



201304220029

Skagit County Auditor

4/22/2013 Page

1 of

9 9:09AM

RETURN TO:

P. Hayden
PO Box 454
Sedro-Woolley, WA 98284

DOCUMENT TITLE(S) (or transactions contained herein):

**AGREEMENT BETWEEN TENANTS IN COMMON REGARDING THE CURRENT
USE AND FUTURE PARTITION OF REAL PROPERTY**

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

GRANTOR(S) (Last name, first name and initials):

1. DelNagro, Phillip A.
2. Francis, Lester
3. Francis, R. Lorrie

GRANTEE(S) (Last name, first name and initials):

1. DelNagro, Phillip A.
2. Francis, Lester
3. Francis, R. Lorrie

LEGAL DESCRIPTION (Abbreviated: i.e., lot, block, plat or quarter, quarter, section, township and range).

Lot 13, "PLAT OF WINDSONG RANCH ESTATES," as per plat recorded on April 9, 2008, under Auditor's File No. 200804090083, records of Skagit County, Washington; situated in Skagit County, Washington.

ASSESSOR'S PARCEL/TAX I.D. NUMBER:

P42280 / 4953-000-013-0100

P42294 / 4953-000-013-0000

ORIGINAL

**AGREEMENT BETWEEN TENANTS IN COMMON REGARDING THE CURRENT
USE AND FUTURE PARTITION OF REAL PROPERTY**

This agreement is made this 25 day of February, 2010 between Lester Francis and R. Lorrie Francis, husband and wife, hereinafter "Francis", and Phillip A. DelNagro, as his separate property, whose wife Karen DelNagro signs to bind the marital community, hereinafter "DelNagro", collectively referred to as "Owners", as follows:

Whereas, Francis executed Purchase and Sale Agreement with Aloha Lumber Co. dated March 20, 2007 for the purchase and sale of Lots 1 and 12 acres of Lot 13, Windsong Ranch Estates Plat, and

Whereas, Francis has signed a Purchase and Sale Agreement with Aloha Lumber Co. for the purchase and sale of Lot 13 and other property, dated September 12, 2007, and

Whereas, the March 20, 2007 Purchase and sale agreement provided for the boundary line adjustment of 12 acres from Lot 13 to Lot 1, and

Whereas, DelNagro has acquired the interest of Francis in the Purchase and Sale agreement dated March 20, 2007, and has purchased the property for both parties by Statutory Warranty Deed dated April 11, 2008 and recorded in Skagit County Auditor File No. 200804180203, with an understanding that they would execute this agreement and a subsequent deed creating a tenancy in common, and

Whereas, DelNagro and Francis agreed that until the Boundary Line Adjustment referenced in the agreement can be accomplished, DelNagro and Francis will own Lot 13 as tenants in common, with DelNagro owning 12/106.29 undivided interest in Lot 13 (which represents 12 acres identified on **Exhibit A**) and Francis owning the remaining undivided interest in Lot 13, Windsong Estates Plat.

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Francis and DelNagro shall hold title to Lot 13 ("the Property") as tenants in common, with DelNagro owning a fractional 12/106.29 undivided interest and Francis owning a fractional 94.29/106.29 undivided interest in the following described real property:

Lot 13, "PLAT OF WINDSONG RANCH ESTATES," as per plat recorded on April 9, 2008, under Auditor's File No. 200804090083, records of Skagit County, Washington; situated in Skagit County, Washington.

Subject to easements and restrictions of record.

This property is illustrated on the Attached **Exhibit A**.



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2. DelNagro has initially acquired the total interest in the property, for purposes of providing a first position deed of trust dated April 17, 2008, recorded in Skagit County Auditor File No. 200804180204, to Washington Federal Savings as beneficiary in conjunction with the purchase of Lot 1, and shall thereafter convey a fractional 94.29/106.29 undivided interest to Francis, subject to said deed of trust and no other encumbrances other than those existing upon his acquisition of the property which are inherent in the plat. DelNagro shall pay the deed of trust and all other liens and encumbrances arising by or through DelNagro, according to its terms, and indemnify, defend, and hold Francis and his interest in the above-described real estate harmless therefore.

