

## **Ouray Ice Park Comprehensive Management Agreement**

This Ouray Ice Park Comprehensive Management Agreement (Agreement) is made by and between the Ouray Ice Park, Inc. (OIPI), a Colorado non-profit corporation, and the City of Ouray, Colorado (the City), effective June 1, 2018. OIPI and the City (collectively the Parties), agree as follows.

### ***Exhibits***

- A. Exhibit A – City owned property
- B. Exhibit B – Water Use Agreement between the City and OIPI
- C. Exhibit C – Ouray County Recreational Access Easement Reception #201752
- D. Exhibit D – Eric Jacobson License Agreement to the City of Ouray
- E. Exhibit E – Permit for Concessionaire and Guiding Services
- F. Exhibit F – Map of Ice Park
- G. Exhibit G – Eric Jacobson Grant of Easement Reception #207435
- H. Exhibit H – Ice Park Sustainability Committee Final Report
- I. Exhibit I – GOCO Grant 2012 Ouray Ice Park Land Purchase

### ***Recitals***

- A. The Ouray Ice Park is a world-class, internationally known outdoor recreational asset, which provides a unique and exemplary ice climbing experience for all user groups, and which is the core of Ouray's winter economy.
- B. The City owns property as shown on the attached Exhibit A.
- C. The City and OIPI are parties to an Agreement for Management of the Ouray Ice Park, with an effective date of November 19, 2012, an Extension Agreement with an effective date of October 4, 2017, extending the Management Agreement which further extends the Term from Term to May 31, 2018 and this revised Management Agreement June 1, 2018 to May 31, 2023.
- D. OIPI and the City are parties to a Water Use Agreement, Exhibit B, entered into in October, 2009, that grants to OIPI a right to use certain of the City's water for the development of ice falls for recreational ice climbing, among other rights. The Water Use Agreement is contingent upon the parties entering to an operating agreement for the Ouray Ice Park.
- E. The City and The Board of County Commissioners of Ouray County, Colorado, have entered into a Recreational Access Easement Agreement dated September 28, 2009 and recorded at Reception Number 201752 in the records of the Ouray County Clerk and Recorder that concerns access rights to and uses permitted on the County's property, Rio M.S. 1965, as shown on Exhibit C.

- F. The City and Eric R. Jacobson are parties to a License Agreement dated December 15, 2010, Exhibit D, that concerns permissible uses allowed within the area of Mr. Jacobson's FERC license, which is partially located within the Park, as well as other lands
- G. The City received a financial grant from Great Outdoors Colorado, Exhibit I, to facilitate the City's purchase of land within the Park previously owned by the United States of America. That grant placed several conditions on the use of those funds which affect the City's use and ability to delegate use and development of the Park.
- H. The City and San Juan Mountain Guides, LLC, , are parties to a Permit for Concessionaire and Guiding Services 2010-2015 Season (Guiding Permit), entered into in 2010, Exhibit E, which regulates specific commercial uses in the Ice Park under certain circumstances.
- I. The City has the ability and authority to grant the rights and create the obligations established by this Agreement.

Now therefore, in consideration of the mutual obligations described below, and for other consideration, the sufficiency of which is hereby acknowledged by the Parties, the Parties additionally agree as follows.

## *Agreement*

### *I. Scope and Activities*

- A. The Ouray Ice Park (the Park) is a property located south of the City of Ouray. It is comprised of lands owned by the City and lands to which the City has acquired various access and use rights. The Park is depicted on the map attached to this Agreement as Exhibit F, which is hereby incorporated into this Agreement by reference.
- B. The City hereby grants to OIPI the authority to provide the Activities described in Section I-C, below within the Park. In addition, the City hereby grants to OIPI all necessary ancillary authority to perform these Activities, including a right to grant permission to use the Park. OIPI is not responsible for overseeing or otherwise managing the Park or any use of the Park that is not an Activity as described in Section I-C, below, or which is otherwise outside the scope of this Agreement.
- C. Activity or Activities as those words are used throughout this Agreement, shall be defined as the following to be provided by OIPI.
  - 1. OIPI agrees to create, maintain, and fund, to a degree and extent that is in its sole discretion, the following climbing venue.
    - a. The Park includes an ice, and mixed ice and rock climbing venue constructed annually by OIPI and comprised of ice falls, climbing routes, anchors, access trails, bridges, causeways, and other related infrastructure.

- b. OIPI shall also manage the operation of and maintain the ice and mixed climbing venue referenced above. Such operation and maintenance may include, for example and without limitation, rock scaling, clearing vegetation, snow removal, placement of signs and barricades, annually opening and closing the Park for ice and mixed climbing, and the opening and closing of climbing areas within the Park or areas of the Park for use by the public when there is a concern about public safety.
  - c. While this ice and mixed climbing venue is re-created annually, improvements related to it may remain in the Park year-round. Such improvements include, for example and without limitation, above and below ground water lines and pipes; sprinkler and shower heads; climbing anchors including without limitation bolts, chains, and pruned trees; informational signs; barricades; on-site storage; observation platforms; metal and wooden causeways, bridges, stairs, and ladders; and pedestrian trails. OIPI will maintain improvements, including any items placed in the Park or adjacent property for purposes of any Activity. In addition, OIPI will remove any temporary items or property related to the operation of the Park within fifteen (15) days of the closing of this climbing venue at the end of the ice climbing season.
  - d. Despite the inherent risks involved in the public's use of the Park, OIPI agrees to make public safety a primary concern, and public safety shall be a topic of discussion at OIPI Board of Directors' meetings. OIPI shall review accidents and incidents to consider safety improvements to the Park.
- D. Any proposals to develop, maintain, or fund additional Activities outside the scope of this Agreement or to amend other documents or other plans in order to establish additional permissible uses of the Park, regardless of their origin, will be considered first by OIPI. If a proposal is received by the City, before considering it, the City shall first refer the proposal to OIPI. OIPI will consider such proposals at a noticed public meeting. After the meeting, OIPI will make a recommendation to the City. The City will consider the proposal or amendment.
- E. Notwithstanding the obligations and authority elsewhere outlined in this Section II, OIPI shall not install, construct, or cause to be constructed any fixture in the Park valued in excess of \$2,500.00 without prior notice to and approval by the City. If the improvement is valued at less than \$10,000.00 but more than \$2,500.00, the City Administrator may approve the fixture on behalf of the City. If the City Administrator denies a request, OIPI may appeal that decision to City Council.
- F. OIPI expressly acknowledges that there are other recreational uses permitted within the Park. The Parties agree to coordinate use of the Park and the City shall not take any action that materially interferes with OIPI's Activities and events, notwithstanding the City's right to terminate this Agreement under Section X.
- G. The City may enact ordinances establishing rules and regulations for use of the Park. OIPI may recommend to the City rules and regulations for use of the Park. OIPI may enact

emergency rules and regulations but if OIPI intends the rule or regulation to remain in effect longer than thirty (30) days, it shall recommend adoption of the rule or regulation by the City. If the City chooses not to implement a recommended rule or regulation pursuant to an ordinance, OIPI may adopt that rule or regulation only upon approval by the City. Under no circumstances shall any rule or regulation imposed by OIPI be in conflict with a rule or regulation adopted by the City. Ordinances enacted by the City shall not materially interfere with OIPI's Activities and Events, and shall be subject to Section VIII-A, below.

- H. The City owns the building in the Park colloquially known as the Powder House. The City hereby grants to OIPI the right to occupy, improve, maintain, and otherwise use that building during the term of this Agreement and subject to the limitations in this paragraph. OIPI shall not have any obligation to maintain or improve the Powder House. The City reserves the right to enter and maintain the Powder House. The Parties acknowledge and agree that the exercise of the City's right may require that the City have exclusive possession of the Powder House to conduct maintenance and repair for a period of time limited to that required to conduct such maintenance and repair.
- I. The parties hereby extend the Water Use Agreement, Exhibit B, for an additional period to run from June 1, 2018, through May 31, 2023.

## *II. Events*

- A. The City grants to OIPI the right and authority to conduct, manage, and host the annual Ouray Ice Festival. OIPI may conduct, manage, or host additional high-impact events within the Park upon notification and approval from the City. City staff may refer a request to conduct, manage or host a high-impact event from OIPI to City Council for approval. For purposes of this Section, a high-impact event is one that requires extensive closure of areas of the Park to accommodate the event, or one during which extended or abnormal crowding is expected to foreclose or substantially interfere with non-event use of the Park. OIPI may conduct, manage, and host other events that are not considered high-impact to a degree and extent that is in its sole discretion. OIPI may conduct events to raise funds to facilitate its operation.
- B. The City shall manage any events in the Park not managed by OIPI. The City shall not require OIPI or its staff to participate in any such events. The City and OIPI shall communicate to ensure that events managed by the City do not conflict with events managed by OIPI or other operations in the Park.

## *III. Concessions*

- A. OIPI may conduct, manage and develop commercial activities and other concessions in the Park which are related to the events and Activities managed by OIPI under this Agreement, except as otherwise limited by this Agreement. The proceeds from these activities shall be devoted to the provision of the events and Activities provided by OIPI. Without limitation, these commercial activities may include the sale of merchandise, and commercial activity associated with the annual Ouray Ice Festival.

- B. Any commercial activity on the public property within the Park shall comply with the permitting requirements of the City Code for the sale of goods and services, except that to the extent such permitting requirements modify the rights granted in this Section III, such modification shall be considered to be an “event” addressed by Section VIII, below.
- C. Concessionaire services rendered from June 1, 2018 to April 30, 2019. As stated above, the City is a party to a Permit for Concessionaire and Guiding Services in the Ouray Ice Park (the “Guiding Permit”), which terminates by its terms on April 30, 2019. Pursuant to the Guiding Permit, the City has established a limited number of Service Days that are used by these commercial users of the climbing venues in the Park. The City agrees not to change this number of Service Days without allowing OIPI to comment on such action. This Section shall not be construed to affect OIPI’s ability to draft rules and regulations that govern a Guiding Permit holder’s conduct in the Park pursuant to Section I-G, above.
- D. Concessionaire services as of May 1, 2019 The Guiding Permit, which runs through April 30, 2019, will not be renewed. Effective May 1, 2019, OIPI will assume the majority of the responsibilities, which currently appear in Section II.D.1. of the Permit, as follows:
1. Historical Use Percentage. OIPI shall maintain the historical 75% of visitor capacity reserved for Recreational users (non-guided, non-commercial, non-institutional) and shall maintain the historical 25% of visitor capacity reserved for Commercial and Institutional users.
    - a. The Parties acknowledge the need for more accurate data regarding the capacity of the Ouray Ice Park with respect to usage by all User Groups and contemplate engaging a person to assist with data collection in time for the 2018-19 Season.
    - b. The parties agree that if the data indicates total facility capacity is reduced at certain times in the season or under certain conditions (amount of terrain open, length of season, etc.), OIPI may direct Commercial and Institutional use away from periods of lesser capacity and into periods of greater capacity.
  2. Transition from Permit. On expiration of the Guiding Permit, it is the policy direction of the Ouray City Council to extend limited protection to the existing Commercial Users of the Ouray Ice Park. Limited protection shall be extended to the San Juan Mountain Guides (SJMG) and all Commercial Users operating in either the 2017-18 Season or the 2018-19 Season, such that no decision by OIPI as to usage shall materially alter the percentage of usage of SJMG or the Commercial Users in the 2019-20 Season. These protections are subject to the following conditions:
    - a. Neither the City nor OIPI intend the limited protection offered here to create monopoly control of the Ouray Ice Park, or to act as a barrier to entry to any qualified Commercial User in the 2019-20 Season.

- b. SJMG and all Commercial Users, as defined above, shall be provided in the 2019-20 season the same percentage of use as each was allocated during the 2017-18 and 2018-19 seasons (as an average of those two seasons).
  - c. In any case, OIPI shall manage usage consistent with historical use percentages, in accordance with Section III, D.
3. Effective September 1, 2019 and annually thereafter OIPI will notify each commercial guide of their user day allocation for the season.
- E. With exception to Section III C, OIPI shall have the responsibility to manage all users of the park. The three main user groups, broadly defined, are 1) Commercial Users, 2) Institutional Users, which include educational and nonprofit users, and 3) Recreational Users.

