

**SECOND AMENDMENT TO
FOOD AND BEVERAGE CONCESSION AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
AREAS USA SJC, LLC**

This SECOND AMENDMENT TO FOOD AND BEVERAGE CONCESSION AGREEMENT is entered into this ____ day of _____, 2011, by the CITY OF SAN JOSE (“City”), a municipal corporation, and Areas USA SJC, LLC a limited liability company (“Concessionaire”).

RECITALS

WHEREAS, on January 29, 2009, City and Concessionaire entered into a Food and Beverage Concession Agreement entitled “Norman Y. Mineta San Jose International Airport Food and Beverage Concession Agreement by and between the City of San Jose and Areas USA SJC, LLC” (“Agreement”); and

WHEREAS, on March 22, 2011, City and Concessionaire entered into a First Amendment to the Agreement to delete the terms and conditions of the City’s Living Wage Policy and/or Prevailing Wage Policy for the remaining term of the Agreement thereby making Concessionaire subject to the Minimum Compensation requirements of the Airport Living Wage and Labor Standards; and

WHEREAS, City and Concessionaire desire to further amend the amended 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;

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

SECTION 1. SECTION 1, “SUMMARY OF TERMS AND DEFINITIONS”, subsection entitled **“MAG Commencement Date”** is amended to read as follows:

““MAG Commencement Date” means July 1, 2010.”

SECTION 2. SECTION 4 “RESTRICTIONS ON ACTIVITIES”, Subsection 4.16, **“Pricing”** is amended to read as follows:

“4.16 Pricing

4.16.1 Concessionaire shall adhere to the requirements and methodology in **EXHIBIT Q**, entitled **“Pricing Policy”**. Should any of the provisions in **EXHIBIT Q** conflict with the provisions of **EXHIBIT L**, entitled **“Airport Tenant Guidelines”**, or conflict with the pricing methodology as presented in the Concessionaire’s Proposal, the provisions of **EXHIBIT Q** shall prevail.

4.16.2 As a good-neighbor service to airline, Airport and support staff who work at the Airport, Concessionaire shall offer all of its Products, with the exception of reading material, tobacco products and phone cards, at a minimum 10% discount to any person who displays a valid Airport identification or security badge.”

SECTION 3. SECTION 5 “WAGE REQUIREMENTS/JOBS CREATION AND REPORTING REQUIREMENT”, Subsection 5.2.4 of Subsection 5.2 **“Jobs Creation and Reporting Requirement”** is amended to read as follows:

“5.2.4 Concessionaire shall submit a Jobs Report to the City on a bi-annual basis due on January 15th and July 15th, in a form subject to the Director’s approval, listing by job title the permanent jobs filled, which jobs of those were available to low and moderate income persons, and a description of how first consideration was given to such persons for those jobs. Each Jobs Report shall also include a description of the

hiring process used, a listing of low and moderate income persons who were interviewed for a particular job, and a listing of the low and moderate income persons who were hired.”

SECTION 4. SECTION 6 “FEES & DEPOSITS”, Subsection 6.1.2.1, “Annual MAG Adjustment” of **Subsection 6.1.2 “MAG Payment”** is amended to read as follows:

“6.1.2.1 Annual MAG Adjustment

6.1.2.1.1 The MAG shall be adjusted on an annual basis on the Annual Adjustment Date, as defined below.

6.1.2.1.2 The Annual Adjustment Date for each MAG shall occur July 1 of each year. On each Annual Adjustment Date, the MAG shall be adjusted to equal eighty-five percent (85%) of the Concession Fee actually due to the City during the previous twelve (12) months. However, the MAG for any year shall not be less than the first year’s MAG. An Annual Adjustment shall be made at the end of each and every Annual Adjustment Date with respect to any underpayment or overpayment of the Concession Fee. If Concessionaire has overpaid the Concession Fee, City shall apply the overpayment to any monthly installment then due and payable to City.”

SECTION 5. SECTION 7 “BOOKS AND RECORDS”, Subsection 7.5 “Statement of Gross Receipts”, is amended to read as follows:

“7.5 Statement of Gross Receipts

No later than ninety (90) days after the Annual Adjustment Date (see SECTION 6.1.2.1.2), Concessionaire shall provide to the City an annual statement for the Concession Area showing, in reasonable detail, consolidated Gross Receipts and the amount of Concession Fees paid to the City for the preceding year ending June 30 (the “Annual Concession Report”). The Annual Concession Report shall be certified, at the Concessionaire’s sole expense, by a Certified Public Accountant.”

No later than ninety (90) days after the Annual Adjustment Date (see SECTION 6.1.2.1.2), Concessionaire shall provide to the City for each Subconcessionaire a separate annual statement of Gross Receipts arising out of the

operations of each Subconcessionaire for the preceding year ending June 30. Such statement shall be certified, at the Concessionaire's sole expense, by a Certified Public Accountant."

SECTION 6. EXHIBIT A, "Airport Site Plan", is amended to read as shown in REVISED EXHIBIT A, attached and incorporated into this Second Amendment.

SECTION 7. EXHIBIT B, "Concession Area", is amended to read as shown in REVISED EXHIBIT B, attached and incorporated into this Second Amendment.

SECTION 8. A new EXHIBIT Q "Pricing Policy" is attached and incorporated into this Second Amendment.

SECTION 9. All of the terms and conditions of the amended Agreement not modified by this Second Amendment shall remain in full force and effect.

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

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

KEVIN FISHER
Senior Deputy City Attorney

DENNIS D. HAWKINS, CMC
City Clerk

Date: _____

“CONCESSIONAIRE”

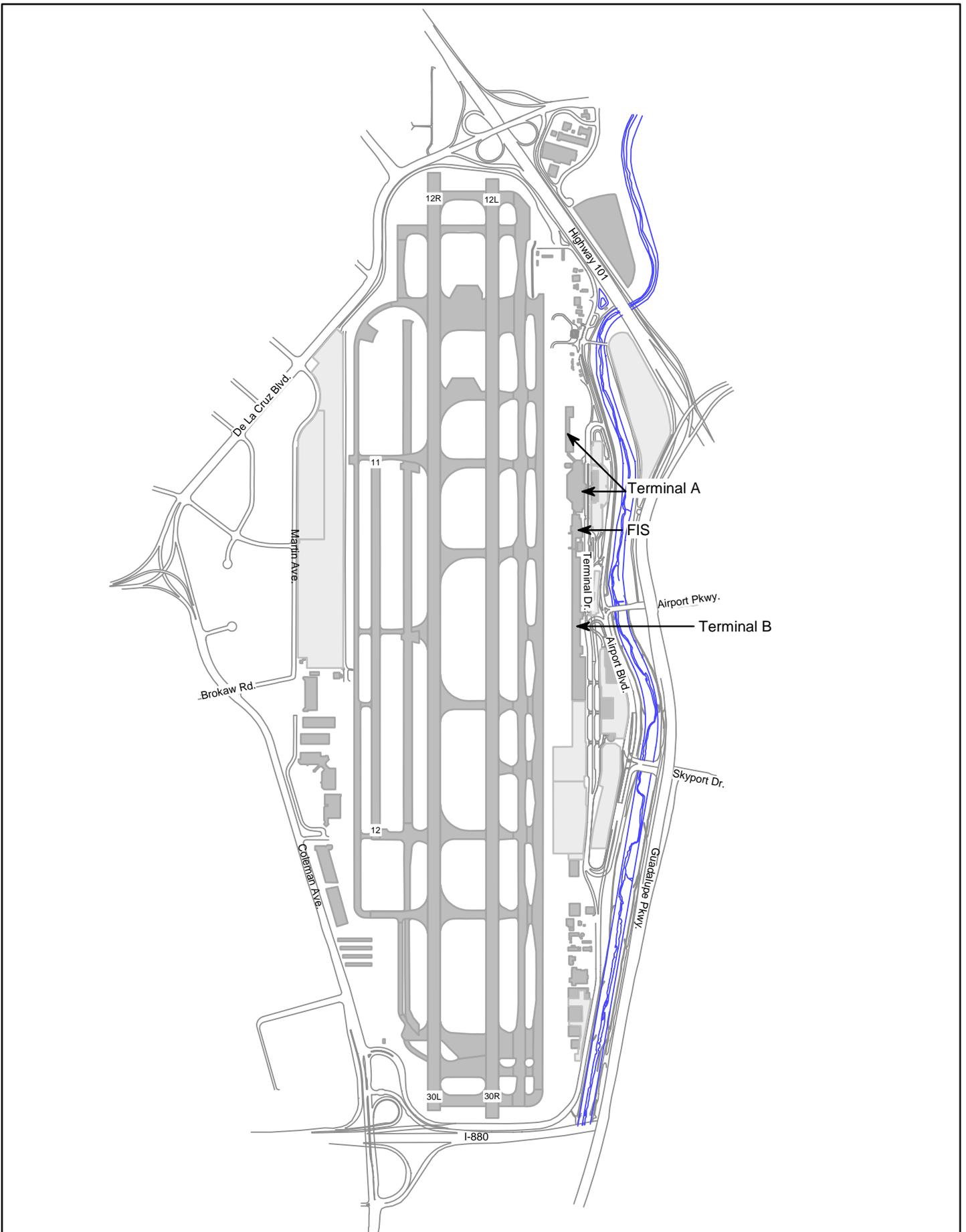
AREAS USA SJC, LLC, a limited liability
company

By: _____

Name: _____

Title: _____

Date: _____



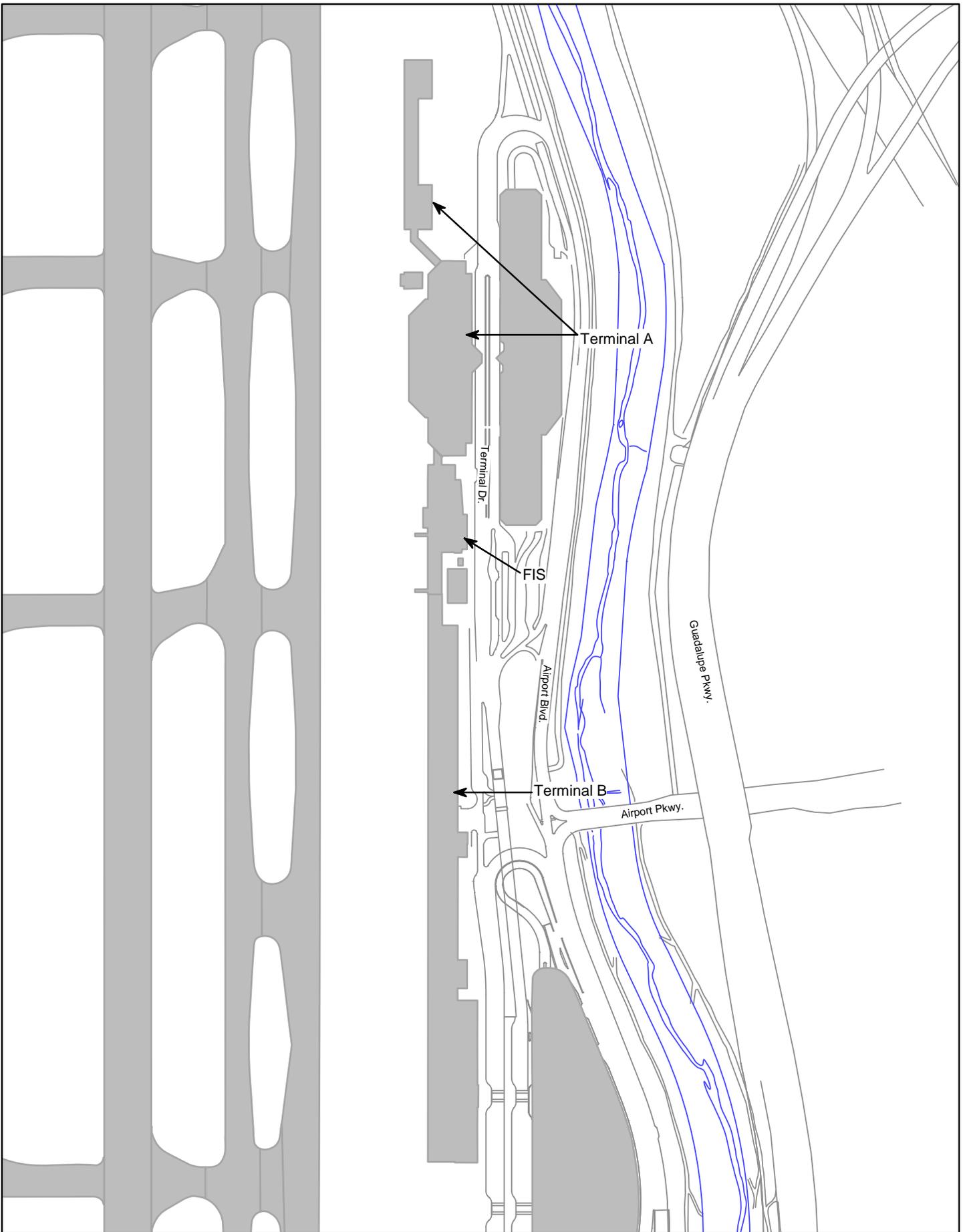
NORTH

Airport Campus Map

NORMAN Y. MINETA
SAN JOSE

Date:

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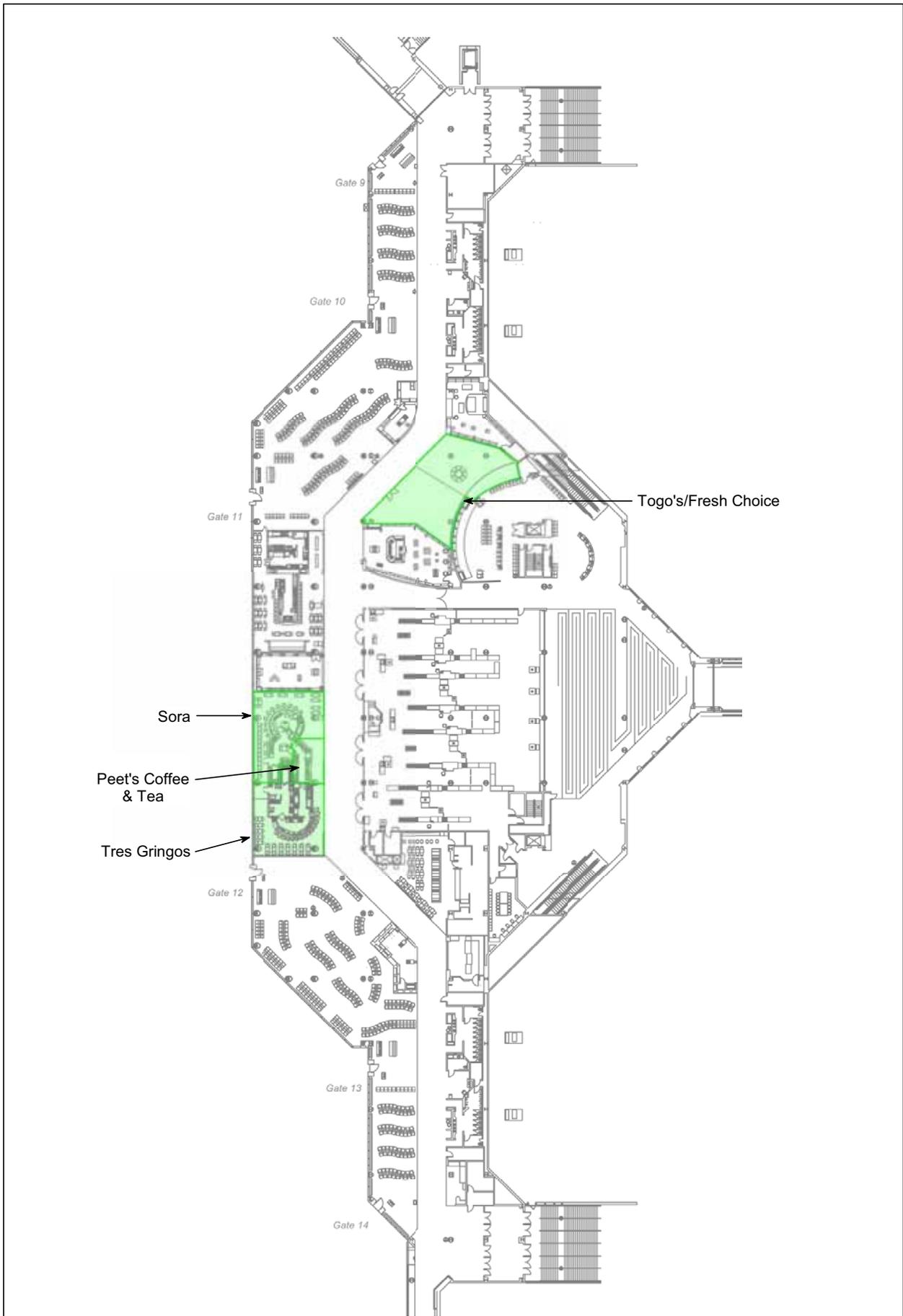
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Terminal Map

