



**Registration of a Charge**

Company Name: **ALEXANDER DENNIS LIMITED**

Company Number: **SC268016**



Received for filing in Electronic Format on the: **30/08/2023**

XCAZL4HD

**Details of Charge**

Date of creation: **25/08/2023**

Charge code: **SC26 8016 0029**

Persons entitled: **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED (THE SECURITY AGENT)**

Brief description: **N/A**

**Contains fixed charge(s).**

**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 SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A TRUE, COMPLETE AND CORRECT COPY OF THE ELECTRONICALLY EXECUTED ORIGINAL INSTRUMENT.**

Certified by: **SOPHIE BEWS, SOLICITOR, DLA PIPER UK LLP, LONDON**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 268016

Charge code: SC26 8016 0029

The Registrar of Companies for Scotland hereby certifies that a charge dated 25th August 2023 and created by ALEXANDER DENNIS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th August 2023 .

Given at Companies House, Edinburgh on 30th August 2023

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**

EXECUTION VERSION

# Mortgage over Shares

Alexander Dennis Limited  
(the Mortgagor)

HSBC Corporate Trustee Company (UK) Limited  
(the Security Agent)

Dated 25 August 2023

I Certify that save for the material redacted pursuant to s859A of the Companies Act 2006 the <sup>electronic</sup> copy instrument delivered as part of this application for registration is a true, complete and correct copy of the electronically executed original instrument.

Sophie

SOPHIE BEWS

DLA PIPER UK LLP

160 Aldersgate Street, London, EC1A 4HT



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This Mortgage over Shares is made on

25 August

2023

## Between

- (1) **Alexander Dennis Limited** a company incorporated under the laws of Scotland with registered number SC268016 having its registered office at 16 Charlotte Square, Edinburgh, Midlothian, EH2 4DF (the **Mortgagor**); and
- (2) **HSBC Corporate Trustee Company (UK) Limited** as trustee for the Secured Parties (the **Security Agent**).

## Recitals

- A The Lenders have agreed to make credit facilities available on the terms of the Facility Agreement.
- B The Mortgagor has agreed to provide Security to the Security Agent (as trustee for the Secured Parties) to secure the payment and discharge of the Secured Liabilities.
- C This Mortgage constitutes a Security Financial Collateral Arrangement for the purposes of the Regulations.

## This deed witnesses

### 1 Definitions and interpretation

#### 1.1 Definitions

Words and expressions defined in the Facility Agreement have the same meanings in this Mortgage unless they are expressly defined in it and, in addition, in this Mortgage:

**Act** means the *Law of Property Act 1925*;

**Amendment and Restatement Agreement** means the amendment and restatement agreement entered into by, amongst others, (1) NFI Group, Inc as Parent, (2) NFI International Limited as Original Borrower, (3) certain subsidiaries of the Parent listed in Part 1 of Schedule 1 to the Amendment and Restatement Agreement as Original Guarantors, (4) HSBC UK Bank plc and Bank of America, N.A., Canada Branch (whether acting individually or together) as Arranger, (5) HSBC UK Bank plc and Bank of America, N.A., Canada Branch as Original Lenders, (6) HSBC Bank plc as Agent, (7) HSBC Corporate Trustee Company (UK) Limited as Security Agent and (8) HSBC Bank plc and HSBC UK Bank plc as Bilateral Ancillary Lenders on or around the date hereof pursuant to the terms of which the Facility Agreement is amended and restated;

**Company** means Plaxton Holdings Limited, a company incorporated in England and Wales with registered number 05812358;

**Core Agent** means The Bank of Nova Scotia as administrative agent pursuant to the Core Facility Agreement;

**Core Facility Agreement** means a credit agreement originally dated 25 October 2018 between, among others, NFI Group Inc., New Flyer Holdings, Inc. (each as borrowers),

The Bank of Nova Scotia (as administrative agent) and each of the lenders (as defined therein), as amended by a first amending agreement dated 2 August 2019, a second amending agreement dated 23 April 2020, a third amending agreement dated 23 December 2020, a fourth amending agreement dated 2 December 2021, a fifth amending agreement dated 29 July 2022 and a sixth amending agreement dated 29 December 2022 and as further amended, modified, supplemented or replaced from time to time;

