STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

6TH CIRCUIT COURT
PROBATE DIVISION

ORDER OF NOTICE

IN RE: CROTCHED MOUNTAIN FOUNDATION

DOCKET #316-2020-EQ-01751

The attached **PETITION FOR DECLARATORY JUDGMENT AND OTHER RELIEF** is a **TRUE ATTEST COPY** of the original petition that has been duly filed in the office of the 6th Circuit Court - Probate Division of this Court, at Concord, NH, on **August 07, 2020.**

The **PETITIONING PARTY IS ORDERED** to notify and summon;

The Attorney General, Director of Charitable Trusts, 33 Capitol Street, Concord, NH 03301

by causing an attested copy of the above-named Petition and this Order of Notice thereon, to be:

(X) given in hand to,
Or
(X) or left at the abode of the above named person(s)

by **SEPTEMBER 17, 2020** and that service be by sheriff or deputy, if the residence of the above-named person(s) is within the state, or by an officer authorized to serve similar process if without the state; and that service outside the state be evidenced by a return of the officer under oath accompanied by a certification of his official character and authority.

IT IS FURTHER ORDERED that the ABOVE-NAMED PERSON(S) file an **APPEARANCE** AND **ANSWER** in writing with Clerk of said Court and deliver a copy to:

Counsel for the petitioning party

on or before **WEDNESDAY, SEPTEMBER 30, 2020 OR BE FOUND IN DEFAULT and the PETITION TAKEN AS CONFESSED.**

A TRUE COPY, ATTEST:

Sharon A. Richardson

September 15, 2020
Date

Sharon A. Richardson
Clerk of Court

The State of New Hampshire

9th Circuit – Probate Division – Nashua

In Re: Crotched Mountain Foundation

Case No: 316-2020-EQ-1751

PETITION FOR DECLARATORY JUDGMENT AND OTHER RELIEF

NOW COMES the petitioner, Crotched Mountain Foundation ("Crotched Mountain"), by and through its attorneys, Devine, Millimet & Branch, P.A., and respectfully submits this Petition for Declaratory Judgment and Other Relief, stating in support as follows:

INTRODUCTION

1. Since 1953, Crotched Mountain Foundation has provided needed and first-rate expert programs for children and adults with disabilities in New Hampshire through its Greenfield, New Hampshire residential and day school (the "Crotched Mountain School") and through other community-based programs throughout the State. Because of recent unforeseeable events, including the current COVID-19 pandemic, Crotched Mountain has made the difficult decision to close its school and staffed residential settings by December 31, 2020. With this Petition, and consistent with RSA 292-B, Crotched Mountain seeks assistance from this Court to access monies held in its restricted institutional fund so that it may effectuate a prudent wind-down of these operations and, more importantly, so that it may transition its clients in a safe, professional, and respectful manner.

PARTIES, JURISDICTION, AND VENUE

2. The petitioner Crotched Mountain Foundation is a non-profit charitable and educational organization with its principal place of business at 1 Verney Drive, Greenfield, New Hampshire, 03047. Crotched Mountain serves over a thousand children and adults, and their families, annually through a variety of community-based programs in New Hampshire and through its flagship day and residential school located in Greenfield, New Hampshire.

3. The Attorney General, Director of Charitable Trusts, 33 Capitol Street, Concord, New Hampshire, 03301, is a necessary party to this proceeding, consistent with RSA 292-B.

4. Crotched Mountain submits that the New Hampshire Department of Health and Human Services, 129 Pleasant Street, Concord, New Hampshire, 03301, may be interested in this action because the wind-down of the Crotched Mountain School and staffed residential programs may have a direct effect on the Department. The relocation of Crotched Mountain residents and students may affect the services provided by the Department of Children, Youth and Families (DCYF), the Bureau of Elderly and Adult Services (BEAS), and the Bureau of Developmental Services (BDS), all of whom serve to address the needs of the disabled, youth, and elderly of New Hampshire. Accordingly, DHHS may want to participate in these proceedings.

5. This Probate Division has jurisdiction over the issues in this matter pursuant to RSA 547:3(II)(a) and RSA 292-B, as this case involves the requested charitable use of an endowment fund.

6. Venue is appropriate in this Circuit because the petitioner's place of business is located in Greenfield, New Hampshire.

RELEVANT BACKGROUND

A. Overview of Crotched Mountain Foundation

7. Crotched Mountain opened as a non-profit charitable and educational organization in 1953. Since that time, Crotched Mountain has served thousands of children and adults through a variety of community-based programs, including its flagship Crotched Mountain School located in Greenfield, New Hampshire. Crotched Mountain's mission is to serve individuals with disabilities and their families, embracing personal choice and development, and building communities of mutual support. It has had a singular goal from the outset to help children, students, and adults with disabilities to achieve maximum independence and to live a great life in the community in which they live. Crotched Mountain's clients have profound disabilities and face numerous challenges. In many cases, they are the most vulnerable of our population. Crotched Mountain's clients have challenging behaviors, including communication needs, emotional problems, medical complexities and often aggressive and violent behaviors. These children and adults come to Crotched Mountain for the exceptional services this non-profit provides. Although perhaps best known for its facility located on Crotched Mountain in Greenfield, New Hampshire - - a sprawling campus located on over 1,200 acres - - Crotched Mountain also provides community-based programs that go far beyond the Greenfield location.

8. Over its long history, Crotched Mountain has successfully adapted to the changing needs in the community. In the past, Crotched Mountain served individuals with polio. It provided a school for the deaf and ran a hospital to care for individuals with special health-related concerns, such as children on ventilators. Its ability to adapt to the changing landscape has allowed it to continue to provide services.

I. The Crotched Mountain School

9. For over 50 years, Crotched Mountain has run its school in its Greenfield, New Hampshire location, serving people with disabilities. It serves individuals from New Hampshire and from other states all over the United States. Located in a beautiful setting, it provides its special education for both day and residential students. It is a fully accredited K-12 + residential and day school, providing award-winning programming, community and campus-based vocational experiences, with a comprehensive suite of therapeutic support. The Crotched Mountain School helps students by giving them the skills needed to succeed in their community and to live a life of maximum independence. It provides 24-hour nursing support for its clients and a full complement of services including occupational therapy, physical therapy, therapeutic recreation, speech therapy, psychology services, and structured vocational experiences, among others. Until recently, the Crotched Mountain School hosted approximately 23 day students and 65 residential students.

