

**FOOD AND BEVERAGE SERVICES AGREEMENT**  
*(VICTORIA CONFERENCE CENTRE)*

THIS AGREEMENT made as of July ●, 2014

BETWEEN:

**THE CORPORATION OF THE CITY OF VICTORIA**  
720 Douglas Street  
Victoria, B.C.  
V8W 3M7  
  
(the “**City**”)

AND:

**BDC (EMPRESS HOTEL) INVESTMENT CORPORATION**  
500 – 1901 Rosser Avenue  
Burnaby, B.C.  
V5C 6S3  
  
(“**BDC Empress**”)

AND:

**FAIRMONT HOTELS INC.**  
1300 – 777 Dunsmuir Street  
Vancouver, B.C.  
V7Y 1K2  
  
(“**Fairmont**”)

AND:

**7742371 CANADA INC.**  
721 Government Street  
Victoria, B.C.  
V8W 1W5  
  
(“**7742371**”)

WHEREAS:

- A. Pursuant to a lease made April 24, 1987 (the “**Lease**”) and an operating agreement made April 24, 1987 (the “**Operating Agreement**”), each between the City and Canadian Pacific Hotels Corporation (“**CP**”), the parties agreed that CP would have the exclusive right to provide all food and beverage services in the conference centre commonly known as the Victoria Conference Centre (the “**Conference Centre**”), located at 720 Douglas Street, Victoria, British Columbia, on the terms and conditions set forth in the Lease and the Operating Agreement;

- B. The City owns and operates certain conference and banquet facilities commonly known as the Crystal Garden within a portion of the building located at 713 Douglas Street, Victoria, British Columbia (the “**Crystal Garden**”);
- C. The City holds food primary liquor licence 133237 with respect to a food and beverage serving establishment within the Conference Centre and food primary liquor licence 303380 with respect to a food and beverage serving establishment within the Crystal Garden (together, the “**Liquor Licences**”) issued by the British Columbia Liquor Control and Licensing Branch (the “**LCLB**”);
- D. Pursuant to a hotel management agreement dated as of June 15, 1999, as amended and restated as of January 1, 2006 (as further amended, restated, supplemented and/or otherwise modified from time to time to the date hereof, the “**Hotel Management Agreement**”) between, among others, Legacy Hotels Corporation (as successor-by-amalgamation to Legacy EF Inc.) (“**Legacy Corp.**”), Legacy Hotels Real Estate Investment Trust (“**Legacy REIT**”) and Fairmont, Fairmont agreed to manage the hotel commonly known as Fairmont Empress Hotel (the “**Hotel**”) and located at 721 Government Street, Victoria, British Columbia, on behalf of Legacy Corp. and Legacy REIT on the terms and conditions set forth in the Hotel Management Agreement;
- E. On September 13, 2007, Empress Hotel LP assumed the interest originally held by CP under the Lease and the Operating Agreement, and the interests of Legacy Corp. and Legacy REIT under the Hotel Management Agreement;
- F. On June 27, 2014, BDC Empress assumed the interest of Empress Hotel LP under the Lease, the Operating Agreement and the Hotel Management Agreement;
- G. The parties have agreed to certain matters regarding the provision of food and beverage services in the Conference Centre and the Crystal Garden, as well as certain ancillary matters, all as set forth herein.

NOW THEREFORE, in consideration of the covenants and agreements herein contained and the sum of \$10.00 now paid by each party to the others (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties agree as follows:

1. Crystal Garden Food and Beverage Services. The City and BDC Empress disagree as to whether the Lease and the Operating Agreement apply to food and beverage services at Crystal Garden. The City has permitted and continues to permit BDC Empress as successor to CP to provide food and beverage services at the Crystal Garden, and this Agreement has been drafted on the basis that the Lease and the Operating Agreement apply to food and beverage services at Crystal Garden. Notwithstanding the foregoing, the parties acknowledge and agree that the City (a) is not conceding that the Lease and the Operating Agreement apply to food and beverage services at the Crystal Garden, and (b) permits BDC Empress to provide food and beverage services at the Crystal Garden and enters into this Agreement without prejudice to the City’s right at any time to dispute the applicability of the Lease and the Operating Agreement to the Crystal Garden in any respect whatsoever.
2. Term. The term of this Agreement will commence on the date first written above and expire on the earlier of (a) the expiry or early termination of the Lease or the Operating Agreement, or (b) the expiry or early termination of the Hotel Management Agreement, provided that the City may at any time by written notice to the other parties terminate this Agreement with

respect to the Crystal Garden and cancel the third party appointment of 7742371 with respect to food primary liquor licence 303380. Notwithstanding the foregoing, the parties acknowledge and agree that BDC Empress (a) is not conceding that the Lease or the Operating Agreement do not apply to food and beverage services at the Crystal Garden, and (b) has agreed to provide the City with the foregoing termination right without prejudice to BDC Empress' right at any time to maintain that the Lease and the Operating Agreement apply to the Crystal Garden and entitle BDC Empress to provide food and beverage services at the Crystal Garden.

