



200704260007
Skagit County Auditor

4/26/2007 Page

1 of

7 8:51AM

State of Washington

**Deed of Trust
With Assignment of Rents**

FIRST AMERICAN TITLE CO.

89756-1

This Deed of Trust, is made this as of the 24th day of April, 2007, between HYATTCENTERS-ANACORTES, LLC, a Washington limited liability company as Grantor, whose address is 5102 Scenic Drive, Yakima, Washington 98908; and First American Title Insurance Company, as Trustee, whose address is 2101 Fourth Avenue, Suite 800, Seattle, Washington 98121 and CWCAPITAL LLC as Beneficiary, whose address is 63 Kendrick Street, Needham, Massachusetts 02494.

Witnesseth: That Grantor grants, transfers, and assigns to Trustee in trust, upon the trusts, covenants, conditions and agreements and for the uses and purposes hereinafter contained, with power of sale, all that real property situate, lying and being in Skagit County, State of Washington, described as follows:

Abbr. Legal: Portion SE SE S-24, T 35N, R 1E

See Exhibit A attached hereto and incorporated herein by reference.

Tax Parcels: P 31871, P 111715 and P 111716

Together with the rents, issues, and profits thereof, **subject, however, to the right, power and authority** hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and any operating lease entered into by Grantor, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot-water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

Together with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and

Together with all articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the ones herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner, and said Grantor agrees to execute a security agreement covering the aforesaid fixtures and articles of personal property, at the time of placing such personal property or any part thereof in the building or buildings to be erected on the lands herein described in the manner and form required by law, at its expense and satisfactory to the Beneficiary.

To have and to hold the property hereinbefore described together with appurtenances to the Trustee, its or his successors and assigns forever.

When and if Grantor and Beneficiary shall respectively become Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting property either referred to or described herein, or in any connection with the use and enjoyment of these premises, this Deed of Trust shall be deemed a Security Agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all Beneficiary's sole election. Grantor and Beneficiary agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the property that is the subject of this Deed of Trust and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal and equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Beneficiary, (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time.

For the purpose of securing performance of each agreement of Grantor herein and payment of a just indebtedness of the Grantor to the Beneficiary in the principal sum of Seven Million Eight Hundred Eighty-One Thousand Three Hundred and 00/100 Dollars (\$7,881,300.00), evidenced by its Note of even date herewith, bearing interest from date on outstanding balance at five and one-half percent (5.50%) per annum, said principal and interest being payable in monthly installments as provided in said Note with a final maturity of May 1, 2042 which Note is identified as being secured hereby by a certificate thereon. Said Note and all of its terms are incorporated herein by reference and this conveyance shall secure any and all extensions thereof, however evidenced.

And to protect the security of this Deed of Trust, grantor covenants and agrees:

1. That it will pay the Note at the times and in the manner provided therein;
2. That it will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.
3. That the Regulatory Agreement, if any, executed by the Grantor and the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, which is being recorded simultaneously herewith, is incorporated in and made a part of this Deed of Trust. Upon default under the Regulatory Agreement and upon the request of the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Grantor so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Regulatory Agreement;

5. That upon default hereunder Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. The property that is the subject of this Deed of Trust is not used principally or primarily for agricultural or farming purposes.

7. That at the option of the Grantor, the principal balance secured hereby may be reamortized on terms acceptable to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, if a partial prepayment results from an award in condemnation in accordance with the provisions of Paragraph 21, herein, or from an insurance payment made in accordance with the provisions of Paragraph 8 herein, where there is a resulting loss of project income;

8. That the Grantor will keep the improvements now existing or hereafter erected on the deeded property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner upon the insurance of the Deed of Trust and other hazards and liabilities as may be required from time to time by the Beneficiary, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies, in amounts not less than necessary to comply with the applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than 80 percent of the Insurable Values or not less than the unpaid balance of the insured Deed of Trust, whichever is the lesser, and in default thereof the Beneficiary shall have the right to effect insurance. Such policies shall be endorsed with standard Mortgagee clause with loss payable to the Beneficiary and the Secretary of Housing and Urban Development as interest may appear, and shall be deposited with the Beneficiary. The insurance carrier providing such insurance shall be chosen by the Grantor subject to approval by the Beneficiary; provided that such approval shall not be unreasonably withheld;

That if the premises covered hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held hereinabove provided, the amounts paid by any insurance company in pursuance of the Contract of Mortgage Insurance to the extent of the indebtedness then remaining unpaid, shall be paid to the Beneficiary, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the premises. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale held hereunder;

9. Together with and in addition to the monthly payments of interest or of principal and interest payable under the terms of said Note, to pay to Beneficiary monthly



200704260007
Skagit County Auditor

until said Note is fully paid, beginning on the first day of the first month after the date hereof, the following sums:

- (a) An amount sufficient to provide the Beneficiary with funds to pay the next mortgage insurance premium if this instrument and the Note secured hereby are insured, or a monthly service charge, if they are held by the Secretary of Housing and Urban Development, as follows:

