



Highlands & Islands
ENTERPRISE

Directline: [REDACTED]
Direct Fax: [REDACTED]
E-Mail: [REDACTED]
Contact: [REDACTED]
Date: 7 July, 1999

Your Ref: BS/1994/254/AT/YM
Our Ref: BFL/1/1/5

[REDACTED]
Planning Service
The Highland Council
Glenurquhart Road
INVERNESS
IV3 5NX

Dear [REDACTED]

**CAIRNGORM FUNICULAR RAILWAY
SECTION 50 AGREEMENT**

I refer to your letter of 2 July 1999.

With reference to the Minute of Agreement in respect of the Cairngorm Funicular, registered GRS (Inverness) 27 March 1997, we confirm that the nature of the development described in the narrative of the said Agreement shall, in the event of Planning Application BS/1999/121, dated 25 May 1999, being approved, be amended to accord with the amendments contained in the said application.

Furthermore, we undertake that if called upon by Highland Council we shall enter into a formal Minute of Agreement to that effect.

Yours sincerely

[REDACTED]
PROPERTY DEVELOPMENT MANAGER



Highlands and Islands Enterprise

Bridge House 20 Bridge Street Inverness IV1 1QR Telephone 01463 234171 Fax 01463 244469
e-mail address: hic.general@hient.co.uk Website:www.hic.co.uk



INVESTOR IN PEOPLE

MINUTE OF AGREEMENT

between

THE HIGHLAND COUNCIL, as Planning Authority for the Highland area, in terms of the Town & Country Planning (Scotland) Act 1972, as amended by the Local Government Etc (Scotland) Act 1994 and whose principal place of business is Council Offices, Glenurquhart Road, Inverness, IV3 5NX (who and whose successors are hereinafter referred to as "the Planning Authority")

OF THE FIRST PART

SCOTTISH NATURAL HERITAGE, as the body with responsibility for conserving and enhancing the natural heritage of Scotland under the Natural Heritage (Scotland) Act 1991 and as agent for the Secretary of State for Scotland for implementing the Habitats and Birds Directives and having their principal place of business at Hope Terrace, Edinburgh (who and whose successors are hereinafter referred to as "SNH")

OF THE SECOND PART

HIGHLANDS & ISLANDS ENTERPRISE, a body constituted under the Enterprise & New Towns (Scotland) Act 1990 and having their principal place of business at Bridge House, Bank Street, Inverness as heritable proprietor of the Development Site (as hereinafter defined) (who and whose successors in title to the Development Site are hereinafter referred to as "the Proprietor")

OF THE THIRD PART

THE CAIRNGORM CHAIRLIFT COMPANY LIMITED, a company incorporated under the Companies Act 1985 and having their registered office at Cairngorm Ski Area, Aviemore, PH22 1RB, as lessee of the Development Site (who and whose successors as operators of the Development Site are hereinafter referred to as "the Applicant")

OF THE FOURTH PART

and

THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND incorporated by Act of Parliament and having its Head Office at PO Box 5, The Mound, Edinburgh (for their interest as holders of a Standard Security as hereafter mentioned)

OF THE FIFTH PART

WHEREAS

1. The Applicant has made an application (hereinafter referred to as "the Application") identified in the Planning Register by the number BS/1994/254 to Highland Regional Council for planning permission in terms of s.22 of the Town & Country Planning (Scotland) Act 1972 in respect of proposals for the development of land extending to 94.3 hectares at Cairngorm, which land (hereinafter referred to as "the Development Site") is delineated in red on the plan annexed and signed as relative hereto (including

the Spoil Dump) and marked "PLAN 1 - Development Site" (and which Plan is hereinafter referred to as "Plan 1") and forms part and portion of ALL and WHOLE the lands of Glenmore Forest in the Parish of Abernethy (formerly the United Parishes of Abernethy and Kincardine) and County of Inverness more particularly described in, disposed by and shown by a boundary line marked in red in the plan signed as relative to the Disposition by [REDACTED] and another in favour of the Forestry Commissioners dated the Ninth and Twelfth and recorded in the Division of the General Register of Sasines applicable to the County of Inverness the Sixteenth, all days of November, Nineteen Hundred and Twenty-three;

2. The development proposals contained in the Application are:-
 - (a) the construction of a funicular railway from Coire Cas car park to the Ptarmigan via the Shieling as shown on Plan 1;
 - (b) the removal of the existing Coire Cas two-stage chairlift system and the existing lower and middle station buildings, which buildings are marked "A" and "B" on Plan 1;
 - (c) removal of the existing garage building at the Coire Cas car park marked "C" on Plan 1;
 - (d) alterations and extensions to existing buildings at the Day Lodge, Shieling and Ptarmigan as the same are identified on Plan 1 to incorporate new funicular stations, catering and exhibition facilities, administration offices and workshops, all as shown on drawings numbered 002, 003, 004, 005, 006, 007, 008, 009, 010A and 11A which accompanied the Application; and
 - (e) the use and subsequent reinstatement of land at Coire na Ciste for the disposal of spoil, which land is shown delineated in red and marked "Spoil Dump" on Plan 1;
3. The Planning Authority succeeded to Highland Regional Council on 1 April 1996 and is now the determining authority for the purposes of the Application;
4. The Development Site adjoins sites proposed by the Secretary of State for Scotland, because of their nature conservation interest, for protection as European sites under Directive 92/43/EEC and Directive 79/409/EEC on the conservation of natural habitats and of wild fauna and flora and on the conservation of wild birds;
5. Highland Regional Council consulted SNH with regard to the planning application as required by regulation 48(3) of the Conservation (Natural Habitats, etc) Regulations 1994 and SNH has now advised the Planning Authority that the development proposals will not affect the integrity of the proposed European sites provided the Applicant enters into this Agreement with SNH under s.49A of the Countryside (Scotland) Act 1967 to safeguard the nature conservation interest of the said sites as hereinafter provided;
6. The Planning Authority is satisfied that the development proposals will not adversely affect the integrity of the proposed European sites and has resolved to grant planning permission in terms of the Application but to withhold the issue of the planning consent document (hereinafter referred to as "the Decision Notice") until this Agreement under s.50 of the Town & Country Planning (Scotland) Act 1972 and s.49A of the Countryside (Scotland) Act 1967 has been concluded for the purposes of restricting or regulating the development or use of the Development Site for which planning permission is to be granted and of safeguarding the nature conservation interest of the said sites as hereinafter provided;
7. The Proprietor is the heritable proprietor of the Development Site and the Applicant is the lessee thereof and both have, for their interests, consented to this Agreement as is evidenced by their signature hereto;

8. Under s.14 of the Enterprise and New Towns (Scotland) Act 1990, the Secretary of State may, after consulting with Highlands and Islands Enterprise, give Highlands and Islands Enterprise directions of a general or specific character as to the exercise of its function; and it shall be the duty of Highlands and Islands Enterprise to give effect to any such direction.
9. The Bank of Scotland hold a Standard Security over the Day Lodge Site, being part and portion of the Development Site, which Standard Security is constituted by Standard Security by the Applicant in their favour dated Seventeenth and recorded in the Division of the General Register of Sasines for the County of Inverness on Twenty-eighth February, both Nineteen Hundred and Ninety-four. The Bank of Scotland is a party hereto solely for the purpose of consenting to its terms as holders of such security and, for the avoidance of doubt, no obligations or liabilities are imposed upon it under this Agreement.

THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:-

- (FIRST) The principal purpose of this Agreement is to ensure that the Development proposed is managed in such a way that it will not adversely affect the integrity of the said European sites.
- (SECOND) For the purposes of this Agreement, the following terms shall have the meaning given to them by this Clause:-
- | | |
|-------------------------|---|
| "Agreement" | unless the context indicates otherwise, includes the approved Visitor Management Plan (including the Monitoring Scheme) referred to in Clause (SIXTH) hereof and the approved Implementation Scheme referred to in Clause (SEVENTH) hereof:- |
| "Associated Buildings" | means the buildings referred to in Recital 2(d) hereof; |
| "Development" | refers to the activities granted planning permission in the Decision Notice to be issued under Clause (THIRD) hereof; |
| "Development Site" | means the land which is the subject of the planning application number BS/1994/254 referred to in Recital 1 hereof which land is described in that Recital; |
| "Implementation Scheme" | means the scheme for implementing the Development referred to in Clause (SEVENTH) hereof; |
| "Monitoring Scheme" | means the Monitoring Scheme to be prepared and implemented by the Applicant under the terms of Clause (SIXTH)(a) and (b) hereof; |
| "Non-Skiing Visitors" | means visitors to the Ski Area at any time of the year who come for a purpose other than skiing, snowboarding, tobogganing, ski bobbing and other winter sports activities of a similar nature. The term also includes skiers, snowboarders and others undertaking the aforementioned sports who move from the Ski Area to adjoining land in the proposed European Sites; |
| "Ski Area" | refers to the area of land which is the subject of (First) Lease between the Highlands and Islands Development Board and Cairngorm Sports Development Limited dated 12th and 22nd January |

1974 with Addendum thereto dated 14th February and 5th March both 1975 and recorded in the Division of the General Register of Sasines for the County of Inverness on 26th July 1984 as varied by Minute of Variation of Lease between the said The Highlands and Islands Development Board and Cairngorm Chairlift Company Limited (formerly Cairngorm Sports Development Limited, the name having been changed by Special Resolution dated 9th December 1977) dated 23rd January and 10th February both 1984 (Second) a Lease between The Highlands and Islands Development Board and Cairngorm Chairlift Company Limited dated 25th and 28th November 1986 and (Third) including for the avoidance of doubt the solum of the public road leading to the Coire Cas Car Park (in so far as located within the "Ski Area") being part of the subjects described in and disposed by Disposition by the Secretary of State for Scotland in favour of The Highland Regional Council dated 19th October and recorded in the said Division of the General Register of Sasines on 30th October both 1989, which area of land is shown delineated in green on the plan annexed and signed as relative hereto and marked "PLAN 2 - Ski Area";

- "Ski Season" refers to the period from 1st November in any year to 30th April in the following year;
- "Summer Season" refers to the period from 1st May to 31st October in any year;
- "Visitor Management Plan" means the plan for managing Non-Skiing Visitors to be prepared and implemented by the Applicant under the terms of Clause (SIXTH) hereof. A draft of the proposed Visitor Management Plan is contained in annex B hereto;

(THIRD)

On execution of this Agreement, the Planning Authority shall forthwith issue to the Applicant, the Decision Notice in respect of approval of the Application and the Development shall be subject to:-

- (i) the conditions, until purified, specified in the Decision Notice;
- and
- (ii) the conditions, restrictions, obligations, prohibitions and others contained within this Agreement until such time, if ever, as any or all of the restrictions, obligations, conditions or others contained within this Agreement are implemented, modified or discharged.

(FOURTH)

The conditions, restrictions, obligations and others contained within this Agreement shall be created real and preferable burdens upon and affecting the Ski Area and are appointed to be recorded at length or otherwise validly referred to in all future conveyances, dispositions or other such deeds, including leases, relating to the Ski Area in whole or in part, BUT DECLARING that, with the exception of the obligations in

Clause (FIFTH) they shall not take effect until such time as the Decision Notice is implemented, the word "implemented" being taken in the context of this Clause to mean the commencement of any Development pursuant to the Decision Notice or any reserved matters consent following thereon. The obligations in Clause (FIFTH) shall take effect immediately on the execution of this Agreement.

(FIFTH)

The Applicant will meet the cost of a base line survey the purpose of which is to document the existing condition of the area shown outlined in red on Plan 3 annexed hereto in relation to soils, habitats, species of birds and levels and patterns of visitor use. The Applicant undertakes to carry out the survey in so far as it relates to the Ski Area. The survey is to cover such matters and is to be undertaken in a manner to be agreed by the Planning Authority and SNH and is to be carried out over a consecutive period of twelve months. No development shall commence on the Development Site, unless otherwise agreed by the Planning Authority and SNH, until that part of the survey to be undertaken by the Applicant has been submitted to and approved in writing by the Planning Authority and SNH. The Planning Authority and SNH will, within twelve weeks of the submission of the said part of the survey for approval, notify the Applicant in writing that they approve the said part of the survey or, alternatively, that they do not approve the said part of the survey for the reasons given in the notice.

(SIXTH)

- (a) Within nine months of the commencement of development on the Development Site, the Applicant will, at its own cost, prepare in consultation with the Planning Authority, SNH and the Proprietor and submit to the Planning Authority and SNH for their approval a final Visitor Management Plan (hereinafter referred to as "the VMP") for Non-Skiing Visitors and the use by the public of the funicular railway shall not commence until such approval has been given. The VMP will define the Applicant's objectives and its approach to visitor management. The Planning Authority and SNH will, within twelve weeks of the submission of the VMP for approval or such longer period as shall be agreed between the parties, notify the applicant in writing that they approve the VMP or, alternatively, that they do not approve the VMP for the reasons given in the notice.
- (b) Amongst other things, the VMP will deal with the preparation and implementation of a monitoring scheme (hereinafter referred to as "the Monitoring Scheme"). The Monitoring Scheme shall include details of the following:-
- (i) the matters to be the subject of detailed monitoring, including the monitoring of non-ski use during the ski season;
 - (ii) the method of monitoring to be adopted and the manner in which it is to be carried out;
 - (iii) the division of responsibility for carrying out and paying for each aspect of monitoring;
 - (iv) the identification of suitably qualified persons to undertake the monitoring;
 - (v) the arrangements for reporting the results;

- (vi) the criteria against which the results of monitoring will be tested and measured and the identity of the persons to undertake the testing and measurement;
- (c) The Applicant undertakes to implement, at its own cost, the obligations imposed on it in the approved VMP, including implementation of such aspects of the approved Monitoring Scheme as are its responsibility in accordance with sub-clause (b)(iii) hereof, in the manner and in the time stipulated in the VMP and to the satisfaction of the Planning Authority and SNH;
- (d) A breach of the terms of the approved VMP shall be treated as a breach of the terms of this Agreement;
- (e) The funicular railway shall not be brought into commercial use until such time as those obligations in the approved VMP which are to be implemented prior to that event have been carried out to the satisfaction of the Planning Authority and SNH;
- (f) The Planning Authority and SNH agree that the draft VMP annexed and signed as relative to this Agreement is indicative of the matters which they wish to see covered in the final VMP. The final VMP will, however, require greater detail and precision and the Planning Authority and SNH will require to be satisfied on these matters before giving their approval to the final VMP.

(SEVENTH)

- (a) Prior to commencement of Development on the Development Site, the Applicant will, at its own cost, prepare and submit to the Planning Authority and SNH for approval a scheme for implementing the Development (hereinafter referred to as "the Implementation Scheme") and the Planning Authority and SNH will decide whether to approve the Scheme. The Planning Authority and SNH hereby agree to respond to the Implementation Scheme within twelve weeks of receiving details hereof and will either grant approval hereunder or indicate why approval has been withheld. The Implementation Scheme shall set out details of the timing and manner of implementation of the Development but without prejudice to the foregoing generality, the Scheme will include details of:-
 - (i) the timing and manner of the removal of the existing Coire Cas chairlifts;
 - (ii) the steps to be taken to reinstate the land and to remove materials consequent on the removal of the chairlifts;
 - (iii) the arrangements for monitoring the results of such reinstatement and for taking remedial action where appropriate;
 - (iv) the steps to be taken to reinstate the land and to remove materials consequent on completion of the construction works involved in the Development and the arrangements for monitoring the results of such reinstatement and for taking remedial action where appropriate;
 - (v) the provisions for monitoring the effect on the Development Site of the Development and for remedying any adverse effects;
- (b) The Applicant undertakes, at its own cost, to implement the Implementation Scheme in the manner agreed and to the satisfaction of the Planning

Authority and SNH. Any breach of the terms of the Implementation Scheme shall be treated as a breach of the terms of this Agreement.

- (EIGHTH)
- (a) The Planning Authority and SNH will after consultation with the Applicant and the Proprietor appoint a suitably qualified person or persons to provide for them, by the end of November in each year or such other date as may be agreed by the Planning Authority and SNH, at the reasonable cost of the Applicant, an annual report on the impact of Non-Skiing Visitors using the Coire Cas car park and the funicular railway and on the effectiveness of the approved VMP in managing such visitors;
 - (b) The Applicant, and the Proprietor in so far as the Proprietor's consent is required, will permit such person or persons appointed pursuant to sub clause (a) of this Clause, or any person duly authorised in writing by such person or persons, access to the Ski Area, to the Development and to other facilities of the Applicant on the Development Site, for the purpose of preparing the annual report;
 - (c) The Applicant and SNH (as appropriate) will provide such person, or any person duly authorised in writing by such person, access to all data in their possession arising from implementation of the Monitoring Scheme referred to in Clause (SIXTH) (b) above.
- (NINTH)
- (a) If information arising from the operation of the Monitoring Scheme or from the annual reports indicates to the Planning Authority and SNH that measures additional to or different from those stipulated in the approved VMP may be appropriate for the purposes of the Development as a consequence of the Development's impact upon the integrity of the proposed European sites referred to in Recital 4 to this Agreement or that remedial work may be required, they shall first consult with the Applicant and the Proprietor about such measures;
 - (b) If, following such consultation, the Planning Authority and SNH decide that measures additional to or different from those stipulated in the approved VMP are appropriate, such measures will be implemented by the Applicant at its own cost and within such time and in such manner as determined by the Planning Authority and SNH and the VMP shall be altered accordingly, and the VMP as so altered shall become the approved VMP;
 - (c) If, following such consultation, the Planning Authority and SNH decide that remedial works are required, such works will be undertaken by the Applicant at its own cost and within such time and in such manner as determined by the Planning Authority and SNH or, if the Planning Authority and SNH so decide, will be undertaken by the Planning Authority and SNH at the cost of the Applicant;
 - (d) The Applicant may at any time request the Planning Authority and SNH to review any of the requirements imposed on it by the approved VMP and the Planning Authority and SNH shall review such requirements and may agree to alter the VMP and the VMP as altered shall become the approved VMP. The Applicant shall meet the reasonable costs of the Planning Authority and SNH properly vouched in undertaking such a review.

VINTH)

- (a) In the event of the Applicant wishing to discontinue the operation of the funicular railway either temporarily or permanently, otherwise than:-
- (i) for the purpose of maintenance or repair;
 - (ii) as a result of bad weather or
 - (iii) as a consequence of the Applicant's normal and reasonable management of the Ski Area

or in the event of the Applicant being obliged permanently to discontinue the operation of the funicular railway, the Applicant shall forthwith give written notice to the Planning Authority, SNH and the Proprietor, which notice shall indicate whether the discontinuance is temporary (and if so, for how long) or permanent. For the avoidance of doubt, in the event of the Applicant discontinuing the operation of the funicular railway permanently because of an intention to assign its interest in the operation to a new operator, the Applicant will, nonetheless be required to serve written notice under this Clause on the Planning Authority, SNH and the Proprietor.

- (b) On receipt of notice of temporary discontinuance, the Planning Authority and SNH may, after consultation with the Applicant, require steps (including the carrying out of works) to be taken by the Applicant to safeguard the integrity of the said European Sites during the period of closure and shall specify the time within which such steps must be taken and the Applicant, at its expense, will thereupon undertake such steps.

