

**RESOLUTION NO. 1232**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT TO PLACE A TELECOMMUNICATION ANTENNA ON THE STARK STREET WATER TOWER.**

**WHEREAS,** the City owns property at 24451 Stark Street, currently the site of Water Reservoir #2; and

**WHEREAS,** Majorco, L.P., a Delaware limited partnership doing business as Sprint Telecommunications Venture, has a need for an antenna site for the receipt and transmission of wireless communications signals; and

**WHEREAS,** Majorco has identified Water Reservoir #2 as a desirable place to affix said antenna, and has offered to lease same from the City for a monthly fee of \$750 for a term of five years, with one additional five-year extension at Majorco's option, and two additional five-year extensions with the consent of both parties; and

**WHEREAS,** staff have studied this proposal and believe the lease can be granted without adverse impact on the City's water system; and

**WHEREAS,** granting this lease to place an antenna on an existing structure may be more desirable than requiring Majorco to construct a separate antenna facility elsewhere in the City.

**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE**

That the Mayor is authorized to enter into a lease agreement substantially as shown in Attachment A with Majorco for placing an antenna and related facilities at Water Reservoir #2, 24451 Stark Street.

**YEAS:** 6  
**NAYS:** 0  
**ABSTAINED:** 0

  
Paul Thaler, Mayor

Dated: 4-3-96

  
George Martinez, City Recorder

Adopted: 3-26-96

# PCS SITE AGREEMENT

Site I. D. Cascade No. 35A

Site Name: SOUTH TROUTDALE

Doc. No. 5 4/9/96

Premises and Use. Owner leases to Sprint Spectrum L.P., a Delaware limited partnership ("SSLP"), the site described below:

Check appropriate box(es)

- Real property consisting of approximately 450 square feet of land;
- Building interior space consisting of approximately \_\_\_\_\_ square;
- Building exterior space for attachment of antennas;
- Building exterior space for placement of base station equipment;
- Tower antenna space on water tank;
- Space required for cable runs to connect PCS equipment and antennas.

the location(s) ("Site") shown on Exhibit A, together with a non-exclusive easement for reasonable access thereto and to the appropriate, in the discretion of SSLP, source of electric and telephone facilities. The Site will be used by SSLP for the purpose of installing, removing, replacing, maintaining and operating, at its expense, a personal communications service system facility ("PCS"), including, without limitation, related antenna equipment and structures. SSLP will use the Site in a manner which will not unreasonably disturb the Owner's use, operation, or maintenance of its water tower or related equipment, or the occupancy of Owner's other tenants.

Term. The term of this Agreement (the "Initial Term") is five years, commencing on the date ("Commencement Date") SSLP signs this Agreement. This Agreement will automatically be renewed for one additional term ("Renewal Term") of five years unless SSLP provides Owner with notice of intention not to renew not less than 90 days prior to the expiration of the Initial Term. Following the first Renewal Term, this agreement may be renewed for two (2) additional Renewal Terms (each for five years) upon the mutual agreement of both parties and upon such terms and conditions that the parties may agree.

Rent. Rent in the amount of \$9,000.00 will be paid annually beginning the earlier of (a) the date which is 30 days after the issuance of a building permit for installation of the PCS, or (b) the first day of the month following commencement of physical preparation of the Site. Thereafter the annual rent will be paid on or before each anniversary of the Commencement Date, partial years to be prorated. The annual rent for each Renewal Term will be the annual rent in effect for the final year of the Initial Term or prior Renewal term, as the case may be, increased by twenty percent (20%). In addition, SSLP will pay the sum of \$100.00 to Owner on the Commencement Date.

Title and Quiet Possession. Owner represents and agrees (a) that it is the Owner of the Site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) that SSLP is entitled to access to the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as SSLP is not in default beyond the expiration of any cure period; and (e) that Owner shall not have unsupervised access to the PCS equipment; however, this shall not limit the Owner's right to access its water tower as needed in the course of its operation and maintenance of the water tower.

Assignment/Subletting. SSLP will not assign or transfer this Agreement or sublet all or any portion of the Site without the prior written consent of Owner, which consent will not be unreasonably withheld, delayed or conditioned.

Notices. All notices must be in writing and are effective when deposited in the U.S. mail, certified and postage prepaid, to the address set forth below or otherwise provided by law.

Improvements. SSLP may, at its expense, make such improvements on the Site and install its wireless communication equipment on the Site as shown on Exhibit A hereto and shall have the reasonable right to upgrade and replace its equipment on the Site so long as the same is consistent with the configuration of the equipment as shown in Exhibit A. If SSLP deems it necessary to make improvements on the Site that are not consistent with the configuration of the equipment as shown in Exhibit A, SSLP must obtain Owner's written consent, which consent will not be unreasonably withheld, delayed, or conditioned, prior to the commencement of installation. Owner agrees to cooperate with SSLP with respect to obtaining any required zoning approvals for the Site and such improvements at SSLP's sole cost. SSLP will paint the antenna panels to blend in with the tank, and will enclose the electrical cabinet with a slatted security fence. During the term of this Agreement SSLP will repair damage to the water tower in a timely manner if the damage is caused by the actions of SSLP. Upon termination or expiration of this Agreement, SSLP shall remove its equipment and improvements and will restore the Site to the condition existing on the commencement date, except for ordinary wear and tear. If SSLP fails to remove its equipment and improvements from the Site within forty five (45) days after the termination of this Agreement, then Owner may, without liability to SSLP, remove such equipment and improvements at SSLP's expense.

Compliance with Laws. To the best of Owner's knowledge, Owner represents that Owner's property (including the Site), and all improvements located thereon, are in compliance with building, life/safety, disability and

other laws, codes and regulations of applicable governmental authorities. SSLP will comply with all applicable laws relating to its possession and use of the Site.

9. Interference. SSLP will resolve technical interference problems with other equipment located at the Site on the Commencement Date or any equipment that becomes attached to the Site at any future date when SSLP desires to add additional equipment to the Site. Likewise, Owner will not permit the installation of any future equipment which results in technical interference problems with SSLP's then existing equipment.

10. Utilities. SSLP will arrange for separate electric service and metering at no cost to Owner and purchase its electrical service directly from the appropriate utility company. SSLP will also be responsible for obtaining telephone service for the Site at no cost to Owner. Owner will reasonably cooperate with SSLP in SSLP's efforts to obtain utilities from any location provided by the servicing utility. SSLP shall obtain approval from Owner of any plans for the location of new utility lines, which approval shall not be unreasonably withheld.

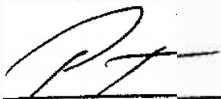
11. Termination. SSLP may terminate this Agreement at any time by notice to Owner without further liability if SSLP does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority or any easements required from any third party to operate the PCS system, or if any such approval is canceled, expires or is withdrawn or terminated, or if Owner fails to have proper Ownership of the Site or authority to enter into this Agreement, or if SSLP is unable to use the Site for its intended purpose due to future changes in technology or design of the communication system which was not contemplated as of the date of the Agreement. Upon termination, all prepaid rent shall be retained by Owner, and SSLP will execute a document which will extinguish the effect of any memorandum of the Agreement recorded in the real property records, and if SSLP fails to do so within a timely manner, SSLP appoints Owner as SSLP's attorney-in-fact for such purpose.

12. Default. If either party is in default under this Agreement for a period of (a) ten days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) thirty days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a thirty day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such thirty day period and proceeds with due diligence to fully cure the default. SSLP waives all consequential and incidental damages arising from any breach or alleged breach of this Agreement by Owner, specifically including any loss of revenues from SSLP's wireless communication system arising from the loss of SSLP's communication signal from the Site.

13. Indemnity. SSLP takes the Site in "AS-IS" condition and assumes sole risk for damage to its equipment and improvements from any cause whatsoever, except from such damage resulting from the Owner's gross negligence or intentional tortious conduct. SSLP agrees to defend, indemnify and hold Owner, including Owner's employees, agents and officers, harmless from and against any and all claims, losses, damages, liabilities, costs (including reasonable attorney fees) arising from SSLP's use of the Site, specifically including its installation, use and maintenance of its equipment and improvements, except for such claims arising from the tortious, intentional acts of Owner, including its employees, agents and officers, or the negligence of Owner, when Owner's contributory fault with respect to the same exceeds the contributory fault of SSLP.

14. Hazardous Substances. To the best of Owner's actual knowledge without investigation, there is no substance, chemical, or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. SSLP shall not introduce or use any such substance on the Site in violation of any applicable law.

owner initials



SSLP initials



5. Subordination and Non-Disturbance. This Agreement is subordinate to any mortgage or deed of trust now of record against the Site. However, promptly after this Agreement is fully executed, Owner will request the holder of any such mortgage or deed of trust to execute a non-disturbance agreement and Owner will cooperate with SSLP toward such end to the extent that such cooperation does not cause Owner additional financial liability or administrative expense.

6. Miscellaneous. (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this agreement; (b) This Agreement is governed by the laws of the State in which the Site is located; (c) If requested by SSLP, Owner agrees promptly to execute and deliver to SSLP a recordable Memorandum of this Agreement in the form of Exhibit B; (d) This Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (e) This Agreement is conditioned upon SSLP's obtaining all necessary government permits and approvals for use of the Site. The execution of this Lease by Owner shall not be deemed to be a commitment by Owner to issue any such permits or approvals; (f) If any provision of this agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (g) The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys fees and other reasonable enforcement costs and expenses from the non-prevailing party.

The following Exhibits are attached to and made a part of this agreement: Exhibits A, B, C, D, and E.

OWNER: CITY OF TROUTDALE

By: Bud Thalhofer

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

S.S./Tax No.: 93-600-2268

See Exhibit A1 for continuation of Owner signatures

Address: City Hall, Troutdale, OR 97060

Date: 4-23-96

SPRINT SPECTRUM, a Delaware limited partnership

By: [Signature]

Its: DIRECTOR

Address: 7770 SW Mohawk, Bldg. "F," Tualatin, OR 97062

Date: 4-25-96

STATE OF OREGON

COUNTY OF Multnomah

The foregoing instrument was acknowledged before me this 4-23rd day of April, 1996.

by Dave Thacker,  by \_\_\_\_\_, as

of City of Troutdale, a municipal corporation, on behalf of the corporation,

by \_\_\_\_\_ partner (or agent) on behalf of \_\_\_\_\_, a partnership.



My commission expires:

Marion Berg  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC FOR STATE OF OREGON

(PRINTED, TYPED OR STAMPED NAME OF NOTARY)  
COMMISSION NUMBER: \_\_\_\_\_

STATE OF OREGON

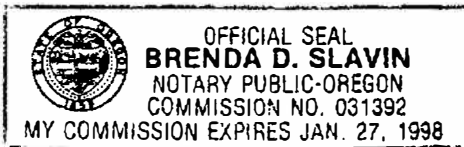
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 25th day of April, 1996.

by Chris Thomas,  by \_\_\_\_\_, as Director

of Sprint Spectrum L.P., a Delaware limited partnership corporation, on behalf of the corporation, partnership.

by \_\_\_\_\_ partner (or agent) on behalf of \_\_\_\_\_, a partnership.



My commission expires:

Brenda D. Slavin  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC FOR STATE OF OREGON

(PRINTED, TYPED OR STAMPED NAME OF NOTARY)  
COMMISSION NUMBER: \_\_\_\_\_

Site Name: SOUTH TROUTDALE

Exhibit A  
to

Site I. D. 035A

### Memorandum of PCS Site Agreement

Legal Description of Property:

#### LEGAL DESCRIPTION

PARCEL 1: A tract of land situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point on the Base Line 1022.30 feet East of the Southwest corner of said Section 35; thence North 1° 19' 40" East parallel with the West line of a 12 acre tract heretofore conveyed to Ivan J. Korsund and Hazel Korsund, husband and wife and Lloyd Bjur and Idamae Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of the tract herein to be described; thence North 88° 35' 50" West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence North 1° 19' 40" East along said West line, a distance of 79.62 feet; thence South 88° 35' 50" East parallel with the South line of said Section 35, a distance of 159.00 feet; thence South 1° 19' 40" West 79.62 feet to the point of beginning.

PARCEL 2: A tract of land situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point on the Baseline, 1022.30 feet East of the Southwest corner of said Section 35; thence North 1° 19' 40" East parallel with the West line of a 12 acre tract heretofore conveyed to Ivan J. Korsund and Hazel Korsund, husband and wife and Lloyd Bjur and Idamae Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of tract herein to be described; thence North 88° 35' 50" West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence South 1° 19' 40" West 16.38 feet; thence South 88° 35' 50" East 159.00 feet; thence North 1° 19' 40" East 16.38 feet to the point of beginning.

Owner Initials \_\_\_\_\_  
SSLP Initials \_\_\_\_\_



## EXHIBIT A

Site Name: SOUTH TROUTDALE

Site Description

Site I. D. 035A

Site situated in the City of Troutdale, County of Multnomah, State of Oregon, commonly described as follows:

Legal Description: 24451 Stark Street, Troutdale, OR 97060

### LEGAL DESCRIPTION

PARCEL 1: A tract of land situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point on the Base Line 1022.30 feet East of the Southwest corner of said Section 35; thence North 1° 19' 40" East parallel with the West line of a 12 acre tract heretofore conveyed to Ivan J. Korsund and Hazel Korsund, husband and wife and Lloyd Bjur and Idamae Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of the tract herein to be described; thence North 88° 35' 50" West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence North 1° 19' 40" East along said West line, a distance of 79.62 feet; thence South 88° 35' 50" East parallel with the South line of said Section 35, a distance of 159.00 feet; thence South 1° 19' 40" West 79.62 feet to the point of beginning.

