

**Niagara County Industrial Development Agency**  
6311 Inducon Corporate Dr. - Sanborn, New York 14132  
(716) 278-8760 Fax (716) 278-8769

**Application for Assistance**

Please answer all questions on the **Niagara County Industrial Development Agency Application and Environmental Assessment Form**. Information submitted as part of this application will not be made public prior to the passage of an Official Action Resolution by the Agency. After such action, this information may be subject to disclosure under the New York State Freedom of Information Act.

Prior to application submission, this project was reviewed with **Lawrence Witul** of the Niagara County Industrial Development Agency and assigned Project Number \_\_\_\_\_.

**I. Company Data**

A. Company Name: Norstar Development USA, L.P. -  
Address: **200 S. Division Street, Buffalo, New York, 14204**

Telephone: **(716)847-1098** Fax: **(716)847-1668**

Email: **lgoodman@norstarus.com**

Website: **www.norstarcompanies.com**

IRS Identification No.: **75-2703932**

Company official completing this application and authorized to respond on behalf of the company:

Name: **Richard L. Higgins** Title: **President**

B. Company Owners, Officers, Directors and Partners: List name and home address, title and other principal business affiliations. (Gary B. Silver, Vice President; Neil Brown, Chairman)

C. Legal Counsel: **Cannon Heyman & Weiss**  
Address: **50 Fountain Plaza, Ste. 301, Buffalo, New York, 14202**

Telephone: **(716)856-1700** Fax: **(716)856-2311**

Email: **gcannon@chwattys.com**

D. Accountant (Firm): **Toski Schaefer & Co.**

Address: **555 International Drive**

Telephone: **(716)634-0700** Fax: **(716)634-0764**

Email: **dzimmerman@toskischaefer.com**

E. Principal Bank of Account: **Bank of America**

F. Type of Business  Corporation  Sub Chapter S  Partnership  
 Sole Proprietorship  Other \_\_\_\_\_

G. Is Company authorized to do business in New York State? Yes  No

H. Principal Stockholders with 5% or more of stock outstanding in the company:

<u>Name</u>	<u>Address</u>	<u>% of Holding</u>
<u>Gary B. Silver</u>	<u>200 S. Division Street, Buffalo</u>	<u>40%</u>
<u>Neil Brown</u>	<u>200 S. Division Street, Buffalo</u>	<u>40%</u>
<u>Richard L. Higgins</u>	<u>200 S. Division Street, Buffalo</u>	<u>20%</u>
_____	_____	_____

I. List subsidiary, associate, and/or affiliated companies of applicant.

Norstar Building Corporation  
Norstar Property Management, Inc.  
Norstar USA, Ltd.  
Norstar Center Court I, Inc.

J. Is the Company or management of the Company now a plaintiff or a defendant in any civil or criminal litigation? Yes  No

Has any person listed above ever been convicted of a criminal offense (other than a minor traffic violation)? Yes  No

Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes  No

*If the answer to any of the above questions is yes, please, furnish details in a separate attachment.*

K. Identify the assistance being requested of the Agency:

- (1)  Bond financing for new project; estimated amount **\$16,000,000**
- (2)  Bond/project refinancing; estimated amount \$ \_\_\_\_\_
- (3)  Lease/sale back
- (4)  Assignment of lease
- (5)  Exemption from Sales Tax; estimated benefit **\$550,000**
- (6)  Exemption from Mortgage Tax; estimated benefit **\$160,000**
- (7)  Exemption from Real Property Tax; estimated benefit \$ \_\_\_\_\_

**\*\*Exemption conforms to the City of Niagara Falls policy.**

If you have selected (5),(6) or (7), indicate whether you are seeking a deviation from the Agency's uniform tax exemption policy: Yes ; No . If the answer is yes, please furnish details in a separate attachment.

(8)  Other (please furnish details in a separate attachment)

**II. Business Data**

A. Company Background

1. Describe when and where was the company established?  
**Norstar Development USA, L.P. was established in 1997 to develop affordable and market rate housing.**
2. Describe the type of business  
**Real estate development**
3. Description of Present Facilities:  
  
Lot size: **3 acres** Number of buildings: **3**  
  
Square footage of facilities: **12,500**  
  
 Owns OR  Rents present facilities
4. What is the present employment of the company?  
  
# Full Time \_\_\_\_\_ # Part Time \_\_\_\_\_  
  
Estimated annual payroll: \$ \_\_\_\_\_
5. Approximate annual sales: \$ \_\_\_\_\_
6. Describe primary markets.  
**New York, Texas, Florida, and Michigan**
7. Provide a brief description of the company and its history.  
**Established in 1997, Norstar Development USA, L.P. was formed to develop affordable and market rate housing. The affordable housing has been concentrated in New York, Florida and Michigan.**

- B. Provide types of business activity and approximate square feet of each for company's present facility:

	<b>Square Feet</b>
<b>Manufacturing/Processing</b>	
<b>Warehousing</b>	
<b>Research &amp; Development</b>	
<b>Commercial</b>	
<b>Retail*</b>	5,000
<b>Office</b>	7,500
<b>Other (specify) rental housing</b>	3,000 units

\* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

- C. Describe principal goods, products and/or services of the company:  
Real estate development and construction.

### III. Project Data

A. Location of Proposed Project:

1. Physical Address of proposed Project Site:

Address: see attached list.

City, Town, Village: Niagara Falls

County: Niagara

2. New York State Empire Zone Tax Incentives.

In addition to financial incentives that the Niagara County Industrial Development Agency can provide with respect to the proposed Project, the Project may also be eligible for New York State tax benefits (sales tax, income tax, and real property tax benefits and credits) under the New York State Empire Zone Program. Empire Zone tax benefits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

**Is the proposed Project Site located in an Empire Zone?**

Yes       No       Unsure

**3. New York State Brownfield Cleanup Program Tax Incentives**

New York State provides for significant refundable New York State tax credits with respect to cleanup and construction (buildings and equipment) costs, real property tax expenses, and insurance costs related to remediating and developing a Brownfield/contaminated property. In addition, New York State provides for a release of liability with respect to such contamination located in, on or emanating from the Brownfield Site. New York State Brownfield Cleanup Program tax credits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

Under the New York Brownfield Cleanup Program, a Brownfield or a Brownfield Site is any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous waste, petroleum, pollutant, or contaminant (collectively, "contaminants").

**Is the proposed Project Site located on a site where the known or potential presence of a contaminant(s) is complicating the development/use of the property?**

Yes\*       No       Unsure

\* Environmental remediation is underway. Please see summary regarding remediation.

**Has a Phase I Environmental Assessment been prepared or will one be prepared with respect to the proposed Project Site?**

Yes       No       Unsure

**Have any other studies or assessments been undertaken with respect to the proposed Project Site that indicate the known or suspected presence of contamination that would complicate the site's development?**

Yes       No       Unsure

**B. Existing Project Facilities:**

1. Parcel Size: **22.134 Acres** OR \_\_\_\_ ft. x \_\_\_\_ ft.

2. Are there existing buildings on the Project site? Yes ; No .

a. If yes, indicate the number of buildings on the site: Also, please briefly identify each existing building and indicate the approximate size (in square feet) of each such existing building:

Building Description	Size

b. Are the existing buildings in operation? Yes ; No . If yes, describe present use of present buildings:

Building	Use
<b>N/A</b>	

c. Are the existing buildings abandoned? Yes ; No . About to be abandoned? Yes ; No . If yes, describe:

\_\_\_\_\_

d. Attach photograph of present buildings.

3. Identify present landowner. **Center Court / LLC**

4. Present zoning of site: **NPD, Multi-family residential**

Are there any variances or special permits affecting the Project site?

Yes  No .

If yes, list below and attach copies of all such variances or special permits.

\_\_\_\_\_

5. Provide Tax Map (section/block/lot) number(s): **144.10-2-5; 144.10-2-11; 144.32-2-16; 144.32-3-1; 144.32-3-2; 144.32-3-18; 144.32-3-19; 144.32-3-20.**

6. List current assessed value: \$ **vacant land under construction.**

List current annual property tax payment: **NCIDA PILOT - \$34,626**

7. Identify school district pertaining to Proposed Project location:  
**City of Niagara Falls**

**C. Proposed Project Facility and Equipment**

1. Does part of the Project consist of the acquisition or construction of a new building or buildings? Yes ; No .

If yes, indicate number and size of new buildings:

**115 units, 59 residential buildings and community center; units range in size from 745 gsf to 1452 gsf**

2. Does part of the Project consist of additions and/or renovations to existing buildings located on the Project site? Yes ; No .

3. If yes, indicate the buildings to be expanded or renovated, the size of any expansions and the nature of expansion and/or renovation:

\_\_\_\_\_

3. Describe the principal uses to be made by the Company of the building or buildings to be acquired, constructed or expanded:

**Residential**

4. Will machinery and equipment be acquired and installed?

New:  No  Yes Type \_\_\_\_\_

Used:  No  Yes Type \_\_\_\_\_

Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:

5. Project Use

- a. What are the principal products to be produced at the Project?  
**Rental housing for low and moderate income households.**

5. Project Use

b. What are the principal activities to be conducted at the Project?

