

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

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

**WHEREAS**, Ingleside proposes to complete construction of the Expansion Project on an accelerated basis, but Ingleside believes this proposed schedule 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 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 30<sup>th</sup> 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.; and

**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 16<sup>th</sup> 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; and

**WHEREAS**, the District Department of Transportation (“DDOT”), in evaluating the Traffic Control Plan for the project, considers other upcoming projects in the area; and

**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; and

**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, and 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, earth drilling, or heavy construction vehicles; and
- f. increased stormwater runoff that may be exacerbated by the addition of new structures or by construction; and

**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; and

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

**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 about the application and proposed Expansion Project; and

**WHEREAS**, the ANC posted on its website and on the Chevy Chase Community Listserv proposed 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 these proposed 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; and

**WHEREAS**, Ingleside has agreed to the inclusion of 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 reasonably accept; and

**NOW THEREFORE**, the ANC expresses its support for the Expansion Project but hereby conditions its 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 and to perform other functions, as provided in these Conditions. 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 be members of the Task Force. The remaining members of the Task Force shall reflect the views of 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 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 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 the General Contractor 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 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; (vi) an alert announcement to notify Ingleside residents and neighbors of any changes or blockages to the normal traffic patterns on Military Road or Broad Branch Road due to the Expansion Project; (vii) an alert announcement to notify Ingleside residents and neighbors of any piledriving, earth drilling or blasting (as further described in the Construction Management Plan, paragraph 3.f. below), and (viii) 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 piledriving, 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 the General Contractor will designate the Ingleside Project Manager (or, in the Project Manager’s absence, an alternate) 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). 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 the Expansion Project Webpage for informational purposes only and will be updated as the outstanding questions or issues are resolved.
- d. The General Contractor will have an employee who is familiar with these Conditions on the site whenever any construction activities are ongoing.

- e. Current contact information for the Ingleside Project Manager will be published on the Expansion Project Webpage.

## 2. Design

- a. The exterior design of the proposed expansion buildings shall be substantially in accordance with the drawings and materials submitted to the BZA on October 6, 2014, as may be 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 29<sup>th</sup> 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 29<sup>th</sup> Street NW for a period of at least 20 years following the 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 Application 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 any portion of Square 2287, Lot 809. Nothing in this paragraph affects Ingleside’s continued use of the currently existing entrance at Military Road, N.W. and 31<sup>st</sup> Street, N.W.
- e. Ingleside represents 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 effective date of the final BZA Order approving Application No. 18898. 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 and implement design additions or modifications that will mitigate stormwater runoff, which may include 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; and (6) installation of drywells or soakage trenches. Ingleside will coordinate its 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.

### **3. Pre-Construction**

- a. At least four months before the planned start of construction, Ingleside and the General Contractor will distribute flyers to or otherwise communicate with all homes or institutions within 200 feet of the boundaries of Square 2287, Lot 809, as identified in Attachment A (the “Designated Area”). Ingleside and 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. The General Contractor will arrange to 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 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 four months before the planned start of construction, Ingleside’s traffic consultant will survey the possible peak period impact that truck traffic may have on the level of service of all intersections within the DDOT-approved Scoping Area (described in Attachment B) and compare those findings to the baseline counts taken earlier this year to determine the 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 11<sup>th</sup> Edition, October 26, 2010.

- c. At least four months before the planned start of construction, Ingleside and 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 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.
  
- d. At least four months before the planned start of construction, Ingleside and 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 "Traffic Control Plan"). This Traffic Control Plan shall contain a component dealing with public transportation as necessitated by the very heavy public transportation - nearing 300 buses per day - either on 30<sup>th</sup> Place, N.W. or Military Road, N.W., and immediately adjacent to the construction site. 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. DDOT also considers the impact of construction vehicles on public transportation, including bus routes that go from 30<sup>th</sup> Place to Military Road, N.W., and vice versa. The Traffic Control Plan shall include at least the following: (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), with a goal of minimizing the impact on streets in the 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; (iii) 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 residential streets identified in Attachment C); (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 neighborhood streets surrounding Ingleside - particularly those streets identified in Attachment C - at any time for any reason during construction); (v) actions that the General Contractor will take to prohibit construction traffic (including hauling or replacing dumpsters) into or out of the site Monday through Saturday before 7:00 am or after 5:00 pm or at any time on Sundays for the duration of construction (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); (vi) actions that will be taken 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; (ix) steps that Ingleside will take to notify DDOT regarding truck or equipment staging areas and prohibitions against construction traffic in the neighborhood streets surrounding Ingleside; and (x) procedures for minimizing construction traffic that may impact religious observances on Rosh Hashanah and Yom Kippur at Temple Sinai. The Traffic Control Plan will be published on the Expansion Project Webpage and updated as necessary by the General Contractor and Ingleside.

