conditions, the ANC may submit them separately.

Comment [s2]: Some of the nearby residents emphasized that the ANC needs to make clear that its approval of the Application is contingent on imposition of these conditions.

Comment [s3]: The Task Force may need to be larger to represent diverse viewpoints and to ensure enough regular participants if there are absences.

Comment [s4]: Ingleside requested that its project manager for the construction be a member of the Task Force to provide information to the Task Force as needed.

Comment [s5]: Ingleside requested that the functions of the Task Force have a fixed end date.

accessible: (i) a calendar that identifies all scheduled meetings or events and ~~for~~ key construction or pre-construction activities related to the Expansion Project, including meetings of the Task Force; (ii) a 24-hour hotline for anyone to notify Ingleside and Whiting-Turner of a serious, unsafe, or dangerous condition that requires urgent attention; (iii) a form to submit written questions, Complaints (as defined in paragraph 6.a. below), or comments that will be forwarded to Ingleside and Whiting-Turner for action and to the ANC for information; (iv) archives of key documents (e.g., design drawings, presentations, schedules, minutes or notes of meetings, etc.); (v) a milestone schedule for the Expansion Project showing key start and completion dates; and (vi) an alert announcement to notify Ingleside residents and neighbors of any upcoming potentially disruptive activities. ~~(as described in the Disruption Abatement Plan, paragraph 3.f. below).~~ Ingleside will also send alert emails or text messages to any persons or institutions wishing to receive notice of upcoming potentially disruptive activities related to the Expansion Project (as identified in paragraph 3.e. ~~below~~-f. below), provided that any persons wishing to receive this information will be given the opportunity to opt in and opt out of receiving it. Ingleside will include other information on the Expansion Project Webpage as outlined below.

- c. Ingleside and Whiting-Turner will ~~each~~ designate a single point of contact who will be responsible for receiving, addressing, and resolving any questions, concerns, Complaints (as defined in paragraph 6.a. below), or suggestions from the ANC, the Task Force, or from the community (including ~~from residents or institutions in the surrounding neighborhood and~~ Ingleside residents). Whiting-Turner will keep a log of outstanding questions or issues that have been raised by the ANC, the Task Force, or the community to identify their status, estimated dates for resolution, and resolution. This log will be available for review by the ANC and the Task Force. This log also will be published on a bi-weekly basis on the Expansion Project Webpage for informational purposes only and will be updated as the outstanding questions or issues are resolved.
- d. Whiting-Turner will have a designated project manager on the site whenever any construction activities are ongoing. Contact information for the designated project manager (phone number and email) will be published on the Expansion Project Webpage and will be updated as necessary by Whiting-Turner.

2. Design

- a. The design of the proposed expansion buildings shall be in substantially accordance with the drawings and materials submitted to the BZA on October 6, 2014, and by any other amendments or modifications that may be initiated by the BZA.
- b. Any other material modifications to the design that Ingleside may propose before Application No. 18898 is finally approved by the BZA must be presented in writing to the ANC at least ten business days before they are submitted to the

Comment [s6]: Ingleside correctly pointed out that some changes may be necessary to correct omissions, errors, or design optimization, without changing the fundamental design.

BZA, and the ANC must have an opportunity to review and make comments on those changes to the BZA.

- c. Ingleside will prepare and provide to the Task Force for comment its plans for trees, shrubs, and other vegetation that it will plant and maintain on the “berm” between the area of the Expansion Project and Military Road, N.W. The objective of these plantings will be to preserve the existing screening of the buildings from view from Military Road and to plant additional screening that will reasonably minimize the view of the buildings from Military Road following completion of the Expansion Project. Ingleside will maintain the plantings on the “berm” during construction and after the Expansion Project is completed. These plans for the “berm” also will be published on the Expansion Project Webpage.
- d. Under no circumstances will Ingleside modify the design of its expansion plans to include a service drive or any other driveway or entrance to its property from Military Road or 29th Street, N.W., N.W. or 29th Street, N.W., and it further stipulates and warrants that it will not build, construct, or erect a service drive or any other driveway or entrance to its property from Military Road or 29th Street NW for a period of at least 20 years following the date of the final BZA order in Application No. 18898. Nothing in this paragraph affects Ingleside’s continued use of the currently existing entrance at Military Road, N.W. and 31st Street, N.W.
- e. Ingleside has stated agrees that it has no plans to design, build, construct, or erect any permanent facilities or structures on its property east of the existing buildings known as “Classic Residences,²⁹” (the “Ravine Area”), and it must further stipulates and warrants that it will not build, construct, or erect any facilities or structures on this portion of its property for a period of at least 20 years following the date of a final BZA order in Application No. 18898.
- e.f. Ingleside will review its design to evaluate the impact of the additional new structures on stormwater runoff and will identify design additions or modifications that will mitigate stormwater runoff, including the following: (i) installation of rain gardens; (2) installation of turfblock or pervious pavements and sidewalks; (3) use of cisterns or rainbarrels to catch and store rainwater for future use; (4) installation of roof gardens or ecoroofs; (5) additional vegetation to reduce erosion and to increase absorbtion; and (6) installation of drywells or soakage trenches. Ingleside will coordinate its storm-water management plan with the District Department of the Environment (“DDOE”) and the RiverSmart program.

Comment [s7]: Ingleside correctly noted that this provision was not intended to affect its existing entrance.

Formatted: Superscript

Comment [s8]: Some nearby residents have suggested that the Ravine Area be preserved as a “perpetual easement” or some similar arrangement that would be perpetually binding. Ingleside objects to such a perpetual arrangement because it would have other implications that are not acceptable to Ingleside and may not be acceptable to nearby residents (e.g., requirements that the space be open to the public). Ingleside had previously agreed to a 15-year moratorium on any building in the Ravine Area, which expires in 2015.

Comment [s9]: As several nearby residents have noted, the District has a stormwater management problem that is being addressed by DDOE, and Ingleside should take steps to be sure that its expansion does not exacerbate or contribute to that problem but helps to provide a solution.

Comment [s10]: This will be a map with a designated area. Whiting-Turner will be providing its input for likely area that could be affected.

3. **Pre-Construction**

- a. At least six months before the planned start of construction, Ingleside and Whiting-Turner will distribute fliers to or otherwise communicate with all homes or institutions within three blocks of the Expansion Project site and the outside limits of the boundaries identified in Attachment A [roughly from 28th and Jenifer, north to Newlands, Newlands and 29th Street to McKinley to Ligation,

South on 32nd to Broad Branch Road, east to the Embassy of the Ivory Coast (the “Designated Area”). Ingleside and Whiting-Turner will offer to conduct a survey of homes, other buildings, equipment, machinery, or existing infrastructure within the Designated Area before construction begins in order to provide a baseline for any damage within this area that might be caused by construction-related activities of the Expansion Project. Any other ~~owner more than three blocks away~~ homeowner or institution outside of the Designated Area may request a survey of a home, other building, equipment, machinery, or existing infrastructure if the ~~owner requesting homeowner or institution~~ shows that there is a reasonable possibility that ~~those facilities~~ they may be affected by a specific activity during construction of the Expansion Project. Whiting-Turner will arrange to conduct surveys, as requested, and will maintain records of any surveys undertaken. The cost for conducting these surveys for any homeowner or institution within the Designated Area of the Expansion Project will be borne entirely by Whiting-Turner and Ingleside. Provided that they can show that there is a reasonable possibility that they may be affected by a specific activity during construction of the Expansion Project, a homeowner or institution outside the Designated Area also will be provided a survey at no cost to them. A copy of any survey conducted will be provided to the requesting homeowner or institution at their request.

