EXECUTIVE ORDER NO. 108

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) 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, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, on March 21, 2020, I issued Executive Order No. 107 (2020), superseding Executive Order No. 104 (2020) and requiring New Jersey residents to remain home or at their place of residence subject to limited exceptions, cancelling social gatherings, and limiting all restaurants and other dining establishments to offering only food delivery and/or take-out services; and

WHEREAS, Executive Order No. 107 (2020) institutes clear parameters on essential retail businesses that are permitted to operate and requires that all businesses or non-profits utilize telework or work-from-home arrangements wherever practicable; and

WHEREAS, under Executive Order No. 107 (2020), all recreational and entertainment businesses are closed to the public, all public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, are closed to the public, and all institutions of higher education shall continue to cease in-person education; and

WHEREAS, the Civilian Defense and Disaster Control Act ("Act") establishes that the Governor "is authorized to make, amend and rescind orders, rules and regulations ... and it shall be unlawful for any municipality or other subdivision or any other governmental agency of this State to adopt any rule or regulation or to enforce any such rule or regulation that may be at variance with any such order, rule or regulation established by the Governor," N.J.S.A. App. A:9-40; and

WHEREAS, the Act further provides that "[i]n the event of a dispute on the question of whether or not any such rule or regulation is at variance with an order, rule or regulation established by the Governor ... the determination of the Governor shall control," N.J.S.A. App. A:9-40; and

WHEREAS, in accordance with N.J.S.A. App A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any 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 my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, during an emergency such as the outbreak of COVID-19, it is of the utmost importance that the responses to the emergency be well coordinated in order to provide consistency of action, to provide clarity of action to the general public, to avoid duplication of efforts, to prevent unnecessary use of critical resources, and to ensure accurate and prompt communications with emergency personnel and the public; and

WHEREAS, unitary management is essential for coordination needed during an emergency, because, among other things:

a. It allows the efficient gathering and assessment of information, and the formulation of a consistent response to changing circumstances;

b. It ensures an appropriate balance statewide between actions needed to combat the spread of COVID-19 and avoiding unnecessary hardships to the public;

c. It ensures that the State's resources are efficiently and adequately deployed;

d. It eliminates the individual and potential competing interests of the State's hundreds of municipalities and 21 counties; and

WHEREAS, the issuance of mandates and restrictions by municipalities and counties at variance with the Governor's Executive Orders confounds the benefits of a unitary management structure, because, among other things:

a. They risk confusion among members of the public by creating requirements that are different and in places contrary to the Governor's Executive Orders;

b. They may cause the public to conform to mandates that the Governor determined are unnecessary or, in the worst case, counter-productive;

c. They disrupt the balance between the actions necessary to combat the spread of COVID-19 and the other needs of the population as determined by the Governor;

d. They risk inefficient deployment of finite resources in that municipal authorities may use their emergency personnel to implement and enforce local mandates the Governor has deemed inappropriate or unnecessary;

e. By establishing inconsistent hours of operations and scope of services for businesses from municipality to municipality, they direct a disproportionate number of persons those surrounding localities where such facilities remain open, hence defeating the principal objective of social distancing; and

WHEREAS, notwithstanding the overwhelming benefits of a unitary management structure, there exist certain limited circumstances where it may be beneficial for localities to be able to impose additional restrictions; and

WHEREAS, certain municipalities may have legitimate concerns about an influx of new visitors, which may cause public health concerns as we impose social distancing measures and aim to avoid unnecessary increases in density of individuals; and

WHEREAS, parks can vary widely in their nature, with some large parks being suitable locations for outdoor activities that can be practiced using social distancing, while other parks can attract large, crowded groups of people that pose significant public health concerns; 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. Any county or municipal restriction imposed in response to COVID-19 that in any way will or might conflict with any of the provisions of Executive Order No. 107 (2020), or which will or might in any way interfere with or impede its achievement, or the achievement of Administrative Orders issued as authorized by my Executive Orders, is hereby invalidated. Examples of such restrictions include, but are not limited to, the following:

a. Any additions to or deletions from the list of retail businesses that I have deemed essential or that have been identified as essential through Administrative Orders authorized by my Executive Orders;

b. Any limitations imposed on any business's scope of service or hours of operation;

c. Any density or social distancing requirements;

d. Any orders relating to the gathering of individuals; and

e. general restrictions on the freedom of movement within that county or municipality, including but not limited to the imposition of curfews.

2. 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 Executive Order No. 107 (2020), or which will or might in any way interfere with or impede its achievement, or the achievement of Administrative Orders issued as authorized by my Executive Orders.

3. Paragraphs 1 and 2 do not apply to the following categories of entities, over which municipalities or counties have the ability to impose additional restrictions in response to COVID-

19 beyond the applicable provisions of Executive Order No. 107 (2020). The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

a. Online marketplaces for arranging or offering lodging; or

b. Municipal or county parks.

4. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

5. This Order shall take effect on Saturday, March 21, 2020, at 9:00 p.m., and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this 21st day of March, Two Thousand and Twenty, and of the Independence of the United States, the Two Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor