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Aug 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Case No. 2024-002150

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Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, and PMI Properties LLC . . . . . Respondents / Appellants,

v.

Research Park, LLC . . . . . Appellant / Respondent.

---

**RECORD ON APPEAL**  
VOLUME IV OF IV

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Steven Edward Buckingham (S.C. Bar No. 0075089)  
The Law Office of Steven Edward Buckingham  
114 Poinsett Highway / Suite D  
Greenville, South Carolina 29609  
(o) 864.735.0832  
(e) seb@buckingham.legal

*Attorney for Appellant / Respondent Research Park,  
LLC*

Stephen L. Brown (SC Bar No. 66468)  
Russell G. Hines (SC Bar No. 72100)  
Clement Rivers, LLP  
25 Calhoun Street / Suite 400  
Charleston, South Carolina 29401  
Post Office Box 993  
(843) 720-5488  
sbrown@ycrlaw.com  
rhines@ycrlaw.com

William A. Coates, Esq. (S.C. Bar No. 0001289)  
Cassidy Coates Price, P.A.  
1052 N. Church Street  
Greenville, SC 29601  
(o) 864.349.2600  
(e) wac@cassidycoates.com

Marwan S. Zubi, Esq. (Pro Hac Vice)  
Nicolai Law Group, P.C.  
1500 Main Street / Suite 1914  
Springfield, MA 01115  
(o) 413.272.2000  
(e) marwan.zubi@niclawgrp.com

*Attorneys for Respondents / Appellants*

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**CERTIFICATION OF COUNSEL FOR APPELLANT / RESPONDENT**

Consistent with Rule 210, SCACR, the undersigned counsel for Appellant / Respondent hereby certifies that this Record on Appeal contains all material proposed to be included by the parties and not any other material.

Respectfully,

*s/ Steven Edward Buckingham*

---

Steven Edward Buckingham (S.C. Bar No. 0075089)  
The Law Office of Steven Edward Buckingham  
114 Poinsett Highway / Suite D  
Greenville, South Carolina 29609  
(o) 864.735.0832  
(e) seb@buckingham.legal

*Attorney for Appellant / Respondent Research Park,  
LLC*

August 29, 2025  
Greenville, South Carolina

### C. The Poly-Med Trailers

The Court also finds that the Poly-Med Trailers that were once considered temporary structures in accordance with the Covenants, have gone past the time period in which they can reasonable be considered temporary. As such, these trailers are in violation of the Covenants. As a result, the Trailers are ordered to be removed within a reasonable time to be determined by the court following briefing by the parties.

#### [D. Award of Attorney's Fees

Under the terms of the Covenants, the prevailing party in this action is entitled to an award of "costs and disbursements and reasonable attorneys' fees." Plaintiffs' Exhibit 5, p. 22. The "prevailing party" is "the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cnty. of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990)(quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997)

Because Plaintiffs succeeded on their claim for an accounting at the hearing on the parties' motion for summary judgment, this Court ruled that an award of attorney's fees was granted in an amount to be determined after trial. Court Order dated July 18, 2023. Given the parties respective motions for summary judgment, the accounting prepared and the evidence and testimony at trial, the vast majority of this case and time at trial has been devoted to Plaintiffs' claims that Defendant breached the Covenants by collecting maintenance fees in annual cost maintenance and upkeep of the Park. Plaintiffs clearly prevailed on the main issue at trial and are, therefore, "the prevailing party."

**III. Order**

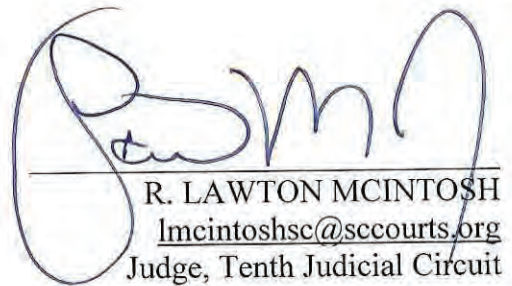
Judgment shall enter in favor of Poly-Med and against the Defendant on Plaintiffs claim for breach of the Covenants in Count I, and for conversion in Count II, of Plaintiffs' Amended Complaint, in the amount of \$74,001.41, plus cost and Attorney fees. Within fourteen (14) days of the date of this Order, Plaintiffs shall submit proof of their costs and disbursements and reasonable attorneys' fees, the amount of which shall be subject to challenge by Defendant.

Counts III of Plaintiffs' Amended Complaint for unjust enrichment was dismissed at trial as Plaintiffs have a remedy at law. Judgment shall enter in favor of Defendant on Plaintiffs' claim for breach of the covenants in County I (to the extent that action is based on a violation of ownership restrictions). Conversion in Count II and for an injunction in Count V of the Amended Complaint.

Defendant's counterclaim for failure to make timely payments of maintenance fees was abandoned at trial. Judgment is entered in favor of Defendant's as to its remaining counterclaim, Plaintiffs are ordered to remove the Trailers at 51 Technology Drive within a reasonable period of time. The parties shall attempt to agree upon what constitutes a reasonable time and upon motion of any party, that the parties are unable to agree, the court shall determine what constitutes a reasonable time.

**IT IS SO ORDERED.**

2-23, 2024  
Anderson, South Carolina



R. LAWTON MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
Judge, Tenth Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-04-01349

Poly-Med, Inc., et al.  
PLAINTIFF(S)

Research Park, LLC  
DEFENDANT(S)

Submitted by: Marwan S. Zubi

Attorney for : ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

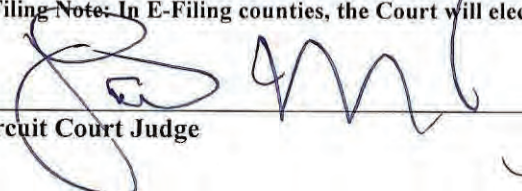
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Poly-Med, Inc.                               | Research Park, LLC                       | \$74,001.41                                              |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

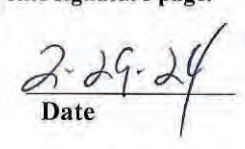
The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note:** In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Circuit Court Judge

2155

Judge Code

  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of February, 2024 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of February, 2024 to attorneys of record or to parties (when appearing pro se) as follows:

William A. Coates,  
Ross B. Plyler,  
Cassidy Coates Price, P.A.  
PO Box 10529  
Greenville, SC 29603

Steven Edward Buckingham  
The Law Office of Steven Edward Buckingham, LLC  
16 Wellington Avenue  
Greenville, SC 29609

Marwan S. Zubi  
Nicolai Law Group, P.C.  
PO Box 15289  
Springfield, MA 01115

J. Kirkman Moorhead  
Moorheada LeFevre, P.A.  
2203 North Main Street  
Anderson, SC 29621

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON  
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

A more complete and final judgment, adding the amount of costs and fees awarded, will issue

upon the court's determination of the amount of costs and fees to be awarded plaintiff.

STATE OF SOUTH CAROLINA  
 COUNTY OF ANDERSON  
 IN THE COMMON PLEAS

DOCUMENT IN A CIVIL CASE  
 CASE NO. 2021 CP-04-01349

POL -MED INC. ET, AL.  
 PLAINTIFFS

RESEARCH PARK LLC.  
 DEFENDANTS

Submitted by

Attorney for ☐ Plaintiff ☐ Defendant  
 or  
☐ Self-Represented Litigant

#### DISPOSITION TYPE CHOICE

- ☐ **RE VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12 b , SCRPC; ☐ Rule 41 a , SCRPC vol. Nonsuit ; ☐ Rule 43 k , SCRPC Settled ; ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STATED DEED TO BANKRUPTCY**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADDED** ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

#### ORDER INFORMATION

##### AMENDED

Defendant motion to reconsider is denied as to the Court's ruling on maintenance and upkeep and related fees. Plaintiffs award of damages is affirmed. The Court finds that Plaintiff is the prevailing party in the case. However, Plaintiffs counsel is to draft an affidavit of attorney's fees that is consistent with the required elements and provide to opposing counsel and the Court. The issues of conversion, amount of attorney's fees, and Plaintiffs removal of the trailer is under advisement.

This order ☐ ends ☒ does not end the case.

| INFORMATION ABOUT JUDGMENT                                                                                                                                                                                   |                                        |                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                        |                                                        |
| Judgment in favor of<br>List name(s) below                                                                                                                                                                   | Judgment Against<br>List name(s) below | Judgment Amount To be Enrolled<br>List amount(s) below |
|                                                                                                                                                                                                              |                                        | \$                                                     |
|                                                                                                                                                                                                              |                                        | \$                                                     |
|                                                                                                                                                                                                              |                                        | \$                                                     |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                        |                                                        |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note** Title abstractors and researchers should refer to the official court order for judgment details. **ATTACHMENT D**  
E-filing Note In E-filing counties, the Court will electronically sign this form using a separate electronic signature page.

| Circuit Court Judge | Judge Code | Date |
|---------------------|------------|------|
|---------------------|------------|------|

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties when appearing pro se as follows:

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEYS FOR PLAINTIFFS

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEYS FOR DEFENDANTS

CLERK OF COURT

**Court Reporter**

E-filing Note In E-filing counties, the date of Entry of judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-filers or who are appearing pro se. See Rule 6.01, SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-29 15:12:55 page 3 of 3

CASE NO. 2021CP0401349

Poly-Med Inc et al  
PLAINTIFFS

Research Park Llc  
DEFENDANTS

**DISPOSITION TYPE CHECK ONE**

- ☐ **REVERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12 b , SCRPC; ☐ Rule 41 a , SCRPC vol. Nonsuit ; ☐ Rule 43 k , SCRPC Settled ;  
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STATED DEED TO BANKRUPTCY**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADDED** ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

Plaintiffs motion to reconsider is denied as to the Court's ruling on maintenance and upkeep and related fees. Plaintiffs award of damages is affirmed. The Court finds that Plaintiff is the prevailing party in the case. However, Plaintiffs counsel is to draft an affidavit of attorney's fees that is consistent with the required elements and provide to opposing counsel and the Court. The issues of conversion, amount of attorney's fees, and Plaintiffs removal of the trailer is under advisement.

**ORDER INFORMATION**

This order ☒ ends ☐ does not end the case. ☐ See Page 2 for additional information.

**for Clerk of Court Office use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/26/2024 .

Marwan S Zubi for Poly-Med Inc,Pmi Properties Llc,Technology Drive 52 Llc,Technology Drive 51 Llc

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter**

E-filing Note The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of Judgment above is not required in those counties. The clerk will mail a copy of the Judgment to parties who are not E-filers or who are appearing pro se. See Rule 10, SCRCP.

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ELECTRONICALLY FILED - 2024 Jul 26 11:11 AM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349  
ELECTRONICALLY FILED - 2024 Dec 19 1:59 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349



Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-26 10:57:08 page 3 of 3

STATE OF SOUTH CAROLINA  
 COUNTY OF ANDERSON  
 IN THE COMMON PLEAS

DOCUMENT IN A CIVIL CASE  
 CASE NO. 2021CP0401349

Poly-Med, Inc.  
 PLAINTIFFS

Research Park, LLC  
 DEFENDANTS

Submitted by R. Lawton McIntosh

Attorney for ☐ Plaintiff ☐ Defendant  
 or  
☐ Self-Represented Litigant

### DISPOSITION TYPE CHOICE ONE

- ☐ **RETURN VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
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- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STATED EVIDENCE TO BAN REPTC**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED** ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

### ORDER INFORMATION

THE COURT INDUSTRIAL PLAINTIFF AS THE PREVAILING PARTY. THE CASE IS PRIMARILY INVOLVED THE SEVERE CARE AND MAINTENANCE FEES, THE CASE ALSO PARTIALLY INVOLVED THE REMOVAL OF TEMPORARY BUILDINGS. THEREFORE, THE PLAINTIFF IS HEREBY AWARDED 50% OF THE TOTAL COST OF ATTORNEY'S FEES. MR. BI TO PREPARE A FORMAL ORDER.

This order ☒ ends ☐ does not end the case.

| INFORMATION ON THE JUDGMENT                                                                                                                                                                                  |                                        |                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                        |                                                        |
| Judgment in favor of<br>List name(s) below                                                                                                                                                                   | Judgment Against<br>List name(s) below | Judgment Amount To be Enrolled<br>List amount(s) below |
|                                                                                                                                                                                                              |                                        | \$                                                     |
|                                                                                                                                                                                                              |                                        | \$                                                     |
|                                                                                                                                                                                                              |                                        | \$                                                     |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                        |                                                        |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note Title abstractors and researchers should refer to the official court order for judgment details.**

|                     |            |      |
|---------------------|------------|------|
|                     | 2155       |      |
| Circuit Court Judge | Judge Code | Date |

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties when appearing pro se as follows:

|                          |                          |
|--------------------------|--------------------------|
|                          |                          |
|                          |                          |
| ATTORNEYS FOR PLAINTIFFS | ATTORNEYS FOR DEFENDANTS |
|                          | CLERK OF COURT           |

**Court Reporter**

E- filing Note In E- filing counties, the date of Entry of judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E- filers or who are appearing pro se. See Rule 1.1, SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BEFORE THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-11-19 16:15:18 page 3 of 3

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

)

) CASE NO.: 2021-CP-04-01349

)

)

Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, PMI Properties, LLC,

)

)

Plaintiffs,

)

)

v.

)

)

Research Park, LLC,

)

)

Defendant.

)

**ORDER ON AWARD OF ATTORNEY'S FEES AND EXPENSES**

This matter came before the Court on Plaintiffs' Motion for Attorney's Fees and Expenses, filed March 8, 2024, which motion was supported by, among other things, affidavits from Plaintiffs' attorneys William A. Coates of Cassidy Coates & Price, P.A., and Marwan S. Zubi of Nicolai Law Group, P.C., attesting that, as of August 5, 2024, Plaintiffs had incurred legal fees and expenses to Mr. Coates's firm in the amount of \$72,447.96 and that, as of July 31, 2024, Plaintiffs had incurred legal fees and expenses to Mr. Zubi's firm in the amount of \$145,744.37, which amounts together totaled \$218,192.33 in legal fees and expenses Plaintiffs had incurred with respect to this matter.<sup>1</sup>

<sup>1</sup> Messrs. Coates and Zubi filed their original fee affidavits contemporaneously with the filing of Plaintiffs' Motion for Attorney's Fees and Expenses on March 8, 2024. As directed by the Court at the July 24, 2024, hearing on Plaintiffs' motion, Messrs. Coates and Zubi filed additional affidavits on August 7, 2024, with updated figures through the dates stated above. This order is based on the legal fees and expenses attested to in Messrs. Coates and Zubi's affidavits filed August 7, 2024. The Court recognizes, however, that the provision of the Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, entitling the prevailing party in enforcement actions to recover legal fees and expenses expressly includes the prevailing party's entitlement to recover legal fees and expenses incurred in "any appeal thereof." After the conclusion of all appeals in this matter, provided, of course, that the

Plaintiffs are the owners, and in the case of Poly-Med, Inc. also the lessee, of parcels of land ("Parcels") in the Clemson University Advanced Materials Center (the "Park") in Anderson, South Carolina. The Park is subject to a Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, as amended ("Covenants"). In 2018, Defendant Research Park, LLC, acquired the Park, and took assignment of the rights, title and interest as Declarant and is the Park Authority under the Covenants.

In their original Complaint in this action, Plaintiffs asserted five causes of action against Defendant: (1) breach of the Covenants by charging maintenance fees in excess of actual maintenance and upkeep costs; (2) conversion of maintenance fees; (3) unjust enrichment with respect to the fees; (4) an accounting of the fees collected and spent; and (5) an injunction to prevent Defendant from selling Park Parcels in violation of the Covenants. Plaintiffs sought damages with respect to the overpayment of fees, interest and an award of their costs, disbursements and reasonable attorneys' fees pursuant to the terms of the Covenants.

Defendant counterclaimed that Plaintiffs have "historically failed to make timely payment" of annual invoices from Defendant for maintenance fees. Defendant also alleged that Plaintiffs placed and maintained office trailers on their Parcel(s) in the Park without approval of Defendant.

At a hearing on the parties' respective motions for summary judgment, the parties agreed to an accounting of the maintenance fees and the Court ordered the parties to select a qualified

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ultimate outcome on appeal is such that Plaintiffs remain entitled to recover legal fees and expenses, Plaintiffs may move this Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses, to account for any legal fees and expenses that are not already covered by this order. If no appeal is taken in this matter after the filing of this order (the Court is aware that appeals were previously taken in this matter that were dismissed), once the time for appeal has expired, Plaintiffs may move the Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses with respect to the prior appeals in this matter, to account for any legal fees and expenses that are not already covered by this order.

accountant to perform it. Through its July 18, 2023 Order following the hearing, the Court also granted an award of attorneys' fees for Plaintiffs, in an amount to be determined after trial.

On February 29, 2024, following a bench trial, this Court entered judgment in favor of Plaintiffs in the amount of \$74,001.41 on their claim for breach of the Covenants plus costs and attorney's fees. The Court found in favor of Defendant on its counterclaim for removal of the officer trailers, but ultimately did not set a certain time frame in which they are to be removed. The matter would be reviewed at the request of Defendant's counsel and the Court reserved the right to order a specific timeframe in which Plaintiffs are required to act. Plaintiffs' other claims, and Defendant's other counterclaim, were disposed of at trial or through other post-trial prior orders of the Court.

Under the terms of the Covenants, the prevailing party in this action is entitled to an award of "costs and disbursements and reasonable attorneys' fees." Plaintiffs' Exhibit 5, p. 22. The authority to award attorney's fees may come from a restrictive covenant. *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 240, 616 S.E.2d 431, 434 (Ct. App. 2005). The "prevailing party" is "the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cnty. of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990) (quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997). Given the parties' respective motions for summary judgment, the accounting prepared and the evidence and testimony at trial, the vast majority of this case and time at trial was devoted to Plaintiffs' claims that Defendant breached the Covenants by collecting maintenance fees well

in excess of the annual cost of maintenance and upkeep of the Park. Plaintiffs clearly prevailed on the main issue and are, therefore, “the prevailing party.”

As explained above, Plaintiffs’ attorneys submitted affidavits, as well as detailed billing records, showing the number of hours expended, the rates charged, and the fees and costs incurred by Plaintiffs. Counsel for Defendant was given the opportunity to either cross-examine Plaintiffs’ counsel on the amount of fees incurred and/or file a memorandum in opposition. Counsel for Defendant declined to cross-examine any of Plaintiffs’ counsel but did file memoranda in opposition Plaintiffs’ motion.

“[T]he court should consider the following six factors when determining a reasonable attorney’s fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). “The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Brawley v. Richland Cnty.*, No. 2020-001135, 2024 WL 4281401, at \*6 (S.C. Ct. App. Sept. 25, 2024) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

This case began in July 2021 and has involved a substantial investment of time by Plaintiffs’ counsel. Plaintiffs’ counsel’s firms spent 619.6 hours on this case, over the course of more than three (3) years. The case involved significant discovery, discovery disputes and a dispute over, and the preparation of, an accounting so that Plaintiffs could determine the true maintenance costs incurred by Defendant, costs Defendant had concealed before the litigation was brought. Plaintiffs successfully defended motions to dismiss and for summary judgment and

succeeded, in part, on their own motion for summary judgment. The matter has been professionally prosecuted and professionally defended; however, the battle over the meaning of the Covenants resulted in considerable disputes, requiring numerous motions by both parties, before, during and after trial. The case was difficult and involved relatively complex questions of law and interpretation of the Covenants. The final decision will no doubt result in an appeal. In light of these facts, I find that the hours reflected in their original, revised and supplemental affidavits filed by Plaintiffs' counsel were reasonable.

None of the fee charged the Plaintiffs was based on any form of contingency. The hourly rates charged by Plaintiffs' counsel, as also reflected in the affidavits and billing records, ranged from \$95.00 for paralegals to between \$330.00 and \$413.00 for Plaintiffs' lead counsel.<sup>2</sup> I find these rates to be reasonable and consistent with rates customarily charged for similar services. As attested to in Messrs. Coates and Zubi's respective affidavits filed August 7, 2024, as of the dates stated therein, Plaintiffs have incurred legal fees and expenses totaling \$218,192.33, which amount consists of legal fees of \$212,204.70 and expenses (in the form of court costs, travel expenses, deposition costs and the like) of \$5,987.63, all of which the Court hereby finds to be reasonable.

