
AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY

AND

CAROLINA EASTERN-VAIL, INC.

PAYMENT IN LIEU OF TAX AGREEMENT

CAROLINA EASTERN-VAIL, INC. PROJECT

Dated as of December 1, 2010

Affected Tax Jurisdictions:

County of Cayuga

City of Auburn

Auburn City School District

THIS **AGREEMENT** (the "**Agreement**") dated as of the 1st day of December, 2010, by and between the **AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY**, a public benefit corporation duly existing under the laws of the State of New York with offices at Memorial City Hall, 24 South Street, Auburn, New York 13021 (the "**Authority**") and **CAROLINA EASTERN-VAIL, INC.**, a New York corporation with offices at 53 Columbus Street, Auburn, New York 13021 (the "**Company**").

WITNESSETH:

WHEREAS, pursuant to Title 15 of Article 8 of the Public Authorities Law of the State of New York (the "**State**") as amended from time to time; as enacted into law by Chapter 915 of the Laws of 1969 of the State (the "**Act**"), the Authority was created and empowered to, among other things, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, civic and research facilities and facilities for use by a federal agency or medical facility, among others, and thereby advancing the job opportunities, health, general prosperity and economic welfare of the people of the City of Auburn and improving their medical care and standard of living; and

WHEREAS, the Act further authorizes the Authority to lease its projects, to charge and collect rent therefore, for the purpose of carrying out any of its corporate purposes; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Authority was created for the benefit of the City of Auburn and the inhabitants thereof; and

WHEREAS, the Authority proposes to acquire a leasehold interest in the Facility described below pursuant to a certain lease agreement dated as of October 1, 2010 (the "**Lease Agreement**") and lease the Facility back to the Company pursuant to a certain leaseback agreement dated as of October 1, 2010 (the "**Leaseback Agreement**"); and

WHEREAS, Carolina Eastern-Vail, Inc., for itself or on behalf of an entity to be formed (the "**Company**"), has requested the Authority's assistance with a certain project (the "**Project**") consisting of approximately 7.726 acres of land located at 53 Columbus Street (the "**Land**") improved with 4 buildings totaling approximately 36,040 square feet in size (the "**Buildings**") and the installation of certain equipment therein for use as a production and storage facility for fertilizers (the "**Equipment**", and collectively with the Land and the Buildings, the "**Facility**"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law (the "**RPTL**") of the State of New York, the Authority is exempt from the payment of taxes imposed upon real property and improvements owned by it, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Authority and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Authority

for the benefit of the County of Cayuga (the "**County**"), City of Auburn (the "**City**"), and the Auburn City School District (the "**School**" and collectively with the County and the City, the "**Affected Tax Jurisdictions**").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

1.1 Representations and Warranties of the Company. The Company does hereby represent and warrant as follows:

(a) The Company is a corporation duly organized and validly existing under the laws of the State and by proper action of its board of directors, has been duly authorized to execute, deliver and perform this Agreement.

(b) The Company is authorized and has the organizational power to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and to the Company's knowledge, the fulfillment of and compliance with the provisions of this Agreement will not in any material respect conflict with or violate or constitute a material breach of or a default under) the terms, conditions or provisions of any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in any material respect in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally, or by general principles of equity.

(c) No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required

as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

1.2 Representations and Warranties of the Authority. The Authority does hereby represent and warrant as follows:

(a) The Authority has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) The Authority presently intends to acquire a leasehold interest in the Facility and to lease the Facility back to the Company.

(c) The Authority is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Authority has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) The Authority is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Authority is a party or by which the Authority is bound.

ARTICLE II

COVENANTS AND AGREEMENTS

2.1 Tax Exempt Status of Facility.

(a) The Authority acknowledges that that, as of the date hereof, the Company anticipates receiving a one hundred percent (100%) credit from the State for real property taxes paid by the Company with respect to the Facility pursuant to the New York State Empire Zone Program (the "**EZ Program**"). Prior to the PILOT Effective Date (as defined below), the Facility shall not be entitled to any exemption from real property taxes by virtue of the Authority's leasehold interest in the Facility, or pursuant to this Agreement or any other agreement between the Authority and the Company, but shall be subject to taxation in accordance with 6.7 of the Leaseback Agreement.

(b) Pursuant to Section 2326 of the Public Authorities Law and Section 412-a of the RPTL, the parties hereto understand that, after the PILOT Effective Date, and for so long thereafter as the Authority shall hold a leasehold in the Facility, the Facility shall be assessed by the Affected Tax Jurisdictions as exempt upon the first assessment rolls of the Affected Tax

Jurisdictions prepared subsequent to the PILOT Effective Date. The Company shall, promptly following the PILOT Effective Date, take such action as may be necessary to ensure that the Facility shall be assessed as exempt upon the assessment rolls of the Affected Tax Jurisdictions prepared subsequent to the PILOT Effective Date, and, for so long thereafter as the Authority shall hold a leasehold interest in the Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Affected Tax Jurisdiction.

(b) The parties hereto understand that the tax exemption extended to the Authority by Section 2326 of the Public Authorities Law and Section 412-a of the RPTL does not entitle the Authority to exemption from special assessments, special district charges, special ad valorem levies (including, but not limited to, fire district charges, pure water charges and sewer charges). Pursuant to the Leaseback Agreement, the Company will be required to pay all such charges and assessments lawfully levied and/or assessed against the Facility.

2.2 Agreement to Make Payments. After the PILOT Effective Date and for the remaining term of the Lease Agreement, the Company agrees to pay to the Authority, as a payment in lieu of taxes, the amounts hereinafter provided.

2.3 Valuation of the Facility. The value of the Facility (the "**Value**") for purposes of determining payments in lieu of taxes due hereunder shall be the product of multiplying (i) the assessed value of the Facility on the PILOT Effective Date (subject to any change to such assessed value that may result from a proceeding, the Company may assert to challenge such assessed value in such tax assessment year), by (ii) the most recently published ORPTS equalization rate for the City (not to exceed 100%).

2.4 Amount of Payments in Lieu of Taxes. Beginning with the fiscal tax years of the Affected Tax Jurisdictions following the PILOT Effective Date, the payments in lieu of taxes to be paid by the Company to the Authority shall be computed by (a) multiplying the Value of the Facility determined pursuant to Section 2.3 above by (b) the actual tax rate in effect at time of such payment; all multiplied by (c) the applicable percentage set forth in Schedule "A".

2.5 Valuation of Future Additions to the Facility.

(a) If there shall be a future addition to the Facility that would constitute assessable property under the RPTL, which addition is constructed or added in any manner after the date of this Agreement, the Company shall notify the Authority of such future addition ("**Future Addition(s)**"). The notice to the Authority shall contain a copy of the application for a building permit, plans and specifications, and any other relevant evidence that the Authority may thereafter request. Upon the Authority's receipt of the notice, the parties hereto shall use their best efforts to agree upon additional payments in lieu of tax for such Future Additions ("**Additional Payments**") and shall amend this Agreement to provide for such Additional Payments.

(b) If the parties are unable to agree on such Additional Payments, the value of the Future Additions for purposes of determining the amount of real property taxes owed by the Company shall be determined by the Assessor pursuant to the RPTL. The Assessor shall

establish the Assessed Value of the Future Additions. The Company shall be entitled to prompt written notice of the initial establishment of such Assessed Value for the Future Additions pursuant to the RPTL.

(c) Commencing on the first fiscal tax year following the date on which any Future Additions shall be completed, the Company agrees to make Additional Payments to the Authority with respect to such Future Additions, such Additional Payments to be computed by multiplying (x) the Assessed Value of such Future Additions determined pursuant to subsection (b) above by (y) the tax rate or rates that would be applicable to such Future Additions if the Authority did not hold a leasehold interest in the Future Additions, and (z) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company if the Authority did not hold a leasehold interest in such Future Additions.

(d) If the Company shall disagree with the determination of Assessed Value for any Future Additions, the Company shall have such rights, remedies and recourses available to it as would lawfully be available to the Company if the Authority did not hold a leasehold interest in the Facility and therefore not exempt upon the assessment rolls of the Affected Tax Jurisdictions. If a lesser Assessed Value is determined by a court of competent jurisdiction and the Additional Payment is thereby reduced, any excess payment shall be refunded to the Company together with interest pursuant to RPTL 726 or, in the Authority's sole discretion, such excess payment shall be applied as a credit against the next succeeding Additional Payment.