PARCEL 2: A tract of land situated in the Southwest one-quarter of Section 35, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point on the Baseline, 1022.30 feet East of the Southwest corner of said Section 35; thence North 1° 19' 40" East parallel with the West line of a 12 acre tract heretofore conveyed to Ivan J. Korsund and Hazel Korsund, husband and wife and Lloyd Bjur and Idamae Bjur, husband and wife on May 6, 1947 and recorded in Book 1169, Page 281, Deed Records of Multnomah County, a distance of 357.38 feet to the point of beginning of tract herein to be described; thence North 88° 35' 50" West parallel with the South line of said Section 35, a distance of 159.00 feet to a point in the West line of the above mentioned 12 acre tract; thence South 1° 19' 40" West 16.38 feet; thence South 88° 35' 50" East 159.00 feet; thence North 1° 19' 40" East 16.38 feet to the point of beginning.

Owner Initials

PT

SSLP Initials

CL

Note: Owner and SSLP may, at SSLP's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.

[Use this Exhibit A for PCS Site Agreement, Memorandum of PCS Site Agreement, Option Agreement and Memorandum of Option Agreement.]



# EXHIBIT A

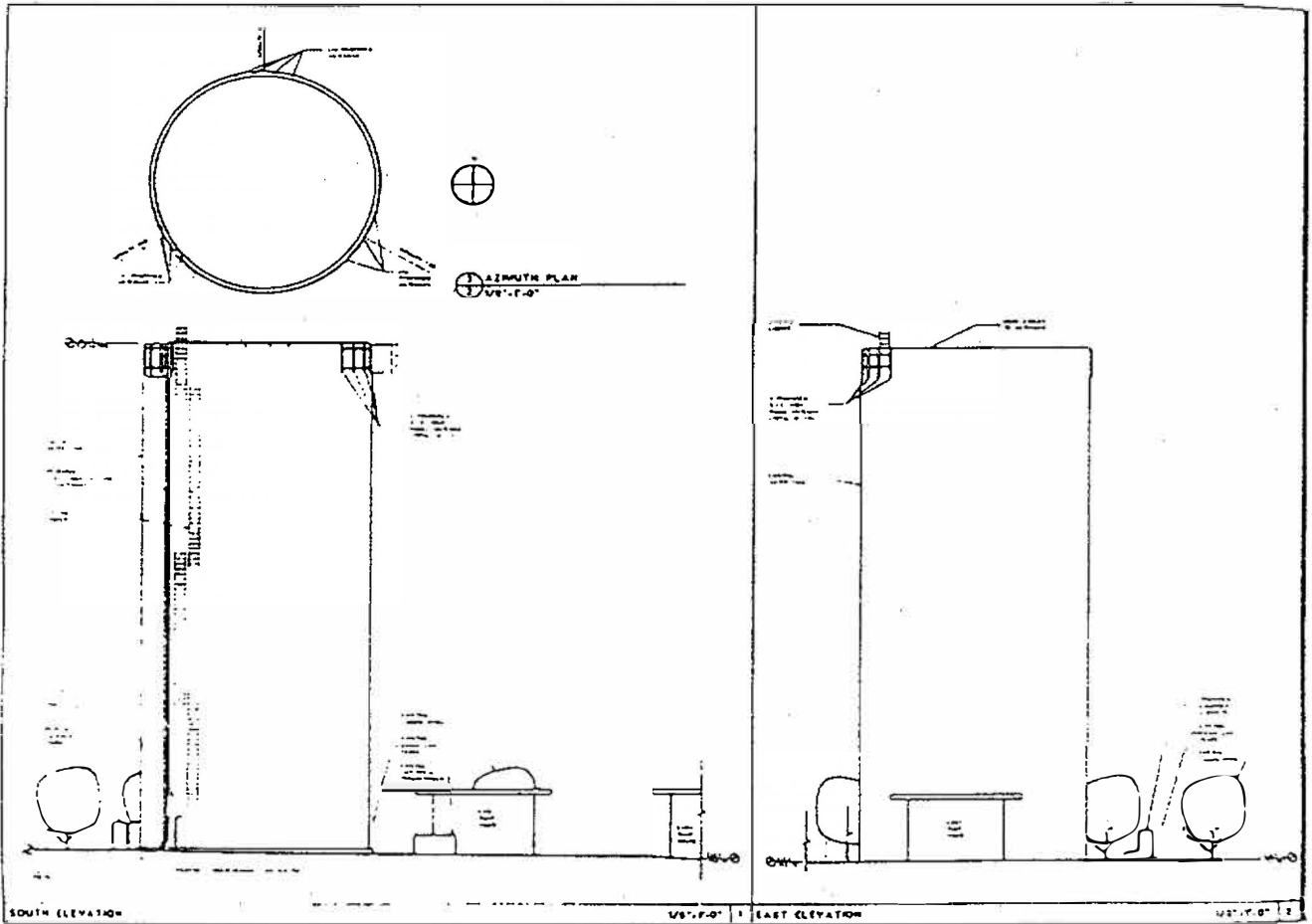
Site Name: SOUTH TROUTDALE

Site Description

Site I. D. 035A

Site situated in the City of Troutdale, County of Multnomah, State of Oregon, commonly described as follows:

SKETCH OF SITE:



Owner Initials

*PT*

SSLP Initials

Note: Owner and SSLP may, at SSLP's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.

\*[Use this Exhibit A for PCS Site Agreement, Memorandum of PCS Site Agreement, Option Agreement and Memorandum of Option Agreement.]

EXHIBIT B

Site Name: BIG BLUE WATER TANK

PCS Site Agreement  
Memorandum of PCS Site Agreement

Site I. D. 035A

This memorandum evidences that a lease was made and entered into by written PCS Site Agreement dated 4-23-96, 1996, between City of Troutdale ("Owner") and Sprint Spectrum L.P., a Delaware limited partnership ("SSLP"), the terms and conditions of which are incorporated herein by reference.

Such Agreement provides in part that Owner leases to SSLP a certain site ("Site") located at 24451 Stark Street, City of Troutdale, County of Multnomah, ~~State~~ of Oregon, within the property of Owner which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of five (5) years commencing on April 25, 1996 which term is subject to one (1) additional five (5) year extension period by SSLP and two (2) additional five (5) year extension periods with the consent of both parties.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

