



Registration of a Charge

Company name: **THE DUNDEE UNITED FOOTBALL COMPANY LIMITED**

Company number: **SC013690**



X650WO11

Received for Electronic Filing: **24/04/2017**

Details of Charge

Date of creation: **07/04/2017**

Charge code: **SC01 3690 0018**

Persons entitled: **ALASTAIR BORTHWICK**

Brief description: **SUBJECTS BEING THE CLUBSTORE LYING TO THE SOUTHWEST OF TANNADICE PARK, DUNDEE BEING THE SUBJECTS REGISTERED IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER ANG65959**

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **MICHAEL LYNER**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 13690

Charge code: SC01 3690 0018

The Registrar of Companies for Scotland hereby certifies that a charge dated 7th April 2017 and created by THE DUNDEE UNITED FOOTBALL COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th April 2017 .

Given at Companies House, Edinburgh on 24th April 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

STANDARD SECURITY

by

THE DUNDEE UNITED FOOTBALL COMPANY LIMITED

in favour of

ALASTAIR BORTHWICK

re: Club Store, Gussie Park, Dundee

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STANDARD SECURITY by:

- (1) **THE DUNDEE UNITED FOOTBALL COMPANY LIMITED** (registered number SC013690) whose registered office is at Tannadice Park, Dundee, DD3 7JW (the "Company"); in favour of
- (2) **ALASTAIR BORTHWICK** residing at 1021 Park Avenue, New York, NY 10028 USA (the "Creditor").

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Standard Security unless the context otherwise requires the following expressions shall have the meanings respectively assigned to them:

"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh and London;
"Encumbrance"	means any mortgage, standard security, pledge, hypothecation, title retention, lien, charge, assignment or assignation by way of security or other agreement or arrangement having the effect of conferring security;
"Event of Default"	means a failure by the Company to comply with its payment obligations under the Loan Notes or the Loan Note Instrument with reference to the Creditor;
"Loan Note Instrument"	means the loan note instrument by the Company dated on or around the date of this Standard Security constituting the Loan Notes;
"Loan Notes"	means the £500,000 Loan Notes constituted under the Loan Note Instrument or as the case may require the principal amount thereof for the time being issued and outstanding or a specified portion thereof;
"Permitted Security"	means any Encumbrance which ranks <i>pari passu</i> with this Standard Security by virtue of a ranking agreement to which the Creditor is party.

“Property”

means all and whole the property or properties described in the Schedule or such of them as shall for the time being remain subject to this Standard Security including all buildings, erections and fixtures and fittings and fixed plant for the time being thereon and all improvements and additions thereto and all servitudes and other heritable rights appurtenant thereto subject to and with the benefit of all leases, underleases, tenancies, agreements for lease, rights, burdens and conditions affecting the same;

“Secured Obligations”

means all or any monies, costs, charges, interest, expenses, liabilities and obligations whether certain or contingent which now or hereafter may be or become due and owing by the Company to the Creditor under the Loan Notes or the Loan Note Instrument whether solely or jointly with one or more persons and whether as principal debtor or guarantor or surety;

“Standard Security”

means this standard security;

“Taxes”

means all forms of tax, duty, rate, levy, social security or similar payments or other imposition whenever and by whatever authority imposed and whether of the United Kingdom or elsewhere, and any interest, penalty or fine in connection with any such items.

- 1.2 References to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.3 Unless the context otherwise requires references to the singular shall include the plural and *vice versa*.
- 1.4 References to Clauses and Parts of the Schedule shall be construed as references to the clauses of and parts of the schedule to this Standard Security and headings to Clauses are inserted for convenience and shall have no effect in the interpretation of this Standard Security.

2. **UNDERTAKING TO PAY**

The Company undertakes to the Creditor that it will on demand pay or discharge the Secured Obligations when the same became due for payment and discharge in accordance with the terms of the Loan Notes and the Loan Note Instrument together additionally with interest thereon from the date of such demand to the date of payment at the rate from time to time applicable to unpaid sums specified in the Loan Note Instrument, save to the extent that such interest is charged on such amount pursuant to the Loan Note Instrument and itself constitutes a Secured Obligation.

3. **CHARGE**

- 3.1 In security of the payment and discharge of its obligations hereunder and in respect of the Secured Obligations, the Company to the intent that the security created shall rank as a continuing security, hereby grants a Standard Security in favour of the Creditor over the Property.
- 3.2 As security for the payment and discharge of its obligations hereunder and in respect of the Secured Obligations, the Company hereby assigns absolutely and agrees to assign absolutely to the Creditor (subject to re-assignment on discharge of the Secured Obligations) all rights and claims to which the Company is now or may hereafter become entitled in relation to the Property.
- 3.3 The Company undertakes to deposit with the Creditor, as soon as reasonably practicable following a request by the Creditor, the deeds and documents of title relating to the Property.

4. **STANDARD CONDITIONS**

The Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 as amended by the Redemption of Standard Securities (Scotland) Act 1971 (together hereinafter referred to as the “**Act**”), and any lawful variation thereof operative for the time being (hereinafter referred to as the “**Standard Conditions**”) shall apply and the Standard Conditions shall be varied firstly in accordance with the provisions of this Standard Security and secondly to the effect that the following provisions shall apply:

- 4.1 Standard Condition 7 shall be varied to the effect that:
 - 4.1.1 the Creditor shall not be required to give any notice of its exercise of the right of entry referred to in Standard Condition 7(2);
 - 4.1.2 the interest rate for the purposes of Standard Condition 7(3) shall be 2% per annum above the Bank of England base rate, or in the event of such

rate ceasing to exist, such equivalent rate as shall be specified by the Creditor from time to time.

- 4.2 For the purposes of Standard Condition 9(1) the Company shall be held to be in default in the event of any of the Secured Obligations remaining outstanding after it has fallen due and payable or in the event of any failure (whether by omission or commission) of the Company to observe and perform any of the terms and conditions in this Standard Security and in the event of the Company being in default as aforesaid, then without prejudice to any other rights and remedies available to the Creditor by virtue of the Standard Conditions, including for the avoidance of doubt Standard Condition 9(1), or any other security, charge or undertaking or in any other manner the Creditor will be entitled to exercise any of the remedies available to a creditor on default of a borrower by virtue of the provisions of the Act.

5. **DECLARATIONS**

If there shall be any breach of the obligations or undertakings contained or referred to in this Standard Security the Creditor shall (without prejudice to all other rights and powers available to it) be entitled, without notice to the Company, to withhold further facilities from the Company.

6. **UNDERTAKINGS RELATING TO THE PROPERTY**

6.1 The Company shall:

6.1.1 not without the prior written consent of the Creditor or otherwise in the ordinary course of business and always permitting liens arising by operation of law create or permit to exist any Encumbrance other than a Permitted Security affecting the Property or sell, transfer, lease or dispose of the Property or any part thereof or interest in the Property or agree to do so whether absolutely or in security;

6.1.2 not, without the prior written consent of the Creditor (such consent not to be unreasonably withheld or delayed), enter into any negotiations with any competent authority with regard to the compulsory acquisition of the Property where any such compulsory acquisition has or could have an adverse effect on the value of the Property.

- 6.2 If the Company fails at any time to perform or observe any undertaking or condition on its part herein contained the Creditor shall be entitled but not obliged, in order to make good such failure in whole or in part and provided that it is necessary to protect its security:

- 6.2.1 to enter upon the Property at a reasonable time and following reasonable prior notice to the Company and effect such repairs and other works thereon as the Creditor considers reasonably necessary to protect its security;
- 6.2.2 to insure and keep insured the Property in such amount and in such manner as the Creditor considers reasonably necessary; and
- 6.2.3 to admit, settle, liquidate, compound or contest in such manner as the Creditor reasonably thinks fit any claim or liability in relation to the Property whether or not the Creditor is expressly indemnified herein against the same and to make such payments and expend or debit on account such moneys as the Creditor considers to be reasonably necessary to that end,

provided that the Creditor shall not be deemed to be a heritable creditor in possession by reason of the exercise of any right conferred by this Clause 6.2 and provided further that any sum reasonably and properly expended by the Creditor in accordance with this Clause 6.2 shall be repayable by the Company and be added to the total of the Secured Obligations.

- 6.3 All moneys received under any insurance whatsoever in respect of loss or damage by fire or otherwise to the Property shall be applied in making good the loss or damage or, following the occurrence of an Event of Default (which is continuing unremedied or unwaived) and if the Creditor so requires, towards the discharge of the money for the time being owing under this Standard Security.

7. **OTHER UNDERTAKINGS**

- 7.1 For so long as it remains bound by the provisions of this Standard Security the Company shall not without the prior written consent of the Creditor (not to be unreasonably withheld or delayed):
 - 7.1.1 enter into or permit to subsist any Encumbrance over the whole or part of the Property other than (i) any Permitted Security, and (ii) any Encumbrance entered into in the ordinary course of business, and (iii) any liens arising by operation of law;
 - 7.1.2 amend its memorandum or articles of association in a way which will contravene or result in contravention of any provision of this Standard Security; or
 - 7.1.3 enter into any agreement which has a material adverse effect upon the Company's ability to perform its obligations under this Standard Security.

8. PAYMENTS

- 8.1 All payments by the Company pursuant to this Standard Security shall be made without any set-off, counterclaim or equity and free and clear of and without withholding or deduction for or on account of any Taxes except to the extent that the Company is required by law to make such withholding or deduction. If the Company or any agent of the Company is obliged to make any such withholding or deduction the Company shall pay a sufficient amount as will result (after such withholding or deduction) in the receipt by the Creditor of the sum which would have been receivable by it in the absence of such withholding or deduction in respect of the Company's obligations under this Standard Security; except that no such amount shall be payable in respect of United Kingdom income tax deducted from any payment of interest which any person is obliged to deduct pursuant to Section 349(2) Income and Corporation Taxes Act 1988 (as currently enacted).
- 8.2 If the Company makes a payment hereunder for the account of the Creditor and the Creditor determines in good faith that it has received or been granted a credit against or relief or remission for or repayment of any Taxes paid or payable by it in respect of or calculated with reference to the deduction or withholding or matter giving rise to such payment the Creditor shall to the extent that it can do so without prejudice to the retention of the amount of such credit relief remission or repayment within a reasonable period after such determination pay to the Company the amount as the Creditor shall have reasonably determined to be attributable to the deduction or withholding or other matter which would leave the Creditor (after such payment) in no better or worse position than it would have been in if the Company had not been required to make such deduction or withholding. Nothing herein contained shall interfere with the right of the Creditor to arrange its tax affairs in whatever manner it thinks fit nor oblige the Creditor to disclose any information relating to its tax affairs or any computations in respect thereof or require the Creditor to do anything that would prejudice its ability to benefit from any other credits or reliefs or remissions for or repayments to which it may be entitled.
- 8.3 All Taxes which are required by law to be deducted or withheld by the Company from any amount paid or payable under this Standard Security shall be paid by the Company to the appropriate authority when due in accordance with the provisions of any applicable law.

9. THE CREDITOR'S RIGHTS

- 9.1 Save in so far as may be expressly provided for in the conditions of any dealing or as may otherwise be acknowledged in writing by the Creditor such dealings shall not prejudice or affect the undertakings, liabilities and obligations of the Company

hereunder or the rights and remedies of the Creditor and shall not release or discharge any Encumbrance given by the Company hereunder.

9.2 The conditions of any dealing agreed in writing by the parties thereto shall be deemed to have been set forth herein and shall be enforceable by the Creditor accordingly.

9.3 For the purpose of this provision a dealing shall include:

9.3.1 the giving of time or indulgence by the Creditor;

9.3.2 the neglect or forbearance of the Creditor, in requiring or enforcing payment of any moneys hereby secured;

9.3.3 the release of any property subject to this Standard Security or of any undertaking, condition, liability or obligation hereunder; and

9.3.4 any act, omission, matter or thing whatsoever whereby the Company would or might have been released from any undertaking, condition, liability or obligation hereunder or any Encumbrance given by it.

