



LAND CASES	LAND USE OR ZONING	
	FROM	TO
AV	LU	
AX	<b>RZ2016-05</b>	<b>CRC w/stip</b> <b>CRC w/amd stip</b>
DX	AV – Administrative Variance AX – Annexation DX – De-annexation HBR – Historic Board Review LU – Land Use RZ – Re-zoning SLUP – Special Land Use ZV – Variance	
HBR	ZONING KENNESAW CITY LIMITS COBB COUNTY LAND LOT	
SLUP		
ZV		

**2454 Kennesaw Due West Rd**  
**Land Lot 167 Tax Parcel 103**  
 Subject Properties

**CITY OF KENNESAW**  
 PLANNING & ZONING DEPT.  
 770-590-8268

*Debra Estess*  
 MAYOR  
*Debra Taylor*  
 CITY CLERK

Scale: 1" = 200'  
 Print Date: 5/24/2016  
 RZ2016\_05\_Aerial\_ap



## OVERALL TRACT

ALL THAT TRACT or parcel of land lying and being in Land Lot 167 of the 20<sup>th</sup> District and 2<sup>nd</sup> Section of Cobb County, Georgia, and being more particularly described as follows:

BEGIN at a right of way monument located at the intersection of the westerly edge of the right of way of Cobb Parkway (U.S. Highway 41/Georgia Highway 3, apparent 250 foot right of way) with the southeasterly edge of the right of way of Kennesaw Due West Road (right of way varies); thence South 49 degrees 39 minutes 06 seconds East a distance of 509.08 feet along the westerly edge of the right of way of Cobb Parkway to an iron pin; thence departing said right of way South 37 degrees 30 minutes 30 seconds West a distance of 481.13 feet to an iron pin; thence North 52 degrees 29 minutes 30 seconds West a distance of 458.33 feet to an iron pin, said iron pin being located on the southerly edge of the right of way of Kennesaw Due West Road; thence in a northeasterly direction along the southerly edge of said right of way North 32 degrees 17 minutes 39 seconds East a distance of 80.87 feet to a point; thence continuing along said right of way North 37 degrees 43 minutes 60 seconds East a distance of 4.18 feet to a point; thence continuing along said right of way North 51 degrees 08 minutes 04 seconds East a distance of 51.37 feet to a right of way monument; thence continuing along said right of way and following the arc of a curve thereof an arc distance of 38.45 feet (said arc being subtended by a chord bearing North 36 degrees 38 minutes and 42 seconds with a chord distance of 38.45 feet and the curve having a radius of 1,115.27 feet); thence continuing along said right of way and following the arc of a curve thereof an arc distance of 239.51 feet to a point (said arc being subtended by a chord bearing North 29 degrees 30 minutes 18 seconds East the chord distance of 239.0 feet and having a radius of 1,115.27 feet); thence continuing along said right of way North 23 degrees 21 minutes 11 seconds East a distance of 64.60 feet to a right of way monument located at the TRUE POINT OF BEGINNING.

The above described tract of land contains 5.22 acres and is more fully described upon the Preliminary Plat for Metro Bank dated December 2, 2015, prepared by Charles M. Patterson, Georgia Registered Professional Engineer, which plat by reference thereto is incorporated herein for a more complete description of the property.

**CITY OF KENNESAW, GEORGIA**

**ORDINANCE NO. 2007-18, 2007**

**AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF  
KENNESAW, GEORGIA SO AS TO CHANGE THE ZONING DISTRICT  
DESIGNATION FROM CITY GC (General Commercial), LI (Light Industrial) and O&I  
(Office Institutional) TO CITY CRC (Community Retail Commercial) FOR  
PROPERTIES LOCATED AT THE INTERSECTION OF  
KENNESAW DUE WEST ROAD AND COBB PARKWAY  
(Land Lots 167, 176, 177, Tax Parcels 55, 53, 2, 5, 13, 185, 201 and 307)**

**WHEREAS**, Branch Properties, LLC and McGuire Properties, Inc. has made application to amend the Official Zoning Map of the City of Kennesaw, Georgia so as to change the zoning designation from City GC (General Commercial), LI (Light Industrial) and O&I (Office Institutional) to City CRC (Community Retail Commercial) for properties located at the intersection of Kennesaw Due West and Cobb Parkway on 34 acre+/- parcel (Land Lots 167, 176, 177, Tax Parcels 55, 53, 2, 5, 13, 185, 201 and 307 (as more particularly described below); and

**WHEREAS**, notice was advertised in the Marietta Daily Journal on October 27, 2006, of a public hearing before the Kennesaw Planning Commission held on November 13, 2006 and the Mayor and Council on December 4 2006; and

**WHEREAS**, the Kennesaw Planning Commission held a public hearing on this proposal on November 13, 2006; and tabled this matter at the request of the applicant to December 11, 2006; and

**WHEREAS**, the Mayor and Council public hearing dates were as follows: December 4 and 18, 2006, February 5, March 5, April 2, and May 21, 2007 and were tabled at the request of the applicant; and

**WHEREAS**, the Mayor and Council have determined that the proposed amendment to the Official Zoning Map is in the public interest and meets the standards established in the Kennesaw Zoning Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS.**

**SECTION 1.** The Official Zoning Map of the City of Kennesaw, Georgia is hereby amended so as to change the zoning district designation from City GC (General Commercial), LI (Light Industrial) and O&I (Office Institutional) to City CRC (Community Retail Commercial) for properties located at the intersection of Kennesaw Due West and Cobb Parkway for the following described property:

**Legal Description**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 166, 167, 176 AND 177 OF THE 20TH DISTRICT, 2ND SECTION, COBB COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN AT THE INTERSECTION OF THE SOUTHERN RIGHT-OF-WAY OF U.S. HIGHWAY 41 (APPARENT 250 FOOT RIGHT-OF-WAY) AND THE EASTERN RIGHT OF WAY OF KENNESAW DUE WEST ROAD (VARIABLE RIGHT-OF-WAY); THENCE WITH A BEARING OF S 43°39'06" E A DISTANCE OF 854.52 FEET TO A POINT; THENCE WITH A BEARING OF S 38°28'20" W A DISTANCE OF 69.41 FEET TO A POINT; THENCE WITH A BEARING OF S 36°49'06" W A DISTANCE OF 81.79 FEET TO A POINT; THENCE IN A SOUTHWESTERLY DIRECTION WITH A NON TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 1,185.22 FEET, HAVING A CHORD BEARING OF S 24°13'54" W AND A CHORD DISTANCE OF 478.75, AND AN ARC LENGTH OF 482.07 TO A POINT; THENCE IN A SOUTHERLY DIRECTION WITH A NON TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 1,149.89 FEET, HAVING A CHORD BEARING OF S 10°12'52" W AND A CHORD DISTANCE OF 71.38, AND AN ARC LENGTH OF 71.39 TO A POINT; THENCE IN A SOUTHERLY DIRECTION WITH A NON TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 1,149.89 FEET, HAVING A CHORD BEARING OF S 05°47'52" W AND A CHORD DISTANCE OF 129.37, AND AN ARC LENGTH OF 129.44 TO A POINT; THENCE WITH A BEARING OF S 03°44'46" W A DISTANCE OF 77.63 FEET TO A POINT; THENCE IN A SOUTHERLY DIRECTION WITH A NON TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 2,252.25 FEET, HAVING A CHORD BEARING OF S 04°33'16" W AND A CHORD DISTANCE OF 202.05, AND AN ARC LENGTH OF 202.12 TO A POINT; THENCE WITH A BEARING OF N 71°18'38" W A DISTANCE OF 323.96 FEET TO A POINT; THENCE WITH A BEARING OF S 32°16'35" W A DISTANCE OF 151.82 FEET TO A POINT; THENCE WITH A BEARING OF S 32°16'35" W A DISTANCE OF 141.23 FEET TO A POINT; THENCE WITH A BEARING OF S 32°16'35" W A DISTANCE OF 216.20 FEET TO A POINT; THENCE WITH A BEARING OF N 75°40'12" W A DISTANCE OF 503.37 FEET TO A POINT; THENCE WITH A BEARING OF N 14°00'52" W A DISTANCE OF 24.98 FEET TO A POINT; THENCE IN A NORTHERLY DIRECTION WITH A NON TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 1,681.14 FEET, HAVING A CHORD BEARING OF N 14°22'44" E AND A CHORD DISTANCE OF 238.24, AND AN ARC LENGTH OF 238.44 TO A POINT; THENCE WITH A BEARING OF N 10°18'57" E A DISTANCE OF 165.79 FEET TO A POINT; THENCE WITH A BEARING OF N 09°28'20" E A DISTANCE OF 218.18 FEET TO A POINT; THENCE WITH A BEARING OF N 09°04'00" E A DISTANCE OF 18.73 FEET TO A POINT; THENCE WITH A BEARING OF N 23°14'48" E A DISTANCE OF 66.82 FEET TO A POINT; THENCE WITH A BEARING OF N 10°19'31" E A DISTANCE OF 96.17 FEET TO A POINT; THENCE WITH A BEARING OF N 14°03'52" E A DISTANCE OF 51.34 FEET TO A POINT; THENCE WITH A BEARING OF N 14°03'52" E A DISTANCE OF 64.73 FEET TO A POINT; THENCE WITH A BEARING OF N 30°27'33" E A DISTANCE OF 72.20 FEET TO A POINT; THENCE WITH A BEARING OF N 30°27'33" E A DISTANCE OF 53.23 FEET TO A POINT; THENCE WITH A BEARING OF N 36°37'17" E A DISTANCE OF 50.97 FEET TO A POINT; THENCE WITH A BEARING OF N 37°47'01" E A DISTANCE OF 33.48 FEET TO A POINT; THENCE WITH A BEARING OF N 00°17'33" W A DISTANCE OF 11.67 FEET TO A POINT; THENCE WITH A BEARING OF N 37°30'30" E A DISTANCE OF 524.43 FEET

TO A POINT; THENCE IN A NORTHEASTERLY DIRECTION WITH A NON TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 1,280.05 FEET, HAVING A CHORD BEARING OF N 30°18'23" E AND A CHORD DISTANCE OF 320.91, AND AN ARC LENGTH OF 321.75 TO A POINT; THENCE WITH A BEARING OF N 23°06'20" E A DISTANCE OF 58.73 FEET TO THE POINT OF BEGINNING.

**SECTION 2. BE IT FURTHER ORDAINED THAT** that the Planning Commission at a meeting held on December 11, 2006 made recommendation to approve the request for rezoning from City GC (General Commercial), LI (Light Industrial) and O&I (Office Institutional) to City CRC (Community Retail Commercial) with condition that the architectural elements illustrated in elevations as presented in the power point and made part of the application to be utilized for the entire development. In addition the letter dated December 11, 2006, from Moore, Ingram, Johnson and Steele.

**SECTION 3. BE IT FURTHER ORDAINED THAT** Mayor and Council at their regular scheduled meeting held June 18, 2007 incorporated all conditions itemized in the letter prepared by Moore, Ingram, Johnson and Steele dated June 18, 2007 as follows:

- (1) Applicants seek rezoning of the Subject Property from the existing zoning categories of General Commercial ("GC"), Light Industrial ("LI"), and office Institutional ("OI") to the Community Retail Commercial ("CRC") zoning category, with reference to the revised Site Plan prepared for the Applicants dated May 31, 2007.
- (2) There shall be no access from the subject development to Burnt Wood Drive.
- (3) Applicant will submit the final access plan for the proposed development to the City of Kennesaw and the Cobb County Department of Transportation staff prior to issuance of development permits.
- (4) Final parking plan layout with final landscaping plan will be presented for review and approval by staff with recommendations by the Planning Commission.
- (5) The architectural style of the proposed retail development shall be consistent among the retail buildings; as well as, buildings to be located on out parcels. Architectural materials shall consist of the following: brick, stone, rock, or epeus with accents of stucco/epeus and related hard surface materials on the front and sides. To the extent any split-face block is utilized on the rear of the building, it shall be painted a color to complement the front. Architectural style will be substantially similar in quality and overall appearance to those elevations submitted to City staff.
- (6) With respect to the out parcels which front Kennesaw Due West Road and Cobb Parkway, at a minimum, either the "front" or "side" elevation shall face these public rights-of-way.
- (7) Dumpsters utilized in the retail development shall not be located or oriented towards Kennesaw Due West Road. Furthermore, such dumpsters shall be contained within an enclosure with materials consistent with the overall architectural style of the retail development. Additionally, dumpsters shall have rubber bumper lids.

(8) Dumpster pick-up times shall be limited to Monday through Friday, between the hours of 7:00 a.m. and 7:00 p.m.

(9) Applicant agrees that lighting within the proposed retail development shall be hooded and/or directed such that glare shall be limited to the boundaries of the Subject Property. Furthermore, light fixtures and poles shall be decorative and period-themed, consistent with the overall architectural style of the retail development.

(10) There shall be a minimum thirty-five (35) foot landscape buffer along that portion of the Subject Property fronting Burnt Wood Drive.

(11) There shall be a minimum twenty (20) foot and ten (10) foot landscape buffers in areas along that portion of the Subject Property fronting Kennesaw Due West Road and Cobb Parkway, as more particularly shown on the revised site plan. Such landscape buffers shall be professionally planted and maintained and the landscaped plan for such buffers shall be approved by the City of Kennesaw staff during the plan review process.

(Additional clarification was provided at the June 18, 2007 Mayor and Council meeting identifying that portion of Subject Property that will incorporate the ten (10) foot landscape buffer area is located across from Lakewood Drive intersection which intersects Kennesaw Due West Road.)

(12) There shall be a twenty-five (25) foot side yard setback along Kennesaw Due West Road.

(13) There shall be a twenty (20) foot front yard setback along Cobb Parkway, as shown on the submitted revised site plan.

(14) With respect to any "stand alone" restaurant, there shall be ten (10) parking spaces per 1,000 square feet of restaurant space.

(15) There shall be a reduction in the stream buffer requirement from seventy-five (75) feet to twenty-five (25) feet, as shown on the submitted site plan.

(16) The following uses are prohibited within the proposed retail development:

(a) Any uses associated with or related to adult-oriented or themed sales or entertainment;

(b) Pawn shops;

(c) Tattoo parlors;

(d) Check cashing;

(e) Houses of worship;

(f) Auto sales, auto parts, and/or service;

- (g) Wholesale sales of any merchandise;
- (h) Gun, knife, or weapon sales;
- (i) Thrift stores, second-hand stores, or flea markets; and
- (j) Outside storage or display of merchandise, except for "sidewalk" sales or special event sales lasting seven (7) days or less.

(17) Applicant shall be allowed to locate a pylon sign, a maximum of thirty-five (35) feet in height along the Subject Property's frontage on Cobb Parkway/U.S. Highway 41. The sign design and materials shall be consistent with the architectural style of the proposed retail development, the materials of which shall be the same or similar to the exterior materials used in the architecture of the retail buildings. The sign style, location, and design shall be submitted to, and approved by, the City of Kennesaw staff prior to issuance of the sign permit.

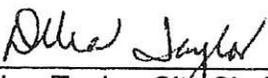
(18) Applicant will utilize the existing billboard structure for on-site advertising for a set period of time not to exceed the time period of seventy-five (75%) percent tenant stabilization of retail spaces, at which time the billboard shall be removed from the site.

**SECTION 4. BE IT FURTHER ORDAINED THAT** it is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, and phrases are severable, and if any section, paragraph, sentence, clause, and phrase is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance.

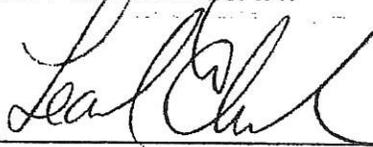
**SECTION 5. BE IT FURTHER ORDAINED THAT** this Ordinance shall become effective from and after its adoption and execution by the Mayor, pursuant to Section 2.11 of the City Charter of the City of Kennesaw.

PASSED AND ADOPTED by the Kennesaw City Council on this 18<sup>th</sup> day of June, 2007.

ATTEST:

  
\_\_\_\_\_  
Debra Taylor, City Clerk

CITY OF KENNESAW:

  
\_\_\_\_\_  
Leonard Church, Mayor





**REZONING APPLICATION**  
Required Fee \$375.00

*Parcel*  
*5/16/14*  
*D.S*

Is this property located within the Kennesaw Historic District (yes) \_\_\_\_\_ (no) No *D.S*

A MINIMUM OF ONE CONSULTATION WITH PLANNING AND ZONING ADMINISTRATOR AND STAFF PRIOR TO THE SUBMISSION OF THE REQUESTED APPLICATION IS MANDATORY.

**REZONING PROPERTY ADDRESS** 2454 Kennesaw Due West Road

Land Lot 167 Tax Parcel 20016701030 Lot Size 5.5 acres

Resident Population 0 Housing Units 0 Other Buildings 1

Zoning Request from:

Present Zoning CRC To: Amendment to Ordinance No. 2007-18, 2007 *(16F)*

For the purpose of: Permitted use to include auto parts store

**APPLICANT** ServisFirst Bank

**APPLICANT EMAIL** mhenderson@servisfirstbank.com

Applicant address P. O. Box 2406, Kennesaw, GA 30156

(Home#) n/a (Fax#) 770-429-9881 (Work#) 770-429-8400

(Cell#) \_\_\_\_\_

Applicant Signature *M. Henderson, SVP*

Signed, sealed and delivered in presence of: \_\_\_\_\_  
Notary

**REPRESENTATIVE** Michael J. Henderson, Senior Vice President

(Fax #) same (Work#) same (Cell#) 404-680-2493

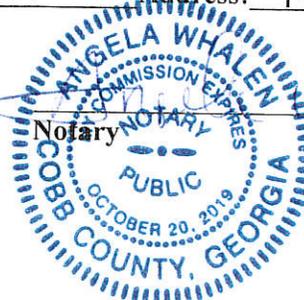
Representative Signature *M. Henderson*

Signed, sealed and delivered in presence of: \_\_\_\_\_  
Notary

**TITLEHOLDER:** ServisFirst Bank Telephone: 770-429-8400

Signature: *M. Henderson, SVP* Address: P. O. Box 2406, Kennesaw, GA 30156

Signed, sealed and delivered in presence of: \_\_\_\_\_





Community Development Department  
 2529 J. O. Stephenson Avenue  
 Kennesaw, GA 30144  
 770-590-8268

**CAMPAIGN CONTRIBUTIONS**

The undersigned Applicant herein certifies that they ~~XXXX~~ **have not** made campaign contributions or gifts within two (2) years immediately preceding the filing of this application, campaign contributions aggregating two hundred fifty dollars (\$250.00) or more or made gifts to a member or members of the Mayor and Council or Planning Commission who will consider the application.

**FINANCIAL INTEREST**

The undersigned Petitioner herein certifies that, to the best of its knowledge, information, and belief, the Mayor, any member of the Planning Commission ~~XXXX~~ **does not** :

- 1) Have a property interest (direct or indirect ownership, including any percentage of ownership less than total) in the subject property;
- 2) Have a financial interest (direct ownership interest of the total assets or capital stock where such ownership interest is ten percent (10%) or more) of a corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust, which has a property interest (direct or indirect ownership, including any percentage of ownership less than total) upon the subject property; and
- 3) Have a spouse, mother, father, brother, sister, son or daughter who has any interest as described above.

The undersigned Petitioner:

CERTIFY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT,  
 THIS 16 DAY OF May, 2016

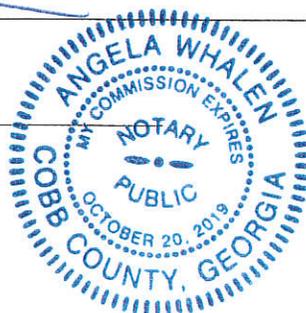
*[Handwritten Signature]*

**APPLICANT'S SIGNATURE**

Applicant means any person who makes application and any attorney, other person representing or acting on behalf of a person who makes application to the Mayor and Council and Planning Commission.

*[Handwritten Signature]*  
 Notary

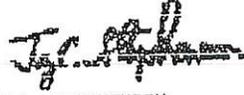
Commission expires: \_\_\_\_\_



## Section 1908 Standards for Decisions- Rezoning

Section 1908 of the Kennesaw Zoning Code details thirteen zoning review factors which must be evaluated by the Planning and Zoning Board and the Mayor and Council when considering a rezoning request. Please provide responses to the following using additional pages if necessary

