

August 23, 1963

Clerk of the Orphans' Court

IN RE: : IN THE ORPHANS' COURT OF DAUPHIN
PETITION OF HERSHEY TRUST COMPANY, : COUNTY, PENNSYLVANIA
TRUSTEE OF MILTON HERSHEY SCHOOL, :
FOR CY PRES AWARD OF PORTION OF :
ACCUMULATED INCOME : No. 712 1963

PETITION FOR CY PRES AWARD
OF PORTION OF ACCUMULATED INCOME

TO THE HONORABLE, THE PRESIDENT JUDGE OF SAID COURT:

The petition of Hershey Trust Company, Trustee of Milton Hershey School, filed by leave of the Honorable Walter E. Alessandroni, Attorney General of the Commonwealth of Pennsylvania, respectfully represents:

1. Your Petitioner, Hershey Trust Company, is a trust company organized and existing under the laws of the Commonwealth of Pennsylvania and maintaining its principal place of business in Hershey, Derry Township, Pennsylvania.

2. By deed of trust dated November 15, 1909 (hereinafter called "School Trust") and recorded in the office of the Recorder of Deeds of Dauphin County, Pennsylvania, in Deed Book E, Vol. 14, page 331, Milton S. Hershey, (hereinafter called "Settlor"), and Catharine S. Hershey, his wife, of Hershey, Derry Township, Dauphin County, Pennsylvania, granted and conveyed certain farms situated in Derry Township to your Petitioner, Hershey Trust Company, as Trustee, (hereinafter called "Trustee") and constituted M. S. Hershey, W. H. Lebkicher, John B. Curry, John A. Landis, George M. Hocker, A. W. Stauffer, John E. Snyder, Israel Moyer and U. G. Risser, and their successors, Managers, (hereinafter called "Managers") for the purpose of founding and endowing in perpetuity an institution to be known as "The Hershey Industrial School", now known as Milton Hershey School, (hereinafter called "School") for the maintenance, education and training of "poor, healthy, white, male orphans", subject to certain trusts and conditions set forth in the School Trust. (A true and correct copy of the School Trust is set forth

on pages 5 to 26 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

3. The said Catharine S. Hershey, wife of Settlor, at the time of the execution of said School Trust, was possessed of no beneficial interest in the property conveyed thereby, other than her inchoate right of dower, and joined in said School Trust for the sole purpose of releasing her inchoate dower right. The said Catharine S. Hershey died on March 25, 1915, survived by her husband, Milton S. Hershey, Settlor.

4. Pursuant to the provisions of said School Trust, the School was established on or about September 3, 1910 and was conducted and managed by said Managers and their successors as an unincorporated school for the purposes and subject to the conditions as set forth in said School Trust, until on or about December 30, 1919.

5. On or about December 30, 1919, the Court of Common Pleas of Dauphin County entered a decree incorporating said Managers and their successors as a corporation of the first class, under the provisions of the Act of April 29, 1874, P.L. 73, as amended, under the name and style of "The Hershey Industrial School". Said charter is recorded in the Office of the Recorder of Deeds of Dauphin County in Charter Book L, page 282. (A true and correct copy of said charter is set forth on pages 56 to 61 of the document attached here-to which is marked "Exhibit A" and made a part hereof.)

6. Upon the granting of said charter, said corporation succeeded to and assumed the control and management of the School and has since conducted the same under the conditions and limitations contained in said School Trust, as modified.

7. Said School Trust has been twice modified by the Courts of Dauphin County, Pennsylvania. Said modifications are more particularly described in paragraphs 8 to 15, infra.

8. On or about October 27, 1933, the School, by leave of then Attorney General, Honorable William A. Schnader, filed its

Petition for Modification of said School Trust in the Court of Common Pleas of Dauphin County, Pennsylvania, at Docket No. 1096 Equity Docket.

In said Petition for Modification of Trust, it was related, inter alia, that the yearly income from the endowment of the School was then approximately \$1,675,000.00; that under the terms of said School Trust, the use of the income was restricted to the operation of the School and to lodge, feed, clothe, educate and instruct in trades, etc., poor, healthy, white, male orphans whose fathers were deceased; that under paragraph 13 of the School Trust, the Managers were directed to admit as many poor, healthy, white, male orphans between the ages of four and eight years, as the Managers determined; that as restricted in said School Trust, the income earned was greatly in excess of what was required and could be used for said purposes; that unless the terms and conditions of the School Trust were modified, the income would accumulate and would not be expended; that it was the experience of the Managers that the restriction for admission to the School to boys between four and eight years was too limited; that the Managers recommended that the age for admission to the School should be extended to fourteen years; that in many instances, boys whose fathers were living, but whose mothers were deceased, were in greater need of the advantages of the School than boys whose fathers were deceased; that the Managers recommended that boys otherwise qualified, whose mothers were deceased, should be admitted to the School, even though their fathers might be living; and that if the modifications recommended were permitted, the Managers believed that a sufficient number of additional boys could be admitted to the School to utilize all of its available facilities and to enable the petitioner to expend the endowment's entire income for the purpose of carrying out the general intent of said School Trust. The Permission and Consent of the Attorney General, the Declaration of Intent and Joinder of Settlor, who was still then living, and the Joinder of

the Trustee and Managers were attached to said petition. (A true and correct copy of said petition is set forth on pages 27 to 39 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

9. On or about October 30, 1933, said Court granted the prayer of said petition and entered the Decree set forth on pages 37-38 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

