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Attorneys for VIRGINIA HIGHLANDS, LLC

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF STOREY**

VIRGINIA HIGHLANDS, LLC, a Nevada  
limited liability company,

Petitioner,

vs.

Case No. *CV 2012 1*  
Department No. *2*

STOREY COUNTY, a political subdivision  
of the State of Nevada,

Respondent.

**PETITION FOR JUDICIAL REVIEW PURSUANT TO NRS 278.0233,  
DECLARATORY RELIEF AND DAMAGES**

COMES NOW, Petitioner VIRGINIA HIGHLANDS, LLC, a Nevada limited liability  
company, hereinafter referred to as "VIRGINIA HIGHLANDS", by and through its counsel Mark  
Amodei, Esq. of KUMMER KAEMPFER BONNER RENSHAW & FERRARIO and Stephen C.

1 Mollath, Esq. of PREZANT & MOLLATH, and complains and against Respondent STOREY  
2 COUNTY, hereinafter referred to as "STOREY", as follows:

3 **THE PARTIES AND BASIS OF CLAIMS**

4 VIRGINIA HIGHLANDS is a Nevada limited liability company engaged in the business  
5 of real estate development in Storey County, Nevada.

6  
7 STOREY is a political subdivision of the State of Nevada. Under the provisions of NRS  
8 Chapter 278 and the Storey County Code, STOREY is charged with the duty to receive and  
9 review zoning and planning applications and act in good faith in connection therewith.

10 This action is brought pursuant to the provisions of NRS 30.010, et seq., and NRS  
11 278.0233.

12  
13 The record of the proceedings before STOREY and referenced herein is filed herewith  
14 and identified as Exhibits 1 through 134, Bate-stamped VH0001 – VH1170 (Exhibit 134 is the  
15 transcript of the August 20, 2007 County Commission hearing which is not Bate-stamped but  
16 has specific page numbers).

17 **GENERAL ALLEGATIONS**

18  
19 1. On September 15, 2006, representatives of VIRGINIA HIGHLANDS met with  
20 STOREY to discuss the processing of certain zoning applications for a project to be known as  
21 Cordevista. As a result of that meeting, STOREY recommended to VIRGINIA HIGHLANDS  
22 that it make application for a Master Plan Amendment and Zone Change in connection with  
23 the proposed project (Exhibit "3", VH0010). At that time, VIRGINIA HIGHLANDS believed that  
24 its proposed project and the zoning to be applied for was consistent with the Storey County  
25 Master Plan, however, it did not want to begin the process with a disagreement over whether a  
26 Master Plan Amendment Application was necessary.  
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1           2.       On February 26, 2007, VIRGINIA HIGHLANDS filed with STOREY, pursuant to  
2 its meeting of September 15, 2006, a Master Plan Amendment Application (Exhibit "5",  
3 VH0014-VH0038) and a Zone Change Application (Exhibit "6", VH0039-VH0062). Said  
4 Applications were designated 2007-049 (Master Plan Amendment) and 2007-050 (Zone  
5 Change). The Master Plan Amendment sought a mixed-use residential Planned Unit  
6 Development (PUD) for 8,600 acres. The zone change requested a change from Special  
7 Industrial (IS) (6,800 acres), Heavy Industrial (1,000 acres) and Forestry (400 acres) to Mixed  
8 Use, Residential Planned Unit Development (PUD). The request for zone change is a "down  
9 zone" for the property.  
10

11           3.       The property owned by VIRGINIA HIGHLANDS which was subject to the  
12 applications referred to in Paragraph 2 above had been used since 1986 as an ammunition,  
13 rocket propellant and explosives testing, manufacturing and storage facility, together with the  
14 hazardous materials and activities associated therewith. On June 29, 1989, the property  
15 which was then owned by VIRGINIA HIGHLANDS' predecessor in interest, Hi-Shear  
16 Technology Corp., was the subject of a Stipulation in Case No. 18745, First Judicial District  
17 Court of the State of Nevada entitled Hi-Shear Technology Corporation vs. Storey County  
18 (Exhibit "127", VH1074-VH1082).<sup>1</sup> Said Stipulation settled a dispute between Hi-Shear and  
19 STOREY regarding a pre-existing special use permit for the uses referred to above in which  
20 STOREY sought to revoke the permit. In essence, the Stipulation recognized, as a matter of  
21 law, the existence of the Special Use Permit and the use of the property. A copy of the  
22 Stipulation is attached hereto and marked Exhibit "A".  
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27 <sup>1</sup> Said property was subsequently sold by Hi-Shear (renamed Defense Systems) to Aerojet of Nevada, which  
28 subsequently sold it to VIRGINIA HIGHLANDS.

1           4.     On December 20, 1994, STOREY adopted its Master Plan. Contained in said  
2 Plan, at Page 55 (Section 9.1.5) was the following statement relative to the property owned by  
3 VIRGINIA HIGHLANDS:

4           “A short distance beyond the disposal site is the turnoff to the Aerojet of Nevada facility,  
5 which is at the end of a winding two lane road. This hi-tech explosives manufacturing  
6 and testing facility is intentionally located in an area four miles from any other  
7 development. As such it provides an unusual planning and land use opportunity. With  
8 the existing two-plus mile buffer around it, consideration should be given to classifying  
9 the area a ‘high risk industrial’ zone. The ‘high risk industrial’ classification could be  
10 defined to include similar facilities. Property tax rates for this classification would reflect  
11 costs related to providing additional services. It is likely that many firms involved in the  
12 same or similar types of manufacturing and/or testing would be interested in relocating  
13 to an area which already had the necessary regulatory framework in place.”

14           This is the only mention in the Storey County Master Plan of the Special Industrial use  
15 of the VIRGINIA HIGHLANDS property and was specifically placed in the Storey County  
16 Master Plan as a result of and to recognize the Stipulation referred to in Paragraph 3 above.<sup>2</sup>  
17 However, throughout the Master Plan, the VIRGINIA HIGHLANDS property is designated for  
18 future development of commercial, residential and retail use.

19           5.     On July 1, 1999, STOREY adopted its zoning ordinance and included therein  
20 Chapter 17.38 (IS Special Industrial Zone). Said zone was adopted for and referred  
21 specifically to the VIRGINIA HIGHLANDS property that was previously owned by Hi-Shear  
22 which was subject to the prior special use permit.<sup>3</sup> A copy of said Chapter 17.38 is attached  
23 hereto and marked Exhibit “B”.

24 <sup>2</sup> This fact is confirmed by Dean Haymore, Storey County Staff at the May 3, 2007 Planning Commission meeting  
25 (Exhibit “32”, Transcript, Page 72, Line 7 through Page 75, Line 1), the July 19, 2007 Planning Commission  
26 hearing (Exhibit “128”, Transcript, Page 20, Line 7 through Page 21, Line 9) and the August 21, 2007 County  
27 Commissioners hearing (Exhibit “134”, Transcript Pages 22-26).

28 <sup>3</sup> This fact is confirmed by Dean Haymore, Storey County Staff at the May 3, 2007 Planning Commission meeting  
(Exhibit “32”, Transcript, Page 72, Line 7 through Page 75, Line 1), the July 19, 2007 Planning Commission  
hearing (Exhibit “128”, Transcript, Page 20, Line 7 through Page 21, Line 9) and the August 21, 2007 County  
Commissioners hearing (Exhibit “134”, Transcript Pages 22-26).

1           There are no other provisions of the Storey County Master Plan that call for, under any  
2 circumstances, the Special Industrial (IS) use of the VIRGINIA HIGHLANDS property. In fact,  
3 such Special Industrial Use is inconsistent with the provisions of the Master Plan in all  
4 respects.

5           6.       In 1999, Tahoe Reno Industrial Center (TRIC) received approval for industrial  
6 zoning on a 102,000 acre site adjacent to the VIRGINIA HIGHLANDS property. Thereafter, in  
7 February, 2000, a Development Agreement was entered into between STOREY and TRIC for  
8 the development of the property. There is no mixed-use, residential, office or retail component  
9 of said development which relies upon Washoe, Lyon or Churchill Counties to provide such  
10 services (VH0058, Justification Statement).