3. Delegation to Fairmont. BDC Empress hereby delegates to Fairmont, in its capacity as nominee of, or agent for, BDC Empress pursuant to the Hotel Management Agreement, all of its duties and responsibilities under the Operating Agreement relating to the provision of food and beverage services to the Conference Centre and the Crystal Garden, and Fairmont hereby accepts such delegation and covenants and agrees with BDC Empress and the City to observe and perform all such duties and responsibilities on behalf of BDC Empress in its capacity as nominee of, or agent for, BDC Empress pursuant to the Hotel Management Agreement, as if it were the party named therein.
4. Third Party Operator Appointment. The City hereby agrees to apply to the LCLB to appoint 7742371 as the third party operator of the Liquor Licences, and not to revoke such appointment prior to the termination or expiry of this Agreement. 7742371 will co-operate with such application as reasonably required and, without limiting the generality of the foregoing, will submit all information required by the LCLB in connection therewith and pay all associated fees levied by the LCLB.
5. Delegation to 7742371. Fairmont hereby delegates to 7742371 such duties and responsibilities under the Operating Agreement relating to the provision of food and beverage services to the Conference Centre and the Crystal Garden as are required to support the appointment of 7742371 as third party operator of the Liquor Licences, and 7742371 hereby accepts such delegation and covenants and agrees with Fairmont and the City to observe and perform all such duties and responsibilities as if it were the party primarily obligated to do so. Notwithstanding the foregoing, Fairmont agrees to and in favour of BDC Empress that it will be primarily responsible for ensuring all duties and responsibilities relating to the provision of food and beverage services to the Conference Centre and the Crystal Garden are observed and performed.
6. Consent. The City hereby consents to the delegation of food and beverage services duties and responsibilities in relation to the Conference Centre and the Crystal Garden as set forth in sections 3 and 5.
7. Non-Assignment. For greater certainty, the parties hereto acknowledge and agree that the provisions set forth in sections 3 and 5 do not constitute an assignment of BDC Empress' rights or obligations under the Operating Agreement.
8. Conflict. In the case of any conflict or inconsistency between a provision in either the Operating Agreement or the Hotel Management Agreement and a provision in this Agreement, the provision in this Agreement will prevail.
9. Indemnity. BDC Empress, Fairmont and 7742371, and each of them, jointly and severally, shall indemnify and save harmless the City, its elected and appointed officials, officers, employees, and agents from and against any and all claims, costs, expenses, damages, loss,

injury, fees (including legal fees on a solicitor and own client basis) and liability whatsoever ("**Claims**") that the City, its elected and appointed officials, officers, employees or agents may suffer or incur arising out of or in connection with the delegation of duties and responsibilities under this Agreement, the conduct of BDC Empress, Fairmont and 7742371, or any of them, in the performance of their respective obligations in connection with the service of liquor at the Conference Centre or the Crystal Garden, the breach of this Agreement by BDC Empress, Fairmont and/or 7742371, the breach of one or both of the Liquor Licences by BDC Empress, Fairmont and/or 7742371, or the suspension, revocation or cancellation of one or both of the Liquor Licences due to the conduct of BDC Empress, Fairmont and/or 7742371, provided that the indemnity contained in this Section 9 shall not apply to the extent any Claims result from the actions or negligence of, or the breach of the terms and provisions of this Agreement or the Operating Agreement by, the City, its elected and appointed officials, officers, employees, and/or agents. This indemnity shall survive the expiry or earlier termination of this Agreement.

10. Confidentiality. Each party will keep confidential the terms of this Agreement and all information in its possession or under its control relating to the subject matter of this Agreement, unless this Agreement or such information is or becomes generally available to the public other than as a result of a disclosure by such party in violation of this Agreement, or unless this Agreement or such information is disclosed as required by law including, without limitation, pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*, to which the City is subject as a public body. Notwithstanding the foregoing, BDC Empress is hereby authorized to disclose the terms of this Agreement to (i) any of its Affiliates (as defined in the *Canada Business Corporations Act*), (ii) any of its directors, officers, employees, agents, consultants or advisors, (iii) any prospective purchasers of BDC Empress', or any of its Affiliates', direct or indirect interest in the Hotel and the related assets, (iv) any investors or prospective investors in and to BDC Empress' or its Affiliates' (or any successors thereof) direct or indirect interest in the Hotel, and/or (v) any lenders or prospective lenders to BDC Empress or its Affiliates (or any successors thereof), and the City is hereby authorized to disclose the terms of this Agreement to any of its elected and appointed officials, officers, employees, agents, consultants or advisors.
11. Time of the Essence. Time is of the essence of this Agreement.
12. Governing Law. This Agreement will be governed by the laws of the Province of British Columbia.
13. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original and both of which taken together will be deemed to constitute one and the same instrument.
14. Electronic Transmission. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

*[The remainder of this page is intentionally blank.]*

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**THE CORPORATION OF THE CITY OF VICTORIA**

**BDC (EMPRESS HOTEL) INVESTMENT CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**FAIRMONT HOTELS INC.**

**7742371 CANADA INC.**

Per: \_\_\_\_\_  
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