



CITY COUNCIL 345 6th Street, Suite 600, Bremerton, WA 98337 ☐ Phone (360) 473-5280

**AUGUST 26, 2009
CITY COUNCIL STUDY SESSION**

5:00 PM – STUDY SESSION in COUNCIL CONFERENCE ROOM 603

The Study Session is open to the public but there will be no opportunities for input or participation; no action will be taken, and the content of these items is subject to change...

1. Lease Agreement between EMERALD BAY YACHTS and CITY OF BREMERTON – Gary Sexton, Redevelopment Projects Administrator
2. HUD – BEDI Grant Acceptance for Bremerton Boardwalk Project – Phil Williams, Public Works & Utilities Director; and Tom Knuckey, Utilities Managing Engineer, Public Works Department
3. Briefing on Regional Fire Authority (RFA) – Fire Chief Al Duke (*Information Only*)
4. Briefing on AWC Municipal Budgeting Workshop – Council Members Nick Wofford and Dianne Robinson (*Information Only*)
5. Council Committee Chair Reports
6. Other General Council Business (*as necessary and as time allows*)



Americans with Disabilities Act (ADA) accommodations provided upon request. Those requiring special accommodations should contact the City Clerk's Office at (360) 473-5323 by noon on the Monday preceding the Council meeting.

DATE SUBMITTED:

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

Item # 1

SUBJECT: Lease Agreement between the City of Bremerton and Emerald Bay Yachts, LLC

Committee Meeting Date: August 26, 2009
COUNCIL MEETING Date: September 2, 2009
Department: Econ. Development
Presenter: Gary Sexton
Phone: 360-473-5282

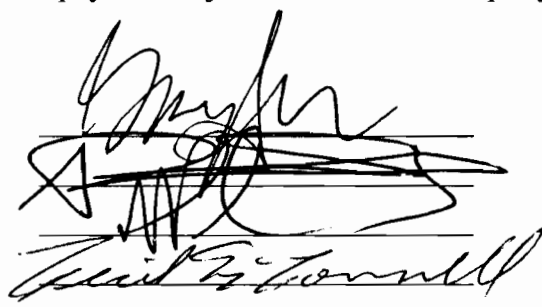
SUMMARY: The proposed lease between the City of Bremerton and Emerald Bay Yachts, LLC is a 5-year lease with an option for and additional 5-year term for commercial sales operations at 140 Washington Avenue.

ATTACHMENTS: Proposed lease.

FISCAL IMPACTS (Include Budgeted Amount): The City will receive \$650.00 per month not including leasehold tax. The lease payment adjustments will be 3% per year.

APPROVALS:

DEPARTMENT DIRECTOR:
CITY ATTORNEY:
FINANCE DIRECTOR:
MAYOR:



COMMITTEE CHAIR

COUNCIL PRESIDENT:

CONSENT AGENDA	<input type="checkbox"/>
GENERAL BUSINESS	<input type="checkbox"/>
PUBLIC HEARING	<input type="checkbox"/>

RECOMMENDED MOTION: Move to approve the lease between the City of Bremerton and Emerald Bay Yachts and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

COUNCIL ACTION: Approve Deny Table Continue No Action

LEASE

This Lease is entered into this _____ day of _____, 2009, between the **CITY OF BREMERTON**, a municipal corporation, (hereinafter referred to as "Lessor"), and **EMERALD BAY YACHTS, LLC**, a Washington corporation, (hereinafter referred to as "Lessee").

WHEREAS, Lessor owns certain real property and a building situate thereon, and

WHEREAS, Lessee desires to lease a portion of the building for retail space for the purchase, sale and lease of boats.

NOW, THEREFORE, the Lessor and Lessee agree as follows:

1. PREMISES. Lessor does hereby lease to the Lessee that portion of a building consisting of approximately 450 square feet located at 140 Washington Avenue, Bremerton, Washington ("Premises") and situated on real property owned by Lessor. The location of the Premises is depicted on Exhibit A attached hereto and incorporated by reference.

2. TERM. The term of this lease shall be for five years commencing August 1, 2009, ("Commencement Date") and ending July 31, 2014, unless otherwise extended or terminated. Lessee and Lessor, by and through the Mayor, may extend this Lease for one additional five year term, subject to mutual agreement of the lease payment and other terms and conditions. To exercise this option, Lessee shall deliver to Lessor a notice to exercise said option within 90 days prior to the expiration of the original term of this lease. If Lessee remains in possession of the Premises or any part thereof after the expiration of the term of this Lease, including any exercised option, without the express written consent of Lessor, such occupancy shall be a tenancy from month-to-month which may be terminated by either Lessor or Lessee by delivering written thirty (30) day notice of termination.

