

**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~~ Adjustment (“BZA”) for approval of plans to expand its facilities (the “Expansion Project”) located at 3050 Military ~~Rd~~ NW, Road, N.W., Washington, DC (Application No. 18898); and

WHEREAS, Ingleside, under the ANC’s sponsorship, held public meetings in May, June, July, September, and 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”)~~ a general contractor (“General Contractor”) ~~to be the provide advice on~~ construction planning ~~contractors~~ for the Expansion Project; and

Comment [s1]: Whiting-Turner has been selected for pre-construction work, but no selection has yet been made for General Contractor.

WHEREAS, Ingleside proposes to complete construction of the Expansion Project on an accelerated basis, but this proposed schedule ~~will~~ may require it to use the house it owns at 5314 29th Street, N.W. (Square 2290, Lot 30) (the “Temporary Facility”) to accommodate 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~~ the General Contractor 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 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, the District Department of Transportation (“DDOT”), in evaluating the Traffic Control Plan for the project, considers other upcoming projects in the area;

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 piling, earth 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
 , December 8, 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~~^{community} about the application and proposed Expansion Project;

WHEREAS, the ANC posted on its website and on the Chevy Chase Community 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~~these proposed ~~set of~~ conditions; and

WHEREAS, the ANC and the 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 the~~ Conditions set forth below in any BZA Order approving its Application; ~~], as submitted, so long as the approved BZA Order does not include additional or different conditions that Ingleside cannot accept;~~

NOW THEREFORE, the ANC ~~expresses its support for the Expansion Project but~~ hereby conditions its ~~approval of~~support for 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: If the application is approved by the BZA, all of these Conditions shall be deemed to apply except that in any instance where a Condition provided herein conflicts with a condition of the BZA Order, the condition included in the BZA Order shall apply.

1. **Communications**

- a. The ANC shall establish an Ingleside Expansion Task Force (~~“(“Task Force”)~~) of at least seven and no more than nine stakeholder 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 and at least one resident of Ingleside shall also be a membermembers of the Task Force. The remaining members of the Task Force shall reflect the views of residents ~~at Ingleside, 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 Community Listserv and other

Comment [s2]: So long as the BZA approves the Application, even if it does not expressly adopt each of the conditions, the conditions will nevertheless apply unless a Condition conflicts with the BZA Order. In other words, the Conditions will apply unless the BZA expressly rejects them or adopts conflicting Conditions on a particular point.

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://iredc.org/planning/index.html~~), (~~http://ircdc.org/planning/index.html~~), and it will keep this ~~web page~~ webpage (“Expansion Project Webpage”) current with at least the following information that will be organized in a way that it will be easily identified and accessible: (i) a calendar that identifies all scheduled meetings or events and 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~~ the General Contractor of a serious, unsafe, or dangerous condition that requires urgent attention; (iii) a form to submit written questions, ~~Complaints~~ complaints (as defined in paragraph 6.a. below), or comments that will be forwarded to Ingleside and ~~Whiting-Turner~~ the General Contractor 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~~ pile driving, earth drilling or blasting (as further described in the ~~Disruption Abatement~~ Construction Management Plan, paragraph 3.f. below), ~~and (vii) an alert announcement to notify Ingleside residents and neighbors of the date and time that a crane will be installed on the site, and the date that DDOT has approved any after-hours work.~~ Ingleside will also send alert emails or text messages to any persons or institutions wishing to receive notice of ~~upcoming potentially disruptive activities~~ pile driving, earth drilling, blasting, crane delivery, or after-hours work related to the Expansion Project (as identified in paragraph 3-(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 ~~by notifying the Task Force.~~ Ingleside will include other information on the Expansion Project Webpage as outlined below.
- c. Ingleside and ~~Whiting-Turner~~ the General Contractor will designate ~~at~~ the Ingleside Project Manager as the 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 residents or institutions in the surrounding neighborhood and Ingleside residents). ~~Whiting-Turner~~ The Ingleside Project Manager 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

Comment [s3]: Ingleside believes the term “potentially disruptive activities” is too vague and is not defined. Instead, we have substituted a specific set of disruptive activities – pile driving, earth drilling, or blasting. This itemization of the disruptive activities is used in paragraph 3.f. as well.

Comment [s4]: Additional disruptive activities for which there will be notice are the crane installation and any DDOT-authorized after-hours work.

the Expansion Project Webpage for informational purposes only and will be updated as the outstanding questions or issues are resolved.

d. ~~Whiting-Turner~~The General Contractor will have ~~a designated project manager an employee who is familiar with these Conditions~~ on the site whenever any construction activities are ongoing. ~~Contact~~

d.e. Current contact information for the ~~designated project manager (phone number and email)~~Ingleside Project Manager will be published on the Expansion Project Webpage ~~and will be updated as necessary by Whiting-Turner.~~

2. **Design**

a. The exterior design of the proposed expansion buildings shall be ~~in~~ substantially in accordance with the drawings and materials submitted to the BZA on October 6, 2014, ~~and by any other amendments or modifications that~~ as may be ~~initiated~~modified by the BZA or in response to ANC or Task Force comments.

b. Any other material modifications to the exterior 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 BZA, and the ANC must have an opportunity to review and make comments on those changes to the BZA; this subsection does not apply to those modifications specifically made at the request of the ANC or the Task Force.

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, 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.~~effective date of the final BZA Order approving Application No. 18898. Furthermore, for a period of a minimum of 20 years from the effective date of the BZA Order approving Applicant No. 18898, Ingleside will not extend, expand, or alter any existing driveway associated with any house Ingleside owns on Military Road for the purpose of providing access to the main Ingleside campus. ~~Nothing~~

Comment [s5]: As it committed at the November 17 ANC meeting, Ingleside will not use any existing driveway as a delivery entrance off of Military Road.

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 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” (the “Ravine Area”), and it 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~~effective date of the final BZA Order approving Application No. 18898. The Ravine Area does not include the property located directly west of the existing Manor House and along Broad Branch Road. The Ravine Area does not include the area south of the Manor House, which Ingleside may consider for a future expansion.
- 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 ~~absorption~~absorption; and (6) installation of drywells or soakage trenches. Ingleside will coordinate its ~~storm-water~~stormwater management plan with the District Department of the Environment (“DDOE”) and the RiverSmart program. The Expansion Project will be required to comply with DDOE’s recently implemented stormwater management amendments specified in Chapter 5 of Title 21 of the District of Columbia Municipal Regulations and must satisfy the requirements of the District’s Municipal Separate Storm Sewer System (“MS4”) permit issued by the U.S. Environmental Protection Agency under the Clean Water Act.

Comment [s6]: This simply makes clear that the area west and south of the Manor House is not part of the Ravine Area, which was the original intent.

Comment [s7]: Rather than specify new stormwater management requirements in this Agreement, it simply references the District’s recently enacted, much more rigorous stormwater management requirements.

Comment [s8]: Ingleside believes that plans will not be sufficiently firm six months before the start of construction and asks to change the Plan due dates to four months before the planned start of construction.

Comment [s9]: Whiting-Turner believes that, absent extraordinary, currently unknown circumstances, any impact on infrastructure more than 200 feet from the Ingleside main campus is not likely. Thus, an automatic survey of these structures is limited to this area, marked on Attachment A. Nevertheless, any other resident who has reason to believe that structures may be affected may request a survey. Ingleside has indicated that it will expressly add anyone who currently has such a belief to the list of automatically surveyed and specify them in this agreement. Also note that the only function of Attachment A is to identify the scope of the pre-construction survey – i.e., it does not affect any aspect of parking or traffic control.

3. **Pre-Construction**

- a. At least ~~six~~four months before the planned start of construction, Ingleside and ~~Whiting-Turner~~the General Contractor will distribute ~~fliers~~flyers to or otherwise communicate with all homes or institutions within 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]~~all properties located within 200 feet of the Ivory Coast [Ingleside’s main campus] (the “Designated Area”). Ingleside and ~~Whiting-Turner~~the General Contractor 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 homeowner or institution outside of the Designated Area may request a survey of a home, other building, equipment, machinery, or existing infrastructure if the requesting homeowner or institution shows that there is a reasonable possibility that they may be affected by

