

## UNDERTAKING

by

CAIRNGORM MOUNTAIN LTD., a company incorporated in Scotland with registered number SC043599 and having its registered office at Cairngorm Ski Area, Aviemore, Inverness-shire, PH22 1RB (hereinafter referred to as the "Obligant")

in favour of

HIGHLANDS AND ISLANDS ENTERPRISE established by the Enterprise and New Towns (Scotland) Act 1990 and having its Principal Office at Fraser House, Friar's Lane, Inverness IV1 1RN (hereinafter referred to as "HIE"),

each of the Obligant and HIE a "Party" and together referred to as the "Parties".

CONSIDERING THAT HIE has agreed to make available to the Obligant the aftermentioned Financial Assistance subject to the terms and conditions below, the Obligant hereby UNDERTAKES throughout the Period of Obligation (as hereinafter defined) to implement the Purpose (as hereinafter defined) for which the Financial Assistance is given and to fulfil and observe all of the terms and conditions of this Undertaking.

### **FIRST      DEFINITIONS**

In this Undertaking the following definitions will apply unless the context requires otherwise:

- (a) "Business" means the operation of the funicular railway and snow sports, leisure and tourism facilities at Cairngorm Mountain;
- (b) "Change of Control" means a situation where (a) any person or group of connected persons not having control (as defined in sections 450 and 451 of the Corporation Tax Act 2010) of the Obligant on the date of this Undertaking acquires control of the Obligant or (b) any shareholder of the Obligant who owns more than 50% of the issued ordinary share capital of the Obligant on the date of this Undertaking transfers (whether by a single transfer or a series of transfers at different times) shares constituting, in aggregate, 25% or more in nominal value of the Obligant's issued ordinary share capital;
- (c) "Day Lodge" means the proposed new day lodge on Cairngorm Mountain to be developed by the Obligant in accordance with the terms of the Lease;
- (d) "Final Repayment Date" means the earlier of (i) the twentieth anniversary of the date of drawdown of the final tranche of the Financial Assistance in accordance with the terms of the Drawdown and Repayment Schedule and (ii) 10 June 2039;

- (e) "Financial Assistance" means a loan of up to £4,000,000 (Four Million Pounds Sterling) or the principal amount thereof outstanding;
- (f) [REDACTED]
- (g) [REDACTED]
- (h) "Lease" means the lease agreement in the agreed form between HIE and the Obligant in respect of certain subjects at Cairngorm Mountain and dated of even date with this Undertaking;
- (i) [REDACTED]
- (j) "Operating Agreement" means the operating agreement in the agreed form between HIE and the Obligant in respect of the operation of certain facilities at Cairngorm Mountain and dated of even date with this Undertaking;
- (k) "Parent Company" means Natural Assets Investments Limited, a company incorporated in England & Wales with registered number 07541643 and having its registered office at 1<sup>st</sup> Floor Whitecroft House, 51 Water Lane, Wilmslow, Cheshire, SK9 5BQ;
- (l) "Period of Obligation" means the period commencing on the date of this Undertaking and continuing for so long as any sums of principal, interest, expenses and / or any other amounts remain due by the Obligant to HIE pursuant to the terms of this Undertaking;
- (m) "Project Management Plan" means the project management plan relative to the carrying out of the Purpose approved by HIE;
- (n) "Purpose" means (a) the construction of the Day Lodge and (b) the fitting out and furnishing of the Day Lodge in connection with the Obligant's Business;
- (o) "Repayment Instalments" means (subject to Clause **FOURTH** 4.(2) hereof) the instalments of principal together with all interest accrued and due up to the date of payment in each case to be repaid by the Obligant to HIE in terms of this Undertaking, such instalments to be repaid in accordance with the terms of the Drawdown and Repayment Schedule;
- (p) "Drawdown and Repayment Schedule" means the schedule setting out the agreed drawdown arrangements and Repayment Instalments in relation to the Financial Assistance to be agreed between the Parties or determined by HIE in accordance with the terms of this Undertaking as such Drawdown and Repayment Schedule may be amended from time to time; and
- (q) "Programme" has the meaning ascribed to that term in the Lease.



## **SECOND**      **INTERPRETATION**

In construing this Undertaking, unless the context otherwise requires:

- (a) "month" means a calendar month;
- (b) the "Obligant" includes executors, successors, permitted assignees and / or representatives of the Obligant;
- (c) the date on which the Financial Assistance is released shall be the date on which HIE's remittance is issued in payment as the same may be certified by any duly authorised officer of HIE;
- (d) words importing the singular number shall include the plural number and vice versa;
- (e) words importing the masculine gender shall include the feminine and neuter genders;
- (f) a reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provisions or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this Undertaking and, in the case of statute, includes any subordinate legislation made under that statute whether before or after the date of this Undertaking;
- (g) a reference to "writing" or "written" does not include either faxes or e-mails;
- (h) where the words "include(s)" or "including" are used they are illustrative and shall not limit the scope of the words preceding them;
- (i) any obligation on a person not to do something includes an obligation not to agree or allow that thing to be done; and
- (j) a reference to a document "in the agreed form" is to that document in the form agreed by the Parties and initialled by or on behalf of each of them for identification (including any alteration which may be so agreed).

## **THIRD**      **PRECONDITIONS / SPECIAL CONDITIONS**

- 1. (1) The Obligant shall fulfil such of the conditions set out in paragraph 2. of this Clause THIRD as HIE may require prior to the Financial Assistance being released.
- (2) In the event that HIE agrees to release the Financial Assistance before all the conditions set out in paragraph 2. of this Clause THIRD have been fulfilled then such conditions as are not so fulfilled shall be fulfilled by the Obligant within whatever period HIE may require.
- (3) In so far as some of the conditions set out in paragraph 2. of this Clause THIRD are also of a continuing nature the Obligant shall comply with such conditions throughout the Period of Obligation.

2. The conditions referred to in paragraph 1. of this Clause THIRD are:

(1) **GUARANTEES**

The Obligant shall procure that an executed copy of each of the Guarantees is delivered to HIE.

(2) **PLANNING PERMISSIONS ETC**

The Obligant shall obtain all such planning permissions, building warrants, fire certificates and such other statutory and / or regulatory consents as are necessary for the implementation of the Purpose and shall observe the conditions thereof throughout the Period of Obligation and shall, without limitation to the generality of the foregoing, comply with all relevant provisions of the Construction (Design and Management) Regulations 2007 (as amended), the Building (Scotland) Act 2003, the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Planning (Consequential Provisions) (Scotland) Act 1997, the Planning Etc (Scotland) Act 2006 and all other relevant planning and building legislation of a similar purpose or nature.

(3) **UNDERTAKING**

The Obligant shall execute this Undertaking and deliver it to HIE.

**FOURTH** **GENERAL CONDITIONS**

The Obligant shall comply with the following conditions throughout the Period of Obligation, provided that in any event, the obligations of the Obligant set out in this clause FOURTH (1) "Conduct of Business, Accounts, Etc" shall not in any way extend the Obligation's obligations (in relation to its conduct of the Business) beyond the Obligant's obligations under the Lease and the Operating Agreement and where the Obligant has carried out its obligations under the Lease and Operating Agreement in accordance with the terms and conditions of those documents, the Obligant will not be in breach of its obligations under clause FOURTH (1) of this Undertaking:

1. **CONDUCT OF BUSINESS, ACCOUNTS, ETC**

- (1) The Obligant shall carry out the Purpose in all material respects in accordance with the terms of the Project Management Plan and the Programme and shall not make any material alterations to the Purpose, the Project Management Plan and / or the Programme without the prior written consent of HIE which consent shall not be unreasonably withheld or delayed.
- (2) The Obligant shall carry out the Purpose using all reasonable skill and care and in a proper and efficient manner and keep and retain proper financial records and books of account (including original invoices and receipts and evidence of payments such as bank statements or equivalent as agreed with HIE in respect of the Purpose) and such records and books shall at all reasonable times be open to the inspection of HIE.



- (3) The Obligant shall provide HIE with such information as it may from time to time reasonably require in regard to all matters relating to the Purpose and the Business and in particular shall provide HIE with: a quarterly progress report in relation to its progress towards implementation of the Purpose, such report to be in form and substance satisfactory to HIE; the Obligant's monthly management accounts in a form to be approved by HIE in so far as they relate to the Purpose within 20 business days of the end of the period to which they relate, and, in each year during the Period of Obligation, with access to the annual audited statement of accounts of the Obligant within six months of the date to which each such statement is made up and a copy of such annual audited statement of accounts as soon as reasonably practicable after publication.
- (4) The Obligant shall not without the prior written consent of HIE discontinue or dispose of the Business or any substantial part of it or make any alteration that is in the reasonable opinion of HIE a material alteration to the character of the Business.
- (5) The Obligant shall not without the prior written consent of HIE, such consent not to be unreasonably withheld or delayed, use any of the property, buildings, plant, equipment and other assets of the Obligant which are acquired or improved with the benefit of the Financial Assistance other than for the Business.
- (6) The Obligant shall not without the prior written consent of HIE sell, lease, grant security over or otherwise dispose of its property or buildings or sell, lease, grant security over or otherwise dispose of or remove any of the plant, equipment or other assets used in connection with the Business and which have been acquired or improved with the benefit of the Financial Assistance such consent not to be unreasonably withheld or delayed in the case of sales, leases, security or disposals to companies in the Obligant's group of companies or to the Obligant's existing UK lenders.
- (7) The Obligant shall maintain and repair the property, buildings, plant, equipment and other assets of the Business in accordance with the terms of the Lease and the Operating Agreement and shall permit HIE to inspect the same upon being given reasonable notice.
- (8) The Obligant shall insure and keep insured the property, buildings, plant, equipment, stock and other assets of the Business in accordance with the terms of the Lease and the Operating Agreement and the relevant policies shall be exhibited to HIE at HIE's request.
- (9) The Obligant shall not without the prior written consent of HIE move the Business or any of the Equipment or any other plant, equipment or other assets acquired in connection with the Purpose out of the HIE area of operation .
- (10) The Obligant shall observe all statutory regulations relative to the Business throughout the Period of Obligation.
- (11) The Financial Assistance shall be applied by the Obligant wholly and exclusively in implementation of the Purpose.



- (12) The Obligant shall provide to HIE details of any additional funding for the Purpose (whether from public or private sources) in excess of the amounts specified in paragraph 2 of Clause THIRD which the Obligant may receive or to which it may become entitled immediately upon such receipt or entitlement.

## 2. **DEFAULT**

The occurrence of any of the following events shall constitute default on the part of the Obligant and the Financial Assistance to the extent that it has been paid out, together with the outstanding interest accrued thereon and any other amounts accrued or outstanding under this Undertaking shall become immediately due and repayable by the Obligant, provided that the value of the Day Lodge as at the date of default (such value to be conclusively determined by an independent valuer to be agreed upon by the Parties or, in the event of failure to so agree within 14 days of the date of default, appointed on the application of either Party by the Chairman or senior office holder (for the time being) of the Scottish Branch of Royal Institution of Chartered Surveyors) shall be set off against all amounts due and repayable by the Obligant under this Undertaking:

- (1) the insolvency of the Obligant or its sequestration or divesting itself of its property by trust deed for behoof of its creditors or if an order is made or a resolution is passed for the dissolution or winding up of the Obligant or a liquidator, a provisional liquidator, a receiver, an administrative receiver or an administrator is appointed to the Obligant;
- (2) material breach by the Obligant of any of the conditions or obligations incumbent on it by virtue of this Undertaking (or any other deed granted relative to this Undertaking) or any other undertaking granted or to be granted by the Obligant in favour of HIE or any other agreement between the Obligant and HIE;
- (3) if there is a Change of Control of the Obligant without the prior written consent of HIE, such consent not to be unreasonably withheld or delayed in the case of a bona fide solvent reconstruction or reorganisation of the group of companies of which the Obligant forms part;
- (4) if, in the reasonable opinion of HIE, it appears that any document or other information submitted in connection with this Undertaking, the Lease and / or the Operating Agreement is fraudulent, false or materially misleading or if, in the reasonable opinion of HIE, the Obligant has withheld information which would have had a material bearing on HIE's decision to approve the Financial Assistance;
- (5) the expiry of a period of 21 days after the date on which a repayment of an instalment of the Financial Assistance or interest thereon becomes due without payment having been made; or
- (6) if the Obligant receives or becomes entitled to other funding for the Purpose (whether from public or private sources),