3. When legally permissible, DelNagro and Francis shall partition Lot 13 with DelNagro acquiring 12 acres as a Boundary Line Adjustment to Lot 1, or as a separate lot, or by an alternative division to be approved by Francis, free and clear of any interest of Francis and liens or encumbrances arising through Francis, and Francis shall acquire the remaining acreage of Lot 13 free and clear of any interest of DelNagro and liens or encumbrances arising through DelNagro. Any dispute over the terms of the partition or the location of the partition boundaries shall be subject to arbitration as set forth below. Francis shall pay the cost of any survey, application, and related costs and fees to any governmental agency for the Boundary line Adjustment, or alternate division or partition of the property. DelNagro shall pay any costs or fees charged by his lender and lienholders.

4. DelNagro shall have exclusive use, control and occupancy of the 12 acres identified on Exhibit A, which he shall access from Lot 1. Francis shall have exclusive use, control and occupancy of the remaining acreage of Lot 13, and shall access this property from a different location under his control. The interim division of the property for purposes of this section may be done by approximation. However, at the time of partition of Lot 13, the parties shall survey 12 acres of the property, and any fences shall be adjusted to conform to the survey.

5. The parties shall maintain Lot 13 in open space/current use tax classifications, and shall set up a joint bank account for purposes of paying their share of taxes and insurance, prorated based on the assessed value of their acreage. Neither party shall build a structure on Lot 13 without consent of the other party. Both parties shall construct and maintain a common fence dividing their respective areas of exclusive use, control and occupancy. Any dispute over the location of the interim fence and the interim use of the property shall be subject to arbitration as set forth below.

6. Except as provided herein, neither party shall encumber Lot 13, or permit it to be encumbered, by any lease, mortgage, deed of trust, conveyance, contract, judgment, or lien, whether voluntary or involuntary, without the consent of the other party. In the event a lien is acquired, the lienholder shall first agree to be bound by this agreement.

7. No Owner shall, either directly or indirectly, make an application to any court for a partition of the Property except as otherwise expressly provided herein. The parties agree to and do hereby waive the right of partition with respect to the Property, and agree that the provisions of this Agreement governing voluntary or involuntary sale are reasonable as a substitute for such right.



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8. Transfer of Interest in Property.

(a) Except as otherwise provided herein, no Owner or individual Owner shall sell, assign, mortgage, pledge or otherwise encumber or transfer all or any part of his interest in the Property, or lease any portion of the Property, without the prior written consent of all of the other Owner, except with respect to a transfer (i) to the individual Owner's spouse or (ii) to a member of the individual Owner's immediate family. Any Owner transferring his interest in the Property shall be obligated to pay all of the transaction costs associated with such transfer, including any applicable transfer taxes.

(b) Notwithstanding the provisions of subparagraph (a) above, any individual Owner's interest may, at death, be transferred, either by will or by operation of law, to one or more persons without consideration, provided, however, that any such person, including an executor, administrator and testamentary trustee, shall hold such interest subject to all the terms of this Agreement, and, in the event of a transfer to more than one person, said persons shall collectively hold the same voting privileges as the individual Owner.

9. Buy-Out Procedure upon Sale of Owner's Interest.

(a) Neither Owner shall sell or transfer his separate co-tenancy interest in the Property, except after compliance with the provisions of this Agreement.

(b) If an Owner desires to sell or transfer his interest in the Property except as provided for in Section 8, the other Owner (the "Non-Selling Party") shall have a right of first refusal, to purchase the property on the same terms and conditions as offered to any third party by the Owner ("Selling Party"); provided that the Non-Selling party may pay all cash at closing if he so elects, and need not purchase other property as a condition of this purchase. If the offer to sell to a third party includes the sale of other adjacent property (property other than Lot 13), the price of the Selling Party's interest in Lot 13 shall not include the value of the adjacent property, and in the event of a dispute, its value be determined by a neutral appraiser selected by agreement of both parties. The cost of the appraisal shall be equally born by both parties. Allocation of closing costs shall conform to the original offer of sale.

