



July 30, 2013

TO: Board of Finance
FROM: Ron Redmond, Church Street Marketplace,
ron.redmond.vt@gmail.com or 802-238-5598
RE: Authorize City of Burlington to execute License Agreement with Prelco,
Inc. to access water at 11-17 Church for public drinking fountain on Church
Street (the Fish Fountain).

In 2011, Church Street Marketplace and Parks & Recreation held a public art review process to select a designer for two new public drinking fountains: one for the Marketplace and at the new Skate Park on the Waterfront. Inspired by former City Councilor Nancy Kaplan, the purpose of the Drinking Fountain project is to merge a free service to the public (fresh drinking water) and public art.

A Public Art Review Panel selected the design of Terry Krinsky and Kirk Williams. Total cost of design and fabrication for the two drinking fountains is \$16,000. The Church Street fountain (\$8,000) has been funded entirely through private donations.

Prelco, Inc., property owner of 11-17 Church Street, has agreed to allow the City access to its public water main of the building's basement. The access will save the City and Marketplace the expense of constructing a freeze proof utility vault under Church Street, Owner and Tenant have agreed during the term of the license to allow the City to:

- (i) install a water supply line for the fountain and a drain line through foundation of the building; and
- (ii) connect the supply and drain lines to the City water and sewer main lines located within the basement of the building;
- (iii) install a separate water meter for the supply line and to pay for any costs of water supplied to the fountain; and
- (iv) access the building to turn off and drain the supply line in the fall of each year and to turn on the supply line in the spring of each year; and
- (v) access the building, if required, for necessary repair or replacement.

We are requesting that the Board of Finance and Burlington City Council authorize the City of Burlington to approve a five-year license agreement with Prelco, Inc. to access water at 11-17 Church Street in consideration of the nominal sum of One Dollar (\$1.00) per year, through January 31, 2017

RE: AUTHORIZE CITY OF BURLINGTON TO EXECUTE LICENSE AGREEMENT
 WITH PRELCO, INC. TO ACCESS WATER AT 11-17 CHURCH FOR PUBLIC
 DRINKING FOUNTAIN ON CHURCH STREET

WHEREAS, the Church Street Marketplace Department is a City of Burlington department, that manages the public right of way in the Church Street Marketplace District. The Church Street Marketplace Department is funded entirely through user fees;

WHEREAS, as part of a public art initiative for the Church Street Marketplace District, the City desires to operate a public drinking fountain on Church Street ("Fountain"), located approximately between 11-17 Church Street and One Church Street.

WHEREAS, access to the public water main is needed to serve the Fountain and the closest access to such public water main in the basement of the Building which is owned by the Prelco, Inc, a Vermont Corporation and leased to the Eddie Bauer LLC, a Delaware Limited Liability Company

WHEREAS, as an accommodation to the City and in support of the Marketplace, and in order to save the City and Marketplace the expense of constructing a freeze proof utility vault under Church Street, Owner and Tenant have agreed during the term of the license to allow the City to:

- (i) install a water supply line for the fountain and a drain line through foundation of the building; and
- (ii) connect the supply and drain lines to the city water and sewer main lines located within the basement of the building;
- (iii) install a separate water meter for the supply line and to pay for any costs of water supplied to the fountain; and
- (iv) access the building to turn off and drain the supply line in the fall of each year and to turn on the supply line in the spring of each year; and
- (v) access the building, if required, for necessary repair or replacement.

.
NOW, THEREFORE, BE IT RESOLVED, that the Burlington City Council authorizes the City of Burlington to approve a license agreement with Prelco, Inc. to access water at 11-17 Church Street in consideration of the nominal sum of One Dollar (\$1.00) per year, through January 31, 2017

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is made by and between the City of Burlington, a municipal corporation organized and existing under the laws of the State of Vermont ("City") and Prelco, Inc., a Vermont corporation ("Owner") and Eddie Bauer LLC, a Delaware Limited Liability Company ("Tenant").

WHEREAS, as part of a capital improvements program for the Church Street Marketplace District (the "Marketplace"), the City desires to operate a public drinking fountain on Church Street ("Fountain"), located approximately between 11-17 Church Street ("Building") and One Church Street.

