

COMPREHENSIVE AGREEMENT

between

THE NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

and

VASPACK, INC., d/b/a ADVENTURE LINKS

**FOR OPERATION OF AN OUTDOOR ENVIRONMENTAL
AND
EXPERIENTIAL EDUCATION FACILITY AND RELATED FACILITIES
AT
HEMLOCK OVERLOOK PARK**

August __, 2009

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COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT ("Agreement") is entered into as of the ___ day of August 2009 ("Effective Date"), by and between **THE NORTHERN VIRGINIA REGIONAL PARK AUTHORITY** (the "Authority", "Park Authority", "Owner", or "NVRPA") and **VASPACK, INC., doing business as Adventure Links**, a Virginia corporation ("AL" or "Operator").

Recitals

R-1. On February 16, 2006, the Authority adopted its Guidelines for Implementation of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA"), as amended, Va. Code 56-575.1, et seq. (the "Guidelines").

R-2. On January 23, 2009, after making written findings justifying use of competitive negotiation procedures, the Authority, acting pursuant to the PPEA and its Guidelines, issued a request for proposals (the "RFP") for operation of an outdoor environmental and experiential education facility and/or related facilities ("the Project"). A copy of the RFP is attached hereto as **Exhibit A**.

R-3. On March 9, 2009, the Authority received initial proposals in response to the RFP, including that of Operator. The Authority posted the initial proposals it received pursuant to the PPEA. The Authority subsequently received Step 2 proposals from offerors on May 21, 2009. Copies of Operator's proposals are attached hereto as **Exhibits B and C**.

R-4. Copies of the proposals were provided to Fairfax County, and the Authority has determined that the Project serves the public purposes of the PPEA based upon the criteria in Va. Code § 56-575.4.C.1-3.

R-5. After conducting negotiations and finding that the purposes of the PPEA would be met, the Authority selected Operator as the private entity with which to finalize a comprehensive agreement for the Project contemplated by the RFP.

R-6. The parties have now finalized a comprehensive agreement consistent with the PPEA and the Guidelines, the terms and conditions of which are set out in this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **General Scope.** Under this Agreement, the Authority is granting AL an approximately five-year license, subject to options to renew by mutual agreement, to use the "Site", a portion of the Authority's Hemlock Overlook Regional Park (the "Park") in Fairfax County, Virginia, and its Improvements, to operate an outdoor environmental and experiential education facility. AL will maintain the Site and the Improvements and will make certain capital improvements. Uses of the Site and Improvements by AL will be limited to ones consistent with educational and recreation programs appropriate for a park of this nature and that are approved by the Authority. AL will charge fees to users of the Site participating in its programs as allowed by this Agreement. AL will pay the Authority annually either a minimum payment or specified percentages of AL's annual gross revenues.

3. **Definitions.** Capitalized terms not otherwise defined herein shall have the meanings set forth below.

(a) "AL Adjusted Gross Revenues" means any and all payments, cash, cash equivalents, monies, and/or other items from any source received by or for the benefit of AL in

exchange for any goods or services provided by AL before any deductions for any expenses but excluding

- (1) amounts paid by AL to the Authority for catering services.
- (2) amounts of customer discounts and customer refunds that actually reduce AL's revenues.
- (3) amounts paid to AL for merchandise and pass-through services, subject to the following restrictions:
 - a. Only a maximum of \$30,000 per year may be deducted from AL's gross revenues for merchandise and pass-through services under paragraph 3(a)(3).
 - b. AL shall provide the Authority a detailed accounting of AL's amounts to be deducted under paragraph 3(a)(3) for merchandise and pass-through services, including the actual costs to AL of such merchandise and services and the amount of any mark-up by AL to their actual costs.
 - c. AL's mark-up to its actual costs for merchandise and pass-through services that may be included as part of the deduction from AL's gross revenues under paragraph 3 (a)(3) shall not exceed 5% of AL's actual cost for such merchandise and services.
 - d. Pass-through services eligible to be included under paragraph 3(a)(3) shall be limited to transportation expenses and rental of facilities and/or equipment not located at the Site.

The calculation under this Agreement of AL's Adjusted Gross Revenues for 2009 shall begin on the Effective Date of this Agreement but shall also include (i) any AL gross revenues in 2009 from the use of the Park that were generated by AL under special permit prior to the Effective Date of this Agreement; and (ii) any AL gross revenues received

prior to the Effective Date of the Agreement for programs services to be provided after the Effective Date.

(b) "Codes and Standards" means any and all local, state or federal rules, regulations, ordinances, codes, laws, orders, or requirements applicable to the Site, its Improvements, or AL's activities on or relating to the Site or Park.

(c) "Force Majeure Event" means an event not the fault of AL, its employees, its licensees, or its invitees, such as a hurricane, tornado, or forest fire, that significantly damages the Site and its Improvements and causes AL's actual gross revenues during a year to fall below 50% of the gross revenues projected in its proposals.

(d) "Improvements" means the structures, roads, trails, utilities, parking lots, and other infrastructure on the Site. The Improvements currently on the Site are listed at **Exhibit D** hereto.

(e) "Site" means that portion of the property owned by the Authority at the Hemlock Overlook Regional Park ("Park") in Fairfax County, Virginia, that is described in **Exhibit D** hereto as being for AL's primary use. Other areas of the Park, such as trails, remain open to general public use and are not part of the Site.