10. Crotched Mountain also serves its clients with disabilities through other programs outside of the main campus facility, as follows:

II. Crotched Mountain Community Care

11. One of Crotched Mountain's largest community-based programs, Crotched Mountain Community Care (CMCC) provides high-quality independent case management services to its New Hampshire clients—individuals on the New Hampshire Choices for Independence Medicaid Waiver Program. This programming helps New Hampshire's low to moderate-income individuals, many with disabilities (most of whom are elderly), remain in their own homes. Crotched Mountain coordinates in-home services like personal care and nursing, provides access for medical equipment and home modifications, and maintains ongoing relationships through regular home visits and phone calls. Without such services, these clients likely would be forced

into alternative living arrangements. The program provides a positive impact to approximately 900 individuals per year, along with their families. The program is an award-winning and nationally recognized provider of case management services with its administrative office located in Manchester, New Hampshire. CMCC is an affiliated nonprofit organization, controlled by Crotched Mountain.

III. Ready Set Connect Autism Centers

12. Ready Set Connect Autism Centers is another affiliated nonprofit controlled by Crotched Mountain. These centers, located in Manchester, Concord, and Tilton, New Hampshire, provide Applied Behavioral Analysis (ABA) therapy to its autistic clients with a caring, supportive, and engaging environment, and constitute a resource for information, education, and advice beyond treatment.

13. Ready Set Connect provides three distinct programs: (a) the Early Intervention Program provides applied behavioral analysis therapy to young, Pre-K children. The staff works on skillsets that will translate into success in school, at home, and in the community for these young individuals; (b) the Life Skills Program is designed to meet the needs of older children with Autism, teaching valuable age-appropriate home, leisure, community, and social skills; and (c) the Social Skills Program provides help for children to navigate social situations, giving them tools to interact with their peers.

IV. Accessible Recreation and Sports

14. Crotched Mountain's Accessible Recreation and Sports program provides outdoor experiences for people of all abilities. Experiences include skiing, kayaking, snowshoeing, snowboarding, and more. Certified recreational therapists along with other staff and volunteers work with individuals who have different physical, developmental, or emotional disabilities,

including Autism spectrum disorders, brain injuries, Cerebral Palsy, emotional disorders, spinal cord injuries and others. It is an extremely popular program with clients and their families alike.

V. The Refurbished Equipment Marketplace

15. This Marketplace provides pre-owned assistive technology to clients at a significant discount. It is the largest seller of pre-owned assistive technology in the region, helping over 650 individuals in 2019 alone. This program is part of the Crotched Mountain family of services.

16. Located in Concord, New Hampshire, the Marketplace provides wheelchairs and accessories, bath equipment, scooters, walking aides, patient lifts, and more.

VI. Adult Community-Based Services

17. The Crotched Mountain, Adult Community-Based programs serve individuals through the Developmentally Disabled (DD) waiver through Medicaid. These programs consist of three separate and distinct services. Community Living is a shared living program that places a home provider with a client (or vice-versa) to allow the client to live more independently. Community Residences allow community living for participants that might otherwise be in a more restrictive setting. In these community residences, Crotched Mountain provides around the clock staffing. Typically, the residences are set up as group homes where more than one client will share a common area in the residence. These community residences allow clients to socialize and live more independently. Finally, Apartments for Adults allow Crotched Mountain to manage several accessibly designed apartment complexes for adults with disabilities. Crotched Mountain serves as the property owner for these apartments, which are located in Manchester, New Hampshire, Whitefield, New Hampshire, Portland, Maine, and East Greenbush, New York. This collection of programs is an affiliated nonprofit, controlled by Crotched Mountain.

VII. Accessible Trails

18. In addition to the day and residential school programming, and the other community-based programs referenced above, Crotched Mountain also maintains on its Greenfield, New Hampshire property the largest accessible trail system in a mountain environment in the United States. These trails are available to people with all abilities.

B. Crotched Mountain Funding and Expenses

19. Crotched Mountain has several sources of income to maintain its high level of services and programing. It receives tuition and room and board for its day and residential school programs, and fees for its other community-based programs like Reay Set Connect. It also receives rent for its residential apartments for adults. In addition, Crotched Mountain receives State and Federal grant monies and donations from supporters throughout New Hampshire and the Country. The majority of these funds may be used at the discretion of the Board and management.

20. In addition to these unrestricted funds, Crotched Mountain also maintains a restricted institutional fund that is not wholly expendable on a current basis (the "Endowment Fund") (see RSA 292-B:2). This Endowment Fund consists of donations from hundreds of individuals and/or institutions. Crotched Mountain is limited in its ability to use these funds on an annual basis. As of May 31, 2020, the collection of funds that make up the Endowment Fund held approximately $14,590,000.

21. Although Crotched Mountain receives income and funding from these various referenced sources, its expenses are significant. Extraordinary funding is needed to maintain payroll for the men and women who provide expert services at the Crotched Mountain School and at Crotched Mountain's staffed residential programs. These programs are labor intensive, with approximately 70% of the programming costs attributed to staff salary and benefits. The

significant challenges of the student and client populations require a one-to-one staff-to-client ratio in most cases. Additional staffing make up the clinical, therapeutic and other support services. Crotched Mountain also faces the challenge of a dwindling workforce of direct support professionals. Staffing shortfalls require that Crotched Mountain pay significant overtime pay to its staff.

22. Crotched Mountain's 70 year-old campus, with its dozens of aging buildings that house the therapeutic programs, requires significant operating and maintenance costs. Its physical location is expensive to run and maintain.

C. Crotched Mountain's Decision to Terminate the Crotched Mountain School and Staffed Residential Settings

23. In March of 2020, the COVID-19 pandemic forced Crotched Mountain to suspend day and residential school programs, and it caused other interruptions in community-based programs (for example, the Ready Set Connect program was off-line from late March to mid-May 2020). As a result, Crotched Mountain lost significant income sources. Its expenses, however, only increased over the next few months. An early outbreak of COVID-19 affected residents and staff at the Greenfield campus (resulting in the death of one resident), and provided significant staffing challenges and caused numerous staff resignations. Crotched Mountain was forced to hire new staff and pay significant overtime to manage the crisis. Although revenue dropped by hundreds of thousands of dollars per month, expenses increased by at least that amount each month. In order to maintain sufficient staffing to serve its clients, Crotched Mountain needed to pay large incentive bonuses and hazard pay. It vastly increased overtime pay as staff numbers decreased, and it incurred new expenses for medical and sanitization purposes. It became readily apparent that Crotched Mountain could not sustain the Crotched Mountain School nor its staffed residential settings for much longer. Crotched Mountain simply did not have the funding needed

to provide its high-quality services, especially with the continuing uncertainty of the COVID-19 pandemic. The risk to the safety of the students and staff was increasing.

24. In June of 2020, after much deliberation, and after consultation with the senior management team at Crotched Mountain, the Crotched Mountain Board of Directors made the painful but necessary decision to shut down the Crotched Mountain School and all staffed residential settings on the main campus as well as all staffed residential settings elsewhere in New Hampshire. The Board and management did not come to this decision lightly. The Board looked to the possibility of collaborating with others and it looked at other reasonable alternatives. However, in order to protect its clients and to save the mission of the charity, the Board saw no other reasonable option.

D. Crotched Mountain's Wind-Down Plan and Budget

25. Crotched Mountain also determined that as part of the shutdown, a six-month wind-down period was necessary for the safety of Crotched Mountain's clients. As noted above, Crotched Mountain serves clients that include children and adults with profound disabilities. Crotched Mountain's clients include children with significant emotional and behavioral disorders, some of whom are aggressive or violent. Few entities provide Crotched Mountain's high level of care and services, in a similar setting. With this profoundly vulnerable population, an immediate wind-down of the school and staffed residences would be disastrous for the clients and for their families, especially during the COVID-19 pandemic. Crotched Mountain and the families it serves need time to find new homes, new schools, and a new support network for these clients. Finding the next best option for each individual is a monumental task, especially since many other schools have presently halted special education admissions.

26. Based on these concerns, Crotched Mountain determined that a six-month wind-down period was needed. Senior management prepared an extensive and detailed budget to allow Crotched Mountain to manage this wind-down period prudently and effectively. After calculating its anticipated reduced revenue, it determined that after using anticipated remaining revenue sources, Crotched Mountain would need an additional $5,987,000 to cover expenses during the wind-down period (to December 31, 2020) and to cover additional expenses after the proposed December 31, 2020 school closure date (through March, 2021). The funds are needed to pay staff and to maintain safety through this transition period. In order to meet this budgeted amount, Crotched Mountain will need to draw significant monies from its Endowment Fund.

27. In order to meet the budgeted expenses, Crotched Mountain will access state funds and other non-restricted funds before accessing the Endowment Fund. In early July 2020, Crotched Mountain learned that New Hampshire Department of Health and Human Services had granted the organization an award of $1.5 million through the Healthcare System Relief Fund. This funding, should it arrive, will cover the needed Crotched Mountain expenses for July and August 2020.[1] In addition, the wind-down budget requires that Crotched Mountain use certain non-restricted funds totaling approximately $650,000. After the application of the DHHS grant and the other non-restricted funds, Crotched Mountain still will need to access approximately $3.8 million from its Endowment Fund to maintain payroll and to meet all other expenses through March 2021. The approximate Endowment Fund monies needed to meet the monthly shortfall in revenue are as follows:

[1] Although the DHHS indicated in early July 2020 that it had awarded this funding, by e-mail dated August 5, 2020 from Nancy Smith, General Counsel of the Governor's Office of Emergency Relief & Recovery (GOFERR), Crotched Mountain learned that GOFERR has placed a temporary hold on the award because it was issued prematurely. Attorney Smith indicates that a new notification of award, if issued at all, should be completed by August 14, 2020. Accordingly, as of the filing of this Petition, Crotched Mountain does not know if it will receive the full $1.5 million grant, a lesser amount, or any amount at all.

July:	$1,100,000
August:	$400,000
September:	$842,832
October:	$690,000
November:	$550,000
December:	$825,000
January 2021	$375,000
February 2021	$65,000
March 2021	$150,000
TOTAL	$3,837,832[2]

28. Over the past three years, Crotched Mountain has provided financial information to the Director of Charitable Trusts. Management and Board Members have also met with the Director frequently to discuss funding, the Endowment Fund status, and other financial issues. More recently, understanding its need for a significant draw from the Endowment Fund, Crotched Mountain initiated conversations with the Director. Through this correspondence, the Director of Charitable Trusts has suggested that it would not approve unilaterally the use of significant funds from the Endowment Fund, and that Crotched Mountain should seek court guidance and approval for this wind-down plan and for the use of the funds. Accordingly, Crotched Mountain now brings this Petition seeking this Court's approval.

29. Crotched Mountain submits that its six-month wind-down plan is reasonable, appropriate, and necessary to keep its clients and their families safe. Without the requested funding from the Endowment Fund, Crotched Mountain will have insufficient funds to pay staff and it will not be able to achieve a safe and effective transition for the individuals it serves. It is also important to understand that the timing of this transition is not fully under Crotched Mountain's control. Instead, the affected public schools will control the new placements. During

[2] This $3,837,832 shortfall will increase to the extent the DHHS grant is reduced from the anticipated $1.5 million award. Should Crotched Mountain not receive the full $1.5 million grant, it will seek an equivalent increase from the Endowment Fund to cover this shortfall. In other words, should GOFERR deny the grant altogether, Crotched Mountain will ask this Court to approve the use of $5,337,832 from the Endowment Fund.

this time, should Crotched Mountain fail to pay its 24-hour caregiving staff, these staff members will necessarily depart, and such departures likely will trigger the need for state intervention. An immediate shut-down likely will overburden Department of Health and Human Services staff and resources with a significant and difficult case load. Crotched Mountain holds a fiduciary and moral responsibility to keep its clients safe while the State identifies appropriate outplacements.

30. As client outplacements continue, Crotched Mountain's source of revenue for housing these clients will drop. As its income drops, Crotched Mountain will need to rely on the proposed Endowment Fund draw to protect its remaining clients. An inability to use the Endowment Fund as set forth in the wind-down plan will place Crotched Mountain's clients at great risk.

31. Presently, some residents in the residential facilities have been discharged. Crotched Mountain transferred some residents to the New Hampshire Department of Children, Youth, and Families. However, the majority of the residential population still resides in the Greenfield facility (and in the staffed residential settings outside of Greenfield). Crotched Mountain staff are working tirelessly with their clients, their families, and other providers in an effort to find new and appropriate homes and schooling. Because Crotched Mountain is dealing with individuals with such profound disabilities, the process is understandably slow.

32. Crotched Mountain will operate after the wind-down period. Although its school and its staffed residential programs will cease, it anticipates that the other Crotched Mountain programs will continue. The decision to close the Crotched Mountain School and the staffed residential programs should allow the other programs to carry out the mission of Crotched Mountain. Crotched Mountain Community Care, Ready Set Connect, Accessible Recreation and

Sports, the Refurbished Equipment Marketplace, and Adult Community-Based Services (absent the staffed residential program) will continue under this restructuring plan.