- (c) On receipt of notice of permanent discontinuance, the Proprietor shall have an initial period of twelve months to find an alternative operator to take over the operation of the funicular railway. If, at the end of that period, no alternative operator has been found but the Proprietor wishes to continue the search and satisfies the Planning Authority and SNH with regard to the steps that have and are being taken to find such an operator, the Planning Authority and SNH shall (acting reasonably and taking into account the Proprietor's interest in the Development Site) allow a further period of twenty-four months for the search. Any further extension beyond the total period of three years shall be at the discretion of the Planning Authority and SNH. Whilst the Proprietor is seeking an alternative operator the Proprietor agrees that he will meet with the Planning Authority and SNH on a regular basis and at least once every six months to inform the Planning Authority and SNH of progress in finding an alternative operator.

- (d) Should the Proprietor fail to find an alternative operator in the period allowed, or should the Proprietor notify the Planning Authority and SNH on receipt of the notice referred to in sub-Clause (a) above that it does not intend to seek an alternative operator, the Applicant undertakes, on receipt of written notification of the position from the Planning Authority and SNH, to dismantle the funicular railway and such other associated buildings and works on the Development Site and which the Planning Authority and SNH require to be dismantled and the same shall be removed from the Development Site and the Development Site shall be reinstated within the time specified by and to a standard to be determined by the Planning Authority and SNH in the written notification and the said written notification shall stipulate a date by which such work must commence. Notwithstanding the undertaking by the Applicant, the Proprietor may, in their absolute discretion, choose to undertake such work and, if they choose to do so, they shall first notify the

Planning Authority and SNH and such work shall be undertaken by the Proprietor within the time and to the standard specified by the Planning Authority and SNH in the written notification to the Applicant. The immediately preceding sentence shall not apply to Highlands and Islands Enterprise who undertake that in the event of the applicant failing to undertake the works of reinstatement referred to above, they will carry out such works and reinstate the Development Site with all due diligence and Highlands and Islands Enterprise agree to have regard to all reasonable requests made by the Planning Authority and SNH in connection with the said reinstatement works. Highlands and Islands Enterprise agree that they shall give prior notice to the Planning Authority and SNH of the nature and full extent of the detailed works to be carried out and the time scale for completion and in the event of any dispute arising between the parties on the said matters said dispute shall be referred to the decision of a sole arbiter having appropriate expertise in civil engineering and in techniques for the reinstatement of land where questions of landscape and ecological significance arise. Such arbiter shall be appointed jointly by the parties, or in default of agreement shall be appointed by the President of the Law Society for the time being. The decision of such arbiter shall be final and binding.

- (e) In the event of the Applicant or the Proprietor failing to commence the work as required in Clause (TENTH)(d) above on the stipulated date or otherwise defaulting on the obligation to carry out the work within the time and to the standard specified, the Planning Authority and SNH may immediately take such action as they think fit to carry out and complete the work to the required standard and persons duly authorised in writing by the Planning Authority and SNH may enter the land to carry out and complete the work, and the reasonable cost thereof may be recovered from the Applicant directly or in terms of Clause (TENTH)(f) hereof.
- (f) In the event of the Applicant failing to reimburse the Planning Authority and SNH the reasonable cost of work carried out by the Planning Authority and SNH in terms of Clause (TENTH)(e) hereof, the Proprietor hereby undertakes to indemnify the Planning Authority and SNH in respect of such costs. This clause shall not apply while Highlands and Islands Enterprise (or any other successor public body) is the Proprietor but it shall apply to any other successor to the Proprietor's interest in the Development Site.

(ELEVENTH)

- (a) Any person duly authorised in writing by the Planning Authority or SNH (such authorisation having first been notified in writing to the Applicant) shall be entitled at any time to enter the Ski Area and any facilities of the Applicant on the Development Site to determine whether the Applicant is fulfilling the obligations imposed on it under this Agreement;
- (b) In the event of a failure by the Applicant to implement or satisfactorily to implement any of its obligations under this Agreement, other than the requirement to carry out work of dismantling, removal and reinstatement referred to in Clause (TENTH)(c) above, the Planning Authority shall, on behalf of itself and of SNH, serve notice in writing by recorded delivery post on the Applicant at its registered office, specifying;
 - (i) the failure or failures;
 - (ii) the steps required to be taken to remedy the failure or failures;
 - (iii) the time within which such steps are to be taken;

- (c) If the Applicant fails to take, or in the judgement of the Planning Authority and SNH fails adequately to take, the required steps within the time stipulated, any person duly authorised in writing by the Planning Authority or SNH may, where positive steps are required, upon giving the Applicant seven days prior notice in writing and subject to Clause TWENTIETH hereof, enter the Ski Area and take such steps and recover the reasonable cost of doing so from the Applicant either directly or in terms of Clause (TWELFTH) of this Agreement as appropriate;
- (d) FURTHERMORE, and having regard to Clause TWENTIETH hereof, where by the start of any Summer Season the time for compliance with the notice referred to in sub-clause (b) above has passed and the steps required have not been taken or in the judgement of the Planning Authority or SNH have not adequately been taken, the Planning Authority and SNH may, where, in their absolute discretion, they consider the failure by the Applicant to be a material failure, instruct that commencement of the use of the funicular railway for that and subsequent Summer Seasons be delayed until such time as the notice has been complied with and the use of the funicular railway shall not commence until the Planning Authority or SNH have certified this in writing to the Applicant;
- (e) For the avoidance of doubt, the exercise by the Planning Authority and SNH of any of their powers under this Agreement shall be without prejudice to their right to take action at common law to remedy a breach of this Agreement and without prejudice to the right of the Planning Authority to take action under the Town & Country Planning (Scotland) Act 1972, as amended, for a breach of planning control.

(TWELFTH)

- (a) The Applicant shall provide not later than the date of the commencement of the Development a Guarantee or Indemnity or Bond from a third party acceptable to the Planning Authority and SNH in the initial sum of SIXTY FIVE THOUSAND POUNDS (£65,000) STERLING, which sum shall be adjusted in line with the Retail Price Index, and on such terms as may be reasonably agreed amongst the parties thereto for the purpose of securing the obligations in this Agreement, other than the reinstatement of the Development Site following upon discontinuance of the operation of the funicular railway as required by Clause (TENTH)(d) above. Such Guarantee or Indemnity or Bond shall be produced to and approved by the Planning Authority and SNH before it takes effect and the Development shall not commence until such time as the said Guarantee, Indemnity or Bond has taken effect. The Guarantee or Indemnity or Bond shall provide that all reasonable costs incurred by the Planning Authority or SNH as a result of the Applicant's failure to perform its obligations will be reimbursed in full and without adjustment on receipt of evidence of the reasonable expenditure incurred. Subject to sub-clause (b) hereof, the Applicant shall, thereafter, maintain the said Guarantee, Indemnity or Bond until the provision of a substitute Guarantee, Indemnity or Bond under Clause (TWELFTH)(c) of this Agreement or a date occurring 36 months (or such extended period as may be allowed by the Planning Authority and SNH in terms of Clause (TENTH)(c)) after a notice of discontinuance is served under Clause (TENTH) of this Agreement. Evidence of renewal of the said Guarantee, Indemnity or Bond for a further term shall be produced to the Planning Authority at least three months prior to its term date. The said Guarantee or Indemnity or Bond and the proceeds available thereunder may be utilised by the Planning Authority and SNH to cover the cost of implementing the obligations in this Agreement. The Applicant further undertakes that, subject to sub-clause (b) hereof, the value of the Guarantee, Indemnity or Bond shall be maintained at SIXTY

FIVE THOUSAND POUNDS (£65,000) STERLING, as adjusted in line with the Retail Price Index, notwithstanding calls upon it from time to time by the Planning Authority and SNH under the terms of this Agreement.

