

AMENDMENT NUMBER THREE TO PRIMARY FOOD AND BEVERAGE LEASE

THIS THIRD AMENDMENT TO PRIMARY FOOD AND BEVERAGE LEASE (“Third Amendment”) is made and entered into as of __ _____, 2020, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and HOST INTERNATIONAL, INC. (“Tenant” or “Lessee”). County and Tenant may sometimes hereinafter individually be referred to as a “Party” or jointly as the “Parties.”

RECITALS

WHEREAS, County and Tenant entered into that certain Primary Food and Beverage Lease dated February 23, 2011 (“Existing Lease” or “Lease”) (unless otherwise specified, all references to Sections shall refer to the Existing Lease, as amended); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “Airport”), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, County and Tenant entered into a First Amendment, dated May 7, 2020, for deferment of rent from March 1, 2020 through June 30, 2020 (“First Amendment”); and

WHEREAS, County and Tenant entered into a Second Amendment, dated August 6, 2020, for extended deferment of rent from July 1, 2020 through September 30, 2020 (“Second Amendment”); and

WHEREAS, County and Tenant mutually desire to further amend the Existing Lease to provide for an adjustment to the Minimum Annual Guarantee (“MAG”) on a proportional basis based on Tenant relinquishing locations upon the terms and conditions contained herein and certain other amendments as more fully set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend as follows:

AGREEMENTS

1. **Option to Extend Term.** Section 2.02 is hereby amended to add the following paragraph:

Tenant may extend the term of this Existing Lease for six (6) months by providing written notice to JWA of Tenant’s exercise of such option no later than January 31, 2021. If Tenant exercises such option, County will grant Tenant a six (6) month lease extension. Such extension shall be subject to the terms and conditions of the Existing Lease as amended.

2. Leased Premises. Section 3.01 is hereby amended to add the following paragraphs:

Tenant shall relinquish its leasehold interests in nine (9) locations in the Leased Premises in exchange for a pro-rata reduction in MAG based on the percentage of sales volume relinquished as a result of releasing the identified locations as set forth herein and as shown in Table 1 of Exhibit H, attached hereto and by reference made a part hereof.

Tenant has identified the following nine (9) locations in the Leased Premises it will relinquish to JWA: Starbucks (Terminal A, Terminal B Baggage Claim, and Terminal C), Zov's (Terminal A, Terminal C), La Tapenade, Blaze Pizza, Javi's, and Pei Wei Express.

Tenant will operate Starbucks Terminal C through January 5, 2021, close as of January 6, 2021, and relinquish this location by no later than February 4, 2021. Starbucks Terminal A, Starbucks Terminal B Baggage Claim, Zov's Terminal A, Zov's Terminal C, La Tapenade, Blaze Pizza, Javi's and Pei Wei Express are currently closed and will remain closed. Tenant will relinquish these locations by the earlier of (i) forty-five (45) days after the date the Third Amendment is fully executed, or (ii) January 15, 2021. Notwithstanding the foregoing, Tenant will have no less than thirty (30) days after the full execution of the Third Amendment to remove its FF&E, as defined in Section 9.03, from each of the nine (9) locations being relinquished. If the Third Amendment is not fully executed by a date, which allows such thirty (30) days, Tenant may extend the relinquishment dates of the locations accordingly.

Tenant will retain and operate the following eight (8) locations in the Leased Premises: California Pizza Kitchen, Hobie's Sand Bar, Farmer's Market, Ruby's Diner, Stella Artois Bar, Ciao, Starbucks Terminal B, and Anaheim Ducks Grill, which represent 53.9% of 2019 Gross Sales for Tenant's entire program.

Additionally, Tenant shall relinquish its leasehold interests in certain storage square footage in the Leased Premises currently occupied by Tenant based on a pro-rata share of revenue-producing square footage that Tenant will continue to operate pursuant to the Premises and MAG Adjustment calculations as shown in Table 2 of Exhibit H. Tenant will continue to operate 59.2% of the 2019 revenue-producing square footage in its leasehold interest. The benchmark goal for the adjusted storage space square footage will be calculated as a pro rata share of Tenant's current storage space (approximately 6,358 square feet), of which 59.2% is approximately 3,763 square feet. Tenant will return to JWA approximately 2,595 square feet of storage space. Notwithstanding the benchmark goal calculations, the Airport understands that based on the needs of the Airport and Tenant, as well as several field-specific realities of the storage space as it is currently constituted (including installed coolers and other equipment, including telecommunications, layout, functionality, operational efficiency, etc.), the ultimate assignment of storage space to Tenant will not mathematically align with the pro-rata shares detailed in Table 2 of Exhibit H. The Airport will work with Tenant to get as close to the benchmark goals as possible while ensuring that both the needs of the Airport are met and that the consistency and efficiency of Tenant's operations are ensured.

As determined in a joint walkthrough and assessment of Tenant's storage space locations, the Airport will reclaim approximately 2,595 square feet of storage space as follows:

- i) All of Tenant's storage/back-of-house space adjacent to the food court units.
- ii) All Storage Room A square footage.
- iii) Approximately 30% of Storage Room A/B square footage.
- iv) Approximately 60% of Storage Room C square footage.

Tenant will retain its coolers and liquor storage areas and JWA will reconfigure the storage spaces to accomplish the changes identified above. JWA will be responsible for performing the work to reconfigure the storage spaces at JWA's sole expense.

Exhibit A and Exhibit B are hereby amended to reflect the foregoing changes to the Leased Premises and are replaced with Exhibit A and Exhibit B attached hereto.

3. Annual Rent. Section 4.01 (B) is hereby amended to add the following paragraphs:

Commencing on September 1, 2020, and continuing until the end of the term of the Existing Lease, as may be extended, Tenant shall pay to County for each annual period either MAG or the Percentage Rent, whichever is greater. The current MAG of \$4,823,000.00 will be reduced to \$2,598,000.00 as shown in Table 1 of Exhibit H for the retained Leased Premises excluding Starbucks Terminal B, which is not included in MAG. Percentage Rent for Starbucks Terminal B will be at a rate of fourteen percent (14%) of gross receipts.

Commencing on September 1, 2020, and continuing until the relinquishment date of Starbucks Terminal C, Starbucks Terminal C is not included in MAG. Percentage Rent for Starbucks Terminal C will be at a rate of fourteen percent (14%) of gross receipts.

Commencing on September 1, 2020, and continuing until the relinquishment date(s) of Starbucks Terminal A, Starbucks Terminal B Baggage Claim, Zov's Terminal A, Zov's Terminal C, La Tapenade, Blaze Pizza, Javi's and Pei Wei Express, Tenant will pay no MAG for such locations.

4. Security Deposit. Section 4.08 is hereby amended to add the following paragraph:

Tenant's required security deposit shall not decrease and shall remain at the current amount of \$1,345,000 until Tenant is current on all rent and Tenant's deferred MAG has been paid in full.

5. Control of Hours and Procedures. Section 12.06 is hereby amended to add the following paragraphs:

Some of Tenant's locations are currently closed due to decreased passenger levels resulting from the COVID-19 pandemic. The reopening of specific locations will be based on the following:

Ruby's Diner - For safe and efficient operations, Tenant shall open Ruby's Diner once passenger enplanement volume reaches a threshold of 45,000 passengers per week. Initial active dining area size shall be approximately 50% and shall be adjusted as passenger enplanement volume builds and as permitted by state and local health and safety ordinances, guidelines, or orders. Ruby's Diner shall offer a full bar with limited food menu. Ruby's Diner shall offer express service,

operating as a “to go” service consisting of a food runner with QR codes and/or with orders being picked up by customers to go. Ruby’s Diner will be staffed with three (3) to four (4) hourly employees.

Upon Tenant opening Ruby’s Diner as outlined above, the Airport will approve the temporary closure of Hobie’s Sand Bar until passenger enplanement volume recovers to the extent that activation of additional space in the Terminal B corridor is necessary, which minimum passenger enplanement volume will be 75,000 passengers per week. In the event passenger enplanement volume drops below 45,000 passengers per week, the Parties may agree upon an alternative arrangement for food and beverage service that is within the scope of the Airport Director’s authority to execute unless such passenger enplanement volume does not support the operation of an additional food and beverage service in conjunction with the requirement to reopen Anaheim Duck’s Grill.

Anaheim Duck’s Grill – Tenant agrees to reopen Anaheim Duck’s Grill in conjunction with Spirit Airlines’ operational commencement at the Airport, which is estimated to be November 16, 2020. Anaheim Duck’s Grill shall offer a full bar with limited food menu. Anaheim Duck’s Grill shall offer express service, operating as a “to go” service consisting of a food runner with QR codes and/or with orders being picked up by customers to go. Anaheim Duck’s Grill active dining area size will be adjusted as permitted by state and local health and safety ordinances, guidelines or orders.

In the event that passenger enplanement volume is below 60,000 enplaned passengers per week after Anaheim Duck’s Grill is required to be operational, Tenant will be permitted to close Ruby’s Diner and reopen Hobie’s Sand Bar.

Starbucks Terminal B – Tenant will continue to operate the Starbucks in Terminal B until the end of the term of the Existing Lease, as may be extended. There shall be no MAG requirement. Percentage Rent for Starbucks Terminal B will be at a rate of fourteen percent (14%) of gross receipts.

6. Brand Licensing Agreements.

As a condition of the Premises, MAG and Storage Space Adjustment described in this Third Amendment, Tenant shall relinquish its third-party rights under the applicable agreements and/or exclusive licenses as they relate to the following brands or organizations at the Airport:

- Javi’s
- Zov’s
- Pei Wei
- Blaze Pizza

Tenant represents that it has the authority to relinquish its rights as stated herein in relation to the above-listed brands and that JWA is free to negotiate with their owners in order to continue their operation at the Airport.

7. Liquor Licenses.

Tenant will not transfer or assign to any third party any liquor license it holds and/or operates under at the Airport.

8. Existing Employee Pool.

Tenant will provide JWA the contact information for the union representative of Tenant's employees and the representative may connect the employee(s) with potential new operators at the Airport.

9. Existing Conditions of Locations and Storage Space Returned to or Reclaimed by JWA. Section 9.03 is hereby amended to add the following paragraph:

Notwithstanding anything to the contrary in the Existing Lease as amended, all Leased Premises relinquished by Tenant pursuant to the Third Amendment (whether returned by Tenant or reclaimed by JWA) will be delivered to JWA in as-is condition. However, Tenant will be permitted to remove all proprietary and brand property, signage, and equipment (collectively, "Brand Property") from all Leased Premises, including Brand Property specific to the brands hereunder or otherwise, and all non-affixed improvements including furniture, fixtures, equipment ("FF&E"). Brand Property includes but is not limited to all Point of Sale ("POS") systems and equipment, small wares, Starbucks Mastrena expresso machines and coffee brewers. JWA will be responsible for providing any barricades at its sole cost for any of the relinquished Leased Premises.

10. COVID-19 Relief.

Tenant will remain eligible for, and will be permitted to receive, any past, present or future financial and other COVID-19 related relief that may be granted to Tenant, or for which Tenant may be eligible, by or from JWA or any other source.

11. Non-Discrimination. Section 11.10 is hereby amended to add the following paragraph:

The U.S. Department of Transportation's regulations, 49 Code of Federal Regulations (C.F.R.) Part 23 as written into the Existing Lease remain unchanged. That said, the Airport Concessions Disadvantaged Business Enterprise (ACDBE) has already indicated an inability to fund losses accrued this year and going forward. As such, even though the ACDBE has made its capital investment and is actively participating in the venture, JWA may not be permitted to claim any ACDBE credit under 49 C.F.R. Part 23 until such time as the ACDBE is able to fund its proportionate share of the losses.