3. LEASE PAYMENT.

(a) Monthly Payment. During the term of this Lease, Lessee agrees to pay Lessor, without notice or demand, the sum of Six Hundred Fifty Dollars and No/100 (\$650.00) per month ("Lease Payment") plus the leasehold tax as set forth in Section 3(e) below, in advance, on or before the first day of the first full calendar month of the term hereof and a like sum on or before the first day of each and every successive calendar month thereafter during the term hereof.

(b) Lease Payment Adjustments. The monthly Lease Payment shall be adjusted every year during the term(s) of this Agreement in the amount of three percent (3%) per year. The adjustment will occur on the anniversary date of this Lease each year.

(c) **Overdue Lease Payment.** Unpaid installments of the Lease Payment or other sums due hereunder shall, if not timely paid, be subject to a later charge of Fifty and No/100 Dollars (\$50.00) to cover the excess costs of administration and shall bear interest from the date due of 12 percent (12%) until all rent and interest has been paid in full. Lessee hereby further agrees to pay any attorneys' fees and expenses incurred by Lessor by reason of Lessee's failure to pay Lease Payment or other charges when due hereunder.

(d) **Holding Over.** If Lessee remains in possession of the Premises or any part thereof after the expiration of the term of this Lease without the express written consent of Lessor, such occupancy shall be a tenancy from month-to-month at a Lease Payment in the amount of 120% of the last Lease Payment, plus all other charges and additional amounts payable hereunder, and upon all the terms hereof applicable to a month-to-month tenancy.

(e) **Leasehold Excise Tax, Other Taxes and Assessments.** In addition to the Lease Payment, Lessee shall pay a leasehold excise tax, pursuant to RCW 82.29A.030, on all Lease Payment amounts paid to the City, currently in the amount of 12.84 percent of the base Lease Payment and as may be adjusted pursuant to Ch. 82.29A RCW. Lessee shall pay the Leasehold tax with the monthly payment. Lessee shall also pay all taxes assessments, and all other governmental charges, of any kind whatsoever, applicable or attributable to the Premises, Lessee's leasehold interest, the improvements, or Lessee's use and enjoyment of the Premises. Lessee shall pay these taxes and assessments when due or as otherwise requested by the Lessor.

(f) **Payment Place.** Payment is to be made to the City of Bremerton, Attn: Director of Financial Services, 345 Sixth Street, Suite 600 Bremerton, Washington 98337.

4. **USE OF PREMISES.** Lessee's use and occupancy of the Premises shall be for retail space for the purchase, sale and lease of boats.

5. **UTILITIES.** Lessee agrees to pay all charges for water and sewer service, power, garbage pickup, janitorial, telephone and for all other utilities which shall be used in the Premises during the full term of this Lease.

6. **IMPROVEMENTS.**

(a) **Specifically.** Lessee accepts the Premises "as is". Lessee may install signage subject to Lessor's approval.

(b) **Generally.** Lessee shall not make or allow to be made any alterations, improvements, or changes to or of the Premises or any part thereof without the prior written consent of Lessor, *and all improvements, alterations, or changes so made shall become a part of the lease Premises and shall belong to Lessor upon expiration or sooner termination of this Lease.* With respect to such alterations, improvements or changes to the Premises requested by Lessee, Lessor's consent shall not be unreasonably withheld. In the event Lessor consents to the making of any alterations, additions, or improvements to the Premises by Lessee, the same shall

be made by Lessee at Lessee's sole cost and expense, the Premises and Lessee's leasehold interest therein shall remain free from any lien of any kind whatsoever, and construction of such alterations, additions or improvements shall be done in compliance with all laws and governmental requirements by qualified city staff or licensed and bonded contractors.

(c) **Removal.** Unless otherwise agreed by the City in writing, Lessee-Owned Improvements shall not be removed by Lessee during the Lease term or upon expiration or termination of this Lease and upon expiration or termination of this Lease, shall become the property of the City without payment by the City.

(d) **Unauthorized Improvements.** Improvements made on the Premises without the City's prior written consent shall immediately become the property of the City, unless the City elects otherwise. Regardless of ownership of Unauthorized Improvements, the City may, at its option, require Lessee to sever, remove, and dispose of them, charge Lessee rent for the use of them, or both. If Lessee fails to remove an Unauthorized Improvement upon request, the City may remove it and charge Lessee for the cost of removal and disposal.

(e) **Liens.** Lessee shall keep the Property and Lessee's leasehold interest free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

7. MAINTENANCE AND REPAIRS.

(a) **Lessee's Obligations.** By taking possession of the Premises, Lessee shall be deemed to have accepted the Premises as being clean and in good order, condition, and repair. Lessee shall, at Lessee's expense, keep the Premises and every part thereof in good condition and repair (except as hereinafter provided with respect to Lessor's obligations set forth in paragraph 7(b) below). Lessee shall, upon the expiration or sooner termination of this Lease, surrender the Premises to Lessor in good condition, clean, excepting only ordinary wear and tear and destruction or damage by such conditions over which Lessee has no control, or such damage as may be due to the failure of Lessor to comply with any covenant herein contained to be performed by Lessor. Damage caused by Lessee's use of the Premises shall be repaired at the sole cost and expense of Lessee.

(b) **Lessor's Obligations.** Lessor shall, at Lessor's expense, repair and maintain the structural portions of the Building, including the roof, foundation, bearing and exterior beams and supports and exterior walls (excluding glass). There shall be no abatement of Rent and no liability for Lessor by reason of any injury to or interference with Lessee's business arising from the making of any repairs, alterations, or improvements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances, and equipment if Lessor shall have taken every reasonable measure to avoid any such injury and interference.

8. LIENS. Lessee shall keep the Premises, Lessee's leasehold interest therein and the Building and Land on which the Premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.

9. INDEMNIFICATION. Lessee shall indemnify, defend and hold Lessor harmless from all loss damage, liability or expense resulting from any injury to any person or any loss of or damage to any property caused by or resulting from any act or omission of Lessee or any officer, agent, employee, guest, invitee or visitor of Lessee in or about the Premises or the Building, but the foregoing provision shall not be construed to make Lessee responsible for injuries to third parties caused by the negligence of Lessor or any officer, agent, employee, guest, invitee or visitor of Lessor. Lessor shall not be liable for any loss or damage to person or property sustained by Lessee, or other persons, which may be caused by theft or any act of neglect of Lessee or occupant of the building, or of any other person, or by any other cause, unless caused by the negligence of Lessor or its officers, licensees, agents, employees, guests, invitees or visitors.

10. LIABILITY INSURANCE; HAZARD INSURANCE.

(a) Liability Insurance. Lessee, at its own expense, shall provide and keep in force comprehensive general liability insurance in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. Lessee shall furnish Lessor with a certificate of such policy within thirty (30) days of the Commencement Date of this Lease and whenever required shall satisfy Lessor that such policy is in full force and effect. Such policy shall name Lessor as an additional insured and shall be primary and noncontributing with any insurance carried by Lessor. The policy shall further provide that it shall not be canceled without twenty (20) days prior written notice to Lessor.

(b) Hazard Insurance. Throughout the term of this Lease, Lessor shall procure and maintain fire, hazard and extended coverage insurance on the Improvements. Should the property become uninhabitable due to loss or become uninhabitable for any other reason the City shall have the option of terminating this lease.

11. PERSONAL PROPERTY. Where furnished by or at the expense of Lessee, all movable property, furniture, furnishings and trade fixtures, other than those affixed to the Premises so that they cannot be removed without material damage, shall remain the property of and be removable by Lessee, and in case of damage by reason of such removal, Lessee shall restore the Premises, Building or common areas to good order and condition. Lessee shall pay or cause to be paid before delinquency any and all taxes levied or assessed and which become payable during the term hereof upon all Lessee's Improvements, equipment, furniture, fixtures, and other personal property located in the Premises. Lessee shall be responsible for all personal property insurance coverage during the term of this Lease.

12. ENTRY BY LESSOR. At any and all reasonable times during regular business hours, upon one (1) day's prior notice to Lessee, Lessor reserves and shall have the right to enter

the Premises to inspect the same a reasonable number of times, to submit the Premises to prospective purchasers or Lessees, to repair the Premises and any portion of the Building that Lessor may deem necessary or desirable, without abatement of Rent, and may for the purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be blocked thereby and further providing that the business of Lessee shall not be interfered with unreasonably. Lessee hereby waives any claim for damages or for any injury or inconvenience to or interference with Lessee's business or any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, if Lessor shall have taken every reasonable measure to avoid any such injury, inconvenience or interference. Lessor shall have the right to use any and all means which Lessor may deem proper to open any doors or otherwise obtain access to the Premises in an emergency, without liability to Lessee except for any failure to exercise due care for Lessee's property, and any entry to the Premises obtained by Lessor by any of said means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction of Lessee from the Premises or any portion thereof.

13. ASSIGNMENT AND SUBLETTING.

(a) City Consent Required. Lessee shall not either voluntarily or by operation of law assign, transfer, mortgage, pledge hypothecate, or encumber this Lease or any interest therein and shall not sublet the Premises or any part thereof or any right or privilege appurtenance thereto or allow any person (the employees, agents, servants, and invitees of Lessee excepted) to occupy or use the Premises or any portion thereof, without the prior written consent of Lessor, which consent by Lessor shall not be unreasonably withheld. Any such assignment or subletting without compliance with the terms of this paragraph shall be void and shall, at the option of Lessor, constitute a default under the terms of this Lease. Consent to one assignment, subletting, occupation, or use by any other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation, or use by another person. Consent to any such assignment or subletting shall in no way relieve Lessee of any liability under this Lease. Lessor may assign the Rent herein provided to any person, partnership, corporation, or bank, and Lessee agrees when notified in writing by the assignee of such assignment to make the Rent payments to assignee under the terms of said assignment.

(b) Rent Payments Following Assignment. The acceptance by the City of the payment of rent following an assignment or other transfer shall not constitute consent to any assignment or transfer.

14. LESSEE'S DEFAULT. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee.

(a) Abandonment. Lessee vacates or abandons the Premises;

(b) Failure to Pay Lease Payment. Lessee fails to make any payment of the

Lease Payment or any other payment required to be made by Lessee hereunder;

(c) **Failure to Observe Other Covenants.** Lessee fails to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for such cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) days and thereafter, diligently prosecutes such cure to completion.

15. REMEDIES ON DEFAULT.

(a) **Termination.** In the event Lessee fails to cure such default, Lessor may, at any time thereafter, terminate this Lease by written notice to Lessee. Lessor may also seek any other remedy provided by law.

(b) **Removal of Personal Property.** In the event of a retaking of possession of the Premises by Lessor, Lessee shall remove all personal property located thereon and upon failure to do so upon demand of Lessor, Lessor may remove and store the same in any place selected by Lessor, including but not limited to a public warehouse, at the expense and risk of Lessee. If Lessee shall fail to pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Lessor may sell any or all of such property at a public or private sale and shall apply the proceeds of such sale first to the cost of such sale, secondly to the payment of the charges for storage, if any, and thirdly to the payment of any other sums of money which may be due from Lessee to Lessor under the terms of this Lease, and the balance, if any, to Lessee. Lessee hereby waives all claims for damages that may be caused by Lessor's lawfully reentering and taking possession of the Premises or lawfully removing and storing the property of Lessee as herein provided and will save Lessor harmless from loss or damages occasioned by Lessor thereby, whether such lawful reentry shall be considered or construed to be a forcible entry.

(c) **Remedies Cumulative.** The remedies hereinafter described shall be cumulative and Lessor shall be entitled to pursue any other remedy now or hereafter available to Lessor under the law or judicial decisions of the State of Washington.

16. **LESSOR'S DEFAULT.** Lessor is in default if Lessor fails to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessor, where such failure shall continue for a period of thirty (30) days after written notice thereof by Lessee to Lessor; provided, however, that if the nature of Lessor's default is such that more than thirty (30) days are reasonably required for such cure, then Lessor shall not be deemed to be in default if Lessor commences such cure within said thirty (30) days and thereafter, diligently prosecutes such cure to completion. In the event Lessor fails to cure such default, Lessee may, at any time thereafter, terminate this Lease by written notice to Lessor. Lessee may also seek any other remedy provided by law.