4. Grant of License.

(a) The Authority hereby grants to AL, and AL hereby accepts, a license ("License") for AL's use (i) of the Site and its Improvements for the purposes allowed by this Agreement, and (ii) for use of other areas of Hemlock Overlook Regional Park not included within the Site, such as trails, along with the general public, subject to the following terms and conditions:

(1) The License is subject to AL meeting all of its obligations under this Agreement and to the Agreement being in effect and not terminated.

(2) The term of this License is the same as the term of this Agreement, including any extensions thereto. When the Agreement terminates, the License also simultaneously terminates, subject to a limited license for a period not to exceed 30 days for AL to remove all its property from the Site and to have all its employees remove their property from the Site.

(3) Unless otherwise agreed in writing or specified by the Authority, all Improvements remain the property of the Authority, including without limitation, any structures, fixtures, or infrastructure added by AL, and any other fixed improvements made by AL to the Site or its Improvements during the course of the License.

(4) AL shall commit no waste as to the Site or its Improvements. Any alterations to the Site or its Improvements, or additions to any Improvements, including without limitation, alterations or erections of structures, are subject to the Authority's prior review and approval, which the Authority may withhold or condition in its sole discretion. The Authority may require such information as it deems desirable for its review to consider whether to approve any alterations or additions and has discretion as to what conditions it may impose on AL as to any alterations or additions.

(5) AL shall not introduce or allow to be introduced onto the Site any materials subject to the Resource Conservation and Recovery Act ("RCRA"), any hazardous substances, any asbestos, or any regulated asbestos-containing materials. AL shall not store oil, gasoline, diesel, or other petroleum products at the Site except as follows:

(a) gasoline and diesel fuel in the fuel tanks of operable vehicles at the Site;

(b) with the prior written approval of the Authority, fuel in fuel tanks that meet all Codes and Standards, that are acceptable to the Authority and Fairfax County's Fire Marshall, and that are kept at a safe distance from any Improvement being used by persons and from any tents.

AL shall immediately remediate at its own expense any release at the Site of any petroleum products to the satisfaction of the Authority.

(6) AL shall not use or allow the Site to be used for any unlawful purpose or in a manner that would constitute a nuisance or otherwise interfere with the peace and enjoyment of other park users or neighboring property owners.

(7) The Authority shall have the right, but not the duty, to inspect the Site and Improvements and AL's operations and maintenance and monitor AL's practices at any time to ensure that AL's activities are acceptable to the Authority in accordance with this Agreement and that the Site and its Improvements are properly maintained and operated.

(8) AL's use of parts of the Park that are not part of the Site shall be limited to uses allowed the general public, shall be subject to the same restrictions applicable to the general public, and shall not interfere with general public use.

(9) To the extent permitted by applicable law, AL may allow up to 20 of its employees to live on the Site, either in existing dormitories or in a tent area established by AL. This tent area may have no more than 10 two-person tents. AL shall obtain the Authority's prior review and approval of such tent area, including without limitation, its location and design. Notwithstanding the preceding three sentences, with the Authority's prior written approval, AL

may have more than 20 staff members living temporarily at the Site not to exceed three times a year for AL staff training sessions. The Authority may, in its sole discretion, direct AL to have its employees cease living in the tent area and/or cease living on the Site, in which case AL shall ensure that its employees cease living in the tent area, or at the Site, as applicable, within 30 days, or sooner if required by law, and that the tents are removed.

(10) AL shall be responsible for all utility costs at the Site associated with AL's operations, including without limitation, water, septic, trash removal, electric, telephone, and propane. AL shall have utilities, including without limitation, electric and telephone, placed in its name for payment by it within 14 days of the Effective Date of this Agreement.

(11) **Exhibit E** hereto includes a list of furniture, fixtures, equipment, and materials ("FF&E") to be left at the Site for AL's use during this Agreement. At the end of this Agreement, AL is to return the FF&E to the Authority in substantially the same condition, fair wear and tear excepted. The Authority makes no warranty as to the FF&E and tenders it to AL in "as-is" condition. AL shall be solely responsible for ensuring that any of the FF&E AL chooses to use is safe to use.

(12) AL shall provide the improvements indicated at **Exhibit G** hereto during the years indicated therein.

(13) The Authority makes no representations or warranties as to whether AL's intended uses of the Site and Improvements are consistent with Codes and Standards. AL has sole responsibility to ensure that any uses it makes of the Site and Improvements are consistent with Codes and Standards.

(14) AL shall not have or allow buses at the Site except as follows:

(a) Buses accessing the Site shall be limited to school buses or activity buses with capacities of no greater than 35 persons, subject to the exception allowed by 14(b).

(b) Coach buses shall be permitted to access the Site up to 15 times per year provided that (i) prior written permission is granted by the Authority, (ii) AL provides advance notice of the coach bus use to the surrounding neighborhood, and (iii) AL arranges for an escort vehicle to meet the bus before it reaches Yates Ford Road and to lead the bus into the Site.

(c) No more than 4 buses may be garaged at the Site at any given time. AL shall be permitted to garage no more than 10 buses at Bull Run Marina. All garaged buses at both the Site and Bull Run Marina must be actively used by AL for programming and shall be fully licensed and operational.

(15) AL shall not store any inoperable vehicles at the Site.

