

# Exhibit B



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June 16, 2020

**Via E-Mail: [tcannady@cheersboston.com](mailto:tcannady@cheersboston.com)**

Hampshire House Corp  
84 Beacon Street  
Boston, MA 02108

<b>RE:</b>	<b>Insured:</b>	<b>Hampshire House Corp</b>
	<b>Policy No.:</b>	<b>MZX 80998638</b>
	<b>Claim No.:</b>	<b>005 20 386242</b>
	<b>Date of Loss:</b>	<b>Reported as March 16, 2020</b>
	<b>Date Reported:</b>	<b>March 17, 2020</b>
	<b>Insuring Company:</b>	<b>Associated Indemnity Corporation</b>

Dear Ms. Cannady:

Thank you for your recent notification to Associated Indemnity Corporation (“AIC”) of Hampshire House Corp claim for lost business income incurred as a result of various local and state orders placing certain restrictions on Hampshire House Corp.

We have now completed our investigation and coverage analysis under Policy No. MZX 80998638, a Property-Gard Building and Personal Property Coverage, Form 142000 12 88, issued by Associated Indemnity Corporation to Hampshire House Corp for the policy period August 01, 2019 to August 01, 2020 (the “Policy”).<sup>1</sup> For the reasons discussed below, we respectfully advise that the Policy does not afford coverage for Hampshire House Corp’s claim. However, in so advising, we recognize that issues concerning the COVID-19 pandemic<sup>2</sup> are rapidly evolving. Therefore, should additional information become available concerning this matter or should the information upon which we have relied materially change, please contact the undersigned, using the above Claim Reference Number, and include such information for our further consideration in

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<sup>1</sup> If you do not presently have your copy of the Policy, please inform us and a reconstructed policy will be sent to you.

<sup>2</sup> The World Health Organization, on March 11, 2020, declared the global outbreak of the disease commonly called “COVID-19,” which is caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a pandemic.



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connection with this claim. AIC will consider any additional information which may impact the question of coverage under your Policy.

In providing this declination letter, AIC is proceeding under a full and complete reservation of rights under all terms and provisions in the Policy, whether or not discussed in this letter. AIC acknowledges that Hampshire House Corp's rights are equally reserved with respect to this matter.

### **FACTUAL BACKGROUND**

The following information sets forth our current understanding of the facts upon which Hampshire House Corp's bases its claims for loss of business income. Please let us know immediately if our understanding is incorrect or based on incomplete information and include with such correspondence all additional information you believe we should consider in connection with your claim. We will review any such information as expeditiously as possible and re-evaluate whether such information changes our coverage analysis with respect to this matter.

We understand that Hampshire House Corp is a family of restaurants with an online merchandise store located in Boston, Massachusetts and Charlestown, Massachusetts. The Policy identifies six scheduled locations: 84 Beacon Street, Boston, MA, 75 Chestnut Street, Boston, MA, 427-435 Faneuil Hall (Restaurant), Boston, MA, 427-435 Faneuil Hall (Store), Boston, MA, 440 Rutherford Ave, Suite 300, Charlestown, 220 Northern Avenue, Boston, MA.

AIC was first notified of this claim via an e-mail dated March 17, 2020 from Hampshire House Corp's broker seeking coverage for lost business income due to forced closure due to coronavirus shutdown.

On March 10, 2020, Massachusetts Governor Charlie Baker issued Executive Order 591, which declared a state of emergency and recognized that COVID-19 is "a respiratory disease that can result in serious illness or death, [and] is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person." However, that proclamation did not restrict restaurant operations or restrict public gatherings. Then, on March 17, 2020, Governor Charlie Baker issued an Executive Order, which prohibited gatherings of more than 25 people and on-premises consumption of food or drink...Any restaurant, bar, or establishment that offers food or drink shall not permit on-premises consumption of food



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or drink; provided that such establishments may continue to offer food for take-out and by delivery provided that they follow the social distancing protocols set forth in Department of Public Health Guidance.

On March 23, 2020, Governor Baker issued an extension, which prohibited gatherings of more than 10 people in any confined indoor or outdoor space, except for a business or organization that is providing COVID-19 Essential Services, defined and listed in Exhibit A. Exhibit A states "Restaurants, bars, and other establishments that sell food and beverage products to the public are encouraged to continue to offer food for take-out and by delivery if they follow the social distancing protocols set forth in the Department of Public Health guidance continue operations."