2.6 Statements. The Authority agrees to submit to the Company periodic statements specifying the amount and due date or dates of the payments due hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed. Each such statement shall coincide with the tax bills set by the Affected Tax Jurisdictions and shall be for that portion of the payment due in that year as apportioned to the taxes otherwise payable to each such entity as set forth in Section 2.6 below.

2.7 Method of Payment. All payments by the Company hereunder shall be paid to the Authority in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

2.8 Agreement to Pay Proportionate Share. The Authority covenants and agrees that it shall make payment to each of the Affected Tax Jurisdictions its pro rata share of the payments received from the Company pursuant to Section 2.2 and 2.5(c) hereof in the same proportion to the amount of real property tax and other taxes which would have been received by each Affected Tax Jurisdiction had the Facility not been exempt due to the status of the Authority.

2.9 Period of Benefits. The tax benefits provided for herein shall commence as of the first taxable status date following the Authority's receipt of written notice from the Company of a Negative State Action (the "**PILOT Effective Date**"). This PILOT Agreement shall expire on the earlier of (a) December 31st of the calendar year following the commencement of the tenth (10th) PILOT Year, ten (10) PILOT Years from the PILOT Effective Date; or (b) December 31, 2026. In no event shall the Company be entitled to receive tax benefits relative to the Facility for

more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. After the PILOT Effective Date, the Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the RPTL. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto. In no event shall the Company be required to pay taxes and payments required by this Agreement for the same period. The term "**Negative State Action**" shall mean any action or occurrence that actually results or may result in the Company's judgment, in the failure of the Company to receive a one hundred percent (100%) credit for real property taxes paid by the Company with respect to the Facility pursuant to the EZ Program. The term "**PILOT Year(s)**" means the following successive tax fiscal years (i) each July 1 – June 30 fiscal year for the City of Auburn and Auburn City School District; and (ii) each January 1 – December 31 fiscal year for the County of Cayuga following the PILOT Effective Date.

2.10 Interest. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, as provided in Section 6.7(d) of the Leaseback Agreement.

2.11 Company to Furnish Subleases. The Company agrees to furnish the commissioner of assessments of each Affected Tax Jurisdiction an annual report, certified by the Company, and if requested by each Affected Tax Jurisdiction, certified to each Affected Tax Jurisdiction by certified public accountants, of the area subleased in the Facility and to furnish copies of each and every sublease within ten (10) days of the execution of said sublease.

2.12 Changes in Law. To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

2.13 Credit for Taxes Paid.

(a) It is understood and agreed that should the Company pay in any calendar year to the Affected Tax Jurisdictions any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or in the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (i) sales and use taxes and (ii) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including, but not limited to water, solid waste, sewage treatment or sewer or other rents, rates and charges), then the Company's obligation to make payments in lieu of taxes for such calendar year to the Authority hereunder shall be reduced by the amounts which the Company shall have so paid in such calendar year, but there shall be no cumulative or retroactive

credit as to any payment in lieu of taxes due to the Authority or as to any payment in lieu of taxes due to the Authority in any other calendar year.

(b) If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the Authority prior written notice of its intention to claim any credit pursuant to the provisions of this Section 2.13, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.2 hereof.

2.14 Employment Requirements. Beginning on the PILOT Effective Date and continuing throughout the term of this Agreement, the Company agrees to maintain Average Employment at the Facility of at least nine (9) individuals. If in the second year after the PILOT Effective Date, the Company fails to maintain Average Employment of at least nine (9) employees, the payments required to be made by the Company for the following year pursuant to Section 2.2 hereof shall be, to the extent permitted by law, the lesser of (a) the amount due under this Agreement divided by a fraction the numerator of which is the Average Employment by the Company at the Facility for such prior year and the denominator of which is the fixed employment requirement of nine (9); or (b) the taxes that would be payable if the Facility were owned by the Company and not by the Authority, giving credit for any exemption which would otherwise be available to the Company pursuant to Section 485-b or any other applicable exemption under the RPTL. For purposes of this Section 2.14, "**Average Employment**" shall mean the number of employees employed by the Company during the calendar year in question who are regularly employed at least forty (40) hours per week. For purposes of the above required, any part-time job shall constitute fifty percent (50%) of a full-time employee.