(16) AL shall not store any recreational vehicles at the Site.

(17) AL shall not store any boats or watercraft at the Site, except canoes, rafts, and kayaks, without the Authority's written permission.

(18) AL shall ensure that vehicles and equipment do not block access by the fire department or emergency vehicles.

(19) AL shall not allow trash to accumulate at the Site and shall promptly cause removal of all trash, with recyclable items to be recycled to the maximum extent practicable.

(20) AL shall not allow any unsanitary or unhealthy conditions at the Site.

(21) AL shall keep both existing gates to the Site locked from dusk to dawn every day; provided, however, that the gates may be temporary unlocked after dusk and before dawn to allow entry or exit of AL staff staying at the Site and of AL clients participating in activities at the Site.

(b) At the termination of the License, at the Authority's sole option, title to any fixed improvements made by AL will convey to the Authority, or such fixed improvements as the Authority directs will be removed and the area returned to its prior condition at AL's sole expense.

(c) During the term of the License, AL bears the sole risk for damage, destruction, or loss of any of the Improvements and FF&E, as well as of its own equipment. AL shall repair any damage to Improvements during the term of this Agreement and replace any Improvements and FF&E that are destroyed or lost, regardless of the cause, unless caused solely by the negligence or intentional misconduct of the Authority or any officer, employee, agent or separate contractor of the Authority.

5. Operations.

(a) AL shall have control of the means and methods of providing programs and activities at the Site, and the Authority shall have no responsibility for those means and methods. Use and operation of the Site shall be at the sole cost and expense of AL.

(b) Subject to the Authority's review and approval, which shall not be unreasonably withheld, AL may charge user fees as specified at **Exhibit C**, p. 4, for persons coming to the Site for AL's programs; provided, however, that a 10% discount shall apply to any school group coming from schools located within any of the Authority's six member jurisdictions (i.e., Fairfax, Loudoun, and Arlington Counties and the Cities of Alexandria, Fairfax and Falls

Church). User fees may be increased to account for inflation and/or costs associated with the Site and AL's programs, with the prior approval of the Authority, which approval shall not be unreasonably withheld.

(c) AL shall not, without the prior written approval of the Authority, which may be withheld or conditioned in the Authority's sole discretion, exceed the following limits as to the number of persons on the Site:

(1) Site usership shall be restricted to no more than 250 persons per day and 30,000 user days per year. Exceptions to daily usership limits may be allowed up to five times per year for special events provided that the Authority grants prior written approval and AL coordinates the event with community leaders.

(2) On an annual basis, the amount of user-days of programming at the Site serving corporate and business groups shall be limited to no more than 40 percent of the total user-days of programming provided. The remainder of user-days shall be reserved for school, youth and community groups.

(d) AL shall provide appropriate staffing at the Site, including without limitation, having at least one staff member at the Site at all times; provided, however, that on federal holidays when no clients are on the Site and after AL has appropriately secured the Site and its Improvements from damage, with all gates locked, AL may leave the Site unattended by any of its staff.

(e) AL agrees that, during the course of this Agreement, it shall not knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

(f) AL represents and warrants that none of its employees at the Site has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. If the Authority so requests, AL shall provide written certifications from each of its employees that the employee has not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. AL shall promptly notify the Authority in writing if any of its employees becomes convicted.

(g) AL shall have appropriate background checks performed for each and every one of its employees who will work at the Site before that person comes to the Site, including (i) a Sex Offender and Crimes Against Minor Search; and (ii) a Criminal History Record Search. AL shall update these background checks annually and shall promptly report to the Authority any instances when a background check reveals unfavorable information. Upon the Authority's request, AL shall provide the Authority the results and allow copying of them.

(h) AL's activities at the Site shall not interfere with other uses of the Hemlock Overlook Regional Park.

(i) All uses of the Site and Improvements are subject to the Authority's prior review and approval. AL's use of the Site and Improvements shall be limited to use as an outdoor environmental and experiential education facility as indicated in AL's proposals, which are at **Exhibits B & C** hereto, and shall not be used for any other purpose without the Authority's express written agreement. AL's programs shall include environmental education programs that meet the Commonwealth of Virginia's Standards of Learning requirements. AL shall ensure that annual usage of the Site meets or exceeds 70% of the usage projected at Appendix D, pages 7-8, of **Exhibit C** hereto.

(j) AL shall ensure that it, its employees, and all invitees and licensees on the Site comply with the rules and regulations of the Authority as they now exist and as they may be amended.

(k) AL shall comply and shall ensure that its employees comply with all safety laws and rules, including without limitation OSHA and its implementing regulations.

(l) AL shall be responsible for safety at the Site, ensuring that the Site and its Improvements are in safe condition, ensuring that all furniture, fixtures, and equipment used are safe, and that all activities of persons on the Site or related to the Site are conducted in a safe manner.

(m) AL shall ensure that its employees are properly trained, managed, and supervised to provide the programs it will offer at the Site.

