

**FIFTH AMENDMENT TO  
FOOD AND BEVERAGE CONCESSION AGREEMENT  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
HOST INTERNATIONAL, INC.**

This FIFTH AMENDMENT TO FOOD AND BEVERAGE CONCESSION AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by the CITY OF SAN JOSE, a municipal corporation of the State of California ("City") and HOST INTERNATIONAL, INC., a Delaware corporation authorized to do business in the State of California ("Host" and "Concessionaire").

**RECITALS**

**WHEREAS**, on January 29, 2009, City and Concessionaire entered into an agreement entitled "NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT FOOD AND BEVERAGE CONCESSION AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND HOST INTERNATIONAL, INC." ("Agreement"); and

**WHEREAS**, on July 18, 2011, City and Concessionaire entered into a First Amendment to the Agreement to temporarily close Chiaramonte's Deli and Bar Location TA + 2 due to the deactivation of Gates 1 through 6 and to reduce Concessionaire's Minimum Annual Guarantee; and

**WHEREAS**, on November 15, 2011, City and Concessionaire entered into a Second Amendment to the Agreement to revise provisions regarding customer pricing, amend the Concession Area and concepts, memorialize changes to the Minimum Annual Guarantee commencement date and annual adjustment date, and make clerical corrections; and

**WHEREAS**, on December 9, 2014, City and Concessionaire entered into a Third Amendment to the Agreement to change the required dates for the mid-term refurbishments, amend the Concession Area and concepts, and memorialize changes to the Minimum Annual Guarantee; and

**WHEREAS**, on March 6, 2018, City and Concessionaire entered into a Fourth Amendment to extend the term through June 30, 2026, add 260 square feet of Concession Support Space, revise the Standards of Operations provision, revise the Maintenance and Repairs provision, add a definition for “Like New”, revise the Fees & Deposits with respect to the Percentage Fee, incorporate a Capital Investment for redevelopment of \$6,000,000, revise the MAG Abatement provisions, revise the Concession Area, revise the Pricing Policy, and add provisions as required under federal law and regulations and the San José Municipal Code; and

**WHEREAS**, City and Concessionaire desire to further amend the amended Agreement to extend the term through June 30, 2028, revise the discount “Pricing” provision, revise the “Joint Marketing Fund Fee” provision to allow for customer service metrics, revise the Concession Area to add a new “Host Interim Facility” concession location, revise the street pricing under the Pricing Policy, add language concerning refurbishments to specific concepts, and add provisions required under federal law and regulations;

**NOW, THEREFORE**, the parties agree to further amend the amended Agreement as follows:

**SECTION 1.** **SECTION 1 “SUMMARY OF TERMS AND DEFINITIONS”**, is hereby amended to revise the definition of “Expiration Date” as follows:

“**Expiration Date**” (SECTION 2.1) shall mean June 30, 2028, subject to earlier termination as provided in this Agreement.”

**SECTION 2.** **SECTION 2 “TERM OF AGREEMENT”**, subsection 2.1 entitled “**Term**” is hereby amended to read as follows:

**“2.1 Term**

This Agreement shall be binding on both parties from the Effective Date set forth in the Summary. The term of this Concession Agreement shall continue until the Expiration Date, unless sooner terminated in accordance with the terms of this Agreement.”

**SECTION 3.** **SECTION 4.16 “PRICING”**, subsection 4.16.2 is hereby amended and restated to read as follows:

**“4.16.2** As a good-neighbor service to airline staff, Airport staff and all other support staff who work at the Airport, Concessionaire shall offer all of its Products at a minimum of fifteen percent (15%) discount to any person who displays a valid Airport identification or security badge.”

**SECTION 4.** **SECTION 6 “FEES AND DEPOSITS”** subsection 6.1.5 entitled “Joint Marketing and Customer Service Fund Fee” is hereby amended to read as follows:

**“6.1.5 Joint Marketing and Customer Service Fund Fee**

A concession marketing and customer service fee of one quarter of one percent (.25%) of Gross Revenues shall be paid monthly to the City no later than the twentieth (20th) of each month for the preceding month’s activity in conjunction with the Monthly Concession Report, to be used for marketing the concessions interest at the airport, which will include, but not be limited to, in-terminal advertising, customer surveys, concession sponsored services, development and maintenance of a customer service training program, and mystery shopping. Concessionaire shall deliver to the City the Joint Marketing and Customer Service Fund Fee in accordance with the payment schedule for payment of the Percentage Fee in **SECTION 6.1.7.**”

**SECTION 5. SECTION 22.4 “MINIMUM CAPITAL IMPROVEMENT EXPENDITURE”**

subsection 22.4.2 “Minimum Capital Improvement Redevelopment Expenditure” is hereby amended to add subsection 22.4.2.4 as follows:

**“22.4.2.4** No later than June 30, 2019, Concessionaire shall redevelop the following Concession Locations as identified below:

- a. Capital Improvements to the seating area in the common area of the Host food court (Trader Vic’s Express and Sushi Boat).
- b. Capital Improvements to the lighting in menu boards in the Una Mas Concession Location.

The Director shall have the sole discretion to change the deadline stated herein in response to a written request from Concessionaire. Said refurbishment shall include, but not be limited to, all refinishing, repair, replacement, redecorating and painting as necessary.

**SECTION 6. SECTION 36 “TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM”** is hereby added as follows:

“A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may

be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.”

**SECTION 7. SECTION 37 “TITLE VI CLAUSES FOR CONSTRUCTION / USE / ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM”** is hereby added as follows:

“A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.”

**SECTION 8.** **THIRD REVISED EXHIBIT B “Concession Area”** is hereby amended to read as shown in **FOURTH REVISED EXHIBIT B, “Concession Area”** attached and incorporated into the Agreement.

**SECTION 9.** **EXHIBIT C “Tenant Mix”** is hereby amended to read as shown in **FIRST REVISED EXHIBIT C, “Tenant Mix”** attached and incorporated into the Agreement.

**SECTION 10.** **Revised EXHIBIT Q “Pricing Policy”** is hereby amended to read as shown in **SECOND REVISED EXHIBIT Q**, attached and incorporated into this Fifth Amendment.

**SECTION 11.** All of the terms and conditions of the amended Agreement not modified by this Fifth Amendment shall remain in full force and effect.

[remainder of page intentionally left blank]

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal  
corporation of the State of California

\_\_\_\_\_  
KEVIN FISHER  
Chief Deputy City Attorney

\_\_\_\_\_  
TONI TABER, CMC  
City Clerk

Date: \_\_\_\_\_

“CONCESSIONAIRE”

HOST INTERNATIONAL, INC.,  
a Delaware corporation authorized to do  
business in the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **FOURTH REVISED EXHIBIT B – CONCESSION AREA**

(see attached)

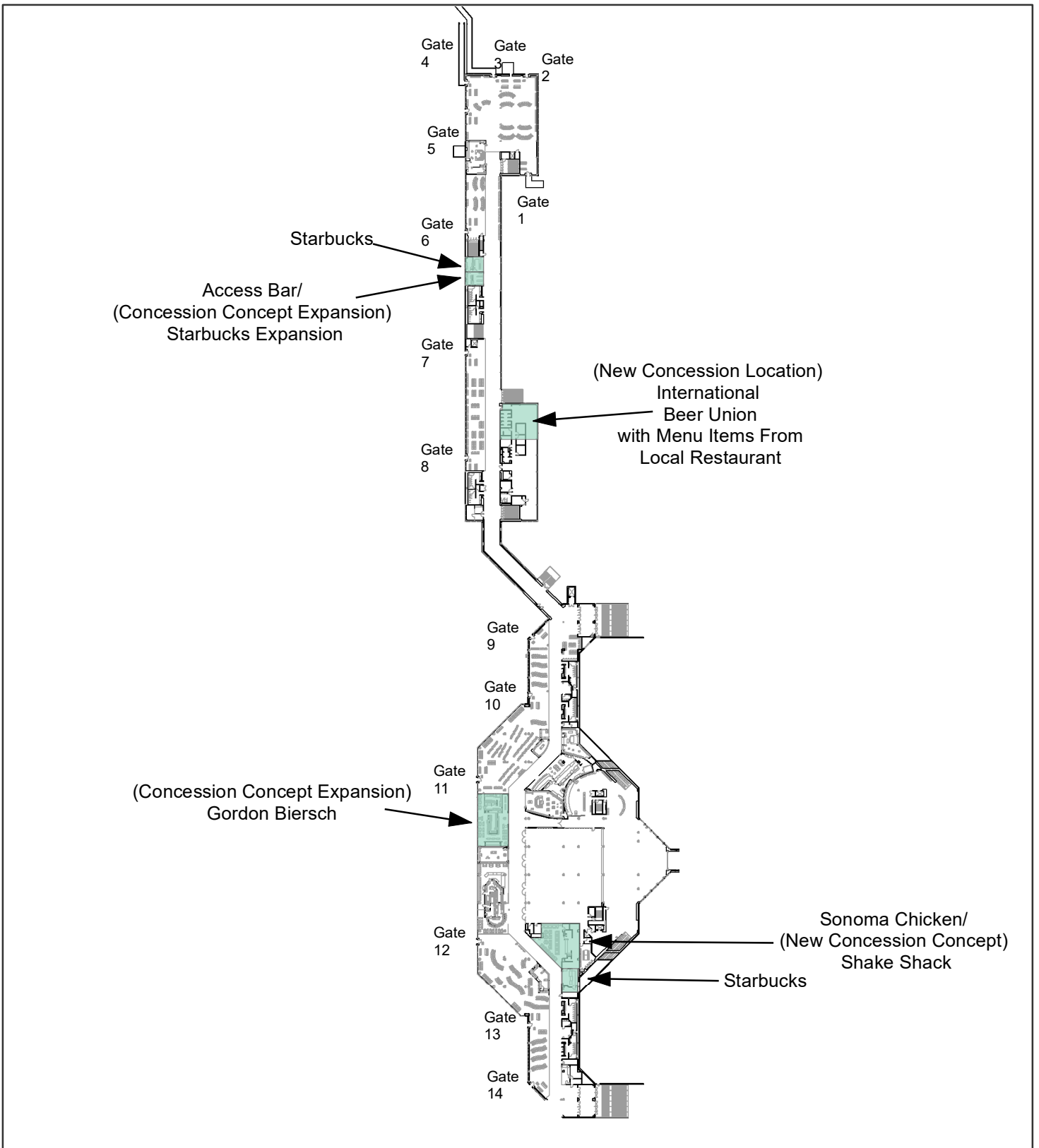
Fourth Revised Exhibit B

Host International, Inc. F&B Concession Agreement  
Fifth Amendment  
Document No. 10331-CA-08-5

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**



Fourth Revised Exhibit B



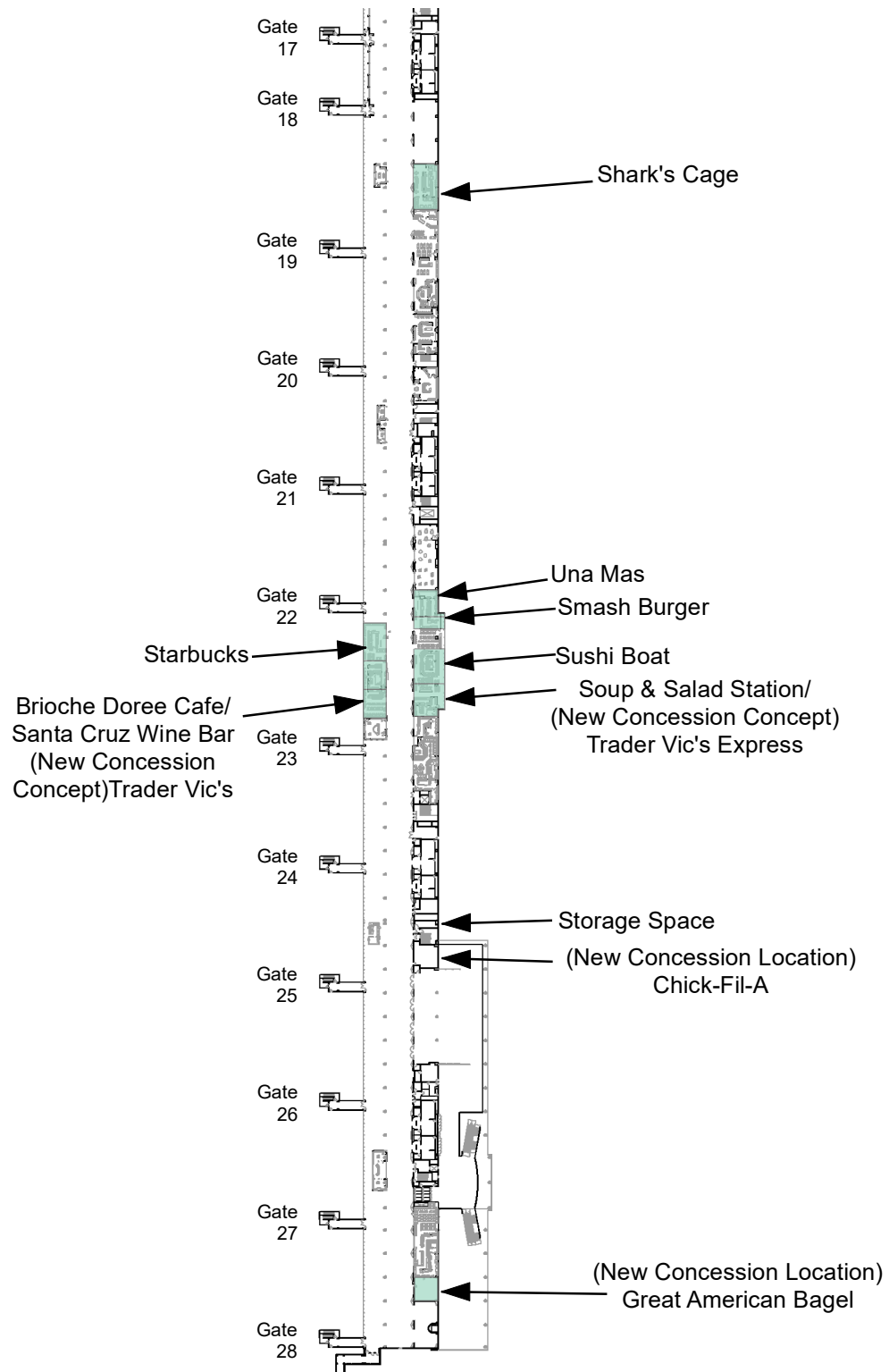
Date: 1/9/2019

Host International, Inc.  
Terminal A Floor 2 Overall Plan  
B-1



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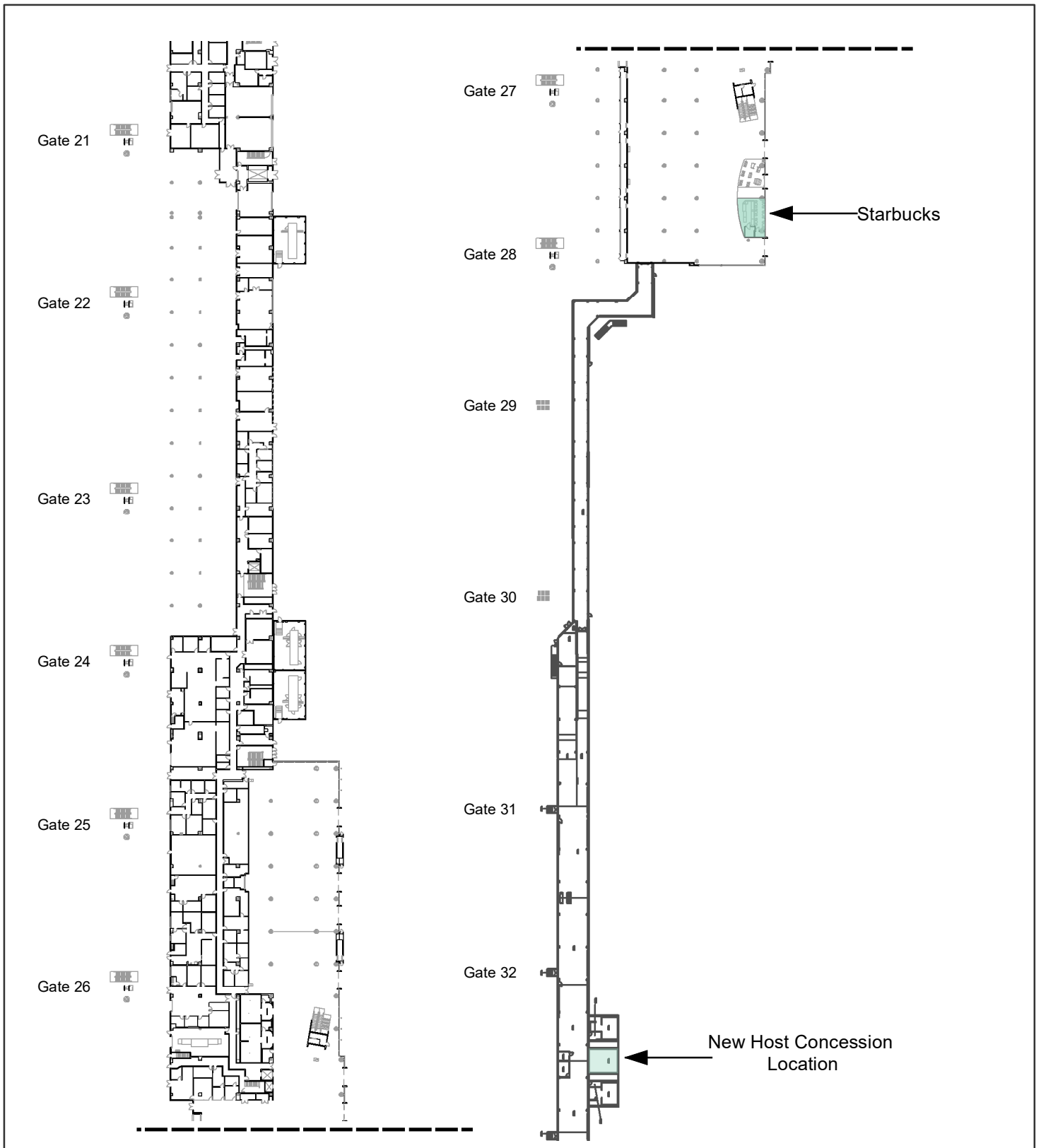
Date: 1/9/2019

Host International, Inc.  
Terminal B Floor 2 Overall Plan  
B-2



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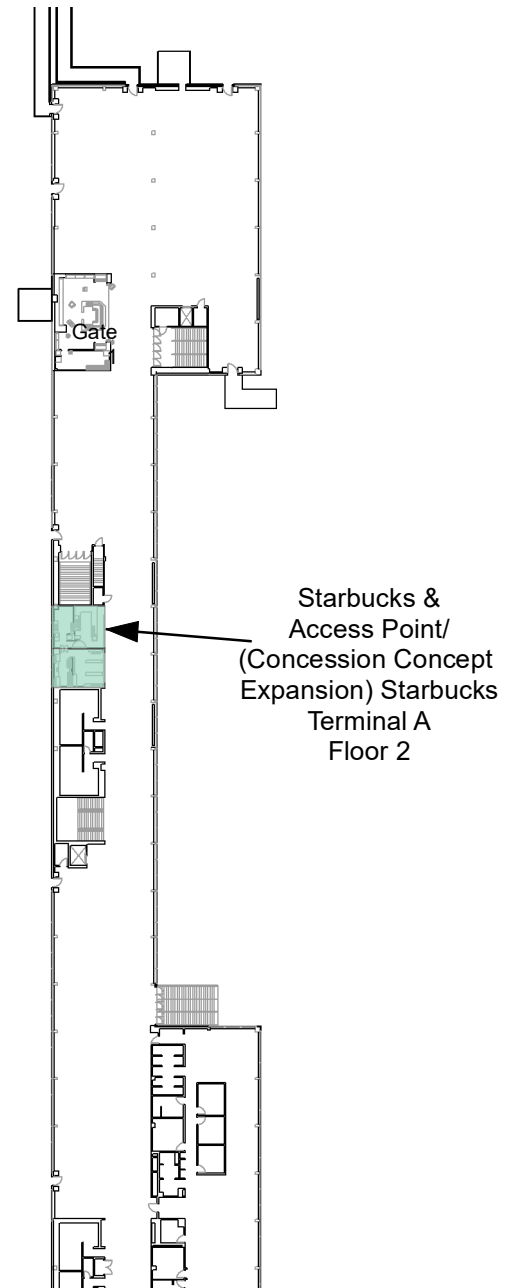
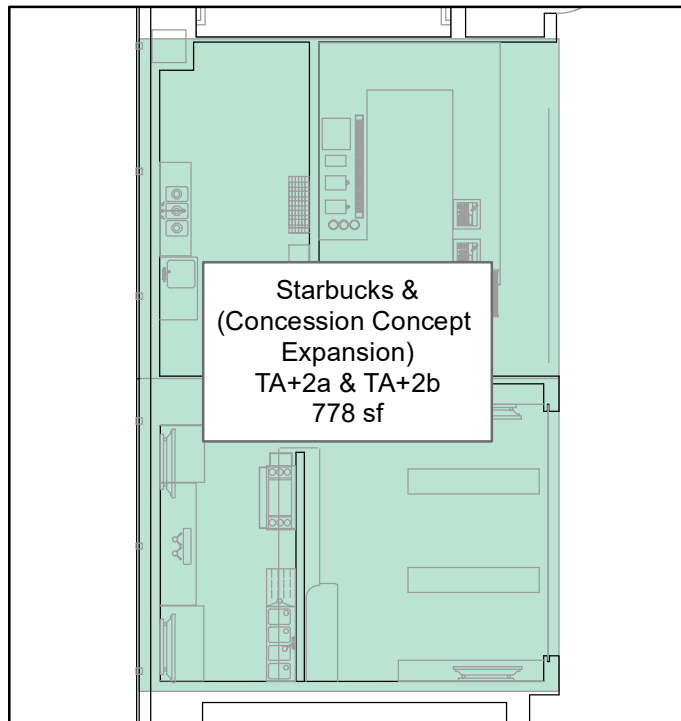
Date: 1/29/2019

Host International, Inc.  
Terminal B Floor 1 Overall Plan  
B-3



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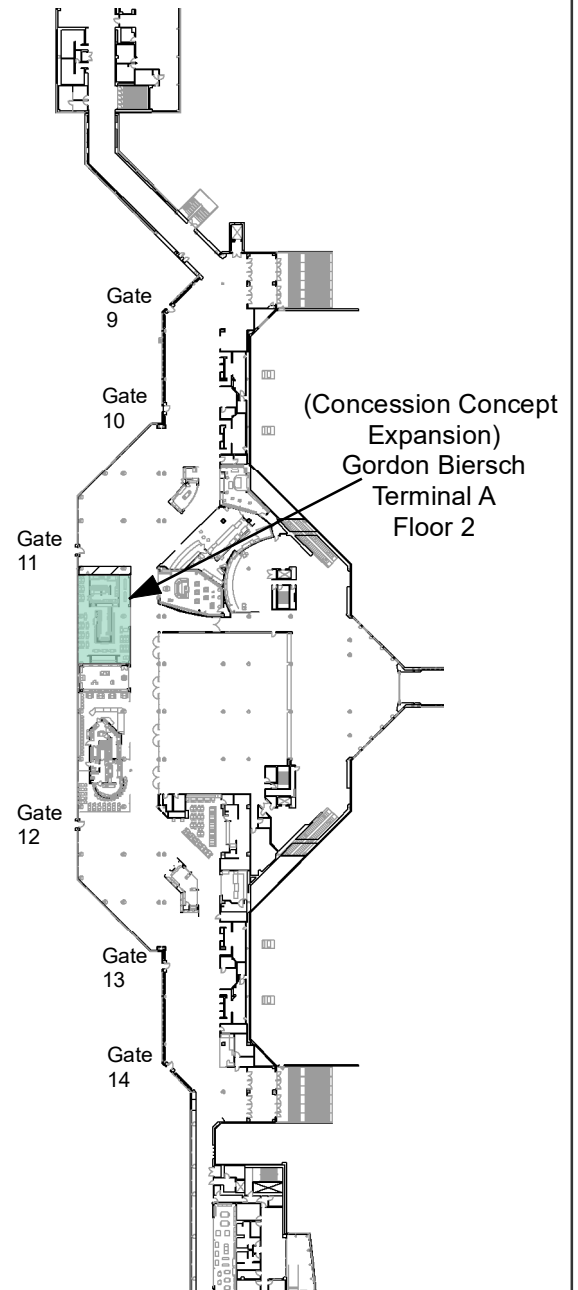
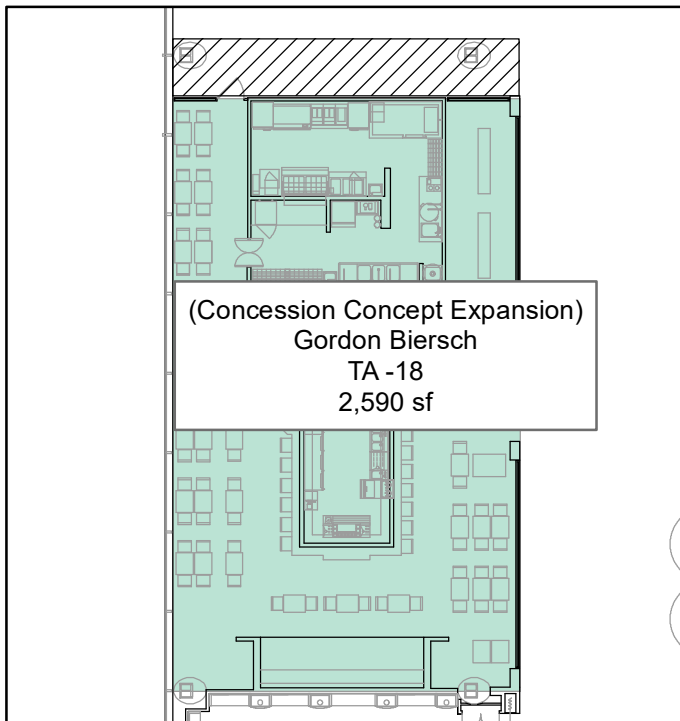