a specific activity during construction of the Expansion Project. ~~Whiting-Turner~~The General Contractor will arrange to ~~conduct~~have the surveys ~~conducted~~, 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. As soon as possible but at least ~~six~~four months before the planned start of construction, ~~Ingleside and Whiting-Turner~~Ingleside’s traffic consultant will ~~systematically~~survey the possible ~~peak period~~ impact ~~and consequences of construction on (i) that truck, bus, pedestrian, bicycle, and passenger car traffic on Military Road, Broad Branch Road, and other neighborhood streets with particular emphasis traffic may have on the streets in-level of service of all intersections within the Designated~~DDOT-approved Scoping Area; ~~(ii) the existing public infrastructure (including but not limited (described in Attachment B) and compare those findings to streets in-the~~baseline counts taken earlier ~~this year to determine the Designated Area, storm and sanitary sewers, gas and water pipes, water pressure and water quality, electrical and digital service; (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)~~estimated difference in levels of service at those intersections, 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. ~~In addition, all construction-related vehicles will be required to follow the District’s restrictions on the transportation of materials which prohibit overweight or oversized vehicles and the scattering or dropping of materials from vehicles. Further, DDOT will require and Ingleside and the General Contractor will provide, a Traffic Control Plan prior to the start of construction. The criteria for such plan are set forth in DDOT’s Traffic Control Plan Inspection Criteria 11th Edition, October 26, 2010.~~

c. At least ~~six~~four months before the planned start of construction, Ingleside and ~~Whiting-Turner~~the General Contractor 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~~construction. ~~While Ingleside’s Permitting Schedule will be based on the best available information, and Ingleside will make every effort to expedite construction, there may be delays relating to permit processing, unanticipated site conditions, or other issues.~~

Comment [s10]: Analysis is customarily done only for peak periods, when the impact of additional Ingleside-related traffic would be most acute.

Comment [s11]: DDOT approves a Scoping Area for purposes of the traffic control plan, and the community can have an input into that determination. The “level of service” includes all forms of transportation.

Comment [s12]: Ingleside says that it has no access to the data that would be necessary to conduct a survey of all infrastructure, and that information is only available to WASA, Washington Gas, Pepco, etc. It can only agree that it will abide by all requirements related to the size and weight of vehicles that may be driven on the roads.

Comment [s13]: Ingleside reasonably wishes to make provision for the likelihood that the Permitting Schedule will change over time.

- d. At least four months before the planned start of construction, Ingleside and ~~Whiting-Turner~~the General Contractor will prepare and provide to the Task Force a proposed plan for managing the construction traffic into and out of the site (the ~~“Construction-Traffic Control Plan”~~), including). The ultimate approval of the Traffic Control Plan is by DDOT, and the ANC and Ingleside understand that, in evaluating the Plan, DDOT considers other large projects that may be underway, planned, or scheduled to begin during the time frame for the Expansion Project that also may impact the surrounding neighborhood. The Traffic Control Plan shall include 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;~~ (i) 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 possible truck or vehicular access points for the construction site, (including any self-propelled construction equipment); ~~(iii),~~ with a goal of minimizing the impact on streets in the neighborhood surrounding neighborhood and balancing any effects to the extent possible; ~~(ii) 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;~~ (i) 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, N.W. and north or south of Broad Branch Road, N.W.);~~ (iv) 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 surrounding Ingleside at any time for any reason during construction); ~~(v) actions that~~ Whiting-Turner~~the General Contractor~~ 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 for the duration of construction; ~~(vi) (nevertheless, the General Contractor shall be permitted to seek permission from DDOT for certain highly limited activities outside of these hours such as the location of the crane on the site);~~ (v) actions that ~~Whiting-Turner~~the General Contractor will take to require covers on any trucks hauling materials that might be blown out of the truck; ~~(vii) procedures for promptly cleaning any spills on roadways; and~~ (vii) procedures for promptly cleaning any spills on roadways; and ~~(ix) procedures to ensure that all truck drivers are licensed, qualified, and not fatigued; and~~ (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 Control Plan about that Plan will be published on the Expansion Project Webpage and updated as necessary by Whiting-Turner~~the General Contractor and Ingleside.
- e. At least four months before the planned start of construction, Ingleside and ~~Whiting-Turner~~the General Contractor will prepare and provide to the Task Force a plan to accommodate parking and transportation during construction for the

Comment [s14]: DDOT has the best information about other projects – 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 (noted in a “whereas” clause) – that are going to impact traffic and considers those projects in its evaluation of the proposed Traffic Control Plan.

Comment [s15]: Ingleside says that this information is not typically determined and, in any case, would be an estimate. It has agreed in paragraph 3.b. that it will abide by all weight restrictions, as established by DDOT, which are designed to prevent impacts on infrastructure.

Comment [s16]: Because diverting construction traffic from one artery (e.g., Military Road) to another (e.g., Broad Branch Road) simply shifts the possible impact from one group of neighbors to another group of neighbors, the aim will be to minimize the overall impact but to strike a reasonable balance of the impacts among neighbors.

Comment [s17]: District regulations permit work to begin at 7:00 am Monday through Saturday, and it would prolong the construction to eliminate one hour (10%) from each workday.

Comment [s18]: Crane installation is typically done with DDOT’s authorization on a weekend to limit its impact on traffic. Neighbors will be notified of any such after-hours work (paragraph 3.b.(vii)).

expected number of construction workers as well as for Ingleside employees ~~and residents~~ (the “Parking and Transportation Plan”). At a minimum, the plan will include (i) continued use of on-site parking by Ingleside residents; (ii) identification of off-site parking ~~that must be used for use~~ during construction ~~for~~by construction workers, ~~and~~ Ingleside employees, ~~and, if necessary, for Ingleside residents;~~ (ii) a plan for at any time during construction when they are unable to be accommodated on the main site; (iii) 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, and Ingleside employees, and, if necessary, to Ingleside residents; (iv); (v) 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; ~~(vi)~~ a plan for enforcing the off-site parking requirements on construction workers, and Ingleside employees, and, if necessary, on Ingleside residents to prevent their parking on the neighborhood streets ~~(e.g., one potential option may be the use of~~ mandatory identification stickers on construction workers’ or Ingleside employees’ vehicles so that they can be readily identified if they park in the neighborhood surrounding Ingleside and regular security patrols by Ingleside or ~~Whiting Turner~~the General Contractor to identify any non-compliance); ~~(vii)~~ 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)the Ingleside Project Manager 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~~the General Contractor and Ingleside; and (vii) formal adoption of the following commitments for long-term parking management, including the period after construction is complete: (a) all residents and staff of Ingleside will be required to register their vehicles with Ingleside; (b) staff will not be charged for parking; (c) all residents and staff will be required to park on-site in the parking garage except that during the construction phase when employees who cannot be accommodated on site will park in the off-site location; (d) any permanent resident or staff member found not parking on the premises will be reminded of the requirement to park on-site, and additional actions will be taken for any permanent resident or staff member that is found not abiding by the parking policy; (e) visitor spaces will be designated on-site and monitored by management to ensure their use and availability for Ingleside guests to minimize potential spillover onto adjacent streets; (f) any visitor to Ingleside that will be parked for more than one day, or for an overnight visit, will be required to register their vehicles with management and receive a guest pass; (g) all visitors to Ingleside will be notified of the requirement to park on premises in designated spaces; (h) any unregistered vehicles occupying a parking space will be towed after reasonable attempts have been made to contact the owner; (i) any vehicles illegally parked in a fire lane or blocking access will be towed immediately; (j)

Comment [s19]: Ingleside does not anticipate having to have any Ingleside residents park off-site during construction.

Comment [s20]: There may be some times during construction when at least a portion of the work force can be accommodated with parking on-site, but under no circumstances will construction workers or Ingleside employees be permitted to park in the neighborhood.

parking in Ingleside facilities by neighboring institutions will only be permitted at times when it can be demonstrated that all Ingleside residents, staff and visitor needs are met, and a surplus of available parking remains.