	Comments
(1) Would the proposed amendment be consistent and compatible with the City's land use and development, plans, goals and objective?	It would be compatible with surrounding properties, properties along Cobb Parkway
(2) Would the proposed amendment tend to increase, decrease, or have no impact on traffic safety and congestion in the streets?	No impact
(3) Would the proposed amendment tend to increase, decrease, or have no relationship to safety from fire and other dangers?	No relationship
(4) Would the proposed amendment tend to promote, diminish, or have no influence on the public health and general welfare of the city?	No influence
(5) Would the proposed amendment tend to increase, decrease, or have no influence on the adequate (provisions) of light or air?	No influence
(6) Would the proposed amendment tend to cause, prevent, or have no influence on the overcrowding of land?	No influence
(7) Would the proposed amendment tend to cause, prevent, or have no relationship on the population distribution within the city-creating any area so dense in population as to adversely affect the health, safety, and general welfare of the city?	No relationship
(8) Would the proposed amendment tend to impede, facilitate, or have no impact on the adequate provision of transportation, water, sewerage, other public services, utilities or facilities?	No impact
(9) Would the proposed amendment tend to be compatible with environmental conditions in light of surrounding developments? If compatible, what factors, if any, would diminish the value, use and enjoyment of surrounding properties?	Compatible. No factors would have a diminishing effect.
(10) Would the proposed amendment tend to require only reasonable expenditures of public funds, or would the amendment tend to require an excessive or premature expenditure of public funds?	No expenditure of public funds
(11) Would the proposed amendment tend to promote, diminish or have no influence upon the aesthetic effect of existing and future uses of property and the surrounding area?	No influence
(12) Would the proposed amendment have measurable adverse economic effect on the value of the surrounding or adjacent property?	No
(13) Would the proposed amendment create an isolated district unrelated to adjacent and nearby districts?	No



JAY C. STEPHENSON  
CLERK OF SUPERIOR COURT Cobb Cty. GA.

Return Recorded Document to:

*m*  
Robert J. Kauffman, Esq.  
Hartley, Rowe & Fowler, P.C.  
P.O. Box 489  
Douglasville, GA 30133

STATE OF GEORGIA  
COUNTY OF Douglas

Cross Reference Deed Book 14604, Page 4586,  
Cobb County, Georgia Records

9/26  
SUPPLEMENTARY DECLARATION CONCERNING EASEMENTS,  
RESTRICTIONS AND OPERATION FOR THE COLUMNS OF KENNESAW AND  
AGREEMENT TO SHARE COST AND REIMBURSEMENT

This Supplementary Declaration Concerning Easements, Restrictions and Operation for the Columns of Kennesaw (the "Supplemental Declaration") is made as of the 19<sup>th</sup> day of November, 2012 by and among PINNACLE PROPERTIES V, LLC, a Georgia limited liability company ("Developer") and METRO BANK ("Metro") joining the execution hereof for the purpose herein set forth:

WITNESSETH

WHEREAS, Developer executed that certain Declaration Concerning Easements, Restrictions and Operation on April 25, 2008, as filed of record in Deed Book 14604, Page 4586, et. Seq., of the Cobb County, Georgia Land Records (hereinafter referred to as the "Declaration"); and

WHEREAS, the Declaration provides that Developer may from time to time execute and record a Supplementary Declaration to the Declaration to amend, modify, and clarify various provisions and exhibits contained in the Declaration; and

WHEREAS, subject to the Declaration, Metro Bank has succeeded to the interest of Developer with regard to that portion of the site that is more particularly described on Exhibit "A" ("Metro Parcel")

NOW, THEREFORE, pursuant to the powers retained in the Declaration, and in consideration of Ten Dollars and No/100 and other valuable consideration and the covenants and agreements herein set forth, Developer, joined by Metro for the purposes herein set forth, hereby declares as follows:

I.

TERMS

All capitalized Terms used herein, but not defined, shall have the meanings given them in the Declaration.

II.

PARCEL DESIGNATION

Developer acknowledges that the Metro Parcel is now owned by Metro.

III.

OUTPARCEL

Developer hereby declares that the Metro Parcel, and each future subdivided lot contained therein, shall be designated an Outparcel.

IV.

DESIGN AND DEVELOPMENT CONTROLS

The entire Metro Parcel shall be exempt from any requirements under Article 4 Design and Development Controls and this article does not, and will not, apply to the Metro Parcel. However, all parcels to be located in the Metro Parcel shall be developed and improved with the same level of quality as, and in harmony with, the balance of the Site and as other improvements approved on or before this date.

V.

RESTRICTIONS AND REQUIREMENTS REGARDING USE AND OPERATION

The entire Metro Parcel shall be exempt from any requirements under the following sections under Article 5: 5.2, 5.3, 5.5, 5.7, 5.10, 5.12, and 5.17. These sections shall not, and will not, apply to the Metro Parcel.

VI.

SIGNAGE EASEMENTS

Developer acknowledges that the Metro Parcel shall be free and clear of any future sign easements or other covenants, conditions, restrictions or operating standards pertaining to signs of any kind whatsoever. Developer, nor any other party, shall have any right to erect any signs within the Metro Parcel without the expressed written consent of Metro. All signs are subject to

approval by the appropriate governmental authority.

## VII.

### PARKING EASEMENT

Pursuant to Section 3.2 of the Declaration, the designation of the Metro Parcel as an Outparcel negates any pre-existing parking easements, which would have been granted to the property comprising the Metro Parcel had it not been designated as an Outparcel. Notwithstanding Section 3.2 of the Declaration, parking shall be allowed within the Metro Parcel for the exclusive use of each Metro Parcel owner's tenants, invitees and licensees. The designation as an Outparcel does not waive any access easements granted to the Metro Parcel under the Declaration.

## VIII.

### SHARED COMMON FACILITIES

Subject to the terms of Item IX below, Developer acknowledges that designation of the Metro Parcel as an Outparcel removes the obligation for the Metro Parcel, as it may be further subdivided, to maintain the Shared Common Area Facilities, be responsible for Shared Common Area Maintenance, or pay any portion of the Shared Common Area Costs. Notwithstanding the foregoing, each owner of the Metro Parcel shall pay its' *pro rata* share, as defined in Item X below, of all maintenance and repair for each of the three entrances for the overall project from a Point at the rear of each entrance island to the edge of the public right of way of either Highway 41 or Kennesaw Due West Road, as the case may be. Excluded from this requirement is the duty to reimburse for the cost of initial installation or repair of defective installation of the any entrance island or paved area within this designated area.

## IX.

### COMMON FACILITIES

All references to Common Facilities Costs in the Declaration do not and shall not apply to the Metro Parcel. As such, any Owner of any portion of the Metro Parcel, as such interest may be transferred, sold or assigned, shall not be responsible for payment of any Common Facilities Costs as defined in Section 1.1.10 and Article 7 of the Declaration, which may be assessed from time to time by the Association against other Parcel Owners. Notwithstanding the foregoing, each Owner of the Metro Parcel will pay its Pro Rata Share for expenses related to the annual maintenance and upkeep of all common water lines, common sanitary sewer lines, entrance and directional signage, common drainage facilities, and the Detention Parcel within thirty (30) days of receipt of an itemized statement showing all costs relating to the upkeep and maintenance of the Detention Parcel for the previous calendar year. (There shall be no reimbursement for the cost of maintenance or administration of the Association, cost of the Association discharging its' duties, or for overhead) The term "Pro Rata Share" shall mean a fraction, the numerator of which shall be the acreage of each Owner's portion of the Metro Parcel

and the denominator of which shall be the aggregate acreage of all Parcels within the Project, exclusive of the Detention Parcel.

X.