- b. ~~At~~ As soon as possible but at least six months before the planned start of construction, Ingleside and Whiting-Turner will systematically survey the possible impact and consequences of construction on (i) truck, bus, pedestrian, bicycle, and passenger car traffic on Military Road, Broad Branch Road, and other neighborhood streets with particular emphasis on the streets in the Designated Area; (ii) the existing public infrastructure (e.g., roads including but not limited to streets in the Designated Area, storm and sanitary sewers, gas and water pipes, and water pressure and water quality, electrical and digital service; ~~and;~~ (iii) the environment (e.g., water and air quality, noise, vibration, dust, dirt, liquid spills and leaks, public safety, and effects on wildlife and pests, including rats) and will provide the results of the survey to the Task Force. A copy of the results of this survey also will be published on the Expansion Project Webpage.
- c. At least six months before the planned start of construction, Ingleside and Whiting-Turner will identify all permits that will be required for the Expansion Project and will prepare and provide to the Task Force a schedule for obtaining all necessary permits (the “Permitting Schedule”). The Permitting Schedule will be published on the Expansion Project Webpage. Work on the Expansion Project will be conducted in compliance with all required permits. Ingleside agrees not to oppose the appearance of residents or institutions in the neighborhood surrounding Ingleside at any hearings held on any permits it seeks in advance of constructions.
- d. At least four months before the planned start of construction, Ingleside and Whiting-Turner will prepare and provide to the Task Force a plan for managing the construction traffic into and out of the site (the “Construction Traffic Plan”),

including at least the following: (i) the estimated quantity and weight of building materials, construction equipment, and rubble to be transported into or from the construction site; (ii) an analysis of the feasibility and impact on the surrounding neighborhood of using Military Road, N.W. and/or Broad Branch Road, N.W. as a possible truck or vehicular access points for the construction site; ~~(ii)~~ (including any self-propelled construction equipment); (iii) analysis of the effect of construction traffic on cross-town vehicular traffic on Military Road, N.W., Broad Branch Road, N.W., and other streets; (iv) identification of truck routes that are authorized and express identification of routes that are prohibited for all project-related traffic including but not limited to truck(s), passenger vehicles, pick-ups, self-propelled construction equipment, skips, and dumpsters throughout construction (including particularly all of the surrounding residential streets and all streets north of Military Road); ~~(iii)~~ N.W. and north or south of Broad Branch Road, N.W.); (v) identification of authorized off-site truck staging areas and those areas that are expressly prohibited for truck staging (e.g., no truck staging on Military Road, N.W., Broad Branch Road, N.W., or in the surrounding neighborhood streets); ~~(iv)~~ surrounding Ingleside at any time for any reason during construction); (vi) actions that Whiting-Turner will take to prohibit construction traffic (including hauling or replacing dumpsters) into or out of the site Monday through Saturday before 8:00 am or after 5:00 pm or at any time on Sundays; ~~(v)~~ for the duration of construction; (vii) actions that will be taken to require covers on any trucks hauling materials that might be blown out of the truck; ~~(viii)~~ procedures for promptly cleaning any spills on roadways; ~~(ix)~~ procedures to ensure that all truck drivers are licensed, qualified, and not fatigued; and (x) steps that Ingleside and Whiting-Turner will take to notify the District Department of Transportation (DDOT) regarding truck or equipment staging areas and prohibitions against construction traffic in the neighborhood streets surrounding Ingleside. The Construction Traffic Plan and any communications with DDOT about that Plan will be published on the Expansion Project Webpage and updated as necessary by Whiting-Turner and Ingleside.

- e. At least four months before the planned start of construction, Ingleside and Whiting-Turner will prepare and provide to the Task Force a plan to accommodate parking and transportation during construction for the expected number of construction workers as well as for Ingleside employees and residents (the “Construction Parking and Transportation Plan”). At a minimum, the plan will include (i) identification of off-site parking that must be used during construction for construction workers, Ingleside employees, and, if necessary, for Ingleside residents; (ii) a plan for providing timely transportation for persons required to use off-site parking; (iii) a plan for communicating the off-site parking requirements to construction workers, Ingleside employees, and, if necessary, to Ingleside residents; ~~and~~ (iv) a plan to prevent any Expansion Project-related parking on Jocelyn Street, N.W. that would affect the drop-offs or pick-ups at Temple Sinai; (v) a plan for enforcing the off-site parking requirements on construction workers, Ingleside employees, and, if necessary, on Ingleside residents to prevent their parking on the neighborhood streets (e.g., mandatory identification stickers on construction workers’ or Ingleside employees’ vehicles

