



**THOUSAND OAKS ALLIANCE FOR THE ARTS
SPECIAL BOARD MEETING**

**Via Video/Teleconference
Monday, December 20, 2021 – 8:30 A.M.**

Pursuant to Assembly Bill 361, the December 20, 2021, Special meeting of the Thousand Oaks Alliance for the Arts (TOArts) will be conducted via teleconference and/or video conference. Board members will be participating electronically and will not be physically present.

You may participate in the meeting by submitting your comments by email to JSerret@toaks.org (please indicate the agenda number in the subject line). Please submit your written comment by 7:00 a.m. on the day of the meeting and it will be provided to Board members before the meeting and made part of the item's record of the Board meeting. All comments received after 7:00 a.m. will be given to Board members after the meeting and made part of the item's record of the Board meeting.

If you would like to speak under Public Comments during this meeting, please click on the Zoom link below. If you have questions about speaking, please call Jonathan Serret at (805) 449-2767 or email JSerret@toaks.org. Persons addressing TOArts are requested to state their name and community of residence for the record.

To join the Zoom Meeting, click on the following link:

<https://us06web.zoom.us/j/8490770722?pwd=SjVldXQ2UzNkQUdPY2Q5QkhtdHJldz09&from=addon>

or Call: (408) 638-0968

Meeting ID: 849 077 0722 Passcode: toarts

MISSION STATEMENT

TOArts enriches lives and strengthens the fabric of the community through arts education and the presentation and support of visual and performing arts at the Bank of America Performing Arts Center and beyond.

VISION

Where the Arts Thrive for All.

AGENDA

1) CALL TO ORDER

2) **ROLL CALL:** Chair David Mead, Vice-Chair Eloise Cohen, Treasurer Al Lowe, Secretary Janet Scherr, Board Directors John Bradley, Kathy Jeffers-Volk, Leanne Neilson, and Kyle Rohrbach.

3) PUBLIC COMMENTS (May only address items relating to Agenda item 4, below)

4) BAPAC CONCESSIONS SERVICES

- a) Authorize execution of agreement with the City of Thousand Oaks permitting TOArts to provide Concessions Services at the Bank of America Performing Arts Center for a term of five years running from January 1, 2022 through December 31, 2026.
- b) Authorize execution of management agreement with Arcis Golf to contract for management services of the concessions operations on TOArts' behalf for a period of five years, running from January 1, 2022 through December 31, 2026.

5) ADJOURNMENT

Any public documents provided to a majority of TOArts Board Directors regarding any item on this agenda will be made available for public inspection at the Cultural Affairs Department Administration Office located at 2100 Thousand Oaks Blvd., Thousand Oaks, California 91362 during normal business hours. In addition, such writing and documents will be posted on the TOArts website at www.toarts.org. Americans with Disabilities Act (ADA): In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting or other services in conjunction with this meeting, please contact the Cultural Affairs Department at 805-449-2700. Upon request, the agenda and documents in this agenda packet, can be made available in appropriate alternative formats to persons with a disability. Notification at least 48 hours prior to the meeting or time when services are needed will assist City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.



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TO: TOArts Board
FROM: Jonathan Serret, Executive Director
DATE: December 20, 2021
SUBJECT: BAPAC Concessions Services

RECOMMENDATION:

1. Authorize execution of agreement with the City of Thousand Oaks, permitting TOArts to provide concessions services at the Bank of America Performing Arts Center for a term of five years, through December 31, 2026.
2. Authorize execution of agreement with Arcis Golf to contract for management services of the concessions operations on TOArts' behalf for a term of five years, through December 31, 2026.

BACKGROUND:

On September 4, 2012, the Thousand Oaks Civic Arts Plaza (TOCAP) Foundation entered into a one-year trial agreement with the City to provide concession services for the BAPAC's Fred Kavli Theatre and Janet & Ray Scherr Forum Theatre.

This move allowed the Cultural Affairs Department to have more control over concessions operations and provided a nonprofit to hold the liquor license required for the concessionaire to serve alcohol, as the City cannot hold a California Department of Alcoholic Beverage Control liquor license. It also provided an additional revenue stream that allowed the TOCAP Foundation to assume additional financial risks in the number of performances by popular artists and national touring attractions that it presented at BAPAC each season.

In 2012, the TOCAP Foundation entered into a management agreement with EAGLE, now known as Arcis Golf, to provide management services for the concession operations, which included taking responsibility for hiring employees, staffing the portable bars during performances, purchasing product, maintaining financial records, and other concessionaire responsibilities. The approximate value of the management agreement is \$30,000 per year with incentives. Arcis Golf also currently manages the Los Robles Greens Golf Course on behalf of the City.

In May 2017, the Alliance for the Arts merged into the TOCAP Foundation to form TOArts. The requisite liquor license was transferred into TOArts' name and TOArts entered into an agreement with the City to continue to serve as the concessionaire for BAPAC. This agreement was extended in 2019 and was intended to be extended again in 2021. However, during the pandemic, staff were unable to extend the agreement prior to expiration. In July

2021, a temporary professional services agreement was executed authorizing TOArts to continue providing concessions services through December 31, 2021.

DISCUSSION/ANALYSIS:

Concessions services are a significant amenity for patrons attending performances. This includes providing and selling various food items, water, soda, juice, and alcoholic beverages to patrons attending performances at BAPAC. Patrons have come to expect the opportunity to purchase refreshments during their attendance at events and performances and this is common throughout the arts and entertainment industry.

Since assuming responsibility for concessions, TOArts has expanded the mix of menu items and implemented a computerized point of sale system, which, together with a policy that allows patrons to bring beverages into the theatre auditoriums, has significantly increased revenues over the last several years. TOArts also provides sellers to assist artists and touring attractions with the sale of merchandise including t-shirts, CDs, videos, posters, and programs. The Theatres Fund Budget benefits from the sale of merchandise by charging artists a commission for the rights to sell their merchandise at BAPAC. This agreement further provides more control and oversight of the concessions' operation.

It is important for BAPAC to continue to provide patrons with services they have come to expect when attending performances at the Fred Kavli or Janet & Ray Scherr Forum Theatres. Having TOArts continue to provide concessions services assures that patrons will be able to enjoy this amenity during their visits to BAPAC for performances and events. This agreement also provides important additional revenues to buffer TOArts' assumption of financial risk to bring popular headline entertainers and events to Thousand Oaks, the investment in the local community through various grant programs, and provides critical commission revenues to the Theatres Fund which continues to recover from the COVID-19 pandemic. To provide greater stability and consistency, this agreement runs concurrently with the City's agreement with Arcis Golf to manage operations at the Los Robles Greens Golf Course in order to allow TOArts the opportunity to continue to contract directly with Arcis Golf.

ATTACHMENTS:

Attachment #1 – Concessions services agreement with City of Thousand Oaks

Attachment #2 – Concessions management agreement with Arcis Golf

Project Name: BAPAC Concession Services

**AGREEMENT FOR CONCESSION SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND THOUSAND OAKS ALLIANCE FOR THE ARTS**

THIS AGREEMENT is made and entered into this 14th day of December 2021, by and between the **CITY OF THOUSAND OAKS**, a municipal corporation (herein referred to as "City"), and **THOUSAND OAKS ALLIANCE FOR THE ARTS**, (herein referred to as "TOArts").

