STATEMENT OF EXISTING AND INTENDED USE AND
STATEMENT OF SATISFACTION OF APPLICANT'S BURDEN
OF PROOF FOR SPECIAL EXCEPTIONS AND VARIANCES

Application of the Redevelopment Land Agency Revitalization Corporation, a subsidiary of National Capital Revitalization Corporation, on behalf of the United States Department of Housing and Urban Development, by Fort Lincoln-Pulte Limited Liability Company

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May 4, 2004

This statement ("Statement") is of the intended use of the Property (as hereinafter defined) and an explanation as to the manner in which the application ("Application") of the Redevelopment Land Agency Revitalization Corporation, a subsidiary of National Capital Revitalization Corporation, on behalf of the United States Department of Housing and Urban Development ("Owner"), by the Fort Lincoln-Pulte Limited Liability Company ("Applicant"), meets the specific tests and burden of proof identified in the Zoning Regulations for special exceptions and area variances. This Statement is submitted on behalf of the Applicant by its attorneys, Greenstein DeLorme & Luchs, P.C., by Jacques B. DePuy, Esquire and Stephanie A. Baldwin, Esquire.

Summary of Application. The Application seeks special exceptions pursuant to the Zoning Regulations, 11 DCMR § 3104.1, for permission to (a) develop a townhouse community consisting of two hundred nine (209) residential dwellings within a R-5-A zoning district pursuant to Section 353 and (b) to construct two (2) or more principal buildings on a single subdivided lot under Section 2516. In addition, the Application seeks area variances pursuant to 11 DCMR §3103.2 from the maximum floor area ratio requirements under Section 402, from the maximum lot occupancy requirements under Section 403, from the minimum rear yard depth requirements under Section 404 and from the minimum front yard depth requirements under Section 2516.5(b).

The Owner and Applicant. The Owner, Redevelopment Land Agency Revitalization Corporation, a subsidiary of National Capital Revitalization Corporation, is an independent instrumentality of the District of Columbia created by the District of Columbia in 1998 to stimulate development and economic revitalization. The Applicant, Fort Lincoln-Pulte Limited Liability Company, is the developer of the Property.

Existing Land Use Controls. The subject property is located in the Fort Lincoln area of northeast Washington, D.C. It is bounded by South Dakota Avenue, N.E., 31st Place, N.E., Fort Lincoln Drive, N.E., 33rd Place, N.E. and private property and consists of parcels identified as Square 4325, Lots 38, 39, 40 (the "Property"). The Property is comprised of approximately 22.68

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17192
EXHIBIT NO. 8

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acres (988,169.92 square feet) and is zoned R-5-A. The Property is also part of the residential neighborhood originally planned in the late 1960s as a federal government-financed urban renewal community or "new town" known as the Fort Lincoln Urban Renewal Area.[1] The site is thus subject to the Fort Lincoln Urban Renewal Plan (the "Fort Lincoln Plan"), a guide for the development of Fort Lincoln as a model in-town community.[2] The Fort Lincoln Plan seeks the development of the neighborhood as a mixed-use area including townhouses, high-rise apartments and condominiums, park and recreational areas, retail and office areas, preserved natural areas and historic landmarks.

Existing and Intended Use. The Property is currently undeveloped. The land is heavily wooded and is subject to significant grade changes throughout the site.

Applicant seeks to develop two hundred nine (209) townhomes for sale at market rate prices. The development is to be known as Fort Lincoln New Town Townhomes. The Townhome Project will include the construction of private roadways, open space common areas, playgrounds and surface parking spaces.

Site and Surrounding Area Description. The Property lies on the west side of the Fort Lincoln Urban Renewal Area and is part of a tract of land bounded by South Dakota Avenue, 31st Place, Fort Lincoln Drive and 33rd Place, N.E. This tract also includes the Petersburg Apartments. Across Fort Lincoln Drive, to the east and northeast of the Property, is parkland and the Lincoln Elementary School. Directly to the north across 31st Place are townhomes and apartments. These townhomes and apartment buildings are set back from the roadways and accessed by local streets and interior parking lots. Across South Dakota Avenue, N.E. to the northwest of the Property are residential single family homes and to the southwest are commercial and light manufacturing buildings. To the south and southeast of the Property, across 33rd Place, N.E., is vacant land upon which a shopping center is planned.

