

C2/1

## RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

**CASE:** C14-99-0132(RCT) – Prosperity Business Park    **Z.A.P. DATE:** March 19, 2013

**ADDRESS:** 9101 – 9201 South IH 35 Service Road Northbound

**OWNER:** NL Land Holdings, Ltd. (John Lewis)    **AGENT:** Alice Glasco Consulting  
(Alice Glasco)

**EXISTING ZONING:** CS-CO

**PROPOSED ZONING:** CS-CO, to  
modify the Conditional Overlay  
and remove the provisions which  
prohibit vehicular access to Oak Hill  
Lane and limit signage

**AREA:** 1.88 acres

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends a Termination of the Restrictive Covenant.

**ZONING AND PLATTING COMMISSION RECOMMENDATION:**

March 19, 2013:

**ISSUES:**

None at this time.

**DEPARTMENT COMMENTS:**

The Restrictive Covenant area covers an undeveloped, unplatted tract. Please refer to Exhibits A and A-1 (Zoning Map and Aerial Map). The tract has frontage on the northbound IH 35 service road and a private roadway easement known as Oak Hill Lane. The tract was rezoned to general commercial services – conditional overlay (CS-CO) district in March 2001 (Case No. C14-99-0132 – Oak Hill Lane 6 AC.). The restrictive covenant attached to the zoning ordinance subjects the property to a rollback to the warehouse/limited office (W/LO) district if a CS use is discontinued for 90 consecutive days. Please refer to Exhibit B (2001 Restrictive Covenant).

The 1.88 acre area covered by the Restrictive Covenant has remained undeveloped and the owner now wishes to proceed with a unified commercial development that would also include an adjacent 14.115 acre tract in unincorporated Travis County. A rezoning case to modify signage and access provisions of the Conditional Overlay and a preliminary plan are also in process (C14-2013-0009 and C8J-2012-0170, both known as Prosperity Business Park).

The owner proposes to remove the Restrictive Covenant because commercial uses, rather than warehouse/limited office development are proposed. The Restrictive Covenant was established at a time when several of the surrounding properties in the City limits were undeveloped and the unincorporated areas to the east were largely residential in character. The adjacent property to the north located at the southeast corner of IH 35 and East Slaughter Lane is zoned CS-CO, and properties at the northeast corner of the intersection are zoned CS-CO and none are encumbered by a restrictive covenant which calls for a rollback to W/LO. For these reasons, Staff supports the Applicant's request for termination of the Restrictive Covenant.

### **EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	CS-CO	Undeveloped
<i>North</i>	CS-CO; I-RR	Convenience storage; Truck rental; Undeveloped
<i>South</i>	SF-2	Undeveloped
<i>East</i>	County	A few residences; Commercial businesses including auto repair
<i>West</i>	N/A	IH-35 Northbound service road and main lanes

**AREA STUDY:** N/A

**TIA:** Is not required

**WATERSHED:** Onion Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** No

**SCENIC ROADWAY:** No

### **NEIGHBORHOOD ORGANIZATIONS:**

26 – Far South Austin Community Association  
 511 – Austin Neighborhoods Council  
 627 – Onion Creek Homeowners Association  
 742 – Austin Independent School District  
 1037 – Homeless Neighborhood Association  
 1075 – League of Bicycling Voters  
 1200 – Super Duper Neighborhood Objectors and Appealers Organization  
 1224 – Austin Monorail Project  
 1228 – Sierra Group, Austin Regional Group  
 1236 – The Real Estate Council of Austin, Inc.  
 1258 – Del Valle Community Coalition  
 1340 – Austin Heritage Tree Foundation  
 1363 – SEL Texas

### **SCHOOLS:**

Blazier Elementary School

Bedichek Middle School

Crockett High School

### **CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-02-0070 – Home Depot #6563	I-RR to CS	To Grant CS-CO with CO for list of	Approved CS-CO (7- 11-2002).

at Slaughter Lane – 8801 S. IH 35 and 100-200 E. Slaughter Ln.		prohibited uses	
C14-97-0081 – IH 35 South at Slaughter Lane – 9000-9100 Block of S IH 35 Service Road Northbound	SF-2 to CS	To Grant CS-CO	Approved CS-CO w/CO for 2,000 trips, list of prohibited uses, no vehicular access to Oak Hill Ln. until improved to City standards, 45' height limit for structures, 40' wide setback for structures from IH 35 r-o-w (10-16-1997).
C14-96-0086 – South Bend – Northeast corner of IH 35 and E Slaughter Ln.	DR to CS	To Grant CS for two tracts; RR for one tract	Approved CS with Restrictive Covenant for the conditions of the TIA (10-10-1996).

**RELATED CASES:**

The rezoning area was annexed into the full-purpose City limits on June 3, 1982 (C7a-80-023 – Ordinance No. 820603-P).

The area was rezoned from SF-2 to CS-CO on March 1, 2001 (C14-99-0132 – Oak Hill Lane 6 AC.). The Conditional Overlay: 1) establishes a 2,000 trips per day limit; 2) prohibits auto rentals, repair services, sales, washing (of any type), adult-oriented uses, commercial off-street parking, drop-off recycling collection facility, pawn shops and residential treatment; 3) limits height of signage to 35 feet above ground level; 4) prohibits access to Oak Hill Lane and 5) requires a 15-foot wide vegetative buffer along the IH 35 frontage. A Restrictive Covenant subjects the property to a rollback to the warehouse/limited office (W/LO) district if a CS use is discontinued for 90 consecutive days. A zoning change to remove signage restrictions and access restrictions is also in process (C14-2013-0009 – Prosperity Business Park).

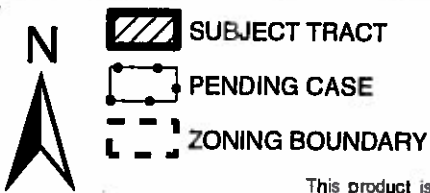
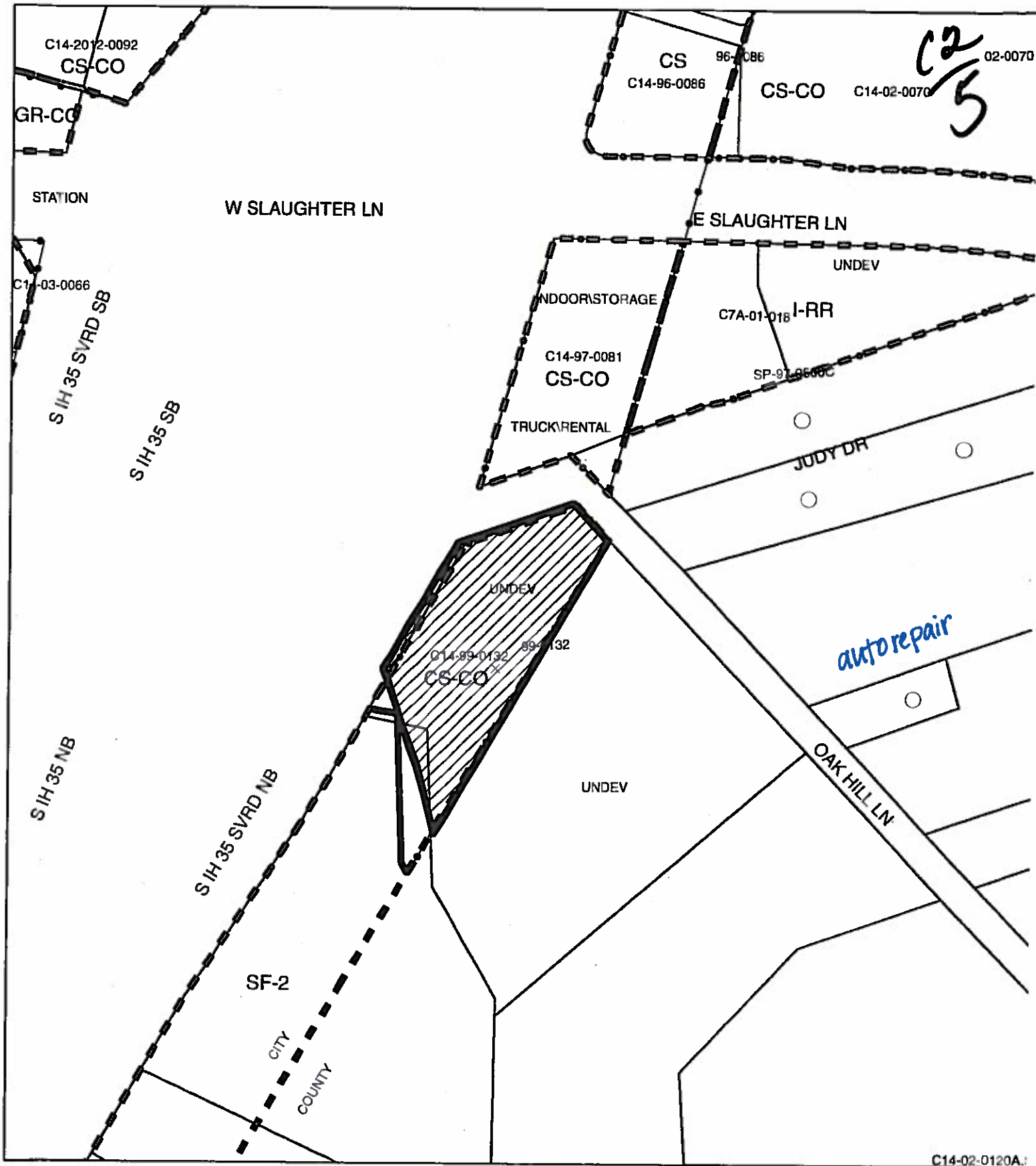
The subject property as well as abutting property to the east within the County is in the subdivision review process (C8J-2012-0170 – Prosperity Business Park preliminary plan). The subdivision consists of six lots on a total of 15.995 acres and includes the platting of Oak Hill Lane. The subject rezoning area is 1.88 acres of Lot 1, Block A. The remaining 14.115 acres is within unincorporated Travis County. There are no site plan applications approved or in process on the subject property.