Comment [s11]: This provision is particularly important for Temple Sinai.

so that they can be readily identified if they park in the neighborhood surrounding Ingleside and regular security patrols by Ingleside or Whiting-Turner to identify any non-compliance); (vi) a plan for ensuring that Ingleside residents and employees do not park on the neighborhood streets once the Expansion Project is completed. The plan also will provide detailed contact information for a Whiting-Turner point of contact (who could be the designated project manager described in 1(d) above) for residents or institutions in the surrounding neighborhood to contact should they observe a violation of the plan (e.g., construction workers parking on neighborhood streets). The Parking and Transportation Plan will be published to the Expansion Project Website and updated as necessary by Whiting-Turner and Ingleside.

- f. At least four months before the planned start of construction, Ingleside and Whiting-Turner will prepare and provide to the Task Force a plan to minimize construction noise, vibrations, odors, dust, dirt, liquid spills or leaks, fumes, effluents, floodlights, rats and other pests, and other disruptions expected from the Expansion Project (the “Disruption Abatement Plan”). This plan will include, at a minimum, actions that will be taken (i) to minimize the extent of blasting or piling that will be required, to schedule any necessary blasting or piling during times that will be least disruptive for Ingleside residents and institutional or residential neighbors, and to provide timely notice to any affected persons of any scheduled blasting or piling; (ii) to minimize airborne dust or dirt; (iii) to prohibit any disruptive work before 7:00 am or after 5:00 pm daily or any time on weekends; ~~(iv)~~ to schedule noisy construction activities when they will be least disruptive; ~~(iv) to~~ to Ingleside residents and the surrounding neighborhood; (v) to limit smoking or break areas ~~on the site~~ to designated areas on site that will not be disruptive for Ingleside residents ~~or nearby neighbors~~; (v) ~~to~~ and the surrounding neighborhood; (vi) to require construction workers to consume food only on the site and not in the surrounding neighborhood and to remove all food trash; ~~(vi) daily~~; (vii) to prohibit construction workers from using alcohol or drugs on the site; ~~(viii)~~ to monitor the quality of the air and water runoff from the construction site; ~~and (viii) throughout construction and to publish monthly updates to the Expansion Project Website concerning air and water runoff~~; (ix) to limit night-time lighting intrusion on Ingleside residents or nearby homes, consistent with security and safety requirements; ~~and (x) to control and mitigate stormwater runoff from the construction site. The Disruption Abatement Plan will be published to the Expansion Project Website and updated as necessary by Whiting-Turner and Ingleside.~~
- g. At least three months before the planned start of construction, Ingleside and Whiting-Turner will prepare and provide to the Task Force a subcontracting plan (the “Subcontracting Plan”) that will include provisions in all subcontracts for specific penalties and remedies that will be imposed for violations of the Construction Traffic Plan, the Parking and Transportation Plan, or the Disruption Abatement Plan. Each major subcontract will include requirements that the subcontractor adhere to the provisions of the most recent Construction Traffic Plan, the Parking and Transportation Plan, and the Disruption Abatement Plan.

Comment [s12]: Piledriving is particularly disruptive for Carnegie because of vibrations, and drilling is much preferred.

Nevertheless, Ingleside and Whiting-Turner will remain responsible for ensuring that work on the Expansion Project is undertaken in accordance with all of the requirements of these Conditions. The Subcontracting Plan will be published to the Expansion Project Website.