(n) AL shall undertake reasonable efforts to offer continuing service to past users of Hemlock Overlook Regional Park and to market its programs available at the Site, including without limitation, those measures indicated at pages 13-14 and Appendix, pages 27-28, of its May 21, 2009, Step 2 Proposal (**Exhibit C**). Beginning not later than July 1, 2011, (1) AL shall refer, and shall cause its employees to refer, to the Site and its programs as "Adventure Links at Hemlock Overlook Regional Park"; and (2) all AL's marketing materials related to the Site and its programs, including but not limited to letterhead, internet, sites or websites, e-mails, brochures, signage, employee uniforms, and bus painting, shall use the name "Adventure Links at Hemlock Overlook Regional Park" and, shall, except on employee uniforms, also contain the Authority's leaf and heron logo and the words "Adventure Links in cooperation with the Northern Virginia Regional Park Authority." AL shall submit all marketing materials for any programs at the Site for Authority review and approval, which shall not be unreasonably

withheld. AL's employees shall answer telephones at the Site with a greeting that includes the identification "Adventure Links at Hemlock Overlook," and automated messages, such as answering machines, shall include the same identifying phrase in their greetings.

(o) AL shall endeavor to use the Authority's food and catering services for activities at the Site when reasonable to do so. AL shall share use of the lodge kitchen at the Site with the Authority. AL shall store and maintain its kitchen utensils separately from those of the Authority and its food and catering services. Only authorized AL and Authority staff may use the kitchen.

(p) AL shall notify the Authority immediately of any incidents of death, bodily injury requiring hospitalization, or damage or loss of property exceeding \$1,000 occurring at the Site. AL shall promptly provide the Authority any additional information that the Authority requests relating to such incidents.

(q) AL's initial operational plans for its use of the Site are subject to review and approval by the Authority. Thereafter, operational plans will be reviewed every year by a committee composed of up to three representatives of AL, one of whom shall be its president, and up to three representatives of the Authority, one of whom shall be the Operations Director or his designee.

(r) The Authority may, in its discretion, revoke approval for AL to conduct particular activities at the Site, in which case AL shall promptly cease such activities.

(s) AL shall provide a high level of service and value to the public in the programs it provides at the Site. AL shall meet the Quality of Service Accreditation Standards set forth by the American Camp Association or shall make diligent efforts to gain accreditation from the Association for Experiential Education.

(t) AL shall limit persons staying at the Site overnight to no more than 164, not including staff. The Authority may, in its sole discretion, approve an increase in this number, but only if such approval is granted in advance in writing, and the Authority may limit or condition its approval upon such terms as it determines in its sole discretion. Overnight stays shall be in the dormitory buildings or in such tent area, as the Authority, in its sole discretion, allows in writing. AL shall obtain the Authority's prior review and approval of such tent area, including without limitation, its location and design. This tent area for overnight stays is an addition to the tent area that is the subject of paragraph 4(a)(9) of this Agreement. The Authority may in its sole discretion, direct AL to cease using this tent area, in which case AL shall cease use of the tent area, and remove the tents within 30 days, or sooner if required by law. Even with Authority permission, AL shall have no more than 16 eight-person tents and three 12-person teepees in such tent area for overnight stays.

6. Term.

The initial term of this Agreement shall be from its Effective Date through December 31, 2014, unless sooner terminated pursuant to its terms and conditions. Subject to any limitations under applicable law, extensions of this Agreement for additional five-year terms may be exercised by mutual agreement of the parties, with commitments to expenditures for improvements for extension years to be agreed upon by the parties prior to the extension.

7. Maintenance.

(a) AL shall maintain the Site and all its Improvements in good and clean order and condition and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, it being the intention of the parties that such repairs and maintenance shall be appropriate for the maintenance of the Site and

its Improvements in their present condition but are not required to restore the Site and its Improvements to their original condition. When used in this paragraph, the term "repairs" shall include all necessary replacements, renewals, alterations, additions, betterments and any work required as a condition to the continued use of the Site and Improvements or any work required by any order of any public entity, including without limitation, Fairfax County, or its officers or agents. All repairs made by AL shall be at least equal in quality and class to the original work.

(b) The Authority shall establish and maintain a Hemlock Overlook Major Maintenance Fund Account ("Fund"). This Fund shall be held by the Authority and shall be used solely for maintenance, repair, and renovations of existing buildings, systems, infrastructure, and equipment for the Site. AL and the Authority each shall make \$10,000 annual major maintenance escrow contributions to this Fund beginning on the first business day following January 1, 2010, and the first business day following each January 1st thereafter. The Fund may be allowed to accrue to a maximum value of \$125,000. In order to be considered a Major Maintenance Expense payable from this Fund, the cost of the maintenance, repair and/or renovation item must exceed \$2,000. To help determine proper use of this Fund, the Authority will inspect Site facilities annually by November 30. The Authority shall look at existing conditions of all buildings, infrastructure, and Authority equipment and will provide recommendations for areas that need repair or equipment that needs to be replaced and/or other suggestions for improvements. At the annual inspection, the Authority and AL will determine what projects involving Major Maintenance Expenses payable from the Fund are needed for the Site for the upcoming year. If the Authority and AL disagree, the Authority's decision shall control. The Authority shall submit Fund status reports, consisting of the Fund balance, disbursements, and planned expenditures, to AL on a quarterly basis. The amount to be

deposited by AL into this Fund annually is in addition to, and not in lieu of, improvements it is otherwise obligated to make under paragraph 4(a)(12) of this Agreement and its other obligations under this Agreement. Within 90 days after termination of this Agreement, including after all extensions, if AL has satisfied all its obligations under this Agreement, it shall be entitled to receive half of the unspent and unobligated balance of this Fund.