ARTICLE III

TRANSFER OF THE FACILITY

3.1 Transfer to Company. In the event that the Facility is transferred from the Authority to the Company (the Lease Agreement is terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Article II herein, or this Agreement terminates and the Facility is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination. In the event that the Facility is transferred from the Authority to the Company, and/or the Company is ineligible for a continued tax exemption as provided in this Agreement, the Company shall be entitled to a credit towards the amount of City, School, and County taxes that the Company is required to pay for the remaining portion of the applicable tax year after the effective date of such transfer or ineligibility. The credit shall be equal to that portion of the amount previously paid pursuant to this Agreement that is allocable to the period of time after such transfer or ineligibility. The provisions of this section shall survive

the termination or expiration of the Leaseback Agreement and this Agreement.

3.2 Change in Control. The Company may sell, sublease, or otherwise transfer the Facility or any part thereof or permit a transfer of more than 49% of the total ownership interest in the Company only with the prior written consent of the Authority, which consent shall not be unreasonably withheld, provided that the transferee assumes all of the Company's covenants, stipulations, promises, agreements and obligations contained in this Agreement. Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be assigned by the Company to whomever the Leaseback Agreement is assigned pursuant to the terms of the Leaseback Agreement, and in such event, the Company shall be released from all obligations hereunder from the date of such prospective assignment.

3.3 Recapture. The Company shall be required to repay a portion of the total benefits received from the Authority, prorated in accordance with the Authority's Uniform Tax Exemption Policy as in effect on the date hereof, upon the occurrence of any of the following events after the PILOT Effective Date: (a) complete liquidation of the Company's business operations; (b) transfer of a substantial number of jobs outside the City of Auburn meaning fifty percent (50%) or more of the Company's Average Employment; (c) sublease of the Facility in violation of the Lease Agreement; or (d) an unauthorized sale, disposition, transfer or change in control with respect to the Facility or the Company. The payments required under 2.14 or 3.3 hereof for any non-compliance shall be paid by the Company to the Authority within thirty (30) days after the Company receives a bill or invoice therefor. However, if the Company has made a good faith effort to achieve the Employment standards or to avoid the conditions relative to recapture, during the respective periods of time applicable thereto, the Company may apply in writing for relief from the obligation for repayment of taxes abated and/or the possible termination of the Lease Agreement, Leaseback Agreement and this Agreement, based on a showing of unforeseen economic circumstances, fiscal hardship or other good cause. Application for relief from the repayment obligation and/or possible termination shall be made to the Authority, which shall determine in its sole discretion, what, if any, relief shall be granted. Relief may include, but shall not be limited to, relief in whole or part from the repayment obligation and possible termination, or an alternate schedule for maintaining the employment level standard.

ARTICLE IV

ADMINISTRATIVE FEE

4.1 Administrative Fee. On the date that the Authority acquires a leasehold interest in the Facility, the Company agrees to pay the Authority a fee of Ten Thousand Nine Hundred Twelve Dollars and 00/100 (\$10,912.00) to offset the indirect expenses incurred by the Authority in administering the Project and for the other corporate purposes of the Authority, together with all legal fees and disbursements incurred by the Authority with respect to the Project.

ARTICLE V

EVENTS OF DEFAULT

5.1 Events of Default. Any one or more of the following events shall constitute "**Events of Default**" hereunder: (a) failure of the Company to pay any amount due and payable by it pursuant to this Agreement and continuance of said failure for a period of ten (10) days after written notice to the Company stating that such payment is due and payable; (b) failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed, other than as referred to in paragraph (a) above and Section 2.12 herein, and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied, or, if such current condition or agreement is capable of cure, but cannot reasonably be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and prosecute same to a cure within sixty (60) days; (c) any warranty, representation or other statement by or on behalf of the Company contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement; and (d) the occurrence and continuance of any events of default under the Lease Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Authority and/or the Affected Tax Jurisdictions may have at law or in equity, the Authority and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Authority with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default.

5.2 Remedies upon Default. Whenever any Event of Default shall have occurred with respect to this Agreement, the Authority may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default.