(c) If the Non-Selling Party elects to exercise the right of first refusal, he shall give a written notice of his election to exercise the right of first refusal to the Selling Party of his intention to exercise the option, which notice shall be given within 20 days of notice of intent to sell. Such notice of exercise shall constitute a binding commitment to purchase, except that it may be conditioned upon the Non-Selling Party's ability to obtain purchase financing reasonably satisfactory to the Non-Selling Party for up to 80 percent of the purchase price within 60 days of the date that the purchase price is either agreed upon by the parties or determined by the appraisal. The Selling Party shall execute a deposit receipt and sale agreement in a customary form and cooperate with the Non-Selling Party in obtaining financing. The Non-Selling Party shall deposit an appropriate amount into an escrow account as a good faith deposit under the deposit receipt and sale agreement within three business days after execution by the Selling Party. The sale shall close within 120 days of exercise of the right of first refusal by the Non-Selling party, unless delay is cause by the Selling Party.

(d) Except for the determination of sales price by a neutral appraiser as provided for above, any dispute regarding the terms of sale, the location of the partition boundary line, the exercise of the right of first refusal, or other matter arising out of the partition, sale and exercise of the rights in this agreement shall be resolved by a single independent arbitrator to be agreed upon by the parties, or if they cannot agree, to be appointed by the presiding judge of the Skagit County Superior Court, and the parties shall proceed pursuant to RCW Ch. 7.04A (Uniform



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Arbitration Act) or successor legislation. Each party shall pay their own costs and attorney fees, and one-half of the arbitrator's fees.

10. Miscellaneous Provisions.

(a) This Agreement represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any prior understanding or writing the parties may have had with respect to the subject matter hereof.

(b) This Agreement shall run with the land for the benefit of each party's respective interest in the Property and shall bind and inure to the benefit of the parties' respective successors, assigns, and heirs so long as any of the original parties to this Agreement continue to own any interest in the Property. At the option of either Owner, the Owners shall execute, acknowledge, and record a memorandum of this Agreement in the official records of the Skagit County Auditor as constructive notice of this Agreement. Both parties agree to disclose the terms of this Agreement to any prospective lender or buyer who may inquire about it.

(c) This Agreement may be amended, modified or terminated only by a writing signed by all Owners owning an interest in the Property, or their respective successors or assigns.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

(e) The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

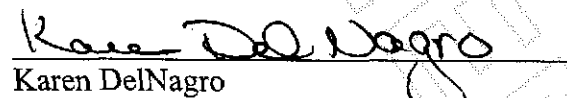
(f) Notices, requests, demands and other communications relating to this Agreement shall be in writing and either delivered (a) personally, (b) by registered or certified mail, postage prepaid, return receipt requested, or (c) by overnight courier, in each case, addressed to the parties at the addresses set forth above. Any addressee may designate a different address to which communications may be sent, by giving notice to the other party of such change of address in conformity with the foregoing provisions. All communications shall be deemed to have been given, if by mail as of the third business day after the date mailed in accordance herewith; and if by delivery or overnight courier, on the date of actual delivery and receipt.

(g) The Owners signing this Agreement hereby ratify and confirm any and all previous actions taken by the Owners with respect to the Property.

(h) The rights under this agreement shall terminate following the partition of the property, the acquisition of the entire interest by a single owner, or by agreement of all owners, provided that the obligation of DelNagro to pay the deed of trust according to its terms, and indemnify, defend, and hold Francis and his interest in the above-described real estate harmless therefore, shall survive until the lien is released from Francis' interest.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date hereof.


Phillip A. DelNagro


Karen DelNagro

Les Francis

R. Lorrie Francis



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STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this date personally appeared before me Phillip A. DelNagro and Karen DelNagro, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN Under My Hand and Official Seal this 16 day of February, 2010.



Lisa L. Riggles
Notary Public in and for the State of
Washington, residing at Mount Vernon
My Commission Expires: 10/1/2013
Print Name: Lisa L. Riggles

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

ON THIS DAY personally appeared before me Les Francis and R. Lorrie Francis, to me known to be the individuals described in and who executed the within and foregoing instrument and acknowledged to me that they signed the same as their free and voluntary act and deed for the purposes therein mentioned.

GIVEN Under My Hand and Official Seal this _____ day of _____, 2010.

Notary Public in and for the State of
Washington, residing at _____
My Commission Expires: _____
Print Name: _____



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Arbitration Act) or successor legislation. Each party shall pay their own costs and attorney fees, and one-half of the arbitrator's fees.

10. Miscellaneous Provisions.

(a) This Agreement represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any prior understanding or writing the parties may have had with respect to the subject matter hereof.