9.4 The Creditor's reasonable and properly incurred costs (including legal costs and surveyors fees) of any dealing including the costs of any release, discharge or reconveyance will be the responsibility of the Company and shall be added to the total of the Secured Obligations.

10. **CERTIFICATE OF SUMS DUE**

A certificate by a director, officer or manager of the Creditor as to the money or liabilities for the time being due or incurred to it by the Company shall, in the absence of fraud or manifest error, be conclusive evidence against the Company in any legal proceedings.

11. **CONTINUING SECURITY**

11.1 The security created by this Standard Security shall not be considered as satisfied by any intermediate payment or satisfaction of the whole or part of the Secured Obligations but shall be a continuing security for all the Secured Obligations.

11.2 The security created by this Standard Security shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other Encumbrance now or hereafter held or judgement or order obtained by the Creditor for all or any part of the Secured Obligations or the omission of the Creditor to claim payment from the Company or any other person nor shall such collateral or other Encumbrance, judgement or order or any lien to which the Creditor may otherwise be entitled

(including any Encumbrance prior to the date of this Standard Security) or the liability of any person not party hereto for all or any part of the Secured Obligations be in any way prejudiced or affected by this Standard Security.

12. WARRANTY

The Company hereby warrants and represents to the Creditor that this Standard Security and performance of its terms does not and will not exceed any power granted to it by or violate any provisions of (1) any material law or regulation or any order or decree of any governmental authority or agency to which it is subject or (2) its memorandum and articles of association or (3) any standard security, contract, undertaking, agreement or instrument to which it is a party or which is binding upon it or any of its assets.

13. NOTICES

13.1 All notices or other communications under or in connection with this Standard Security shall be given in writing by facsimile or letter. Any notice shall be deemed to be given as follows:

13.1.1 if sent by facsimile, with confirmed receipt of transmission from the receiving machine, on the Business Day it was transmitted or, if transmitted after the normal business hours of the recipient, the following Business Day;

13.1.2 if delivered by hand, on the Business Day of actual delivery or if delivered after the normal business hours of the recipient, the following Business Day; and

13.1.3 if posted, on the second Business Day following the day on which it was properly despatched by first class mail postage prepaid.

13.2 The address for notices to the Company is as set out on the first page of this Standard Security and the facsimile number is 01382 889398 or such other address or facsimile number as the Company may notify to the Creditor by not less than five Business Days' notice.

13.3 The address for notices to the Creditor is as set out on the first page of this Standard Security or such other address or facsimile number as the Creditor may notify to the Company by not less than five Business Days' notice.

14. **PRESERVATION OF RIGHTS**

14.1 Neither the obligations of the Company herein contained nor the rights, powers and remedies conferred in respect of the Company upon the Creditor by this Standard Security or by law shall be discharged, impaired or otherwise affected by:

14.1.1 the winding up, dissolution, administration or reorganisation of the Company or any change in the status, function, control or ownership of the Company;

14.1.2 any legal limitation, disability, incapacity or other circumstances relating to the Company in relation to the indebtedness or any of the obligations of the Company in relation to the Secured Obligations being or becoming illegal, invalid, unenforceable or ineffective in any respect;

14.1.3 any time or other indulgence being granted or agreed to be granted to the Company in respect of its obligations in relation to the Secured Obligations or under any other Encumbrance;

14.1.4 any amendment to, or any variation, waiver or release of any obligation of the Company in relation to the Secured Obligations;

14.1.5 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any such Encumbrance taken in respect of the Company in relation to the Secured Obligations; or

14.1.6 any other act, event or omission which, but for this Clause might operate to inadvertently discharge, impair or otherwise affect any of the obligations of the Company herein contained or any of the rights, powers or remedies conferred upon the Creditor by this Standard Security or by law.

14.2 Any settlement or discharge given by the Creditor to the Company in respect of the Company's obligations hereunder or any other agreement reached between the Creditor and the Company in relation thereto shall be, and be deemed always to have been, void if any act on the faith of which the Creditor gave the Company the settlement or discharge or entered into that agreement is subsequently avoided by or in pursuance of any provision of law.

14.3 No assurance, security or payment which may be avoided under any enactment relating to bankruptcy, insolvency, winding-up or any similar process (including under sections 238 to 245 (inclusive) of the Insolvency Act 1986) and no release, settlement or discharge given or made by the Creditor on the faith of any such assurance, security or payment, shall prejudice or affect the right of such persons to

enforce the security created by or pursuant to this Standard Security in respect of the full extent of the Secured Obligations hereby secured.

15. **FURTHER ASSURANCE**

The Company will at its sole cost and promptly following a request from the Creditor, do all such acts and sign and deliver all such deeds, instruments, notices or other documents of any kind or in such form as the Creditor may require in each case in order to perfect the Creditor's security under the Standard Security or, after this Standard Security has become enforceable, to enable the Creditor to facilitate the realisation of the Property.

16. **GOVERNING LAW AND JURISDICTION**

16.1 This Standard Security shall be governed by and construed in accordance with the laws of Scotland.

16.2 The Company irrevocably agrees for the benefit of the Creditor that the Court of Session in Scotland (the "**Court**") shall have exclusive jurisdiction (subject as provided below) in relation to any claim, dispute or difference concerning this Standard Security and in relation to, or in relation to the enforcement of, any judgement relating to any such claim, dispute or difference.

16.3 The Company irrevocably waives any right that it may have to object to an action being brought in the Court, to claim that the action has been brought in an inconvenient forum or to claim that the Court does not have jurisdiction.

16.4 Such aforesaid submission to the jurisdiction of the Court shall not (and shall not be construed as to) limit the right of the Creditor to bring legal proceedings in any other court of competent jurisdiction (including, without limitation, the courts having jurisdiction by reason of the Company's place of incorporation). Legal proceedings by the Creditor in any one or more jurisdictions shall not preclude legal proceedings by them or it in any other jurisdiction, whether by way of substantive action, ancillary relief, enforcement or otherwise.

17. **WARRANTICE**

The Company grants warrantice but excepting therefrom the occupancy rights granted in favour of Just Sport (Pro Club) Ltd, a company incorporated under the Companies Acts (registered number 05032306) and having its registered office at 1 Enterprise City, Meadowfield Avenue, Spennymoor, Durham, DL16 6JF.

IN WITNESS WHEREOF these presents consisting of this and the preceding 10 pages, together with the Schedule annexed, are subscribed on behalf of the Company

at _____

on _____ day of _____ Two thousand and seventeen by

_____ 

Director/authorised signatory

_____ 

Director/authorised signatory/Witness

Name: _____

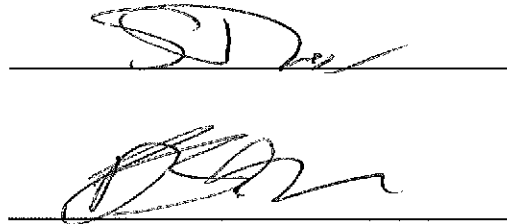
Witness Address: _____

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING STANDARD SECURITY
BY THE DUNDEE UNITED FOOTBALL COMPANY LIMITED IN FAVOUR OF ALASTAIR
BORTHWICK OVER THE CLUB STORE, GUSSIE PARK, DUNDEE DATED MARCH
2017

SCHEDULE 1

Property

Subjects being the club store lying to the southwest of Tannadice Park, Dundee being the
subjects registered in the Land Register of Scotland under title number ANG65959.



Two handwritten signatures are present, each written on a horizontal line. The top signature is in dark ink and appears to be 'SD'. The bottom signature is in a lighter, possibly blue or grey, ink and is more stylized, resembling 'JL' or 'JLW'. To the right of the bottom signature, there is a dark, triangular mark.