10. On or about October 27, 1933, the School filed its Application for Articles of Amendment of its Articles of Incorporation at Docket No. 201, September Term, 1933, in the Court of Common Pleas of Dauphin County, Pennsylvania, to conform, inter alia, the corporate purposes set forth in said charter to said modifications of said School Trust. The Consent of Petitioner's Board of Managers to Amendment of Articles of Incorporation and the Approval of the Department of Welfare were attached to said application. (A true and correct copy of said application is set forth on pages 62 to 71 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

11. On or about October 30, 1933 said Court entered its Decree approving the said Articles of Amendment and making them a part of the charter of the School. (A true and correct copy of said Decree is set forth on page 70 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

12. On or about December 17, 1951, said School, by leave of then Attorney General, Honorable Robert E. Woodside, filed its second Petition for Modification of Trust in the Orphans' Court of Dauphin County at Docket No. 824, 1951. In said Petition for Modification of Trust, it was related, inter alia, that section 28 of said School Trust provided and required that the School be called "The Hershey Industrial School" and that the School had been incorporated under said name, but that during the preceding twenty years the words "Industrial School" had been frequently used in the official

names of state and local correctional institutions or reformatories for delinquent and criminal boys and girls and that as a result thereof many persons assumed that "The Hershey Industrial School" was a correctional or reformatory institution. The Managers recommended that the name of the School be changed from "The Hershey Industrial School" to "Milton Hershey School". The Permission and Consent of the Attorney General and the Joinder of the School's Trustee and Managers were attached to said Petition. (A true and correct copy of said Petition is set forth on pages 40 to 55 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

13. On or about December 17, 1951, the Orphans' Court entered its Decree authorizing the change of the School's name from "The Hershey Industrial School" to "Milton Hershey School." (A true and correct copy of said Decree is set forth on pages 52 to 53 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

14. On or about December 24, 1951, the School filed its Application for Articles of Amendment of its Articles of Incorporation at Docket No. 816, Sept. Term, 1951, in the Court of Common Pleas of Dauphin County to conform, inter alia, its corporate name to said modification of trust. The Consent of the School's Managers to Amendment of Articles of Incorporation, Certificate of Availability of Name and the Approval of the Department of Welfare were attached to said Application. (A true and correct copy of said Application is set forth on pages 72 to 87 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

15. On or about December 24, 1951, said Court entered its Decree approving said Articles of Amendment and making them a part of the charter of the School. (A true and correct copy of said Decree is set forth on page 83 of the document attached hereto which is marked "Exhibit A" and made a part hereof.)

16. At the time of, and from time to time subsequent to, the establishment of said School, Settlor transferred sums of money,

securities and other personal property to Hershey Trust Company, as Trustee, as gifts for the endowment of the School, under and subject to the trusts and conditions of the School Trust. Substantially all of the property, real or personal, owned, possessed or held in trust for the School was given, or has accrued from property given, by inter vivos gifts from Settlor. The only other property given to the Trustee or School consists of (a) a bequest under the will of Settlor, who died on October 13, 1945, of 346 shares of capital stock of Hershey Trust Company, having an aggregate appraised value as of the time of his death of \$43,250; (b) a devise under the will of John E. Snyder, who died December 20, 1934, of his residence property in Hershey, Pennsylvania, having an appraised value as of the time of his death of \$30,000; and (c) a devise under the last will and testament of Mary Amos, who died June 21, 1947, of her residence property in Bedford County, Pennsylvania, having a fair market value at the time of her death not exceeding \$2,500. No other property has been given to said Trustee or to the School.

17. On or about September 3, 1910, the School began operations in the buildings which composed the "Hershey Homestead", the Hershey's ancestral home, and enrolled its first orphans.

18. From time to time after 1910, the physical plant and facilities of the School were enlarged. By 1934, the School's major facilities were designed to accommodate approximately 1600 students.

19. In early 1960, the School's Managers retained a committee of professional consultants, known as the "Anniversary Evaluation Committee", to make a comprehensive, critical evaluation of the School's program and physical plant. The report of the Anniversary Evaluation Committee was filed with the School's Managers on or about August 2, 1960. (A true and correct copy of said report, entitled "Report of the Anniversary Evaluation Committee" is attached hereto, marked "Exhibit B" and made a part hereof.)

20. In addition to the Anniversary Evaluation Committee's

study of the School, the School was further evaluated during 1960-1961 by the Commission on Secondary Schools of the Middle States Association of Colleges and Secondary Schools and an Evaluation Committee designated by the Pennsylvania Association of Private Academic Schools. The report of the Commission on Secondary Schools of the Middle States Association of Colleges and Secondary Schools was filed with the School on January 2, 1960. (A copy thereof, entitled "Report of the Evaluating Committee, Milton Hershey School, Hershey, Pennsylvania", is attached hereto as "Exhibit C" and made a part hereof.) The Report of the Pennsylvania Association of Private Academic Schools was filed with the School on April 18, 1961. (A copy thereof, entitled "Report of the Committee Visiting the Milton Hershey School", is attached hereto as "Exhibit D" and made a part hereof.)

21. Following the receipt and study of said evaluation reports, the School's Managers adopted a major improvement and construction program which was designed to implement virtually every major recommendation which said evaluation committees had set forth in their reports, including changes in the School's physical plant and enrichment of the School's program. It is estimated that the capital expenditures which will be made during 1962-1966 to complete said program will be in excess of \$21,000,000.