NORMAN Y. MINETA
SAN JOSE

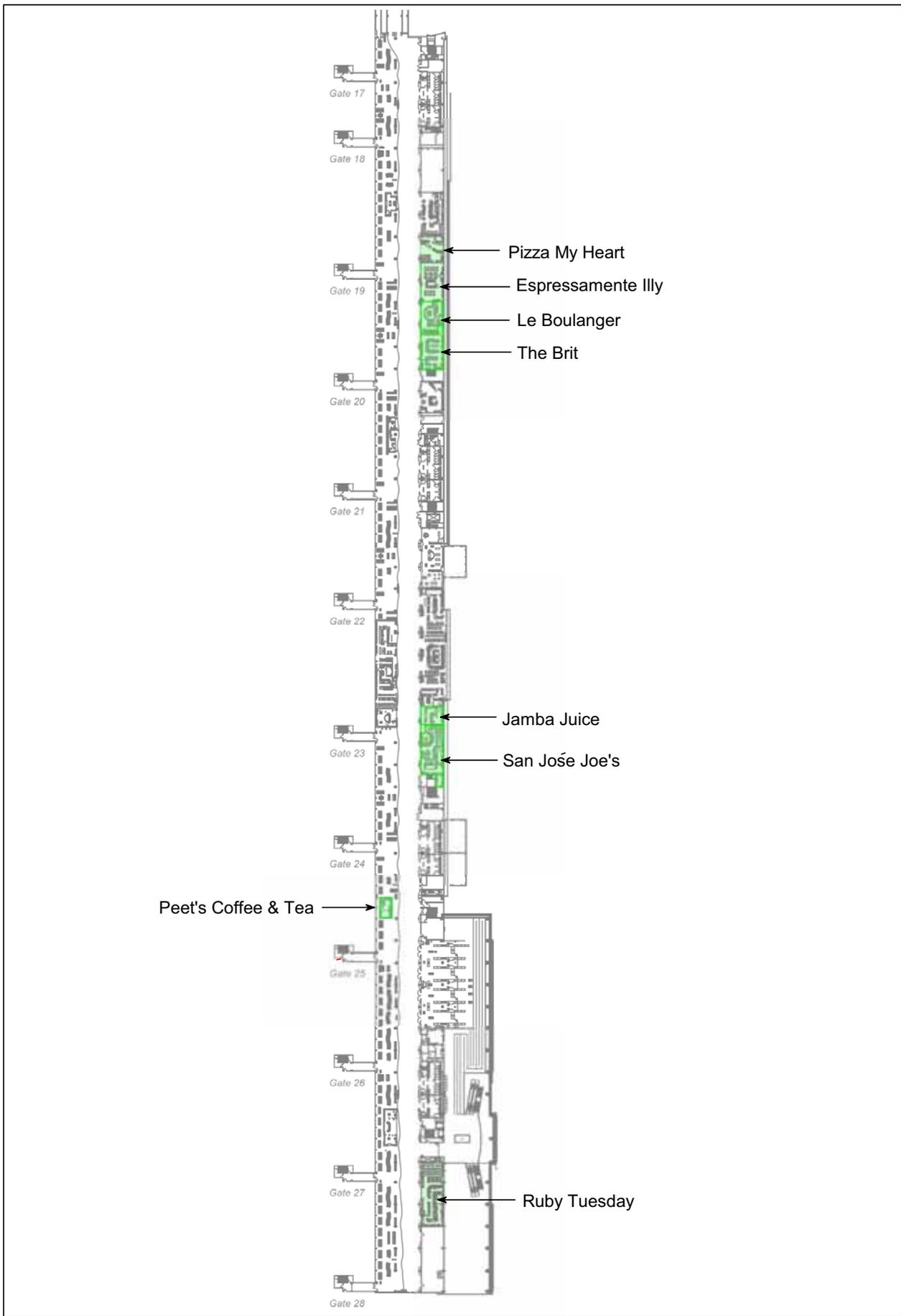
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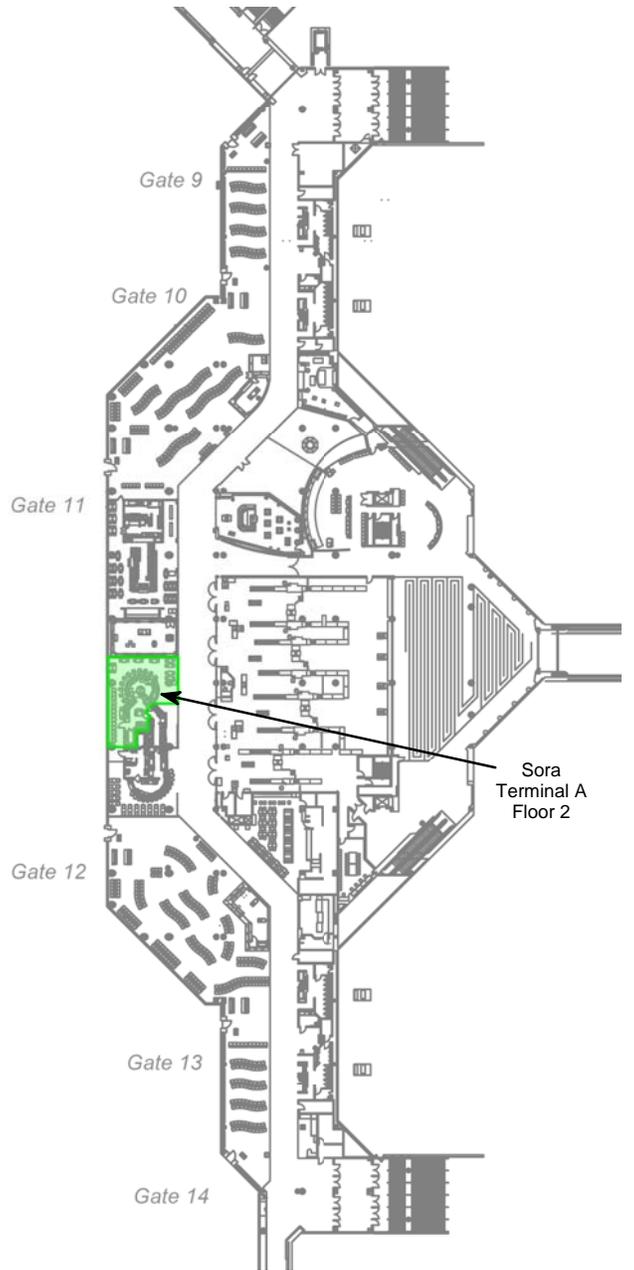
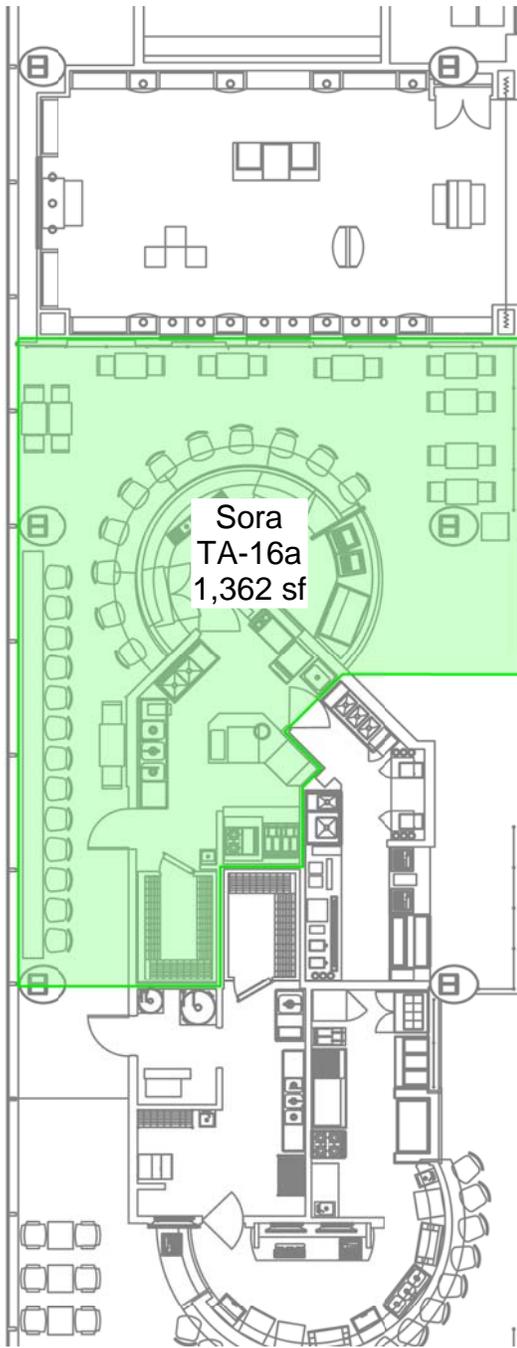
Areas SJC USA, LLC
Terminal A Floor 2 Overall Plan





Areas SJC USA, LLC
Terminal B, Floor 2 Overall Plan





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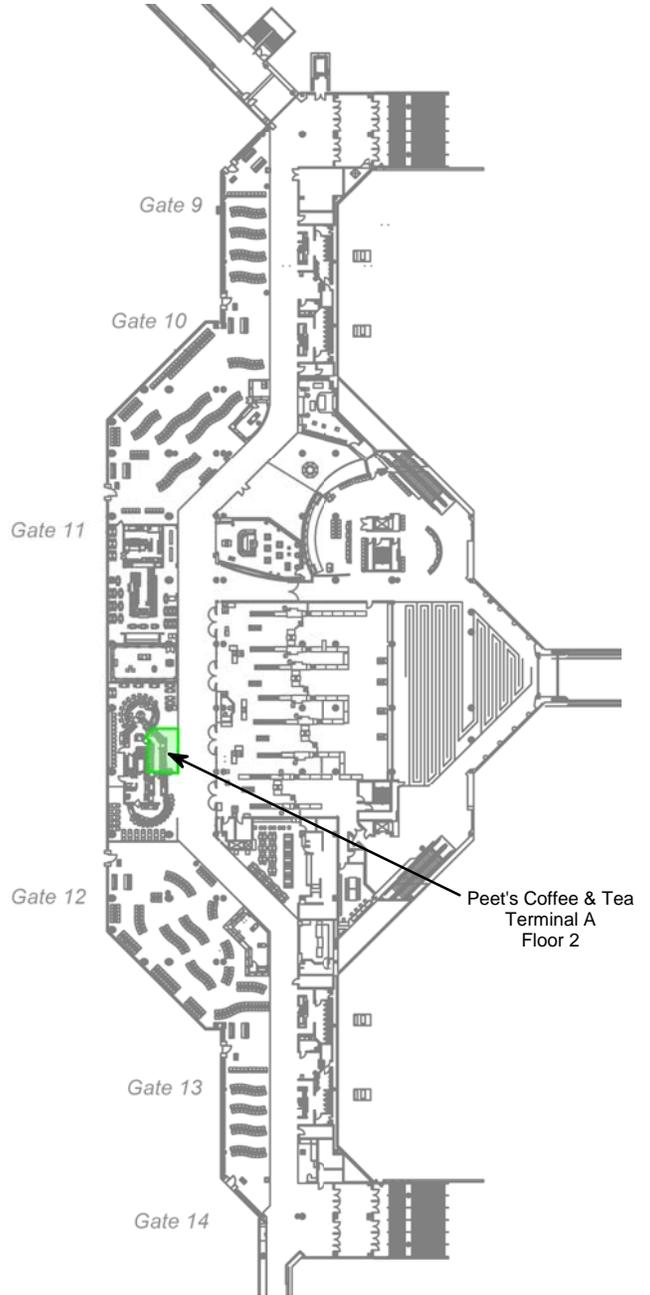
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Areas SJC USA, LLC
Terminal A Floor 2