#### *IV. Fees*

- A. Commercial Users operating under the Guide Permit will operate under the terms of the Guide Permit through April 30, 2019. Beginning with the 2019-20 Season, Commercial Users may be charged a fee.
- B. Institutional Users shall be charged a fee beginning with the 2018-19 Season.
- C. The fee structure is to be determined, customary to fees charged in similar built environments, and may be a percentage of gross sales (3%, 5%, etc.), or a fee charged per individual user. The fee structure shall be approved by both the City and OIPI, and may be adjusted from time to time. Any fee structure that includes Commercial Guides shall include Institutional Users.
- D. All fees charged shall be collected by OIPI and split evenly (50% to OIPI and 50% to the City), but all fees collected shall be spent for the benefit of the Ouray Ice Park itself. OIPI shall submit an accounting of revenue and itemize expenses report with the first annual report on May 15. The City shall place all fees so received in a restricted enterprise fund for the purpose stated here or in a reserved restricted account and identified specifically in the budget and produce an expenditure report.
- E. Local food and merchandise vendors may be offered a reduced fee structure on terms to be determined and mutually agreed to by the Parties.

#### *V. Sustainability of the Ice Park and Operations*

- A. Data Compilation. The City shall make its best and good faith effort to engage an intern, preferably in a graduate program, for the 2018-2019 ice climbing season. This intern so engaged shall work at the direction and under the control of the City Administrator. Any such person so engaged shall work to gather Outdoor Recreation data including usage of the Ice Park by all User Groups, provide resources to compile Standard Operating Procedures

(SOP), assist with Risk Management development and to perform other duties as assigned. The timeline is as follows:

1. May 31, 2019 Visitor Capacity Study
  2. May 31, 2020 Standard Operating Procedures (SOP) including Risk Management Manual and/or documentation of Safety Program Implementation and Enforcement
  3. May 31, 2022, or earlier if available, recommendation on preferred method of Ice Park management/operation model
  4. May 31, 2023, or earlier if, implementation of components that establish sustainable operation technics including funding, provide a recreational facility and protect the health of the Ice Park.
- B. Advisory Team. There is hereby identified an Advisory Team (AT), to be further named, defined and purpose as set forth in this section by By-Laws drafted by the four (4) core members and approved by both OIPI and the City prior to September 1, 2018. The goal of the AT is a group of persons committed to the best interest of the Ouray Ice Park. The purpose of the AT is to provide an informal venue for the Parties and interested persons to discuss various issues concerning the Ouray Ice Park in good faith, including management, operations, usage, capital planning, long-term strategic planning, succession planning, sustainability, mission, vision, values, recreational interests, commercial interests, economic impact, and similar topics. The AT shall also be a venue to manage disputes, disagreements, and unforeseen issues as they arise, however work of the AT shall be advisory and nonbinding. The AT shall meet no less frequently than quarterly and as needed. The core members of the AT shall include: 1) a member of City Council, 2) the City Administrator, 3) a member of the OIPI Board, 4) the OIPI Executive Director, and three (3) at large members appointed by mutual agreement of the four (4) core members.
- C. Development. This Comprehensive Management Agreement is limited by its terms, with respect to future development of other facilities within the Ouray Ice Park. The City and OIPI agree that future development within the Ouray Ice Park, if any, shall be mutually agreed upon and not encumber or negatively impact OIPI's seasonal operations or City authorized Via Ferrata.

#### *VI. Reports*

- A. OIPI agrees to report to the City twice a year regarding its operations in the Park. The first report shall be submitted to the City by May 15 and shall detail the activities and events conducted by OIPI, and successes and challenges of the previous ice climbing season, including a report on user safety. The second report shall be submitted by October 15 and detail OIPI's plans for the upcoming ice climbing season and any improvements planned or made by OIPI. The following components shall be included in one or both of the reports:
1. Fiscal year financials
  2. Annual budget
  3. Water Usage
  4. Concessionaire use

5. Implemented safety programs with incident reports
  6. Scheduled Training
  7. Ambassador Report (incidents/enforcement, visitor information if available, etc.)
  8. Improvements (improvements planned/completed at the appropriate report date)
- B. City and OIPI representatives will shall cooperate with Eric Jacobson or his designee in the preparation and submission of the FERC Form 80 "Licensed Hydropower Development Recreation Report" per Federal Regulation 18 CFR 8.11 at every 6<sup>th</sup> year interval.

