

CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY
37 Church Street
Cortland, New York 13045

Dated December 19, 2008

To Whom It May Concern:

**Re: New York State Sales or Use Tax Exemption
Cortland County Industrial Development Agency
Clocktower Project**

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), you have requested a letter from Cortland County Industrial Development Agency (the "Agency"), a public benefit corporation duly established pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 77 of the 1974 Laws of New York, as amended, constituting Section 902 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project (the "Project") located at 112-122 and 124-126 Main Street in the City of Cortland, Cortland County, New York (the "Project Site").

Clocktower Holdings, LLC (the "Company") has applied to and been approved for financial assistance from the Agency in the matter of completion of the Project on the Project Site. The Project includes the following: (A)(1) the acquisition of an interest in an approximately 0.4 acre parcel of land (the "Land") located at the corner of Main Street and Tompkins Street in the City of Cortland, Cortland County, New York; (2) the construction on the Land of a building to contain approximately 21,000 square feet of space (the "Facility") and (3) the acquisition and installation therein and thereon of certain materials, furnishings, machinery and equipment (the "Equipment"), all of the foregoing to constitute a mixed use building containing retail, commercial and residential space to be operated by the Company (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of December 1, 2008 (the "Lease Agreement") by and between the Company and the Agency. Please be advised that on December 19, 2008, the Lease Agreement was fully executed by the Company and the Agency pursuant to which the Agency appointed the Company as agent of the Agency to

acquire, construct and install the Project Facility, said appointment being intended by the Agency to be retroactive to December 1, 2008.

This agency appointment includes the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents, and to such other parties as the Company chooses including, but not limited to, the individuals and entities described on Schedule A attached hereto. The Company and each of the individuals and entities described on Schedule A attached hereto are sometimes referred to herein as an "Agent" and collectively, as the "Agents". The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents, and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any, or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

It is our opinion that the Agents may make project purchases of materials to be incorporated in the Project and machinery and equipment constituting a part of the Project and purchases or rentals of supplies, tools, equipment or services necessary to acquire or install the Project and, with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York, if the following procedures are observed:

1. Purchases must be billed or invoiced by the vendor to the Agent as agent for the Agency (e.g., "AGENT as agent for Cortland County Industrial Development Agency") and identify the date of delivery and indicate the place of delivery.
2. Payment must be made by the Agent, acting as agent, directly to the vendor from a special project fund of the payor.
3. Deliveries must be made to the Project Site, or under certain circumstances (such as where the materials require additional fabrication before installation on the Project Site or for storage to protect materials from theft or vandalism prior to installation at the Project Site) deliveries may be made to a site other than the Project Site, providing the ultimate delivery of the materials is made to the Project Site. Where delivery is made to a site other than the Project Site, the purchases must be billed or invoiced by the vendor to the Agent as agent of the Agency, identify the date and place of delivery, the Agency's full name and address and the Project Site where the materials will ultimately be delivered for installation.

Pursuant to Section 874(8) of the Act, the Company, as agent of the Agency, must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency. The penalty for failure to file such a statement under Section 874(8) of the Act shall be the removal of authority to act as an agent for the Agency.

This letter shall serve as proof of the existence of an agency contract between the Agency and each Agent for the SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND AN AGENT IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency, nor any Agent as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter received by any vendor or seller to the Agent as agent for the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law Section 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect sales and use tax on purchases or rentals of such materials, supplies, tools, equipment or services by the Agency through its agent, the Agent.

THIS LETTER SHALL BE IN EFFECT UNTIL NOVEMBER 30, 2009.

In the event you have any questions with respect to the above, please do not hesitate to contact Thomas Gillson, Executive Director, of the Agency, at (607) 756-5005.

Very truly yours,

CORTLAND COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Paul F. Slowey, Chairman

SCHEDULE "A"

LIST OF APPOINTED AGENTS¹

1. _____
2. _____
3. _____
4. _____

¹ For each Agent appointed by the Company, a Form ST-60 must be completed and filed with NYS Department of Taxation and Finance indicating such Agent of the Company