- e. At least four months before the planned start of construction, Ingleside and the General Contractor 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 (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 for use during construction by construction workers and Ingleside employees 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; (iv) a plan for communicating the off-site parking requirements to construction workers and Ingleside employees; (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 Nursery School or use of Jocelyn Street, N.W. during religious observances on Rosh Hashanah and Yom Kippur; (vi) a plan for enforcing the off-site parking requirements on construction workers and Ingleside employees to prevent their parking on the neighborhood streets (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 the General Contractor to identify any non-compliance); (vii) a plan for ensuring that Ingleside employees do not park on the neighborhood streets once the Expansion Project is completed, except as provided herein; and (viii) 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 or on Military Road, directly in front of Ingleside property, except that during the construction phase when employees who cannot be accommodated on site or on Military Road 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; and (j) 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. The plan also will provide detailed contact information for 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 the General Contractor and Ingleside.

- f. At least four months before the planned start of construction, Ingleside and 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 “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 the hours of 8 am to 4 pm, to avoid any blasting, earth drilling, or piledriving that would disrupt religious observances during Rosh Hashanah or Yom Kippur at Temple Sinai, and to provide timely notice to any affected persons (i.e., 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; (iv) to limit smoking or break areas to designated areas on site that are located no closer than 25 feet from the property line shared with Temple Sinai; (v) to require construction workers to refrain from consuming food on nearby residential streets and to consume food inside the construction fence when within 25 feet of the property line shared with Temple Sinai. Construction workers shall also 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 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 Construction Management Plan will be published to the Expansion Project Website and updated as necessary by the General Contractor and Ingleside.

- g. At least three months before the planned start of construction, Ingleside and 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 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 Construction Management Plan. Nevertheless, Ingleside and 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. The Traffic Control Plan, the Parking and Transportation Plan, the Construction Management Plan, or the Subcontracting Plan (collectively, the “Construction Plans”) will be consistent with these Conditions and with the BZA’s Order approving the Application. Within 30 calendar days of the delivery of individual Construction Plans to the Task Force, the Task Force will provide its written comments, suggestions, concerns, and objections, if any, to Ingleside and 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, but Ingleside may at any time make reasonable modifications to any particular Construction Plan after consulting with the Task Force to identify any comments, suggestions, concerns, or objections, so long as the modifications are consistent with these Conditions and with the BZA’s Order approving the Application. The Task Force, Ingleside, and the General Contractor will make reasonable efforts to address and resolve 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.

#### **4. Temporary Facility on 29<sup>th</sup> 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 29<sup>th</sup> 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. In the event Ingleside determines not to convert the house for use as the Temporary Facility, then the conditions in subparagraphs (b)-(g) shall not be applicable.