12. No Other Amendments; This Third Amendment Governs and Controls.

Except as expressly modified by this Third Amendment, the Existing Lease, as amended by the First Amendment and Second Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Third Amendment are inconsistent with any of the provisions set forth in the Existing Lease, First

Amendment, and Second Amendment, the provisions of this Third Amendment shall govern and control. Any reference to the “Agreement,” “Lease,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, Second Amendment and this Third Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, Second Amendment, and Third Amendment shall be read and interpreted as if it was one agreement.

13. Authority.

Each Party represents to the other Party or Parties that the individual executing this Third Amendment on behalf of such Party has the capacity and authority to execute and deliver this Third Amendment on behalf of such Party and that this Third Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

14. Governing Law.

This Third Amendment and the Existing Lease as previously amended shall be governed by and construed in accordance with the laws of the State of California.

15. Counterparts and Execution.

This Third Amendment may be executed and delivered in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Third Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

16. Severability.

If any provision of this Third Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Third Amendment shall nonetheless remain in full force and effect.

[Signatures appear on following pages]

IN WITNESS WHEREOF, County and Tenant have executed this Third Amendment as of the day and year first above written.

TENANT: Host International Inc.

By: Jeffrey L. Poersch
Its: JEFFREY L. POERSCH
Name: ASSISTANT SECRETARY

APPROVED AS TO FORM:

County Counsel

By: Carolyn Khouram

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: _____

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: _____
Barry Rondinella
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY

COUNTY OF ORANGE

By: _____
Chairwoman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors

EXHIBIT A

LEASED PREMISES DESCRIPTION

Parcel Number: PM 1121-345-0004

Project Name: John Wayne Airport

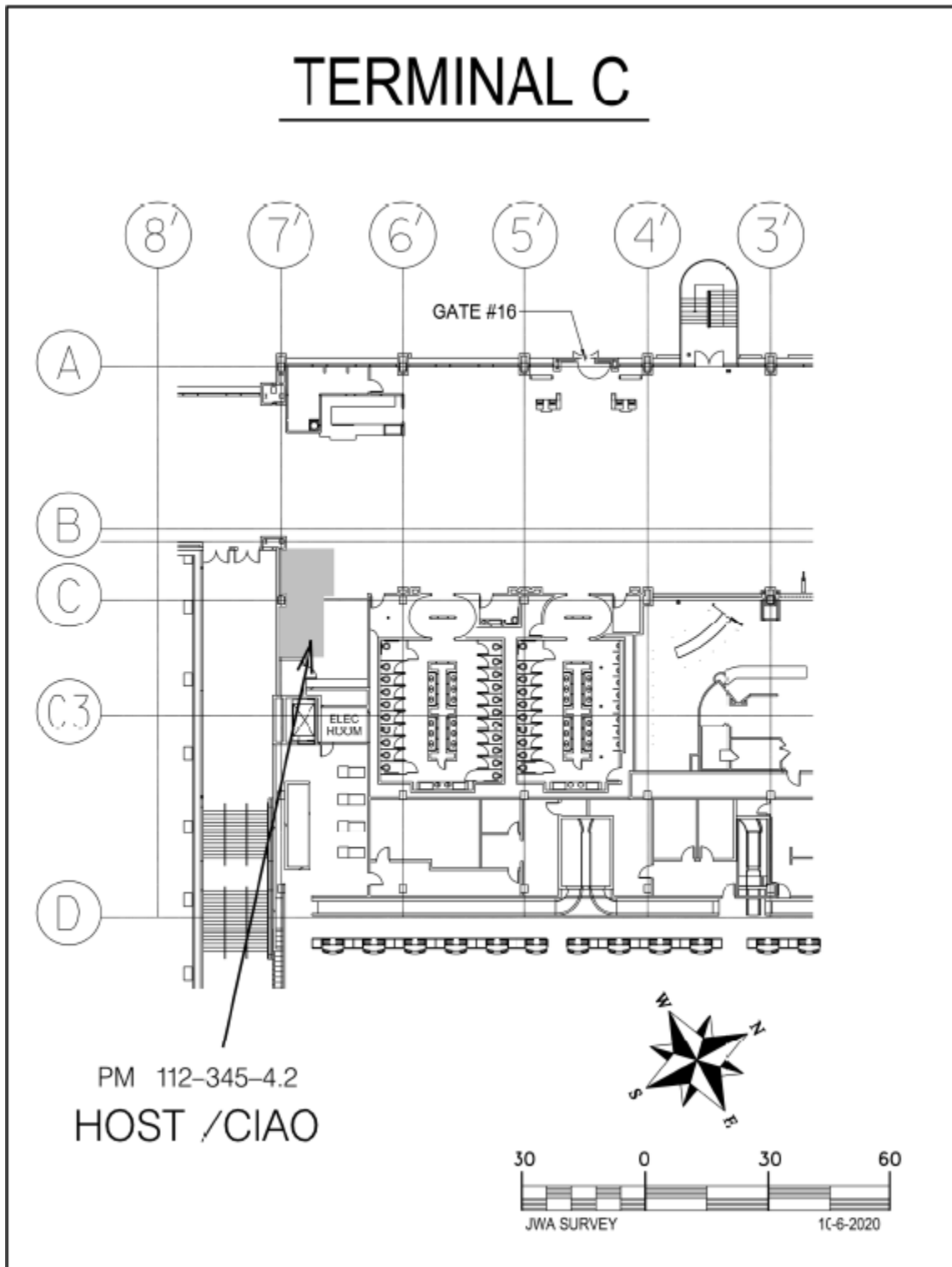
The Leased Premises referred to in this Lease shall mean all premises shown on floor plans marked "Exhibit B" attached hereto and made a part hereof.

Exhibit A, being that certain area designated as concession parcels as set forth below in the Concession Summary Table located on the arrival and departure levels, and is situated within the John Wayne Airport, Thomas F. Riley Terminal Building at 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book A, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

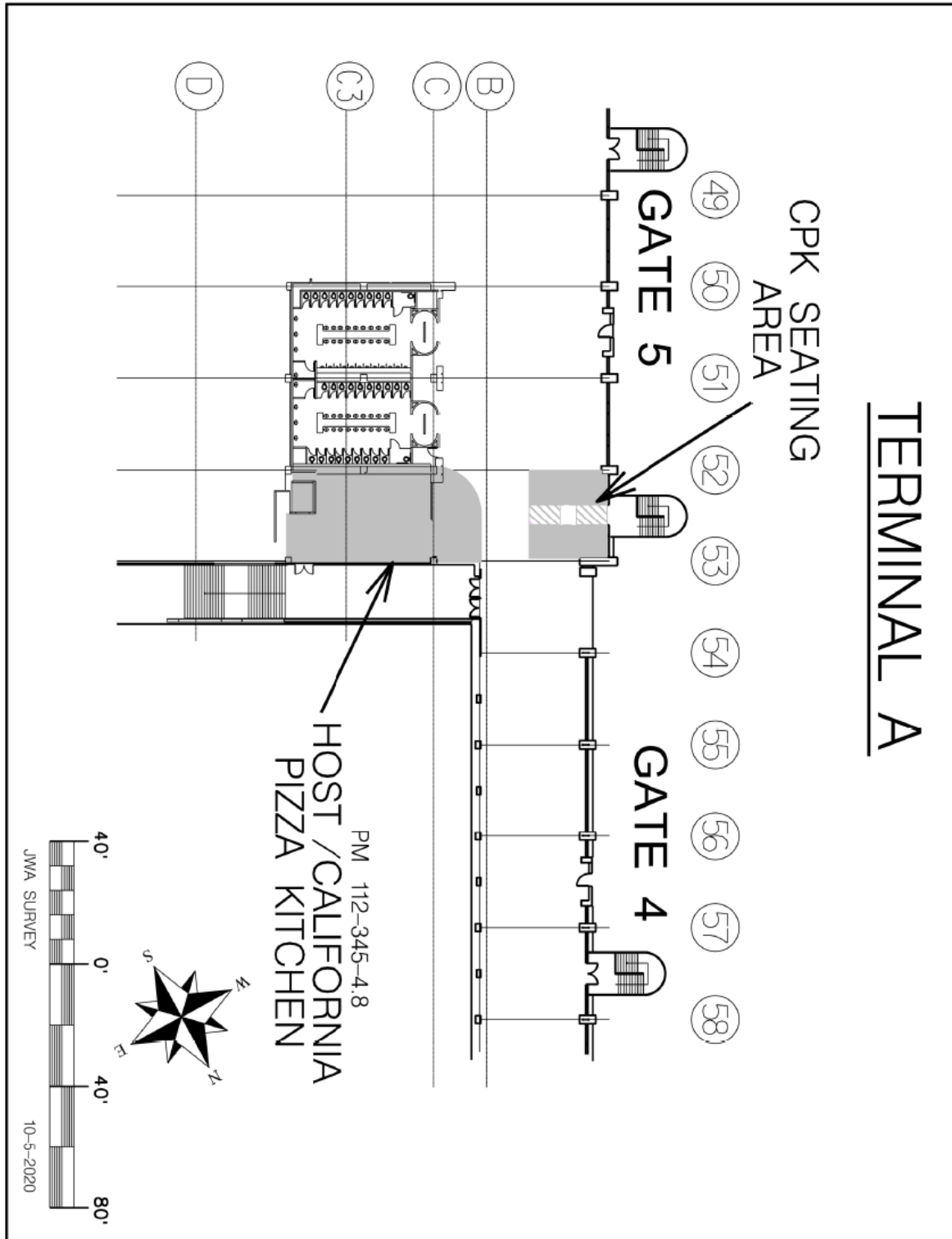
Concession Summary Table:

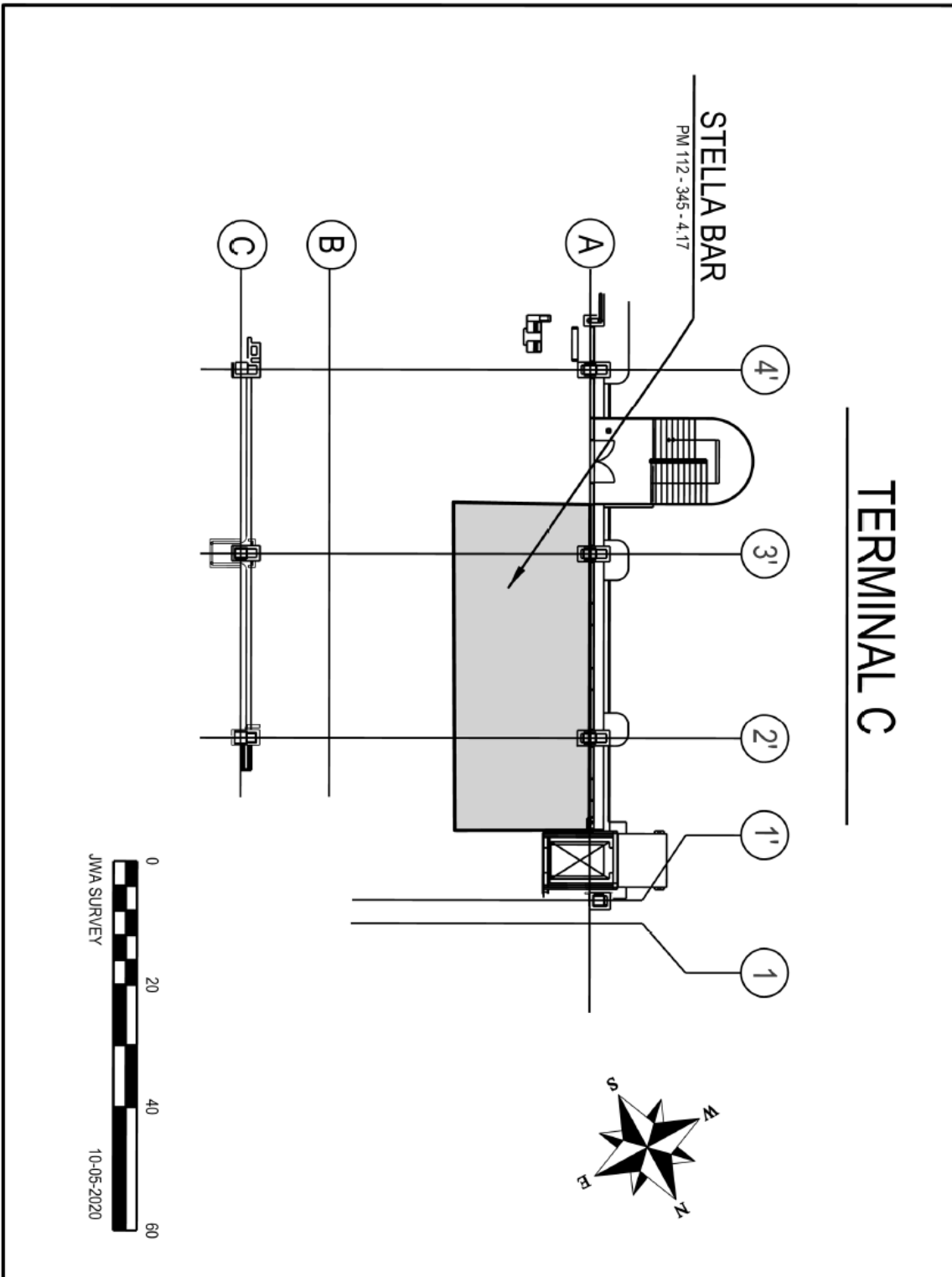
Project Store Facility Concept	LOCATION : Departure Level, Post Security
Duck's Bar and Grill	Terminal C, Gate 18, Col. 19-17
CIAO Wall	Terminal C Gate 16, Col. 7-6
Stella Bar	Terminal C Gate 15, Col, 7-6
Hobie's Sand Bar	Terminal B Gate 12, Col. 17-18
Starbucks Terminal B	Terminal B Gate 11-12, Col 22-22
Ruby's Diner	Rotated Square, Gates 8-9, Col. 32-38
Farmers Market	Rotated Square, Gates 8-9 Col. 32-38
California Pizza Kitchen	Terminal A, Gates 5 Col. 52-53

EXHIBIT B

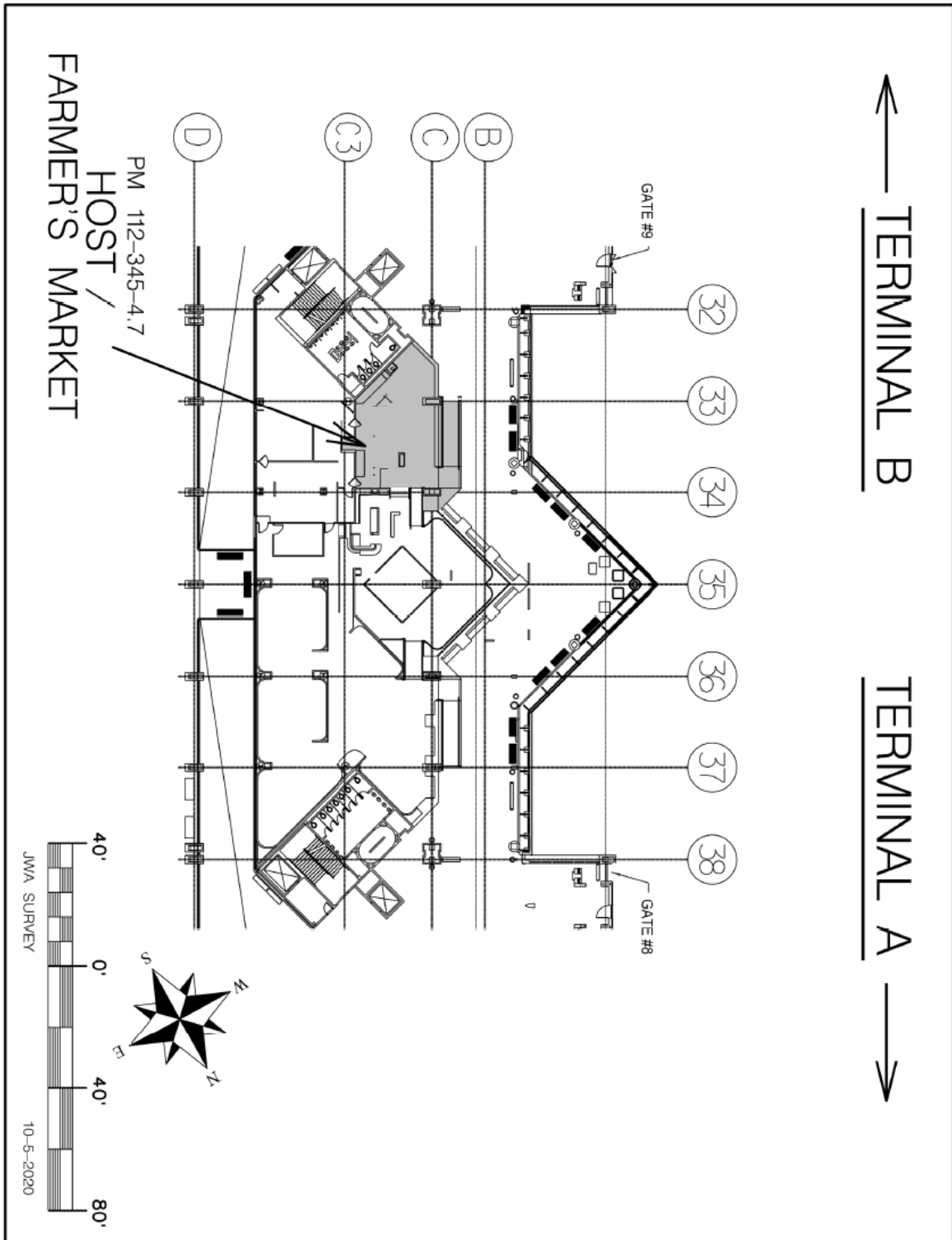


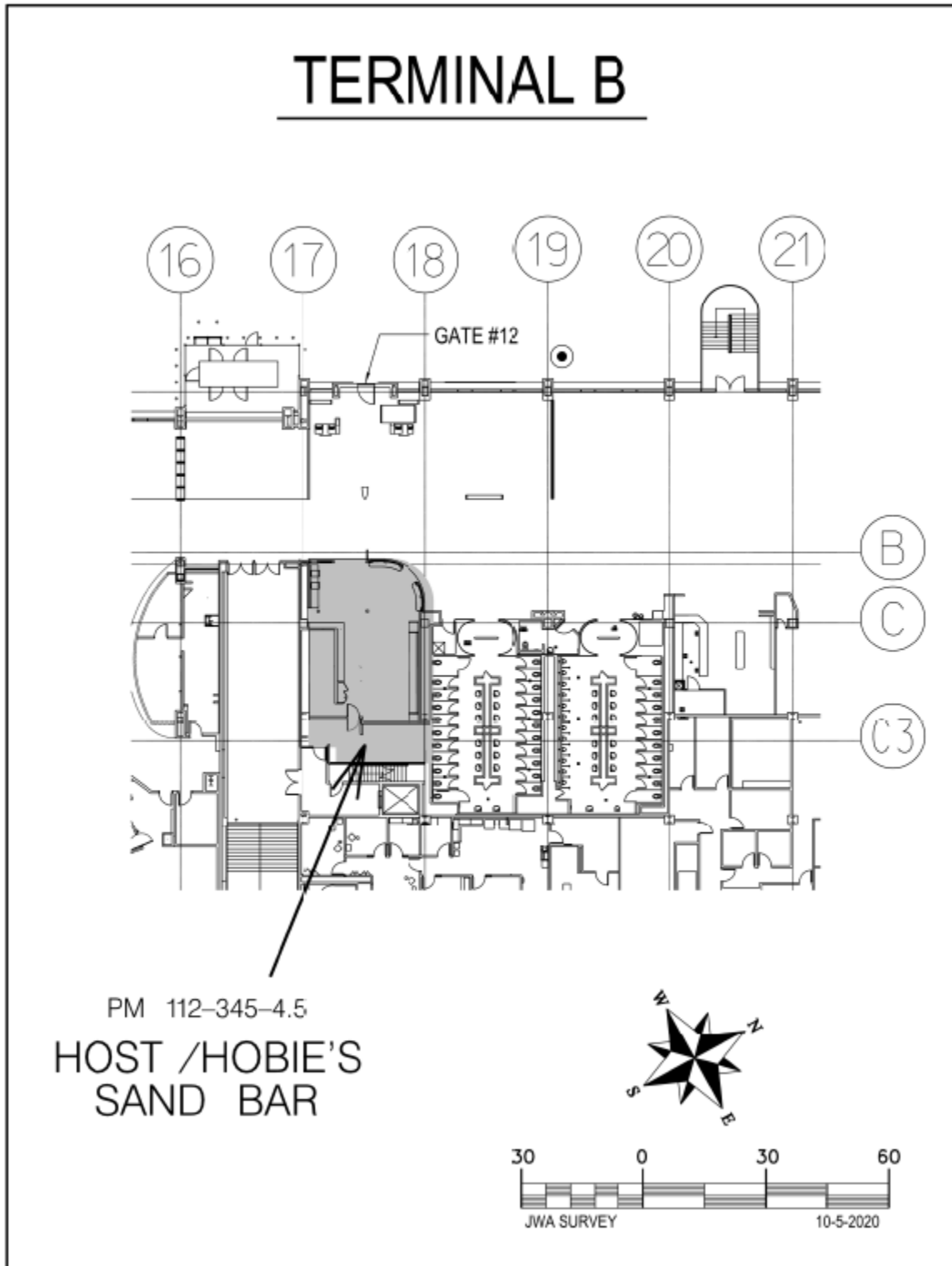
SURVEYOR\PROJECTS\TERMINAL CONCESSIONS\CIAO\

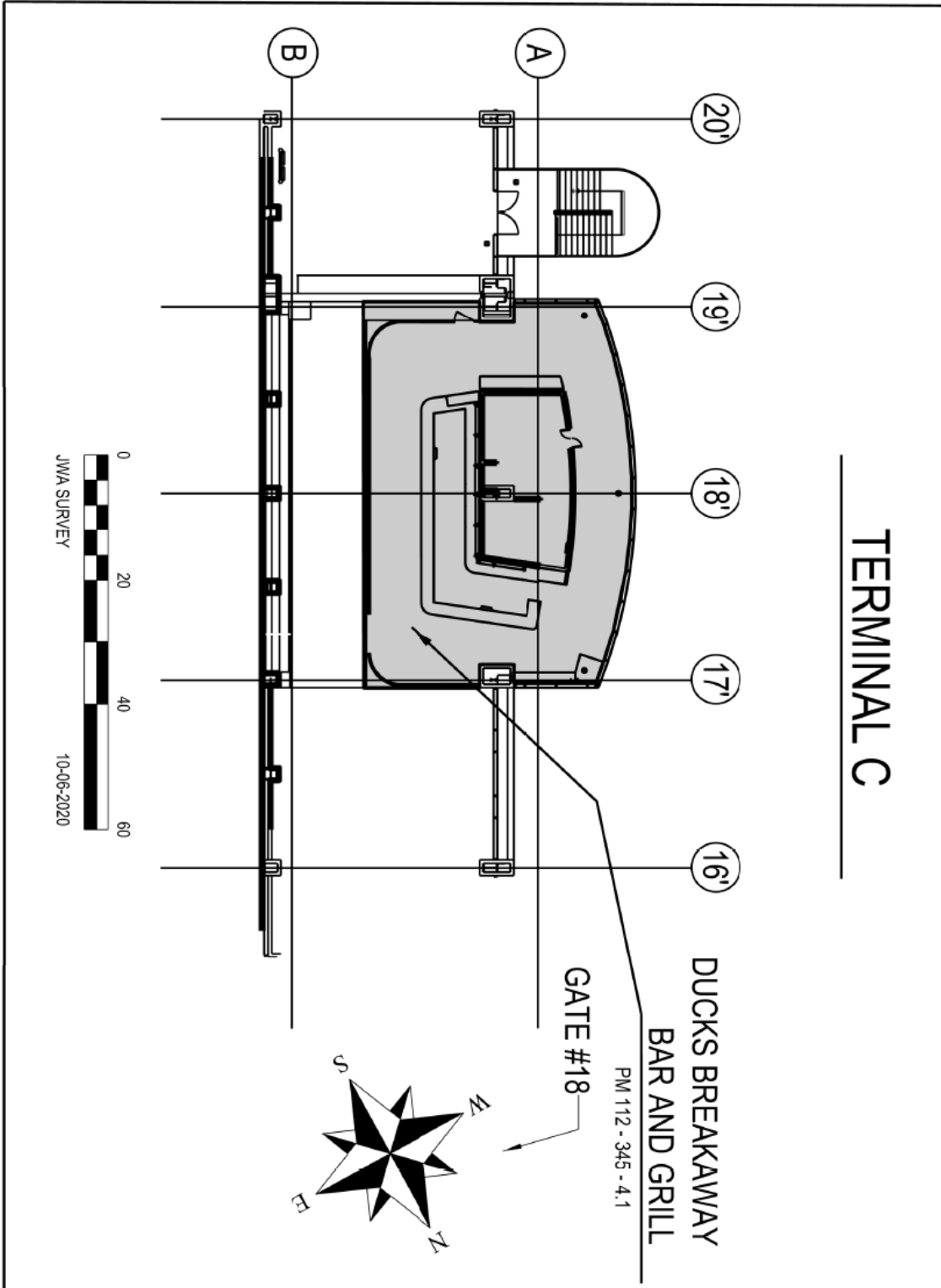




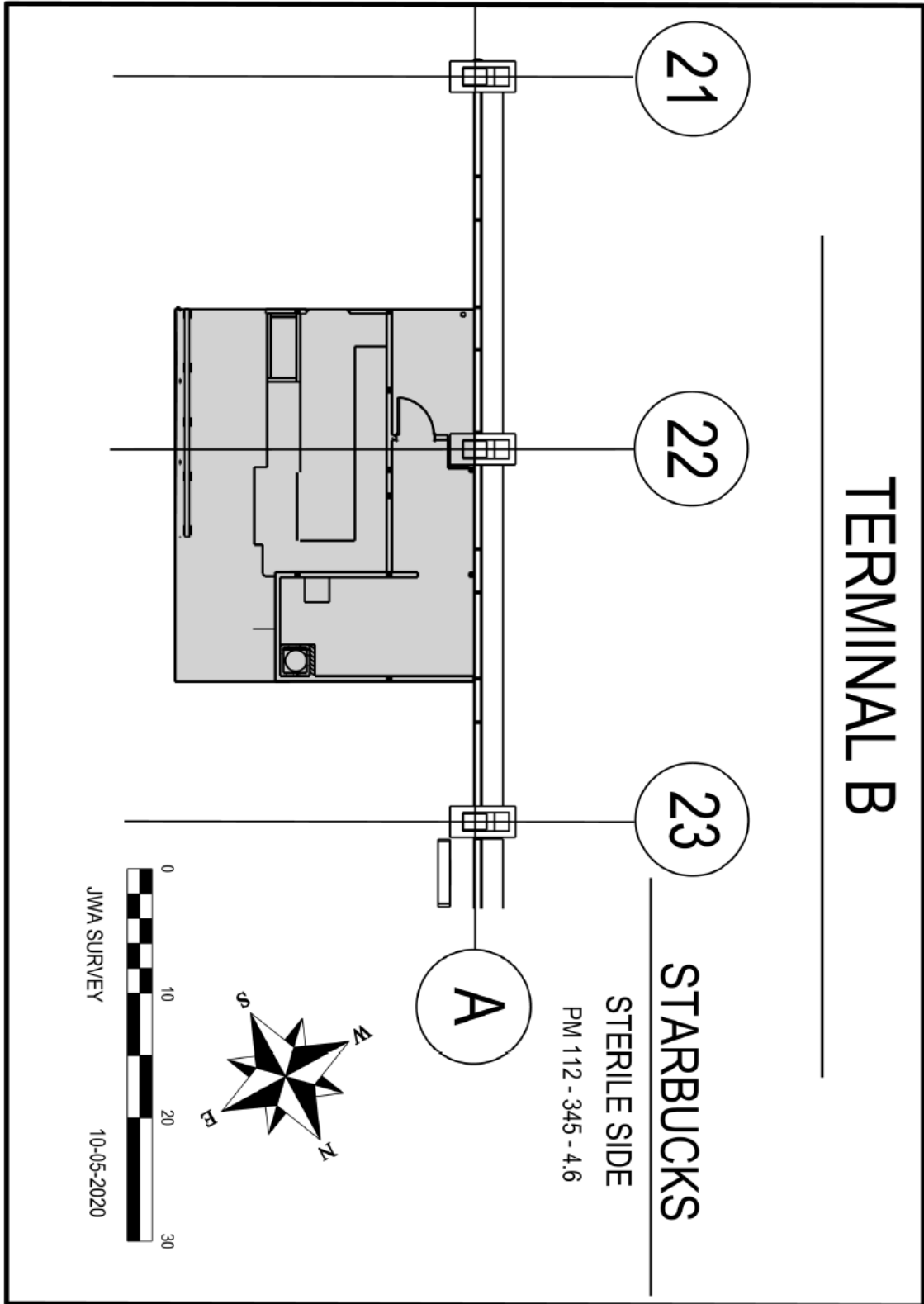
Surveyor's Project: Terminal Concessions Stella







Surveyor/Project: Terminal Concessions/Anaheim Ducks Grill



Surveyor/Project/Terminal Concessions/T-8 Starbucks

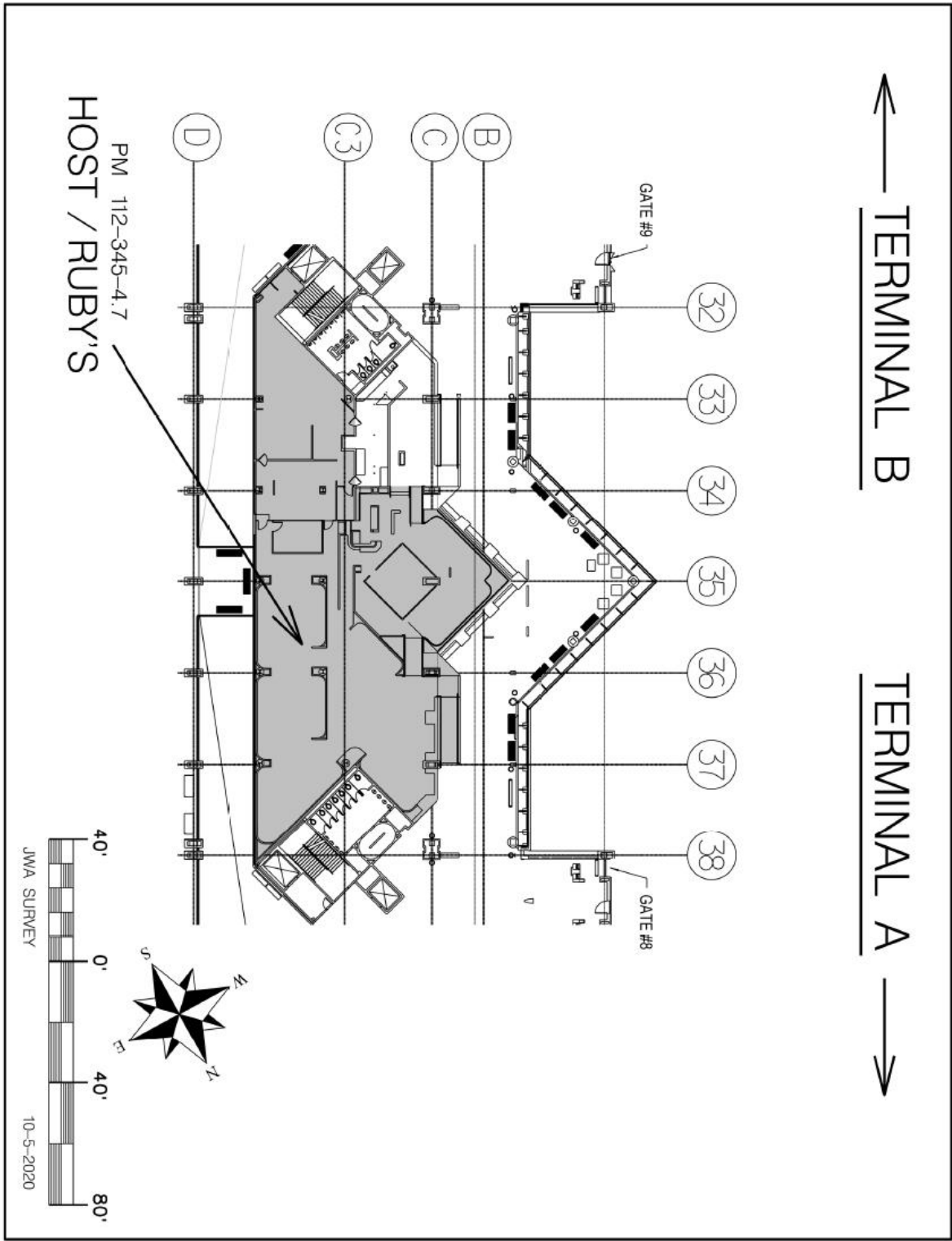


EXHIBIT H

Table 1 – MAG Adjustment Calculation

MAG	Sales				Adjusted MAG
	Total	Return	Operate	Operate % of Total	
\$4,823	\$30,103	\$13,885	\$16,218	53.9%	\$ 2,598

Return	Baggage	A	A	B	B	C	C	C	C	C	Total
Concept Name	Starbucks	Zovs A	Starbucks	La Tapenade	Starbucks	Starbucks	Blaze Pizza	Javis	Pei Wei Express	Zovs	Total
2019 Sales (\$k)	\$981	\$18	\$2,304	\$36	\$2,381	\$2,464	\$402	\$4,153	\$818	\$329	\$13,885

Operate	A	A/B	A/B	B	B	C	C	C	Total
Concept Name	California Pizza Kitchen	Farmers Market	Ruby's Diner	Starbucks	Hobie Sand Bar	Anaheim Ducks Grill	Stella Artois	Ciao	Total
2019 Sales (\$k)	\$2,941	\$988	\$4,575		\$2,344	\$3,425	\$1,005	\$941	\$16,218

Note: Host will operate the Starbucks in Terminal B but it will not be subject to MAG and will not be included in the MAG adjustment, as this location will pay percentage rent only.

Table 2 – Storage Space Benchmark Goal Calculation (based on Premises & MAG Adjustment)

Scenario	Total Storage SF	Square Footage				Adjusted Storage SF
		Total Revenue SF	Return	Operate	Operate % of Total	
Sq Ft	6,358	30,883	12,604	18,279	59.2%	3,763
	a	b = c + d	c	d	e = d / b	f = a x e

Return	Baggage	A	A	B	C	C	C	C	C	Total
Concept Name	Starbucks	Zovs A	Starbucks	La Tapenade	Starbucks	Blaze Pizza	Javis	Pei Wei Express	Zovs	Total
Sq Ft	369	446	672	450	667	1,500	6,000	1,250	1,250	12,604

Operate	A	A/B	A/B	B	B	C	C	C	Total
Concept Name	California Pizza Kitchen	Farmers Market	Rubys Diner	Starbucks	Hobie Sand Bar	Anaheim Ducks Grill	Stella Artois	Ciao	Total
Sq Ft	1,906	1,100	9,303	721	1,430	2,308	1,171	340	18,279