- h. Within 30 calendar days of delivery of ~~the~~ the Construction Traffic Plan, the Parking and Transportation Plan, the Disruption Abatement Plan, or the Subcontracting Plan (collectively, the “Construction Plans”) to the Task Force, the Task Force will provide its written comments, suggestions, concerns, and objections, if any, to Ingleside and Whiting-Turner. If the Task Force does not provide any written comments, suggestions, concerns, or objections related to a particular Construction Plan within 30 days, that particular Construction Plan shall be deemed acceptable. The Task Force, Ingleside, and Whiting-Turner will make reasonable efforts to resolve any differences with regard to a particular Construction Plan. If they have been unable to resolve any differences within 15 calendar days, the Task Force and Ingleside/Whiting-Turner will each submit a concise statement of its position on each discrete disputed portion of the Construction Plan to the Referee designated pursuant to paragraph 6.b. below for resolution. The Referee may request additional information from the Task Force and/or Ingleside/Whiting-Turner, but within an additional ten business days, the Referee will decide whether to accept either the Task Force’s or Ingleside’s/Whiting-Turner’s position on each discrete disputed portion of the Construction Plan – i.e., the Referee must choose between either the Task Force position or the Ingleside/Whiting-Turner position on each discrete disputed portion of the Construction Plan and may not recommend any changes from the position advocated by a party (as in “Baseball Arbitration”). The Referee’s determination about which position to adopt will be binding and may not be contested further by any of the parties or by anyone seeking to enforce these ~~conditions~~Conditions.

4. **Temporary Facility on 29th Street, N.W.**

- a. In order to reduce the construction schedule for the Expansion Project to approximately 30 months, Ingleside may, consistent with all required approvals and permits, use the existing house that it owns at 5314 29th Street, N.W. (“Temporary Facility”) to temporarily house no more than ten current assisted-living residents until construction of the new assisted-living facility is completed, but, in any case, no longer than 24 months.
- b. Ingleside will make all necessary changes or modifications to the Temporary Facility so that it will safely and lawfully accommodate no more than ten assisted-living residents. Ingleside will, however, make no material changes or modifications to the exterior of the house ~~so that it retains~~which alters its

Comment [s13]: Ingleside is in discussions with the residents near the house at 5314 29th Street, N.W., and may reach an agreement that could be substituted for this section of the conditions.

residential character, consistent with the other homes on 29th Street, N.W.. None of the changes or modifications will affect or infringe upon the ravine area between the Temporary Facility and the Classic Residences on Ingleside's property, and all access to the Temporary Facility will be from 29th Street, N.W..

- c. Ingleside will notify the residents on the 5300 block of 29th Street, N.W., Jenifer Street, N.W., and the 5300 block of 28th Street, N.W. by letter ~~or email~~ at least four weeks before it plans to begin construction to change or modify the Temporary Facility. During that construction, Ingleside will use no more than two street parking spaces for construction-related activities (e.g., materials delivery, dumpster/waste disposal, etc.). Construction workers working on the Temporary Facility will not be permitted to park on 29th Street, N.W., Jenifer Street, N.W., Kanawha Street, N.W., Legation Street, N.W., or 28th Street, N.W. at any time during construction to change or modify the Temporary Facility. Ingleside will make every reasonable effort to minimize the length of construction for the Temporary Facility.
- d. Ingleside will obtain all necessary permits and certifications to use this house temporarily for no more than ten assisted-living residents. All relevant permits or certifications, once obtained by Ingleside, will be published on the Expansion Project Website.
- e. After construction of any modifications or changes to the Temporary Facility is complete, Ingleside will accommodate all visitors' and staff's parking to this facility in the driveway or otherwise off the street at the Temporary Facility or on 29th Street, N.W. immediately in front of the Temporary Facility. Ingleside will not make any new curb cuts or otherwise alter the current streetscape of 29th Street, N.W..
- f. When the assisted-living facilities are completed as part of the Expansion Project, Ingleside will make all reasonably necessary changes and modifications to the Temporary Facility so that it can be returned to use as a single-family, residential home, (e.g., removal and remodeling of excess bathrooms that are not consistent with single-family use, if necessary). Ingleside will sell the house at 5314 29th Street, N.W. and the adjoining vacant lot on 29th Street, N.W. to an independent buyer or buyers for residential use within a reasonable period of time after construction of the Expansion Project is completed but no later than 6 months thereafter.
- g. During the period when Ingleside uses the Temporary Facility to house a limited number of no more than 10 assisted-living residents, the staff at ~~that the~~ Temporary Facility will normally consist of two persons during the day and evening shifts and one person during the night shift, ~~none of whom will~~. No Ingleside employee staffing the Temporary Facility will be permitted to park on 29th Street, N.W., Kanawha Street, N.W., Legation Street, N.W., Jenifer Street, or 28th Street, N.W.. Ingleside will provide a point of contact whom neighbors on 29th Street, N.W., Jenifer Street, N.W., or 28th Street, N.W. may contact if they