Description of Townhome Project. The townhome project will be a community of two hundred nine (209) three-story townhomes ("Townhome Project" or "Project"). Each of the townhomes will offer a garage accessed from the front of the unit. All of the townhomes will have an optional deck and rear extension. Among the townhomes there will be three different models, the Hathaway, the Fairlington and the Silverbrook. Variety among the models will be created by varying color schemes and decorative features including window bays, entry ways, dormers, and gables. The Silverbrook model will have a one-car garage, while the Hathaway and Fairlington models will have two-car garages. The square footage of the Hathaway and Fairlington models will be approximately 2376 square feet, while the Silverbrook model will be approximately 2160 square feet. A homeowners association composed of all townhome owners

[1] The Fort Lincoln Urban Renewal Area can roughly be described as the area of land bounded by South Dakota Avenue, N.E., Bladensburg Road, N.E., the District of Columbia – Maryland line and New York Avenue, N.E.
[2] Adopted on May 19, 1972 and readopted on April 5, 1990 by the National Capitol Planning Commission and approved by the District of Columbia Council on July 26, 1972, and by the Council of the District of Columbia on December 6, 1994.

will be established and will own the common land, private roadways and other infrastructure (such as the water management system) of the Project.

The development will include two major private streets: Patricia Harris Roberts Lane which will be accessed off of 31st Place and Theodore R. Hagans Drive which will circle off of Fort Lincoln Drive at two egress/ingress points. Consistent with the other residential developments in the Fort Lincoln neighborhood, the townhomes near 31st Place and Fort Lincoln Drive are not accessed directly from adjacent roads. Instead, all of the townhomes will front internal private streets and courts and will be grouped in strings of four or five. The site topography prescribes that some units in the same string will be at different elevations resulting with the rear of these lower levels to be partially underground.

Three hundred eighty-eight (388) parking spaces will be provided within the Townhome Project. Of such total, three hundred twenty-seven (327) will be provided as garage spaces and sixty-one (61) will be provided as surfaces spaces. Twelve (12) handicap parking spaces will also be provided.

The Project will also include two playgrounds and a substantial amount of preserved and wooded open space along 31st Place, N.E. and in the southeast corner of the Property, next to the Petersburg Apartments.

Statement of Satisfaction of Burden of Proof for Zoning Relief Sought. The Applicant submits that, based upon (i) its Application and the materials submitted in conjunction therewith, (ii) the evidence to be presented at the public hearing and (iii) other evidence to be submitted subsequent hereto, it will satisfy and comply with the applicable legal standards and burdens of proof for the special exceptions and variances requested.

A. Special Exceptions.

This Application submitted by Applicant will satisfy the requirements of a special exception under Section 3104.1 of the Zoning Regulations. Those regulations require a special exception to be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and to not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps... ."

1. R-5-A Residential Development.

The development of a new residential community in a R-5-A zone district is controlled by Section 353 of the Zoning Regulations. This Section requires that the Application be reviewed by various District of Columbia agencies and comply with the requirements of Section 3104.1 of the Zoning Regulations. The Application will comply with these requirements.

The development will not adversely affect neighboring or nearby property and meets the purpose and intent of the objectives of the Fort Lincoln Plan and the zoning plan. The design of the Townhome Project is in harmony with the surrounding community. The scale, size, orientation and materials of the proposed townhomes are compatible with the other residential developments in the Fort Lincoln neighborhood. Additionally, the Townhome Project will provide a sufficient number of parking spaces to support its residents and their visitors, and the surrounding road network will support the additional traffic generated by the community. The Townhome Project will also provide a substantial amount of open space and wooded areas. Finally, the construction of the Townhome Project will continue the development goals of the Fort Lincoln Plan and bring additional vitality and life to the Fort Lincoln neighborhood.

The Property is zoned R-5-A, which allows densities and building heights that are less than those allowed in most of the surrounding neighborhood which is designated R-5-D. The area is also generally depicted as "moderate density residential" according to the District of Columbia Generalized Land Use Map. According to the Land Use Plan of the Fort Lincoln Plan, most of the surrounding area, as well as the Property, is designated as residential, except for the area across 33rd Place, N.E. which is designated for retail/shopping. The area is also designated as a "housing opportunity area" as indicated by the Generalized Land Use Policies Map. Although C-3-C and C-M-1 zone districts are located across 33rd Place, N.E. and South Dakota Avenue, N.E., respectively, the Property is buffered from these areas by treed inclines and the Petersburg Apartments.