ASSOCIATION

Article 8 does not and shall not apply to the Metro Parcel. As such, the Metro Parcel shall not be required to join or participate in any Association formed or which may be formed by regarding the Project.

XI

INDEMNIFICATION, CASUALTY AND CONDEMNATION

Articles 9 shall not apply to the Metro Parcel. The last sentence in Article 10.1 shall not apply to the Metro parcel.

XII.

PARCEL PLAN

Developer, and the undersigned Design Control Committee (the "DCC") hereby acknowledge that the Metro Parcel is designated as a Parcel under the Declaration and the Parcel Plan is hereby amended to reflect that Parcels 9, 10 and 14 have been eliminated and replaced with the Metro Parcel. The balance of Parcels 9, 10 and 14 not consumed by the Metro Parcel shall be merged into the other contiguous Parcels. Further, the main drive aisles on the Parcel Plan, adjoining the Metro Parcel, are amended to now be located as designated on the site plan attached hereto as Exhibit "B". The Developer and DCC hereby consent to the destruction or removal of any existing infrastructure or improvements, at Metro's expense, located within or adjacent to the Metro Parcel in order to complete the installation of any entranceway and major drive serving the Development; however, any infrastructure improvements on the Metro Parcel that benefit all parcels shall be replaced and/or relocated by Metro at Metro's expense.

XIII.

MISCELLANEOUS

Except as hereby amended, the Declaration is hereby ratified and confirmed, and remains in all respects in full force and effect in accordance with its terms, as modified hereby. The provisions of this supplemental Declaration shall be binding upon and inure to the benefit of all Owners of Parcels in the Project, their successors-in-interest and permitted assigns. This Supplemental Declaration shall be governed by and construed in accordance with the laws of the State of Georgia without reference to or application of its rules or principals governing conflicts of laws or choice of laws. This Supplemental Declaration may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall

constitute but one and the same instrument. In the event any provisions of this Supplemental Declaration shall conflict with any provisions of this Declaration, the more restrictive of such conflicting provisions shall control, except to the extent that this Supplemental Declaration expressly provides that a provision or provisions hereof shall apply notwithstanding contrary provisions of the Declaration, in which case the provisions of this Supplemental Declaration shall govern and control with respect to such specific conflict. If any term, condition or covenant of this Supplemental Declaration is held to be invalid, illegal, or unenforceable in any respect, this Supplemental declaration shall be construed without such provision.

IN WITNESS WHEREOF, Developer has caused this Supplementary Declaration to be executed under seal the day and year first above written.

PINNACLE PROPERTIES V, LLC

Signed, sealed and delivered in the presence of:

By: Fortress Asset Management, LLC, its sole Member

[Signature]  
Witness

By: Cornerstone Bank, its Manager

[Signature]  
Notary Public

By: [Signature] (Seal)

My commission expires: 2/19/13

Name: Henry C. Almost, SR  
Title: EXECUTIVE VICE PRESIDENT



DESIGN CONTROL COMMITTEE

[Signature]  
Witness

[Signature] (SEAL)  
Hans Kempers, Member

[Signature]  
Notary Seal  
My Commission Expires: \_\_\_\_\_



[Signature] (SEAL)  
Gregory D. Rush, Member

[Signature]  
Witness

[Signature]  
Notary Seal  
My Commission Expires: 2/19/13



[Signatures Continuing on Following Page]

Ben Selman, III (SEAL)  
Ben Selman, III, Member

[Signature]  
Witness

[Signature]  
Notary Seal  
My Commission Expires: 2/19/15

[Signatures Continuing on Following Page]



METRO BANK

*Rolyn K. [Signature]*  
Witness

BY: *[Signature]* (SEAL)  
NAME: *Ken L. Barber*  
TITLE: *CEO*

*Jennifer L. Davis*  
Notary Seal  
My Commission Expires  
**JENNIFER L. DAVIS**  
**NOTARY PUBLIC**  
**STATE OF GEORGIA**  
My Commission Expires June 2, 2015



BK: 15003 PG: 1895

**Exhibit "A"**

All that tract or parcel of land lying and being in Land Lot 167, 20<sup>th</sup> District, 2<sup>nd</sup> Section of Cobb County, Georgia and being more particularly described as follows:

To find the Point of Beginning, commence at a 1 inch open top pipe found at the Land Lot corner common to Land Lots 166, 167, 176 and 177, said District and Section; thence leaving the said point and running with the line common to Land Lots 166 and 167, North 00° 17' 33" West, 183.29 feet to an iron pin set on the southerly right of way line of Kennesaw Due West Road (having a variable width right of way); thence running with the said line of Kennesaw Due West Road, North 37° 30' 30" East, 335.91 feet to the True Point of Beginning of the herein described tract or parcel of land; thence leaving the said Point of Beginning and running with the said line of Kennesaw Due West Road

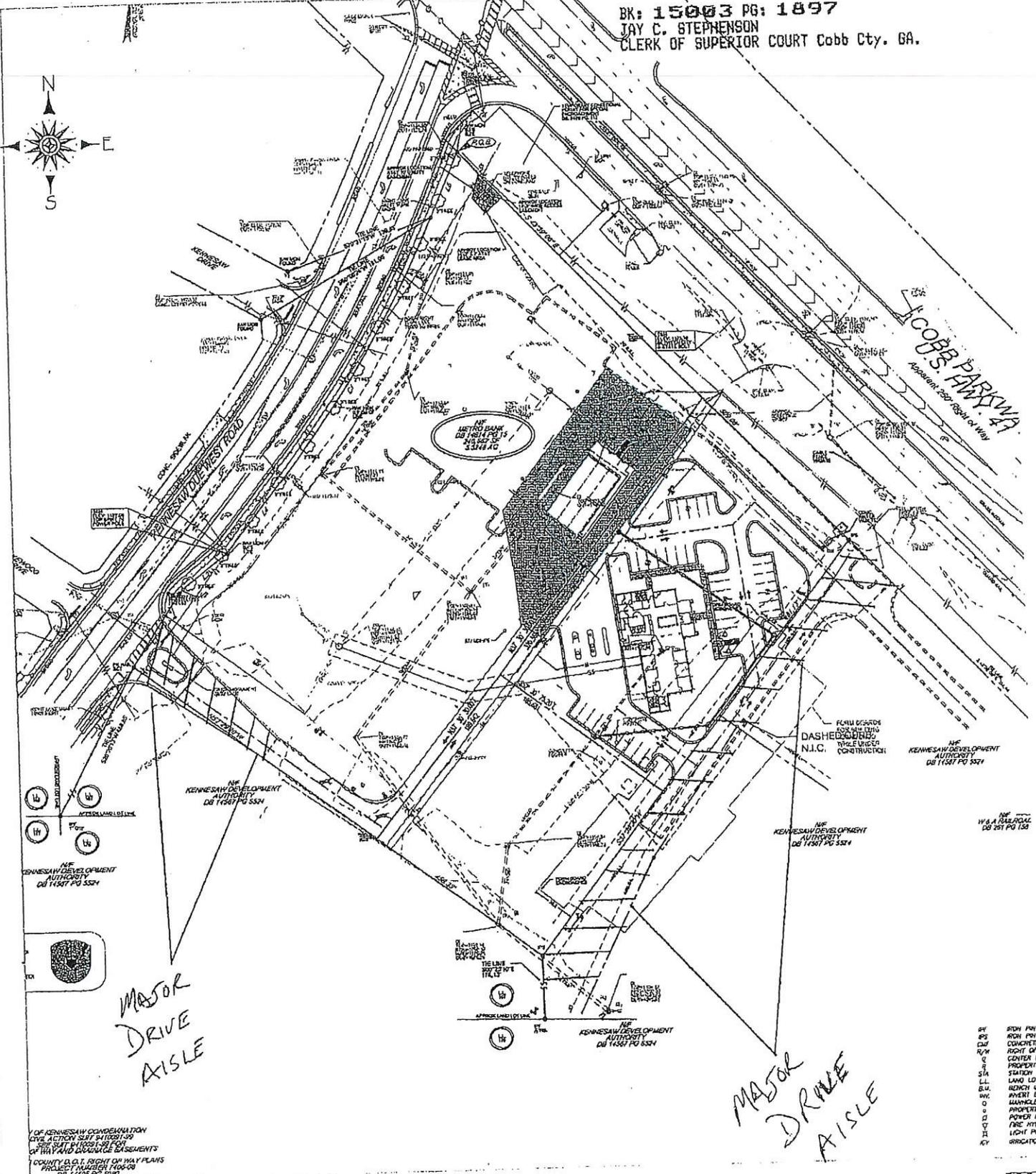
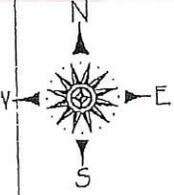
1. North 37° 30' 30" East, 188.52 feet; thence,
2. 321.75 feet along the arc of a curve deflecting to the left, having a radius of 1,279.89 feet and a chord bearing and distance of North 30° 18' 23" East, 320.91 feet; thence,
3. North 23° 06' 17" East, 58.73 feet to a point of intersection with the southwesterly right of way line of U.S. Highway 41 (having a 250 feet wide right of way); thence, running with the said line of U.S. Highway 41
4. South 43° 39' 06" East, 537.83 feet; thence, leaving the aforesaid line of U.S. Highway 41 and running
5. South 37° 30' 30" West, 481.13 feet; thence,
6. North 52° 29' 30" West, 476.60 feet to the Point of Beginning, containing 253,683 square feet or 5.8238 acres of land, more or less.