11           7.       On July 5, 2006, the Storey County Commissioners approved a Master Plan  
12 Amendment<sup>4</sup> and Zone Change for over 2,000 acres owned by Painted Rock Partners, LLC  
13 from Forestry to Mixed Use (Planned Unit Development) (Exhibit "133", VH1119-VH1170).  
14 Said property is east of the property owned by VIRGINIA HIGHLANDS and the mixed use  
15 approved on July 5, 2006 was identical to the mixed use sought by VIRGINIA HIGHLANDS.  
16 The zoning sought by Painted Rock Partners was an "up" zone from Forestry to Mixed Use.  
17 Storey County Commissioner Greg J. "Bum" Hess has an ownership and management interest  
18 in Painted Rock Partners and recused himself from the vote at the County Commissioners  
19 hearing of July 5, 2006.

20           8.       On March 15, 2007, STOREY requested VIRGINIA HIGHLANDS to provide  
21 zoning, planning, engineering and other information on the Cordevista Project (Exhibit "8",  
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<sup>4</sup> The mixed use sought by Painted Rock Partners was consistent with the Master Plan of Storey County. There is no explanation given as to why STOREY processed a Master Plan Amendment along with a the zone change from Forestry to Mixed Use (Planned Unit Development).

1 VH0065). On March 21, 2007, VIRGINIA HIGHLANDS provided STOREY with a  
2 comprehensive package of the information requested (Exhibit "9", VH0067-VH0135; Also see,  
3 Exhibits "1" and "2", VH0006-VH0009).

4 9. On March 30, 2007, VIRGINIA HIGHLANDS submitted further detailed  
5 information on the project's impacts to the Lockwood and Virginia City/Highlands residents of  
6 Storey County in connection with town meetings scheduled to discuss the project (Exhibit  
7 "111", VH0137-VH0142).

8 10. On April 2, 2007, VIRGINIA HIGHLANDS submitted to STOREY, at its request, a  
9 detailed Technical Drainage Study and Scientific Investigations Report (Exhibit "13", VH0143-  
10 VH0399).

11 11. On April 5, April 9 and April 10, 2007, VIRGINIA HIGHLANDS forwarded to  
12 STOREY, at its request, further technical information concerning the property (Exhibit "14",  
13 VH0400-VH0403).

14 12. On April 13, 2007, the Storey County Planning Commission held a meeting on  
15 VIRGINIA HIGHLANDS' Applications (Exhibit "19", Transcript, Pages 1-165). It became  
16 readily apparent from the public testimony that the Lockwood residents of Storey County were  
17 in favor of the project and the Virginia City/Highlands residents were against the project.<sup>5</sup> The  
18 Planning Commission then voted to hold another meeting on the applications in Lockwood on  
19 May 3, 2007. No Planning Staff report was ever prepared by STOREY on the applications,  
20 nor did Planning Staff voice any objection to the applications.  
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26 <sup>5</sup> There is no access to the project from Virginia City or the Highlands. The only access is through the Lockwood  
27 area along I-80. Storey County has always been geographically separated in this manner. All development,  
28 however, including the Painted Rock project, is occurring on the I-80/Lockwood side of Storey County and does  
not impact the southern portion of Storey County.

1           13.    On April 23, 2007, STOREY requested VIRGINIA HIGHLANDS to provide further  
2 information for purposes of the May 3, 2007 meeting (Exhibit "20", VH0409-VH0410).

3           14.    In response to STOREY's request of April 23, 2007, VIRGINIA HIGHLANDS  
4 submitted further reports and information as follows:

- 5           •    Resource Concepts letter, May 2, 2007 – Wild Horses (Exhibit "25", VH0430)
- 6           •    Resource Concepts letter, May 3, 2007 – Water (Exhibit "26", VH0431-VH0432)
- 7           •    Resource Concepts letter, May 3, 2007 – Drainage (Exhibit "28", VH0433-  
8           VH0435)
- 9           •    The Planning Center letter, May 3, 2007 (Exhibit "29", VH0436-VH0437)
- 10          •    Cordevista Exhibit Binder (Exhibit "30", VH0438-VH0467, Tabs 1-20)

11           Very significant in the above material provided is the "Master Plan Conformance Table"  
12 (Exhibit "30", Tab 20, VH0461-VH0467). A copy of said Table is attached hereto and marked  
13 Exhibit "C". The significance of this comparative table is that it candidly sets forth, as a matter  
14 of planning criteria, guidelines and principles that the zone change requested from Special  
15 Industrial (IS) to Mixed Use (Planned Unit Development) is consistent with the Storey County  
16 Master Plan. As such, no Master Plan Amendment Application was needed.

