

**AN ORDINANCE OF NICHOLAS COUNTY, STATE OF WEST VIRGINIA,  
AUTHORIZING THE IMPLEMENTATION OF THE  
NICHOLAS COUNTY FIRE SERVICE FEE**

*WHEREAS*, West Virginia Code Chapter 7, Article 17, Section 1, et seq., as amended, provides the Nicholas County Commission with the authority to impose reasonable fire service rates, fees and charges;

*WHEREAS*, it is deemed in the best interest of the citizens and residents of Nicholas County, West Virginia, and necessary and appropriate, to impose such reasonable fire service rates, fees, and charges; and

*WHEREAS*, the Nicholas County Fire Board has presented a petition containing the signatures of at least ten percent (10%) of the qualified voters of Nicholas County, West Virginia, duly and properly signed, and filed with the Clerk of the County Commission of Nicholas County, West Virginia, directing that the said County Commission impose such a fee;

*NOW THEREFORE*, the Nicholas County Commission hereby sets forth and charges that:

**SECTION 1: APPLICABILITY**

This Ordinance shall apply to all owners of residential buildings, residential rental buildings, commercial buildings, and institutional buildings that are located and situate in the areas and zones served by the following volunteer fire departments: Richwood Volunteer Fire Department; Summersville Volunteer Fire Department; Craigsville/Beaver/Cottle Volunteer Fire Department; Nettie Volunteer Fire Department; Birch River Volunteer Fire Department; Wilderness Volunteer Fire Department; Kessler's Cross Lanes Volunteer Fire Department; and departments issued a primary response district within Nicholas County, WV for fire service protection as authorized by the Nicholas County Commission, WV State Fire Commission and the WV State Fire Marshall's Office; the geographic areas of which are defined as all of Nicholas County Primary Fire Service Districts. Owners of record as of the first day of July of each year shall be responsible for the full and complete payment of any amount levied per the ordinance.

**SECTION 2: AMOUNT LEVIED**

A. There is hereby imposed and levied upon the owners of all residential buildings (as defined in Section 6A) as users of fire protection service, a fire protection fee or charge of Thirty-Five Dollars (\$35.00) per residential building, per calendar year.

B. There is hereby imposed and levied upon the owners of all commercial or institutional buildings (as defined in Section 6C) as users of fire protection service, a fire protection fee or charge at the following rates:

- i. One Hundred Dollars (\$ 100.00) for buildings containing Three Thousand (3,000) Square Feet or less;
- ii. Two Hundred Dollars (\$ 200.00) for buildings containing Three

Thousand and One (3,001) Square Feet up to Five Thousand (5,000) square feet;

- iii. Three Hundred Dollars (\$ 300.00) for buildings containing Five Thousand and One (5001) Square Feet to Seven Thousand, Five Hundred (7,500) Square Feet;
- iv. Four Hundred Dollars (\$ 400.00) for buildings containing Seven Thousand, Five Hundred and One (7,501) Square Feet to Ten Thousand (10,000) Square Feet;
- v. Five Hundred Dollars (\$ 500.00) for buildings containing Ten Thousand and One (10,001) Square Feet to Twenty-Five Thousand Square Feet;
- vi. Seven Hundred Fifty Dollars (\$ 750.00) for buildings containing Twenty-Five and One (25,001) Square Feet to Fifty Thousand (50,000) Square Feet;
- vii. One Thousand, Five Hundred Dollars (\$ 1,500.00) for buildings containing Fifty Thousand and One (50,001) Square Feet to Seventy- Five Thousand (75,000) Square Feet;
- viii. Two Thousand Dollars (\$ 2,000.00) for buildings containing Seventy-Five and One (75,001) Square Feet to One Hundred Thousand (100,000) Square Feet;
- ix. Three Thousand Dollars (\$ 3,000.00) for buildings containing in excess of One Hundred Thousand (100,000) Square Feet;

In the event several buildings, all being on the same tract of land, the said owner shall be assessed a single, combined fee for the grand total of square footage of all buildings/units of said tract of land.

C. There is hereby imposed and levied upon the owners of all residential rental buildings (as defined in Section 6B) as users of fire protection service, a fire protection fee or charge of Thirty-Five Dollars (\$ 35.00) per residential unit for buildings containing no more than two (2) units. Residential buildings containing three (3) or more units shall be assessed at the commercial building rate by square footage.

D. There is hereby imposed and levied upon the owners of all tracts of managed or unmanaged timber land, larger in size than 50 acres, a fire protection fee of \$0.22 per acre.

### **SECTION 3: EFFECTIVE DATE**

The fire service fee ordinance shall become effective on August 1<sup>st</sup>, 2022 and shall be for fire protection services rendered from July 1 until June 30 each year hereafter.

#### **SECTION 4: BILLING AND COLLECTION OF FEES**

A. All fees and charges for fire protection services shall be billed and collected by the Nicholas County Sheriff and deposited in a fire service fee account administered by the Nicholas County Commission and will be assessed to the owner as of the first day of July of each year.

B. The entire amount of the annual fire fee will be billed in July and shall be due and payable on or before September 30 each year. Provided, alternatively the owner may satisfy its obligation by paying two (2) equal installments, the first of which shall be due and payable on or before September 30<sup>th</sup> each year and the second of which shall be due and payable on or before December 31<sup>st</sup> each year. Delinquent payments shall be subject to a late fee of 10% interest after 12 months, reoccurring. Provided further, that fire fee billing for the first year following enactment of this fire fee ordinance shall begin in July and shall not be subject to a late fee.

C. Should a business or residential owner chose to not pay their Fire Usury Fee, The Nicholas County Commission **shall not** have a lien on any property as security for payment due under this ordinance, so therefore that individual runs the risk of being liable to the provisions of the ORDINANCE OF NICHOLAS COUNTY, STATE OF WEST VIRGINIA, AUTHORIZING THE VOLUNTEER FIRE DEPARTMENTS IN NICHOLAS COUNTY TO CHARGE AND RECOUP THE COSTS OF CERTAIN EMERGENCY RESCUE SERVICES, EQUIPMENT AND TRAINING PURSUANT TO WEST VIRGINIA CODE 7-1-3D. Additionally, the County Fire Board may proceed with any and all remedies available under West Virginia law, including a civil action. In the event the Board initiates a civil action and is successful in its recovery, the nonpaying owner shall reimburse the Board for all costs and expenses, including attorney's fees.

#### **SECTION 5: COLLECTION FOR FIRE PROTECTION SERVICE**

The fees imposed and levied by this Ordinance shall be collected in the aforescribed manner and process and shall be used in a manner and for the purpose of fire protection services commencing as of the effective date of this Ordinance, and thereafter. Fees or charges levied by this Ordinance will be utilized for priority needs or purposes of member departments which will include expenditures related to the collection anchor operation of the fire protection fee system.

After payment and/or encumbering for any and all collection and/or operational expenses, fees levied by this Ordinance shall become available to draw upon by each of the seven (7) fire departments, with each department receiving the fees collected within their primary fire service district, each holding a separate fund for the collection of fees by the Sheriff of Nicholas County. This will apply to each respective department: Richwood Volunteer Fire Department; Summersville Volunteer Fire Department; Craigsville/Beaver/Cottle Volunteer Fire Department; Nettie Volunteer Fire Department; Birch River Volunteer Fire Department; Wilderness Volunteer Fire Department; Kessler's Cross Lanes Volunteer Fire Department; and departments issued a primary response district within Nicholas County, WV for fire service protection as authorized by the Nicholas County Commission, WV State Fire Commission and the WV State

Fire Marshall's Office; the geographic areas of which are defined as all of Nicholas County Primary Fire Service Districts.

The established Departments of Nicholas County will be as follows:

District 1: Richwood Volunteer Fire Department

District 2: Summersville Volunteer Fire Department

District 3: CBC Volunteer Fire Department

District 4: Nettie Volunteer Fire Department

District 5: Birch River Volunteer Fire Department

District 6: Wilderness Volunteer Fire Department

District 7: Kesslers Cross Lanes Volunteer Fire Department

District 8: Quinwood Volunteer Fire Department

District 9: Gauley River Volunteer Fire Department

#### **SECTION 6: DISBURSEMENT OF FUNDS**

Of the amount collected, each of the fire departments may, after July 1 of each year, apply to draw upon and receive funding from their allotment of the fire fee collections in the manner described in paragraph three of section 6. These funds will be held by the Nicholas County Sheriff acting in their capacity as treasurer. Should the departments choose, their fire fee funds may accumulate after the end of each fiscal year and will not be subject to redistribution to other fire departments. However, these funds may not accumulate to more than \$700,000.00 per department.