NORMAN Y. MINETA
SAN JOSE
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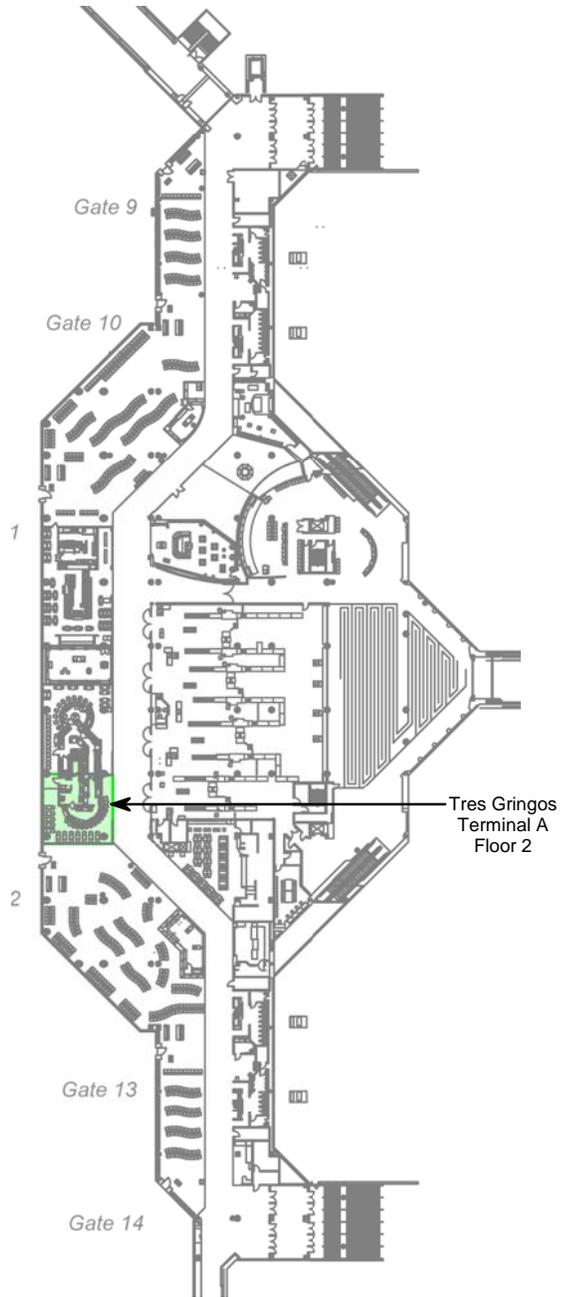
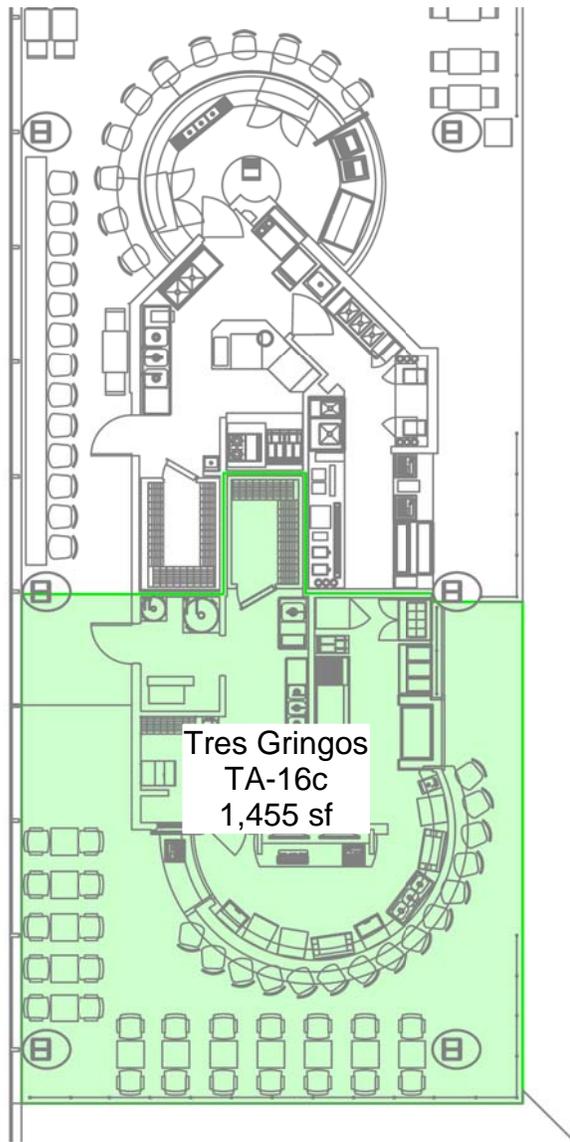
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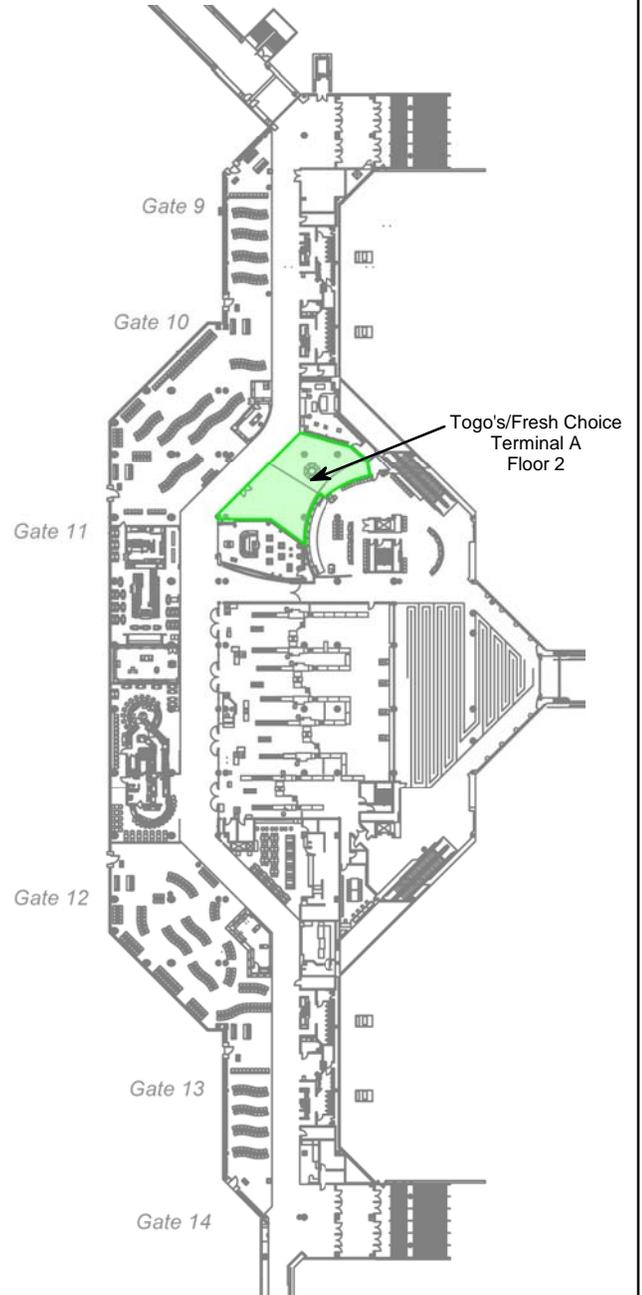
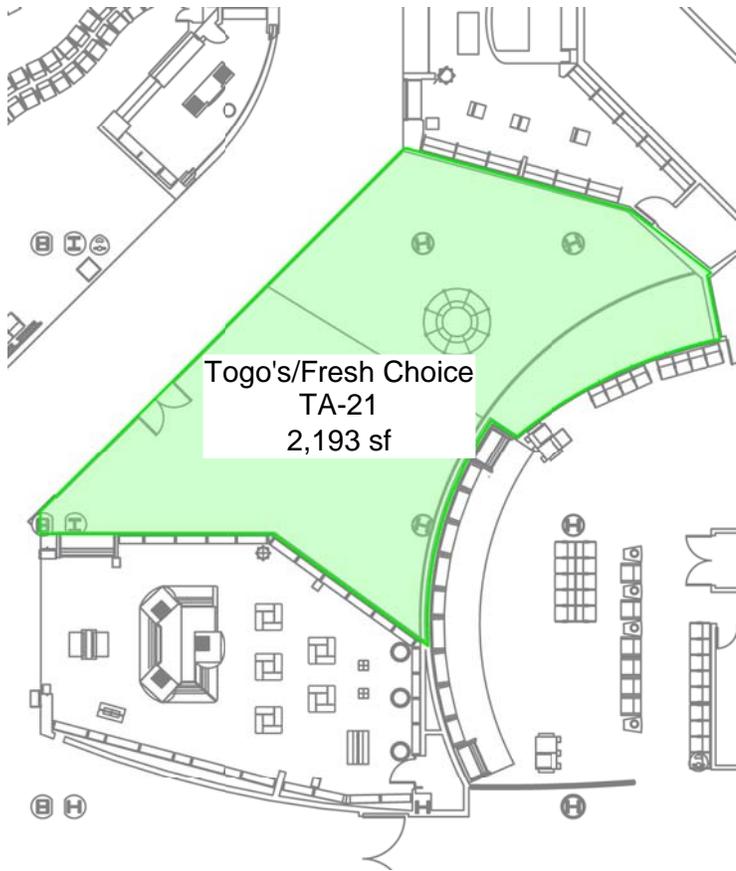
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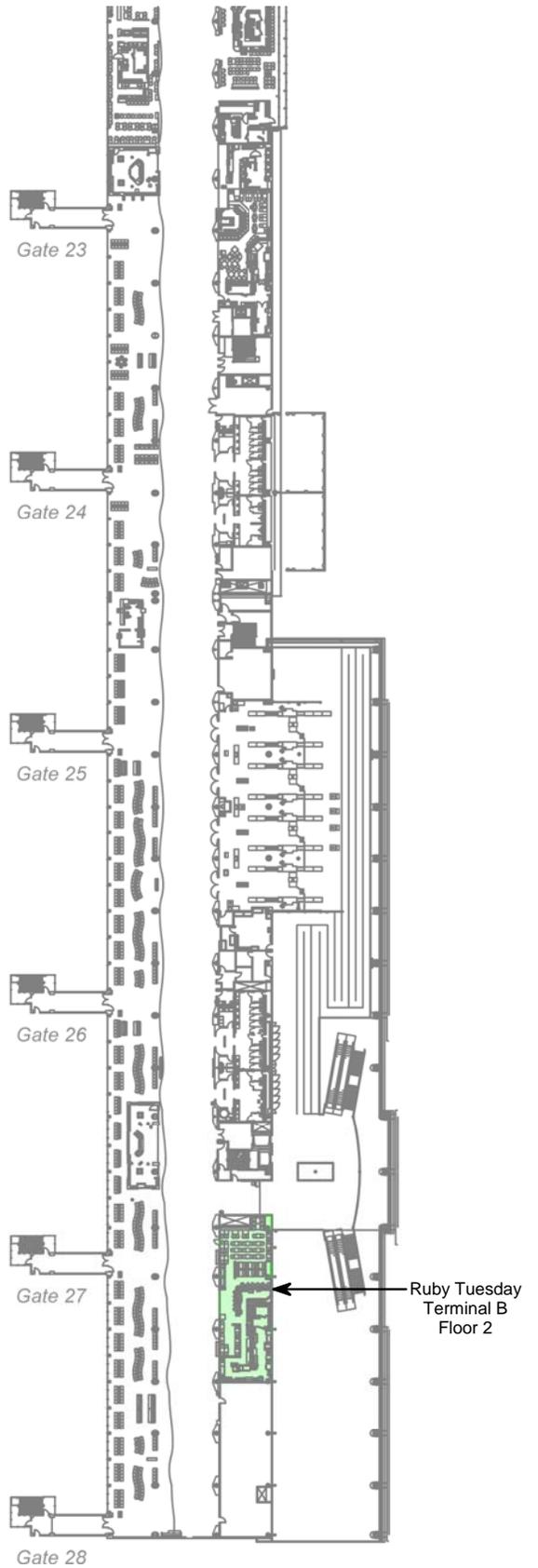
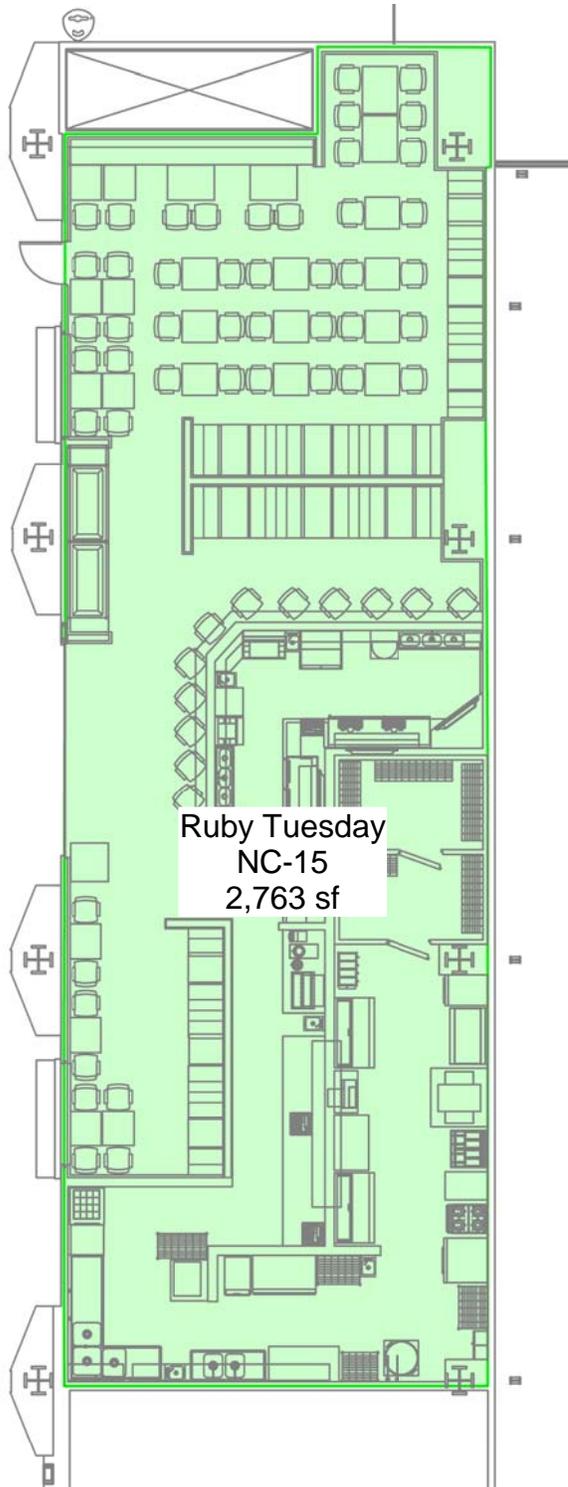
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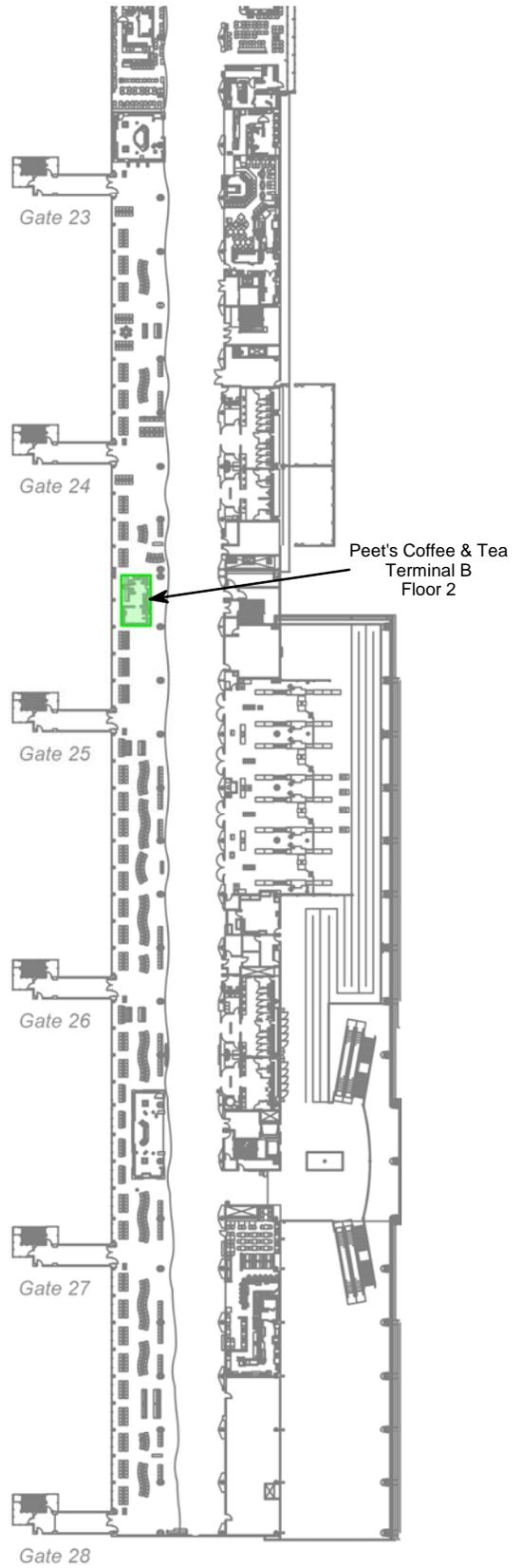
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Areas SJC USA, LLC
Terminal B Floor 2

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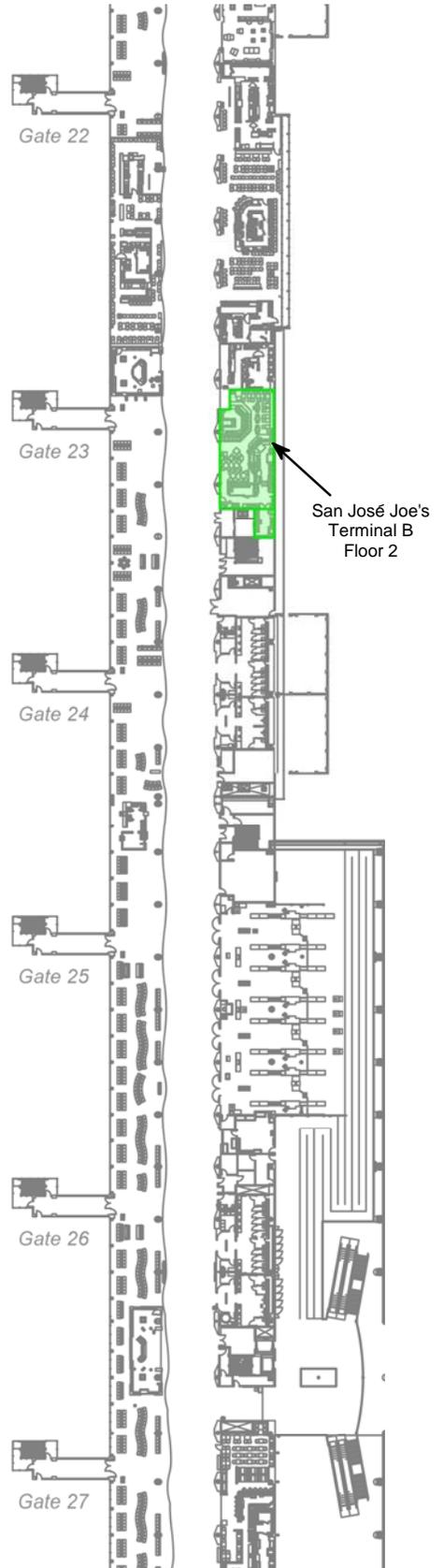
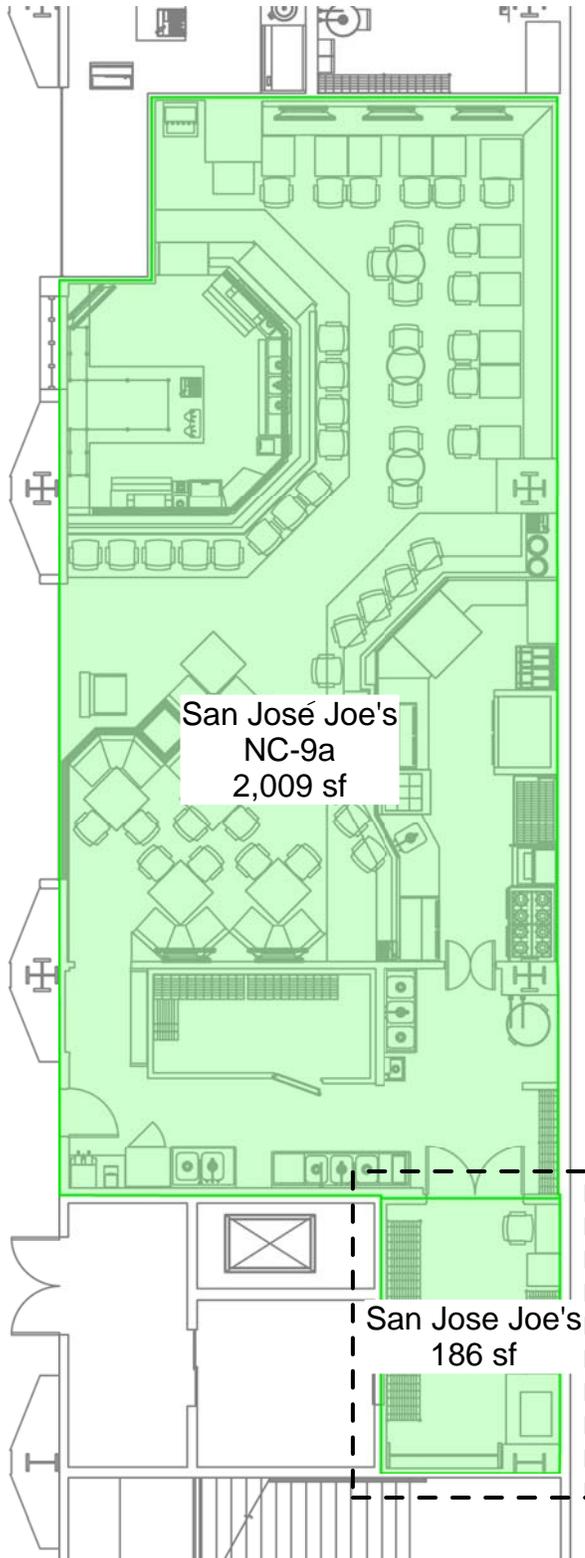
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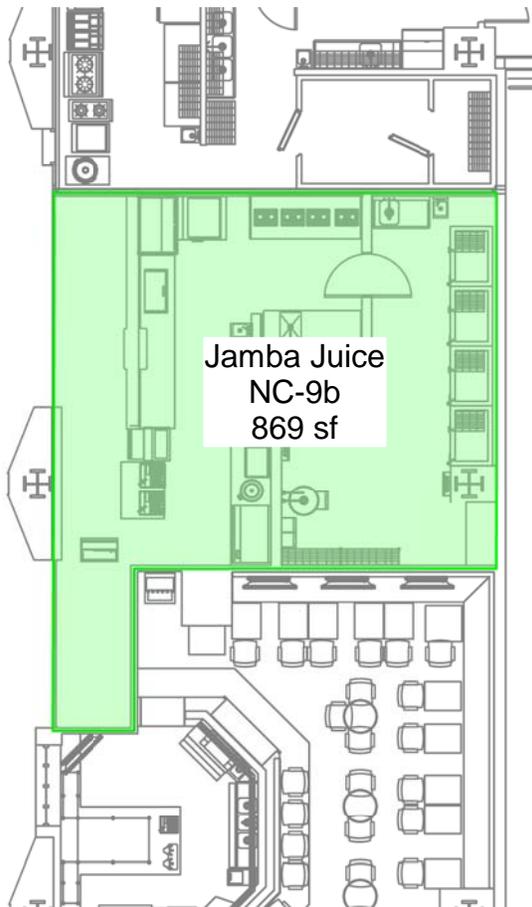
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Terminal B Floor 2

