STATE OF VERMONT

EXECUTIVE DEPARTMENT

ADDENDUM 9 TO EXECUTIVE ORDER 01-20

[Extension of State of Emergency Declared March 13, 2020; Other COVID-19 Related Directives and Clarifications]

WHEREAS, since December 2019, Vermont has been working in close collaboration with the national Centers for Disease Control and Prevention ("CDC") and with the United States Health and Human Services Agency to monitor and plan for the potential for an outbreak of respiratory illness due to a novel coronavirus ("COVID-19"), in the United States; and

WHEREAS, the Governor directed the Vermont Department of Health ("VDH") to activate the Health Operations Center in February 2020 when VDH began to monitor and later, test Vermonters who may have been exposed to COVID-19; and

WHEREAS, in March 2020, the Governor directed the Department of Public Safety, Division of Vermont Emergency Management ("DPS/VEM") to assemble an interagency taskforce, and later to activate the Vermont State Emergency Operations Center ("SEOC"), in accordance with the State Emergency Management Plan, to organize prevention, response, and mitigation efforts and share information with local and state officials; and

WHEREAS, on March 7, 2020 and March 11, 2020, VDH detected the first two cases of COVID-19 in Vermont; and

WHEREAS, on March 11, 2020 the World Health Organization made the assessment that COVID-19 can be characterized as a pandemic; and

WHEREAS, on Friday, March 13, 2020, the Governor issued Executive Order 01-20, Declaration of State of Emergency in Response to COVID-19 and National Guard Call-Out ("Executive Order"), declaring a state of emergency for the State of Vermont in response to COVID-19; and

WHEREAS, on Friday, March 13, 2020, President Trump issued a national emergency declaration for the COVID-19 pandemic; and

WHEREAS, the Governor, in consultation with VDH and the Vermont Agency of Human Services, has initiated aggressive and sustained efforts to protect property and public health, and to ensure public safety in this public health emergency including:

- Directive 1 issued March 15, 2020, to all School Boards and Superintendents for Continuity of Education Planning which closed all schools to in-person education and required planning for education continuity;
- Addendum 1 to the Executive Order issued March 16, 2020, which modified the Executive Order to prohibit all non-essential mass gatherings to the lesser of fifty (50) people or fifty

percent (50%) of the occupancy of a facility at the same time for social, recreational or entertainment activities;

- Addendum 2 to the Executive Order issued March 17, 2020 ordering restaurants, bars, or establishments that offer food or drink to suspend on-premises consumption of food or drink;
- Directive 2 issued March 17, 2020 to all School Boards, Superintendents, and Child Care Programs to close childcare centers and provide for services to children of Essential Persons during the closure period in response to COVID-19;
- Directive 3 issued March 18, 2020 directing Department of Motor Vehicle services to provide online, by mail or phone, and suspend all in-person transactions;
- Directive 4 issued March 19, 2020 to the Department of Liquor and Lottery authorizing take-out, curbside pickup and delivery of beverage alcohol, including spirit-based drinks and malt and vinous product accompanying food orders for off premise consumption;
- Addendum 3 to the Executive Order issued March 20, 2020, requiring the postponement of all non-essential adult elective surgery and medical and surgical procedures;
- Addendum 4 to the Executive Order issued March 21, 2020, which suspended the operation of close-contact businesses and further restricted the size of mass gatherings;
- Addendum 5 to the Executive Order issued March 23, 2020, which ordered all businesses and non-profits to institute work from home procedures to the extent possible;
- Addendum 6 to the Executive Order issued March 24, 2020, which ordered all Vermonters to stay home, stay safe with the exception of those performing critical services ("Stay Home/Stay Safe");
- Directive 5 issued March 25, 2020 clarifying schools for preK-12 students shall remain dismissed for in-person instruction for the remainder of the 2019-2020 school year and required schools to have continuity of learning plans for remote learning implemented on or before Monday, April 13, 2020;
- Addendum 7 to the Executive Order issued March 30, 2020, which imposed quarantine restrictions on travelers arriving in Vermont and clarified the closure of lodging operations;
- Addendum 8 to the Executive Order issued April 3, 2020, which clarified the Governor's direction to provide non-congregate sheltering in Vermont and extended certain deadlines relating to closures of DMV and bars and restaurants; and

