EXECUTIVE ORDER NO. 192

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, and 191 (2020), issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, August 27, 2020, September 25, 2020, and October 24, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act ("EHPA"), to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187 and Nos. 189-191 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, during that time, essential retail businesses and many other types of businesses continued to operate, and it was necessary to impose strict COVID-19 mitigation protocols on those businesses to protect the health of workers and of the community; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan (the "Plan") for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, part of the Plan required imposing health and safety protocols on businesses that were permitted to resume partial or total operations in order to protect visitors, customers, and the workforce; and

WHEREAS, now that a more significant portion of the State's workforce has returned to in-person work, and as the State's economy continues to gradually reopen, it is necessary to ensure broad application of relevant health and safety standards to protect workers across all industries; and

WHEREAS, given the recent upticks in the rate of reported new cases across all counties in the State, the use of mandatory health and safety protocols for all industries can help guard against continuing spread and ensure that New Jersey's workers feel safe and supported at their places of work; and

WHEREAS, the federal Occupational Safety and Health Administration ("OSHA") has not issued occupational safety or health standards specific to COVID-19; and

WHEREAS, expanding application of critical COVID-19 protocols to workplaces that have resumed physical operations will require increased investigative and enforcement capacity to efficiently address worker complaints of insufficient compliance with such protocols; and

WHEREAS, Public Employees Occupational Safety and Health ("PEOSH") has already established a process for considering health and safety complaints raised by public sector employees in New Jersey; and

WHEREAS, imposing new safety protocols will require training of both employers and employees to encourage full compliance, so as to ensure public health and safety; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Effective at 6:00 a.m. on Thursday, November 5, 2020, every business, non-profit, and governmental or educational entity (hereinafter collectively referred to as "employers" or "employer"), that requires or permits its workforce, whether in part or as a whole, to be physically present at a worksite to perform work is required to abide by the following requirements, at minimum, to protect employees, customers, and all others who come into physical contact with its operations:

a. Require that individuals at the worksite maintain at least six feet of distance from one another to the maximum extent possible, including but not limited to during worksite meetings, orientations and similar activities that would traditionally require individuals to be present in a single room or space and in close proximity, in common areas such as restrooms and breakrooms, and when individuals are entering and exiting the workplace. Where the nature of an employee's work or the work area does not allow for six feet of distance to be maintained at all times, employers shall ensure that each such employee wears a mask as provided in subsection b. and shall install physical barriers between workstations wherever possible.

b. Require employees, customers, visitors, and other individuals entering the worksite to wear cloth or disposable face masks while on the premises, in accordance with Centers for Disease Control and Prevention ("CDC") recommendations, except where the individual is under two years of age or where it is impracticable for an individual to wear a face mask, such as when the individual is eating or drinking or where a service being provided by the employer cannot be performed on an individual who is wearing a mask;

i. *Masking requirements specific to employees:*

1. Employers may permit employees to remove face masks when the employees are situated at their workstations and are

more than six feet from other individuals at the workplace, or when an individual is alone in a walled office;

2. Employers must make available, at their expense, such face masks to their employees;

3. Nothing in this subsection shall prevent employees from wearing a surgical-grade mask or other more protective face mask, or interfere with the employer's obligation to provide employees with more protective equipment if it is otherwise required because of the nature of the work involved; and

4. Employers may deny entry to the worksite to any employee who declines to wear a face mask, except when doing so would violate State or federal law. Where an employee cannot wear a mask because of a disability, an employer may, consistent with the Americans with Disabilities Act ("ADA") and/or New Jersey Law Against Discrimination ("NJLAD"), be required to provide the employee with a reasonable accommodation unless doing so would be an undue hardship on the employer's operations. An employer may require employees to produce medical documentation supporting claims that

they are unable to wear a face mask because of a disability.

ii. *Masking requirements specific to customers and visitors:*

1. Employers may deny entry to the worksite to any customer or visitor who declines to wear a face mask, except when doing so would violate State or federal law. The employer may be required to provide a customer or visitor who declines to wear a mask due to a disability services or goods via a reasonable accommodation, pursuant to ADA and NJLAD, unless such accommodation would pose an undue hardship on the employer's operations; and

2. Where a customer or other visitor declines to wear a face mask on the premises due to a disability that inhibits such usage, neither the employer nor its employees shall require the individual to produce medical documentation verifying the stated condition, unless production is otherwise required by State or federal law.

iii. Any prior requirements imposed by an Executive Order restricting the ability of an employer to require the production of medical documentation, or to deny entry to a customer,

employee, or other visitor to the worksite that refuses to wear a face mask, that are inconsistent with the terms of this Paragraph are hereby superseded.

iv. Subsection b. shall not apply to employers subject to Executive Order No. 175 (2020).