- (b) The sum referred to in sub-clause (a) above shall be reviewed by the Applicant, the Planning Authority and SNH every three years and adjusted by the Applicant to reflect the cost for the time being as determined by the Planning Authority and SNH of securing the obligations in this Agreement other than the reinstatement of the Development Site following upon discontinuance of the operation of the funicular railway as required by Clause (TENTH)(d) above. To assist in the review, the Applicant undertakes to maintain a record, in a manner to be agreed from time to time between the Applicant, the Planning Authority and SNH, of the cost of implementing the obligations in this Agreement and to produce such record to the Planning Authority and SNH on request at the commencement of a review.
- (c) In the event of an alternative operator taking over the operation of the funicular railway as provided for in Clause TENTH (c) hereof, and on every subsequent occasion on which an alternative operator takes over the operation of the funicular railway, the said Guarantee, Indemnity or Bond shall continue to be maintained by the outgoing operator until such time as the alternative operator has taken out and brought into effect a Guarantee, Indemnity or Bond in like manner and for a like adjustable sum with a third party acceptable to the Planning Authority and SNH, which Guarantee, Indemnity or Bond shall be maintained and renewed in like manner.

(THIRTEENTH)

- (a) Subject to sub-clauses (c) and (d) below, the Planning Authority and SNH shall have equal status in matters requiring a decision to be made or action to be taken by them under this Agreement or in other matters relating to implementation of this Agreement. Both must agree on the decision to be made or the action to be taken.
- (b) Where action under this Agreement is to be taken by the Applicant to the satisfaction of the Planning Authority and SNH, each must be satisfied before the Applicant can be taken to have complied with the requirements.
- (c)
 - (i) Where, under the terms of this Agreement, the Planning Authority and SNH are initially unable to agree on a decision to be made or action to be taken, the Authority will forthwith notify the Applicant and the Proprietor and provide a copy of the notification to SNH.
 - (ii) The Planning Authority and SNH will each have three weeks from the date of the notification to the Applicant and the Proprietor to provide the other with a written statement of their case on the matter. The Planning Authority and SNH shall each provide a copy of their statement to the Applicant and the Proprietor.
 - (iii) Thereafter, the matter in issue will be referred within five weeks from the date of the said notification to a joint committee for consideration. The joint committee will comprise three members appointed by the Planning Authority and three members appointed by SNH. The quorum for the joint committee will be six. The decision of the joint committee on the matter will be final and binding on the Planning Authority and SNH. The decision will be communicated to the Applicant and the Proprietor in writing within three days of the date of the meeting.

(iv) If SNH is of the opinion that the matter in issue concerns or is likely to concern the integrity of the said European Sites, their view on this shall be taken as conclusive and the joint committee shall be chaired by one of the three SNH members. In all other cases, the joint committee shall be chaired by one of the three Planning Authority members. In the event of an equality of votes on the matter in issue, the Chairman shall have a casting vote.

(d) The Planning Authority and SNH may agree that, in the circumstances of a particular case or with regard to particular matters, the decision to be made or the action to be taken under this Agreement shall be determined by one of them. Such agreement may be subject to such conditions as the Planning Authority and SNH consider appropriate, including a condition allowing for a resumption of jurisdiction in specified circumstances. Such an agreement between the Planning Authority and SNH shall be notified to the Applicant in writing and shall not take effect until such notification has been given.

(FOURTEENTH)

(a) Subject to Clause EIGHTEENTH hereof, the Planning Authority and SNH shall be the sole arbiters of whether action to be taken by the Applicant under the terms of this Agreement has been satisfactorily taken;

(b) Any dispute arising between the Parties hereto as to the true intent and meaning of these presents and in particular of any terms and provisions hereof shall be referred to the decision of a sole arbiter appointed jointly by the parties or in default of agreement to be appointed by the President of the Law Society of Scotland for the time being. The decision of such arbiter shall be final and binding on all parties.

(c) Any dispute between the Parties hereto as to what is reasonable in the context in which that term is used in Clauses EIGHTH (a), NINTH (d), TENTH (e), ELEVENTH (c) and SEVENTEENTH shall be referred to the decision of a sole arbiter appointed jointly by the parties or in default of agreement to be appointed by the President of the Law Society of Scotland for the time being. The decision of such arbiter shall be final and binding on all parties.

(FIFTEENTH)

The Proprietor, for itself and its successors in title, hereby agrees that before a new operator takes over the operation of the development from the Applicant or from a successor to the Applicant, that new operator will execute and deliver to the Planning Authority and SNH an Agreement with the Planning Authority and SNH in the form of the draft agreement contained in Annex A hereto. Such new operator will not be permitted by the Proprietor to commence operation of the development until such Agreement has been entered into.

(SIXTEENTH)

The Applicant and the Proprietor agree that no entitlement to compensation shall arise against the Planning Authority or SNH as a result of any action competently taken or decision competently made by them under the terms of this Agreement.

(SEVENTEENTH)

The Applicant shall meet the reasonable expenses of the Planning Authority and SNH in the preparation and execution of this Agreement, including the Stamp Duty, if any, and the recording and registration dues.

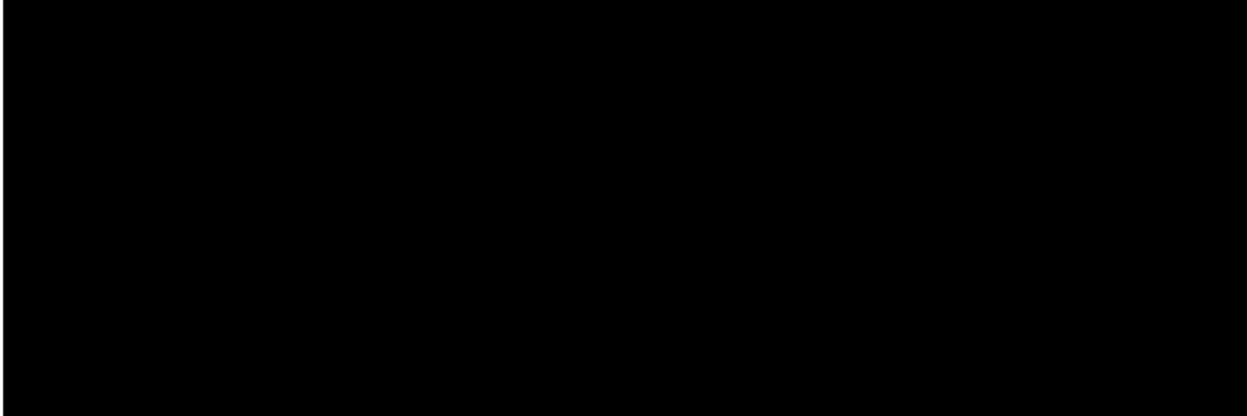
- (EIGHTEENTH) Throughout this Agreement, wherever the Planning Authority and SNH are required to give their consent or approval to any action or are each required to exercise their discretion with regard to any of the conditions contained in this Agreement, the Planning Authority and SNH undertakes not to act unreasonably in the sense in which that term was defined in Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223 and to act without any undue delay.
- (NINETEENTH) Whenever the Planning Authority and SNH are required to give notice to the Applicant in terms of this Agreement, the Planning Authority and SNH shall also give notice to the Proprietor;
- (TWENTIETH) If the Planning Authority has served notice on the Applicant in terms of Clause ELEVENTH (b) hereof and the Applicant has failed or failed adequately to take the required steps within the time stipulated, the Proprietor may, within three days of receiving the notice referred to in Clause ELEVENTH (c) hereof, notify the Planning Authority of the Proprietor's intention to undertake such steps and the Proprietor shall be given such further period to undertake such steps as the Planning Authority may determine. Should the Proprietor fail to take such steps or fail adequately to take such steps within the further period of time specified, the Planning Authority and SNH may thereupon implement the terms of Clause ELEVENTH (c) hereof.
- (TWENTY FIRST) In the event that either:-
- (a) the funicular railway has ceased to be operated for a continuous period of twelve months other than for repairs or renewal and without the written consent of the Planning Authority and SNH; or
 - (b) in the event of the Applicant being in breach of the obligations to maintain in place a Guarantee, Indemnity or Bond in terms of Clause TWELFTH (a) hereof for a period of three months after the Planning Authority and SNH have given written notice to the Applicant of such breach;
- then in either of these events, the Applicant will be deemed to have given notice of permanent discontinuance in terms of Clause TENTH hereof.
- (TWENTY SECOND) If, for any reason, the Proprietor becomes the operator of the Development, the Proprietor hereby agrees to fulfil the terms of this Agreement as they apply to the operator of the Development save that Clause TWELFTH (a) shall not apply to Highlands and Islands Enterprise or any other successor public body but such clause shall apply to any other successor in title of Highlands and Islands Enterprise as Proprietor.
- (TWENTY THIRD) The Proprietor further undertakes to take any future tenant of the Ski Area, or any part of it, bound by the terms of this Agreement and to produce evidence of this to the Planning Authority and SNH.
- (TWENTY FOURTH) Highlands and Islands Enterprise agree that they will not sell or otherwise dispose of the Development Site to any other party who is not under the obligation in s.14 of the Enterprise and New Towns (Scotland) Act 1990 (or any re-enactment thereof) without first consulting with the Planning Authority and SNH and having regard to the views of the Planning Authority and SNH in relation to the effect any disposal may have on the integrity of the proposed European Sites referred to in recitals 4 and 5 hereof.

(TWENTY FIFTH)

If the funicular railway and associated buildings are dismantled and removed and the development site reinstated, all as provided in Clause TENTH, and if there is no outstanding failure by the Applicant to fulfil any of its obligations under this Agreement then the terms of this Agreement shall be discharged save that the parties hereto agree that the planning permission for the Development shall, in those circumstances, be deemed to be discontinued without any liability on the part of the Planning Authority to pay compensation.

(TWENTY SIXTH)

The parties hereto consent to the registration hereof for preservation and execution. IN WITNESS WHEREOF: these presents, consisting of this and the preceding thirteen pages, together with annexes A and B and plans 1, 2 and 3 annexed as relative hereto, are executed as follows: they are subscribed for and on behalf of Scottish Natural Heritage by [redacted] their Chief Executive before this witness, [redacted] Senior Personal Secretary, 12 Hope Terrace, Edinburgh both together at Edinburgh on 17th March Nineteen Hundred and Ninety Seven; they are sealed with the Common Seal of the Highland Council and subscribed for them and on their behalf by [redacted] Area Manager, Badenoch and Strathspey and authorised signatory at Kingussie on 25th March Nineteen Hundred and Ninety Seven; they are sealed with the Common Seal of Highlands and Islands Enterprise and subscribed for them and on their behalf by [redacted] their Chief Executive before this witness, [redacted] Solicitor, 20 Bridge Street, Inverness both together at Inverness on 25th March Nineteen Hundred and Ninety Seven; they are subscribed for and on behalf of Cairngorm Chairlift Company Limited by [redacted] Company Secretary before this witness, [redacted] Accountant, 20 Bridge Street, Inverness both together at Inverness on 25th March Nineteen Hundred and Ninety Seven and they are in terms of Act of Parliament, and by authority of the Board of Directors, sealed with the Common Corporate Seal of the Governor and Company of the Bank of Scotland and subscribed for them and on their behalf by [redacted] Senior Manager, Legal Services Department, for and on behalf of The Governor and Company of the Bank of Scotland, before this witness [redacted] Bank of Scotland, Edinburgh both together at Edinburgh on 26th March Nineteen Hundred and Ninety Seven.



Register on behalf of the within named The Highland Council for preservation and execution as well as for publication in the Register of the County of Inverness [redacted]

Solicitor, Kingussie
Agent

Register on behalf of the within named Scottish Natural Heritage for preservation and execution as well as for publication in the Register of the County of Inverness [redacted]

Solicitors, Edinburgh
Agents

Register on behalf of the within named Highlands & Islands Enterprise for preservation and execution as well as for publication in the Register of the County of Inverness [redacted]

Solicitors, Inverness
Agents

Register on behalf of the within named Cairngorm Chairlift Company Ltd for preservation and execution as well as for publication in the Register of the County of Inverness [redacted]

Solicitors, Edinburgh
Agents

Register on behalf of the within named The Governor and Company of The Bank of Scotland for preservation and execution as well as for publication in the Register of the County of Inverness [redacted]

Solicitors, Edinburgh
Agents

ANNEX A

MINUTE OF AGREEMENT

between

THE HIGHLAND COUNCIL, as Planning Authority for the Highland area, in terms of the Town & Country Planning (Scotland) Act 1972, as amended by the Local Government Etc (Scotland) Act 1994 and whose principal place of business is Council Offices, Glenurquhart Road, Inverness, IV3 5NX (who and whose successors are hereinafter referred to as "the Planning Authority")

OF THE FIRST PART

SCOTTISH NATURAL HERITAGE, as the body with responsibility for conserving and enhancing the natural heritage of Scotland under the Natural Heritage (Scotland) Act 1991 and as agent for the Secretary of State for Scotland for implementing the Habitats and Birds Directives and having their principal place of business at Hope Terrace, Edinburgh (who and whose successors are hereinafter referred to as "SNH")

OF THE SECOND PART

HIGHLANDS & ISLANDS ENTERPRISE, a body constituted under the Enterprise & New Towns (Scotland) Act 1990 and having their principal place of business at Bridge House, Bank Street, Inverness as heritable proprietor of the Development Site (as hereinafter defined)(who and whose successors in title to the Development Site are hereinafter referred to as "the Proprietor")

OF THE THIRD PART

and

(hereinafter referred to as "the Operator")

OF THE FOURTH PART

WHEREAS

ONE The Planning Authority, SNH, the Proprietor, the Cairngorm Chairlift Company Limited and the Governor and Company of the Bank of Scotland have entered into an Agreement dated ("the Agreement") in terms of Section 50 of the Town and Country Planning (Scotland) Act 1972 and Section 49a of the Countryside (Scotland) Act 1967 for the purpose of restricting or regulating the development or use of the development of land extending to 94.3 hectares at Cairngorm, which land (hereinafter referred to as "the Development Site") is delineated in red on the plan annexed and signed as relative to the said Agreement marked "Plan 1-Development Site" and

TWO The Operator is about to commence operating the funicular railway on the Development Site.

THE PARTIES NOW AGREE AS FOLLOWS:-

1. The Operator hereby binds and obliges itself and undertakes to the other parties to adhere to the terms of the Agreement in all respects as if the Operator was the Applicant as defined in the Agreement.

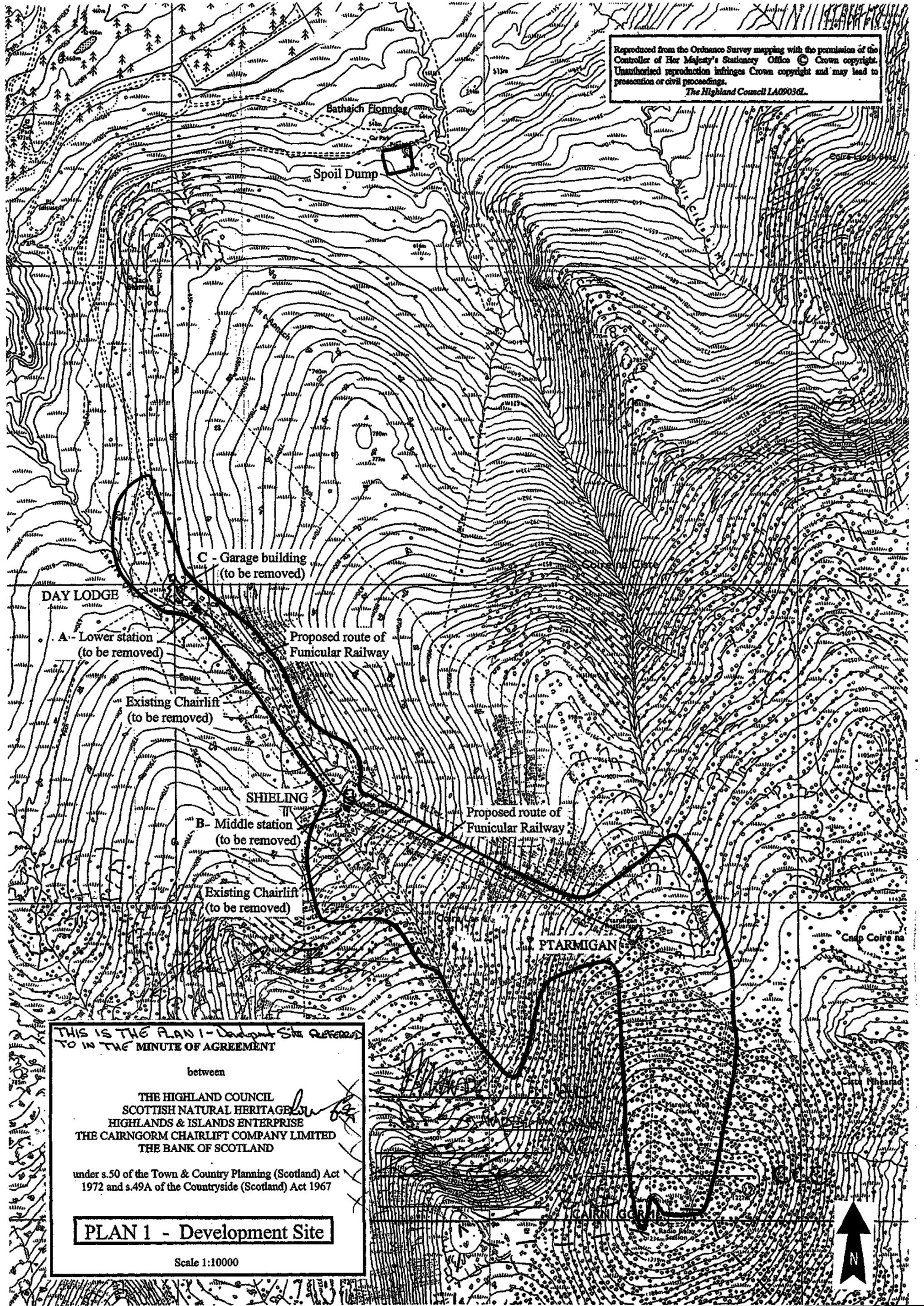
2. The Planning Authority, SNH and the Proprietor hereby accept the Operator in place of the Applicant.
3. Except as varied hereby the whole terms of the agreement remain in full force and effect.

IN WITNESS WHEREOF

This and the preceding page comprise the Annex A
referred to in the foregoing Minute of Agreement between
The Highland Council, Scottish Natural Heritage, Highlands
& Islands Enterprise, The Cairngorm Chairlift Company
Limited and The Governor And Company of The Bank of
Scotland.



