

BOARD OF REGENTS
BRIEFING PAPER

AGENDA ITEM TITLE: University of Nevada, Reno - New School of the Arts Fine Arts Building - Bank Promissory Note Resolution

MEETING DATE: March 2 – 3, 2017

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

December 2015 Board of Regents Meeting

The Board approved President Marc Johnson’s request to proceed with the development of a new School of the Arts fine arts building (Exhibits 1 and 2) to be located on the main campus of the University of Nevada, Reno. The proposed project involves no state funds and is wholly dependent on donor gifts and pledges (including two “trust expectancies”) and contributions from the School of the Arts.

March 2016 Board of Regents Meeting

The Board approved the proposed funding plan for the new School of the Arts fine arts building and a Promissory Note to the UNR Foundation in exchange for a loan to help bridge the longer term “trust expectancy” donor pledge for which bank financing is not available. The balance of the financing plan was to include donor cash-on-hand plus a proposed bank loan to bridge the remaining shorter-term donor pledges and the School of the Arts contributions.

March 2017 Board of Regents Meeting

The purpose of this briefing paper is to update the Board of Regents on 1) the final cost estimate for the new School of the Arts fine arts building and the status of the financing plan, 2) the project schedule, and 3) to seek approval of a Resolution (Exhibit 3) to conduct a competitively bid, fixed-rate, 5-year bank loan in an amount up to \$12.625 million to bridge the outstanding donor pledges and contributions.

Final Project Cost Estimate and Financing Plan (\$ in Millions)

New School of the Arts Fine Arts Building

	Original Estimate March 2016	Revised Estimate March 2017
Estimated Project Cost (in 2018 Dollars)	\$20.0	\$24.8
Cash Gifts In Hand	\$5.6	7.3
UNR Foundation Promissory Note	5.0	5.0
School of the Arts Funding Contributions (1)	2.0	2.0
Recorded/Unrecorded Donor Pledges (1)	7.4	10.5
Total Funding Sources	\$20.00	\$24.8

(1) Bank loan to be repaid by donor pledges and School of the Arts contributions

Project Schedule Update

The pre-design work for the proposed fine arts building has been completed. Final design through construction documents began in late spring 2016 and will be completed in early 2017. Construction will commence in May of 2017 and be completed in time for the fall semester of 2018.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

University of Nevada, Reno President Marc Johnson requests Board of Regents approval of a Resolution to secure a competitively bid, fixed-rate, 5-year bank loan in an amount up to \$12.625 million.

4. IMPETUS (WHY NOW?):

The new School of the Arts fine arts building project and financing plan were previously reviewed and approved by the Board of Regents. The project is progressing well and the financing plan needs to be fully implemented with this Bank Promissory Note Resolution.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- In December 2015, the Board of Regents approved the request to proceed with development of a new School of the Arts fine arts building.
- In March 2016 the Board approved the proposed funding plan for the new building.
- The University has secured \$7.3 million cash in hand and \$10.5 million in recorded/unrecorded donor pledges.
- The Bank Promissory Note Resolution is necessary to now secure the appropriate financing; waiting to act on the resolution could jeopardize the project.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

Given the need for two loans to bridge the pledges (the existing UNR Foundation loan and the proposed Bank loan), this request results in additional indebtedness to the financial position of the University. While sufficient donor pledges to retire the indebtedness have been secured, should any pledge fail to materialize the University will be responsible for resolving the shortfall.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

None. The Board has previously approved this project and construction documents are nearly complete. The financing plan including donor gifts and pledges is well underway and will be finalized with this Bank Promissory Note.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #_____ Chapter #_____ Section #_____
 - Amends Current Board Policy: Title #_____ Chapter #_____ Section #_____
 - Amends Current Procedures & Guidelines Manual: Chapter #_____ Section #_____
 - Other: _____
 - X Fiscal Impact: Yes X No _____
- Explain: Project will require the University to secure a bank loan to monetize bridge donor pledges and contributions.

EXHIBIT 1
VIEW OF EXTERIOR - FROM NORTH EAST



EXHIBIT 2
VIEW OF RECITAL HALL



Exhibit 3

RESOLUTION NO. _____

WHEREAS, pursuant to chapter 396 of Nevada Revised Statutes (the "Project Act") and all laws supplemental thereto, the Board of Regents (the "Board") of the Nevada System of Higher Education ("NSHE") is authorized to issue an obligation to repay money in the form of a promissory note (the "Note") in the principal amount up to \$12,625,000 as specified in a certificate of the Chancellor or the Vice Chancellor for Finance or any interim (the "Vice Chancellor for Finance") dated on or before the date of delivery of the Note (the "Certificate") to finance the costs of capital improvements at the University of Nevada, Reno (the "Project"); and

WHEREAS, the Board hereby authorizes the Vice Chancellor for Finance to arrange for the issuance and sale of the Note for the Project, including inviting bids for the purchase of the Note and ratifies action previously taken in connection with the issuance and sale of the Note; and

WHEREAS, after distribution of notice inviting bids for the purchase of the Note, Board authorizes the Vice Chancellor for Finance, as the chief financial officer of NSHE or the Chancellor, as the chief administrative officer of NSHE, to receive and publicly open bids and sell the Note to the best bidder therefor (the "Purchaser") and ratifies action previously taken in connection with the receipt and opening of bids and either of such officer is hereby authorized to accept a binding contract for the Note, the Note to bear interest at the rate or rates per annum, including a variable interest rate, provided in the purchase proposal submitted by the Purchaser (the "Proposal"), at a price consisting of the principal amount and accrued interest thereon from their date to the date of their delivery, less a discount or plus a premium as set forth in the Certificate and otherwise upon the terms and conditions herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION:

Section 1. The officers of the System are hereby authorized to take all action necessary to effectuate the provisions of this resolution, including, without limitation, the Chancellor or the Vice Chancellor for Finance is authorized to sell the Note and sign the Proposal as a binding contract with the Purchaser for the purchase of the Note and negotiate the terms of the Note (in one series or more) and the Proposal by the Chancellor or the Vice Chancellor for Finance with the Purchaser which terms shall not be materially inconsistent with the terms of the Certificate and the form of the Note attached hereto as Exhibit A, with any changes to the form of the Note as are approved by the Chancellor or the Vice Chancellor for Finance in the judgment of the Chancellor or the Vice Chancellor for Finance, including any covenants or provisions to protect the owner of the Note and/or NSHE, that the Chancellor or Vice Chancellor for Finance determines are necessary or desirable to obtain favorable terms for NSHE which covenants or provisions, if any, shall be evidenced by such officer's execution of the Certificate and any such determination made is conclusive absent fraud or abuse of discretion.

44609890

Section 2. The Note shall be issued and payable in fully registered form, i.e., registered as to both principal and interest and shall be dated as of the date of delivery of the Note. The principal advanced under the Note shall bear interest from its date until the maturity dates thereof (or, if redeemed prior to maturity as provided below, the redemption dates) at the respective variable or fixed rates set forth in the Certificate, and payable semi-annually in the designated years as set forth in the Certificate commencing as set forth in the Certificate; provided that any Note which is reissued upon transfer, exchange or other replacement shall bear interest at the rate or rates set forth in the Certificate from the most recent interest payment date to which interest has been paid, or if no interest has been paid, from the date of the Note. The Note shall mature in the designated amounts of principal and designated years as set forth in the Certificate. The final principal payment under the Note shall be paid to the registered owner of the Note at the office of U.S. Bank National Association, as the registrar and paying agent for the Note (the "Paying Agent") on presentation and surrender of the Note at maturity or on call for redemption as provided below. Installments of maturing principal and interest on the Note shall be paid by check or draft mailed or electronic funds transfer initiated on or before each interest payment date (or if such interest payment date is not a business day, on the next succeeding business day) to the registered owner hereof at the address appearing on the registration records of NSHE maintained by the Paying Agent or such other means acceptable to the Purchaser and the Paying Agent. All such payments shall be made in lawful money of the United States of America.

Section 3. The Note, or portions thereof, maturing on and after the date specified in the Certificate, shall be subject to redemption prior to their respective maturities, at the option of NSHE, at any time on and after the date specified in the Certificate, in whole or in part from any maturities selected by NSHE, at a price equal to the principal amount of the Note, or portion thereof, so redeemed, accrued interest thereon to the redemption date, and a premium, if any, as provided in the Certificate. The Note may be transferred as otherwise set forth in the Certificate.

Section 4. The Board hereby authorizes the execution and delivery of the Note with manual or facsimile signatures of the Chairman, Chancellor, ex officio Treasurer, and the Secretary of the Board, the execution and delivery of such certificates as may be necessary to evidence the validity and enforceability of the Note and the exclusion of interest on the Note from gross income and alternative taxable income for federal income tax purposes, including the execution of closing certificates by any of the officers of the Board and any of the Chancellor, Vice Chancellor for Finance and Vice Chancellor for Legal Affairs.

Section 5. The Board hereby declares its intent to reimburse the costs of the Project from proceeds of the Note. This is a declaration of official intent under Section 1.150-2 of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended.

Section 6. The Board hereby determines and declares that:

(a) NSHE intends to incur expenditures with respect to the Project prior to the issuance of the Note and to reimburse those expenditures from the issuance of the Note; and

(b) The payment of costs related to the Project and the reimbursement of such costs from the proceeds of the Note is consistent with NSHE's budgetary and financial circumstances as of the date of this Resolution. NSHE does not currently have moneys which are, nor does NSHE reasonably expect moneys to be, allocated on a long-term basis, reserved or otherwise available pursuant to NSHE's budget to pay the expenditures which NSHE intends to reimburse; and

(c) The maximum principal amount of the Note expected to be issued for the Project is \$12,625,000.

Section 7. This resolution shall be effective on its passage and approval.

PASSED, ADOPTED AND APPROVED this March _____, 2017.

NEVADA SYSTEM OF HIGHER EDUCATION

Chairman, Board of Regents

Attest:

Chief of Staff and Special Counsel
to the Board of Regents and
ex officio Secretary of the Board of Regents

Exhibit A

TRANSFER OF THIS NOTE OTHER THAN BY REGISTRATION IS NOT EFFECTIVE

NEVADA SYSTEM OF HIGHER EDUCATION
PROMISSORY NOTE
(UNIVERSITY OF NEVADA, RENO)
SERIES 2017A

No. R-1

FINAL MATURITY DATE: _____ PRINCIPAL AMOUNT: \$ _____
INTEREST RATE: [_____% per annum][variable rate as calculated herein]
DATE OF DELIVERY: _____, 2017

For value received, the Nevada System of Higher Education (the "System"), hereby promises to pay in installments as outlined below, from any sources legally available therefor to the order of _____ (the "Lender"), or its registered assigns as shown on the registration panel appended hereto, the aggregate principal amount of \$ _____ from the date of delivery of the Note until the principal advanced under the Note is paid in full at the interest rate set forth above.

Interest shall be calculated on the basis of a ____-day year of _____ day months. Interest shall be payable on _____ 1 and _____ 1 of each year commencing on _____, 20__ until the maturity date hereof. The outstanding principal of this Note shall mature in installments of principal payable on _____ 1 and _____ 1 of each year commencing on _____ 1, ____ and ending on _____ 1, _____ at which time all unpaid principal plus accrued unpaid interest shall be due and payable. The installments of principal shall be due as set forth in the amortization schedule attached hereto as Exhibit A and made a part hereof.

The final principal payment under this Note shall be paid to the registered owner of this Note at the office of the U.S. Bank National Association, as registrar and paying agent for the Note (the "Paying Agent") on presentation and surrender of this Note at maturity or on call for prepayment as provided below. Installments of principal and interest on this Note shall be paid by check or draft mailed or electronic funds transfer initiated on or before each interest payment date or prepayment date (or if such interest payment date or prepayment date is not a Business Day, on the next succeeding Business Day) to the registered owner hereof at the address appearing on the registration records of the System maintained by the Paying Agent or such other means acceptable to the Lender and the Paying Agent. "Business Day" means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in Reno, Nevada or New York, New York or the states where the principal corporate office of the System or the principal corporate trust office of the Paying Agent is located are authorized by law to close, or (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed. Notwithstanding the foregoing, all payments of principal and interest on this Note to the Lender may be made via wire transfer pursuant to instructions on file with the Paying Agent and without presentment or surrender of this Note except presentment or surrender shall be required upon final maturity or prepayment in whole of this Note. All such payments shall be made in lawful money of the United States of America.

The outstanding principal of the Note may be prepaid in whole or in part in any order or maturity on and after _____ at the option of the System as directed by the Vice Chancellor of Finance without premium or penalty on 10 days' written notice by first class mail postage prepaid or electronic notice to the registered owner hereof. On any date on which the System is prepaying all or any portion of the principal balance of this Note, interest accrued on such principal so prepaid to the date of prepayment shall also be paid. After the date of the prepayment of all or part of the principal hereof, interest on the portion of the principal so prepaid will cease to accrue. The amount of principal so prepaid may be noted on the prepayment panel appended to this Note and shall be maintained in the registration records by the Registrar.

Partial principal prepayments shall be applied to the principal due under the Note as directed by the Chancellor or the Vice Chancellor for Finance of the System, including application to the most remote installment of principal due under this Note which may result in a shortened term for this Note.

The principal of and interest on this Note are payable only to the registered owner hereof at the address appearing on the registration records of the System maintained by the Paying Agent. This Note may be transferred on presentation by the registered owner to the Paying Agent, together with evidence of transfer satisfactory to the Paying Agent and Registrar, and such transfer shall be noted in the registration records of the System maintained by the Registrar and may be similarly noted on the registration panel hereof and no such transfer shall be effective until the registered owner shall have provided such satisfactory evidence of transfer to the Paying Agent and Registrar. This Note may be transferred in minimum authorized denominations of \$250,000 if (i) written notice of such transfer, together with addresses and related information with respect to such purchaser, is delivered to the Registrar by such transferor and (ii) such purchaser shall have delivered to the Registrar and the transferor an investor letter in the form attached as Exhibit B to this Note executed by a duly authorized officer of such purchaser; provided that each such purchaser shall constitute (1) a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, and (2) a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer, of not less than \$5,000,000,000. Notwithstanding the foregoing, this Note may be transferred without limitation to an affiliate of the Lender, each of the beneficial owners of which are "qualified institutional buyers" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended.

The Paying Agent shall not be required to transfer ownership of this Note within 30 days of any date on which any portion of the principal hereof is to be prepaid. The System, the Registrar and the Paying Agent shall be entitled to treat the registered owner of this Note as noted in the registration records maintained by the Registrar as the absolute owner hereof for all purposes hereof and any applicable laws, notwithstanding any notice to the contrary received by any or all of them and the Paying Agent shall transmit payments to the registered owner hereof as shown on the registration records of the System maintained by the Registrar.

This Note is issued by the System pursuant to authorization by the Board of Regents of the System (the "Board") for the purpose of financing in part the cost of capital improvements for the University of Nevada, Reno. This Note is payable from any monies of the System legally available for the purpose of making such payment, and the System hereby covenants to make sufficient provision annually in its budget to pay the principal of and interest on this Note when due.

This Note does not constitute a debt or indebtedness of the State of Nevada or a charge against the State's credit or taxing power. Repayment of this Note is not subject to annual appropriation by the System.

Each of the following are defined to be an "Event of Default" hereunder.

- (i) the System is 5 or more calendar days late in making any regularly scheduled payment of the principal of or interest on this Note when due;
- (ii) the System files a petition or similar pleading or any petition or similar pleading is filed against the System seeking a discharge composition or other form of relief of the System's debt under the Federal Bankruptcy laws or under any other applicable bankruptcy, insolvency or similar laws of the United States or the State of Nevada;
- (iii) an order or decree is entered in a court of competent jurisdiction in an insolvency case under the Federal Bankruptcy laws or under any other applicable federal or state bankruptcy, insolvency, or similar law appointing a receiver, custodian, liquidator, or trustee for the assets of the System or any substantial part of the System's property and such decree or order continues unstayed and in effect for a period of 90 days; or
- (iv) the System voluntarily suspends its business.

If an Event of Default shall have occurred hereunder, and in the case of those events listed in clauses (ii) through (iv) of the preceding sentence only, such Event of Default is not cured within 30 days after written notice from the registered owner hereof to the Paying Agent specifying the Events of Default and requiring that it be remedied, then:

- [(i) the registered owner may declare the unpaid principal balance of this Note, together with the interest thereon to be then fully due and payable;]
- (ii) the registered owner may proceed against the System to protect and enforce all of its rights hereunder by mandamus or by other suit, action or special proceeding in law or in equity in any court of competent jurisdiction for the specific performance of the covenants and agreements of the System hereunder; and
- (iii) the registered owner may exercise such other remedies available to it at law or in equity.

Any failure on the part of the registered owner to exercise, and any delay in exercising, any right hereunder shall not operate as a waiver thereof or of any other remedy; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any other remedies provided by law.

Payments made on this Note shall be applied in the following order of priority: (i) to pay any reasonable expenses incurred in collecting amounts due under or in enforcing the provisions of this Note, (ii) to pay interest in arrears or then due, and (iii) to pay the installments of principal in arrears or then due. If any principal payment is not made when due, interest shall continue on the unpaid installment of principal until it is paid.

This Note shall be governed by the laws of the State of Nevada.

It is hereby certified, recited, declared and warranted that all actions required to be taken prior to the issuance hereof have been had and taken by the System.

The System covenants for the benefit of the registered owners of this Note that it will not take any action or omit to take any action with respect to this Note, the proceeds thereof, any other funds of the System or any facilities financed with the proceeds of this Note if such action or omission (i) would cause the interest on this Note to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended to the

date of delivery of this Note (the "Tax Code"), or (ii) would cause interest on this Note to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code ,except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Tax Code.

IN WITNESS WHEREOF, the Nevada System of Higher Education has caused this Note to be signed and executed by the manual or facsimile signature of the Chairman of its Board of Regents, to be countersigned by the manual or facsimile signature of the Chancellor, ex-officio Treasurer of the System and to be signed and attested by the manual or facsimile signature of the Chief Executive Officer of the Board, ex officio Secretary, all as of the date of this Note appearing above.

NEVADA SYSTEM OF HIGHER EDUCATION

Chairman, Board of Regents

Countersigned:

Chancellor, ex-officio Treasurer

(SEAL)
Attest:

Chief of Staff and Special Counsel
to the Board of Regents and
ex officio Secretary of the Board of Regents