REQUESTED RELIEF

33. The funds at issue constitute an endowment fund as defined in NH RSA 292-B:2, in that the Endowment Fund consists of multiple funds, from multiple sources, all of which contain certain restrictive language, such that the monies are not wholly expendable on a current basis. Crotched Mountain Foundation must use these funds for its charitable services. The Endowment Fund is subject to the rules of expenditures as set forth in RSA 292-B:4 and is subject to deviation or modification pursuant to RSA 292-B:6.

COUNT I
(Determination Under RSA 292-B:4)

34. The Petitioner asserts by reference each of the preceding paragraphs as if fully set forth herein.

35. RSA 292-B:4 provides that a charitable institution may appropriate for expenditure so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinary prudent person in a like position would exercise under similar circumstances. See RSA 292-B:4.

36. In making the determination to appropriate endowment funds, the institution shall consider the following factors:

(a) The duration and preservation of the endowment fund;
(b) The purposes of the institution and the endowment fund;
(c) General economic conditions;
(d) The possible effect of inflation or deflation;
(e) The expected total return from income and the appreciation of investments;
(f) Other resources of the institution; and

(g) The investment policy of the institution.

RSA 292-B:4(I)

37. The senior management team at Crotched Mountain and its Board of Directors have considered these factors. The Board has considered numerous alternative approaches, including the possibility of collaborating with other organizations to maintain the Crotched Mountain School and its staffed residential programs. None of these partnerships came to fruition. It grappled with its obligation to preserve the Endowment Fund for future use, and strongly considered the purposes of the institution and the Endowment Fund, in light of Crotched Mountain's charitable and educational mission, to help children, adults and students with disabilities and to help clients achieve maximum independence. The purpose of the Endowment Fund is to advance the charitable purpose and the charitable mission of Crotched Mountain Foundation. The proposed use of these funds plainly complies with that general purpose. Absent the use of the Endowment Fund, Crotched Mountain realistically fears that its other remaining programs might also be at risk. The senior management and the Crotched Mountain Board have undergone a strenuous and thoughtful analysis and have determined that the only reasonable alternative to continue the mission of Crotched Mountain is to wind-down the school and the staffed residential programs. The Endowment Fund is needed to achieve this plan safely.

38. The global pandemic and the resulting general economic conditions, including the forced shutdown of the Crotched Mountain School and the other residential facilities because of COVID-19, has left the charity with significantly reduced income, placing it in an impossible position in these unprecedented times.

39. Appropriately, the Board's plan accesses Crotched Mountain's other sources of income and its other funding and unrestricted funds before tapping into its Endowment Fund. As

noted above, this includes a potential DHHS grant of $1.5 million as well as unrestricted funds of approximately $650,000. However, Crotched Mountain's current revenue stream (dwindling) and other unrestricted funding sources is not enough. An orderly wind-down of the Crotched Mountain School and staffed residential programs is necessary to protect the clients Crotched Mountain serves. Crotched Mountain needs to access the funds set forth in its developed budget to pay necessary staff for this six-month wind-down period, and through March 2021.

40. Crotched Mountain recognizes that RSA 292-B:4 provides an evidentiary presumption, that an expenditure in any year of any amount greater than 7% of the fair market value of an endowment fund[3] creates a rebuttal presumption of imprudence. RSA 292-B:4(VI). The proposed budget results in the appropriation of an amount in excess of this 7% threshold. However, under the circumstances and for the reasons set forth above, Crotched Mountain submits that this Court should determine that it has effectively rebutted this presumption of imprudence.

41. Crotched Mountain respectfully requests that this Court determine that Crotched Mountain made a good faith determination of the funds needed for a safe and appropriate wind-down of its school and staffed residential programming and that under the circumstances the use of the Endowment Fund as presented is prudent. Crotched Mountain asks the Court to allow such use.

COUNT II
(Modification of Endowment Restriction Under RSA 292-B:6)

42. The Petitioner reasserts by reference each of the preceding paragraphs as if fully set forth herein.

[3] The fair market value of a fund is calculated on the basis of fair market value determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made.

43. RSA 292-B:6 provides that a Court, upon application of an institution like Crotched Mountain, may modify a restriction contained in a gift instrument of an institutional fund if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. RSA 292-B:6(II). Under such circumstances, an institution must notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. Id. To the extent practicable, any modification must be made in accordance with the donor's probable intention. Id.

44. As an alternative request, Crotched Mountain asks this Court to modify the restrictions contained in its collection of monies that make up its Endowment Fund. Crotched Mountain established the Endowment Fund to further its charitable mission of serving individuals with disabilities and their families. For the reasons set forth above, this Court should modify any restrictions to the Endowment Fund that would otherwise prevent Crotched Mountain from accessing the funds needed to safely and prudently wind-down the Crotched Mountain School and staffed residential programs. This Court should allow Crotched Mountain to assist its clients to ensure they find homes and schools that will provide the best alternative to their Crotched Mountain experience.

45. Crotched Mountain has notified the Attorney General's Office, Director of Charitable Trusts Unit, of this requested application. Crotched Mountain submits that the probable intention of the various donors of funds in the Endowment Fund is to use the money in a manner as determined by Crotched Mountain's senior management and its Board of Directors, consistent with the mission of assisting individuals with disabilities and helping them live with dignity and as independently as possible.

46. For these reasons, Crotched Mountain requests that this Court modify the Endowment Fund restrictions to allow Crotched Mountain to draw from the Endowment Fund in an amount consistent with its wind-down budget.

COUNT III
(Declaratory Judgment (RSA 491:22))

47. The Petitioner reasserts by reference each of the preceding paragraphs as if fully set forth herein.

48. A controversy exists between Crotched Mountain and the Director of Charitable Trusts regarding the prudent and appropriate use of the Crotched Mountain Endowment Fund.

49. As set forth above, and based on additional evidence to be submitted to this Court as needed, Crotched Mountain respectfully requests that the Court determine and declare that its proposed wind-down budget and use of its Endowment Fund contained within is prudent and should be allowed under RSA 292-B:4, all in accordance with RSA 491:22.

COUNT IV
(Count in Equity)

50. The Petitioner reasserts by reference each of the preceding paragraphs as if fully set forth herein.

51. Crotched Mountain submits that this Court may, pursuant to its broad equitable powers set forth in RSA 547:3-b, issue an order that will allow Crotched Mountain to access its Endowment Fund in the manner set forth in its proposed wind-down budget. Crotched Mountain requests that this Court make such an order.

WHEREFORE, Crotched Mountain Foundation respectfully requests that this Court:

A. Issue Orders of Notice and schedule a hearing in this matter on an expedited basis to address the issues set forth above in a timely manner;

B. After a hearing, issue an order pursuant to RSA 292-B:4, which will allow Crotched Mountain to access its Endowment Fund for the purposes of winding down the Crotched Mountain School and staffed residential programs, consistent with its wind-down plan and budget, in the amount of at least $3,837,832;

C. After a hearing, issue an order, in the alternative, modifying the restrictions on the use of the Crotched Mountain Endowment Fund so that Crotched Mountain may access the Endowment Fund in an amount consistent with its wind-down plan and budget, in the amount of at least $3,837,832;

D. Issue a declaratory judgment order under RSA 491:22, declaring that Crotched Mountain's proposed wind-down budget and use of its Endowment Fund monies, in the amount of at least $3,837,832, is allowed under the circumstances; and

E. Grant such other and further relief as the Court shall deems appropriate.

Respectfully submitted,

CROTCHED MOUNTAIN FOUNDATION,
By its attorneys,

DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION

Dated: August 7, 2020

By: _____

David P. Eby, Esq. (NH Bar #12468)
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Manchester, NH 03101
603-669-1000
deby@devinemillimet.com

The State of New Hampshire

9th Circuit – Probate Division – Nashua

In Re: Crotched Mountain Foundation

Case No:_____

PETITION FOR DECLARATORY JUDGMENT AND OTHER RELIEF

NOW COMES the petitioner, Crotched Mountain Foundation ("Crotched Mountain"), by and through its attorneys, Devine, Millimet & Branch, P.A., and respectfully submits this Petition for Declaratory Judgment and Other Relief, stating in support as follows:

INTRODUCTION

1. Since 1953, Crotched Mountain Foundation has provided needed and first-rate expert programs for children and adults with disabilities in New Hampshire through its Greenfield, New Hampshire residential and day school (the "Crotched Mountain School") and through other community-based programs throughout the State. Because of recent unforeseeable events, including the current COVID-19 pandemic, Crotched Mountain has made the difficult decision to close its school and staffed residential settings by December 31, 2020. With this Petition, and consistent with RSA 292-B, Crotched Mountain seeks assistance from this Court to access monies held in its restricted institutional fund so that it may effectuate a prudent wind-down of these operations and, more importantly, so that it may transition its clients in a safe, professional, and respectful manner.

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2. The petitioner Crotched Mountain Foundation is a non-profit charitable and educational organization with its principal place of business at 1 Verney Drive, Greenfield, New Hampshire, 03047. Crotched Mountain serves over a thousand children and adults, and their families, annually through a variety of community-based programs in New Hampshire and through its flagship day and residential school located in Greenfield, New Hampshire.

3. The New Hampshire Department of State, Office of the Attorney General, Charitable Trust Unit, 33 Capitol Street, Concord, New Hampshire, 03301, is a necessary party to this proceeding, consistent with RSA 292-B.

4. Crotched Mountain submits that the New Hampshire Department of Health and Human Services, 129 Pleasant Street, Concord, New Hampshire, 03301, is an interested party to this action in that the wind-down of the Crotched Mountain School and staffed residential programs may have a direct effect on the Department. The relocation of Crotched Mountain residents and students may affect the services provided by the Department of Children, Youth and Families (DCYF), the Bureau of Elderly and Adult Services (BEAS), and the Bureau of Developmental Services (BDS), all of whom serve to address the needs of the disabled, youth, and elderly of New Hampshire.

5. This Probate Division has jurisdiction over the issues in this matter pursuant to RSA 547:3(II)(a) and RSA 292-B, as this case involves the requested charitable use of an endowment fund.

6. Venue is appropriate in this Circuit because the petitioner's place of business is located in Greenfield, New Hampshire.

RELEVANT BACKGROUND

A. Overview of Crotched Mountain Foundation

7. Crotched Mountain opened as a non-profit charitable and educational organization in 1953. Since that time, Crotched Mountain has served thousands of children and adults through a variety of community-based programs, including its flagship Crotched Mountain School located in Greenfield, New Hampshire. Crotched Mountain's mission is to serve individuals with disabilities and their families, embracing personal choice and development, and building communities of mutual support. It has had a singular goal from the outset to help children, students, and adults with disabilities to achieve maximum independence and to live a great life in the community in which they live. Crotched Mountain's clients have profound disabilities and face numerous challenges. In many cases, they are the most vulnerable of our population. Crotched Mountain's clients have challenging behaviors, including communication needs, emotional problems, medical complexities and often aggressive and violent behaviors. These children and adults come to Crotched Mountain for the exceptional services this non-profit provides. Although perhaps best known for its facility located on Crotched Mountain in Greenfield, New Hampshire - - a sprawling campus located on over 1,200 acres - - Crotched Mountain also provides community-based programs that go far beyond the Greenfield location.

8. Over its long history, Crotched Mountain has successfully adapted to the changing needs in the community. In the past, Crotched Mountain served individuals with polio. It provided a school for the deaf and ran a hospital to care for individuals with special health-related concerns, such as children on ventilators. Its ability to adapt to the changing landscape has allowed it to continue to provide services.

I. The Crotched Mountain School

9. For over 50 years, Crotched Mountain has run its school in its Greenfield, New Hampshire location, serving people with disabilities. It serves individuals from New Hampshire and from other states all over the United States. Located in a beautiful setting, it provides its special education for both day and residential students. It is a fully accredited K-12 + residential and day school, providing award-winning programming, community and campus-based vocational experiences, with a comprehensive suite of therapeutic support. The Crotched Mountain School helps students by giving them the skills needed to succeed in their community and to live a life of maximum independence. It provides 24-hour nursing support for its clients and a full complement of services including occupational therapy, physical therapy, therapeutic recreation, speech therapy, psychology services, and structured vocational experiences, among others. Until recently, the Crotched Mountain School hosted approximately 23 day students and 65 residential students.

10. Crotched Mountain also serves its clients with disabilities through other programs outside of the main campus facility, as follows:

II. Crotched Mountain Community Care

11. One of Crotched Mountain's largest community-based programs, Crotched Mountain Community Care (CMCC) provides high-quality independent case management services to its New Hampshire clients—individuals on the New Hampshire Choices for Independence Medicaid Waiver Program. This programming helps New Hampshire's low to moderate-income individuals, many with disabilities (most of whom are elderly), remain in their own homes. Crotched Mountain coordinates in-home services like personal care and nursing, provides access for medical equipment and home modifications, and maintains ongoing relationships through regular home visits and phone calls. Without such services, these clients likely would be forced

into alternative living arrangements. The program provides a positive impact to approximately 900 individuals per year, along with their families. The program is an award-winning and nationally recognized provider of case management services with its administrative office located in Manchester, New Hampshire. CMCC is an affiliated nonprofit organization, controlled by Crotched Mountain.

