

3H-6

Agenda Item #:

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: August 19, 2008 [X] Consent [ ] Regular  
[ ] Ordinance [ ] Public Hearing  
Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:**

A) an Agreement with Tallmar, Inc., a Florida Corporation, for the placement of communication equipment onto the rooftop of the Marriott Residence Inn, located at 1111 East Atlantic Avenue in Delray Beach on behalf of the Palm Beach County Sheriff's Office: and

B) a Use Agreement with the Palm Beach County Sheriff's Office (PBSO) establishing PBSO's financial responsibility for rent and this equipment.

**Summary:** This Agreement will allow for the installation of radar and other miscellaneous communication equipment which will enhance maritime security and improve communication between local law enforcement agencies. The premises consists of 400+/- SF of roof top space on the Marriott Residence Inn for the installation of an equipment shelter and placement of a radar dish and mast. The Term of the Agreement is for ten years commencing upon execution by the County. The gross annual rent is four thousand dollars (\$4,000), which will be increased annually by CPI. All improvements will be performed by PBSO at its sole expense. The Landlord will provide electrical service. The County has the option to terminate this Agreement for any reason upon ninety (90) days prior written notice to Landlord. The Landlord has the right to terminate upon 180 days notice and Landlord's payment of an \$8,000 early termination fee. The Use Agreement provides that PBSO will pay the annual rent and the cost of improvements. (PREM) District 4 (JMB)

**Background and Justification:** In order to provide increased maritime security of the South Florida coastline and to improve communications between law enforcement agencies, PBSO requires the use of a roof top facility upon which they can install communication and radar equipment. The PBSO Radio Services Department performed an extensive search of the area and selected the Marriott Residence Inn based upon its geographical location. The roof top of the Marriott will provide ample room for PBSO's communication equipment. PBSO will fund all equipment, installation costs and rent. The Landlord has agreed to absorb the cost of electric service on the rooftop. Florida Statutes Section 286.23 requires that a Disclosure of Beneficial Interest be obtained when a property held in a representative capacity is leased to the County. Tallmar, Inc., a Florida Corporation, has provided the attached Disclosure indicating that various members of the Walsh family own the corporation. The Use Agreement outlines the responsibilities of PBSO to pay rent and cover the cost of installing the equipment.

**Attachments:**

- 1. Location Map
- 2. Agreement
- 3. Use Agreement
- 4. Budget Availability Statement
- 5. Disclosure of Beneficial Interest

Recommended By: [Signature] Ashley Wolf 7/28/08  
Department Director Date

Approved By: [Signature] [Signature]  
County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2008	2009	2010	2011	2012
<b>Capital Expenditures</b>					
<b>Operating Costs</b>	<u>\$334.00</u>	<u>\$4,017.00</u>	<u>\$4,272.00</u>	<u>\$4,429.00</u>	<u>\$4,650.00</u>
<b>External Revenues</b>	_____	_____	_____	_____	_____
<b>Program Income (County)</b>	_____	_____	_____	_____	_____
<b>In-Kind Match (County)</b>	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$334.00</u>	<u>\$4,017.00</u>	<u>\$4,272.00</u>	<u>\$4,429.00</u>	<u>\$4,650.00</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

**Is Item Included in Current Budget:** Yes  **X** No

Budget Account No: Fund 0001 Dept 164 Unit 1604 Object 4410

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Fiscal Impact has been calculated using an estimated amount of 5% for CPI. Figures based upon Rent Commencement in September 2008.

This Agreement ~~may~~ be funded using a Homeland Security Grant. In the event that the Grant runs out or is not sufficient, the Use Agreement provides that the Sheriff will fund the expenses out of its operating budget or the County will terminate.

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

OFMB: 8-11-08 (with handwritten notes: 8/16/08, 8/19/08, 7/31/08)
   
 Contract Development and Control: 8/11/08

**This item complies with current County policies.**

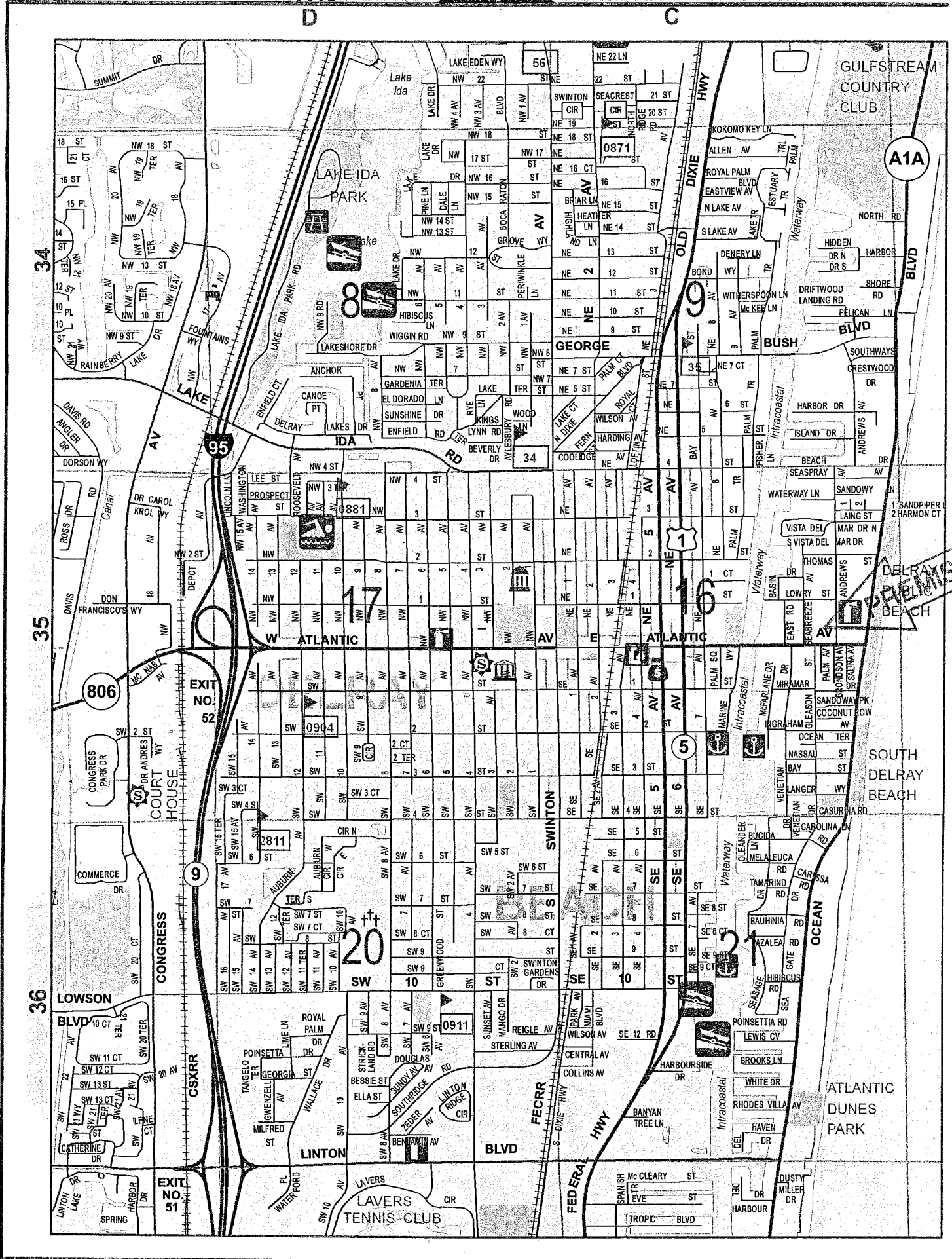
**B. Legal Sufficiency:**

Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

**This summary is not to be used as a basis for payment.**



ATTACHMENT # 1

LOCATION MAP



**AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2008, by and between Tallmar, Inc., a Florida corporation, hereinafter referred to as "LESSOR" and Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

**WITNESSETH:**

**WHEREAS**, LESSOR is the owner of the Marriott Residence Inn, 1111 East Atlantic Ave., Delray Beach, Florida, 33483; and

**WHEREAS**, COUNTY has a need to place communication equipment on a building in Palm Beach County on behalf of the Palm Beach County Sheriff's Office; and

**WHEREAS**, LESSOR has space available on the rooftop of the LESSOR's property (the "Building") for installation of COUNTY's communication equipment; and

**WHEREAS**, LESSOR is willing to lease such space to COUNTY for the use set forth hereinafter.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

The foregoing recitals are true and correct and incorporated herein by reference.

**ARTICLE I**  
**TERM OF AGREEMENT**

**Section 1.01            Length of Term and Commencement Date.**

The term of this Agreement shall commence upon the execution hereof by COUNTY and shall extend for a period of ten (10) years thereafter, unless earlier terminated pursuant to the provisions of this Agreement (the "Term").

**Section 1.02            Termination of Agreement.**

COUNTY shall have the right to terminate this Agreement subject to the conditions set forth below in the event:

- a. COUNTY, after diligent effort, fails to receive, obtain, and/or maintain any consent, permit or approval of any governmental entity necessary for COUNTY to operate its business and/or to construct and use its Communication Equipment as hereinafter defined, as contemplated herein; or
- b. COUNTY no longer desires; as determined in its sole discretion, to use or occupy the rooftop of the Building for operation of its Communication Equipment.

COUNTY shall advise LESSOR of its intent to terminate this Agreement by giving LESSOR ninety (90) days written notice of termination, setting forth the effective date of such termination. Thereafter, COUNTY shall remove all its Communication Equipment and appurtenances installed upon and/or within the Building, shall repair any damage occasioned thereby and shall restore the areas occupied by COUNTY's Communication Equipment to the condition same were in upon execution of this Agreement, normal wear and tear excepted. Upon completion of the foregoing work, the Agreement shall terminate and the parties shall be released of all further liability arising hereunder, with the exception only of any then existing defaults or matters in existence at the time of such termination which would constitute a default with the passage of time and the giving of any required notice.

## **ARTICLE II** **RENT**

### **Section 2.01 Annual Gross Rent.**

COUNTY shall pay LESSOR an annual Gross Rent of Four Thousand Dollars (\$4,000). The annual Gross Rent shall be payable commencing on the first day of the month following the date upon which the COUNTY has obtained all necessary governmental approvals and permits for the installation and operation of the COUNTY's Communication Equipment, but not later than nine (9) months following the execution of this Agreement by COUNTY (the "Rental Commencement Date") and on each anniversary thereof during the Term of this Agreement.

### **Section 2.02 Cost of Living Adjustment to Annual Gross Rent.**

Commencing one (1) year from the Rental Commencement Date, and on each subsequent anniversary thereof (the "Adjustment Date"), the annual Gross Rent shall be adjusted as hereinafter set forth in accordance with any increase in the Consumer Price Index for all Urban Consumers, All Items, U.S. City average (1982-1984=100) (hereinafter "CPI") issued by the Bureau of Statistics of the U.S. Department of Labor. On each Adjustment Date, the annual Gross Rent payable for the immediately preceding one (1) year period shall be adjusted by multiplying the then current annual Gross Rent by a fraction, the numerator of which shall be the CPI value for the month three (3) months preceding the applicable Adjustment Date, and the denominator of which shall be the CPI value for the month three (3) months preceding the month in which the Rental Commencement Date occurs. In no event shall the annual Gross Rent after adjustment be less than the annual Gross Rent for the immediately preceding one (1) year period. In the event that during the Term of this Agreement the CPI ceases to be published, or if a substantial change is made in the method of establishing or computing the CPI, then the determination of the adjustment in the annual Gross Rent shall be made with the use of such conversion factor, formula or tables as may be published by the Bureau of Labor Statistics, or if none is available, by any other nationally recognized publisher of similar information chosen by the COUNTY.

### **Section 2.03 Assessments and Property Taxes.**

During the Term of this Agreement, COUNTY shall pay before delinquency all personal property taxes and assessments levied by any governmental authority on the Communication Equipment and on any Alterations constructed by COUNTY.

**ARTICLE III**  
**INSTALLTION OF COMMUNICATION EQUIPMENT**

**Section 3.01 County's Work.**

COUNTY shall have the right to install one outdoor electronic equipment cabinet approximately 30 inches square on the rooftop of the Building. Additionally, the COUNTY shall install a structural steel mount on the existing elevator penthouse to support the required radar and microwave dishes as described in Exhibit "A" attached hereto and made a part hereof (hereinafter collectively referred to as "County's Communication Equipment"). Said Communication Equipment shall be installed in the locations indicated on the Floor Plan attached hereto and made a part hereof as Exhibit "B". The installation of the equipment cabinet will be on steel supports connected to existing abandoned steel pipe supports located on the roof. No roof penetrations or placing of materials on the roof membrane structure are required. COUNTY will also install a circuit breaker not to exceed 2 pole/40 amps on one of the 3 available electrical sub panels located on the roof as determined by the LESSOR's maintenance staff. COUNTY will produce plans and specifications for the installation of said Communication Equipment and the supporting electrical connections, and shall submit same to LESSOR for its approval prior to commencing installation thereof, which approval shall not be unreasonably withheld.

**Section 3.02 Alterations.**

COUNTY shall not install any additional antennas or equipment upon the Building, nor construct any additional improvements not specifically identified in Exhibit "A" attached hereto without LESSOR's prior written consent, which consent will not be unreasonably withheld. In the event either party hereto proposes to conduct any installation, alteration, improvement, or modification of the buildings, structures or equipment on the rooftop of the Building (hereinafter collectively referred to as "Alterations"), the party proposing to conduct said Alterations shall submit to the other party detailed plans and specifications for the proposed Alterations for the other party's prior review and written approval, which approval shall not be unreasonably withheld.

**Section 3.03 Construction Liens.**

In compliance with Florida Statutes 713.10 COUNTY covenants and agrees that nothing contained in this Agreement shall be construed as a consent on the part of the LESSOR to subject the estate of the LESSOR to liability under the Construction Lien Law of the State of Florida, it being expressly understood that the LESSOR's estate shall not be subject to such liability. COUNTY shall notify any and all contractors and subcontractors employed by or on behalf of COUNTY of this provision of this Agreement. In the event any construction lien is filed against the estate of LESSOR as a result of any work performed by or on behalf of COUNTY, COUNTY shall bond or transfer said lien to security within fifteen (15) days of notice from LESSOR of the existence of said lien.

**Section 3.04 General Provisions.**

Any and all equipment and appurtenances thereto placed on the rooftop of the Building or within the equipment cabinet on the rooftop of the Building by the COUNTY, or any Alterations to such equipment located on or about the rooftop of the Building by COUNTY shall be purchased, insured, installed and maintained by COUNTY, at COUNTY's own cost and expense. COUNTY shall obtain at its sole cost

and expense all governmental permits and approvals required for such installation and maintenance prior to commencing such work. All work done by COUNTY in connection with the performance of COUNTY's Work and any repairs, maintenance and other work to be performed by COUNTY pursuant to this Agreement shall be done only by duly licensed contractors or subcontractors specializing in such work, and shall be performed in a good and workmanlike manner and shall be diligently prosecuted to completion strictly in accordance with governmental permits and approved plans and specifications.

**ARTICLE IV**  
**USE OF ROOFTOP SPACE**

**Section 4.01 Use.**

COUNTY shall have the right to access, use and operate its Communication Equipment on a 24-hour basis during the entire Term of this Agreement. This will include periodic inspections of filters and shelter security as deemed necessary by the COUNTY. The frequencies to be utilized by COUNTY are set forth in Exhibit "C" attached hereto and made a part hereof.

**Section 4.02 Interference.**

Exhibit "C" is a list of the frequencies to be utilized by the COUNTY in the operation of its Communication Equipment. COUNTY shall be solely responsible for the selection and use of the designated frequencies. The parties mutually agree not to cause or allow any interference with the other party's communication facilities or equipment or any party's permitted use of the rooftop of the Building. No party shall modify, or permit the modification of, any antenna or associated combiner, multicoupler, cross band couplers or other components of the other party's receive and transmit antenna systems, which should in any way reduce the "Effective Radiated Power" or "Coverage" of the other party's radio communications system. A party will be deemed the "Interfering Party" if it introduces any activity or change, modifications or addition to its communications facilities, equipment or its use of the rooftop of the Building that interferes with another party's existing communication facilities or equipment or any other party's then currently authorized use thereof. The Interfering Party upon receipt of written notice from any other party using the Building for operation of communications equipment will take all steps necessary at its sole cost to correct and eliminate such interference and to cause its equipment to operate within its assigned frequencies.

The Interfering Party's failure to take immediate action to terminate any such interference shall constitute a default under this Agreement. Any of the foregoing actions by a third party leasing space on the rooftop of the Building from LESSOR shall constitute a default by LESSOR hereunder. Prior to installation of any equipment on the rooftop of the Building utilizing a frequency other than identified in Exhibit "C", the party proposing said installation shall obtain at its sole cost and expense an intermodulation study performed by a licensed engineer to determine the compatibility of equipment to be installed with the systems then existing on the rooftop of the Building. Copies of said intermodulation studies shall be provided to all parties then maintaining the equipment of the rooftop of the Building prior to installation of the equipment. In the event said intermodulation study indicates that said equipment will interfere or is likely to interfere with any of the equipment identified in Exhibits "A" and "B" and/or the frequencies identified in Exhibit "C", then said party shall not proceed with said installation.

**Section 4.03 Governmental Regulations.**

The parties hereto shall each comply with all ordinances, laws, statutes and regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to their use of the rooftop of the Building.

**ARTICLE V**  
**REPAIRS AND MAINTENANCE**

**Section 5.01 Building.**

LESSOR shall maintain the Building in good repair and condition at all times during the Term of this Agreement, at LESSOR's sole cost and expense. Notwithstanding the foregoing, any and all damages to the Building caused by COUNTY shall be repaired by COUNTY at its sole cost and expense.

**Section 5.02 County's Equipment and Personal Property.**

COUNTY shall, at its sole cost and expense, maintain its Communication Equipment and appurtenances located on or about the rooftop of the Building in good repair and condition throughout the term of this Agreement.

**ARTICLE VI**  
**INSURANCE**

**Section 6.01 Liability Insurance.**

COUNTY shall, during the entire Term hereof, provide LESSOR with a certificate evidencing self-insurance coverage for comprehensive general liability in the amount of \$100,000 per person and \$200,000 per incident or occurrence. In the event the Legislature should change the COUNTY's exposure by Statute above or below the sums insured against, COUNTY shall provide insurance to the extent of that exposure.

**Section 6.02 Personal Property.**

COUNTY's Communication Equipment and personal property placed or located on the rooftop of the Building shall be kept there at the sole risk of COUNTY. Notwithstanding the foregoing, LESSOR shall take all reasonable measures to restrict access to the rooftop of the Building and to prohibit unauthorized access to COUNTY's Communication Equipment.

**ARTICLE VII**  
**DAMAGE OR DESTRUCTION OF THE BUILDING**

**Section 7.01 Damage or Destruction by Fire, War or Act of God.**

In the event that fire, windstorm or other such casualty causes damage to the Building or the Building's systems such that COUNTY is unable to access or operate its Communication Equipment, LESSOR shall take such measures as may be reasonably required to assist COUNTY in restoring its Communications Equipment to an operational condition. In the event that it is determined that the damaged areas of the Building shall not be restored, LESSOR shall immediately thereafter provide COUNTY with written notice of said determination whereupon COUNTY shall have the right, at its option, to terminate this Agreement. During any period of time in which such casualty prevents COUNTY from operating its Communication Equipment, the annual Gross Rent shall abate until COUNTY is able to restore its equipment to an operational condition.



**ARTICLE VIII**  
**UTILITIES**

LESSOR shall provide electrical service to the rooftop of the Building at LESSOR's sole cost and expense. LESSOR shall be solely responsible for and promptly pay directly to the utility company or the provider of such service all charges or assessments for electricity used or consumed by COUNTY. LESSOR shall not be liable for an interruption or failure in the supply of such service to the rooftop of the Building resulting from a failure of the utility company to provide service to the rooftop of the Building.

**ARTICLE IX**  
**DEFAULT**

**Section 9.01 Default.**

In the event either party hereto shall fail to perform or observe any of the terms, covenants or conditions of this Agreement on said party's part to be performed, the same shall constitute a default hereunder. In the event said default has not been fully and completely cured within thirty (30) days of written notice of said default by the non-defaulting party, or in the event such default is not reasonably capable of being cured within a thirty (30) day period, or in the event the defaulting party does not immediately upon receipt of notice of such default commence to cure same and thereafter proceed with all due diligence to complete the cure of such default within a reasonable period of time under the circumstances, the non-defaulting party shall have right to seek all remedies available at law or in equity for such default, including the right of specific performance.

**Section 9.02 Waiver, Accord and Satisfaction.**

The waiver by either party of any default by the other party of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same of any other term, condition or covenant herein contained. The written consent or approval by LESSOR to or of any act by COUNTY requiring LESSOR's consent or approval shall not be deemed to waive or render unnecessary LESSOR's consent to or approval of any subsequent similar act by COUNTY.

**ARTICLE X**  
**ACCESS**

COUNTY shall have the right to enter upon the Marriott Residence Inn at all times in order to gain access to its Communication Equipment. LESSOR shall provide COUNTY with 24-hour access to the rooftop of the Building and to County's Communication Equipment.

**ARTICLE XI**  
**ANNUAL BUDGETARY FUNDING**

This Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual funding by Federal grant. Notwithstanding anything in this Agreement to the contrary, COUNTY shall have the right to cancel this Agreement for

any reason upon ninety (90) days prior written notice to LESSOR, whereupon the parties shall be relieved of all further obligation hereunder.

## ARTICLE XII CONDEMNATION

If all or part of the Building shall be taken or condemned for public or quasi-public use and as a result the COUNTY's ability to access and/or operate its Communication Equipment is prohibited or materially restricted, either party shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other party. Any such termination shall be effective as of the date title is vested in the condemning authority. Upon the effective date of such termination, the parties shall be relieved of all further obligations arising subsequent to the date of termination, with the exception only of any then existing defaults, or matters in existence at the time of such termination which would constitute a default with the passage of time and the giving of any required notice.

## ARTICLE XIII MISCELLANEOUS PROVISIONS

### **Section 13.01            Non-Discrimination.**

LESSOR shall assure and certify that it will comply with Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R-92-13 and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation or disability.

### **Section 13.02            Public Entity Crimes.**

As provided in Florida Statutes 287.132-133, LESSOR hereby certifies that, to its knowledge, LESSOR, its affiliates, agents, contractors, employees or suppliers who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) month period immediately preceding the Commencement Date of the Term of this Agreement. This certification is required pursuant to Florida Statute 287.133(3)(a).