#### *VII. Statutory Protection*

- A. The City relies on the protections of the Colorado Recreational Use Statute, COLO. REV. STAT. §33-41-101, *et seq.* (the CRUS), and the Colorado Governmental Immunity Act, COLO. REV. STAT. §24-10-101 *et seq.* (the CGIA). This Agreement shall be construed, to the extent possible, to allow the full protection of such statutory protections to all parties who have granted easements or permits related to the recreational uses in the Park. OIPI shall operate and maintain the Ice Park in a manner to ensure the protections of these statutes with regard to Recreational Users. For example, and without limitation, OIPI shall not charge a fee for use of the Park by Recreational Users.
- B. To the extent permitted by law and to the extent covered by the general liability insurance policies maintained by the City, the City agrees to hold harmless, defend and indemnify OIPI from and against all claims by whomever made of bodily injury (including death) to or property loss or damage incurred by any member of the public arising out of or relating to Activities and events conduct or managed by OIPI as contemplated under this Agreement.
- C. As stated in Section I-B, above, OIPI has a right to grant permission to use the Park, and thus for purposes of the CRUS, the City represents and acknowledges that OIPI is an owner as that term is defined at COLO. REV. STAT. §33-41-102(3), and this Agreement shall be construed, to the extent possible, to establish OIPI as such an owner.

#### *VIII. Agreements and Statutes that Affect OIPI Activities*

- A. Any of the events listed below shall not be construed to broaden or increase OIPI's obligations established pursuant to this Agreement without a modification of this Agreement. In addition, the following events may be cause to terminate this Agreement if the event results in a new or greater obligation for OIPI or materially impacts OIPI's rights or ability to carry out the obligations established by this Agreement:
1. Any change in any agreement referenced in the Recitals;
  2. Any change in any statute referenced in Section V;
  3. Any new agreement entered into by the City or its agents or assigns;
  4. Any new statue, law, or other applicable regulation; or
  5. A change in OIPI's access to the City's water supply; or
  6. An expansion or contraction of the Park.



- B. As described in the Recitals, the City has acquired a license concerning certain property owned and, or, licensed by FERC to Eric R. Jacobson and an easement to property owned by Ouray County. The City shall have the responsibility for ensuring compliance with its obligations under those agreements and shall notify OIPI of any issues related to such compliance. Any compliance measure that results in a change or impact similar to that described in Section VIII-A shall be cause to terminate this Agreement.

#### *IX. Insurance*

If at any time while this Agreement is in effect, the City obtains general liability insurance coverage concerning the existence or use of the Park, the City shall include OIPI as an additional named insured party on the City's general liability insurance coverage. If at any time while this agreement is in effect OIPI obtains general liability insurance coverage concerning the existence or use of the Park, OIPI shall include the City as an additional named insured party on the City's general liability insurance coverage.

#### *X. Term and Termination*

The Term of this Agreement shall be five years, commencing on June 1, 2018 and extending through May 31, 2023, It is anticipated that OIPI shall have exclusive control of and access to the Ice Park and its facilities from October 1 through April 15, for set-up, shut-down and operation of the Ice Park facilities. Nothing in this Agreement shall restrict OIPI from engaging in the maintenance or repair of Ice Park facilities and/or other related Ice Park functions at other times of the year, provided that such activities occurring during April 16 through September 30 of each year shall be conducted in such manner as not to materially interfere with other City-authorized activities or functions.

- A. This Agreement may be terminated prior to expiration of the Term by either party for any of the following causes and pursuant to the following procedure:
1. This Agreement may be terminated upon the material breach of a provision of this Agreement, a material misrepresentation, or the insolvency or incapacity of either party.
  2. The occurrence of any event listed in Sections VIII-A and VIII-B of this Agreement.
  3. This Agreement may only be terminated upon 90 days prior written notice to the non-terminating party. Such notice must plainly and clearly describe the cause for which termination is sought. The non-terminating party shall have an opportunity to cure the cause for termination within thirty (30) days after written notice is given by the terminating party. If the cure is such that it cannot be completed within thirty (30) days and the non-terminating party has proceeded with due diligence to cure after receipt of the notice, the Agreement shall not terminate until it is determined that the cure cannot be completed. In the event that such cause is cured, this Agreement shall not be terminated. If the non-terminating party does not exercise due diligence in curing the cause, the Agreement shall terminate thirty (30) days after the notice is given.

- C. In the event this Agreement is terminated, the City shall be free to continue to operate the Park or to enter into an agreement or agreements with other parties providing for the operation of the Park.
- D. Either party may unilaterally suspend the conduct of an Activity as a result of extreme hazards or extreme safety concerns. The suspending party shall provide no less than fifteen (15) days prior written notice to the other party. Such notice must plainly and clearly explain the Activity to be suspended, the nature of the hazard or safety concern, and the corrective measures required to resume the operation of the suspended Activity. Either party may suspend the conduct of an Activity without prior notice if there exists an immediate threat to health or safety associated with the conduct of such Activity. However, the suspending party shall provide notice of the as soon as practicable after a suspension due to an immediate threat to health or safety. Any suspension of an Activity shall not last longer than the minimum period of time reasonably necessary to correct the reason for such suspension.
- E. Upon termination of this Agreement, any fixtures installed by OIPI in the Park shall be the property of City. OIPI shall retain all other non-fixture improvements installed by OIPI, subject to the following conditions. OIPI shall remove all its property and, or non-fixture improvements within forty-five (45) days after the termination of this Agreement, or as soon as is practicable if forty-five days is an insufficient amount of time. If such property or non-fixture improvements are not removed, the City may, at its sole discretion, retain such property and improvements or have such property and improvements removed.
- F. To the extent that the previous operating agreement between the parties, referenced in the Recitals above, has expired, and to the extent that that agreement put in place provisions for various property interests to be exchanged in the event that that agreement expired, the parties agree that no such exchange shall occur.

#### *XI. Miscellaneous*

- A. OIPI owns and has registered its ownership of the following trademarks: the “Ouray Ice Park” and “Ouray Ice Festival” word marks, as well as other design marks (Marks). No license to use those trademarks or other trademark right, copyright, or other intellectual property right owned or reserved by OIPI is conveyed by this Agreement to the City or any other party or entity. During the term of this Agreement, OIPI may not assign any Marks to a third party without written consent by the City. Upon termination of this Agreement, the City has the right to purchase the Marks owned by OIPI after the effective date of this Agreement. The City shall notify OIPI in writing within ten (10) days after the termination of this Agreement of its intent to exercise its right to purchase. If the City fails to provide such notice, OIPI may retain or assign the Marks to a third party. If the City does provide such notice, OIPI may not assign the Marks to a third party unless the City waives its right to purchase the Marks as provided for in this paragraph. The parties agree that the purchase price of the assignment is equal to the documented and reasonable costs incurred by OIPI to maintain such Marks and prosecute infringement upon those Marks and goodwill valued at \$1,000.00 per Mark so assigned. Any cost associated with the assignment itself shall be

borne by the City. The City shall pay OIPI the purchase price within thirty (30) days of the parties agreeing on the purchase price. If the City fails to pay the purchase price within thirty (30) days, it waives its right to purchase the Marks pursuant to the terms of this paragraph. Upon the City's payment, OIPI will assign the purchased Marks and coordinate with the City to file all required documentation with the United States Patent and Trademark Office, Colorado Secretary of State and any other applicable agency.

- B. OIPI shall cause its articles of incorporation and bylaws to be amended as necessary to be consistent with this agreement. OIPI shall provide adequate notice to the City of all regular, public OIPI Board of Directors' meetings.
- C. The parties are independent contractors and no other partnership, employment status, or other relationship is established by this Agreement.
- D. Neither party shall be responsible for any delay or failure to perform any provision of this Agreement to the extent such delay or failure is caused by a force majeure circumstance or other Act of God.
- E. The City may, upon reasonable notice to OIPI, inspect and evaluate all OIPI operations in order to ensure public safety and health, identify operating deficiencies and to ensure satisfactory services for the general public.
- F. Neither party to this Agreement may transfer or assign its interests, obligations, or rights established by this Agreement without prior written of the other party to this Agreement.
- G. If any of the provisions of this Agreement are deemed by a competent court to be invalid or unenforceable, then such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement.
- H. Any notice required by this Agreement shall be directed to the following addresses.

To OIPI:  
Ouray Ice Park, Inc.  
[info@ourayicepark.com](mailto:info@ourayicepark.com)  
PO Box 1058, Ouray, CO 81427

To the City:  
City of Ouray  
Attn: City Administrator  
PO Box 468, Ouray, CO 81427

- I. The failure by a party to require performance of any provision of this Agreement shall not constitute a waiver of such provision and shall not affect the overall validity of this Agreement.
- J. Headings used in this Agreement are for organization only, and shall not be used to interpret the meaning of any provision of this Agreement.