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The Highland Council LA09036L



Bathaich Fionndag

Spoil Dump

C - Garage building
(to be removed)

DAY LODGE

A - Lower station
(to be removed)

Proposed route of
Funicular Railway

Existing Chairlift
(to be removed)

SHIELING

B - Middle station
(to be removed)

Proposed route of
Funicular Railway

Existing Chairlift
(to be removed)

PTARMIGAN

THIS IS THE PLAN 1 - Development Site
TO IN THE MINUTE OF AGREEMENT

between

THE HIGHLAND COUNCIL
SCOTTISH NATURAL HERITAGE
HIGHLANDS & ISLANDS ENTERPRISE
THE CAIRNGORM CHAIRLIFT COMPANY LIMITED
THE BANK OF SCOTLAND

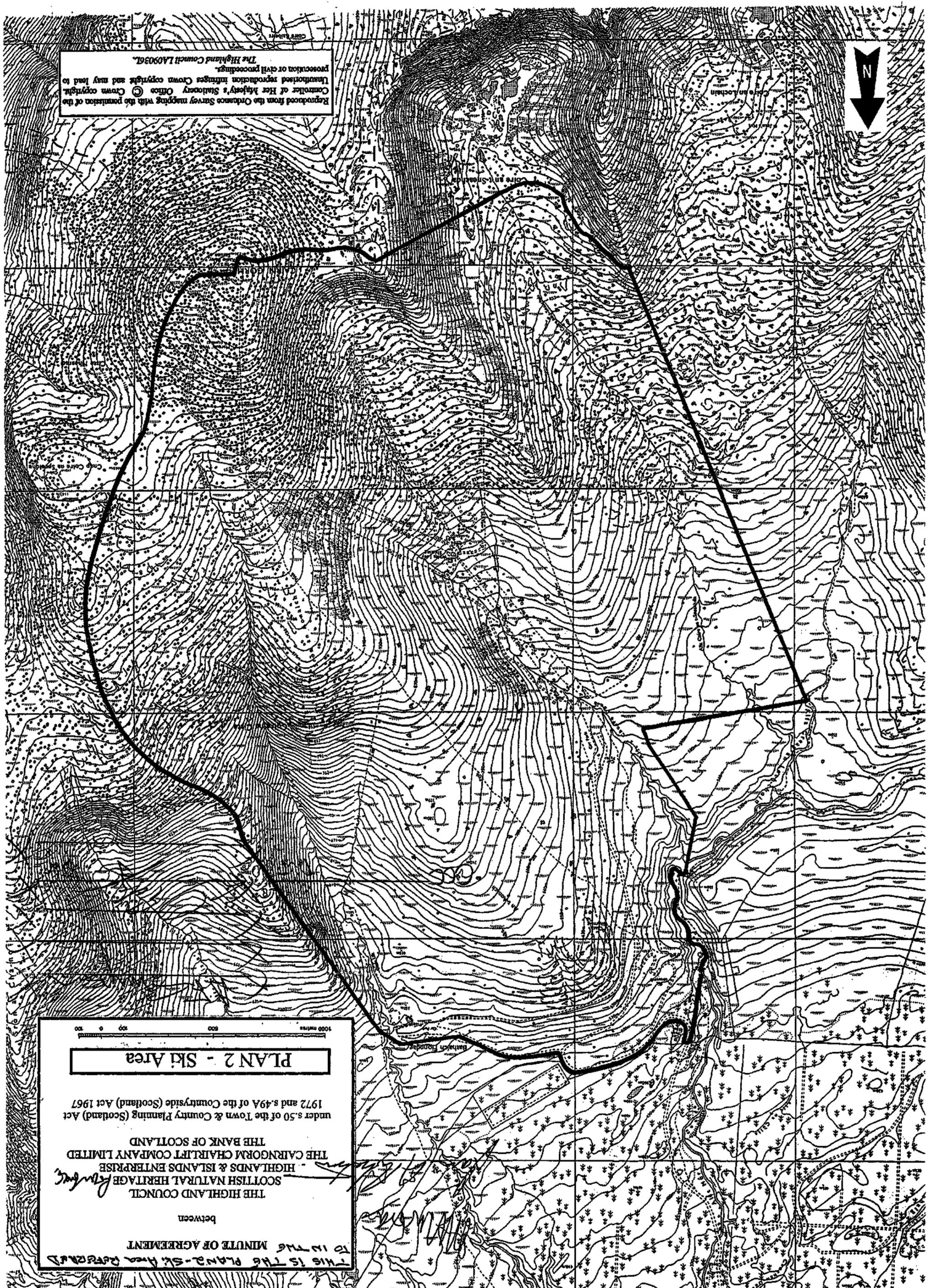
under s.50 of the Town & Country Planning (Scotland) Act
1972 and s.49A of the Countryside (Scotland) Act 1967

PLAN 1 - Development Site

Scale 1:10000



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The Highland Council LA090361.



THIS IS THE PLAN 2 - SKI AREA REPRODUCED
TO BE THE MINUTE OF AGREEMENT
between
THE HIGHLAND COUNCIL
SCOTTISH NATURAL HERITAGE
HIGHLANDS & ISLANDS ENTERPRISE
THE CAIRNGORM CHAIRLIFT COMPANY LIMITED
THE BANK OF SCOTLAND
under s.50 of the Town & Country Planning (Scotland) Act 1972 and s.49A of the Countryside (Scotland) Act 1967

PLAN 2 - Ski Area

1000 metres
0 100 200 300

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The Highland Council LA09036L.

CAIRNGORMS RANGER SERVICE
MOUNTAIN INFORMATION

CAIRNGORMS

Loch Etchachan

Loch Avon
(Loch A'an)



THIS IS THE PLAN 3 - Baseline Survey Area AS
REFERRED TO IN MINUTE OF AGREEMENT

between

THE HIGHLAND COUNCIL
SCOTTISH NATURAL HERITAGE
HIGHLANDS & ISLANDS ENTERPRISE
THE CAIRNGORM CHAIRLIFT COMPANY LIMITED
THE BANK OF SCOTLAND

under s.50 of the Town & Country Planning (Scotland) Act
1972 and s.49A of the Countryside (Scotland) Act 1967

PLAN 3 - Baseline Survey Area

Scale 1:25000

MINUTE OF AGREEMENT

between

**THE HIGHLAND COUNCIL
SCOTTISH NATURAL HERITAGE
HIGHLANDS & ISLANDS ENTERPRISE
THE CAIRNGORM CHAIRLIFT COMPANY
LIMITED**

and

**THE GOVERNOR AND COMPANY OF THE
BANK OF SCOTLAND**

under s.50 of the Town and Country Planning
(Scotland) Act 1972 and S.49a of the Countryside
(Scotland) Act 1967

1997

**Director of Law & Administration
Highland Council
Council Office
Inverness
IV3 5NX**