17           15.    On May 3, 2007, a second Planning Commission meeting of STOREY was held  
18 in Lockwood. Again, no Planning Staff report was prepared by STOREY, nor did Planning  
19 Staff voice any objections to the applications. The Planning Commission then voted to  
20 continue the applications to a July 11, 2007 Town Hall meeting and, thereafter, to a July 19,  
21 2007 Planning Commission hearing. Again, it was apparent from the public testimony that the  
22 Lockwood residents of Storey County were in favor of the project and the Virginia  
23 City/Highlands citizens were against.

1           16.    On May 17, 2007, VIRGINIA HIGHLANDS, at the request of STOREY, provided  
2 further traffic information (Exhibit "37", VH0539-VH0541).

3           17.    Since the applications were filed, VIRGINIA HIGHLANDS and STOREY have  
4 had 95 meetings and hearings relative to this project (Exhibit "42", VH0584-VH0587). As  
5 such, the project has had the benefit of full disclosure, discussion and analysis by STOREY  
6 whose Staff did not prepare any report recommending a denial of the Applications.  
7

8           18.    Shortly before June 13, 2007, STOREY retained Mark H. Gunderson, Ltd. as  
9 special legal counsel to STOREY relative to VIRGINIA HIGHLANDS' applications. On June  
10 13, 2007, Mark H. Gunderson, Esq. instructed Storey County Staff not to meet with VIRGINIA  
11 HIGHLANDS or its planning consultants without the presence of STOREY's legal counsel  
12 (Exhibit "39", VH0551).

13           19.    On July 2, 2007, VIRGINIA HIGHLANDS, at STOREY's request, provided a  
14 housing study for the project, together with its economic justification and benefits to STOREY  
15 (Exhibit "43", VH0589-VH0626).<sup>6</sup>  
16

17           20.    On July 11, 2007, a third Town Hall meeting was held concerning the Cordevista  
18 Project (Exhibit "45", Transcript, VH0630-VH0656) whereat VIRGINIA HIGHLANDS  
19 endeavored to answer questions concerning the project.  
20

21           21.    On July 12, 2007, as a result of the Town Hall meeting and pursuant to the  
22 request of STOREY, VIRGINIA HIGHLANDS provided planning staff with an explanation of  
23 the phasing of the project (Exhibit "46", VH0657).  
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27 <sup>6</sup> Reno, Sparks and Washoe County councilmembers and commissioners also sent letters of justification and  
28 support for the project to STOREY (Exhibit "44", VH0627-VH0629).



1           22.    On July 13, 2007, counsel for VIRGINIA HIGHLANDS, Stephen C. Mollath, Esq.,  
2 delivered to STOREY a letter setting forth the legal and planning reasons why the zone  
3 change from Special Industrial (IS) to Mixed Use (Planned Unit Development) was consistent  
4 with the Storey County Master Plan (Exhibit "47", VH0658-VH0662). As a result of such  
5 consistency, a Master Plan amendment (2007-049) is not required. The letter requested that  
6 the Master Plan amendment application be deemed unnecessary.  
7

8           23.    On July 16, 2007, VIRGINIA HIGHLANDS delivered to STOREY a list of its  
9 development commitments (Exhibit "49", VH0667-VH0668).

10          24.    On July 16, 2007, Storey County Staff submitted its Cordevista Impact Staff  
11 Report (Exhibit "124", VH1054-VH1071, duplicate of Exhibit "110"). VIRGINIA HIGHLANDS  
12 agrees with the contents and recommended actions of the report. The report, at Page 7,  
13 VH1060, recommended:  
14

- 15           a)    Establish, recruit and hire Planning Staff positions to process the Cordevista  
16                Project that would be processed subsequent to any zone change, and
- 17           b)    Provide phasing and triggers for the project.

18          The Staff report adopted the analysis of the current Special Industrial (IS) vs. proposed  
19 Mixed Use (Planned Unit Development) zoning at Attachment #1 (VH1062) and Cordevista  
20 Impacts, Attachment #2 (VH1063). Also see, Justification Statement (Exhibit "6", VH0058 and  
21 VH0061 attached hereto and marked Exhibit "D". There were no Staff recommendations of  
22 denial or objections to the project.  
23

24          25.    From the inception of the Cordevista Project, Storey County Commissioner Greg  
25 J. "Bum" Hess has had a pecuniary and managerial interest in the Painted Rock Project, a  
26 competitor to Cordevista (Exhibits "122", VH1051-VH1052; Exhibit "48", VH0663-VH0666;  
27 Exhibit "130", VH1114; Exhibit "133", VH1117-VH1170).  
28

1 26. None of the engineering and planning studies and reports submitted to STOREY  
2 by VIRGINIA HIGHLANDS in support of the project, referred to in Paragraphs 2, 9, 10, 11, 14,  
3 16, 19, 21 and 23 above were controverted by any evidence, Storey County Planning Staff or  
4 credible testimony at any public hearing.

5 27. On July 19, 2007, the Applications came before the Storey County Planning  
6 Commission, together with the record of the application (Exhibits "1" through "133"). VIRGINIA  
7 HIGHLANDS' planning consultants were present to respond to any questions concerning their  
8 reports and findings (Exhibit "41", VH0556-VH0583). At said hearing, the Planning  
9 Commission voted as follows:  
10

11 A. Denied VIRGINIA HIGHLANDS' request that the Application for Master  
12 Plan amendment (2007-049) was not necessary because the Mixed Use zoning was  
13 inconsistent with the Master Plan (Transcript, Pages 22-26, VH1089-VH1090).

14 B. Denied VIRGINIA HIGHLANDS' request for a Master Plan amendment to  
15 provide for a Mixed Use (Planned Unit Development), rather than Special Industrial.

16 C. Denied VIRGINIA HIGHLANDS' request for a zone change from Special  
17 Industrial to Mixed Use (Planned Unit Development).  
18

19 The basis for the denial as stated by Commissioner Prater was that the application of  
20 VIRGINIA HIGHLANDS' 8,600 acres was "spot zoning" (Transcript, Page 110, VH1111).  
21

22 28. On August 20, 2007, the denial recommendation of the Planning Commission  
23 came before the Storey County Commission. At said hearing, VIRGINIA HIGHLANDS  
24 presented the testimony of Greg Haws, a Professional Land Planner from The Planning Group  
25 who testified that the application for a zone change from Special Industrial (IS) to Mixed Use  
26 (PUD) was consistent with the Master Plan and the zone change from Special Industrial (IS) to  
27  
28

1 Mixed Use (PUD) was a down zone and appropriate under all sound and recognized planning  
2 principles.<sup>7</sup> The Storey County Commission thereafter upheld the denial recommendation of  
3 the Planning Commission on an irrelevant and unintelligible basis not supported by any  
4 substantial evidence stating as follows:

5 "So on that, I move to uphold the planning commissions recommendation  
6 denying the application of the master plan amendment, because the proposed  
7 amendment is not in substantial compliance with the policies and goals and objectives  
8 of the master plan.

9 We are just talking of the master plan. And if we need more to look at, you  
10 know, I have to look at land uses, you look at, with zoning – land uses which is  
11 inconsistent or incompatible with adjacent land uses. Transportation is amendment  
12 would not create an immediate need for access – would create an immediate need for  
13 access roads, or government services which would adversely – would adversely affect  
14 the county's ability to meet those needs.

15 The conservation of natural resources. This amendment would jeopardize  
16 ensuring that present and future county residents have adequate water supply meeting  
17 safe drinking standards. This amendment would not protect the present or future water  
18 resources, which I'm well aware of what's going on in the Highlands, and I'm well aware  
19 of what's gone through the River District, that we're lucky to have what we have there.  
20 And I'm a little concerned, too, also hearing the latest actions from Washoe County, the  
21 water graph right now, I don't know how the Washoe County commission is keeping  
22 water to their district."

23 (Exhibit "134", Transcript, Commission hearing, August 21, 2007, Pages 58-59)

### 24 CLAIM FOR RELIEF

#### 25 (Petition for Judicial Review and Declaratory Relief)

26 29. VIRGINIA HIGHLANDS repeats and realleges each and every allegation set  
27 forth in Paragraphs 1 through 28 as if set forth herein in full.

28 30. STOREY's denials of VIRGINIA HIGHLANDS' Applications were clearly  
erroneous and were not supported by substantial evidence in the record. Further, the denials

<sup>7</sup> Dean Haymore, the Storey County Master Plan Administrator, agreed that the existing Special Industrial (IS) zoning is "nasty zoning" which needs to be addressed because Staff is concerned about it (Exhibit "134", Transcript, Commission hearing, August 21, 2007, Page 2, Lines 6-22).

1 of the Applications, to include a determination that a master plan amendment application was  
2 required, was arbitrary, capricious and characterized by an abuse of discretion.

3 31. STOREY's findings are arbitrary and capricious and constitute an abuse of  
4 discretion because they directly contradict evidence contained in the record.

5 32. STOREY's findings are erroneous as a matter of law and further constitute an  
6 abuse of discretion.

7  
8 33. The actions taken by STOREY, upon facts and evidence presented, are  
9 unlawful, unreasonable and in violation of the provisions of NRS Chapter 278 and Storey  
10 County Master Plan and Code. Said decision was arbitrary, capricious and was not supported  
11 by substantial evidence in that the proposed project zoning is consistent with the Storey  
12 County Master Plan, zoning and all planning policies, regulations and required findings under  
13 the Storey County Master Plan and Code.  
14

15 34. The actions taken by STOREY are in violation of VIRGINIA HIGHLANDS' due  
16 process and equal rights protections under the Nevada and United States Constitutions, and  
17 constitutes a taking. STOREY ignored the evidence before it, and made findings contrary to  
18 law.  
19

20 35. VIRGINIA HIGHLANDS has performed all of its obligations relative to said  
21 application, has no other adequate remedy at law, and will sustain irreparable injury and  
22 pecuniary loss unless such denial is appropriately reviewed and reversed.  
23

24 **PRAYER FOR RELIEF**

25 WHEREFORE, VIRGINIA HIGHLANDS prays the Court:  
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27  
28

1           1.     That the actions of STOREY be reviewed pursuant to the provisions of NRS  
2 278.0233, that the issues thereof be adjudicated, and that STOREY be ordered to approve the  
3 Applications (Application Nos. 2007-049 and 2007-050).

4           2.     The rights and obligations of the parties be adjudicated pursuant to NRS Chapter  
5 30.010, to include a determination that the Zoning Application was consistent with the Storey  
6 County Master Plan and that a master plan amendment application (2007-049) was not  
7 required to be filed and processed.

8           3.     For costs of suit and attorney's fees herein incurred pursuant NRS 278.0237.

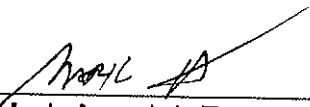
9           4.     For such relief as the Court deems just and proper.


10          5.     For damages in excess of \$10,000.00, pursuant to the provisions of NRS  
11 278.0233.  
12

13           DATED this 10th day of September, 2007.

14  
15 **KUMMER KAEMPFER BONNER**  
16 **RENSHAW & FERRARIO**

**PREZANT & MOLLATH**

17  
18 By   
19 \_\_\_\_\_  
20 Mark Amodei, Esq.


By   
21 \_\_\_\_\_  
22 Stephen C. Mollath, Esq.

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24  
25  
26  
27  
28 Attorneys for Petitioner

1 STATE OF NEVADA )  
2 COUNTY OF WASHOE ) ss.

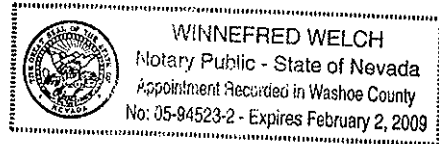
3  
4 G. BLAKE SMITH, being duly sworn, deposes and says:


5 That he is a representative of VIRGINIA HIGHLANDS, LLC, the Petitioner herein; that  
6 he has read the foregoing **PETITION FOR JUDICIAL REVIEW PURSUANT TO NRS**  
7 **278.0233, DECLARATORY RELIEF AND DAMAGES** and knows the contents thereof, and  
8 that the same is true of his own knowledge, except as to the matters therein stated to be  
9 alleged upon information and belief, and as to those matters, he believes it to be true.

10   
G. BLAKE SMITH

11  
12 SUBSCRIBED AND SWORN to before me,

13 this 10 day of September, 2007.



16   
17 NOTARY PUBLIC