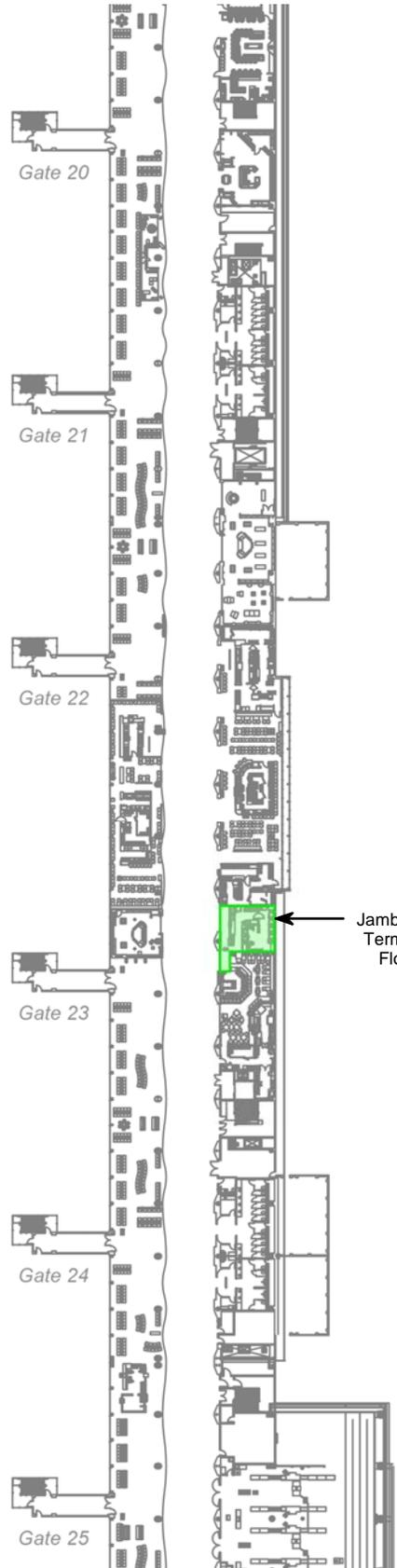
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Jamba Juice
NC-9b
869 sf



