

These Non-Binding Deal Points are intended to reflect the conceptual terms tentatively agreed upon between the parties as key provisions to be incorporated into a subsequent Sales Tax Revenue Sharing Agreement. Therefore, these tentative business terms are not binding on either party until after final contractual terms have been negotiated and executed by both parties.

- The Parties:
 - City: City of Napa
 - Developer: Town Center Shops LLC (for the benefit of NTC Shops, LLC, ZLT Dunne LLC and/or the business affiliates holding membership interest therein)

- The Project:
 - The Project Site is generally located in Downtown Napa between First Street, Franklin Street, Clay Street, and Coombs Street, as shown on Exhibit “A.” Portions of the Project Site are subject to a Reciprocal Easement Agreement granting a public access easement for the benefit of the City/Successor Agency (“Common Areas”)
 - The Shops at Napa Center is an existing outdoor lifestyle retail shopping center of approximately 120,000 square feet, located on the Project Site that was originally opened to the public as “Napa Town Center” in 1990. The project has not seen any additional investment other than periodic maintenance in the last 22 years, contributing to its current underperforming status.
 - The Developer acquired the Project Site and has plans to make significant investments in the Project site in order to attract new tenants to the area, including both high-performing national merchandisers as well as best-in-class local and regional restaurateurs and retailers. Additionally, new tenants are expected to make significant investments in the Project Site. The Developer's plans for improvements to the Project Site include significant improvements to the Common Areas as more particularly described in Exhibit “B” (“Common Area Improvements”). This level of investment is required in the Common Area in order to attract further capital investment by individual tenants through their respective storefront improvements.
 - The Developer shall comply with all applicable laws regarding the design and construction of the Improvements. The Developer shall be responsible for obtaining all services, supplies and materials necessary to complete the Common Area Improvements using the Developer's normal contracting procedures.
 - The City agrees that the Revenue Sharing Agreement is being entered into by the City pursuant to the City's "Contracting Ordinance" and that except for those provisions of state law expressly adopted by the City, the provisions of state law applicable to general law cities do not apply to the Revenue Sharing Agreement.

- Public Benefits Resulting from the Project:
 - Creation of a desirable retail center will be attractive to a healthy, vibrant mix of local, regional and national tenants will expand shopping choices for Napa residents and fill empty spaces, and complement existing businesses;

- Enhanced and expanded retail will be attractive to visitors and support additional hotel stays, resulting in greater sales tax and TOT revenue for the City;
 - Investment in the Shops will result in higher property values and higher property tax revenues for the City;
 - Enhanced retail will provide an ongoing stream of sales tax revenue to the City (after the provisions of the agreement lapse);
 - Additional revenue to the City will help fund services to the citizens of Napa;
 - The high quality of Project Improvements through use of materials, overall design and updated image will upgrade the downtown environment and complement nearby private development completed in recent years;
 - The high quality design will be complimented by public amenities, programming of activities and events on a frequent basis, and paid advertising, public relations and marketing [*to be defined as a condition of this Agreement*]which will draw greater pedestrian activity to downtown and in so doing, will contribute to the feasibility and desirability of other projects in downtown Napa;
 - The center will be rebranded to increase downtown Napa’s desirability from a retailer and consumer perspective;
 - The Improvements will be designed to take into consideration linkages to pedestrian / bicycle pathways; upgrades to outdoor gathering spaces; potential location(s) for public art – all helping to integrate the Project with the surrounding street retail areas, physically ‘opening up’ the center to better integrate with downtown street retail for a more seamless pedestrian experience creating an improved visitor experience ; and
 - The Improvements will be designed with the goal of activating key activity nodes of the property to eliminate “dead zones” and public nuisances.
- Revenue Sharing:
 - Subject to the terms of the Agreement, the City will pay to the Developer the Developer’s Share of the Incremental Sales Tax received by the City from businesses located at the Project Site in an amount not to exceed the lesser of: (a) \$5,000,000, or (b) the amount of capital expenditures made by the Developer or its affiliates on Common Area Improvements.
 - Conditions Precedent: The City shall have no obligation to make any payment of the Developer Share under the Agreement unless all of the conditions precedent are satisfied or waived by the City:
 - The construction of Common Area Improvements is substantially complete. The final Agreement shall include provisions to require prompt decisions by the City, and a process for promptly resolving disputes. Developer has provided copies of payment records for the construction contract for the Common Area Improvements.
 - The comprehensive design guidelines for future tenants’ storefronts, in a form satisfactory to the City, have been provided to the City.

- Payments. Payments of the Developer’s Share shall be paid to the Developer on a quarterly schedule to be further detailed in the final Agreement, after satisfaction of the Conditions Precedent and continuing until expiration of the Term of the Agreement. Developer and City acknowledge that each quarterly payment of the Developer’s Share will represent the Developer’s Share of the Incremental Sales Tax for the prior quarter
- Annual Statement and True Up Payment. . No later than 120 days after the end of each fiscal year, the City shall provide the Developer with a statement of the Incremental Sales Tax for the previous fiscal year, the Base Sales Tax and the calculation of the Developer’s Share with sufficient detail to allow the Developer to verify the City’s calculations. In the event the annual statement indicates that the Developer’s Share actually paid by the City to the Developer for the prior fiscal year was insufficient, the City shall at the same time it delivers the annual statement deliver to the Developer the portion of the Developer’s Share owed for the prior fiscal year. In the event the annual statement shows that the Developer’s Share actually paid to by the City to the Developer for the prior fiscal year exceeded the amounts owed under this Agreement, the City may offset future payments of Developer’s Share by the overpayment until such time as the amount paid to the Developer equals the amount owed. Developer shall have the right to audit the information provided in the Annual Statement and the City shall cooperate in any such audit. Any such audit shall be conducted at the Developer’s sole expense.
- Term of Agreement. The Agreement shall commence on the date of execution by the City and the Developer and shall expire on the earlier of: (a) the Developer receiving \$5,000,000 in Incremental Sales Tax, or (b) twelve years after the date all Conditions Precedent have been satisfied as set forth below. Upon expiration of the Agreement, the City shall have no further obligation to pay any portion of the sales tax from the Project Site to the Developer.
- Definitions.
 - “Sales Tax” is the actual sales tax generated by the sale of taxable items within the Project Site and distributed to the City by the State Board of Equalization; in other words it excludes the local ½ cent Measure A sales tax generated for the Flood Protection Project or any other portion of the sales tax that is not dispersed directly to the City as revenue for deposit to its general fund.
 - “Incremental Sales Tax” is the Sales Tax received by the City each fiscal year that exceeds the “Base Sales Tax.”
 - “Base Sales Tax” is the Sales Tax received by the City for the 12-month period ending June 30, 2012 increased by three percent (3%) each year after fiscal year 2011-12. *[The City will provide the Developer the aggregate Base Sales Tax data prior to execution of the Agreement.]*
 - The “Developer’s Share” is the portion of the Incremental Sales Tax the City will pay to the Developer each quarter during the term of the Agreement commencing with satisfaction of the Conditions Precedent:
 - 85% of the Incremental Sales Tax until the first to occur of: (a) the City has paid the Developer \$4,000,000, or (b) the expiration of the Agreement.

- If the City has paid the Developer \$4,000,000 or more under the Agreement, the Developer's Share shall be 75% of the Incremental Sales Tax until the expiration of the Agreement.
- Deposit Account. *[The City is willing to consider an escrow account if the costs are borne by the developer; however an escrow seems unnecessary from a cost and administrative standpoint.]*
- Indemnity. The Developer shall defend and indemnify the City against any claims or litigation resulting from:
 - Any work done by the Developer or its affiliates on the Project Site or the Common Area Improvements
 - Any negligence on the part of the Developer or any of its agents, contractors, employees, operators, licensees or invitees
 - Any failure of the Developer to comply with the provisions of the Agreement or the requirements of State and local laws applicable to the Project Site.

Provided, however, Developer's indemnification shall not extend to any claims or litigation caused by the City's negligence or willful misconduct. City shall cooperate with the Developer in the defense of any claims or litigation covered by the indemnity. The Final Agreement shall include provisions that ensure that any compensation received by the City or the Developer as a result of litigation is equitably distributed between the parties.

EXHIBIT A: PROJECT SITE

Note: Proposed improvements are to take place in the common areas of the existing Napa Town Center, denoted by the red dotted line (including the easement at the Randolph St. entry point, adjacent to the Bank building and the Dunne building) and including façade improvements facing public rights of way. Improvements to the Merrill's site, the Bank building and the Dunne buildings are to be undertaken as separate projects. Common Area Improvements include improvements both to the horizontal hardscapes and landscaping, but also improvements on vertical surfaces such as lighting, signage, architectural features.



Note: Rendering is for concept depiction only, and is subject to change at any time until project application is approved.



EXHIBIT B

COMMON AREA IMPROVEMENTS

HORIZONTAL HARDSCAPE

- Refurbish select areas of common area hardscape with new pavers.
- Install small water features
- Renovate/replace existing fountain with new water feature in between buildings A and B.
- Seating areas surrounded by planter boxes
- Replace pavers around cork tree with new seating area plus new flush grade wood deck, and pea gravel bed with playful sculptures

LANDSCAPING

- Install irrigated and non-irrigated planter beds with bench seat surrounds
- Install array of numerous non-fixed planting boxes to demarcate seating areas

VERTICAL/STRUCTURAL IMPROVEMENTS

- Dismantle the “drum” architectural feature in between buildings A and B
- Trellis cornice with rooftop planters (building B)
- Pendant lighting (between buildings B and C)
- Building-mounted and free-standing signage: primary, secondary and tertiary identification; directories; and directional wayfinding
- Removal of partial roofing at existing rotunda roof and replace with new translucent panels.
- Removal of eastern-most portion of building E (adjacent to rotunda)
- Removal of gabled parapets at building E and infill in between window projections
- Existing base building structures to be patched, primed and painted on buildings A, B, C, D, E and G (to prepare for future tenant improvements per tenant design guidelines)
- Awning and or lattice to be removed on buildings A, B, C, E and G
- Exterior lighting to be replaced on buildings A, B, C, D, E and G

Note: *The Project Scope of Work, and related renderings depicting such improvements, are subject to change at any time until Design Review final approval by the City of Napa Planning Commission. For full description, please see City of Napa Community Development Department Project # PL2-014, “The Shops At Napa Center.”*