

**Special Meeting of the Board of Governors and General Meeting of  
the Members**

**3.45pm on Tuesday, 1 October 2013**

**Via Conference call\* and**

**in 1B27, Technopark, London Road, London SE1**

**Agenda**

<i>No.</i>	<i>Item</i>	<i>Paper No.</i>	<i>Presenter</i>
	<b>Board meeting</b>		
1.	Welcome and apologies		Chair
2.	Declarations of Interest <i>Governors are required to declare any interest in any item of business at this meeting</i>		Chair
3.	Update on induction of Vice Chancellor designate (to note)	Verbal update	Chair
4.	Loan Agreement to Professor Phoenix, Vice Chancellor and director designate and legal mortgage (to approve)	BG.48(13)	Chair
5.	Board minutes (to approve and issue)	p11-13	Chair
	<i>Meeting adjourns for General Meeting – all governors please remain as they are also the members</i>		Chair
6.	<b>General Meeting</b>		
6.1	Ordinary resolutions (to approve as members)	p9	Chair
7.	Any other business		Chair
	<i>General Meeting ends and Board Meeting ends</i>		Chair

Date of next ordinary meeting: 4pm on Thursday 17 October 2013.

---

Members: David Longbottom (Chair), Dame Sarah Mullally (Vice Chair), Martin Earwicker (Vice Chancellor and Chief Executive), Barbara Ahland, Steve Balmont, Douglas Denham St Pinnock, Ken Dytor, Mee Ling Ng, Hilary McCallion, Anne Montgomery, Andrew Owen, Diana Parker, Shushma Patel, James Smith and Jon Warwick.

With: Executive Director of Finance, University Secretary, Director of Human Resources and Governance Officer.

**\* Conference call dial in details:**

Please call: 0800 917 1956

When asked for a passcode, please enter: 57485113#

	PAPER NO: BG.48(13)	
Board:	<b>Board of Governors + Members in general meeting</b>	
Date:	1 October 2013	
Paper title:	Loan Agreement to Professor Phoenix, Vice Chancellor and director designate	
Author:	James Stevenson, University Secretary and Clerk to the Board of Governors	
Board sponsor:	David Longbottom, Chairman of the Board of Governors	
<b>Recommendation:</b>	<p>That the Board:</p> <ul style="list-style-type: none"> <li>• consider, and if thought fit, approve the terms of the loan agreement and legal mortgage</li> <li>• recommend to the members that the University enter into a loan agreement and legal mortgage with Professor Phoenix</li> <li>• approve the issue of an ordinary resolution to members</li> <li>• authorise the execution of the loan agreement and legal mortgage on behalf of the University</li> </ul> <p>That the members (all governors are also members):</p> <ul style="list-style-type: none"> <li>• approve the ordinary resolution to enter into the loan agreement and legal mortgage.</li> </ul>	
Matter previously considered by:	Remuneration Committee	On: 19 August 2013
Further approval required?	N/A	N/A
Communications – who should be made aware of the decision?	Grant Thornton, External Auditors Professor Phoenix	

## **Executive Summary**

### *Introduction*

At its meeting of 19 August 2013, the Board appointed Professor David Phoenix as the Vice Chancellor designate, who will start formally on 1<sup>st</sup> January 2014.

Professor Phoenix is relocating to London from Lancashire. However, his family will remain in Lancashire in order not to disrupt schooling arrangements over the next two academic years.

The Remuneration Committee considers that it is in the interests of LSBU for the new Vice Chancellor to be able to commute easily to the Southwark campus and to facilitate his participation in LSBU meetings and events during the working week. Accordingly, the Remuneration Committee recommends to the Board that an interest-free secured loan is made available to Professor Phoenix to enable him to buy a residential property in London.

The proposed terms are: an interest-free loan to buy a residential property in London; secured by a legal mortgage in favour of LSBU; and repayable within 2 years.

A leasehold property close to LSBU has been identified in Walworth, London Borough of Southwark, at a purchase price of £360,000. There are two possible scenarios:

- Scenario A – the VC designate intends to contribute a deposit of £60,000, subject to negotiation with his existing mortgage lender, Santander. In this case, the value of the proposed loan by LSBU would be £300,000.
- Scenario B – if Santander is not prepared to advance £60,000, then the value of the proposed loan by LSBU would be £360,000.

The VC designate is keen to secure legal completion of the purchase by 28<sup>th</sup> October 2013. This is advantageous to LSBU for the reasons above.

Professor Phoenix becomes a director of LSBU on 1<sup>st</sup> January 2014. Under the Companies Act 2006, a loan to a director must be approved by LSBU in general meeting. In addition, details of the loan will be published in LSBU's annual report in due course.

*The loan and security*

The sole purpose of the loan for the VC designate is to buy a residential property in London. The whole amount of the loan will be secured by a first legal mortgage in favour of LSBU.

Following legal best practice, protections for LSBU are fully set out in a proposed loan agreement and deed of legal mortgage. The protections include:

- clear events of default (clause 9 of the loan agreement);
- early repayment if the VC designate's employment ends before the repayment date; and
- a legal mortgage over the London property in favour of LSBU, to be registered at HM Land Registry.

Under the Consumer Credit Act 1974, the loan comes within the "non-commercial agreement" exemption. This means LSBU is free to proceed with the transaction without a consumer credit licence and does not have to follow certain strict formalities.

Near final versions of the loan agreement and deed of legal mortgage are attached for reference. The Board may take assurance that the documents have been drafted by LSBU's external property lawyers, Muckle LLP (therefore governors do not have to satisfy themselves as to the detail of these documents unless they wish to). The documents are being reviewed by the VC designate's own conveyancing lawyers who may wish to make comments. This is because the VC designate must receive independent legal advice as to his own personal interests.

Accordingly, the Board is requested to authorise the Chairman to approve any necessary amendments to the documents prior to execution.

*Financial impact*

The loan agreement specifies repayment in full after two years. The financial impact is as follows:

- Scenario A (loan of £300,000) – as the loan is interest free, LSBU foregoes approximately £4,500 worth of interest, calculated on a rate of 0.75% compound. The financial benefit to Professor Phoenix is considerably higher at approximately £25,000 compound with a 2 year fixed rate mortgage at an APR of 4.5%. Expenditure is £300,000 as an interest free secured loan.

- Scenario B (loan of £360,000) – LSBU foregoes approximately £5,425 worth of interest, calculated on a rate of 0.75% compound. The financial benefit to Professor Phoenix is approximately £30,000 compound with a 2 year fixed rate mortgage at an APR of 4.5%. Expenditure is £360,000 as an interest free secured loan.

#### *Drawdown procedure*

The loan will be made available for completion of the purchase by way of solicitors' undertakings via the client account of Muckle LLP to the VC designate's conveyancing solicitor. Prior to the release of funds, Muckle will report on title to the London property and perform a bankruptcy search. If these are satisfactory the funds will be released to allow legal completion. Muckle will then register the mortgage in favour of LSBU at HM Land Registry.

#### **Recommendation**

The Board is requested to:

- consider, and if thought fit, approve the terms of the loan agreement and legal mortgage;
- authorise the Chairman to set the amount of the loan at either: (a) £300,000 or (b) £360,000;
- recommend to the members that the University enter into a loan agreement and deed of legal mortgage with Professor Phoenix;
- recommend the attached form of ordinary resolution to the members.

Governors, as members, are requested to:

- approve the ordinary resolution to enter into a loan agreement (at a value to be set by the Chairman) with Professor Phoenix.

The Board is then requested to:

- authorise the Chairman (failing whom the Vice Chair) and the secretary to execute the loan agreement and legal mortgage and any associated documents on behalf of the University.

*University Secretary & Clerk to the Board*  
*27<sup>th</sup> September 2013*

#### **Appendices:**

1. Ordinary resolutions of the members
2. Pro forma board minutes
3. Loan agreement
4. Legal mortgage

**Company Number: 00986761**

**The Companies Act 2006**  
**Ordinary Resolutions**  
**of**  
**London South Bank University**  
**(University)**

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 (**Act**), the Governors/directors of the University propose that the following resolutions (**Resolutions**) are passed as ordinary resolutions:

**Ordinary Resolutions**

1. That the University in good faith and for the purpose of carrying on its business and charitable objects, enter into the arrangements (**Transaction**) to be effected under or pursuant to:
  - 1.1 a proposed secured, interest free loan of [£300,000 / £360,000] to be made available to the University's Vice Chancellor designate and director designate, David Phoenix, for the sole purpose of enabling David Phoenix to purchase living accommodation in a London borough (**Property**) (it being noted that the University has no interest or involvement in the Property purchase itself), pursuant to the terms of a loan agreement to be entered into between (1) the University and (2) David Phoenix (**Loan Agreement**); and
  - 1.2 a legal mortgage to be granted by David Phoenix in favour of the University over the Property as security for his obligations under the Loan Agreement (**Legal Mortgage**),  
  
for the purpose of section 197 of the Companies Act 2006 and otherwise.
2. That the Board of Governors (the directors) be authorised to pass and to implement such resolutions as they think fit in connection with the University's entry into the Transaction and the performance of its obligations and the exercise of its rights in relation to the Transaction, including as regards approval and execution and delivery of the Loan Agreement, the Legal Mortgage and all related matters.
3. That the Governors and Secretary of the University be authorised to:
  - 3.1 execute the Loan Agreement, the Legal Mortgage and any such ancillary or related documents to the Loan Agreement and the Legal Mortgage;
  - 3.2 approve any amendments made to the Loan Agreement and the Legal Mortgage and any such ancillary or related document; and
  - 3.3 to sign and/or dispatch or deliver all other documents, notices and certificates to be signed and/or dispatched or delivered by the University under or in connection with the Loan Agreement and the Legal Mortgage.

**Agreement**

The members of the University who were entitled to vote on the Resolutions on 1 October 2013 irrevocably agree to the Resolutions and authorise the Chairman to sign on their behalf:

..... **Dated**.....  
**David Longbottom, Chairman of the Board of Governors**

Company Number: 00986761

**London South Bank University**

**(University)**

**Minutes of a meeting of the Board of Governors of the University**

**held at**

**at**

**a.m./p.m. on 1 October 2013**

**Present:** [ ] (Chairman)  
[ ]

**1. Notice and Quorum**

The Chairman reported to the meeting that due notice of the meeting had been given to each Governor and that a quorum was present. Accordingly the Chairman declared the meeting duly convened and constituted.

**2. Business of the Meeting**

2.1 The Chairman reported that the business of the meeting was to deal with matters in relation to a proposed loan to be made available to the University's Vice Chancellor designate and director designate, David Phoenix (**Borrower**). It was reported that the Board of Governors of the University had agreed to provide a secured, interest free loan of [£300,000 / £360,000] to the Borrower (**Loan**) for the sole purpose of enabling the Borrower to purchase living accommodation in a London borough (**Property**).