(c) The Authority will fund the replacement of the shingles on the roofs of five of the dormitory buildings, up to a total cost of \$60,000, within one year of the Effective Date of this Agreement. This funding is in addition to payments under paragraph 7(b). AL shall reimburse the Authority 1/20th of the cost of this roof project each year on the first business day following March 31, beginning in 2011. This reimbursement by AL is in addition to any AL payments made under paragraph 7(a) and 9.

(d) Within 90 days of the effective date of the Agreement, the Authority shall purchase lodge tables and up to 3 storage sheds that will be placed at the Site and will remain the property of the Authority.

(e) Except as otherwise provided in this Agreement or any exhibit hereto, the Authority shall not be required to furnish any services or facilities, or to make any repairs, alterations, additions, replacements or betterments in or to the Site or its Improvements, and AL hereby waives any and all rights to such services, facilities, repairs, alterations, additions, replacements or betterments, whether conferred by statute or otherwise, including, without limitation, any right to make any repairs, replacements, alterations or improvements at the expense of the Authority, and to obtain damages or reductions or abatements of payments to the Authority.

(f) The Authority, upon the failure of AL to maintain the Site or any of its Improvements in accordance with the provisions of this paragraph, may elect to maintain the Site or any of its Improvements on AL's behalf. Any and all costs of such maintenance shall be an expense of AL. Prior to undertaking any maintenance, the Authority shall provide AL with written notice of the manner in which AL has failed to maintain the Site or any of its Improvements, and AL shall have a period of thirty (30) days after the receipt of such notice to perform the maintenance specified in such notice, or to commence and continue diligently thereafter such maintenance, if such maintenance by its nature cannot be completed in thirty (30) days.

(g) AL shall inspect the Challenge Course in detail before its first use and at least annually to ensure that it and its equipment are in good condition and safe and that the Challenge Course meets the requirements of the Association for Challenge Course Technology or the Professional Ropes Course Association. AL shall notify the Authority of such inspections at least five days in advance and allow Authority representatives to observe if they wish. AL shall develop procedures for other routine inspection of the Challenge Course by its staff, in addition to those before first use and annually, as is prudent.

(h) Notwithstanding the foregoing, if AL's failure to maintain the Site or any of activities on the Site creates a threat to public health or safety or to the environment, the Authority may, in its discretion, act immediately to address the condition, and AL shall promptly reimburse the Authority its costs in doing so.

8. Capital Improvements.

(a) AL shall not make any capital improvements to the Site or its Improvements without the prior review and written consent of the Authority, which the

Authority may withhold or condition in its sole discretion. AL shall promptly provide the Authority any information the Authority deems reasonably necessary to conduct its review of any proposed capital improvements. The Authority has discretion as to what conditions it may impose on capital improvements.

(b) Any capital improvements involving construction costing \$100,000 or more must have performance and payment bonds as required by the PPEA/Virginia Public Procurement Act.

(c) Any capital improvements must meet all Codes and Standards.

(d) The Authority may, during the course of this Agreement, if it deems it desirable, have improvements constructed at the Site provided such construction does not unreasonably interfere with AL's use of the Site.

9. Plan of Finance and Revenues.

(a) AL shall be solely responsible for bearing all costs and expenses associated with the Site and its use as well as for bearing all costs and expenses for operation and maintenance during the life of the Agreement except as provided in paragraphs 7(b) and 7(c) of this Agreement.

(b) AL shall make annual payments to the Authority as follows based on annual "AL Adjusted Gross Revenues", without offsetting credits for capital investments:

Gross Revenue Range (\$ millions)	Authority % of each \$500,000 increment
0 to .5	1
.5 to 1	2
1 to 1.5	4
1.5 to 2	5
2 to 2.5	6
2.5 to 3	7
3 +	8

(c) AL's minimum annual payments to the Authority shall be as below regardless of AL's Adjusted Gross Revenues:

Year	Minimum Annual Payment to Authority
2009	\$0
2010	\$30,000
2011	\$45,000
2012	\$60,000
2013	\$75,000
2014	\$85,000

(d) Notwithstanding (c) above, no minimum annual payment will be required during a year in which a Force Majeure Event occurs as defined in this Agreement, with the annual payment for such year being based on (b) above.

(e) Each annual payment from AL to the Authority shall be due by the first business day following March 31 of the following year. AL shall provide such substantiation as the Authority may require to ensure the payment amount is correct, including without limitation, an audited financial statement for the prior year. Interest on past due payment amounts shall accrue at the legal rate.

(f) When this Agreement, as extended, terminates, AL shall be entitled to offsetting credits for capital investments, such as roof replacements, made and paid for by AL during the term of the Agreement that have a useful life beyond the Agreement's term as follows: The useful life of the capital investment item shall be determined by agreement or by using standard depreciation tables. The total capital investment for the item shall be multiplied by a fraction, the numerator being the difference between the useful life in years and the Agreement's term in years, and the denominator being the useful life in years. The resulting product is the offsetting credit. By way of example, the parties have agreed that a new roof has a useful life of 20 years. For a new roof installed in 2009 at a cost of \$10,000, if the Agreement terminates after

its initial five-year term, the calculation of the offsetting credit would be $15/20 \times \$10,000 = \$7,500$. This credit does not apply to amounts contributed to the Fund pursuant to paragraph 7(b).

(g) AL may, subject to the Authority's approval, arrange for corporate or other sponsorships for activities at the Site. Revenues from such sponsorships shall be included in AL's gross revenues used to calculate AL's payment obligations under 9(b) unless the Authority agrees otherwise in writing.

(h) Any obligation the Authority has under this Agreement that requires expenditure by the Authority of any funds is conditioned on appropriation of such funds.

(i) AL shall be responsible for payment of any taxes required by law as the result of its use of the Site and Improvements pursuant to this Agreement.

(j) AL shall submit to the Authority detailed annual income statements, balance sheets and tax returns for each year, compiled by an independent certified public accountant, by the first business day following March 31 of the following year. AL shall also submit to the Authority within 15 days after the end of each quarter quarterly summaries of revenues, expenses, user types and numbers. AL shall provide to the Authority annually a list of all assets costing over \$500 and all inventory provided by AL at the Site. The Authority shall have access to review AL's accounting records at any time and to conduct independent reviews and audits. AL shall ensure that all its accounting records are maintained in accordance with Generally Accepted Accounting Principles ("GAAP") and that revenues indicated on its financial statements are stated in accordance with GAAP.

10. Insurance and Risk Management.

(a) AL shall cause the following insurance to be maintained without interruption at all times while this Agreement remains in effect: (i) workers' compensation; (ii) employers' liability; (iii) commercial general liability insurance; (iv) automobile liability insurance; (v) umbrella/excess liability insurance; and (vi) property insurance on the Improvements and fixtures, furniture and equipment on the Site. The insurance shall be from companies that are rated at least A-/VII by A.M. Best, that are licensed to do business in Virginia, and that are reasonably satisfactory to the Authority. Workers' compensation insurance shall be with coverages as required by law. Employer's liability insurance shall include the following coverages: \$100,000 each incident; \$100,000 disease, each employee. Commercial general liability insurance shall be for a combined single limit for personal injury and property damage of not less than \$2,000,000. The automobile liability insurance shall be for a combined single limit for bodily injury and property damage of not less than \$1,000,000. The umbrella/excess liability coverage shall be for \$3,000,000 that supplements the commercial general liability policy, workers' compensation policy, and automobile liability policy coverages. The property insurance shall insure the Improvements, furniture, fixtures, and equipment on the Site for their replacement costs and shall have a deductible no greater than \$25,000. The Authority shall be named as an additional insured on all policies except workers' compensation. All policies shall include an endorsement that they cannot be cancelled without 30 days prior written notice to the Authority. Certified, true copies of the policies, their endorsements, and documentation showing the policies remain in effect shall be provided to the Authority annually, and also at other times upon its demand.

(b) Should AL cease to have all of the insurance coverage required by 10(a), then AL shall immediately cease all activities at the Site until all required coverages are in effect.

(c) AL shall follow prudent risk management procedures in its use of the Site and the Park and in its operations. AL shall obtain from participants in its programs and persons who are at the Site written releases that extend to the Authority and its board, officers, and employees to the same extent that they apply to AL. AL shall also obtain from parents or legal guardians of any minors participating in any of AL's programs a Participation and Acknowledgement of Risk Agreement for minors that afford the same protections to the Authority that are afforded to AL and substantially in the form of **Exhibit F** hereto.

11. Representations and Warranties of AL and Authority.

(a) AL represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein and that the execution of this Agreement by it has been duly and properly authorized. AL shall provide the Authority with certified copies of any documents that the Authority requests to evidence such status and authorization.

(b) The Authority represents that it has legal authority to enter into this Agreement and to perform all its obligations hereunder and that execution of this Agreement has been duly and properly authorized by the Authority's Board.

(c) The Authority makes no representations or warranties concerning the Site, the feasibility of the Project, or the feasibility of AL's plans or proposals.

12. Termination of Agreement.

(a) AL may terminate this Agreement for default if, through no fault of AL or any persons or entities performing any portions of the Project under direct or indirect contract with AL, the Authority has failed to fulfill a material obligation or duty herein, and after receiving written notice of such failure, the Authority fails to cure such failure within forty-five (45) days; provided, however, if the nature of the failure is not reasonably capable of being

corrected within such 45-day period and the Authority notifies AL of a reasonable alternative period, the Authority shall be allowed such reasonable alternative period so long as the Authority promptly pursues such correction to completion.

(b) The Authority may terminate this Agreement for default if AL has failed to fulfill a material obligation or duty herein, and after receiving written notice of such failure, AL fails to cure such failure within forty-five (45) days; provided, however, if the nature of the failure is not reasonably capable of being corrected within such 45-day period and AL notifies the Authority of a reasonable alternative period, AL shall be allowed such reasonable alternative period so long as AL promptly and diligently pursues such correction to completion.

For purposes of this Agreement, the following are some, but not all, of AL's obligations and duties under this Agreement that are "material" for purposes of this Paragraph 12(b):

- (1) Failure to maintain the insurance required by Paragraph 10.
- (2) Failure to satisfy any of the obligations in Paragraph 4 (a) (4), (5), (6), (8), (9), (10), (12), (14), (15), (16) (17), (18), (19), (20) or (21).
- (3) Failure to satisfy any of the obligations in Paragraph 5 (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (p), (s) or (t).
- (4) Charging user fees above those authorized by the Authority.
- (5) Failure to satisfy any of the obligations at Paragraph 7.
- (6) Any violation of Paragraph 8.
- (7) Failure to make payments required by Paragraph 9 or to provide information required by Paragraph 9.
- (8) Failure to comply with Paragraph 13.

(9) Failure to comply with Paragraphs 16, 17 or 18.

(c) In addition to any other rights the Authority may have under Paragraph 12 or elsewhere in this Agreement, the Authority may, upon written notice, immediately terminate this Agreement at any time if AL fails to meet its obligations under Paragraph 10.

(d) If not sooner terminated pursuant to subparagraphs (a) through (c) above, or by mutual agreement, the Agreement shall terminate when all of AL's and the Authority's obligations under this Agreement have been fulfilled.

(e) AL shall remove all its property from the Site and Improvements have its employees, invitees, and licenses remove all their property from the Site and Improvements, and tender the Site and its Improvements back to the Authority in good, clean condition and in the state of maintenance and repair required by this Agreement within 30 days of any termination. If termination occurs before year end, AL shall make payments under Paragraph 9 for that ending year and all other amounts due to the Authority within 60 days of termination.

13. Indemnification.

(a) AL shall indemnify and hold the Authority and its board, board members, officers, employees, and agents harmless from any and all liability, loss, expense, or damage, including without limitation, reasonable attorney's fees and disbursements, arising out of or relating to (i) AL's use of the Park, Site, and/or Improvements; (ii) AL employees living on the Site; (iii) third-party claims or causes of action for bodily injury, sickness, death, or property damage or destruction in connection with use of the Park, Site, and/or Improvements; (iv) any mechanics', construction, or other liens arising as a result of any repairs, maintenance, or capital improvements; (v) any claim of patent infringement, copyright infringement, or violation of any other intellectual property right relating to the Project; (vi) damage to the Site or any of its

Improvements during the term of the Agreement; or (vii) any failure of the Project to comply with any applicable Codes and Standards. Such obligation by AL to indemnify and hold the Authority harmless shall not apply to any loss, liability, damage or expense, including attorneys' fees, to the extent proximately caused solely by any negligence or intentional misconduct by the Authority or any officer, employee, agent or separate contractor of the Authority.

(b) AL's obligations to indemnify the Authority and hold it harmless under this Paragraph 13 do not supersede any obligations by AL elsewhere in this Agreement to indemnify the Authority and hold it harmless, these indemnification obligations being intended to be cumulative.

14. Ownership and Use Of Certain Intellectual Property.

(a) The names "Hemlock Overlook Park" and "Hemlock Overlook Regional Park" shall remain tradenames and trademarks that are the Authority's sole property and AL shall cease using such names promptly upon termination of this Agreement.

(b) Within 7 days of the Agreement's termination, AL shall transfer to the Authority at no cost to the Authority any domain names containing the words "Hemlock Overlook" and/or "Hemlock Overlook Regional Park", including without limitation, www.hemlockoverlook.net and www.hemlockoverlook.com.

(c) The Authority shall have a perpetual license to use at Hemlock Overlook Regional Park and in conjunction with programs at Hemlock Overlook any names of programs, program materials and programs that are developed by AL for use at the Site.

(d) At the Authority's request, AL shall provide the Authority with copies of any and all program materials for programs provided at the Site.

(e) At the Authority's request, AL shall make available for inspection by the Authority or its representatives lists of users of the Site, including without limitation, names and contact information.

(f) At the Authority's request, upon termination of this Agreement, AL shall provide the Authority in paper and/or such electronic format as specified by the Authority, lists of those who have used the Site during the term of the Agreement, including without limitation, names and contact information. The Authority shall have the right to use such lists and contact persons on such lists for the Authority's programs, including any program at the Park.

15. Resolution of Disputes, Claims and Other Matters. Disputes, claims and other matters in question between the parties shall be resolved in accordance with the Guidelines.

16. Equal Opportunity Employment.

(a) During the performance of this Agreement, AL agrees as follows:

(i) AL shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by federal or state law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of AL. AL agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) AL, in all solicitations or advertisements for employees placed by or on behalf of AL, shall state that AL is an equal opportunity employer.

(iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the notice, advertisement, and solicitation requirements of this paragraph.

(b) AL shall cause to be included the provisions of the foregoing paragraphs (a)(i), (a)(ii), and (a)(iii) (substituting the contractor or vendor for AL as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

17. Drug-Free Workplace

(a) During the performance of this Agreement, AL agrees to (i) provide a drug-free workplace for AL's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in AL's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of AL that AL maintains a drug-free workplace; and (iv) cause to be included the provisions of the foregoing clauses (substituting the subcontractor or vendor for AL as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(b) For the purposes of this paragraph, "drug-free workplace" means a site for the performance of work done in connection with this Agreement by AL where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation,

possession or use of any controlled substance or marijuana during the performance of the Agreement.

(c) AL shall conduct drug testing of its newly hired employees and random drug testing of employees in safety-sensitive positions, such as operation of vehicles, operation of equipment, or instruction on the Challenge Course or ropes.

