ROBINS, KAPLAN, MILLER & CIRESI LLP

ATTORNEYS AT LAW

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, D.C. 20006-1307
TEL: 202-775-0725 FAX: 202-223-
www.rkmc.com

RICHARD B. NETTLER
(202) 736-2720

February 11, 2005

VIA FACSIMILE (202.619.7420)

Mr. Dave Murphy
National Park Service
1100 Ohio Drive, SW
Washington, D.C. 20242

Re: BZA Application No. 17276

Dear Mr. Murphy:

It is our understanding that you had a telephone conference with our consultants from Greenhorne & O'Mara, Inc., this morning and that you informed them that you remained "on-board" with the proposed site plan originally filed with the application in the above-referenced matter but that you had several concerns with regard to the redesign of the site plan, primarily related to the changes to the southern portion of the Property and the wetlands area. The following addresses each of your concerns and our clients' (Investcorp Holdings, First Capital Trust, LLC and Phillips Park LLC) proposed solutions:

1. Lots Backing onto the Whitehaven Park.

Our clients commit to having covenants, in writing, prohibiting construction within the twenty-five foot (25') rear yard set back on the lots backing onto parkland. Draft language to this effect is as follows:

> All the lots which have rear yards facing onto the Whitehaven Park on the South, or the Glover Archibald Park (or 44th Paper Street) to the East, will be subject to further controls designed to preserve the green buffer to the Parks: No structures of any kind (including, but not limited to repairs to the existing fence or replace the fence with one approved, after consultation with the National Park Service, gazeboes, storage sheds, retaining walls, patios or decks) may be constructed within the 25' rear yard buffer area of the property. To limit the spread of invasive plant species, only trees and shrubs listed on an approved list developed with National Park Service may be planted in this area.

BZA
Case No. 17276
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO. 17276
EXHIBIT NO. 35

Word 45668203.1

We should have a more detailed outline of the architectural guidelines prior to the hearing on Tuesday, February 15, 2005, and we will provide you with a copy of this outline. Such guidelines will be a part of the landscape design guidelines also developed for the site.

As to the completed covenants, as you discussed with my associate, Jeannine Rustad, Esquire, the covenants will be filed with the land records prior to the sale of any of the individual lots. In addition, a homeowners association will be in existence before the sale of the first lot. Finally, we are working on obtaining a copy of guidelines approved in other circumstances as a guide and which you had mentioned to Ms. Rustad as an example of guidelines the National Park Service have supported.

2. Off-Site Storm Water Management Along Foxhall Road.

You have expressed the desire to have off-site storm water runoff along the western border of the Property along Foxhall Road captured and piped along Foxhall Road down to the existing storm water/sewer pipes on Whitehaven Boulevard, rather than through the Property to the proposed storm water management system. Accordingly, our clients will install a catch basin at the southern boundary of the Property and pipe storm water runoff to the existing storm water/sewer facility at Whitehaven.

Additionally, with regard to Foxhall Road, our clients have just learned that the District of Columbia Department of Transportation ("DDOT") has plans to improve Foxhall Road in the near future. Given our clients' intentions to make additional improvements to Foxhall Road adjacent to the Property, including as described herein, our clients will work closely with DDOT in these efforts. We have already spoken with Mr. Patrick Obady (DCDOT) and he will provide our consultants with information regarding the Foxhall Road improvement schedule.

3. Wetlands Area.

With the previous design, a road had been proposed along the southern boundary of the Property with a bridge over the wetlands. We understand that you were satisfied with this design, as it would have a positive effect on the wetlands area and surrounds due to potential excavation of materials that have been dumped in the area over the years. With the new design, to accomplish the improvement of the wetlands area, our clients will work with the U.S. Army Corps of Engineers, which has jurisdiction over the wetlands, to excavate any debris from the wetlands area that may currently be impacting the Whitehaven parkland.

4. On-Site Sanitary-Sewer Connection.

You expressed concern as to whether the existing sanitary-sewer pipe under the 44th Street right-of-way to the east of the Property has degraded to such an extent that it will not be

able to handle the extra capacity from the proposed development. Additionally, if the existing system can handle the extra capacity, you are opposed to the disturbance of any trees within the right-of-way caused by connecting the sewer lines from the Property to the existing line.

With regard to the status of the existing pipe, our clients will work with the District of Columbia Water and Sewer Authority ("WASA") to ensure use of the line for the proposed development is feasible. As suggested, our clients will take a video of this section of the existing pipe and verify with WASA its current condition and ability to handle the extra capacity. Should it be determined that the pipe has degraded and cannot handle the extra capacity, our clients will work with both WASA and NPS to come up with an alternative plan. In the event that it is feasible to connect to the existing line, our clients will work with an ISA certified arborist to minimize any impact on existing, mature, valuable and healthy trees within the 44th Street right-of-way. Jim Shabelski at WASA has informed us that WASA will assume responsibility if the 10" sanitary sewer on 44th Street needs repairs and will report to us on that matter.

5. Off-Site Storm Water Run-Off on W Street.

You indicated concern regarding the recent improvements to W Street completed by the DDOT as the improvements relate to storm water run-off. We and our clients will bring the question as to the outlet for the new catch basins to DDOT's attention.

Mr. Edwin Edokwe/DCDOT told us that the standard practice is that storm water management is provided for the public road improvements including W Street, NW between Foxhall Road and 44th Street. Mr. Edokwe has suggested that you call him if there is any question regarding this matter.

6. On-Site Storm Water Management

You have also indicated a desire to insure that on-site storm water management issues are properly addressed. With regard to on-site storm water management, our clients will also work closely with the National Park Service and provide you with our engineer's information regarding the discharge rate, velocity, and the esthetics of the outfall(s).

We hope that these responses, as well as our clients' intent to continue working with NPS

and the relevant District agencies, satisfies you. Should you have any additional questions or comments, please do not hesitate to contact us.

Sincerely

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler

cc: Joel Lawson, D.C. Office of Planning
D.C. Board of Zoning Adjustment
Alma Gates, ANC 3D
Felipe Paraud