Jamba Juice
Terminal B
Floor 2

NORTH



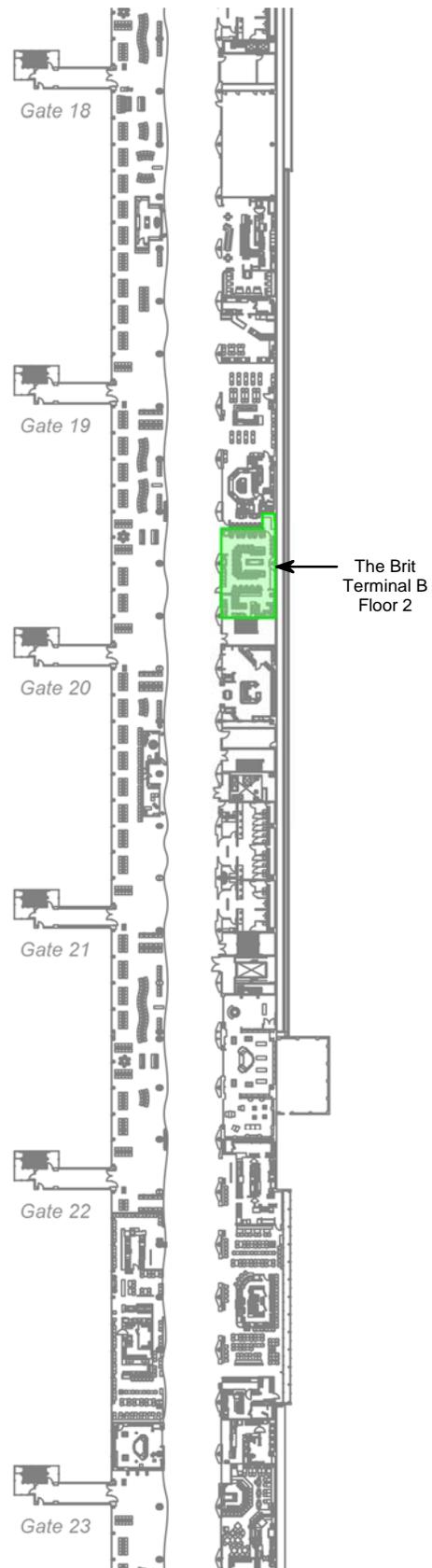
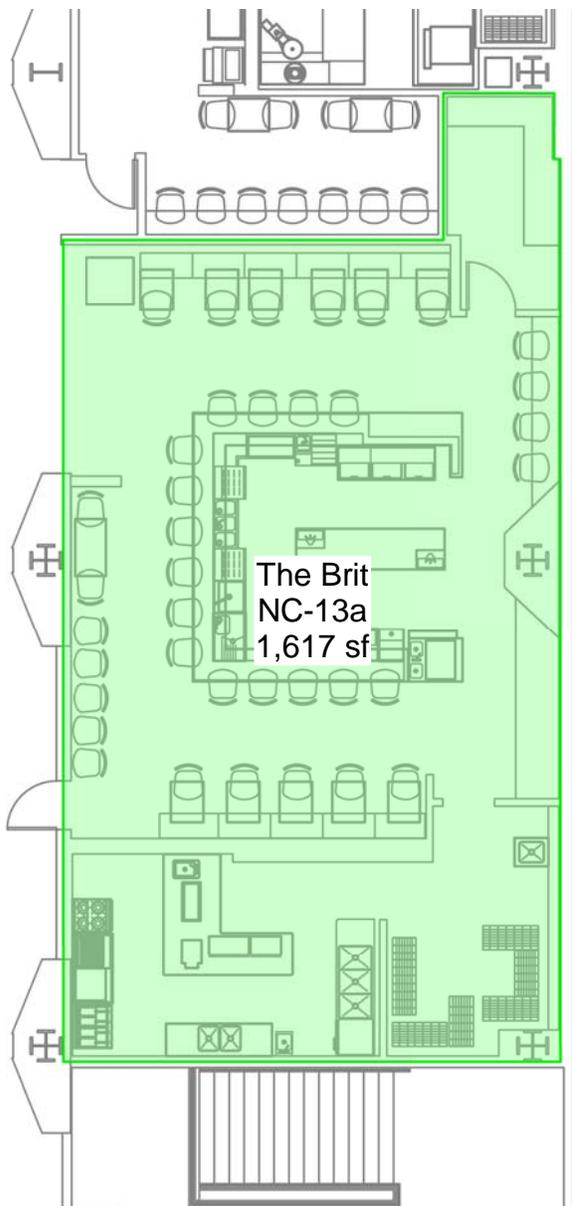
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Areas SJC USA, LLC
Terminal B Floor 2

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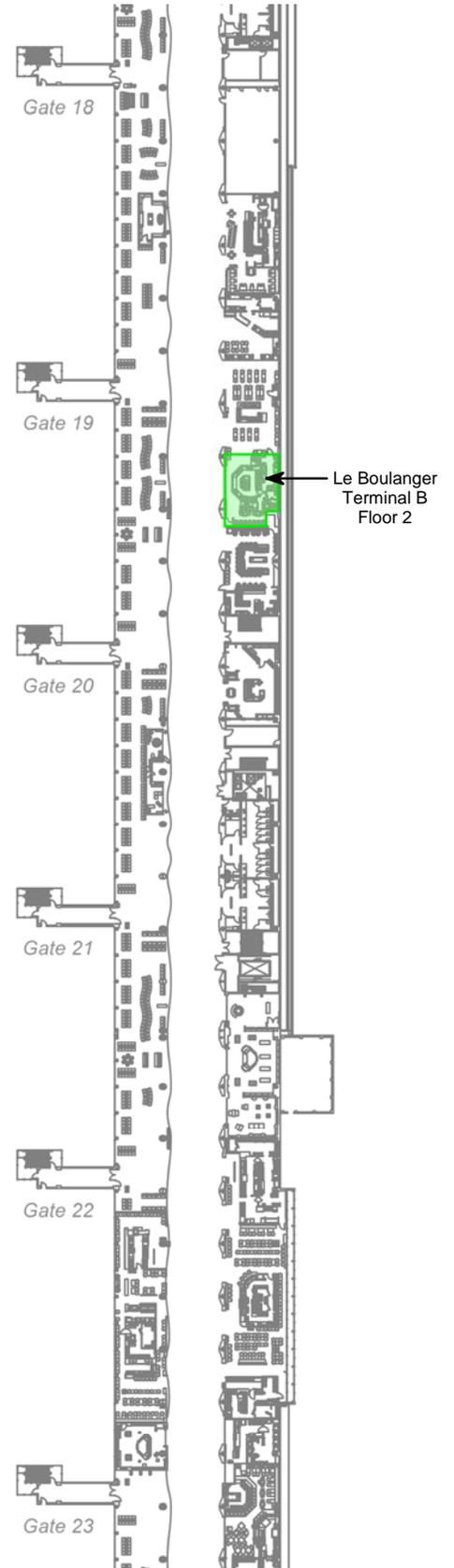
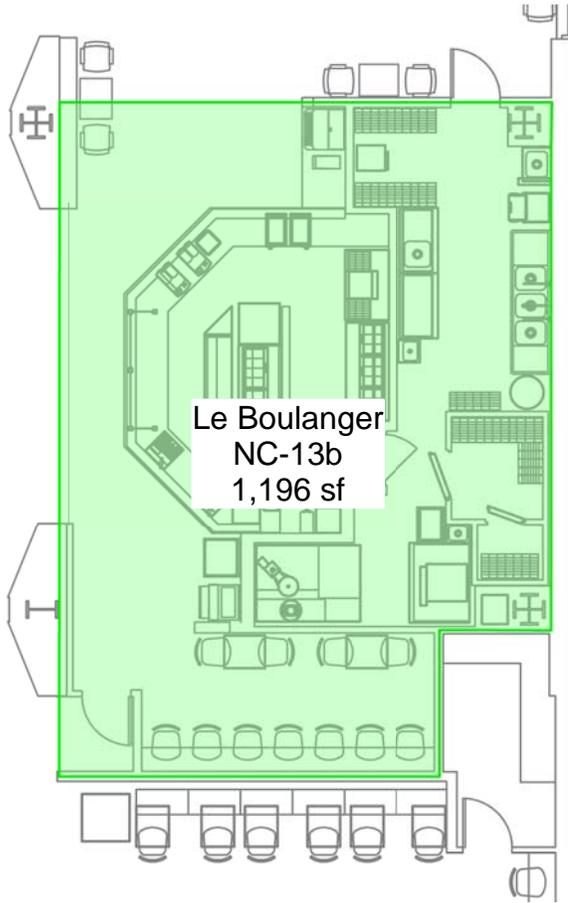
Areas SJC USA, LLC
Terminal B Floor 2