III. Ready Set Connect Autism Centers

12. Ready Set Connect Autism Centers is another affiliated nonprofit controlled by Crotched Mountain. These centers, located in Manchester, Concord, and Tilton, New Hampshire, provide Applied Behavioral Analysis (ABA) therapy to its autistic clients with a caring, supportive, and engaging environment, and constitute a resource for information, education, and advice beyond treatment.

13. Ready Set Connect provides three distinct programs: (a) the Early Intervention Program provides applied behavioral analysis therapy to young, Pre-K children. The staff works on skillsets that will translate into success in school, at home, and in the community for these young individuals; (b) the Life Skills Program is designed to meet the needs of older children with Autism, teaching valuable age-appropriate home, leisure, community, and social skills; and (c) the Social Skills Program provides help for children to navigate social situations, giving them tools to interact with their peers.

IV. Accessible Recreation and Sports

14. Crotched Mountain's Accessible Recreation and Sports program provides outdoor experiences for people of all abilities. Experiences include skiing, kayaking, snowshoeing, snowboarding, and more. Certified recreational therapists along with other staff and volunteers work with individuals who have different physical, developmental, or emotional disabilities,

including Autism spectrum disorders, brain injuries, Cerebral Palsy, emotional disorders, spinal cord injuries and others. It is an extremely popular program with clients and their families alike.

V. The Refurbished Equipment Marketplace

15. This Marketplace provides pre-owned assistive technology to clients at a significant discount. It is the largest seller of pre-owned assistive technology in the region, helping over 650 individuals in 2019 alone. This program is part of the Crotched Mountain family of services.

16. Located in Concord, New Hampshire, the Marketplace provides wheelchairs and accessories, bath equipment, scooters, walking aides, patient lifts, and more.

VI. Adult Community-Based Services

17. The Crotched Mountain, Adult Community-Based programs serve individuals through the Developmentally Disabled (DD) waiver through Medicaid. These programs consist of three separate and distinct services. Community Living is a shared living program that places a home provider with a client (or vice-versa) to allow the client to live more independently. Community Residences allow community living for participants that might otherwise be in a more restrictive setting. In these community residences, Crotched Mountain provides around the clock staffing. Typically, the residences are set up as group homes where more than one client will share a common area in the residence. These community residences allow clients to socialize and live more independently. Finally, Apartments for Adults allow Crotched Mountain to manage several accessibly designed apartment complexes for adults with disabilities. Crotched Mountain serves as the property owner for these apartments, which are located in Manchester, New Hampshire, Whitefield, New Hampshire, Portland, Maine, and East Greenbush, New York. This collection of programs is an affiliated nonprofit, controlled by Crotched Mountain.

VII. Accessible Trails

18. In addition to the day and residential school programming, and the other community-based programs referenced above, Crotched Mountain also maintains on its Greenfield, New Hampshire property the largest accessible trail system in a mountain environment in the United States. These trails are available to people with all abilities.

B. Crotched Mountain Funding and Expenses

19. Crotched Mountain has several sources of income to maintain its high level of services and programing. It receives tuition and room and board for its day and residential school programs, and fees for its other community-based programs like Reay Set Connect. It also receives rent for its residential apartments for adults. In addition, Crotched Mountain receives State and Federal grant monies and donations from supporters throughout New Hampshire and the Country. The majority of these funds may be used at the discretion of the Board and management.

20. In addition to these unrestricted funds, Crotched Mountain also maintains a restricted institutional fund that is not wholly expendable on a current basis (the "Endowment Fund") (see RSA 292-B:2). This Endowment Fund consists of donations from hundreds of individuals and/or institutions. Crotched Mountain is limited in its ability to use these funds on an annual basis. As of May 31, 2020, the collection of funds that make up the Endowment Fund held approximately $14,590,000.

21. Although Crotched Mountain receives income and funding from these various referenced sources, its expenses are significant. Extraordinary funding is needed to maintain payroll for the men and women who provide expert services at the Crotched Mountain School and at Crotched Mountain's staffed residential programs. These programs are labor intensive, with approximately 70% of the programming costs attributed to staff salary and benefits. The

significant challenges of the student and client populations require a one-to-one staff-to-client ratio in most cases. Additional staffing make up the clinical, therapeutic and other support services. Crotched Mountain also faces the challenge of a dwindling workforce of direct support professionals. Staffing shortfalls require that Crotched Mountain pay significant overtime pay to its staff.

22. Crotched Mountain's 70 year-old campus, with its dozens of aging buildings that house the therapeutic programs, requires significant operating and maintenance costs. Its physical location is expensive to run and maintain.

C. Crotched Mountain's Decision to Terminate the Crotched Mountain School and Staffed Residential Settings

23. In March of 2020, the COVID-19 pandemic forced Crotched Mountain to suspend day and residential school programs, and it caused other interruptions in community-based programs (for example, the Ready Set Connect program was off-line from late March to mid-May 2020). As a result, Crotched Mountain lost significant income sources. Its expenses, however, only increased over the next few months. An early outbreak of COVID-19 affected residents and staff at the Greenfield campus (resulting in the death of one resident), and provided significant staffing challenges and caused numerous staff resignations. Crotched Mountain was forced to hire new staff and pay significant overtime to manage the crisis. Although revenue dropped by hundreds of thousands of dollars per month, expenses increased by at least that amount each month. In order to maintain sufficient staffing to serve its clients, Crotched Mountain needed to pay large incentive bonuses and hazard pay. It vastly increased overtime pay as staff numbers decreased, and it incurred new expenses for medical and sanitization purposes. It became readily apparent that Crotched Mountain could not sustain the Crotched Mountain School nor its staffed residential settings for much longer. Crotched Mountain simply did not have the funding needed

to provide its high-quality services, especially with the continuing uncertainty of the COVID-19 pandemic. The risk to the safety of the students and staff was increasing.

24. In June of 2020, after much deliberation, and after consultation with the senior management team at Crotched Mountain, the Crotched Mountain Board of Directors made the painful but necessary decision to shut down the Crotched Mountain School and all staffed residential settings on the main campus as well as all staffed residential settings elsewhere in New Hampshire. The Board and management did not come to this decision lightly. The Board looked to the possibility of collaborating with others and it looked at other reasonable alternatives. However, in order to protect its clients and to save the mission of the charity, the Board saw no other reasonable option.