PROVISION FOR REGISTRATION AS TO PRINCIPAL AND INTEREST

This Note must be registered as to both principal and interest on the registration records of the System, kept by U.S. Bank National Association, as registrar and paying agent (the "Registrar"). After registration as to both principal and interest, the Registrar shall note such registration on such registration records and may not such amounts in the registration blank below, and the principal and interest on this Note shall be paid to such registered owner. This Note may be transferred by the registered owner or such registered owner's legal representative only upon a duly executed assignment in form satisfactory to the Registrar and a duly executed investor letter in the form attached to this Note as Exhibit B, such transfer to be made on the registration records and endorsed hereon. The System, the Registrar and the Paying Agent shall be entitled to treat the registered owner of this Note as noted in the registration records maintained by the Registrar as the absolute owner hereof for all purposes of this Note and any applicable laws, notwithstanding any notice to the contrary received by any or all of them and the Paying Agent shall transmit payments to the registered owner hereof as shown on the registration records of the System maintained by the Registrar.

Every privilege, registration, and transfer, shall be exercised only in accordance with the authorizing resolution and such reasonable rules and regulations as the Registrar may prescribe.

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ASSIGNMENT

The within and foregoing Note No. R-1 is hereby sold, assigned, transferred and set over, without recourse, unto _____, or order, subject to the terms and conditions of said Note.

Dated this _____, _____.

Owner

Signature Guaranteed:

PREPAYMENT PANEL

Principal of this Note has been prepaid on the dates indicated below:

<u>Date of Prepayment</u>	<u>Amount Prepaid</u>	<u>Signature of Paying Agent</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT A
(Attach Amortization Schedule)

EXHIBIT B

FORM OF INVESTOR LETTER

Nevada System of Higher Education
2601 Enterprise Road
Reno, Nevada 89512

Re: **[\$12,625,000]**
NEVADA SYSTEM OF HIGHER EDUCATION
PROMISSORY NOTE
(UNIVERSITY OF NEVADA, RENO)
SERIES 2017A

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of all of the above-referenced note (the "*Note*"), dated _____, 2017. _____ (the "*Purchaser*," the "*undersigned*," "*us*" or "*we*," as applicable) is purchasing the Note issued by the Nevada System of Higher Education (the "*System*"). We hereby represent and warrant to you and agree with you as follows:

1. We understand that the Note has not been registered pursuant to the Securities Act of 1933, as amended (the "*1933 Act*") or the securities laws of any state. We acknowledge that the Note (i) is not being registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state, (ii) will not be listed on any securities exchange, and (iii) will not carry a rating from any rating service.
2. We have not offered, offered to sell, offered for sale or sold any of the Note by means of any form of general solicitation or general advertising, and we are not an underwriter of the Note within the meaning of Section 2(11) of the 1933 Act.
3. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Note.

44609890

4. We have authority to purchase the Note and to execute this letter and any other instruments and documents required to be executed by the purchaser in connection with the purchase of the Note.

5. The undersigned is a duly appointed, qualified and acting representative of the Purchaser and is authorized to cause the Purchaser to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.

6. The Purchaser is a "qualified institutional buyer" as defined in Rule 144A promulgated under the 1933 Act and is a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus of not less than \$5,000,000,000 as of the date hereof, and is able to bear the economic risks of such investment.

7. The undersigned understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Notes. The undersigned has made its own inquiry and analysis with respect to the System, the Note and the security therefor, and other material factors affecting the security for and payment of the Note.

8. The undersigned acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the System, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the System, the Note and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Note.

9. The Note is being acquired by the Purchaser for investment for its own account and not with a present view toward resale or distribution; *provided, however*, that the Purchaser reserves the right to sell, transfer or redistribute the Note, but agrees that any such sale, transfer or distribution by the Purchaser shall be to a Person:

(a) that is an affiliate of the Purchaser;

(b) that is a trust or other custodial arrangement established by the Purchaser or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers; or

(c) that the Purchaser reasonably believes to be a qualified institutional buyer and a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such

country, and, in any case, having a combined capital and surplus of not less than \$5,000,000,000 as of the date of such sale, transfer or distribution who executes an investor letter substantially in the form of this letter.

Very truly yours,

_____, AS PURCHASER

By: _____

Name: _____

Title: _____