

LICENSE AGREEMENT FOR TABLES AND CHAIRS
BIG DADDY'S RESTAURANT
2013-2014 SEASON

This LICENSE AGREEMENT is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (hereinafter CITY) and KEHOE, INC. d/b/a BIG DADDY'S RESTAURANT, a commercial establishment located at 177 Church Street, Burlington, Vermont (hereinafter BIG DADDY'S or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 177 Church Street; and

WHEREAS, BIG DADDY'S has requested that it be permitted to place 11 tables and 44 chairs on the sidewalk area in front of the building at 177 Church Street; and

WHEREAS, BIG DADDY'S has stated in its permit application that they will be surrounding the tables and chairs on 3 sides with a cloth covered crowd control barrier and enclosing the 4th side with stanchions and they will cover a 336 sq. ft. area; and

WHEREAS, this application was reviewed and approved by the Department of Public Works with modifications attached hereto as Exhibit B; and

WHEREAS, such use of a public thoroughfare for periods in excess of 30 days requires approval of the City Council under Charter Sec. 48XLIX and Burlington Code of Ordinances Chap. 27, Sec. 27-32;

WITNESSETH:

The CITY and BIG DADDY'S enter into the following License Agreement:

1. TERM

The CITY grants to BIG DADDY'S (hereinafter LICENSEE) a license to place 11 tables and 44 chairs surrounded on 3 sides with a cloth covered crowd control barrier and by

stanchions on the 4th side covering an area of 336 sq. ft. on the public right-of-way for a term commencing as of the date of execution of this Agreement and terminating on April 30, 2014 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain tables and chairs on the public right-of-way (hereinafter referred to as the premises) for the consumption of food and beverage. Licensee must ensure that at all times there is a 7 ft. right-of-way for pedestrian traffic. The tables and chairs shall be placed as approved by the Department of Public Works. A copy of the approved plan is attached hereto as Exhibit C.

3. MAINTENANCE

- a. LICENSEE shall maintain the tables and chairs in proper condition.
- b. LICENSEE shall be responsible for the maintenance and upkeep of the tables and chairs and any damage to the tables and chairs is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the tables and chairs, this License Agreement is revocable on notice by the CITY to LICENSEE of a violation of this section; however LICENSEE shall have 14 days to cure any problem if it notifies the CITY in writing within three (3) days of its intent to cure the violation.
- c. The tables and chairs shall be placed in accordance with all conditions set by the Department of Public Works (attached hereto as Exhibit B) and shall not impede the CITY'S ability to maintain the road, sidewalk, parking meters or greenbelt, if any.
- d. The tables and chairs shall not cause an obstruction or inconvenience to members of the public using the sidewalk, parking meters or street.

- e. LICENSEE will clear all tables and chairs by 9:00 p.m.
- f. LICENSEE shall pick up and sweep debris created by its use of the public right-of-way.

4. LICENSE FEE

There shall be a fee for this license equal to the encumbrance application fee and the square foot use fee. This fee shall be payable immediately to the Burlington City Clerk's Office. **Failure to pay the annual fee shall result in the immediate revocation of the license.**

5. REVOCATION

This License Agreement is immediately revocable should LICENSEE discontinue use of the tables and chairs. In any event, this Agreement is revocable by the CITY within 30 days upon sending written notice to LICENSEE. Upon revocation, LICENSEE must remove at its own expense the tables and chairs and other materials or obstructions placed on the property. If LICENSEE refuses to promptly remove such obstructions, they may be removed by the CITY and LICENSEE shall be liable for all expenses of such removal.

6. INSURANCE

a. LICENSEE shall maintain in effect throughout the term of this Agreement comprehensive public liability insurance with an A rated insurance carrier, or better, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Agreement in an amount not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. The CITY shall be named as an additional insured on such insurance policy.

b. Prior to execution of this Agreement, LICENSEE shall furnish the CITY with a certificate of insurance and endorsement which shall include the provision that the CITY is named as an additional insured and shall be given 15 days written notification prior to cancellation of such insurance for nonpayment of premium and 45 days' notice for any other reason. The certificate shall be attached to this Agreement as Exhibit D and the endorsement shall be attached as Exhibit E.

c. The certificate of insurance shall be provided annually on or before its stated expiration. It is the responsibility of LICENSEE to ensure that a current certificate of insurance is on file with the CITY at all times. **Failure to furnish a current certificate of insurance will result in immediate revocation of this license.**

7. INDEMNIFICATION

LICENSEE agrees to indemnify, defend and hold the CITY harmless and free from liability arising out of LICENSEE'S use of the CITY'S right-of-way, and LICENSEE agrees to make no claim against the CITY or any of its officers, employees, agents or representatives for any loss or damage caused by the CITY'S use or maintenance of its right-of-way.