Comment [s21]: Ingleside has agreed to these permanent rules that will govern parking, including addressing a concern that Ingleside employees might not be able to park on-site after construction is complete – staff will not be charged for parking.

f. At least four months before the planned start of construction, Ingleside and ~~Whiting-Turner~~the General Contractor 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~~Construction Management Plan”). This plan will include, at a minimum, actions that will be taken (i) to minimize the extent of blasting, earth drilling or piledriving that will be required, to schedule any necessary blasting, earth drilling or piledriving during ~~times that will be least disruptive for Ingleside residents and institutional or residential neighbors~~the hours of 8 am to 4 pm, and to provide timely notice to any affected persons (persons who notified Ingleside or the Task Force that they would like to receive such notice) of any scheduled blasting, earth drilling, or piledriving; (ii) to notify the Task Force of the date and time that the crane will be installed at the site; (iii) 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 to Ingleside residents and the surrounding neighborhood; (v) to limit smoking or break areas to designated areas on site ~~that will not be disruptive for Ingleside residents and the surrounding neighborhood~~; (vi) to require; (v) to require construction workers to consume~~refrain from consuming~~ food only on the site and not in the surrounding neighborhood on nearby residential streets and to remove all food trash daily; ~~(vi) to require that all contracts with subcontractors contain a provision requiring all drivers to be licensed, qualified, and not impaired;~~ (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 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 ~~(ix)~~ to control and mitigate stormwater runoff from the construction site. The ~~Disruption Abatement~~Construction Management Plan will be published to the Expansion Project Website and updated as necessary by ~~Whiting-Turner~~the General Contractor and Ingleside.

Comment [s22]: These specific activities will not be permitted in the early morning or early evening hours.

Comment [s23]: Ingleside had originally deleted the requirement that all drivers be licensed, qualified, and sober because it said it did not have control over the drivers, but it has agreed to require that each subcontract include a provision that it will require all drivers to be licensed, qualified, and not impaired.

Comment [s24]: As noted above, Ingleside says that instead of specifying stormwater management requirements in this Agreement, it references the District’s recently enacted, much more rigorous stormwater management requirements. See paragraph 2.f.

g. At least three months before the planned start of construction, Ingleside and ~~Whiting-Turner~~the General Contractor 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~~Construction Management 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~~Construction Management Plan. Nevertheless, Ingleside and ~~Whiting-Turner~~the General Contractor 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 ~~Construction~~Traffic Control Plan, the Parking and Transportation Plan, the ~~Disruption Abatement~~Construction Management 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~~the General Contractor. The Task Force shall provide one set of comments that a majority of the Task Force has endorsed for each of the Construction Plans. 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.~~The Task Force, Ingleside, and the General Contractor will make reasonable efforts to address any questions or issues that are raised with regard to a particular Plan. Ingleside, in its discretion, will incorporate these comments as practicable. Ingleside will determine whether a change is practicable based on whether it affects the Expansion Project’s cost or schedule, interferes with the permit process in any way, or violates any federal or District laws, policies, practices, or regulations.

Comment [s25]: Ingleside asks that the Task Force present only one set of comments so that it can focus its response.

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.~~

Comment [s26]: Ingleside says that it cannot agree to a procedure that could result in approval by the Referee of unreasonable and even unlawful construction plans. In the end, if a change in a Construction Plan would affect cost or schedule, interfere with permitting, or violate any governmental law, policy, practice, or regulation, it could not be accepted. Ingleside will agree to incorporate Task Force comments to the extent practicable.

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Comment [s27]: The limited communications I have received from residents near the Ingleside house on 29th Street have indicated that a majority of those residents find these conditions – with these modifications – acceptable.

- 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 which alters its 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~~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 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. except that parking directly in front of the 5314 29th Street house or the adjacent vacant lot owned by Ingleside shall be permitted. 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~~Webpage.
- e. After construction of any modifications or changes to the Temporary Facility is complete, Ingleside will accommodate all ~~visitors'~~visitors and ~~staff's~~staff 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. or the adjacent vacant lot owned by Ingleside. Ingleside will not ~~make~~construct 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.~~
- ~~f. Upon issuance of a certificate of occupancy for the building containing the permanent assisted living units, Ingleside will record a covenant on the 5314 29th Street lot and the adjacent vacant lot limiting the use of the home, after the~~

building is vacated by the assisted living residents, and the lot, to uses permitted as a matter of right under the zoning regulations for the R-1-A zone district.

Comment [s28]: This is a key provision for the residents near the 29th Street house, and Ingleside has agree to include it in the ANC conditions.