"OWNER"

By: Paul Thofer  
Name: Paul Thofer  
Title: Mayor

Address: \_\_\_\_\_

See Exhibit B1 for continuation of Owner signatures

"SSLP"

Sprint Spectrum L.P., a Delaware limited partnership

By: [Signature]  
Name: Chris Thomas  
Title: Director  
Address: 7770 SW Makuni Blvd. E  
Tualatin, Oregon 97062

## EXHIBIT C

Site Name BIG BLUE WATER TANK

PCS Site Agreement

Site I. D. 035A

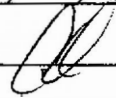
### Taxes

SSLP will be responsible for payment of all real and personal property taxes assessed directly upon and arising solely from its use of the communications facility on the Site. SSLP will pay such taxes within sixty (60) days of receipt of sufficient documentation indicating calculation of SSLP's share and payment of the taxes by Owner, or the taxing authority if separately billed to SSLP.

Owner Initials \_\_\_\_\_



SSLP Initials \_\_\_\_\_



## EXHIBIT D

Site Name BIG BLUE WATER TANK

PCS Site Agreement

Site I. D. 035A

### Insurance

SSLP will procure and maintain a public liability policy, with limits of \$1,000,000 for bodily injury, \$1,000,000 for property damage, \$2,000,000 aggregate, with a certificate of insurance to be furnished to Owner within 30 days of written request. Such policy will provide that cancellation will not occur without at least 15 days prior written notice to Owner. Owner shall be listed as an additional insured party on such insurance policy.

Owner Initials \_\_\_\_\_

*PT*

SSLP Initials \_\_\_\_\_

*W*

## EXHIBIT E

Site Name BIG BLUE WATER TANK

PCS Site Agreement

Site I. D. 035A

### Casualty

Should the water tank suffer substantial damage from any cause whatsoever and Owner determines that it is in its best interests to not repair such damage or to remove the tank, then upon written notice of Owner's determination, this Agreement may be terminated by either party upon thirty (30) days written notice to the other party. It is expressly understood by SSLP that in the event of such substantial damage to the tank, Owner has no obligation to rebuild or repair the tank.

Owner Initials

PJT

SSLP Initials

WJ