

# TRIO COMMUNICATIONS SITE LEASE AGREEMENT DECATUR NORTH

This Communications Site Lease Agreement (the "Lease Agreement"), entered into as of the 25<sup>th</sup> day of June, 2012 by and between **Trio Communications**, a Texas limited partnership ("Lessor"), having an address at **P. O. Box 76, Montague, Texas 76251**, and WISE COUNTY, TEXAS, a governmental entity having an address at P.O. Box 899 DECATUR, TEXAS 76234, (hereinafter referred to as "Lessee").

In consideration of the mutual promises, conditions, covenants and considerations passing between the parties hereto, it is understood and agreed by and between the parties to this Lease Agreement as follows:

Lessor does hereby lease unto Lessee antenna space on Lessor's **Antenna Structure Registration Number (ASR) 1055507, FM730 5 Miles North, Decatur Texas** located at **Latitude: 33-18-54N Longitude: 097-33-53W** together with access thereto (the "Site"). The property to be installed and maintained by Lessee at Lessee's expense on Lessor's Site is described as follows:

- A. Equipment of Lessee and its locations on Lessor's tower and ground site as described on Exhibit A, attached, and as shown on the diagram attached to Exhibit A which shall be approved by Lessor prior to Lessee's installation.
- B. Equipment Building: Lessee will have the use of Lessor's equipment building which is located near the base of the tower for a standard rack in which to place Lessee's equipment, as such lease space in Lessor's equipment building is designated on the diagram attached to Exhibit A.

1. **TERM AND RENTAL:** The Initial Term of this Lease Agreement shall be for a period of FIVE (5) year(s) commencing on June 25, 2012. For as long as Lessee does not increase the size of its Premises or alter the wind load or structural impact of its equipment upon the Tower, monthly rental shall be in the amount of THREE-HUNDRED TWENTY Dollars (\$320.00) ("Rental Rate" or "Rent") until the end of this Term of Lease Agreement period. This Rental Rate will automatically increase by TEN (10%) percent on Renewal of This Lease Agreement. Upon delivery to Lessee of Lessor's calculation of such increase, Lessee shall pay any such increase with the monthly Rent payment for the next month. In addition to the monthly Rental Rate, Lessee shall pay Lessor if, and when due, any sales, use or other taxes or assessments which are assessed or due by reason of this Lease Agreement and/or Lessee's use of the Site hereunder.

1.1. This Lease Agreement shall be automatically extended for FIVE (5) additional term(s) of FIVE (5) year(s) each ("Renewal Terms"), upon the same terms and conditions found herein. Lessee may terminate this Lease Agreement at any time, with or without cause, upon ninety (90) days prior written notice to Lessor. The Initial Term together with any Renewal Terms are collectively referred to herein as the "Term".

2. **TITLE/LIENS:** Lessee shall have no right, title or interest in the Site except the non-exclusive use of thereof as expressly set forth in this Lease Agreement. Lessor acknowledges that Lessee's equipment shall, at all times, remain the personal property of Lessee and shall not be considered a fixture to the real estate, tower or building comprising the Site. Lessor shall not, permit any other third parties to, remove or relocate Lessee's equipment nor permit any liens or encumbrances to be placed upon the equipment. In the event any such lien or encumbrance arises, Lessor shall, at its own expense, cause the same to be discharged within fifteen (15) days following its receipt of written notice of the filing thereof.

3. **INVOICING:** Lessor must furnish to Lessee an invoice stating the amount of rental and additional charges, if any, due by Lessee for the next succeeding rental period. The failure or omission of Lessor to furnish to Lessee such invoice shall not relieve the Lessee from the requirement to make full and timely payment of rentals as herein required.

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4. **LATE CHARGES:** In the event any payment due hereunder shall remain unpaid for a period of ten (10) days or more after the due date of such payment, Lessor shall be entitled to the additional amount of twenty-five dollars (\$25.00) as a late charge.

5. **ELECTRICITY:** Lessor provides electricity at the Site for the benefit of Lessee.