D. <u>Crotched Mountain's Wind-Down Plan and Budget</u>

25. Crotched Mountain also determined that as part of the shutdown, a six-month wind-down period was necessary for the safety of Crotched Mountain's clients. As noted above, Crotched Mountain serves clients that include children and adults with profound disabilities. Crotched Mountain's clients include children with significant emotional and behavioral disorders, some of whom are aggressive or violent. Few entities provide Crotched Mountain's high level of care and services, in a similar setting. With this profoundly vulnerable population, an immediate wind-down of the school and staffed residences would be disastrous for the clients and for their families, especially during the COVID-19 pandemic. Crotched Mountain and the families it serves need time to find new homes, new schools, and a new support network for these clients. Finding the next best option for each individual is a monumental task, especially since many other schools have presently halted special education admissions.

26. Based on these concerns, Crotched Mountain determined that a six-month wind-down period was needed. Senior management prepared an extensive and detailed budget to allow Crotched Mountain to manage this wind-down period prudently and effectively. After calculating its anticipated reduced revenue, it determined that after using anticipated remaining revenue sources, Crotched Mountain would need an additional $5,987,000 to cover expenses during the wind-down period (to December 31, 2020) and to cover additional expenses after the proposed December 31, 2020 school closure date (through March, 2021). The funds are needed to pay staff and to maintain safety through this transition period. In order to meet this budgeted amount, Crotched Mountain will need to draw significant monies from its Endowment Fund.

27. In order to meet the budgeted expenses, Crotched Mountain will access state funds and other non-restricted funds before accessing the Endowment Fund. In early July 2020, Crotched Mountain learned that New Hampshire Department of Health and Human Services had granted the organization an award of $1.5 million through the Healthcare System Relief Fund. This funding, should it arrive, will cover the needed Crotched Mountain expenses for July and August 2020.[1] In addition, the wind-down budget requires that Crotched Mountain use certain non-restricted funds totaling approximately $650,000. After the application of the DHHS grant and the other non-restricted funds, Crotched Mountain still will need to access approximately $3.8 million from its Endowment Fund to maintain payroll and to meet all other expenses through March 2021. The approximate Endowment Fund monies needed to meet the monthly shortfall in revenue are as follows:

[1] Although the DHHS indicated in early July 2020 that it had awarded this funding, by e-mail dated August 5, 2020 from Nancy Smith, General Counsel of the Governor's Office of Emergency Relief & Recovery (GOFERR), Crotched Mountain learned that GOFERR has placed a temporary hold on the award because it was issued prematurely. Attorney Smith indicates that a new notification of award, if issued at all, should be completed by August 14, 2020. Accordingly, as of the filing of this Petition, Crotched Mountain does not know if it will receive the full $1.5 million grant, a lesser amount, or any amount at all.

July:	$1,100,000
August:	$400,000
September:	$842,832
October:	$690,000
November:	$550,000
December:	$825,000
January 2021	$375,000
February 2021	$65,000
March 2021	$150,000
TOTAL	$3,837,832[2]

28. Over the past three years, Crotched Mountain has provided financial information to the Director of Charitable Trusts within the Department of Justice, Office of the Attorney General, on a quarterly basis. Management and Board Members have also met with the Director frequently to discuss funding, the Endowment Fund status, and other financial issues. More recently, understanding its need for a significant draw from the Endowment Fund, Crotched Mountain initiated conversations with the Director. Through this correspondence, the Director of Charitable Trusts has suggested that it would not approve unilaterally the use of significant funds from the Endowment Fund, and that Crotched Mountain should seek court guidance and approval for this wind-down plan and for the use of the funds. Accordingly, Crotched Mountain now brings this Petition seeking this Court's approval.

29. Crotched Mountain submits that its six-month wind-down plan is reasonable, appropriate, and necessary to keep its clients and their families safe. Without the requested funding from the Endowment Fund, Crotched Mountain will have insufficient funds to pay staff and it will not be able to achieve a safe and effective transition for the individuals it serves. It is also important to understand that the timing of this transition is not fully under Crotched

[2] This $3,837,832 shortfall will increase to the extent the DHHS grant is reduced from the anticipated $1.5 million award. Should Crotched Mountain not receive the full $1.5 million grant, it will seek an equivalent increase from the Endowment Fund to cover this shortfall. In other words, should GOFERR deny the grant altogether, Crotched Mountain will ask this Court to approve the use of $5,337,832 from the Endowment Fund.

Mountain's control. Instead, the affected public schools will control the new placements. During this time, should Crotched Mountain fail to pay its 24-hour caregiving staff, these staff members will necessarily depart, and such departures likely will trigger the need for state intervention. An immediate shut-down likely will overburden Department of Health and Human Services staff and resources with a significant and difficult case load. Crotched Mountain holds a fiduciary and moral responsibility to keep its clients safe while the State identifies appropriate outplacements.

30. As client outplacements continue, Crotched Mountain's source of revenue for housing these clients will drop. As its income drops, Crotched Mountain will need to rely on the proposed Endowment Fund draw to protect its remaining clients. An inability to use the Endowment Fund as set forth in the wind-down plan will place Crotched Mountain's clients at great risk.

31. Presently, some residents in the residential facilities have been discharged. Crotched Mountain transferred some residents to the New Hampshire Department of Children, Youth, and Families. However, the majority of the residential population still resides in the Greenfield facility (and in the staffed residential settings outside of Greenfield). Crotched Mountain staff are working tirelessly with their clients, their families, and other providers in an effort to find new and appropriate homes and schooling. Because Crotched Mountain is dealing with individuals with such profound disabilities, the process is understandably slow.

32. Crotched Mountain will operate after the wind-down period. Although its school and its staffed residential programs will cease, it anticipates that the other Crotched Mountain programs will continue. The decision to close the Crotched Mountain School and the staffed residential programs should allow the other programs to carry out the mission of Crotched Mountain. Crotched Mountain Community Care, Ready Set Connect, Accessible Recreation and

Sports, the Refurbished Equipment Marketplace, and Adult Community-Based Services (absent the staffed residential program) will continue under this restructuring plan.

REQUESTED RELIEF

33. The funds at issue constitute an endowment fund as defined in NH RSA 292-B:2, in that the Endowment Fund consists of multiple funds, from multiple sources, all of which contain certain restrictive language, such that the monies are not wholly expendable on a current basis. Crotched Mountain Foundation must use these funds for its charitable services. The Endowment Fund is subject to the rules of expenditures as set forth in RSA 292-B:4 and is subject to deviation or modification pursuant to RSA 292-B:6.

COUNT I
(Determination Under RSA 292-B:4)

34. The Petitioner asserts by reference each of the preceding paragraphs as if fully set forth herein.

35. RSA 292-B:4 provides that a charitable institution may appropriate for expenditure so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinary prudent person in a like position would exercise under similar circumstances. See RSA 292-B:4.

