EXECUTIVE ORDER NO. 195

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, 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 (the "Act") and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 103-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187 and Nos. 189-194 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, I issued Executive Order No. 108 on March 21, 2020, which permitted municipalities and counties to impose additional restrictions on county and municipal parks and on online marketplaces for arranging or offering lodging to permit locals targeted flexibility to respond to issues with congregation in certain areas; and

WHEREAS, on November 10, 2020, I issued Executive Order No. 194, which, in part, required food and beverage establishments to close their indoor operations between the hours of 10:00 p.m. and 5:00 a.m. each day; and

WHEREAS, the 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, I have subsequently reaffirmed that declaration in numerous COVID-19-related Orders, including in Executive Order No. 194 (2020); and

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

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

d. It avoids 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. It risks confusion among members of the public by creating requirements that are different and in places contrary to the Governor's Executive Orders;

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

c. It disrupts 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. It risks 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; 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 congregation in and around businesses at particular hours, which may cause public health concerns as we aim to avoid unnecessary increases in density of individuals; and

WHEREAS, businesses vary widely in their nature, with some attracting large, crowded groups of people in indoor spaces, which would 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 Nos. 103-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187 and Nos. 189-194 (2020), or which will or might in any way interfere with or impede their achievement, or the achievement of Administrative Orders issued as authorized by my Executive Orders, is hereby invalidated unless otherwise expressly permitted. 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;

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 Nos. 103-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187 and Nos. 189-194 (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, unless otherwise expressly permitted. This Order shall not supersede the provisions of Executive Order No. 108 (2020) that currently remain in effect, which includes the ability of municipalities and counties to impose additional restrictions on online marketplaces for arranging or offering lodging and on municipal parks, or the provisions of any Administrative order that permits municipalities and counties to impose additional restrictions.

3. Notwithstanding Paragraphs 1 and 2, municipalities and counties are permitted under this Order to impose additional restrictions, in response to COVID-19, on the hours of operation of non-essential retail businesses, as defined by Executive Order No. 107 (2020) and subsequent Administrative orders, and food and beverage establishments, as defined by Executive Order No. 194 (2020), personal care service businesses, as defined by Executive Order No. 157 (2020), and recreation and entertainment businesses, as defined by Executive Orders Nos. 157 and 181 (2020). Such limitations may apply across the entire county or municipality or in targeted locations therein. Provided, however, that the limitations authorized by this paragraph cannot restrict the hours of operation of such businesses between 5:00 a.m. and 8:00 p.m. While municipalities and counties can restrict hours of operation for the aforementioned businesses between the hours of 8:00 p.m. and 5:00 a.m., they cannot prevent dining establishments from arranging for the pickup or delivery of goods or otherwise limit their scope of operations. 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 of entities.

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

5. 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 Department of Health as appropriate.

GIVEN, under my hand and seal this 12th day of November, 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