

1993

Medical Leasing, LTD., a Utah partnership v.  
Anthony W. Middleton, Jr., Carol S. Middleton,  
George W. Middleton, Jean H. Middleton, Delores  
B. Middleton, Richard G. Middleton, Jane G.  
Middleton, Mary Middleton Dahl and Richard P.  
Middleton, executor of the Estate of Victoria Ann  
M. Stearns : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Richard D. Burbidge; Burbidge & Mitchell; Jay D. Gurmankin; Counsel for Appellee.

George A Hunt; Kurt Frankenburg; Williams & Hunt; Joseph J. Palmer; Wayne G. Petty; Moyle & Draper; Counsel for Appellants .

---

### Recommended Citation

Brief of Appellant, *Medical Leasing v. Middleton*, No. 930218 (Utah Court of Appeals, 1993).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/5095](https://digitalcommons.law.byu.edu/byu_ca1/5095)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

TAH  
OCUMENT  
F U  
J  
10  
CKET NO.

BRIEF ,

IN THE UTAH SUPREME COURT

MEDICAL LEASING, LTD., a Utah :  
partnership, :

Plaintiff and Appellee, :

v. :

ANTHONY W. MIDDLETON, JR., :  
CAROL S. MIDDLETON, GEORGE W. :

MIDDLETON, JEAN H. MIDDLETON, :  
DELORES B. MIDDLETON, :  
RICHARD G. MIDDLETON, JANE :  
G. MIDDLETON, MARY MIDDLETON :  
DAHL and RICHARD P. MIDDLETON, :  
executor of the ESTATE OF :  
VICTORIA ANN M. STEARN, :

Defendants and Appellants. :

93-0218-CA

Appellate Court No. ~~1213~~

Priority Number of the Case: 15

Nature of Proceeding:  
Appeal from Judgment of  
Third District Court  
Honorable Kenneth Rigtrup

JOINT ADDENDUM OF  
APPELLANTS/DEFENDANTS

Richard D. Burbidge  
BURBIDGE & MITCHELL  
139 East South Temple  
Suite 2001  
Salt Lake City, UT 84111

Jay D. Gurmankin  
215 South State Street  
Suite 500  
Salt Lake City, UT 84111

Counsel for Appellee Medical  
Leasing, Ltd.

Joseph J. Palmer (No. 2505), and  
Wayne G. Petty (No. 2596), of  
MOYLE & DRAPER, P.C.  
600 Deseret Plaza  
No. 15 East First South  
Salt Lake City, Utah 84111-1915  
Telephone: (801) 521-0250

Counsel for Appellants Delores B.  
Middleton, Richard G. Middleton,  
Jane G. Middleton, Mary  
Middleton Dahl and Richard P.  
Middleton as executor of the  
estate of Victoria Ann M. Stearn

George A. Hunt  
Kurt Frankenburg  
WILLIAMS & HUNT  
257 East 200 South, Suite 500  
Salt Lake City, Utah 84145-5678

Counsel for Appellants Anthony and  
Carol Middleton, George W.  
Middleton and Jean H. Middleton

FILED

Feb 9 1993

CLERK SUPREME COURT  
UTAH

## IN THE UTAH SUPREME COURT

---

MEDICAL LEASING, LTD., a Utah	:	
partnership,	:	
	:	
Plaintiff and Appellee,	:	
	:	
v.	:	
	:	Appellate Court No. 920439
ANTHONY W. MIDDLETON, JR.,	:	
CAROL S. MIDDLETON, GEORGE W.	:	Priority Number of the Case: 15
	:	
MIDDLETON, JEAN H. MIDDLETON,	:	
DELORES B. MIDDLETON,	:	Nature of Proceeding:
RICHARD G. MIDDLETON, JANE	:	Appeal from Judgment of
G. MIDDLETON, MARY MIDDLETON	:	Third District Court
DAHL and RICHARD P. MIDDLETON,	:	Honorable Kenneth Rigtrup
executor of the ESTATE OF	:	
VICTORIA ANN M. STEARN,	:	
	:	
Defendants and Appellants.	:	

---

### JOINT ADDENDUM OF APPELLANTS/DEFENDANTS

---

Richard D. Burbidge  
BURBIDGE & MITCHELL  
139 East South Temple  
Suite 2001  
Salt Lake City, UT 84111

Jay D. Gurmankin  
215 South State Street  
Suite 500  
Salt Lake City, UT 84111

Counsel for Appellee Medical  
Leasing, Ltd.

Joseph J. Palmer (No. 2505), and  
Wayne G. Petty (No. 2596), of  
MOYLE & DRAPER, P.C.  
600 Deseret Plaza  
No. 15 East First South  
Salt Lake City, Utah 84111-1915  
Telephone: (801) 521-0250

Counsel for Appellants Delores B.  
Middleton, Richard G. Middleton,  
Jane G. Middleton, Mary  
Middleton Dahl and Richard P.  
Middleton as executor of the  
estate of Victoria Ann M. Stearn

George A. Hunt  
Kurt Frankenburg  
WILLIAMS & HUNT  
257 East 200 South, Suite 500  
Salt Lake City, Utah 84145-5678

Counsel for Appellants Anthony and  
Carol Middleton, George W.  
Middleton and Jean H. Middleton

JOINT ADDENDUM OF APPELLANTS/DEFENDANTS

TABLE OF CONTENTS

1. Order on Defendants' Motion to Dismiss (August 14, 1990)
2. Order on Defendants' Motions For Summary Judgment (May 13, 1991)
3. Transcript of Ruling (notice) February 26, 1992 (R. at 5889-90)
4. Instructions to the Jury
5. Judgment
6. Transcript of ruling (express breach, attorneys fees, post-judgment mitigation) August 17, 1992 (R. at 2939-48)
7. Amended Ground Lease, dated August 1, 1980
8. Findings of Fact and Conclusions of Law and Order, re: Zions Utah Bancorporation v. Medical Leasing Limited, et al. (March 1, 1986)

Tab 1

GIAUQUE & BENDER  
Jay D. Gurmankin (1275)  
Carol Clawson (4813)  
500 Kearns Building  
Salt Lake City, Utah 84101  
Telephone: (801) 533-8383

Attorneys for Plaintiffs

**FILED DISTRICT COURT**  
Third Judicial District

**AUG 14 1990**

SALT LAKE COUNTY  
By *James R. Rigtrup*  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

MEDICAL LEASING, LTD., a Utah  
partnership,

Plaintiff,

v.

ANTHONY W. MIDDLETON, JR.,  
CAROL S. MIDDLETON, GEORGE W.  
MIDDLETON, JEAN H. MIDDLETON,  
DELORES B. MIDDLETON, RICHARD G.  
MIDDLETON, JANE G. MIDDLETON, MAY  
MIDDLETON DAHL and RICHARD P.  
MIDDLETON, Executor of the Estate  
of VICTORIA ANN M. STEARN,

Defendants.

ORDER

Civil No. 90-0900998-CN  
Hon. Kenneth Rigtrup

The Motion to Dismiss Complaint and Motion for More  
Definite Statement of defendants Richard G. Middleton, Jane G.  
Middleton, Mary Middleton Dahl and Richard P. Middleton, Executor  
of the Estate of Victoria Ann M. Stearn, came on for hearing  
before the Court on August 6, 1990. Joseph J. Palmer appeared  
for the moving defendants; Kurt M. Frankenberg appeared on behalf  
of all other defendants; Jay Gurmankin and Carol Clawson appeared  
for plaintiffs. The Court having heard argument of counsel and

the same having been reported, and the Court being fully advised in the premises, and good cause appearing,

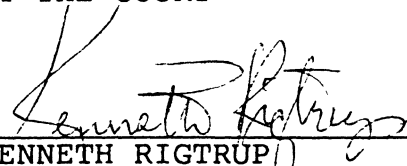
NOW, THEREFORE, IT IS ORDERED, DECREED AND ADJUDGED:

1. Defendants' Motion to Dismiss the Complaint is granted as to Count I (declaratory judgment and injunction) with prejudice and without leave to amend.

2. Plaintiff is given 30 days from the date of entry of this Order to amend Counts II, III and IV of the Complaint.

Dated this 14<sup>th</sup> day of August 1990

BY THE COURT

  
KENNETH RIGTRUP  
District Judge

APPROVED AS TO FORM:

GIAUQUE & BENDINGER

By 

MOYLE & BRAUER

By  8/13/90

SNOW, CHRISTENSEN & MARTINEAU

By 

-609

Tab 2



FILED DISTRICT COURT  
Third Judicial District

GIAUQUE, CROCKETT & BENDER  
Jay D. Gurmankin (1275)  
Carol Clawson (4813)  
500 Kearns Building  
Salt Lake City, Utah 84101  
Telephone: (801) 533-8383

MAY 23 1991  
By Constance George  
Deputy Clerk

Attorneys for Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

MEDICAL LEASING, LTD., a Utah  
partnership,  
  
Plaintiff,  
  
v.  
  
ANTHONY W. MIDDLETON, JR.,  
CAROL S. MIDDLETON, GEORGE W.  
MIDDLETON, JEAN H. MIDDLETON,  
DELORES B. MIDDLETON, RICHARD G.  
MIDDLETON, JANE G. MIDDLETON, MAY  
MIDDLETON DAHL and RICHARD P.  
MIDDLETON, Executor of the Estate  
of VICTORIA ANN M. STEARN,  
  
Defendants.

ORDER

Civil No. 90-0900998-CN  
Hon. Kenneth Rigrup

The motions for summary judgment of defendants Anthony W. Middleton, Jr., Carol S. Middleton, George W. Middleton, Jean H. Middleton, Delores B. Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl and Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn, came on for hearing and argument before the Court on Friday, May 10, 1991, at 2:00 p.m. Memoranda in support of the respective positions of the parties

were filed in advance of the hearing. Plaintiff was represented by Jay D. Gurmankin and Carol Clawson of Giauque, Crockett & Bendinger. Defendants Anthony W. Middleton, Jr., Carol S. Middleton, George W. Middleton and Jean H. Middleton were represented by George A. Hunt and Kurt M. Frankenburg of Williams & Hunt. Defendants Delores B. Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl and Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn were represented by Joseph J. Palmer of Moyle & Draper.

The Court having reviewed the memoranda and heard the arguments of counsel for all parties, and being fully advised hereby orders as follows:

1. The motions for summary judgment dismissing Count II of the Amended Complaint (Intentional Interference With Contract) are granted because the Court concludes as a matter of law that there was no contract between plaintiff and The Boyer Company which could be the subject of intentional interference.

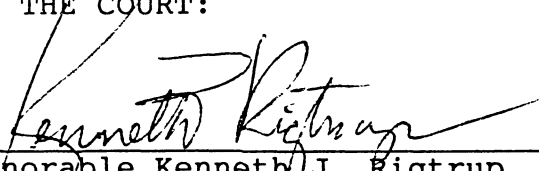
2. The motions for summary judgment as to Count I (Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing), and Count III (Interference With Prospective Economic Relations) are denied, the court finding that there are genuine issues as to material facts going to those claims.

3. Defendants' motions to dismiss the claim for punitive damages are denied.

4. Defendants' motions for an award of reasonable costs and attorneys' fees are denied.

Dated this 23<sup>rd</sup> day of May, 1991.

BY THE COURT:

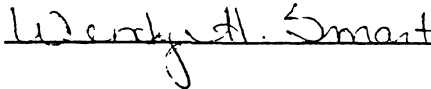
  
Honorable Kenneth J. Rigtrup  
Third District Court Judge

CERTIFICATE OF SERVICE

On this 15th day of May, 1991, a true copy of the foregoing ORDER was sent by first-class mail with postage thereon fully prepaid to:

Joseph J. Palmer, Esq.  
Wayne G. Petty, Esq.  
MOYLE & DRAPER  
15 East 100 South, Suite 600  
Salt Lake City, Utah 84111

George A. Hunt, Esq.  
WILLIAMS & HUNT  
257 East 200 South, Suite 500  
P. O. Box 45678  
Salt Lake City, Utah 84145-4567

  
Wendy H. Smart

Tab 3

IN THE THIRD JUDICIAL DISTRICT COURT FOR  
SALT LAKE COUNTY, STATE OF UTAH

\* \* \*

MEDICAL LEASING, LTD, )  
Plaintiff, )  
-vs- )  
MIDDLETON, ANTHONY W. JR, )  
et al., )  
Defendants. )

Case No. 900900998 CN

MOTIONS ON DIRECTED  
VERDICT, EXCEPTION TO JI's

-----  
BE IT REMEMBERED that on the 26th day of  
February, 1992, at 10:00 o'clock a.m., this cause came  
on for trial before the HONORABLE KENNETH RIGTRUP,  
District Court, with a jury, in the Salt Lake County  
Courthouse, Salt Lake City, Utah.  
-----

A P P E A R A N C E S:

For the Plaintiff: JAY D. GURMANKIN  
Attorney at Law

For the Defendant: JOSEPH J. PALMER  
Attorney at Law

CAT by: CARLTON S. WAY, CSR, RPR

1 persuaded the Court, at least, that that's sufficient  
2 to put Plaintiffs on notice. And it is still -- at  
3 this point, I will go back and review the authorities  
4 that have been given me, and before tomorrow decide,  
5 with more finality, whether it is in or out.

6 MR. BURBIDGE: Thank you, your Honor.

7 THE COURT: There was a discussion last  
8 evening with respect to there being the requirement,  
9 under the Ground Lease of August 1980 -- I'm not sure  
10 of the date. This copy is less than clear. But, at  
11 any rate, the Amended Ground Lease has a 30-day notice  
12 provision on defaults. And the Court has, in fact,  
13 reviewed and advised Counsel of the Court's  
14 interpretation, thereof.

15 The Paragraph 6 on Page 6 of the Amended  
16 Ground Lease is the provision in question. The Court  
17 simply finds that that provision is unambiguous, is  
18 clear; accordingly, the Court, as a matter of law, can  
19 interpret that provision; and the intent of that  
20 provision is simply to provide a contractual means of  
21 taking care of defaults by giving notice to the  
22 defaulting party by the non-defaulting party. And if  
23 the defaulting party does not act, then it puts the  
24 position -- puts the non-defaulting party in the  
25 position of correcting the default and shifting the

1 expenses back to the defaulting party. It means  
2 nothing more, nothing less than that; and specifically  
3 provides that the remedies in this article conferred  
4 to do not exclude any remedies provided in the lease  
5 or by law.

6 In addition, thereto, on Page 16 of the  
7 Amended Ground Lease, Paragraph 15, that has a  
8 provision that indicates the remedies are cumulative,  
9 and is consistent with the language in Paragraph 6.  
10 For that reason, the Court finds that it is not a  
11 condition -- a necessary condition precedent, that  
12 there be a written 30-day notice of default to create  
13 a claim for breach of contract.

14 With respect to the motion of Plaintiff  
15 for directed verdict on the Complaint, those are  
16 denied without prejudice to any judgments, motions for  
17 judgment N.O.V. that might be subsequently made.

18 With respect to the motion for directed  
19 verdict on the breach of contract claim, as to any  
20 breaches, express or implied, of the contract other  
21 than as for attorneys' fees, that will be granted; and  
22 Mr. Palmer's acknowledgment indicates it's clear that  
23 the only remaining claim to be asserted is for  
24 attorneys' fees.

25 MR. HUNT: It is coterminous. That's on

Tab 4



FILED DISTRICT COURT  
Third Judicial District

FEB 27 1992

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

By OB  
Deputy Clerk

STATE OF UTAH

MEDICAL LEASING, LTD., a Utah  
partnership,

Plaintiff,

-vs-

ANTHONY W. MIDDLETON, JR.,  
CAROL S. MIDDLETON, GEORGE W.  
MIDDLETON, JEAN H. MIDDLETON,  
DELORES B. MIDDLETON, RICHARD G.  
MIDDLETON, JANE G. MIDDLETON,  
MAY MIDDLETON DAHL, and  
RICHARD P. MIDDLETON, Executor  
of the Estate of VICTORIA  
ANN M. STEARN,

Defendants.

INSTRUCTIONS TO THE JURY

Civil No. 900900998 CN  
Judge Kenneth Rigtrup

Ladies and Gentlemen of the Jury:

(See Instructions No. 1 through 38)

INSTRUCTION NO. 14

Claims of the Parties

Plaintiff ("Medical Leasing") claims in this action that Anthony Middleton threatened that the Middletons would file litigation if The Boyer Company subleased the property from Medical Leasing unless Defendants (collectively "the Middletons") were paid, and Medical Leasing claims he made such threats even though Anthony Middleton knew that the Middletons were not entitled to share in any income to be derived from the sublease and that Anthony Middleton or the Middletons had no basis for litigation. Medical Leasing claims that as a result of the Middletons' failure to cooperate and the intimidation and threats of Anthony Middleton, The Boyer Company did not sublease and develop the property, as a result of which Medical Leasing suffered very substantial damages. Medical Leasing seeks recovery for these actions on two theories. First, that this conduct constituted intentional interference with Medical Leasing's prospective economic relation with The Boyer Company. Second, Medical Leasing alleges that this conduct constituted a breach of the express terms of the Amended Ground Lease between the parties and the covenant of good faith and fair dealing implied by law in every contract.

Medical Leasing claims that all actions of Anthony Middleton referred to in the previous paragraph are attributed to each and every other Defendant by the rules of the law, including the rules of agency. Medical Leasing claims that

Anthony Middleton was the agent of all the other Middletons, or that the acts of Anthony Middleton were ratified by each of the other Middletons.

The Middletons claim that they never, directly or through Anthony Middleton, engaged in any improper intimidation or threats against Medical Leasing or The Boyer Company, that they never intended to injure Medical Leasing, and that they always were interested only in pursuing legitimate economic objectives and protecting legal rights of their own. The Middletons deny that any of their actions or actions of Anthony Middleton caused The Boyer Company not to sublease or develop the property. Each Middleton denies Anthony Middleton was an agent for the other Middletons, or that he or she ratified Anthony Middleton's acts.

Defendants Anthony W. Middleton, Jr., Carol S. Middleton, George W. Middleton and Jean H. Middleton are represented by counsel separate from counsel for Richard G. Middleton, Delores B. Middleton, Jane G. Middleton, Mary Middleton Dahl and Richard P. Middleton, executor of the Estate of Victoria Ann M. Stearn (who may be referred to in these instructions collectively as the "Richard Middleton Group"). Each of the Middletons claims he or she does not always agree and sometimes has different views on issues from the other Middletons regarding the property.

INSTRUCTION NO. 15

Elements of Interference with Prospective Economic Relations

To find for Plaintiff on its interference with prospective economic relations claim, you must find that Plaintiff proved by a preponderance of the evidence that one or more of the Defendants:

(1) Intentionally interfered with Plaintiff's existing or potential economic relations with The Boyer Company;

(2) For an improper purpose or by improper means;

(3) Thereby proximately causing economic injury to Plaintiff.

INSTRUCTION NO. 16

Expectancy of Future Economic Benefit

Medical Leasing contends that, at the time of the Defendants' conduct, a business relationship existed between Medical Leasing and The Boyer Company with an expectancy or likelihood of future economic benefit for Medical Leasing. You must first determine whether such an expectancy existed.

In determining this question, the expectancy need not be evidenced by a contract. It is sufficient if you find from the evidence that there were either prior dealings or a prior course of conduct between Medical Leasing and The Boyer Company from which a reasonable expectation of future economic benefit arose. Medical Leasing must show this expected benefit with some degree of specificity, such that it is a realistic expectation, but it need not be shown with certainty, because prospective things are necessarily uncertain. The law requires more than a mere hope or optimism; what is required is a reasonable likelihood or probability.

INSTRUCTION NO. 17

Knowledge

In order to find that a Defendant intentionally interfered with the potential business relationship between Plaintiff and The Boyer Company you must find that that Defendant knew of the existence of Plaintiff's potential business relationship.

INSTRUCTION NO. 18

Improper Purpose

The element of "improper purpose" is satisfied if you find that the Defendants' dominant purpose was to injure Medical Leasing.

INSTRUCTION NO. 19

Improper Means

The element of "improper means" is satisfied when the means used to interfere with Medical Leasing's economic relations are contrary to law, such as violations of statutes, ethical standards, regulations, or recognized common-law rules. In addition, "improper means" includes acts of violence, threats or other intimidation, deceit or misrepresentation, bribery, unfounded or baseless litigation, defamation, or disparaging falsehood. Means may also be "improper" because they violate an established standard of an industry, trade or profession.



INSTRUCTION NO. 20

Improper Means

A deliberate breach of contract is not, by itself, an "improper means;" nor is an immediate purpose to inflict injury by itself an "improper means" so long as it does not predominate over other legitimate purposes. Taken together, however, a breach of contract committed for the immediate purpose of injuring the other contracting party is an "improper means." When both are found together, they satisfy the "improper means" element of the cause of action for intentional interference with prospective economic relations.

To satisfy the "improper means" element in this way, the defendants must have committed a breach not just to obtain relief from its obligation under the contract or lease (for which contract damages would have made the plaintiff whole), but with the intent to injure a plaintiff in a manner not compensable merely by contract damages because of special vulnerability of the plaintiff to such a breach at that time.

INSTRUCTION NO. 21

Intentional Interference Required

Interference with a prospective economic relation is intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action. Substantial certainty requires more than a strong possibility.

One is not liable for reckless or negligent interference with a prospective economic relation.

INSTRUCTION NO. 22

Privilege

You are instructed that if you find Defendants proved by a preponderance of the evidence that Defendants were reasonably acting to protect a legitimate economic interest of their own, arising out of or in conjunction with the 1980 Amended Ground Lease, were exercising their rights under that lease, or were exercising their rights to assert an honest claim, then the conduct of the Middletons was justified and privileged and Medical Leasing is not entitled to recover for any intentional interference with prospective economic relations.

INSTRUCTION NO. 23

Medical Leasing's Breach of Contract Claim

Medical Leasing contends that Defendants breached the express terms of the Amended Ground Lease by seeking to induce The Boyer Company not to enter into a sublease with Medical Leasing unless Defendants were paid additional compensation to which they were not entitled.

Accordingly, you should find for Medical Leasing on its express breach of contract claim if you find by a preponderance of the evidence each of the following elements:

- (1) That a Defendant breached the express terms of paragraph 8 of the Amended Ground Lease; and
- (2) That Medical Leasing's damages, if any, were proximately caused by Defendants' breach of the Amended Ground Lease.

INSTRUCTION NO. 24

Breach of the Covenant of Good Faith and Fair Dealing

Medical Leasing also contends that Defendants breached their implied covenant of good faith and fair dealing under the Amended Ground Lease by taking action contrary to the provisions of paragraph 8 dealing with subleasing. Defendants deny this contention.

Every contract, including the Amended Ground Lease between Medical Leasing and the Middletons, imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.

Under the covenant of good faith and fair dealing, each party impliedly promises that he will not intentionally or purposely do anything which will destroy or injure the other party's right to receive the benefits of the contract. A violation of the covenant gives rise to a claim for breach of the Amended Ground Lease. This duty does not require the parties to materially depart from specific contract rights to which they have already agreed. An examination of the express Amended Ground Lease terms alone, however, is insufficient to determine whether there has been a breach of the implied covenant of good faith and fair dealing. To comply with their obligation to perform the Amended Ground lease in good faith, a party's actions must be consistent with the agreed common purpose and the justified expectations of the other party under paragraph 8. The purpose, intentions and expectations of the

parties should be determined by considering the Amended Ground Lease language, as modified in the Zions stipulation, and the course of dealing between and the conduct of the parties.

INSTRUCTION NO. 25

Express Authority

Medical Leasing contends that Anthony Middleton acted as the agent of the remaining Defendants in connection with his communications with Medical Leasing and The Boyer Company concerning the property in this action. The Middletons claim that Anthony Middleton was not the agent of any of them, and that Medical Leasing, Ltd. had been told and knew that Anthony Middleton was not the agent of any member of the Group.

An agent is one who is authorized to act for or in the place of another, who is called the principal, and who is subject to control by the principal.

A principal is a person who has authorized another person, called an agent, to act on the account and subject to the control of the principal.

A principal is responsible to others for the acts or omissions of the agent if the agent was acting within the scope of the agent's authority or in the course of carrying out the agent's express duties at the time the claim arose.

INSTRUCTION NO. 26

Ratification

Medical Leasing also contends that the remaining Defendants ratified or approved of Anthony Middleton's intimidation or threats of litigation towards Medical Leasing and The Boyer Company.