17. EMINENT DOMAIN. If the whole of the Premises (or the whole or part of the Building or Improvements) shall be acquired or condemned by eminent domain for any public or quasi-public use, or if a part of the Premises is so taken so that the Premises are rendered unsuitable for the business of Lessee, then the term of this Lease shall terminate as of the date title or possession shall be transferred in such proceeding, whichever shall occur first. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the business of Lessee, then Lessor shall restore the Premises to a condition comparable to its condition immediately prior to such taking less the portion lost in the taking, and this Lease shall continue in full force and effect provided, however, that the monthly Rent shall abate in the same ratio that the portion of the Premises so taken bears to the whole of the Premises.. Lessor shall have the right to receive the compensation of damages awarded upon either such total or partial taking and Lessee shall have no claim thereto; provided that Lessee may independently pursue an award or compensation to Lessee for the taking of Lessee's personal property or fixtures or for the interruption of or damage to Lessee's business and for any other interest of Lessee.

18. HAZARDOUS SUBSTANCES. Lessee shall not generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, hydrocarbons, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances or any pollutants or substances defined as hazardous or toxic in accordance with applicable federal, state, and local laws and regulations ("Hazardous Substances") in, on or about the Premises. Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, liabilities, losses, damages, cleanup costs, response costs, and expenses (including reasonable attorneys' fees) arising out of or in any way related to the Release by Lessee, or any of its agents, representatives, or employees, or the presence of such Hazardous Substances in, on or about the Premises occurring at any time after the Commencement Date and arising out of the activities of Lessee, or any of its agents, representatives or employees. The provisions of this paragraph shall survive termination or expiration of this Lease.

19. GENERAL PROVISIONS. Lessor and Lessee agree to the following general provisions:

(a) **Waiver.** No waiver of default by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants and conditions herein contained, to be performed, kept and observed by the other party. The subsequent acceptance of Rent hereunder by Lessor shall not be deemed to be a waiver of any preceding default by Lessee of any term, covenant, or condition of this Lease other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding default at the time of the acceptance of such Rent.

(b) **Time.** Time is of the essence of this Lease and each and all of its

provisions in which performance is a factor.

(c) **Paragraph Headings.** The paragraph or section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

(d) **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

(e) **Recordation.** Neither Lessor nor Lessee shall record this Lease, but a short form memorandum hereof may be recorded at the request of Lessor.

(f) **Quiet Possession.** Upon Lessee paying the Rent reserved hereunder and performing all of the covenants, conditions, and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease. The Premises are leased subject to any and all existing encumbrances, conditions, rights, covenants, easements, restrictions, rights-of-way, and any matters of record, applicable zoning and building laws, and such matters as may be disclosed by inspection or survey.

(g) **Prior Agreements.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding upon any party until fully executed by both parties hereto.

(h) **Inability to Perform.** The time period within which any party is to fulfill an obligation of such the party under this Lease shall be extended by such time period that any party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of such party.

(i) **Severability.** Any provisions of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provision shall remain in full force and effect.

(j) **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall whenever possible be cumulative with all other remedies at law or in equity.

(k) **Choice of Law.** This Lease shall be construed under all of the applicable laws, statutes, ordinances, rules and regulations of the United States, the State of Washington, County of Kitsap, and the City of Bremerton. In the case of a dispute between the parties, venue

over such dispute shall be with the Superior Court of Kitsap County, Washington.

(l) Execution. This Lease may be executed in several counterparts, each of which shall be deemed an original instrument.

(m) Notices. All notices to be given hereunder shall be in writing and shall be personally delivered and receipt acknowledged, sent by United States certified mail, return receipt requested, sent by facsimile, with original delivered within three (3) days, or sent by overnight delivery through public or private service, delivery charge prepaid, and addressed to the party at the respective mailing address as herein set forth.

To Lessor: Mayor
City of Bremerton
345 6th Street, Suite 600
Bremerton, WA 98337

To Lessee: Scott Alprin
Emerald Bay Yachts, LLC
PO Box 2477
Gig Harbor, WA 98335

It is understood that each party may change the address to which notice may be sent by giving a written notice of such change to the other party hereto in the manner herein provided.

(n) Lessee's Corporate Authority. Lessee is a Washington corporation, and each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. Lessee further represents and warrants that it is fully registered and qualified to do business in the State of Washington.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LESSOR

LESSEE

CITY OF BREMERTON

EMERALD BAY YACHTS, LLC

By: Cecil McConnel
Its: Mayor Pro-Tem, City of Bremerton

By: Scott Alprin
Its: Managing Member

Notaries on Next Pages

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Scott Alprin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of Emerald Bay Yachts, LLC to be the free and voluntary act of such Corporation for the uses and purposes mentioned in the instrument.