### **Section 13.03            Entire Agreement.**

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between COUNTY and LESSOR concerning the Building. All representations, either oral or written shall be deemed to be merged into this Agreement. No alteration, modification, waiver, change or addition to this Agreement shall be binding upon COUNTY or LESSOR unless reduced to writing and signed by them.

### **Section 13.04            Notices.**

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted

before 5PM on a business day and on the next business day if transmitted after 5pm or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to LESSOR at:

Tallmar, Inc.  
C/O Michael Walsh, President  
1001 East Atlantic Ave.  
Delray Beach, FL. 33483  
Fax:

(b) If to the COUNTY at:

Palm Beach County  
Property & Real Estate Management Division  
Attn: Director  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605  
Fax: (561) 233-0210

With a copy to:

Palm Beach Sheriff's Office  
Attn: Ray Carlson, Radio Services  
3228 Gun Club Road  
West Palm Beach, FL 33406  
Fax:

And

Palm Beach County Attorney's Office  
Attn: Real Estate  
301 North Olive Avenue  
Suite 601  
West Palm Beach, FL 33401  
Fax: (561) 355-4398

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

**Section 13.05 Severability.**

If any term of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid and enforceable shall not be affected thereby, and each term of this Agreement, shall be valid and enforceable to the fullest extent permitted by law.

**Section 13.06 Captions.**

The captions in this Agreement are included for convenience only and shall not be taken into consideration in any construction or interpretations of this Agreement or any of its provisions.

**Section 13.07 Recording.**

COUNTY shall not record this Agreement, or any memorandum or short form thereof, without the written consent and joinder of LESSOR.

**Section 13.08 Waiver of Jury Trial.**

The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

**Section 13.09 Governing Law.**

This Agreement shall be governed by, constructed and enforced in accordance with the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

**Section 13.10 Time of Essence.**

Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

**Section 13.11 Benefit and Binding Effect.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

**Section 13.12 Disclosure of Beneficial Interest**

LESSOR represents that simultaneously with LESSOR's execution of this Agreement, LESSOR has executed and delivered to COUNTY, the Landlord's Disclosure of Beneficial Interests attached hereto as Exhibit "D", attached hereto and made a part hereof (the "Disclosure"), disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the LESSOR as required by Section 286.23 of the Florida Statutes unless LESSOR is exempt under the statute. LESSOR warrants that in the event there are any changes to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the LESSOR after the date of execution of the Disclosure until the Effective Date of the Agreement, LESSOR shall immediately, and in every instance, provide written notification of such change to the COUNTY pursuant to Section 13.04 of this Agreement.

**Section 13.13 Quiet Enjoyment.**

Upon the observance and performance of all the covenants, terms, and conditions on COUNTY's part to be observed and performed, COUNTY shall peaceably and quietly hold and enjoy the rooftop of the Building for the Term hereby demised and any extensions thereof without hindrance or interruption by LESSOR or any other person or persons lawfully or equitably claiming by, through, or under the LESSOR, subject, nevertheless, to the terms and conditions of this Agreement.

**ARTICLE XIV  
TERMINATION RIGHTS**

It is specifically understood and agreed that a material inducement to LESSOR to enter into this Agreement is the agreement of COUNTY that, notwithstanding any term or provision contained and set forth in this Agreement to the contrary, LESSOR shall have and is hereby granted the option, in the sole and unbridled discretion of LESSOR, to furnish written notice of termination ("Notice of Termination") at any time to COUNTY which sets forth the date on which this Agreement shall automatically terminate and no longer be in force and effect provided that such termination date shall not be earlier than that date which is one hundred eighty (180) days from and after the date that the LESSOR furnishes such Notice of Termination to COUNTY pursuant to Section 13.04 of this Agreement; provided, however, that such termination shall not become effective until the last to occur of: (a) the date set forth in the Notice of Termination, and (b) that date the LESSOR pays to COUNTY a one-time termination fee in the amount of Eight Thousand and no/100 Dollars (\$8,000.00) in addition to a refund of the annual Gross Rent prorated from the termination date through the remainder of the Term.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, COUNTY and LESSOR have executed this Agreement, or have caused the same to be executed by their duly authorized representatives as of the day and year first above written.

ATTEST:

PALM BEACH COUNTY,  
a political subdivision of the State of Florida

SHARON R. BOCK  
CLERK & COMPTROLLER

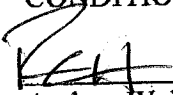
By: \_\_\_\_\_  
Deputy Clerk

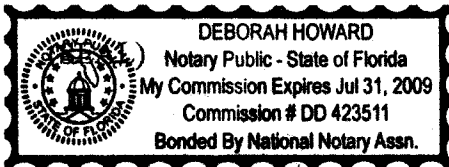
By: \_\_\_\_\_  
Addie L. Greene, Chairperson

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

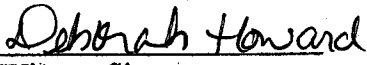
APPROVED AS TO TERMS AND  
CONDITIONS

\_\_\_\_\_  
Assistant County Attorney

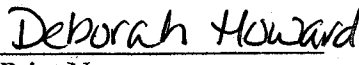
  
\_\_\_\_\_  
Audrey Wolf, Director  
Facilities Development & Operations




TALLMAR, INC., a Florida corporation

  
\_\_\_\_\_  
Witness Signature

By:   
\_\_\_\_\_  
Print Name:

  
\_\_\_\_\_  
Print Name

Its: Pres

  
\_\_\_\_\_  
Witness Signature

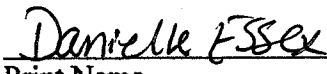
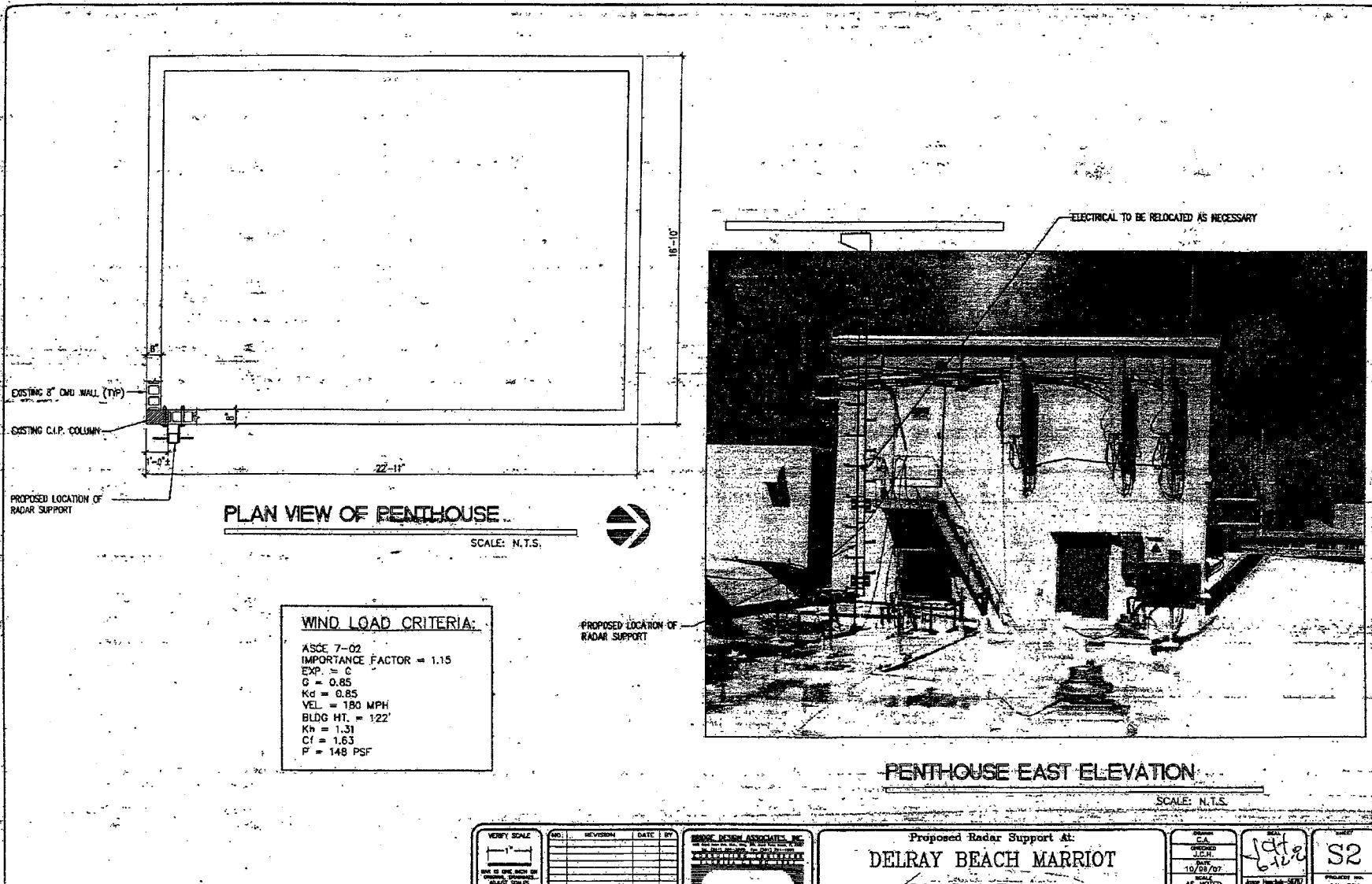
  
\_\_\_\_\_  
Print Name

EXHIBIT "A"

COMMUNICATIONS EQUIPMENT

Equipment Description	Frequency	Power	Location	Height
Marriott DelRay Beach				
Transceiver, TERMA model 2001	Classified	25 KW	Antenna mast top	124
Transceiver, Microwave Motorola TPT600	5.8 Ghz spread s	00.20 watts	2' below antenna mast top	122



PLAN VIEW OF PENTHOUSE

SCALE: N.T.S.



**WIND LOAD CRITERIA:**

ASCE 7-02  
 IMPORTANCE FACTOR = 1.15  
 EXP. = C  
 Q = 0.85  
 Kd = 0.85  
 VEL = 180 MPH  
 BLDG HT. = 122'  
 Kh = 1.31  
 Cf = 1.63  
 P = 148 PSF

PROPOSED LOCATION OF RADAR SUPPORT



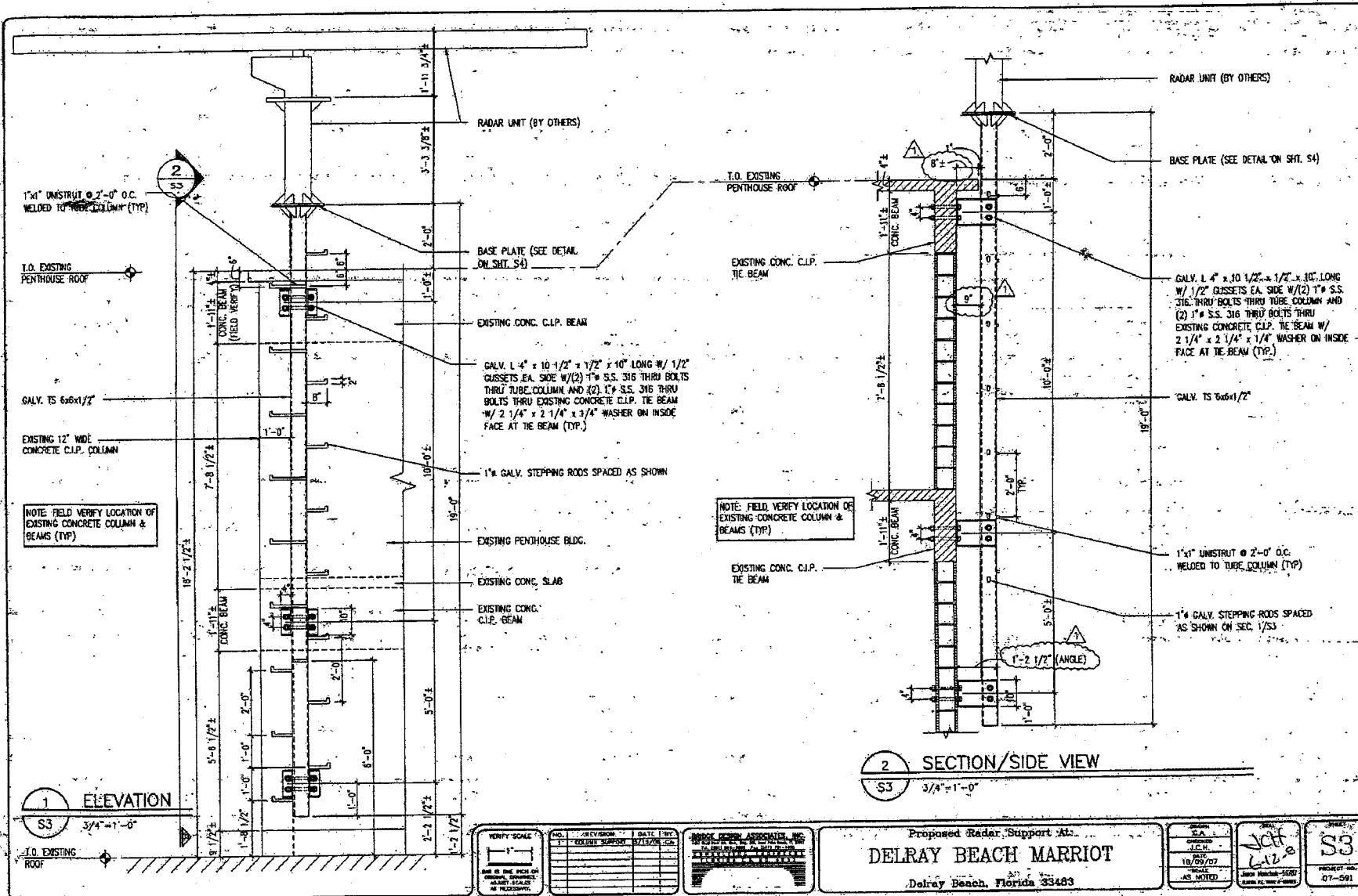
PENTHOUSE EAST ELEVATION

SCALE: N.T.S.

VERIFY SCALE 	NO.	REVISION	DATE	BY	PROPOSED RADAR SUPPORT AT <b>DELRAY BEACH MARRIOTT</b> Delray Beach, Florida 33483	CHECKED G.A. 10/21/07	DATE 10/21/07	PROJECT NO. 07-581
	1" = 1'-0" USE IN ONE PLACE OR RELOCATED AS NECESSARY					PROJECT NO. 07-581		



C:\projects\delray\_beach\_marrriott\delray\_beach\_marrriott\delray\_beach\_marrriott\delray\_beach\_marrriott\delray\_beach\_marrriott.dwg, 6/7/2008 4:48:28 PM



1 ELEVATION  
 S3 3/4" = 1'-0"

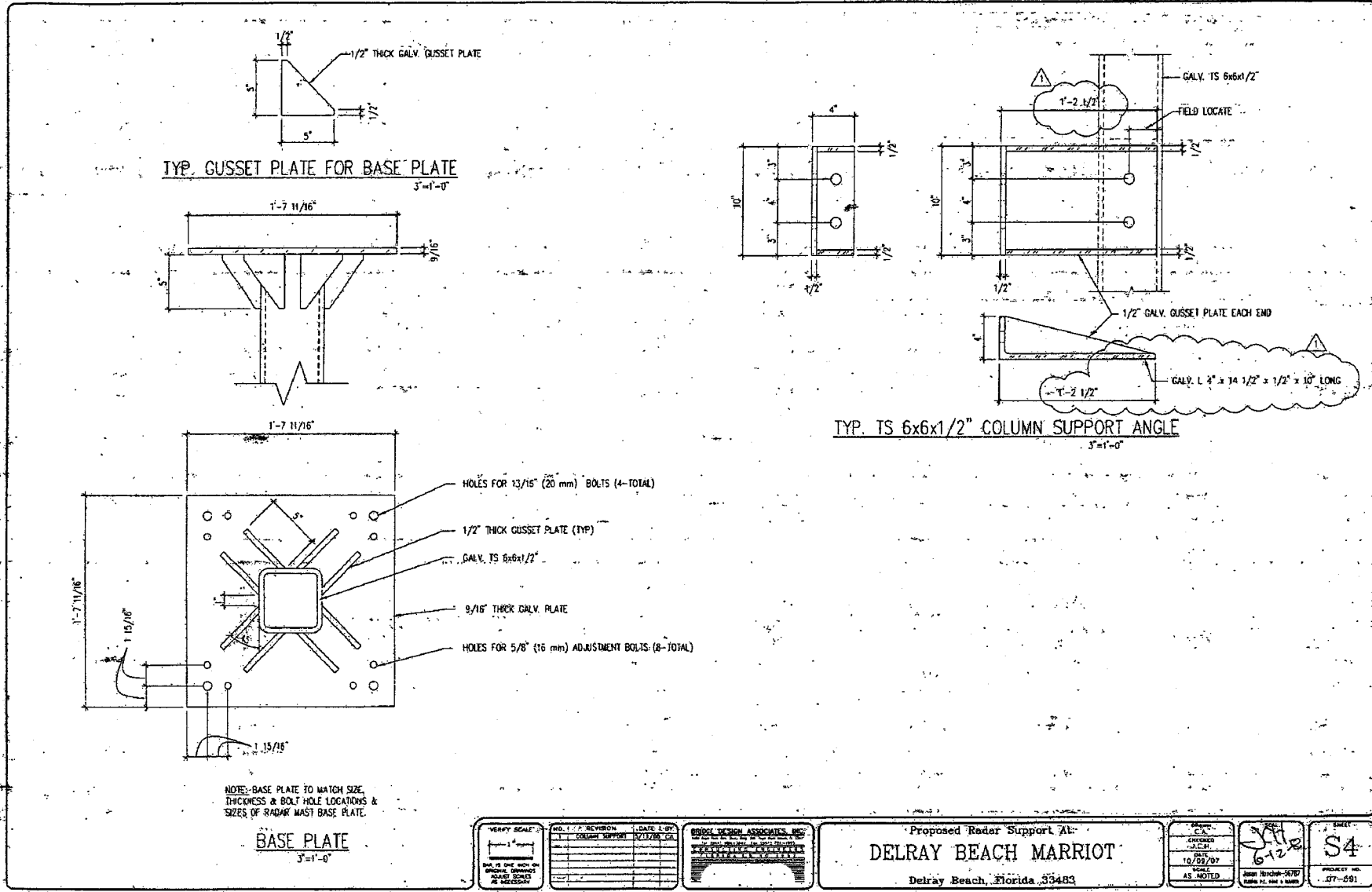
2 SECTION/SIDE VIEW  
 S3 3/4" = 1'-0"

FLOOR PLAN

EXHIBIT "B"

Page 2 of 3

VERIFY SCALE 1" = 1'-0"	NO. OF REVISIONS DATE TIME CHECKED BY DATE TIME	PROPOSED RADAR SUPPORT AT <b>DELRAY BEACH MARRIOTT</b> Delray Beach, Florida 33483	DESIGN DATE CHECKED DATE SCALE AS NOTED	JCH 6/7/08 DATE 18/06/07 SCALE AS NOTED	<b>S3</b> PROJECT NO. 07-591
----------------------------	--	--	--	--	------------------------------------



VERIFY SCALE

DATE: 10/22/07

BY: [Signature]

NO.	DESCRIPTION	DATE	BY
1	COLUMN SUPPORT	10/22/07	GL

BRIDGE DESIGN ASSOCIATES, INC.

10000 W. BOCA RATON BLVD., SUITE 200

BOCA RATON, FLORIDA 33433

TEL: 561-993-8800

FAX: 561-993-8801

WWW.BDA-INC.COM

Proposed Radar Support At:

**DELRAY BEACH MARRIOTT**

Delray Beach, Florida 33483

DATE: 10/22/07

SCALE: AS NOTED

DATE: 10/22/07

SCALE: AS NOTED

SHEET: S4

PROJECT NO: 07-091

**EXHIBIT "C"**  
**FREQUENCY LIST**

Equipment Description	Frequency	Power	Location	Height
Marriott DelRay Beach				
Transceiver, TERMA model 2001	Classified	25 KW	Antenna mast top	124
Transceiver, Microwave Motorola TPT600	5.8 Ghz spread s	00.20 watts	2' below antenna mast top	122

EXHIBIT "D"

DISCLOSURE OF BENEFICIAL INTEREST

LANDLORD'S DISCLOSURE OF BENEFICIAL INTERESTS  
(REQUIRED BY FLORIDA STATUTES 286.23)

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY  
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, Michael Walsh, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the Manager (position - i.e. president, partner, trustee) of Tallmar, Inc., a Florida corporation LLC (the "Landlord") which entity is the owner of the real property legally described on the attached Exhibit "A" (the "Property").

2. Affiant's address is: 1001 E. ATLANTIC AVE  
Delray Bch, FL 33483

3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five Percent (5%) or greater beneficial interest in the Landlord and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit is given to comply with Florida Statutes 286.23, and will be relied upon by Palm Beach County in its lease of the Property.

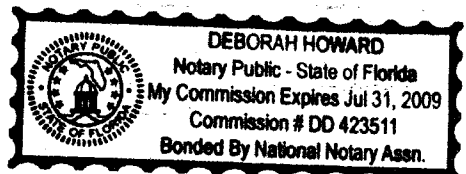
5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Michael Walsh, Affiant  
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 28 day of July, 2008 by \_\_\_\_\_  
[ ] who is personally known to me or [ ] who has produced \_\_\_\_\_  
as identification and who did take an oath.



Deborah Howard  
Notary Public  
Deborah Howard  
(Print Notary Name)

NOTARY PUBLIC  
State of Florida at Large  
My Commission Expires: 7/31/09

**EXHIBIT "A"**

**PROPERTY**

All units within the SPANISH RIVER RESORT AND BEACH CLUB CONDOMINIUM, according to the Declaration thereof, as recorded in Official Records Book 3228, Page 62, and as amended in Official Records Book 3457, Page 89, Official Records Book 3612, Page 587, Official Records Book 3676, Page 820, Official Records Book 3827, Page 1761, Official Records Book 4652, Page 1155, Official Records Book 5718, Page 238 and amendment to Articles of Incorporation and By-Laws in Official Records Book 5721, Page 528 all of the Public Records of Palm Beach County, Florida, constituting 72 residential units and 9 commercial units, which condominium was declared on the property legally described as follows:

The West 150 feet of the South Half (S 1/2) of Block 164 of the fractional East Half (E 1/2) of Section 16, Township 46 South, Range 43 East, in the City of Delray Beach, Florida, according to the plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 1, Page 25; less the South 15 feet thereof for Road Right of Way.