In order to find that the remaining Defendants ratified or approved of Anthony Middleton's acts in this regard, you must find that such Defendant demonstrated by his or her conduct an intention to treat the act as authorized or conduct by such Defendant justifiable only if there were such an intent. You must also find Anthony Middleton purported to act for such Defendant and such Defendant had knowledge of the material facts concerning those acts.



INSTRUCTION NO. 27

Tenants in Common

The Middletons own the property which they have leased to Medical Leasing, Ltd. as tenants in common, a form of ownership of real property. Tenants in common are not agents as to each other because of their common ownership of property.

INSTRUCTION NO. 28

Proximate Cause

The proximate cause of a loss is that cause which, in natural and continuous sequence, produces the loss and without which the loss would not have occurred. A proximate cause is one which sets in operation the factors that accomplish the loss.

The law does not necessarily recognize only one proximate cause of an injury, consisting of only one factor, one act, or the conduct of only one person. To the contrary, the acts and omissions of two or more persons may work concurrently as the efficient cause of an injury, and in such a case, each of the participating acts or omissions is regarded in law as a proximate cause and both may be held responsible.

INSTRUCTION NO. 29

Compensatory Damages

If, after considering the evidence in this case and the instructions I have given, you should find the issues in favor of the Plaintiff, then it is my duty to tell you what damages the Plaintiff would be entitled to recover. It would be a sum which you believe, from the evidence, will fairly and reasonably compensate the Plaintiff for any damage Plaintiff has suffered as a proximate result of the Defendants' acts, which includes the anticipated profits of which Plaintiff was deprived, provided they are not mere speculation.

In this case, the Plaintiff claims that Plaintiff's business lost profits Plaintiff might have earned but for the Defendants' conduct. In determining damages, you may consider whether the Plaintiff suffered any measurable loss of profits as a result of the Defendants' conduct.

Plaintiff is entitled to recover such damages, if any, as are reasonably established from the evidence in this case.

The difficulty or uncertainty in ascertaining or measuring the precise amount of any damage does not preclude recovery, and you should use your best judgment in determining the amount of such damages, if any, based upon the evidence.

INSTRUCTION NO. 30

Mitigation

Defendants contend that Plaintiff did not act with reasonable diligence to mitigate its damages. It is the duty of a person who has been damaged by the acts or failures to act of another to use reasonable means to prevent the aggravation of those damages and to effect the recovery. The burden is on the Defendants to prove by a preponderance of the evidence that Plaintiff failed to so mitigate its damages. Reasonable diligence and reasonable means in such situations depend upon the facts and circumstances of the particular case. If one fails to use reasonable diligence to prevent the aggravation of his damages, and they are aggravated as a result of that failure, the liability of another, if any, must be limited to the amount of damage that would have been suffered if the injured party had exercised the required diligence.

A party is not required to mitigate its losses by complying with the other party's demands which the other party is not entitled to make under the contract.

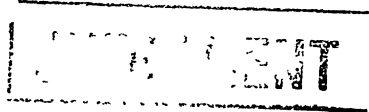
Tab 5

AUG 28 1992

RICHARD D. BURBIDGE, Esq. (#0492)  
BURBIDGE & MITCHELL  
139 E. South Temple, Suite 2001  
Salt Lake City, Utah 84111  
(801) 355-6677

SALT LAKE COUNTY  
C. Wig  
Deputy Clerk

JAY D. GURMANKIN, Esq. (1275)  
215 South State, Suite 500  
Salt Lake City, UT 84111  
(801) 532-1036



Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

MEDICAL LEASING, LTD., a Utah  
partnership,

Plaintiff,

-vs-

ANTHONY W. MIDDLETON, JR.,  
CAROL S. MIDDLETON, GEORGE W.  
MIDDLETON, JEAN H. MIDDLETON,  
DELORES B. MIDDLETON, RICHARD G.  
MIDDLETON, JANE G. MIDDLETON,  
MARY MIDDLETON DAHL, and  
RICHARD P. MIDDLETON, Executor  
of the Estate of VICTORIA  
ANN M. STEARN,

Defendants.

JUDGMENT

2176887  
9-2-92-8:06am.

Civil No. 900900998 CN  
Judge Kenneth Rigtrup

Plaintiff Medical Leasing, Ltd. brought on for trial its  
claims for breach of the Amended Ground Lease, breach of the  
covenant of good faith and fair dealing under the Amended Ground  
Lease, and intentional interference with prospective economic  
relationship against Defendants Anthony W. Middleton, Jr., Carol  
S. Middleton, George W. Middleton, Jean H. Middleton, Delores B.

Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl and Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn, which trial commenced February 11, 1992. Plaintiff was represented by Richard D. Burbidge of Burbidge & Mitchell, and Jay D. Gurmankin. Defendants Anthony W. Middleton, Jr., Carol S. Middleton, George W. Middleton and Jean H. Middleton were represented by George Hunt and Kurt Frankenburg of Williams & Hunt. Defendants Delores B. Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl and Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn, were represented by Joseph J. Palmer of Moyle & Draper. The case was tried before a jury of eight persons and after the close of evidence, the case was submitted to the jury on special verdicts to be answered by the jury. The jury returned the following answers to the interrogatories set forth in the special verdict forms:

1. Did Defendants, or any of them, intentionally interfere with Medical Leasing's prospective economic relationship with The Boyer Company through improper means or for an improper purpose? [Answer this question separately for each Defendant]

Anthony W. Middleton, Jr.	<u>  x  </u>	Yes
	<u>      </u>	No
Carol S. Middleton	<u>  x  </u>	Yes
	<u>      </u>	No
George W. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No

Jean H. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Dolores B. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Richard G. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Jane G. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Mary Middleton Dahl	<u>      </u>	Yes
	<u>  x  </u>	No
Richard P. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Estate of Victoria	<u>      </u>	Yes
Ann M. Stearn	<u>  x  </u>	No

2. If you have answered Question No. 1 "yes" for Defendant, did Medical Leasing suffer damages as a proximate result of the conduct of any of such Defendants in interfering with Medical Leasing's prospective economic relationship with The Boyer Company? [Answer this question separately for each Defendant]

Anthony W. Middleton, Jr.	<u>  x  </u>	Yes
	<u>      </u>	No
Carol S. Middleton	<u>  x  </u>	Yes
	<u>      </u>	No
George W. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Jean H. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Dolores B. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No



Richard G. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Jane G. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Mary Middleton Dahl	<u>      </u>	Yes
	<u>  x  </u>	No
Richard P. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Estate of Victoria		
Ann M. Stearn	<u>      </u>	Yes
	<u>  x  </u>	No

3. If your answer to Question No. 2 above was "yes," for any Defendant, were Defendants, or any of them, privileged to interfere with any such economic relationship as that term has been defined for you in the Instructions? [Answer this question separately for each Defendant]

Anthony W. Middleton, Jr.	<u>      </u>	Yes
	<u>  x  </u>	No
Carol S. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
George W. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Jean H. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Dolores B. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Richard G. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Jane G. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No
Mary Middleton Dahl	<u>      </u>	Yes
	<u>  x  </u>	No

Richard P. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No

Estate of Victoria	<u>      </u>	Yes
Ann M. Stearn	<u>  x  </u>	No

4. Did the Defendants, or any of them, breach the express terms of the Amended Ground Lease and/or their implied covenant of good faith and fair dealing owed to Medical Leasing?  
[Answer this question separately for each Defendant]

Anthony W. Middleton, Jr.	<u>  x  </u>	Yes
	<u>      </u>	No

Carol S. Middleton	<u>  x  </u>	Yes
	<u>      </u>	No

George W. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No

Jean H. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No

Dolores B. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No

Richard G. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No

Jane G. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No

Mary Middleton Dahl	<u>      </u>	Yes
	<u>  x  </u>	No

Richard P. Middleton	<u>      </u>	Yes
	<u>  x  </u>	No

Estate of Victoria	<u>      </u>	Yes
Ann M. Stearn	<u>  x  </u>	No

5. If you have answered Question No. 4 "yes" with respect to any Defendant, did Medical Leasing suffer damages as a proximate result of the breach of the Amended Ground Lease by that Defendant? [Answer this question separately for each Defendant]

Anthony W. Middleton, Jr.	<u>  x  </u> Yes <u>      </u> No
Carol S. Middleton	<u>  x  </u> Yes <u>      </u> No
George W. Middleton	<u>      </u> Yes <u>  x  </u> No
Jean H. Middleton	<u>      </u> Yes <u>  x  </u> No
Dolores B. Middleton	<u>      </u> Yes <u>  x  </u> No
Richard G. Middleton	<u>      </u> Yes <u>  x  </u> No
Jane G. Middleton	<u>      </u> Yes <u>  x  </u> No
Mary Middleton Dahl	<u>      </u> Yes <u>  x  </u> No
Richard P. Middleton	<u>      </u> Yes <u>  x  </u> No
Estate of Victoria Ann M. Stearn	<u>      </u> Yes <u>  x  </u> No

6. If you have found that any Defendant intentionally interfered with Medical Leasing's prospective economic relationship without privilege or that any Defendant breached the express terms of the Amended Ground Lease and/or their

implied covenant of good faith and fair dealing and that Medical Leasing suffered damages as a proximate result thereof, what amount of damages, if any, is Medical Leasing entitled to recover?

Answer: \$2,582,780.00

7. If you have found that Medical Leasing is entitled to recover compensatory damages for interference with Medical Leasing's prospective economic relationship with The Boyer Company, is Medical Leasing entitled to recover punitive damages against any of the Defendants whom you have found to be liable for compensatory damages? [Answer this question separately for each Defendant whom you have found liable for compensatory damages for interference with prospective economic relationship]

Anthony W. Middleton, Jr.	<u>  x  </u> Yes <u>      </u> No
Carol S. Middleton	<u>      </u> Yes <u>  x  </u> No
George W. Middleton	<u>      </u> Yes <u>  x  </u> No
Jean H. Middleton	<u>      </u> Yes <u>  x  </u> No
Dolores B. Middleton	<u>      </u> Yes <u>  x  </u> No
Richard G. Middleton	<u>      </u> Yes <u>  x  </u> No
Jane G. Middleton	<u>      </u> Yes <u>  x  </u> No
Mary Middleton Dahl	<u>      </u> Yes <u>  x  </u> No

Richard P. Middleton

           Yes  
  x   No

Estate of Victoria  
Ann M. Stearn

           Yes  
  x   No

After the rendition of the above-referenced special verdicts, a bifurcated trial was held respecting punitive damages and the jury returned the following answer to the special verdict submitted to them:

Special Verdict on Punitive Damages

1. What amount of punitive damages, if any, is Plaintiff entitled to recover from Defendant Anthony W. Middleton, Jr.?

Answer:   \$75,000.00  

Subsequent to the entry of the Special Verdicts by the jury and in accordance with previous order of the court reserving the issue of joint liability for breach of the Amended Ground Lease and/or breach of the covenant of good faith and fair dealing, Plaintiff filed its "Motion for Entry of Judgment Jointly Against All Defendants for Breach of the Amended Ground Lease" moving the court for entry of the judgment as against all Defendants on the grounds that all Defendants were jointly obligated under the Amended Ground Lease and that all Defendants

were jointly liable for damages arising from the breach of the Amended Ground Lease and/or breach of the covenant of good faith and fair dealing.

Hearing on said motion was held by the court April 13, 1992 at the hour of 8:30 a.m. Plaintiff appeared by and through its counsel of record, Richard D. Burbidge of Burbidge & Mitchell and Jay D. Gurmankin. Defendants Anthony W. Middleton, Jr., Carol S. Middleton, George W. Middleton and Jean H. Middleton appeared by and through their counsel of record, George A. Hunt of Williams & Hunt. Defendants Delores B. Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl and Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn appeared by and through their counsel of record, Joseph J. Palmer of Moyle & Draper.

The court, having reviewed Plaintiff's "Motion for Entry of Judgment Jointly Against All Defendants for Breach of the Amended Ground Lease" and supporting and opposing memoranda, having heard the arguments of counsel, and being fully apprised in the matter, granted Plaintiff's motion and found as a matter of law that all Defendants are jointly liable for the breach of contract and/or breach of the covenant of good faith and fair dealing as found by the jury and are jointly responsible for the damages found by the jury to be proximately caused by said breach.