WHEREAS, as of April 5, 2020, the United States had experienced 337,646 cases of COVID-19 with 9,648 COVID-19-related deaths; Quebec had experienced 7,944 cases of COVID-19 with 94 COVID-19-related deaths; New York had experienced 122,911 cases of COVID-19 with 4,161 COVID-19-related deaths; Massachusetts had experienced over 12,500 cases of COVID-19 with 231 COVID-19-related deaths; New Hampshire had experienced 621 cases of COVID-19 with 9 COVID-19-related deaths; and Vermont had experienced 512 cases of COVID-19 with 22 COVID-19-related deaths; and

WHEREAS, modeling studies done for the State clearly show that, but for the mitigation measures taken to date, the number of COVID-19 cases and COVID-19 related deaths in the State and the region would be having a much more devastating effect on Vermonters and would be threatening to overwhelm the capacity of the Vermont health care system; and

WHEREAS, the Governor has determined, in consultation with the Commissioner of VDH and DPS/VEM, based on the best science and data available, to extend the State of Emergency for the State of Vermont through Friday, May 15, 2020; and

WHEREAS, the Governor has further determined to issue a rule which clarifies the scope of the providers and situations protected by 20 V.S.A. § 20 in order to remove barriers to health care facility surge capacity planning; and

WHEREAS, the Governor has determined to authorize lodging facilities to resume acceptance of reservations for stays and events beginning June 15, 2020, subject to further action as needed to respond to continued COVID-19 response, as well as issue other directions and clarifications.

NOW THEREFORE, I, Philip B. Scott, by virtue of the authority vested in me as Governor of Vermont by the Constitution of the State of Vermont, the emergency powers set forth in 20 V.S.A. §§ 8, 9 and 11 and other laws hereby declare the State of Emergency for the State of Vermont shall be extended through midnight on Friday, May 15, 2020.

IT IS FURTHER ORDERED:

1. The Executive Order and all Directives and Addenda issued thereunder shall continue in full force and effect until midnight on May 15, 2020, at which time the Governor, in consultation with the Vermont Department of Health and the Department of Public Safety/Division of Emergency Management shall assess the emergency and determine whether to amend or extend the State of Emergency.

2. Lodging Reservations. Addendum 7 to the Executive Order is hereby supplemented to authorize lodging operators to immediately accept reservations for stays and events occurring on or after June 15, 2020; provided, however, the Governor, in consultation with the Commissioner of VDH and the Commissioner of DPS/VEM, shall assess the emergency and determine whether to amend or extend this date.

3. Stay Home/Stay Safe Guidance. For the purpose of clarifying Stay Home/Stay Safe, the Secretary of the Agency of Commerce and Community Development ("ACCD") is directed to provide guidance as follows:

    A. As it relates to the suspension of real estate activities, clarify existing guidance regarding real estate sales and brokerage to ensure guidance applies to all real estate sales, including those for sale by owner.

    On-line real estate sites shall post a prominent notice on their web platforms which advises potential sellers and purchasers that all in-person real estate transactions are temporarily suspended.

    Real estate functions that can be conducted online, by phone or email may continue.

B. As it relates to Financial, Legal and Professional Services and Municipalities, clarify existing guidelines to the extent necessary to facilitate assistance to Vermonters seeking to take advantage of state and federal financial support made available in response to the economic impacts of COVID-19.

4. Motor Vehicle Inspections. In order to alleviate in-person contact at locations offering vehicle inspections, the Department of Motor Vehicles is hereby directed to extend inspections for motor vehicles other than school buses and motor buses, for 60 days for inspections due in April 2020 (a green "4").

5. Directive to State Agencies Regarding Non-Congregate Temporary Housing. Effective as of March 1, 2020, State Agencies which determine the need for non-congregate temporary housing to quarantine and temporarily isolate first responders, including Department of Corrections personnel, health care workers and others critical to the COVID-19 response, such as critical infrastructure construction and maintenance, who are at reasonable risk of having been exposed to or are infected with COVID-19, or are recovering from COVID-19, and cannot return to their usual residence because of the risk of infecting other household members, shall provide alternative non-congregate housing to this population of first responders, health care workers and others critical to the COVID-19 response.

6. COVID-19 Emergency Response Services. In accordance with the authority granted to the Governor pursuant to 20 V.S.A. §§ 8 and 9 to make, amend, and rescind necessary orders, rules, and regulations for emergency management purposes, I hereby adopt the following rule for the purpose of interpreting the scope of 20 V.S.A. § 20 relating to legal immunity for Health Care Facilities, Health Care Providers, and Health Care Volunteers, as defined herein, who are providing COVID-19 related emergency management services or response activities. The intent of this rule is to clarify that under protections afforded by 20 V.S.A. § 20, Health Care Facilities, Health Care Providers, and Health Care Volunteers would be immune from civil liability for any death, injury, or loss resulting from COVID-19 related emergency management services or response activities, except in the case of willful misconduct or gross negligence.

   A. For purposes of this Addendum 9 to the Executive Order, the following terms are defined as set forth below; provided, however, these definitions are intended to provide further detail to the scope of the immunities provided in 20 V.S.A. § 20 and are not intended to limit or narrow the scope of the immunities provided therein:

      i. "All-hazards" for purposes of the existing State of Emergency means the COVID-19 outbreak in Vermont which has been determined by the Governor to pose a threat or may pose a threat to public safety in Vermont.

      ii. "Emergency functions" include, for purposes of this order, services provided by the public safety, firefighting services, police services, sheriff's department services, medical and health services, including those services provided by Health Care Providers and Health Care Volunteers, rescue,

communications, evacuation of persons, emergency welfare services, protection of critical infrastructure, emergency transportation, other functions related to civilian protection, and all other activities necessary or incidental to the preparation for and carrying out of these functions.

iii. "Emergency management" means the preparation for and implementation of all emergency functions, other than the functions for which military forces or other federal agencies are primarily responsible, to prevent, plan for, mitigate, and support response and recovery efforts from all hazards. Emergency management includes the equipping, exercising, and training designed to ensure that this state and its communities are prepared to deal with all-hazards.

iv. "Health Care Facilities" means State licensed nursing homes (as defined in 33 V.S.A. § 7102(7)) and Middlesex Therapeutic Community Residence, all State licensed assisted living residences (as defined in 33 V.S.A. § 7102(1)), Level III residential care homes (33 V.S.A. 7102(10)(A)), intermediate care facilities for individuals with intellectual disability (ICF/ID) (42 C.F.R. § 440.150), all State therapeutic community residences (as defined in 33 V.S.A. § 7102 (11)), Level IV residential care homes (33 V.S.A. § 7102 (10)(B)), all hospitals (as defined in 18 V.S.A. § 1902) and all alternate or temporary hospital sites and other isolation, quarantine or housing sites designated by the Commissioner of PSD/VEM for the treatment of, or alternate shelter for those who have been exposed to or infected with COVID-19.

v. "Health Care Providers" means all health care providers as defined by 18 V.S.A. § 9432(9), including volunteers, who are providing health care services in response to the COVID-19 outbreak and are authorized to do so.

vi. "Health Care Volunteers" means all volunteers or medical or nursing students who do not have licensure who are providing services, assistance, or support at a Health Care Facility in response to the COVID-19 outbreak and are authorized to do so.

B. For Health Care Facilities and Health Care Providers, an emergency management service or response activity, includes, but may not be limited to:

i. Expedited postponement of non-essential adult elective surgery and medical and surgical procedures, including dental procedures, in the safest but most expedient way possible, as ordered by Addendum 3 of the Executive Order, if elective surgeries and medical and surgical procedures are performed at the Health Care Facility or by the Health Care Provider;

ii. Cancelling or denying elective surgeries or procedures or routine care to the extent determined necessary for the health, safety and welfare of a patient or as necessary to respond to the COVID-19 outbreak;

iii. Redeployment or cross training of staff not typically assigned to such duties, to the extent necessary to respond to the COVID-19 outbreak;

iv. Planning, or enacting, crisis standard-of-care measures, including, but not limited to, modifying numbers of beds, preserving PPE, and triaging access to services or equipment as necessary to respond to the COVID-19 outbreak; and

v. Reduced record-keeping to the extent necessary for Health Care Providers to respond to the COVID-19 outbreak.

C. For Health Care Volunteers, "emergency management services or response activities" also includes providing services, assistance, or support at a Health Care Facility in response to the COVID-19 outbreak.

D. Nothing contained in this Executive Order shall alter existing law with respect to gross negligence or willful misconduct.

This Addendum 9 shall take effect upon signing and shall continue in full force and effect until midnight on May 15, 2020, at which time the Governor, in consultation with the Vermont Department of Health and the Department of Public Safety/Division of Emergency Management shall assess the emergency and determine whether to amend or extend this Addendum.

By the Governor:

Philip B. Scott
Governor

Brittney L. Wilson
Secretary of Civil and Military Affairs

Executive Order No. 01-20 – Addendum 9

Dated: April 10, 2020