Plaintiffs' attorneys have strong backgrounds, several decades of combined experience and are in good standing in multiple jurisdictions. The results they obtained are important, not only to Plaintiffs, but to all the owners in the Park, as it will not only compensate Plaintiffs for the maintenance fees they were overcharged for years but will determine the maintenance and upkeep cost for which Plaintiffs and other owners in the Park may be charged for the indefinite future.

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<sup>2</sup> One attorney's hourly rate was \$461.00, but the hours expended by him in the case were very small on a relative basis.

Over the years to come, the results obtained in this case will result in substantial savings for Plaintiff and all Park owners.

However, the result of the case was not a complete victory for Plaintiffs. A reasonable fee award must be proportional to the degree of success obtained.” *Id.* at \*7. “A review of the results obtained is a particularly important consideration, especially ‘where a plaintiff is deemed ‘prevailing’ even though he succeeded on only some of his claims for relief.’” *Id.* at \*6 (quoting *Hensley*, 461 U.S. at 433). Plaintiffs did not prevail on all of their claims, as the case also involved Defendant’s counterclaim for an order requiring removal of the Plaintiffs’ office trailers. As a result, Plaintiffs are awarded seventy-five (75%) of the fees and expenses they incurred. Plaintiffs are, therefore, awarded \$163,644.25 ( $\$218,192.33 \times .75$ ). At Plaintiffs’ request, in the interest of simplicity, and so this Court does not have to apportion the fees and costs among Plaintiffs, the award of fees and expenses is in favor of Plaintiff, Poly-Med, Inc., only.

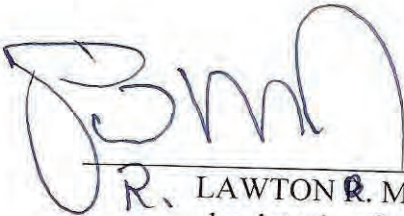
Accordingly, \$163,644.25 in attorneys’ fees and expenses shall be added to the judgment in favor of Poly-Med against Defendant.<sup>3</sup>

<SIGNED ON THE FOLLOWING PAGE>

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<sup>3</sup> Again, as explained above, this order is based on the legal fees and expenses attested to in Messrs. Coates and Zubi’s affidavits filed August 7, 2024. After the conclusion of all appeals in this matter, provided, of course, that the ultimate outcome on appeal is such that Plaintiffs remain entitled to recover legal fees and expenses, Plaintiffs may move this Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses, to account for any legal fees and expenses that are not already covered by this order. If no appeal is taken in this matter after the filing of this order, once the time for appeal has expired, Plaintiffs may move the Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses with respect to the prior appeals in this matter, to account for any legal fees and expenses that are not already covered by this order.

IT IS SO ORDERED.

  
R. LAWTON R. MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
Judge, Tenth Judicial Circuit

12-9, 2024  
Greenville, South Carolina  
Anderson, SC (RLM)

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Case No. 2021-CP-04-01349

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Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, and PMI Properties LLC ..... Respondents,

v.

Research Park, LLC ..... Appellant.

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**AMENDED NOTICE OF APPEAL**

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Research Park, LLC hereby appeals the following Orders of the Honorable R. Lawton McIntosh: (1) an Order dated November 6, 2023, which is attached hereto as **Attachment A**; (2) a Decision dated February 23, 2024, which is attached hereto as **Attachment B**; (3) a Decision dated February 29, 2024, which is attached hereto as **Attachment C**; (4) an Order dated July 26, 2024, which is attached hereto as **Attachment D**; (5) an Order dated July 29, 2024, which is attached hereto as **Attachment E**; (6) an Order dated November 19, 2024, which is attached hereto as **Attachment F**; (7) a Decision dated December 9, 2024, which is attached hereto as **Attachment G**; and (8) an Order dated December 20, 2024, entitled “Final Judgment,” which is attached hereto as **Attachment H**. Appellant received written notice of the entry of each Order via email on the date each respective Order was entered.

There are several procedural circumstances of note. First, an appeal of this matter was previously taken and indexed as Appellate Case No. 2024-001404, but was dismissed without prejudice by Order of the Court of Appeals dated October 14, 2024. Second, in the dismissal without prejudice, the Court cited to the case of Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986), in which the Supreme Court dismissed an appeal without prejudice pending the disposition of post-trial motions under Rule 59, and allowing either party to renew its appeal within ten days after the trial court's order disposing of post-trial motions. Third, in this case, the trial court directed Respondents' counsel to prepare "a comprehensive final judgment incorporating the previous orders." This "comprehensive final judgment" was entered during the afternoon of Friday, December 20, 2024. Fourth, despite the pendency of the entry of a "comprehensive final judgment," all issues for which Appellant seeks review by this Court were finally decided by the trial court's order of December 9, 2024. Fifth, in light of the Hudson decision and the entry of the trial court's order of December 9, and out of an extreme abundance of caution, Appellant deemed it necessary to file the notice of appeal (which is hereby amended) on December 19, 2024.

It does not appear that the trial court's "final judgment" entered on December 20, 2024 alters any issue from which appeal has already been taken. However, for the sake of a comprehensive appellate record, this Amended Notice of Appeal has been filed, to include an appeal from the December 20 Order, (Att. H).

Finally, given the holding in Hudson, Appellant does not believe that a new filing fee for this appeal is necessary. However, if Appellant is incorrect, Appellant would respectfully ask the Clerk's Office to advise him otherwise, so that the filing fee may be promptly submitted under separate cover.

Respectfully submitted,

*s/ Steven Edward Buckingham*

---

Steven Edward Buckingham (S.C. Bar No. 0075089)  
The Law Office of Steven Edward Buckingham, LLC  
16 Wellington Avenue  
Greenville, South Carolina 29609  
(o) 864.735.0832  
(e) seb@buckingham.legal

*Attorney for Appellant*

Filed this 23d Day of December, 2024.  
Greenville, South Carolina

Other Counsel of Record:

William A. Coates, Esq. (S.C. Bar No. 0001289)  
Cassidy Coates Price, P.A.  
1052 N. Church Street  
Greenville, SC 29601  
(o) 864.349.2600  
(e) wac@cassidycoates.com

Stephen L. Brown, Esq. (S.C. Bar No. 0066468)  
Russell G. Hines, Esq. (S.C. Bar No. 0072100)  
Clement Rivers, LLP  
25 Calhoun Street / Suite 400  
Charleston, SC 29401  
(o) 843.720.5488  
(e) sbrown@ycrlaw.com  
rhines@ycrlaw.com

Marwan S. Zubi, Esq. (Pro Hac Vice)  
Nicolai Law Group, P.C.  
1500 Main Street / Suite 1914  
Springfield, MA 01115  
(o) 413.272.2000  
(e) marwan.zubi@niclawgrp.com

*Attorneys for Respondents*

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0401349

Poly-Med Inc., et al.  
PLAINTIFF(S)

Research Park LLC  
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

**ORDER INFORMATION**

WHILE DEFENDANT HAD THE UNAMBIGUOUS RIGHT TO CHARGE THE PRESCRIBED AMOUNTS IN THE COVENANTS, WHICH WAS \$300 PER ACRE COMPOUNDED 10% ANNUALLY, FOR MAINTENANCE AND UPKEEP, DEFENDANT WAS REQUIRED BY THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, AND POSSIBLY HAD A FIDUCIARY DUTY TO USE THE MONIES CHARGED FOR THE PURPOSE OF MAINTENANCE AND UPKEEP. THE FEES CHARGED FOR MAINTENANCE AND UPKEEP WERE NOT INTENDED TO BE A PROFIT-MAKING MECHANISM. THE COURT FINDS THAT PLAINTIFF IS ENTITLED TO DAMAGES IN THE AMOUNT OF \$65,724.23. THIS AMOUNT REPRESENTS THE DIFFERENCE IN WHAT DEFENDANT CHARGED PLAINTIFF FOR MAINTENANCE AND UPKEEP AND THE AMOUNT DEFENDANT ACTUALLY SPENT ON MAINTENANCE AND UPKEEP FROM THE TIME DEFENDANT TOOK OWNERSHIP OF THE PROPERTY TO PRESENT.

FURTHER, THE COURT FINDS THAT WHEN TAKING THE COVENANTS INTO CONSIDERATION AS A WHOLE, DEFENDANT IS UNDER NO OBLIGATION OR REQUIREMENT TO CONVEY COMMON AREAS OVER TO THE ASSOCIATION. BASED ON THE COVENANTS, THE CONVEYANCE OF COMMON AREAS TO THE ASSOCIATION IS DISCRETIONARY.

THE COURT ALSO FINDS THAT THE POLY-MED TRAILERS THAT WERE ONCE CONSIDERED TEMPORARY STRUCTURES IN ACCORDANCE WITH THE COVENANTS, HAVE GONE PAST THE TIME PERIOD IN WHICH THEY CAN REASONABLY BE CONSIDERED TEMPORARY. AS SUCH, THESE TRAILERS ARE IN VIOLATION OF THE COVENANTS. AS A RESULT, THE TRAILERS ARE ORDERED TO BE REMOVED WITHIN A REASONABLE TIME PERIOD. THE COURT REQUESTS THAT THE PARTIES BRIEF THE COURT ON WHAT SHOULD BE CONSIDERED A REASONABLE TIME PERIOD TO HAVE THE STRUCTURES REMOVED BASED ON THE CIRCUMSTANCES OF THIS CASE.

PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER AND CIRCULATE IT WITH OPPOSING COUNSEL PRIOR TO ITS SUBMISSION TO THE COURT.

This order ☒ ends ☐ does not end the case.

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|                                                                                                                                                                                                              |                                          | \$                                                       |
|                                                                                                                                                                                                              |                                          | \$                                                       |
|                                                                                                                                                                                                              |                                          | \$                                                       |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**  
**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

|                            |                   |             |
|----------------------------|-------------------|-------------|
|                            | 2155              |             |
| <b>Circuit Court Judge</b> | <b>Judge Code</b> | <b>Date</b> |

### For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

|                                         |                                         |
|-----------------------------------------|-----------------------------------------|
|                                         |                                         |
|                                         |                                         |
| <b>ATTORNEY(S) FOR THE PLAINTIFF(S)</b> | <b>ATTORNEY(S) FOR THE DEFENDANT(S)</b> |
|                                         |                                         |
|                                         | <b>CLERK OF COURT</b>                   |

### Court Reporter:

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

**ATTACHMENT A**

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ELECTRONICALLY FILED - 2023 Dec 08 12:52 PM - ANDERSON - COMMON PLEAS - CASE#2021ICP0401349



Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2023-11-06 11:32:06 page 4 of 4

|                                                |   |                              |
|------------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS |
|                                                | ) |                              |
| COUNTY OF ANDERSON                             | ) | CASE NO.: 2021-CP-04-01349   |
|                                                | ) |                              |
| Poly-Med, Inc., Technology Drive 51, LLC,      | ) |                              |
| Technology Drive 52, LLC, PMI Properties, LLC, | ) |                              |
|                                                | ) |                              |
| Plaintiffs,                                    | ) |                              |
|                                                | ) |                              |
| v.                                             | ) |                              |
|                                                | ) |                              |
| Research Park, LLC,                            | ) |                              |
|                                                | ) |                              |
| Defendant.                                     | ) |                              |

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### MEMORANDUM AND ORDER FOR JUDGMENT

Following a bench trial in the above-captioned matter, the Court finds the following facts:

#### I. Findings of Fact

##### A. **Background**

Plaintiffs are related parties through ownership and control. They are the owners, and in the case of Poly-Med, Inc. also the lessee, of parcels of land ("Parcels") in the Clemson University Advanced Materials Center (the "Park") in Anderson, South Carolina. The South Carolina Research Authority (the "SCRA") created the Park and subjected it to a Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, as amended ("Covenants"). The SCRA was established pursuant to a legislative act, which specifically intended "to promote the development of high technology industries and research facilities in South Carolina" and "to enhance the research capabilities of [South Carolina's] public and private universities." The purpose of the Park was "to allow the Authority [now the Defendant Research

Park, LLC] to offer parcels [in the Park] for sale to purchasers or for lease to tenants or for other development within the purview of the Act.” Plaintiffs’ Exhibit 5, pp. 1-2.

The SCRA declared that the Covenants would: (a) run with the land and that the Park was made subject and subordinate to the terms, provisions and conditions of the Covenants; and (b) inure to the benefit of, and would be binding upon, each and every person or entity, their heirs, successors and assigns who acquired any interest in the Park or any part thereof. *Id.* p. 2. In keeping with the intent of the SCRA and the Park, the Covenants provide that no person or entity shall be an Owner, as that term is defined in the Covenants, tenant or occupant of any Parcel or subdivision thereof unless such person or entity shall at all times maintain in its employment a minimum of 15% of its employees as scientists or engineers, as those terms are defined in the Covenants, upon the Parcel or Parcels owed or occupied by such person or entity. *Id.* pp. 9-10.

The Covenants provide that an Association, as defined in the Covenants, was to be established and every Owner of a Parcel was to be a member of the Association entitled to one vote for each full acre of the Parcel to which the member was attributable. *Id.* p. 14. The Association once created, was to manage, administer and operate the Park through its board of directors and be responsible for the operation, maintenance and repair of Park common areas (the “Common Areas”) once conveyed to the Association. *Id.* p.16. The Covenants require that the Authority eventually designate portions of the Park property as Common Areas and convey them to the Association. *Id.* pp. 4-6. However, no Common Areas shall be so conveyed “until such conveyance will result in the Authority owning less than one-half of the Property so that the Authority will be entitled to less than one-half the votes in the Association.” *Id.* p.7. Until the Common Areas are conveyed to the Association, the Park consists of whatever mix of Parcels and Common Areas as determined by the Authority in its sole discretion. *Id.* p.5.

The Covenant also provide that:

Prior to the conveyance of any portion of the Property to the Association as Common Areas, each Owner shall pay the Authority a maintenance fee for maintenance and upkeep of the Park. The fee shall be computed on the basis of \$300.00 per acre per annum and it shall be payable in advance in equal monthly installments. The per acre fee of \$300.00 shall be for the calendar year 1986. It shall increase by 10% compounded annually each year until the Authority conveys any portion of the Property to the Association as Common Areas, after which conveyance this maintenance fee shall terminate and the Owner's sole liability and responsibility shall be to pay whatever Assessments are due the Association. In any year, the Authority may reduce this fee in its sole discretion.

*Id.* p.17.

Until the conveyance of any Common Area to the Association, the sole responsibility for maintaining the Park, except for Parcels sold to Owners, is that of the Authority, and the sole obligation of Owners, other than the Authority, is to pay the maintenance fee to the Authority as provided in the Covenants. *Id.* pp. 25-26. The Association, once established, is to prepare a budget and determine the amount of Assessments to be assessed against the Park Parcels by the Association. *Id.* pp. 18-19. Assessments may be used by the Association, to pay additional "Common Expenses" beyond expenses for maintenance and upkeep of the Park. Unlike maintenance fees charged by the Authority before any Common Areas are conveyed to the Association, Assessments may be used to pay various expenses related to operation of the Park listed in the Assessments section of the Covenants and "any other expenses and liabilities which may be incurred by the Association for the benefit of all the Owners under or by reason of" the Covenants. *Id.* p. 18. The authority is limited to charging parcel owners for "maintenance and upkeep"

Defendant Research Park, LLC, acquired the Park, and took assignment of the rights, title and interest as Declarant under the Covenants, pursuant to a Notice of Assignment of Declarant's Rights effective as of October 10, 2018. Plaintiffs' Exhibits 1 & 2. Defendant is a single member

limited liability company owned by Dan Wagner. Prior to Defendant's ownership of the Park, the SCRA had conveyed the Park, including all unsold property and its developer rights, to Anderson County in 2006, who assigned it to Anderson County Development Partnership ("ACDP"). Plaintiffs' Exhibit 2. ACDP changed its name to Innovate Anderson, a South Carolina non-profit ("Innovate") in 2008. *Id.*

When it was Park Authority, Innovate periodically collected maintenance fees from Owners in the Park, including Poly-Med. Before conveying the Park to Defendant, Innovate gave Defendant a document entitled "Innovate Income and Expense Proration Estimates for Settlement." Plaintiffs' Exhibit 7. The Income and Expense Proration showed the maintenance fees collected from Park Owners at the rate of \$600 per acre in the total amount of \$69,645.36 per year and "Monthly Expenses" including monthly water, power and landscaping expenses in the amount of \$2,333.33 per month. *Id.* Upon Innovate conveying the Park to Defendant, Innovate transferred \$50,182.82 in collected and unused maintenance fees to Defendant. Defendant financed the purchase of the Park, in part, through a mortgage. Plaintiffs' Exhibit 4.

The Covenants also provide that "[n]o building, landscaping or other improvements shall be altered, placed or erected on any Parcel without approval from the Authority or its agent." Plaintiffs' Exhibit 5, p. 26. On or about June 14, 2017, before Defendant acquired the Park, Poly-Med's current Manager of Facility and IT, Jeffrey Ellis, sent an email to Burriss Nelson, Registered Agent, requesting approval to install modular office buildings ("Trailers") to serve as temporary offices at Poly-Med's Parcel at 51 Technology Drive in the Park. Mr. Ellis submitted drawings and specification with the email. He later spoke to Mr. Nelson by telephone and, in that conversation, Mr. Nelson gave his approval for the Trailers.

Beginning in 2019, Defendant began billing Owners, including Poly-Med, annual maintenance fees at the rate of \$600 per acre. At the time, Plaintiffs owned 19.25 acres in the Park. Poly-Med paid \$11,550 in maintenance fees that year. Plaintiffs' Exhibit 14. In October 2019, Plaintiff, PMI Properties, Inc., a wholly-owned subsidiary of Poly-Med, purchased from Defendant an additional 12.685 acres next to one of Plaintiffs' existing Parcels. Plaintiffs' Exhibit 12. PMI Properties paid \$5,385.93 in maintenance fees to Defendant as part of the purchase. Plaintiffs' Exhibit 17. PMI Properties later transferred the new Parcel to Poly-Med through an unrecorded deed. Plaintiffs' Exhibit 16.

In 2020, Defendant's invoice for annual maintenance fees to Poly-Med increased to \$19,161.00, due to Plaintiffs' acquisition of the additional acreage in 2019. Plaintiffs' Exhibit 13. On April 30, 2020, Poly-Med president, David Shalaby, sent a message to Mr. Wagner complaining that very little maintenance was actually being performed in the Park and asking for information on how the maintenance fees collected were being spent. Plaintiffs' Exhibit 18. After getting no response, Poly-Med counsel sent Mr. Wagner an email seeking an accounting of the fees. Plaintiffs' Exhibit 19. In response, Defendant took the position that Plaintiffs were not entitled to an accounting of the maintenance fee and refused to provide one. Plaintiffs' Exhibit 18.

## **B. The Parties Claims**

### **1. Plaintiffs' Claims**

In their original Complaint, Plaintiffs asserted five causes of action against Defendant: (1) breach of restrictive covenants by charging maintenance fees in excess of actual maintenance and upkeep costs; (2) conversion of maintenance fees; (3) unjust enrichment with respect to the fees; (4) an accounting of the fees collected and spent; and (5) an injunction to prevent Defendant from

selling Park Parcels to persons or entities that it not meet the science and engineering employee requirements for Park Owners. Plaintiffs seek damages with respect to the overpayment of fees, interest and an award of their costs, disbursements and reasonable attorneys' fees. The Covenants provide that:

In any suit or action brought by the Authority, an Owner, the Association or a first lienholder or their heirs, successors or assigns to enforce any of the terms, provision or restrictive covenants of this Declaration, the prevailing party shall be entitled to his costs and disbursements and reasonable attorneys' fees in such suit or action and any appeal thereof.

Plaintiffs' Exhibit 5, p. 22.

## 2. Defendant's Counterclaims

Defendant counterclaims that Plaintiffs have "historically failed to make timely payment" of annual invoices from Defendant for maintenance fees. Defendant also alleges that Plaintiffs made improvements on their Parcel(s) without approval of Defendant or its predecessors. Defendant seeks a judgment for damages, an injunction against Plaintiffs and an award of Defendant's costs, disbursements and reasonable attorneys' fees.

### **C. Defendant's Expenditures of Maintenance Fees**

Through discovery, and examination of Defendant's bank records, Plaintiffs learned that Defendant was using maintenance fees collected from Park Owners, including Plaintiffs, to pay its monthly mortgage payments and for expenses like accounting fees, insurance, marketing expenses and legal fees, including the legal fees incurred by Defendant in this action. See Plaintiffs' Exhibits 8 & 9. At trial, Mr. Wagner testified that he considered any fees collected in excess of expenses for maintenance and upkeep to be profits with which he could do whatever he wished. When Defendant first opened a bank account after its acquisition of the Park in 2018, it deposited only \$25,000.00 of the \$50,182.82 in collected maintenance fees it received from Innovate. Plaintiffs'

Exhibit 8. At various times, Mr. Wagner has withdrawn funds from the maintenance fee accounts for his personal use. Plaintiffs' Exhibits 10 & 11.

#### **D. The Court's Earlier Orders**

The parties each filed motions for summary judgment with respect to their claims and counterclaims. Following a hearing on those motions, the Court granted Plaintiffs' oral motion for an injunction, prohibiting Defendant from selling Park Parcels to persons or entities that do not meet the Covenant's Owner restrictions. Pursuant to the Court's order, the parties picked a qualified accountant, by agreement, and an accounting of the fees was prepared. Plaintiffs' Exhibit 15. Through its July 18, 2023 Order, the Court also granted an award of attorneys' fees for the Plaintiffs, in an amount to be determined after trial. Court Order dated July 18, 2023.

Defendant's claim that Plaintiffs failed to make timely payment of maintenance fees was abandoned at trial. The Court also dismissed Plaintiffs' claim that Defendants was attempting to market Parcels to persons or entities that did not meet on Ownership requirements. The respective claims were dismissed on grounds of insufficient proof.

At trial, Plaintiffs also argued that the Covenants require that the Park Authority, now Defendant, designate Common Areas and convey them to the Association. Because the Covenants do not include a specific period of time for such designation and conveyance, Plaintiffs maintain that the Court should apply a reasonable period of time. Plaintiffs contend that thirty-seven (37) years (from when the Park and Covenants were created) is beyond any reasonable period of time for Innovate or Defendant to designate Common Areas and convey them to the Association. Defendant currently owns somewhere between 118.81 acres (47.94% of the acres) and 136.40 acres (51.44% of the acres) in the Park. The Owners other than Defendant currently own somewhere between 129.04 acres (52.07% of the acres) and 128.76 acres (48.56 % of the acres)

in the Park. *See* Plaintiffs' Exhibit 30. Plaintiffs were permitted to amend their Complaint to conform to the evidence at trial with respect to their claim that Common Areas should be designated and conveyed. In their Amended Complaint, Plaintiffs requested that the Court issues an order directing Defendant to designate, as Common Areas, at least ten (10) acres of Defendant's property in the Park, or such lesser amount of acres as will result in Defendant owning less than one-half of the Park Property, so that Defendant will be entitled to less than one-half the votes in the Association, and then convey the Common Areas to an Association of Park Owners pursuant to the Covenants.

## II. Legal Analysis

### A. Maintenance Fees

"Restrictive covenants are contractual in nature." *Hardy v. Aiken*, 369 S.C. 160, 166 (2006). "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it *at the time of execution*." *Hanold v. Watson's Orchard Prop. Owners Ass'n, Inc.*, 412 S.C. 387, 396 (Ct. App. 2015), *aff'd*, 419 S.C. 162 (2017) (quoting *Hardy*, 369 S.C. at 166) (emphasis added). Indeed, "the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* (citing *Taylor v. Lindsey*, 332 S.C. 1, 4 (1998)).

"[N]oncontradictory terms may be implied in a contract in order to effectuate the manifest intention of the parties when the circumstances warrant it, and that there exists in every contract an implied covenant of good faith and fair dealing." *Com. Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 366–67, 147 S.E.2d 481, 484 (1966).

To the extent the Covenants do not *expressly* provide that maintenance fees collected by the Authority (now Defendant) may only be used, and may only be collected to the extent

necessary, for the maintenance and upkeep of the Park, given the language used in the Covenants, the intent of them and of the original Authority (SCRA) and the covenant of good faith and fair dealing, such a limitation may be certainly implied.

The question then becomes what constitutes “maintenance and upkeep” under the Covenants. When a term is not defined within a contract, “evidence of its usual and customary meaning is competent to aid in determining its meaning.” *Hanold*, 412 S.C. at 397 (citing *Anderson v. Buonforte*, 365 S.C. 482, 490 (Ct. App. 2005)).<sup>1</sup>

If South Carolina courts have not expressly defined a term in the context of restrictive covenants, interpretations in cases from other jurisdictions may also provide support. *See id.* at 397-98 (review of cases from other jurisdictions dealing with the term “developed” in the context of restrictive covenants confirmed that “develop” connotes conversion into an area suitable for use or sale). Although “maintenance fee,” “maintenance,” and “upkeep” are not defined in the Covenants, standard methods of contract interpretation and a review of other jurisdictions’ interpretations provide that “maintenance” connotes a state of physical repair, upkeep, and preservation, and does not include administrative expenditures. *Saphir v. Neustadt*, 177 Conn. 191, 204-05, 413 A.2d 843, 851 (1979). In *Saphir*, the Supreme Court of Connecticut addressed a similar issue where the defendant developer collected funds from the plaintiff-property owners pursuant to a covenant that was to “be applied to the maintenance . . . of the roads.” *Id.* at 203, 850. However, the defendant developer argued that the maintenance funds collected encompassed expenses including real estate taxes, legal fees, state fees, insurance, fire department contributions,

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<sup>1</sup> “When a [contract] does not define a term, the term should be defined according to the usual understating of the term’s significance to the ordinary person.” *Hutchinson -v- Liberty Life Ins. Co.*, 393 SC 19, 24, 709 SE 2d 130,134 (Ct App 2011). Dictionary can be useful staring points for interpreting terms in a [contract]. *Hutchinson, id.* “Merriam-Webster” dictionary defines “maintenance” as “to keep in an existing state (as of repairs, efficiency, or validity), preserve from failure or decline.” “Merriam-Webster” dictionary defines “upkeep” as “the act or cost of maintain in good condition; maintenance”.

signs, and a guardhouse. *Id.* at 203, 851. In affirming the trial court's finding that "maintenance" did not include authorization of such expenditures, the *Saphir* court noted:

Implicit in the court's findings and conclusions is a restrictive definition of the word "maintenance" in the covenant contained in the plaintiffs' deeds, one that would limit permissible use of the "road fund" to the physical upkeep of the road, excluding use of the funds for administrative or managerial expenses. This construction of "maintenance" is both consistent with meanings given to similar covenants relating to road maintenance, and with the parties' intentions concerning the payments made by the plaintiffs. "*Maintenance in relation to property has been defined as 'the upkeep or preservation of the condition of property'; Black's Law Dictionary; and 'making repairs and otherwise keeping premises . . . in good condition'; Ballantine's Law Dictionary. It connotes a state of physical repair, upkeep, and preservation. Frye v. Angst, 28 Wis.2d 575, 582, 137 N.W.2d 430 (1965); 54 C.J.S. Maintenance, p. 905. It does not, in common parlance, encompass the expenditure of funds for the administrative or managerial purposes of a corporation. If the covenant here in question had been intended to authorize expenditures other than those related to the physical upkeep and repair of the roads, it could easily have so stated. See Neptune Park Assn. v. Steinberg, 138 Conn. 357, 361, 84 A.2d 687 (1951).*"

*Saphir*, 177 Conn. at 205, 851 (emphasis added).

Here, as in *Saphir*, Defendant is attempting to expand the ordinary meaning of the words "maintenance and upkeep" to include expenses for mortgage payments, attorney fees, accounting fees, management expenses, insurance premiums and marketing expenses. The plain and obvious meaning of "maintenance and upkeep" does not support Defendant's interpretation.

The Covenants provide that the Authority may collect "a maintenance fee for maintenance and upkeep of the Park." Plaintiffs' Exhibit 5, p.17. Had the Authority intended to authorize expenditure of the fees for anything other than the physical upkeep of the Park's common areas, it could have easily so stated in the Covenants, would not have used the language it did ("for maintenance and upkeep") and would not have called the fee a "maintenance" fee. *See id.* at 205. Indeed, the Covenants *do contemplate* a much wider array of expenditures in the subsequent paragraph governing "Assessments" paid to the Association (instead of a maintenance fee to the

Authority) after any portion of the Park is conveyed to the Association as Common Areas. Plaintiffs' Exhibit 5, p. 18 (emphasis added). When describing the scope of allowable charges by the Association, the Covenant provides a list of estimated expenses including, among other things:

[E]xpenses of management; taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees; including fees for a Manager (if any); utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration. Such expenses shall constitute the Common Expenses.

*Id.*, p. 18.

The inclusion of these various items under allowable expenses for Assessments is evidence that the Covenants do not intend for such expenses to be included as part of the maintenance fees chargeable by the Authority. The Covenants could have easily included this same list of expenses in the maintenance fee section, but did not. Including a list of expenses in one part of the Covenant and not in the other is evidence of the original parties intention that the ordinary and common understanding of “maintenance and upkeep” is limited to ordinary physical repairs to keep the common areas in good condition.

The accounting showed all the maintenance fees collected by Defendant as well as all of Defendant's expenditures from the bank account(s) in which the fees were deposited. Plaintiffs' Exhibit 15. The Court finds that the only expenses actually used “for maintenance and upkeep of the Park” incurred by Defendant since it took ownership of the Park, and became Park Authority in October 2018, were expenses for water, power and landscaping. For the years 2019 to 2023, Poly-Med paid \$93,579.93 in maintenance fees. *See* Plaintiffs' Exhibit 15 & 30. During those years, Plaintiffs' share of maintenance expenses (water, power and landscaping) based on its percentage ownership of Park Property (not owed by Defendant) was \$27,855.70. *Id.* Plaintiffs

were overcharged by \$74,001.41 in the years 2019 to 2023. Plaintiffs' Exhibit 30. [The \$65,724.23 in damages in this Court's Form 4 order reflect only the amounts Plaintiffs overpaid in the years 2019 to 2023. The Order does not reflect overpayments in 2018, though Defendant received \$50,182.82 in collected maintenance fees from Innovate when it purchased the Park in that year. For the total period of Defendant's Park Ownership, from 2018 to 2023, Poly-Med paid \$101,902.25 in maintenance fees (including Plaintiffs' share of the \$50,182.82) while its share of maintenance expenses during the period was only \$27,900.84. *Id.* pp. 3. For the total period 2018 to 2023, Poly-Med was overcharged by a total of \$74,001.41. *Id.* pp. 3-4.

While the Defendant had the unambiguous right to charge the prescribed amounts in the Covenants, which was \$300 per acre compounded 10% annually, for maintenance and upkeep, Defendant was required by the implied covenant of good faith and fair dealing, and possibility had a fiduciary duty to use the monies charged for the purpose of maintenance and upkeep. The fees charged for maintenance and upkeep were not intended to be a profit-making mechanism. The Court finds that Plaintiff [Poly-Med] is entitled to damages in the amount of \$74,001.41. This amount represents the difference in what Defendant charged Plaintiff[s] for maintenance and upkeep and the amount defendant actually spent on maintenance and upkeep from the time defendant took ownership of the property to present.

#### **B. Designation of Common Areas and Conveyance to the Association**

Further, the Court finds that when taking the Covenants into consideration as a whole, Defendant is under no obligation or requirement to convey Common Areas over to the Association. Based on the Covenants, the conveyance of Common Areas to the Association is discretionary.

### **C. The Poly-Med Trailers**

The Court also finds that the Poly-Med Trailers that were once considered temporary structures in accordance with the Covenants, have gone past the time period in which they can reasonable be considered temporary. As such, these trailers are in violation of the Covenants. As a result, the Trailers are ordered to be removed within a reasonable time to be determined by the court following briefing by the parties.

### **[D. Award of Attorney's Fees**

Under the terms of the Covenants, the prevailing party in this action is entitled to an award of “costs and disbursements and reasonable attorneys’ fees.” Plaintiffs’ Exhibit 5, p. 22. The “prevailing party” is “the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention is the one in whose favor the decision or verdict is rendered and judgment entered.” *Heath v. Cnty. of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990)(quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997)

Because Plaintiffs succeeded on their claim for an accounting at the hearing on the parties’ motion for summary judgment, this Court ruled that an award of attorney’s fees was granted in an amount to be determined after trial. Court Order dated July 18, 2023. Given the parties respective motions for summary judgment, the accounting prepared and the evidence and testimony at trial, the vast majority of this case and time at trial has been devoted to Plaintiffs’ claims that Defendant breached the Covenants by collecting maintenance fees in annual cost maintenance and upkeep of the Park. Plaintiffs clearly prevailed on the main issue at trial and are, therefore, “the prevailing party.”

**III. Order**

Judgment shall enter in favor of Poly-Med and against the Defendant on Plaintiffs claim for breach of the Covenants in Count I, and for conversion in Count II, of Plaintiffs' Amended Complaint, in the amount of \$74,001.41, plus cost and Attorney fees. Within fourteen (14) days of the date of this Order, Plaintiffs shall submit proof of their costs and disbursements and reasonable attorneys' fees, the amount of which shall be subject to challenge by Defendant.

Counts III of Plaintiffs' Amended Complaint for unjust enrichment was dismissed at trial as Plaintiffs have a remedy at law. Judgment shall enter in favor of Defendant on Plaintiffs' claim for breach of the covenants in County I (to the extent that action is based on a violation of ownership restrictions). Conversion in Count II and for an injunction in Count V of the Amended Complaint.

Defendant's counterclaim for failure to make timely payments of maintenance fees was abandoned at trial. Judgment is entered in favor of Defendant's as to its remaining counterclaim, Plaintiffs are ordered to remove the Trailers at 51 Technology Drive within a reasonable period of time. The parties shall attempt to agree upon what constitutes a reasonable time and upon motion of any party, that the parties are unable to agree, the court shall determine what constitutes a reasonable time.

**IT IS SO ORDERED.**

2-23, 2024  
Anderson, South Carolina



R. LAWTON MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
Judge, Tenth Judicial Circuit

|                                                |   |                              |
|------------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS |
|                                                | ) |                              |
| COUNTY OF ANDERSON                             | ) | CASE NO.: 2021-CP-04-01349   |
|                                                | ) |                              |
| Poly-Med, Inc., Technology Drive 51, LLC,      | ) |                              |
| Technology Drive 52, LLC, PMI Properties, LLC, | ) |                              |
|                                                | ) |                              |
| Plaintiffs,                                    | ) |                              |
|                                                | ) |                              |
| v.                                             | ) |                              |
|                                                | ) |                              |
| Research Park, LLC,                            | ) |                              |
|                                                | ) |                              |
| Defendant.                                     | ) |                              |

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### MEMORANDUM AND ORDER FOR JUDGMENT

Following a bench trial in the above-captioned matter, the Court finds the following facts:

#### I. Findings of Fact

##### A. **Background**

Plaintiffs are related parties through ownership and control. They are the owners, and in the case of Poly-Med, Inc. also the lessee, of parcels of land ("Parcels") in the Clemson University Advanced Materials Center (the "Park") in Anderson, South Carolina. The South Carolina Research Authority (the "SCRA") created the Park and subjected it to a Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, as amended ("Covenants"). The SCRA was established pursuant to a legislative act, which specifically intended "to promote the development of high technology industries and research facilities in South Carolina" and "to enhance the research capabilities of [South Carolina's] public and private universities." The purpose of the Park was "to allow the Authority [now the Defendant Research

Park, LLC] to offer parcels [in the Park] for sale to purchasers or for lease to tenants or for other development within the purview of the Act.” Plaintiffs’ Exhibit 5, pp. 1-2.

The SCRA declared that the Covenants would: (a) run with the land and that the Park was made subject and subordinate to the terms, provisions and conditions of the Covenants; and (b) inure to the benefit of, and would be binding upon, each and every person or entity, their heirs, successors and assigns who acquired any interest in the Park or any part thereof. *Id.* p. 2. In keeping with the intent of the SCRA and the Park, the Covenants provide that no person or entity shall be an Owner, as that term is defined in the Covenants, tenant or occupant of any Parcel or subdivision thereof unless such person or entity shall at all times maintain in its employment a minimum of 15% of its employees as scientists or engineers, as those terms are defined in the Covenants, upon the Parcel or Parcels owed or occupied by such person or entity. *Id.* pp. 9-10.

The Covenants provide that an Association, as defined in the Covenants, was to be established and every Owner of a Parcel was to be a member of the Association entitled to one vote for each full acre of the Parcel to which the member was attributable. *Id.* p. 14. The Association once created, was to manage, administer and operate the Park through its board of directors and be responsible for the operation, maintenance and repair of Park common areas (the “Common Areas”) once conveyed to the Association. *Id.* p.16. The Covenants require that the Authority eventually designate portions of the Park property as Common Areas and convey them to the Association. *Id.* pp. 4-6. However, no Common Areas shall be so conveyed “until such conveyance will result in the Authority owning less than one-half of the Property so that the Authority will be entitled to less than one-half the votes in the Association.” *Id.* p.7. Until the Common Areas are conveyed to the Association, the Park consists of whatever mix or Parcels and Common Areas as determined by the Authority in its sole discretion. *Id.* p.5.

The Covenant also provide that:

Prior to the conveyance of any portion of the Property to the Association as Common Areas, each Owner shall pay the Authority a maintenance fee for maintenance and upkeep of the Park. The fee shall be computed on the basis of \$300.00 per acre per annum and it shall be payable in advance in equal monthly installments. The per acre fee of \$300.00 shall be for the calendar year 1986. It shall increase by 10% compounded annually each year until the Authority conveys any portion of the Property to the Association as Common Areas, after which conveyance this maintenance fee shall terminate and the Owner's sole liability and responsibility shall be to pay whatever Assessments are due the Association. In any year, the Authority may reduce this fee in its sole discretion.

*Id.* p.17.

Until the conveyance of any Common Area to the Association, the sole responsibility for maintaining the Park, except for Parcels sold to Owners, is that of the Authority, and the sole obligation of Owners, other than the Authority, is to pay the maintenance fee to the Authority as provided in the Covenants. *Id.* pp. 25-26. The Association, once established, is to prepare a budget and determine the amount of Assessments to be assessed against the Park Parcels by the Association. *Id.* pp. 18-19. Assessments may be used by the Association, to pay additional "Common Expenses" beyond expenses for maintenance and upkeep of the Park. Unlike maintenance fees charged by the Authority before any Common Areas are conveyed to the Association, Assessments may be used to pay various expenses related to operation of the Park listed in the Assessments section of the Covenants and "any other expenses and liabilities which may be incurred by the Association for the benefit of all the Owners under or by reason of" the Covenants. *Id.* p. 18. The authority is limited to charging parcel owners for "maintenance and upkeep"

Defendant Research Park, LLC, acquired the Park, and took assignment of the rights, title and interest as Declarant under the Covenants, pursuant to a Notice of Assignment of Declarant's Rights effective as of October 10, 2018. Plaintiffs' Exhibits 1 & 2. Defendant is a single member

limited liability company owned by Dan Wagner. Prior to Defendant's ownership of the Park, the SCRA had conveyed the Park, including all unsold property and its developer rights, to Anderson County in 2006, who assigned it to Anderson County Development Partnership ("ACDP"). Plaintiffs' Exhibit 2. ACDP changed its name to Innovate Anderson, a South Carolina non-profit ("Innovate") in 2008. *Id.*

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## **B. The Parties Claims**

### **1. Plaintiffs' Claims**

In their original Complaint, Plaintiffs asserted five causes of action against Defendant: (1) breach of restrictive covenants by charging maintenance fees in excess of actual maintenance and upkeep costs; (2) conversion of maintenance fees; (3) unjust enrichment with respect to the fees; (4) an accounting of the fees collected and spent; and (5) an injunction to prevent Defendant from

selling Park Parcels to persons or entities that it not meet the science and engineering employee requirements for Park Owners. Plaintiffs seek damages with respect to the overpayment of fees, interest and an award of their costs, disbursements and reasonable attorneys' fees. The Covenants provide that:

In any suit or action brought by the Authority, an Owner, the Association or a first lienholder or their heirs, successors or assigns to enforce any of the terms, provision or restrictive covenants of this Declaration, the prevailing party shall be entitled to his costs and disbursements and reasonable attorneys' fees in such suit or action and any appeal thereof.