2.2 The terms of the Loan were set out in a loan agreement to be entered into between (1) the University and (2) the Borrower (**Loan Agreement**). The University were prepared to provide the Loan to the Borrower on the basis that the Borrower grant a legal mortgage over the Property in favour of the University (**Legal Mortgage**).

2.3 The Chairman reported that the business of the meeting was to:

2.3.1 consider and if thought fit, approve the Loan;

2.3.2 consider and if thought fit, approve entry into and delivery of the Loan Agreement; and

2.3.3 consider and if thought fit, approve entry into and delivery of the Legal Mortgage.

**3. Declaration of Interest**

3.1 Pursuant to section 177 of the Companies Act 2006 and the University's articles of association the Governors declared their interest (if any) in the business to be transacted at the meeting. In particular, as the Borrower was to be appointed a director and Governor of the University, the provisions of sections 197 to 214 of the Companies Act 2006 were considered.

3.2 It was noted that, pursuant to the University's articles of association, a director/Governor may not vote and form part of the quorum at a meeting of Governors or of a committee on a resolution which concerns or relates to a matter in which he has directly or indirectly an interest. Accordingly, it was acknowledged that the Borrower was not present at the meeting.

**4. Documents produced to the meeting**

An execution version of the Loan Agreement and the Legal Mortgage (**Documents**) were produced to the meeting.

## 5. **Consideration of Documents**

- 5.1 The terms of the Documents were duly and carefully considered.
- 5.2 The board noted the detailed terms in relation to:
- 5.2.1 the provision of the Loan, including the repayment date of 2 years after the date of the Loan Agreement, that the Loan is interest free and the events of default which would enable the University to accelerate repayment of the Loan; and
- 5.2.2 the Legal Mortgage, including that the University would obtain a first ranking mortgage over the Property.
- 5.3 The Documents were fully and carefully considered by the Governors.
- 5.4 The Chairman explained to the board, and the board fully and carefully considered and noted the commercial reasons why the University should enter into the Documents, that it was in the best interests of the University to provide a reasonable relocation package to the Vice Chancellor designate who would be relocating from Lancashire to central London in order to be closer to the University and to readily undertake university engagements as appropriate.
- 5.5 The board then considered whether it was in the best interests of the University to execute the Documents.
- 5.6 It was noted that the execution and delivery by the University of the Documents and the exercise of its rights, the assumption of its liabilities and performance of its obligations under the Documents will not result in any breach of any restriction imposed on it by its articles of association and/or memorandum of association or other agreement to which it is a party and which is binding on it.
- 5.7 The Chairman reminded the Governors of their statutory duty to promote the success of the University for the benefit of its members as set out at Section 172(1) of the Companies Act 2006. After further discussion, it was the conclusion of the Governors, having considered the success of the University, that the Documents and the transactions contemplated by it would promote the success of the University for the benefit of its members as a whole and its charitable benefactors.

## 6. **Members' approval**

- 6.1 It was reported that it was considered necessary for the members of the University to pass resolutions approving the entry into the Documents by the University.
- 6.2 The resolutions would be by way of ordinary resolutions, drafts of which were produced to the meeting. It was resolved that the University Secretary be authorised and instructed to send the ordinary resolutions to the members of the University entitled to attend and vote at general meetings of the University.
- 6.3 The meeting then adjourned to enable the ordinary resolutions to be circulated.
- 6.4 Upon resumption of the meeting it was reported that the ordinary resolutions had been passed in accordance with the University's articles of association. A copy of the ordinary resolutions signed by the Chairman of the Board of Governors of the University was tabled.

## 7. **Authority to execute documents**

- 7.1 It was resolved that:



- 7.1.1 the terms of, and the transaction contemplated by, the Documents and any ancillary or related documents be and are approved and that the University execute the Documents and any related or ancillary documents;
- 7.1.2 any Governor and, in the case of any document to be executed as a deed, any two Governors or any one Governor and the University Secretary be and are authorised to sign the Documents and any ancillary or related documents to the Documents and in doing so to agree and approve any amendments made to the Documents and any such ancillary or related documents after the holding of this meeting; and
- 7.1.3 any Governor or two Governors be and are authorised to sign and/or despatch or deliver all other documents, notices and certificates to be signed and/or dispatched or delivered by the University under or in connection with the Documents.

**8. Filing**

The University Secretary was instructed to make all necessary and appropriate entries into the books and registers of the University.

**9. Close of meeting**

There being no further business the Chairman declared the meeting closed.

.....  
**Chairman**

**Dated**

**2013**

**London South Bank University**

**and**

**David Phoenix**

**Loan Agreement**

**IMPORTANT NOTICE: We recommend that you consult a solicitor or other independent legal adviser before signing this document.**

**muckle<sup>LLP</sup>**

**Muckle LLP  
Time Central  
32 Gallowgate  
Newcastle upon Tyne**

**Dated**

**2013**

**Parties**

- (1) **David Phoenix** of 157 Prescot Road, Ormskirk, L39 4SN (**Borrower**); and
- (2) **London South Bank University** (a company limited by guarantee registered in England and Wales with company number 00986761) whose registered office is at 103 Borough Road, London, SE1 0AA (**Lender**).

**Background**

The Lender has agreed to provide the Borrower with a secured term loan of £300,000 (three hundred thousand pounds) on the terms of this Deed.

**It is agreed**

**1. Definitions and Interpretation**

- 1.1 The definitions and rules of interpretation in this clause apply in this Deed.

**Availability Period** the period from and including the date of this Deed to and including the date falling 60 Business Days after the date of this Deed;

**Business Day** a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market;

**Event of Default** any event or circumstance detailed in clause 11;

**Finance Documents** this Deed, the Legal Mortgage and any other documents designed as such by the Lender and the Borrower;

**Legal Mortgage** the legal mortgage granted by the Borrower in favour of the Lender on or around the date of this Deed over the property purchased by the Borrower with the proceeds of the Loan;

**Loan** the total principal amount of the loan outstanding under this Deed;

**Repayment Date** the second anniversary of the date of this Deed; and

**Security** any mortgage, charge (whether fixed or floating, legal or

equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**Sterling and £**

the lawful currency for the time being of the United Kingdom.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Deed.
- 1.3 A reference to a **Finance Document** (or any provision of it) or any other document shall be construed as a reference to such Finance Document, that provision or that document as it is in force for the time being and as amended, varied or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties.
- 1.4 A reference to a **person** shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.5 A reference to **writing** or **written** does not include communication by fax or e-mail.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.8 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly).
- 1.9 A reference to a clause is to a clause of this Deed unless the context requires otherwise.

**2. The Loan**

The Lender grants to the Borrower a secured Sterling term loan of a total principal amount not exceeding [£300,000 / £360,000] on the terms, and subject to the conditions, of this Deed.

**3. Purpose**

- 3.1 The Borrower shall use the Loan for the sole purpose of purchasing living accommodation in a London borough.
- 3.2 The Lender is not obliged to monitor or verify how any amount advanced under this Deed is used.

#### 4. **Drawing**

4.1 The Borrower may draw the Loan in a single amount on any Business Day during the Availability Period. To do this, the Borrower shall give the Lender at least one Business Day's prior notice of the date on which the Borrower wants to draw the Loan.

4.2 Any notice given under clause 4.1 will be irrevocable.

4.3 The Loan shall be made by the Lender by payment into the account of the Borrower notified by the Borrower to the Lender in writing.

4.4 If the Loan is not drawn by the Borrower during the Availability Period it will automatically be cancelled.

#### 5. **Conditions Precedent**

5.1 This clause 5 is inserted solely for the benefit of the Lender.

5.2 The Borrower may not give notice to draw the Loan unless the Lender has received, in form and substance satisfactory to the Lender:

5.2.1 the original Legal Mortgage signed by the Borrower; and

5.2.2 a valuation of the property subject to the Legal Mortgage.

5.3 Subject to clause 5.2, the Lender will only be obliged to make the Loan available if, on both the date of the notice to draw down the Loan and the proposed drawdown date of the Loan (specified in the notice referred to in clause 4.1):

5.3.1 the representations and warranties in clause 10 are true and correct and will be true and correct immediately after the Lender has made the proposed Loan; and

5.3.2 no Event of Default is continuing or would result from the proposed Loan.

#### 6. **Repayment**

The Borrower shall repay the Loan in full on the Repayment Date.

#### 7. **Voluntary Prepayment**

The Borrower may prepay part or all of the Loan at any time without incurring any penalty or premium by notifying the Lender in writing 5 Business Days in advance.

#### 8. **Payments**

8.1 All payments made by the Borrower under this Deed shall be in Sterling:

8.1.1 in full, without any deduction, set-off or counterclaim; and

8.1.2 in immediately available cleared funds on the due date to the account notified by the Lender to the Borrower.

8.2 Time shall be of essence in making each payment under this Deed.

## 9. **Calculations and Certificates**

If the Lender issues any certificate, determination or notification of a rate or any amount payable under this Deed, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates.

## 10. **Representations and Warranties**

10.1 The Borrower represents and warrants, on the date of this Agreement and on the date the Loan is drawn down pursuant to clause 4.1, that:

10.1.1 no Event of Default has occurred or is continuing or is reasonably likely to result from making the Loan or the entry into, the performance of, or any transaction contemplated by any Finance Document;

10.1.2 its obligations under the Finance Documents are legal, valid, binding and enforceable; and

10.1.3 the Legal Mortgage creates (or, once entered into, will create):

10.1.3.1 valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and

10.1.3.2 subject to registration at Land Registry, perfected Security over the assets expressed to be subject to security in it,

in favour of the Lender, having the priority and ranking expressed to be created by the Legal Mortgage and ranking ahead of all (if any) Security and rights of third parties.

## 11. **Events of Default**

Each of the events or circumstances set out in this clause 11 (other than clause 11.8) is an Event of Default.

11.1 The Borrower fails to pay any sum payable under any Finance Document, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within 2 Business Days of its due date.

- 11.2 The Borrower fails (other than by failing to pay), to comply with any provision of any Finance Document.
- 11.3 Any provision of a Finance Document is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.
- 11.4 If there is any action, proceedings, procedure or step taken for the suspension of payments, bankruptcy (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower.
- 11.5 The Borrower's employment with the Lender comes to an end for any reason whatsoever.
- 11.6 The Borrower dies.
- 11.7 Any event occurs (or circumstances exist) which, in the reasonable opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the terms of, a Finance Document.
- 11.8 At any time after an Event of Default has occurred, the Lender may, by notice to the Borrower:
- 11.8.1 cancel all outstanding obligations of the Lender under this Deed whereupon they shall be immediately be cancelled; and/or
- 11.8.2 declare that the Loan (and all other amounts outstanding under this Deed) is immediately due and payable, whereupon they shall become immediately due and payable; and/or
- 11.8.3 declare that the Loan be payable on demand, whereupon it shall become immediately payable by the Borrower (or in the case of clause 11.6, the Borrower's estate) on demand by the Lender; and/or
- 11.8.4 declare the Legal Mortgage to be enforceable.
12. **Remedies, Waivers, Amendments and Consents**
- 12.1 Any amendment to this Deed shall be in writing and signed by, or on behalf of, each party.
- 12.2 Any waiver of any right or remedy or any consent given under this Deed is only effective if it is in writing and signed by the waiving or consenting party. It shall apply only in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

12.3 No delay or failure to exercise any right or remedy under this Deed on the part of the Lender shall operate as a waiver of any such right or remedy.

12.4 No single or partial exercise of any right or remedy under this Deed by the Lender shall prevent any further or other exercise or the exercise of any other right or remedy under this Deed.

12.5 Rights and remedies under this Deed are cumulative and do not exclude any other rights or remedies provided by law or otherwise.

### 13. **Severance**

13.1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

13.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the parties.

### 14. **Assignment**

14.1 The Borrower may not assign any of his rights or transfer any of his rights or obligations under this Deed without the consent of the Lender.

14.2 The Lender may assign any of its rights or transfer any of its rights or obligations under this Deed.

### 15. **Counterparts**

This Deed may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.

### 16. **Third Party Rights**

A person who is not a party to this Deed cannot enforce, or enjoy the benefit of, any term of this Deed under the Contracts (Rights of Third Parties) Act 1999.

### 17. **Notices**

17.1 Each notice or other communication required to be given under, or in connection with, this Deed shall be in writing, delivered personally or sent by pre-paid first-class letter and sent to the addresses given at the beginning of this Deed or to any other addresses that are notified in writing by one party to the other from time to time.



- 17.2 Any notice or other communication given by the Lender shall be deemed to have been received:
- 17.2.1 if given by hand, at the time of actual delivery; and
  - 17.2.2 if posted, on the second Business Day following the day on which it was despatched by pre-paid first-class post.
- 17.3 A notice or other communication given as described in clause 17.2.2 on a day which is not a Business Day, or after normal business hours in the place of receipt, shall be deemed to have been received on the next Business Day.
- 17.4 Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt by the Lender.
18. **Governing Law and Jurisdiction**
- 18.1 This Deed and any dispute or claim arising out of, or in connection with it, or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
- 18.2 The parties to this Deed irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Executed** as a deed but not delivered until the date on the front of this document by

**London South Bank University**

acting by

.....  
(signature of Governor)

a Governor and the Secretary

.....  
(signature of Secretary)

**Signed** as a deed by

**David Phoenix**

.....  
(signature)

in the presence of

.....  
Signature of witness

.....  
Name of witness

.....  
Address

.....  
Occupation

**INDEPENDENT LEGAL ADVICE:**

I, David Phoenix, confirm that I have/have not [*delete as appropriate*] obtained independent legal advice and that I am fully aware of the legal consequences of signing this Deed and have done so freely and willingly.

Signed .....

Dated .....



Dated

2013

**David Phoenix**  
and  
**London South Bank University**

**Legal Mortgage**

**IMPORTANT NOTICE: We recommend that you consult a solicitor or other independent legal adviser before signing this document.**

muckle<sup>LLP</sup>

Muckle LLP  
Time Central  
32 Gallowgate  
Newcastle upon Tyne  
NE1 4BF

**Contents**

<b>Clause</b>	<b>Page</b>
1. Definitions and Interpretation	1
2. Loan	4
3. Purpose of Loan	4
4. Covenant to Pay	4
5. Grant of Security	4
6. Perfection of Security	4
7. Representations and Warranties	5
8. Covenants	5
9. Powers of the Lender	5
10. Enforcement of Security	5
11. Costs and Indemnity	5
12. Release	5
13. Assignment and Transfer	6
14. Continuing Security	6
15. Notices	7
16. Governing Law	8
Schedule 1 Property	9
Schedule 2 Representations and Warranties	10
Schedule 3 Covenants	11
Schedule 4 Powers of the Lender	16
Schedule 5 Events of Default	17

**Dated**

**2013**

**Parties**

- (1) **David Phoenix** of 157 Prescot Road, Ormskirk, L39 4SN (**Borrower**); and
- (2) **London South Bank University** (a company limited by guarantee registered in England and Wales with company number 00986761) whose registered office is at 103 Borough Road, London, SE1 0AA (**Lender**).

**Background**

- (A) The Lender has agreed under the Agreement to provide the Borrower with the Loan on a secured basis.
- (B) The Borrower is the owner of the Property.
- (C) This mortgage provides security which the Borrower has agreed to give the Lender for the Loan.
- (D) The Loan will be repaid on the Repayment Date.
- (E) The parties wish to take advantage of one of the exceptions to the Consumer Credit Act 1974.

**It is agreed**

**1. Definitions and Interpretation**

**1.1 Definitions**

The definitions and rules of interpretation in this clause apply in this mortgage.