WHEREAS, access to the public water main is needed to serve the Fountain and the closest access to such public water main in the basement of the Building which is owned by the Owner and leased to the Tenant until January 31, 2017, as may be renewed from time to time.

WHEREAS, as an accommodation to the City and in support of the Marketplace, and in order to save the City and Marketplace the expense of constructing a freeze proof utility vault under Church Street, Owner and Tenant have agreed during the term of the license to allow the City to:

- (i) install a water supply line for the Fountain and a drain line ("Supply and Drain Lines") through foundation of the Building; and
- (ii) connect the Supply and Drain Lines to the City water and sewer main lines located within the basement of the Building;
- (iii) install a separate water meter for the supply line and to pay for any costs of water supplied to the fountain; and
- (iv) access the Building to turn off and drain the supply line in the fall of each year and to turn on the supply line in the spring of each year; and
- (v) access the Building, if required, for necessary repair or replacement.

NOW, THEREFORE, in consideration of the nominal sum of One Dollar (\$1.00) per year and the covenants and conditions contained herein the parties agree as follows:

1. Owner hereby grants, and Tenant consents to, a license to the City to undertake the following activities within the Building:

- (i) The City may install the Supply and Drain Lines through foundation of the Building; and
- (ii) The City may connect the supply line to the municipal water main line and the drain line to wastewater lines located within the basement of the Building; and
- (iii) The City shall install a separate water meter for the supply line and shall pay for any costs of water supplied to the fountain and for the costs of the disposal of the wastewater if any charge for such disposal is made by the City; and
- (iv) The City may access the Building during normal operating hours, unless otherwise agreed to, to turn off and drain the supply line in the fall of each year and to turn on the supply line in the spring of each year. City employees shall present valid identification showing that they work for the City and explain what they require; and

(v) The City may access the Building, if required, for necessary repair or replacement of the Supply and Waste Lines or water meter, provided such does not impede the normal operation of Tenant's retail store.

Together the foregoing being hereinafter referred to as the "Licensed Activities"

2. The initial term of this License shall be for twenty (20) years beginning July 1, 2013, and the license shall renew automatically thereafter from year to year unless the Owner or the City gives written notice to the other of its intention not to renew said license, said notice to be given prior to 180 days before the end of the then current license year. In addition, this license shall automatically terminate in the event the Building is substantially destroyed. Upon termination or expiration of the license, the City will remove the Supply and Waste Lines and meter and repair any damage caused by such removal.

3. The location of the Supply and Waste Lines, the connection to the municipal water main and wastewater main and the water meter shall be approved by the Owner and the Tenant and the exact approved locations shall be shown on final plans. The final plans shall include a shut off of the Supply Line located outside the Building.

4. The Supply and Waste Lines and meter shall be designed and installed in a manner which ensures the Supply and Waste Lines and meter do not interfere in any way with the Owner's or Tenant's ability to use, manage, repair, replace or maintain the Building or operate a retail store in the Building, or any component or systems of the Building. The initial installation of the Supply and Waste Lines and water meter and any subsequent maintenance, repair or replacement related to the Supply and Waste Lines and water meter or any Licensed Activities shall occur during Tenant's normal business hours, except in emergency situations. Access to the Building by the City shall only occur after at least forty eight (48) hours prior notice to the Owner and to the Tenant or future tenants of the Building. During the course of construction and installation of the Fountain the City shall insure that reasonable ingress and egress to the Building is maintained during business hours. The City shall work with Tenant to schedule access to Tenant's space at such times so as to minimize disruption of Tenant's business and to enable Tenant to pre-schedule additional employee resources as may be required by Tenant's loss prevention policies then in effect.

5. The City shall indemnify and save each of Owner and Tenant and other future tenants of the Building harmless from all loss, cost, liability or expense, including but not limited to arising from actions, causes of action, suits, damages, judgments, or claims for personal injuries, property damage and demands whatsoever, including all costs of defense arising out of or in connection with the design, installation, operation, repair, maintenance or replacement of the Supply and Waste Lines connection to the water or wastewater mains or water meter or in connection with any of the Licensed Activities. In the event that any of the Licensed Activities adversely affects the insurance rate or coverage for the Building or for Tenant's operation or inventory, Owner or Tenant or future tenants on the Building shall provide reasonable notice to the City of such adverse impact and the City shall, upon demand, reimburse Owner or Tenant for any increases in insurance costs caused by the Licensed Activities.

6. All expenses in connection with the design, installation, repair, maintenance, replacement, operation and supervision of the Supply and Waste Lines and water meter, including the reasonable cost of Tenant's additional payroll expense to oversee work being performed in Tenant's space as required by Tenant's loss prevention policies then in effect, shall be the sole responsibility of the City. The City shall reimburse Tenant for any such payroll expense within 30 days of receipt of an invoice for such costs. Any damage done to the Building in connection with the installation, operation, repair, maintenance or replacement of the Supply and Waste Lines and water meter shall be promptly repaired by the City at its sole cost. Any damage done to the personal property of Owner or Tenant in connection with the installation, operation, repair, maintenance or replacement of the Supply and Waste Lines and water meter shall be promptly reimbursed by the City to Owner or Tenant, as applicable, upon receipt of an invoice for the reasonable repair or replacement cost of such damage.

7. Any notices to be given pursuant to this License shall be sufficient if given by a writing deposited in the United States mails, certified mail or registered mail, return receipt requested, postage prepaid, by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, by facsimile or by email (provided that the electronic process used is reasonably secure and not easily susceptible to manipulation) addressed as follows:

If to Owner:

Prelco, Inc.
2564 Snipe Ireland Road
Richmond, VT 05477

If to Tenant:

Eddie Bauer LLC
10401 NE 8th Street, Suite 500
Bellevue, WA 98004
Attn: Real Estate Department

With a copy to:

Eddie Bauer LLC
10401 NE 8th Street, Suite 500
Bellevue, WA 98004
Attn: Legal Department, General Counsel

And a copy to:

Eddie Bauer Store #533
11-17 Church Street
Burlington, Vermont 05401
Attn: Store Manager

If to City

Executive Director
Church Street Marketplace
2 Church Street, Suite 2A
Burlington, Vermont 05401

With a copy to:

Director
Department of Public Works
645 Pine Street
Burlington, Vermont 05401

or to such other person, address or number as the party entitled to such notice or communication shall have specified by notice to the other party given in accordance with the provisions of this Section. Any such notice or other communication shall be deemed given: (i) if mailed, three days after being deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by courier, the next day after being deposited with the courier, properly addressed and with prepaid; (iii) if sent by telecopy, when transmission has been electronically confirmed; and (iv) if sent by email, upon receipt of a read-receipt by the recipient.

Signature Pages to Follow

AGREED to at Burlington, Vermont this _____ day of _____, 2013.

CITY OF BURLINGTON

Witness

By:_____

STATE OF VERMONT)

COUNTY OF CHITTENDEN, SS.)

At Burlington, this ____ day of _____, 2013 personally appeared _____
and s/he acknowledged this instrument, by her/him sealed and subscribed, to be her/his free
act and deed and the free act and deed of the City of Burlington.

Before me,

Notary Public

AGREED to at Burlington, Vermont this _____ day of _____, 2013.

PRELCO, INC

Witness By: _____
Wright Preston, Duly Authorized Agent

STATE OF VERMONT)
COUNTY OF CHITTENDEN, SS.)

At Burlington, this ____ day of _____, 2013 personally appeared Wright C. Preston, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Prelco, Inc.

Before me,

Notary Public

AGREED to at _____, _____ this _____ day of _____, 2013.

EDDIE BAUER LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF WASHINGTON)

) SS.

COUNTY OF KING)

On this _____ day of _____, 2013, before me personally appeared _____, to me known to be the _____ of EDDIE BAUER LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be her/her free act and deed and the free and voluntary act and deed of said company, and on oath stated that (s)he was authorized to execute said instrument on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature: _____

Name:(print)_____

NOTARY PUBLIC in and for the State of Washington,
residing at _____

My appointment expires:_____