8. PERMITS

LICENSEE shall be responsible for obtaining all necessary CITY and/or State permits including zoning permits, prior to placement of the tables and chairs.

9. NUISANCES PROHIBITED

LICENSEE shall not, during the term hereof, on or in the premises maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City

of Burlington ordinance, State or Federal statute, or controlling bylaw, regulation, or condition imposed whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement.

10. ASSIGNMENT OF RIGHTS

LICENSEE shall not sell or assign its rights pursuant to this Agreement or permit the use of the premises or any part thereof by any other entity without the express prior written consent of the CITY. Any unauthorized action in violation of this provision shall be void, and shall terminate LICENSEE'S rights pursuant to this Agreement.

11. LIMITATION OF RIGHTS

LICENSEE acknowledges that no property or other right is created other than that specifically defined and limited by this Agreement.

12. This License Agreement supersedes all other License Agreements executed for this location.

DATED at Burlington, Vermont this _____ day of _____,

2013.

CITY OF BURLINGTON

By: _____

Witness

Miro Weinberger, Mayor
Duly Authorized

KEHOE, INC. d/b/a
BIG DADDY'S RESTAURANT

Witness

By: _____
Duly Authorized

1b/c: GM 2013//License Agree for Encumbrance -- BIG DADDY'S, 177 Church St. (Tables & Chairs) 2013 , 5/21/13



OFFICE OF THE CLERK AND TREASURER
 149 CHURCH STREET
 BURLINGTON, VT 05401
 Voice: (802)865-7000
 FAX: (802)865-7014
 TTY: (802)865-7142
 Amy Bovee (802)865-7019
 Ron Gore (802)865-7562

Revised

Encumbrance Application / Renewal

Effective 04/30/2013 - 04/30/2014

FRANCES KEHOE, III
 BIG DADDY'S RESTAURANTS
 BURLINGTON, VT 05401

DATE: Tuesday, February 5, 2013
 PHONE: 802-863-0000
 FAX:
 EMAIL:

DBA NAME: BIG DADDY'S RESTAURANTS

COMPANY: BIG DADDY'S RESTAURANTS

LOCATION: 177 CHURCH STREET

Permission is requested to allow/continue the encumbrance in the following area and manner (please describe fully, including size and physical barriers around area i.e. trees, grates, parking meters, etc with photos, diagrams, blueprints; may reference prior application):

Placement of Encumbrance: Outdoor seating area surrounded on three sides with cloth covered crowd control barriers and stantions on the 4th side.

Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): ~~368~~ 336

PLEASE ATTACH:

1. Certificate of Liability Insurance with holder as the: "CITY OF BURLINGTON, CLERK/TREASURER'S OFFICE ENCUMBRANCE APPLICATION DEPT., 149 CHURCH ST., BURLINGTON, VT 05401"
2. Endorsement to Insurance Policy outlining the Cancellation Policy
3. Endorsement to Insurance Policy listing the City as Additional Insured
4. Sketch, Photo, or Blueprint of what you are proposing.
5. Check for the square feet fees (\$1 per square foot) + \$25 Application fee: 393⁰⁰/100

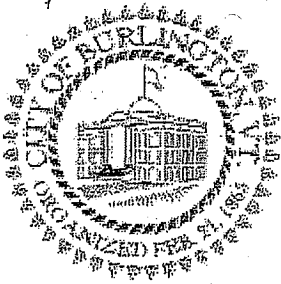
Signature Frances I Kehoe III
 FRANCES KEHOE, III

Date 5/9/13

For office use only: Amount received \$ 393.00 on 5/10 Check# 3762

Sent to Attorney: 5/17 Processing refund for \$57 on 5/30 OB

Exhibit A



OFFICE OF THE CLERK AND TREASURER
 149 CHURCH STREET
 BURLINGTON, VT 05401
 Voice: (802)865-7000
 FAX: (802)865-7014
 TTY: (802)865-7142
 Amy Bovee (802)865-7019
 Ron Gore (802)865-7562

Encumbrance DPW Approval Form

Effective 05/01/2013 - 04/30/2014

ATTENTION: RON GORE, BURLINGTON DEPARTMENT OF PUBLIC WORKS

DBA NAME: BIG DADDY'S RESTAURANTS DATE: Friday, May 10, 2013
 COMPANY: BIG DADDY'S RESTAURANTS PHONE: 802-863-0000
 LOCATION: 177 CHURCH STREET FAX:
 MAILING ADDRESS: FRANCES KEHOE, III
 BURLINGTON, VT 05401