36. In making the determination to appropriate endowment funds, the institution shall consider the following factors:

(a) The duration and preservation of the endowment fund;
(b) The purposes of the institution and the endowment fund;
(c) General economic conditions;
(d) The possible effect of inflation or deflation;
(e) The expected total return from income and the appreciation of investments;
(f) Other resources of the institution; and

(g) The investment policy of the institution.

RSA 292-B:4(I)

37. The senior management team at Crotched Mountain and its Board of Directors have considered these factors. The Board has considered numerous alternative approaches, including the possibility of collaborating with other organizations to maintain the Crotched Mountain School and its staffed residential programs. None of these partnerships came to fruition. It grappled with its obligation to preserve the Endowment Fund for future use, and strongly considered the purposes of the institution and the Endowment Fund, in light of Crotched Mountain's charitable and educational mission, to help children, adults and students with disabilities and to help clients achieve maximum independence. The purpose of the Endowment Fund is to advance the charitable purpose and the charitable mission of Crotched Mountain Foundation. The proposed use of these funds plainly complies with that general purpose. Absent the use of the Endowment Fund, Crotched Mountain realistically fears that its other remaining programs might also be at risk. The senior management and the Crotched Mountain Board have undergone a strenuous and thoughtful analysis and have determined that the only reasonable alternative to continue the mission of Crotched Mountain is to wind-down the school and the staffed residential programs. The Endowment Fund is needed to achieve this plan safely.

38. The global pandemic and the resulting general economic conditions, including the forced shutdown of the Crotched Mountain School and the other residential facilities because of COVID-19, has left the charity with significantly reduced income, placing it in an impossible position in these unprecedented times.

39. Appropriately, the Board's plan accesses Crotched Mountain's other sources of income and its other funding and unrestricted funds before tapping into its Endowment Fund. As

noted above, this includes a potential DHHS grant of $1.5 million as well as unrestricted funds of approximately $650,000. However, Crotched Mountain's current revenue stream (dwindling) and other unrestricted funding sources is not enough. An orderly wind-down of the Crotched Mountain School and staffed residential programs is necessary to protect the clients Crotched Mountain serves. Crotched Mountain needs to access the funds set forth in its developed budget to pay necessary staff for this six-month wind-down period, and through March 2021.

40. Crotched Mountain recognizes that RSA 292-B:4 provides an evidentiary presumption, that an expenditure in any year of any amount greater than 7% of the fair market value of an endowment fund[3] creates a rebuttal presumption of imprudence. RSA 292-B:4(VI). The proposed budget results in the appropriation of an amount in excess of this 7% threshold. However, under the circumstances and for the reasons set forth above, Crotched Mountain submits that this Court should determine that it has effectively rebutted this presumption of imprudence.

41. Crotched Mountain respectfully requests that this Court determine that Crotched Mountain made a good faith determination of the funds needed for a safe and appropriate wind-down of its school and staffed residential programming and that under the circumstances the use of the Endowment Fund as presented is prudent. Crotched Mountain asks the Court to allow such use.

COUNT II
(Modification of Endowment Restriction Under RSA 292-B:6)

42. The Petitioner reasserts by reference each of the preceding paragraphs as if fully set forth herein.

[3] The fair market value of a fund is calculated on the basis of fair market value determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made.

43. RSA 292-B:6 provides that a Court, upon application of an institution like Crotched Mountain, may modify a restriction contained in a gift instrument of an institutional fund if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. RSA 292-B:6(II). Under such circumstances, an institution must notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. Id. To the extent practicable, any modification must be made in accordance with the donor's probable intention. Id.

44. As an alternative request, Crotched Mountain asks this Court to modify the restrictions contained in its collection of monies that make up its Endowment Fund. Crotched Mountain established the Endowment Fund to further its charitable mission of serving individuals with disabilities and their families. For the reasons set forth above, this Court should modify any restrictions to the Endowment Fund that would otherwise prevent Crotched Mountain from accessing the funds needed to safely and prudently wind-down the Crotched Mountain School and staffed residential programs. This Court should allow Crotched Mountain to assist its clients to ensure they find homes and schools that will provide the best alternative to their Crotched Mountain experience.

45. Crotched Mountain has notified the Attorney General's Office, Director of Charitable Trusts Unit, of this requested application. Crotched Mountain submits that the probable intention of the various donors of funds in the Endowment Fund is to use the money in a manner as determined by Crotched Mountain's senior management and its Board of Directors, consistent with the mission of assisting individuals with disabilities and helping them live with dignity and as independently as possible.

46. For these reasons, Crotched Mountain requests that this Court modify the Endowment Fund restrictions to allow Crotched Mountain to draw from the Endowment Fund in an amount consistent with its wind-down budget.

COUNT III
(Declaratory Judgment (RSA 491:22))

47. The Petitioner reasserts by reference each of the preceding paragraphs as if fully set forth herein.

48. A controversy exists between Crotched Mountain and the Director of Charitable Trusts Unit regarding the prudent and appropriate use of the Crotched Mountain Endowment Fund.

49. As set forth above, and based on additional evidence to be submitted to this Court as needed, Crotched Mountain respectfully requests that the Court determine and declare that its proposed wind-down budget and use of its Endowment Fund contained within is prudent and should be allowed under RSA 292-B:4, all in accordance with RSA 491:22.

COUNT IV
(Count in Equity)

50. The Petitioner reasserts by reference each of the preceding paragraphs as if fully set forth herein.

51. Crotched Mountain submits that this Court may, pursuant to its broad equitable powers set forth in RSA 547:3-b, issue an order that will allow Crotched Mountain to access its Endowment Fund in the manner set forth in its proposed wind-down budget. Crotched Mountain requests that this Court make such an order.

WHEREFORE, Crotched Mountain Foundation respectfully requests that this Court:

A. Issue Orders of Notice and schedule a hearing in this matter on an expedited basis to address the issues set forth above in a timely manner;

B. After a hearing, issue an order pursuant to RSA 292-B:4, which will allow Crotched Mountain to access its Endowment Fund for the purposes of winding down the Crotched Mountain School and staffed residential programs, consistent with its wind-down plan and budget;

C. After a hearing, issue an order, in the alternative, modifying the restrictions on the use of the Crotched Mountain Endowment Fund so that Crotched Mountain may access the Endowment Fund in an amount consistent with its wind-down plan and budget;

D. Issue a declaratory judgment order under RSA 491:22, declaring that Crotched Mountain's proposed wind-down budget and use of its Endowment Fund monies is allowed under the circumstances; and

E. Grant such other and further relief as the Court shall deems appropriate.

Respectfully submitted,

CROTCHED MOUNTAIN FOUNDATION,
By its attorneys,
DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION

Dated: August 6, 2020

By: _____

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