**Agreement** the loan agreement dated the date of this mortgage between the Borrower and the Lender for the provision of an interest free loan of [£300,000/£360,000] secured by this mortgage;

**Business Day** a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London;

**Encumbrance** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;

<b>Event of Default</b>	any event or circumstance listed in Schedule 5 or the Agreement;
<b>Loan</b>	the sum of [£300,000/£360,000];
<b>LPA 1925</b>	the Law of Property Act 1925;
<b>Property</b>	the freehold or leasehold property (whether registered or unregistered) owned by the Borrower described in Schedule 1;
<b>Repayment Date</b>	has the meaning given to it in the Agreement;
<b>Secured Liabilities</b>	all present and future monies, obligations and liabilities owed by the Borrower to the Lender under or in connection with the Loan, the Agreement and this mortgage;
<b>Security Period</b>	the period starting on the date of this mortgage and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding;
<b>VAT</b>	value added tax.

## 1.2 Interpretation

In this legal mortgage:

- 1.2.1 a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;
- 1.2.2 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;

- 1.2.4 a reference to a clause or Schedule is to a clause of, or Schedule to, this mortgage and references to paragraphs are to paragraphs of the relevant Schedule, unless the context otherwise requires;
- 1.2.5 a reference to **this mortgage** (or any provision of it) or any other document shall be construed as a reference to this legal mortgage, that provision or that document as it is in force for the time being and as amended in accordance with its terms or with the agreement of the relevant parties;
- 1.2.6 a reference to a **person** shall include a reference to an individual, firm, company, partnership, corporation, unincorporated body of persons, or any state or any agency of any person;
- 1.2.7 a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly); and
- 1.2.8 clause, Schedule and paragraph headings shall not affect the interpretation of this mortgage.
- 1.2.9 if there is an inconsistency between a defined term in this mortgage and in the Agreement, the provisions of this mortgage shall prevail.

### 1.3 **Nature of security over real property**

A reference in this mortgage to a charge or mortgage of, or over, the Property includes:

- 1.3.1 all buildings and fixtures and fittings which are situated on, or form part of, the Property at any time;
- 1.3.2 the proceeds of sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.3.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.3.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.



#### 1.4 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Agreement and of any side letters between any parties in relation to the Agreement are incorporated into this mortgage.

#### 1.5 **Third party rights**

A third party (being any person other than the Borrower, the Lender and its permitted successors and assigns) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this mortgage.

#### 1.6 **Schedules**

The Schedules form part of this mortgage and shall have effect as if set out in full in the body of this mortgage. Any reference to this mortgage includes the Schedules.

### 2. **Loan**

The Lender provides to the Borrower the Loan, on the terms and subject to the conditions of this mortgage.

### 3. **Purpose of Loan**

The Borrower shall use the Loan to purchase the Property.

### 4. **Covenant to Pay**

The Borrower shall, on demand, pay to the Lender and discharge the Secured Liabilities on the Repayment Date or, if earlier, on an Event of Default.

### 5. **Grant of Security**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower charges the Property, with full title guarantee, to the Lender by way of first legal mortgage.

### 6. **Perfection of Security**

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date] in favour of London South Bank University referred to in the charges register."

## 7. **Representations and Warranties**

The Borrower represents and warrants to the Lender in the terms set out in Schedule 2 on each day during the Security Period.

## 8. **Covenants**

The Borrower covenants with the Lender in the terms set out in Schedule 3.

## 9. **Powers of the Lender**

The Lender shall have the powers set out in Schedule 4.

## 10. **Enforcement of Security**

### 10.1 **When security becomes enforceable**

The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this mortgage) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this mortgage, but the Lender shall not exercise such power of sale or other powers until an Event of Default occurs (whether or not such an Event of Default is still continuing) whereupon it shall become immediately exercisable.

### 10.2 **When statutory powers arise**

Section 103 of the LPA 1925 (restricting the power of sale) does not apply to the security constituted by this mortgage.

## 11. **Costs and Indemnity**

The Borrower shall pay to, or reimburse the Lender on demand, on a full indemnity basis, all costs and liabilities incurred by the Lender in relation to this mortgage or the Property or suing for, or recovering any of the Secured Liabilities, including, without limitation, the costs of any proceedings in relation to this mortgage or the Secured Liabilities or incurred in or suffered by any default or delay by the Borrower in performing any of its obligations under this mortgage.

## 12. **Release**

On the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release the Property from the security constituted by this mortgage.

### 13. **Assignment and Transfer**

#### 13.1 **Assignment by the Lender**

The Lender may assign or transfer the whole or any part of the Lender's rights and/or obligations under this mortgage to any person.

#### 13.2 **Assignment by the Borrower**

The Borrower may not assign any of its rights, or transfer any of its obligations, under this mortgage or enter into any transaction which would result in any of those rights or obligations passing to another person.

### 14. **Continuing Security**

#### 14.1 **Continuing security**

This mortgage shall remain in full force and effect as a continuing security for the Secured Liabilities unless and until the Lender discharges this mortgage in writing.

#### 14.2 **Rights cumulative**

The rights and powers of the Lender conferred by this mortgage are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law.

#### 14.3 **Waivers**

Any waiver or variation of any right by the Lender (whether arising under this mortgage or under the general law) shall only be effective if it is in writing and signed by the Lender and applies only in the circumstances for which it was given, and shall not prevent the Lender from subsequently relying on the relevant provision.

#### 14.4 **Further exercise of rights**

No act or course of conduct or negotiation by or on behalf of the Lender shall, in any way, preclude the Lender from exercising any right or power under this mortgage or constitute a suspension or variation of any such right or power.