RACKS / RAMPS / STAIRS / TABLES / CHAIRS ETC

1. Racks, ramps, sidewalks, encumbrances should be located on private property, if possible. In the opinion of the City Building Inspector, is there an available alternative location for the ramp on private property? Yes No

2. Will there be sufficient width for plows and pedestrian access if racks, ramp, sidewalk, tables & chairs encumbrances are added on the sidewalk? Yes No

3. Additional Comments: RENEWAL - SAME AS PREVIOUS YEARS

4. A 368 square foot placement of OUTDOOR SEATING AREA SURROUNDED ON THREE SIDES WITH CLOTH COVERED CROWD CONTROL BARRIERS AND STANTIONS ON THE FOURTH

DEPARTMENT OF PUBLIC WORKS

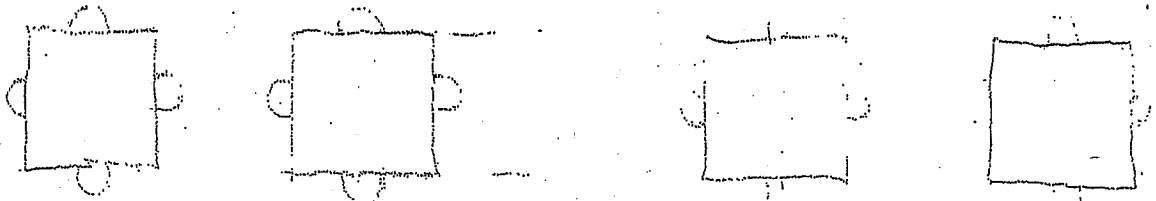
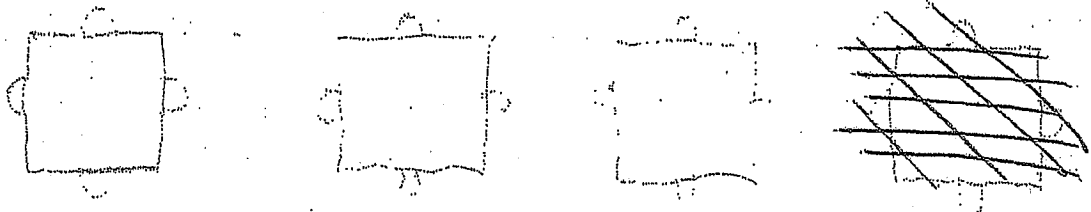
Approved? Yes
 No

TABLES / CHAIRS WITHIN DIVISION
 Explain: RENEWAL - SAME AS PREVIOUS

Signature Ron Gore

Date: 05/10/13

Exhibit B



19'

Not To Scale

10s
seer house

— Rig Daddy's —

10s
seer house

Exhibit C





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/21/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Noyle W Johnson Insurance Agency Inc. 119 River Street P.O. Box 279 Montpelier VT 05601-0279	CONTACT NAME: Holly McEnany	
	PHONE (A/C, No. Ext): (802) 223-9655	FAX (A/C, No.): (802) 223-7515
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Peerless Indemnity		18333
INSURER B: Peerless		24198
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES CERTIFICATE NUMBER: CL1262115767 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>		B08707264	6/25/2012	6/25/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC					
B	AUTOMOBILE LIABILITY ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		B11275748	7/21/2011	7/21/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 5,000
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/>					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A			WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L EACH ACCIDENT \$ E.L DISEASE - EA EMPLOYEE \$ E.L DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
City of Burlington is Additional Insured on General Liability in respects to insured's outdoor tables and chairs

CERTIFICATE HOLDER City of Burlington Att: Amy City Hall, Room 20 149 Church Street Burlington, VT 05401	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

Exhibit D

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VERMONT CHANGES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

A. Section I – Property is amended as follows:

1. The following is added to Paragraph E.4. Legal Action Against Us Property Loss Condition:

However, your right to bring legal action against us is not conditioned upon your compliance with the provisions of the Appraisal Property Loss Condition, if any.

2. The following is added to Paragraph E.6. Loss Payment Property Loss Condition and replaces any provision to the contrary:

We will pay for covered loss or damage within 10 working days after we reach agreement with you on the amount of loss, provided all other terms of the Loss Payment Property Loss Condition are satisfied.

B. Section III – Common Policy Conditions is amended as follows:

1. Paragraph A. Cancellation is replaced by the following:

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. Cancellation of Policies in Effect for Less than 60 Days.

If this policy has been in effect for less than 60 days and this policy is not a renewal of a policy we issued, we may cancel this policy by:

- a. Giving the first Named Insured at least 15 days' notice prior to the cancellation date for nonpayment of premium or substantial increase in hazard; or
- b. Mailing or delivering the first Named Insured at least 45 days' notice prior to the cancellation date for any other reason.

If cancellation is for nonpayment of premium, written notice may be sent by certificate of mailing or certified mail. If cancellation is for any reason other than nonpayment of premium, written notice must be sent by certified mail.

3. Cancellation of Policies in Effect For 60 Days or More

If this policy has been in effect for 60 days or more, or if this is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. Nonpayment of premium;
- b. Fraud or material misrepresentation affecting this policy or in the presentation of claims under this policy;
- c. Violation of any provisions of this policy; or
- d. Substantial increase in hazard, provided we have secured approval for the cancellation from the commissioner of insurance.

If we cancel this policy for one of the reasons specified in paragraph 3., we will cancel only in the following manner:

- a. By giving at least 15 days' notice before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. By mailing or delivering at least 45 days' notice before the effective date of cancellation if we cancel for any other reason.

Written notice of cancellation, including the reason for cancellation, will be mailed or delivered to the first Named Insured at the first Named Insured's last mailing address known to us.

If cancellation is for nonpayment of premium, written notice may be sent by certificate of mailing or certified mail. If cancellation is for any reason other than nonpayment of premium, written notice must be sent by certified mail.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
 5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
 6. If notice is mailed, proof of mailing will be sufficient proof of notice.
2. Paragraph C. Concealment, Misrepresentation Or Fraud is replaced by the following:

C. Concealment, Misrepresentation Or Fraud

We will not pay for any loss or damage in any case of:

1. Concealment or misrepresentation of a material fact; or
 2. Fraud;
- committed by you at any time and relating to coverage under this policy.

3. The following paragraphs are added:

M. When We Do Not Renew

1. We may elect not to renew this policy by mailing, by certified mail, or delivering written notice of nonrenewal to the first Named Insured's last mailing address known to us. We will mail or deliver this notice at least 45 days before the:
 - a. Expiration of the policy; or
 - b. Anniversary date of this policy if this policy has been written for a term of more than one year.

2. This provision does not apply:
 - a. If we have indicated a willingness to renew;
 - b. In case of nonpayment of premium;
 - c. If you do not pay any advance premium required by us for renewal; or
 - d. If any property covered in this policy is insured under any other insurance policy.

N. Renewal

1. If we:
 - a. Elect to renew this policy; and
 - b. Have the necessary information to issue a renewal policy;

we will confirm in writing at least 45 days before it expires our intention to renew this policy; and the premium at which this policy will be renewed.

2. If we do not comply with the provisions of Paragraph 1., you will have renewal coverage. The renewal coverage will be at the rates:
 - a. In effect under the expiring or expired policy; or
 - b. In effect on the expiration date, that have been approved by the Commissioner;whichever are lower.

This renewal coverage will be on a pro rata basis and will continue for 45 days after we confirm renewal coverage and premium. If you accept this renewal policy, this Paragraph 2. does not apply.

- C. The following paragraph is added to the Businessowners Coverage Form:

1. Statutory Liability

- a. In addition to paying and satisfying judicial judgments rendered against the insured in consequence of claims to which this policy applies, we will protect the insured against the levy of executions issued on such judgments or claims against the insured.

- b. We may, without the insured's consent, continue litigation after a judgment has been rendered with respect to the insured's legal liability under this policy for damages in particular instance. In that event, no limitation of our liability will be valid where the matter of that litigation is concerned.
- c. Under Coverage Forms to which this endorsement applies any legal action against us to recover for loss under this policy must be brought within one year after amount of loss is finally established. The amount of loss can be established only by:
 - (1) Judicial judgment; or
 - (2) An agreement between the parties involved with our written consent.
- d. In the event of the insured's bankruptcy or insolvency, an injured person or claimant who has obtained a judgment against the insured may bring suit against us, provided:
 - (1) The judgment was for damages covered by this policy; and
 - (2) The suit is for damages in amounts no greater than the applicable Limits of Insurance of this policy.
- e. Payment by the insured of any judicial judgment or claim for any of our liability under this policy will not deprive the insured of the right to bring action against us.

POLICY NUMBER:

BUSINESSOWNERS
BP 04 07 07 02

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE OR POLITICAL
SUBDIVISIONS – PERMITS RELATING TO PREMISES**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE*

State Or Political Subdivision:
City Of Burlington
149 Church Street
Burlington, VT 05041

*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph C. Who Is An Insured in Section II – Liability:

4. Any state or political subdivision shown in the Schedule is also an insured, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

- a. The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decoration and similar exposures;
- b. The construction, erection, or removal of elevators; or
- c. The ownership, maintenance, or use of any elevators covered by this insurance.