On March 31, 2020, Governor Baker extended the above orders until May 4, 2020.

On March 18, 2020 we spoke with Terri Cannady of Hampshire House Corp. Mr. Cannady reported that there was a reduction in normal income due to Governor Baker's proclamations. It was reported that some restaurants were doing take-out orders. Hampshire House Corp confirmed that there had not been physical damage at the location, and reported that there are no known COVID-19 positive cases at the location.

Based on readily available public information, our understanding is that since Governor Baker's proclamations, Hampshire House Corp has now closed its locations until further notice due to the Governor's orders, however, the online merchandise store remains open at [www.cheersboston.com](http://www.cheersboston.com).

## **POLICY OVERVIEW**

As noted above, we have evaluated Hampshire House Corp's claim under Policy No. MZX 80998638. The Policy includes 6 scheduled locations. By endorsement, the Policy provides Business Income Coverage Form CP 0030 10/91 for Business Income including Rental Value Coverage, along with Civil Authority for a period of up to two consecutive weeks from the date of loss. The Policy also contains the Property-Gard Restaurant Plus Extension Endorsement 143626 06 05 which provides Off Premises Special Event Cancellation coverage with a \$50,000 limit of insurance. The Policy also provides The Crisis Management Coverage Extension, Form 143623 06 05, is provided for \$25,000. We address each below.

The Policy is governed by all of its terms, conditions, definitions, limitations, exclusions, and endorsements. We discuss certain policy provisions in this letter. We encourage



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Hampshire House Corp to read the Policy in its entirety so that it will be familiar with all of its terms, conditions, definitions, limitations, exclusions, and endorsements.

## COVERAGE ANALYSIS

### Business Income, Extra Expense, and Civil Authority Coverage

Pursuant to Business Income Coverage Form (and Extra Expense) CP 00 30 10 91, Section A, the Policy provides coverage for Business Income (Section A.1), Extra Expense (Section A.3.a.), and Civil Authority (Section A.3.b.) as follows:

#### A. Coverage

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We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your **operations** during the **period of restoration**. The suspension must be caused by direct physical loss of or damage to property at the premises described in the Declarations, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from any Covered Cause of Loss.

##### 1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

##### 2. Covered Causes of Loss

See applicable Causes of Loss Form as shown in the Declarations.

##### 3. Additional Coverages

###### a. Extra Expense

Extra Expense means necessary expenses you incur during the **period of restoration** that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.



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- (1) We will pay any Extra Expense to avoid or minimize the suspension of business and to continue **operations**:
  - (a) At the described premises; or
  - (b) At replacement premises or at temporary locations, including:
    - (i) Relocation expenses; and
    - (ii) Costs to equip and operate that replacement or temporary locations.
- (2) We will pay any Extra Expense to minimize the suspension of business if you cannot continue **operations**.
- (3) We will pay any Extra Expense to:
  - (a) Repair or replace any property; or
  - (b) Research, replace or restore the lost information on damaged valuable papers and records;to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

b. Civil Authority

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described **premises** due to direct physical loss of or damage to property, other than at the described **premises**, caused by or resulting from any Covered Cause of Loss. This coverage will begin from the date of the action of Civil Authority and will apply for the number of consecutive weeks shown in the Schedule of this Endorsement.

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**G. Definitions**

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2. **Operations** means

- a. Your business activities occurring at the described premises; and



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- b. The tenantability of the described premises, if coverage for Business Income including **Rental Value** or **Rental Value** applies.
3. **Period of restoration** means the period of time that:
- a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
  - b. Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

**Period of restoration** does not include any increased period due to the enforcement of any ordinance or law, that:

- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**.

The expiration date of this policy will not cut short the **period of restoration**.

Coverage for loss of “business income” under Section A.1 applies only when Hampshire House Corp sustains a necessary suspension due to direct physical loss of or damage to property at Scheduled Premises, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from a Covered Cause of Loss.

Coverage for loss of Extra Expense under Additional Coverages, Section 3.a., applies only when Hampshire House Corp incurs necessary expenses “during the **period of restoration**” that it would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss. Similarly, coverage for actual loss of Business Income and necessary Extra Expense under the Civil Authority Coverage must be caused by action of civil authority that prohibits access to Scheduled Premises due to direct physical loss of or damage to property, other than at your covered locations, caused by or resulting from any Covered Cause of Loss.



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Based on current information, we understand that Hampshire House Corp has not sustained a necessary suspension of its “operations” due to direct physical loss of or damage to property at a Scheduled Premise, as required under Section A.1 and A.3.a.

We also understand that access to Hampshire House Corp’s Scheduled Premises have not been prohibited by a civil authority due to direct physical loss of or damage to property, other than at your covered locations.

Because there has been no direct physical loss of or damage to property, there has been no Covered Cause of Loss under the Policy’s Business Income, Extra Expense or Civil Authority coverages of the Policy.

We understand the loss allegedly sustained by Hampshire House Corp was due to the executive orders recently instituted by the State of Massachusetts which have placed certain restrictions on businesses. Such orders, as discussed above, do not prohibit access to your covered premises and do not arise from any direct physical loss of or damage to property.

Notwithstanding this conclusion, we recognize that various government entities are continuing to issue orders in response to the current COVID-19 pandemic. While the present orders described above do not trigger the Civil Authority Coverage, new orders or actions may be issued. In that regard, should new orders issue that Hampshire House Corp believes could fall within this coverage or if there are other orders, not available within the public domain on which you are relying, please immediately advise us of such orders and provide copies to the undersigned for further evaluation.

### **The Crisis Event Coverage**

The Crisis Management Coverage Extension Endorsement, Form 143623 06 05, includes Crisis Event Business Income and Extra Expense Coverage, which provides, in part, the following:

#### **B. Crisis Event Business Income and Extra Expense Coverage**

##### **1. Crisis Event Business Income**

- a. We will pay for the actual loss of **crisis event business income** you sustain due to the necessary **suspension** of your **operations** during the **crisis event period of restoration**. The **suspension** must be caused by





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or result from a **covered crisis event** at your **covered premises**. This coverage will begin after the Waiting Period Deductible shown in the Schedule and end the earlier of:

- i. the date you could restore your **operations**, with reasonable speed, to the level which would generate the business income amount that would have existed if no **covered crisis event** occurred; or
- ii. sixty (60) consecutive days after the **covered crisis event** occurred.

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The following additional definitions apply to this coverage:

**G. Definitions**

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1. **Covered crisis event** means the following:

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- b. **Premises contamination.** Necessary closure of your **covered premises** due to any sudden, accidental and unintentional contamination or impairment of the **covered premises** or other property on the **covered premises** which results in clear, identifiable, internal or external visible symptoms of bodily injury, illness, or death of any person(s). This includes **covered premises** contaminated by **communicable disease**, Legionnaires' disease, but does not include premises contaminated by other **pollutants** or **fungi**.

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2. **Covered premises** means that part of the location you occupy which is covered by this policy including the area within 100 feet thereof. If your **covered premises** are comprised of more than one location, then **covered premises** only refers to the location at which the **covered crisis event** occurred.
3. **Communicable disease** means any disease or any related or resulting diseases, viruses, complexes, symptoms, manifestations, effects, conditions, or illnesses.



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6. **Crisis event period of restoration** means the period of time that:
- a. Begins:
    - (1) After the Waiting Period Deductible in the Schedule for Crisis Event Business Income coverage following the date of the **covered crisis event** at your **covered premises**; or
    - (2) With the date of the **covered crisis event** at your **covered premises** for Crisis Event Extra Expense Coverage, and
  - b. Ends on the date when the **operations** at your **covered premises** should be returned to the condition that would have existed had the **covered crisis event** not occurred using reasonable speed.

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9. **Operations** means:
- a. Your business activities occurring at the **covered premises**; and
  - b. The tenantability of the **covered premises** for **rental value**.

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12. **Suspension** means:
- a. The slowdown or cessation of your business activities; or
  - b. That a part or all of the **covered premises** is rendered untenable.

This coverage is triggered by the necessary “suspension” of Hampshire House Corp’s “operations” caused by or resulting from a “covered crisis event” at a “covered premise.”

A “covered crisis event” means certain enumerated perils, including premises contamination.<sup>3</sup> “Premises contamination” means the necessary closure of your “covered premises” due to any sudden, accidental and unintentional contamination or impairment

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<sup>3</sup> In addition to premises contamination, a “crisis covered event” means violent acts, contaminated food, certain specified crimes, an explosion, a fire, a construction accident, an equipment failure, or a workplace accident occurring at a location and which results in significant adverse media coverage of



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of the "covered premises" or other property on the "covered premises" which results in clear, identifiable, internal or external visible symptoms of bodily injury, illness, or death of any person(s). While "premises contamination" includes "covered premises" that are contaminated by "communicable disease," which includes disease and virus, we understand that Hampshire House Corp has not sustained any "premises contamination" as defined herein. Moreover, we understand that you have not sustained any significant adverse media coverage as a consequence of a "crisis covered event." Accordingly, this coverage does not appear implicated with respect to your claim.

### OFF PREMISES SPECIAL EVENT CANCELLATION

By Property-Gard Restaurant Plus Extension Endorsement 143626 06/05 provides:

F. If the Declarations show you have Business Income Coverage, the following are added to Section A.3., Additional Coverages of the Business Income Coverage Form (and Extra Expense):

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g. Off Premises Special Event Cancellation

We will pay the actual loss of **business income** or **rental value** you sustain if a **special event**, not at a covered location, is canceled due to direct physical damage to property anywhere in the coverage territory, but only if the property damage is caused by a covered **cause of loss**.

The amount we pay will be reduced by any income you receive from the use, in whole or in part, of any space reserved for a special event that has been canceled.

The most we will pay for any one loss under this coverage is the Limit of Insurance shown in the Schedule above for this Off Premises Special Event Cancellation coverage.

Cause Of Loss Form Special Exclusion B.4.a.(3)(b) does not apply to Off Premises Special Event Cancellation coverage. For the purpose of this coverage, property damaged does not include property belonging to any supplier of water services, communication services or power services."



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The Off Premises Special Event Cancellation is provided for Hampshire House Corp for the actual loss of business income not at a covered location if canceled due to direct physical damage to property anywhere in the coverage territory by a covered cause of loss.

In any event such cancellations or postponements were not caused by and did not result from any direct physical loss or damage to property that is not at a covered location. Accordingly, Hampshire House Corp's claim does not fall within the coverage provided by this endorsement.

### Potentially Applicable Exclusions

Notwithstanding our conclusion that Hampshire House Corp's claim does not fall within the basic scope of coverage provided by the Policy, we also reserve our rights under the following Exclusions set forth in Section B., Exclusions, Causes of Loss Form 141035 12 88 of the Policy, with respect to all coverages provided by the Policy:

#### B. Exclusions

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2. We will not pay for loss or damage caused by or resulting from any of the following ... d. (3) Disease;

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3. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage:

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- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

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Given the nature of the underlying facts involved in this matter, we reserve our rights under the Disease Exclusion (Section B.2.d.(3) and Exclusion B.3.b., either of which may apply to this matter in the event that coverage is triggered by direct physical loss of or damage to property as discussed herein.

### **CONCLUSION**

Based upon the foregoing reasons, AIC must decline Hampshire House Corp's claim based on presently available information. In light of our conclusion that this matter does not fall within any of the insuring agreements in the Policy, we have not addressed certain other provisions of the Policy, which may limit or preclude coverage for this matter. We continue to reserve all of our rights under the Policy, including all terms, conditions, definitions, limitations, exclusions, and endorsements, whether or not addressed herein. This reservation of rights includes, but is not limited to, our right: (1) to request the submission of a sworn statement in proof of loss; (2) to conduct examinations under oath; and (3) to require you or your representative to produce documents for review by AIC's designated representatives. Further, we reserve the right to appraise any loss if either you or AIC deems such procedure to be necessary to determine the value of such loss notwithstanding this coverage determination.

Nothing set forth in this letter or in our communications should be construed as a waiver of any rights we may have under the Policy or applicable law, all of which continue to be expressly reserved. We again acknowledge that all of Hampshire House Corp's rights are equally reserved with respect to this matter.

Please be advised that your policy contains provisions with regard to legal action against us. It states that no one may bring a legal action against us under this insurance unless there has been full compliance with all the terms and conditions of this policy and the action is brought within 2 years after the date on which the damage occurred. Nothing contained herein or heretofore constitutes a waiver of any of the terms or conditions of the policy.



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If you have any questions regarding this letter or wish to discuss this matter further, please contact the undersigned.

Sincerely,

*Gina McFarland*

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Complex Property Claims Adjuster  
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