

SCHEDULE 31

Parent Company Guarantee

[2024]

(1) SHEFFIELD CITY COUNCIL

and

(2) CASTLE VIEW INTERNATIONAL HOLDINGS LTD

PARENT COMPANY GUARANTEE
relating to the leisure operating contract for leisure services in Sheffield

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THIS DEED is dated

[2024]

BETWEEN:

- (1) **SHEFFIELD CITY COUNCIL** of Town Hall, Pinstone Street, Sheffield S1 2HH (the "**Authority**");
and
- (2) **CASTLE VIEW INTERNATIONAL HOLDINGS LTD** (company number SC129442) whose
registered office is at 4 Steuart Road, Bridge Of Allan, Scotland, FK9 4JX (the "**Guarantor**").

BACKGROUND

- (A) Sports and Leisure Management Limited (the "**Contractor**") is entering into a contract with the
Authority for leisure services dated on or around the date of this Guarantee (the "**Leisure
Operating Contract**").
- (B) The Guarantor (being the relevant parent company of the Contractor) has agreed to guarantee
the obligations of the Contractor pursuant to the Leisure Operating Contract.

Now, in consideration of the payment of £1 (receipt of which is hereby acknowledged by the Guarantor)
this Guarantee witnesses as follows:

TERMS AGREED

- 1. **Interpretation, representations, warranties and acknowledgement by the Guarantor**
 - 1.1 Unless the context otherwise requires or unless otherwise defined or provided for in this
Guarantee, capitalised words and expressions used shall have the same meanings that
are given to them in the Leisure Operating Contract.
 - 1.2 In addition, the following words and phrases shall have the following meanings:

"Acceptable Replacement Guarantor"	means any other company or other legal entity which is of financial standing acceptable to the Authority;
"Guaranteed Obligations"	has the meaning given to it in clause 2.1;
"Guarantor's Liability Cap"	shall be an amount equal to the Contractor's maximum aggregate liability under the Leisure Operating Contract; and
"Schedule"	the Schedule to this Guarantee.
 - 1.3 The following rules of interpretation apply to this Guarantee:
 - 1.3.1 In the event of any conflict between the Leisure Operating Contract and this
Guarantee, the latter will prevail;
 - 1.3.2 references to a person are to be construed to include references to a corporation,
firm, company, partnership, joint venture, unincorporated body of persons,
individual, or any state or agency of a state, whether or not a separate legal
entity;
 - 1.3.3 headings are for ease of reference only and shall not be taken into consideration
in the interpretation or construction of this Guarantee.

- 1.3.4 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
 - 1.3.5 references to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
 - 1.3.6 unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;
 - 1.3.7 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
 - 1.3.8 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
 - 1.3.9 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
 - 1.3.10 titles and headings of clauses in this Guarantee are for reference only and shall not affect its interpretation or construction;
 - 1.3.11 any reference to a "**clause**" shall mean a clause of this Guarantee unless otherwise stated;
 - 1.3.12 unless otherwise stated, references to the words "**include**", "**including**", "**in particular**" and "**for example**" shall be construed without limitation;
 - 1.3.13 Any reference to the "**Leisure Operating Contract**" or to any other document or agreement shall include any variation, amendment or supplement thereto; and
 - 1.3.14 A reference to a person or party shall include its permitted successors and assigns.
- 1.4 The Guarantor represents and warrants and undertakes to the Authority that:
- 1.4.1 it is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has the power to carry on its business as now being conducted and to own its property and other assets;
 - 1.4.2 it has the power to enter into Guarantee and to exercise its rights and perform all of its obligations under this Guarantee;
 - 1.4.3 all required corporate (including supervisory approval) and other action to authorise its execution of this Guarantee and the performance of its obligations under this Guarantee has been duly taken;
 - 1.4.4 the obligations expressed to be assumed by it in this Guarantee are legal and valid obligations binding on it and enforceable to the extent permitted by law in accordance with their respective terms;

- 1.4.5 the entry into and performance by it of this Guarantee in each case does not and will not conflict with or cause a breach of:
 - 1.4.5.1 any law or regulation applicable to it;
 - 1.4.5.2 its articles of association, legal establishment or corporate constitution; or
 - 1.4.5.3 any agreement, instrument or document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 1.4.6 it has the legal capacity to enter into this Guarantee; and
- 1.4.7 all governmental and other authorisations, approvals, licences and consents required, to enable it lawfully to enter onto, exercise its rights and comply with its obligations under this Guarantee, and to make this Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect.
- 1.5 The Guarantor acknowledges that the Authority has accepted this Guarantee in full reliance on the representations and warranties set out in this clause 1 and on the basis that this Guarantee is effective to guarantee the performance of the Guaranteed Obligations in accordance with the provisions of this Guarantee.

2. **Guarantee and indemnity**

- 2.1 In consideration of the Authority entering into the Leisure Operating Contract with the Contractor, subject to clause 3 of this Guarantee, the Guarantor as sole and primary obligor irrevocably and unconditionally guarantees to the Authority:
 - 2.1.1 the due and punctual performance and observance by the Contractor, its successors and permitted assignees, of each and all of the obligations, liabilities, warranties, duties and undertakings of the Contractor under, or pursuant to the Leisure Operating Contract including any indebtedness, monies, obligations and liabilities; whether actual or contingent, present or future, which may be now or at any time hereafter due, owing or incurred by the Contractor under or pursuant to the Leisure Operating Contract (the "**Guaranteed Obligations**"); and
 - 2.1.2 where this Guarantee constitutes a replacement guarantee pursuant to clause 4.2 of the previous guarantee between the Authority and the previous guarantor (being substantially in the same form hereof), that it shall be liable in place of the previous guarantor for Guarantee Obligations arising on or before the date of delivery of this Guarantee when and as the Guaranteed Obligations become due, payable and/or performable by either:
 - 2.1.2.1 the Contractor according to the terms of the Leisure Operating Contract; and
 - 2.1.2.2 the previous guarantor according to the terms of the preceding guarantee.

- 2.2 Without prejudice to the foregoing and subject to clause 3 of this Guarantee, the Guarantor warrants and undertakes to the Authority that if and whenever the Contractor is in breach of the terms of the Leisure Operating Contract, the Guarantor shall upon receipt of a written notice of demand substantially in the form contained in the Schedule to this Guarantee:
- 2.2.1 promptly make good or procure the making good of any failure by the Contractor to observe and perform any Guaranteed Obligations;
 - 2.2.2 pay within fifteen (15) Business Days to the Authority the amount of any payment due and payable by the Contractor under the Leisure Operating Contract.
- 2.3 Without prejudice to the foregoing and subject to clause 3 of this Guarantee, the Guarantor as, primary obligor and as a separate and independent obligation and liability from its obligations and liabilities under clauses 2.1 and 2.2 irrevocably and unconditionally agrees to pay to the Authority on written notice of demand such sums as may be necessary to indemnify the Authority from and against any loss, damages, costs, expenses or liability suffered or incurred by the Authority as a result of:
- 2.3.1 any of the Guaranteed Obligations being or becoming void, voidable, unenforceable, invalid or ineffective as against the Contractor or the previous guarantor for any reason whatsoever; or
 - 2.3.2 the failure of the Contractor to fully and promptly perform any of its obligations under the Leisure Operating Contract, the amount of such loss, damage, costs and expenses or liability being the amount which the Authority is entitled to recover from the Contractor under the Leisure Operating Contract or would have otherwise been entitled to recover from the Contractor had the Guaranteed Obligations not been or become void, voidable, unenforceable, invalid or ineffective; or
 - 2.3.3 where this Guarantee constitutes a replacement guarantee pursuant to clause 4.2 of the previous guarantee between the Authority and the previous guarantor (being substantially in the same form hereof), any breach of the previous guarantee by the previous guarantor or any claim and/or demand under the previous guarantee arising on or before the date of delivery of the replacement guarantee to which the Authority, whether having issued a written notice of demand of the same or not, would have otherwise been entitled to recover from the previous guarantor had the previous guarantee not ceased to have effect as a result of this Guarantee coming into force.
- 2.4 The Guarantor shall indemnify and keep indemnified the Authority (to the extent not indemnified under the Leisure Operating Contract in accordance with its terms) on or within fifteen (15) Business Days of demand by the Authority against all losses, actions, claims, costs, damages, charges, expenses and liabilities suffered or incurred by the Authority in respect of the costs, damages, charges, and expenses incurred in the enforcement, preservation, or exercise (or attempted enforcement, preservation or exercise where such attempt fails as a result of the invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee) of this Guarantee or

occasioned by any breach by the Guarantor of any of its obligations to the Authority under this Guarantee.