	%		%
Warehousing		Manufacturing	
Processing		Pollution control	
Office		Research & Development	
Retail*		Commercial	
Recreational		Other: rental housing	100%

\* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

c. Does the Project include facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities? Yes ; No .

**If yes, please see Addendum A attached hereto.**

d. Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from one area of the State of New York to another area of the State of New York? Yes  No  If yes, please explain:  
\_\_\_\_\_

e. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes  No

If yes, please provide detail: \_\_\_\_\_

i. If the answer to either question (d) or question (e) is yes, indicate whether any of the following apply to the Project:

(1) Is the Project reasonably necessary to preserve the competitive position of the Company or such Project Occupant in its industry?  
Yes  No

If yes, please provide detail: \_\_\_\_\_



- (2) Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes  No

If yes, please provide detail: \_\_\_\_\_

6. Is this a single phase or multi-phase project?  Single  Multi

Phase I Activities: **115 rental units and 15 homeownership units**

Phase II Activities: **100 rental units and 16 homeownership units (future)**

Phase III Activities: \_\_\_\_\_

- D. Utilities and services presently serving site. Provide name of utility provider.

Gas:	<b>National Fuel</b>	Size:
Electric:	<b>National Grid</b>	Power:
Water:	<b>City of Niagara Falls</b>	Size:
Sewer:	<b>City of Niagara Falls</b>	Size:
Other (specify):		

- E. What is your project timetable? (Provide dates)

- Start date: acquisition or construction of facilities: **December 2007**
- Completion of project facilities: **December 2010**
- Project occupancy – starting date of operations: **April 2010**

- F. Have any contracts or purchases been made, committed and/or executed toward the project?  No  Yes,

If yes, please provide detail: **Construction on the site began in February 2008, but was suspended due to extenuating site issues that have been resolved.**

- G. Has any work toward the completion of the project been initiated?  No  Yes,

If yes, please provide detail: **same as above**

- H. Will the project require any government actions, permits or clearances (other than IDA requirements)? If yes, please provide the following details:

Action	Issuing Agency	Date of Issuance
<b><u>All other governmental actions have been taken.</u></b>		

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- I. Include any site plans, drawings or blueprints that have been developed.
- J. Does the Company intend to lease or sublease more than 10% (by area or fair market value) of the Project? Yes ; No . If yes, please complete the following for each existing or proposed tenant or subtenant:

Sublessee name: \_\_\_\_\_  
Present Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer's ID No.: \_\_\_\_\_

Sublessee is:  Corporation       Partnership       Sole Proprietorship

Relationship to Company: \_\_\_\_\_

Percentage of Project to be leased or subleased: \_\_\_\_\_%

Use of Project intended by Sublessee: \_\_\_\_\_

Date of lease or sublease to Sublessee: \_\_\_\_\_

Term of lease or sublease to Sublessee: \_\_\_\_\_

Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project?  
Yes       No .

**If yes, please provide on a separate attachment:** (a) details, and (b) the answers to questions III(D)(6)(c) through (f) with respect to each such sublessee.

K. Describe the reasons why this project is necessary and what effect it will have on your company: **Center Court is a severely distressed, publicly assisted housing complex building in 1949 owned by the Niagara Falls Housing Authority. The Authority does not have the funds to modernize the units. A redevelopment is necessary to save these affordable housing units. If a redevelopment plan had not been pursued, the affordable housing units would have been lost to the community. Such loss would have been a severe negative impact on the neighborhood, including commercial and retail business activities.**

#### IV. Employment Impact

- A) Will Niagara County contractors and / or sub contractors be utilized for the construction project?      Yes       No .
- B) What is the estimated number of construction jobs to be created at the project site from

Niagara County: **112** Erie County \_\_\_\_\_, Other Areas \_\_\_\_\_,

- C) Indicate below the number of people presently employed at the Project site and the number that will be employed at the Project site at end of the first and second years after the Project has been completed (Do not include construction workers). Also indicate below the number of workers employed at the Project site representing newly created positions as opposed to positions relocated from other project sites of the applicant.