City and TOArts agree as follows:

1. THEATRE CONCESSIONS

City and TOArts hereby agree that TOArts will, in addition to its duties and obligations as the City's partner nonprofit organization dedicated to advance, support, and present visual and performing arts, cultural events, and arts education at the Bank of America Performing Arts Center, carry out the services described in Section 2. TOArts warrants it has the qualifications, experience, and personnel to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by TOArts are as follows:

City grants TOArts the sole and exclusive right to provide professional concession services at all events taking place at the Fred Kavli Theatre and Janet & Ray Scherr Forum, collectively referred to as Bank of America Performing Arts Center (herein referred to as "BAPAC") with the exception of backstage catering for performers and crew. Services shall generally include the sales of food, alcoholic and non-alcoholic beverages during BAPAC events, and as more particularly set forth in the Scope of Work and Technical Requirements, attached as Exhibit "A," and incorporated herein.

3. COMPENSATION AND PAYMENT

(a) Compensation. TOArts shall pay monthly to the City an amount equal to twenty-percent (20%) of Net Sales with Net Sales defined as gross sales less the cost of sales and general operating expenses.

(b) Payment. TOArts shall provide City with a monthly financial report in a form satisfactory to City's Project Manager. All payments shall be made on a quarterly basis to City within 30 days after City's approval of the quarterly financial report.

4. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by TOArts shall be accomplished under the general direction of, and coordinate with, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is the City's Cultural Affairs Director.

City shall perform the services defined in Exhibit "A" and provide the equipment as listed in Exhibit "B".

5. TERM, PROGRESS AND COMPLETION

The term of this Agreement shall run from January 1, 2021 to December 31, 2026, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

TOArts shall not commence work on the services to be performed until (i) TOArts furnishes proof of insurance as required by paragraph 9 below, and (ii) City gives written authorization to proceed with the work provided by City's Project Manager.

6. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documents prepared and maintained for concession operations will be the property of TOArts. Copies of said documents will be provided to City on a quarterly basis, or within five business days if requested by City. City shall be entitled to immediate possession of all concession-related drawings, designs, data, photographs, reports and other documentation upon completion of the work under this Agreement. City agrees to hold TOArts harmless from all damages, claims, expenses, and losses arising out of any reuse of any plans and specifications for purposes other than those described in this Agreement, unless written authorization of TOArts is first obtained.

7. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This Agreement is for professional services which are personal to City. The following portions of the work will be subcontracted out to other parties by TOArts: Arcis Golf (herein referred to as "ARCIS") will provided general management of concession services on behalf of TOArts under this agreement.

The ARCIS General Manager of the Los Robles Greens Golf Course is deemed to be specially experienced and is a key member of ARCIS's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to TOArts and City on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, City may terminate this Agreement.

This Agreement is not assignable by TOArts without City's prior consent in writing.

8. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for TOArts' Damages. TOArts holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of TOArts' claims, demands, lawsuits, judgments, damages, losses, injuries or liability to TOArts, to TOArts' employees, to TOArts losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third-Party Claims/Liability. TOArts shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with TOArts', including its employees, agents', volunteer', contractors', and subcontractors' negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and TOArts, or should City otherwise find TOArts' legal counsel unacceptable, then TOArts shall reimburse the City its costs of defense, including without limitation reasonable legal counsel's fees, expert fees and all other costs and fees of litigation. TOArts shall promptly pay City any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a tier of fact to have been the result of TOArts', its employees', agents', volunteers', contractors' or subcontractors' negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

TOArts obligations under this section apply regardless of whether or not such claim, charge damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, TOArts shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of TOArts will be for that entire portion or percentage of liability not attributable to the active negligence of City.

(c) Nonwaiver. City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in

Section 9.

9. INSURANCE

Without limiting TOArts' indemnification of City, and prior to commencement of Work, TOArts shall obtain, provide, and maintain at its own expense during the term of this agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to the City.

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** TOArts shall, at TOArts' sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including with limitation, blanket contractual liability.

2. **Workers' Compensation:** TOArts shall, at TOArts' sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law.

3. **Liquor Liability:** TOArts shall, at TOArts' sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Liquor Liability insurance coverage. Such insurance policy shall, at a minimum, include coverage on an "occurrence" basis, for bodily injury, death and property damage from negligent and/or illegal alcohol service in connection with the work to be performed under this Agreement in an amount not less than \$1,000,000 per occurrence.

Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and TOArts agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this agreement.

If TOArts maintains higher limits than the minimum shown above, the City requires and shall be entitled to coverage for the higher limits maintained by TOArts. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL and liquor liability policies with respect to liability arising out of work or operations performed by or on behalf of TOArts including materials, parts, or equipment furnished in connection with such work or operations. General liability and liquor liability coverage can be provided in the form of an endorsement to TOArts' insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The provision shall also apply to any excess liability policies.

City's Rights of Enforcement

In the event any policy of insurance required under this agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by TOArts, or City will withhold amounts sufficient to pay premium from TOArts payments. In the alternative, City may cancel this agreement.

Primary Coverage

For any claims related to this Agreement, TOArts' insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess TOArts' insurance and shall not contribute with it.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its officers, officials, employees or volunteers or shall specifically allow TOArts or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. TOArts hereby waives his own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subcontractors.

Verification of Coverage

Foundation TOArts shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive TOArts' obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

TOArts shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and TOArts shall ensure that City is an additional insured on insurance required from subcontractors.

10. RELATION OF THE PARTIES

The relationship of the parties to this Agreement shall be that of independent contractors and that in no event shall TOArts be considered an officer, agent, servant or employee of City. TOArts shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

11. CORRECTIONS

In addition to the above indemnification obligations, TOArts shall correct, at its expense, all errors in the work that may be disclosed during City's review of TOArts' report or plans. Should TOArts fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be charged to TOArts or withheld from any funds due to TOArts hereunder.

12. TERMINATION BY EITHER PARTY

Either party, by notifying the other in writing, may upon 90 calendar days' notice, terminate without cause any portion or all of the services agreed to be performed under this Agreement. If termination is for cause, no notice period need be given. In the event of termination, TOArts shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. Any compensation for actual work performed and charges outstanding at the time of termination owed to TOArts by City or for payment of net sales required under Section 3 (a) above owed to City from TOArts shall be payable within 60 days following submission of a final statement by TOArts unless termination is for cause. If termination is for cause, the party in breach shall be compensated only to the extent required by law.

13. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, TOArts shall make available to a representative of City for examination of all its records with respect to all matters covered by this Agreement and will permit City to audit, examine and/or reproduce such records. TOArts will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this Agreement.

14. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance

by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

15. CONFLICT OF INTEREST

TOArts is unaware of any City employee or official that has a financial interest in TOArts' business. During the term of this Agreement and/or as a result of being awarded this Agreement, TOArts shall not offer, encourage or accept any financial interest in TOArts' business by any City employee or official.

16. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

17. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

18. GOVERNING LAW

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Ventura County.

19. TAXPAYER IDENTIFICATION NUMBER

TOArts shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9 as most recently issued by the Internal Revenue Service.

20. NON-APPROPRIATION OF FUNDS

Payments due and payable to TOArts for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of City

funds. In the event City has not appropriated sufficient funds for payment of TOArts services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

21. MODIFICATION OF AGREEMENT

The tasks described in this Agreement and all other terms of this Agreement may be modified only upon mutual written consent of City and TOArts.

22. USE OF THE TERM "CITY"

Reference to "City" in this Agreement includes City Manager or any authorized representative acting on behalf of City.

23. PERMITS AND LICENSES

TOArts, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement, as more fully described in the Scope of Work, Exhibit "A" hereto.

24. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

25. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

26. ENTIRE AGREEMENT BETWEEN PARTIES

Except for TOArts' proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services and contains all of the covenants and agreements between the parties with respect to said services.

27. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

28. SIGNATURES

(a) Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) Scanned Signatures. In the event that any signature is delivered by facsimile transmission or submitted electronically as a scanned image (i.e. files with .pdf, .tiff or .jpeg extensions), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned signature page were an original thereof.

(c) Digital/Electronic Signatures. This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA) and are produced using a City-approved method. The presence of an electronic signature on this document shall be construed as the parties' consent to do business electronically.

29. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Attention: Jonathan Serret
 Cultural Affairs Department
 City of Thousand Oaks
 2100 Thousand Oaks Boulevard
 Thousand Oaks, CA 91362

TO TOARTS: Attention: David Mead
 Thousand Oaks Alliance for the Arts
 2100 Thousand Oaks Boulevard
 Thousand Oaks, CA 91362

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

TOARTS

By: David Mead
 Title: Chair

By: Janet Scherr
 Title: Secretary

CITY OF THOUSAND OAKS

Robert Engler, Mayor

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager

APPROVED BY DEPARTMENT HEAD:

Jonathan Serret, Cultural Affairs Director

APPROVED AS TO FORM:

Office of the City Attorney

Tracy Friedl, Assistant City Attorney

EXHIBIT A**CONCESSION SERVICES
SCOPE OF WORK AND REQUIREMENTS****1. GENERAL INFORMATION**

TOArts shall provide, directly or through use of a subcontractor, professional concession services at Theatres consisting of the sales of food, alcoholic and non-alcoholic beverages from permanent or portable concession stands, catered food and beverages for special functions in Theatre meeting rooms and lounges, and merchandise sales as may be required by artists performing at Theatres.

2. TOARTS

TOArts is responsible for the following requirements:

- a. **Bookkeeping.** TOArts shall establish and maintain a system of bookkeeping satisfactory to City's Internal Auditor.
- b. **Cash Control and Inventory Systems.** TOArts shall use in all permanent and portable concession stands a cash control and inventory system to track sales and product usage.
- c. **City Approval of Personnel.** City shall approve TOArts' choice of concessions subcontractor, which is currently Arcis Golf, and reserves the right to request and have TOArts comply with personnel changes, particularly the Facilities Manager, to the extent permitted by applicable law. If at any time, any personnel are unsatisfactory to City Project Manager, TOArts shall work with the concessions subcontractor to make a change in such personnel acceptable to City within ten (10) days of written notice from City.
- d. **Deliveries.** TOArts shall schedule the movement of products in and out of concession locations to avoid conflicts with events at Theatres.
- e. **Facilities.** For the period of this Agreement, City will furnish at no cost to TOArts office and storage space, concessions areas and pantry space. The location of any and all mobile concession stands requires the approval of City's Project Manager.
- f. **Facilities Access.** TOArts and its employees and subcontractors shall be entitled to enter upon and remain in designated BAPAC areas only during events and to office areas for the conduct of normal business activities associated with this Agreement.

- g. **Facilities Inspections.** City shall have the right at any time and as often as the City considers necessary to inspect the locations and places of TOArts' concessions operations to advise TOArts of the existence of any conditions which the City determines to be unsafe, unsanitary or detrimental to the public or operation of the BAPAC. TOArts shall correct all such conditions promptly after written notice from City.
- h. **Food Safety.** TOArts is solely responsible for complying with all State, County and industry standard food safety regulations and procedures, including federal Hazard Analysis Critical Control Point (HACCP) standards, and for any health issues arising from the service of food by TOArts or its employees or subcontractors.
- i. **Licenses and Permits.** TOArts shall procure all required licenses and permits and pay all charges and fees necessary for the business to be conducted hereunder, including, but not limited to Ventura County Health permits and a full-service liquor license from the California Department of Alcoholic Beverage Control.
- j. **Merchandise Sales.** TOArts may be required to provide personnel to serve as "sellers" for the sale of artist merchandise prior to, during, and after artist performances at Theatres. TOArts will be reimbursed by artists at a rate of \$100.00 per seller. City shall retain all merchandise sales commissions paid by artist in exchange for the right to sell artist's merchandise at BAPAC.
- k. **Product Pricing.** TOArts product offerings and pricing shall be pre-approved by City during the term of this Agreement.
- l. **Promotions.** From time to time, City may direct TOArts to adopt promotional or marketing efforts to increase the sales of food, beverages and other services.
- m. **Restrictions on Sales.** City's contracts with rental tenants for particular events at Theatres may stipulate reasonable restrictions on the sale of food, beverages and other concession items because of the nature of the function.
- n. **Sales Reports.** Within two (2) business days following each event, TOArts shall provide City with a sales recap report.
- o. **Sanitation.** TOArts shall maintain, at all times, all food preparation and serving areas, and all equipment, fixtures, utensils, and other concessions related items in a clean and sanitary condition and comply with all applicable health and sanitation laws and regulations in effect where the areas are located in the BAPAC.
- p. **Signage.** Any signage used to display product information and pricing shall be maintained in good condition and working order. All signage must be preapproved by City's Project Manager prior to installation and shall not conflict with any sponsorship arrangement entered into by City and shall be expressly used to advertise a product for sale at the concessions sales location where the sign is being display.

- q. **Sponsorships and Sampling.** Nothing in this Agreement shall be construed so as to prohibit a rental tenant or sponsor of the BAPAC or an event from exhibiting any merchandise in connection with the same, or from dispensing free samples of merchandise. Sampling of food or beverage merchandise shall take place following an event, so as to not impact TOArts' concessions sales.
- r. **Taxes.** TOArts shall collect and promptly disburse all taxes required by federal, state and local authorities for any sales conducted by TOArts in the BAPAC and shall pay any applicable taxes relating to food service operations, equipment, or inventory (other than with respect to City owned/purchased equipment).
- s. **TIPS, TEAM.** TOArts shall implement an alcoholic beverage management control system to establish procedures when serving alcoholic beverages to patrons, such as Techniques for Effective Alcohol Management (TEAMS) or Training for Intervention Procedures (TIPS).
- t. **Uniforms and Appearance.** TOArts shall ensure that concessions employees maintain a professional appearance while performing the duties associated with this Agreement.