6. **DEPOSITS, FEES AND TAXES:** In the event that the FCC, the U.S. Forest Service, any public utility, or any other agency requires or increases any fees and/or deposits as a direct result of Lessee's installation of its equipment at the site, Lessee agrees to pay said fees and/or deposits upon notice. Lessor will pay when due all other real estate taxes and assessments attributable to the property of Lessor of which the Lessee's premises is a part.

7. **PERMITS, LICENSES AND REGULATIONS:** Lessee agrees and understands that it is the Lessee's responsibility to abide by all federal, state and local rules and regulations pertaining to the operation of the Site and of Lessee's equipment; including without limitations, those pertaining to the installation, maintenance, height, location, use, operation, and removal of its equipment, antenna systems, and other alterations or improvements authorized herein. Lessee agrees and understands that changes in rules and policies by agencies or persons other than Lessor that affect the operation or use of Lessee's equipment and of the Site are not the Lessor's responsibility. Lessee hereby represents that Lessee has obtained the necessary licenses and permits required to use said Site, or that Lessee will obtain said licenses or permits, at Lessee's own expense, prior to any such use.

8. **USE:** It is expressly agreed by Lessee and Lessor that: (1) while using the Site, Lessee shall be responsible for proper operation of its own equipment in compliance with Federal Communications Commission ("FCC") rules; (2) Lessee hereby consents to the execution of agreements between Lessor and other parties eligible to share the Site, whereby such parties do not interfere with Lessee's operation of its own equipment; and (3) Lessee represents that it has independently ascertained that the Site is adequate and proper for Lessee's intended use and has entered into this Lease Agreement based solely upon said independent investigation.

9. **COVERAGE AND INTERFERENCE:** Lessor makes no representations concerning the distance at which useable radio signals may be transmitted and received from the Site or location thereof. Lessee is hereby notified that the Site is subject to degradation of performance from, but not limited to, natural and man-made phenomena such as so-called "skip" interference, power line and ignition noise, intermodulation, co-channel interference, and interference from users of the same or radio frequencies. The Lessor is not responsible for interference due to the above or other causes.

9.1. Lessee shall be responsible for taking such steps as may be necessary to prevent any spurious radiation or "objectionable interference" (as hereafter defined) with the broadcasting or transmission facilities of Lessor, or other lessees on the Site as of the commencement date of this Lease Agreement, caused by Lessee. If such objectionable interference or spurious radiation cannot be reduced to levels reasonably acceptable to Lessor within sixty (60) days after Lessee commences taking corrective measures, Lessor may elect to terminate this Lease Agreement by giving Lessee thirty (30) days prior written notice. Lessor or its designated representatives shall have the sole right, initially and during the term of this Lease Agreement, to require Lessee to take whatever action is necessary to eliminate objectionable interference by Lessee's equipment with devices by Lessor to minimize spurious radiation.

9.2. Nothing contained in this Lease Agreement shall be deemed to entitle Lessee to the exclusive possession of any vertical span of space of the Site, it being the intention of both parties that the vertical span of space may be used by others at the direction of the Lessor provided no objectionable interference is caused to Lessee's radio transmission activity. It is understood and agreed that Lessor intends to and shall have the right to accommodate as many transmitters and/or receivers as possible at the Site, and in that connection it is understood and agreed that Lessor shall have the right at any time during the term of this

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Lease Agreement to locate the antenna or other equipment of other Lessee's transmission activities thereby, and provided, further, that Lessee is not put to any cost in connection therewith. For purposes of this Lease Agreement, objectionable interference shall be deemed to exist if: (1) a determination to that effect is made by an authorized representative of the FCC, or (2) a condition exists which constitutes interference within the meaning of the provisions of the Rules and Regulations of the FCC at the time in effect, or (3) there is a material impairment of sound, picture, data or other transmission in any material portion of the protected service area of such activity as such area is or may be defined by the FCC at any hour during the period of operation of such activity, as compared with that which would be obtained if no other lessees were transmitting from the Site or had any equipment at the Site, or (4) a lessee is prevented from using or having access to its equipment at reasonable and usual times to an extent to which interferes to a material degree with the operation and maintenance thereof, it being understood that a reasonable temporary interference which does not materially interfere with the operation or maintenance of said equipment which is occasioned by the installation of new equipment by another lessee or by repairs to or maintenance of existing equipment of another lessee shall not be considered objectionable interference.