Subsequent thereto, Defendants Delores B. Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl and

Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn filed a Motion to Have Verdict Set Aside and to Have Judgment Entered in Accordance with Motion for Directed Verdict; Motion for Judgment Notwithstanding the Verdict; or Motion for New Trial, and Defendants Anthony W. Middleton, Jr., Carol S. Middleton, George W. Middleton, Jean H. Middleton filed a Motion for Judgment Notwithstanding the Verdict or New Trial. Said motions were heard before the court on August 17, 1992 at the hour of 8:30 a.m. Plaintiff appeared by and through its counsel of record, Richard D. Burbidge and Stephen B. Mitchell of Burbidge & Mitchell and Jay D. Gurmankin. Defendants Anthony W. Middleton, Jr., Carol S. Middleton, George W. Middleton and Jean H. Middleton appeared by and through their counsel of record, George A. Hunt and Kurt M. Frankenburg of Williams & Hunt. Defendants Delores B. Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl and Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn appeared by and through their counsel of record, Joseph J. Palmer and Wayne G. Petty of Moyle & Draper. The court, having reviewed the motions, supporting and opposing memoranda, having heard the arguments of counsel and being fully apprised in the matter, HEREBY ORDERS that the respective motions are denied.

Accordingly, the following Judgment is hereby entered upon the jury's special verdicts and upon the court's order pursuant to Plaintiff's "Motion for Entry of Judgment Jointly Against All Defendants for Breach of the Amended Ground Lease:"

IT IS HEREBY ORDERED that judgment be and the same hereby is entered in favor of Plaintiff Medical Leasing, Ltd. on its claims for breach of the Amended Ground Lease and/or breach of the covenant of good faith and fair dealing under the Amended Ground Lease against Defendants Anthony W. Middleton Jr., Carol S. Middleton, George W. Middleton, Jean H. Middleton, Delores B. Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl and Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn, jointly, and that judgment be and the same hereby is entered in favor of Plaintiff Medical Leasing, Ltd. on its claim for intentional interference with prospective economic relationship against Defendants Anthony W. Middleton, Jr. and Carol S. Middleton, jointly, all in the amount of \$2,582,780.00, together with interest thereon at the rate of 10% per annum from and after February 28, 1992 to the date judgment is entered and thereafter at the judgment rate of 12% per annum, and that judgment be and the same hereby is entered in favor of Plaintiff Medical Leasing, Ltd. on its claim for attorneys fees against Defendants jointly in the amount of \$275,000.00, together with interest at the rate of 12% per annum from and after the date judgment is entered, and that Plaintiff Medical Leasing, Ltd. is awarded its costs of suit.

IT IS FURTHER ORDERED that Plaintiff's claim for intentional interference with prospective economic relationship is hereby dismissed with prejudice, no cause of action having been found, as to Defendants George W. Middleton, Jean H.



Middleton, Delores B. Middleton, Richard G. Middleton, Jane G. Middleton, Mary Middleton Dahl, and Richard P. Middleton, Executor of the Estate of Victoria Ann M. Stearn.

IT IS FURTHER ORDERED, based upon the jury's special verdict on punitive damages, that judgment be and the same hereby is entered in favor of Plaintiff Medical Leasing, Ltd. against Defendant Anthony W. Middleton, Jr. for punitive damages in the amount of \$75,000.00, together with interest thereon at the rate of 10% per annum from and after February 28, 1992 to the date judgment is entered and thereafter at the judgment rate of 12% per annum. The punitive damage award, when paid, shall be divided in accordance with § 78-18-1(3) Utah Code Annotated.

The Court Hereby Determines that there is no just cause for the delay of entry of the judgment and certifies same to be final in accordance with the provisions of Rule 54(b) Utah Rules of Civil Procedure upon entry. However, execution of the Judgment is stayed for thirty (30) days; provided however, it is ordered that the judgment shall be an automatic lien on all real property of the Defendants located in Salt Lake County, Utah as and when entered and that, during the period that this stay is in effect, Defendants shall not transfer any of their real property, cause any lien or encumbrance to attach to any of their real property, or transfer or encumber any of their personal property except for ordinary living expenses and the day to day operation of their businesses.

It Is Further Hereby Ordered that notwithstanding the finality of the judgment, the court shall retain jurisdiction of this matter in the following limited respect: In the event that either Plaintiff or Defendants obtain a development agreement for the undeveloped portion of the subject property during the period of time that the subject Amended Ground Lease is in effect on said undeveloped portion of the subject property, Defendants may apply to the court for consideration of whether and to what extent they may share in any proceeds from such development agreement as credit against the final judgment.

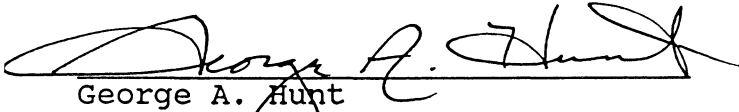
DATED this 28<sup>th</sup> day of August, 1992.

BY THE COURT:

  
HONORABLE KENNETH RISTRUP  
THIRD DISTRICT COURT JUDGE


Approved as to form:

WILLIAMS & HUNT

A handwritten signature in cursive script, appearing to read "George A. Hunt", written over a horizontal line.

George A. Hunt  
Attorneys for Defendants  
Anthony W. Middleton, Jr.,  
Carol S. Middleton, George W.  
Middleton and Jean H. Middleton

MOYLE & DRAPER

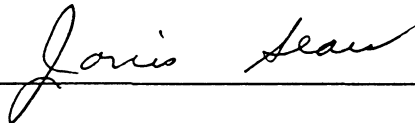
A handwritten signature in cursive script, appearing to read "Wayne S. Petty", written over a horizontal line.  
Joseph J. Palmer  
Attorneys for Defendants  
Delores B. Middleton, Richard G.  
Middleton, Jane G. Middleton,  
Mary Middleton Dahl, and Richard  
P. Middleton, Executor of the  
Estate of Victoria Ann M. Stearn

CERTIFICATE OF HAND DELIVERY

I, the undersigned, hereby certify that a copy of the proposed Judgment was hand-delivered to the following parties this 28<sup>th</sup> day of August, 1992:

George A. Hunt, Esq.  
Kurt M. Frankenburg, Esq.  
WILLIAMS & HUNT  
257 East 200 South, Suite 500  
P.O. Box 45678  
Salt Lake City, Utah 84145-5678

Joseph J. Palmer, Esq.  
MOYLE & DRAPER  
600 Deseret Plaza  
No. 15 East First South  
Salt Lake City, Utah 84111-1915

  
\_\_\_\_\_

js ml\judg

Tab 6

FILED DISTRICT COURT  
IN THE THIRD JUDICIAL DISTRICT COURT Third Judicial District  
SALT LAKE COUNTY, STATE OF UTAH AUG 21 1992

\* \* \*

SALT LAKE COUNTY

By CE

DEPUTY CLERK

MEDICAL LEASING, LTD, )  
Plaintiff, )  
-vs- )  
MIDDLETON, ANTHONY W JR, )  
et al., )  
Defendants. )

ORIGINAL

Case No. 900900998CN

DECISION, 8-17-92

-----  
BE IT REMEMBERED that on the 17th day of  
August, 1992, at 8:30 o'clock a.m., this cause came on  
for Hearing before the HONORABLE KENNETH RIGTRUP,  
District Court, without a jury, in the Salt Lake  
County Courthouse, Salt Lake City, Utah.

-----  
A P P E A R A N C E S:

For the Plaintiff: JAY D. GURMANKIN  
Attorney at Law

For the Defendant: JOSEPH J. PALMER  
Attorney at Law

CAT by: CARLTON S. WAY, CSR, RPR

1 jury, apparently. The record is replete with that  
2 kind of evidence.

3 Having made those general comments, the  
4 Court must conclude that there is substantial evidence  
5 in the record to support the verdict as rendered by  
6 the jury in this matter.

7 For those reasons, the motions for  
8 judgment N.O.V. and for a new trial are denied.

9 With respect to the damages: The Court,  
10 I suppose, at one or two points, sua sponte, indicated  
11 some concern with the Reed Case about how the damage  
12 issue was approached. The Court's mulled that over  
13 thoroughly. Until today, I don't recall any of the  
14 attorneys, until Mr. Petty and Mr. Burbidge suggested  
15 the possible remedy of transferring the property back  
16 -- but that notion has certainly been mulled over and  
17 over by the Court. The prospect of a 2.6 -- roughly  
18 -- million dollar judgment and the further prospect of  
19 landlocking the use of the land for 48 years is not,  
20 it seems to the Court, a good result. There might be  
21 those who think the property would best be utilized by  
22 greenbelting it, maybe. But the Court in the Reed  
23 Case suggested that that was not good public policy.  
24 And since the property is zoned Commercial, the Court  
25 doesn't view that as appropriate public policy.

1           The Court ought not to lose sight of the  
2 fact that this suit is not between a landlord and a  
3 tenant over past rents due or over future rents  
4 claimed. This is a lawsuit between a landowner, who  
5 was granted a long-term lease and Ring, Wong and  
6 Adair, who are in the business of trying to develop  
7 the land; or at least that was their effort. And I  
8 suppose they are in the business of subleasing and  
9 yielding business income through the vehicle of rents  
10 given the fact that they are seeking loss of future  
11 profits, which to them it's a case of profits, not a  
12 case of rents. So, the Court concludes that the Reed  
13 Case is not applicable.

14           Accordingly, the Court does conclude  
15 that there is substantial and rational evidence in the  
16 record to support the verdict on the issue of damages,  
17 and awards judgment for \$2,582,780; plus interest  
18 thereon at the statutory rate of ten percent per annum  
19 from and after February 27, 1992, in the amount of ten  
20 percent per annum.

21           The Court went back and reviewed that  
22 issue and canvassed it, and thinks that's the only  
23 rational conclusion that can be made.

24           Thereafter, the judgment may bear  
25 interest at the rate of 12 percent per annum.



1                   That judgment shall be entered jointly  
2 and severally against all named Defendants as the  
3 landlord in this case.

4                   A punitive damage judgment may be  
5 entered against Anthony W. Middleton, Jr. in the  
6 amount of \$75,000.

7                   The last issue that's been raised was  
8 the issue of attorneys' fees. The Court is perplexed  
9 -- I'm always perplexed, I guess, at the size and  
10 magnitude of attorneys' fees having been a poor lawyer  
11 by comparative standards.

12                  MR. BURBIDGE: By economics.

13                  THE COURT: By economics. I always had  
14 the disadvantage of being able to see that the poor  
15 guy I represented was always in worse shape than I  
16 was, so I was very willing to cut, ignore, take small  
17 token payments over a long period of time. I think  
18 they are troubling to all of the judges of this  
19 district. We have talked about the problem of  
20 attorneys' fees, collectively, as judges on a number  
21 of occasions. But I don't want to perpetuate ongoing  
22 hearings needlessly.

23                  I haven't microscopically examined all  
24 of the invoices and hours and so forth, but I  
25 recognize some merit in the positions taken by the

1 Defendants about allocating and so forth. And so, the  
2 Court will find and approve as reasonable attorneys'  
3 fees \$275,000.

4 If that's not acceptable to both  
5 parties, then the Court will have an evidentiary  
6 hearing at which time I would require a day or however  
7 long it takes to put Mr. Gurmankin and Mr. Burbidge on  
8 the stand and subject them to cross-examination and so  
9 forth. But given the combined fees of the Defendants'  
10 Counsel of \$233,000, it would appear to the Court that  
11 an award of that size is certainly justified.

12 As an attorney, my perception was that  
13 the Plaintiffs have the laboring oar, and that's the  
14 tougher case than the Defendant has. Though, that  
15 might be somewhat in error, it's easier sometimes to  
16 find fault than to be positive and affirmative about  
17 things.

18 MR. BURBIDGE: That's acceptable, your  
19 Honor.

20 THE COURT: And so, I think that given  
21 all that I've reviewed, that a loss for some extent  
22 for losing on the motion pertaining to injunctive  
23 relief, and allows for the ruling that I made with  
24 respect to whether or not the Middletons could be  
25 compelled to undertake new, additional duties and

1 obligations, and there may be some other things that  
2 can be thrown out, as well. If that's not acceptable  
3 to both sides, then the order can reserve the issue  
4 for further hearing.

5 MR. GURMANKIN: May I just say, your  
6 Honor, that that is acceptable to us. And if that  
7 does end up being the Court's order, we will forego a  
8 supplemental application for post-trial motions. If  
9 that is not acceptable to the Defendants and we do  
10 have to have a hearing, we will be filing a  
11 supplemental.

12 THE COURT: In addition, the Court  
13 awards Plaintiffs' their taxable costs. And my views  
14 of taxable costs are relatively conservative. So, you  
15 can try pencils and papers and paperclips, but it  
16 won't work with this Judge. I'll put you fairly on  
17 warning.

18 MR. BURBIDGE: You won't see it, Judge.

19 THE COURT: And so, I would just suggest  
20 that you be fairly careful about your memorandum of  
21 costs and disbursements.

22 Is there any -- are there any pending  
23 issues that I've missed or overlooked?

24 MR. PALMER: Your Honor, we had raised  
25 as to attorneys' fees the -- in the Memorandum, the

1 point that the jury finding was: "Yes, there was an  
2 express (slash) -- express breach of contract or  
3 implied breach." And that the case law requires the  
4 former. And without a specific finding on it, you  
5 cannot recover attorneys' fees. That's been  
6 submitted, and I take it that you are ruling on our  
7 position on that without argument?

8 THE COURT: And I did consider that  
9 fully, and my conclusion is that there was substantial  
10 evidence in the record to demonstrate that Paragraph 8  
11 of the Amended Ground Lease was expressly breached,  
12 and the result achieved justifies the amount of the  
13 attorneys' fees I've awarded.

14 One last part of the Order that I did  
15 overlook: The Court, as a matter of public policy,  
16 would conclude that it would be inappropriate to allow  
17 the property in question to be locked up until the  
18 Year 2040 without any development. The Court  
19 considered the conveyance back of the interest of the  
20 Middletons' perhaps appropriate, but I think that's  
21 inconsistent with the award of damages for loss of  
22 future profits; and so, I concluded that that was an  
23 inappropriate remedy.

24 But to avoid the possibility of the  
25 property being tied up, the Court will require in the

1 order that the Court have continuing jurisdiction in  
2 this case should any development plan come forward.  
3 And the Court reserves the option of treating that in  
4 the way of mitigation of the awarded damages.

5 That does two things, I suppose: It  
6 still creates a little bit of an incentive on the part  
7 of Medical Leasing to mitigate into the future, but I  
8 think more importantly it gives the Middletons a  
9 strong incentive to go to their friend, Mr. Boyer, who  
10 they are probably in a good position with, and try to  
11 revive the project. It leaves the Middletons in the  
12 position of extending the leasehold interest to  
13 accommodate financial amortization. And so, it seems  
14 to me that kind of continuing jurisdiction doesn't put  
15 either party in a perilous situation, put either of  
16 you at a disadvantage, but puts both of you in a  
17 position of going out and through collective efforts  
18 maybe still put something together and get the program  
19 back on track.

20 Mr. Gurmankin?

21 MR. GURMANKIN: Your Honor, my question  
22 has to do with -- I take it that that part of the  
23 order will not affect our ability to collect on the  
24 judgment?

25 THE COURT: No.

1 MR. PALMER: I was just going to address  
2 that.

3 THE COURT: I suppose the order can have  
4 a 54(b) Certification. That's a final, binding  
5 order.

6 MR. PALMER: Your Honor, none of the  
7 Defendants can respond to the judgment in full. We  
8 would -- particularly in light -- well, for one  
9 reason, in light of the question about continuing  
10 jurisdiction. Now, we may be able to explore the  
11 matter with Mr. Boyer, and, further, the problem of  
12 having to scramble around to see what can be done  
13 about bonds. We'd ask for a stay of execution on the  
14 judgment for 30 days. The land is here. These  
15 individuals are all residents of Salt Lake City; all  
16 practicing physicians. Fraudulent conveyances, if  
17 they were to make them, could be looked at. We need  
18 that time.

19 MR. HUNT: I will join in that, your  
20 Honor. We do need some time to get our affairs in  
21 order.

22 THE COURT: Mr. Burbidge.

23 MR. BURBIDGE: Well, he asked for a  
24 specific amount of time?

25 THE COURT: 30 days.

1 MR. BURBIDGE: I think that's -- so long  
2 as --

3 You are not going to worry about it.

4 So long as your Honor would simply order  
5 that no assets be transferred or encumbered. I am not  
6 suggesting that they would do that, but just for the  
7 protection of my clients, I would --

8 MR. PALMER: That's too general an order  
9 to make. Our parties are not going to do that. But  
10 to say no assets are going to be transferred means that  
11 you can't pay your bills.

12 MR. BURBIDGE: Simply --

13 THE COURT: Okay. The judgment becomes  
14 a lien against all real property. So, to avoid any  
15 last-minute transfers, the Court will provide that the  
16 Defendants may have a 30-day stay of execution from  
17 the date of entry of the judgment. And as a condition  
18 of granting that stay, the Court will require that no  
19 real property shall be transferred, encumbered or in  
20 any way altered. And that other than the usual living  
21 expenses, the day-to-day expenses -- and the Court  
22 understands that takes cash -- and the usual operation  
23 of their business, no other assets shall be  
24 transferred, hypothecated, alienated, whatever; all of  
25 the words that lawyers use with great surplusage.

1                   Mr. Gurmankin, you get to do the  
2 paperwork.

3                   MR. GURMANKIN: I --

4                   MR. BURBIDGE: He is going out of town.  
5 So, if you don't mind, I will do it.

6                   THE COURT: All right. We will be in  
7 the recess.

8                                   (Hearing adjourned.)  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 REPORTER'S CERTIFICATE

2  
3 STATE OF UTAH )  
4 County of SALT LAKE ) ss.

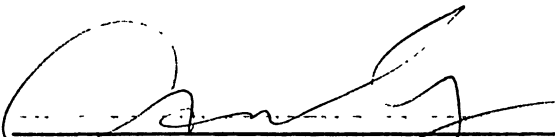
5  
6 I, CARLTON S. WAY, CSR, do hereby certify that  
7 I am a Certified Shorthand Reporter and a Notary  
8 Public in and for the State of Utah;

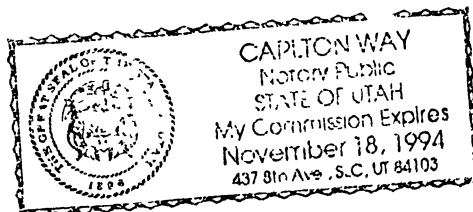
9 That I took down the proceedings aforesaid at  
10 the time and place therein named and thereafter  
11 reduced the same to print by means of computer-aided  
12 transcription (CAT) under my direction and control;

13 I further certify that I have no interest in  
14 the event of this action.

15 WITNESS MY HAND AND SEAL this the 20th day of  
16 August, 1992.

17  
18  
19 (Signature)

20   
21 CARLTON S. WAY, CSR, RPR



Tab 7

AMENDED  
GROUND LEASE

THIS GROUND LEASE is made as of the \_\_\_\_\_ day of Aug 1, 1980, between ANTHONY W. MIDDLETON, JR. and CAROL S. MIDDLETON, his wife, GEORGE W. MIDDLETON and JEAN H. MIDDLETON, his wife, DELORES B. MIDDLETON, RICHARD G. MIDDLETON and JANE G. MIDDLETON, his wife, MARY MIDDLETON DAHL and RICHARD P. MIDDLETON, executor of the Estate of VICTORIA ANN M. STEARN, hereinafter referred to as "Landlord", and SALT LAKE SURGICAL CENTER, INC., a Utah corporation, hereinafter referred to as "Tenant";

RECITALS

A. Landlord and Tenant entered into a Ground Lease dated July 21, 1975, which was modified by Amendment to Lease dated August 25, 1976.

B. Tenant or its successor has constructed a surgical facility on a portion of the lands and premises mentioned in the Ground Lease.

C. Tenant desires to expand the surgical facility.

D. Landlord and Tenant, in order to allow the expansion of the surgical facility, subject to the terms and conditions hereof, enter into this Amended Ground Lease.

AGREEMENT

1. Term, Rent and Use.

1.1 Term. Landlord leases and lets to Tenant and Tenant rents from Landlord the Leased Premises more particularly described on Schedule "1" attached hereto and made a part hereof. The term of this Lease shall terminate on the 31st day of July, 2025. Lease years shall commence on August 1 and expire on July 31.

extension thereof, rent shall be paid in monthly installments in advance on the first day of each month and shall be computed as follows:

(a) For the period commencing August 1, 1980, and ending July 31, 1983, rent shall be \$25,200 per year, payable \$2,100 per month.

(b) Commencing with the lease year which begins on August 1, 1983, and at intervals of each three lease years during the term of this lease and any extension thereof, the rent rate per year shall be increased or decreased by the same percentage that the Composite Retail Consumer Price Index ("Price Index") of all items (as compiled by U.S. Department of Labor, Bureau of Labor Statistics, with 1967 as the 100 base year) has increased or decreased from its level as of the beginning of the previous 3-year period, provided however, the first adjustment shall be for the change in the Price Index from May 1, 1980 to August 1, 1983. For example, the rent shall be adjusted on August 1, 1983 for the change in the index from May 1, 1980 to August 1, 1983; if at the commencement of the lease year beginning August 1, 1983, the Index has increased by 10%, the annual rent rate would be increased by \$2,500 per year (10% of \$25,200). The next adjustment shall take place on August 1, 1986 for the change from August 1, 1983 to August 1, 1986. In the event that such Price Index is not promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor, or if a substantial change is made in the method of establishing such Price Index, then the Price Index shall be adjusted to the figure that would have resulted had no change occurred in the manner of computing the Price Index. In the event that such a Price Index (or

succession or ~~Substitute Index~~ is not available, a reliable government or other non-partisan publication evaluating the information theretofore used in determining the Price Index shall be used in lieu of such Price Index.

(c) In order to compensate the Landlord for the increased value of the leased property, Tenant shall pay Landlord as additional rent the amount of three percent (3%) of the total monthly rent payable under subparagraph (b) above. This additional rent shall be payable monthly, with the monthly rent payments of subparagraph (b) above and shall commence August 1, 1983.

(d) As additional rent during the term of this Lease and any extension thereof, Tenant agrees to pay all charges for electricity, gas, heat, water, including assessments on water stock, telephone, and other utility services used on the leased Premises. Tenant shall also pay or cause to be paid all taxes levied against the leased Premises, including general property taxes or assessments, provided that taxes and assessments shall be prorated to the last day of the term. In addition, Tenant also agrees to pay any sales, rental or use taxes imposed by any governmental authority relative to the leased Premises or the businesses conducted thereon, this Lease or the rental paid hereunder, or as a result of any or all of them, whether imposed on Landlord or Tenant; provided that Tenant shall not be required to pay any franchise, corporate, estate, inheritance, succession, transfer or income tax of Landlord.

If any tax or assessment is or may be paid in installments, Tenant may pay the same in installments as the same become due; provided that Tenant shall be obligated to pay only those installments which become due or are assessed for periods during the term of this Lease, and any tax or assessment or

installment thereof payable with respect to a tax period during which the term of this Lease shall expire or terminate, otherwise than because of the fault of Tenant, shall be adjusted between Landlord and Tenant as of the expiration or termination of this Lease so that Tenant shall pay only the amount which bears the same relation to the total tax or assessment as the part of such tax period included within the term of this Lease is to the entire tax period.

Tenant shall have the right, at its expense, to contest in its own name or in the name of Landlord, any such notice or tax, provided that Tenant shall so notify Landlord and shall, upon demand, satisfactorily indemnify Landlord. Landlord agrees to promptly transmit to Tenant all tax, assessment and other notices relating thereto.

1.3 Use. Tenant shall use that portion of the Leased Premise described in Schedules "2" and "3" only for the operation of the surgical facility constructed thereon. The balance of the Leased Premises may be used for such other businesses that are related or complimentary thereto and for any other lawful use.

2. Construction, Maintenance and Alterations of Building Improvements. Subject to the provisions of paragraphs 7 and 8 hereof, Tenant may, at its expense, construct on the Leased Premises any improvements thereto as it may deem desirable, except as provided above, but Tenant shall at all times maintain the premises and any improvements in good condition and repair, ordinary wear and tear and damage by casualty and the elements excepted. Landlord shall not be obligated to maintain, replace or rebuild any improvements thereon. All improvements constructed on the Leased Premises by Tenant and all additions, alterations and improvements thereto made by Tenant shall not become a part of the realty even if affixed to the

realty, but shall remain the exclusive personal property of Tenant during the term of this Ground Lease. On surrendering possession to Landlord, all improvements then located on the Leased Premises shall become the exclusive property of the Landlord, unless within thirty (30) days before termination of this lease Landlord gives Tenant notice to remove any such improvements or the contents thereof, in whole or in part, in which event Tenant shall remove such improvements at its expense and repair any damage done by the removal within sixty (60) days following termination, and this obligation shall survive the termination date herein contained. Tenant agrees not to permit any liens to stand against the Leased Premises for work done or materials furnished to it for more than ten (10) days; provided, however, that if Tenant contests the validity of any such lien, it may post adequate security with Landlord so that upon final determination of the validity thereof, Tenant shall cause such lien to be satisfied and released of record.

3. Tenant's Fixtures. Tenant may install in the Leased Premises such fixtures, improvements and equipment as it deems desirable, and all of said items shall remain Tenant's personal property whether or not affixed to the Leased Premises. Tenant may remove its personal property from the Leased Premises at any time but shall repair any damage caused by removal.

4. Indemnification, Insurance and Damage. Tenant agrees to indemnify Landlord and save Landlord harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from its use or any subtenants' or sublessees' use of the premises or from claimed injury, damage or loss to person (including death) or property on the Leased Premises or on the adjoining streets and sidewalks, including those caused by the negligent act of Landlord or Landlord's

employees, but excluding the willful acts of Landlord. Tenant shall maintain (1) general liability insurance of at least \$1,000,000 single limit coverage or \$1,000,000 per injury, \$1,000,000 per accident and \$600,000 property damage on the premises, and (2) broad form fire and extended coverage on the improvements to 100% of the insurance replacement value thereof, during the term hereof, naming Landlord as an insured or loss payee thereunder. Such policies may be blanket policies. Certificates of such insurance shall be deposited with Landlord at least ten (10) days before expiration of the term of such policies. In the event of destruction of the improvements, wholly or partially, from any cause covered by such insurance, Tenant shall either, at its option, devote the insurance proceeds to restoration of the damaged improvements, or apply the proceeds first to the satisfaction of any mortgage or deed of trust against the property and second to the cleaning up and removal of the debris and the balance shall be paid to Tenant.

5. Assignment and Subletting. Tenant may voluntarily assign this Ground Lease or sublet the whole or any part of the Leased Premises, provided an assignee of the lease assumes in writing the obligations of Tenant to Landlord; but in the event of assignment or sublease, Tenant shall remain liable to Landlord for full performance of its obligations hereunder. Tenant's interest may not be assigned by operation of law. Landlord may assign or hypothecate this lease without Tenant's consent, and Tenant shall attorn to any assignee or mortgagee. Upon any transferee's written assumption of Landlord's future obligations hereunder, Landlord shall be released from any future obligation to Tenant.

6. Default. A party shall be deemed to be in default upon the expiration of thirty (30) days from the date of written notice from the other party specifying the particulars in which



such party has failed to perform the obligations of this lease unless that party, prior to expiration of said thirty (30) days, has rectified the particulars specified in the notice. Upon such default occurring, the nondefaulting party may incur any expenses necessary to perform the obligation of the other party as specified in such notice, and if the defaulting party is the Landlord, Tenant may deduct such expenses from the rents thereafter to become due. If the defaulting party is the Tenant, Landlord may decree the term ended and enter the Leased Premises with or without process of law. The remedies in this article conferred do not exclude any other remedies provided in the Lease or by law.

7. Landlord's Title. Tenant shall have quiet and peaceful possession of the Leased Premises as against all persons claiming adversely thereto through Landlord or their predecessors in interest. Tenant has previously examined Landlord's title, approved and accepted the same with any and all exceptions thereto, including easements, rights of way or other restrictions and encumbrances thereon.

Tenant has previously constructed a surgical facility upon two acres of the leased property. Lessor has previously subordinated its interest in the two acres to a construction and permanent loan on the two acres. The two acres are described in Schedule 2 attached hereto.

Tenant desires, plans and agrees to expand its surgical facility upon the Leased Premises, and Landlord has been advised by it that seventy-five hundredths (.75) of an acre of the leased property will be sufficient acreage upon which to construct and operate the expansion of the surgical facility intended and agreed to be established. It is agreed by the parties hereto that the expansion of the surgical facility will be located on the property described in Schedule 3, which Les-

see represents to be (1) contiguous to the property described in Schedule 2, and (2) an area of .75 acres. Tenant has represented to Landlord that it will be impossible for it to finance the construction of the expansion of the surgical facility without the subordination of Landlord of its fee title to the .75 acres upon which it is to be constructed, to a mortgage or deed of trust for such financing. It is agreed, therefore, by the parties as follows:

7.1 In addition to Lessee's right to encumber its leasehold estate, Lessee shall have the right, subject to the conditions described herein and in conjunction with Lessee's mortgaging of its leasehold estate, to require Landlord to encumber by a mortgage or deed of trust (the "mortgage") the fee title of the additional .75 acres or a total of 2.75 acres (including the land described in Schedule 2) upon which the surgical facility, including the expansion, is to be constructed and operated, under which the fee title to the land shall be subordinate to the rights of the holder of the indebtedness secured by such mortgage, on the following terms and conditions:

(a) Lessee shall not in any way be in default under the terms of this Amended Ground Lease at the time any such request is made or at the time Landlord is required to execute the mortgage.

(b) The Landlord shall not be required to sign the note or other evidence of indebtedness secured by the mortgage, and the subordination provisions shall be conditioned on the absence of any personal obligation of the Landlord or any right to have recourse against the Landlord other than Landlord's interest in the Leased Premises.

(c) The obligation secured by the mortgage (1) after completion of any construction for which the proceeds of the mortgage is used, shall be capable of being satisfied

by the payment of money only without the performance of other obligations; (2) shall run only to an Institution, defined as commercial banks, trust companies, savings and loan associations, real estate investment trusts and insurance companies; (3) shall not exceed, in any event, including the initial building or buildings on the property described in Schedule 2 and the expansion on the property described in Schedule 3 annexed hereto, (i) the principal amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000), or (ii) seventy-five percent (75%) of the value of the property as improved or to be improved, as determined by the permanent lender, and (4) in the case of a construction loan, shall be repayable out of the proceeds of a permanent loan then committed to close within two (2) years of the first advance on the construction loan, or in the case of a permanent loan, in equal monthly installments of principal and interest over a period of time not to exceed forty (40) years.

(d) The mortgage shall secure only a note executed by the Tenant for the purpose of obtaining (1) a construction loan for the construction of improvements on the land qualified as provided herein; (2) a permanent loan to repay a qualified construction loan; and (3) a refinancing loan, which shall not exceed the amount of the unpaid principal balance on the permanent loan being refinanced.

(e) In addition, in connection with the expansion of the surgical facility, the following special conditions must be satisfied:

(i) Tenant shall have prepared preliminary design plans for the improvements, which plans shall be submitted for Landlord's prior approval which shall not be unreasonably withheld.

- (ii) Tenant shall be required to invest at least Five Hundred Thousand Dollars (\$500,000) of its own funds in the construction and equipping of the proposed improvements to expand the surgical facility, in addition to the proceeds of the construction loan and in addition to amounts previously invested or the value of the surgical facility. At least Four Hundred Thousand Dollars (\$400,000) of such funds shall be deposited with the lender prior to the first advance under the construction loan under instructions to disburse the funds deposited as and when needed for the construction of the improvements.
- (iii) Tenant shall have furnished to Landlord a signed construction contract or copy thereof obligating a reputable builder to complete construction of the improvements proposed in the plans described above, together with a corporate surety bond in the amount of the contract price conditioned on the contractor's performance of the contract and completion of the improvements free of all liens or, in lieu of such bond, evidence reasonably satisfactory to Landlord of contractor's financial worth and stability adequate to assure such performance and completion.
- (iv) The mortgage or the building loan agreement shall provide that the proceeds of the loan shall be used only for construction costs on the land. "Construction costs" for purposes of this lease shall include the costs of work, labor, materials, equipment and supplies used in such construction, premiums for bonds, architect and engineering fees,

costs of construction financing including interest during the period of construction, applicable legal fees, utilities and taxes during the period of any such construction, costs of topographical survey, appraisal, cost of building permits, inspection, checking and testing required by applicable laws or ordinances or otherwise with respect to such construction, costs of cleanup, costs of materials and installation in connection with utilities, costs of the acquisition and installation of fixtures, costs of landscaping, the cost of insurance during any such construction, and contractor's profit.

(f) The mortgage, in all cases, shall provide for, or comply with, the following:

- (i) Before exercising any right of acceleration or maturity, or any right of foreclosure against the Landlord's fee interest in the premises, as distinguished from Tenant's leasehold estate, the holder of the mortgage will give Landlord at least thirty (30) days' written notice of all defaults claimed (in addition to notice to Tenant) and the holder of the mortgage will not thereafter exercise such right of acceleration or foreclosure so long as Landlord makes payment of all current installments of principal and interest and cures any other defaults reasonably curable by Landlord (which shall not include defaults such as the bankruptcy or insolvency of the Tenant);
- (ii) No provision shall prohibit Landlord's sale of its interest in the land or provide for the acceleration of the indebtedness by reason of such a sale.

(g) It is understood and agreed by all of the parties hereto that Landlord does not agree to subordinate the fee title of any of the Leased Property except as to the 2.750 acres above referred to.

(h) Tenant shall furnish Landlord with a true copy of the mortgage, the note secured thereby, and all other documents required by Lender.

(i) Any default in the performance of the construction of the expansion of the surgical facility or the construction or permanent loans, including but not limited to failure to make monthly installments or other payments as they come due, or failure to remove all mechanic's liens or other obligations accruing or claimed against the leased property pursuant to the provisions of the last sentence of paragraph 2, shall constitute a default under this Amended Ground Lease.

8. Development of Additional Portions of the Leased Premises. Landlord is not obligated to subordinate any additional portion of the Leased Premises, except as provided in paragraph 7. Landlord may subordinate additional portions of the Leased Premises on terms and conditions to which Landlord agrees in writing.

Lessee shall not make, have made, contract for, obtain loans or other agreements for, any development upon any remaining portion of the Leased Premises without Landlord's prior written consent. Landlord is not required to give its consent, such consent being solely at Landlord's discretion. This restriction is given by Lessee as inducement for Landlord's agreement of paragraph 7, recognizing that additional development of the Leased Premises by Lessee may result in additional risk of loss of the property subordinated or to be subordinated pursuant to paragraph 7.

This paragraph shall not preclude Lessee from selling or subleasing its interest in the remaining portion of the Leased Premises to an independent third party for development or otherwise, provided Lessee is not a joint venturer, partner, stockholder, participant, or otherwise involved, directly or indirectly, in the development of the property with such third party.

9. Condemnation. If any portion of or interest in the Leased Premises shall be taken or damaged by condemnation under any right of eminent domain or any transfer in lieu thereof, Tenant shall restore the remaining buildings to a complete architectural unit and shall remain in possession with this Ground Lease continuing as to the remaining portion of the Leased Premises, but with rentals under paragraph 1 reduced in the ratio which Tenant's subrentals and use are affected by condemnation. If by reason of such condemnation, Tenant is unable to economically use the remaining premises, Tenant may cancel this Ground Lease as of the date of occupancy by governmental authority by notice to the Landlord within three months after said date even though Tenant may not have constructed any improvements on the Leased Premises. If this Ground Lease is so terminated, Tenant shall have the option for a period of ninety (90) days after such notice of termination is given to remove all of the buildings and other improvements from the Leased Premises and retain any salvage value therefrom. If Tenant does not elect to remove all of the buildings and other improvements from the property, Tenant shall execute and deliver to Landlord a Bill of Sale and all other documents reasonably required by Landlord to evidence the transfer of title to such improvements. Tenant shall be obligated to leave the Premises in a clean and satisfactory condition with all buildings in good condition and repair and suitable for use, in the

event Tenant elects not to remove the improvements from the property. In the event of any condemnation and whether or not Tenant elects to terminate this Ground Lease, (i) Landlord shall be entitled to that portion of the award or payment made in the condemnation proceedings attributable to the taking of or damage to the real property, subject to the provisions of any Mortgage to which Landlord's interest in this Ground Lease is subordinate, (ii) Tenant shall be entitled to that portion of the award or payment made in the condemnation proceedings attributable to the value of Tenant's leasehold estate, relocation expenses, loss of business or revenue, the value of any improvements on the Leased Premises and the value of Tenant's fixtures and equipment, subject to the provisions of any mortgage to which Tenant's interest in this Ground Lease is subordinate, and (iii) Landlord and Tenant shall share in any remainder of the condemnation award or payment as their interests may appear. Anything in this paragraph to the contrary notwithstanding, this paragraph shall not apply to the taking by condemnation or agreement of up to twelve feet of the southerly part of the Leased Premises under present plans for widening 39th South Street, with which plans the parties hereto are familiar and Landlord shall be entitled to any award paid therefor. Any taking in excess of twelve feet will be considered a condemnation under the provisions of this paragraph 9.

10. Access to Premises. Landlord or its agents may have access to the premises and any improvements thereof at all reasonable times to examine the premises or to show them to any prospective purchasers, tenants, or mortgagees and may place for rental or for sale signs on the premises during the last six months of the term hereof.

11. Compliance with Laws. Tenant agrees not to violate any law, ordinance, rule or regulation of any governmental



authority having jurisdiction of the Leased Premises. Tenant may contest the validity of any such law, ordinance, rule or regulation, provided adequate security is posted with Landlord during the period of such contest, and Tenant shall indemnify and hold Landlord harmless against the consequence of any violation thereof by Tenant, including all costs of defense and attorney's fees.

12. Notices. Any notice provided for herein shall be given by registered or certified United States mail, postage prepaid, addressed, if to Landlord, to the person to whom the rent is then payable at the address to which the rent is then mailed, and, if to Tenant, to Salt Lake Surgical Center, Inc., 617 East 3900 South, Salt Lake City, Utah. The person and the place to which notices are to be mailed may be changed by either party by notice to the other party. Landlord agrees that a copy of all notices which Landlord gives Tenant hereunder shall also be given by certified mail to such other mortgagees or subtenants and at such places as Tenant may designate in writing. Upon either party's written request, and provided it can do so truthfully, the other will certify in writing to all persons designated in the request (1) that the other party has performed all its obligations and is not in default under this Ground Lease, (2) that this Ground Lease is in full force and effect, and (3) that each person designated in such certification may rely thereon for all purposes. Landlord further agrees that in the event of any default by Tenant under this Ground Lease, any mortgagee or other holder of a security interest in Tenant's leasehold or improvements and/or any assignee or subtenant of Tenant may cure such default within the time allowed Tenant for same hereunder and continue this Ground Lease in full force and effect.

13. Where Rent Payable. Upon further notice in writing, rent shall be paid to Richard P. Middleton, 1437 Harvard Avenue, Salt Lake City, Utah.

14. Renewal Options. Tenant, at its option, may extend the term of this Ground Lease for fifteen (15) years on the same terms and conditions hereof by notice mailed to Landlord at least One Hundred Eighty (180) days before the expiration of the term hereof.

15. Remedies Cumulative. No remedy herein conferred upon or reserved to Landlord or Tenant shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute.

16. Attorney's Fees. If Landlord or Tenant default hereunder or file a suit against the other which is in any way connected with this lease, the defaulting party shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

17. Memorandum of Lease. This Ground Lease shall not be recorded, but it is agreed that, upon request by either party, the parties will execute a short form of this Ground Lease in such form as may be reasonably acceptable to counsel which may be recorded by either party.

18. Paragraph Headings. The paragraph headings of this Ground Lease are inserted only for reference and do not affect the terms and provisions hereof.

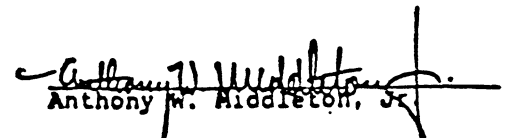
19. Rights of Successors. All of the rights and obligations of the parties under this Ground Lease shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns. The Lease has previously

been assigned to Medical Leasing Limited, a limited partnership. Landlord approves the assignment without in any way releasing or affecting the obligation or liability of Salt Lake Surgical Center, Inc. Medical Leasing Limited, John C. Adair, Alice Jane Adair, Wallace H. Ring, \_\_\_\_\_, Harry C. Wong, Jean A. Wong, John E. Pace and Nancy K. Pace, to induce Landlord to enter into this Amended Ground Lease, guarantee this Amended Ground Lease as provided in the Guarantee below.

20. Counterparts. This Amended Ground Lease and the Guarantee hereof, below, may be executed in any number of counterparts and when so executed, all of such counterparts shall constitute a single instrument binding upon all parties thereto, notwithstanding the fact that all parties are not signatory to the original or the same counterpart. The Tenant and Guarantors hereby authorize the Landlord to remove the signature pages from any counterpart copy and attach all such pages to a single instrument, sometimes herein referred to as the "master copy," so that the signatures of all parties and guarantors will be physically attached to the same document.

21. Tenant's Right to Grant Easements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the premises, rights of way or easements on or over the premises for poles or conduits or both for telephone, electricity, water, sanitary or storm sewers or both, and for other utilities and municipal or special district services. Landlord agrees to execute any documents necessary to accomplish the foregoing.

EXECUTED as of the date first above written.

  
Anthony W. Middleton, Jr.

Carol S. Middleton  
Carol S. Middleton

George S. Middleton  
George S. Middleton

Jean H. Middleton  
Jean H. Middleton

Delores B. Middleton  
Delores B. Middleton

Richard G. Middleton  
Richard G. Middleton

Jane G. Middleton  
Jane G. Middleton

Mary Middleton Dahl  
Mary Middleton Dahl

Richard P. Middleton  
Estate of Victoria Ann M.  
Stearn by Richard P. Middleton

LANDLORD

SALT LAKE SURGICAL CENTER,  
INC.

By Thomas C. Long  
its President  
TENANT

Attest:  
John A. Adams  
Secretary

GUARANTY OF AMENDED GROUND LEASE

This Guaranty is given by each of the undersigned, individually, to Landlord as designated in the foregoing Amended Ground Lease on the \_\_\_\_ day of July, 1980.

The undersigned hereby absolutely and unconditionally guarantee the performance of the foregoing Amended Ground Lease and any extensions or renewals of said Amended Ground Lease. The undersigned further guarantee the payment of any and all sums due or which may become due under the Amended Ground Lease, including all costs and attorney's fees, if any, incurred in connection with collection of said amounts. The undersigned enter into this Guaranty, regardless of the willingness and ability of Salt Lake Surgical Center, Inc. to pay the indebtedness, and the undersigned expressly waives presentment for payment, notice of non-payment, and protest to any extensions of time of payment granted by Landlord.

Landlord may proceed against the undersigned for any amount hereby guaranteed without taking any action against Salt Lake Surgical Center, Inc. or any other person, firm or corporation, or against any collateral which secures the Amended Ground Lease.

The undersigned agree to pay all costs and expenses incurred by Landlord in enforcing this Guaranty, including costs and reasonable attorney's fees.

IN WITNESS WHEREOF, the undersigned has signed this Guaranty the day and year first above written.

MEDICAL LEASING LIMITED

By Wallace H. Ring  
Its General Manager

John C. Adair  
John C. Adair

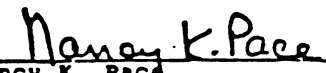
Alice Jane Adair  
Alice Jane Adair

Wallace H. Ring  
Wallace H. Ring

Harry C. Wong  
Harry C. Wong

Jean A. Wong  
Jean A. Wong

  
John E. Pace

  
Nancy K. Pace

**SCHEDULE 1**

**Leased Premises covered by Ground Lease attached hereto:**

**Lot 1, Block 19, Ten Acre Plat "A", Big Field Survey, subject to the right of way and easement of the State Road Commission of the State of Utah for Seventh East Highway Project No. S-0140(8), and subject to any portion of the above described property that is located within Thirty-ninth South Street adjoining said property on the south thereof or that may be taken in connection with the widening of said Thirty-ninth South Street.**

**Subject also to easement for irrigation ditch and any other easements disclosed by the survey of said property.**

## **SCHEDULE 2**

**BEGINNING** at a point on the West line of Lot 1, Block 19, Ten Acre Plat "A", Big Field Survey of Section 31, Township 1 South, Range 1 East, Salt Lake Base and Meridian, 7 feet North of the Southwest corner of said Lot 1, and running thence East 250.0 feet to a point 7.0 feet North of the South line of said Lot 1; thence North 350.0 feet to a point 250.0 feet East of the West line of said Lot 1; thence West 250.0 feet to the West line of said Lot 1; thence South 350.0 feet to the point of beginning.

**TOGETHER WITH** a perpetual easement for the construction thereon a box culvert and appurtenant parts thereof incident to the construction of a highway known as Project No. CR-220-(2). Said easement is described as follows: Beginning at a point 7.0 feet North of the Southwest corner of Lot 1, Block 19, Ten Acre Plat "A", Big Field Survey, and running thence North 10.00 feet; thence East 28.00 feet; thence South 10.00 feet; thence West 28.00 feet to the point of beginning.



SCHEDULE 3

Beginning at a point on the West line of Lot 1, Block 19, Ten Acre Plat "A", Big Field Survey, said point being North 00°12'23" East 7.0 feet from the Southwest corner of said Lot 1 and running thence South 89°58'25" East 250.00 feet parallel to the South line of said Lot 1; thence North 00°12'23" East 479.16 feet parallel to said West line; thence North 89°58'25" West 250.00 feet parallel to said South line; thence South 00°12'23" West 479.16 feet along said West line to the point of beginning.

Less the property described in Schedule 2 to Amended Ground Lease.

Tab 8

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

MAR 1 1986

H Dixon Hindley, Clerk 3rd Dist. Court

By [Signature]  
Deputy Clerk

MERLIN O. BAKER (0180) of  
RAY, QUINNEY & NEBEKER  
Attorneys for Defendants  
Delores B. Middleton, Richard  
G. Middleton, Jane G. Middleton,  
Mary Middleton Dahl, and Richard  
P. Middleton, as Executor of the  
Estate of Victoria Ann M. Stearn  
400 Deseret Building  
79 South Main Street  
P. O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500

Bk 205 NC 799  
3-12-86-300am

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----oo0oc-----

ZIONS UTAH BANCORPORATION,  
a Utah corporation,

Plaintiff,

v.

MEDICAL LEASING LIMITED, a  
Utah limited partnership;  
ANTHONY W. MIDDLETON, JR. and  
CAROL S. MIDDLETON, his wife;  
GEORGE W. MIDDLETON and  
JEAN H. MIDDLETON, his wife;  
DELORES B. MIDDLETON; RICHARD G.  
MIDDLETON and JANE G. MIDDLETON,  
his wife; MARY MIDDLETON DAHL;  
and RICHARD P. MIDDLETON, as  
Executor of the Estate of  
VICTORIA ANN M. STEARN,

Defendants.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

Civil No. C-83-713

ANTHONY W. MIDDLETON, and  
CAROL S. MIDDLETON, his wife;  
GEORGE W. MIDDLETON and  
JEAN MIDDLETON, his wife,

Third-Party  
Plaintiffs.

Judge Timothy R. Hanson



v. :

SALT LAKE SURGICAL CENTER. :

INC., a Utah corporation; :

JOHN C. ADAIR, ALICE JANE ADAIR, : :

WALLACE H. RING, HARRY C. WONG, : :

JEAN A. WONG, JOHN E. PACE and : :

NANCY K. PACE, : :

Third-Party : :

Defendants. : :

----oo0oo----

The Motion of the Middleton defendants to enforce a settlement agreement of the parties to this action, having come on for hearing before this Court on January 22, 1986, and the Court having reviewed the memoranda of the parties and the supporting affidavits, the sworn testimony of Harry C. Wong and Wallace H. Ring, the exhibits introduced into evidence, and considered the oral arguments of the parties, the Court hereby makes the following Findings of Fact, Conclusions of Law and Order:

#### FINDINGS OF FACT

1. Prior to October 19, 1985, the parties, through their respective attorneys, were engaged in settlement negotiations of the claims which are the subject matter of this action.

2. All of the attorneys of the respective parties to the action had authority from their clients to negotiate and conclude a settlement of the claims of the parties in this action.

3. On Saturday, October 19, 1985, the parties, through their respective attorneys, arrived at a settlement of all of the claims involved in said action, and said settlement was set forth

in a written document entitled, Stipulation and Mutual Release of All Claims, which is attached hereto as Exhibit "A".

4. The settlement agreement arrived at between the parties through their respective attorneys also included the payment of \$21,000.00 by Medical Leasing Limited or its principals to the Middleton defendants. This part of the agreement was not included in the Stipulation and Mutual Release of All Claims pursuant to the express oral agreement of the parties.

#### CONCLUSIONS OF LAW

1. The settlement agreement of the parties as set forth in the Stipulation and Mutual Release of All Claims, attached hereto as Exhibit "A", and the oral agreement of the parties for payment of \$21,000.00 by the defendant Medical Leasing Limited or its principals to the Middleton defendants, is a valid and enforceable agreement binding in all respects upon the parties who are named as parties and signatories to said Stipulation and Mutual Release.

2. This settlement agreement was not entered into inadvertently and there is no justifiable reason to set it aside. The parties to this action are bound by its terms. This action and all of the claims of the parties should be dismissed with prejudice.

#### O R D E R

Based upon the foregoing findings of fact and conclusions of law and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

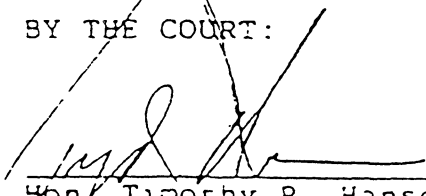
1. The Stipulation and Mutual Release of All Claim attached hereto as Exhibit "A" is a valid, binding and enforceable agreement between the parties in this action and the Court hereby orders specific enforcement of said agreement.

2. The defendant Medical Leasing Limited or its principals are hereby ordered to pay the Middleton defendants the sum of \$21,000.00, pursuant to the agreement between the parties.

3. The claims, crossclaims, counterclaims and third-party claims of the parties to this action are hereby dismissed with prejudice, each party to bear its own costs.


DATED this 11 day of <sup>MARCH</sup>~~JANUARY~~, 1986.

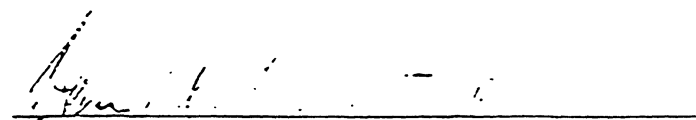
BY THE COURT:

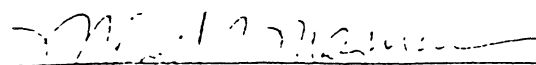
  
Hon. Timothy R. Hanson  
District Court Judge


APPROVED AS TO FORM:

ATTEST  
A. DIXON HINDLEY  
Clerk

  
Edward M. Garrett  
GARRETT AND STURDY  
Attorneys for Medical Leasing  
Limited and Third-Party  
Defendants

  
John A. Beckstead  
CALLISTER, DUNCAN & NEBEKER  
Attorneys for Plaintiff and  
Zions First National Bank

  
\_\_\_\_\_  
Michael J. Mazuran/  
LARSEN, MAZURAN & VERHAAREN  
Attorneys for Defendants Anthony  
W. Middleton, Carol S.  
Middleton, George W. Middleton  
and Jean H. Middleton

  
\_\_\_\_\_  
Merlin O. Baker  
RAY, QUINNEY & NEBEKER  
Attorneys for Defendants  
Delores B. Middleton, Richard G. Middleton,  
Jane G. Middleton, Mary Middleton Dahl, and  
Richard P. Middleton, as Executor of the  
Estate of Victoria Ann M. Stearn

0304b

MERLIN O. BAKER (A0180) of  
RAY, QUINNEY & NEBEKER  
Attorneys for Defendants  
Delores B. Middleton, Richard  
G. Middleton, Jane G. Middleton,  
Mary Middleton Dahl, and Richard  
P. Middleton, as Executor of the  
Estate of Victoria Ann M. Stearn  
400 Deseret Building  
79 South Main Street  
P. O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

-----00000-----

ZIONS UTAH BANCORPORATION,  
a Utah corporation,

Plaintiff,

v.

STIPULATION AND MUTUAL  
RELEASE OF ALL CLAIMS

MEDICAL LEASING LIMITED, a  
Utah limited partnership;  
ANTHONY W. MIDDLETON, JR. and  
CAROL S. MIDDLETON, his wife;  
GEORGE W. MIDDLETON and JEAN H.  
MIDDLETON, his wife; DELORES B.  
MIDDLETON; RICHARD G. MIDDLETON  
and JANE G. MIDDLETON, his wife;  
MARY MIDDLETON DAHL; and RICHARD  
P. MIDDLETON, as executor of  
the estate of VICTORIA ANN M.  
STEARNS,

Defendants.

---

ANTHONY W. MIDDLETON, and  
CAROL S. MIDDLETON, his wife;  
GEORGE W. MIDDLETON and JEAN  
MIDDLETON, his wife,

Third-Party Plaintiffs,

Judge Timothy R. Hanson

Civil No. C-83-713



:  
SALT LAKE SURGICAL CENTER,  
INC., a Utah corporation:       :  
JOHN C. ADAIR, ALICE JANE ADAIR  
WALLACE H. RING, HARRY C. WONG,  
JEAN A. WONG, JOHN E. PACE and  
NANCY K. PACE,                       :

Third-Party Defendants       :

----ooOoo----

WHEREAS, a certain action was filed in the Third Judicial  
District Court of Salt Lake County, State of Utah, entitled, Zions  
Utah Bancorporation, Plaintiff, v. Medical Leasing Limited, et al.,  
Defendants, and Anthony W. Middleton, et al., Third Party  
Plaintiffs, v. Salt Lake Surgical Center, et al., Third Party  
Defendants, Civil No. C-83-713, wherein the parties have filed  
claims, counterclaims and third-party claims against each other;  
and

WHEREAS, all parties to the aforesaid action have settled  
all claims which exist between the parties;

NOW, THEREFORE, Medical Leasing Limited (hereinafter  
"Medical Leasing"), Salt Lake Surgical Center, Inc. (hereinafter  
"Salt Lake Surgical"), John C. Adair, Alice Jane Adair, Harry  
Wong, Jean A. Wong, Wallace H. Ring, John C. Pace, Nancy K. Pace  
and Anthony W. Middleton, Jr., Carol S. Middleton, George W.  
Middleton, Jean H. Middleton, Delores P. Middleton, Richard G.  
Middleton, Jane G. Middleton, Mary Middleton Dahl, Richard P.  
Middleton as Executor of the Estate of Victoria Ann M. Stearn  
(hereinafter the "Middletons") and Zions Utah Bancorporation

(hereinafter "ZUB"), in consideration of the execution of this Stipulation and Mutual Release of All Claims, agree as follows:

1. The Middletons hereby acknowledge the validity of that certain Lease dated August 12, 1980 (hereinafter the "Sublease") between Medical Leasing and Zions First National Bank (hereinafter "Zions") and further acknowledge that the Sublease does not violate any provision of the Amended Ground Lease dated August 1, 1980, between Middletons and Salt Lake Surgical, predecessor to Medical Leasing. References in this Stipulation to the Sublease are deemed to include that certain Assignment of Lease dated December 7, 1981, from Zions to ZUB.

2. ZUB and Zions do hereby release, acquit and forever discharge each of the Middletons, their agents, attorneys, representatives, successors in interest and assigns from all manner of action, causes of action, suits or claims alleged in or arising out of or incident to or in any way connected with the action referred to above, or arising out of or based upon or in any way related to the Lease between Zions and Medical Leasing and the Amended Ground Lease dated August 1, 1980, between the Middletons and Salt Lake Surgical, or in any way related to any delay in commencing construction by Zions.

3. The Middletons, and each of them, their successors, heirs, assigns, executors, personal representatives, and all parties claiming by, through or under them, and Medical Leasing, its partners (both general and limited) and each of them, their successors, heirs, assigns, executors, personal representatives

and all parties claiming by, through or under Medical Leasing or any of its partners, do hereby release, acquit and forever discharge ZUB, Zions, their officers, directors, agents, attorneys, employees, successors and assigns, past and present, from all manner of action, causes of action, suits or claims alleged in or arising out of or incident to or in any way connected with this action, or relating to any delay in commencing construction by Zions or ZUB.

4. The Middletons hereby acknowledge that they have not received any payment from Zions nor in the future will they accept any payment from Zions or its assigns in connection with the subject property or the Sublease or in consideration of the execution of this Stipulation except in the event that subordination is required hereafter for any reason.

5. It is acknowledged between the Middletons and Medical Leasing that Paragraph 8 of the Amended Ground Lease dated August 1, 1980, may be re-stated as follows: consent of the Middletons to the future development of the leased premises is not required unless the lessee shall seek to develop the property or an independent third party sublessee or assignee requires that the interest of the Middletons be subordinated to the interest of a development lender. In other words, the lessee may not develop the property without the consent of the Middletons, but a third party sublessee or assignee totally independent of the lessee may further develop the property without the consent of the Middletons

using its own or borrowed capital provided subordination of the interest of the Middletons is not required for said development.

6. It is acknowledged and agreed by all parties that ZUB is a third party sublessee independent of the lessee who may develop the property without consent of Middletons provided subordination of the interest of the Middletons is not required for said development.

7. The defendants Middleton, the third party defendants and Medical Leasing do hereby mutually release, acquit and forever discharge each other of and from all claims, causes of action alleged in or arising out of or incident to or in any way connected with the action referred to above, or relating to any delay in commencing construction by Zions. Provided, however, the Stipulation as to the intent and meaning of Paragraph 5 of the Amended Ground Lease, as set forth in Paragraph 5 herein, is not affected by this mutual release.

8. ZUB and Medical Leasing acknowledge the validity of the Sublease and do mutually release each other of and from all claims, demands, and causes of action that may exist or have accrued on account of all claims and causes of action set forth in the within litigation.

9. It is further stipulated by all parties hereto that this Stipulation settles doubtful and disputed claims and is not to be construed as an admission of liability on the part of any party to this Stipulation.

10. It is further stipulated that the Court shall dismiss, with prejudice, all claims, crossclaims, counterclaims and third party claims, and all amendments thereto, on file in this action.

11. Each of the undersigned represents that he has read the foregoing Stipulation and Mutual Release of All Claims and knows the contents thereof and signs the same of his own free act executed on the date indicated below and, if a corporation or partnership, further represents that he is authorized by the corporation or partnership for which he signs.

DATED this \_\_\_\_\_ day of October, 1985.

GARRETT AND STURDY

By: \_\_\_\_\_  
Edward M. Garrett,  
Attorneys for Medical Leasing  
Limited and Third Party Defendants

CALLISTER, DUNCAN & NEBEKER

By: \_\_\_\_\_  
John A. Beckstead,  
Attorneys for Plaintiff and Zions  
First National Bank

LARSEN, MAZURAN & VERHAAREN

By: \_\_\_\_\_  
Michael J. Mazuran,  
Attorneys for Defendants Anthony  
W. Middleton, Carol S. Middleton,  
George W. Middleton and Jean H.  
Middleton

RAY, QUINNEY & NEBEKER

By: \_\_\_\_\_  
Merlin O. Baker,  
Attorneys for Defendants Delores  
B. Middleton, Richard G.  
Middleton, Jane G. Middleton,  
Mary Middleton Dahl and Richard  
P. Middleton, as Executor of the  
Estate of Victoria Ann M. Stearn

MEDICAL LEASING LIMITED

By: \_\_\_\_\_  
General Partner  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
General Partner

By: \_\_\_\_\_  
General Partner

ZIONS UTAH BANCORPORATION

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

SALT LAKE SURGICAL CENTER, INC.

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

John C. Adair

Alice Jane Adair

Harry Wong

Jean A. Wong

Wallace H. Ring

John C. Pace

Nancy K. Pace

Anthony W. Middleton, Jr.

Carol S. Middleton

George W. Middleton

Jean H. Middleton

Richard G. Middleton

Jane G. Middleton

Delores B. Middleton

Mary Middleton Dahi

Richard P. Middleton,  
as Executor of the Estate  
of Victoria Ann. M. Stearn

0271b