Date: 1/9/2019

Host International, Inc.  
Terminal A Floor 2  
B-4



Fourth Revised Exhibit B



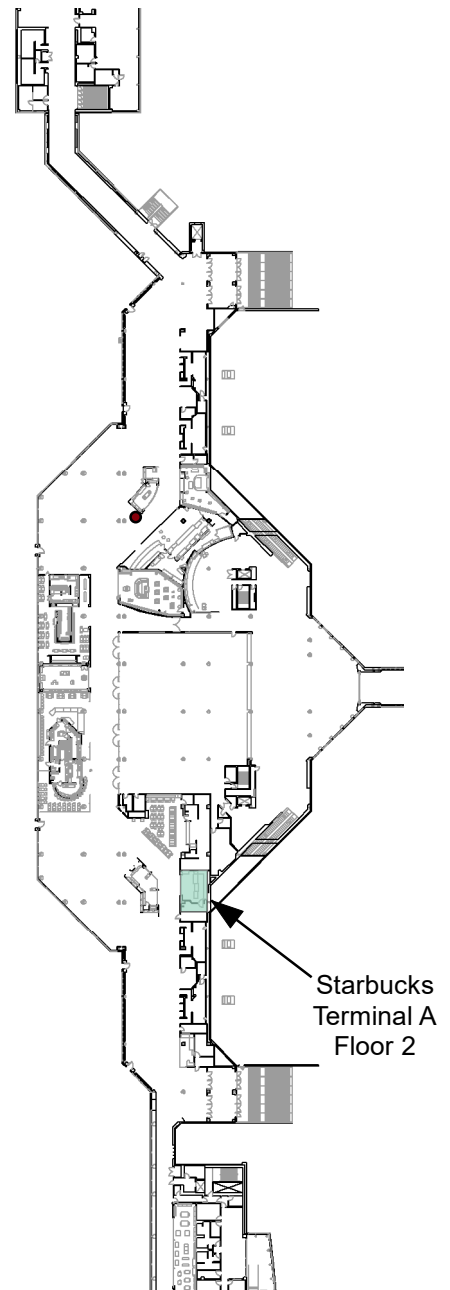
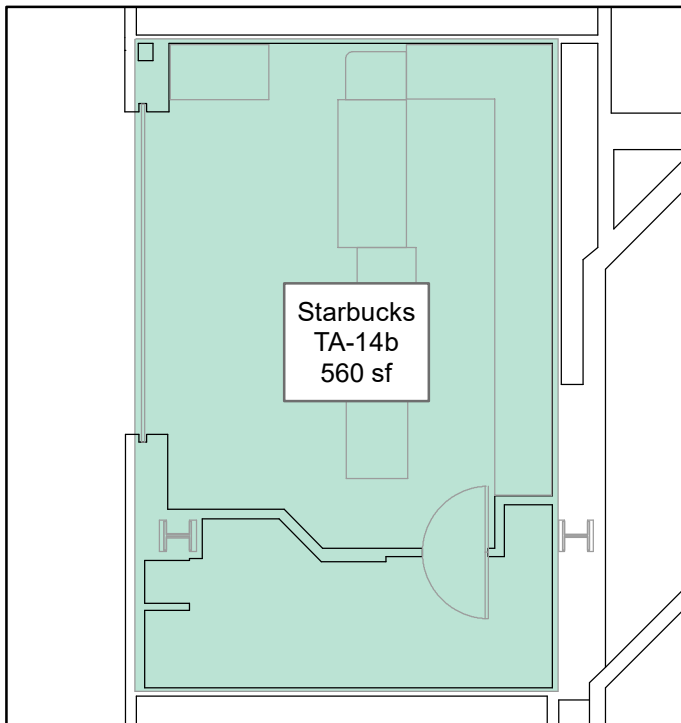
Date: 1/9/2019

Host International, Inc.  
Terminal A Floor 2  
B-5



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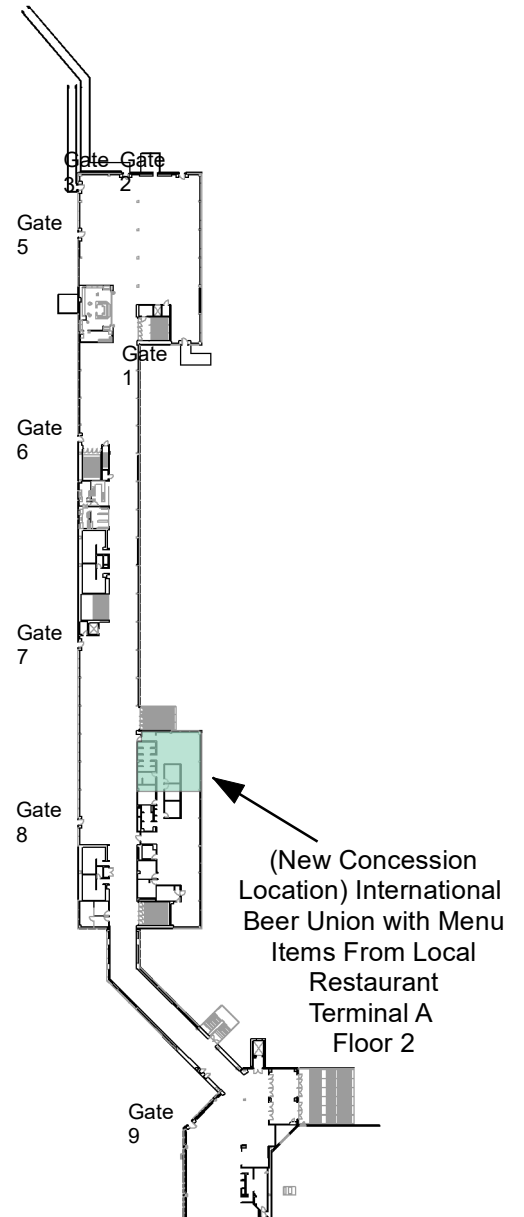
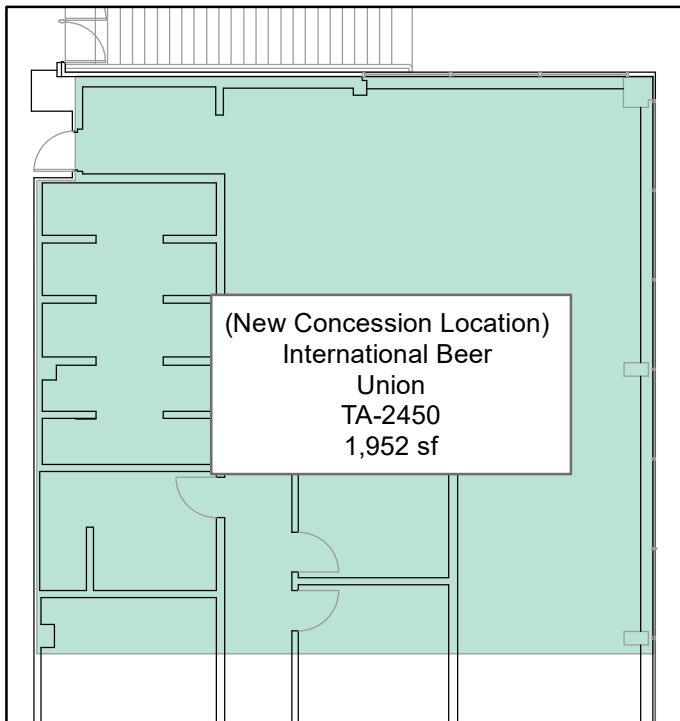
Date: 1/9/2019

Host International, Inc.  
Terminal A Floor 2  
B-6



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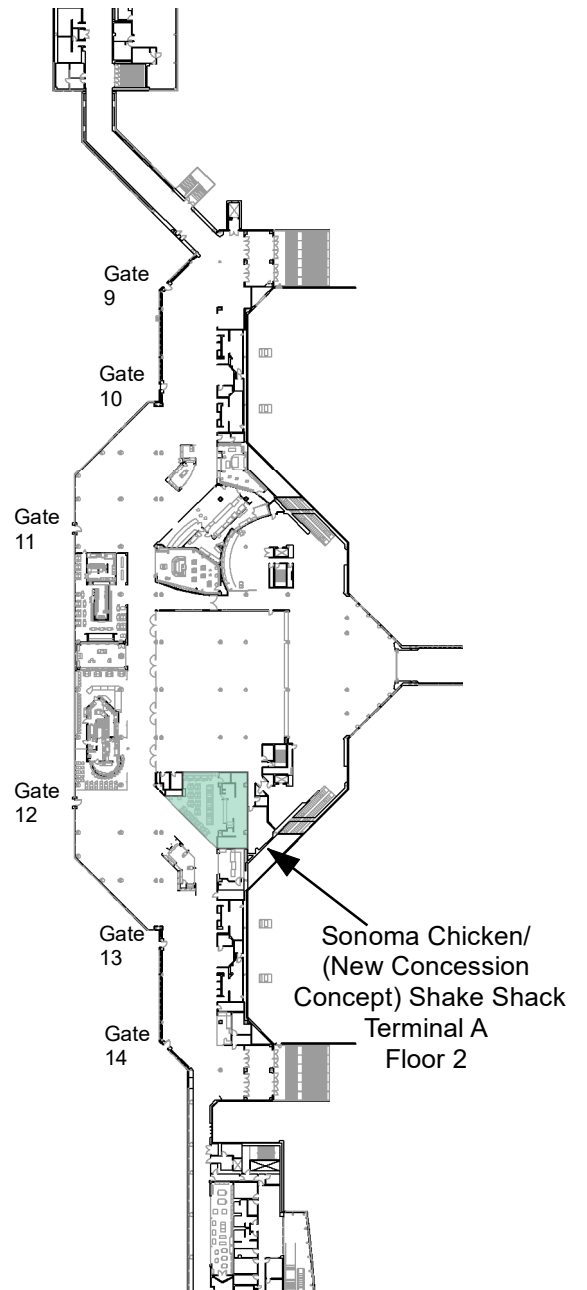
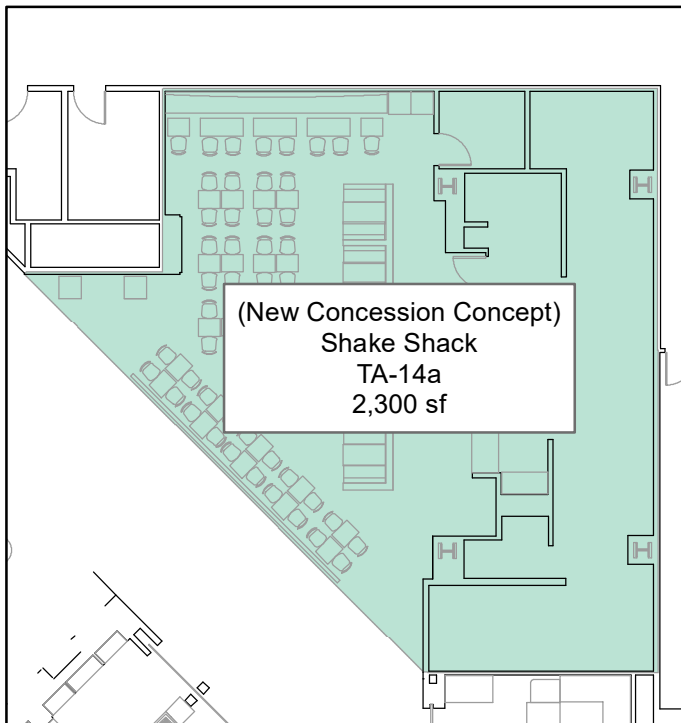
Date: 1/9/2019

Host International, Inc.  
Terminal A Floor 2  
B-7



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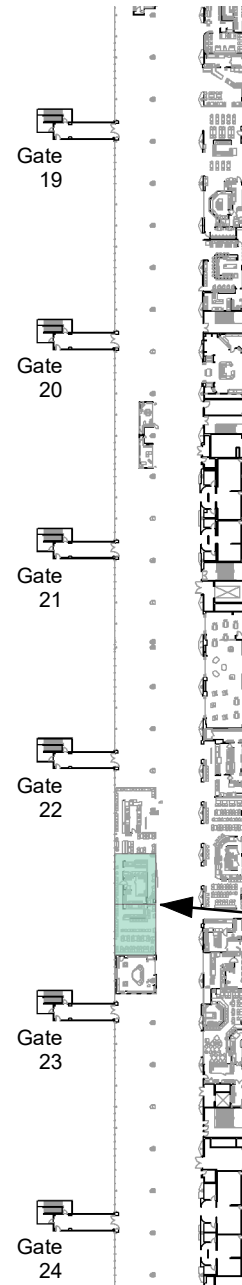
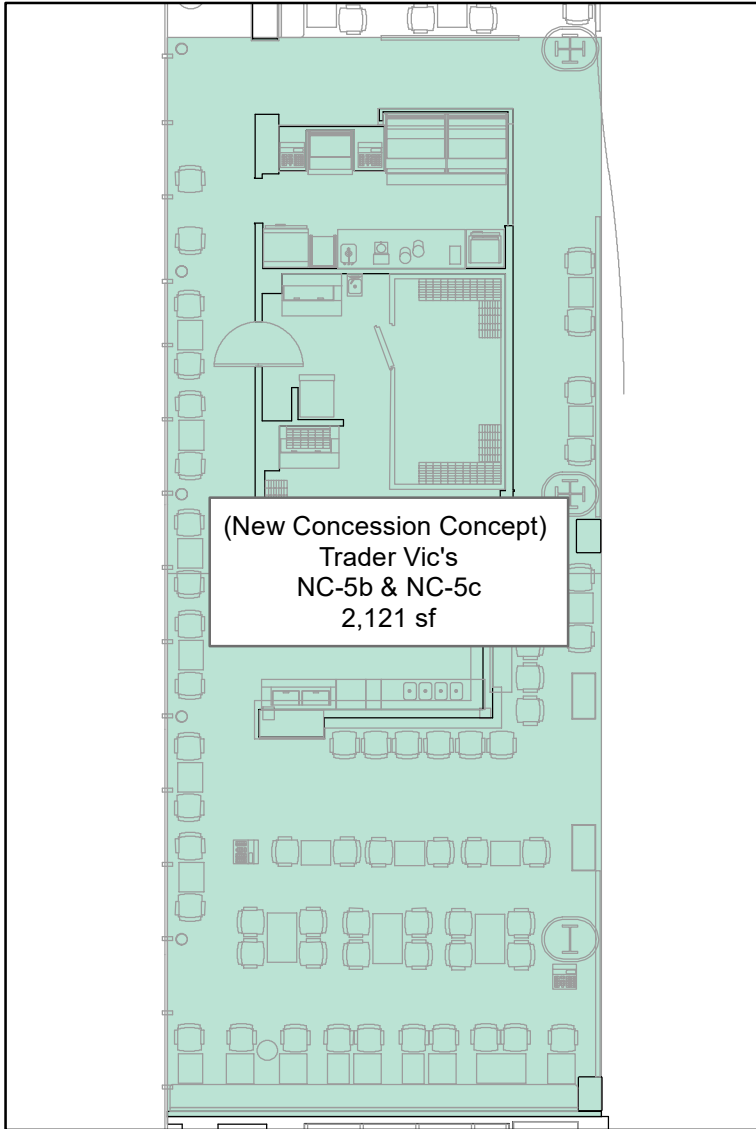
Date: 1/9/2019

Host International, Inc.  
Terminal A Floor 2  
B-8





Fourth Revised Exhibit B



Brioche Doree Cafe &  
Santa Cruz Wine Bar/  
(New Concession  
Concept) Trader Vic's  
Terminal B  
Floor 2



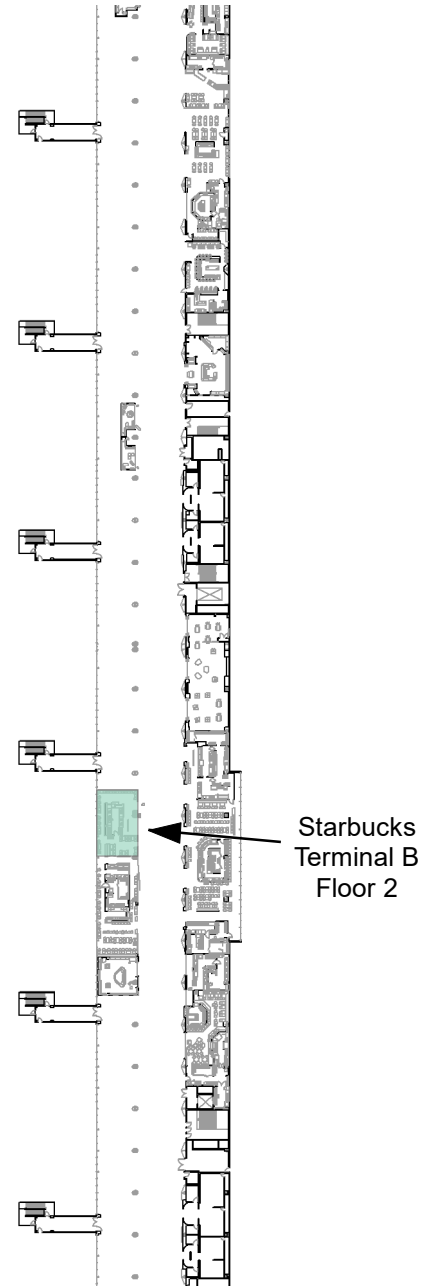
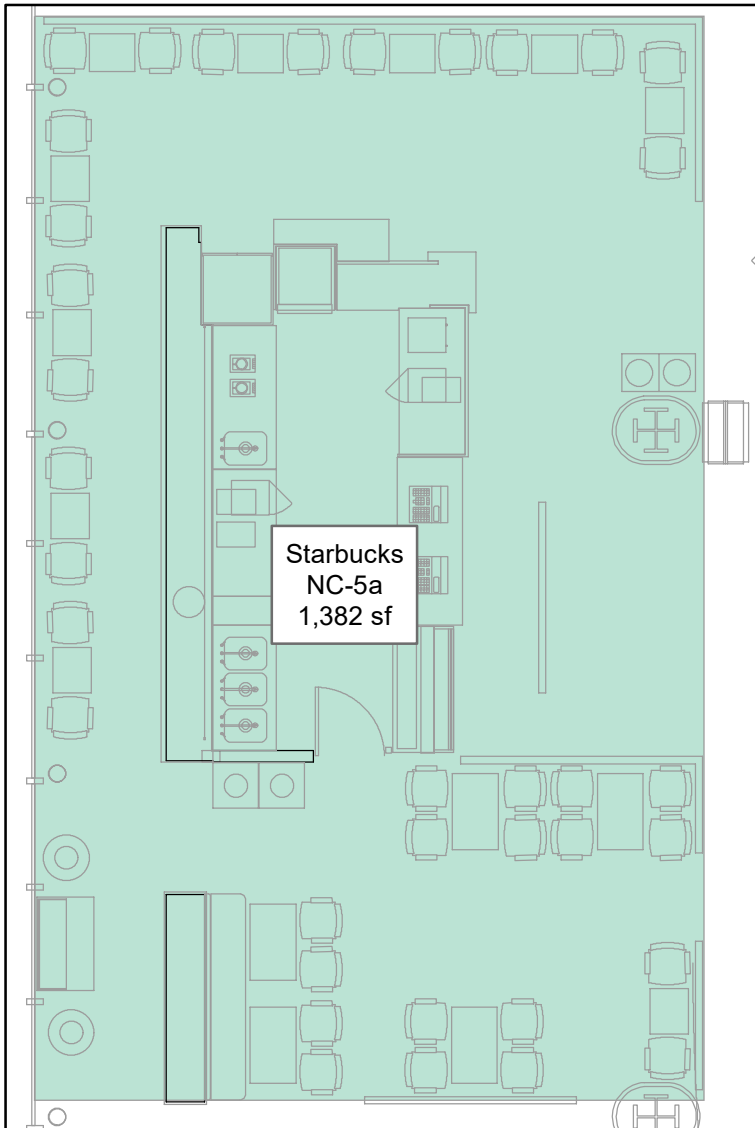
Date: 1/8/2019

Host International, Inc.  
Terminal B Floor 2  
B-9



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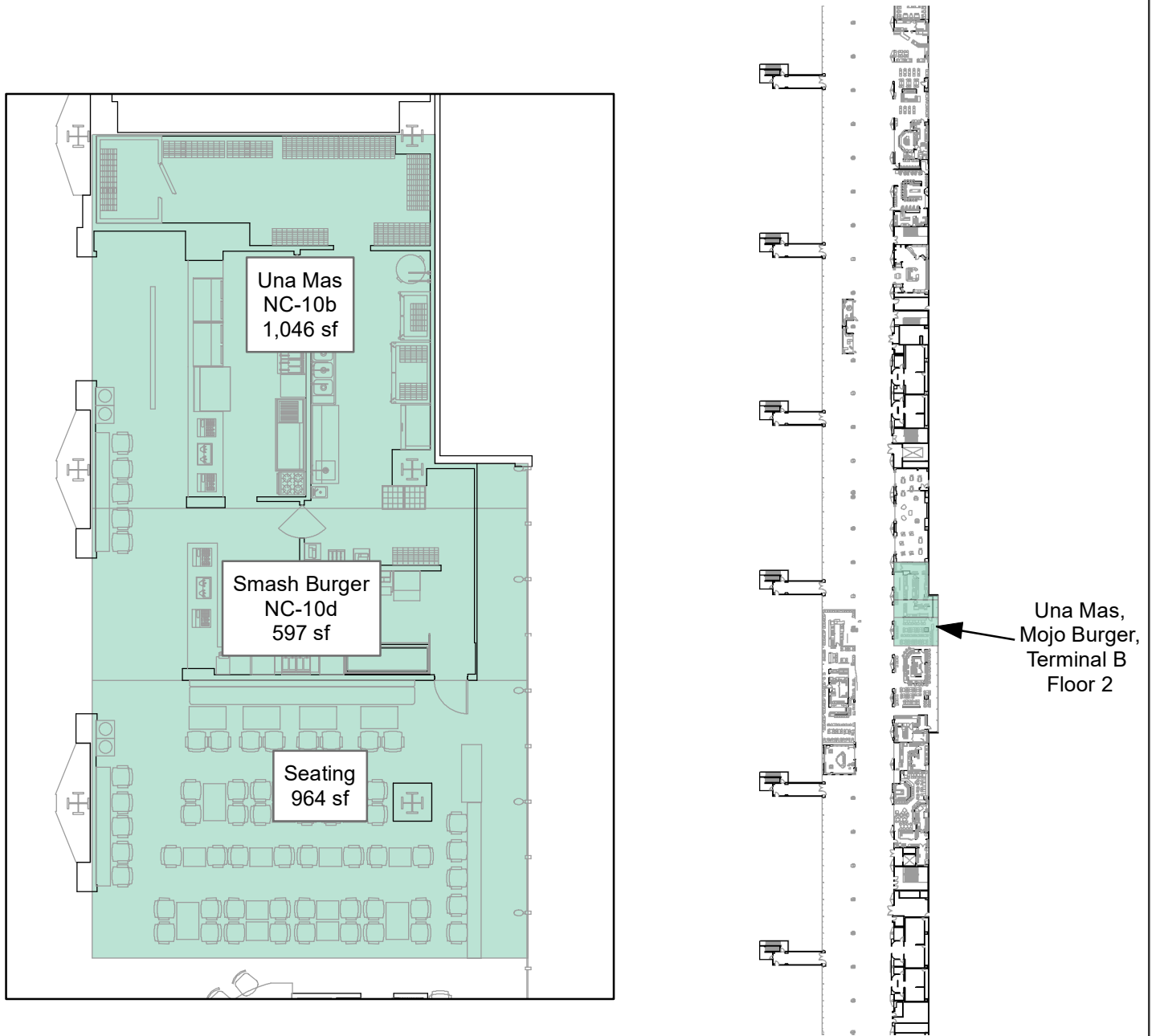
Date: 1/8/2019

Host International, Inc.  
Terminal B Floor 2  
B-10



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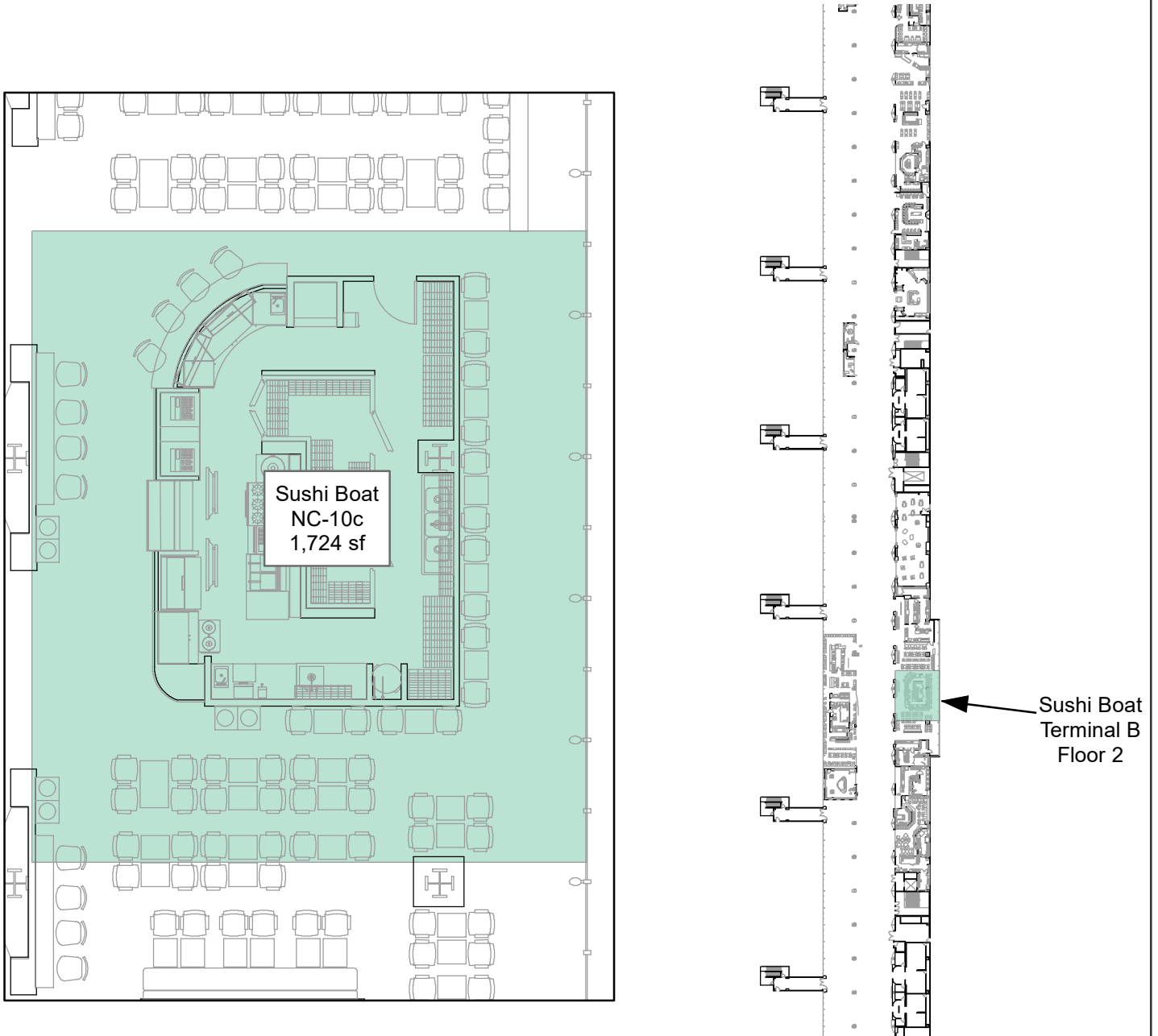
Date: 1/8/2019

Host International, Inc.  
Terminal B Floor 2  
B-11



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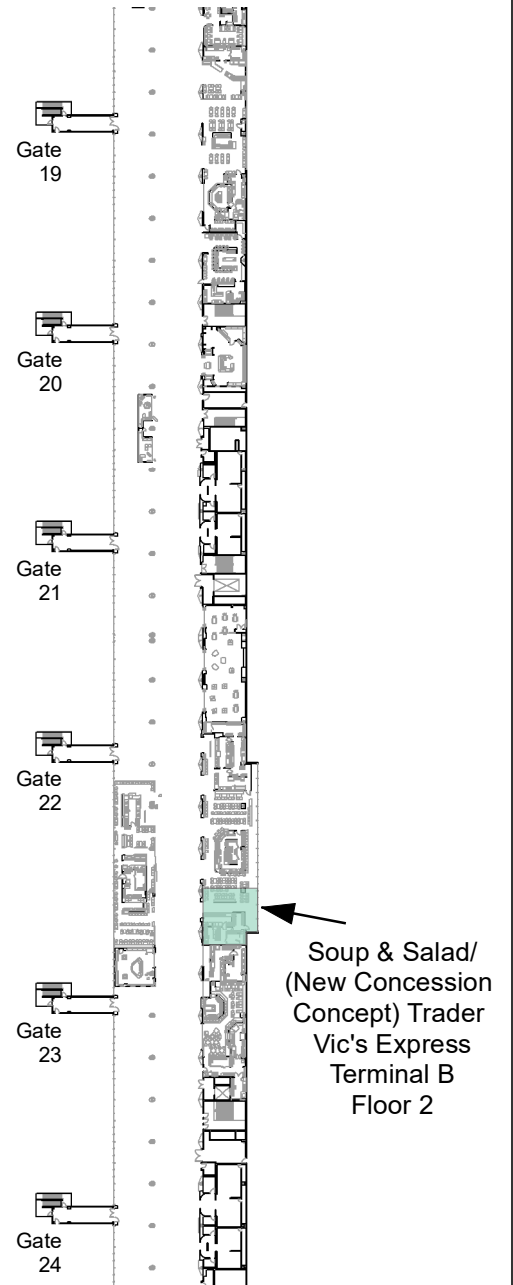
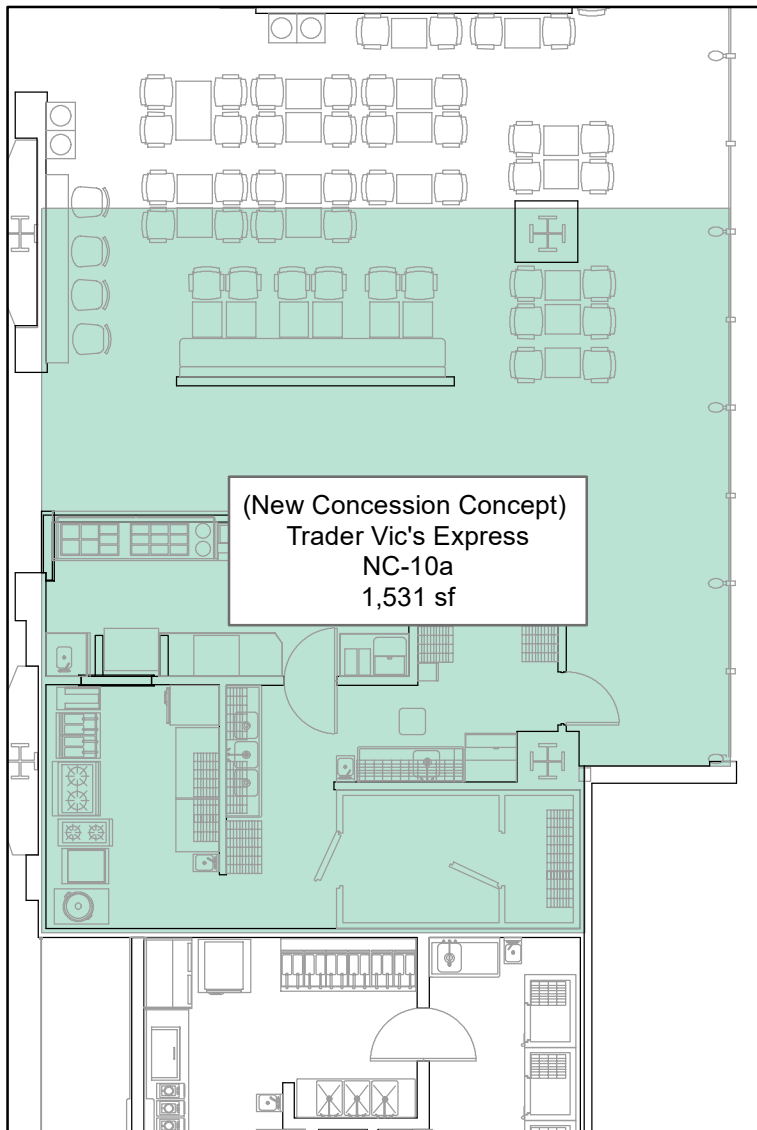
Date: 1/8/2019

Host International, Inc.  
Terminal B Floor 2  
B-12



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Fourth Revised Exhibit B



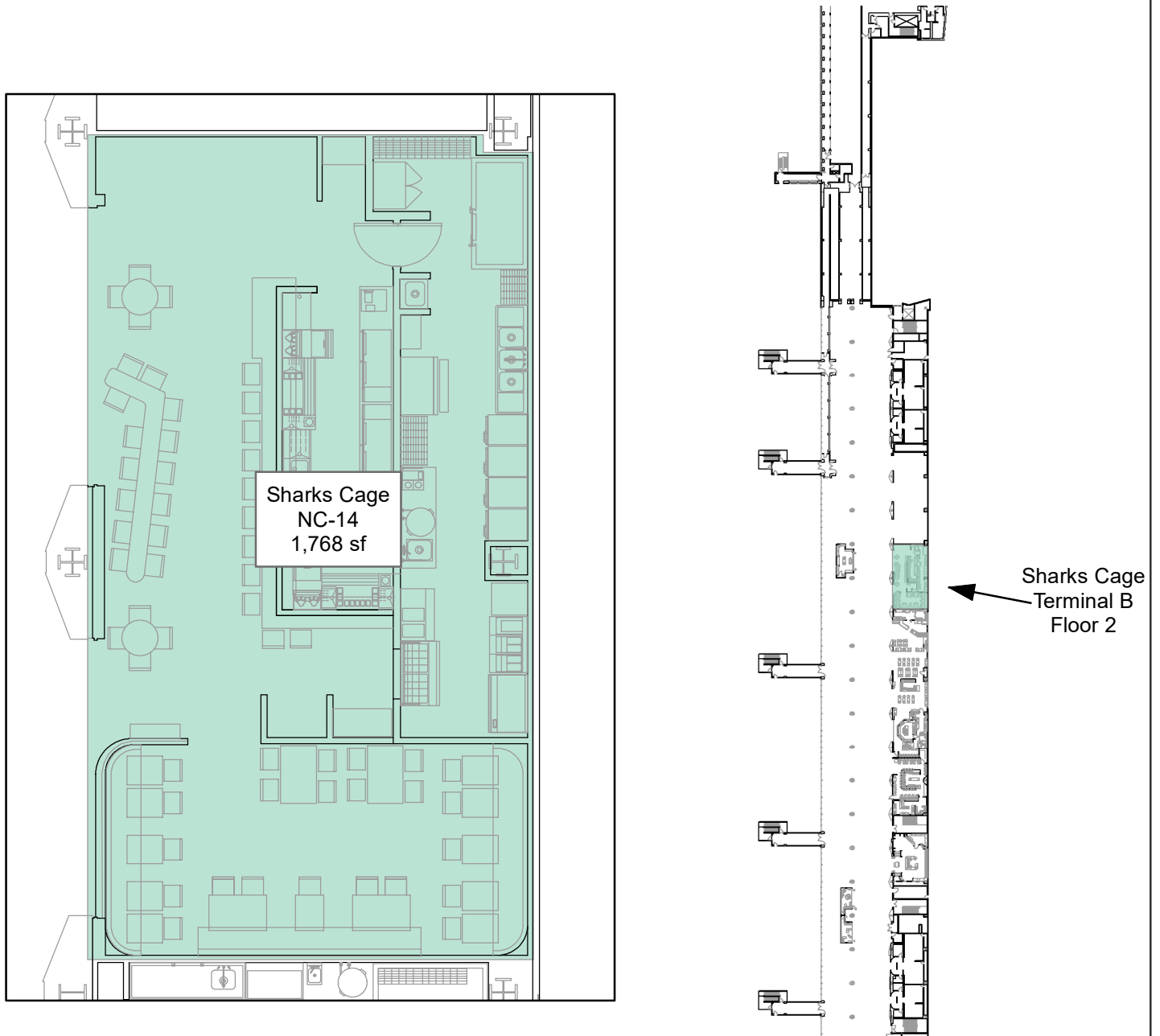
Date: 1/8/2019

Host International, Inc.  
Terminal B Floor 2  
B-13



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Fourth Revised Exhibit B



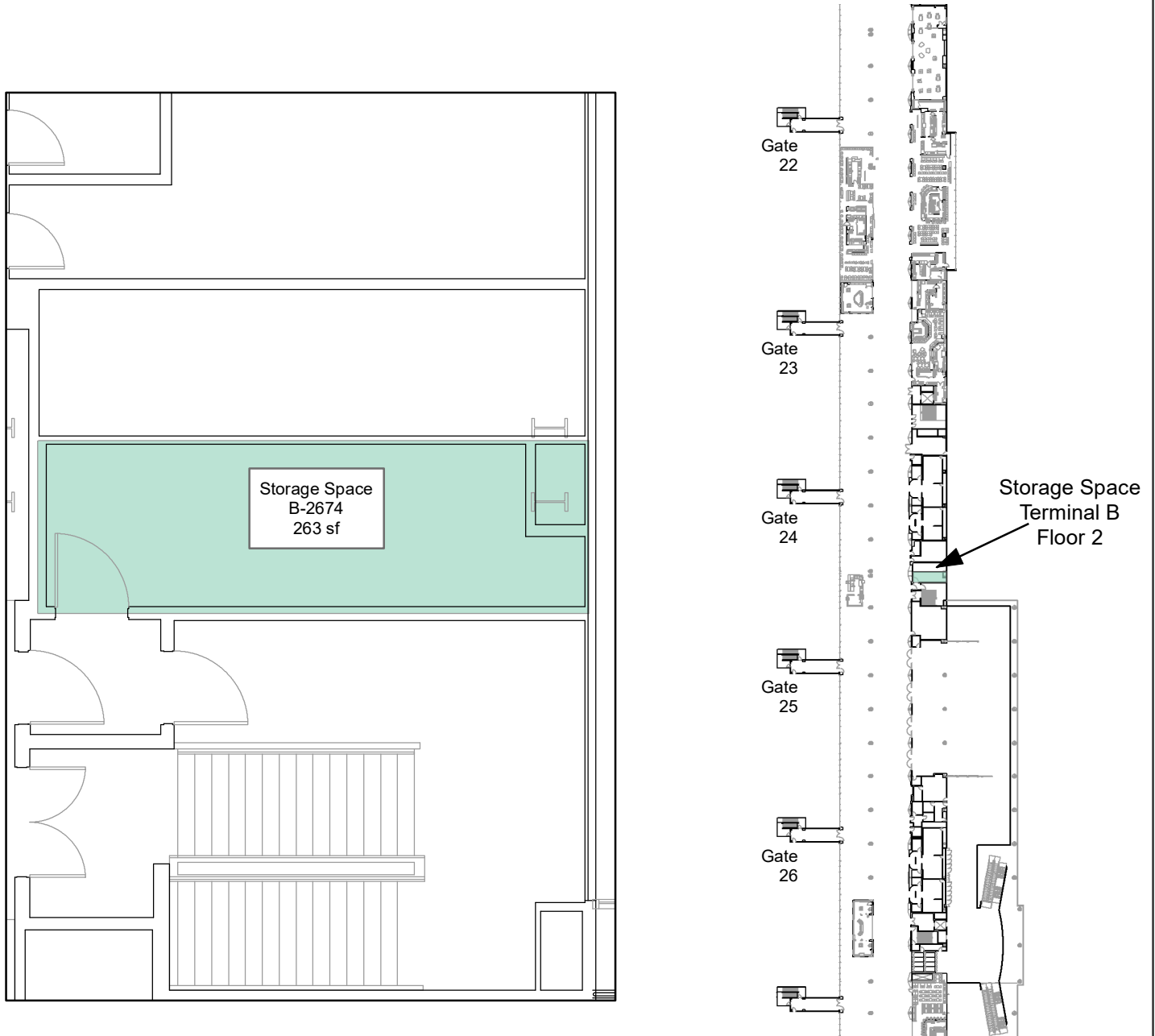
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Host International, Inc.  
Terminal B Floor 2  
B-14



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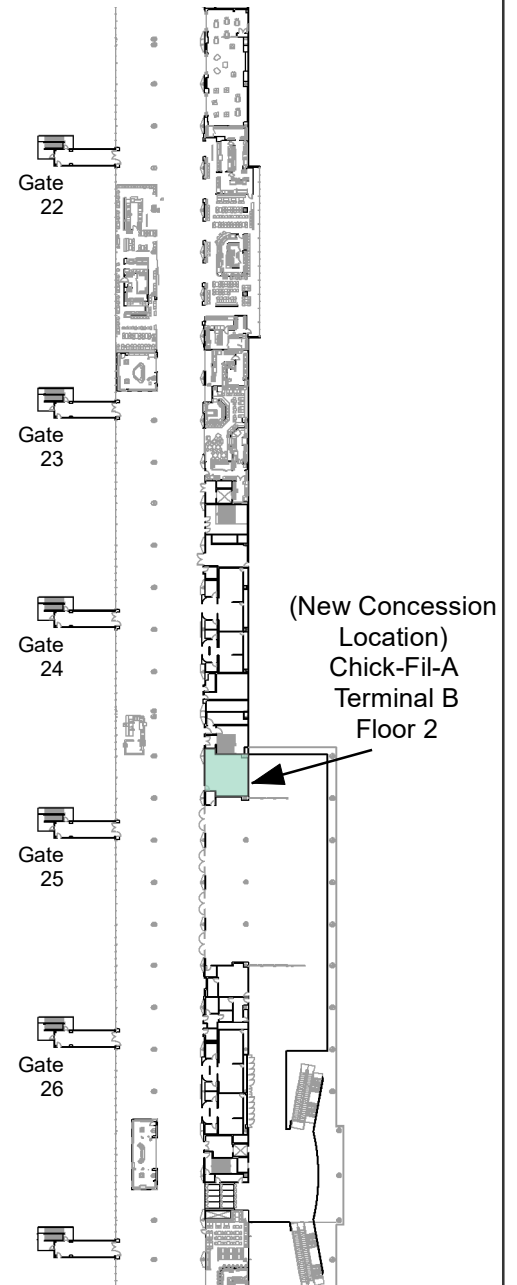
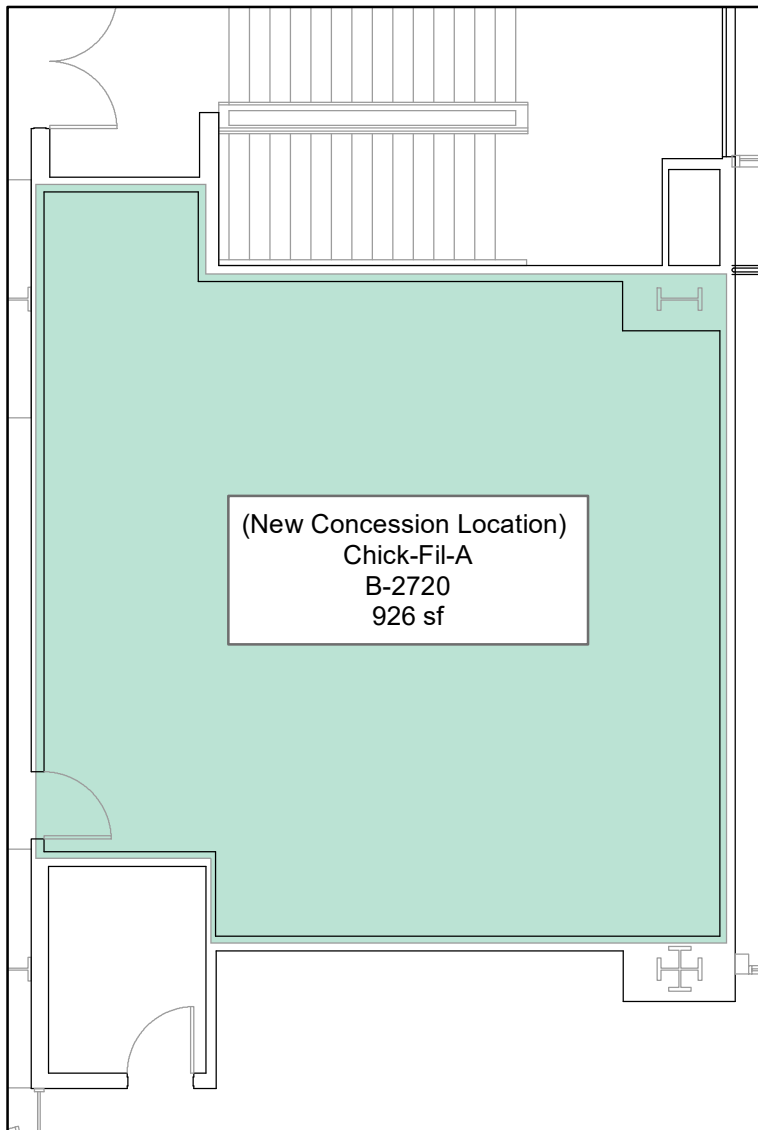


Date: 1/8/2019

Host International, Inc.  
Terminal B Floor 2  
B-15



Fourth Revised Exhibit B



Date: 1/8/2019

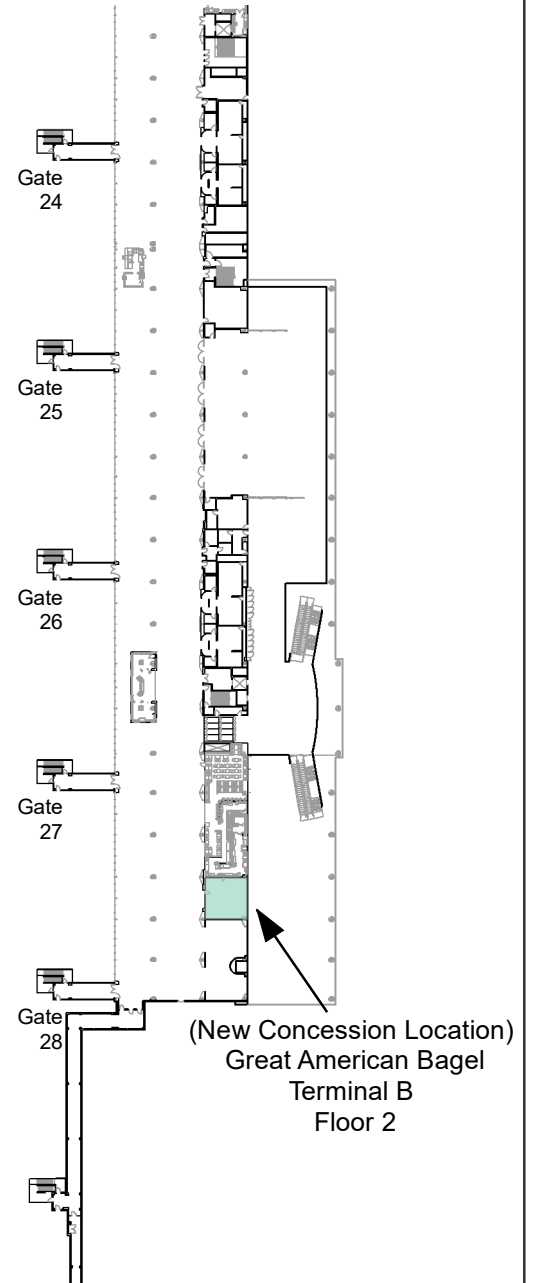
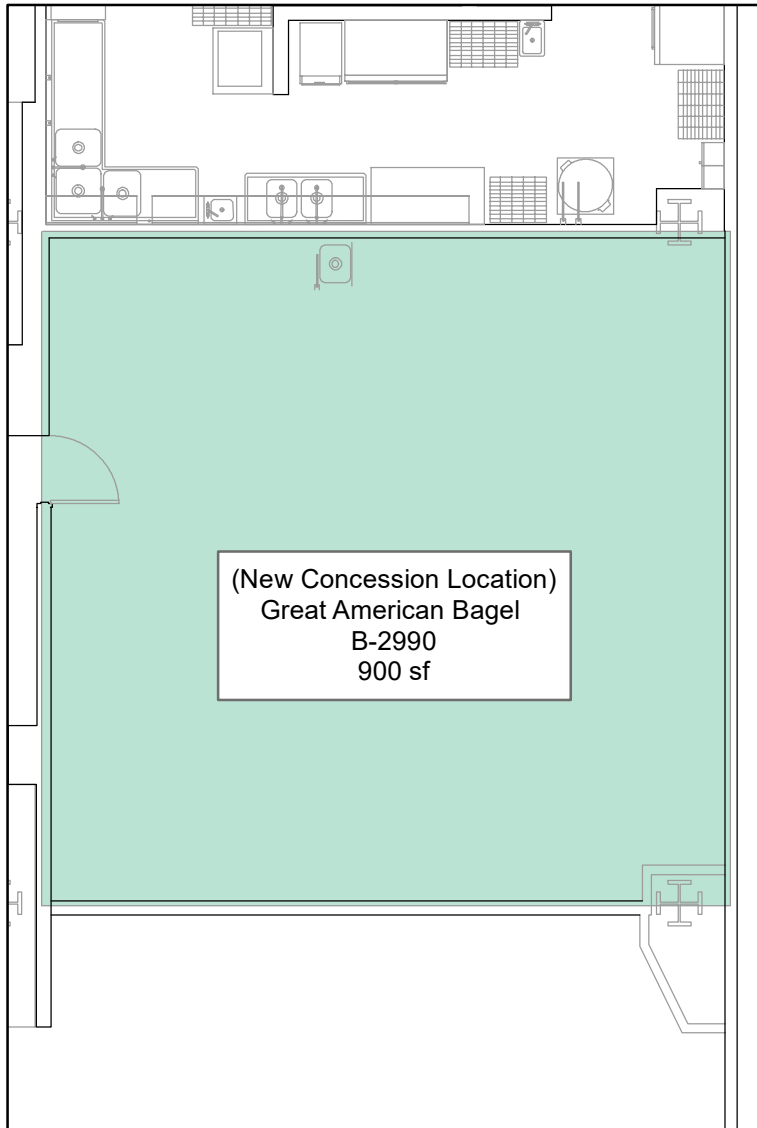
Host International, Inc.  
Terminal B Floor 2  
B-16



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Fourth Revised Exhibit B



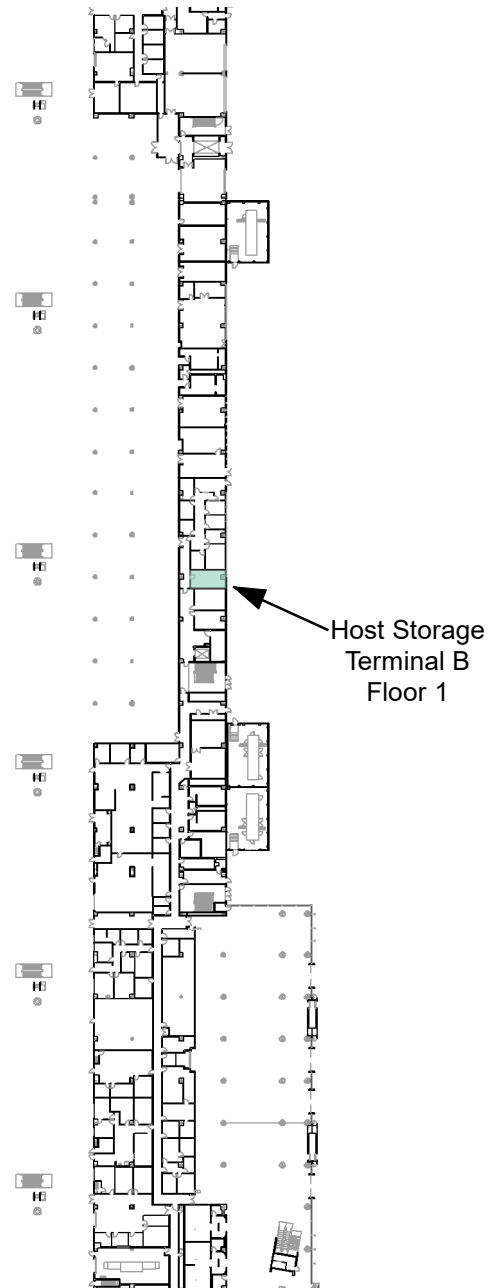
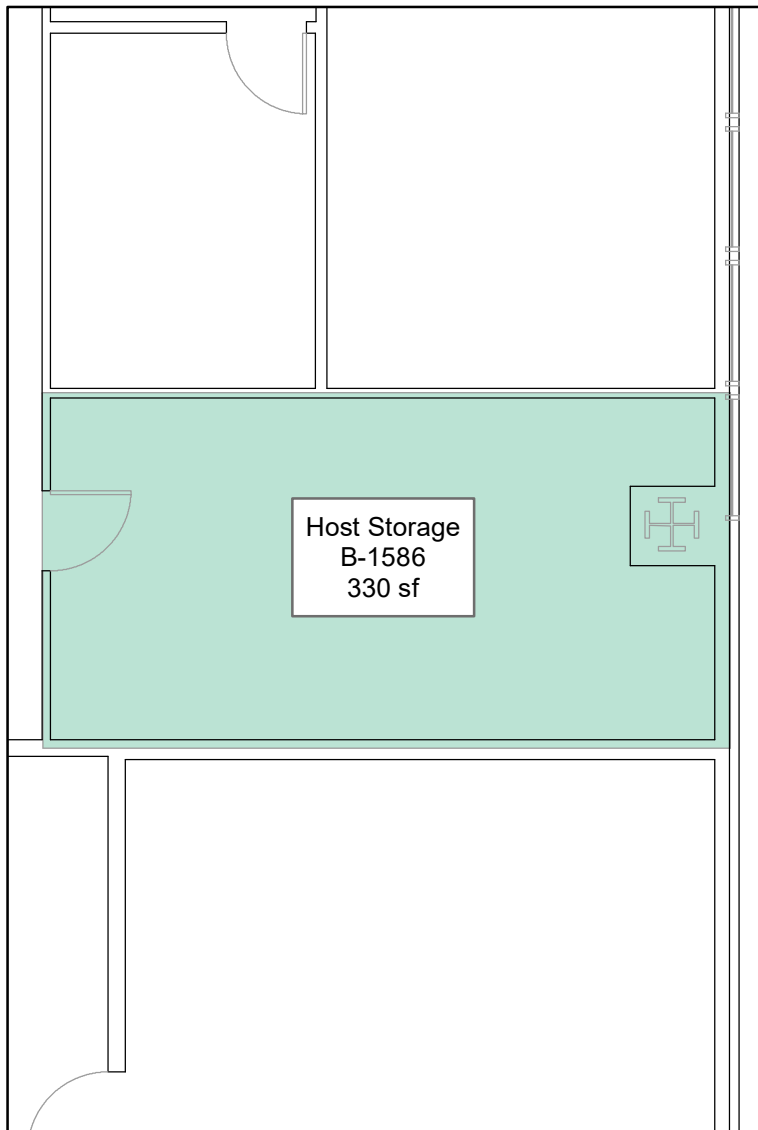
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Host International, Inc.  
Terminal B Floor 2  
B-17



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Fourth Revised Exhibit B



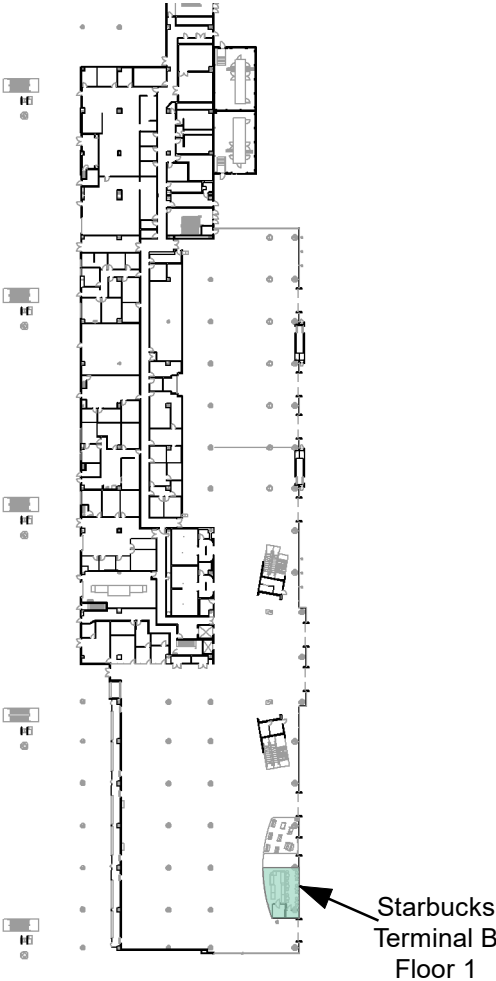
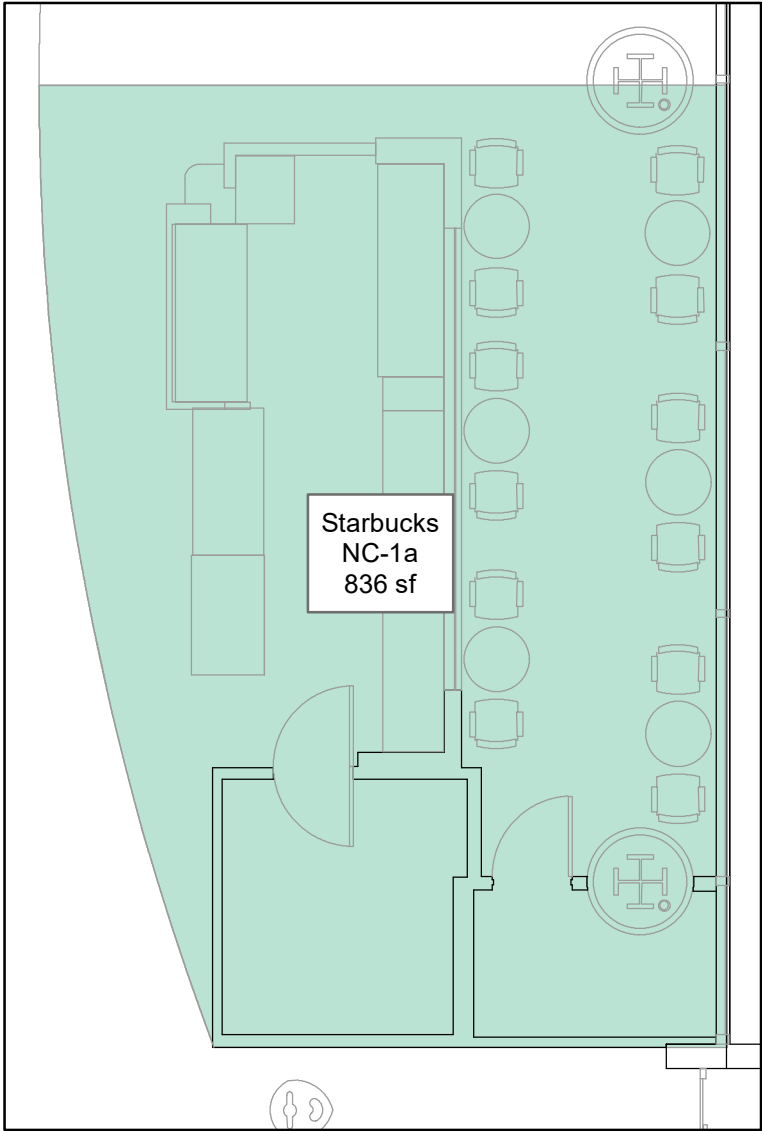
Date: 1/8/2019