## **10. LESSEE'S MAINTENANCE AND REMOVAL OF EQUIPMENT AND COAXIAL CABLES:**

This section only pertains to lessees that require their own specified antenna systems.

**10.1.** Lessee shall install only the equipment, (including antenna and transmission line) which has been approved by Lessor. The Lessee agrees that the installation will be done in a neat, workmanlike manner and in compliance with all applicable laws and regulations. All costs of the installation (including repair of damages caused thereby to Lessor's or other lessee's equipment) will be the responsibility of the Lessee. Any additional equipment, other than Lessee's equipment above first referenced herein, shall only be installed at Lessor's consent by amendment hereof.

**10.2.** Lessee shall be required to properly ground all antenna equipment at the uppermost location of its equipment on the tower and properly ground its coaxial cable at the base of the tower.

**10.3.** Lessor retains the right to paint all coaxial cables attached to the tower, including Lessee's coaxial cable, as necessary, in order to prevent "black leg". In the event Lessor paints all coaxial cables, Lessee agrees to pay Lessor upon invoice for Lessee's pro rata share of reasonable expenses incurred by Lessor.

**10.4.** Lessee is required to remove all of Lessee's equipment, including Lessee's coaxial cable and antennas, within thirty (30) days following the date of termination of this Lease Agreement at Lessee's sole risk and expense. In the event Lessee does not timely remove its equipment, antennas and coaxial cable as herein required, Lessor shall retain the Security Deposit as liquidated damages. If the actual costs of removal of Lessee's equipment, antennas and coaxial cable by Lessor exceed the Security Deposit, Lessee shall pay to Lessor the additional cost. All equipment, antennas and coaxial cable not so timely removed by Lessee shall be considered abandoned by Lessee and shall become property of Lessor.

**11. INSTALLATION AND ACCESS:** Lessor will provide Lessee unlimited access to Lessee's equipment at the Site for the purposes herein agreed and for complying with any reasonable request for inspection by representatives of the FCC. Lessee shall have access only to its own equipment and under no circumstances will Lessee gain access to other equipment located at the Site or allow anyone else access to equipment other than its own. Lessee will provide Lessor in writing the identity of the service company or individual who is authorized to have access to its equipment for maintenance and only those so named will be permitted.

**12. COORDINATION OF INSTALLATION, REPAIR AND MAINTENANCE:** In the event of the need for installation, repair or maintenance of the tower, equipment building or other common facility, or of the equipment of Lessee or other lessees, and if such repair or maintenance is not of an emergency nature, then Lessor or other lessees shall have the right, upon ten (10) days notification to Lessee, to undertake such

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repair or maintenance at its convenience, or to require Lessee to do so, if the same relates to Lessee's equipment. Lessor and Lessee agree to coordinate such activities in such a manner as to minimize any downtime that may be caused to Lessee's operations, or to the operation of other lessees. Lessee agrees to reduce or shut down the power of its transmitter if necessary at a coordinated time so that such installation, repair or maintenance may take place.

**13. FAILURES AND MAINTENANCE:** Lessee is hereby notified and understands that the Site will not provide communications 100% of the time and it will, by its very nature, fail and require maintenance from time to time without notice. Such facts have been taken into consideration by Lessee prior to the execution of this Lease Agreement, and such failures shall not constitute nonperformance or negligence on the part of the Lessor. Lessor is not liable or responsible for interruptions or termination of service caused by strikes, lockouts, governmental acts, acts of God or other conditions beyond its control. Any such interruption or termination of service shall not be considered as a breach of this Lease Agreement by Lessor; provided, however, that the monthly Rent shall be abated for the duration of such interruption or termination of service. The Lessee at its own expense shall be totally responsible for any and all maintenance of its equipment due to lightning, power line surges, ground faults, excessive voltage, or any other causes beyond control of Lessor.

Lessee promises to notify Lessor in writing each and every failure and/or malfunction on the part of the Lessor or Site not later than forty-eight (48) hours after the occurrence of such failure and/or malfunction.

**14. CASUALTY:** If the Site becomes completely unstable due to fire or other casualty and Lessee's equipment becomes inoperable for a period of at least sixty (60) days as a result thereof, either party may elect to terminate this Lease Agreement upon thirty (30) days' written notice to the other given prior to the completion of repairs.

As Lessee's sole recourse or remedy for such casualty, the monthly Rent shall be abated on a per diem basis while the equipment at the Site cannot be operated due to fire or other casualty. Without limiting the foregoing, Lessor shall not, under any circumstances, be responsible for any losses or damage to Lessee's equipment or loss of service from Lessee's equipment as a result of fire, theft, vandalism, lightning, loss of AC power by serving utility, loss of accessibility, power line surges, ground faults, excessive voltage, shut down of Site for necessary repairs or normal maintenance work, and any other similar causes beyond Lessor's control. In the event of termination of this Lease Agreement, the monthly Rent shall be apportioned on a per diem basis and paid to the date of the fire or other casualty.

**15. TERMINATION OF LESSOR'S RIGHTS TO SITE:** In the event that any state, local or federal government agency causes the Site and/or its location to become unavailable, Lessor shall (i) terminate this Lease Agreement by providing Lessee with as much prior written notice as possible and (ii) subject to Lessee's approval, make another similar site and/or location available on the same terms within thirty (30) days following such termination, in which event the change of Site and/or location shall not affect the obligations of Lessee. Lessor represents to Lessee shall exercise all available renewal options under the Site Lease and shall not terminate the Site Lease early for convenience.

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16. **INSURANCE:** Lessor provides no insurance on Lessee's equipment. Lessee agrees to furnish Lessor with Certificates of Insurance certifying that Lessee has agreed to the below specified insurance. Further, such Certificate of Insurance will name Lessor, and Lessor's mortgage if requested, as an additional named insured on liability insurance with minimum coverage of:

General Liability coverage of \$100,000 for each person and \$300,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence of injury or damage to property per Texas Civil Practice and Remedies Code Section 101.024(b)

17. **HAZARDOUS MATERIALS:** Lessee represents to Lessor, as part of the considerations recited herein that no part of the lease premises shall be used by Lessee for the disposal, storage, treatment, processing, manufacturing or other handling of any hazardous wastes, hazardous substance, asbestos or other materials (collectively, the foregoing are referred to herein as "Hazardous Materials") deemed hazardous or otherwise subject to any federal, state, county or municipal laws, statutes, codes, rules, regulations or ordinances pertaining to the use, handling, release, disposal, storage, treatment, processing or manufacturing of such Hazardous Materials or similar materials and substances (collectively, all such laws, etc. are referred to herein as "Environmental Laws").

Lessee expressly acknowledges and agrees that in the event any such contamination by Hazardous Materials shall hereafter be conclusively determined, by a governmental entity or such other governing body with jurisdiction over such matters, to have occurred, arising out of or resulting from Lessee's occupancy, at, upon or from the leased premises such occurrence of contamination shall be deemed, at Lessor's option, to constitute a default under this Lease Agreement. Lessee hereby covenants and agrees, further, that in the event of the conclusive determination, by a governmental entity or such other governing body with jurisdiction over such matters, that any such contamination of the property has occurred, Lessee shall be obligated immediately to clean-up, remove, resolve, minimize the impact of or otherwise to remediate (any and all such activities being referred to generally as "Remediation") any such contamination of the property.

Lessor represents that, to the best of its knowledge, the Site is free of any Hazardous Materials and is in compliance with all applicable Environmental Laws. If any Hazardous Materials exist on the Site, Lessee shall have no obligation to remediate, abate or remove such substances; provided that Lessee is not responsible for the presence of such substances. Lessor shall indemnify and defend Lessee for any liability, cost or expense incurred by Lessee with respect to such Hazardous Materials for which Lessee is not responsible.

18. **DEFAULT/TERMINATION:** In the event of Lessee's default in the payment of Rent or the Lessee's failure to comply with any other material provision of this Lease Agreement, Lessor may, upon prior written notice to Lessee and Lessee's failure to commence to cure such default or noncompliance within thirty (30) days following its receipt of such notice, at its option, (i) terminate this Lease Agreement without affecting its right to sue for all past due Rent and any other damages to which the Lessor may be entitled, and (ii) in addition, be entitled to all other rights and remedies to which it is permitted under law or equity. Notwithstanding anything to the contrary contained herein, Lessee may terminate this Lease Agreement at any time, with or without cause, upon ninety (90) days prior written notice to Lessor.

19. **ASSIGNMENT:** Lessee may not assign, sell or transfer its rights hereunder without the express written consent of the Lessor. Notwithstanding foregoing, this Lease Agreement and all of Lessee's rights hereunder, may be assigned, without Lessor's prior consent to any affiliate of Lessee or successor to Lessee's business provided Lessee notify Lessor in writing setting forth the name, address, and telephone number of such assignee. All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, with prior written notice to Lessee, subject, however, to all of Lessee's rights under this Lease Agreement.

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20. **ESTOPPEL/SUBORDINATION:** Lessee shall at any time upon ten (10) days' prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (a) certifying that this Lease Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification), and the date to which the Rent and other charges are paid in advance, if any, (b) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the parts of Lessor hereunder, or specifying such defaults if any are claimed, and (c) setting forth any prepaid Rent. Any such statement may be conclusively relied upon by any prospective purchaser, investor, lessee, or encumbrances of the Site.

Lessor acknowledges that this Lease Agreement shall be subject and subordinate to any liens, security interests and encumbrances imposed by any of Lessee's lenders on its equipment and Lessee's leasehold interest created hereunder. Lessor shall cooperate with Lessee in promptly executing, acknowledging and delivering any written agreements, documents and instruments required by Lessee or any of its lenders.

21. **NOTICES:** Any notice, communication, request, demand, reply or advice (severally and collectively referred to as "Notice") in this Lease Agreement required or permitted to be given, made or accepted must be in writing. Notice may unless otherwise provided herein, be given or served (a) by depositing the same in the United States Mail, postage, and fees prepaid, registered or certified, and addressed to the party to be notified, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, in person or by commercial courier or (c) by regular mail, facsimile transmission, telegram or other commercially reasonable means addressed to the party to be notified. Notice sent by registered or certified mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after such deposit or as of earlier actual receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the address of the parties shall, until changed by written notice, be as follows:

**Lessor:** Trio Communications  
P. O. Box 76  
111 South Hall St  
Montague, Texas 76251  
Telephone: (940) 894-2181  
Facsimile: (940) 894-2191  
Attn: Contract Administration

**Lessee:** WISE COUNTY  
P.O. BOX 899

**DECATUR, TEXAS 76234**

Telephone: **(940) 627-5971**

Facsimile: **(940) 627-3797**

Attn: SHERIFF DAVID WALKER

Email: **WalkerD@sheriff.co.wise.tx.us**

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22. **GENERAL PROVISIONS:** The undersigned certifies that they have read and understand all of the terms of this Lease Agreement, and each party acknowledges receipt of a true copy hereof at the time of execution. All of the terms and conditions hereof are part of this Lease Agreement, and there are no express or implied warranties, modifications, or performance guarantees other than those expressly stated herein. The parties hereto agree that no subsequent modification, warranty, or waiver shall become valid until it is reduced to writing, and executed by Lessee and Lessor. In the event of a conflict between the provisions of this Lease Agreement and the Site Lease, the provisions of this Lease Agreement control.

23. **AUTHORITY:** Any individual signing this Lease Agreement on behalf of an entity represents and warrants that he has full authority to do so. Lessor further represents and warrants that it has obtained any and all consents necessary to enter into this Lease Agreement.