**Default Rate** means the rate of interest specified in, and calculated in accordance with, clause 10.3 of the Facility Agreement;

**Distribution Rights** means all dividends, interest and other distributions paid or payable on or in respect of the Shares, and any right to receive them;

**Effective Date** has the meaning given to it in the Amendment and Restatement Agreement;

**Existing Mortgage Over Shares** means the mortgage over shares dated 19 February 2021 and entered into between (1) Alexander Dennis Limited (as Mortgagor) and (2) HSBC Corporate Trustee Company (UK) Limited (as Security Agent);

**Facility Agreement** means the facilities agreement originally dated 1 May 2020 (as has been amended, restated, novated, replaced, supplemented or varied from time to time including as amended and restated by amendment and restatement agreements dated 23 December 2020 and 2 December 2021, as amended pursuant to amendment letters dated 4 April 2022, 8 June 2022 and 29 June 2022, and as further amended and restated by amendment and restatement agreements dated 29 July 2022 and 29 December 2022, and pursuant to amendment letters dated 23 June 2023 and 28 July 2023, and by the Amendment and Restatement Agreement) between, among others, the Mortgagor and the Security Agent;

**Financial Collateral** has the same meaning as it has in the Regulations;

**Mortgage** means this mortgage over shares;

**PSC Regime** means the regime relating to "people with significant control", as set out in Part 21A of the *Companies Act 2006* and *The Register of People with Significant Control Regulations 2016*;

**Receiver** means a receiver appointed pursuant to this Mortgage or to any applicable law, whether alone or jointly, and includes a receiver and/or manager;

**Regulations** means the *Financial Collateral Arrangements (No 2) Regulations 2003* (S.I. 2003/3226) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements, and **Regulation** means any of them;

**Secured Liabilities** means all the liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any Obligor to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity;

**Security** means a mortgage, charge, pledge, lien, standard security, assignment, or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**Security Assets** means all of the assets of the Mortgagor which are the subject of any Security created or to be created by this Mortgage;

**Security Period** means the period starting on the date of this Mortgage and ending on the date on which the Security Agent is satisfied that:

- (a) all of the Secured Liabilities have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents; and

**Shares** means:

- (a) the shares specified in Schedule 1; and
- (b) any other shares in the Company owned legally or beneficially by the Mortgagor from time to time,

in each case together with all allotments, accretions, offers, options, rights, bonuses, benefits and advantages, whether by way of conversion, redemption, preference, option or otherwise (except for Distribution Rights) which at any time accrue to or are offered or arise in respect of them.

## 1.2 Construction

- (a) The principles of construction set out in clause 1.2 (*Construction*) of the Facility Agreement apply to this Mortgage, insofar as they are relevant to it, as they apply to the Facility Agreement.
- (b) Unless a contrary intention appears, any reference in this Mortgage to:
  - (i) this **Mortgage** is a reference to this Mortgage as amended, varied, novated, supplemented and replaced from time to time;
  - (ii) the **Mortgagor**, the **Security Agent** or any other **Secured Party** includes any one or more of its assigns, transferees and successors in title (in the case of the Mortgagor, so far as any such is permitted); and
  - (iii) the **Security Agent** or any other **Secured Party** (except for the references in clause 17 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.

## 1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Mortgage, a person who is not a party to this Mortgage has no right under the *Contracts (Rights of Third Parties) Act 1999* (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Mortgage.
- (b) The parties to this Mortgage may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Mortgage without the consent of any person that is not a party (without prejudice to the terms of the other Finance Documents).
- (c) Any Secured Party or any person described in clauses 12 (*Protection of purchasers*) or clause 13 (*Protection of the Secured Parties*) may, subject to this clause 1.3 (*Third party rights*) and the Third Parties Act, rely on any clause of this Mortgage which expressly confers rights on it.

#### **1.4 Effect as a deed**

This Mortgage shall take effect as a deed even if it is signed under hand on behalf of the Security Agent.