Together with Lots 1, 2, and 28, SEABREEZE PARK, as recorded in Plat Book 4, Page 31 of the Public Records of Palm Beach County, Florida less the North 10 feet of said Lot 28 and less the Right of Way for Atlantic Avenue.

Said lands lying in the City of Delray Beach, Palm Beach County, Florida, containing 71789.41 square feet (1.65 acres) more or less.



## USE AGREEMENT

THIS USE AGREEMENT (the "Agreement"), made and entered into \_\_\_\_\_ by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, ("COUNTY") and RIC L. BRADSHAW, SHERIFF, in his official capacity as the Sheriff of Palm Beach County, Florida, a State constitutional officer ("SHERIFF").

### WITNESSETH:

WHEREAS, COUNTY and TALLMAR, INC., a Florida corporation ("TALLMAR"), are entering into an agreement of even date herewith (the "Marriott Residence Inn Agreement"), a copy of which is attached hereto and made a part hereof as Exhibit "A", for COUNTY's installation of communication equipment upon the rooftop of the Building as defined in the Marriott Residence Inn Agreement; and

WHEREAS, COUNTY agreed to enter into the Marriott Residence Inn Agreement to provide for the installation of communication equipment on SHERIFF's behalf; and

WHEREAS, under the terms of the Marriott Residence Inn Agreement, COUNTY agreed to pay TALLMAR Annual Gross Rent in exchange for COUNTY's use of the rooftop of the Building; and

WHEREAS, SHERIFF agrees to pay COUNTY for COUNTY's payment of Annual Gross Rent caused by the installation of SHERIFF's communication equipment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. SHERIFF acknowledges that COUNTY's Annual Gross Rent shall initially be Four Thousand Dollars (\$4,000.00), and that the Annual Gross Rent shall be adjusted annually for the cost of living pursuant to Section 2.02 of the Marriott Residence Inn Agreement.
3. SHERIFF agrees to pay COUNTY the amount of Annual Gross Rent due on the Rental Commencement Date as set forth in Section 2.01 of the Marriott Residence Inn Agreement. The Director of Property & Real Estate Management shall provide SHERIFF with an invoice for the amount due, which amount shall be promptly authorized for payment through internal payment procedures.
4. Effective on the first anniversary of the Rental Commencement Date, and on each subsequent anniversary thereof, SHERIFF agrees to pay COUNTY the Annual Gross Rent, as adjusted pursuant to Section 2.02 of the Marriott Residence Inn Agreement, in full after receipt of an invoice from the Director of Property & Real Estate Management notifying SHERIFF of the amount due, which amount shall be promptly authorized for payment through internal payment procedures.
5. The parties acknowledge that the SHERIFF is funding the Annual Gross Rent payments and installation of SHERIFF's communication equipment using

grant funds. In the event that the grant funding is discontinued, SHERIFF agrees that he will fund all expenditures due COUNTY under this Agreement out of SHERIFF's operating budget. In the event SHERIFF does not fund said expenditures, COUNTY shall terminate the Marriott Residence Inn Agreement.

6. SHERIFF shall be responsible for the maintenance, repair, and/or replacement, and insurance of SHERIFF's communication equipment, and for all costs associated with the maintenance, repair, and/or replacement, and insurance of SHERIFF's communication equipment.

7. SHERIFF agrees to install only the equipment listed and/or shown in Exhibits "A" and "B" to the Marriott Residence Inn Agreement. SHERIFF agrees to utilize only the frequencies assigned to it in Exhibit "C" to the Marriott Residence Inn Agreement.

8. SHERIFF acknowledges that its use of the Building is subject to COUNTY's agreement with TALLMAR, and agrees that it shall not take any action that would place COUNTY in violation of the terms of the Marriott Residence Inn Agreement. SHERIFF further agrees that any such action will be grounds for immediate termination by COUNTY of this Agreement and the Marriott Residence Inn Agreement and all rights granted to SHERIFF thereunder. SHERIFF agrees to cure any default if so required.

9. This Agreement shall remain in effect from the Agreement Effective Date until the termination or expiration of the Marriott Residence Inn Agreement.

10. This Agreement shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners ("Agreement Effective Date").

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

ATTEST:

**PALM BEACH COUNTY,**  
a political subdivision of the State of Florida

SHARON R. BOCK  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

(SEAL)

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
Assistant County Attorney

By: *Audrey Wolf*  
Audrey Wolf, Director  
Facilities Development & Operations

ATTEST:

**RIC L. BRADSHAW, SHERIFF**, in  
his capacity as the Sheriff of Palm Beach  
County, Florida, a State constitutional  
officer

By: *Shanna McWilliam*

By: *Col. Michael E. Gwoger* OTC  
Ric L. Bradshaw, Sheriff

For Sheriff Bradshaw

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: *[Signature]*  
Asst Legal Advisor, PBC Sheriff's Office  
*RIC BRADSHAW*

G:\Property Mgmt Section\Out Lease\PBSO Delray Marriott Antenna\MOU.002.doc

**EXHIBIT "A"**

**Marriott Residence Inn Agreement**

**AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by and between Tallmar, Inc., a Florida corporation, hereinafter referred to as "LESSOR" and Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

**WITNESSETH:**

**WHEREAS**, LESSOR is the owner of the Marriott Residence Inn, 1111 East Atlantic Ave., Delray Beach, Florida, 33483; and

**WHEREAS**, COUNTY has a need to place communication equipment on a building in Palm Beach County on behalf of the Palm Beach County Sheriff's Office; and

**WHEREAS**, LESSOR has space available on the rooftop of the LESSOR's property (the "Building") for installation of COUNTY's communication equipment; and

**WHEREAS**, LESSOR is willing to lease such space to COUNTY for the use set forth hereinafter.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

The foregoing recitals are true and correct and incorporated herein by reference.

**ARTICLE I**  
**TERM OF AGREEMENT**

**Section 1.01            Length of Term and Commencement Date.**

The term of this Agreement shall commence upon the execution hereof by COUNTY and shall extend for a period of ten (10) years thereafter, unless earlier terminated pursuant to the provisions of this Agreement (the "Term").

**Section 1.02            Termination of Agreement.**

COUNTY shall have the right to terminate this Agreement subject to the conditions set forth below in the event:

- a. COUNTY, after diligent effort, fails to receive, obtain, and/or maintain any consent, permit or approval of any governmental entity necessary for COUNTY to operate its business and/or to construct and use its Communication Equipment as hereinafter defined, as contemplated herein; or
- b. COUNTY no longer desires, as determined in its sole discretion, to use or occupy the rooftop of the Building for operation of its Communication Equipment.

COUNTY shall advise LESSOR of its intent to terminate this Agreement by giving LESSOR ninety (90) days written notice of termination, setting forth the effective date of such termination. Thereafter, COUNTY shall remove all its Communication Equipment and appurtenances installed upon and/or within the Building, shall repair any damage occasioned thereby and shall restore the areas occupied by COUNTY's Communication Equipment to the condition same were in upon execution of this Agreement, normal wear and tear excepted. Upon completion of the foregoing work, the Agreement shall terminate and the parties shall be released of all further liability arising hereunder, with the exception only of any then existing defaults or matters in existence at the time of such termination which would constitute a default with the passage of time and the giving of any required notice.

## ARTICLE II RENT

### **Section 2.01            Annual Gross Rent.**

COUNTY shall pay LESSOR an annual Gross Rent of Four Thousand Dollars (\$4,000). The annual Gross Rent shall be payable commencing on the first day of the month following the date upon which the COUNTY has obtained all necessary governmental approvals and permits for the installation and operation of the COUNTY's Communication Equipment, but not later than nine (9) months following the execution of this Agreement by COUNTY (the "Rental Commencement Date") and on each anniversary thereof during the Term of this Agreement.

### **Section 2.02            Cost of Living Adjustment to Annual Gross Rent.**

Commencing one (1) year from the Rental Commencement Date, and on each subsequent anniversary thereof (the "Adjustment Date"), the annual Gross Rent shall be adjusted as hereinafter set forth in accordance with any increase in the Consumer Price Index for all Urban Consumers, All Items, U.S. City average (1982-1984=100) (hereinafter "CPI") issued by the Bureau of Statistics of the U.S. Department of Labor. On each Adjustment Date, the annual Gross Rent payable for the immediately preceding one (1) year period shall be adjusted by multiplying the then current annual Gross Rent by a fraction, the numerator of which shall be the CPI value for the month three (3) months preceding the applicable Adjustment Date, and the denominator of which shall be the CPI value for the month three (3) months preceding the month in which the Rental Commencement Date occurs. In no event shall the annual Gross Rent after adjustment be less than the annual Gross Rent for the immediately preceding one (1) year period. In the event that during the Term of this Agreement the CPI ceases to be published, or if a substantial change is made in the method of establishing or computing the CPI, then the determination of the adjustment in the annual Gross Rent shall be made with the use of such conversion factor, formula or tables as may be published by the Bureau of Labor Statistics, or if none is available, by any other nationally recognized publisher of similar information chosen by the COUNTY.

### **Section 2.03            Assessments and Property Taxes.**

During the Term of this Agreement, COUNTY shall pay before delinquency all personal property taxes and assessments levied by any governmental authority on the Communication Equipment and on any Alterations constructed by COUNTY.

**ARTICLE III**  
**INSTALLTION OF COMMUNICATION EQUIPMENT**

**Section 3.01 County's Work.**

COUNTY shall have the right to install one outdoor electronic equipment cabinet approximately 30 inches square on the rooftop of the Building. Additionally, the COUNTY shall install a structural steel mount on the existing elevator penthouse to support the required radar and microwave dishes as described in Exhibit "A" attached hereto and made a part hereof (hereinafter collectively referred to as "County's Communication Equipment"). Said Communication Equipment shall be installed in the locations indicated on the Floor Plan attached hereto and made a part hereof as Exhibit "B". The installation of the equipment cabinet will be on steel supports connected to existing abandoned steel pipe supports located on the roof. No roof penetrations or placing of materials on the roof membrane structure are required. COUNTY will also install a circuit breaker not to exceed 2 pole/40 amps on one of the 3 available electrical sub panels located on the roof as determined by the LESSOR's maintenance staff. COUNTY will produce plans and specifications for the installation of said Communication Equipment and the supporting electrical connections, and shall submit same to LESSOR for its approval prior to commencing installation thereof, which approval shall not be unreasonably withheld.

**Section 3.02 Alterations.**

COUNTY shall not install any additional antennas or equipment upon the Building, nor construct any additional improvements not specifically identified in Exhibit "A" attached hereto without LESSOR's prior written consent, which consent will not be unreasonably withheld. In the event either party hereto proposes to conduct any installation, alteration, improvement, or modification of the buildings, structures or equipment on the rooftop of the Building (hereinafter collectively referred to as "Alterations"), the party proposing to conduct said Alterations shall submit to the other party detailed plans and specifications for the proposed Alterations for the other party's prior review and written approval, which approval shall not be unreasonably withheld.

**Section 3.03 Construction Liens.**

In compliance with Florida Statutes 713.10 COUNTY covenants and agrees that nothing contained in this Agreement shall be construed as a consent on the part of the LESSOR to subject the estate of the LESSOR to liability under the Construction Lien Law of the State of Florida, it being expressly understood that the LESSOR's estate shall not be subject to such liability. COUNTY shall notify any and all contractors and subcontractors employed by or on behalf of COUNTY of this provision of this Agreement. In the event any construction lien is filed against the estate of LESSOR as a result of any work performed by or on behalf of COUNTY, COUNTY shall bond or transfer said lien to security within fifteen (15) days of notice from LESSOR of the existence of said lien.