3. CITY

City is responsible for the following requirements:

- a. **Notice of Event Schedule.** City shall provide TOArts with advance notice of scheduled events at BAPAC including an estimated attendance for each event.
- b. **City Provided Equipment.** City owns and maintains the basic concessions equipment listed in Exhibit "B" of this Agreement and located in the BAPAC's permanent concessions stand and BAPAC facilities.
- c. **Trash Services.** City is responsible for the removal of trash and recycling materials from the BAPAC. TOArts shall comply with all laws and City policies concerning recycling and environmental issues that are in effect during the term of this Agreement.
- d. **Utilities.** City shall furnish, at no cost for consumption, all electric, gas, heat, water and drainage utilities necessary for the food service operations. TOArts shall use best efforts to practice prudent energy management satisfactory to City. City shall be responsible for maintaining and repairing all utility lines and utility service equipment for TOArts' locations within BAPAC.

EXHIBIT B

**CONCESSION SERVICES
CITY PROVIDED EQUIPMENT**

- Ice Machine, double headed 2,000 lb.
- Ice Machine, crushed ice machine
- Reach in refrigerators, 180 cubic feet

**AGREEMENT FOR CONCESSION MANAGEMENT SERVICES
BETWEEN THOUSAND OAKS ALLIANCE FOR THE ARTS
AND
EVERGREEN ALLIANCE GOLF LIMITED, LP D/B/A ARCIS GOLF**

This MANAGEMENT AGREEMENT (the "**Agreement**") is made and entered into as of January 1, 2022 by and between the **Thousand Oaks Alliance for the Arts**, a non-profit foundation (hereinafter referred to as "**TOARTS**") and **Evergreen Alliance Golf Limited, LP d/b/a Arcis Golf** (hereinafter referred to as "**Arcis**") for the management of concessions for the Thousand Oaks Civic Arts Plaza's Bank of America Performing Arts Center (hereinafter referred to as "BAPAC") in Thousand Oaks, CA.

Recitals

A. TOArts is responsible for oversight of concessions at the Bank of America Performing Arts Center (BAPAC), comprised of the Fred Kavli Theatre and the Scherr Forum respectively, located at the Thousand Oaks Civic Arts Plaza 2100 Thousand Oaks Boulevard, Thousand Oaks, CA 91362;

B. TOArts desires to facilitate the management of the concessions for the BAPAC through the use of a professional management company whose duties are further defined in this Management Agreement and the attached exhibits as currently written or as amended over time;

C. Arcis is a professional management company with experience and expertise related to concession management and promotion and has the requisite qualifications to properly perform hereunder.

D. TOArts desires to retain Arcis and Arcis desires to provide such management services pursuant to the terms and conditions of this Agreement.

Agreement

The parties agree as follows:

1. **Term of Agreement.** The term of this Agreement shall be from January 1, 2022 (the "Start Date"), until December 31, 2026. TOArts shall have the option to renew the Agreement, with mutual acceptance by Arcis, no more than three (3) separate times for a period of five (5) years each, so long as TOArts is still contractually permitted by the City of Thousand Oaks to provide concession services. Extensions shall be memorialized with a written amendment signed by both parties. Parties shall give written notice 90 days prior to the end of any term period of their intention to extend the Agreement. Either party can terminate without cause by giving 150 days' notice prior to any date.

2. **Services to be Performed by Arcis.** During the term of this Agreement, Arcis shall provide the following services to TOArts: all operations and management of concessions for and in the BAPAC, the collection and disbursement of all monies related

thereto, the employment of all staff necessary for the full and proper operation of BAPAC concessions, management of promotions and events in conjunction with TOArts and/or designated City of Thousand Oaks Theatre staff, sale of artist merchandise when requested by TOArts or Theater staff, the purchase and sale of food, beverages, supplies and services, the purchase and maintenance of insurance coverage, the handling of disputes with third parties arising out of the sale of concessions, control of BAPAC concession related litigation, the collection and payment of all appropriate taxes, and the performance of all other day-to-day activities relative to BAPAC concessions.

3. **BAPAC Operations.** With respect to the operation of the BAPAC, the parties hereto agree as follows:

a. TOArts Authorization. TOArts hereby grants and delegates to Arcis the authority and the responsibility necessary to permit Arcis to perform its duties under this Agreement and to do any and all acts deemed necessary or desirable for operation and maintenance of concessions at BAPAC and agrees to take such additional steps as are necessary to evidence such delegation and authorization as is reasonably requested by Arcis.

b. Major Decisions. From time to time, Arcis may submit to TOArts for approval proposals for major expenditures, improvements or events which impact the concessions, including, but not limited to: capital improvements and expenditures and the Annual Budgets (as defined in subparagraph 3d below). Arcis shall secure TOArts' prior approval of all such major proposals, which approval may also require City input and approval. Arcis shall, to the best of its ability, operate the concessions in accordance with the major policy decisions approved by TOArts.

c. Operational Guidelines. Arcis and TOARTS agree to abide by the Operational Guidelines already established for the concession obligations at the BAPAC. The Operational Guidelines include hours of operation, best practices for concession services, handling of money and verification of accounts, and other policies relating to the operation of the concessions. The Operational Guidelines will be reviewed periodically by TOArts and Arcis representatives and any possible revisions shall be approved by key City staff prior to implementation. Arcis also agrees to adhere to any requirements contained in the liquor license(s) obtained by TOArts for use at the BAPAC.

d. Annual Operating Budget/Pro Forma. Not later than May 1 (60 days prior to Fiscal Year End) of each year during the term of this Agreement or any renewal hereof, Arcis shall submit a proposed operating budget (the "Proposed Annual Budget") to TOArts for the upcoming fiscal year. The Proposed Annual Budget shall specify the amount of working capital required to continue operations of the Concessions for the upcoming calendar year in light of all major policy decisions, specify all anticipated expenses required to maintain a reasonable level of equipment, supplies and inventory and all projected expenses for long-term capital improvements and equipment. TOArts shall approve or reject the Proposed Annual Budget within thirty (30) days of its receipt by TOArts. TOArts' failure to reject Proposed Annual Budget shall be deemed an approval by TOArts of the Proposed Annual Budget as submitted by Arcis. The Proposed Annual Budget, once approved (or deemed approved) by TOArts, shall be referred to as the "Annual Budget". In the event TOArts and Arcis cannot agree on the Proposed Annual Budget, such dispute

will be submitted to Arbitration as set forth in Paragraph 22 hereof. Arcis shall be entitled to continue to operate the Concessions in accordance with the then existing budget until such time as the new Proposed Annual Budget is approved by TOArts, or as determined by Arbitration. The first Operational Budget pro forma shall be provided to TOArts within 30 days of the execution of this Agreement.

f. Promotion of Activities. Arcis shall coordinate and direct all work done with respect to the promotion, advertisement and public relations of concessions and concession related activities at the BAPAC in conjunction with TOArts.

g. BAPAC Personnel. Arcis shall, in its sole discretion, hire all staff necessary for the efficient operation of the concessions at the BAPAC, including, but not limited to, on-site management personnel and food and beverage staff. Such personnel shall be hired and employed by Arcis. TOArts will be consulted and Arcis agrees to accept input from TOArts as to the selection of the on-site Facility Manager hired by Arcis. TOArts and Arcis agree that the Facility Manager shall be directly involved in performing, supervising or assisting in the performance of concession work and shall attend monthly City of Thousand Oaks Cultural Affairs Department staff meetings.

h. Food and Beverage Services. TOArts shall allow the sale of beer, wine and liquor at the BAPAC. TOArts will secure and keep current the necessary State of California local liquor licenses, and all other permits and approvals and be the permittee for concessions services at BAPAC. Arcis will manage the sale of alcoholic beverages for TOArts. Arcis shall comply with all laws relating to the sale of alcoholic beverages. Arcis shall purchase and sell such beverages for the BAPAC and sell such beverages pursuant to the guidelines set forth in Exhibit B. Arcis shall purchase and sell such other food and beverages at the BAPAC for such prices as TOArts and Arcis deem prudent after analyzing prior operational data and trends. If Arcis is negligent in the sale of beer, wine, or liquor at the BAPAC and any licenses or permits are revoked, Arcis shall have thirty (30) days to correct the infraction, institute necessary protocols to prevent the action that caused the revocation, pay any associated requisite costs, and cooperate with TOArts in any efforts to have the revoked license or permit reinstated. If Arcis' actions or the actions of its employees are not corrected within thirty (30) days, such failure will be considered a default by Arcis under section 9 of this Agreement.

i. Corporate Purchasing. Due to Arcis' size, it is able to negotiate national purchasing contracts with certain vendors. If the BAPAC utilizes such national purchasing contracts, Arcis agrees to share with TOArts a percentage of any marketing allowances received from those vendors during the Term, as well as any rebates received. TOArts will also benefit from Arcis' negotiated pricing. All equipment leases and operating contracts will be in the name of TOArts.

j. Point of Sale System. TOArts shall ensure that any Point of Sale system ("POS") used by TOArts shall be compatible with that used by Arcis.

k. Exclusivity of Concessions / Option for Catering Events. Arcis shall hold the exclusive rights to all concessions at the BAPAC. Arcis understands, however, that City and TOArts may utilize outside caterers for private events. Arcis will have the same rights as any outside caterer to bid on any private catering opportunity (separate from its

concession duties). Arcis shall have the exclusive right to sell and dispense liquor for all events held at the BAPAC. Any caterer who desires to provide alcohol for sale and/or use during an event at BAPAC, will need to arrange and pay for the use of Arcis employees to sell, pour or dispense the alcohol.

I. Outside Consultants/Contractors. Arcis shall consult with TOArts and obtain written consent prior to retaining any outside consultants and third-party contractors in connection with the operation of the BAPAC, such as accountants, attorneys, tax advisers and marketing/public relations consultants.

4. **Net Cash Flow.** Arcis shall pay to TOArts quarterly one hundred percent (100%) of the Net Cash Flow from the concessions of the BAPAC, determined in accordance with the provisions of this paragraph, for the period ending on the last day of the preceding month. "Net Cash Flow" shall be a dollar amount, equal to (a) Revenues less (b) the sum of: (i) Expenses; and (ii) Actual Capital Expenditures, all as defined below. Approved Reserves will not be included in the Monthly Net Cash Flow calculation.

a. Revenues. "Revenues" shall mean all cash receipts of any kind from operation of the concessions of the BAPAC, including but not limited to: proceeds from the sale of food and beverages, rebates, proceeds from the sale of assets, interest income, Advances (as hereafter defined) and insurance proceeds.

b. Expenses. "Expenses" shall mean all cash expenditures made in connection with or for the benefit of the BAPAC, with TOArts' approval, and losses of any kind from the operation of the BAPAC, including but not limited to:

(1) Any and all direct employee concession-related expenses including, but not limited to, payroll, bonus, payroll taxes, employee benefits (including, without limitation, insurance, health and welfare benefits), 401 (k), employee disputes and litigation, unemployment insurance and taxes, testing, hiring and training. Said expenses to be charged at a pro-rata share of the employee's work at BAPAC or for specific functions related to concession preparation for scheduled BAPAC performances. Arcis will account for each employee's work hours for TOArts-related business according to industry standards.

(2) Sales, use, rental and other taxes and governmental fees and charges assessed against the BAPAC or its operation.

(3) Cost of food, beverage, and supplies and all other inventory;

(4) Costs associated with the procurement and maintenance of Insurance (including, without limitation, the insurance coverage specified in paragraph 12 hereof) including all deductibles and self-insured retentions;

(5) Cost associated with marketing, advertising and promotion of the Concession services;

(6) Acquisition costs, lease payments and debt service payments

for equipment, furniture, fixtures and other capital items;

- (7) License fees, dues and subscriptions;
- (8) Costs of maintaining and improving the BAPAC;
- (9) Fees of outside consultants and third-party contractors retained by Arcis in connection with the operation of the BAPAC, such as accountants, attorneys, tax advisers and marketing/public relations consultants.
- (10) All Management Fees (as defined in Paragraph 7, below) paid to Arcis in accordance with this Agreement;
- (11) Arcis' direct and indirect out-of-pocket expenses incurred in connection with the operation of the BAPAC;
- (12) All fees associated with the BAPAC banking and accounts;
- (13) All losses arising from theft, spoilage, Act of God or other Force Majeure event unless such losses are attributable to Arcis' negligence or the negligent or intentional actions of Arcis' employees or agents; and
- (14) Any and all other costs reasonable and customary in the industry.

c. Actual Capital Expenditures. "Actual Capital Expenditures" shall mean all cash payments of \$500 or more for equipment, furniture, fixtures, facility improvements, capital items and other customary expenses incurred in the operation of the Concessions. In the event of an emergency, Arcis is authorized to make an otherwise unapproved capital expenditure, providing that no permanent structural changes shall be allowed without City approval. Arcis will notify TOArts within fifteen (15) business days following making such expenditure. For purposes of this Paragraph, "Emergency" shall mean any improvement or maintenance required to ensure the health and safety of the facility's guests or employees, or as otherwise required by operation of law.

5. **Advances from TOArts.** If in the unlikely event that, at any time, the Revenues from the operation of the BAPAC are not sufficient to meet the Actual Capital Expenditures or Expenses as they become due, TOArts shall immediately transfer sufficient funds into the Facility Accounts to meet such obligations.

