

CONSERVATION EASEMENT

STATE OF TEXAS §

COUNTY OF SAN JACINTO§

This Grant of Conservation Easement ("Conservation Easement") is made on this 7th day of Nov, 2002, by Marjorie H. Russell and Kenneth L. Russell, with an address of 1620 Woodland Lane, Huntsville, Texas 77340 ("Grantor"), and Natural Area Preservation Association, a non-profit corporation organized and existing under the laws of the State of Texas, with an address of P. O. Box 162481, Austin, Travis County, Texas 78716-2481 ("Grantee").

RECITALS:

A. The Grantor is the sole owner in fee simple of certain real property legally described in Exhibit A, attached hereto and incorporated by this reference, consisting of approximately 131 acres located in San Jacinto County, State of Texas, hereinafter referred to as the "Protected Property" and known as the **RUSSELL-FRITZ WESTERNMOST LONGLEAF PINE PRESERVE**, which is legally described in Exhibit A, attached hereto and incorporated by this reference.

B. The Protected Property is an undeveloped area in relatively natural condition that qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder; specifically the Protected Property protects a tract of undeveloped, mature forest which provides habitat for numerous native plants and animals.

C. The characteristics of the Protected Property, its current use and state of improvement, are described in a Baseline Report to be prepared by Grantee for the Grantor within four months. The Grantor will work with the Grantee to ensure that the Report is a complete and accurate description of the Protected Property at the time of

donation of this Conservation Easement. The Report will be used by the Grantor and Grantee to assure that any future changes in the use of the Protected Property will be consistent with the terms of this Conservation Easement. However, the Baseline Report is not intended to preclude the use of other evidence to establish the present condition of the Protected Property if there is a controversy over its use.

D. The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity, and the State of Texas has authorized the creation of Conservation Easements pursuant to The Texas Natural Resource Code Chapter 183 and the Grantor and Grantee wish to avail themselves of the provisions of that law.

NOW, THEREFORE, the Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift, hereby gives, grants, bargains, sells and conveys unto the Grantee a Conservation Easement in perpetuity over the Protected Property, of the nature and character as follows:

1. **PURPOSE.** The purpose of this Conservation Easement is to ensure that the Protected Property will be retained forever predominantly in its natural and scenic condition; to protect native plants, animals, and plant communities on the Protected Property; to prevent any use of the Protected Property that will impair or interfere with the conservation values of the Protected Property described herein, while allowing for uses on the Protected Property that are compatible with and not destructive of the conservation values of the Protected Property, such as hunting of white-tailed deer and feral hogs, and other compatible commercial and recreational uses.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the purposes of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Protected Property after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on uses of the Protected Property imposed by law.

2. **PROPERTY USES.** Any activity on or use of the Protected Property inconsistent with the purposes of this conservation easement is prohibited. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed. Grantor and Grantee have determined that the allowed activities do not impair the conservation values of the Protected Property. Additional retained rights of Grantor are set forth in Paragraph 3 below.

2.1 Subdivision. The Protected Property may not be further divided, subdivided or partitioned. This provision does not apply to the two areas that are excluded from the Conservation Easement as described in Exhibit A.

2.2 Construction. There shall be no further construction of buildings, structures, wells, roads, dams, or other improvements on the Protected Property, except that perimeter fencing may be built and maintained if necessary to prevent unauthorized entry to the preserve. Existing soft-surface roads may be stabilized as necessary to prevent erosion. Additional hiking, equestrian, and interpretive trails may be added as well as hard surface pathways for the passage of electric powered vehicles for visitation by the handicapped, so long as said construction or improvement maintains the ecological integrity of the Protected Property to the greatest possible extent. Said trails, paths, and roads may be mowed or trimmed for minimal width maintenance. Shrines or memorials may be constructed at the edge of trails, paths or roads.

2.3 Mineral Extraction. Minerals shall not be extracted by any surface mining methods. Extraction of subsurface minerals should be accomplished by means of extraction methods that will have a limited and localized impact on, and not significantly impair or interfere with, the conservation values of the Protected Property and the purposes of this Easement. Grantor shall give written notice to Grantee thirty (30) days prior to beginning any extraction of minerals.

2.4 Excavation. Except as necessary to accommodate the activities expressly permitted under this easement, there shall be no ditching, draining, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, mining,

drilling or removal of minerals, nor any building of roads except as described in Paragraph 2.2 above, or change in the topography of the Protected Property.

2.5 Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Protected Property that require no surface alteration or other development of the land. Pursuit of wildlife by any form of motorized transportation is not allowed. White-tailed deer are the only native species of wildlife that may be hunted under any circumstances. All other native species are to be strictly protected, including but not limited to native insects, microorganisms, venomous snakes, alligators, and all other native creatures, except under certain scientifically verifiable circumstances as described in Paragraph 2.12. Feral hogs, dogs, cats, and other non-native species are to be controlled, removed, or humanely killed as possible.

2.6 Destruction of Plants, Disturbance of Natural Habitat. Grantor shall have the right to cut and remove exotic trees, shrubs, or plants, and to cut firebreaks in case of emergency. Grantor shall also have the right to cut and remove trees, shrubs, or plants to accommodate the activities expressly permitted under this easement in Paragraphs 2.2, 2.3, and 2.4. There shall be no additional removal, harvesting, destruction, or cutting of native trees, shrubs, or plants. There shall be no planting of invasive or non-native trees, shrubs, or plants on the Protected Property. Except to accommodate the activities expressly permitted under this Easement, there shall be no use of plowing or other disturbance that would lessen native biological diversity or alter the native species composition of habitat areas on the Protected Property.

As native plant and animal communities and species are subject to human-induced modification of the life support systems of the biosphere, rapid changes in climate may occur that could adversely affect the native species and ecological balance of the Protected Property. Due to fragmentation of most of the world's biomes, it is now impossible for native gene pools to ebb and flow and evolve as in past epochs. Therefore, it is recognized that the native species composition of the Protected Property may change due to factors beyond the control of either Grantee or Grantor. Catastrophic environmental changes may require that Grantee, using the best available science, aid the introduction of native species that, in a non-fragmented landscape, would enter the Protected Property to fill the ecological changes left by extirpated native

species. Scientifically supported artificial intervention may prove to be necessary on a case-by-case basis to protect or preserve an endangered native species or community using methods scientifically established as having occurred in areas of non-fragmented habitat. Any human modification of the Protected Property should be conducted with extreme caution and under adequate monitoring by the scientific community, and any such intervention must be approved by both Grantor and Grantee.

2.6a Longleaf Pine Protection and Propagation. Notwithstanding the foregoing, Grantor may conduct experimental activities on parts of the Protected Property to promote the natural growth and regeneration of longleaf pines (*Pinus palustris*), subject to approval by Grantee and the stewardship committee. Should it be determined by the Grantee and the stewardship committee that planting of longleaf pines through artificial means is necessary in order to mitigate the loss of pines from past harvesting that eliminated many mature longleaf pines from the subject property, and thus created an unbalance in the relative abundance of species, only seed or seedlings from the local *Pinus palustris* gene pool may be used.

2.7 Hydrology. Except as necessary to accommodate allowed activities, there shall be no alteration, depletion or extraction of surface or subsurface water on the Protected Property. Grantor shall not sell or otherwise transfer water rights associated with the Protected Property.

2.8 Signage. No signs or billboards or other advertising displays are allowed on the Protected Property, except for those signs whose placement, number and design do not significantly diminish the scenic character of the Protected Property.

2.9 Biocides. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides.

2.10 Dumping. There shall be no new storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, except as permitted elsewhere in this Easement.

2.11 Pollution. There shall be no pollution of surface water, natural watercourses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Protected Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Protected Property.

2.12 Predator Control. Grantor shall attempt to eliminate non-native feral hogs, dogs, cats, and any other non-native predatory or problem animals by humane methods approved by the Grantor. No native predators, including bears, cougars, coyotes, red wolves, red wolf-coyote crosses, hawks, eagles, foxes, alligators, or snakes, may be killed under any circumstances except under immediate danger of loss of life or serious injury in the case of an attack by a bear, cougar, rattlesnake, or other predator capable of killing humans. However, if it is determined through scientific study that a threat to a rare or endangered species, to the native ecological balance, to the relative abundance of native species, or to the ecological integrity is occurring or is likely to occur from an overpopulation of a native species, then control, removal or elimination of the damaging species may be conducted subject to approval by Grantor and Grantee.

2.13 Commercial Development. Any industrial use of or activity on the Protected Property is prohibited. Commercial development or use that is compatible with wildlife preservation is permitted, provided such development or use does not undermine the conservation values of the Protected Property.

3. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** Grantor retains the following additional rights:

3.1 Existing Uses. The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Easement. Prior to making any change in use of the Protected Property, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Protected Property subject to the terms of this Conservation Easement.

4. **GRANTEE'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to Grantee by this Conservation Easement:

4.1 Right to Enforce. The right to preserve and protect the conservation values of the Protected Property and enforce the terms of this Conservation Easement.

4.2 Right of Entry. The right of Grantee's staff, contractors and associated natural resource management professionals to enter the Protected Property one or more times a year after reasonable notice to Grantor, for the purposes of: (a) inspecting the Protected Property to determine if Grantor is complying with the covenants and purposes of this Conservation Easement; and (b) monitoring of plant and wildlife populations.

4.3 Discretionary Consent. The Grantee's consent for activities otherwise prohibited or requiring Grantee's consent under paragraph 2 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in paragraph 2 are deemed desirable by both the Grantor and Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring the Grantee's consent shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement.

5. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor or in any way to modify any existing

obligation of the Grantor as owners of the Protected Property. Among other things, this shall apply to:

(a) *Taxes* - The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Protected Property.

(b) *Management, Upkeep and Maintenance* - The Grantor shall be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Protected Property.

6. **ACCESS.** No right of access by the general public to any portion of the Protected Property is conveyed by this Conservation Easement. As these properties are to serve as native gene pool repositories and as part of worldwide biological and ecological conservation, controlled access by biologists, ecologists, botanists, and other scientists and their students shall be allowed for academic research. Media may be given tours so that the Protected Property may be described to the general public. Other entry may be allowed by special arrangement. Under no circumstances are any biological or mineral materials to be disturbed or removed for off-site study or any other purposes except by mutual consent of the Grantor and Grantee.

7. **ENFORCEMENT.** The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. With reasonable notice, the Grantee may enter the Protected Property for the purpose of inspecting for violations. If the Grantee determines that a violation has occurred, is occurring, or is threatened, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the conservation values of the Protected Property, the Grantee shall give the Grantor written notice of the violation and sixty (60) days to correct it (or to begin good faith efforts to correct in the event the violation is something which cannot be reasonably corrected in sixty days), before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Protected Property to its

condition prior to the violation. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

8. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this easement are in gross and assignable. The Grantee shall have the right to transfer or assign this Conservation Easement to any private nonprofit organization that at the time of transfer is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code, and the organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility.

9. **TRANSFER OF PROPERTY.** The Grantor shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Protected Property, or any interest therein, to any third party, and the document of conveyance shall expressly refer to this Conservation Easement.

10. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Texas Natural Resources Code 183.001 *et seq.*, or any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would adversely affect the enforceability of this Conservation Easement.

11. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Protected Property have changed so much that it is impossible to fulfill the conservation purposes set forth above, this Conservation Easement may be terminated only by a court with jurisdiction at the joint request of both the Grantor and Grantee.

If condemnation of all or part of the Protected Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings. At the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee. If the easement is terminated and the Protected Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Grantor) equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Protected Property, as these values are determined at the time of donation of this Conservation Easement. The Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement by expending said funds for the purchase of fee simple protected lands or conservation easements which will mitigate the damage to the immediate geographic vicinity of the Protected Property.

12. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of Texas, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

13. **INDEMNIFICATION.** Each party agrees to hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Protected Property that causes injury to a person(s) or damage to property.

14. **TITLE.** The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey this Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

15. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:

Marjorie and Kenneth Russell
1620 Woodland Lane
Huntsville, Texas 77340

To the Grantee:

Natural Area Preservation Association
P. O. Box 162481
Austin, Texas 78716-2481

16. **ENVIRONMENTAL CONDITION.** The Grantor warrants that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

17. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

18. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

19. **PERPETUAL DURATION.** This Conservation Easement runs with the land and binds all successive owners of the Protected Property.

20. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

21. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.

22. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as

EXHIBIT A: DESCRIPTION OF PROTECTED PROPERTY

Being 151 acres of land, more or less, situated in the ISAAC PRATER SURVEY, A-239 and the RICHARD BANKHEAD SURVEY, A-70, San Jacinto County, Texas, and being all of undeveloped land bounded on the West by FM Highway 980, on the South by Waterwood Parkway, on the East and Easterly side by Waterwood Bay Road, along the Northerly side by (i) a 9.451 acre tract of land described a Parcel 4 in a deed from Horizon Properties Corporation to Waterwood Holdings, L.P., dated April 3, 1998, recorded in Volume 278, Page 394 of the Official Public Records, San Jacinto County, Texas, (ii) Bass Boat Village of Waterwood, a subdivision in San Jacinto County, Texas as shown by the plat of recorded in Volume 5, Page 28 of the Plat Records, San Jacinto County, Texas and (iii) the fee taking line of the Livingston Reservoir.

SAVE AND EXCEPT:

- 1) A 10 acre tract, more or less, situated in the southwest corner of the called 151 acre tract, being described as: beginning at the intersection of the North right-of-way line of Waterwood Parkway at its intersection with the East right-of-way line of FM 980. Thence N14-07 W, 660' along the East right-of-way line of FM 980 to a point, thence N75-53E 660' to a point, thence S14-07E 660' to a point on the North right of way line of Waterwood Parkway, thence S75-53W along the North right of way line of Waterwood Parkway to the place of beginning.
- 2) A 10 acre tract, more or less, situated on the Easterly boundary of the called 151 acre tract also being the west right of way line of the Marina Road, being described as beginning at a point shown on sheet two of The Beach plat, filed in Vol. 6, pg. 9 of the deed records of San Jacinto County. Said beginning point being the southern most point of the said west right of way line of the Marina Road that measures 653.48 feet with a bearing of N29-38-36W. Thence along the west right of way line of the Marina Road N29-38-36W 653.48 feet to a point, thence continuing along the west right of way line of the Marina Road and along the arc of the curve to left 56.15 feet to a point, thence S38-37-25W 361.58 feet to a point, thence S86-14-54W 157.21 feet to a point, thence S29-38-36E 878.61 feet to a point, thence N60-21-24E 489.41 feet to a point on a curve of the west right of way line of the Marina Road, thence in a northwesterly direction along the arc of the curve 242.17 feet to the place of beginning.

collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

23. **EXHIBITS.** The following Exhibit is incorporated within this Easement:

Exhibit A: Description of Protected Property

24. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the signature of its authorized representative affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective on the date recorded in the San Jacinto County Registry of Deeds.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands and seals on the date first written above.

GRANTORS:

Kenneth L Russell J L Russell (SEAL)

Marjorie J Russell (SEAL)

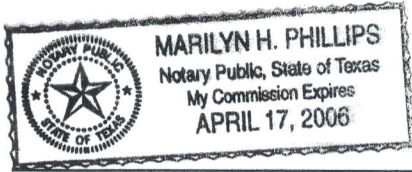
STATE OF Texas §

COUNTY OF Walker §

34663

BEFORE ME, the undersigned authority, on this day personally appeared Kenneth L. & Margorie Russell, known to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he executed the same for the purposes and consideration therein stated, individually and in the capacity above stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 7 day of Nov, 2002.



(SEAL)

NOTARY PUBLIC

My commission expires:

04-17-06

GRANTEE:

NATURAL AREA PRESERVATION ASSOCIATION

By: Edward Cortez (SEAL)

Its: Secretary

STATE OF Texas §

COUNTY OF Dallas §

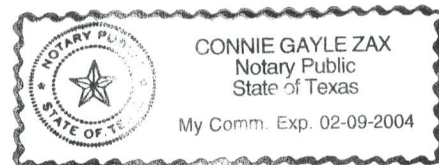
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BEFORE ME, the undersigned authority, on this day personally appeared Richard G. Rose, known to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he executed the same for the purposes and consideration therein stated, individually and in the capacity above stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 8 day of March 2002.



NOTARY PUBLIC (SEAL)



My commission expires:

CLERK'S NOTICE: ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE, IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

RETURN TO:

Phil Palmer

100 WATERWOOD

HUNTSVILLE, TX. 77320

FILED FOR
RECORD

02 DEC -5 PM 3:03

Charlene Vann
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF SAN JACINTO
I, Charlene Vann, hereby certify that this instrument was FILED in file number sequence on the date and at the time stamped hereon by me and was daily RECORDED, in the official public records of San Jacinto County, Texas as stamped hereon by me on

DEC 5 - 2002



CHARLENE VANN
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS