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13 BKP 36-15-12e/o COMP *af*  
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## AMENDMENT TO LEASE

This Amendment to Lease (this "Amendment") is made and entered into as of July 11, 2008 (the "Effective Date"), by and among Treat America Limited, a Kansas corporation ("Tenant"); and Swanson Family Building, L.L.C., A Limited Liability Company, a Nebraska limited liability company, Cora Kathryn Johnson, Harry Wayne Sullivan, Lori Ann Hilker, Tracy Jo Lynch, and Darcy Lea Brown (collectively, "Landlords").

### **Recitals**

A. Tenant is the "Tenant", by assignment from The Swanson Corporation, a Nebraska corporation ("Swanson Corporation") under a certain Lease (the "Lease") made on March 3, 1997, by and between First National Bank of Omaha, Trustee of the Merle Swanson Testamentary Trust and Joy G. Swanson, as tenants in common, collectively as "Landlord", and Swanson Corporation.

B. Landlords, as tenants in common, have succeeded to the interests of the Landlord under the Lease, and are presently the fee owners of the Premises (as hereinafter defined).

C. The premises demised under the Lease (the "Premises") are legally described on Exhibit A attached hereto and incorporated herein by reference. As described on Exhibit A, the Premises consist of Parcel 1 and Parcel 2.

D. Landlords intend to sell, or have sold, the south approximately 241.57 feet of Parcel 1 of the Premises (the "Sale Parcel") to a third-party. To facilitate such sale, the Premises have been, or will be, at no cost or expense to Tenant, legally subdivided. The legal description of the Sale Parcel is attached hereto as Exhibit B. The legal description of the remainder of the Premises (the "New Leased Premises") is attached hereto as Exhibit C.

E. To further facilitate such sale, Tenant and Landlords have agreed to amend the Lease as hereinafter provided.

### **Amendment**

In consideration of the foregoing recitals and the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, Tenant and Landlords hereby agree that the Lease shall be, and hereby is, amended in the following respects:

1. As of the Effective Date, the Sale Parcel is deleted from the Premises, and the description of the "premises" under the Lease is replaced with the legal description of the New Leased Premises as shown on Exhibit C attached hereto and incorporated herein by reference.

2. From and after the Effective Date, throughout the remainder of the term of the Lease, the monthly rental shall be \$16,504.00 (the "New Monthly Rental Rate").

3. Tenant and Landlords acknowledge and agree that prior to the Effective Date the monthly rental has been \$18,727.00 (the "Old Monthly Rental Rate"). Rental for the month of the Effective Date shall be pro-rated as of the Effective Date, with rental for the portion of such

month prior to the Effective Date being at the Old Monthly Rental Rate, and rental for the remainder of such month commencing on the Effective Date being at the New Monthly Rental Rate. To the extent that Tenant has prepaid rental for the month of the Effective Date in excess of the amount due for such month, Tenant shall be entitled to a credit and may deduct the amount of such excess from the rental for the next month.

4. Tenant and Landlords further acknowledge and agree that Tenant's obligation to pay real property taxes on the Sale Parcel ceases on the Effective Date. Tenant has paid all of the real property taxes payable in 2008 on the entire original Premises (i.e., the New Leased Premises and the Sale Parcel). On the Effective Date, Landlords shall refund to Tenant an amount equal to that portion of such taxes attributable to the Sale Parcel for the remainder of the year. For example, if the Sale Parcel represents one-third (1/3) of the entire original Premises, and the Effective Date is May 1, 2008, then Landlords shall refund to Tenant an amount equal to two-ninths (2/9) (i.e., 8/12 of 1/3) of such taxes so paid by Tenant. Tenant shall be entitled to a credit and may deduct such amount from the rental for the next month, and for successive months if and to the extent necessary to exhaust the credit.

5. In order to comply with requirements imposed by the City of Omaha for approval of the subdivision or "lot-split" of the Premises, Landlords shall, at their sole cost and expense, cause: (a) the removal of the asphalt parking area located generally on the east side of the New Leased Premises, south of the existing building thereon, perpendicular to 60<sup>th</sup> Street and parallel to the boundary between the New Leased Premises and the Sale Parcel; (b) the proper removal from the New Leased Premises and the proper disposal of all such asphalt and any other waste and debris therefrom; (c) any necessary fill, using clean dirt and/or topsoil, grading and other earthwork of and to such area; and (d) the sodding or seeding, with bluegrass or other grass approved by Tenant, of such area (all of the foregoing hereinafter collectively referred to as the "Work"). The Work shall not include any damage to or destruction of the existing driveway onto and from 60<sup>th</sup> Street, necessary for vehicular ingress and egress to and from the other existing parking area on the east side of the existing building on the New Leased Premises. The Work shall be performed promptly and with diligence, in a good and workmanlike manner, by one or more reputable contractors engaged by Landlords. Landlords shall defend, indemnify and hold harmless Tenant from and against any and all costs, expenses, damages and claims due or related to or otherwise in connection with the Work or the performance thereof.

6. Tenant and Landlords acknowledge and agree that the Lease remains in full force and effect, as modified and amended by this Amendment. To the extent of any conflict or inconsistency between this Amendment and the Lease as originally written (including previous amendments thereto, if any), the terms and provisions of this Amendment shall govern and control.

7. This Amendment may be signed by different parties in separate counterparts, all of which when taken together shall constitute one and the same instrument.

In witness whereof, Tenant and Landlords have executed this Amendment, with the intent to be legally bound hereby, to be effective as of the Effective Date first provided above.

**[The remainder of this page is intentionally left blank. Signature pages to follow.]**

**TENANT:**

Treat America Limited, a Kansas corporation

By: \_\_\_\_\_

Printed Name: John W Mitchell

Title: CEO

STATE OF Kansas )  
 ) ss.  
COUNTY OF Johnson )

On this 23<sup>rd</sup> day of June, 2008, before me a Notary Public in and for said County and/or State, personally came John W Mitchell of TREAT AMERICA LIMITED, a Kansas corporation, who is known to me to be the identical person whose name is affixed to the above Amendment and who acknowledged same to be his voluntary act and deed and the voluntary act and deed of TREAT AMERICA LIMITED.

WITNESS my hand and Notarial seal, the day and date last above written.

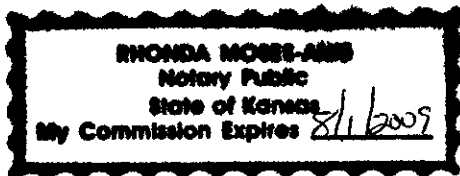
Rhonda Moses-Arb

Notary Public

Printed Name: Rhonda Moses-Arb

My Commission Expires:

August 1, 2009



**LANDLORDS:**

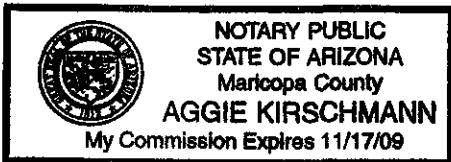
Swanson Family Building, L.L.C., A Limited Liability Company, a Nebraska limited liability company

By: *Alan J. Rausch*  
Alan J. Rausch  
Manager

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

On this 29<sup>th</sup> day of MAY, 2008, before me a Notary Public in and for said County and/or State, personally came Alan J. Rausch, Manager of SWANSON FAMILY BUILDING, L.L.C., A Limited Liability Company, a Nebraska limited liability company, who is known to me to be the identical person whose name is affixed to the above Amendment and who acknowledged same to be his voluntary act and deed and the voluntary act and deed of SWANSON FAMILY BUILDING, L.L.C., A Limited Liability Company.

WITNESS my hand and Notarial seal, the day and date last above written.



*Aggie Kirschmann*  
Notary Public  
Printed Name: AGGIE KIRSCHMANN

My Commission Expires:

11-17-09

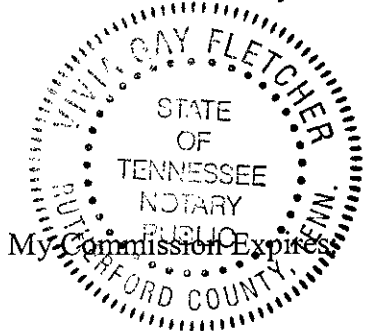


Harry W Sullivan  
Harry Wayne Sullivan

STATE OF TN)  
COUNTY OF Rutherford) ss.

On this 22<sup>nd</sup> day of May, 2008, before me a Notary Public in and for said County and/or State, personally appeared Harry Wayne Sullivan, an individual, who is known to me to be the identical person whose name is affixed to the above Amendment and who acknowledged same to be his voluntary act and deed.

WITNESS my hand and Notarial seal, the day and date last above written.



Vivian Gay Fletcher  
Notary Public  
Printed Name: V. Via Gay Fletcher

My Commission Expires NOV. 21, 2010





Tracy Jo Lynch  
Tracy Jo Lynch

STATE OF Iowa )  
COUNTY OF JASPER ) ss.

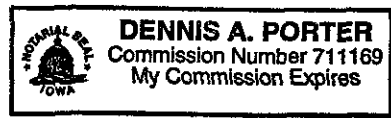
On this 18<sup>TH</sup> day of MAY, 2008, before me a Notary Public in and for said County and/or State, personally appeared Tracy Jo Lynch, an individual, who is known to me to be the identical person whose name is affixed to the above Amendment and who acknowledged same to be her voluntary act and deed.

WITNESS my hand and Notarial seal, the day and date last above written.

Dennis Porter  
Notary Public  
Printed Name: Dennis Porter

My Commission Expires:

7-6-2010





## EXHIBIT A

### Premises

PARCEL 1:

The East 635 feet of the North 330 feet of the South 1/2 of the Southeast 1/4 of the Northeast 1/4 of Section 36, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, except those parts thereof taken for street purposes, together with the East 635 feet of the South 330 feet of the North 1/2 of the Southeast 1/4 of the Northeast 1/4 of Section 36, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, except that part thereof taken for street purposes, more particularly described as follows:

Beginning at a point 50 feet West of the Southeast corner of the Northeast 1/4 of the Southeast 1/4 of the Northeast 1/4 of said Section 36; thence (assuming the East line of said NE 1/4 of Section 36 to be North/South in direction) North along a line parallel with and 50 feet West of the East line of said Northeast 1/4 for 330.78 feet; thence N 89°37'22" W for 584.75 feet along the North line of the South 330 feet of the North 1/2 of the Southeast 1/4 of the Northeast 1/4 of said Section 36; thence South for 379.99 feet to a point of curve; thence Southeasterly along a curve to the left (having a radius of 300.0 feet) for an arc distance of 133.62 feet to a point of reverse curve; thence Southerly along a curve to the right (having a radius of 350.0) for an arc distance of 157.94 feet to a point on the South line of the North 330 feet of the South 1/2 of the Southeast 1/4 of the Northeast 1/4 of said Section 36; thence S 89°37'27" E for 521.31 feet along said South line; thence North along a line parallel with and 50 feet West of the East line of the Northeast 1/4 of said Section 36 for 330.79 to the point of beginning.

PARCEL 2:

That part of the SE 1/4 of the NE 1/4 of Section 36, T15N, R12E of the 6th P.M., Douglas County, Nebraska, described as follows: Beginning at a point which is North 1103.00 feet and N 89°38'20" W, 182.00 feet of the SE corner of the SE 1/4 of the NE 1/4 of said Section 36; thence continuing N 89°38'20" W 453.22 feet to the East line of 61st Avenue; thence S 00°00'50" E 110.28 feet on the East line of 61st Avenue; thence S 89°38'20" E 453.30 feet; thence North 110.28 feet to the point of beginning.

**EXHIBIT B**

**Sale Parcel**

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Lot 2 in SWANSON ADDITION, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

55-37846

## EXHIBIT C

### New Leased Premises

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PARCEL 1:

53-37846

Lot 1 in SWANSON ADDITION, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

PARCEL 2:

That part of the SE ¼ of the NE ¼ of Section 36, T15N, R12E of the 6<sup>th</sup> P.M., Douglas County, Nebraska, described as follows: Beginning at a point which is North 1103.00 feet and N 89°38'20" W, 182.00 feet of the SE corner of the SE ¼ of the NE ¼ of said Section 36; thence continuing N 89°38'20" W 453.22 feet to the East line of 61<sup>st</sup> Avenue; thence S 00°00'50" E 110.28 feet on the East line of 61<sup>st</sup> Avenue; thence S 89°38'20" E 453.30 feet; thence North 110.28 feet to the point of beginning.