6. **Accounts.** All Revenues, Advances and Approved Reserves shall be held by Arcis for TOArts, subject to such funds being disbursed for Expenses and Actual Capital Expenditures. Arcis shall maintain one or more separate accounts (collectively referred to as "Facility Accounts"), which may include interest earning accounts, at one or more commercial banks, each approved in advance by TOArts, for the receipt of Revenues, Advances and Approved Reserves and for the payment of Actual Capital Expenditures, Expenses and Approved Reserves. Arcis shall account to TOArts and pay all payments due to TOArts from Facility Accounts in accordance with this Agreement. Arcis shall not

commingle Revenues, Advances and Approved Reserves with other money or accounts, and shall not take any money or property from the Facility Accounts or from the BAPAC except to make payments for Actual Capital Expenditures, Expenses and Approved Reserves as set forth in this Agreement. Arcis shall not purchase goods or services from an entity affiliated with Arcis unless such purchase is on terms reasonably competitive with terms available from non-affiliated sources.

7. **Management Fees.** In exchange for services, which include, but are not limited to accounting, financial reporting, legal, risk management, payroll, human resources, training, operational oversight and other "back of the house" services rendered by Arcis under this Agreement, Arcis shall be paid from Facility Accounts: (b) all direct and indirect out-of-pocket Expenses incurred by Arcis in connection with the operation of the BAPAC; and a Base Management Fee. If, on any date when any of the foregoing amounts are owing to Arcis, the Facility Accounts contain insufficient funds to pay Arcis the amounts owing, TOArts shall immediately make an Advance to cover the shortfall. If TOArts fails to make such Advance within 5 business days of such notice by Arcis, the amount owed to Arcis shall bear interest at the rate of two percent (2%) over the prime rate at Wells Fargo Bank, adjusted on the first day of each month, until paid in full.

d. Base Management Fee. The "Base Management Fee" shall be an amount equal to the greater of \$2,500.00 per month (\$30,000 per year) or 8% of Gross Concession Revenue for the preceding month. The Base Management Fee shall be due and payable on the twenty-fifth day of each month and shall be deducted from the Facility Accounts. "Gross Concession Revenues" shall mean Revenues as defined in Section 4a minus Sale of Assets, Advances, Interest, and Insurance Proceeds.

8. **Accounting.** Arcis shall maintain books and records relating to the business activities of the BAPAC separate from its other books and records. Arcis shall prepare an opening balance sheet listing assets and liabilities used or incurred in the operation of the BAPAC. Thereafter, Arcis shall have monthly financial statements prepared which shall include unaudited balance sheets and income statements (each month's records shall be referred to separately as the "Monthly Financial Statements") prepared as if the operation of the Concessions is a business entity separate from Arcis and TOArts. Arcis shall deliver a copy of the preceding month's Monthly Financial Statements within twenty-five (25) days after the end of that month, except where circumstances beyond the reasonable control of Arcis delay delivery of such statements. TOArts agrees that if actual practice indicates the deadline set forth in the preceding sentence is impractical or impossible for Arcis to meet, TOArts shall modify such requirements. In addition, Arcis shall deliver to TOArts, not later than August 31 of each year during the term of this Agreement or any renewal thereof, a copy of year-end financial statements for the BAPAC for the preceding fiscal year.

a. Review and Audit: At any time during the term of this Agreement, upon five (5) business days advanced notice and during normal business hours of operation, and for three (3) years thereafter, TOArts shall be entitled to inspect the books and records related to Arcis' management of the BAPAC, and TOArts may conduct an audit of the BAPAC records, all Monthly Financial Statements and all Annual Financial Statements generated and/or held by Arcis, provided that any expense incurred by TOArts in conducting an inspection or audit shall be borne by TOArts.

b. Audit Penalty: If, as the result of such audit, any found and established discrepancy in financial reporting exceeds 8% of the annual revenues generated, Arcis shall forthwith pay such sum owed, pay for all reasonable TOArts' costs of that audit, and shall result in a penalty of 10% of the unpaid balance per occurrence.

9. **Default by Arcis.**

e. Events of Default. Any one or more of the following events shall, unless cured in accordance with paragraph 9.b., below, constitute a default of this Agreement by Arcis ("Default"):

(2) A material breach of the obligations of Arcis under paragraph 3 of this Agreement;

(3) A discontinuance by Arcis of its business or abandonment of its activities at BAPAC; or

(4) A material breach of any material term or provision of this Agreement, which remains uncured 30 days after Arcis receives notice thereof;

(4) Misconduct or malfeasance of any BAPAC employee working under Arcis' control, which misconduct is not immediately corrected or which causes irreparable harm to the BAPAC, TOArts or the City of Thousand Oaks. Such conduct shall include, but not be limited to, theft or embezzlement, being under the influence of drugs or alcohol while at work, rude, violent or disrespectful behavior towards co-workers or BAPAC patrons

f. Cure. Arcis shall have thirty (30) days after receipt of written notice from TOArts specifying the nature of its Default under paragraph 9.a., above, within which to initiate cure of such Default, or such longer period of time as may be reasonably required to cure such Default provided that Arcis promptly commences the remedying of such Default and is continuing diligently to complete such cure.

g. Exercise of Termination Option. In the event of a Default, TOArts may terminate this Agreement upon expiration of the cure period described in subparagraph 9.b., above, by delivering to Arcis written notice of its election to terminate the Agreement, provided that Arcis has not timely cured the Default. In addition, TOArts shall pay Arcis all amounts owed to Arcis prior to submitting written notification of termination unless said amounts are in dispute or TOArts is claiming Arcis' actions have caused monetary damages. If TOArts asserts Arcis' actions have resulted in damages and Arcis claims it is owed money for previous work pursuant to this Agreement, TOArts shall set aside the disputed amount in a separate account. The disputed amount shall remain in the protected account until either the parties have reached a written agreement to disperse the funds or a court order compels dispersal in some fashion.

d. Notice. In the case of the above causes of termination, TOArts shall give written notice of termination to Arcis and termination shall become effective ninety (90) days after such termination notice is received by Arcis, subject to any dispute being resolved by arbitration as set forth in Paragraph 22 of the Agreement. If there has been no

cure of the cause for termination within such ninety-day notice period or the dispute has not been resolved by arbitration, this contract shall be effectively terminated and be of no further force or effect at the end of such ninety-day period.

10. Default by TOArts.

h. Events of Default. Any one or more of the following events shall, unless cured in accordance with paragraph 10.b., below, constitute a default of this Agreement by TOArts ("Default"):

- (5) A breach of any material term of this Agreement;
- (6) Failure to timely advance funds to Arcis pursuant to this Agreement.
- (7) A discontinuance by TOArts of its business, filing of Bankruptcy petition, or any other action relating to the insolvency of TOArts, or termination of the agreement from City granting TOArts rights to operate concessions.

i. Cure. TOArts shall have sixty (60) days after receipt of written notice from Arcis specifying the nature of its Default under paragraph 10.a.(1), above, within which to cure such Default, or such longer period of time as may be reasonably required to cure such Default provided that TOArts promptly commences the remedying of such Default and is continuing diligently to complete such cure. For item 10.a.(2) above, TOArts shall have no more than fifteen (15) days after receipt of notice within which to cure such Default and for item 10.a.(3) above, no notice or cure period shall be provided.