DATED:

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires / / .

EXHIBIT A
PREMISES

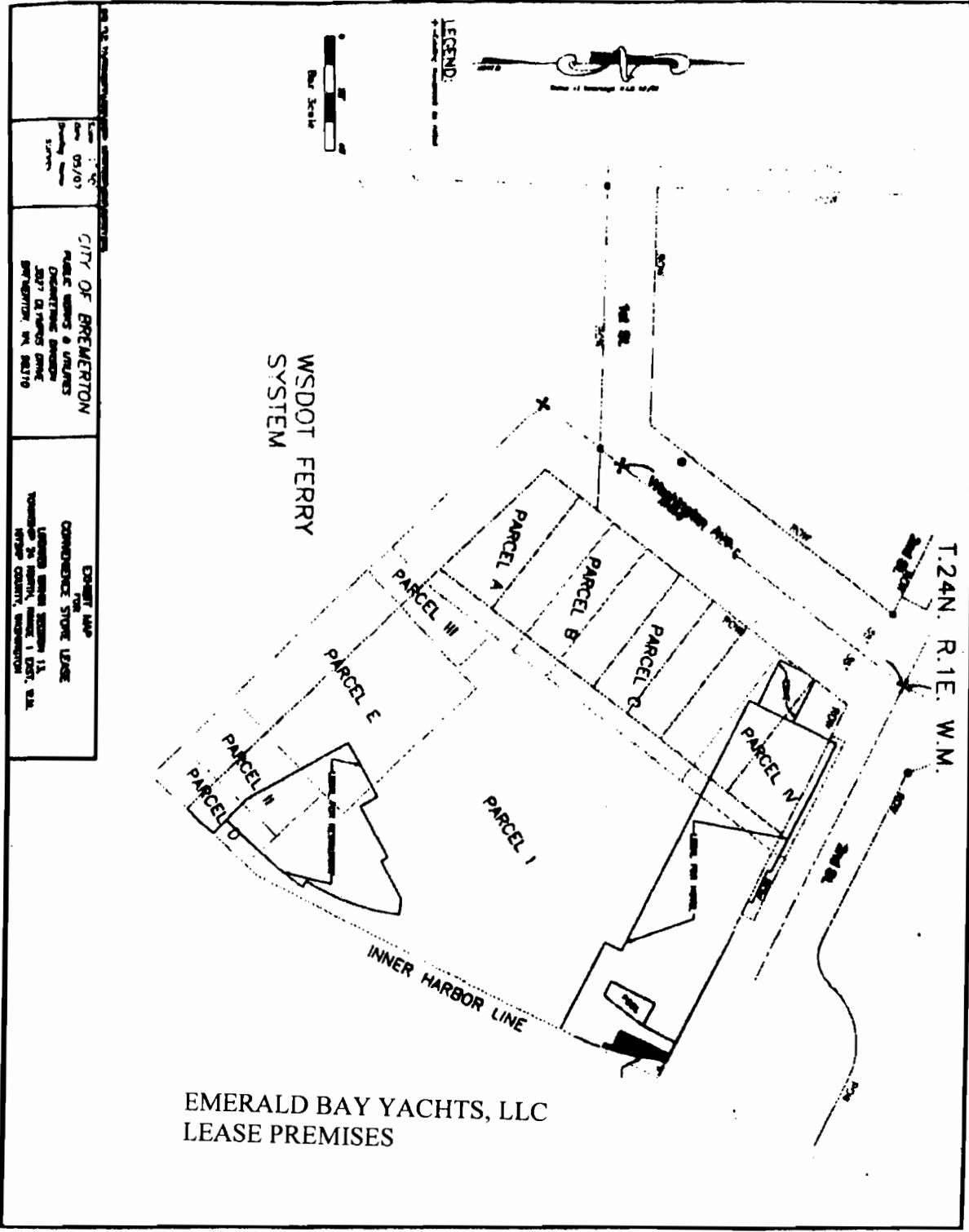


EXHIBIT A

Item #4

BUDGET SUGGESTIONS

For 2010



Information Bulletin No. 533
August 2009



www.mrsc.org/Publications/bs10.pdf