STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 36-20

By the Governor

WHEREAS, a State of Emergency was declared on the Sixteenth Day of March, Two Thousand Twenty for all counties in West Virginia (the "State of Emergency Declaration"), to allow agencies to coordinate and create necessary measures to prepare for and respond to the outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and

WHEREAS, Chapter 15, Article 5, Section 6 of the Code of West Virginia authorizes the Governor to, among other things, control ingress and egress to and from a disaster area or an area where large-scale threat exists, the movement of persons within the area, and the occupancy of premises therein, and to perform and exercise other functions, powers, and duties that are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Executive Order 9-20 required all businesses and operations in West Virginia, except Essential Businesses and Operations as defined therein, to cease all activities within the state except for such minimum basic operations as are necessary to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or related functions, and the minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences, and provided exceptions for businesses such as home-based businesses and small businesses that do not invite in the general public and which have five or less employees in the office while requiring proper social distancing and hygiene practices be maintained at such businesses; and

WHEREAS, Executive Order 3-20 closed all fitness centers, gymnasiums, recreation centers, and similar businesses or entities where the public tends to congregate for recreation, sport, or similar leisure activities throughout the 55 counties of this state, and Executive Order 9-20 prohibited, among other things, the operation of "movie and other theaters"; and

WHEREAS, since the issuance of Executive Order 3-20, Executive Order 9-20, and other executive orders ordering closed or otherwise limiting occupancy of certain establishments and facilities in this state, implementation of successful public health measures has resulted in revised projections of rates of infection and COVID-19 related deaths in West Virginia, as well as ever-strengthening supply chains for personal protective equipment and other medical equipment and supplies, resulting in greater preparedness and response capacity throughout the state; and

WHEREAS, on April 27, 2020, I, Governor Jim Justice, announced the state's re-opening plan, West Virginia Strong: *The Comeback* (the "Comeback Plan"), to phase in the re-opening of businesses in the state of West Virginia on a week by week basis to most effectively monitor and respond to the public health effects of this phased re-opening, to be based upon certain metrics and conditions to safely re-open segments of West Virginia's economy and get our citizens back to work, while ensuring the health and protection of all West Virginians, and especially the state's significant elder and vulnerable population who are at most risk from the COVID-19 virus; and

WHEREAS, Executive Order 28-20 and Executive Order 30-20 allowed for the resumption of all medical procedures throughout the state while requiring that hospitals and ambulatory surgical centers around the state limit procedures to only more urgent procedures to ensure adequate response capacity and preserve necessary personal protective equipment and other resources at such facilities in the event of any surge of COVID-19; and

WHEREAS, Executive Order 32-20 lifted the stay-at-home policy under Executive Order 9-20 and declared a safer-at-home policy, allowing certain types of businesses to begin to re-open, allowing restaurants to resume outdoor dining, and partially lifting certain restrictions on gathering size, provided that certain safety measures are in place; and

WHEREAS, re-opening additional segments of the state's economy in accordance with the Comeback Plan, utilizing a phased approach to re-open sectors of the economy week by week, while continuing to prioritize and provide for the health and protection of all West Virginians, and especially the state's significant elder and vulnerable population, is in the public interest; and

WHEREAS, West Virginia's public health experts have advised that allowing for the reopening of wellness center facilities that offer exercise therapy, physical therapy, post-operative therapy, and/or rehabilitative therapy programs to individuals, which are operated as part of a hospital or hospital system, or are otherwise staffed with West Virginia licensed health care providers (including physicians, physical therapists, chiropractors, nurse practitioners, and physicians assistants), and allowing for the reopening of drive-in movie theaters, is appropriate at this time; and

NOW, THEREFORE, I, JIM JUSTICE, pursuant to the authority vested in me pursuant to the provisions of Chapter 15, Article 5, Section 6 and Chapter 15, Article 5, Section 1 of the Code of West Virginia, hereby **DECLARE** and **ORDER**, effective as of 12:01 AM, Eastern Standard Time, on the Eleventh day of May, Two Thousand Twenty, unless rescinded, amended, or otherwise postponed by subsequent executive order prior to the effective date of this Order, as follows:

1. Executive Order 3-20, as it relates to the closure of fitness centers, gymnasiums, recreation centers, and similar businesses or entities where the public tends to congregate for recreation, sport, or similar leisure activities, is hereby amended to provide that all fitness centers, gymnasiums, recreation centers, and similar businesses or entities where the public tends to congregate for recreation, sport, or similar leisure activities throughout the 55 counties of this state shall continue to prohibit occupancy by the general public, but that wellness center facilities that offer exercise therapy, physical therapy, post-operative therapy, and/or rehabilitative therapy programs to individuals, which are operated as part of a hospital or hospital system, or are otherwise staffed with licensed health care providers (including physicians, physical therapists, chiropractors, nurse practitioners, and physicians assistants licensed to practice in West Virginia), may operate, but must ensure that proper social distancing and hygiene

practices are maintained. Additional guidance for such wellness centers, *Guidance for Wellness Centers Operated by or with West Virginia Licensed Health Care Providers*, is available at governor.wv.gov."

2. The following provisions of Executive Order 9-20, as amended by Executive Order 32-20, is hereby amended and supplemented as follows to allow certain wellness centers that meet the criteria provided below to resume operation:

   a. Section 3 is amended and supplemented by the addition of the following subsection:

      "aa. **Wellness Centers**. Wellness center facilities that offer exercise therapy, physical therapy, post-operative therapy, and/or rehabilitative therapy programs to individuals, which are operated as part of a hospital or hospital system, or are otherwise staffed with West Virginia licensed health care providers (including physicians, physical therapists, chiropractors, nurse practitioners, and physicians assistants), may operate, but must ensure that proper social distancing and hygiene practices are maintained. Additional guidance for such wellness center facilities, *Guidance for Wellness Centers Operated by or with West Virginia Licensed Health Care Providers*, is available at governor.wv.gov."

   b. Section 4, as amended, is hereby deleted in its entirety and replaced with the following to allow drive-in movie theaters to resume operation:

      "4. **Prohibited activities.** All places of public amusement, whether indoors or outdoors, including but not limited to locations with amusement rides, carnivals, zoos, museums, arcades, fairs, pool halls, bingo halls, malls (except that stores in a mall that have a direct outdoor entrance and exit that provide essential services and products under the terms of this Order and stores in a mall that have a direct outdoor entrance and exit that constitute those small businesses of 10 or fewer employees with more limited customer interaction and customer contact, if any, as described in Section 2 of this Order, may remain open), children's play centers, playgrounds, bowling alleys, movie and other theaters (except for drive-in movie theaters which ensure that proper social distancing and hygiene practices are maintained, and operated in accordance with the *Guidance for West*

Virginia Drive-In Movie Theaters, available at governor.wv.gov), concert and music halls, adult entertainment venues, racetracks (except where racetracks offer spectator-less horse races, beginning no sooner than May 14, 2020, which shall not allow any in-person spectators but which horse races may be simulcast, provided that such horse racing shall be conducted in accordance with guidance and best practices developed, published, and disseminated by the applicable track operators and horsemen's associations, including ensuring all staff and employees maintain proper social distancing and hygiene practices), social clubs, and other similar businesses shall be closed."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

DONE at the Capitol in the City of Charleston, State of West Virginia, this Eighth day of May, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-seventh year of the State.

GOVERNOR

By the Governor

SECRETARY OF STATE