11. **Vacating the BAPAC/Transfer Upon Termination.** Upon termination of this Agreement for any reason, Arcis shall immediately: (1) vacate the premises by the end of the applicable Notice period; and (2) sell, transfer and/or assign to TOArts all assets of the Concession services owned by Arcis, including those set forth in subparagraph 11.a., below, and TOArts shall assume and agree in writing to indemnify Arcis against all liabilities, including those set forth in paragraph 11.b., below, and all obligations and contingent liabilities relating to the BAPAC, other than contingent tort liabilities which result from the intentional malfeasance or negligence of Arcis or its agents.

j. Assets to be Transferred. Assets to be transferred and assigned to TOArts shall include, but not be limited to: all of Arcis' right, title and interest to any of the following arising out of activities of the BAPAC or purchased by Arcis from Advances from TOArts, or Revenues of the BAPAC (other than insurance proceeds relating to liabilities not required to be assumed by TOArts):

- (8) Cash in the Facility Accounts;
- (9) Accounts receivable;
- (10) Other receivables;
- (11) Inventories of food, beverages and supplies;
- (12) All equipment, furniture and fixtures;
- (13) Prepaid accounts and deposits;
- (14) Contract rights;
- (15) BAPAC specific trade names;
- (16) BAPAC books and records;
- (10) BAPAC proprietary information; and
- (11) BAPAC level goodwill.

k. Liabilities to be Assumed. Liabilities which TOArts assumes, or against which TOArts shall indemnify Arcis, shall include all debts and other contractual obligations arising out of the operation of the BAPAC. Such assumption of liability shall not include any tort liability resulting from the intentional wrong-doing or negligence of Arcis.

l. Closing. The transfer of assets and assumption of liabilities shall occur on the effective date of any termination unless the parties agree otherwise. No termination shall be effective until the simultaneous consummation of the foregoing transfer

and assumption occurs. Prior to the closing, TOArts shall continue to make Advances to Arcis to cover any deficiency of Revenues.

d. Pre – Fund. Upon any notice of termination of the Agreement, TOArts shall pre-fund Arcis for the following expenses:

- (1) All payrolls expected to be paid on TOArts' behalf during the transition period based upon the average value of last 4 payroll cycles multiplied by the number of future cycles in transition period;
- (2) All management fees that will be due to Arcis through the termination date; and
- (3) Any/all Advances due Arcis.

At no time during a post-notification, transition period will Arcis be in a credit position to TOArts.

12. **Indemnity.** The parties agree that Arcis is not an agent or employee of TOArts, and all activities of Arcis relating to the BAPAC shall be in Arcis' capacity as independent contractor to TOArts.

m. Obligations of the BAPAC. All obligations and costs to defend all disputed claims arising out of or resulting from Arcis' activities conducted in connection with or incidental to this Agreement **shall be paid as an expense of the BAPAC**. Arcis shall keep TOArts advised of any such matters. ____/____ (Signatories' Initials)

n. Indemnification by Arcis. Arcis shall indemnify, hold harmless and defend TOArts, its officers, directors, agents and employees, from and against all liability for any and all claims, liens, suits, demands or actions for damages, injuries (including death) to persons, property damage (including loss of use), and expenses, including court costs and reasonable attorneys' fees, expert's fees and other reasonable costs arising out of or resulting from Arcis' intentional malfeasance or negligence in the operation of the Concessions at BAPAC.

o. Indemnification by TOArts. TOArts shall indemnify, hold harmless and defend Arcis, its officers, agents and employees, from and against all liabilities for any and all claims, liens, suits, demands or actions for damages, injuries (including death) to persons, property damage (including loss of use), and expenses, including court costs and attorneys', consultant's fees and other reasonable costs arising out of, involving, or resulting from the operation of the Concessions by Arcis, the conduct of Arcis' business, the breach of any representation or warranty by TOArts, any act, omission or neglect of TOArts, its agents, contractors, employees or invitees, and out of any default or breach by TOArts in the performance in a timely manner of any obligation on TOArts' part to be performed under this Agreement, and arising out of, involving, or resulting from all liabilities and obligations transferred, assumed or to be assumed by TOArts in accordance with Paragraph 10 of this Agreement.

d. **Notice of Claims.** Arcis and TOArts shall provide each other with prompt written notice of any event covered by the indemnity sections of this Agreement and in

the event a claim or action is filed, each party may employ attorneys of its own choosing to appear and defend the claim or action on its behalf. Failure to provide such notice, however, shall not limit any party's indemnity obligations hereunder.

13. **Insurance.** As an Expense of the BAPAC, Arcis shall obtain liability insurance of the types and in the amounts set forth below from an underwriter(s) licensed to do business in the State of California. Arcis shall furnish to TOArts certificates of insurance, evidencing the required insurance, on or before the Start Date, and thereafter shall furnish new certificates upon request. So long as TOArts is not in breach of this Agreement, Arcis shall obtain and maintain the following types and amounts of insurance, for the term of this Agreement and any renewal hereof:

p. Type and Amount of Insurance. The type and amount of insurance Arcis shall obtain for management of the concessions at BAPAC shall be:

"TYPE"	"AMOUNT"
(17) Workers' Compensation and Employer's Liability or Statutory reasonably acceptable alternative	
(18) Comprehensive General (Public) Liability (or its equivalent) to include (but not limited to) the following:	Bodily Injury: \$1,000,000/person \$2,000,000 /occurrence and Property Damage: \$ 1,000,000-per occurrence or \$2,000,000-Combined Single Limit for bodily injury and property damage.
(c) Premises/Operations	
(d) Independent Contractors	
(e) Personal Injury	
(f) Products/Completed operations	
(19) Fidelity Insurance - covering all employees and officers having access to monies collected.	Amount sufficient to protect the loss of the largest dollar amount in the control or possession of an employee at any given time, but not less than \$25,000 or such other amount as requested by the TOArts).
(20) Property Insurance - for physical damage to the property of Arcis located at the BAPAC, including improvements and betterments to to the BAPAC.	Coverage for minimum of one hundred percent (100%) of the fair market value of property owned by Arcis.
(21) Comprehensive Automobile Liability (or its equivalent) - to include coverage for:	Bodily Injury: \$500,000 per person \$1,000,000 per occurrence and

(g) Owned/Leased Automobiles	Property Damage:
(h) Non-owned Automobiles	\$ 250,000 per occurrence
(i) Hired Cars	or
	\$1,000,000 Combined Single Limit for
	bodily injury and property damage.
(6) Corporate Liability Umbrella	At least \$10,000,000
(7) Liquor Liability	\$2,000,000 Aggregate or
	\$1,000,000 Each common cause

q. Additional Insurance Requirements. With respect to the above-described insurance, Arcis agrees to:

(22) Name City of Thousand Oaks and TOArts as additional insureds, or an insured as its interest may appear, and

(23) Provide thirty (30) days' written notice of any material change, termination or cancellation.

14. **Covenant of Cooperation.** Arcis shall provide TOArts with prompt written notice of any material injuries or damage suffered at the BAPAC, significant complaints, whether written or otherwise, about the BAPAC or its management, and actual or anticipated disputes with or claims by third parties. Arcis further covenants to cooperate with TOArts in resolving any such complaints, disputes or claims and TOArts covenants to cooperate with Arcis in resolving any such complaints, disputes or claims.