and any part of the Financial Assistance remaining unpaid, which might be claimed by the Obligant, shall on the date on which default is first constituted be irrevocably withdrawn.

### 3 PAYMENT OF FINANCIAL ASSISTANCE

Subject to Clause **THIRD** hereof the Financial Assistance shall be released by HIE to the Obligant in a number of tranches in amounts and on dates to be agreed between HIE and the Obligant following receipt and approval by HIE of a written request for the Financial Assistance from the Obligant, which request shall include written evidence in form and substance satisfactory to HIE that the Obligant requires such Financial Assistance in implementation of the Purpose.

### 4 CONDITIONS

(1) The Obligant shall:

- (a) repay the Financial Assistance and interest thereon (such interest being calculated at the Interest Rate on the amount of the Financial Assistance outstanding at the end of each month) by way of the Repayment Instalments of capital and interest in accordance with the Drawdown and Repayment Schedule provided always that the Obligant shall repay the Financial Assistance and interest thereon in full by the Final Repayment Date; and
- (b) make all Repayment Instalments, at the option of HIE, by direct debit or by way of banker's order.

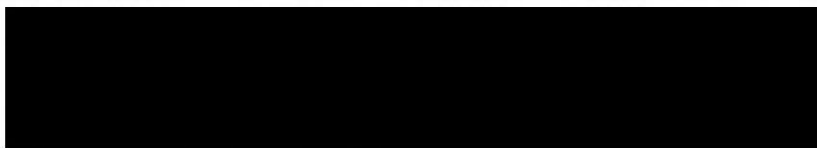
(2) Without prejudice to Clause **FOURTH 2.** hereof the Obligant agrees that:

- (a) [REDACTED] it shall (acting reasonably and in good faith) agree the terms of the Drawdown and Repayment Schedule with HIE, failing which HIE shall be entitled at its sole discretion to determine the terms of the Drawdown and Repayment Schedule;
- (b) the Drawdown and Repayment Schedule shall be agreed by the Obligant and HIE or, as the case may be, determined by HIE in terms of paragraph 2(a) of this Clause **FOURTH 4** having regard to the following principles:
  - (i) the Financial Assistance shall be drawn down by the Obligant in a number of separate tranches;
  - (ii) the amount and the date of drawdown of each such tranche shall be agreed having regard to the terms of the Programme;
  - (iii) interest calculated at the Interest Rate shall be payable by the Obligant on each such tranche of the Financial Assistance from the date of drawdown of that tranche;
  - (iv) upon the date of drawdown of the final tranche of the Financial Assistance in accordance with the terms of the Drawdown and Repayment Schedule, interest (calculated at the Interest Rate) on the total amount of the Financial Assistance drawn down as at that date shall be capitalised and added to such total amount of Financial



Assistance, the aggregate of the amount of the capitalised interest and such total amount of Financial Assistance being hereinafter referred to as the "Total Repayment Amount"; and

(v)



- (c) HIE shall be entitled to amend the Drawdown and Repayment Schedule and recalculate the amount of the Repayment Instalments or the number of Repayment Instalments in terms of this Undertaking in the following circumstances: (i) if the Obligant does not take up the whole amount of the Financial Assistance, in which case the number of Repayment Instalments shall be reduced accordingly; (ii) if the Obligant has failed to pay a Repayment Instalment on the due date, in which case, at the option of HIE, the amount of the Repayment Instalments shall be increased and/or the number of the Repayment Instalments shall be increased; and (iii) if the Repayment Instalments are subject to deduction of Income Tax by the Obligant and the rate of Income Tax deductible from the Repayment Instalments is altered, in which case the amount of the Repayment Instalments shall be increased or decreased as appropriate.
- (d) If the Obligant fails to make the Repayment Instalments on the due date for payment in accordance with the terms of the Drawdown and Repayment Schedule (whether demanded or not) and is in arrears of interest of more than three months then HIE, at its option, shall, by serving notice on the Obligant, be entitled to capitalise all outstanding interest and recalculate the Repayment Instalments by either varying the amount thereof and/or by increasing the number thereof.