(b) This Agreement shall run with the land for the benefit of each party's respective interest in the Property and shall bind and inure to the benefit of the parties' respective successors, assigns, and heirs so long as any of the original parties to this Agreement continue to own any interest in the Property. At the option of either Owner, the Owners shall execute, acknowledge, and record a memorandum of this Agreement in the official records of the Skagit County Auditor as constructive notice of this Agreement. Both parties agree to disclose the terms of this Agreement to any prospective lender or buyer who may inquire about it.

(c) This Agreement may be amended, modified or terminated only by a writing signed by all Owners owning an interest in the Property, or their respective successors or assigns.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

(e) The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

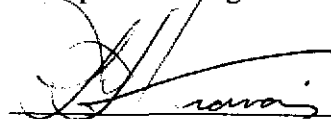
(f) Notices, requests, demands and other communications relating to this Agreement shall be in writing and either delivered (a) personally, (b) by registered or certified mail, postage prepaid, return receipt requested, or (c) by overnight courier, in each case, addressed to the parties at the addresses set forth above. Any addressee may designate a different address to which communications may be sent, by giving notice to the other party of such change of address in conformity with the foregoing provisions. All communications shall be deemed to have been given, if by mail as of the third business day after the date mailed in accordance herewith; and if by delivery or overnight courier, on the date of actual delivery and receipt.

(g) The Owners signing this Agreement hereby ratify and confirm any and all previous actions taken by the Owners with respect to the Property.

(h) The rights under this agreement shall terminate following the partition of the property, the acquisition of the entire interest by a single owner, or by agreement of all owners, provided that the obligation of DelNagro to pay the deed of trust according to its terms, and indemnify, defend, and hold Francis and his interest in the above-described real estate harmless therefore, shall survive until the lien is released from Francis' interest.


IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date hereof.

Phillip A. DelNagro



Les Francis

Karen DelNagro


R. Lorrie Francis

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Skagit County Auditor

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this date personally appeared before me Phillip A. DelNagro and Karen DelNagro, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

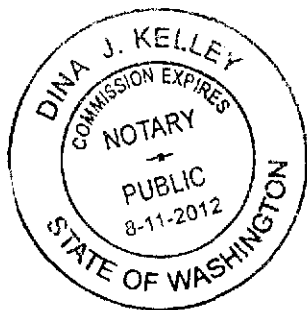
GIVEN Under My Hand and Official Seal this _____ day of _____, 2010.

Notary Public in and for the State of
Washington, residing at _____
My Commission Expires: _____
Print Name: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

ON THIS DAY personally appeared before me Les Francis and R. Lorrie Francis, to me known to be the individuals described in and who executed the within and foregoing instrument and acknowledged to me that they signed the same as their free and voluntary act and deed for the purposes therein mentioned.

GIVEN Under My Hand and Official Seal this 25th day of February, 2010.



Dina J. Kelley
Notary Public in and for the State of
Washington, residing at 2400 Woodley
My Commission Expires: 8-11-2012
Print Name: Dina J. Kelley



