

Doc # 2006163630
Page 1 of 11
Date: 11/07/2006 10:21A
Filed by: SKAMANIA COUNTY TITLE
Filed & Recorded in Official Records
of SKAMANIA COUNTY
SKAMANIA COUNTY AUDITOR
J MICHAEL GARVISON
Fee: \$42.00

Return Address:

CROCKER KUNO OSTROVSKY LLC
720 Olive Way, Suite 1000
Seattle, WA 98101

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. Order Appointing Inverness Group LLC as Special Master

Reference Number(s) of Documents assigned or released:

N/A

Grantor(s) (Last name, first name, initials)

Skamania Coves Resort, LLC

Grantee(s) (Last name first, then first name and initials)

Inverness Group LLC

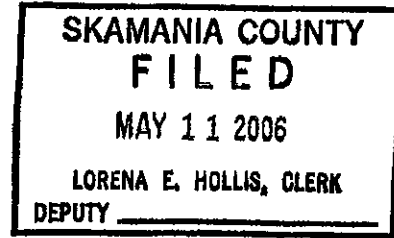
Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

#1200, Section 31, Township 3 N, Range 8 E, Willamette Meridian, Skamania County, Washington

Full Legal IS of Page 11

Assessor's Property Tax Parcel/Account Number 03-08-31-0-01200-00

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.



7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR SKAMANIA COUNTY

9 FREDERICK C. JOHNSTON,

10 Plaintiff,

11 v.

12 STEVE A. KONELL and KIMBERLY F.
13 KONELL, husband and wife, and SKAMANIA
COVES RESORT, LLC, a Washington limited
liability company,

14 Defendant.
15

Case No. 01-2-00153-3

**ORDER APPOINTING INVERNESS
GROUP LLC AS SPECIAL MASTER**

16 This matter came on regularly for hearing before the Honorable E. Thompson Reynolds
17 on April 27, 2006; all parties having appeared through counsel, and the court deeming itself fully
18 advised, now, therefore, it is hereby ORDERED:

19 1. **Appointment of Special Master:** Inverness Group LLC, by and through its
20 Managing Partner, John L. Davidson, is hereby appointed as Special Master of the assets of
21 Skamania Coves Resort, LLC, to take charge of and assume control of all real and personal
22 property, and tangible or intangible assets, of Skamania Coves Resort, LLC (collectively, the
23 "Assets") for the purpose of liquidating said assets and winding up the affairs of the Skamania
24 Coves Resort, LLC; except that the majority member Steve Konell shall continue to manage the
25 on-site day-to-day affairs of the Skamania Coves Resort.

26 ///

1 ORDER APPOINTING INVERNESS GROUP LLC AS SPECIAL
MASTER

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1 2. **Inverness Group LLC** (the "Special Master") may at any time file a motion
2 requesting that it be exonerated, discharged, and released from its appointment as Special
3 Master. The Special Master's motion may be heard at the first opportunity for Skamania County
4 Court's motion docket following the Special Master's motion. Regardless of the posture of the
5 Special Master's motion, the Special Master shall have no continuing obligation to perform his
6 duties as Special Master hereunder 30 days after the date the motion is filed ("Suspension Date");
7 provided, however, that the Special Master shall provide such accountings or additional services
8 as the Court may direct relating to the Special Master's duties or performance prior to the
9 Suspension Date.

10 3. **Bond and Oath.** The appointment of the Special Master is subject to the Special
11 Master furnishing as soon as practicable a bond in the sum of \$10,000 approved by the above-
12 entitled Court, conditioned upon his faithful discharge of his duties as Special Master. The cost
13 of the bond shall be reimbursable to the Special Master. Entry of this order, or of a true copy
14 hereof, countersigned by the Special Master or an authorized representative of the Special
15 Master, evidences the Special Master's acceptance of his rights and duties hereunder and
16 constitutes administration of any required oath of office; upon furnishing the bond the Special
17 Master need take no further action to be approved and appointed as the Special Master in this
18 matter.

19 4. **Powers and Duties.** The Special Master shall have exclusive possession and
20 control over all Assets with the power and authority to preserve and protect them for the benefit
21 of the creditors and members of Skamania Coves Resort, LLC. Except as otherwise limited by
22 this order, the Special Master may do all things that can be done by any and all members of the
23 Skamania Coves Resort, LLC. The Special Master will attempt to consult with the current
24 members, but ultimately, the Special Master has final authority to make all decisions in
25 connection with the liquidation of the Skamania Coves Resort, LLC assets as permitted under
26 this Order. The Special Master is vested with all of the powers, rights and duties of Special

2 ORDER APPOINTING INVERNESS GROUP LLC AS SPECIAL
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1 Masters or Custodians appointed under Washington law including, without limitation, the
2 following rights, powers and duties:

3 **Sale of the Assets.** The Special Master shall initiate and direct the sale of the assets,
4 including real property assets. The Special Master shall employ such professional resources, as
5 the Special Master, in his sole discretion, considers necessary to the sale effort. Such resources
6 may include, but are not limited to real property brokers, appraisal firms, and others. The
7 Special Master is authorized to review any current listings of the real property assets and make
8 any changes that the Special Master deems appropriate and necessary.

9 **Possession of Assets.** Until further order of this Court, the Special Master shall have the
10 right to take and keep possession of all assets, including without limitation all bank accounts,
11 rent, fees or other collections received by majority member Steve Konell through his
12 management of the on-site day-to-day affairs of the Skamania Coves Resort, and the real and
13 personal property of Skamania Coves Resort, LLC.

14 **Collection of Accounts.** If he deems it appropriate, the Special Master may commence
15 legal action to pursue collection of any account or other amounts receivable without prior court
16 approval and may make any other changes he deems necessary to the management of the
17 Skamania Coves Resort to insure collection of monies due.

18 **Completion of Contracts.** The Special Master may assume and complete any contract
19 or any other transaction in the operation of Skamania Coves Resort, LLC that he deems prudent
20 in his business judgment to undertake, and may contract for the labor, materials, equipment and
21 service necessary to perform such contracts. The Special Master may apply to this Court to
22 reject and terminate any incomplete contract or unexpired lease of Skamania Coves Resort, LLC,
23 as the Special Master deems prudent in his reasonable business judgment.

24 **Obtaining Secured Credit.** Following six business days' notice (or such other notice as
25 the Court may approve) and the opportunity for parties in interest to request a hearing, the
26 Special Master may borrow money upon such terms and conditions as are commercially

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1 reasonable in the banking industry for the type of loan and amount of money borrowed by the
2 Special Master, including the right to grant security interests in the assets of Skamania Coves
3 Resort, LLC.

4 **Contracts and Employees.** In order to perform his responsibilities, the Special Master
5 may contract or otherwise provide for goods, materials, services, and supplies as determined by
6 the Special Master in his reasonable business judgment to be necessary and appropriate, and to
7 pay such sums as he determines to be reasonable for such goods, materials, services and supplies.
8 The Special Master shall be free at all times to discharge any such contractors (including
9 members) from the Special Master's employ, with or without cause.

10 **No Obligation to Complete Tax Returns.** Notwithstanding any other provision hereof,
11 the Special Master shall be under no obligation to complete or file tax returns on behalf of
12 Skamania Coves Resort, LLC for income or other taxes arising before the date of this order.
13 While acting as Special Master, the Special Master shall comply with all applicable laws and
14 regulations relating to tax reporting requirements. The Special Master shall furnish members of
15 Skamania Coves Resort, LLC with such access to books and records within the Special Master's
16 custody or control as reasonably may be necessary in order for Skamania Coves Resort, LLC to
17 complete and file tax returns on its own behalf.

18 **Court Actions.** The Special Master may bring and prosecute actions for the recovery of
19 any assets which may be in the possession of any third party, and, with the approval of the Court,
20 it may employ attorneys and other professionals as determined by the Special Master to be
21 necessary to assist it in fulfilling his duties. Employment of any such professionals shall only be
22 after notice and approval of the above-entitled Court.

23 **Settlement Authority.** The Special Master may compromise and settle claims where the
24 disputed amount does not exceed \$1,000 without approval of the Court and without notice to
25 parties.

26 ///

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1 **Care of Property; Repairs by Special Master; Insurance.** The Special Master shall
2 maintain any real and tangible personal property owned by Skamania Coves Resort, LLC that
3 may be transferred to his control in the condition similar to that at the time received, ordinary
4 wear and tear excepted. The Special Master may make such repairs and alterations to any assets
5 as the Special Master determines to be prudent or legally required. The Special Master is
6 authorized to insure, maintain, and protect the assets and may incur expenses to do so. The
7 Special Master may review all existing insurance coverage with respect to the assets. The
8 Special Master may maintain in place existing insurance policies, or procure such replacement or
9 additional insurance policies, as it determines to be most economical and convenient, and to pay
10 all premiums in connection therewith whether presently due or becoming due after the date of
11 this order.

12 **No Personal Obligation of Special Master.** No obligation incurred by the Special
13 Master in the good faith performance of his duties in accordance with the orders of this Court
14 whether pursuant to any contract, by reason of any tort, or otherwise, shall be the Special
15 Master's obligation. Rather, the recourse of any person or entity to whom the Special Master
16 becomes obligated in connection with the performance of his duties and responsibilities shall be
17 solely against the assets of the Special Mastership estate.

18 **Standard of Care.** The Special Master shall at all times exercise ordinary care in
19 employing his business judgment to administer the assets.

20 **Licenses and Permits.** The Special Master may acquire or renew all governmental
21 licenses, permits, or other authorizations, either in the Special Master's name or in the name of
22 Skamania Coves Resort, LLC, pertaining to the assets or any business associated therewith and
23 to do all other things necessary or appropriate to sell the assets.

24 **Cooperation With Special Master.** The parties to this proceeding, their attorneys, and
25 all of the officers, directors, managers, agents, and employees of Skamania Coves Resort, LLC
26 shall cooperate with the Special Master in connection with his management, operation, and

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1 liquidation of the assets. Each of them shall relinquish and deliver possession of the assets to the
2 Special Master upon his demand, and shall turn over to the Special Master all records, books,
3 contracts, lease documents, plans, and specifications, accounting records, deposits and
4 documents relating to the financing, management, control, operation and preservation of the
5 assets as the Special Master may demand, upon demand, and each of them is enjoined from
6 interfering with the liquidation of the assets by the Special Master.

7 **Provision of Information.** Upon a reasonable request of either Skamania Coves Resort,
8 LLC member, the Special Master shall make available records, files and information concerning
9 the affairs of the LLC.

10 **Administration.** The Special Master is authorized to employ the following procedures
11 and case administration:

12 **Bank Accounts.** The Special Master may establish bank accounts with any federally
13 insured financial institution for the purpose of receiving and disbursing funds used for the
14 liquidation of the assets and business of Skamania Coves Resort, LLC or may continue to use the
15 Company's existing accounts.

16 **Professional Services.** The Special Master may contract for professional services
17 including, but not limited to, such legal and accounting services as are reasonably required for
18 the Special Master to discharge his duties in relation to Skamania Coves Resort, LLC.

19 **Financial Reports.** The Special Master shall establish a suitable accounting system for
20 recording and reporting the Special Master's fees and reimbursable expenses, and the other
21 necessary costs and expenses incurred in the performance of his duties, including payment of
22 professionals. The Special Master shall file on or before August 17, 2006, his first report for the
23 period from the date of this order through July 31, 2006. Thereafter, the Special Master shall file
24 and serve on the parties a quarterly report for each quarter's activity, by the last day of the month
25 following the end of the quarter. No hearing shall be required unless a party or creditor requests
26 a hearing on notice or objects to any accounting or budget.

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1 **Fee.** The Special Master shall be compensated based upon an hourly rate of \$210,
2 reasonable costs and expenses, plus any commission earned as set forth below. The Special
3 Master shall charge for no more than 10 hours per week, unless notice is provided in advance.
4 The Special Master shall not be entitled to compensation for any travel time. Travel and other
5 related expenses, subject to the approval of the court, shall be reimbursable to the Special
6 Master. The Special Master agrees to defer compensation until sale of substantially all of the
7 assets or upon discharge of the Special Master by subsequent order of the Court, whichever event
8 shall occur earlier. This Order shall create a lien for the benefit of the Special Master that shall
9 have priority over the interests of any and all members of the Skamania Coves Resort, LLC in
10 closing of any sale of assets.

11 **Commission.** Upon sale of the assets (Transaction) in which substantially all of the
12 assets are transferred to one or several third parties, or to either of the Parties, the Special Master,
13 in addition to his fee, shall be entitled to a commission. The Special Master shall, in his sole
14 discretion, retain and compensate from the sale proceeds, a nationally known brokerage firm
15 to market the property. The total commission, including those paid to the brokerage firm and to
16 the Special Master on the sale of the property shall not exceed 7% of the sale price. The
17 application of the commission between the Special Master and the broker shall be negotiated and
18 agreed as part of the sale listing agreement. For purposes of the commission, consideration shall
19 include cash, assumption of debt, or forgiveness of debt held by a buyer.

20 **Payment of Fees of Professionals.** The Special Master is authorized to make payment
21 as follows:

22 (1) the Special Master shall file a notice of intent to compensate and serve such
23 notice, together with a reasonably detailed description of the time periods, services, and amount
24 requested on parties in interest.

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1 (2) If no party in interest objects to such accounting within ten calendar days of its
2 filing, the fees and costs shall be deemed approved as being fully and finally earned without
3 further order or leave of the Court.

4 (3) Until such fees and costs are approved either through the process described above
5 or by order of the Court, the Special Master may only segregate sums for such fees.

6 (4) The Special Master may provide notice of compensation every other week. The
7 commission, if any, earned by the Special Master in conjunction with the sale of assets of the
8 Skamania Coves Resort, LLC shall be payable from the assets only after review and approval by
9 this or any other Court then having jurisdiction.

10 **Court Approval; Procedure.** Any motion by the Special Master for court approval of
11 any act of the Special Master requiring court approval shall be served on the members of
12 Skamania Coves Resort, LLC by service upon their counsel. In addition to service by mail or
13 personal service, service may be made by telefacsimile. Notwithstanding any provision of this
14 order requiring court approval of any act of the Special Master, the Special Master may
15 nonetheless undertake an action without prior court approval if he obtains the written consent of
16 each party hereto and each other person who has filed and served on the Special Master a request
17 for special notice.

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1 **Further Instructions.** The Special Master may at any time apply to this Court for
2 further or other instructions, or for a modification of this order, or for further powers necessary to
3 enable the Special Master properly to perform his duties, or for termination of the Special
4 Master's appointment.

5 DATED this 11th day of May, 2006.

6
7
8 _____
The Honorable Thompson E. Reynolds

9 Presented by:

10 _____
11 Mark J. McGranaghan, WSBA # 34243
12 Of Attorneys for Plaintiff

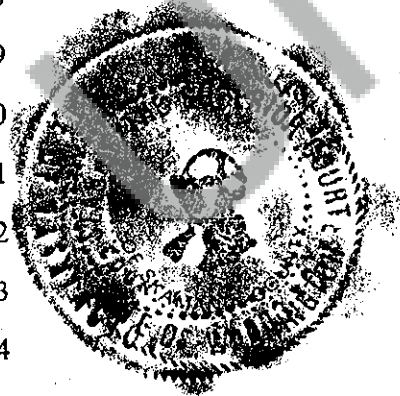
13 Appointment of Special Master Accepted:

14 _____
15 Inverness Group LLC / John L. Davidson
16

17
18 State of Washington }
County of Skamania } SS

19 I, Lorena E. Hollis, County Clerk of the Superior
20 Court of Skamania County, Washington, DO HEREBY
21 CERTIFY that this instrument, consisting of 9
22 page(s), is a true and correct copy of the original
now on file and of record in my office and, as County
23 Clerk, I am the legal custodian thereof.

24 Signed and sealed at Stevenson, Washington
this date 11-07-2006
LORENA E. HOLLIS County Clerk
25 BY J. L. Davidson Deputy
26



9 ORDER APPOINTING INVERNESS GROUP LLC AS SPECIAL
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Exhibit A

All that portion of Government Lots 2,3 and 4, in Section 31, Township 3 North, Range 8 East of the Willamette Meridian, Skamania County, Washington, which lies South of the South line of that tract conveyed to the State of Washington, by deed recorded June 18, 1929, as Auditor's File No. 15726, Skamania County Deed Records.

EXCEPTING THEREFROM a strip of land 100 feet in width conveyed to the Portland and Seattle Railway Company, by deed recorded February 15, 1906, in Book 1, page 450, Skamania County Deed Records.

ALSO EXCEPTING that portion of the Easterly 75 feet of Government Lot 4, lying Southerly of State Highway 8 and Northerly of the tract conveyed to the Portland and Seattle Railway Company.

Unofficial Copy