

## PROPOSED AMENDMENTS TO NND INVESTMENT TRUST DEED

**1. Section 1 of the Deed of Settlement is amended by adding the following in alphabetical order:**

**“Annual Distribution”** means the distribution that is made to the Beneficiary in respect of each fiscal year of the Trust consisting of a payment or application of the Income, if any, of the Trust for the fiscal year pursuant to clause 16 and, where applicable, a payment or application of an amount of capital of the Trust pursuant to subparagraph 17(1)(a);

**“Distribution Threshold”**, for a fiscal year, means the amount that is equal to 3% of the fair market value of the capital property of the Trust computed at the end of that fiscal year;

**“Government House Funds”** means the amount of \$2,500,000 of Compensation Funds under the Final Agreement that were applied by the Settlor toward the construction of the Government House prior to the date on which the property listed in Schedule “A” hereto was contributed to the Trust;

**“Perpetual Endowment”** means the perpetual endowment that must be maintained to satisfy the requirements specified in clause 4.3 of the Constitution, as that clause read on the date the Trust was settled;

**2. The definition “Minimum Amount” in section 1 of the Deed of Settlement is replaced by the following:**

**“Minimum Amount”**, at any time, means the Perpetual Endowment as it would be determined at that time if the amount of the Perpetual Endowment as at the effective date of this Deed of Settlement were reduced by the Government House Funds.

**3. Section 17 of the Deed of Settlement is replaced by the following:**

17.(1) Until the Division Date, and subject to the requirement to maintain the Minimum Amount, the following rules apply:

(a) where the amount of Income that is, pursuant to clause 16, paid or payable to or for the benefit of the Beneficiary on the last day of a fiscal year of the Trust is less than the Distribution Threshold for the fiscal year, the Trustees may pay or apply to or for the benefit of the Beneficiary such amount of the capital of the Trust that, when added to the amount of Income so paid or payable, equals the Distribution Threshold for the fiscal year;

(b) the Trustees may, in any fiscal year of the Trust, pay or apply to or for the benefit of the Beneficiary an amount of capital of the Trust otherwise than as part of the Annual Distribution made in respect of the preceding fiscal year only upon

the unanimous agreement of the Trustees, which payment or application shall, subject to subsection (2) hereof, be made in such manner and for such purposes as the Trustees in their absolute discretion consider appropriate and in the best interests of the Beneficiary, except that the Trustees shall not, at any particular time in the fiscal year, so pay or apply to or for the benefit of the Beneficiary an amount of capital that, when added to the total of all other amounts of capital of the Trust paid or applied to or for the benefit of the Beneficiary during the fiscal year and before the particular time, exceeds the Distribution Threshold for the immediately preceding fiscal year of the Trust, unless

- (i) the excess amount is required by the Beneficiary to fund the construction of the Government House;
  - (ii) the excess amount is required by the Beneficiary to fund its debt obligations (principal or interest) to financial institutions that have lent the Beneficiary money to build the Government House;
  - (iii) the Trustees, on the written opinion of legal counsel as to the anticipated effects of so paying or applying the excess amount, issue a written resolution permitting the Distribution Threshold to be exceeded, in which case the requirement that distributions of capital not exceed the Distribution Threshold shall not apply, but, for greater certainty, the requirement to maintain the Minimum Amount shall continue to apply; or
  - (iv) the Trustees have received written instructions to distribute an amount of capital in excess of the Distribution Threshold as a result of the application of clause 11 or 12, in which case the requirement that distributions of capital not exceed the Distribution Threshold shall not apply and the requirement to maintain the Minimum Amount also shall not apply.
- (2) Where, in any fiscal year of the Trust, an advance is made under paragraph 17(1)(b) for the purpose of funding the construction of the Government House or the debt obligations referred to in subparagraph 17(1)(b)(ii), the entire amount of the advance shall be paid or applied as a loan from the Trust to the Beneficiary. Where an advance is made in the circumstances described in subparagraph 17(1)(b)(iii), at least the amount by which the advance exceeds the Distribution Threshold for the immediately preceding fiscal year shall be paid or applied as a loan from the Trust to the Beneficiary. The loan in any of these circumstances shall be made pursuant to an agreement in writing between the Trust and the Beneficiary and the terms of the loan shall be commensurate with what would be negotiated between arm's length parties in the context of normal commercial practice at the time the loan is made.