18. Records Inspection and Copying. AL agrees that the Authority and its authorized representatives and consultants may, at Authority's option and expense, at reasonable times and upon prior notice, inspect and copy all records relating to revenues, costs, and/or programs associated with this Agreement to the extent necessary to confirm compliance with the terms of the Agreement, until three (3) years after termination of this Agreement. The AL agrees to provide Authority adequate and appropriate work space at AL's facilities in order to conduct such examinations. AL agrees to include in all subcontracts for goods or services involving the Site or its Improvements, a provision that the Authority and its authorized representatives will, until three years after services were last rendered for the Project, at reasonable times and upon prior written notice, have access to and the right to inspect and copy books, documents, papers, or other records of the subcontractors. The term subcontract as used in this clause excludes:

- (i) Purchase orders; and
- (ii) Subcontracts for public utility services at rates established for uniform applicability to the general public.

19. Notices. All notices and demands by any party to any other shall be given in writing and sent by facsimile (with receipt confirmed) to the facsimile number below with confirmation at the telephone number below and a copy of the notice sent by United States first-

class mail, postage prepaid, or by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Authority: Paul A. Gilbert
Executive Director
Northern Virginia Regional Park Authority
5400 Ox Road
Fairfax Station, VA 22035
Telephone: 703-352-5900
Facsimile: 703-273-0905

With a copy to:

Thomas R. Folk
Reed Smith LLP
3110 Fairview Park Drive, Suite 1400
Falls Church, VA 22042
Telephone: 703-641-4294
Facsimile: 703-641-4340

To AL:

Anna L. Birch
Adventure Links
21498 Blue Ridge Mountain Road
Paris, VA 20130
Telephone: 800-877-0954
Fax: (540) 443-6522

With a copy to:

Telephone: _____
Facsimile: _____

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or by facsimile (provided that, in the case of a facsimile, confirmation is made by telephone and first-class mail), or three days after sending if sent by certified mail, return receipt requested.

20. Successors and Assigns. Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be assigned without the prior written consent of the parties to this Agreement.

21. Independent Contractor. It is expressly understood and agreed by the parties hereto that AL, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the Authority. No employee of AL shall be considered to be an employee or agent of the Authority.

22. **No Waiver.** The failure of the Authority to insist upon the strict performance of any provisions of this Agreement, the failure of the Authority to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by the Authority of any act by AL requiring the Authority's consent or approval shall not be construed to waive or render unnecessary the requirement for the Authority's consent or approval of any subsequent similar act by AL. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

23. **Severability.** If any term or provision of this Agreement shall be determined to be invalid or unenforceable in any respect, it shall be replaced with a substantially similar provision to the greatest extent possible and the Agreement shall remain in full force and effect.

24. **Cooperation.** The parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate representatives with the authority to make decisions binding upon such party (subject in the case of the Authority to those matters requiring an appropriate Board vote) so as to not unduly delay resolution of disputes and disagreements.

25. **Parties' Representatives.** The parties shall each appoint a representative, who may be either an employee or a specifically authorized contractor or other authorized agent of the party. The name, responsibilities and authority, address and telephone number of the party's representative will be provided to the other party in writing. The party's representative may be

removed or replaced at any time without prior notice to the other party, but notification of the change, including the name and address of any successor representative, will be provided promptly to the other party in writing.

26. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

27. **Entire Agreement.** This Agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between AL and the Authority concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon AL or the Authority unless reduced to writing and signed by each party. The RFP and AL's proposals are incorporated by reference for purposes of providing details concerning the overall intent of the parties. However, no document incorporated by reference is intended to contradict this Agreement.

28. **Waiver of Claims for Consequential And Certain Other Damages.** The Authority and AL waive claims against the other for consequential damages arising out of or relating to this Agreement. AL also waives any claims for any damages for delay of any kind, including without limitation, any delay caused by the Authority or anyone acting on its behalf.

29. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. The provisions of this Agreement

shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

30. No Financial Obligation by Authority. The parties do not intend the Authority to have any financial obligations under this Agreement, except as follows: during the term of this Agreement, annual provision of a \$10,000 payment into the major maintenance escrow account as described in paragraph 9(b).

31. Financial Statements. AL agrees to provide the Authority with copies of complete and current financial statements for itself on an annual basis, or more frequently if requested by the Authority. AL may designate such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act by following the procedure for such designation indicated in the RFP, and the Authority shall use its best efforts to maintain the confidentiality of such information.

32. Survival of Provisions. The following obligations imposed by this Agreement shall survive its termination: Paragraph 12(e), Paragraph 13, Paragraph 14, and Paragraph 18.

33. Copy of Agreement to Auditor of Public Accounts. The Authority shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty (30) days of its effective date.

34. Exhibits. The following exhibits are hereby deemed to be part of this Agreement:

- Exhibit A — Request for Proposals
- Exhibit B — Adventure Links' March 9, 2009, Proposal
- Exhibit C — Adventure Links' May 21, 2009, Step 2 Proposal
- Exhibit D — Description of Site, Improvements
- Exhibit E — Furniture, Fixtures, Equipment & Materials
- Exhibit F — Participation and Acknowledgement of Risk Form for Minors
- Exhibit G — Capital Improvements to be made by Adventure Links

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

"AUTHORITY"

Northern Virginia Regional Park Authority, a
Virginia park authority

By: _____
Its: _____

"OPERATOR"

Vaspack, Inc.,
a Virginia corporation, doing business as Adventure
Links

By: _____
Its: _____