observe an Ingleside employee parking on these streets while working at the Temporary Facility. Deliveries to the Temporary Facility will be limited to smaller ~~vans and vans and~~, except in emergencies, will be made only between 9:00 am and 5:00 pm. Ingleside will also provide security services for the house similar to those provided for the other Ingleside facilities and will be responsible for snow removal on 29th Street, N.W. to assure emergency and other access to the house.

5. **Construction**

- a. Ingleside and Whiting-Turner will erect and maintain a high-quality construction fence along the perimeter of the construction during the Expansion Project. This construction fence will be designed so that the construction site is not visible from Military Road at ground level.
- b. Construction offices will be located in trailers on the construction site or in existing buildings on the site. Construction trailers and latrines will not be positioned on the property bordering Military Road ~~or east of the Classic Residences, N.W. or the Ravine Area.~~ No construction offices, latrines, material dumps, or project-related vehicles of any kind may be parked where they may be visible from Military Road, N.W.
- c. Ingleside and Whiting-Turner will remove rubbish and construction debris continuously during the normal construction work day and will inspect the site daily for compliance. Ingleside will publish to the Expansion Project Website complete contact information for a point of contact (which may be the designated project manager), whom neighbors can contact to report rubbish or construction debris outside of the construction site.
- d. Normal construction hours shall be between 7:00 am and 5:00 pm, Monday through Saturday. In the event that an emergency threatens the life and safety of workers, Ingleside residents, or others in the community, construction may occur during other hours or on other days so long as the Task Force is given reasonable notice. Reasonable notice shall be considered an email to the members of the Task Force.
- e. To the extent that any blasting, piledriving, or drilling is required for the Expansion Project, it will be conducted only between 8:30 am and 3:00 pm, Monday through Friday, and consistent with the other provisions concerning blasting, piledriving, and drilling outlined in 3(f) above.
- f. Ingleside and Whiting-Turner will erect reasonable signage throughout the Expansion Project site to advise subcontractors and construction workers of the requirements of these Conditions and the penalties for violations of these Conditions.

Comment [s14]: Some nearby residents have suggested the following additional paragraph in this section: "Ingleside and Whiting-Turner shall engage an independent consultant to provide oversight on behalf of the surrounding community of (i) compliance with project undertakings to protect the community; (ii) to identify emergent problems so that they may be addressed as soon as possible; and (iii) unanticipated issues arising from design errors or changed conditions not the fault of Ingleside but nonetheless affecting the impact of the project on the surrounding community. This consultant shall publish monthly updates on his or her work to the Expansion Project Website." Ingleside strongly objects to this provision because it would add an additional layer of review that is not necessary. Ingleside will have its own independent contractor representative that will be reviewing Whiting-Turner's work.

Comment [s15]: Ingleside is determining with Whiting-Turner whether this is workable.

6. **Enforcement**

- a. The Task Force will designate one or more of its members to receive reports of any perceived violation of these Conditions (a “Complaint”) from an ANC Commissioner, Task Force member, ~~or~~ neighborhood resident (including any Ingleside resident~~), or nearby institution. Any Task Force member who receives a Complaint shall forward that Complaint to the designated member handling complaints, if appropriate.~~ If the Complaint identifies a potential violation of these Conditions, the designated Task Force member(s) will notify the single point of contact (designated pursuant to paragraph 1.c. of these Conditions~~) of the Complaint.~~ Whiting-Turner will investigate the Complaint and report the results of its investigation to the ANC, to the Task Force, and to the complaining party within three business days. The parties will make a good faith effort to resolve the Complaint within an additional five business days based on the ~~finest~~ fine structure specified in paragraph 6.c. below. The resolution may also include appropriate provisions to prevent a recurring violation of these Conditions. All Complaints will be published on the Expansion Project Website no later than ten business days after it is resolved. The Task Force member responsible for fielding Complaints will publish on the Expansion Project Website a brief description of the resolution of all Complaints listed there.
- b. At least five months before the start of construction, Ingleside and the Task Force will jointly designate ~~an attorney~~ a person who is independent of any interest of Ingleside, the contractors and subcontractors, and any government officials and who is experienced in dispute resolution, real estate, and construction matters in the District of Columbia (the “Referee”) to resolve any Complaints that have not been resolved by the parties within eight business days. The Referee will be compensated by Ingleside at an agreed-upon fixed rate for each Complaint resolved~~, except that for disputes requiring exceptional time expenditure a higher rate may be negotiated by him or her.~~ If Ingleside and the Task Force are unable to reach agreement on who will be the Referee, the Task Force and Ingleside will each compile a list of three qualified candidates, and each candidate will propose a fixed rate for resolution of each Complaint. The Referee will be chosen from among the candidates on the two lists based on which candidate proposes a fixed rate nearest to the mean of all the proposed rates.
- c. For any Complaint that the parties have not resolved within eight business days, within an additional three business days, they will submit to the Referee a written summary of their respective positions no longer than ~~2000~~ 1500 words. Within an additional three business days, the Referee will determine whether the Complaint is meritorious and, if so, will decide the amount of any fines based on a determination of the seriousness of the infraction and in accordance with the following schedule:
- i. The first “minor” violation of the requirements in the Construction Traffic Plan, the Parking and Transportation Plan, ~~or~~ the Disruption Abatement Plan, or these Conditions (where a violation is deemed “minor” if the impact on the neighborhood is short-lived and non-recurring): \$200 per violation;

Comment [s16]: Ingleside is concerned about the mechanism for designating an Referee if there is no agreement with the Task Force. One alternative is to request appointment of a neutral from the American Arbitration Association or a similar independent organization.

Comment [s17]: The objective is to require the parties to synthesize their positions so that a dispute can be resolved promptly by the Referee.

- ii. The second through fifth “minor” violation of the requirements in the Construction Traffic Plan, the Parking and Transportation Plan, or the Disruption Abatement Plan, or these Conditions: \$500 per violation;
- iii. The sixth or greater “minor” violation of the requirements in the Construction Traffic Plan, the Parking and Transportation Plan, or the Disruption Abatement Plan, or these Conditions: \$1500 per violation;
- iv. The first “major” violation of any requirement of the Construction Traffic Plan, the Parking and Transportation Plan, the Disruption Abatement Plan, or these Conditions (where a violation is deemed “major” if (a) there is long-lasting damage to public or private property or the environment requiring repair or other appropriate remediation by an agency of District of Columbia Government (i.e., DDOT or the District Department of the Environment) or a private homeowner or institution other than Ingleside, (b) the violation was a result of knowing, reckless, or intentional misconduct, or (c) the violation is part of a pattern of disregard for the requirements of these Conditions): ~~\$2000~~\$5,000 per violation;);
- v. The second or subsequent “major” violation of any requirement of the Construction Traffic Plan, the Parking and Transportation Plan, the Disruption Abatement Plan, or these Conditions: ~~\$5000~~10,000 per violation; and
- ~~vi. Fines will be capped at \$100,000 unless there has been a pattern of repeated violations or of knowing, reckless, or intentional violations.~~
- vi. ~~_____~~
- d. The Referee’s determination about whether there was a violation of these Conditions will be binding ~~and may not be contested further by any of the parties or by anyone seeking to enforce these conditions on the parties to this agreement and may not otherwise be enforced except as provided in section 6. The Referee shall notify the parties of his or her decision and notice of such decision shall be published on the Expansion Project Website as soon as practicable thereafter. For every violation of these Conditions substantiated by the Referee, he or she shall impose any fines (as described in 6(c) above) equally on Ingleside and Whiting-Turner (i.e., a 50/50 basis).~~
- e. Nevertheless, any fines assessed by the Referee for a violation of these Conditions may not provide a full and fair remedy. ~~Accordingly, nothing~~Nothing in these Conditions shall preclude any person or institution suffering an injury as a result of conduct that the Referee determines is a violation of these Conditions from commencing legal proceedings seeking any remedy at law or at equity.
- f. ~~_____~~ Ingleside and Whiting-Turner will be responsible for paying any fines that the Referee assesses within 20 ~~days, but~~calendar days. Nothing in these Conditions shall preclude Ingleside ~~may seek~~and/or Whiting-Turner from seeking