The above-described property is shown as Tract 1 containing 5.8238 acres and described according to that certain Boundary Exhibit prepared by TerraMark Professional Land Surveying, William C. Wohlford, Georgia Registered Land Surveyor No. 2577, last revised October 31, 2006, which certain survey is incorporated herein by this reference and made a part of this description.

Less and Except the parcel of land conveyed under the Right of Way Deed from Kennesaw Development Authority to Cobb County Department of Transportation dated January 16, 2008, as filed of record in Deed Book 14605, Page 5080, Cobb County, Georgia Records.

Exhibit "B"

BK: 15003 PG: 1897  
 JAY C. STEPHENSON  
 CLERK OF SUPERIOR COURT Cobb Cty. GA.



JACOBS PARKWAY  
 APPROXIMATE 200' RIGHT OF WAY

PLAN DEGRADE FOR MINIMUM DASHED CONSTRUCTION N.I.C.

KENNESAW DEVELOPMENT AUTHORITY DO 11887 PG 554

W & A CIRCULAR DO 261 PG 158

KENNESAW DEVELOPMENT AUTHORITY DO 11887 PG 554

MAJOR DRIVE AISLE

MAJOR DRIVE AISLE

OF KENNESAW COMMISSION  
 ONE ACTION SLIT 841001-52  
 WITH 841001-52 PLAN  
 OF 841001-52 AND 841001-52  
 COUNTY CL. RT. RIGHT OF WAY PLANS  
 PROJECT NUMBER 1406-08  
 CB 1406 PG 508

- ST
- PS
- CD
- R/W
- Q
- SIA
- LL
- B.U.
- WE
- O
- Q
- H
- RY

**APPROVAL  
OF THE DESIGN CONTROL COMMITTEE  
COLUMNS AT KENNESAW  
(METRO BANK PARCEL)**

The undersigned, being all of the Members of the Design Control Committee (the "DCC") under that certain Declaration Concerning Easements, Restrictions and Operation, dated as of April 25, 2008, and recorded at Deed Book 14604, Page 4586, Cobb County, Georgia Records (the "Declaration"), acting in accordance with Article 4 of the Declaration, hereby take the following actions:

WHEREAS, Metro Bank, a Georgia banking company ("Metro"), is an Owner (as defined in the Declaration) of a Parcel (as defined in the Declaration) that is subject to the terms and conditions of the Declaration;

WHEREAS, Metro proposes to develop a retail banking facility on its Parcel in accordance with the plans and specifications (the "Metro Plans") presented to the DCC, copies of which are attached hereto as Exhibit A and/or on file with the DCC;

WHEREAS, Section 4.8, 4.9, 4.10 and 4.11 of the Declaration set forth the procedures and process for the submission and approval of any plans and specifications for the development of a Parcel;

NOW THEREFORE, the Members of the DCC hereby take the following actions based on the recitals set forth above:

RESOLVED, Metro has submitted the Metro Plans to the DCC for approval in accordance with Section 4.10 of the Declaration;

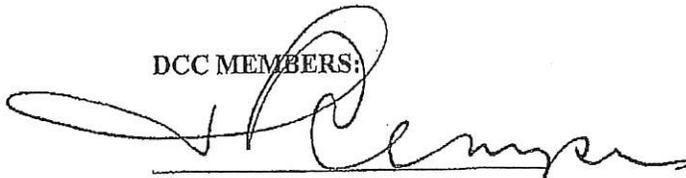
RESOLVED, the Members of the DCC have reviewed the Metro Plans and hereby approve the Metro Plans as submitted to the DCC and as attached hereto as Exhibit A and/or as on file DCC, all in accordance with Section 4.11 of the Declaration; and

RESOLVED, that this Approval may be signed in counterparts.

[Signatures on Following Page]

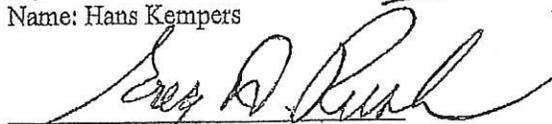
Executed this 28 day of June, 2012.

**DCC MEMBERS:**



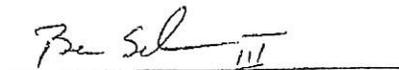
Signature

Name: Hans Kempers



Signature

Name: Gregory D. Rush

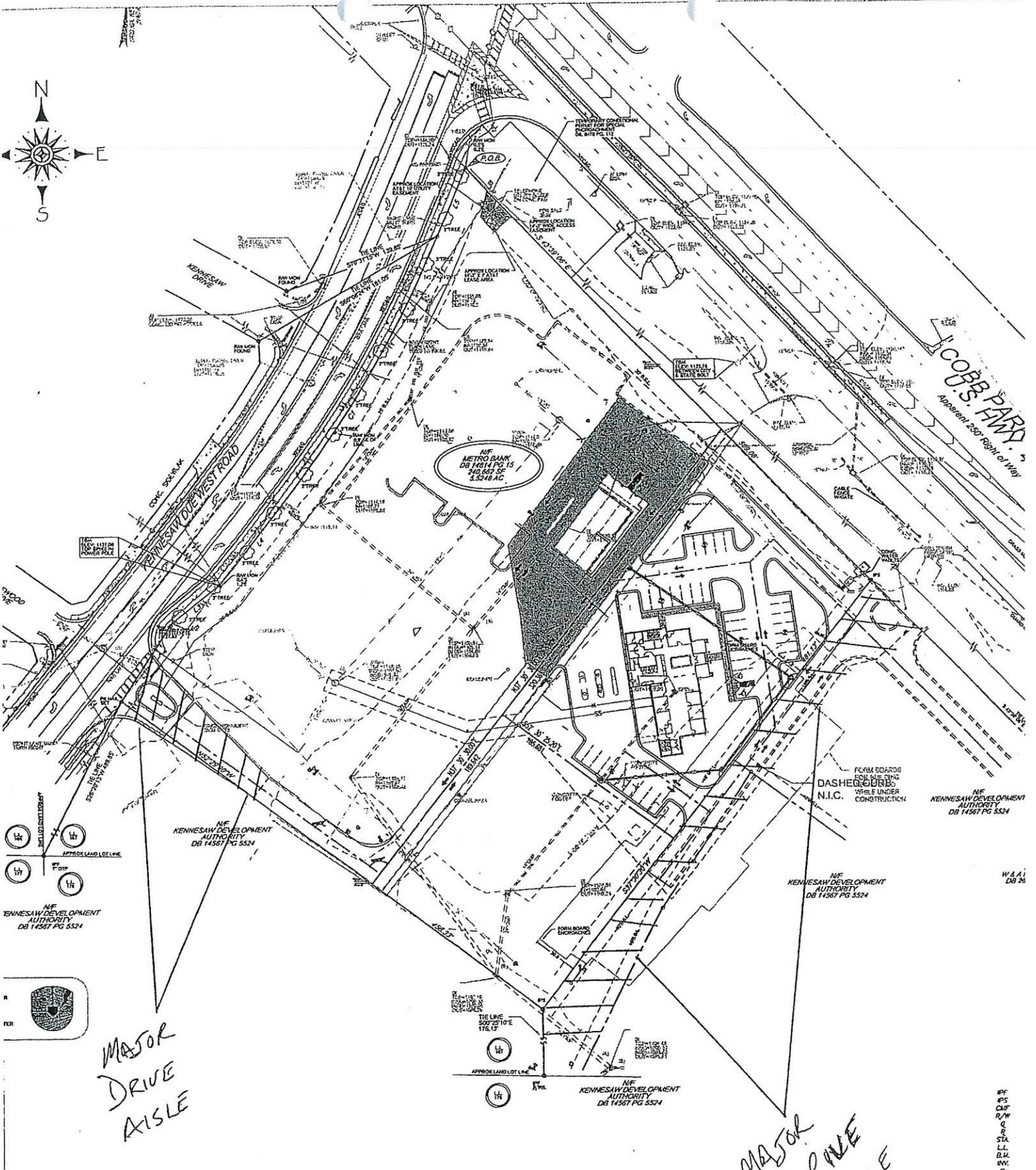
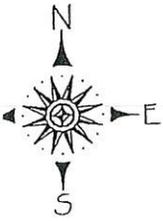


Signature

Name: Ben Selman III

Exhibit A

(Attached Plans)



JACOBS PARK  
Approx. 200' Right of Way

MF METRO BANK  
DB 1414 PG 15  
240,652 SF  
1.3248 AC

MF KENNESAW DEVELOPMENT  
AUTHORITY  
DB 14567 PG 5524

FORM BOARD  
DASHED LINES  
N.I.C.  
WHERE UNDER  
CONSTRUCTION

MF KENNESAW DEVELOPMENT  
AUTHORITY  
DB 14567 PG 5524

MF KENNESAW DEVELOPMENT  
AUTHORITY  
DB 14567 PG 5524

MF KENNESAW DEVELOPMENT  
AUTHORITY  
DB 14567 PG 5524

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B.L.  
R.V.  
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KV

MAJOR  
DRIVE  
AISLE

MAJOR  
DRIVE  
AISLE

OF KENNESAW CONDIGNATION  
CIVIL ACTION SUIT 9410291-99  
SEE SUIT 9410291-99 FOR  
OF WAY AND DRAINAGE EASEMENTS  
COUNTY D.O.T. RIGHT OF WAY PLANS  
PROJECT NUMBER 1406-08  
DB 14605 PG 5080

EXHIBIT "C"

(Parcel PILOT Documents - Attached)

Exhibit C-1

After recording, please return to:

Robert L. Rearden, Esq.  
Sheley & Hall, P.C.  
303 Peachtree Street  
Suite 4440  
Atlanta, Georgia 30308

LIMITED WARRANTY DEED

THIS INDENTURE is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **METRO BANK**, a Georgia banking company ("Grantor"), and **KENNESAW DEVELOPMENT AUTHORITY**, a Georgia public corporation ("Grantee") (the words "Grantor" and "Grantee" to include their respective successors and assigns where the context requires or permits);

**W I T N E S S E T H:**

GRANTOR, for and in consideration of the sum of Ten and No/100ths Dollars (\$10.00) in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed and by these presents does grant, bargain, sell, alien, convey and confirm unto said Grantee, all that certain real property lying and being in Cobb County, Georgia, being more particularly described on Exhibit A attached hereto and by this reference made a part hereof, together with any and all plants, trees, timber, shrubbery, improvements and fixtures located thereon or attached thereto, and together with any and all right, title and interest of Grantor in and to the improvements and fixtures, and all rights, easements, licenses and benefits appurtenant thereto (hereinafter referred to as the "Property") subject to those matters set forth on Exhibit B, attached hereto and by this reference made a part hereof.

TO HAVE AND TO HOLD the Property with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the Grantee forever in **FEE SIMPLE**.

**AND GRANTOR** will warrant and forever defend the right and title to the Property unto Grantee against the claims of all persons claiming by, under, or through Grantor, subject to those matters set forth on Exhibit B, attached hereto and by this reference made a part hereof.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be signed and sealed on its behalf by its duly authorized officers the day and year first above written.

**GRANTOR:**

Signed, sealed and delivered  
in the presence of:

METRO BANK, a Georgia banking company

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[CORPORATE SEAL]

My commission expires:  
\_\_\_\_\_

[NOTARIAL SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION

(to be attached)

**EXHIBIT "B"**

**PERMITTED EXCEPTIONS**

(to be attached)

Exhibit C-2

-----Space Above This Line for Recorder's Use-----

After recording, please return to:  
McKenna Long & Aldridge LLP  
303 Peachtree Street, N.E. - Suite 5300  
Atlanta, Georgia 30308  
Attn: Rita Coppock

---

**PARCEL MANAGEMENT SERVICE AGREEMENT**

between

**METRO BANK,**  
as Service Provider

and

**KENNESAW DEVELOPMENT AUTHORITY,**  
as Service Recipient

Dated \_\_\_\_\_, 2012

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(This Table of Contents is not a part of the Parcel Management Service Agreement  
and is only for convenience of reference.)

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Deed Book 14814 Pg 151  
Filed and Recorded Nov-17-2010 03:51pm  
~~2010-0151306~~  
Real Estate Transfer Tax \$0.00

*J.C. Stephenson*  
Jay C. Stephenson  
Clerk of Superior Court Cobb Cty. Ga.

RETURN RECORDED DOCUMENT TO:

HARTLEY, ROWE & FOWLER, P.C.  
Att: Walter P. Rowe, Esq.  
P. O. BOX 489  
DOUGLASVILLE, GA 30133-0489  
FILE NO. 0004236-121

**DEED UNDER POWER OF SALE**

**CROSS REFERENCE DEED BOOK 14528, PAGE 2016, COBB COUNTY, GEORGIA RECORDS**

GEORGIA, DOUGLAS COUNTY

THIS INDENTURE is made and entered into this 5<sup>th</sup> day of October, 2010, by and between PINNACLE PROPERTIES V, LLC, a Georgia limited liability company ("Borrower"), acting by and through its duly appointed agent and attorney-in-fact, METRO BANK ("Lender"), as party of the first part, and METRO BANK ("Purchaser") as party of the second part;

**WITNESSETH:**

WHEREAS, on August 20, 2007 Borrower executed a Deed to Secure Debt, Assignment of Rents and Security Agreement (the "Security Deed") to Omni National Bank, which was recorded in Deed Book 14528, Page 2016, Cobb County, Georgia Records, as transferred and assigned from Omni National Bank to Lender on March 20, 2008 by Assignment recorded in Deed Book 14593, Page 498, as modified on March 20, 2008 by Agreement recorded in Deed Book 14596, Page 3965; as further modified by Agreement dated April 10, 2009, as recorded in Deed Book 14687, Page 543, Cobb County, Georgia Records; as further modified by Agreement dated April 20, 2010, and filed of record in Deed Book 14776, Page 5362, Cobb County, Georgia Records, which deed conveys the property described below

(the "Property"), to secure payment of a note (the "Note") dated April 20, 2010 in the original sum of \$3,600,000.00; and

WHEREAS, default occurred under the Note and the Security Deed and Lender elected, pursuant to the terms of the Note and the Security Deed, to declare the entire principal and interest immediately due and payable; and

WHEREAS, no further notice of the sale under power of sale was required, as no part of the Property conveyed by the Security Deed was used or to be used as a dwelling place of the Borrower, at the time the Security Deed was executed; and

WHEREAS, Lender, according to the terms of the Security Deed did expose the Property for sale to the highest and best bidder for cash on the first Tuesday in October, 2010 during the legal hours of sale before the courthouse door in Cobb County, Georgia, after first advertising the sale by notice published in the Marietta Daily Journal, once a week for four (4) weeks immediately preceding the sale, and after complying with the terms of the Security Deed and advertisement; and

WHEREAS, the Property was knocked off to the Purchaser, being the highest and best bidder for cash, at and for the sum of \$3,414,820.00.

NOW, THEREFORE, in consideration of the premises and the sum of \$3,414,820.00 cash in hand paid, the receipt of which is hereby acknowledged, Borrower, acting by and through its duly appointed agent and attorney-in-fact, pursuant to the provisions of the Security Deed, does hereby bargain, sell, transfer and convey unto Purchaser, its successors and assigns, the following described Property:

All that tract or parcel of land lying and being in Land Lot 167, 20<sup>th</sup> District, 2<sup>nd</sup> Section of Cobb County, Georgia and being more particularly described as follows:

To find the Point of Beginning, commence at a 1 inch open top pipe found at the Land Lot corner common to Land Lots 166, 167, 176 and 177, said District and Section; thence leaving the said point and running with the line common to Land Lots 166 and 167, North 00° 17' 33" West, 183.29 feet to an iron pin set on the southerly right of way line of Kennesaw Due West Road (having a variable width right of way); thence running with the said line of Kennesaw Due West

Road, North 37° 30' 30" East, 335.91 feet to the True Point of Beginning of the herein described tract or parcel of land; thence leaving the said Point of Beginning and running with the said line of Kennesaw Due West Road

1. North 37° 30' 30" East, 188.52 feet; thence,
2. 321.75 feet along the arc of a curve deflecting to the left, having a radius of 1,279.89 feet and a chord bearing and distance of North 30° 18' 23" East, 320.91 feet; thence,
3. North 23° 06' 17" East, 58.73 feet to a point of intersection with the southwesterly right of way line of U.S. Highway 41 (having a 250 feet wide right of way); thence, running with the said line of U.S. Highway 41
4. South 43° 39' 06" East, 537.83 feet; thence, leaving the aforesaid line of U.S. Highway 41 and running
5. South 37° 30' 30" West, 481.13 feet; thence,
6. North 52° 29' 30" West, 476.60 feet to the Point of Beginning, containing 253,683 square feet or 5.8238 acres of land, more or less.

The above-described property is shown as Tract 1 containing 5.8238 acres and described according to that certain Boundary Exhibit prepared by TerraMark Professional Land Surveying, William C. Wohlford, Georgia Registered Land Surveyor No. 2577, last revised October 31, 2006, which certain survey is incorporated herein by this reference and made a part of this description.

TOGETHER WITH easements benefiting the above described property as set forth in the Declaration Concerning Easements, Restrictions and Operations dated April 25, 2008, filed May 2, 2008 in Deed Book 14604, Page 4586, Cobb County, Georgia Records.

TOGETHER with all and singular the improvements, fixtures, easements, hereditaments, rights, members and appurtenances thereunto belonging or in anywise appertaining.

Together with all and singular the rights, members and appurtenances thereto appertaining, and all estate, right, title, interest, claim or demand of Borrower, Borrower's representatives, heirs, successors and assigns, legal or equitable or otherwise whatsoever, in and to the same.

To have and to hold the Property unto the party of the second part, its successors and assigns in fee simple, in as full and ample a manner as Borrower or Borrower's representatives, heirs, successors or assigns did hold and enjoy the same.

This conveyance is made subject to (i) ad valorem taxes which may constitute a lien against the Property; and (ii) all easements and restrictions of record, if any, having priority over the Security Deed;

and (iii) the Declaration Concerning Easements, Restrictions and Operation dated April 25, 2008, filed of record in Deed Book 14604, Page 4586, Cobb County, Georgia Records.

IN WITNESS of all of which, Lender, as attorney in fact for Borrower, has hereto set its hand and affixed its seal and delivered this instrument the day and year first above written.

Signed, sealed and delivered in the presence of:

METRO BANK  
As Attorney in Fact for  
PINNACLE PROPERTIES V, LLC, A GEORGIA  
LIMITED LIABILITY COMPANY

By: *Christopher C. Houtchens* (SEAL)  
Printed Name: Christopher C. Houtchens  
Title: Executive Vice President

*Jessie P. Miller*  
Witness

*J Davis*  
Notary Public

(AFFIX CORPORATE SEAL)