Plaintiffs' Exhibit 5, p. 22.

## 2. Defendant's Counterclaims

Defendant counterclaims that Plaintiffs have "historically failed to make timely payment" of annual invoices from Defendant for maintenance fees. Defendant also alleges that Plaintiffs made improvements on their Parcel(s) without approval of Defendant or its predecessors. Defendant seeks a judgment for damages, an injunction against Plaintiffs and an award of Defendant's costs, disbursements and reasonable attorneys' fees.

### **C. Defendant's Expenditures of Maintenance Fees**

Through discovery, and examination of Defendant's bank records, Plaintiffs learned that Defendant was using maintenance fees collected from Park Owners, including Plaintiffs, to pay its monthly mortgage payments and for expenses like accounting fees, insurance, marketing expenses and legal fees, including the legal fees incurred by Defendant in this action. See Plaintiffs' Exhibits 8 & 9. At trial, Mr. Wagner testified that he considered any fees collected in excess of expenses for maintenance and upkeep to be profits with which he could do whatever he wished. When Defendant first opened a bank account after its acquisition of the Park in 2018, it deposited only \$25,000.00 of the \$50,182.82 in collected maintenance fees it received from Innovate. Plaintiffs'

Exhibit 8. At various times, Mr. Wagner has withdrawn funds from the maintenance fee accounts for his personal use. Plaintiffs' Exhibits 10 & 11.

#### **D. The Court's Earlier Orders**

The parties each filed motions for summary judgment with respect to their claims and counterclaims. Following a hearing on those motions, the Court granted Plaintiffs' oral motion for an injunction, prohibiting Defendant from selling Park Parcels to persons or entities that do not meet the Covenant's Owner restrictions. Pursuant to the Court's order, the parties picked a qualified accountant, by agreement, and an accounting of the fees was prepared. Plaintiffs' Exhibit 15. Through its July 18, 2023 Order, the Court also granted an award of attorneys' fees for the Plaintiffs, in an amount to be determined after trial. Court Order dated July 18, 2023.

Defendant's claim that Plaintiffs failed to make timely payment of maintenance fees was abandoned at trial. The Court also dismissed Plaintiffs' claim that Defendants was attempting to market Parcels to persons or entities that did not meet on Ownership requirements. The respective claims were dismissed on grounds of insufficient proof.

At trial, Plaintiffs also argued that the Covenants require that the Park Authority, now Defendant, designate Common Areas and convey them to the Association. Because the Covenants do not include a specific period of time for such designation and conveyance, Plaintiffs maintain that the Court should apply a reasonable period of time. Plaintiffs contend that thirty-seven (37) years (from when the Park and Covenants were created) is beyond any reasonable period of time for Innovate or Defendant to designate Common Areas and convey them to the Association. Defendant currently owns somewhere between 118.81 acres (47.94% of the acres) and 136.40 acres (51.44% of the acres) in the Park. The Owners other than Defendant currently own somewhere between 129.04 acres (52.07% of the acres) and 128.76 acres (48.56 % of the acres)

in the Park. *See* Plaintiffs' Exhibit 30. Plaintiffs were permitted to amend their Complaint to conform to the evidence at trial with respect to their claim that Common Areas should be designated and conveyed. In their Amended Complaint, Plaintiffs requested that the Court issues an order directing Defendant to designate, as Common Areas, at least ten (10) acres of Defendant's property in the Park, or such lesser amount of acres as will result in Defendant owning less than one-half of the Park Property, so that Defendant will be entitled to less than one-half the votes in the Association, and then convey the Common Areas to an Association of Park Owners pursuant to the Covenants.

## II. Legal Analysis

### A. Maintenance Fees

"Restrictive covenants are contractual in nature." *Hardy v. Aiken*, 369 S.C. 160, 166 (2006). "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it *at the time of execution*." *Hanold v. Watson's Orchard Prop. Owners Ass'n, Inc.*, 412 S.C. 387, 396 (Ct. App. 2015), *aff'd*, 419 S.C. 162 (2017) (quoting *Hardy*, 369 S.C. at 166) (emphasis added). Indeed, "the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* (citing *Taylor v. Lindsey*, 332 S.C. 1, 4 (1998)).

"[N]oncontradictory terms may be implied in a contract in order to effectuate the manifest intention of the parties when the circumstances warrant it, and that there exists in every contract an implied covenant of good faith and fair dealing." *Com. Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 366–67, 147 S.E.2d 481, 484 (1966).

To the extent the Covenants do not *expressly* provide that maintenance fees collected by the Authority (now Defendant) may only be used, and may only be collected to the extent

necessary, for the maintenance and upkeep of the Park, given the language used in the Covenants, the intent of them and of the original Authority (SCRA) and the covenant of good faith and fair dealing, such a limitation may be certainly implied.

The question then becomes what constitutes “maintenance and upkeep” under the Covenants. When a term is not defined within a contract, “evidence of its usual and customary meaning is competent to aid in determining its meaning.” *Hanold*, 412 S.C. at 397 (citing *Anderson v. Buonforte*, 365 S.C. 482, 490 (Ct. App. 2005)).<sup>1</sup>

If South Carolina courts have not expressly defined a term in the context of restrictive covenants, interpretations in cases from other jurisdictions may also provide support. *See id.* at 397-98 (review of cases from other jurisdictions dealing with the term “developed” in the context of restrictive covenants confirmed that “develop” connotes conversion into an area suitable for use or sale). Although “maintenance fee,” “maintenance,” and “upkeep” are not defined in the Covenants, standard methods of contract interpretation and a review of other jurisdictions’ interpretations provide that “maintenance” connotes a state of physical repair, upkeep, and preservation, and does not include administrative expenditures. *Saphir v. Neustadt*, 177 Conn. 191, 204-05, 413 A.2d 843, 851 (1979). In *Saphir*, the Supreme Court of Connecticut addressed a similar issue where the defendant developer collected funds from the plaintiff-property owners pursuant to a covenant that was to “be applied to the maintenance . . . of the roads.” *Id.* at 203, 850. However, the defendant developer argued that the maintenance funds collected encompassed expenses including real estate taxes, legal fees, state fees, insurance, fire department contributions,

<sup>1</sup> “When a [contract] does not define a term, the term should be defined according to the usual understating of the term’s significance to the ordinary person.” *Hutchinson -v- Liberty Life Ins. Co.*, 393 SC 19, 24, 709 SE 2d 130,134 (Ct App 2011). Dictionary can be useful staring points for interpreting terms in a [contract]. *Hutchinson, id.*, “Merriam-Webster” dictionary defines “maintenance” as “to keep in an existing state (as of repairs, efficiency, or validity), preserve from failure or decline.” “Merriam-Webster” dictionary defines “upkeep” as “the act or cost of maintain in good condition; maintenance”.

signs, and a guardhouse. *Id.* at 203, 851. In affirming the trial court's finding that "maintenance" did not include authorization of such expenditures, the *Saphir* court noted:

Implicit in the court's findings and conclusions is a restrictive definition of the word "maintenance" in the covenant contained in the plaintiffs' deeds, one that would limit permissible use of the "road fund" to the physical upkeep of the road, excluding use of the funds for administrative or managerial expenses. This construction of "maintenance" is both consistent with meanings given to similar covenants relating to road maintenance, and with the parties' intentions concerning the payments made by the plaintiffs. "*Maintenance in relation to property has been defined as 'the upkeep or preservation of the condition of property'; Black's Law Dictionary; and 'making repairs and otherwise keeping premises . . . in good condition'; Ballantine's Law Dictionary. It connotes a state of physical repair, upkeep, and preservation. Frye v. Angst, 28 Wis.2d 575, 582, 137 N.W.2d 430 (1965); 54 C.J.S. Maintenance, p. 905. It does not, in common parlance, encompass the expenditure of funds for the administrative or managerial purposes of a corporation. If the covenant here in question had been intended to authorize expenditures other than those related to the physical upkeep and repair of the roads, it could easily have so stated. See Neptune Park Assn. v. Steinberg, 138 Conn. 357, 361, 84 A.2d 687 (1951).*

*Saphir*, 177 Conn. at 205, 851 (emphasis added).

Here, as in *Saphir*, Defendant is attempting to expand the ordinary meaning of the words "maintenance and upkeep" to include expenses for mortgage payments, attorney fees, accounting fees, management expenses, insurance premiums and marketing expenses. The plain and obvious meaning of "maintenance and upkeep" does not support Defendant's interpretation.

The Covenants provide that the Authority may collect "a maintenance fee for maintenance and upkeep of the Park." Plaintiffs' Exhibit 5, p.17. Had the Authority intended to authorize expenditure of the fees for anything other than the physical upkeep of the Park's common areas, it could have easily so stated in the Covenants, would not have used the language it did ("for maintenance and upkeep") and would not have called the fee a "maintenance" fee. *See id.* at 205. Indeed, the Covenants *do contemplate* a much wider array of expenditures in the subsequent paragraph governing "Assessments" paid to the Association (instead of a maintenance fee to the

Authority) after any portion of the Park is conveyed to the Association as Common Areas. Plaintiffs' Exhibit 5, p. 18 (emphasis added). When describing the scope of allowable charges by the Association, the Covenant provides a list of estimated expenses including, among other things:

[E]xpenses of management; taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees; including fees for a Manager (if any); utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration. Such expenses shall constitute the Common Expenses.

*Id.*, p. 18.

The inclusion of these various items under allowable expenses for Assessments is evidence that the Covenants do not intend for such expenses to be included as part of the maintenance fees chargeable by the Authority. The Covenants could have easily included this same list of expenses in the maintenance fee section, but did not. Including a list of expenses in one part of the Covenant and not in the other is evidence of the original parties intention that the ordinary and common understanding of “maintenance and upkeep” is limited to ordinary physical repairs to keep the common areas in good condition.

The accounting showed all the maintenance fees collected by Defendant as well as all of Defendant's expenditures from the bank account(s) in which the fees were deposited. Plaintiffs' Exhibit 15. The Court finds that the only expenses actually used “for maintenance and upkeep of the Park” incurred by Defendant since it took ownership of the Park, and became Park Authority in October 2018, were expenses for water, power and landscaping. For the years 2019 to 2023, Poly-Med paid \$93,579.93 in maintenance fees. *See* Plaintiffs' Exhibit 15 & 30. During those years, Plaintiffs' share of maintenance expenses (water, power and landscaping) based on its percentage ownership of Park Property (not owed by Defendant) was \$27,855.70. *Id.* Plaintiffs

were overcharged by \$74,001.41 in the years 2019 to 2023. Plaintiffs' Exhibit 30. [The \$65,724.23 in damages in this Court's Form 4 order reflect only the amounts Plaintiffs overpaid in the years 2019 to 2023. The Order does not reflect overpayments in 2018, though Defendant received \$50,182.82 in collected maintenance fees from Innovate when it purchased the Park in that year. For the total period of Defendant's Park Ownership, from 2018 to 2023, Poly-Med paid \$101,902.25 in maintenance fees (including Plaintiffs' share of the \$50,182.82) while its share of maintenance expenses during the period was only \$27,900.84. *Id.* pp. 3. For the total period 2018 to 2023, Poly-Med was overcharged by a total of \$74,001.41. *Id.* pp. 3-4.

While the Defendant had the unambiguous right to charge the prescribed amounts in the Covenants, which was \$300 per acre compounded 10% annually, for maintenance and upkeep, Defendant was required by the implied covenant of good faith and fair dealing, and possibility had a fiduciary duty to use the monies charged for the purpose of maintenance and upkeep. The fees charged for maintenance and upkeep were not intended to be a profit-making mechanism. The Court finds that Plaintiff [Poly-Med] is entitled to damages in the amount of \$74,001.41. This amount represents the difference in what Defendant charged Plaintiff[s] for maintenance and upkeep and the amount defendant actually spent on maintenance and upkeep from the time defendant took ownership of the property to present.

#### **B. Designation of Common Areas and Conveyance to the Association**

Further, the Court finds that when taking the Covenants into consideration as a whole, Defendant is under no obligation or requirement to convey Common Areas over to the Association. Based on the Covenants, the conveyance of Common Areas to the Association is discretionary.

### C. The Poly-Med Trailers

The Court also finds that the Poly-Med Trailers that were once considered temporary structures in accordance with the Covenants, have gone past the time period in which they can reasonable be considered temporary. As such, these trailers are in violation of the Covenants. As a result, the Trailers are ordered to be removed within a reasonable time to be determined by the court following briefing by the parties.

### [D. Award of Attorney's Fees

Under the terms of the Covenants, the prevailing party in this action is entitled to an award of "costs and disbursements and reasonable attorneys' fees." Plaintiffs' Exhibit 5, p. 22. The "prevailing party" is "the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cnty. of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990)(quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997)

Because Plaintiffs succeeded on their claim for an accounting at the hearing on the parties' motion for summary judgment, this Court ruled that an award of attorney's fees was granted in an amount to be determined after trial. Court Order dated July 18, 2023. Given the parties respective motions for summary judgment, the accounting prepared and the evidence and testimony at trial, the vast majority of this case and time at trial has been devoted to Plaintiffs' claims that Defendant breached the Covenants by collecting maintenance fees in annual cost maintenance and upkeep of the Park. Plaintiffs clearly prevailed on the main issue at trial and are, therefore, "the prevailing party."

**III. Order**

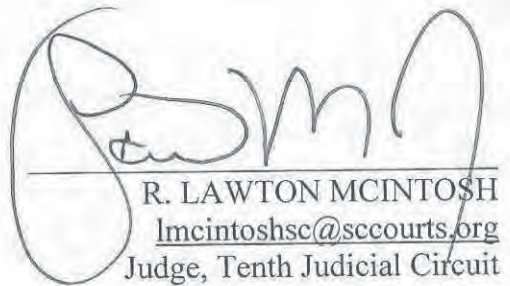
Judgment shall enter in favor of Poly-Med and against the Defendant on Plaintiffs claim for breach of the Covenants in Count I, and for conversion in Count II, of Plaintiffs' Amended Complaint, in the amount of \$74,001.41, plus cost and Attorney fees. Within fourteen (14) days of the date of this Order, Plaintiffs shall submit proof of their costs and disbursements and reasonable attorneys' fees, the amount of which shall be subject to challenge by Defendant.

Counts III of Plaintiffs' Amended Complaint for unjust enrichment was dismissed at trial as Plaintiffs have a remedy at law. Judgment shall enter in favor of Defendant on Plaintiffs' claim for breach of the covenants in County I (to the extent that action is based on a violation of ownership restrictions). Conversion in Count II and for an injunction in Count V of the Amended Complaint.

Defendant's counterclaim for failure to make timely payments of maintenance fees was abandoned at trial. Judgment is entered in favor of Defendant's as to its remaining counterclaim, Plaintiffs are ordered to remove the Trailers at 51 Technology Drive within a reasonable period of time. The parties shall attempt to agree upon what constitutes a reasonable time and upon motion of any party, that the parties are unable to agree, the court shall determine what constitutes a reasonable time.

**IT IS SO ORDERED.**

2-23, 2024  
Anderson, South Carolina

  
 R. LAWTON MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
 Judge, Tenth Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-04-01349

Poly-Med, Inc., et al.  
PLAINTIFF(S)

Research Park, LLC  
DEFENDANT(S)

Submitted by: Marwan S. Zubi

Attorney for : ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

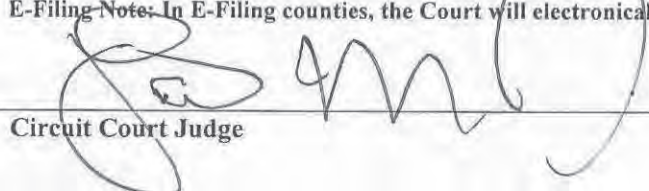
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Poly-Med, Inc.                               | Research Park, LLC                       | \$74,001.41                                              |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

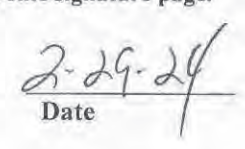
The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Circuit Court Judge

2155

Judge Code

  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of February, 2024 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of February, 2024 to attorneys of record or to parties (when appearing pro se) as follows:

William A. Coates,  
Ross B. Plyler,  
Cassidy Coates Price, P.A.  
PO Box 10529  
Greenville, SC 29603

Steven Edward Buckingham  
The Law Office of Steven Edward Buckingham, LLC  
16 Wellington Avenue  
Greenville, SC 29609

Marwan S. Zubi  
Nicolai Law Group, P.C.  
PO Box 15289  
Springfield, MA 01115

J. Kirkman Moorhead  
Moorheada LeFevre, P.A.  
2203 North Main Street  
Anderson, SC 29621

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

A more complete and final judgment, adding the amount of costs and fees awarded, will issue

upon the court's determination of the amount of costs and fees to be awarded plaintiff.

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-04-01349

POLY-MED INC. ET, AL.  
PLAINTIFF(S)

RESEARCH PARK LLC.  
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

## ORDER INFORMATION

## AMENDED:

Defendant motion to reconsider is denied as to the Court's ruling on maintenance and upkeep and related fees. Plaintiffs award of damages is affirmed. The Court finds that Plaintiff is the prevailing party in the case. However, Plaintiffs counsel is to draft an affidavit of attorney's fees that is consistent with the required elements and provide to opposing counsel and the Court. The issues of conversion, amount of attorney's fees, and Plaintiffs removal of the trailer is under advisement.

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

|                              |                    |               |
|------------------------------|--------------------|---------------|
| _____<br>Circuit Court Judge | 2155<br>Judge Code | _____<br>Date |
|------------------------------|--------------------|---------------|

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-29 15:12:55 page 3 of 3

STATE OF SOUTH CAROLINA  
COUNTY OF Anderson  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

ATTACHMENT E

CASE NO. 2021CP0401349

Poly-Med Inc et al  
PLAINTIFF(S)

Research Park Llc  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs motion to reconsider is denied as to the Court's ruling on maintenance and upkeep and related fees. Plaintiffs award of damages is affirmed. The Court finds that Plaintiff is the prevailing party in the case. However, Plaintiffs counsel is to draft an affidavit of attorney's fees that is consistent with the required elements and provide to opposing counsel and the Court. The issues of conversion, amount of attorney's fees, and Plaintiffs removal of the trailer is under advisement.

**ORDER INFORMATION**

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/26/2024 .

Marwan S Zubi for Poly-Med Inc,Pmi Properties Llc,Technology Drive 52 Llc,Technology Drive 51 Llc

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-26 10:57:08 page 3 of 3

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0401349

Poly-Med, Inc.  
PLAINTIFF(S)

Research Park, LLC  
DEFENDANT(S)

Submitted by: R. Lawton McIntosh

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

## ORDER INFORMATION

**THE COURT FINDS THAT PLAINTIFF WAS THE PREVAILING PARTY. WHILE THIS CASE PRIMARILY INVOLVED THE USE OF CARE AND MAINTENANCE FEES, THE CASE ALSO PARTIALLY INVOLVED THE REMOVAL OF TEMPORARY BUILDINGS. THEREFORE, THE PLAINTIFF IS HEREBY GRANTED 75% OF THEIR TOTAL COST FOR ATTORNEY'S FEES. MR. ZUBI TO PREPARE A FORMAL ORDER.**

This order ☒ ends ☐ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

|                     |            |      |
|---------------------|------------|------|
|                     | 2155       |      |
| Circuit Court Judge | Judge Code | Date |

### For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

|                                  |                                  |
|----------------------------------|----------------------------------|
|                                  |                                  |
|                                  |                                  |
| ATTORNEY(S) FOR THE PLAINTIFF(S) | ATTORNEY(S) FOR THE DEFENDANT(S) |
|                                  |                                  |
|                                  | CLERK OF COURT                   |

### Court Reporter:

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

### ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

)

) CASE NO.: 2021-CP-04-01349

)

)

Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, PMI Properties, LLC,

)

)

Plaintiffs,

)

)

v.

)

)

Research Park, LLC,

)

)

Defendant.

)

)

)

**ORDER ON AWARD OF ATTORNEY'S FEES AND EXPENSES**

This matter came before the Court on Plaintiffs' Motion for Attorney's Fees and Expenses, filed March 8, 2024, which motion was supported by, among other things, affidavits from Plaintiffs' attorneys William A. Coates of Cassidy Coates & Price, P.A., and Marwan S. Zubi of Nicolai Law Group, P.C., attesting that, as of August 5, 2024, Plaintiffs had incurred legal fees and expenses to Mr. Coates's firm in the amount of \$72,447.96 and that, as of July 31, 2024, Plaintiffs had incurred legal fees and expenses to Mr. Zubi's firm in the amount of \$145,744.37, which amounts together totaled \$218,192.33 in legal fees and expenses Plaintiffs had incurred with respect to this matter.<sup>1</sup>

<sup>1</sup> Messrs. Coates and Zubi filed their original fee affidavits contemporaneously with the filing of Plaintiffs' Motion for Attorney's Fees and Expenses on March 8, 2024. As directed by the Court at the July 24, 2024, hearing on Plaintiffs' motion, Messrs. Coates and Zubi filed additional affidavits on August 7, 2024, with updated figures through the dates stated above. This order is based on the legal fees and expenses attested to in Messrs. Coates and Zubi's affidavits filed August 7, 2024. The Court recognizes, however, that the provision of the Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, entitling the prevailing party in enforcement actions to recover legal fees and expenses expressly includes the prevailing party's entitlement to recover legal fees and expenses incurred in "any appeal thereof." After the conclusion of all appeals in this matter, provided, of course, that the

Plaintiffs are the owners, and in the case of Poly-Med, Inc. also the lessee, of parcels of land ("Parcels") in the Clemson University Advanced Materials Center (the "Park") in Anderson, South Carolina. The Park is subject to a Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, as amended ("Covenants"). In 2018, Defendant Research Park, LLC, acquired the Park, and took assignment of the rights, title and interest as Declarant and is the Park Authority under the Covenants.

In their original Complaint in this action, Plaintiffs asserted five causes of action against Defendant: (1) breach of the Covenants by charging maintenance fees in excess of actual maintenance and upkeep costs; (2) conversion of maintenance fees; (3) unjust enrichment with respect to the fees; (4) an accounting of the fees collected and spent; and (5) an injunction to prevent Defendant from selling Park Parcels in violation of the Covenants. Plaintiffs sought damages with respect to the overpayment of fees, interest and an award of their costs, disbursements and reasonable attorneys' fees pursuant to the terms of the Covenants.

Defendant counterclaimed that Plaintiffs have "historically failed to make timely payment" of annual invoices from Defendant for maintenance fees. Defendant also alleged that Plaintiffs placed and maintained office trailers on their Parcel(s) in the Park without approval of Defendant.

At a hearing on the parties' respective motions for summary judgment, the parties agreed to an accounting of the maintenance fees and the Court ordered the parties to select a qualified

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ultimate outcome on appeal is such that Plaintiffs remain entitled to recover legal fees and expenses, Plaintiffs may move this Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses, to account for any legal fees and expenses that are not already covered by this order. If no appeal is taken in this matter after the filing of this order (the Court is aware that appeals were previously taken in this matter that were dismissed), once the time for appeal has expired, Plaintiffs may move the Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses with respect to the prior appeals in this matter, to account for any legal fees and expenses that are not already covered by this order.

accountant to perform it. Through its July 18, 2023 Order following the hearing, the Court also granted an award of attorneys' fees for Plaintiffs, in an amount to be determined after trial.

On February 29, 2024, following a bench trial, this Court entered judgment in favor of Plaintiffs in the amount of \$74,001.41 on their claim for breach of the Covenants plus costs and attorney's fees. The Court found in favor of Defendant on its counterclaim for removal of the officer trailers, but ultimately did not set a certain time frame in which they are to be removed. The matter would be reviewed at the request of Defendant's counsel and the Court reserved the right to order a specific timeframe in which Plaintiffs are required to act. Plaintiffs' other claims, and Defendant's other counterclaim, were disposed of at trial or through other post-trial prior orders of the Court.

Under the terms of the Covenants, the prevailing party in this action is entitled to an award of "costs and disbursements and reasonable attorneys' fees." Plaintiffs' Exhibit 5, p. 22. The authority to award attorney's fees may come from a restrictive covenant. *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 240, 616 S.E.2d 431, 434 (Ct. App. 2005). The "prevailing party" is "the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cnty. of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990) (quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997). Given the parties' respective motions for summary judgment, the accounting prepared and the evidence and testimony at trial, the vast majority of this case and time at trial was devoted to Plaintiffs' claims that Defendant breached the Covenants by collecting maintenance fees well

in excess of the annual cost of maintenance and upkeep of the Park. Plaintiffs clearly prevailed on the main issue and are, therefore, “the prevailing party.”

As explained above, Plaintiffs’ attorneys submitted affidavits, as well as detailed billing records, showing the number of hours expended, the rates charged, and the fees and costs incurred by Plaintiffs. Counsel for Defendant was given the opportunity to either cross-examine Plaintiffs’ counsel on the amount of fees incurred and/or file a memorandum in opposition. Counsel for Defendant declined to cross-examine any of Plaintiffs’ counsel but did file memoranda in opposition Plaintiffs’ motion.

“[T]he court should consider the following six factors when determining a reasonable attorney’s fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). “The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Brawley v. Richland Cnty.*, No. 2020-001135, 2024 WL 4281401, at \*6 (S.C. Ct. App. Sept. 25, 2024) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

This case began in July 2021 and has involved a substantial investment of time by Plaintiffs’ counsel. Plaintiffs’ counsel’s firms spent 619.6 hours on this case, over the course of more than three (3) years. The case involved significant discovery, discovery disputes and a dispute over, and the preparation of, an accounting so that Plaintiffs could determine the true maintenance costs incurred by Defendant, costs Defendant had concealed before the litigation was brought. Plaintiffs successfully defended motions to dismiss and for summary judgment and

succeeded, in part, on their own motion for summary judgment. The matter has been professionally prosecuted and professionally defended; however, the battle over the meaning of the Covenants resulted in considerable disputes, requiring numerous motions by both parties, before, during and after trial. The case was difficult and involved relatively complex questions of law and interpretation of the Covenants. The final decision will no doubt result in an appeal. In light of these facts, I find that the hours reflected in their original, revised and supplemental affidavits filed by Plaintiffs' counsel were reasonable.

None of the fee charged the Plaintiffs was based on any form of contingency. The hourly rates charged by Plaintiffs' counsel, as also reflected in the affidavits and billing records, ranged from \$95.00 for paralegals to between \$330.00 and \$413.00 for Plaintiffs' lead counsel.<sup>2</sup> I find these rates to be reasonable and consistent with rates customarily charged for similar services. As attested to in Messrs. Coates and Zubi's respective affidavits filed August 7, 2024, as of the dates stated therein, Plaintiffs have incurred legal fees and expenses totaling \$218,192.33, which amount consists of legal fees of \$212,204.70 and expenses (in the form of court costs, travel expenses, deposition costs and the like) of \$5,987.63, all of which the Court hereby finds to be reasonable.

Plaintiffs' attorneys have strong backgrounds, several decades of combined experience and are in good standing in multiple jurisdictions. The results they obtained are important, not only to Plaintiffs, but to all the owners in the Park, as it will not only compensate Plaintiffs for the maintenance fees they were overcharged for years but will determine the maintenance and upkeep cost for which Plaintiffs and other owners in the Park may be charged for the indefinite future.

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<sup>2</sup> One attorney's hourly rate was \$461.00, but the hours expended by him in the case were very small on a relative basis.

Over the years to come, the results obtained in this case will result in substantial savings for Plaintiff and all Park owners.

However, the result of the case was not a complete victory for Plaintiffs. A reasonable fee award must be proportional to the degree of success obtained.” *Id.* at \*7. “A review of the results obtained is a particularly important consideration, especially ‘where a plaintiff is deemed ‘prevailing’ even though he succeeded on only some of his claims for relief.’” *Id.* at \*6 (quoting *Hensley*, 461 U.S. at 433). Plaintiffs did not prevail on all of their claims, as the case also involved Defendant’s counterclaim for an order requiring removal of the Plaintiffs’ office trailers. As a result, Plaintiffs are awarded seventy-five (75%) of the fees and expenses they incurred. Plaintiffs are, therefore, awarded \$163,644.25 ( $\$218,192.33 \times .75$ ). At Plaintiffs’ request, in the interest of simplicity, and so this Court does not have to apportion the fees and costs among Plaintiffs, the award of fees and expenses is in favor of Plaintiff, Poly-Med, Inc., only.

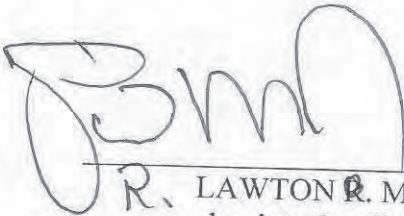
Accordingly, \$163,644.25 in attorneys’ fees and expenses shall be added to the judgment in favor of Poly-Med against Defendant.<sup>3</sup>

<SIGNED ON THE FOLLOWING PAGE>

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<sup>3</sup> Again, as explained above, this order is based on the legal fees and expenses attested to in Messrs. Coates and Zubi’s affidavits filed August 7, 2024. After the conclusion of all appeals in this matter, provided, of course, that the ultimate outcome on appeal is such that Plaintiffs remain entitled to recover legal fees and expenses, Plaintiffs may move this Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses, to account for any legal fees and expenses that are not already covered by this order. If no appeal is taken in this matter after the filing of this order, once the time for appeal has expired, Plaintiffs may move the Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses with respect to the prior appeals in this matter, to account for any legal fees and expenses that are not already covered by this order.

IT IS SO ORDERED.

  
R. LAWTON R. MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
Judge, Tenth Judicial Circuit

12-9, 2024  
Greenville, South Carolina  
Anderson, SC (RLM)

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|                                                |   |                              |
|------------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS |
|                                                | ) |                              |
| COUNTY OF ANDERSON                             | ) | CASE NO.: 2021-CP-04-01349   |
|                                                | ) |                              |
| Poly-Med, Inc., Technology Drive 51, LLC,      | ) |                              |
| Technology Drive 52, LLC, PMI Properties, LLC, | ) |                              |
|                                                | ) |                              |
| Plaintiffs,                                    | ) |                              |
|                                                | ) |                              |
| v.                                             | ) |                              |
|                                                | ) |                              |
| Research Park, LLC,                            | ) |                              |
|                                                | ) |                              |
| Defendant.                                     | ) |                              |

### FINAL JUDGMENT IN A CIVIL CASE

This action came to trial before the Court, and after the issues have been tried or heard and a decision rendered, it is hereby **ORDERED** and **ADJUDGED** that:

As to Plaintiffs' Claims in this Action:

1. On Plaintiffs' First Cause of Action of Plaintiffs' Amended Complaint for Breach of Restrictive Covenant, judgment hereby enters in favor of Plaintiff, Poly-Med, Inc., against Defendant, Research Park, LLC, in the amount of \$74,001.41, plus attorney's fees, costs and expenses in the amount of \$163,644.25, for a total of \$237,645.66, with interest from the date of judgment at the legal rate as provided by law.
2. Judgment hereby enters in favor of Defendant on Plaintiffs' Second Cause of Action for Conversion and Fifth Cause of Action for an Injunction pursuant to prior orders of this Court.
3. Plaintiffs' Third Cause of Action for Unjust Enrichment was dismissed at trial as Plaintiffs have an adequate remedy at law.
4. Summary Judgment entered in favor of Plaintiffs on their Fourth Cause of Action for an Accounting and Plaintiffs have obtained the accounting they sought.

As to Defendants' Counterclaims in this Action:

1. On Defendant's Counterclaim for violation of the restrictive covenant regarding the continued presence of "temporary" office trailers on Plaintiffs' premises and request

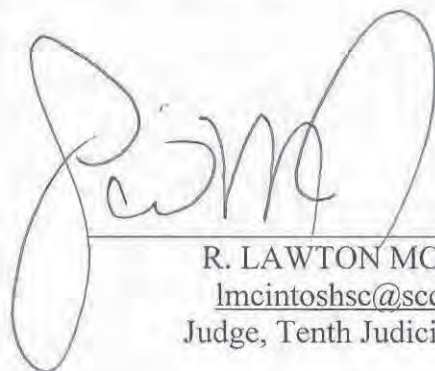
for removal of the trailers, the Court has elected to suspend the imposition of a date certain by which removal must be accomplished. Instead, from time to time and only upon the request of Defendant's counsel, the Court may require Plaintiffs to provide information by which the Court may evaluate Plaintiffs' advances in the removal of such trailers and/or their replacement with permanent structures. If, upon such review, the Court finds that Plaintiffs' progress has been inadequate, the Court reserves the right to order a specific time frame, or date certain, by which the removal of the temporary trailers must be accomplished.

2. Defendants' Counterclaim for failure to make timely payments of maintenance fees was abandoned at trial.

If, and to the extent, there were other claims or counterclaims of the parties in this action, they were disposed of by prior Orders of the Court.

This Final Judgment ends the case.

12-20, 2024  
Anderson, South Carolina



R. LAWTON MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
Judge, Tenth Judicial Circuit

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Anderson County  
Court of Common Pleas  
R. Lawton McIntosh, Circuit Court Judge

---

Case No. 2021-CP-04-01349  
Appellate Case No. 2024-002150

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Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, PMI Properties, LLC,

Respondents/Appellants,

v.

Research Park, LLC,

Appellant/Respondent.

---

**NOTICE OF CROSS-APPEAL**

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Stephen L. Brown (SC Bar No. 66468)  
sbrown@ycrlaw.com  
Russell G. Hines (SC Bar No. 72100)  
rhines@ycrlaw.com  
CLEMENT RIVERS, LLP  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

*Attorneys for Respondents/Appellants  
Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, and  
PMI Properties, LLC*

*\*Additional counsel identified on next page*

Willam A. Coates (SC Bar No. 1289)  
wac@cassidycoates.com  
Ross B. Plyler (SC Bar No. 71688)  
rplyler@cassidycoates.com  
CASSIDY COATES PRICE, P.A.  
1052 North Church Street  
Greenville, South Carolina 29601  
P.O. Box. 10529 (29603)  
(864) 349-2600

-and-

Marwan S. Zubi (admitted pro hac vice<sup>1</sup>)  
marwan.zubi@niclawgrp.com  
NICOLAI LAW GROUP, P.C.  
198 Charlton Road, Suite 8  
Sturbridge, Massachusetts 01566  
P.O. Box 2840  
Worcester, Massachusetts 01613  
(413) 272-2000

*Attorneys for Respondents/Appellants  
Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, and  
PMI Properties, LLC*

**Other Counsel of Record:**

Steven Edward Buckingham (SC Bar No. 75089)  
seb@buckingham.legal  
THE LAW OFFICE OF STEVEN EDWARD BUCKINGHAM, LLC  
16 Wellington Avenue  
Greenville, South Carolina 29609  
(864) 735-0832

-and-

John Kirkman Moorhead (SC Bar No. 7039)  
kirk@mllawyers.com  
MOORHEAD LEFEVRE, PA  
2203 North Main Street  
Anderson, South Carolina 29621  
(864) 225-9155

*Attorneys for Appellant/Respondent  
Research Park, LLC*

---

<sup>1</sup> Pursuant to Rule 404(c), SCACR, a copy of the circuit court order granting Mr. Zubi's pro hac vice admission is attached hereto as Exhibit 1. The associated regular member of the South Carolina Bar is William A. Coates, whose South Carolina Bar Number is 1289.

Plaintiffs/Respondents/Appellants, Poly-Med, Inc., Technology Drive 51, LLC, Technology Drive 52, LLC, PMI Properties, LLC (collectively, “Cross-Appellants”), hereby appeal the following orders of the Honorable R. Lawton McIntosh, Circuit Court Judge:

- **Form 4 Order filed November 6, 2023**, a copy of which is attached hereto as Exhibit A;
- **Memorandum and Order for Judgment and Form 4 Order filed February 29, 2024**, a copy of which is attached hereto as Exhibit B;
- **Form 4 Order filed July 26, 2024**, a copy of which is attached hereto as Exhibit C;
- **Form 4 Order filed July 29, 2024**, a copy of which is attached hereto as Exhibit D;
- **Form 4 Order filed August 27, 2024**, a copy of which is attached hereto as Exhibit E;
- **Order on Outstanding Motions Regarding Conversion & Injunctive Relief filed September 26, 2024**, a copy of which is attached hereto as Exhibit F;
- **Form 4 Order filed November 19, 2024**, a copy of which is attached hereto as Exhibit G;
- **Order on Award of Attorney’s Fees and Expenses filed December 9, 2024**, a copy of which is attached hereto as Exhibit H;
- **Form 4 Order filed December 17, 2024**, a copy of which is attached hereto as Exhibit I; and
- **Final Judgment in a Civil Case filed December 20, 2024**, a copy of which is attached hereto as Exhibit J.<sup>2</sup>

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<sup>2</sup> Cross-Appellants recognize that “[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal.” Rule 201(b), SCACR. As this is a cross-appeal, Cross-Appellants are, of course, only aggrieved by some aspects of the appealed orders. In fact, with regard to the appealed orders attached hereto as Exhibits C and D, Cross-Appellants may not be aggrieved by them at all—indeed, Cross-Appellants believe that Exhibit D amends and thereby supersedes Exhibit C—but as these orders (as well as others among the orders identified above, for instance, the orders attached hereto as Exhibits G and H, which rule in Cross-Appellants’ favor as to attorney fees/expenses but deduct 25% from Cross-Appellants’ award because Cross-Appellants did not prevail on the trailer-removal issue) at least reference an issue(s) as to which Cross-Appellants are aggrieved, Cross-Appellants are including these orders in this notice of appeal out of an abundance of caution. And, of course, when the time comes, Cross-Appellants will identify in their principal appellate brief each of the issues they present for this Court’s

Cross-Appellants received written notice of entry of each respective order on the date of its filing, the most recent of which was on December 20, 2024. Additionally, Cross-Appellants were served with a Notice of Appeal in this matter by Defendant/Appellant/Respondent, Research Park, LLC, on December 19, 2024, and an Amended Notice of Appeal on December 23, 2024. *See* Rule 203(c), SCACR (allowing “[a] respondent [to] institute a cross-appeal by serving a notice of appeal on all adverse parties . . . within five (5) days after receipt of appellant’s notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires”).

**<SIGNED ON THE FOLLOWING PAGE>**

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review. *See* Rule 208(b)(1)(B), SCACR (requiring briefs of appellants to include “[a] statement of each of the issues presented for review”).

Respectfully submitted,

By: s/Stephen L. Brown  
Stephen L. Brown (SC Bar No. 66468)  
sbrown@ycrlaw.com  
Russell G. Hines (SC Bar No. 72100)  
rhines@ycrlaw.com  
CLEMENT RIVERS, LLP  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

-and-

Willam A. Coates (SC Bar No. 1289)  
wac@cassidycoates.com  
Ross B. Plyler (SC Bar No. 71688)  
rplyler@cassidycoates.com  
CASSIDY COATES PRICE, P.A.  
1052 North Church Street  
Greenville, South Carolina 29601  
P.O. Box. 10529 (29603)  
(864) 349-2600

-and-

Marwan S. Zubi (admitted pro hac vice)  
marwan.zubi@niclawgrp.com  
NICOLAI LAW GROUP, P.C.  
198 Charlton Road, Suite 8  
Sturbridge, Massachusetts 01566  
P.O. Box 2840  
Worcester, Massachusetts 01613  
(413) 272-2000

*Attorneys for Respondents/Appellants  
Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, and  
PMI Properties, LLC*

Charleston, South Carolina

December 27, 2024

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
  
Poly-Med Inc., Technology Drive 51, LLC )  
Technology Drive 52, LLC, PMI Properties, )  
LLC, )  
Plaintiffs, )  
 )  
vs. )  
 )  
Research Park, LLC )  
 )  
 )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

C.A. No.: 2021-CP-04-01349

**ORDER GRANTING  
MOTION FOR ADMISSION  
*PRO HAC VICE* OF  
MARWAN S. ZUBI**

This matter comes before the Court by motion of William A. Coates of the law firm Roe Cassidy Coates & Price, P.A. who represents the Plaintiffs, in the above-captioned action seeking the admission *pro hac vice* of Marwan S. Zubi. Counsel for Defendant does not object to this motion.

THEREFORE, FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED that Marwan S. Zubi is admitted *pro hac vice* for purposes of this matter.

IT IS SO ORDERED.

\_\_\_\_\_  
Clerk of Court  
Tenth Judicial Circuit

Anderson, South Carolina

DATED: \_\_\_\_\_





Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Pro Hac Vice

So Ordered

s/ J. Cordell Maddox Jr.

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ROA\_01567

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COMMON PLEAS

DOCUMENT IN A CIVIL CASE  
CASE NO. 2021CP0401349

Poly-Med Inc., et al.  
PLAINTIFF S

Research Park LLC  
DEFENDANT S

Submitted by R. Lawton McIntosh

Attorney for ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

**DISPOSITION TYPE ONE**

- ☐ **R VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12 b , SCRPC; ☐ Rule 41 a , SCRPC ol. Nonsuit ; ☐ Rule 43 k , SCRPC Settled ; ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STATED E TO BAN R PTC**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADDED ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

**ORDER INFORMATION**

FILED DEPENDANT ADT E NAMBI O SRI T TO C AR E T E PRESCRIBED AMOUNTS IN THE COVENANTS, IC AS \$300 PER ACRE COMPOSED 10 ANNUALLY, OR MAINTENANCE AND P EEP, DEPENDANT AS REQUIRED BY THE IMPLIED COVENANT OF GOOD FAITH AND AIR DEALING, AND POSSIBLE ADJUSTMENT TO SET THE MONIES CARVED OUT THE PROPOSED MAINTENANCE AND P EEP. THE EESC CARVED OR MAINTENANCE AND P EEP WERE NOT INTENDED TO BE A PRO IT-MA IN MECHANISM. THE COURT INDUSTRY AT PLAINTIFF IS ENTITLED TO DAMAGES IN THE AMOUNT OF \$65, 24.23. THIS AMOUNT REPRESENTS THE DIFFERENCE IN THE DEPENDANT CARVED PLAINTIFF OR MAINTENANCE AND P EEP AND THE AMOUNT DEPENDANT ACTUALLY SPENT ON MAINTENANCE AND P EEP FROM THE TIME DEPENDANT TO OWNERSHIP OF THE PROPERTY TO PRESENT.

RIGHTER, THE COURT INDUSTRY AT ENTA IN THE COVENANTS INTO CONSIDERATION AS A WHOLE, DEPENDANT IS UNDER NO OBLIGATION OR REQUIREMENT TO CONVEY COMMON AREAS OVER TO THE ASSOCIATION. BASED ON THE COVENANTS, THE CONVEYANCE OF COMMON AREAS TO THE ASSOCIATION IS DISCRETIONARY.

THE COURT ALSO INDUSTRY AT THE POLY-MED TRAILERS THAT WERE ONCE CONSIDERED TEMPORARY STRUCTURES IN ACCORDANCE WITH THE COVENANTS, HAVE ONE PAST THE TIME PERIOD IN WHICH THEY CAN REASONABLY BE CONSIDERED TEMPORARY. AS SUCH, THESE TRAILERS ARE IN VIOLATION OF THE COVENANTS. AS A RESULT, THE TRAILERS ARE ORDERED TO BE REMOVED WITHIN A REASONABLE TIME PERIOD. THE COURT REQUESTS THAT THE PARTIES BRIEF THE COURT ON WHAT SHOULD BE CONSIDERED A REASONABLE TIME PERIOD TO AVE THE STRUCTURES REMOVED BASED ON THE CIRCUMSTANCES OF THIS CASE.

PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER AND CIRCULATE IT TO OPPOSING COUNSEL PRIOR TO ITS SUBMISSION TO THE COURT.



This order ☒ ends ☐ does not end the case.

| INFORMATION ORDERED JUDGMENT                                                                                                                                                                                 |                                       |                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                       |                                                       |
| Judgment in favor of<br>List name s below                                                                                                                                                                    | Judgment Against<br>List name s below | Judgment Amount To be Enrolled<br>List amount s below |
|                                                                                                                                                                                                              |                                       | \$                                                    |
|                                                                                                                                                                                                              |                                       | \$                                                    |
|                                                                                                                                                                                                              |                                       | \$                                                    |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                       |                                                       |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note** Title abstractors and researchers should refer to the official court order for judgment details.  
**E-filing Note** In E-filing counties, the Court will electronically sign this form using a separate electronic signature page.

|                     |            |      |
|---------------------|------------|------|
|                     | 2155       |      |
| Circuit Court Judge | Judge Code | Date |

**or Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties when appearing pro se as follows:

|                             |                             |
|-----------------------------|-----------------------------|
|                             |                             |
|                             |                             |
| ATTORNEYS OR THE PLAINTIFFS | ATTORNEYS OR THE DEFENDANTS |
|                             | CLERK OF COURT              |

**Court Reporter**

**E-filing Note** In E-filing counties, the date of Entry of judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-filers or who are appearing pro se. See Rule \_\_\_\_ d, SCRPC.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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ELECTRONICALLY FILED - 2024 Dec 27 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349



Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2023-11-06 11:32:06 page 4 of 4

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, PMI Properties, LLC,

Plaintiffs,

v.

Research Park, LLC,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

) CASE NO.: 2021-CP-04-01349

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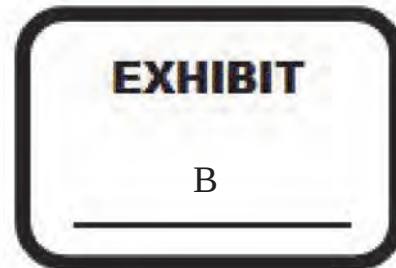
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### MEMORANDUM AND ORDER FOR JUDGMENT

Following a bench trial in the above-captioned matter, the Court finds the following facts:

#### I. Findings of Fact

##### A. **Background**

Plaintiffs are related parties through ownership and control. They are the owners, and in the case of Poly-Med, Inc. also the lessee, of parcels of land ("Parcels") in the Clemson University Advanced Materials Center (the "Park") in Anderson, South Carolina. The South Carolina Research Authority (the "SCRA") created the Park and subjected it to a Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, as amended ("Covenants"). The SCRA was established pursuant to a legislative act, which specifically intended "to promote the development of high technology industries and research facilities in South Carolina" and "to enhance the research capabilities of [South Carolina's] public and private universities." The purpose of the Park was "to allow the Authority [now the Defendant Research

Park, LLC] to offer parcels [in the Park] for sale to purchasers or for lease to tenants or for other development within the purview of the Act.” Plaintiffs’ Exhibit 5, pp. 1-2.

The SCRA declared that the Covenants would: (a) run with the land and that the Park was made subject and subordinate to the terms, provisions and conditions of the Covenants; and (b) inure to the benefit of, and would be binding upon, each and every person or entity, their heirs, successors and assigns who acquired any interest in the Park or any part thereof. *Id.* p. 2. In keeping with the intent of the SCRA and the Park, the Covenants provide that no person or entity shall be an Owner, as that term is defined in the Covenants, tenant or occupant of any Parcel or subdivision thereof unless such person or entity shall at all times maintain in its employment a minimum of 15% of its employees as scientists or engineers, as those terms are defined in the Covenants, upon the Parcel or Parcels owed or occupied by such person or entity. *Id.* pp. 9-10.

The Covenants provide that an Association, as defined in the Covenants, was to be established and every Owner of a Parcel was to be a member of the Association entitled to one vote for each full acre of the Parcel to which the member was attributable. *Id.* p. 14. The Association once created, was to manage, administer and operate the Park through its board of directors and be responsible for the operation, maintenance and repair of Park common areas (the “Common Areas”) once conveyed to the Association. *Id.* p.16. The Covenants require that the Authority eventually designate portions of the Park property as Common Areas and convey them to the Association. *Id.* pp. 4-6. However, no Common Areas shall be so conveyed “until such conveyance will result in the Authority owning less than one-half of the Property so that the Authority will be entitled to less than one-half the votes in the Association.” *Id.* p.7. Until the Common Areas are conveyed to the Association, the Park consists of whatever mix or Parcels and Common Areas as determined by the Authority in its sole discretion. *Id.* p.5.

The Covenant also provide that:

Prior to the conveyance of any portion of the Property to the Association as Common Areas, each Owner shall pay the Authority a maintenance fee for maintenance and upkeep of the Park. The fee shall be computed on the basis of \$300.00 per acre per annum and it shall be payable in advance in equal monthly installments. The per acre fee of \$300.00 shall be for the calendar year 1986. It shall increase by 10% compounded annually each year until the Authority conveys any portion of the Property to the Association as Common Areas, after which conveyance this maintenance fee shall terminate and the Owner's sole liability and responsibility shall be to pay whatever Assessments are due the Association. In any year, the Authority may reduce this fee in its sole discretion.

*Id.* p.17.

Until the conveyance of any Common Area to the Association, the sole responsibility for maintaining the Park, except for Parcels sold to Owners, is that of the Authority, and the sole obligation of Owners, other than the Authority, is to pay the maintenance fee to the Authority as provided in the Covenants. *Id.* pp. 25-26. The Association, once established, is to prepare a budget and determine the amount of Assessments to be assessed against the Park Parcels by the Association. *Id.* pp. 18-19. Assessments may be used by the Association, to pay additional "Common Expenses" beyond expenses for maintenance and upkeep of the Park. Unlike maintenance fees charged by the Authority before any Common Areas are conveyed to the Association, Assessments may be used to pay various expenses related to operation of the Park listed in the Assessments section of the Covenants and "any other expenses and liabilities which may be incurred by the Association for the benefit of all the Owners under or by reason of" the Covenants. *Id.* p. 18. The authority is limited to charging parcel owners for "maintenance and upkeep"

Defendant Research Park, LLC, acquired the Park, and took assignment of the rights, title and interest as Declarant under the Covenants, pursuant to a Notice of Assignment of Declarant's Rights effective as of October 10, 2018. Plaintiffs' Exhibits 1 & 2. Defendant is a single member

limited liability company owned by Dan Wagner. Prior to Defendant's ownership of the Park, the SCRA had conveyed the Park, including all unsold property and its developer rights, to Anderson County in 2006, who assigned it to Anderson County Development Partnership ("ACDP"). Plaintiffs' Exhibit 2. ACDP changed its name to Innovate Anderson, a South Carolina non-profit ("Innovate") in 2008. *Id.*

When it was Park Authority, Innovate periodically collected maintenance fees from Owners in the Park, including Poly-Med. Before conveying the Park to Defendant, Innovate gave Defendant a document entitled "Innovate Income and Expense Proration Estimates for Settlement." Plaintiffs' Exhibit 7. The Income and Expense Proration showed the maintenance fees collected from Park Owners at the rate of \$600 per acre in the total amount of \$69,645.36 per year and "Monthly Expenses" including monthly water, power and landscaping expenses in the amount of \$2,333.33 per month. *Id.* Upon Innovate conveying the Park to Defendant, Innovate transferred \$50,182.82 in collected and unused maintenance fees to Defendant. Defendant financed the purchase of the Park, in part, through a mortgage. Plaintiffs' Exhibit 4.

The Covenants also provide that "[n]o building, landscaping or other improvements shall be altered, placed or erected on any Parcel without approval from the Authority or its agent." Plaintiffs' Exhibit 5, p. 26. On or about June 14, 2017, before Defendant acquired the Park, Poly-Med's current Manager of Facility and IT, Jeffrey Ellis, sent an email to Burriss Nelson, Registered Agent, requesting approval to install modular office buildings ("Trailers") to serve as temporary offices at Poly-Med's Parcel at 51 Technology Drive in the Park. Mr. Ellis submitted drawings and specification with the email. He later spoke to Mr. Nelson by telephone and, in that conversation, Mr. Nelson gave his approval for the Trailers.

Beginning in 2019, Defendant began billing Owners, including Poly-Med, annual maintenance fees at the rate of \$600 per acre. At the time, Plaintiffs owned 19.25 acres in the Park. Poly-Med paid \$11,550 in maintenance fees that year. Plaintiffs' Exhibit 14. In October 2019, Plaintiff, PMI Properties, Inc., a wholly-owned subsidiary of Poly-Med, purchased from Defendant an additional 12.685 acres next to one of Plaintiffs' existing Parcels. Plaintiffs' Exhibit 12. PMI Properties paid \$5,385.93 in maintenance fees to Defendant as part of the purchase. Plaintiffs' Exhibit 17. PMI Properties later transferred the new Parcel to Poly-Med through an unrecorded deed. Plaintiffs' Exhibit 16.

In 2020, Defendant's invoice for annual maintenance fees to Poly-Med increased to \$19,161.00, due to Plaintiffs' acquisition of the additional acreage in 2019. Plaintiffs' Exhibit 13. On April 30, 2020, Poly-Med president, David Shalaby, sent a message to Mr. Wagner complaining that very little maintenance was actually being performed in the Park and asking for information on how the maintenance fees collected were being spent. Plaintiffs' Exhibit 18. After getting no response, Poly-Med counsel sent Mr. Wagner an email seeking an accounting of the fees. Plaintiffs' Exhibit 19. In response, Defendant took the position that Plaintiffs were not entitled to an accounting of the maintenance fee and refused to provide one. Plaintiffs' Exhibit 18.

## **B. The Parties Claims**

### **1. Plaintiffs' Claims**

In their original Complaint, Plaintiffs asserted five causes of action against Defendant: (1) breach of restrictive covenants by charging maintenance fees in excess of actual maintenance and upkeep costs; (2) conversion of maintenance fees; (3) unjust enrichment with respect to the fees; (4) an accounting of the fees collected and spent; and (5) an injunction to prevent Defendant from

selling Park Parcels to persons or entities that it not meet the science and engineering employee requirements for Park Owners. Plaintiffs seek damages with respect to the overpayment of fees, interest and an award of their costs, disbursements and reasonable attorneys' fees. The Covenants provide that:

In any suit or action brought by the Authority, an Owner, the Association or a first lienholder or their heirs, successors or assigns to enforce any of the terms, provision or restrictive covenants of this Declaration, the prevailing party shall be entitled to his costs and disbursements and reasonable attorneys' fees in such suit or action and any appeal thereof.

Plaintiffs' Exhibit 5, p. 22.

2. Defendant's Counterclaims

Defendant counterclaims that Plaintiffs have "historically failed to make timely payment" of annual invoices from Defendant for maintenance fees. Defendant also alleges that Plaintiffs made improvements on their Parcel(s) without approval of Defendant or its predecessors. Defendant seeks a judgment for damages, an injunction against Plaintiffs and an award of Defendant's costs, disbursements and reasonable attorneys' fees.

**C. Defendant's Expenditures of Maintenance Fees**

Through discovery, and examination of Defendant's bank records, Plaintiffs learned that Defendant was using maintenance fees collected from Park Owners, including Plaintiffs, to pay its monthly mortgage payments and for expenses like accounting fees, insurance, marketing expenses and legal fees, including the legal fees incurred by Defendant in this action. See Plaintiffs' Exhibits 8 & 9. At trial, Mr. Wagner testified that he considered any fees collected in excess of expenses for maintenance and upkeep to be profits with which he could do whatever he wished. When Defendant first opened a bank account after its acquisition of the Park in 2018, it deposited only \$25,000.00 of the \$50,182.82 in collected maintenance fees it received from Innovate. Plaintiffs'

Exhibit 8. At various times, Mr. Wagner has withdrawn funds from the maintenance fee accounts for his personal use. Plaintiffs' Exhibits 10 & 11.

#### **D. The Court's Earlier Orders**

The parties each filed motions for summary judgment with respect to their claims and counterclaims. Following a hearing on those motions, the Court granted Plaintiffs' oral motion for an injunction, prohibiting Defendant from selling Park Parcels to persons or entities that do not meet the Covenant's Owner restrictions. Pursuant to the Court's order, the parties picked a qualified accountant, by agreement, and an accounting of the fees was prepared. Plaintiffs' Exhibit 15. Through its July 18, 2023 Order, the Court also granted an award of attorneys' fees for the Plaintiffs, in an amount to be determined after trial. Court Order dated July 18, 2023.

Defendant's claim that Plaintiffs failed to make timely payment of maintenance fees was abandoned at trial. The Court also dismissed Plaintiffs' claim that Defendants was attempting to market Parcels to persons or entities that did not meet on Ownership requirements. The respective claims were dismissed on grounds of insufficient proof.

At trial, Plaintiffs also argued that the Covenants require that the Park Authority, now Defendant, designate Common Areas and convey them to the Association. Because the Covenants do not include a specific period of time for such designation and conveyance, Plaintiffs maintain that the Court should apply a reasonable period of time. Plaintiffs contend that thirty-seven (37) years (from when the Park and Covenants were created) is beyond any reasonable period of time for Innovate or Defendant to designate Common Areas and convey them to the Association. Defendant currently owns somewhere between 118.81 acres (47.94% of the acres) and 136.40 acres (51.44% of the acres) in the Park. The Owners other than Defendant currently own somewhere between 129.04 acres (52.07% of the acres) and 128.76 acres (48.56 % of the acres)

in the Park. *See* Plaintiffs' Exhibit 30. Plaintiffs were permitted to amend their Complaint to conform to the evidence at trial with respect to their claim that Common Areas should be designated and conveyed. In their Amended Complaint, Plaintiffs requested that the Court issues an order directing Defendant to designate, as Common Areas, at least ten (10) acres of Defendant's property in the Park, or such lesser amount of acres as will result in Defendant owning less than one-half of the Park Property, so that Defendant will be entitled to less than one-half the votes in the Association, and then convey the Common Areas to an Association of Park Owners pursuant to the Covenants.

## **II. Legal Analysis**

### **A. Maintenance Fees**

"Restrictive covenants are contractual in nature." *Hardy v. Aiken*, 369 S.C. 160, 166 (2006). "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it *at the time of execution*." *Hanold v. Watson's Orchard Prop. Owners Ass'n, Inc.*, 412 S.C. 387, 396 (Ct. App. 2015), *aff'd*, 419 S.C. 162 (2017) (quoting *Hardy*, 369 S.C. at 166) (emphasis added). Indeed, "the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* (citing *Taylor v. Lindsey*, 332 S.C. 1, 4 (1998)).

"[N]oncontradictory terms may be implied in a contract in order to effectuate the manifest intention of the parties when the circumstances warrant it, and that there exists in every contract an implied covenant of good faith and fair dealing." *Com. Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 366–67, 147 S.E.2d 481, 484 (1966).

To the extent the Covenants do not *expressly* provide that maintenance fees collected by the Authority (now Defendant) may only be used, and may only be collected to the extent

necessary, for the maintenance and upkeep of the Park, given the language used in the Covenants, the intent of them and of the original Authority (SCRA) and the covenant of good faith and fair dealing, such a limitation may be certainly implied.

The question then becomes what constitutes “maintenance and upkeep” under the Covenants. When a term is not defined within a contract, “evidence of its usual and customary meaning is competent to aid in determining its meaning.” *Hanold*, 412 S.C. at 397 (citing *Anderson v. Buonforte*, 365 S.C. 482, 490 (Ct. App. 2005)).<sup>1</sup>

If South Carolina courts have not expressly defined a term in the context of restrictive covenants, interpretations in cases from other jurisdictions may also provide support. *See id.* at 397-98 (review of cases from other jurisdictions dealing with the term “developed” in the context of restrictive covenants confirmed that “develop” connotes conversion into an area suitable for use or sale). Although “maintenance fee,” “maintenance,” and “upkeep” are not defined in the Covenants, standard methods of contract interpretation and a review of other jurisdictions’ interpretations provide that “maintenance” connotes a state of physical repair, upkeep, and preservation, and does not include administrative expenditures. *Saphir v. Neustadt*, 177 Conn. 191, 204-05, 413 A.2d 843, 851 (1979). In *Saphir*, the Supreme Court of Connecticut addressed a similar issue where the defendant developer collected funds from the plaintiff-property owners pursuant to a covenant that was to “be applied to the maintenance . . . of the roads.” *Id.* at 203, 850. However, the defendant developer argued that the maintenance funds collected encompassed expenses including real estate taxes, legal fees, state fees, insurance, fire department contributions,

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<sup>1</sup> “When a [contract] does not define a term, the term should be defined according to the usual understating of the term’s significance to the ordinary person.” *Hutchinson -v- Liberty Life Ins. Co.*, 393 SC 19, 24, 709 SE 2d 130,134 (Ct App 2011). Dictionary can be useful staring points for interpreting terms in a [contract]. *Hutchinson, id.*, “*Merriam-Webster*” dictionary defines “maintenance” as “to keep in an existing state (as of repairs, efficiency, or validity), preserve from failure or decline.” “*Merriam-Webster*” dictionary defines “upkeep” as “the act or cost of maintain in good condition; maintenance”.

signs, and a guardhouse. *Id.* at 203, 851. In affirming the trial court's finding that "maintenance" did not include authorization of such expenditures, the *Saphir* court noted:

Implicit in the court's findings and conclusions is a restrictive definition of the word "maintenance" in the covenant contained in the plaintiffs' deeds, one that would limit permissible use of the "road fund" to the physical upkeep of the road, excluding use of the funds for administrative or managerial expenses. This construction of "maintenance" is both consistent with meanings given to similar covenants relating to road maintenance, and with the parties' intentions concerning the payments made by the plaintiffs. "*Maintenance in relation to property has been defined as 'the upkeep or preservation of the condition of property'; Black's Law Dictionary; and 'making repairs and otherwise keeping premises . . . in good condition'; Ballantine's Law Dictionary. It connotes a state of physical repair, upkeep, and preservation. Frye v. Angst, 28 Wis.2d 575, 582, 137 N.W.2d 430 (1965); 54 C.J.S. Maintenance, p. 905. It does not, in common parlance, encompass the expenditure of funds for the administrative or managerial purposes of a corporation. If the covenant here in question had been intended to authorize expenditures other than those related to the physical upkeep and repair of the roads, it could easily have so stated. See Neptune Park Assn. v. Steinberg, 138 Conn. 357, 361, 84 A.2d 687 (1951).*

*Saphir*, 177 Conn. at 205, 851 (emphasis added).