TYPE OF EMPLOYMENT				
	PROFESSIONAL OR MANAGERIAL	SKILLED OR SEMI- SKILLED	UNSKILLED	TOTALS
Present Full Time	1	1		2
Present Part Time				
Present Seasonal				
First Year Full Time	2	3		5
First Year Part Time				
First Year Seasonal				
Second Year Full Time				
Second Year Part Time		2		2
Second Year Seasonal				

#### V. Project Cost Data

- A. Give breakdown of project costs:

<b>Land</b>	<b>\$0</b>
<b>Buildings: Acquisition</b>	<b>\$</b>
<b>Renovation</b>	<b>\$</b>
<b>New Construction</b>	<b>\$21,093,980</b>
<b>Demolition</b>	<b>\$50,000</b>
<b>Utilities and Road</b>	<b>\$2,708,526</b>
<b>Site work and preparation</b>	<b>\$3,406,511</b>
<b>Acquisition of machinery &amp; equipment</b>	<b>\$0</b>
<b>Installation</b>	<b>\$0</b>
<b>Architectural and engineering fees</b>	<b>\$805,000</b>
<b>Legal fees</b>	<b>\$455,000</b>
<b>Interest during construction</b>	<b>\$630,000</b>
<b>Other</b>	<b>\$7,020,585</b>
<b>TOTAL</b>	<b>\$36,169,602</b>

Have any of these expenditures been incurred to date?  No  Yes If yes, identify:  
Approximately \$9,023,868

B. Summary of Financing (please see construction and permanent sources summary)

<b>Total Project Costs</b>	<b>\$36,169,602</b>
<b>Amount of Bond or Leaseback financing</b>	<b>*\$16,000,000</b>
<b>Other – gov’t, deferred fee</b>	<b>\$8,365,496</b>
<b>Equity</b>	<b>\$11,804,106</b>

\* Volume cap of \$18 million is being sought from the State

C. Will any part of the project be financed with funds of the company?  No  Yes, If yes, please provide detail:

Item	\$
<b>Deferred Fee</b>	<b>\$626,083</b>

D. Will other forms of government financing be used to undertake the project:  No  Yes  
If yes, please provide detail:

Program	Amount	Status
<b>HUD HOPE VI</b>	<b>\$9,728,248</b>	<b>Approved</b>
<b>DHCR TCAP, City</b>	<b>12,643,425</b>	<b>Approved</b>

E. Have financial institutions or potential bond purchasers been approached?  No  Yes  
If yes, please provide detail: **JP Morgan is the bond purchaser**

F. List capital expenditures of the company: Norstar Development USA, L.P.

	Past 3 years	Next 3 years
<b>Real Property</b>	<b>\$6,000,000</b>	<b>same</b>
<b>Buildings</b>	<b>\$65,000,000</b>	<b>same</b>
<b>Equipment</b>	<b>\$</b>	<b>\$</b>

VI. Financial and Feasibility Data

A. Describe the need or demand for the product or services to be provided as a result of the project: **As previously mentioned, without the redevelopment of Center Court low and moderate income residential units would be lost to the community. Such loss would also cause economic harm to the surrounding community and businesses.**

B. Has the company utilized bond financing before?  No  Yes.

If yes, describe when, where and amount: Erie County IDA, \$8 million and \$ million;  
Oswego County IDA, \$5 million; Buffalo Municipal Housing Authority \$7 million; North  
Hempstead Housing Authority; \$5 million; Albany IDA, \$1.8 million.

- C. Provide any marketing, economic and/or feasibility studies that have been developed, particularly for tourist destination facilities.
- D. The following information will be required by the Agency and returned once an action of the Agency has been taken:
  - 1. Financial statements for the last three (3) years;
  - 2. Projections for the next three (3) years including Balance Sheets, Profit and Loss Statements, Cash Flow Statements by quarters, etc.

**VII. Financial Assistance Expected From The Agency**

A. Tax Benefits.

- 1. Is the applicant requesting any real property tax exemption in connection with the Project that would not be available to a project that did not involve the Agency?  
 Yes  No

If yes, is the real property tax exemption being sought consistent with the Agency's Uniform Tax Exemption Policy? Yes  No

- 2. Is the applicant expecting that the financing of the Project will be secured by one or more mortgages? Yes  No

If yes, what is the approximate amount of financing to be secured by mortgages?  
 \$ \_\_\_\_\_

- 3. Is the applicant expecting to be appointed agent of the Agency for purposes of avoiding payment of N.Y.S. Sales Tax or Compensating Use Tax? Yes  No .

If yes, what is the approximate amount of purchases which the applicant expects to be exempt from the N.Y.S. Sales and Compensating Use Taxes? **40% of the estimated construction budget.**

- 4. What is the estimated value of each type of tax-exemption being sought in connection with the Project? Please detail the type of tax-exemption and value of each exemption.