3. Guarantor's Defences

- 3.1 In relation to any demand made by the Authority pursuant to clause 2 the Guarantor shall be entitled to raise all objections, defences, set-offs or limitations of liability the Contractor may have pursuant to the Leisure Operating Contract.
- 3.2 Subject to clauses 3.4 and 9, in no circumstances shall the total liability of the Guarantor pursuant to this Guarantee exceed the lower of:
 - 3.2.1 the Guarantor's Liability Cap; and
 - 3.2.2 the liability of the Contractor to the Authority under the Leisure Operating Contract or the liability which the Contractor would have had to the Authority, had the Guaranteed Obligations not been or become void, voidable, unenforceable, invalid or ineffective.
- 3.3 The Guarantor waives to the extent permitted by law, any notices which may be required to be given to the Guarantor pursuant to any regulation, law or statute.
- 3.4 No provision of this Guarantee shall limit or exclude the liability of either party:
 - 3.4.1 in respect of any liability for death or personal injury caused by that party's negligence;
 - 3.4.2 arising out of that party's fraud or fraudulent misrepresentation; and/or
 - 3.4.3 in respect of any other liability the exclusion or limitation of which is prohibited by law.

4. Expiry

- 4.1 The obligations of the Guarantor set out herein shall constitute and be continuing irrevocable obligations and accordingly shall remain in full force and effect from the date hereof until the Contractor has discharged all of its obligations under the Leisure Operating Contract and the Guarantor has discharged its obligations hereunder.
- 4.2 In the event that the Contractor ceases to be a subsidiary of the Guarantor, the Guarantor may offer a replacement guarantee for this Guarantee, substantially in the form hereof. If such replacement guarantee is from an Acceptable Replacement Guarantor, the Authority shall accept such replacement guarantee as security for the Guaranteed Obligations.
- 4.3 The Guarantor shall be entitled (at its sole discretion) to procure a substitute guarantor provided that such substitute guarantor is an Acceptable Replacement Guarantor and provides a replacement guarantee in the same form as this Guarantee, at which time such substitute guarantor shall become the Guarantor. The Authority undertakes to

return this Guarantee to the Guarantor upon provision of such replacement guarantee, whereupon this Guarantee shall (save where the replacement guarantor does not:

4.3.1 assume liability in place of the previous guarantor, as part of its guaranteed obligations under the replacement guarantee, for all obligations, liabilities, claims and demands under the previous guarantee arising on or before the date of delivery of the replacement guarantee; and

4.3.2 agree to the incorporation of the indemnity under clause 2.3.3 of this Guarantee) cease to have effect and the Guarantor shall be released from all liabilities under this Guarantee. For the avoidance of doubt, subject to the foregoing this Guarantee shall continue in full force and effect, notwithstanding the disposal by the Guarantor of any or all of its shares in the Contractor.

4.4 No claim or right of claim pursuant to this Guarantee shall become statute barred prior to the date of prescription or expiry date of the limitation period of the relevant Guaranteed Obligation.

5. Reservation of rights

5.1 The obligations of the Guarantor contained in this Guarantee shall be in addition to, and independent of, any other security, indemnity or guarantee which the Authority may at any time hold in respect of any of the obligations of the Contractor under the Leisure Operating Contract.

5.2 The Leisure Operating Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this Guarantee (which includes the Contractor's duties, obligations and liabilities under the Leisure Operating Contract as modified, amended or supplemented) shall remain in force and shall not be released, discharged, reduced or adversely affected by any act, omission, matter, circumstance or other thing which, but for this clause, might operate to release, discharge, affect or impair this Guarantee, including any of the following:

5.2.1 any non-written arrangement between the Contractor and the Authority;

5.2.2 any amendment to, or any variation, waiver or release of, any obligation of the Contractor under or pursuant to the Leisure Operating Contract;

5.2.3 any time or indulgence being granted or agreed to be granted to the Contractor in respect of its obligations under or pursuant to the Leisure Operating Contract;

5.2.4 the taking, variation or release of, or enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor;

5.2.5 any legal limitation, disability, incapacity or other circumstances relating to the Contractor;

5.2.6 the insolvency, winding-up, dissolution, administration or re-organisation of or any change in status, function, control or ownership of the Contractor or any other person;

- 5.2.7 any obligation of the Contractor under the Leisure Operating Contract being or becoming illegal, void, invalid, unenforceable or ineffective in any respect;
- 5.2.8 the assignment, transfer or novation of the Leisure Operating Contract in accordance with its terms (provided always the Contractor is party to the Leisure Operating Contract as assigned or novated); and/or
- 5.2.9 the suspension or termination of the Leisure Operating Contract or of the employment of the Contractor under the Leisure Operating Contract.

6. Assignment

- 6.1 The Guarantor is not entitled to assign, novate or otherwise transfer this Guarantee.
- 6.2 With prior notification to, but without the consent of the Guarantor, the Authority shall be entitled to assign, novate or transfer this Guarantee to any person to which the Leisure Operating Contract has been assigned in accordance with its terms.

7. Settlement conditional

If any security given or payment made to the Authority by the Guarantor (or any other person on behalf of the Guarantor) in discharge or settlement of the Guarantor's liability under this Guarantee is at any time avoided or reduced by virtue of any applicable law, provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application for the time being in force, then the Authority shall be entitled to recover the value or amount of such security or payment from the Guarantor subsequently as if such settlement or discharge had not occurred.

8. Exercise of rights

- 8.1 The Authority shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by law:
 - 8.1.1 to take any legal proceedings or obtain judgment in any court against the Contractor; or
 - 8.1.2 to make or file any claim or proof in a winding-up or dissolution of the Contractor.
- 8.2 Any judgment, award, agreement or determination of any amount due from the Contractor under the Leisure Operating Contract shall be binding upon the Guarantor.

9. Interest

Any amount which is not paid under this Guarantee, when due in accordance with a written notice of demand served under clause 2 of this Guarantee, shall carry interest at the rate of interest applicable to overdue amounts under the Leisure Operating Contract from the due date until date of payment.

10. Taxes

All payments in respect of the obligations of the Guarantor under this Guarantee shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatsoever nature imposed, levied, collected or assessed by His Majesty's Revenue and Customs or any other government or fiscal authority outside the United

Kingdom having power to tax, save where such withholding or deduction is required by law. In that event, the Guarantor shall pay such additional amounts as will result in the receipt by the Authority of such amount as would have been received by the Authority if no such withholding or deduction had been required.

11. Notices

11.1 Any notice to either party, or demand by the Authority on the Guarantor, to be served under this Guarantee shall be in writing and may be delivered in person or sent by recorded delivery post to the Guarantor at its address appearing in this Guarantee or at such other address as it may have notified to the Authority in accordance with this clause 11.

11.2 Any such notice or demand shall be deemed to have been served on the Guarantor:

11.2.1 if delivered in person, at the time of receipted delivery; or

11.2.2 if posted, upon the date recorded for receipt.

11.3 Any notice to the Authority shall be deemed to have been duly served if delivered in person against a receipt or by recorded delivery post to Town Hall, Pinstone Street, Sheffield S1 2HH and marked for the attention of Lisa Firth.

11.4 All communications and documentation concerning this Guarantee shall be in English.

12. Waiver

12.1 No delay or omission by the Authority in exercising any right, power or privilege under this Guarantee shall impair or be construed as a waiver of such right, power or privilege and nor shall any single or partial exercise of any such right, power or privilege or the exercise of any other right, power or privilege.

12.2 A waiver given or consent granted by the Authority under this Guarantee shall be effective only if given in writing and then only in the instance and for the specific purpose for which it is given.

13. Additional and continuing security

The obligations of the Guarantor shall be in addition to and independent of every other security which the Authority may at any time hold in respect of the Guaranteed Obligations. This Guarantee shall in no circumstances be, or deemed to be, a mortgage, charge, pledge, lien or assignation by way of security.

14. Partial invalidity

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality or enforceability of the remaining part or provisions of this Guarantee.

15. Dispute resolution and governing law

This Guarantee shall be governed and construed in accordance with the Laws of England and Wales and the Parties hereby agree to submit to the exclusive jurisdiction of the courts of England and Wales, over any difference, dispute or unsettled claim arising out of or in connection with this

Guarantee. The Guarantor hereby agrees not to assert any claim of forum non conveniens regarding the jurisdiction of the courts of England and Wales.

16. Demands and notification binding

Any demand, notification or certificate given by the Authority specifying amounts due and payable under or in connection with any of the provisions of the Guarantee shall, in the absence of manifest error, be conclusive and binding on the Guarantor.

17. Exclusion of third party rights

Subject to any assignation pursuant to clause 6, no term of this Guarantee is enforceable under the Contracts (Right of Third Parties) Act 1999 by a person who is not a party to this Guarantee.

18. Payments

18.1 All payments to be made by the Guarantor in respect of this Guarantee shall:

18.1.1 be made in same day available electronically transferable funds (with no handling charge, commission or exchange rate conversion fee deducted) to the credit of such bank account as the Authority may designate; and

18.1.2 be made in pound sterling or such other currency as the Authority nominate; and

18.1.3 only be deemed received by the Authority upon their written confirmation sent to the Guarantor.

19. Further acknowledgement by Guarantor

The Guarantor hereby acknowledges that it has full knowledge of the provisions and content of the Leisure Operating Contract.

20. Confidentiality and FOIA

Both Parties shall treat the terms of this Guarantee as confidential and neither party shall disclose its terms except as required by law, including for the avoidance of doubt pursuant to FOIA and the Environmental Information Regulations.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE

Form of Demand Notice

[]

Attention: Authorised and responsible representative

[Date]

Dear Sirs

We refer to the Guarantee dated [INSERT DATE] between us, and to the Leisure Operating Contract dated [INSERT DATE] between Sheffield City Council and your subsidiary [INSERT NAME].

This letter is our formal demand for the payment of [●] pursuant to clause 2.2.2 of the Guarantee, which amount is due and payable by your subsidiary [INSERT NAME]. Please make payment to: The County of Sheffield City Council, [INSERT BANK ACCOUNT NUMBER AND DETAILS], within fifteen (15) Business Days of your receipt of this demand.

AND/OR

This letter is our formal demand for the payment of [●], which amount is payable by you pursuant to your obligation to indemnify us from and against our losses, damages, costs, expenses, and/or liabilities under and in accordance with clause 2.3 of the Guarantee. This letter shall not have the effect of diminishing, discharging or releasing you from the performance of your obligations under and in accordance with clause 2.3 if we (acting reasonably) suffer or incur any further loss, damages, costs, expenses or liabilities pursuant to clause 2.3. Please make payment to: Sheffield City Council, [INSERT BANK ACCOUNT NUMBER AND DETAILS], within fifteen (15) Business Days of your receipt of this demand.

AND/OR

This letter is our formal demand for the payment of [●], which amount is payable by you pursuant to your obligation to indemnify us from and against our losses, damages, costs, expenses, and/or liabilities under and in accordance with clause 2.4 of the Guarantee. This letter shall not have the effect of diminishing, discharging or releasing you from the performance of your obligations under and in accordance with clause 2.4 if we (acting reasonably) suffer or incur any further loss, damages, costs, expenses or liabilities pursuant to said clause 2.4. Please make payment to: Sheffield City Council, [INSERT BANK ACCOUNT NUMBER AND DETAILS], within fifteen (15) Business Days of your receipt of this demand.

AND/OR

This letter is our formal demand that you perform and discharge [DESCRIBE RELEVANT OBLIGATIONS] the obligations and liabilities of your subsidiary [INSERT NAME] as required pursuant to clause 2.2.1 of the Guarantee which your subsidiary, in breach of the Leisure Operating Contract, has failed to perform and discharge.

Yours faithfully

Sheffield City Council