C2/H

**ABUTTING STREETS:**

Name	ROW	Pavement	Class	Sidewalk?	Bus Route?	Bike Route?
Oak Hill Lane	80 feet	20 feet	Collector	No	No	No
IH 35 Northbound Service Road	Varies	FWY 6	Freeway	No	No	No

**CITY COUNCIL DATE:** April 11, 2013**ACTION:****ORDINANCE READINGS:** 1<sup>st</sup>2<sup>nd</sup>3<sup>rd</sup>**ORDINANCE NUMBER:****CASE MANAGER:** Wendy Rhoades  
e-mail: wendy.rhoades@austintexas.gov**PHONE:** 974-7719



1" = 200'

**ZONING**  
**ZONING CASE#: C14-99-0132(RCT)**

*Exhibit A*

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made









C2  
7

Zoning Case No. C14-99-0132

20010301-13

**RESTRICTIVE COVENANT**

**OWNER:** JANOE TRUCK SALES AND SERVICE, INC., a Texas corporation, dba Janoe Kenworth Trucks

**ADDRESS:** 5036 Roosevelt Avenue, San Antonio, Texas 78214

**CONSIDERATION:** Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

**PROPERTY:** A 6.39 acre tract of land out of the Santiago del Valle Grant, said tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. If use of the Property as general commercial services (CS) use is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to warehouse limited office (W/LO) district as defined in Chapter 25-2 of the City Code. Normal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the Property after damage or destruction shall not be included in calculating the period of discontinuance.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXHIBIT B  
2001 RESTRICTIVE COVENANT

C2/8

EXECUTED this the 27<sup>TH</sup> day of FEBRUARY, 2001.

OWNER:

JANOE TRUCK SALES AND  
SERVICE, INC. a Texas corporation,  
dba Janoe Kenworth Trucks

By: Tom D. Janoe  
Tom D. Janoe, President

APPROVED AS TO FORM:

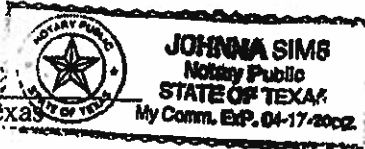
Dwight Thomas  
Assistant City Attorney  
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 27<sup>th</sup> day of February, 2001, by Tom D. Janoe, President of Janoe Truck Sales and Service, Inc., a Texas corporation, dba Janoe Kenworth Trucks, on behalf of said corporation.

Johnna Sims  
Notary Public, State of Texas



After Recording, Please Return to:  
City of Austin  
Department of Law  
P. O. Box 1546  
Austin, Texas 78767-1546  
Attention: Diana Minter, Legal Assistant