

Department of  
**Community Investment**

## Memorandum

Monday, March 09, 2015

TO: Redevelopment Commission  
FROM: Brock Zeeb, Director of Economic Resources  
SUBJECT: Yummy Cupcakes / 1<sup>st</sup> Amendment to Lease

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Yummy Cupcakes is requesting to restructure its lease agreement. Yummy incurred significantly higher construction and startup costs. Because of construction delays and unforeseen renovations, Yummy was unable to take advantage of the current lease's first four month stabilization period.

Attached is the proposed lease amendment payment schedule:

Important notes are:

- Term remains 5 years
- Total payments during the term increase by \$5,000 (over 5 yrs.)

In effort to be flexible with a new tenant and to give the business an opportunity to take root and become an anchor in downtown, staff requests approval of this lease amendment.



## FIRST AMENDMENT TO LEASE

This First Amendment To Lease (the "First Amendment") is made and entered into effective February \_\_, 2015, (the "Effective Date") by and between the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission ("Landlord"), and Irish Cupcakes, Inc. d/b/a Yummy Cupcakes, an Indiana corporation, of 58727 Baugo Cove Drive, Elkhart, Indiana 46517 ("Tenant").

### Background

A. Landlord and Tenant entered into that certain Lease dated November 14, 2013 (the "Lease"), for premises located at 119 S. Michigan Street, South Bend, Indiana, and more particularly described in the Lease (the "Premises"); and

B. Landlord and Tenant desire to amend and modify certain terms and provisions of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in the Lease and this First Amendment, and in accordance with Section 14.5 of the Lease, the Lease is hereby amended as follows:

1. Each capitalized term used in this First Amendment shall have the meaning stated in the Lease, unless otherwise defined in this First Amendment.

2. Section 1.2 of the Lease is deleted in its entirety and replaced with the table set forth below. The terms stated in the table set forth below will be in effect for each payment of Base Rent after the Effective Date of this First Amendment, and Tenant will have no right to claim any refund or offset of any amount paid to Landlord before the Effective Date of this First Amendment. It is provided, however, that, notwithstanding anything to the contrary in the Lease or this First Amendment, no Base Rent will be due for the months of February, March, April, or May of 2015.

1.2. Base Rent.

<u>Lease Year(s)</u>	<u>Base Rent</u>
2	\$2.00 per sq. ft. per year
3	\$3.50 per sq. ft. per year
4 - 5	\$8.25 per sq. ft. per year
6 - 10	\$11.00 per sq. ft. per year
11 - 15	\$14.00 per sq. ft. per year

3. In Section 5.2 of the Lease, the phrase "as defined in Section 5.7(a)" is deleted and replaced with the phrase "as defined in Section 5.8(a)."

4. The following Article XV is inserted immediately following the end of Article XIV:

**ARTICLE XV.**  
**REPORTING REQUIREMENTS.**

15.1 Required Reporting. Within thirty (30) days after the conclusion of each quarter-year period during the Term of the Lease, Tenant will submit to Landlord a certified report concerning Tenant's operations and financial performance during the previous quarter-year period (each, a "Quarterly Report"). In each Quarterly Report, Tenant will provide (a) Tenant's then-current interim or annual financial statements, as the case may be, including (i) balance sheet, (ii) income statement, and (iii) statement of cash flows; (b) Tenant's discussion of its current operations; and (c) Tenant's projection of revenues for the upcoming quarter-year period. Tenant will certify in each Quarterly Report that its contents are true and accurate. For purposes of Tenant's obligations under this Section 15.1, the quarter-year periods are defined as follows: "Q1" means the period from January 1 to March 31; "Q2" means the period from April 1 to June 30; "Q3" means the period from July 1 to September 30; and "Q4" means the period from October 1 to December 31. The first Quarterly Report due to Landlord under this Section 15.1 will be due within thirty (30) days after the conclusion of Q1 of 2015.

15.2 Default. Any failure by Tenant to perform its obligations under Section 15.1 to Landlord's reasonable satisfaction, which is not cured within five (5) days of notice of such failure from Landlord, will constitute an Event of Default under the Lease.

5. All terms and conditions of the Lease will remain in full force and effect unless expressly modified by this First Amendment.

6. This First Amendment may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument.


[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment To Lease as of the Effective Date.

CITY OF SOUTH BEND, INDIANA,  
DEPARTMENT OF REDEVELOPMENT,  
BY AND THROUGH THE SOUTH BEND  
REDEVELOPMENT COMMISSION

IRISH CUPCAKES, INC.,  
an Indiana corporation,

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Lawrence Katz  
Title: Owner

ATTEST

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_