The Townhome Project as developed with strings of four or five single-family row dwellings will be harmonious with the surrounding neighborhood, the underlying zoning and future uses as designated by the Generalized Land Use Maps and the Fort Lincoln Plan. The development meets a general objective of the Housing Element of the District of Columbia Comprehensive Plan which calls for the stimulation of the "production of new housing" by "encouraging housing on suitably located ... properties that are vacant, surplus, underutilized, or unused ... ."[3] Furthermore, the Townhome Project contributes to the Fort Lincoln New Town "housing opportunity area" as designated in the Housing Objectives for Ward 5 under the Comprehensive Plan. (10 DCMR §1609.1(a)(2)).

Thus, the Townhome Project is in harmony with the surrounding community and will not have any adverse impacts on surrounding properties nor the present or future character of the Fort Lincoln neighborhood.

2. Theoretical Lot Development.

The Application satisfies the requirements of a special exception under Section 3104.1 and Section 2516 of the Zoning Regulations. As discussed above, the Townhome Project meets

[3] District of Columbia Comprehensive Plan, adopted in 1984 and 1985, updated in 1998 and 1999, published at Title 10 of the District of Columbia Municipal Regulations.

the requirements of Section 3104.1. Subsection 2516.5 of the Zoning Regulations provides that in cases where buildings have no street frontage, theoretical lots my be authorized so long as certain criteria are met.

The Townhome Project has been designed with all of the townhome lots facing private interior streets and courts. This design is partly influenced by the irregular topography of the site, but is also due to a desire to screen the community from the commercial character of the South Dakota Avenue, S.E. and to build along 31st Place and Fort Lincoln Drive in a manner that is consistent with the neighborhood. As stated previously, the residential development along 31st Place and Fort Lincoln Drive is set back ten feet (10 ft.) from such streets, with the residential units facing interior streets and parking lots. Additionally, the design contributes to the creation of an intimate and quite townhome community.

Theoretical lot developments must satisfy certain specified criteria. Theoretical lots must have a front yard of a size which is equivalent to the required rear yard depth for the zone district in which the building is located (§ 2516.5(b)) (the required rear yard depth in R-5-A District is twenty feet (20 ft.)). Subsection 2516.6 also requires that any means of ingress or egress must be twenty-five feet (25 ft.) in width and cannot be included in the area of any theoretical lot. Additionally under Subsection 2516.6, where there are not at least two (2) entrances or exits from a means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty feet (60 ft.). The Townhouse development meets the requirements of Subsection 2516.6 for the provision of net density. Thus, except for those few lots that do not conform to the open space requirements for front yards under Subsection 2516.5(b) (and for which variance relief is requested), the lots within the Townhome Project meet the requirements of Subsection 2516.5. Accordingly, the Townhome Project site plan meets the applicable standards of Section 2516 for a theoretical let development.

B. Variances.

By this Application, variance relief is requested from the maximum floor area ratio requirements under Section 402, the maximum lot occupancy requirements under Section 403, the minimum rear yard depth under Section 404 and the minimum front yard depth under Section 2516.5(b).[4]

The development standard for the R-5-A zoning district requires a floor area ratio of 0.90, a maximum percentage of lot occupancy of forty percent (40%), and a minimum rear yard depth of twenty feet (20 ft.). Additionally, pursuant to the requirements for theoretical lots, the open space in the front yard must be equivalent to the required rear yard depth in the zone district (twenty feet (20 ft.).

[4] Please refer to the spreadsheet attached to the Zoning Self-Certification Form for information regarding the variances requested for individual lots.

The overall floor area ratio and lot occupancy for the entire Townhome Project as a whole is well within the requirements for a R-5-A zoning district (See chart below). The total area for the site is 988,169.92 square feet, the aggregate floor area is 575,000 square feet and the building footprints for the entire Project is approximately 205,460 square feet. This results in an overall floor area ratio of 0.58, which is significantly less than the 0.90 allowed under Section 402. Additionally, the lot occupancy for the entire site is approximately twenty-one percent (21%), which is approximately half than the maximum lot occupancy allow under Section 403. Therefore, the intent of the Zoning Regulations, in regard to open space and density, are met with the provision of common land areas and private streets within the Townhome Project.

SUMMARY OF MANNER IN WHICH PROJECT AS A WHOLE COMPLIES WITH KEY ZONING REQUIREMENTS

	Zoning Requirements	**Provided:**
Lot Occupancy	40 % maximum	21%
FAR	.9 maximum	.58
Building Height	40 feet maximum/3 stories	All Townhomes are 35 feet/3 stories
Parking	209 (1 for each Dwelling Unit)	388 Parking Spaces (327 Garage Spaces and 61 Surface Spaces)

The variances requested by this Application will satisfy the variance requirements of Section 3103.2 of the Zoning Regulations.

First, the Applicant must show that the Property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition. The Property has a unique topography and exceptional conditions. The most notable and visible characteristic of the Property is its irregular topography. The Property experiences a slope from its high point on Fort Lincoln Drive to its low point along South Dakota Avenue, N.E., which in some places can reflect a drop of seventy-five feet (75 ft.) from the high point to the low point. Furthermore, the pattern of development in the Fort Lincoln neighborhood places residential developments away from major neighborhood roads, such as 31st Place and Fort Lincoln Drive, and instead has structures oriented towards interior streets and parking lots. Additionally, the Property is bounded by South Dakota Avenue, N.E., a heavily commercial and industrial roadway which is unfavorable for directly abutting residential development. Lastly, in order to realize one of the general development objectives of the Fort Lincoln Plan, to preserve

the area's "natural beauty and ecology", the Applicant has set aside wooded areas and open space within the Property. Thus, development on the Property is controlled by its topography and adjacent roadways.

The second prong of the area variance test is that strict application of the Zoning Regulations would result in a peculiar and exceptional practical difficulty. The Applicant submits that the Application complies with this requirement because the unique conditions of the Property result in and cause such practical difficulty. Specifically, the unique conditions of the Property dictate the locations and design of the townhome units.

Because it is undesirable to locate the townhomes directly on South Dakota Avenue and inconsistent with the neighborhood (and very difficult and unsafe because of the topography) to place them directly on 31st Place and Fort Lincoln Drive, interior private streets were planned. The design and positioning of these interior streets were dictated by the Property's unusual topography. Furthermore, consistent with the objectives of the Fort Lincoln Plan, the Applicant sought to preserve wooded areas and natural open spaces on the Property, which further restricted the layout of the interior streets. These factors which prescribed the street plan for the Townhome Project in turn influenced the placement of townhomes and consequently, resulted in the need for the requested variances for FAR, lot occupancy, front yard and rear yard set backs for some of the theoretical lots.

It should be noted that lots which require a rear yard variance, do not require a front yard variance and vice versa. Additionally, the rear yard depth measurements assume that the homeowner will request the ten foot (10 ft.) optional deck and extension to the back of the home. If these additions are not built, the rear yard will be increased by ten feet, which in most cases will result in the required depth of twenty feet (20 ft.). Lastly, the need for variances for front and rear yard depths are compensated by the low density of the Townhome Project which has an overall floor area ratio and lot occupancy that is well within the zoning requirements of the R-5-A district.

Under the third prong of the variance test, relief granted cannot cause substantial detriment to the public good or substantially impair the intent, purpose and integrity of the zoning plan. (§3103.2). No substantial adverse impacts or detriment to the public good will result if the variances are granted. The FAR, lot occupancy and yard variances for the affected lots will not cause a substantial adverse effect or cause detriment to the public good because of the ample amounts of wooded and natural open spaces preserved within the Property by the Applicant, and low density of the entire project.

Furthermore, the Townhome Project will contribute to the development and vitality of the Fort Lincoln Urban Renewal Area. The construction of the Townhome Project will meet the purpose and intent of the objectives concerning the stimulation of housing construction in the Fort Lincoln, pursuant to the Fort Lincoln Plan, the Housing Element of the District of Columbia Comprehensive Plan and the Housing Objectives for Ward 5 Plan. The Comprehensive Plan

designates the Property as a part of a "Housing Opportunity Area." The Fort Lincoln Plan includes support for the "*[c]onstruction of ... [d]welling [u]nits with a wide variety of housing types, densities and bedroom sizes ... with expanded opportunities for home ownership by all income groups*" (§310.04) , and the Ward 5 Plan includes support for objectives which "*[s]timulate the production of new housing, such as in Fort Lincoln, ...to meet the needs of all the ward's residents ,...*" (§ 1608.1(b)) and to "*encourage homeownership*" (§ 1608.1(d)). Additionally, the design of the Townhome Project conforms with the requirements of the R-5-A zone district while also complementing and enhancing the surrounding neighborhood. The Townhome Project will provide sufficient parking for its residents and guests. The surrounding road network will support the additional traffic generated by the community. Thus, the Townhome Project will not have an adverse impact on the neighborhood nor cause any detriment to the public good.

Conclusion. For the reasons set forth above, the Redevelopment Land Agency Revitalization Corporation and Fort Lincoln-Pulte Limited Liability Company, by and through counsel, submits that its Application has satisfied (and will satisfy) all applicable zoning requirements and the requisite burdens of proof for special exceptions and the requested variances and, therefore, should be granted.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

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