Of the amount collected, not more than \$300,000.00 each year will be set aside for the purpose of acquiring new or used fire trucks. The truck fund allotment amount will be determined by July 31<sup>st</sup> of each year. The Nicholas County Fire Board is tasked with setting a truck schedule for six (6) in-county departments, excluding Summersville, by July 31, 2023 and thereafter every six (6) years. The Nicholas County Fire Fee will provide for the salary of an administrative assistant. This administrative assistance shall be an employee of the Nicholas County Department of Homeland Security and Emergency Management. Thereafter, Richwood, Summersville, Craigsville, Nettie, Birch River, Wilderness and Kesslers Cross Lanes Fire Departments will each be allocated 0.0825% of the funds. Gauley River Fire Department and Quinwood Fire Department shall receive 0.017% of the remaining funds. Summersville Fire Department shall be allocated 1/7<sup>th</sup> of the amount withheld for the purpose of purchasing fire trucks to provide funding solely for the purchase or debt service of new or used fire trucks. The remaining 6/7<sup>th</sup> shall be allocated by the County Fire Board solely for the purchase of new or used fire trucks based on need. Gauley River and Quinwood Fire Departments will not qualify for payments under the fire truck allotment.

Annually, each fire department will submit invoices for the equipment which the department wishes to purchase with the fire service fee allotment. The County Fire Board will then review the request. Upon approval, the request will be sent to the County Commission for review and approval. Upon approval by the County Commission, the department may purchase the approved equipment. Upon confirmation by the Office of Emergency Services Director that the order is accurate and complies with the approval of the County Commission, the invoice will be submitted for payment to the County Commission. Payments will not be made for orders not preapproved by the County Fire Board and County Commission.

#### **SECTION 7: ENFORCEMENT AND DELINQUENT PAYMENT**

The fees assessed and levied pursuant to the provisions of this Ordinance shall be a debt due the Nicholas County Commission and may be collected by proceedings instituted in courts of competent jurisdiction. *The Nicholas County Commission **shall not** have a lien on any property as security for payment due under this Ordinance.*

Refusal to pay the Fire Usury Fee will leave a landowner liable to provisions of the ORDINANCE OF NICHOLAS COUNTY, STATE OF WEST VIRGINIA, AUTHORIZING THE VOLUNTEER FIRE DEPARTMENTS IN NICHOLAS COUNTY TO CHARGE AND RECOUP THE COSTS OF CERTAIN EMERGENCY RESCUE SERVICES, EQUIPMENT AND TRAINING PURSUANT TO WEST VIRGINIA CODE 7-1-3D.

#### **SECTION 8: DEFINITIONS**

1. "Residential Building" means any structure which is used or intended by the nature of its construction to be used by persons for living and sleeping quarters, including modular and mobile homes, but shall not include hotels, motels, or other buildings intended primarily for transient lodging.
2. "Residential Rental Building" means any structure which is rented in whole or in part for the purpose of single or dual family dwelling.
3. "Commercial Building" and/or "Institutional Building" means any structure which is used or intended by the nature of its construction to be used for business, industry, manufacturing or any other commercial activity, as well as a structure that encompasses three or more family dwelling units in the same structure.
4. "Owner" means any person or entity listed in the records of the County Assessor of Nicholas County, West Virginia, and is possessing exclusive rights and control of property, whether in fee or for life.
5. "Farm Building" is defined as all buildings used exclusively for bona fide, active, and operational farming, including pole barns, barns, detached garages, smokehouses, utility buildings, grain silos/bins, or any other structures that does not serve as a residence.

#### **SECTION 9: EXPEMPTIONS**

- A. Any structure, building or buildings statutorily or otherwise legally exempt from County property taxes, i.e. churches, military establishments, and charitable

organizations, shall be exempt from fees set forth in this Ordinance; also exempt are Farm Buildings (as defined in Section 7) from fees set forth in this Ordinance.

- B. Financial Hardship Exemption - One- and two-family residential property owners may apply for a fire service fee hardship exemption if the said owner fully and completely qualifies with regard to all income and residence eligibility criteria set forth in the **Residential Hardship Exemption Application**, as may from time to time be amended. Copies of the **Residential Hardship Exemption Applications** will be available at the Office of the Nicholas County Commission and each owner's Fire Station. Owners that are desirous to apply for the aforementioned exemption must apply on an annual basis and are required to file an application each year with up to date financial information. Said information must be provided with the application of exemption, for review. The guidelines set are as follows:

You must provide proof of total household income from within the last 30 days of the submission of this document:

# of Persons in Household	125% Poverty Guidelines	Monthly Gross
1.	<u>\$14,712.00</u>	<u>\$1,226.00</u>
2.	<u>\$19,912.00</u>	<u>\$1,659.00</u>
3.	<u>\$25,112.00</u>	<u>\$2,092.00</u>
4.	<u>\$30,312.00</u>	<u>\$2,526.00</u>
5.	<u>\$35,512.00</u>	<u>\$2,959.00</u>

## SECTION 10: TENANT COUNTY CITIZEN PROTECTION(S)

Any Nicholas County citizen in a landlord-tenant agreement concerning living quarters are governed by the following applications:

- A. In the situation of one or two rental units being used for living quarters, being in the same structure, where there is not also a commercial use for other parts of the structure, the landlord (owner of the property) will be liable for an annual fire fee of \$35. The tenant, should the landlord pay their residential fire fee, is due a copy of the receipt of payment (within 30 days of payment) and therefore may present this documentation in order to be protected in the event of an automobile accident that they are determined responsible for. Should the landlord choose to not pay their Fire Usury Fee, the tenant is eligible to pay a **Personal Auto Fire Usury Fee Option** referred to in Section 11.
- B. In the situation of three or more rental units, being in the same structure, are being used for living quarters the structure will be served a fire service fee of the appropriate commercial rate. The landlord will not be liable to provide proof of payment of their fee to the tenant in this scenario. However, said tenant are eligible for the **Personal Auto Fire Usury Fee Option** referred to in Section 11.
- C. Should a situation occur where there is a tenant, renting a unit placed within a commercial structure (ex. Storefront with a rented apartment on the second floor), the landlord will not be liable to provide proof of payment of their fee to the tenant as they

will be billed at a commercial rate. However, said tenant are eligible for the **Personal Auto Fire Usury Fee Option** referred to in Section 11.

*The Nicholas County Commission **shall not** have a lien on any property, being real or personal, as security for payment due under this Ordinance.*

#### **SECTION 11: PERSONAL AUTO FIRE USURY FEE OPTION**

Should a tenant of a commercial structure, or a tenant of a rented home of one or two living units, wish to do so, may submit a PERSONAL AUTO FIRE USURY FEE form with the annual fee being \$15 (fifteen dollars). There are to be no exemptions to this option. The decision to not pay this fee leaves individuals in this specific situation liable for the County's Fire Department Expense Billing Ordinance.

Requirement of notice legal publication

THE PERSONAL AUTO FIRE USURY FEE OPTION IS ONLY OPEN TO CURRENT CITIZENS OF NICHOLAS COUNTY. A PROOF OF RESIDENCY WILL BE REQUIRED BEFORE THIS OPTION BE GRANTED.

#### **SECTION 12: MULTI-TRACT PRIVATE LANDOWNER PROTECTION**

Should the event occur that a citizen, owning multiple tracts of land with only one of said tracts having a home fixed upon it, all tracts will be protected on all tracts of land concerning their exempt Farm Buildings (Section 8, A) from any billing should an event occur that a Nicholas County Fire Department, or departments issued a primary response district within Nicholas County, WV. For landowners in this situation, all events are to be exempt excluding such incident, accident, fire, et al involving hazardous materials or any incident involving extended duration search and rescue or water rescue.

#### **SECTION 13: EXEMPTION OF THE ORDINANCE OF NICHOLAS COUNTY, STATE OF WEST VIRGINIA, AUTHORIZING THE VOLUNTEER FIRE DEPARTMENTS IN NICHOLAS COUNTY TO CHARGE AND RECOUP THE COSTS OF CERTAIN EMERGENCY RESCUE SERVICES, EQUIPMENT AND TRAINING PURSUANT TO WEST VIRGINIA CODE 7-1-3D.**

Should a landowner or citizen having proof, or can provide proof within 45 days, of previous payment of their annual fee in the year that a billable event occurring, that individual and those in the protected household would be exempt from billing by any Nicholas County or other departments issued a primary response district within Nicholas County, WV. This ordinance leaves no limit on the number of billable incidents per year nor per household, all events are to be exempt excluding such incident, accident, fire, et al involving hazardous materials or any incident involving extended duration search and rescue or water rescue.

#### **SECTION 14: PROTECTION(S) CONCERNING IN-CITY COUNTY RESIDENTS**

Up and until either city, being Richwood or Summersville, should choose to dissolve their in-city fire usury fees, the option to pay the Nicholas County Fire Usury Fee will only apply to those

who live within the confines of Nicholas County, excluding those who own residential or industrial properties within the confines of The City of Richwood or the City of Summersville.

Up and until either city, being Richwood or Summersville, should choose to dissolve their in-city fire usury fees, this ordinance will allow for county-wide protection for those in-city residents who can provide a proof of payment of their respective city's fee. Proof of this payment must be provided by the city to the individual upon the yearly payment of their respective in-city fees.

#### **SECTION 15: PROTECTION(S) CONCERNING COUNTY CITIZENS**

Those citizens of Nicholas County able to provide proof of payment of their annual Fire Usury Fee after an accident/fire has occurred, will therefore be protected from personal billing coming from: Richwood Volunteer Fire Department; Summersville Volunteer Fire Department; Craigsville/Beaver/Cottle Volunteer Fire Department; Nettie Volunteer Fire Department; Birch River Volunteer Fire Department; Wilderness Volunteer Fire Department; Kessler's Cross Lanes Volunteer Fire Department; and any other departments issued a primary response district within Nicholas County, WV.

#### **SECTION 16: INSURANCE PROTECTION(S)**

Should a landowner or citizen having proof, or can provide proof of payment within 90 days after a billable event occur to the Nicholas County Fire Department, with said proof of payment covering the year that the billable event occurs, the insurance of that individual and those in the protected household's home and automotive insurances would be protected against billing by any Nicholas County or other departments issued a primary response district within Nicholas County, WV. All events are exempt excluding such incident, accident, fire, et al involving hazardous materials or any incident involving extended duration search and rescue or water rescue.

#### **SECTION 17: APPLICATION OF STATUTE**

This Ordinance is enacted under the specific authority granted to the Commission under the terms of Chapter 7, Article 17 of the West Virginia Code, and the powers and limitations therein contained are incorporated in this Ordinance by reference.

#### **SECTION 18: PROTESTS**

The owner of any such building above, feeling aggrieved by a charge or fee for fire protection service fee, shall file on or before thirty-five (35) days following the aforementioned billing date for the said fire service fee, shall file a written objection to the same. All properly and legally filed written objections and/or grievances shall be reviewed by the Nicholas County Fire Board in a reasonable period of time, and the said Nicholas County Fire Board shall render and issue a written decision as to the said objection and/or grievance. The owner of any such building above, feeling aggrieved by the denial of a written application for a residential property hardship exemption, may protest the same by delivering written notice to the Nicholas County Fire Board on or before fourteen (14) days following the dated of the aforementioned denial or grievance. Upon proper filing and receipt of such a protest and/or objection, the Nicholas County Fire Board shall conduct in a reasonable period of time, a hearing as to the objections



and/or grievances and shall render and issue a written decision as to the said objection and/or grievance.

The owner of any such building above, feeling aggrieved by the decision of the Nicholas County Fire Board following a hearing as to an objection to the charge or fee for fire protection service fee, or aggrieved by a written decision of the Nicholas County First Board with regard to an application for a residential property hardship exemption, may protest the same by delivering written notice to the Nicholas County Commission on or before fourteen (14) days following the dated of the aforementioned denial or grievance, which shall review the same, and should such protest warrant a hearing, the said Commission shall set a time for such a hearing within thirty (30) days of filing such protest. The Nicholas County Commission shall render a decision based on the record made at the hearing within a reasonable time, giving notice in writing of its decision to all parties concerned. The amount, if any, due the Nicholas County Commission under such decisions shall be due and payable thirty (30) days after service or notice of the decision. Any person aggrieved by such administrative decision may, within thirty (30) days from date of service and/or notice of the decision, and shall file a petition, duly verified, with the Circuit Court of Nicholas County, West Virginia, requesting review by certiorari. Failure to file such a petition in a proper and timely manner shall render the decision of the Nicholas County Commission final and conclusive.