22. Upon completion of said improvement and construction program, almost all facilities of the School will have been completely rebuilt, renovated, remodeled, redecorated or replaced and will consist of the physical plant and facilities described in "Exhibit E", which is attached hereto and made a part hereof. All parts of the physical plant will be well suited for use for their intended purposes, in excellent condition and there will be no need in the foreseeable future to make further major additions or alterations to any of them. Except for periodic maintenance and upkeep, no action or expenditure will be needed to maintain the usefulness of said facilities during the foreseeable future.

23. Upon completion of said improvement and construction program, the School's major physical facilities, (with the exception of student housing which is built in individual "family units" for 12-16 boys each only as they are needed to accommodate students) will have a capacity to accommodate approximately 1600 students. (A copy of the School's information brochure which describes and illustrates portions of the School's campus and physical plant is attached hereto, made a part hereof and marked "Exhibit F".)

24. The School is currently staffed by approximately 630 employees, including 18 administrators and supervisors, 80 teachers, 161 full time house parents, 68 part time, substitute house parents, 9 full time and 7 part time specialists, consisting of doctors, dentists, nurses, counsellors, etc., 22 business and clerical workers, 103 full time and 16 part time staff workers consisting of cooks, janitors, drivers, etc., 10 farm administrators and supervisors and 134 agricultural workers who operate the School's farms. Upon completion of the present development program, there will have been added to the staff 30 additional house parents, 11 more teachers, a naturalist and two assistants, a planetarium director, a family counselor, an assistant director of the Junior Division, two assistant directors of the Intermediate Division, a consultant to the Senior Division, a high school counselor, a vocational counselor, a research director, a consulting psychiatrist and 6 additional clerical workers.

25. Upon completion of the current improvement program, the School will be fully and adequately staffed and no additional personnel, (except for the number of house parents which would be needed if increased enrollment made it necessary to build additional individual "housing units") would be needed for the School to accommodate approximately 1600 students in accordance with the recommendations of the School's professional consultants.

26. Upon completion of the current improvement program, the School will be fully equipped with modern and serviceable equipment in every phase of its operation. Except for routine replace-

ment and maintenance of said equipment in the usual course of operation, the School will have no unsatisfied needs for equipment or facilities of any kind.

27. For many years, commencing before 1933, the School has encountered progressively more difficulty in enrolling an adequate number of students fully to use the capacity of the School's facilities and has never been able to enroll a sufficient number to utilize all of the income which the school Trust has earned. There is set forth in "Exhibit G", attached hereto and made a part hereof, the number of students who were enrolled in the School as of December 31 of each year since 1933 and the approximate percentage of the capacity of the School's major facilities which were being used during each of the years in question. As indicated in said Exhibit G, no more than 72% of the capacity of the School's major facilities have been used during the period from 1934 to 1962.

28. During the years specified in paragraph 27, no qualified applicant who desired to be enrolled at the School was ever refused admission except during the years of World War II when rationing restrictions and shortages limited the procurement of necessary supplies.

29. Since 1956, the School has conducted an aggressive program to educate the public as to the availability of the School's facilities and program and to obtain the names of boys who were potentially in need of and qualified for admission to the School. The public education program has consisted, inter alia, of representatives of the School contacting personnel of the public elementary and secondary schools throughout the Commonwealth of Pennsylvania, distributing the film "A Living Heritage for Boys" to television stations, schools and clubs, providing lecturers to speak to various groups about the School, encouraging the School's alumni to meet with groups to discuss the School, developing catalogs and mailing pieces for distribution among prospective applicants and interested parties, inviting groups to tour the School and hold their conventions

there, making the School's Glee Club available for concerts around the state and country and making more than 3,000 field trips throughout the state to speak with school administrators, guidance counselors, nurses, home visitors, teachers, welfare personnel, psychologists, service clubs and community leaders.

30. As a result of the public education program described in paragraph 29, the School was able to obtain the names of over nine thousand boys who were prospective students. Although a concentrated effort was made to enroll as many of said prospective students as were qualified and in need of the School's service, the School was able to enroll only a small proportion of said students, resulting in a gradual increase in the School's enrollment from 1956 to date. (The details of the public education program are set forth in "Exhibit H", composed of "Survey Report of Half and Full Orphans in the Pennsylvania Public Schools" (1956-1958), "Annual Report of Public School Contacts" (1959) and "Annual Report of Public School Contacts" (September-December, 1961 and January-December, 1962), which is attached hereto and made a part hereof.)

31. On the basis of information provided by the Department of Health, Education and Welfare of the United States of America, the number of orphans who resided in the United States of America declined from 16.3% in 1920 to 4.4% in 1961 of the portion of the nation's population composed of persons who are under the age of eighteen years, or by nearly 70%. During the same period, the number of full orphans in the United States declined from 750,000 in 1920 to 55,000 in 1961, or by more than 92%.

32. On the basis of their experience, the recommendations of the evaluation committees and information furnished to them by the Department of Health, Education and Welfare of the United States, and the Department of Welfare of the Commonwealth of Pennsylvania, the School's Managers and your Petitioner have concluded and believe that the number of orphans in need of institutional care has substantially declined in recent years. Among the significant

causes for the reduction in the number of orphans in need of institutional care is the substantial growth of public income-maintenance programs. In recent decades, it has become less and less necessary for children to be placed in an institution for care because of economic reasons. The Old Age, Survivors and Disability Insurance Program, in particular, has provided benefits to large numbers of orphans who might otherwise be in need of the type of institutional care provided by the School. As of December, 1960, 70% of paternal orphans in the United States received benefits based on their deceased fathers' earnings record. A substantial number of other orphans, or their surviving parent on their behalf and for their benefit, received public assistance under the Aid to Dependent Children Program and Aid to Mothers Program. Likewise, the dramatic decline in the mortality rate of the population during the years from 1910 to date has greatly reduced the number of children who become orphans.

33. In addition to the fact that there are many fewer boys who become orphans today and that income-maintenance programs have substantially reduced the economic need of surviving parents to place their children in institutional care, Petitioner has been advised and believes that there has developed a growing tendency among professional, social and welfare workers to disfavor institutional care of healthy children in favor of individual foster home care in their local communities, and, where institutional care is indicated, to disfavor placing students in institutions which are located long distances from their local communities in favor of placing them in institutions reasonably near their homes so that close contacts with surviving members of their families can be maintained. Petitioner has also been advised that current professional theory favors institutions of reasonably small size and the School's professional consultants have advised it that the size of the School should be limited to not more than 1500 students at any time in the future.

34. On the basis of the inability of the School to obtain a sufficient number of students to make efficient use of the School's existing facilities, the substantial decline in the total number of orphans in the United States and the notably diminished need for institutional care of orphans, the School's Managers and Trustee have concluded and believe that the task of locating and enrolling a sufficient number of students to make reasonably efficient use of the School's present and existing facilities will become more and more difficult in the future and that to expand the School's physical plant or to increase its facilities to accommodate more than 1600 students would be contrary to prevailing professional advice and thinking, impractical, wasteful and imprudent.

35. The total estimated value of the assets of the School Trust as of December 31, 1962 was approximately \$394,683,000.00, consisting of assets representing the corpus of the Trust with an approximate estimated value of \$298,295,000.00 and net accumulated income with an approximate estimated market value of \$96,388,000.00. In addition to the amounts set forth above, as of the same date, the accounts of the Managers of the School showed net assets, consisting of accounts and notes receivable, inventories, prepaid expenses, machinery, equipment and livestock, less allowances for depreciation, in the amount of \$3,077,000.00. The Managers of the School, had, therefore, assets with an estimated value as of December 31, 1962, of \$397,760,000.00 available with which to meet the capital and operational needs of the School. (A Statement of the Estimated Value of the Assets of the Milton Hershey School Trust as of December 31, 1962 is attached hereto, marked "Exhibit I" and made a part hereof. A copy of the School's Financial Statement as of December 31, 1962, as prepared by Arthur Andersen & Co., Certified Public Accountants, is attached hereto, marked "Exhibit J" and made a part hereof.)

36. For many years, the assets of the School Trust have earned income in excess of the School's needs as is demonstrated in

"Exhibit K", attached hereto and made a part hereof.

37. The School's Managers and Trustee have concluded, and all available factors indicate, that the future role to be played by the School in the care of orphans will, as a result of intervening changed conditions, be more limited than Settlor envisioned when he founded the School in 1909.

38. Your Petitioner believes that in the future it will be difficult for the School even to maintain its present level of enrollment and virtually impossible to increase its enrollment substantially above the present levels.

39. Even if it is assumed (1) that earning capacity of the School Trust's assets will remain static except as it will increase as additional surplus income is accumulated and invested or as it will decrease as any part of the corpus or accumulated income is spent to pay the costs of present improvement and construction programs or future costs of operation, (2) that the cost of operating the School will increase at the rate of 5% each year over the amount spent in 1962 and (3) that the amount which will be spent in providing graduates with college training will increase at the rate of 10% each year over the amount spent in 1962, if the enrollment of the School is maintained at approximately current levels, it is expected that the School will accumulate additional substantial amounts of income as indicated in "Exhibit L", attached hereto and made a part hereof.

40. Employing the same assumptions set forth in paragraph 39, supra, except assuming that the School will increase its enrollment at the rate of 25 students each year during the period between 1963 and 1972, (resulting in a total enrollment at the end of 1972 of approximately 1400-1450 students, which the School's Managers and your Petitioner do not believe will be possible), the School will still accumulate additional substantial amounts of income as indicated in "Exhibit M", attached hereto and made a part hereof.

41. Employing the same assumptions as set forth in paragraph 39, supra, except assuming that there will be an increase in enrollment of 50 students each year during the period between 1963 and 1972, (which the School's Managers and your Petitioner believe is almost certain not to happen) resulting in a total enrollment of approximately 1650 students by the end of 1972, the School will nevertheless accumulate additional substantial amounts of income as indicated in "Exhibit N", attached hereto and made a part hereof.

42. Your Petitioner believes and therefore avers that if the School's enrollment remains relatively constant at present levels between 1100 and 1200 boys, which the School's Managers and your Petitioner believe will happen, the School Trust will accumulate an additional sum of \$33,825,000.00 during the next ten years which, when added to the present investments held as accumulated income with an estimated value as of December 31, 1962 of approximately \$96,000,000.00, will result in the School Trust holding unexpended income with an estimated value of approximately \$130,000,000.00 by the end of 1972; if enrollment is increased at the rate of 25 students each year during the next ten years, which the Managers and your Petitioner believe is not likely to happen, the School Trust will accumulate an additional sum of \$25,682,000.00 which will result in a total accumulation of income in the amount of \$122,000,000.00 by the end of 1972; and if enrollment is increased at the rate of 50 students each year during the next ten years, which the Managers and your Petitioner believe is almost certain not to happen, the School Trust will accumulate an additional sum of \$15,975,000.00, giving it a total of accumulated income in the amount of approximately \$112,000,000.00 by the end of 1972.

43. Your Petitioner believes and therefore avers that the estimates set forth in paragraphs 39, 40 and 41 are likely to underestimate the amount of additional excess income which would in fact be accumulated during the period between 1963 and 1972 because

of the very conservative assumptions which have been employed in their computation.