**Section 3.04 General Provisions.**

Any and all equipment and appurtenances thereto placed on the rooftop of the Building or within the equipment cabinet on the rooftop of the Building by the COUNTY, or any Alterations to such equipment located on or about the rooftop of the Building by COUNTY shall be purchased, insured, installed and maintained by COUNTY, at COUNTY's own cost and expense. COUNTY shall obtain at its sole cost

and expense all governmental permits and approvals required for such installation and maintenance prior to commencing such work. All work done by COUNTY in connection with the performance of COUNTY's Work and any repairs, maintenance and other work to be performed by COUNTY pursuant to this Agreement shall be done only by duly licensed contractors or subcontractors specializing in such work, and shall be performed in a good and workmanlike manner and shall be diligently prosecuted to completion strictly in accordance with governmental permits and approved plans and specifications.

**ARTICLE IV**  
**USE OF ROOFTOP SPACE**

**Section 4.01 Use.**

COUNTY shall have the right to access, use and operate its Communication Equipment on a 24-hour basis during the entire Term of this Agreement. This will include periodic inspections of filters and shelter security as deemed necessary by the COUNTY. The frequencies to be utilized by COUNTY are set forth in Exhibit "C" attached hereto and made a part hereof.

**Section 4.02 Interference.**

Exhibit "C" is a list of the frequencies to be utilized by the COUNTY in the operation of its Communication Equipment. COUNTY shall be solely responsible for the selection and use of the designated frequencies. The parties mutually agree not to cause or allow any interference with the other party's communication facilities or equipment or any party's permitted use of the rooftop of the Building. No party shall modify, or permit the modification of, any antenna or associated combiner, multicoupler, cross band couplers or other components of the other party's receive and transmit antenna systems, which should in any way reduce the "Effective Radiated Power" or "Coverage" of the other party's radio communications system. A party will be deemed the "Interfering Party" if it introduces any activity or change, modifications or addition to its communications facilities, equipment or its use of the rooftop of the Building that interferes with another party's existing communication facilities or equipment or any other party's then currently authorized use thereof. The Interfering Party upon receipt of written notice from any other party using the Building for operation of communications equipment will take all steps necessary at its sole cost to correct and eliminate such interference and to cause its equipment to operate within its assigned frequencies.

The Interfering Party's failure to take immediate action to terminate any such interference shall constitute a default under this Agreement. Any of the foregoing actions by a third party leasing space on the rooftop of the Building from LESSOR shall constitute a default by LESSOR hereunder. Prior to installation of any equipment on the rooftop of the Building utilizing a frequency other than identified in Exhibit "C", the party proposing said installation shall obtain at its sole cost and expense an intermodulation study performed by a licensed engineer to determine the compatibility of equipment to be installed with the systems then existing on the rooftop of the Building. Copies of said intermodulation studies shall be provided to all parties then maintaining the equipment of the rooftop of the Building prior to installation of the equipment. In the event said intermodulation study indicates that said equipment will interfere or is likely to interfere with any of the equipment identified in Exhibits "A" and "B" and/or the frequencies identified in Exhibit "C", then said party shall not proceed with said installation.

**Section 4.03 Governmental Regulations.**

The parties hereto shall each comply with all ordinances, laws, statutes and regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to their use of the rooftop of the Building.

**ARTICLE V**  
**REPAIRS AND MAINTENANCE**

**Section 5.01 Building.**

LESSOR shall maintain the Building in good repair and condition at all times during the Term of this Agreement, at LESSOR's sole cost and expense. Notwithstanding the foregoing, any and all damages to the Building caused by COUNTY shall be repaired by COUNTY at its sole cost and expense.

**Section 5.02 County's Equipment and Personal Property.**

COUNTY shall, at its sole cost and expense, maintain its Communication Equipment and appurtenances located on or about the rooftop of the Building in good repair and condition throughout the term of this Agreement.

**ARTICLE VI**  
**INSURANCE**

**Section 6.01 Liability Insurance.**

COUNTY shall, during the entire Term hereof, provide LESSOR with a certificate evidencing self-insurance coverage for comprehensive general liability in the amount of \$100,000 per person and \$200,000 per incident or occurrence. In the event the Legislature should change the COUNTY's exposure by Statute above or below the sums insured against, COUNTY shall provide insurance to the extent of that exposure.

**Section 6.02 Personal Property.**

COUNTY's Communication Equipment and personal property placed or located on the rooftop of the Building shall be kept there at the sole risk of COUNTY. Notwithstanding the foregoing, LESSOR shall take all reasonable measures to restrict access to the rooftop of the Building and to prohibit unauthorized access to COUNTY's Communication Equipment.

**ARTICLE VII**  
**DAMAGE OR DESTRUCTION OF THE BUILDING**

**Section 7.01 Damage or Destruction by Fire, War or Act of God.**

In the event that fire, windstorm or other such casualty causes damage to the Building or the Building's systems such that COUNTY is unable to access or operate its Communication Equipment, LESSOR shall take such measures as may be reasonably required to assist COUNTY in restoring its Communications Equipment to an operational condition. In the event that it is determined that the damaged areas of the Building shall not be restored, LESSOR shall immediately thereafter provide COUNTY with written notice of said determination whereupon COUNTY shall have the right, at its option, to terminate this Agreement. During any period of time in which such casualty prevents COUNTY from operating its Communication Equipment, the annual Gross Rent shall abate until COUNTY is able to restore its equipment to an operational condition.

**ARTICLE VIII**  
**UTILITIES**

LESSOR shall provide electrical service to the rooftop of the Building at LESSOR's sole cost and expense. LESSOR shall be solely responsible for and promptly pay directly to the utility company or the provider of such service all charges or assessments for electricity used or consumed by COUNTY. LESSOR shall not be liable for an interruption or failure in the supply of such service to the rooftop of the Building resulting from a failure of the utility company to provide service to the rooftop of the Building.

**ARTICLE IX**  
**DEFAULT**

**Section 9.01           Default.**

In the event either party hereto shall fail to perform or observe any of the terms, covenants or conditions of this Agreement on said party's part to be performed, the same shall constitute a default hereunder. In the event said default has not been fully and completely cured within thirty (30) days of written notice of said default by the non-defaulting party, or in the event such default is not reasonably capable of being cured within a thirty (30) day period, or in the event the defaulting party does not immediately upon receipt of notice of such default commence to cure same and thereafter proceed with all due diligence to complete the cure of such default within a reasonable period of time under the circumstances, the non-defaulting party shall have right to seek all remedies available at law or in equity for such default, including the right of specific performance.

**Section 9.02           Waiver, Accord and Satisfaction.**

The waiver by either party of any default by the other party of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same of any other term, condition or covenant herein contained. The written consent or approval by LESSOR to or of any act by COUNTY requiring LESSOR's consent or approval shall not be deemed to waive or render unnecessary LESSOR's consent to or approval of any subsequent similar act by COUNTY.

**ARTICLE X**  
**ACCESS**

COUNTY shall have the right to enter upon the Marriott Residence Inn at all times in order to gain access to its Communication Equipment. LESSOR shall provide COUNTY with 24-hour access to the rooftop of the Building and to County's Communication Equipment.

**ARTICLE XI**  
**ANNUAL BUDGETARY FUNDING**

This Agreement and all obligations of COUNTY hereunder are subject to and contingent upon annual funding by Federal grant. Notwithstanding anything in this Agreement to the contrary, COUNTY shall have the right to cancel this Agreement for



any reason upon ninety (90) days prior written notice to LESSOR, whereupon the parties shall be relieved of all further obligation hereunder.

## ARTICLE XII CONDEMNATION

If all or part of the Building shall be taken or condemned for public or quasi-public use and as a result the COUNTY's ability to access and/or operate its Communication Equipment is prohibited or materially restricted, either party shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other party. Any such termination shall be effective as of the date title is vested in the condemning authority. Upon the effective date of such termination, the parties shall be relieved of all further obligations arising subsequent to the date of termination, with the exception only of any then existing defaults, or matters in existence at the time of such termination which would constitute a default with the passage of time and the giving of any required notice.

## ARTICLE XIII MISCELLANEOUS PROVISIONS

### **Section 13.01            Non-Discrimination.**

LESSOR shall assure and certify that it will comply with Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R-92-13 and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation or disability.

### **Section 13.02            Public Entity Crimes.**

As provided in Florida Statutes 287.132-133, LESSOR hereby certifies that, to its knowledge, LESSOR, its affiliates, agents, contractors, employees or suppliers who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) month period immediately preceding the Commencement Date of the Term of this Agreement. This certification is required pursuant to Florida Statute 287.133(3)(a).

### **Section 13.03            Entire Agreement.**

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between COUNTY and LESSOR concerning the Building. All representations, either oral or written shall be deemed to be merged into this Agreement. No alteration, modification, waiver, change or addition to this Agreement shall be binding upon COUNTY or LESSOR unless reduced to writing and signed by them.

### **Section 13.04            Notices.**

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted

before 5PM on a business day and on the next business day if transmitted after 5pm or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to LESSOR at:

Tallmar, Inc.  
C/O Michael Walsh, President  
1001 East Atlantic Ave.  
Delray Beach, FL. 33483  
Fax:

(b) If to the COUNTY at:

Palm Beach County  
Property & Real Estate Management Division  
Attn: Director  
2633 Vista Parkway  
West Palm Beach, FL 33411-5605  
Fax: (561) 233-0210

With a copy to:

Palm Beach Sheriff's Office  
Attn: Ray Carlson, Radio Services  
3228 Gun Club Road  
West Palm Beach, FL 33406  
Fax:

And

Palm Beach County Attorney's Office  
Attn: Real Estate  
301 North Olive Avenue  
Suite 601  
West Palm Beach, FL 33401  
Fax: (561) 355-4398

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

**Section 13.05 Severability.**

If any term of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid and enforceable shall not be affected thereby, and each term of this Agreement, shall be valid and enforceable to the fullest extent permitted by law.

**Section 13.06 Captions.**

The captions in this Agreement are included for convenience only and shall not be taken into consideration in any construction or interpretations of this Agreement or any of its provisions.

**Section 13.07 Recording.**

COUNTY shall not record this Agreement, or any memorandum or short form thereof, without the written consent and joinder of LESSOR.

**Section 13.08 Waiver of Jury Trial.**

The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

**Section 13.09 Governing Law.**

This Agreement shall be governed by, constructed and enforced in accordance with the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

**Section 13.10 Time of Essence.**

Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

**Section 13.11 Benefit and Binding Effect.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

**Section 13.12 Disclosure of Beneficial Interest**

LESSOR represents that simultaneously with LESSOR's execution of this Agreement, LESSOR has executed and delivered to COUNTY, the Landlord's Disclosure of Beneficial Interests attached hereto as Exhibit "D", attached hereto and made a part hereof (the "Disclosure"), disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the LESSOR as required by Section 286.23 of the Florida Statutes unless LESSOR is exempt under the statute. LESSOR warrants that in the event there are any changes to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the LESSOR after the date of execution of the Disclosure until the Effective Date of the Agreement, LESSOR shall immediately, and in every instance, provide written notification of such change to the COUNTY pursuant to Section 13.04 of this Agreement.