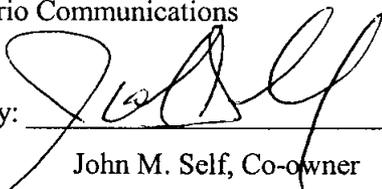
24. **COUNTERPARTS:** This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, and all of which together shall constitute one and the same instrument. This Lease Agreement shall become operative when each party has executed at least one counterpart here of.

25. **MISCELLANEOUS PROVISIONS:** Time is of the essence in this Lease Agreement. The waiver of any term, provision or any default shall not constitute the waiver of any other term, provision or default. This Lease Agreement is made, and is to be performed at the office of the Lessor. This Lease Agreement shall be governed by the laws of the State in which the Site is located. If any part of this Lease Agreement shall be adjudged contrary to law, the remaining provisions hereof shall remain in full force and effect.

This Lease Agreement shall be binding upon the respective successors, assigns and personal representatives of the parties.

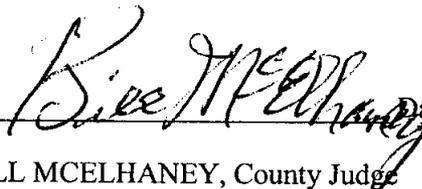
**LESSOR:**

Trio Communications

By:  Date: 7-5-2012  
John M. Self, Co-owner

**LESSEE:**

WISE COUNTY

By:  Date: 06/20/12  
BILL MCELHANEY, County Judge

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## EXHIBIT A

### 1. FREQUENCIES OF OPERATION:

<u>TRANSMIT</u>	<u>RECEIVE</u>	<u>TRANSMIT</u>	<u>RECEIVE</u>
____ MHz	____ MHz	____ MHz	____ MHz
____ MHz	____ MHz	____ MHz	____ MHz
____ MHz	____ MHz	____ MHz	____ MHz
____ MHz	____ MHz	____ MHz	____ MHz

### 2. LESSEES COMMUNICATION EQUIPMENT:

System Name: ____	System Name: ____	System Name: ____
Make: ____	Make: ____	Make: ____
Model: ____	Model: ____	Model: ____
Power Output: ____	Power Output: ____	Power Output: ____
Number: ____	Number: ____	Number: ____

### 3. ANTENNA(S):

Make: SINCLAIR

Model: SC229

Dimensions: 138-225MHZ 6DB / 23.17FT

Number: 1

### DISH(ES):

Make: ??

Model: ??

Dimensions: 3FT DISH

Number: 2

### 4. TRANSMISSION LINE(S):

Make: \_\_\_\_

Model: \_\_\_\_

Size: \_\_\_\_

Number: \_\_\_\_

Make: \_\_\_\_

Model: \_\_\_\_

Size: \_\_\_\_

Number: \_\_\_\_

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## 5. MOUNTING HEIGHT, MOUNTING ORIENTATION, AND FLOOR SPACE USAGE:

(a) 1 Antenna(s) and 2 Dish(es) mounted at the 250FT & 100FT/50FT level of the tower (mounting method and exact location of antenna(s) subject to Lessor's approval).

(b) Floor space within Lessor's equipment shelter measuring 3FT x 3FT for Lessee's radio 1 cabinet(s), measuring 19" x 25" x 7.5FT (exact location of cabinet subject to Lessor's approval).

(c) Combiner / Receiver Multi-coupler usage \_\_\_\_\_

Number: \_\_\_\_\_

Other comments (e.g. – separate shelter, battery backup) \_\_\_\_\_

## 6. EMERGENCY CONTACT INFORMATION

### LESSOR:

CONTACT: JOHN SELF

PHONE: (940) 531-0320

CONTACT: LYNN SELF

PHONE: (940) 366-1112

### LESSEE:

CONTACT: SHERIFF DAVID WALKER

PHONE: (904) 627-5971

CONTACT: \_\_\_\_\_

PHONE: (\_\_\_\_) \_\_\_\_ - \_\_\_\_