#### **SECTION 19: COUNTY COMMISSION OVERSIGHT; DEPARTMENT INTEGRITY**

The Nicholas County Commission reserves the right at any time to suspend the disbursement of funds to any fire department by a majority vote being held in a regular or special meeting, should there be irregularities or other concerns of potential financial impropriety, namely the misuse of funds coming from this Fire Fee.

Each department must submit their Annual Report (of the previous calendar year) to the Nicholas County Commission, as well as the Nicholas County Fire Board by the first (1<sup>st</sup>) day of May for review, ensuring transparency and oversight of the use of the funds that are provided by this ordinance. Department representatives may be called to testify in a regularly scheduled meeting to either governing body, should any concerns be raised about the use of these funds.

Fire departments are to uphold their responsibilities within the confines of regulations provided by the West Virginia State Fire Marshall's Office. Pursuant to this ordinance, if at any time a department collecting funds provided by the Nicholas County Fire Fee is found to be in non-compliance or is found to be outside the permissible operations of the West Virginia State Fire Marshall's Office such funds shall be temporarily suspended until the non-compliance is resolved.

#### **SECTION 20: PUBLICATION OF FIRE SERVICE FEE ORDINANCE**

This Nicholas County Fire Service Fee Ordinance shall be published by Class II Publication, being once a week for two (2) successive weeks, in a qualified newspaper published and circulated in Nicholas County, West Virginia.

#### **SECTION 21: USES OF FUNDS PROVIDED BY THIS FIRE FEE**

The funds made available to the fire departments within and providing service to Nicholas County can be applied for and spent upon such uses as provided by state guidelines such as and including West Virginia Code 8-15-18B without the state recommended caps on spending and upon member retention efforts.

## SECTION 22: SEVERABILITY AND LIABILITY

Severability – Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance be declared invalid by an entity of lawful control, or court of competent jurisdiction, such a determination or declaration shall not invalidate or other render illegal, unlawful, or unenforceable all remaining provisions of this Ordinance, and the same shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Liability – The enactment of this Ordinance shall not constitute a representation, guarantee, or warranty of any kind by the County Commission of Nicholas County, West Virginia, or by any official or employee thereof, and shall create no liability upon the County Commission of Nicholas County West Virginia, and/or any official, employee, assign, or agent thereof.

## SECTION 23: EFFECTIVE DATE

First Reading	<u>June 28, 2022</u>
Second Reading	<u>July 13, 2022</u>
Public Comment	<u>August 3, 2022</u>
Third Reading	<u>August 3, 2022</u>

This Ordinance shall become effective, on the 3 day of August, 2022, and the first annual fee shall become payable as outline by the Ordinance and/or the owner's invoice.

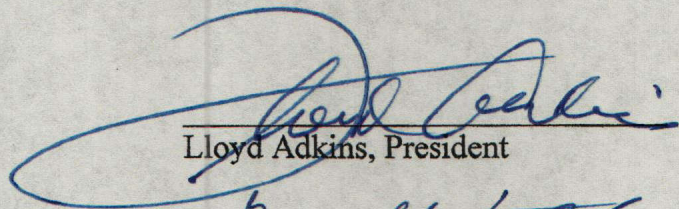
## DOCUMENTS ATTACHED:

1. Statement of Administrative Support by The City of Summersville, West Virginia
2. Statement of Administrative Support by The City of Richwood, West Virginia
3. Residential Hardship Exemption Application
4. Personal Auto Fire Usury Fee Option Application
5. West Virginia Code 7-1-3D
6. West Virginia Code 7-17-1 et seq.
7. Federal Poverty Guidelines


**THE COUNTY COMMISSION OF NICHOLAS COUNTY, WEST VIRGINIA**  
**aka THE NICHOLAS COUNTY COMMISSION, a statutory body.**

ENTERED by the County Commission of Nicholas County, West Virginia,  
on this the 3 day of August, 2022.

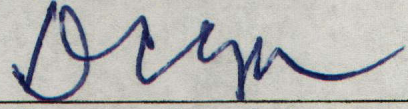
WITNESS the following signatures and seals.



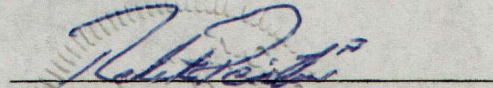
Lloyd Adkins, President



Garrett Cole, Commissioner



Craig Chapman, Commissioner

  
County Clerk, Robert Painter, II.

County Clerk, Robert Painter, II.