44. As restricted by the terms of the School Trust, the amounts of income which will be earned by the School Trust in subsequent years is substantially in excess of the amount which the School's Managers and Trustee will be able reasonably and prudently to spend in operating the School in accordance with Settlor's expressed intentions.

45. Your Petitioner believes and therefore avers that after the current additions and improvement program is completed and paid for from current and accumulated income, the School's Managers and Trustee will not be able to enroll enough eligible students fully to utilize the School's facilities and will not require, or be able to spend, (1) the unexpended income which has been accumulated in the past or (2) the amount of current income which will be earned hereafter by the investment of the corpus and accumulated income held by the School Trust.

46. Through a combination of changed circumstances not foreseen by Settlor in 1909 when he founded the School, and in 1918, when he gave to the School the bulk of its assets in the form of the capital stock of Hershey Chocolate Company, predecessor of the present Hershey Chocolate Corporation, and particularly as a result of the sharp decline in the number of the nation's children who become orphans, the widespread development of public welfare and insurance programs, and the changed concepts of professional social and welfare workers concerning the proper care of healthy orphaned children, to the extent that the School Trust holds accumulated income and will earn current income in excess of the amount which can be reasonably and prudently spent in accomplishing the purposes of the School Trust, there has been a pro tanto failure of the purpose of the School Trust.

47. Your Petitioner believes and states that although it was the intention of Settlor to endow the School with sufficient

assets to permit the complete and perpetual effectuation of the charitable purposes set forth in the School Trust, it was also his intention that the income earned by the investment of said corpus should be spent for the effectuation of charitable purposes from time to time and not to require the indefinite accumulation of such income, as was evidenced by his request to have the purposes of the School Trust modified and enlarged in 1933 in order to permit the current and accumulated income then being earned and held by the School Trust to be more fully spent for charitable purposes.

48. Your Petitioner believes and therefore submits that it is proper and appropriate for this Honorable Court to award a portion of the accumulated income held by the School Trust which is in excess of the needs of the School, to some other charitable purpose or purposes which fall within Settlor's charitable intentions and scheme.

49. In an effort to provide this Honorable Court with a suggested scheme of disposition of said portion of accumulated income which would be in full accordance with Settlor's charitable intentions and scheme, your Petitioner and the Managers of the School have made a comprehensive study of Settlor's charitable acts and interests during his life and on the basis thereof and, in the case of some of the Managers, on the basis of their personal knowledge of Settlor and his charitable intentions, have concluded that Settlor's charitable intentions and scheme can best be served by awarding a portion of said accumulated income to The M. S. Hershey Foundation to be held and applied by said Foundation to the accomplishment of the charitable purposes which Settlor expressly set forth in his inter vivos agreement of trust of December 5, 1935, all as more particularly set forth hereinafter.

50. By his inter vivos agreement of trust dated December 5, 1935 (hereinafter called "Foundation Trust"), Settlor created The M. S. Hershey Foundation (hereinafter called "Foundation"). The

charitable purposes which Settlor expressly set forth in the Foundation Trust are as follows:

- "(a) For the establishment and maintenance in whole or in part of one or more educational institutions in Derry Township, Pennsylvania; and/or
- (b) The support of the public schools of Derry Township, Pennsylvania, and the improvement and elevation of the standard of education therein; and/or
- (c) The vocational, cultural or professional education of any resident of Derry Township, Pennsylvania."

(A copy of said Foundation Trust is attached hereto, marked "Exhibit O" and made a part hereof.)

51. The assets of the Foundation have been derived solely from the inter vivos gifts of Settlor and subsequent gifts of the Hershey Chocolate Corporation. The quoted market value of the Foundation's assets as of April 30, 1963 (the end of the Foundation's fiscal year), was \$4,967,534.71. (A copy of the Annual Statement of The M. S. Hershey Foundation for the fiscal year ending April 30, 1963, is attached hereto, marked "Exhibit P" and made a part hereof.)

52. Settlor named your Petitioner, Hershey Trust Company, as Trustee of the Foundation Trust, as he had done in the School Trust, and provided that the Foundation should be managed by Managers elected from your Petitioner's Board of Directors, as he had also done in the School Trust. At all times, the Trustee and Managers of the School Trust and the Foundation Trust have been the same.

53. Since the creation of the Foundation by Settlor in 1935, it has spent the sum of \$894,416.71 in paying the operating costs of Hershey Junior College and has spent the sum of \$2,212,069.12 to support and improve the education system of Derry Township.

54. Settlor's deep interest and concern with education and the establishment and maintenance of educational institutions in Derry Township are further manifested by the many charitable acts which he performed during his life, including the facts that in 1909, when Settlor founded the Milton Hershey School, he pre-

scribed that a comprehensive educational program should be an integral part of its operation and provided for the college education of its graduates; in 1914, Settlor built, financed and donated the M. S. Hershey Consolidated School to Derry Township; in 1925, through Settlor's offices, the Derry Township Junior-Senior High School was donated by Hershey Chocolate Company to the Township; during the nineteen-thirties, Settlor negotiated with Lebanon Valley College to induce its representatives to relocate the College in the town of Hershey; in 1935, Settlor established the Foundation; in 1938, Settlor successfully negotiated with the Derry Township School Board to organize Hershey Junior College and personally guaranteed the expenses thereof during the first two years of its operation; the Foundation, under his guidance during his life and in accordance with his intentions after his death, has paid all of the costs of operating the Hershey Junior College; the Foundation, under his guidance during his life and in accordance with his intentions after his death, has provided Derry Township with additional school buildings and further financial support; and Settlor's final charitable act was to establish by his will a trust for the support of the Derry Township School District. (Settlor's will is recorded in the office of the Register of Wills of Dauphin County in Will Book "N", Volume 2, page 405. A copy of said will is attached hereto, marked "Exhibit Q" and made a part hereof.)

55. Although Settlor was an unusually wealthy person and notwithstanding the fact that in the course of his life he gave all of his wealth to charity, the charitable purposes to which he exclusively devoted his energy, interest and wealth were limited to those described by the charitable purposes which he expressly set forth in the School Trust and the Foundation Trust. Settlor never dedicated any significant part of his wealth to any charitable purpose not encompassed by the charitable purposes set forth in the School Trust and Foundation Trust. The combined charitable purposes described in the two said trusts constitute a comprehensive statement of Settlor's charitable intentions and scheme.

56. Settlor's charitable interests and acts were narrowly restricted to the geographical boundaries of the town of Hershey and Derry Township. The creation of the Community of Hershey was largely the personal work of Settlor; he located his home and business therein; he founded his School for Orphans therein; he provided that any educational institutions which the Foundation established or maintained should be located therein; and he caused the Hershey Hotel, Park, Golf Courses, Sports Arena, Hershey Junior College and many other unique facilities to be located therein. Because of Settlor's exclusive concern with and devotion to the town of Hershey and Derry Township, your Petitioner believes and, therefore, avers that it was his intention that any agency or institution which might be responsible for the application of funds given by him to charitable purposes and any institution which might be established with any such funds should be located in and about the town of Hershey, Derry Township, to the end that such agency or institution would make a cumulative contribution to the unique character and renown of the town of Hershey.

57. After comprehensive study of the future financial resources and needs of the School, your Petitioner believes and recommends that assets held by the School Trust as accumulated income with a quoted market value of \$50,000,000 should be awarded to the Foundation Trust. Your Petitioner's recommendation that the sum to be awarded should be \$50,000,000 is based on the fact said amount can be removed from the School Trust's accumulated income fund without jeopardizing the present or future financial integrity of the School and without financially limiting or prejudicing the ability of the Managers of the School to accomplish the charitable purposes which Settlor named in the School Trust as fully as possible under the circumstances prevailing.

58. Your Petitioner's study of the financial resources and needs of the School during the period from 1963-1972 demonstrates that if assets which are being held in the School Trust's accumulated income fund with a quoted market value of \$50,000,000 were

withdrawn on January 1, 1964, the School Trust would nevertheless have more than adequate income to finance its operations as indicated in "Exhibit R", attached hereto and made a part hereof.

59. Your Petitioner believes and therefore avers that if investments with a quoted market value of \$50,000,000 are withdrawn from the School Trust's Accumulated Income Fund on January 1, 1964, if enrollment is maintained at current levels, which is most likely to happen, the School Trust will nevertheless earn and accumulate an additional amount of excess income in the amount of \$19,299,000.00 during the next ten years; if enrollment increases at the rate of 25 students per year, which is unlikely to happen, the School Trust will nevertheless earn and accumulate additional excess income in the amount of \$11,171,000.00 during the projected period; and, even if enrollment increases at the rate of 50 students per year, which is almost certain not to happen, the School Trust will nevertheless earn and accumulate excess income in the amount of \$1,464,000.00.

60. Your Petitioner believes and therefore avers that Settlor's charitable intentions and scheme are completely stated in the combined charitable purposes which he expressly set forth in the School Trust and Foundation Trust and that no other charitable purposes interested Settlor or fell within the purview of his charitable intentions or scheme and that Settlor's charitable intentions could best be served by awarding to the Foundation assets held by the School Trust in its accumulated income fund with a current quoted value of \$50,000,000 in order that the Foundation may apply said assets to the charitable purposes which Settlor expressly set forth in the Foundation Trust.

61. Your Petitioner is advised that if your Honorable Court shall grant the relief prayed for herein, the Foundation proposes to apply the \$50,000,000.00 worth of assets which would be awarded to it from the accumulated income fund of the School Trust to establish and maintain a medical school in and about the

town of Hershey, Derry Township, which would be affiliated with and operated by The Pennsylvania State University. Said assets would be applied and expended to plan, construct, operate, equip, administer, maintain, endow and subsidize said medical school, with all necessary or appropriate components, including, but not limited to, land, grounds, buildings, structures, appurtenances, equipment, supplies, and any other property, real or personal, or services required or appropriate in providing adequate teaching facilities, library and research facilities, a teaching hospital, dormitories, residences, dining, recreational and other essential or desirable facilities needed to operate a modern medical school in accordance with the highest professional standards. Said fund would also be used to award scholarship grants and loans to worthy students or applicants for admission. It is proposed that said institution would be designated as "The Milton S. Hershey Medical Center" and that preference for admission, as between applicants of comparable qualifications, would be given to bona fide residents of Derry Township, Pennsylvania.

62. Your Petitioner is advised that in order for the United States to maintain the current ratio of physicians to population (approximately 141 to 100,000), the nation must have 330,000 physicians by 1975. If the nation is to have 330,000 doctors by 1975, it will be necessary to have 11,000 graduates a year by that time, or approximately 3,600 more than are currently being graduated each year. If the minimum goal of maintaining the present ratio of physicians to population is to be met, the capacity of existing medical schools must be substantially increased and new schools must be established.

63. Your Petitioner believes that the creation of a fully equipped medical school in and about the town of Hershey, Derry Township, appropriately named to commemorate Settlor, would best fulfill Settlor's charitable intentions and scheme while providing Pennsylvania and the nation with urgently needed medical educational facilities.

64. The M. S. Hershey Foundation and the Board of Managers thereof are willing to accept the proposed award and to apply it for the purposes and uses described above as evidenced by their joinder herein.

65. The names and addresses of the Managers of the School are:

<u>Name</u>	<u>Address</u>
Theodore R. Banks	256 East Chocolate Avenue, Hershey, Pa.
James E. Bobb	278 East Chocolate Avenue, Hershey, Pa.
Joseph S. Gumper	430 East Chocolate Avenue, Hershey, Pa.
Kenneth V. Hatt	323 Homestead Road, Hershey, Pa.
John O. Hershey	MHS Homestead, Hershey, Pa.
Samuel F. Hinkle	112 Para Avenue, Hershey, Pa.
Harold S. Mohler	367 East Granada Avenue, Hershey, Pa.
William E. Schiller	308 Elm Avenue, Hershey, Pa.
Arthur R. Whiteman	221 Maple Avenue, Hershey, Pa.

True and correct copies of this petition have been served on Milton S. Hershey School and the Board of Managers thereof and they have acknowledged receipt of the same and have joined in the prayer hereof. Said acknowledgement and joinder are attached hereto.

66. A true and correct copy of this petition has been served upon the Honorable Walter E. Alessandroni, Attorney General of the Commonwealth of Pennsylvania, thereby supplying him with the information required by Rule 1 of Section 11 of the Orphans' Court Rules of Dauphin County. Said Honorable Walter E. Alessandroni has acknowledged receipt of a copy of said petition, has granted his leave to your Petitioner to present the petition in this action and has concurred in the prayer hereof, as evidenced by his acknowledgement and statement which is attached hereto.

67. Your Petitioner is willing to become responsible for the costs of this proceeding.

WHEREFORE, Your Petitioner prays:

First, that your Honorable Court, by its decree, carry into effect the intent of the Settlor as related in the above petition so far as the same can be carried into effect consistently with law and equity;

Second, that your Honorable Court approve, direct and authorize your Petitioner, as Trustee of Milton Hershey School, to withdraw from the accumulated income fund of the Milton Hershey School Trust investments having an aggregate quoted market value of \$50,000,000 as of the date of said withdrawal and, by proper

instruments, to transfer, deliver and set over all right, title and interest in said investments to the income fund of The M. S. Hershey Foundation Trust for the purposes set forth hereinbefore; and

Third, such general relief in the premises as to your Honorable Court may appear necessary and proper.

AND it will ever pray.

HERSHEY TRUST COMPANY

By Arthur R. Whiteman
Arthur R. Whiteman, President
Trustee of Milton Hershey School Trust

William H. Radebaugh
DUNNINGTON, BARTHOLOW & MILLER
Chrysler Building East
New York City, New York

Jack A. Riggs
Samuel A. Schreckengast, Jr.
Gilbert Nurick
McNEES, WALLACE & NURICK
Commerce Building
Harrisburg, Pennsylvania

Attorneys for Petitioner

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF DAUPHIN } SS:

Personally appeared before me, the undersigned, a notary public in and for said Commonwealth and County, ARTHUR R. WHITEMAN who, being duly sworn according to law, deposes and says that he is the President of Hershey Trust Company, Trustee of Milton Hershey School Trust, Petitioner in the within petition, that he is authorized to execute said petition and to make this affidavit on behalf of Hershey Trust Company, Trustee, and that the facts set forth therein are true and correct to the best of his information, belief and knowledge.

Arthur R. Whiteman
ARTHUR R. WHITEMAN

Sworn to and subscribed
before me this 16th day
of August, 1963.

Joseph Martosati
Notary Public

My Commission Expires:

JOSEPH MARTOSATI
Notary Public
My Commission ends February 1, 1965
Hershey, Pa. Dauphin County

ACKNOWLEDGMENT AND JOINDER
OF BOARD OF MANAGERS OF
MILTON HERSHEY SCHOOL

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF DAUPHIN) SS:
)

Personally appeared before me, the undersigned, a notary public in and for said Commonwealth and County, JAMES E. BOBB, who, being duly sworn according to law, deposes and says that he is the Chairman of the Board of Managers of Milton Hershey School, that he is authorized to make this affidavit on behalf of said Board of Managers, that the Board of Managers of Milton Hershey School has received copies of the within petition and hereby acknowledges receipt of the same, that the facts set forth therein are true and correct to the best of his information, belief and knowledge and that the Board of Managers of Milton Hershey School hereby joins in the prayer thereof.

James E. Bobb
JAMES E. BOBB,
Chairman
Board of Managers of Milton
Hershey School

Sworn to and subscribed
before me this 16th day
of August, 1963.

James E. Bobb
Notary Public

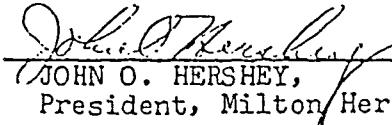
My Commission Expires:

NOTARY PUBLIC
PAUL E. BOBB
My Commission Expires February 1, 1965
Hershey, Pa. Dauphin County

ACKNOWLEDGMENT AND JOINDER
OF MILTON HERSHEY SCHOOL

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF DAUPHIN) SS:

Personally appeared before me, the undersigned, a notary public in and for said Commonwealth and County, JOHN O. HERSHEY, who, being duly sworn according to law, deposes and says that he is the President of Milton Hershey School, a non-profit corporation organized and existing under the laws of the Commonwealth of Pennsylvania, that he is authorized to make this affidavit on behalf of said corporation, that Milton Hershey School has received a copy of the within petition and hereby acknowledges receipt of the same, that the facts set forth therein are true and correct to the best of his information, belief and knowledge and that Milton Hershey School hereby joins in the prayer thereof.


JOHN O. HERSHEY,
President, Milton Hershey School

Sworn to and subscribed
before me this 16th day
of August, 1963.



Notary Public

My Commission Expires:

JOHN O. HERSHEY
NOTARY PUBLIC
(SEAL) My Commission Expires February 1, 1965
Hershey, Pa. Dauphin County

ACKNOWLEDGMENT AND ACCEPTANCE
OF THE BOARD OF MANAGERS
OF THE M. S. HERSHEY FOUNDATION

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF DAUPHIN)

Personally appeared before me, the undersigned, a notary public in and for said Commonwealth and County, JAMES E. BOBB, who, being duly sworn according to law, deposes and says that he is the Chairman of the Board of Managers of The M. S. Hershey Foundation, an unincorporated charitable foundation, that he is authorized to make this affidavit on behalf of said Foundation, that said Board of Managers has received copies of the within petition and hereby acknowledges receipt of the same and that The M. S. Hershey Foundation is willing to accept the award proposed in the within petition and to apply it for the purposes and uses described in said petition subject to such terms and conditions as may be decreed by the Orphans' Court of Dauphin County.

James E. Bobb

JAMES E. BOBB,
Chairman
Board of Managers of
The M. S. Hershey Foundation

Sworn to and subscribed
before me this 16th day
of August, 1963.

John P. Marshall

Notary Public

My Commission Expires:

Jan 31, 1964
M. S. H. F.
My Commission Expires January 1, 1965
Hershey, Pa. Dauphin County

CONSENT, ACKNOWLEDGMENT

AND JOINDER OF

ATTORNEY GENERAL

AND NOW, this 21 day of August, 1963, service of the within petition is accepted, receipt of copy thereof and of notice pursuant to Section 11, Rule 1 of the Orphans' Court of Dauphin County is acknowledged, leave is granted to the Petitioner to present the petition in this action and the undersigned concurs in the prayer thereof.

William F. Kauffman
Attorney General of
Commonwealth of Pennsylvania

DECREE

AND NOW, this 23rd day of August, 1963, upon consideration of the foregoing petition of Hershey Trust Company, Trustee of Milton Hershey School, it appearing that the Milton Hershey School Trust has accumulated income substantially in excess of the amount which can be reasonably or prudently spent in the complete and perpetual effectuation of the charitable purposes which the Settlor of said trust set forth in the deed of trust of November 15, 1909, as modified by the Courts of Dauphin County, Pennsylvania in 1933 and 1951; and it appearing that there has been a failure, pro tanto of the purpose of the trust and that it is appropriate for, and the duty of, this Court to award such portion of said accumulated income which cannot reasonably or prudently be used to effectuate the charitable purposes set forth in said Milton Hershey School Trust to some other charitable purpose which falls within the scope of Settlor's charitable intentions and which will, under the present circumstances, best serve to further Settlor's charitable intent; and it appearing that Settlor's charitable intentions can best be furthered and realized by awarding such portion of said accumulated income to The M. S. Hershey Foundation; and it further appearing that investments held in the accumulated income fund of the Milton Hershey School Trust with an aggregate quoted market value of \$50,000,000 are unneeded for the complete and perpetual effectuation of the charitable purposes set forth in the Milton Hershey School Trust; and it appearing that the Board of Managers of Milton Hershey School and Milton Hershey School have acknowledged receipt of service of said petition and have joined in the petition's prayer; and it further appearing that The M. S. Hershey Foundation and the Board of Managers thereof, are willing to accept the proposed award and to apply it for the purposes and uses described in the within petition and as decreed by this

Court; and it further appearing that the Attorney General of the Commonwealth of Pennsylvania has acknowledged receipt of the service of said petition, has granted his leave to present the petition to this Court and has concurred in the prayer thereof;

NOW THEREFORE, Hershey Trust Company, as Trustee of Milton Hershey School, is hereby authorized and directed to withdraw from the accumulated income fund of the Milton Hershey School Trust investments having an aggregate quoted market value of \$50,000,000, as of the date of said withdrawal, and, by proper instruments to transfer, deliver and set over all right, title and interest in said investments to the income fund of The M. S. Hershey Foundation Trust.

The fund awarded in this decree shall be applied and expended for the planning, construction, operation, equipping, administration and maintenance of a medical school to be located in Derry Township, Pennsylvania, with all of the necessary or appropriate components including, but not limited to, land, grounds, buildings, structures, appurtenances, equipment, supplies and any other property, real or personal, or services required or appropriate in providing adequate teaching facilities, library and research facilities, a teaching hospital, dormitories, residences, dining, recreational and other essential or desirable facilities; with the right to enter into such agreements, arrangements and financial commitments as may be necessary or desirable for affiliation with, and operation and administration by, The Pennsylvania State University or such other accredited college or university as may be selected by the Managers of The M. S. Hershey Foundation; and with the right, inter alia, to apply any portion of said fund or the income therefrom to the endowment and subsidization of such institution and the awarding of scholarship grants or loans to worthy students or applicants for admission.

Said institution shall be designated as "The Milton S. Hershey Medical Center" and preference for admission thereto, as between applicants of comparable qualifications, shall be given to bona fide residents of Derry Township, Pennsylvania, who possess the prescribed requirements and qualifications for admission.

BY THE COURT:

15/ J.W. F. George
P.J.