Here, as in *Saphir*, Defendant is attempting to expand the ordinary meaning of the words "maintenance and upkeep" to include expenses for mortgage payments, attorney fees, accounting fees, management expenses, insurance premiums and marketing expenses. The plain and obvious meaning of "maintenance and upkeep" does not support Defendant's interpretation.

The Covenants provide that the Authority may collect "a maintenance fee for maintenance and upkeep of the Park." Plaintiffs' Exhibit 5, p.17. Had the Authority intended to authorize expenditure of the fees for anything other than the physical upkeep of the Park's common areas, it could have easily so stated in the Covenants, would not have used the language it did ("for maintenance and upkeep") and would not have called the fee a "maintenance" fee. *See id.* at 205. Indeed, the Covenants *do contemplate* a much wider array of expenditures in the subsequent paragraph governing "Assessments" paid to the Association (instead of a maintenance fee to the

Authority) after any portion of the Park is conveyed to the Association as Common Areas. Plaintiffs' Exhibit 5, p. 18 (emphasis added). When describing the scope of allowable charges by the Association, the Covenant provides a list of estimated expenses including, among other things:

[E]xpenses of management; taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees; including fees for a Manager (if any); utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration. Such expenses shall constitute the Common Expenses.

*Id.*, p. 18.

The inclusion of these various items under allowable expenses for Assessments is evident~~e~~ that the Covenants do not intend for such expenses to be included as part of the maintenance fees chargeable by the Authority. The Covenants could have easily included this same list of expenses in the maintenance fee section, but did not. Including a list of expenses in one part of the Covenant and not in the other is evidence of the original parties intention that the ordinary and common understanding of “maintenance and upkeep” is limited to ordinary physical repairs to keep the common areas in good condition.

The accounting showed all the maintenance fees collected by Defendant as well as all of Defendant's expenditures from the bank account(s) in which the fees were deposited. Plaintiffs' Exhibit 15. The Court finds that the only expenses actually used “for maintenance and upkeep of the Park” incurred by Defendant since it took ownership of the Park, and became Park Authority in October 2018, were expenses for water, power and landscaping. For the years 2019 to 2023, Poly-Med paid \$93,579.93 in maintenance fees. *See* Plaintiffs' Exhibit 15 & 30. During those years, Plaintiffs' share of maintenance expenses (water, power and landscaping) based on its percentage ownership of Park Property (not owed by Defendant) was \$27,855.70. *Id.* Plaintiffs

were overcharged by \$74,001.41 in the years 2019 to 2023. Plaintiffs' Exhibit 30. [The \$65,724.23 in damages in this Court's Form 4 order reflect only the amounts Plaintiffs overpaid in the years 2019 to 2023. The Order does not reflect overpayments in 2018, though Defendant received \$50,182.82 in collected maintenance fees from Innovate when it purchased the Park in that year. For the total period of Defendant's Park Ownership, from 2018 to 2023, Poly-Med paid \$101,902.25 in maintenance fees (including Plaintiffs' share of the \$50,182.82) while its share of maintenance expenses during the period was only \$27,900.84. *Id.* pp. 3. For the total period 2018 to 2023, Poly-Med was overcharged by a total of \$74,001.41. *Id.* pp. 3-4.

While the Defendant had the unambiguous right to charge the prescribed amounts in the Covenants, which was \$300 per acre compounded 10% annually, for maintenance and upkeep, Defendant was required by the implied covenant of good faith and fair dealing, and possibility had a fiduciary duty to use the monies charged for the purpose of maintenance and upkeep. The fees charged for maintenance and upkeep were not intended to be a profit-making mechanism. The Court finds that Plaintiff [Poly-Med] is entitled to damages in the amount of \$74,001.41. This amount represents the difference in what Defendant charged Plaintiff[s] for maintenance and upkeep and the amount defendant actually spent on maintenance and upkeep from the time defendant took ownership of the property to present.

#### **B. Designation of Common Areas and Conveyance to the Association**

Further, the Court finds that when taking the Covenants into consideration as a whole, Defendant is under no obligation or requirement to convey Common Areas over to the Association. Based on the Covenants, the conveyance of Common Areas to the Association is discretionary.

### **C. The Poly-Med Trailers**

The Court also finds that the Poly-Med Trailers that were once considered temporary structures in accordance with the Covenants, have gone past the time period in which they can reasonable be considered temporary. As such, these trailers are in violation of the Covenants. As a result, the Trailers are ordered to be removed within a reasonable time to be determined by the court following briefing by the parties.

#### **[D. Award of Attorney's Fees**

Under the terms of the Covenants, the prevailing party in this action is entitled to an award of "costs and disbursements and reasonable attorneys' fees." Plaintiffs' Exhibit 5, p. 22. The "prevailing party" is "the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cnty. of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990)(quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997)

Because Plaintiffs succeeded on their claim for an accounting at the hearing on the parties' motion for summary judgment, this Court ruled that an award of attorney's fees was granted in an amount to be determined after trial. Court Order dated July 18, 2023. Given the parties respective motions for summary judgment, the accounting prepared and the evidence and testimony at trial, the vast majority of this case and time at trial has been devoted to Plaintiffs' claims that Defendant breached the Covenants by collecting maintenance fees in annual cost maintenance and upkeep of the Park. Plaintiffs clearly prevailed on the main issue at trial and are, therefore, "the prevailing party."

### III. Order

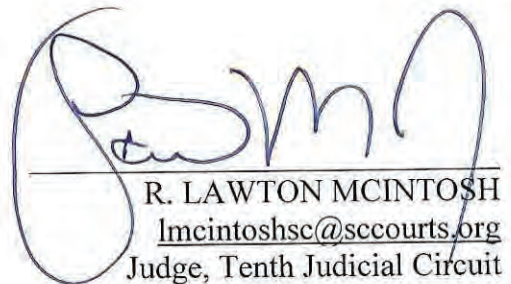
Judgment shall enter in favor of Poly-Med and against the Defendant on Plaintiffs claim for breach of the Covenants in Count I, and for conversion in Count II, of Plaintiffs' Amended Complaint, in the amount of \$74,001.41, plus cost and Attorney fees. Within fourteen (14) days of the date of this Order, Plaintiffs shall submit proof of their costs and disbursements and reasonable attorneys' fees, the amount of which shall be subject to challenge by Defendant.

Counts III of Plaintiffs' Amended Complaint for unjust enrichment was dismissed at trial as Plaintiffs have a remedy at law. Judgment shall enter in favor of Defendant on Plaintiffs' claim for breach of the covenants in County I (to the extent that action is based on a violation of ownership restrictions). Conversion in Count II and for an injunction in Count V of the Amended Complaint.

Defendant's counterclaim for failure to make timely payments of maintenance fees was abandoned at trial. Judgment is entered in favor of Defendant's as to its remaining counterclaim, Plaintiffs are ordered to remove the Trailers at 51 Technology Drive within a reasonable period of time. The parties shall attempt to agree upon what constitutes a reasonable time and upon motion of any party, that the parties are unable to agree, the court shall determine what constitutes a reasonable time.

**IT IS SO ORDERED.**

2-23, 2024  
Anderson, South Carolina



R. LAWTON MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
Judge, Tenth Judicial Circuit

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-04-01349

Poly-Med, Inc., et al.  
PLAINTIFF(S)Research Park, LLC  
DEFENDANT(S)

Submitted by: Marwan S. Zubi

Attorney for : ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Poly-Med, Inc.                               | Research Park, LLC                       | \$74,001.41                                              |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2155

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of February, 2024 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of February, 2024 to attorneys of record or to parties (when appearing pro se) as follows:

William A. Coates,  
Ross B. Plyler,  
Cassidy Coates Price, P.A.  
PO Box 10529  
Greenville, SC 29603

Steven Edward Buckingham  
The Law Office of Steven Edward Buckingham, LLC  
16 Wellington Avenue  
Greenville, SC 29609

Marwan S. Zubi  
Nicolai Law Group, P.C.  
PO Box 15289  
Springfield, MA 01115

J. Kirkman Moorhead  
Moorheada LeFevre, P.A.  
2203 North Main Street  
Anderson, SC 29621

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

A more complete and final judgment, adding the amount of costs and fees awarded, will issue

upon the court's determination of the amount of costs and fees to be awarded plaintiff.

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY of Anderson  
IN THE COUNTY OF COMMON PLEAS

DOCUMENT IN A CIVIL CASE

CASE NO. 2021CP0401349

Poly-Med Inc et al  
PLAINTIFFSResearch Park Llc  
DEFENDANTS

## DISPOSITION TYPE CHECK ONE

- ☐ **REVERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BEFORE TRIAL OR HEARING.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12 b , SCRPC; ☐ Rule 41 a , SCRPC vol. Nonsuit ; ☐ Rule 43 k , SCRPC Settled ;  
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADDED ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

Plaintiffs motion to reconsider is denied as to the Court's ruling on maintenance and upkeep and related fees. Plaintiffs award of damages is affirmed. The Court finds that Plaintiff is the prevailing party in the case. However, Plaintiffs counsel is to draft an affidavit of attorney's fees that is consistent with the required elements and provide to opposing counsel and the Court. The issues of conversion, amount of attorney's fees, and Plaintiffs removal of the trailer is under advisement.

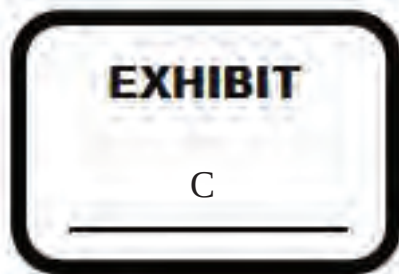
## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.☐ See Page 2 for additional information.

for Clerk of Court Office use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/26/2024 .

Marwan S Zubi for Poly-Med Inc,Pmi Properties Llc,Technology Drive 52 Llc,Technology Drive 51 Llc



NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter

E-filing Note The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of Judgment above is not required in those counties. The clerk will mail a copy of the Judgment to parties who are not E-filers or who are appearing pro se. See Rule 1.1, SCRCP.

---



Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Electronic Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-26 10:57:08 page 3 of 3

ELECTRONICALLY FILED - 2024 Jul 26 11:11 AM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349  
ELECTRONICALLY FILED - 2024 Dec 27 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COMMON PLEAS

DEFENDANT IN A CIVIL CASE  
CASE NO. 2021 CP-04-01349

POL -MED INC. ET, AL.  
PLAINTIFFS

RESEARCH PARK LLC.  
DEFENDANTS

Submitted by

Attorney for ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

### DISPOSITION TYPE CHECK ONE

- ☐ **TRIAL VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BEFORE TRIAL.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12 b , SCRPC; ☐ Rule 41 a , SCRPC Vol. Nonsuit ; ☐ Rule 43 k , SCRPC Settled ; ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADDED ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

### ORDER INFORMATION

#### AMENDED

Defendant motion to reconsider is denied as to the Court's ruling on maintenance and upkeep and related fees. Plaintiffs award of damages is affirmed. The Court finds that Plaintiff is the prevailing party in the case. However, Plaintiffs counsel is to draft an affidavit of attorney's fees that is consistent with the required elements and provide to opposing counsel and the Court. The issues of conversion, amount of attorney's fees, and Plaintiffs removal of the trailer is under advisement.

This order ☐ ends ☒ does not end the case.

| INFORMATION ABOUT DEFENDMENT                                                                                                                                                                                 |                                        |                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                        |                                                        |
| Judgment in favor of<br>List name(s) below                                                                                                                                                                   | Judgment Against<br>List name(s) below | Judgment Amount To be Enrolled<br>List amount(s) below |
|                                                                                                                                                                                                              |                                        | \$                                                     |
|                                                                                                                                                                                                              |                                        | \$                                                     |
|                                                                                                                                                                                                              |                                        | \$                                                     |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                        |                                                        |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note** Title abstractors and researchers should refer to the official court order for judgment details.  
E-filing Note In E-filing counties, the Court will electronically sign this form using a separate electronic signature page.

| Circuit Court Judge | Judge Code | Date |
|---------------------|------------|------|
|---------------------|------------|------|

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties when appearing pro se as follows:

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEYS FOR THE PLAINTIFFS

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEYS FOR THE DEFENDANTS

CLERK OF COURT

**Court Reporter**

E-filing Note In E-filing counties, the date of Entry of judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-filers or who are appearing pro se. See Rule 6.01, SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-07-29 15:12:55 page 3 of 3

ELECTRONICALLY FILED - 2024 Jul 29 3:22 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349  
ELECTRONICALLY FILED - 2024 Dec 27 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349

ROA\_01593

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COMMON PLEAS

DEFENDANT IN A CIVIL CASE  
CASE NO. 2021CP0401349

Poly-Med, Inc.  
PLAINTIFFS

Research Park, LLC  
DEFENDANTS

|                                        |                                                                                    |
|----------------------------------------|------------------------------------------------------------------------------------|
| Submitted by <b>R. Lawton McIntosh</b> | Attorney for <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|                                        | or<br><input type="checkbox"/> Self-Represented Litigant                           |

**DISPOSITION TYPE ONE**

- ☐ **RE VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12 b , SCRPC; ☐ Rule 41 a , SCRPC ol. Nonsuit ; ☐ Rule 43 k , SCRPC Settled ; ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STATED TO BE TO BAN REPTC**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED** ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

**ORDER INFORMATION**

COUNSEL OR THE DEFENDANT AS I TEEN 15 DAYS FROM THE DATE OF FILING THIS ORDER TO SEE TO CROSS-EXAMINE PLAINTIFF'S COUNSEL AS TO ATTORNEYS FEES AND COST REQUESTED AND OR TO FILE A MEMORANDUM IN OPPOSITION.

FILE REQUEST OF DEFENDANT'S COUNSEL TO REQUEST THE RIGHT TO CROSS-EXAMINE PLAINTIFF'S ATTORNEYS REASONS AND OR TO FILE A MEMORANDUM IN OPPOSITION WILL BE TREATED AS DEFENDANT'S ACOQUESCENCE OF THE FEES AND COSTS BY CLAIMANT.

**PLAINTIFF'S CLAIM FOR CONVERSION IS DENIED.**

AS TO DEFENDANT'S COUNTERCLAIM OR THE REMOVAL OF THE MOBILE STRUCTURES, THE COURT WILL NOT SET A CERTAIN TIME FRAME IN WHICH PLAINTIFF IS TO ACT. THIS MATTER WILL BE REVIEWED FROM TIME TO TIME AT THE REQUEST OF DEFENDANT'S COUNSEL TO REVIEW ADVANCES MADE IN REMOVAL OF THE MOBILE STRUCTURES AND REPLACE THEM WITH PERMANENT STRUCTURES. I UPON REQUEST BY DEFENDANT TO REVIEW PLAINTIFF'S PROGRESS, THE COURT DETERMINES THAT PLAINTIFF'S PROGRESS IS INADEQUATE, THE COURT RESERVES THE RIGHT TO ORDER A SPECIFIC TIME FRAME IN WHICH PLAINTIFF WILL BE REQUIRED TO PERFORM. DEFENDANT'S COUNSEL TO PREPARE A FORMAL ORDER.

This order ☒ ends ☐ does not end the case.

| INFORMATION OR THE JUDGMENT                                                                                                                                                                                  |                  |                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|--------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                  |                                |
| Judgment in favor of                                                                                                                                                                                         | Judgment Against | Judgment Amount To be Enrolled |







Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-27 14:01:24 page 4 of 4

ELECTRONICALLY FILED - 2024 Aug 27 2:27 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349  
ELECTRONICALLY FILED - 2024 Dec 27 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349

ROA\_01597

|                                       |   |                                              |
|---------------------------------------|---|----------------------------------------------|
| STATE OF SOUTH CAROLINA               | ) |                                              |
|                                       | ) | IN THE COURT OF COMMON PLEAS                 |
| COUNTY OF ANDERSON                    | ) | TENTH JUDICIAL CIRCUIT                       |
|                                       | ) |                                              |
| POLY-MED, INC.; TECHNOLOGY            | ) | C.A. No.: 2021-CP-04-01349                   |
| DRIVE 51, LLC; TECHNOLOGY             | ) |                                              |
| DRIVE 52, LLC; and PMI                | ) |                                              |
| PROPERTIES, LLC,                      | ) |                                              |
|                                       | ) |                                              |
| Plaintiffs / Counterclaim Defendants, | ) |                                              |
|                                       | ) |                                              |
| vs.                                   | ) | <u>ORDER ON OUTSTANDING MOTIONS</u>          |
|                                       | ) | <u>REGARDING CONVERSION &amp; INJUNCTIVE</u> |
| RESEARCH PARK, LLC,                   | ) | <u>RELIEF</u>                                |
|                                       | ) |                                              |
| Defendant / Counterclaim Plaintiff.   | ) |                                              |

**THIS MATTER** came before the Court in connection with two issues that remain post-trial; specifically, the issues regarding the disposition of Plaintiffs' claim for conversion, as well as whether and to what extent the Court may establish dates certain by which Plaintiffs must remove temporary trailers from their premises at the Clemson Research Park. A hearing on these and related matters was held on July 24, 2024. Plaintiffs were represented by Marwan Zubi and William Coates; Defendant was represented by Steven Edward Buckingham. By Form 4 entered August 27, 2024, the Court indicated its decision as to the matters presented in this order, and has entered this order to explain the bases for its decision.

As to Plaintiffs' cause of action for conversion, one of the issues raised in Defendant's post-trial motions is that Plaintiffs could not have prevailed on their action for conversion as a matter of law, and that therefore, to the extent the Court's written decision of February 23, 2024 held otherwise, the decision should be reversed and corrected. Upon due consideration of the facts and pertinent legal authorities, Defendant's motion is granted.



In the initial written decision regarding this dispute, this Court held that, under the pertinent covenants, “Defendant had the unambiguous right to charge the prescribed amounts in the covenants, which was \$300 per acre compounded 10% annually” going back to 1986. The undisputed evidence at trial was that, for the duration of Defendant’s ownership of the Clemson Research Park, Defendant had charged property owners \$600 per year per acre owned, and that this was substantially less than the amount authorized by the covenants, which is a mathematical fact. Accordingly, the Court held that the amount Defendant had charged property owners under the covenants was consistent with the covenants, while also holding that Defendant’s use of funds collected from property owners for anything other than “maintenance and upkeep,” as that term is defined in this Court’s prior decision, was inconsistent with the covenants.

Plaintiffs’ interpretation of the covenants appears to conflate two issues: collection of maintenance fees and their expenditure. It appears to be Plaintiffs’ contention that, under the covenants, Defendant may only collect maintenance fees from property owners necessary to cover “maintenance and upkeep;” that the collection of any amount of maintenance fee in excess of what is necessary for “maintenance and upkeep” constitutes conversion.

To reach this construction, however, the Court would have to disregard the plain language of the covenants, which establish the method by which annual maintenance fees are calculated, and which further establish that each property owner’s obligation is to pay the maintenance fees as calculated. And, while the covenants do give Defendant the authority to reduce the amount of the maintenance fee in any given year according to its discretion, the covenants do not establish an obligation to do so. Therefore, if the Court were to adopt Plaintiffs’ construction of the covenants, the Court would also be required to create a new term in the covenants—one providing an alternative method of calculating the maintenance fee—even

though the covenants already establish the method by which the fee is calculated. Consistent with well-established precedent, the Court declines the invitation to create a new contractual obligation.

The question of whether Defendant's collection of maintenance fees remains distinct from the question of how the maintenance fees are spent. And the immediate issue before the Court—with respect to Plaintiffs' conversion action—relates solely to collection.

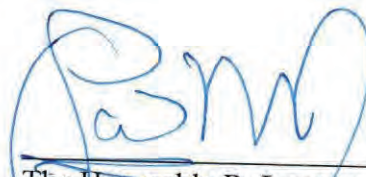
Conversion is the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. See, e.g., SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). An action for conversion "cannot arise from the exercise of a legal right" of ownership over the property allegedly converted. Kirby v. Horne Motor Co., 295 S.C. 7, 11, 366 S.E.2d 259, 261-62 (Ct. App. 1988) (citation omitted).

In the instant case, and consistent with the foregoing discussion, Defendant's collection of the maintenance fee does not constitute conversion. As long as Defendant charges Clemson Research Park property owners an amount no greater than \$300 per acre compounded by 10% annually, going back to 1986, Defendant's imposition of such charges is permissible under the covenants. And, since the covenants establish that each property owner's obligation is to pay the maintenance fee, Defendant has the right to collect such fee from each property owner. Accordingly, when a property owner tenders the maintenance fee to Defendant, it is doing so expressly pursuant to its contractual obligations. Plaintiffs' payment of their contractual obligations does not constitute a conversion, see, e.g., Owens v. Zippy Mart of S.C. Inc., 268 S.C. 383, 234 S.E.2d 217 (1977), and that is separate and apart from the real matter in dispute, which is how the funds collected were spent.

For these reasons, Defendant's motion for reconsideration as to the issue of conversion is granted. As a matter of law, Plaintiffs have failed to state a legally cognizable cause of action for conversion, and judgment on Plaintiffs' conversion action is hereby directed in Defendant's favor.

The final matter to address in this decision pertains to Defendant's action against Plaintiffs for breach of the covenants, specifically regarding the continued presence of "temporary" office trailers that were installed on Plaintiffs' premises and have remained there for a number of years. The Court has previously held that Plaintiffs must remove the trailers from their premises, but invited supplemental briefing from the parties as to the amount of time that Plaintiffs should be allowed to accomplish such removal. Upon due consideration of the parties' submissions, the Court has elected to suspend the imposition of a date certain by which removal must be accomplished. Instead, from time to time and only upon the request of Defendant's counsel, the Court may require Plaintiffs to provide information by which the Court may evaluate Plaintiffs' advances in the removal of such trailers and/or their replacement with permanent structures. If, upon such review, the Court finds that Plaintiffs' progress has been inadequate, the Court reserves the right to order a specific time frame, or date certain, by which the removal of the temporary trailers must be accomplished.

It is **SO ORDERED**.



The Honorable R. Lawton McIntosh  
Judge, Tenth Judicial Circuit

Entered this 25 Day of September, 2024  
Anderson, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COMMON PLEAS

DEFENDANT IN A CIVIL CASE  
CASE NO. 2021CP0401349

Poly-Med, Inc.  
PLAINTIFFS

Research Park, LLC  
DEFENDANTS

|                                        |                                                                                    |
|----------------------------------------|------------------------------------------------------------------------------------|
| Submitted by <b>R. Lawton McIntosh</b> | Attorney for <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|                                        | or<br><input type="checkbox"/> Self-Represented Litigant                           |

**DISPOSITION TYPE CHECK ONE**

- ☐ **REVERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12 b , SCRCP; ☐ Rule 41 a , SCRCP Vol. Nonsuit ; ☐ Rule 43 k , SCRCP Settled ; ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STATED BY THE COURT**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED** ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

**ORDER INFORMATION**

THE COURT INDUSTRIAL PLAINTIFF AS THE PREVAILING PARTY. THE CASE IS PRIMARILY INVOLVED THE SEVERE CARE AND MAINTENANCE FEES, THE CASE ALSO PARTIALLY INVOLVED THE REMOVAL OF TEMPORARY BUILDINGS. THEREFORE, THE PLAINTIFF IS HEREBY AWARDED 50% OF THE TOTAL COST OF ATTORNEY'S FEES. MR. [Name] TO PREPARE A FORMAL ORDER.

This order ☒ ends ☐ does not end the case.

| INFORMATION ON THE JUDGMENT                                                                                                                                                                                  |                                        |                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                        |                                                        |
| Judgment in favor of<br>List name(s) below                                                                                                                                                                   | Judgment Against<br>List name(s) below | Judgment Amount To be Enrolled<br>List amount(s) below |
|                                                                                                                                                                                                              |                                        | \$                                                     |
|                                                                                                                                                                                                              |                                        | \$                                                     |
|                                                                                                                                                                                                              |                                        | \$                                                     |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                        |                                                        |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note Title abstractors and researchers should refer to the official court order for judgment details.**

|                     |            |      |
|---------------------|------------|------|
|                     | 2155       |      |
| Circuit Court Judge | Judge Code | Date |

**or Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties when appearing pro se as follows:

|                          |                          |
|--------------------------|--------------------------|
|                          |                          |
|                          |                          |
| ATTORNEYS FOR PLAINTIFFS | ATTORNEYS FOR DEFENDANTS |
|                          | CLERK OF COURT           |

**Court Reporter**

E-iling Note In E-iling counties, the date of Entry of judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-ilers or who are appearing pro se. See Rule 6, SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-11-19 16:15:18 page 3 of 3

ELECTRONICALLY FILED - 2024 Nov 19 4:20 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349  
ELECTRONICALLY FILED - 2024 Dec 27 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349

ROA\_01604



Plaintiffs are the owners, and in the case of Poly-Med, Inc. also the lessee, of parcels of land ("Parcels") in the Clemson University Advanced Materials Center (the "Park") in Anderson, South Carolina. The Park is subject to a Declaration of Covenants, Conditions and Restrictions of Clemson Research Park dated December 23, 1986, as amended ("Covenants"). In 2018, Defendant Research Park, LLC, acquired the Park, and took assignment of the rights, title and interest as Declarant and is the Park Authority under the Covenants.

In their original Complaint in this action, Plaintiffs asserted five causes of action against Defendant: (1) breach of the Covenants by charging maintenance fees in excess of actual maintenance and upkeep costs; (2) conversion of maintenance fees; (3) unjust enrichment with respect to the fees; (4) an accounting of the fees collected and spent; and (5) an injunction to prevent Defendant from selling Park Parcels in violation of the Covenants. Plaintiffs sought damages with respect to the overpayment of fees, interest and an award of their costs, disbursements and reasonable attorneys' fees pursuant to the terms of the Covenants.

Defendant counterclaimed that Plaintiffs have "historically failed to make timely payment" of annual invoices from Defendant for maintenance fees. Defendant also alleged that Plaintiffs placed and maintained office trailers on their Parcel(s) in the Park without approval of Defendant.

At a hearing on the parties' respective motions for summary judgment, the parties agreed to an accounting of the maintenance fees and the Court ordered the parties to select a qualified

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ultimate outcome on appeal is such that Plaintiffs remain entitled to recover legal fees and expenses, Plaintiffs may move this Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses, to account for any legal fees and expenses that are not already covered by this order. If no appeal is taken in this matter after the filing of this order (the Court is aware that appeals were previously taken in this matter that were dismissed), once the time for appeal has expired, Plaintiffs may move the Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses with respect to the prior appeals in this matter, to account for any legal fees and expenses that are not already covered by this order.

accountant to perform it. Through its July 18, 2023 Order following the hearing, the Court also granted an award of attorneys' fees for Plaintiffs, in an amount to be determined after trial.

On February 29, 2024, following a bench trial, this Court entered judgment in favor of Plaintiffs in the amount of \$74,001.41 on their claim for breach of the Covenants plus costs and attorney's fees. The Court found in favor of Defendant on its counterclaim for removal of the officer trailers, but ultimately did not set a certain time frame in which they are to be removed. The matter would be reviewed at the request of Defendant's counsel and the Court reserved the right to order a specific timeframe in which Plaintiffs are required to act. Plaintiffs' other claims, and Defendant's other counterclaim, were disposed of at trial or through other post-trial prior orders of the Court.

Under the terms of the Covenants, the prevailing party in this action is entitled to an award of "costs and disbursements and reasonable attorneys' fees." Plaintiffs' Exhibit 5, p. 22. The authority to award attorney's fees may come from a restrictive covenant. *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 240, 616 S.E.2d 431, 434 (Ct. App. 2005). The "prevailing party" is "the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cnty. of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990) (quoting *Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (1964)); *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 778 (Ct. App. 1997). Given the parties' respective motions for summary judgment, the accounting prepared and the evidence and testimony at trial, the vast majority of this case and time at trial was devoted to Plaintiffs' claims that Defendant breached the Covenants by collecting maintenance fees well

in excess of the annual cost of maintenance and upkeep of the Park. Plaintiffs clearly prevailed on the main issue and are, therefore, “the prevailing party.”

As explained above, Plaintiffs’ attorneys submitted affidavits, as well as detailed billing records, showing the number of hours expended, the rates charged, and the fees and costs incurred by Plaintiffs. Counsel for Defendant was given the opportunity to either cross-examine Plaintiffs’ counsel on the amount of fees incurred and/or file a memorandum in opposition. Counsel for Defendant declined to cross-examine any of Plaintiffs’ counsel but did file memoranda in opposition Plaintiffs’ motion.

“[T]he court should consider the following six factors when determining a reasonable attorney’s fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). “The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Brawley v. Richland Cnty.*, No. 2020-001135, 2024 WL 4281401, at \*6 (S.C. Ct. App. Sept. 25, 2024) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

This case began in July 2021 and has involved a substantial investment of time by Plaintiffs’ counsel. Plaintiffs’ counsel’s firms spent 619.6 hours on this case, over the course of more than three (3) years. The case involved significant discovery, discovery disputes and a dispute over, and the preparation of, an accounting so that Plaintiffs could determine the true maintenance costs incurred by Defendant, costs Defendant had concealed before the litigation was brought. Plaintiffs successfully defended motions to dismiss and for summary judgment and

succeeded, in part, on their own motion for summary judgment. The matter has been professionally prosecuted and professionally defended; however, the battle over the meaning of the Covenants resulted in considerable disputes, requiring numerous motions by both parties, before, during and after trial. The case was difficult and involved relatively complex questions of law and interpretation of the Covenants. The final decision will no doubt result in an appeal. In light of these facts, I find that the hours reflected in their original, revised and supplemental affidavits filed by Plaintiffs' counsel were reasonable.

None of the fee charged the Plaintiffs was based on any form of contingency. The hourly rates charged by Plaintiffs' counsel, as also reflected in the affidavits and billing records, ranged from \$95.00 for paralegals to between \$330.00 and \$413.00 for Plaintiffs' lead counsel.<sup>2</sup> I find these rates to be reasonable and consistent with rates customarily charged for similar services. As attested to in Messrs. Coates and Zubi's respective affidavits filed August 7, 2024, as of the dates stated therein, Plaintiffs have incurred legal fees and expenses totaling \$218,192.33, which amount consists of legal fees of \$212,204.70 and expenses (in the form of court costs, travel expenses, deposition costs and the like) of \$5,987.63, all of which the Court hereby finds to be reasonable.

Plaintiffs' attorneys have strong backgrounds, several decades of combined experience and are in good standing in multiple jurisdictions. The results they obtained are important, not only to Plaintiffs, but to all the owners in the Park, as it will not only compensate Plaintiffs for the maintenance fees they were overcharged for years but will determine the maintenance and upkeep cost for which Plaintiffs and other owners in the Park may be charged for the indefinite future.

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<sup>2</sup> One attorney's hourly rate was \$461.00, but the hours expended by him in the case were very small on a relative basis.

Over the years to come, the results obtained in this case will result in substantial savings for Plaintiff and all Park owners.

However, the result of the case was not a complete victory for Plaintiffs. A reasonable fee award must be proportional to the degree of success obtained.” *Id.* at \*7. “A review of the results obtained is a particularly important consideration, especially ‘where a plaintiff is deemed ‘prevailing’ even though he succeeded on only some of his claims for relief.’” *Id.* at \*6 (quoting *Hensley*, 461 U.S. at 433). Plaintiffs did not prevail on all of their claims, as the case also involved Defendant’s counterclaim for an order requiring removal of the Plaintiffs’ office trailers. As a result, Plaintiffs are awarded seventy-five (75%) of the fees and expenses they incurred. Plaintiffs are, therefore, awarded \$163,644.25 ( $\$218,192.33 \times .75$ ). At Plaintiffs’ request, in the interest of simplicity, and so this Court does not have to apportion the fees and costs among Plaintiffs, the award of fees and expenses is in favor of Plaintiff, Poly-Med, Inc., only.

Accordingly, \$163,644.25 in attorneys’ fees and expenses shall be added to the judgment in favor of Poly-Med against Defendant.<sup>3</sup>

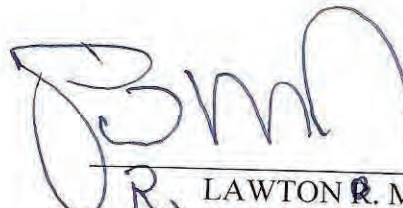
**<SIGNED ON THE FOLLOWING PAGE>**

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<sup>3</sup> Again, as explained above, this order is based on the legal fees and expenses attested to in Messrs. Coates and Zubi’s affidavits filed August 7, 2024. After the conclusion of all appeals in this matter, provided, of course, that the ultimate outcome on appeal is such that Plaintiffs remain entitled to recover legal fees and expenses, Plaintiffs may move this Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses, to account for any legal fees and expenses that are not already covered by this order. If no appeal is taken in this matter after the filing of this order, once the time for appeal has expired, Plaintiffs may move the Court for an additional award for any legal fees and expenses incurred in this matter, including any appellate legal fees and expenses with respect to the prior appeals in this matter, to account for any legal fees and expenses that are not already covered by this order.

IT IS SO ORDERED.

12-9, 2024  
Greenville, South Carolina  
Anderson, SC (RLM)

  
R. LAWTON R. MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
Judge, Tenth Judicial Circuit

ELECTRONICALLY FILED - 2024 Dec 09 4:24 PM - ANDERSON - COMMON PLEAS - CASE#2021CP0401349  
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STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COMMON PLEAS

DEFENDANT IN A CIVIL CASE  
CASE NO. 2021CP0401349

Poly-Med Inc. et al  
PLAINTIFFS

Research Park LLC  
DEFENDANT S

|                                        |                                                                                    |
|----------------------------------------|------------------------------------------------------------------------------------|
| Submitted by <b>R. Lawton McIntosh</b> | Attorney for <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|                                        | or<br><input type="checkbox"/> Self-Represented Litigant                           |

**DISPOSITION TYPE CHOICE ONE**

- ☐ **REVERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12 b , SCRPC; ☐ Rule 41 a , SCRPC Vol. Nonsuit ; ☐ Rule 43 k , SCRPC Settled ; ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40 , SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STATED DEED TO BAN REPTC**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADDED** ☐ See attached order formal order to follow ☒ Statement of judgment by the Court:

**ORDER INFORMATION**

**PLAINTIFF'S MOTION FOR RECONSIDERATION IS DENIED. IT IS NOT NECESSARY TO A FORMAL HEARING. NO FORMAL ORDER REQUESTED.**

This order ☐ ends ☒ does not end the case.

| INFORMATION ABOUT THE JUDGMENT                                                                                                                                                                               |                                       |                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                       |                                                       |
| Judgment in favor of<br>List name s below                                                                                                                                                                    | Judgment Against<br>List name s below | Judgment Amount To be Enrolled<br>List amount s below |
|                                                                                                                                                                                                              |                                       | \$                                                    |
|                                                                                                                                                                                                              |                                       | \$                                                    |
|                                                                                                                                                                                                              |                                       | \$                                                    |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                       |                                                       |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note Title abstractors and researchers should refer to the official court order for judgment details.**

**E-filing Note** In E-filing counties, the Court will electronically sign this form using a separate electronic signature page.

|                     |                    |      |
|---------------------|--------------------|------|
| Circuit Court Judge | 2155<br>Judge Code | Date |
|---------------------|--------------------|------|

**or Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties when appearing pro se as follows:

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEYS FOR PLAINTIFFS

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEYS FOR DEFENDANTS

CLERK OF COURT

**Court Reporter**

**E-filing Note** In E-filing counties, the date of Entry of judgment is the same date as reflected on the Electronic file Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-filers or who are appearing pro se. See Rule 1.1, SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Anderson Common Pleas

**Case Caption:** Poly-Med Inc , plaintiff, et al VS Research Park Llc

**Case Number:** 2021CP0401349

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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ROA\_01614

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

) CASE NO.: 2021-CP-04-01349

Poly-Med, Inc., Technology Drive 51, LLC,  
Technology Drive 52, LLC, PMI Properties, LLC,

Plaintiffs,

v.

Research Park, LLC,

Defendant.

**EXHIBIT**

J

### FINAL JUDGMENT IN A CIVIL CASE

This action came to trial before the Court, and after the issues have been tried or heard and a decision rendered, it is hereby **ORDERED** and **ADJUDGED** that:

As to Plaintiffs' Claims in this Action:

1. On Plaintiffs' First Cause of Action of Plaintiffs' Amended Complaint for Breach of Restrictive Covenant, judgment hereby enters in favor of Plaintiff, Poly-Med, Inc., against Defendant, Research Park, LLC, in the amount of \$74,001.41, plus attorney's fees, costs and expenses in the amount of \$163,644.25, for a total of \$237,645.66, with interest from the date of judgment at the legal rate as provided by law.
2. Judgment hereby enters in favor of Defendant on Plaintiffs' Second Cause of Action for Conversion and Fifth Cause of Action for an Injunction pursuant to prior orders of this Court.
3. Plaintiffs' Third Cause of Action for Unjust Enrichment was dismissed at trial as Plaintiffs have an adequate remedy at law.
4. Summary Judgment entered in favor of Plaintiffs on their Fourth Cause of Action for an Accounting and Plaintiffs have obtained the accounting they sought.

As to Defendants' Counterclaims in this Action:

1. On Defendant's Counterclaim for violation of the restrictive covenant regarding the continued presence of "temporary" office trailers on Plaintiffs' premises and request

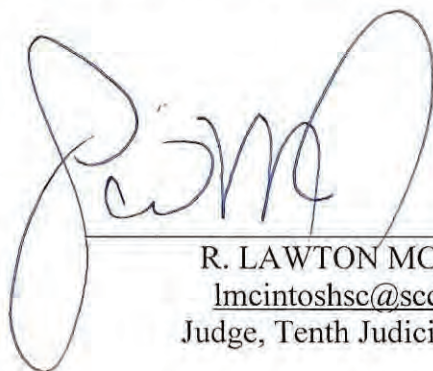
for removal of the trailers, the Court has elected to suspend the imposition of a date certain by which removal must be accomplished. Instead, from time to time and only upon the request of Defendant's counsel, the Court may require Plaintiffs to provide information by which the Court may evaluate Plaintiffs' advances in the removal of such trailers and/or their replacement with permanent structures. If, upon such review, the Court finds that Plaintiffs' progress has been inadequate, the Court reserves the right to order a specific time frame, or date certain, by which the removal of the temporary trailers must be accomplished.

2. Defendants' Counterclaim for failure to make timely payments of maintenance fees was abandoned at trial.

If, and to the extent, there were other claims or counterclaims of the parties in this action, they were disposed of by prior Orders of the Court.

This Final Judgment ends the case.

12-20, 2024  
Anderson, South Carolina



R. LAWTON MCINTOSH  
[lmcintoshsc@sccourts.org](mailto:lmcintoshsc@sccourts.org)  
Judge, Tenth Judicial Circuit