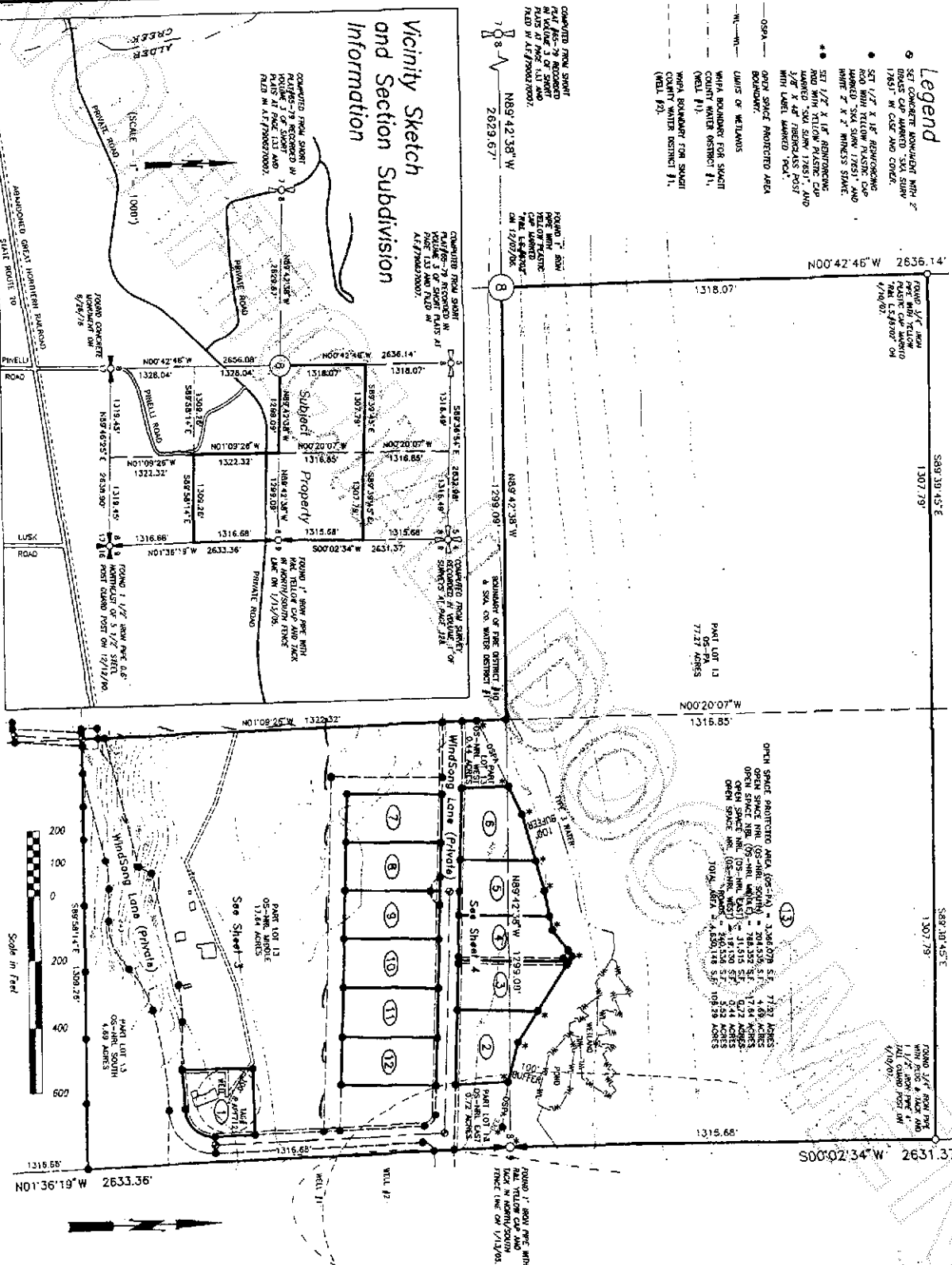
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in the SE1/4 of the NE1/4, the SW1/4 of the NE1/4, and the NE1/4 of the SE1/4 of Section 8, Twp. 35 N., Rng. 7 E., W.M.

Legend

- ⑤ SET CONCRETE MONUMENT WITH 1/2" REBAR. CAP MONUMENT 3/4" DIA. 1/8" H. IN CLAD AND CORNER.
 * SET 1/2" X 1/2" REBAR CROSSING ROAD WITH YELLOW PLASTIC CAP. MONUMENT 3/4" DIA. 1/8" H. IN WHITE 3/4" X 1/2" THICKNESS STAKE.
 ** SET 1/2" X 1/2" REBAR CROSSING ROAD WITH YELLOW PLASTIC CAP MONUMENT 3/4" DIA. 1/8" H. IN 3/4" X 1/2" THICKNESS POST WITH LABEL MONUMENT POL.
 OPEN SPACE PROTECTED AREA BOUNDARY.
 LUMBS OF WE LUMANS
 WITH BOUNDARY FOR SHAGIT COUNTY WATER DISTRICT #1.
 (NEEL #1).
 WITH BOUNDARY FOR SHAGIT COUNTY WATER DISTRICT #1.
 (NEEL #2).

PACE 135 mm
 A.E. Pineda 7/5
 Vicinity Sketch
 and Section Subdivision
 Information



SURVEYOR'S CERTIFICATE
This map correctly represents a

AUDITOR'S CERTIFICATE



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Skagit County Auditor