Comment [s18]: Some nearby residents have strongly objected to any limit on the amount of fines, arguing that once the cap is reached, there will be no financial incentive to comply with the conditions. Ingleside says it would be a non-starter to eliminate the cap on fines because it would not be able to obtain reasonable terms from capable contractors and subcontractors if there were any unlimited potential liability. Moreover, Ingleside says that Whiting-Turner has said that it will manage to prevent imposition of any fines, and if the fines should reach the cap, it would represent a breakdown of any incentives provided by the fines, and enforcement would need to be addressed through some other mechanism.

Formatted

reimbursement from any contractor or subcontractor or other party that may be responsible for the violation, found by the Referee. Fines will be paid to one or more non-profit organizations in the District of Columbia, to be designated by the Task Force. Such designation will be communicated in writing by the chair of the Task Force to the Referee and to Ingleside.

Comment [s19]: Some nearby neighbors have suggested the following additional language: "by Ingleside and Whiting-Turner into an escrow account managed by the Referee and made available to pay private legal fees for actions under 6(e) above. If any funds are available in the Escrow Account after completion of the Expansion Project, such funds may be contributed . . ." There would also be a new paragraph as follows: "Fines will be paid in to an escrow account available for legal fees associated with actions under 6(e) below. The Referee shall be tasked with managing the escrow account for the duration of the Expansion Project. He or she shall publish a monthly accounting of all escrow account transactions to the Expansion Project Website." Ingleside says that the enforcement mechanism was intended to avoid litigation, and the creation of a fund that could be used to support litigation would be inconsistent with that objective.

7. Disclosure of Pertinent Information to the Public

- a. Because of the large scope of the Expansion Project and its potential impact on citizens beyond the surrounding neighborhood, in addition to the information identified above, Ingleside will publish additional information on the Expansion Project Website.
- b. The following information will also be included on the Expansion Project Website:
 - i. The cost to the District of Columbia Government that are not covered by any payments from Ingleside or its residents, if any, for providing additional services such as water pressure and quality, sewer and electrical services to Ingleside upon completion of the Expansion Project;
 - ii. The relationship of the Expansion Project to numerous other Federal and District infrastructure projects and transportation plans underway or planned, to include Broad Branch Road, N.W. reconstruction, Oregon Avenue, N.W. rebuilding, reconstruction of the 16th Street bridge over Military Road, N.W., any other possible repairs on Military Road, N.W., and the Lafayette Elementary school expansion;

£.

Formatted: Normal, Indent: First line: 0.5", Space After: 0 pt, No bullets or numbering

Adopted at a duly noticed public meeting of ANC 3/4G on _____, 2014 by a vote of ___ to ___ (a quorum being 4).

Jim McCarthy
Chair, ANC 3/4G

David Engel
Secretary, ANC 3/4G