

**COMMONWEALTH OF MASSACHUSETTS  
LAND COURT  
DEPARTMENT OF THE TRIAL COURT**

BARNSTABLE, ss.

CASE NO. 23 MISC 000243-A

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)  
FESTIVA DEVELOPMENT GROUP, INC. )  
    Petitioners )  
)  
v. )  
)  
FESTIVA DEVELOPMENT GROUP, LLC, )  
    Respondent )  
)  
\_\_\_\_\_)

**WARRANT TO COMMISSIONER CHRISTOPHER J. SULLIVAN, ESQUIRE  
TO SELL BY PRIVATE SALE A CERTAIN PARCEL OF REAL PROPERTY IN MASHPEE**

By Interim Order dated February 5, 2024, this Honorable Court appointed Christopher J. Sullivan, Esquire, to serve as Partition Commissioner in this action. As a matter of record title, there are 1,612 interval owners<sup>1</sup> with an interest in the Subject Property known and numbered as Southcape Resort and Club (“Southcape Condominium I”) (“Subject Property”), 950 Falmouth Road, Mashpee, Massachusetts 02649. The Court determined in its January 31, 2024, Interim Order that the right to partition had been established. The Court received the Commissioner’s Third Interim Report on September 30, 2024. The Commissioner and the Parties appeared before the Court on October 10, 2024, for a status conference on the aforementioned report, and further instructions. On November 13, 2024, the Commissioner and the Parties appeared before the court to review this Proposed Warrant for Sale, the Commissioner’s Status Update and various objections. After a thorough review of this Proposed Warrant and the Commissioner’s Status Update, this Court now issues the Warrant to Sell, pursuant to the Further Motion to Issue Warrant for Sale and to G.L.c. 241, §§ 12 and 31.

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<sup>1</sup> Interval owners are those individuals who are now tenants in common of each of the 31 condominium units within Southcape Condominium I, following the termination of the time share supplement.

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TO: Christopher J. Sullivan, Esquire, of Quincy, Massachusetts

YOU were appointed Commissioner, by Order of this Court dated February 5, 2024, to make partition by sale of all the land herein described the sole, common owners of record of which, by their agreement, as follows: all 1,612 interval owners.

Having previously sworn, you are hereby ORDERED to effect partition by making sale of the whole of the Subject Property by private sale. The sale of said Subject Property shall take place as promptly as reasonably possible, and in no event later than six (6) months following the date of issuance of the Warrant to Sell, unless the court allows a later date. Under this Warrant, sale of said Subject Property shall occur by private sale in accordance with the following terms:

1. The Commissioner shall enter into a fee and commission agreement with John O’Toole of Olde Towne Commercial Real Estate Company of Boston (“Broker”) to proceed with a bulk sale of all thirty-one (31) units. Said Fee Agreement shall be conditioned upon the fact that the Broker agrees to accept a four percent (4%) commission for any third-party sales and a two percent (2%) commission for any sale directly to the Petitioner, any affiliates or subsidiaries of Zealandia Holding Company, Inc., or the adjacent LeClaire Village Affordable Housing Complex so long as they are not represented by a buyer’s agent.
2. The Commissioner shall, subject to any particular requirements of law and this Warrant and other orders of this Court, arrange, control, oversee, and establish the terms of the sale of said Subject Property by the Broker. The Commissioner shall enter into an agreement with a buyer for the purchase and sale of the Subject Property (and any necessary and proper amendments to that agreement) and thereafter shall proceed to consummate the sale, all in accordance with and subject to the terms and provisions of applicable law, this Warrant, and any other orders of this Court. The Purchase and Sale Agreement shall contain customary, fair, and reasonable

terms, but the Subject Property shall be sold AS-IS, without warranty or representation of any kind, and without any covenant or undertaking which will survive the delivery of the deed by the Commissioner. The Purchase and Sale Agreement shall provide that the price and other terms of sale shall be subject to review and approval by the court, as provided in this Warrant, and that the sale shall not be consummated unless and until approved by the Court on application of the Commissioner, subject to the rights of the parties to object, all as set forth in this Warrant.

- a. The Subject Property is being sold AS-IS including the record title the Commissioner is able to deliver, the current condition of the septic system, and all tangible personal property including all furniture located in the units.
  - b. The Commissioner shall direct the Broker to develop a website for marketing purposes and as a receptacle for due diligence materials. Due diligence materials shall include but are not limited to title abstracts, Title V inspection reports, a clean 6D Certificate, and any other relevant information.
3. The proposed minimum listing price shall not be less than \$5,499,000 and the proposed minimum sale price shall not be less than \$5,200,000 as determined by the Broker. The Commissioner and the Broker will jointly finalize the listing price and offering statement.
4. The Commissioner is to file his bond at the time a purchase and sale agreement is executed.
5. The expenses and charges of the sale and partition, including those of or incurred by the Commissioner, shall, to the extent they are reasonable, be paid out of the net proceeds of the sale prior to distribution to the parties. (In no event, however, shall the total fees to be paid to the Commissioner exceed, when calculated on an hourly basis for time appropriately expended, the ordinary and customary fees he charges clients for comparable legal services.) After making payment for all such just and proper expenses and charges of the sale and partition and paying any amount actually necessary to clear any liens and encumbrances upon the title to the

Subject Property, the Commissioner shall distribute and pay over the remaining net proceeds of the sale to the parties of this action, in such a manner as to make the partition just.

6. Distributions of the net proceeds from the sale of the Subject Property to the 1,612 interval owners shall be made pursuant to the distribution formula as outlined in the Guardian ad Litem Report dated October 23, 2024, which was adopted by this Court at the Status Conference on November 13, 2024, and is reflected in the Court's docket entry for said conference.
7. Within ten (10) days after execution of a Purchase and Sale Agreement, and while the time for closing is pending under the terms of the Purchase and Sales Agreement, the Commissioner shall present to the court (and serve upon the parties to this action) by written report: a true account of the terms of the private sale; of his incurred and anticipated expenses and charges (with receipts); the name of the buyer and the sum committed by the buyer to be paid for said real estate. Within seven (7) days of service of the Commissioner's written report, the parties are to file and serve any objections they have concerning the report, or their objections will be deemed waived. The court will act on any such objections which may be filed and approve or disapprove the price and terms of sale, on the papers submitted, without hearing, unless the court otherwise orders.
8. Once the court has approved the price and terms of sale, the Commissioner will proceed to consummate the sale; to convey title by Commissioner's Deed; to receive the purchase price from the buyer; to make all necessary adjustments, distributions, and payments associated with the sale (including payments or credits to discharge the Subject Property of any liens thereon, pay off unpaid invoices and make adjustments); all on the closing date set in the Purchase and Sale Agreement, in accordance with this Warrant, and any further orders the Court may enter.
9. Taxation of Sale - The Commissioner shall retain a C.P.A to advise and process any and all tax returns. The Commissioner shall request and receive a FEIN in his capacity as Commissioner and provide it to the closing attorney. The Commissioner shall distribute the funds in

accordance with the Accounting Among the Parties, advice from the C.P.A., relevant tax laws, and paragraph 6 of this Warrant.

At the appropriate time the Commissioner will complete the Accounting. A non-interest-bearing account will be utilized to avoid necessitating a 1041 income tax return and a hold back of funds for the entirety of the audit period because no interest will be earned on the account all of which would delay the Commissioner's Accounting.

10. The parties are directed to provide full access to the Commissioner and the Broker, to the extent necessary, to ready the Subject Property for sale, to market the Subject Property, and to show the premises on short notice. Without limiting the generality of the preceding sentence, the Trustees of Southcape Condominium I and their property managers and representatives are, upon request, to provide the Commissioner and/or the Broker with keys, access codes, and anything else required to facilitate access.
11. Within forty-five (45) days following the closing on the sale of said Subject Property, unless the court shall otherwise order, or unless a written report is filed indicating the need for evidentiary proceedings pursuant to above paragraph 6, you are required to present to this Court, under oath, a true account of the payments made by you, and to return this Warrant with your doings endorsed thereon, accompanied by the receipts of the persons whom you have paid.

**SO ORDERED**

By the Court (Rubin, J.) /s/ Diane R. Rubin

Attest:

/s/ Deborah J. Patterson  
Deborah J. Patterson, Recorder

Dated: November 21, 2024