- a. N.Y.S. Sales and Compensating Use Taxes: **\$550,000**
- b. Mortgage Recording Taxes: **\$\$160,000**
- c. Real Property Tax Exemptions: **\$based upon City PILOT**
- d. Other (please specify):  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

5. Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency's Uniform Tax-exemption Policy?  
Yes  No .

If yes, please explain how the request of the applicant differs from the Agency's Uniform Tax-Exemption Policy: \_\_\_\_\_

### VIII. Representations By The Applicant

The applicant understands and agrees with the Agency as follows:

- A. Job Listings. In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.
- B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
- C. Annual Sales Tax Filings: In accordance with Section 874(8) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the applicant.
- D. Annual Employment Reports: The applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site.
- E. Absence of Conflicts of Interest: The applicant has received from the Agency a list of the members, officers and employees of the Agency. No member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described: **none**



## CERTIFICATION

(to be executed by the principal of the applicant and acknowledged by a notary public)

- I. **Linda Goodman** (name of chief executive officer or other authorized representative of applicant) deposes and says that he/she is the **Executive Director** (title) of **Norstar Development USA, L.P.** (name of corporation or other entity) named in the attached Application (the "Applicant"); that he/she has read the foregoing Application and knows the contents thereof, and that the same is true to his/her knowledge.
- II. The grounds for deponent's belief relative to all matters in the Application which are not stated upon his/her own personal knowledge, are investigations which deponent has caused to be made concerning the subject matter of the Application, as well as information acquired by deponent in the course of his/her duties as an officer of and from the books and papers of said corporation or other entity.
- III. As an officer of the Applicant deponent acknowledges and agrees that the Applicant shall be and is responsible for all costs incurred by the Agency and all legal counsel for the Agency, including its general counsel and/or bond/transaction counsel, whether or not the Application, the proposed project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the proposed project described herein and (C) any further action taken by the Agency with respect to the proposed project; including without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.
- IV. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:
  - (a) The sum of \_\_\_\_\_ as a non-refundable processing fee, plus the sum of \_\_\_\_\_ if Agency assistance in retaining professionals is requested, to be paid upon submission of the Application;
  - (b) Unless otherwise agreed to by the Agency, an amount equal to \_\_\_\_\_ of the total project costs to be paid at transaction closing;
  - (c) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the

Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project; with all such charges to be paid by the applicant at the closing.

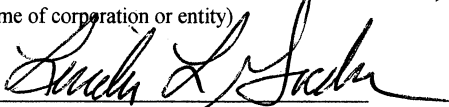
- V. By executing and submitting this Application, and in the event the closing does not occur, the Applicant further covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel:
- (a) If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, the Applicant shall pay to the Agency, its agents, or assigns, upon presentation of an invoice, a sum of one and one quarter percent (1.25%) of (i) the amount of bond financing requested; or (ii) the amount on which the financial assistance for the proposed project was determined, and upon presentation of an invoice, all actual costs involved with respect to the Application, including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel; or
  - (b) If the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback transaction, then upon presentation of an invoice, all actual costs involved with respect to the Application, up to that date and time, incurred by the Agency including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- VI. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections IV and V are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- VI. The cost incurred by the Agency and paid by the Applicant, including bond/transaction counsel fees and the Agency's general counsel's fees and the processing fees, may be considered as a costs of the project and included in the financing of costs of the proposed project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.
- VI. The Applicant is aware and acknowledges that according to the New York Public Officer's Law, Article 6, Freedom of Information, the public has the right to request information about the project and the Applicant, and that in accordance with Public Officer's Law Article 7, all meetings of the Agency are open to the public.

The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations made in this Application and, if applicable, made in Addendum A, when acting hereon and hereby represents

that the statements made herein and therein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading.

**NORSTAR DEVELOPMENT USA, L.P.**

(name of corporation or entity)



**LINDA L. GOODMAN**

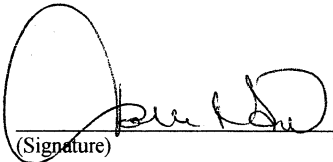
(name of officer)

**EXECUTIVE DIRECTOR**

(title)

NOTARY

Sworn to before me this 12<sup>th</sup> day of January, 2010.

  
\_\_\_\_\_  
(Signature)

**TINA M. NASTRI**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
**QUALIFIED IN ERIE COUNTY**  
**My Commission Expires March 17, 2012**