#### **1.5 Existing Mortgage Over Shares**

- (a) With effect from the Effective Date, the Facility Agreement will be amended and restated pursuant to the terms of the Amendment and Restatement Agreement.
- (b) It is a condition precedent to the occurrence of the Effective Date of the Amendment and Restatement Agreement that the Chargors enter into this Deed.
- (c) Notwithstanding any other provision of this Deed, the parties acknowledge and agree that the Chargors enter into this Deed in addition to, and without prejudice to, the Existing Mortgage Over Shares and that any references in this Deed to the Security created hereunder being first ranking are subject to any prior ranking Security created under the Existing Mortgage Over Shares.
- (d) The parties hereby agree that, with effect from the Effective Date, the Existing Mortgage Over Shares shall be amended by:
  - (i) deleting references to "Secured Party" and replacing it with "UK Existing Secured Party";
  - (ii) deleting references to "Finance Document" and replacing it with "UK Existing Finance Document"; and
  - (iii) deleting references to "Finance Party" and replacing it with "UK Existing Finance Party",

including, in each case, the equivalent plural terms.

#### **1.6 This Mortgage**

The Chargors and the Security Agent agree that this Mortgage shall constitute a Transaction Security Document for the purposes of the Facility Agreement, but not, for the avoidance of doubt, a UK Existing Transaction Security Document.

### **2 Covenant to pay**

The Mortgagor covenants with the Security Agent and the other Secured Parties that it will on demand pay and discharge the Secured Liabilities when due.

### **3 Mortgage**

The Mortgagor mortgages or (if or to the extent that this Mortgage does not take effect as a mortgage) charges by way of fixed charge:

- (a) the Shares; and
- (b) the Distribution Rights.



## **4 Nature of Security created**

The Security created under this Mortgage is created:

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities;
- (b) in favour of the Security Agent as trustee for the Secured Parties; and
- (c) with full title guarantee (subject to the Existing Mortgage Over Shares).

## **5 Representations and warranties by the Mortgagor**

### **5.1 Representations and warranties**

In entering into this Mortgage, the Security Agent has relied on the representations of the Mortgagor that, and the Mortgagor warrants to the Security Agent that:

- (a) it is the sole legal and beneficial owner of the Security Assets;
- (b) the Shares are fully paid;
- (c) it is not deemed to be unable to pay its debts for the purpose of section 123 of the *Insolvency Act 1986* (but ignoring any requirement that any matter referred to in that section be proved to the satisfaction of the court), nor will it become so in consequence of entering into the Finance Documents;
- (d) on the date of this Mortgage:
  - (i) it has complied in full with any obligations it has to provide information to the Company under the PSC Regime; and
  - (ii) it has received neither a "warning notice" nor a "restrictions notice" (each as defined in Schedule 1B to the *Companies Act 2006*) in respect of any of the Security Assets which remains in effect; and
- (e) on the date of this Mortgage, the Shares specified in Schedule 1 represent not less than 100 per cent of the issued share capital of the Company.

### **5.2 Repetition**

The representations and warranties set out in this clause 5 shall survive the execution of this Mortgage and are deemed to be repeated by reference to the facts and circumstances then existing on each date on which the Repeating Representations are deemed to be repeated.

## **6 Positive covenants**

The covenants in this clause 6 remain in force from the date of this Mortgage until the end of the Security Period.

### **6.1 Required percentage of share capital**

The Mortgagor covenants with the Secured Parties that the Shares will at all times represent not less than 100% of the issued share capital of the Company.

## 6.2 Preservation of the Security Assets

The Mortgagor shall:

- (a) promptly pay all calls, instalments and other payments which may be made or become due in respect of the Shares (or, in respect of Shares of which the Security Agent is the legal owner, promptly pay to the Security Agent on demand such amounts as the Security Agent may require to make those payments, together with interest at the Default Rate from the date of payment by the Security Agent to the date of payment by the Mortgagor under this clause, both before and after judgment);
- (b) comply with any notice served on it, under the *Companies Act 2006* or pursuant to the Company's articles of association or any other constitutional document, in respect of or in connection with the Shares or the Company, and will promptly provide to the Security Agent a copy of that notice;
- (c) promptly, on the request of the Security Agent provide to the Security Agent a copy of all other notices, reports, accounts and circulars in respect of or in connection with any of the Security Assets; and
- (d) promptly notify the Security Agent if any Shares are in, or are converted into, uncertificated form (without prejudice to the covenant in paragraph (a)(ii) of clause 8.1 (*Dividends and voting rights*) and:
  - (i) act on any instructions given by the Security Agent, and give such directions as the Security Agent may require to protect and preserve the Security Agent's security in respect of those Shares; and
  - (ii) transfer those Shares to an escrow account in respect of which it has named as escrow agent a nominee or agent of the Security Agent notified to the Mortgagor or any other person approved in writing by the Security Agent.

## 6.3 PSC Regime

The Mortgagor agrees:

- (a) to comply in full with any obligations it has to provide information to the Company under the PSC Regime; and
- (b) (without prejudice to its obligation under clause 6.3(a)) to inform the Security Agent promptly if it receives either a "warning notice" or a "restrictions notice" (each as defined in Schedule 1B to the *Companies Act 2006*) in relation to any of the Security Assets.

## 6.4 Deposit of documents

- (a) The Mortgagor shall (in the case of the Shares specified in Schedule 1 and save to the extent already held by the Security Agent), promptly after entering into this Mortgage or (in the case of any other Shares) on such later date on which any Shares are issued to or otherwise acquired by the Mortgagor, deposit with the Security Agent, in respect of or in connection with the Shares:
  - (i) all stock and share certificates and documents of or evidencing title;
  - (ii) signed undated transfers, completed in blank; and
  - (iii) any other documents which the Security Agent may from time to time reasonably require for perfecting its title, or the title of any purchaser,

all of which will be held by, or by solicitors acting on behalf of, the Security Agent at the expense and risk of the Mortgagor.

- (b) Prior to the date upon which the Core Facility Agreement has been repaid in full, the obligation set out in paragraph 6.4(a) above shall be deemed to be satisfied by depositing such documentation as is set out in that paragraph with the Core Agent.

## **6.5 Payments without deduction**

The Mortgagor covenants with the Secured Parties that all payments to be made by it under this Mortgage shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## **7 Negative covenants**

The covenants in this clause 7 remain in force from the date of this Mortgage until the end of the Security Period.

### **7.1 Disposals**

The Mortgagor shall not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, license, transfer, loan, nor otherwise dispose of any Security Asset, nor enter into an agreement to make any such disposal.

### **7.2 Negative pledge**

Except as permitted by the Facility Agreement the Mortgagor shall not create or permit to subsist any Security over any Security Asset.

### **7.3 Preservation of the Security Assets**

The Mortgagor shall not without the prior written consent of the Security Agent:

- (a) permit any person other than the Mortgagor, the Security Agent or any purchaser to be registered as holder of any of the Shares other than the Core Agent pursuant to the terms of the Core Facility Agreement;
- (b) permit a variation of any rights attaching to any of the Shares;
- (c) take any action which might result in the issue of further Shares of the Company; or
- (d) take any Security in connection with its liability under this Mortgage from any guarantor of, or provider of Security for, any of the Secured Liabilities.

## **8 Dividends and voting rights**

### **8.1 Before demand by the Security Agent**

Until such time as the Security Agent makes a demand under clause 8.2 (*After demand by the Security Agent*), the Mortgagor may exercise any of its voting and other rights and powers attached to the Shares, but shall not do so in a manner which may:

- (a) have the effect of:
  - (i) changing the terms of issue of any Shares (or any class of them) or any Distribution Rights relating to them; or

- (ii) converting any Shares (or any class of them) into uncertificated form;
- (b) impair the value of any of the Shares;
- (c) prejudice the security created by this Mortgage; or
- (d) otherwise prejudice the interests of the Secured Parties under the Finance Documents.

## **8.2 After demand by the Security Agent**

After the Security Agent so demands, at any time after the occurrence of an Event of Default which is continuing, the Mortgagor shall:

- (a) promptly pay over to the Security Agent all moneys arising from the Distribution Rights which it may receive; and
- (b) exercise all voting and other rights and powers attached to the Shares in any manner which the Security Agent may direct.

## **9 Rights and powers of the Security Agent**

During the Security Period the Security Agent may, without notice to the Mortgagor:

- (a) appoint nominees, attorneys, correspondents, trustees, advisers and agents to perform any of its functions under this Mortgage;
- (b) delegate to any person, with power to sub-delegate, any of its rights, powers and discretions under this Mortgage;
- (c) at any time after the occurrence of an Event of Default which is continuing, complete and date any of the transfers and other documents referred to in paragraphs (a)(ii) or (a)(iii)6.4(a)(iii) of clause 6.4 (*Deposit of documents*) and transfer all or any of the Shares to itself; and
- (d) pay calls, instalments and other payments which may be made or become due in respect of the Shares if the Mortgagor fails to do so.

## **10 Enforcement**

### **10.1 When Security becomes enforceable**

The Security created by this Mortgage shall become enforceable at any time after the occurrence of an Event of Default which is continuing.

### **10.2 Powers on enforcement**

- (a) At any time after the Security created by this Mortgage has become enforceable the Security Agent may (without prejudice to any other of its rights and remedies and without notice to the Mortgagor) do all or any of the following:
  - (i) sell or otherwise dispose of the Security Assets, and otherwise exercise all the other powers and rights which may be exercisable by the registered holder of the Shares and all other powers conferred on mortgagees by the Act, as varied and extended by this Mortgage, without the restrictions contained in sections 103 or 109(1) of the Act;

- (ii) to the extent that any Security Asset constitutes Financial Collateral, as defined in the Regulations, appropriate it and transfer the title in and to it to the Security Agent insofar as not already transferred, subject to paragraphs (1) and (2) of Regulation 18;
  - (iii) apply any moneys which it may receive in respect of the Distribution Rights as though they were proceeds of sale; and
  - (iv) subject to clause 11.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets.
- (b) The value of any Financial Collateral appropriated pursuant to paragraph (a)(ii) of clause 10.2 shall be the market price of the Shares at the time of appropriation as reasonably determined by the Security Agent (or an agent, Delegate, attorney or Receiver appointed by it) by reference to a public index or by such other process as the Security Agent (or an agent, Delegate, attorney or Receiver appointed by it) may reasonably select, including independent valuation. The parties to this Mortgage agree that the method of valuation provided for in this Mortgage shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

### **10.3 Disposal of the Security Assets**

In exercising the powers referred to in paragraph (a)(ii) of clause 10.2 (*Powers on enforcement*), the Security Agent or any Receiver may sell or dispose of all or any of the Security Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

### **10.4 Application of moneys**

- (a) The Security Agent shall apply any moneys received or recovered by it pursuant to this Mortgage in accordance with the Facility Agreement.
- (b) Any Receiver shall apply any moneys received or recovered by it pursuant to this Mortgage:
  - (i) first, in or towards the pro rata payment of or provision for any sums owing to the Security Agent, any Receiver or any Delegate; and
  - (ii) secondly, to the Security Agent for application in accordance with clause 10.4(a),and section 109(8) of the Act shall not apply.
- (c) Clauses 10.4(a) and 10.4(b) will override any appropriation made by the Mortgagor.

## **11 Appointment and powers of Receivers**

### **11.1 Method of appointment and removal**

- (a) Except as provided below, the Security Agent may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:
  - (i) the Security created by this Mortgage has become enforceable; or
  - (ii) the Mortgagor so requests the Security Agent in writing at any time.

- (b) If section A52 of Part A1 of the *Insolvency Act 1986* applies to this Mortgage, the Security Agent is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under Part A1 of the *Insolvency Act 1986* other than in respect of a floating charge referred to in subsection (4) of section A52 of Part A1 of the *Insolvency Act 1986*.
- (c) Every appointment or removal of a Receiver, of any delegate or of any other person by the Security Agent pursuant to this Mortgage may be made in writing under the hand of any officer or manager of the Security Agent.

#### **11.2 Powers of Receiver**

Every Receiver shall have all the powers:

- (a) of the Security Agent under this Mortgage;
- (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act;
- (c) in relation to, and to the extent applicable to, the Security Assets or any of them, as specified in Schedule 1 of the *Insolvency Act 1986* (whether or not the Receiver is an administrative receiver within the meaning of that Act); and
- (d) in relation to any Security Asset, which he would have if he were its absolute owner.

#### **11.3 Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Mortgage.

#### **11.4 Receiver as agent**

- (a) Every Receiver shall be the agent of the Mortgagor which shall be solely responsible for his acts and defaults and for the payment of his remuneration. The Mortgagor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.
- (b) No Secured Party will incur any liability (either to the Mortgagor or to any other person) by reason of the appointment of a Receiver or for any other reason.

#### **11.5 Receiver's remuneration**

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Agent, and the maximum rate specified in section 109(6) of the Act shall not apply.

#### **11.6 Removal**

The Security Agent may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **11.7 Relationship with Security Agent**

To the fullest extent allowed by law, any right, power or discretion conferred by this Mortgage over Shares (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Security Agent in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

## **12 Protection of purchasers**

No purchaser or other person dealing with the Security Agent or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of the Security Agent or any Receiver to exercise any of the powers conferred by this Mortgage has arisen or not and whether such power is being properly exercised;
- (b) with the propriety of the exercise or purported exercise of those powers;
- (c) with the application of any moneys paid to the Security Agent, to any Receiver or to any other person;
- (d) whether the Secured Liabilities have become payable; or
- (e) whether any money remains due under the Finance Documents.

## **13 Protection of the Secured Parties**

### **13.1 Exclusion of liability**

- (a) None of the Security Agent, the other Secured Parties or any of their respective officers or employees shall have any responsibility or liability:
  - (i) for any action taken in relation to all or any of the Security Assets;
  - (ii) for any failure to take any action in relation to all or any of the Security Assets, and in particular any failure to:
    - (A) forward to the Mortgagor any report, circular or other communication received by the Security Agent in relation to any Security Assets;
    - (B) accept or decline any offer made in respect of any Security Assets;
    - (C) make any payment in relation to any Security Assets; or
    - (D) enforce the payment of any amount payable in respect of the Security Assets;
  - (iii) to account as mortgagee in possession or for any loss upon realisation of any Security Assets;
  - (iv) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under clause 18 (*Currency*); or
  - (v) for any other default or omission in relation to all or any of the Security Assets for which a mortgagee in possession might be liable,

except in the case of gross negligence or wilful misconduct on the part of that person.

- (b) The Security Agent is not obliged to do any of the following in respect of any Security Assets:
  - (i) perform any obligation of the Mortgagor;
  - (ii) make any payment;
  - (iii) make any enquiry as to the nature or sufficiency of any payment received by it or the Mortgagor;
  - (iv) present or file any claim or take any other action to collect or enforce the payment of any amount to which it or the Mortgagor may be entitled; or
  - (v) exercise any rights to which it or the Mortgagor may be entitled.

### **13.2 Delegation by Security Agent**

- (a) The Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Mortgage.
- (b) Any such delegation may be made upon any terms (including power to sub-delegate) which the Security Agent or any Receiver may think fit.
- (c) Neither the Security Agent nor any Receiver will be in any way responsible or liable to the Chargor or any other person for any cost, expense, loss or liability arising from any act, omission, default, or misconduct on the part of any delegate or sub-delegate.

## **14 Preservation of Security**

### **14.1 Reinstatement**

If any payment by the Mortgagor or discharge given by the Security Agent (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liability of the Mortgagor and the Security created by this Mortgage shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Secured Parties shall be entitled to recover the value or amount of that Security or payment from the Mortgagor, as if the payment, discharge, avoidance or reduction had not occurred.

### **14.2 Waiver of defences**

Neither the Security created by this Mortgage nor the obligations of the Mortgagor under this Mortgage will be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to the Mortgagor, the Security Agent or any other Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any Obligor or any other person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over



assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or
- (g) any insolvency, liquidation, administration or similar procedure.

#### **14.3 Mortgagor intent**

Without prejudice to the generality of clause 14.2 (*Waiver of defences*), the Mortgagor expressly confirms that it intends that the Security created by this Mortgage shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following:

- (a) acquisitions of any nature;
- (b) increasing working capital;
- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;
- (e) refinancing existing facilities;
- (f) refinancing any other indebtedness;
- (g) making facilities available to new borrowers;
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and
- (i) any fees, costs and/or expenses associated with any of the foregoing.

#### **14.4 Immediate recourse**

The Mortgagor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Mortgagor under this Mortgage. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **14.5 Appropriations**

During the Security Period each Secured Party may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to clause 10.4 (*Application of moneys*), apply and enforce the same in such manner

and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Mortgagor shall not be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from the Mortgagor or on account of the Secured Liabilities.

#### **14.6 Deferral of Mortgagor's rights**

During the Security Period and unless the Security Agent otherwise directs, the Mortgagor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Mortgage or the enforcement of the Security created by this Mortgage:

- (a) to receive or claim payment from, or be indemnified by an Obligor;
- (b) to claim any contribution from any guarantor of, or provider of Security in respect of, any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under any Finance Document or of any guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to exercise any right of set-off against any Obligor; and/or
- (e) to claim or prove as a creditor of any Obligor in competition with any Secured Party.

#### **14.7 Additional Security**

This Mortgage is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to any Secured Party.

#### **14.8 New accounts**

If any Secured Party receives notice (actual or otherwise) of any subsequent Security over or affecting all or any of the Security Assets it may open a new account or accounts in the name of the Borrower and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security, and as from that time all payments made by the Borrower to that Secured Party:

- (a) shall be credited or be treated as having been credited to the new account; and
- (b) shall not operate to reduce the Secured Liabilities at the time when the Secured Party received or was deemed to have received such notice.

### **15 Tacking**

For the purposes of section 94(1) of the Act the Lenders shall make further advances to the Borrower on the terms and subject to the conditions of the Finance Documents.

### **16 Further assurance**

#### **16.1 Registration at Companies House**

The Mortgagor consents to the registration of this Mortgage at Companies House pursuant to Part 25 of the *Companies Act 2006*.

## 16.2 Further action

The Mortgagor shall, at its own expense, promptly take any action and sign or execute any further documents which the Security Agent may require in order to:

- (a) give effect to the requirements of this Mortgage;
- (b) protect, preserve and perfect the Security intended to be created by or pursuant to this Mortgage;
- (c) protect and preserve the ranking of the Security intended to be created by or pursuant to this Mortgage with any other Security over the Security Assets; or
- (d) facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on the Security Agent or any Receiver in connection with all or any of the Security Assets,

and any such document may disapply section 93 of the Act.

## 17 Power of attorney

The Mortgagor irrevocably and by way of security appoints each of:

- (a) the Security Agent;
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Security Agent; and
- (c) any Receiver,

jointly and severally as the Mortgagor's attorney, in the Mortgagor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit following the occurrence of an Event of Default which is continuing or following the failure by the Mortgagor to comply with a reasonable request from the Security Agent, to take any action and sign or execute any further documents which the Mortgagor is required to take, sign or execute in accordance with this Mortgage. The Mortgagor agrees, promptly on the request of the Security Agent or any Receiver, to ratify and confirm all such actions taken and documents signed or executed.

## 18 Currency

### 18.1 The Spot Rate

In this clause, the **Spot Rate** means on any day, in relation to the Security Agent or any other Finance Party:

- (a) the spot rate of exchange of that Finance Party; or
- (b) (if that Finance Party does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by that Finance Party (acting reasonably),

for the purchase of any currency with any other currency in the London foreign exchange market on that day.

## **18.2 Conversion of moneys received**

The Security Agent or any other Finance Party may convert any moneys received, recovered or realised in any currency under this Mortgage (including the proceeds of any previous conversion under this clause) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

## **19 Discharge of Security**

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities, unless any third party has any subrogation or other rights in respect of the Security created by this Mortgage at that time, the Security Agent shall, at the request and cost of the Mortgagor, release the Security Assets from this Mortgage. Section 93 of the Act shall not apply to this Mortgage.