- g. During the period when Ingleside uses the Temporary Facility to house no more than 10 assisted-living residents, the staff at the Temporary Facility will normally consist of two persons during the day and evening shifts and ~~one person~~ up to two persons during the night shift. 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., ~~... expect that parking directly in front of 5314 29th Street or the adjacent vacant lot owned by Ingleside is permitted.~~ 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, except in emergencies, will be made only between 9:00 am and 5:00 pm.~~ vans. 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~~ the General Contractor 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~~ to the extent feasible to reduce the visibility of 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, N.W. or the Ravine Area. ~~No~~ All construction offices, latrines, material dumps, or project-related vehicles of any kind ~~may~~ will be ~~parked where they may be visible~~ screened with a fence to minimize any visual impacts from Military Road, N.W.
- c. Ingleside and ~~Whiting-Turner~~ the General Contractor 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

Comment [s29]: All project-related facilities and vehicles will be screened from view on Military Road.

Task Force and is not required to be given before the start of the emergency work if there is inadequate time to do so.

Comment [s30]: This covers the instance when the emergency is so dire that it may be necessary to begin work immediately, with no time to give notice first.

- e. To the extent that any blasting, piledriving, or earth drilling is required for the Expansion Project, it will be conducted only between 8:~~30~~00 am and 34:00 pm, Monday through Friday, and consistent with the other provisions concerning blasting, piledriving, and earth drilling outlined in 3(f) above.
- f. Ingleside and ~~Whiting-Turner~~The General Contractor 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.

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, 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~~The General Contractor 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 and fines will be based on the 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~~four months before the start of construction, Ingleside and the Task Force will jointly designate a person who is independent of any interest of Ingleside, the residents or institutions in the neighborhood surrounding 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 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, the ~~Disruption Abatement~~Construction Management 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;
 - ii. The second through fifth “minor” violation of the requirements in the ~~Construction~~Traffic Control Plan, the Parking and Transportation Plan, or the ~~Disruption Abatement~~Construction Management Plan, or these Conditions: \$500 per violation;
 - iii. The sixth or greater “minor” violation of the requirements in the ~~Construction~~Traffic Control Plan, the Parking and Transportation Plan, or the ~~Disruption Abatement~~Construction Management 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~~Construction Management 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): ~~\$5,000~~2,500 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: ~~\$105,000~~ per violation; and
 - vi. Fines will be capped at \$100,000 unless there has been, but if and once the cap is reached, the Referee can impose a pattern of repeated single

Comment [s31]: Ingleside believes fines at this level will be more than sufficient to incentivize compliance with the conditions.

Comment [s32]: Ingleside believes fines at this level will be more than sufficient to incentivize compliance with the conditions.

~~additional \$25,000 penalty fine if continued violations or of knowing, reckless, or intentional occur and the Referee determines that the continued violations demonstrate a continuing pattern of non-compliance.~~

~~vi.vii. For purposes of counting of violations, after any six-month period with no violations, the number of violations will be reset to zero.~~

- d. The Referee’s determination about whether there was a violation of these Conditions will be binding 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); the General Contractor (i.e., a 50/50 basis). If the Referee finds that there is no violation, the parties to this Agreement and the Task Force members may not take a position contrary to that finding.~~
- e. Nevertheless, any fines assessed by the Referee for a violation of these Conditions may not provide a full and fair remedy. Nothing in these Conditions shall preclude any person or institution ~~(other than the ANC)~~ 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 calendar days. Nothing in these Conditions shall preclude Ingleside and/or ~~Whiting Turner~~the General Contractor from seeking 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 [s33]: Ingleside requires that there be a cap on fines because it will not be able to get contractors to agree to an unlimited liability. It understands, however, that there may need to be a mechanism to maintain an incentive to perform, even if the cap is reached. As a very large hammer and incentive, Ingleside has agreed to a one-time \$25,000 fine if non-compliance persists.

Comment [s34]: Ingleside believes that this reset provision will give it an additional lever to incentivize performance because it can tell subcontractors that they can get out of a hole for fines if they can perform without a single fine for a period of six months. This should give subcontractors an additional incentive so that they can reduce their liability to fines.

Comment [s35]: This is consistent with the principle that the Referee’s decision is final.

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;~~

Comment [s36]: Ingleside says it has no way to make these determinations.

- 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;~~

Comment [s37]: This provision is now covered in a whereas clause and in the Traffic Control Plan, paragraph 3.d.

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

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