Host International, Inc.  
Terminal B Floor 1  
B-18



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Fourth Revised Exhibit B

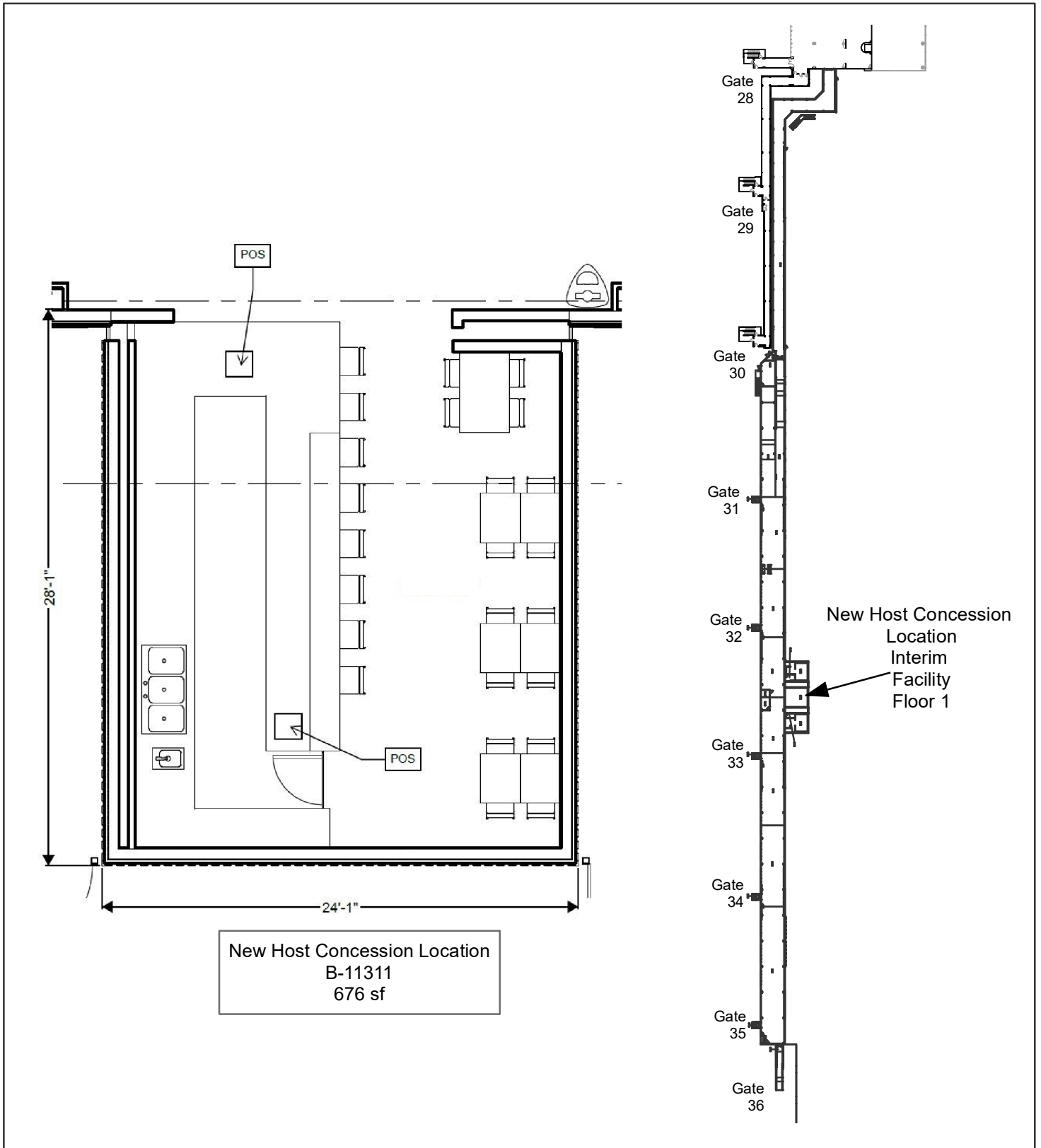


Date: 1/8/2019

Host International, Inc.  
Terminal B Floor 1  
B-19



Fourth Revised Exhibit B



Date: 12/20/2018

Host International, Inc.  
Terminal B Floor 2  
B-20



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## FIRST REVISED EXHIBIT C – TENANT MIX

Spacing #	Location #	Sq. ft.	Name
TA-14a	A2801	2,300	Shake Shack (Currently Sonoma Chicken)
TA-14b	A2811	560	Starbucks
TA-18	A2771	2,590	Gordon Biersch (including expansion)
TA+2/TA+2b	A2251/A2253	778	Starbucks/Office (Currently Access Point/Starbucks)
NC-5b/NC-5c	B2561/B2571	2,121	Trader Vics (Currently Brioche Doree/Santa Cruz Wine)
NC-10a	B2560	1,531	Trader Vics Express (Currently Soup & Salad Station)
NC-10b	B2530	1,046	Una Mas
NC-10c	B2550	1,724	Sushi Boat
NC-10d	B2540	597	Smash Burger
NC-14	B2200	1,768	Sharks Cage
NC-5a	B2551	1,382	Starbucks
NC-1a	B1980	836	Starbucks - Bag Claim
NC-10b/10d	B2544	964	Seating Area - T/B Food Court
NC-5d	B1586	330	Remote Storage – 1 <sup>st</sup> Floor Terminal B
TBD	B11311	676	Interim Terminal
T/A	A2400-2480	1,952	International Beer Union (A2450)
T/B	B2720/2674	1,189	Chick-fil-A (926s.f.) + Adjacent storage (263s.f.)
T/B	B2990	900	Great American Bagel
<b>Total</b>		<b>23,244</b>	

First Revised Exhibit C

Host International, Inc. F&B Concession Agreement  
Fifth Amendment  
Document No. 10331-CA-08-5

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## **SECOND REVISED EXHIBIT Q – PRICING POLICY**

The intent of the Pricing Policy is for prices and quality of products and services at the Airport to be comparable to off-Airport (street) locations within Santa Clara County, California. Multiple concessionaires operate at the Airport and it is expected that competition for customers will ensure that prices and quality of products and services remain at a level that closely matches street comparables.

### **Pricing Requirements and Comparables**

Concessionaire is responsible for establishing comparable locations for the purpose of instituting a pricing structure for their concessions under the following guidelines:

1. Name brand stores:
  - a. If a concession has a street location within Santa Clara County, that location will be designated as a comparable store.
  - b. Concessionaire may submit comparable pricing from a minimum of one (1) street location and no more than three (3) street locations.
2. Alternate comparable locations:
  - a. If a concession does not have a street location in Santa Clara County, the concessionaire and Airport will identify no more than three (3) street locations in Santa Clara County similar in concept, size, and quality.
  - b. If a product or service is not available at the selected street locations, the concessionaire and Airport will identify no more than three (3) alternate street locations in Santa Clara County for that product or service.
  - c. If concessionaire is unable to find a reasonable comparable location within Santa Clara County, the concessionaire shall have the right to request in writing an exemption from the local comparable requirement for approval by the Director. Such request must include reason for requested exemption and provide a detailed explanation of how concessionaire intends to establish pricing for its products or services.
3. Pricing:
  - a. Affordable pricing is an essential aspect of the passenger experience at the Airport. It is our goal that prices should be close to prices found on the street but in no case, shall prices exceed thirteen percent (13%) of a comparable location or brand located in the Santa Clara County area. If a location does not have an equivalent comparative brand in the vicinity, then the Airport and Concessionaire shall agree to three equivalent locations for comparison.
  - b. Concessionaire must provide a price justification, to be approved by the Airport, for any product that is different in size or quality for purposes of establishing a reasonable comparable price.

4. Protection from competition:

- a. Stores that are partially or fully protected from competition, such as hotels, amusement parks or sports arenas, and locations that operate using off-price or discount pricing structures, shall not be included as comparable locations.
- b. Notwithstanding the preceding paragraph, if a branded concession has a location at either Oakland International Airport or San Francisco International Airport, that airport location may be used as the only comparable location. However, prices cannot exceed the prices at that comparable airport location.

5. Product and price submittal:

Concessionaire is required to submit a complete product and price list to the Director for approval at least thirty (30) days prior to the initial concession opening. Such product and price list shall detail all products and services available for sale and the requested price. Differences in size or quality of a product or service shall, all other things being equal, be considered by Airport during its review.

6. Approval of comparables and pricing:

If the Airport and concessionaire are unable to agree on the comparable street locations or prices, the Director will select the comparable street locations for the purpose of establishing prices.

## **Pricing Display**

1. Display of pricing:

Concessionaire is required to prominently and clearly display pricing for all products and services offered at any location(s) at the Airport.

2. Pre-marked or pre-printed price:

Where prices are pre-marked or pre-printed on the item by the distributor or manufacturer, the price charged for the item shall not exceed the pre-marked or pre-printed price.

## **Price Adjustments and Prices for New Products**

1. Written approvals:

Concessionaire must obtain Airport's written approval prior to adjusting prices and prior to pricing new products and services. Any request for price adjustments or price approvals for new products and services must be submitted to the Director at least fourteen (14) days prior to either the price increase effective date or availability of a new product or service, as applicable. Price increases shall be

based on increases in prices for the same items at the comparable street locations in Santa Clara County.

2. Price adjustments:

Concessionaire will be allowed to submit pricing adjustments two (2) times per year unless otherwise requested by concessionaire due to market conditions, and as approved by the Director.

**Remedies for Exorbitant Prices and/or Insufficient Quality**

1. Review of pricing and quality:

At any time, the Director may survey prices and the quality of products and services then in effect at comparable street locations in Santa Clara County. If the Director determines that any prices being charged by concessionaire at the Airport are exorbitant compared to street pricing as identified in the survey, or that any product or service being offered by concessionaire is of insufficient quality compared to the street locations, the concessionaire is required to submit, within seven (7) days, a product and price list with comparables as required in the Pricing Policy. Prices must be adjusted within seven (7) days of the Director's approval.

2. Remedies:

- a. Should the concessionaire not provide an acceptable price list with comparables within seven (7) days, the products or services must be removed immediately from the concession location or may be offered at street pricing plus thirteen percent (13%) as determined by the Director.
- b. Should the concessionaire not replace products or services of insufficient quality with items of sufficient quality within seven (7) days, the products or services must be removed immediately from the concession location.



## CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of the corporation.

I, \_\_\_\_\_ certify that I  
Name of Secretary or Assistant Secretary

am the ☐ Secretary or ☐ Assistant Secretary of the corporation named in the

attached agreement; that \_\_\_\_\_  
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the \_\_\_\_\_  
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and in behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

\_\_\_\_\_  
Signature of Secretary or Assistant Secretary

\_\_\_\_\_  
Corporate Seal

\_\_\_\_\_  
Date