NORMAN Y. MINETA
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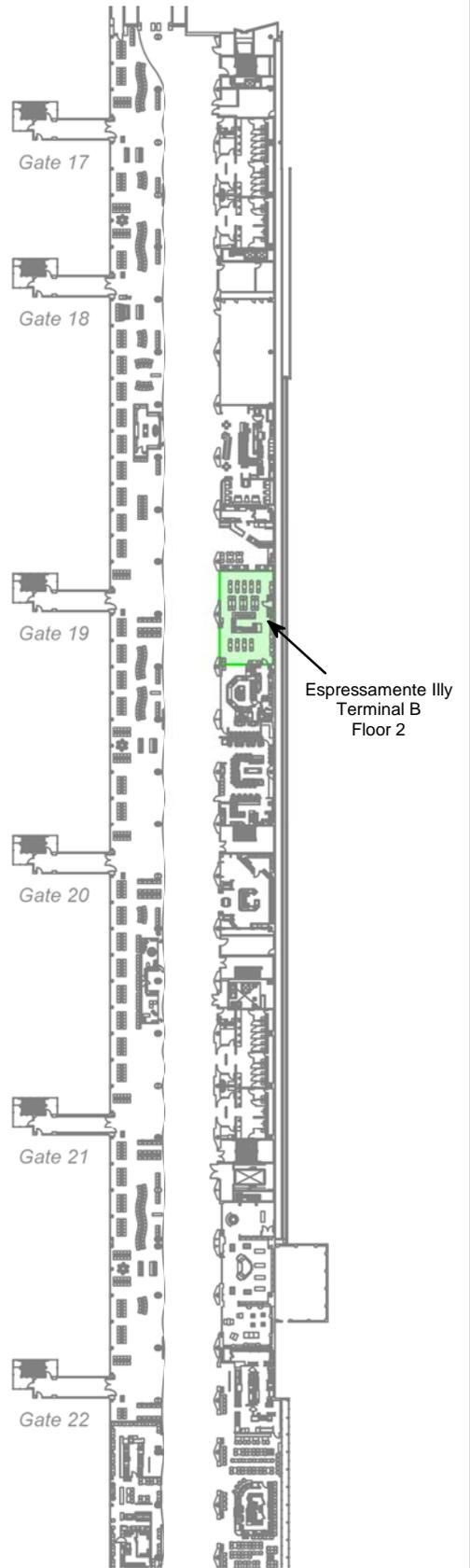
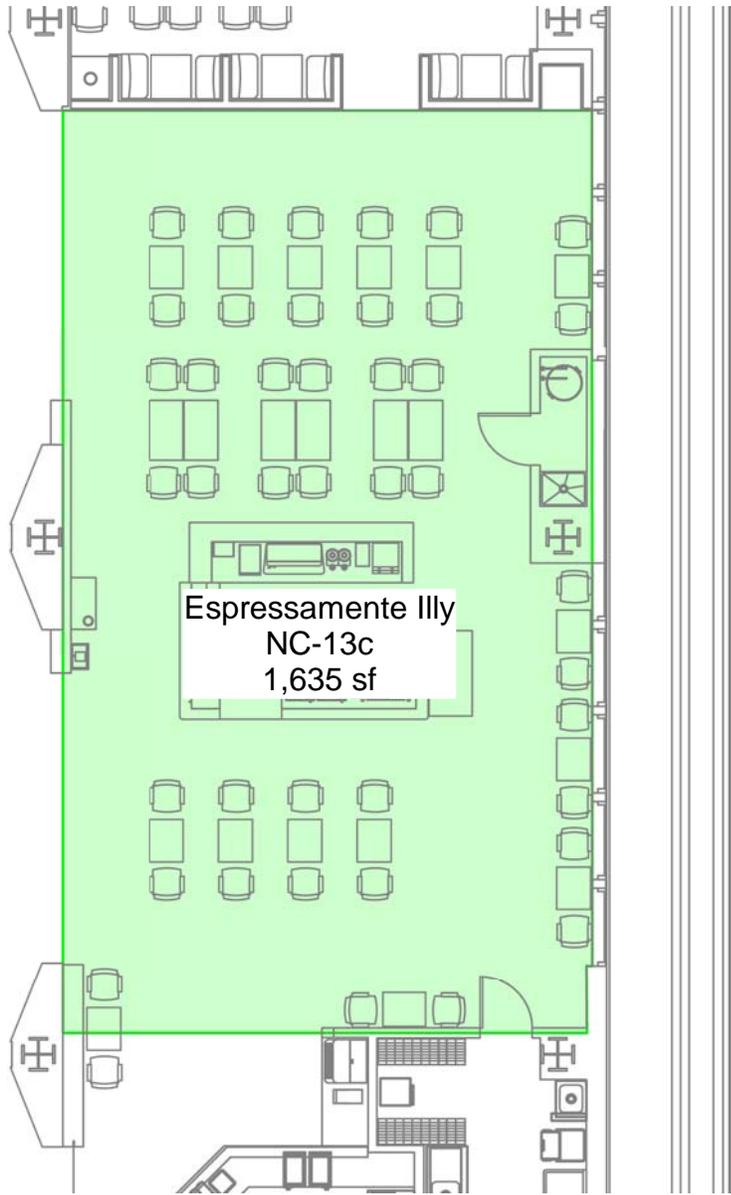
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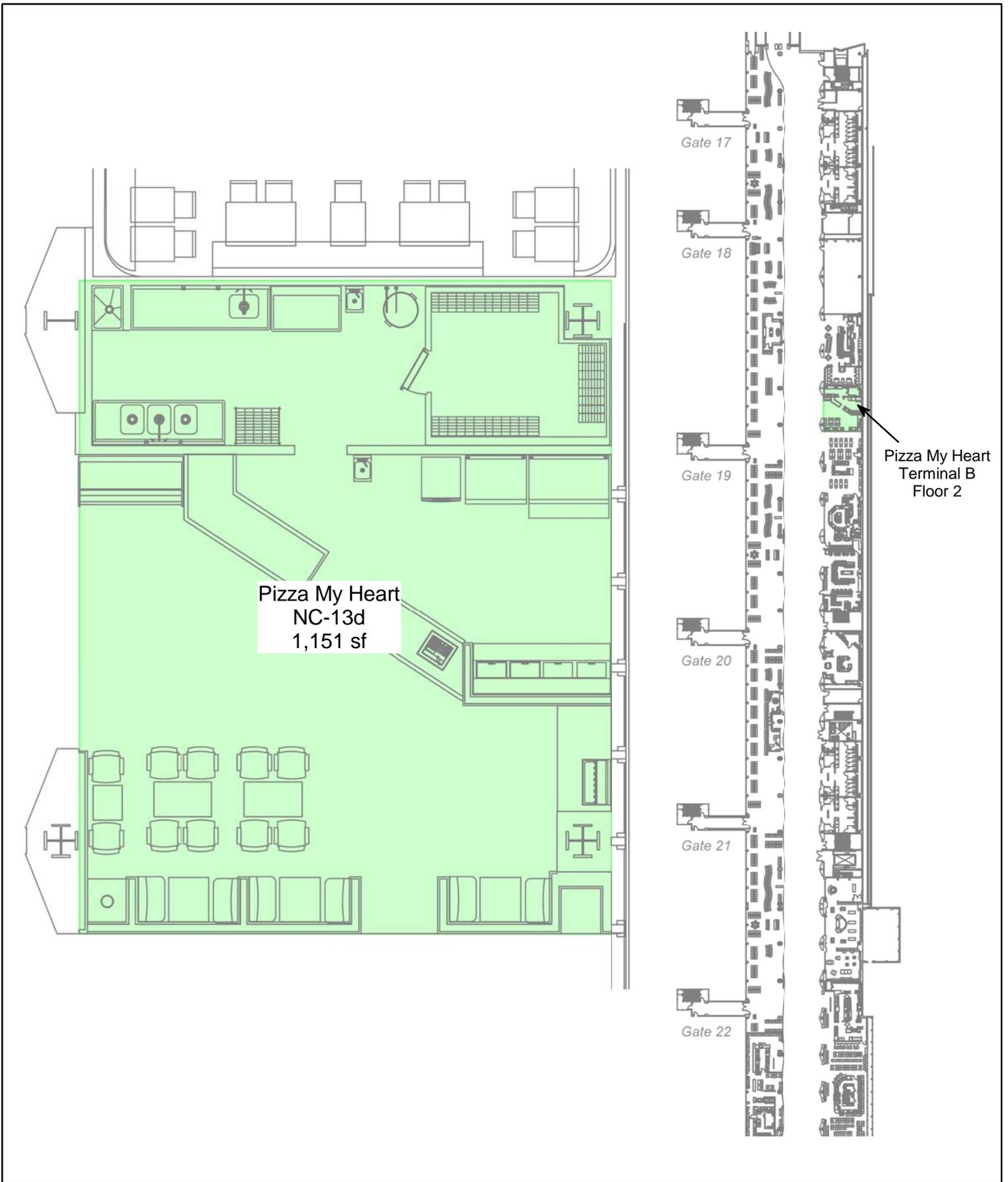
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Pizza My Heart
NC-13d
1,151 sf

Pizza My Heart
Terminal B
Floor 2

NORTH



Date: 9/1

Areas SJC USA, LLC
Terminal B Floor 2

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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. 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 and concessionaire is strongly encouraged to charge prices that are no more than ten percent (10%) higher than the same product or service offered at the approved street location(s).
 - 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

- a. 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

- a. 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

- a. 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

- a. 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

- a. 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

- a. 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

- a. 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 ten percent (10%) 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.

ALL-PURPOSE ACKNOWLEDGMENT

State of _____ }
County of _____ }

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer – Title(s): _____
- Partner – Limited General
- Attorney in Fact
- Trustee
- Guardian or conservator
- Other: _____

Signer is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer – Title(s): _____
- Partner – Limited General
- Attorney in Fact
- Trustee
- Guardian or conservator
- Other: _____

Signer is Representing: _____