**Section 13.13 Quiet Enjoyment.**

Upon the observance and performance of all the covenants, terms, and conditions on COUNTY's part to be observed and performed, COUNTY shall peaceably and quietly hold and enjoy the rooftop of the Building for the Term hereby demised and any extensions thereof without hindrance or interruption by LESSOR or any other person or persons lawfully or equitably claiming by, through, or under the LESSOR, subject, nevertheless, to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, COUNTY and LESSOR have executed this Agreement, or have caused the same to be executed by their duly authorized representatives as of the day and year first above written.

ATTEST:

PALM BEACH COUNTY,  
a political subdivision of the State of Florida

SHARON R. BOCK  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

\_\_\_\_\_  
Assistant County Attorney

\_\_\_\_\_  
Audrey Wolf, Director  
Facilities Development & Operations

(SEAL)

TALLMAR, INC., a Florida corporation

\_\_\_\_\_  
Witness Signature

By: \_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Print Name

Its: \_\_\_\_\_

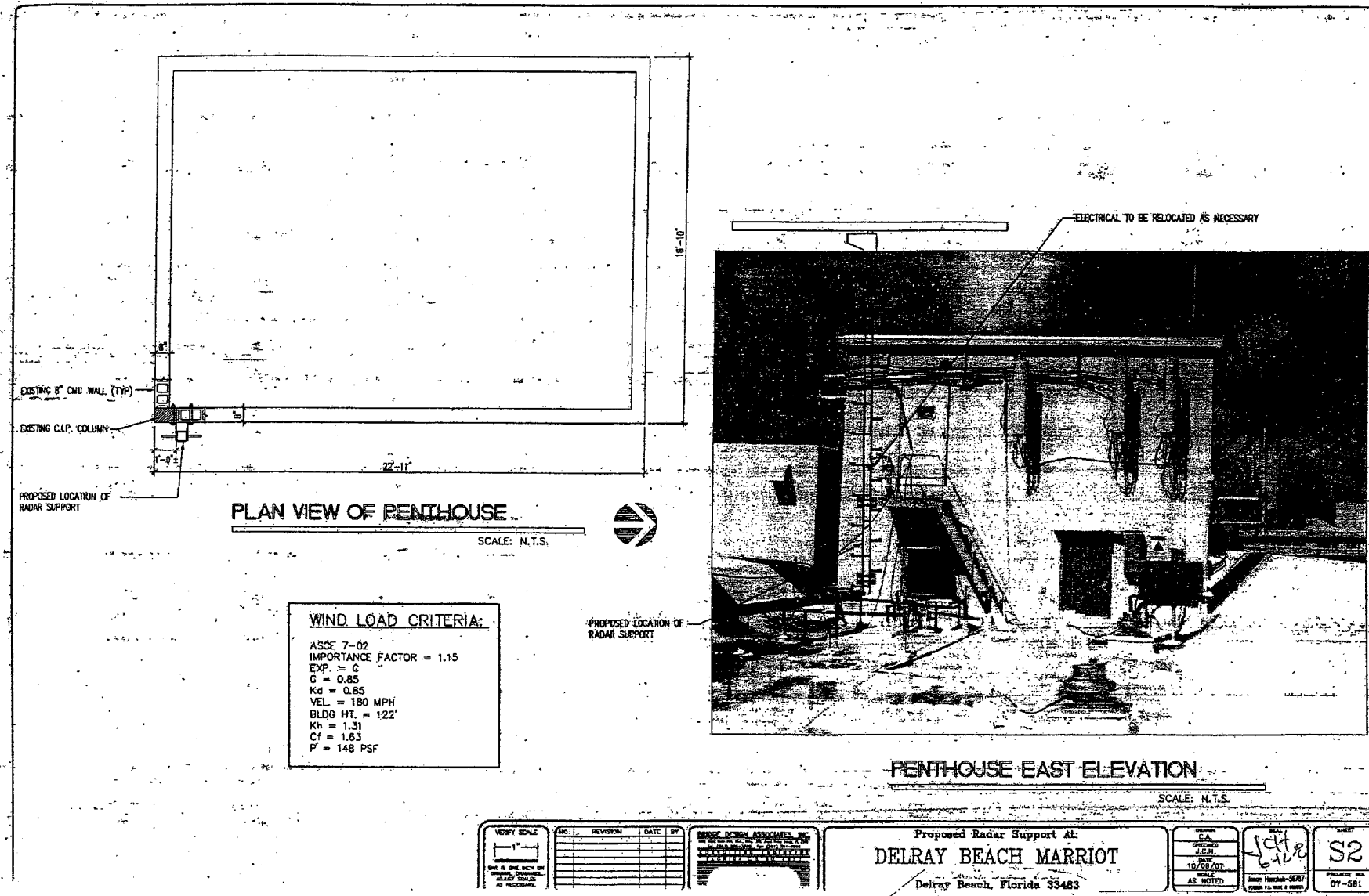
\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

EXHIBIT "A"

COMMUNICATIONS EQUIPMENT

Equipment Description	Frequency	Power	Location	Height
Marriott DelRay Beach				
Transceiver, TERMA model 2001	Classified	25 KW	Antenna mast top	124
Transceiver, Microwave Motorola TPT600	5.8 Ghz spread s	00.20 watts	2' below antenna mast top	122



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**PLAN VIEW OF PENTHOUSE**

SCALE: N.T.S.

**WIND LOAD CRITERIA:**

ASCE 7-02  
 IMPORTANCE FACTOR = 1.15  
 EXP. = C  
 G = 0.85  
 Kd = 0.85  
 VEL = 180 MPH  
 BLDG HT. = 122'  
 Kh = 1.31  
 Cf = 1.63  
 P = 148 PSF

**PENTHOUSE EAST ELEVATION**

SCALE: N.T.S.

NO.	REVISION	DATE	BY

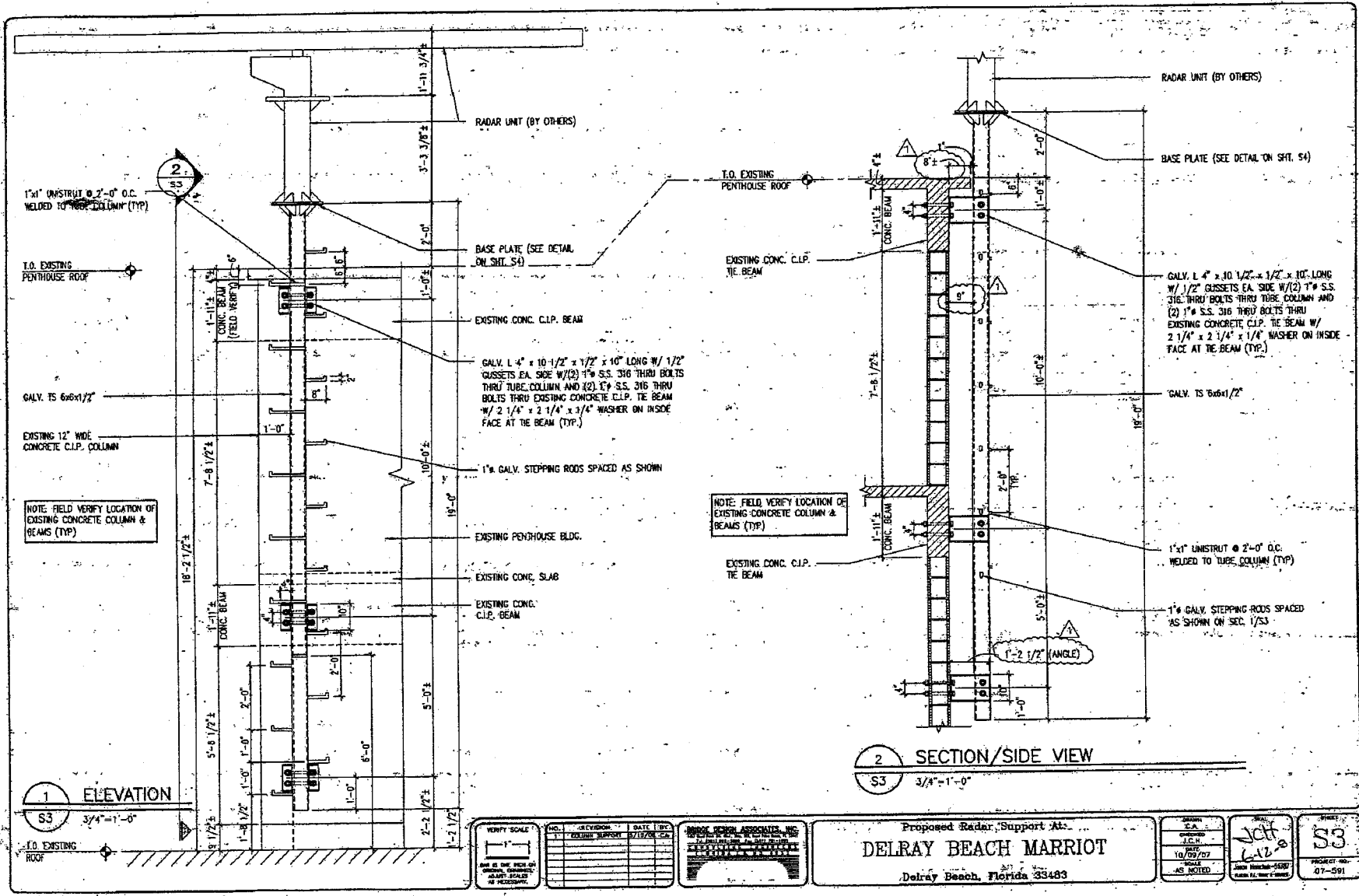


Proposed Radar Support At:  
**DELRAY BEACH MARRIOTT**  
 Delray Beach, Florida 33483

DATE  
 15/09/07  
 SCALE  
 AS NOTED

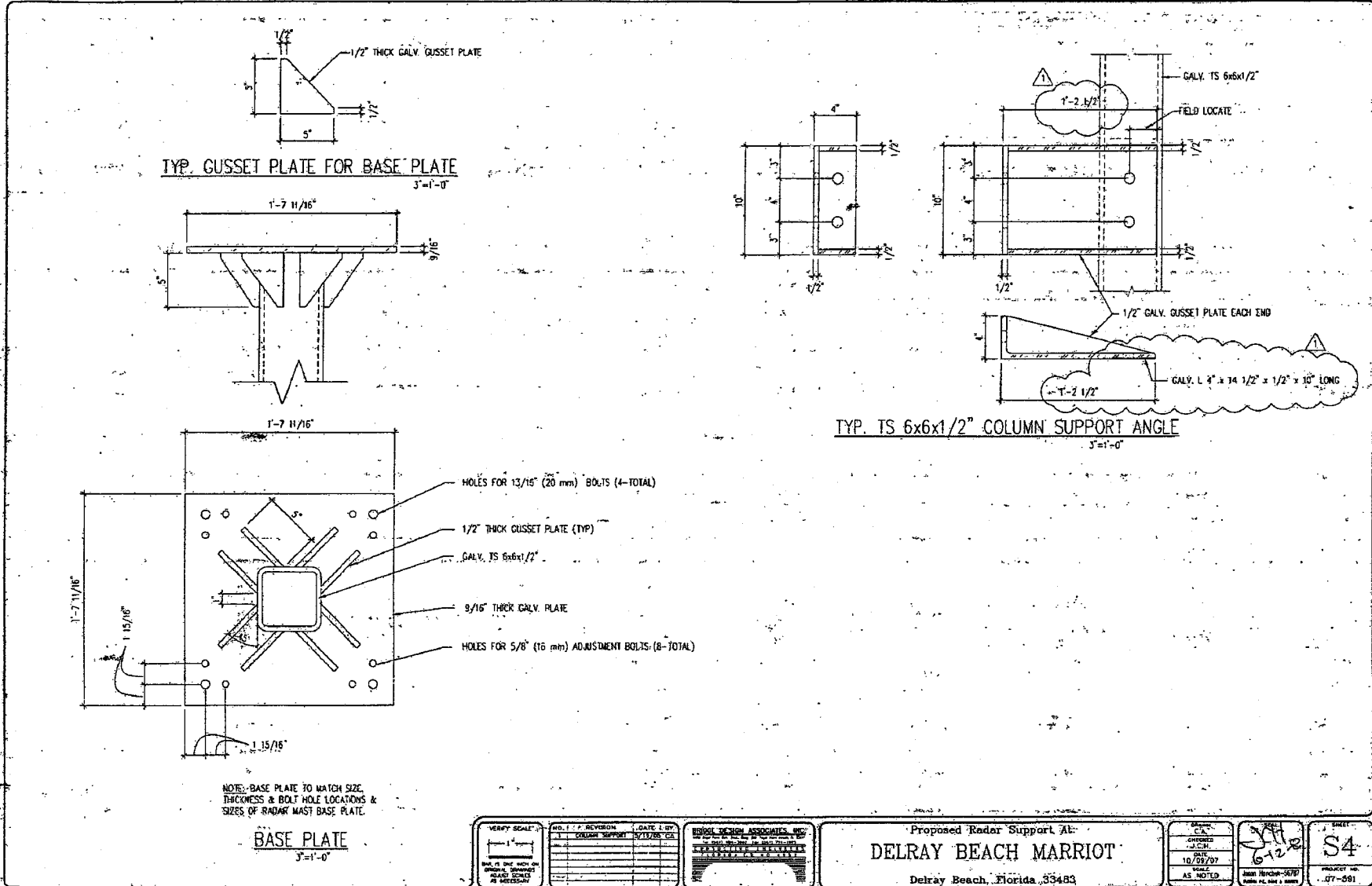
S2  
 PROJECT NO.  
 07-581

FLOOR PLAN



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VERIFY SCALE 1" = 1'-0" THIS IS THE SCALE OF THE DRAWING. ALL DIMENSIONS SHALL BE ACCORDING.	NO. 1 REVISION DESIGN SUPPORT	DATE (DD/M/YY) 5/19/08 (CA)	PROPOSED READER SUPPORT AT <b>DELRAY BEACH MARRIOTT</b> Delray Beach, Florida 33483	DESIGN S.A. J.C.H.	SCALE AS NOTED	PROJECT NO. <b>S3</b> 07-591
	PROJECT NO. 07-591					



TYP. GUSSET PLATE FOR BASE PLATE  
3"=1'-0"

TYP. TS 6x6x1/2" COLUMN SUPPORT ANGLE  
3"=1'-0"

BASE PLATE  
3"=1'-0"

NOTE: BASE PLATE TO MATCH SIZE, THICKNESS & BOLT HOLE LOCATIONS & SIZES OF RADAR MAST BASE PLATE.

VERIFY SCALE 1" = 1'-0" DIMS IN THE HAND ON DRAWING. DIMENSIONS SHALL BE AS SHOWN UNLESS OTHERWISE SPECIFIED.	NO. 1 REVISION DATE 1/15/07 BY J. J. JONES	PROJECT NO. 07-591	PROJECT NAME DELRAY BEACH MARRIOTT	PROJECT LOCATION DELRAY BEACH, FLORIDA 33483	SHEET NO. S4	TOTAL SHEETS 07-591
	DESIGNER J. J. JONES	CHECKED J. J. JONES	DATE 10/22/07	SCALE AS NOTED	DRAWN BY J. J. JONES	PROJECT NO. 07-591



EXHIBIT "C"

FREQUENCY LIST

Equipment Description	Frequency	Power	Location	Height
Marriott DelRay Beach				
Transceiver, TERMA model 2001	Classified	25 KW	Antenna mast top	124
Transceiver, Microwave Motorola TPT600	5.8 Ghz spread s	00.20 watts	2' below antenna mast top	122

EXHIBIT "D"

DISCLOSURE OF BENEFICIAL INTEREST

LANDLORD'S DISCLOSURE OF BENEFICIAL INTERESTS  
(REQUIRED BY FLORIDA STATUTES 286.23)

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY  
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as "Affiant", who being by me  
first duly sworn, under oath, deposes and states as follows:

1. Affiant is the \_\_\_\_\_ (position - i.e. president, partner,  
trustee) of Tallmar, Inc., a Florida corporation \_\_\_\_\_  
\_\_\_\_\_, (the "Landlord") which entity is the owner of the real property legally described  
on the attached Exhibit "A" (the "Property").

2. Affiant's address is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Attached hereto as Exhibit "B" is a complete listing of the names and  
addresses of every person or entity having a five Percent (5%) or greater beneficial  
interest in the Landlord and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit is given to comply with Florida  
Statutes 286.23, and will be relied upon by Palm Beach County in its lease of the  
Property.

5. Affiant further states that Affiant is familiar with the nature of an oath and  
with the penalties provided by the laws of the State of Florida for falsely swearing to  
statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this  
Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and  
complete.

FURTHER AFFIANT SAYETH NAUGHT.

\_\_\_\_\_, Affiant  
(Print Affiant Name)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 200\_, by \_\_\_\_\_  
[ ] who is personally known to me or [ ] who has produced \_\_\_\_\_  
as identification and who did take an oath.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
(Print Notary Name)

NOTARY PUBLIC  
State of Florida at Large

My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

**PROPERTY**

All units within the SPANISH RIVER RESORT AND BEACH CLUB CONDOMINIUM, according to the Declaration thereof, as recorded in Official Records Book 3228, Page 62, and as amended in Official Records Book 3457, Page 89, Official Records Book 3612, Page 587, Official Records Book 3676, Page 820, Official Records Book 3827, Page 1761, Official Records Book 4652, Page 1155, Official Records Book 5718, Page 238 and amendment to Articles of Incorporation and By-Laws in Official Records Book 5721, Page 528 all of the Public Records of Palm Beach County, Florida, constituting 72 residential units and 9 commercial units, which condominium was declared on the property legally described as follows:

The West 150 feet of the South Half (S 1/2) of Block 164 of the fractional East Half (E 1/2) of Section 16, Township 46 South, Range 43 East, in the City of Delray Beach, Florida, according to the plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 1, Page 25; less the South 15 feet thereof for Road Right of Way.

Together with Lots 1, 2, and 28, SEABREEZE PARK, as recorded in Plat Book 4, Page 31 of the Public Records of Palm Beach County, Florida less the North 10 feet of said Lot 28 and less the Right of Way for Atlantic Avenue.

Said lands lying in the City of Delray Beach, Palm Beach County, Florida, containing 71789.41 square feet (1.65 acres) more or less.



**BUDGET AVAILABILITY STATEMENT**

REQUEST DATE: 07/11/2008

REQUESTED BY: Martha LaVerghetta, Property Specialist, PREM

SENT TO: Ray Carlson, Division Manager, Radio Services, PBSO

PROJECT NAME: Lease Agreement between Tallmar, Inc. and PBC on behalf of PBSO for the placement of a radar antenna on the Delray Marriott Residence Inn rooftop.

IS ITEM INCLUDED IN CURRENT BUDGET: YES  NO

BUDGET ACCOUNT NO:

FUND: \_\_\_\_\_ DEPT: \_\_\_\_\_ UNIT: \_\_\_\_\_ OBJ: \_\_\_\_\_ PROGRAM: \_\_\_\_\_

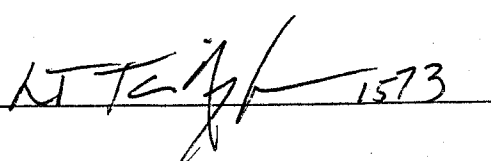
**FIVE YEAR SUMMARY OF FISCAL IMPACT**

FISCAL YEARS	2008	2009	2010	2011	2012
CAPITAL EXPENDITURES	_____	_____	_____	_____	_____
OPERATING COSTS (rent)	<u>\$334.00</u>	<u>\$4,017.00</u>	<u>\$4,272.00</u>	<u>\$4,429.00</u>	<u>\$4,650.00</u>
EXTERNAL REVENUE	_____	_____	_____	_____	_____
PROGRAM INCOME (COUNTY)	_____	_____	_____	_____	_____
IN KIND MATCH (COUNTY)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$334.00</u>	<u>\$4,017.00</u>	<u>\$4,272.00</u>	<u>\$4,429.00</u>	<u>\$4,650.00</u>

\*Fiscal Impact has been calculated using an estimated amount of 5% for CPI.

\*Figures based upon Rent Commencement in September 2008.

PROPOSED BCC MEETING DATE: August 19, 2008

BAS APPROVED BY:  1573 DATE: 7-16-08

**ATTACHMENT # 4**

EXHIBIT "D"

DISCLOSURE OF BENEFICIAL INTEREST

LANDLORD'S DISCLOSURE OF BENEFICIAL INTERESTS  
(REQUIRED BY FLORIDA STATUTES 286.23)

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY  
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, Michael Walsh, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the MANAGER (position - i.e. president, partner, trustee) of Tallmar, Inc., a Florida corporation LLC (the "Landlord") which entity is the owner of the real property legally described on the attached Exhibit "A" (the "Property").

2. Affiant's address is: 1001 E. ATLANTIC AVE  
Delray Beach, FL 33483

3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five Percent (5%) or greater beneficial interest in the Landlord and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit is given to comply with Florida Statutes 286.23, and will be relied upon by Palm Beach County in its lease of the Property.

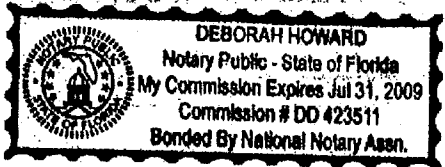
5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Michael Walsh, Affiant  
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 8 day of July, 2008, by \_\_\_\_\_  
[ ] who is personally known to me or [ ] who has produced \_\_\_\_\_ as identification and who did take an oath.



Deborah Howard  
Notary Public  
Deborah Howard  
(Print Notary Name)

NOTARY PUBLIC  
State of Florida at Large

My Commission Expires: 7/31/09

ATTACHMENT #5



TALLMAR, INC., A FLORIDA CORPORATION

1001 EAST ATLANTIC AVENUE, SUITE 202

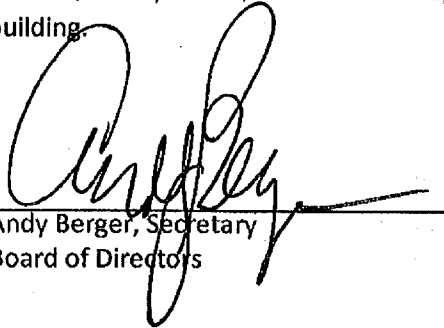
DELRAY BEACH, FLORIDA 33483

561-279-9900

July 25, 2008

To Whom It May Concern:

The undersigned, the duly authorized Secretary of the Tallmar, Inc., a Florida Corporation does hereby certify that Michael Walsh, is authorized to execute on behalf of Tallmar, Inc. that certain Agreement between Palm Beach County and the Tallmar, Inc. to use the property located at 1111 East Atlantic Avenue, Delray Beach, Florida for the operation of communication equipment upon the rooftop of the building.



Andy Berger, Secretary  
Board of Directors