#### 14.5 **Delay**

No delay or failure to exercise any right or power under this mortgage shall operate as a waiver.

## 14.6 Counterparts

This mortgage may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

## 15. Notices

### 15.1 Service

Each notice or other communication required to be given under, or in connection with, this mortgage shall be:

15.1.1 in writing, delivered personally or sent by pre-paid first-class letter or fax; and

15.1.2 sent:

15.1.2.1 to the Borrower at:

157 Prescott Road, Ormskirk, L39 4SN [*or new property address?*]

15.1.2.2 to the Lender at:

103 Borough Road, London, SE1 0AA

Attention: University Secretary

or to such other address or fax number as is notified in writing by one party to the other from time to time.

### 15.2 Receipt by Borrower

Any notice or other communication that the Lender gives shall be deemed to have been received:

15.2.1 if given by hand, at the time of actual delivery; and

15.2.2 if posted, on the second Business Day after the day it was sent by pre-paid first-class post.

A notice or other communication given as described in clause 15.2.1 on a day which is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### 15.3 Receipt by Lender

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

16. **Governing Law**

This mortgage and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**Executed** in the manner set out below on the date hereof.

**Schedule 1****Property**

*[description of property including title number if property is registered]*

## Schedule 2

### Representations and Warranties

1. **Ownership of Property**

The Borrower is the legal and beneficial owner of the Property and has good and marketable title to the Property.

2. **No Encumbrances**

The Property is free from Encumbrances other than the Encumbrance created by this mortgage.

3. **Adverse Claims**

The Borrower has not received or acknowledged notice of any adverse claim by any person in respect of the Property or any interest in it.

4. **Adverse Covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever, which materially adversely affect the Property.

5. **No Breach of Laws**

There is no breach of any law or regulation which materially adversely affects the Property.

6. **No Interference in Enjoyment**

No facility necessary for the enjoyment and use of the Property is subject to terms entitling any person to terminate or curtail its use.

7. **No Overriding Interests**

Nothing has arisen, has been created or is subsisting which would be an overriding interest in the Property.

8. **Avoidance of Security**

No Encumbrance expressed to be created under this mortgage is liable to be avoided, or otherwise set aside, on the bankruptcy of the Borrower or otherwise.

9. **No Prohibitions or Breaches**

There is no prohibition on the Borrower assigning his rights in the Property and the entry into this mortgage by the Borrower does not and will not constitute a breach of any policy, agreement, document or instrument binding on the Borrower or his assets.

### **Schedule 3**

#### **Covenants**

##### **Part 1**

##### **General covenants**

#### **1. Negative Pledge and Disposal Restrictions**

1.1 The Borrower shall not at any time, except with the prior written consent of the Lender:

1.1.1 create or permit any Encumbrance on, or in relation to, the Property other than any Encumbrance created by this mortgage;

1.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner all or any part of, or any interest in, the Property; or

1.1.3 create or grant any interest in the Property in favour of a third party.

#### **2. Preservation of Property**

The Borrower shall not do, or permit to be done, any act or thing which would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Property or the effectiveness of the security created by this mortgage.

#### **3. Enforcement of Rights**

The Borrower shall use his reasonable endeavours to enforce any rights and start, continue or defend any proceedings relating to any of the Property which the Lender may require from time to time.

#### **4. Compliance With Laws**

The Borrower shall comply with all laws and regulations for the time being in force relating to or affecting any Property and shall obtain and promptly renew from time to time and comply with the terms of all consents which may be necessary to enable it to preserve, maintain or renew any Property.

#### **5. Notice of Breaches**

5.1 The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of any breach of:

5.1.1 any representation or warranty set out in Schedule 2; and

5.1.2 any covenant set out in Schedule 3.



## Part 2

### Property covenants

#### 1. **Repair and Maintenance**

The Borrower shall keep all fixtures and fittings on the Property in good repair and condition and shall keep the Property adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use by others of a like nature and equal value.

#### 2. **No Alterations**

2.1 The Borrower shall not, without the prior written consent of the Lender:

2.1.1 pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or

2.1.2 make or permit to be made any material alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with paragraph 1 of this Part 2 of Schedule 3).

2.2 The Borrower shall promptly give notice to the Lender if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

#### 3. **Development Restrictions**

3.1 The Borrower shall not, without the prior written consent of the Lender:

3.1.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or

3.1.2 carry out or permit or allow any development, as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008, to be carried out on the Property or change or permit or allow the use of the Property to be changed.

#### 4. **Insurance**

4.1 The Borrower shall insure and keep insured [(or where insurance is the responsibility of the landlord under the terms of the lease, procure that the landlord insures and keeps insured)] the Property against fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, escape of water or oil, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion, malicious damage, theft

or attempted theft, falling trees and branches and aerials, subsidence, heave, landslip, collision, accidental damage to underground services, public liability to anyone else and any other risks which the Landlord reasonably requires to be insured against from time to time.

4.2 The Borrower shall, if requested by the Lender, produce to the Lender the policy, certificate or cover note relating to any such insurance required by paragraph 4.1 of this Part 3, Schedule 3 [(or where such insurance is effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease)].

## 5. **Insurance Premiums**

5.1 The Borrower:

5.1.1 shall promptly pay all premiums in respect of any insurance policy on the Property and do all other things necessary to keep such policy in full force and effect; and

5.1.2 shall (if the Lender so requires) produce to the Lender the receipts for all premiums and other payments necessary for effecting and keeping up the insurance policies [(or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease)].

## 6. **No Invalidation of Insurance**

The Borrower shall not do or omit to do or permit to be done or omitted anything that may invalidate or otherwise prejudice any insurance policies relating to the Property.

## 7. **Insurance Policies' Proceeds**

7.1 All monies payable under any of the insurance policies relating to the Property at any time (whether or not the security constituted by this mortgage has become enforceable) shall:

7.1.1 immediately be paid to the Lender; or

7.1.2 if they are not paid directly to the Lender by the insurers, be held, pending such payment, by the Borrower upon trust for the Lender.

## 8. **Leases and Licences Affecting the Property**

8.1 The Borrower shall not, without the prior written consent of the Lender which consent, in the case of paragraph 8.1.4, is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent:

- 8.1.1 grant, or agree to grant, any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing (or agreeing to lease) or of accepting (or agreeing to accept) surrenders under sections 99 or 100 of the LPA 1925; or
- 8.1.2 in any other way dispose of (or agree to dispose of), accept the surrender of (or agree to accept the surrender of), surrender (or agree to surrender) or create any legal or equitable estate or interest in the whole or any part of the Property; or
- 8.1.3 let any person into occupation of or share occupation of the whole or any part of the Property; or
- 8.1.4 grant any consent or licence under any lease or licence affecting the Property.

## 9. **No Restrictive Obligations**

The Borrower shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatsoever in or over the whole or any part of the Property.

## 10. **Proprietary Rights**

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Lender.

## 11. **Compliance With and Enforcement of Covenants**

11.1 The Borrower shall:

- 11.1.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and
- 11.1.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

## 12. **Notices or Claims Relating to the Property**

The Borrower shall:

- 12.1 Give full particulars to the Lender of any notice, application or requirement given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to

the locality in which it is situated, within seven days after becoming aware of the relevant Notice.

- 12.2 If the Lender so requires, immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, such objections or representations in respect of any such Notice as the Lender may desire.

13. **[Payment of [Rent and] Outgoings**

- 13.1 The Borrower shall:

13.1.1 [where the Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and]

13.1.2 pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed upon the Property or on its occupier.]

14. **[Rent Reviews**

- 14.1 The Borrower:

14.1.1 [shall, if the Property is subject to occupational leases or licences, implement any upwards rent review provisions and shall not, without the prior written consent of the Lender, agree to any change in rent to less than the open market rental value of the relevant part of the Property][; and

14.1.2 shall not, without the prior written consent of the Lender, if the Property is leasehold, agree to any change in the rent payable under the lease in excess of the open market rental value and shall only agree to any upwards rent review in accordance with the terms of the lease].]

15. **Inspection**

The Borrower shall permit the Lender and any person appointed by them to enter on and inspect the Property on reasonable prior notice.

16. **VAT Option to Tax**

The Borrower shall not, without the prior written consent of the Lender:

- 16.1 Exercise any VAT option to tax in relation to the Property.
- 16.2 Revoke any VAT option to tax exercised prior to and disclosed to the Lender in writing prior to the date of this mortgage.

## **Schedule 4**

### **Powers of the Lender**

#### **1. Power to Remedy**

1.1 The Lender shall be entitled (but shall not be obliged) to remedy a breach at any time by the Borrower of any of its obligations contained in this mortgage. Any monies expended by the Lender in remedying a breach by the Borrower of any of its obligations contained in this mortgage shall be reimbursed by the Borrower to the Lender on a full indemnity basis.

1.2 In remedying any breach in accordance with paragraph 1.1 of Schedule 4, the Lender and its agents shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs or other works.

#### **2. Exercise of Rights**

The rights of the Lender under paragraph 1 of this Schedule 4 are without prejudice to any other rights of the Lender under this mortgage. The exercise of those rights shall not make the Lender liable to account as a mortgagee in possession.

**Schedule 5**  
**Events of Default**

**1. Non-payment**

The Borrower fails to pay any sum payable by it under the Agreement or this mortgage when due, unless its failure to pay is caused solely either by:

- 1.1 An administrative error or technical problem and payment is made within two Business Days of its due date.
- 1.2 An event (not caused by, and outside the control of, either party) that materially disrupts the systems that enable payments to be made or which otherwise prevents either or both parties from complying with their obligations under the Agreement or this mortgage.

**2. Non-compliance**

The Borrower fails (other than a failure to pay) to comply with any provision of the Agreement or this mortgage.

**3. Misrepresentation**

Any representation, warranty or statement made by the Borrower in relation to the Agreement or this mortgage is (or proves to have been) incomplete, untrue, incorrect or misleading when made.

**4. Insolvency**

- 4.1 The Borrower stops or suspends payment of any of its debts or is unable to pay any of its debts as they fall due.
- 4.2 A petition for a bankruptcy order is presented or a bankruptcy order is made against the Borrower.

**Executed** as a deed but not delivered until the date on the front of this document by

**London South Bank University**

acting by

.....  
(signature of Governor)

a Governor and the Secretary

.....  
(signature of Secretary)

**Signed** as a deed by

**David Phoenix**

.....  
(signature)

in the presence of

.....  
Signature of witness

.....  
Name of witness

.....  
Address

.....  
Occupation

**INDEPENDENT LEGAL ADVICE:**

I, David Phoenix, confirm that I have/have not [*delete as appropriate*] obtained independent legal advice and that I am fully aware of the legal consequences of signing this mortgage and have done so freely and willingly.

Signed .....

Dated .....