15. **TOArts Representations and Warranties.** As consideration for Arcis to enter into this Agreement, TOArts makes the following representations and warranties to Arcis.

r. Each of the Recitals set forth in this Agreement is true and correct.

s. TOArts is the designated non-profit 501(c)(3) support organization for the Bank of America Performing Arts Center's Kavli Theatre and Scherr Forum.

t. TOArts has power and authority and all legal rights to enter into and perform this Agreement. The officers of TOArts executing this Agreement are duly and properly in office and fully authorized to execute the Agreement. This Agreement, when duly authorized, executed and delivered by the parties hereto, shall create a valid and binding obligation on the part of TOArts, enforceable against TOArts in accordance with its terms.

u. Except as previously disclosed in writing to Arcis, there are no actions, suits or proceedings pending or, to the knowledge of TOArts, threatened against TOArts or affecting TOArts, the BAPAC or any of TOArts' assets, properties or rights, at law or in equity, by or before any court, arbitrator, administrative or governmental body or other person. Except as previously disclosed in writing to Arcis, TOArts is not in violation or default with respect to any applicable law or regulation which affects the BAPAC.

e. The BAPAC is adequate and in sufficiently good condition for Arcis to manage and operate concessions and other services contemplated by the terms of this Agreement. The BAPAC has all water and utility hook-ups necessary to operate the concession stands and other services contemplated by the terms of this Agreement.

15. **Arcis' Representations and Warranties.** As consideration for TOArts to enter into this Agreement, Arcis makes the following representations and warranties to TOArts.

v. Each of the Recitals set forth in this Agreement is true and correct.

w. Arcis is a duly organized and validly existing limited partnership in good standing under the laws of the State of Delaware and is registered and lawfully permitted to conduct business in California.

x. Arcis has the full power and authority and all legal rights to enter into and perform this Agreement and any other agreement referred to herein and contemplated by this Agreement. This Agreement, when duly authorized, executed and delivered by the parties hereto, shall create a valid and binding obligation on the part of Arcis, enforceable against Arcis in accordance with its terms.

16. **Relationship of the Parties.** The relationship between TOArts and Arcis shall be and at all times remains that of TOArts and independent contractor, respectively. Neither TOArts nor Arcis shall be construed or held to be a partner, limited partner, associate or agent of the other, or be joint venturers with one another. Neither TOArts nor Arcis shall be authorized by the other to contract any debt, liability or obligation for or on behalf of the other, except as provided for herein.

17. **Notices.** Except as otherwise specifically provided herein, any and all notices required or permitted under this Agreement shall be in writing and shall be deemed delivered upon personal delivery or upon mailing thereof when properly addressed and deposited in the United State Mail, first class postage prepaid, registered or certified mail, return receipt requested, or when properly addressed upon deposit with Federal Express, Express Mail or other trackable overnight courier service. Notices shall be properly addressed if addressed to the parties as follows:

If to TOArts: Jonathan Serret
Executive Director
Thousand Oaks Alliance for the Arts (TOArts)
2100 Thousand Oaks Blvd.
Thousand Oaks, CA 91362

With a copy to:
Jaime Boscarino
Finance Director/Treasurer

Patrick Hehir
Chief Assistant City Attorney

If to Arcis:

Attn: Legal Department
Evergreen Alliance Golf Limited, L.P. dba Arcis Golf
4851 LBJ Freeway, Suite 600
Dallas, Texas 75244

With a copy to:

Scott Siddons
General Counsel
Evergreen Alliance Golf Limited, L. P.
4851 LBJ Freeway, Suite 600
Dallas, Texas 75244

The addresses for notices may be changed by written notice given to the other party as provided above.

18. **Further Acts.** Each party to this Agreement agrees to execute and deliver all documents and instruments and to perform all further acts and to take any and all further steps that may be reasonably necessary to carry out the provisions of this Agreement and the transactions contemplated herein.

19. **Section Headings.** The section headings in this Agreement are for convenience and reference only and shall in no way define, limit, extend or interpret the scope of this Agreement or of any particular section contained herein.

20. **Interpretation.** Unless the context requires otherwise, words used in the singular number shall include the plural and vice-versa.

21. **Amendments and Waivers.** This Agreement shall be modified only by written instrument executed by the parties hereto. Any waiver of any provision of this Agreement shall be made in writing executed by the party who could demand fulfillment of such waived provision.

22. **Arbitration.** Any dispute arising out of this Agreement shall be submitted to arbitration. If either party wishes to commence arbitration, it shall serve written notice to the other party and, within fifteen (15) days after service, the parties shall mutually select a single arbitrator to conduct such arbitration. In the event that the parties fail to agree on a single arbitrator within fifteen (15) days, each party shall select one (1) arbitrator within ten (10) days thereafter, and those two (2) arbitrators shall select a third arbitrator, within ten (10) days after their own selection, to form a panel of three (3) arbitrators. Any decision by the sole arbitrator, or by a majority of the arbitration panel, shall be final and binding upon the parties. Any arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association then in effect, except that each party shall have the right to conduct pre-arbitration discovery limited to three (3) depositions and one (1) request for documents. The arbitrator or arbitration panel shall determine all discovery disputes. Costs and expenses, including reasonable attorneys' fees, incurred with respect to the arbitration shall be borne by the losing party, unless otherwise determined by the arbitrator or arbitration panel based on a showing of good cause.

Initials:

TOArts

Arcis

23. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Arcis may assign this Agreement upon written notice to TOArts.

24. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of **California**.

25. **ELECTRONIC SIGNATURES**

(a) **Scanned Signatures.** In the event that any signature is delivered by facsimile transmission or submitted electronically as a scanned image (i.e. files with .pdf, .tiff or .jpeg extensions), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned signature page were an original thereof.

(b) **Digital/Electronic Signatures.** This Agreement and any amendment hereto may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA) and are produced using a City-approved method. The presence of an electronic signature on this document shall be construed as the parties' consent to do business electronically.

26. **Severability.** Should one or more of the provisions of this Agreement be determined to be illegal or unenforceable, the other provisions nonetheless shall remain in full force and effect. The illegal or unenforceable provisions or provisions shall be deemed amended to conform to applicable laws so as to be valid and enforceable if such an amendment would not materially alter the intention of the parties.

27. **Entire Agreement.** This Agreement (together with any attached Exhibits) constitutes the entire agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior agreements, arrangements, understandings, restrictions, representations or warranties, whether oral or written, between the parties relating to the subject matter of this Agreement.

28. **Force Majeure.** The parties shall not be liable for loss, delay, or inability to perform caused by Acts of God, riots, war, insurrection, government regulations, epidemic or related public health order, or cause or event beyond the control of the parties.

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

TOARTS

By: David Mead, Chair

Attest: _____
Janet Scherr, Secretary

Arcis

By: _____

By: _____

Attest: _____