## **5 PUBLICITY/FREEDOM OF INFORMATION ACKNOWLEDGEMENT**

- (1) HIE reserves the right to publicise the provision of the Financial Assistance to the Obligant and to include it in a public record of cases, both to demonstrate how its resources are used and to give examples of the types of development it is able to assist.
- (2) The Obligant shall ensure that any publicity given in respect of the Purpose contains an acknowledgement of HIE's funding support and shall display in a prominent place, such plaque, sticker or logo as HIE may from time to time require.
- (3) The Obligant acknowledges that HIE is subject to the terms of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and may be obliged to disclose information relating to this Undertaking and / or the Purpose. Where HIE receives a request to disclose information contained in the Project Management Plan under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, HIE will, prior to disclosure of such information, consult with and have regard to any views expressed by the Obligant in relation to the disclosure of such information. For the avoidance of doubt, HIE shall be responsible for determining at its absolute discretion whether such information is



exempt from disclosure in accordance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 and whether any such information is to be disclosed pursuant thereto.

**6 CERTIFICATE OF ALL SUMS DUE**

The Obligant agrees and declares that, except in the case of manifest error, a certificate signed by any duly authorised officer of HIE shall be sufficient to ascertain conclusively and fix all sums of principal and interest and expenses and any other sums due resting and owing by the Obligant to HIE by virtue of the provisions contained in this Undertaking.

**7 ASSIGNATION/NOVATION**

The Obligant shall not assign or novate its obligations in terms of this Undertaking without the prior written consent of HIE such consent not to be unreasonably withheld or delayed in the case of an assignation or novation to another company in the group of companies of which the Obligant forms part.

**8 NOTICES**

Any notice given under this Undertaking shall be in writing and sent in the case of HIE to its principal office address and in the case of the Obligant to its registered office and shall be deemed to have been received, if delivered personally, at the time of delivery, or if sent by pre-paid first class post or recorded delivery 2 business days after posting.

**9 AMENDMENTS**

Subject and without prejudice to the terms of Clause **FOURTH** 4. hereof, no amendment of this Undertaking shall be effective unless in writing and signed for and on behalf of the Obligant and HIE.

**10 WAIVER**

No failure to exercise or delay by HIE in exercising any right or remedy under this Undertaking or by law shall constitute a waiver of such right or remedy or shall prevent any future exercise thereof in whole or in part and no waiver by HIE shall be effective unless in writing.

11 LAW OF SCOTLAND AND REGISTRATION

The Parties agree that this Undertaking shall be construed and determined in all respects according to the Law of Scotland and the Parties hereby submit to the exclusive jurisdiction of the Scottish courts. The Obligant hereby consents to the registration of this Undertaking together with any certificate relative hereto for the purpose of preservation and execution.

IN WITNESS WHEREOF these presents on this and the preceding eight pages are executed as follows:

Signed for on behalf of CairnGorm Mountain Limited at INVERNESS on the 11 TH  
day of JUNE 2014 in the presence of the witness subscribing hereto:

..... Witness

.....  
Director

..... Full Name

ANTHONY WILSON  
Full Name

..... Address

.....

Sealed with the seal of Highlands and Islands Enterprise and subscribed for and on its behalf

at INVERNESS on the 11 TH  
day of JUNE 2014 in the presence of the witness subscribing hereto:

by  
..... Witness

.....  
Authorised Signatory

..... Full Name

ALISON LYNER  
Full Name

..... Address

.....



**UNDERTAKING**

by

CairnGorm Mountain Limited

in favour of

Highlands and Islands Enterprise

2014