5.3 Recording of Documents. Whenever any Event of Default shall have occurred with respect to this Agreement, the Authority may upon sixty (60) days notice to the Company, record any documents necessary in the appropriate county clerk's office terminating the Lease Agreement. The Company hereby appoints the Authority as its attorney in fact to execute and deliver all documents necessary for such termination, and recording thereof in the county clerk's office shall constitute delivery thereof so long as notice thereof, including a copy with notice of recording, is sent to the Company.

5.4 Payment of Attorneys Fees and Expenses. If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Authority should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefore, pay to the Authority the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

5.5 Cumulative Remedies; Waiver and Notice.

(a) No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) In order to entitle the Authority to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

ARTICLE VI

MISCELLANEOUS

6.1 Assignment. Except as otherwise provided in the Leaseback Agreement, no portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed. Except as otherwise provided in the Leaseback Agreement, the Company shall continue to be liable for obligations hereunder notwithstanding such assignement.

6.2 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

6.3 Notices. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Authority: Auburn Industrial Development Authority
Memorial City Hall
24 South Street

Auburn, New York 13021
Attn.: James Dacey, Chairman

With a Copy to: Hancock & Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13202
Attn.: Richard W. Cook, Esq.

To the Company: Carolina Eastern Vail, Inc.
53 Columbus Street
Auburn, New York 13021
Attn.:

With a Copy to: Nixon Peabody, LLP
1100 Clinton Square
Rochester, New York 14604
Attn.: Jonathan S. Penna, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

6.4 Governing Law; Jurisdiction. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Cayuga County, New York.

6.5 No Recourse. All covenants, stipulations, promises, agreements and obligations of the Authority contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any member, officer, agent, servant or employee of the Authority in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent, servant or employee, as such, of the Authority or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Authority, either directly or through the Authority or any successor public benefit corporation or political subdivision or any person so executing this Agreement. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by any such member, officer, agent, servant or employee of the Authority or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent, servant or employee under or by reason of the obligations,

covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

6.6 Limited Obligation. The obligations and agreements of the Authority contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Auburn, New York, and neither the State of New York nor the City of Auburn, New York shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Authority, but rather shall constitute limited obligations of the Authority payable solely from the revenues of the Authority derived and to be derived from the lease, sale or other disposition of the Facility.

6.7 Limitation on Authority Action. Notwithstanding any provision of this Agreement to the contrary, the Authority shall not be obligated to take any action pursuant to any provision hereof unless (i) the Authority shall have been requested to do so in writing by the Company; and (ii) if compliance with such request is reasonably expected to result in the incurrence by the Authority (or any of its members, officers, agents (other than the Company), servants or employees) of any liability, fees, expenses or other costs, the Authority shall have received from the Company security or indemnity satisfactory to the Authority for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs; or (iii) unless such action by the Authority is required by law.

6.8 Amendment. This Agreement may not be effectively amended, changed, modified, altered or terminated unless such amendment, change, modification, alteration or termination is in writing and, in the case of any amendment, change, modification or alteration of this Agreement, unless the Company and its successors and assigns shall assume in writing the obligations of such amended, changed, modified or altered Agreement.

6.9 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Authority, the Company and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of the Authority and the Affected Tax Jurisdictions.

6.10 Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

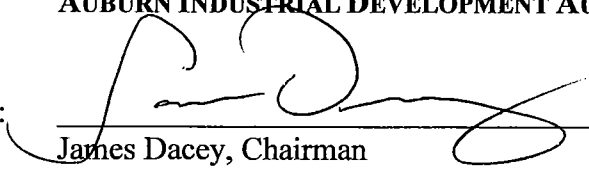
6.11 Entire Agreement. This Agreement is intended to constitute the entire Agreement and to supersede all prior agreements, whether oral or written, between the parties with respect to the subject matter hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AUBURN INDUSTRIAL DEVELOPMENT AUTHORITY

By:


James Dacey, Chairman

CAROLINA EASTERN-VAIL, INC.

By:

Peter Vail, Jr., President

SCHEDULE "A"

Amount of Payments in Lieu of Taxes

<u>PILOT YEAR</u>	<u>APPLICABLE PERCENTAGE</u>
1	0%
2	10%
3	20%
4	30%
5	40%
6	50%
7	60%
8	70%
9	80%
10	90%
11	And thereafter 100%