## **20 Notices**

### **20.1 Communications in writing**

Any communication to be made under or in connection with this Mortgage shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **20.2 Addresses**

- (a) The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Mortgage is that identified with its name below or any substitute address, fax number or department or officer as either party may notify to the other by not less than five Business Days' notice.

- (b) The addresses referred to in clause 20.2(a) are:

- (i) The Mortgagor:

c/o New Flyer Industries Canada ULC  
711 Kernaghan Avenue  
Winnipeg, Manitoba  
R2C 3T4

Attention: Chief Financial Officer

Fax: (202) 224-6652

- (ii) The Security Agent:

Level 22  
8 Canada Square  
London E14 5HQ

Attention: Issuer Services Trustee Administration

Fax: +44 (0) 20 7991 4350

Email: [Ctla.trustee.admin@hsbc.com](mailto:Ctla.trustee.admin@hsbc.com)

## **20.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Mortgage will only be effective:
    - (i) if by way of fax, when received in legible form; or
    - (ii) if by way of letter:
      - (A) when it has been left at the relevant address or
      - (B) two Business Days (or, in the case of airmail, five Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail postage prepaid), in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under clause 20.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified in clause 20.2(b) (or any substitute department or officer as the Security Agent shall specify for this purpose).

## **20.4 English language**

- (a) Any notice given under or in connection with this Mortgage must be in English.
- (b) All other documents provided under or in connection with this Mortgage must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **21 Calculations and certificates**

### **21.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Mortgage, the entries made in the accounts maintained by the Security Agent or any other Secured Party are *prima facie* evidence of the matters to which they relate.

### **21.2 Certificates and determinations**

Any certification or determination by the Security Agent or any other Secured Party of a rate or amount under this Mortgage is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **22 Partial invalidity**

If, at any time, any provision of this Mortgage is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of

the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **23 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Mortgage shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Mortgage are cumulative and not exclusive of any rights or remedies provided by law.

## **24 Amendments and waivers**

Any term of this Mortgage may be amended or waived only with the written consent of the Mortgagor and the Security Agent.

## **25 Counterparts**

This Mortgage may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Mortgage.

## **26 Governing law and enforcement**

### **26.1 Governing law**

English law governs this Mortgage, its interpretation and any non-contractual obligations arising from or connected with it.

### **26.2 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Mortgage (including a dispute regarding the existence, validity or termination of this Mortgage) (a **Dispute**).
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) Notwithstanding clause 26.2(a), neither the Security Agent nor any other Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent and the other Secured Parties may take concurrent proceedings in any number of jurisdictions.

### **26.3 Service of process**

- (a) Subject to clause 26.3(c), the address for service of the Mortgagor in England and Wales under this clause is Cameron House, Priorswood Place, East Pimbo, Skelmersdale, WN8 9QB.
- (b) Without prejudice to any other mode of service allowed under any relevant law, any Service Document relating to proceedings before the English courts may be served on the Mortgagor at its address for service. That service may be made by pre-paid first class recorded delivery post or any other method allowed by law.
- (c) If the Mortgagor wishes to change its address for service to a different address in England or Wales, it may do so by giving the Security Agent at least 20 Business Days' written notice of its new address for service.

- (d) In this clause, "Service Document" means any claim form, application notice, judgment, order or other notice of legal process relating to the Mortgage.

**Executed** as a deed and delivered on the date appearing at the beginning of this Mortgage.

Schedule 1 Shares


Number of shares or amount of stock or other securities	Name of issuing company	Description of shares, stock or other securities
82,655,671	Plaxton Holdings Limited	Ordinary shares of £0.10



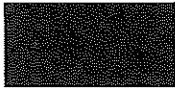
Signature page

The Mortgagor

Executed as a deed, but not delivered until the )  
first date specified on page 1, by )  
**Alexander Dennis Limited:** )

Signature 

Name (block capitals) **Michael Stewart**  
**Director**

Signature 

Name (block capitals) **Richard Paul Davies**  
**Director**

Security Agent

Signed as a deed, but not delivered until the )  
first date specified on page 1, for and on behalf )  
of **HSBC Corporate Trustee Company (UK)** )  
**Limited** in the presence of a witness: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name .....  
(block capitals)

Witness address .....  
.....  
.....