- 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 and upon the termination of the temporary use and prior to sale, Ingleside shall remove not less than three (3) bedrooms and three (3) bathrooms in the Temporary Facility. 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 29<sup>th</sup> 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 29<sup>th</sup> Street, N.W.
- c. Ingleside will notify the residents on the 5300 block of 29<sup>th</sup> Street, N.W., the 2700 and 2800 blocks of Jenifer Street, N.W., the 5300 block of 28<sup>th</sup> Street, N.W., and the 5300 block of 27<sup>th</sup> Street by letter at least four weeks before it plans to begin construction to change or modify the Temporary Facility. Construction workers working on the Temporary Facility will not be permitted to park on 29<sup>th</sup> Street, N.W., Jenifer Street, N.W., Kanawha Street, N.W., Legation Street, N.W., 28<sup>th</sup> Street, N.W., or 27<sup>th</sup> Street at any time during construction to change or modify the Temporary Facility except that parking directly in front of the 5314 29<sup>th</sup> 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 Webpage.
- e. After construction of any modifications or changes to the Temporary Facility is complete, Ingleside will accommodate all visitors and staff parking to this facility in the driveway or the garage at the Temporary Facility or on 29<sup>th</sup> Street, N.W. immediately in front of the Temporary Facility or in front of the adjacent vacant lot owned by Ingleside. Ingleside will not construct any new curb cuts or otherwise alter the current streetscape of 29<sup>th</sup> Street, N.W.
- f. Within thirty (30) days after the issuance of a certificate of occupancy and necessary licenses for the building containing the permanent assisted living units, Ingleside will terminate the use of the Temporary Facility and will record a covenant on the 5314 29<sup>th</sup> Street lot limiting the use of the house, after it 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. Any use of the house by Ingleside after use as a Temporary Facility is terminated and prior to the sale of the house, shall be limited to single-family residential use.
- 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 up to two persons during the night shift. No Ingleside employee staffing the Temporary Facility will be permitted to park on 29<sup>th</sup> Street, N.W., Kanawha Street, N.W., Legation Street, N.W., Jenifer Street, N.W., 28<sup>th</sup> Street, N.W., or 27<sup>th</sup> Street, N.W. except that parking directly in front of 5314 29<sup>th</sup> Street or in front of the adjacent vacant lot owned by Ingleside is permitted. Other construction-related activities (e.g., materials delivery, dumpster/waste disposal, etc.) shall also be limited to the space directly in front of 5314 29<sup>th</sup> Street or in front of the adjacent vacant lot owned by Ingleside. Ingleside will provide a point of contact whom neighbors on 29<sup>th</sup> Street, N.W., Jenifer Street, N.W., 28<sup>th</sup> Street, N.W., or 27<sup>th</sup> Street 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. 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 29<sup>th</sup> Street, N.W. to assure emergency and other access to the house.

- h. Within 90 days of the effective date of the BZA Order, Ingleside will: (i) submit a subdivision application to create a record lot for the adjacent vacant property, and (ii) list and actively market the adjacent vacant lot for sale. Within thirty (30) days of the effective date of the recordation of a subdivision plat creating a buildable lot out of the adjacent vacant property, Ingleside will record a covenant limiting its use to uses permitted as a matter of right in the R-1-A Zone District. Nothing in these conditions shall restrict the right to construct a driveway on 29<sup>th</sup> Street to access a residential house on the currently vacant lot.

## **5. Construction**

- a. Ingleside and 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 to the extent feasible to reduce the visibility of the construction site from Military Road, N.W. or from Temple Sinai.
- 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. All construction offices, latrines, material dumps, or project-related vehicles of any kind will be screened with a fence to minimize any visual impacts from Military Road, N.W. or from Temple Sinai.
- c. Ingleside and 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 Task Force and is not required to be given before the start of the emergency work if there is inadequate time to do so.
- e. To the extent that any blasting, piledriving, or earth drilling is required for the Expansion Project, it will be conducted only between 8:00 am and 4:00 pm, Monday through Friday, and consistent with the other provisions concerning blasting, piledriving, and earth drilling outlined in 3(f) above.
- f. Ingleside and 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. 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 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 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 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 Traffic Control Plan, the Parking and Transportation Plan, or the Construction Management Plan, or these Conditions: \$500 per violation;
  - iii. The sixth or greater “minor” violation of the requirements in the Traffic Control Plan, the Parking and Transportation Plan, or the 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 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): \$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: \$5,000 per violation;
  - vi. Fines will be capped at \$100,000, but if and once the cap is reached, the Referee can impose a single additional \$25,000 penalty fine if continued violations occur and the Referee determines that the continued violations demonstrate a continuing pattern of non-compliance; and

- 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 the General Contractor (i.e., a 50/50 basis). The parties to this Agreement and the Task Force members may not take a public position contrary to the Referee's 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 will be responsible for paying any fines that the Referee assesses within 20 calendar days. Nothing in these Conditions shall preclude Ingleside and/or 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.

Adopted at a duly noticed public meeting of ANC 3/4G on December 8, 2014 by a vote of \_\_\_ to \_\_\_ (a quorum being 4). Commissioner Randy Speck will be designated to represent the Commission at the BZA hearing.

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Jim McCarthy  
Chair, ANC 3/4G

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David Engel  
Secretary, ANC 3/4G