(I) If and so long as said Note of even date and this instrument are insured or are reinsured under the provisions of the National Housing Act, an amount sufficient to accumulate in the hands of the Beneficiary one month prior to its due date the annual mortgage insurance premium, in order to provide such Beneficiary with funds to pay such premium to the Secretary of Housing and Urban Development, pursuant to the National Housing Act, as amended, and applicable Regulations thereunder, or

(II) Beginning with the first day of the month following an assignment of this instrument and the Note secured hereby to the Secretary of Housing and Urban Development, a monthly service charge which shall be an amount equal to one-twelfth of one-half percent (1/12 of 1/2%) of the average outstanding principal balance due on the Note computed for each successive year beginning with the first of the month following such assignment, without taking into account delinquencies or prepayments.

- (b) A sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, taxes and assessments next due on the premises covered hereby (all as estimated by the Beneficiary) less all sums already paid therefore divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, water rates, taxes and assessments will become delinquent, such sums to be held by Beneficiary in trust to pay said ground rents, premiums, water rates, taxes, and special assessments.

- (c) All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the Note secured hereby shall be added together and the aggregate amount thereof shall be paid each month in a single payment to be applied by Beneficiary to the following items in the order set forth:

(i) premium charges under the Contract of Mortgage Insurance with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, or service charge;

(ii) ground rents, taxes, special assessments, water rates, fire and other property insurance premiums;

(iii) interest on the Note secured hereby;

(iv) amortization of the principal of said Note.

10. Any excess accumulated under paragraph (b) above remaining after payment of the items therein mentioned shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item

shall exceed the estimate therefore, the Grantor shall without demand forthwith make good the deficiency. Failure to do so before the due date of such item shall be a default hereunder. In case of termination of the Contract of Mortgage Insurance by prepayment of the mortgage in full, or otherwise (except as hereinafter provided), accumulations under paragraph (a) above not required to meet payments due under the Contract of Mortgage Insurance, shall be credited to the Grantor. If the property is sold under foreclosure or is otherwise acquired by the Beneficiary after default, any remaining balance of the accumulations under paragraph (b) above shall be credited to the principal of the debt as of the date of commencement of foreclosure proceedings or as of the date the property is otherwise acquired; and accumulations under paragraph (a) above shall be similarly applied unless required to pay sums due to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner under the Contract of Mortgage Insurance;

11. To keep said property in good condition and repair, not to remove or demolish any buildings thereon; to complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any alteration of or addition to the buildings or improvements hereafter constructed in or upon said property without the consent of the Beneficiary;

12. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

13. Should Grantor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees;

14. The Beneficiary shall have the right to pay mortgage insurance premiums or fire and other property insurance premiums when due to the extent that monthly payments made hereunder for the purpose of meeting same are insufficient. All such payments made by the Beneficiary shall be added to the principal sum secured hereby.

15. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in said Note.



200704260007
Skagit County Auditor

~~16. That the funds to be advanced hereunder are to be used in the construction of certain improvements on the lands herein described in accordance with a certain building loan agreement made by and between Grantor and the Beneficiary dated the _____ day of _____, 10, which building loan agreement (except such part or parts thereof as may be inconsistent herewith) is incorporated herein by reference to the same extent and effect as if fully set forth herein, and made a part of this Deed of Trust, and on the failure of the Grantor to keep and perform all the covenants, conditions, and agreements of said building loan agreement thereupon, the principal sum and of all arrears of interest, and other charges provided for herein shall at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding. This covenant shall be terminated upon the completion of the building or buildings to the satisfaction of the Beneficiary and the making of the final advance as provided in said building loan agreement.~~

17. The Grantor further covenants that it will not voluntarily create, suffer or permit to be created against the property subject to this Deed of Trust any lien or liens inferior or superior to the lien of this Deed of Trust and further that it will keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises;

18. That the improvements ~~about to be made~~ upon the premises, covered by the Deed of Trust, ~~and all plans and specifications~~ comply with all municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same ~~will upon completion~~ comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

19. That so long as this Deed of Trust and the Note secured hereby are insured under the provisions of the National Housing Act, or held by the Secretary of Housing and Urban Development, it will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed.

It is mutually agreed that:

20. That if the ~~maintenance construction~~ of the improvements herein referred to shall not be carried on with reasonable diligence or shall be discontinued at any time for any reason ~~other than strikes or lockouts~~, the Beneficiary, after due notice to the Grantor or any subsequent owner, is hereby invested with full and complete authority to enter upon said premises, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, ~~and to continue any and all outstanding contracts for the erection and completion of said building or buildings~~, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Grantor, and to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by the Beneficiary (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Deed of Trust and shall be due and payable on demand with

interest at the rate specified in said Note, but no such advances shall be insured unless same are specifically approved by the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, prior to the making thereof;

21. That all awards of compensation in connection with condemnation for public use or a taking of any of that property, shall be paid to the Beneficiary to be applied to the amount due under the Note secured hereby in (1) amounts equal to the next maturing installment or installments of principal and (2) with any balance to be credited to the next payment due under the Note. That all awards of damages in connection with any condemnation for public use of, or injury to any residue of that property, shall be paid to the Beneficiary to be applied to a fund held for and on behalf of the Grantor which fund shall, at the option of the Beneficiary, and with the prior approval of the Secretary of Housing and Urban Development, either be applied to the amount due under the Note as specified in the preceding sentence, or be disbursed for the restoration or repair of the damaged residue. No amount applied to the reduction of the principal amount due in accordance with (1) shall be considered an optional prepayment as the term is used in this Deed of Trust and the Note secured hereby, nor relieve the Grantor from making regular monthly payments commencing on the first day of the first month following the date of receipt of the award. The Beneficiary is hereby authorized in the name of the Grantor to execute and deliver valid acquittances for such awards and to appeal from such awards.

22. At any time upon written request of the Beneficiary, payment of its fees and presentation of this Deed and the Note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The Grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof.

23. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder or should this Deed of Trust and said Note not be eligible for insurance under the National Housing Act within eight (8) months from the date hereof (written statement of any officer of the Department of Housing and Urban Development or authorized agent of the Secretary of Housing and Urban Development dated subsequent to eight (8) months' time from the date of this Deed of Trust, declining to insure said Note and this Deed of Trust, being deemed conclusive proof of such ineligibility), or should the commitment of the Department of Housing and Urban Development to insure this loan cease to be in full force and effect for any reason whatsoever, Beneficiary may declare all sums secured hereby immediately due and payable. No waiver by Beneficiary of any default on the part of Grantor shall be construed as a waiver of any subsequent default hereunder.

24. Upon default or upon the happening of any event described in Paragraph 23 above, and upon written consent of Beneficiary Trustee shall sell the trust property, in



200704260007

Skagit County Auditor

accordance with the Deed of Trust Act of the State of Washington, at public auction, to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto; Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had, or had the power to convey at the time of its execution of this Deed of Trust, and such as it may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington, is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. The Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

25. Notwithstanding any other provision contained herein or in the Note, it is agreed that the execution of the Note shall impose no personal liability upon the Grantor for payment of the indebtedness evidenced thereby and in the event of a default, the holder of the Note shall look solely to the property subject to Deed of Trust and Security Agreement of even date between Grantor and Beneficiary and to the rents, issues and profits thereof in satisfaction of the indebtedness evidenced by the Note and will not seek or obtain any deficiency or personal judgment against the Grantor except such judgment or decree as may be necessary to foreclose or bar its interest in the property subject to this Deed of Trust and all other property mortgaged, pledged, conveyed or assigned to secure payment of the Note; provided, that nothing in this condition and no action so taken shall operate to impair any obligation of the maker under the Regulatory Agreement herein referred to and made a part hereof.

26. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which when duly recorded in the proper office of the county or counties in

which the property is situated, shall be conclusive proof of proper appointment of the successor trustee;

27. By accepting payment of any sums secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or declare default for failure so to pay.

28. The collection of rents, issues, and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

29. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto;"

30. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

31. The trust created hereby is irrevocable by Grantor.

32. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of each Grantor hereunder are joint and several;

33. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party unless brought by Trustee;

34. The undersigned Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the mailing address opposite his name hereto. Failure to insert such address shall be deemed a waiver of any request hereunder for a copy of such notices.



200704260007

Skagit County Auditor

Street and Number

5102 Scenic Drive

Mailing Address for
Notices City and State

Yakima, Washington 98908

Name of Trustor

Hyattcenters-Anacortes, LLC

In witness whereof the Grantor has caused its name to be hereunto subscribed the day and year herein first above written.
HYATTCENTERS-ANACORTES, LLC,
a Washington limited liability company

By

H. Norman Hyatt
H. Norman Hyatt, Managing Member

By

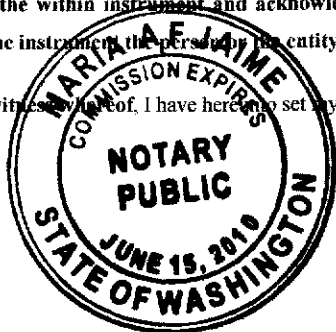
State of Washington)

) (ss:

County of Yakima)

On this 27th day of April, 2007, before me, MARIA A F JAIME, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared H. Norman Hyatt, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or the entity on behalf of which the person acted, executed the instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



Maria A F Jaime
Notary Public in and for the State of Washington,

residing at

Yakima

(Seal)

My appointment expires

June 15, 2010



200704260007
Skagit County Auditor

Exhibit A

LEGAL DESCRIPTION:

Lots 1, 2 and 3, City of Anacortes Short Plat No. 91-005, approved October 24, 1991, Recorded November 4, 1991, in Book 10 of Short Plats, pages 24 and 25, under Auditor's File No. 9111040088, and being a portion of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 24, Township 35 North, Range 1 East, W.M., all in Skagit County, Washington.



200704260007

Skagit County Auditor

4/26/2007 Page 7 of 7 8:51AM