c. Provide sanitization materials, such as hand sanitizer that contains at least 60% alcohol and sanitizing wipes that are approved by the United States Environmental Protection Agency for SARS-CoV-2 virus to employees, customers, and visitors at no cost to those individuals;

d. Ensure that employees practice regular hand hygiene, particularly when such employees are interacting with the public, and provide employees break time for repeated handwashing throughout the workday and access to adequate hand washing facilities. Employers may adopt policies that require employees to wear gloves in addition to regular hand hygiene. Where an employer requires its employees to wear gloves while at the worksite, the employer must provide such gloves to employees;

e. Routinely clean and disinfect all high-touch areas in accordance with DOH and CDC guidelines, particularly in spaces that are accessible to employees, customers, or other individuals, including, but not limited to, restrooms, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure

cleaning procedures following a known or potential exposure are in compliance with CDC recommendations;

f. Prior to each shift, conduct daily health checks of employees, such as temperature screenings, visual symptom checking, self-assessment checklists, and/or health questionnaires, consistent with CDC guidance, including latest CDC guidance regarding COVID-19 symptoms, consistent with the confidentiality requirements of the ADA, NJLAD and any other applicable laws, and consistent with any guidance from the Equal Employment Opportunity Commission ("EEOC") and the New Jersey Division on Civil Rights;

g. Immediately separate and send home employees who appear to have symptoms, as defined by the CDC, consistent with COVID-19 illness upon arrival at work or who become sick during the day. Employers subject to the New Jersey Earned Sick Leave Law, New Jersey Family Leave Act, N.J.S.A. 34:11D-12 and/or federal leave laws must continue to follow the requirements of the law, including by allowing individuals to use accrued leave in the manner permitted by law and employer policy, when requiring employees to leave the workplace in accordance with the provisions of this subparagraph;

h. Promptly notify all employees of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the ADA and any

other applicable laws, and consistent with guidance from the EEOC;

i. Clean and disinfect the worksite in accordance with CDC guidelines when an employee at the site has been diagnosed with COVID-19 illness; and

j. Continue to follow guidelines and directives issued by the New Jersey DOH, the CDC and the Occupational Safety and Health Administration, as applicable, for maintaining a clean, safe and healthy work environment.

2. The provisions included in Paragraph 1 do not apply when they interfere with the discharge of the operational duties of first responders, emergency management personnel, emergency dispatchers, health care personnel, public health personnel, court personnel, law enforcement and corrections personnel, hazardous materials responders, transit workers, child protection and child welfare personnel, housing and shelter personnel, military employees, and governmental employees engaged in emergency response activities.

3. Paragraph 1 does not apply to the United States government, or to religious institutions to the extent that application of the health and safety protocols would prohibit the free exercise of religion.

4. The Commissioner of the DOH, pursuant to her authority under the EHPA, N.J.S.A. 26:13-1 et seq., and in consultation with any applicable State agencies, is authorized to impose additional health and safety standards relevant to COVID-19 on employers. Nothing in this Order shall be construed to impair any other state agency's authority to impose additional health and safety standards pursuant to other laws or Executive Orders.

5. The Commissioner of the Department of Labor and Workforce Development ("DOLWD"), in consultation with the Commissioner of the DOH, is hereby authorized to provide support for efforts to enforce the requirements outlined in Paragraph 1 of this Order through the following means:

a. Establishing an intake mechanism to receive complaints from individuals working in the State that are subject to the COVID-19 specific health and safety protocols outlined in this Order. The Commissioner of the DOLWD shall, where applicable, coordinate with relevant licensing and/or regulating agencies or refer complaints to such agencies. Nothing in this Order shall require the intake mechanism to serve as the sole means for receiving or processing such complaints;

b. Creating a process for consideration of such complaints, including, but not limited to, through the use of employee and employer interviews; and

c. Coordinating with the Commissioner of the DOH and any other applicable State entity to establish a process to address such complaints and to raise potential deficiencies in compliance with the requirements outlined in Paragraph 1 with the employer. Such process shall, at minimum, provide employers with an opportunity to correct the alleged or confirmed deficiency.

Complaints received by employees working for employers subject to oversight by PEOSH shall be directed to PEOSH for consideration.

6. The Commissioner of the DOH, pursuant to her authority under the EHPA, N.J.S.A. 26:13-1 et seq., in consultation with the Commissioner of the DOLWD, shall establish a process for investigation of complaints received pursuant to the intake mechanism outlined above, where necessary, including, for example, by performing workplace inspections and issuing subpoenas for information. The DOH shall enter into a memorandum of understanding with the DOLWD to provide assistance in the exercise of those powers and support for investigative efforts. The Commissioners of DOH and DOLWD shall, where necessary, coordinate with relevant federal and State agencies, including OSHA, during this process.

7. Where consistent, the requirements of this Order shall supplement the requirements outlined in any Executive Order, Administrative Order, or similar directive that apply to employers that have resumed operations prior to the effective date of this Order, including via Executive Orders Nos. 122, 125, 142, 145, 147, 149, 155, 157, 165, 175, 181 and 183 (2020). Where an already existing requirement is inconsistent with a requirement outlined in Paragraph 1 of this Order, the previously issued requirement shall continue to apply unless otherwise specified.

8. Paragraph 2, subsection (c) of Executive Order No. 142 (2020) is hereby rescinded.

9. The Commissioner of the DOLWD is hereby further directed to provide compliance and safety training for employers and employees, focused at least in part on the health and safety protocols listed in Paragraph 1, through the following means:

a. Establish a program to fund workforce training partners to develop and deliver, including virtually, training to workers and employers

throughout the State, subject to the availability of funding; and

b. Develop notices and informational materials to inform workers of their rights and employers of their obligations under this Order.

10. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

11. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

12. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

13. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50. Any employer that fails to adhere to the protocols outlined in this Order or to any subsequent requirements issued by the Commissioner of the DOH is subject to, among other actions, closure by the Commissioner of the DOH pursuant to N.J.S.A. 26:13-8.

14. Nothing in this Order shall be considered to create a private right of action to enforce the requirements outlined herein.

15. This Order shall take effect immediately, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of the DOH as appropriate.

GIVEN, under my hand and seal this 28th day of October, Two Thousand and Twenty, and of the Independence of the United States, the Two Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor