

**EIGHTH AMENDMENT TO
RETAIL CONCESSION AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
AMS-SJC JV**

This EIGHTH AMENDMENT TO RETAIL 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 AMS-SJC JV, a Joint Venture authorized to do business in the State of California (“Concessionaire”).

RECITALS

WHEREAS, on February 2, 2009, City and Concessionaire entered into an agreement entitled “NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT RETAIL CONCESSION AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND AMS-SJC JV” (referred to herein as the “Agreement”); and

WHEREAS, on November 15, 2011, City and Concessionaire entered into a First 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 7, 2011, City and Concessionaire consented to the assignment of the interest of Marilla Chocolate Company to the remaining joint venturers, Airport Management Services, LLC (dba Hudson Group), and J.R. Lester & Associates, Ltd.; and

WHEREAS, on May 07, 2012, City and Concessionaire entered into a Second 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 amended Agreement hereby making Concessionaire subject to the Minimum Compensation requirements of Chapter 25.11 of the San José Municipal Code “Airport Living Wage and Labor Standards”; and

WHEREAS, on December 10, 2014, City and Concessionaire entered into a Third Amendment to the Agreement to revise Section 22.6 “Minimum Mid-Term Concession Refurbishment Expenditure” to grant the Director authority to change the required dates for the mid-term refurbishments; and

WHEREAS, on January 27, 2015, City and Concessionaire entered into a Fourth Amendment to the Agreement to permit the sale of Duty Free Goods under the Concession Operations, further revise Exhibit B, and extend the term of the Agreement through June 30, 2024; and

WHEREAS, on June 18, 2015, City and Concessionaire entered into a Fifth Amendment to the Agreement to relocate the Concession Support Space and further revise Exhibit B, and to add nondiscrimination requirements, as mandated by the Federal Aviation Administration; and

WHEREAS, Dufry AG is the parent company of both Concessionaire and of WDFG North America LLC (“WDFG”), which also operates Concession Operations at the Airport as a concessionaire pursuant to a separate Retail Concession Agreement, dated February 2, 2009, as amended (“WDFG Agreement”) with the City; and

WHEREAS, on April 4, 2017, City and Concessionaire entered into a Sixth Amendment to the Agreement to consolidate and incorporate the WDFG Agreement under the Agreement; extend the term, revise the Concession Operations, add to the Modification of Concession Area provisions, add to the Director’s Authority provisions; add approximately 1,500 square feet of Concession Support Space; modify the Annual MAG

Adjustment, and add provisions as required under federal law and regulations and the San José Municipal Code; and

WHEREAS, on October 30, 2017, City and Concessionaire entered into a Seventh Amendment to further revise Exhibit B and Exhibit C; and

WHEREAS, City and Concessionaire desire to further amend the amended Agreement to add a Hudson Grab and Go Concession to the Concession Operations permitted under the Agreement; and

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

SECTION 1. SECTION 6 “FEES & DEPOSITS” subsection 6.1.1.1 entitled “Concession Fee Calculation” is hereby amended to read as follows:

“6.1.1.1. Concession Fee Calculation.

a. From the Commencement Date, Concessionaire shall pay a Concession Fee calculated solely as the Percentage Fee of Concessionaire’s Gross Revenues as follows:

Reading Material, candy, snacks, tobacco, HBA, sundries, travel accessories, food and beverage, sold from Concession Areas other than the Duty Free Concession Area	18.0% of Gross Revenues
Souvenirs, gifts, apparel, t-shirts sold from Concession Areas other than the Duty Free Concession Area	25.0% of Gross Revenues
	12.0% of Gross Revenues

All other items sold from Concession Areas other than the Duty Free Concession Area	
Food and Beverage portion of Concession Area at location TA-26 (Terminal A)	12.0% of Gross Revenues
All items sold from the the Concession Area at location F2261 (Hudson Grab and Go, Terminal A)	8.5% of Gross Revenues from the execution of the eighth amendment through December 31, 2022 10.5% of Gross Revenues from January 01, 2023 through the Expiration Date of the Concession Location as stated on Exhibit C
All goods sold from the Duty Free (DUFREY) Concession Area	12.0% of Duty Free Concession Area Gross Revenues from \$0 to \$1,500,000
All items sold from the Duty Free (DUFREY) Concession Area	18.0% of Duty Free Concession Area Gross Revenues from \$1,500,000 to \$4,000,000
All items sold from the Duty Free Concession	20.0% of Duty Free Concession Area Gross Revenues in excess of \$4,000,000

b. From the MAG Commencement Date, Concessionaire shall pay to City on a monthly basis the greater of: a) one-twelfth (1/12) of the MAG set out in **SECTION 6.1.2** below, or b) the total of the Percentage Fees set out in subsection a above.”

SECTION 2. SECTION 6 “FEES & DEPOSITS” subsection 6.1.5 entitled “Joint Marketing 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 half of one percent (.5%) of Gross Revenues will be assessed monthly to be paid to the City monthly, on the twentieth (20th) of each month, to be used for marketing the concession at the Airport and customer service initiatives to enhance the overall customer service at the Airport. 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 6.1.3.1** above.”

SECTION 3. SECTION 22 “ALTERATIONS AND IMPROVEMENTS” subsection 22.6.5 is hereby added as follows:

“22.6.5 Effective February 26, 2019, Concessionaire will take possession of the Hudson Grab and Go location as indentified on EXHIBIT B. Concessionaire agrees to install the Concession Improvements and Concessionaire’s Furnishings, Trade Fixtures and Equipment at its sole cost and expense without any reimbursement from City in accordance with the provision of the Agreement in the Concession Area identified on **EXHIBIT B** as the Hudson Grab and Go. Any Capital Improvement Expenditure for the Hudson Grab and Go location shall be fully amortized by Concessionaire no later than December 31, 2022.

SECTION 4. FIFTH REVISED EXHIBIT B, entitled “**CONCESSION AREA,**” is amended to read as shown on the “**SIXTH REVISED EXHIBIT B**”, attached and incorporated into this Eighth Amendment.

SECTION 5. SECOND REVISED EXHIBIT C, entitled “**TENANT MIX,**” is amended to read as shown on the “**THIRD REVISED EXHIBIT C**”, attached and incorporated into this Eighth Amendment.

SECTION 6. All of the terms and conditions of the amended Agreement not modified by this Eighth 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
of the State of California

KEVIN FISHER
Chief Deputy City Attorney

TONI J. TABER, CMC
City Clerk

Date: _____


“CONCESSIONAIRE”

AMS-SJC JV, a Joint Venture

AIRPORT MANAGEMENT SERVICES, LLC
(dba Hudson Group), a Delaware limited
liability company authorized to do business in
the State of California

APPROVED AS TO FORM:

Natalie Aronov
Natalie Aronov
Senior Counsel, Hudson Group
1/29/19
Date

By: 
Name: Michael R. Mullaney
Executive Vice President
Title: Corporate Strategy & Development
Corporate Strategy & Development

Date: _____

J.R. LESTER & ASSOCIATES, LTD,
a California corporation

By: _____

Name: _____

Title: _____

Date: _____

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

"CITY"

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

APPROVED AS TO FORM:



KEVIN FISHER
Chief Deputy City Attorney

TONI J. TABER, CMC
City Clerk


Date: _____

"CONCESSIONAIRE"

AMS-SJC JV, a Joint Venture

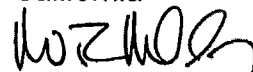
AIRPORT MANAGEMENT SERVICES, LLC
(dba Hudson Group), a Delaware limited
liability company authorized to do business in
the State of California

APPROVED AS TO FORM:



Natalie Aronov
Senior Counsel, Hudson Group
1/29/19


Date

By: 

Name: Michael R. Mullaney
Executive Vice President
Corporate Strategy & Development
Title: Corporate Strategy & Development

Date: _____

J.R. LESTER & ASSOCIATES, LTD,
a California corporation

By: 

Name: N. Sami G. Munga,
Title: PRESIDENT/CEO

Date: _____

CORPORATE SECRETARY CERTIFICATE

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

I, Adam Ratner certify that I
Name of Secretary or Assistant Secretary

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

attached agreement; that Michael Mullaney
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the Executive Vice President
Title of Person that Signed the Agreement

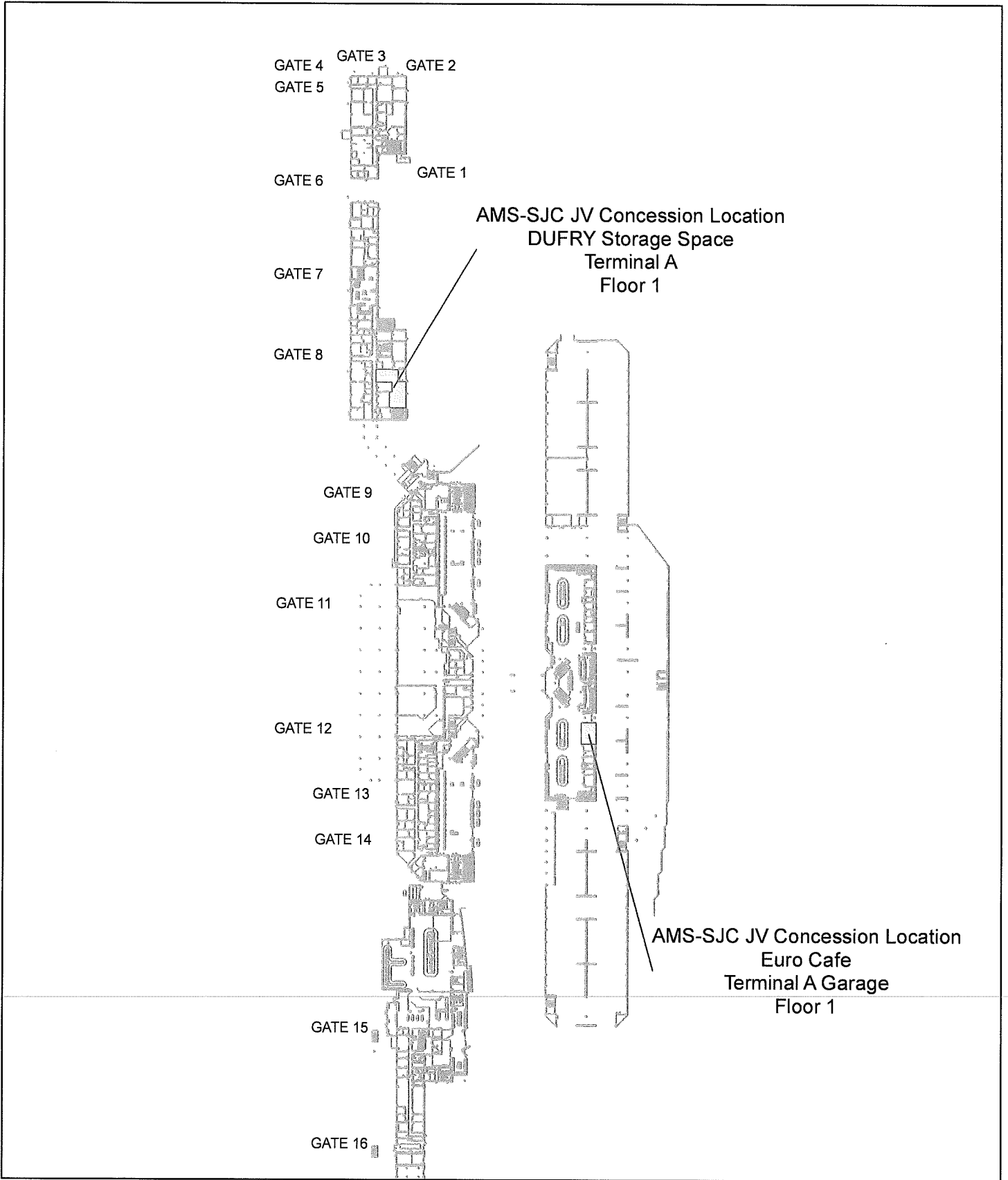
of the corporation; and that the agreement was duly signed for and on behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

Adam Ratner
Signature of Secretary or Assistant Secretary

Corporate Seal

2/4/17
Date

SIXTH REVISED EXHIBIT B



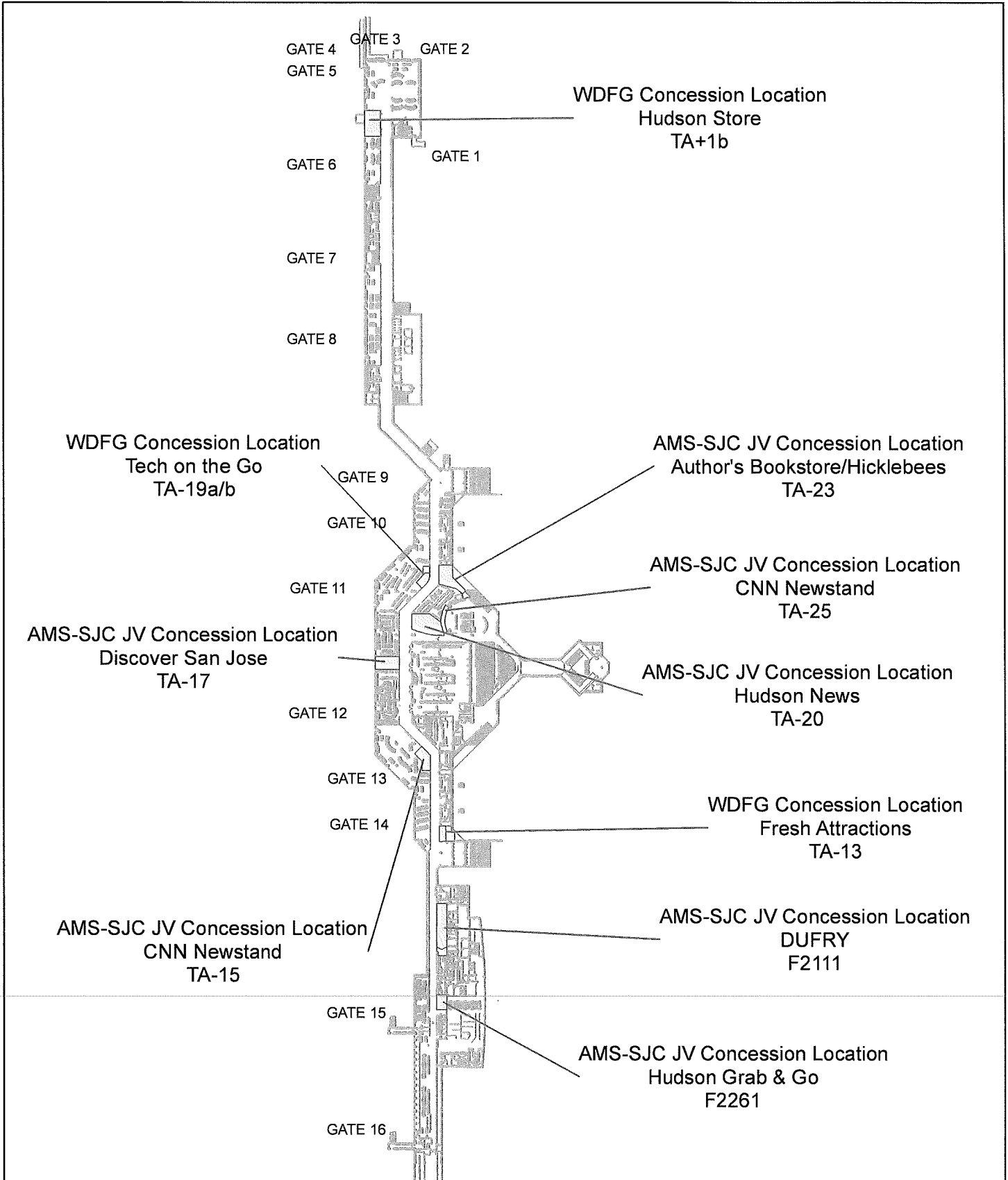
AMS-SJC JV
Terminal A Floor 1 Overall Plan
B-1



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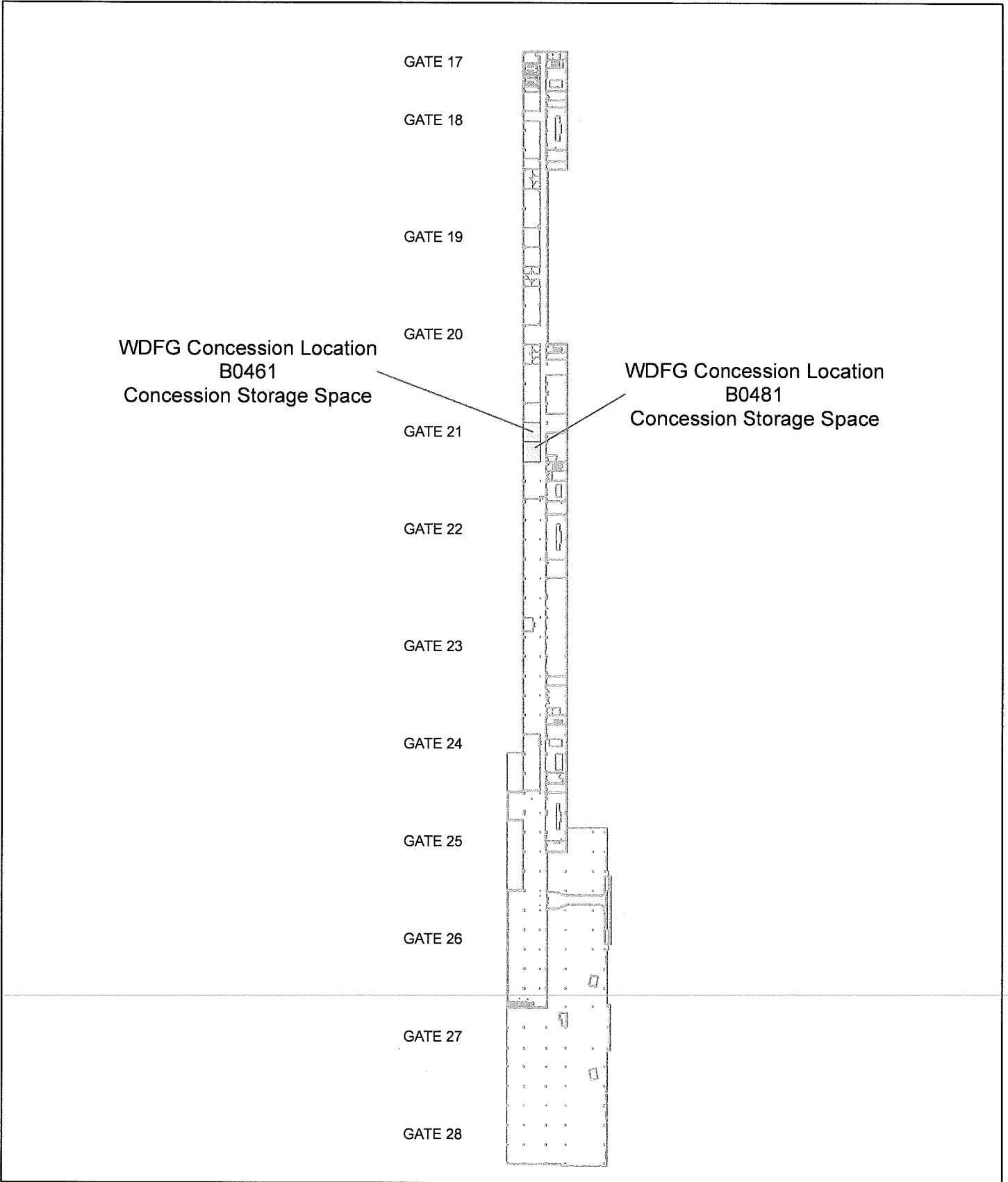
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Terminal A Floor 2 Overall Plan
B-2



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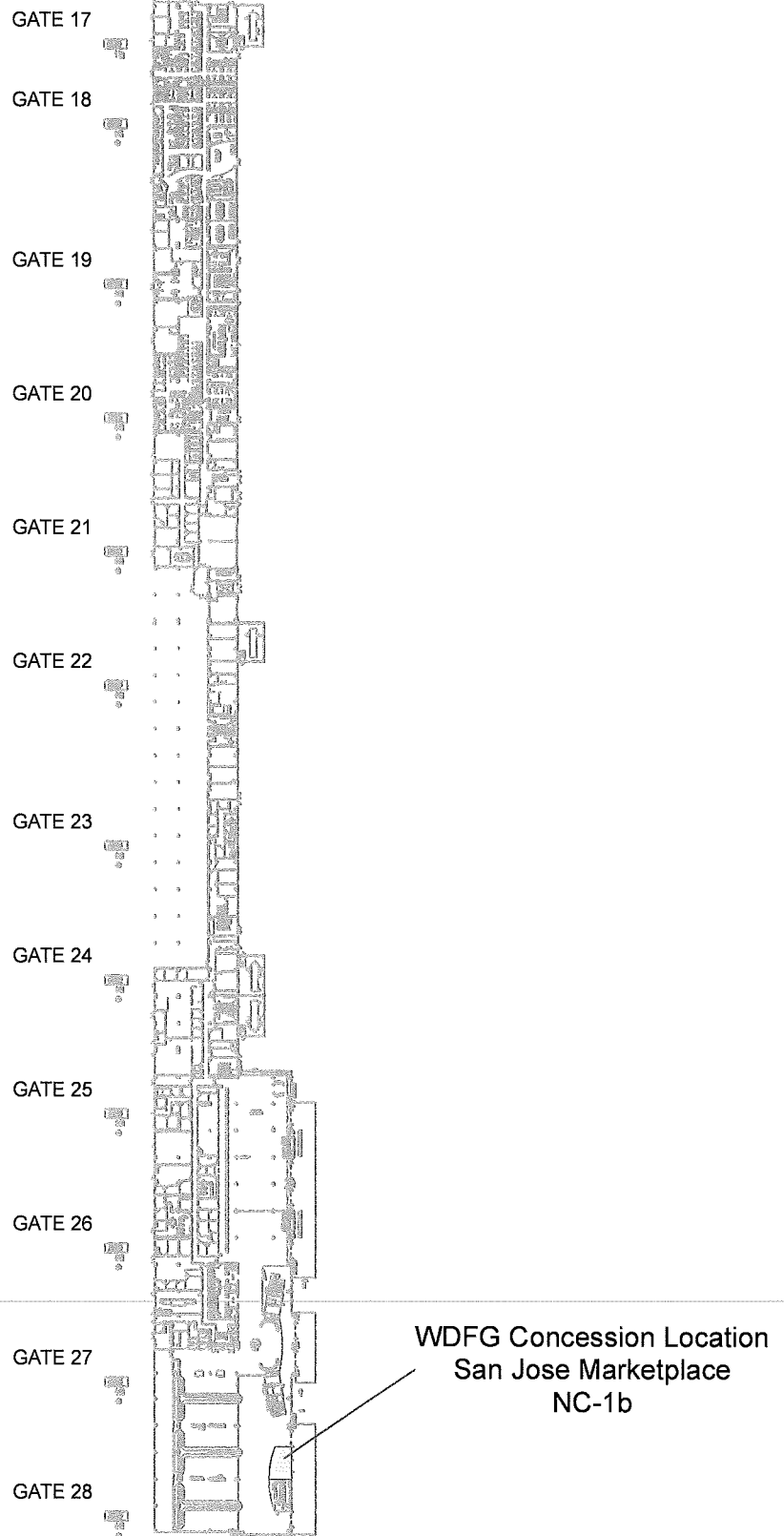
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Terminal B Floor 0 Overall Plan
R-3

NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL



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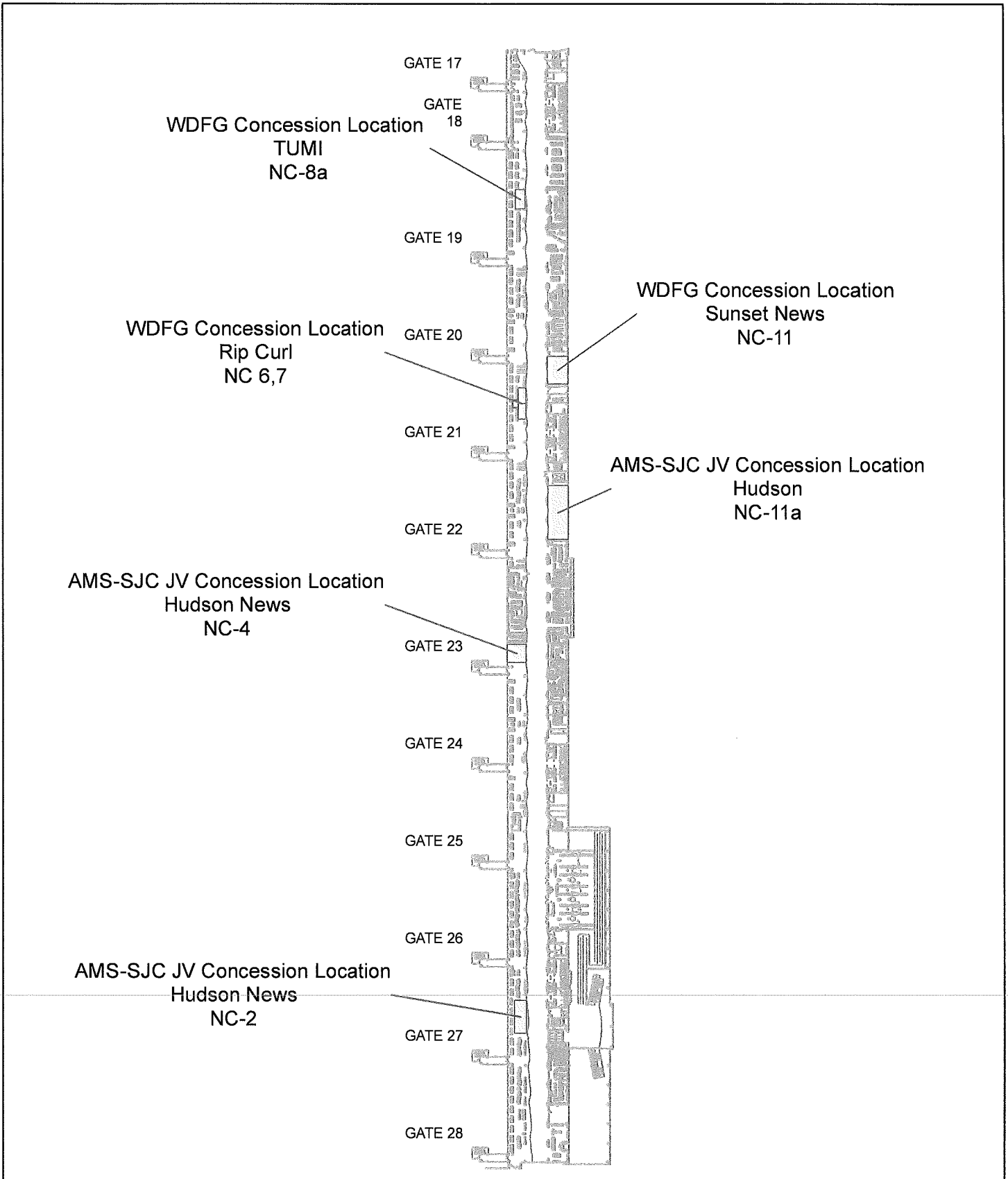


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Terminal B Floor 1 Overall Plan
B-4



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Terminal B Floor 2 Overall Plan
R-5

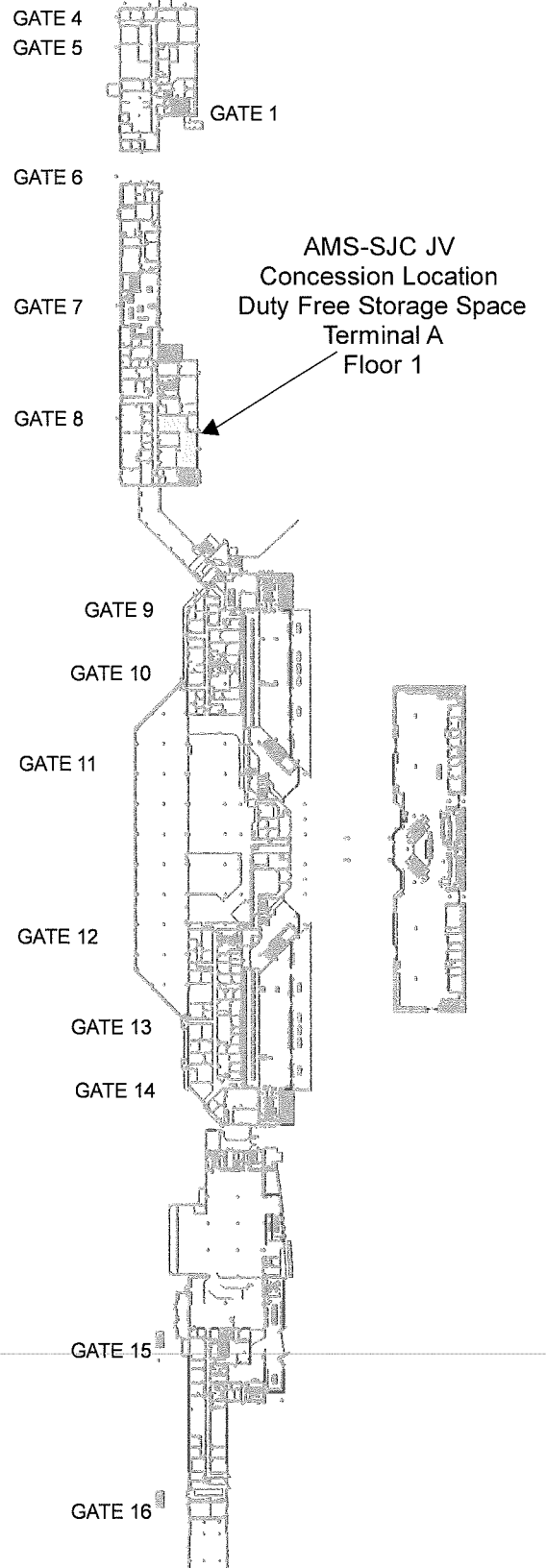
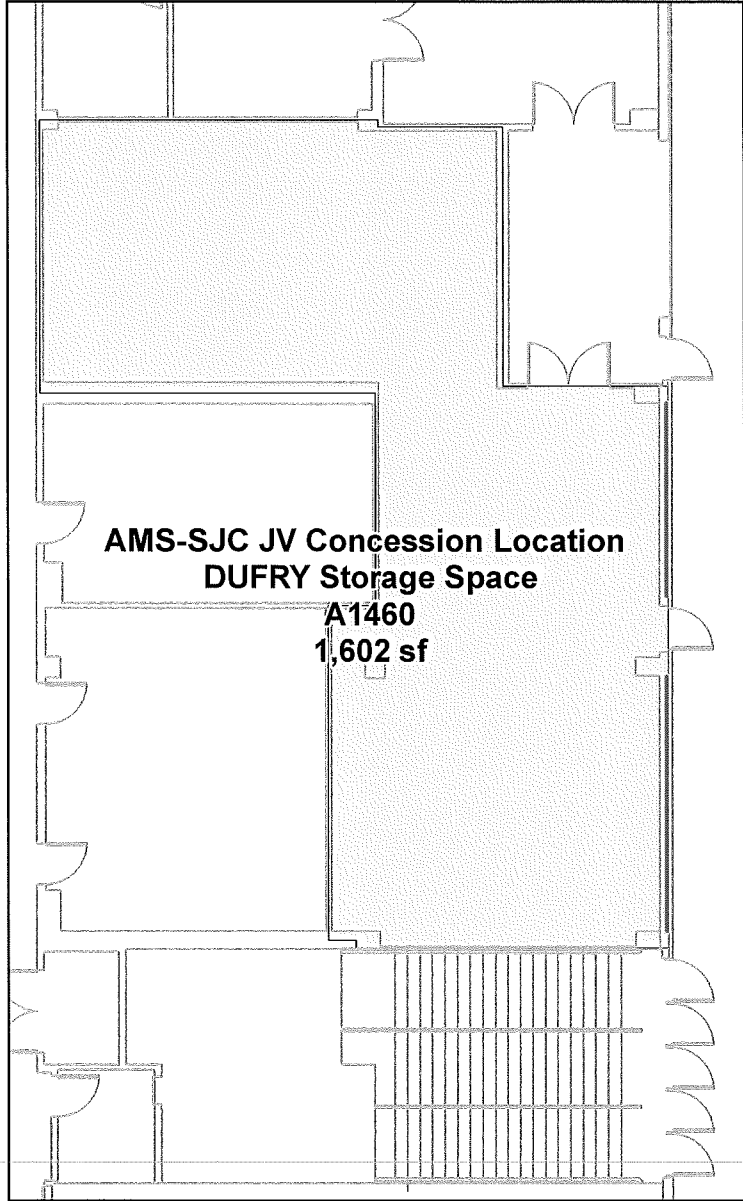
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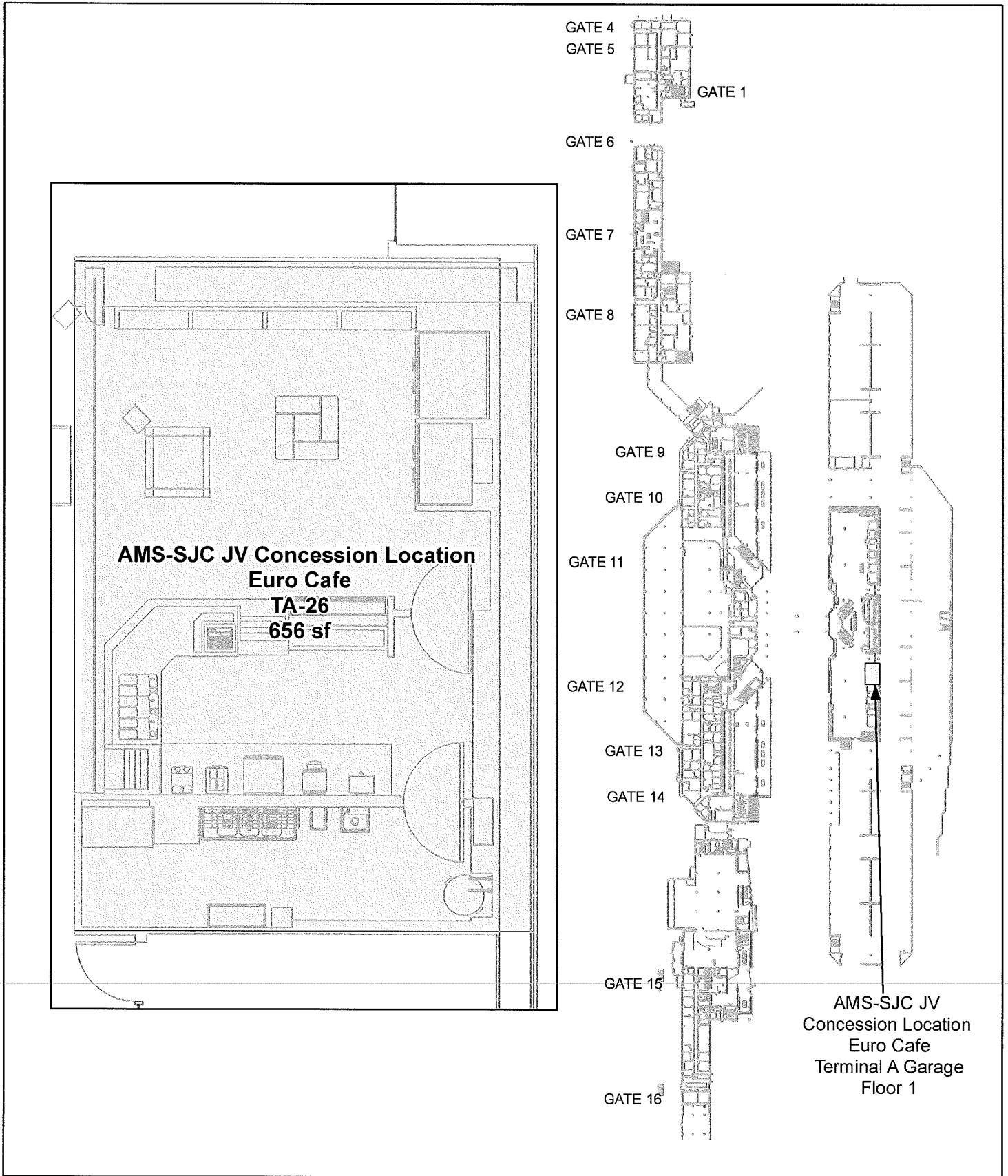
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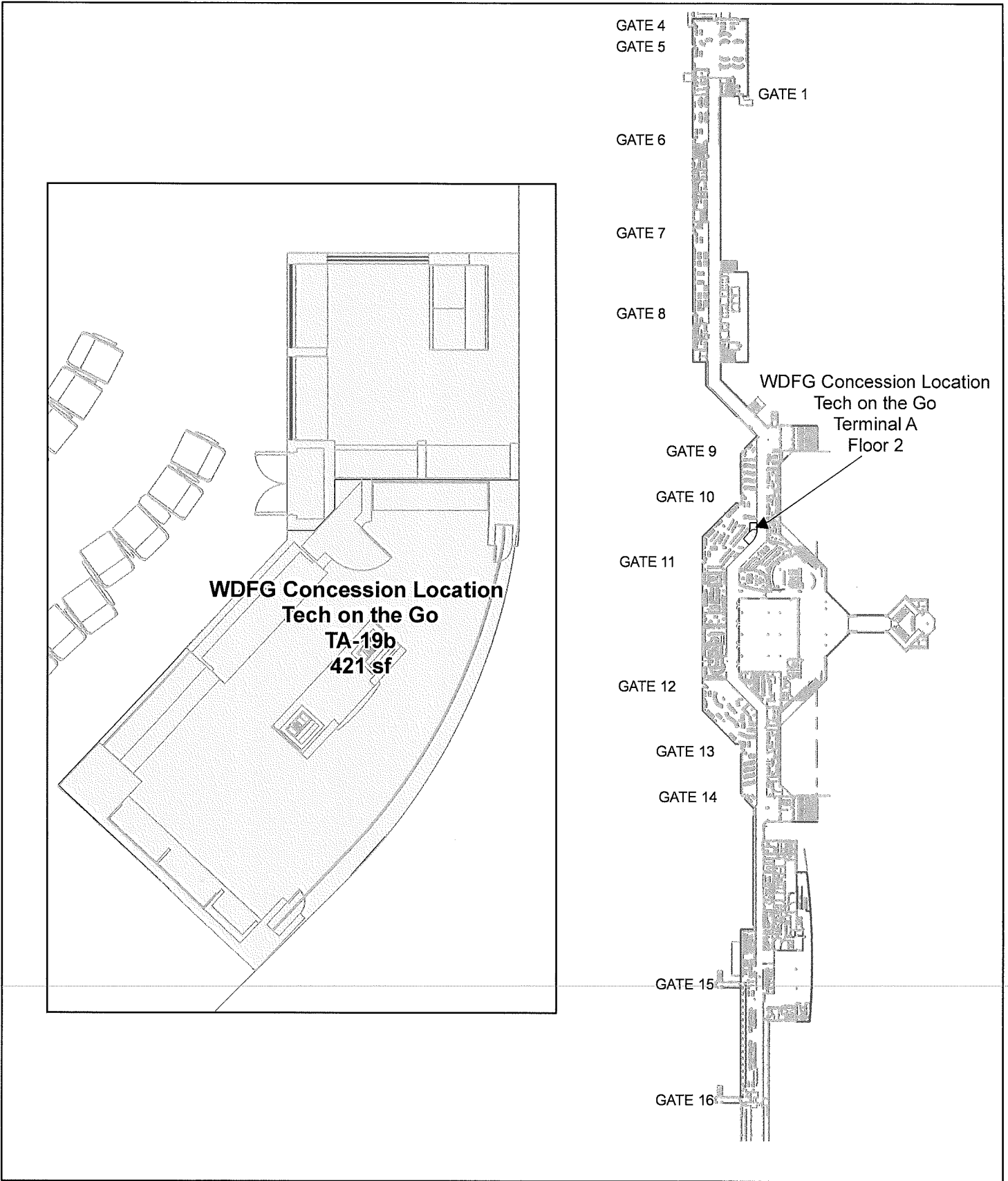
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Terminal A Floor 1
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Terminal A Floor 2
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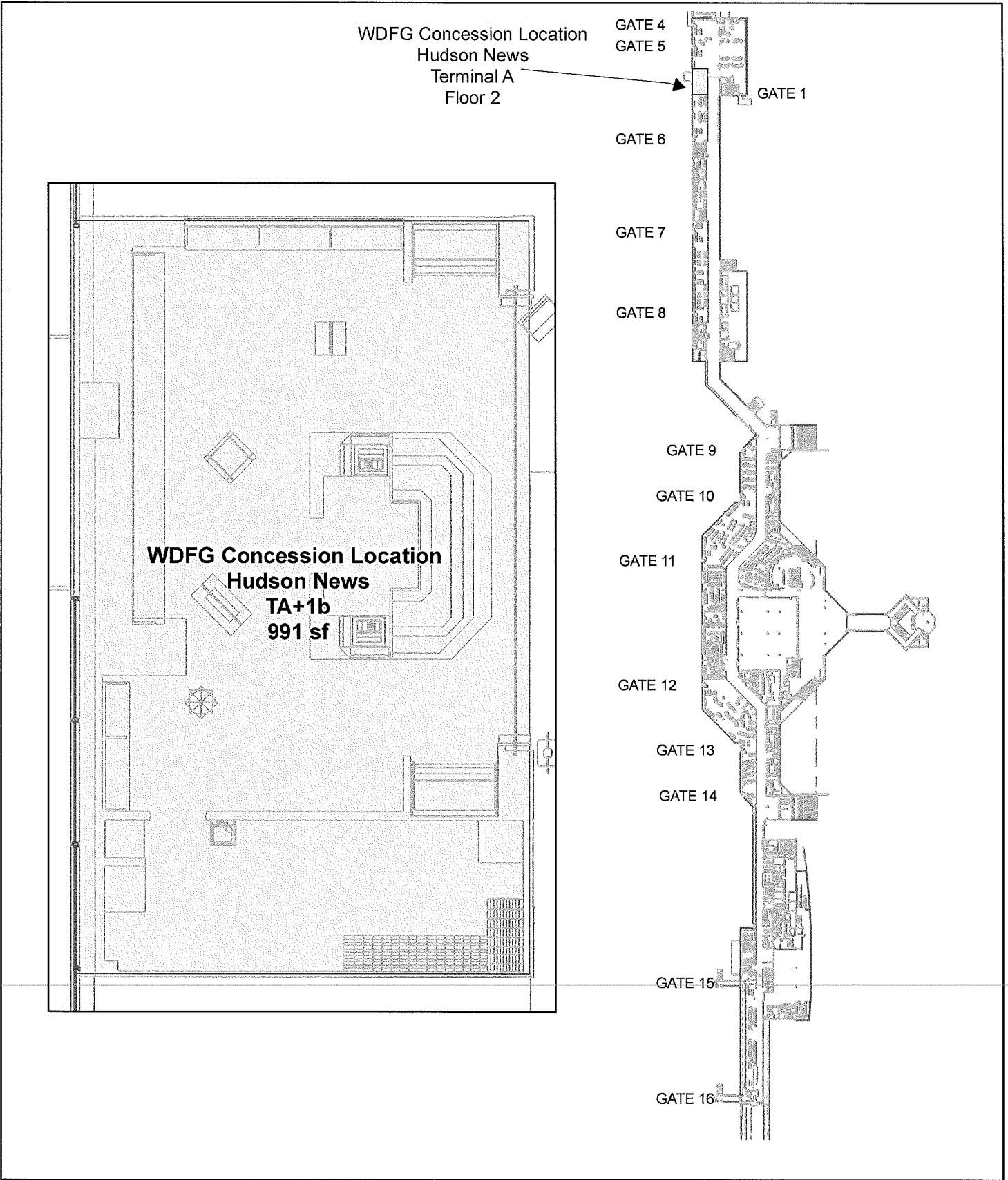
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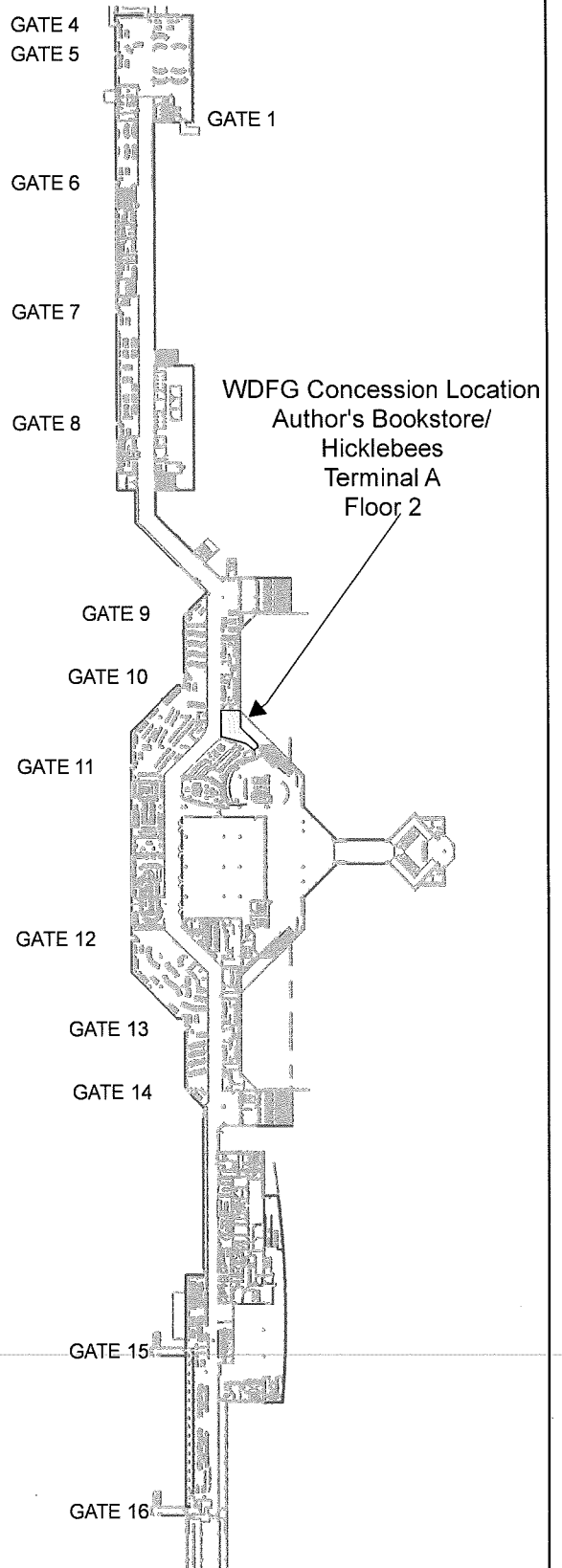
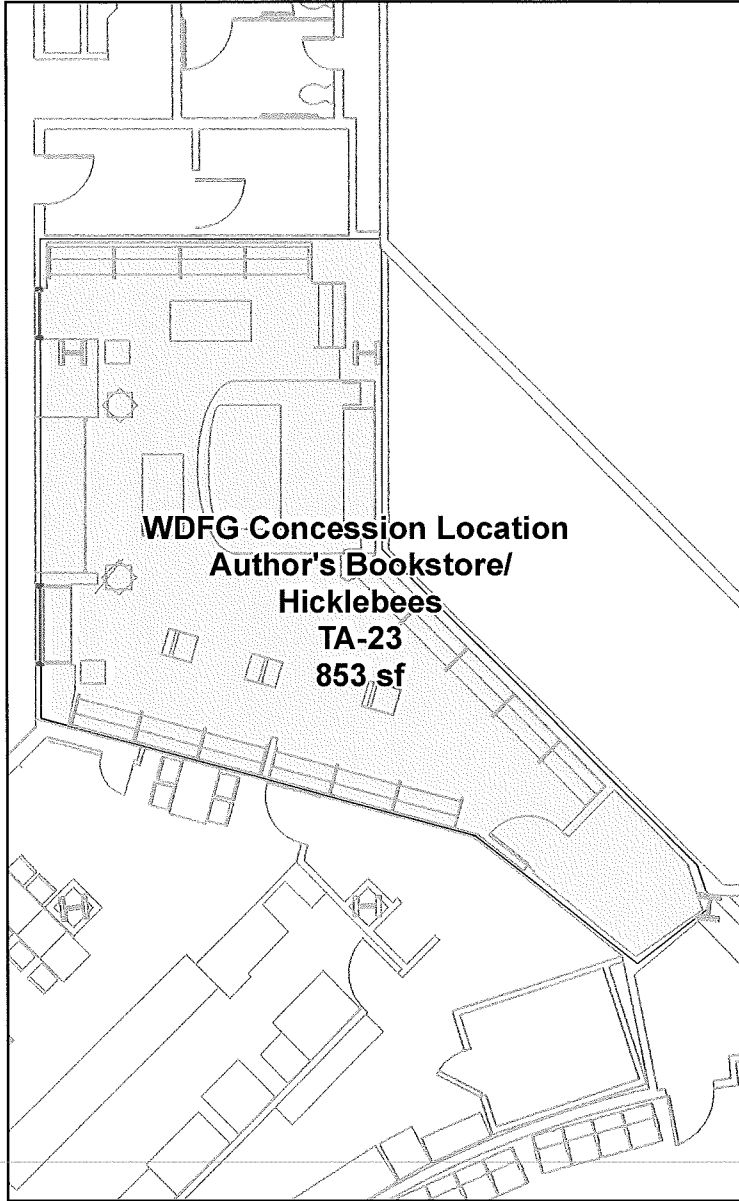
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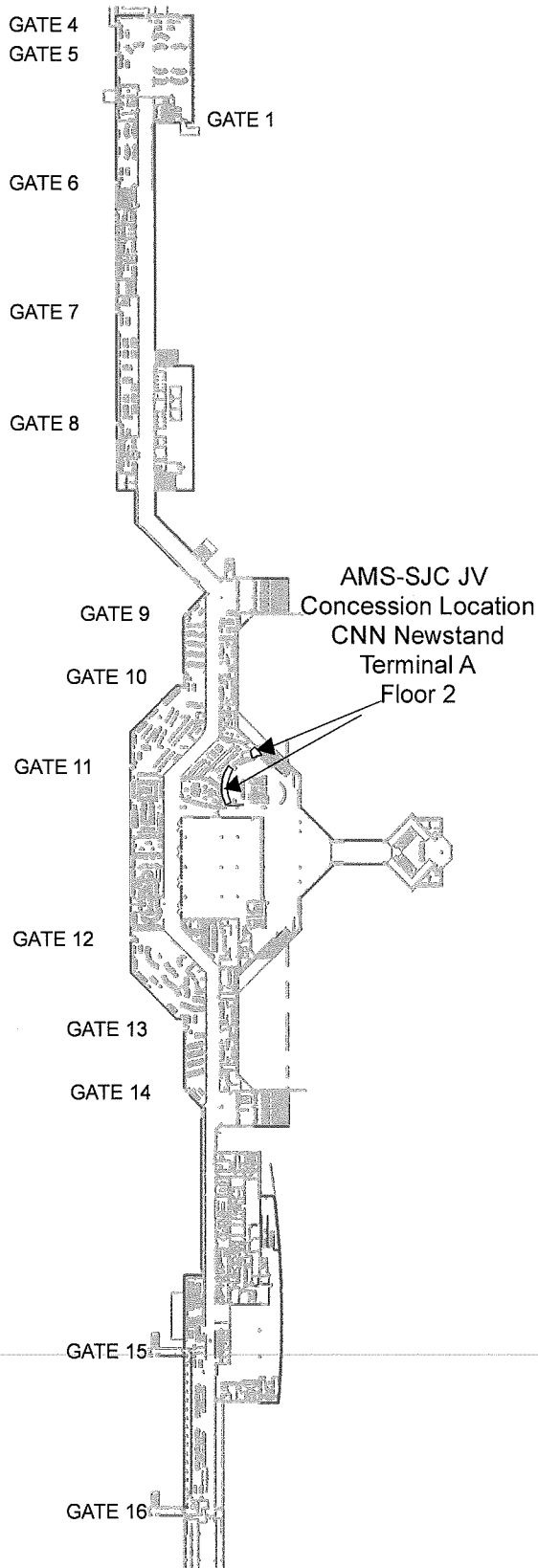
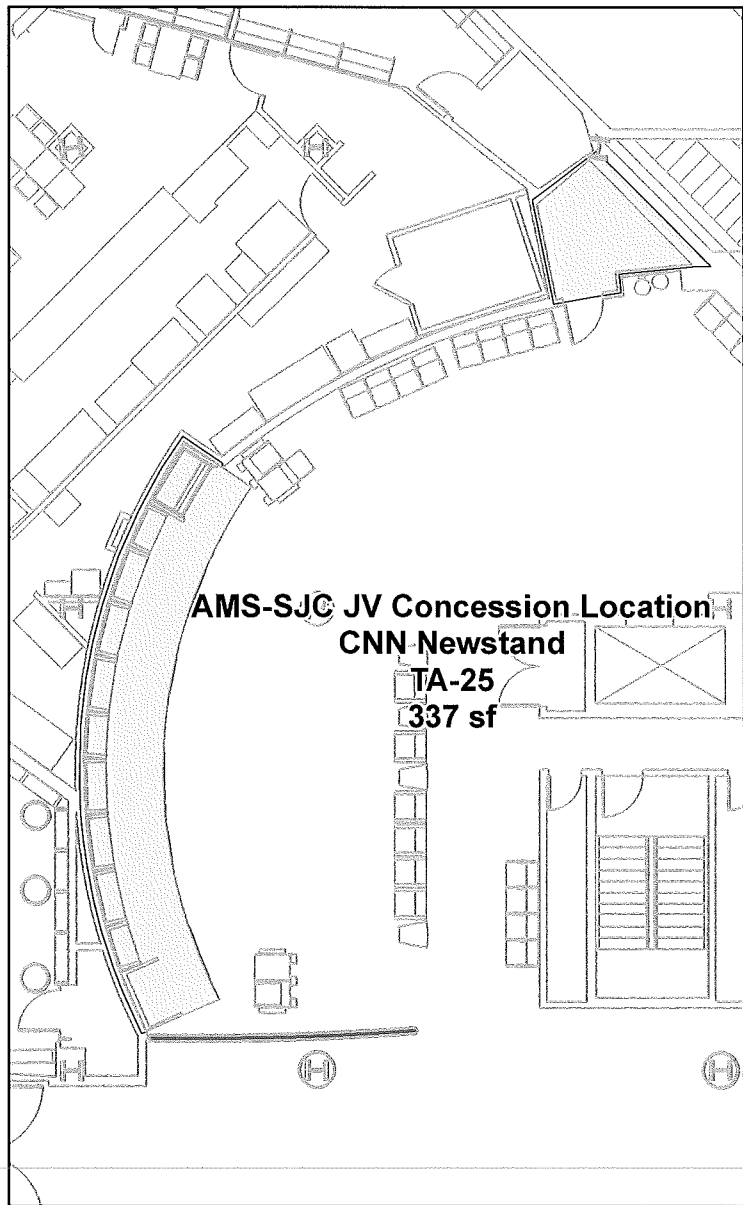


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Terminal A Floor 2
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B 11

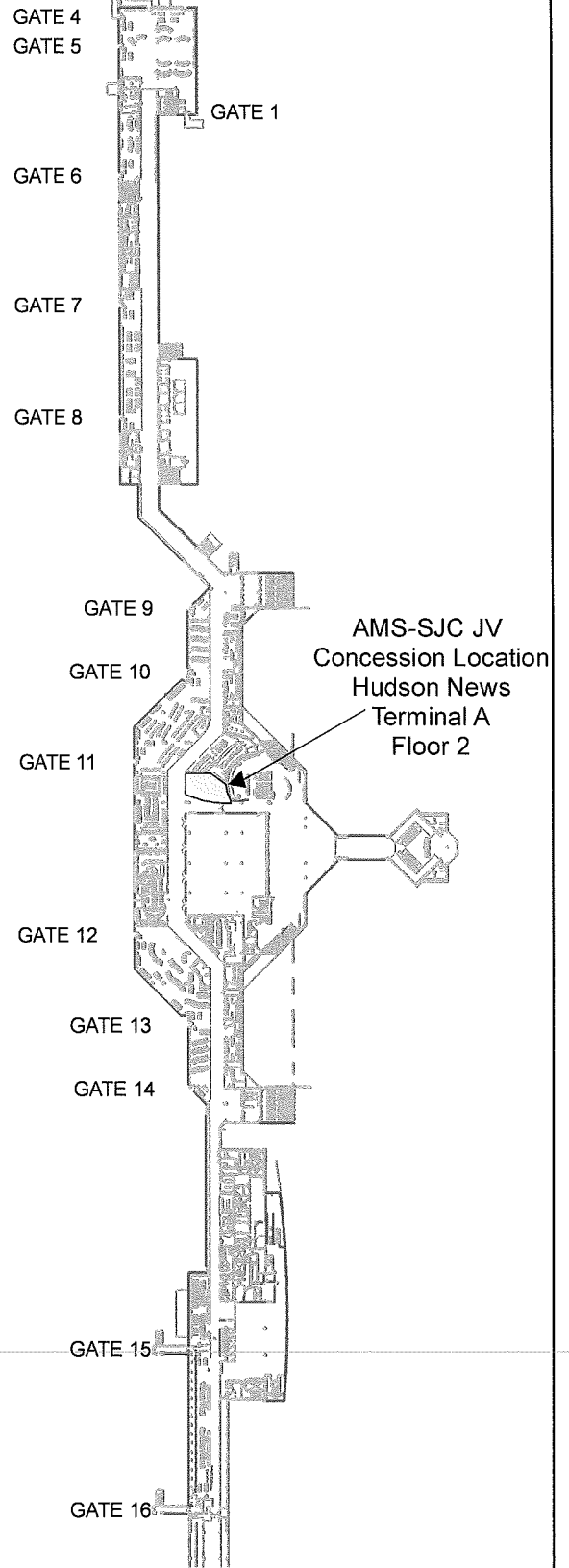
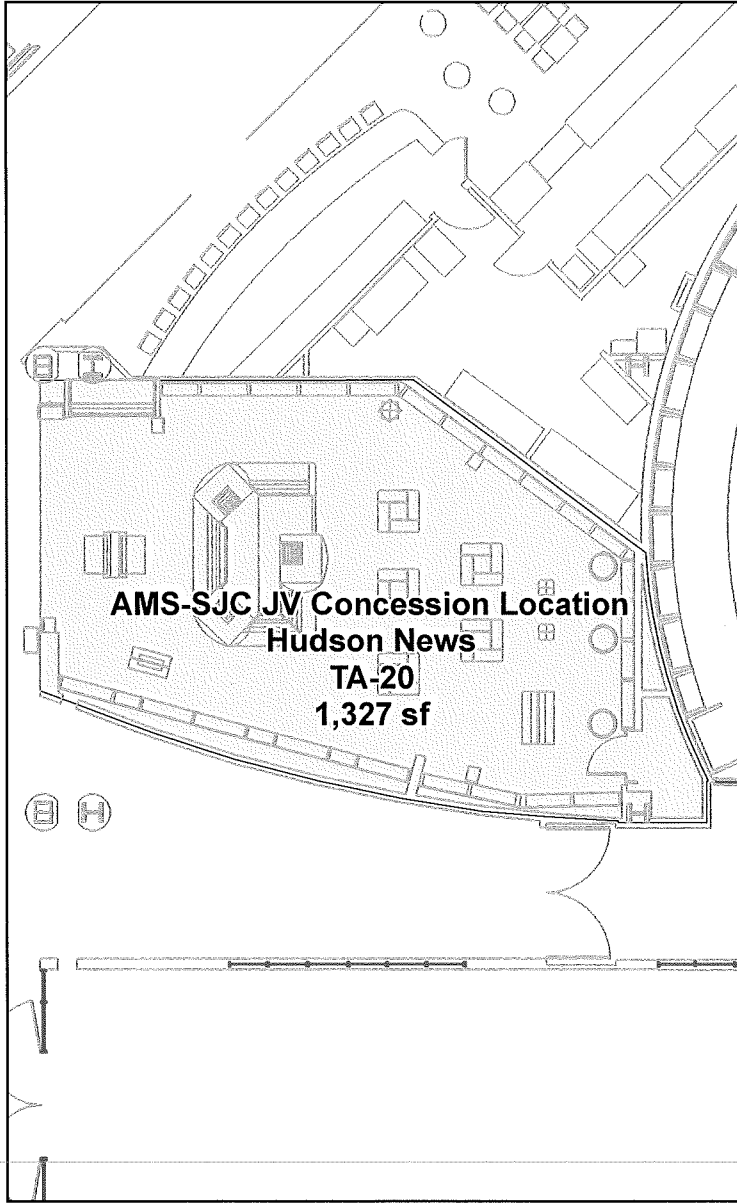
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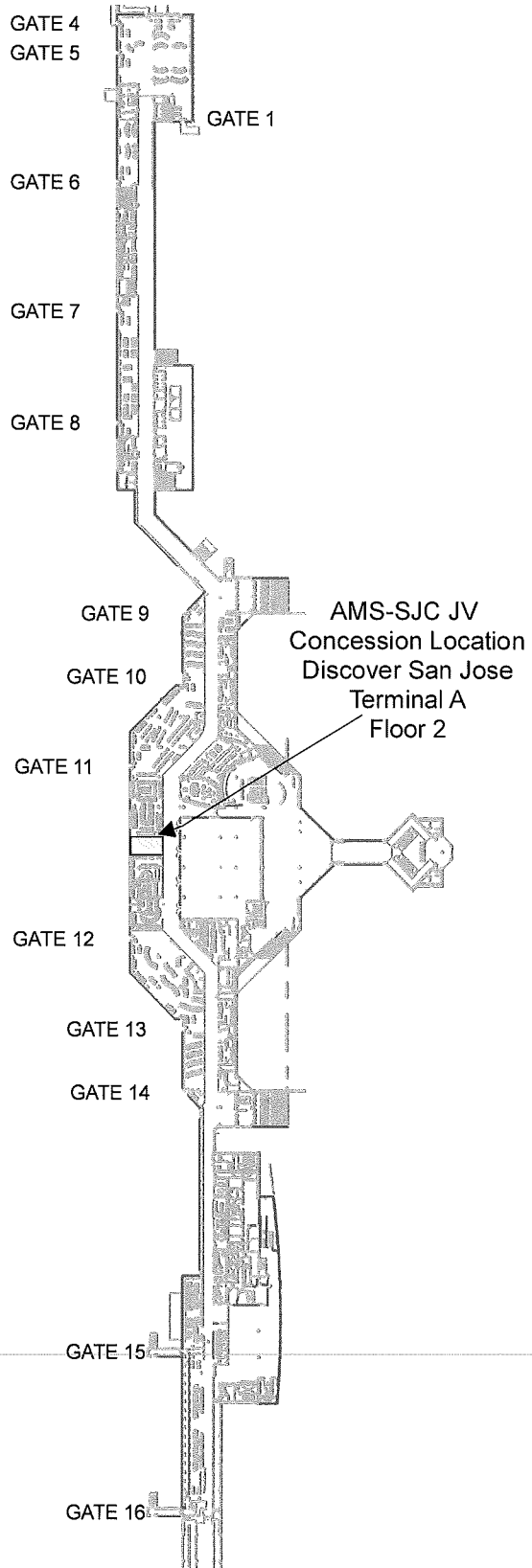
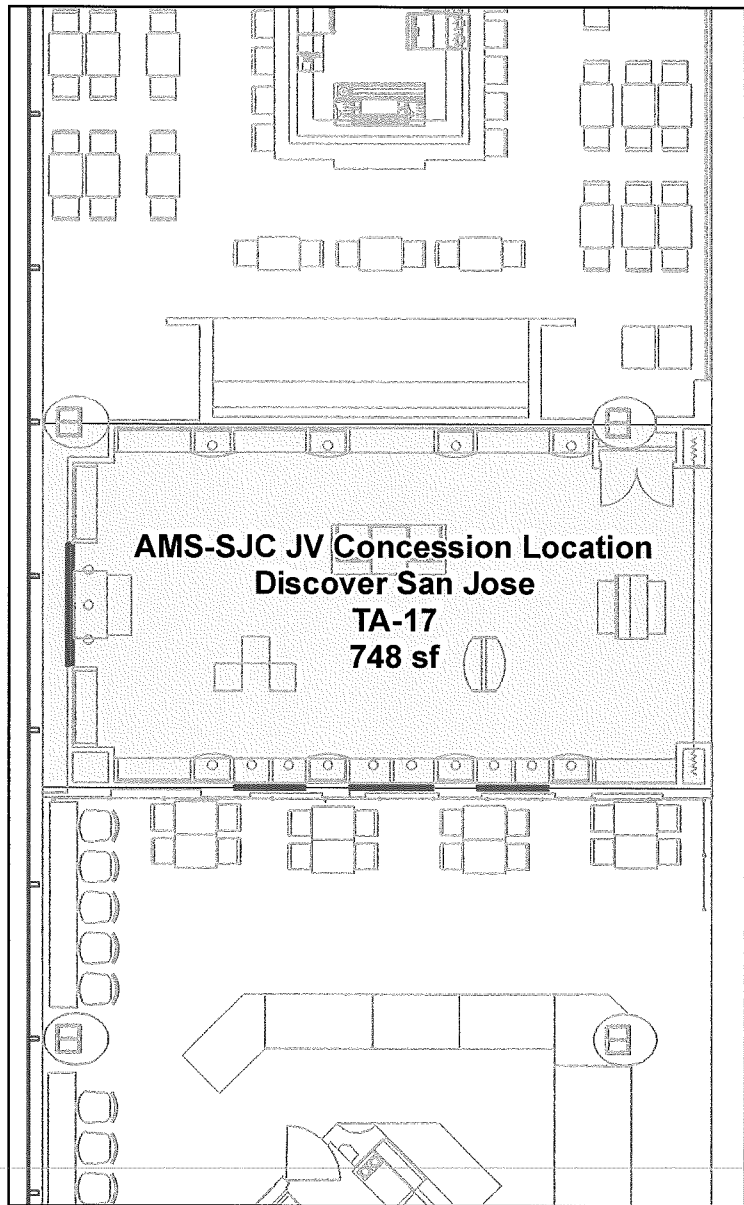
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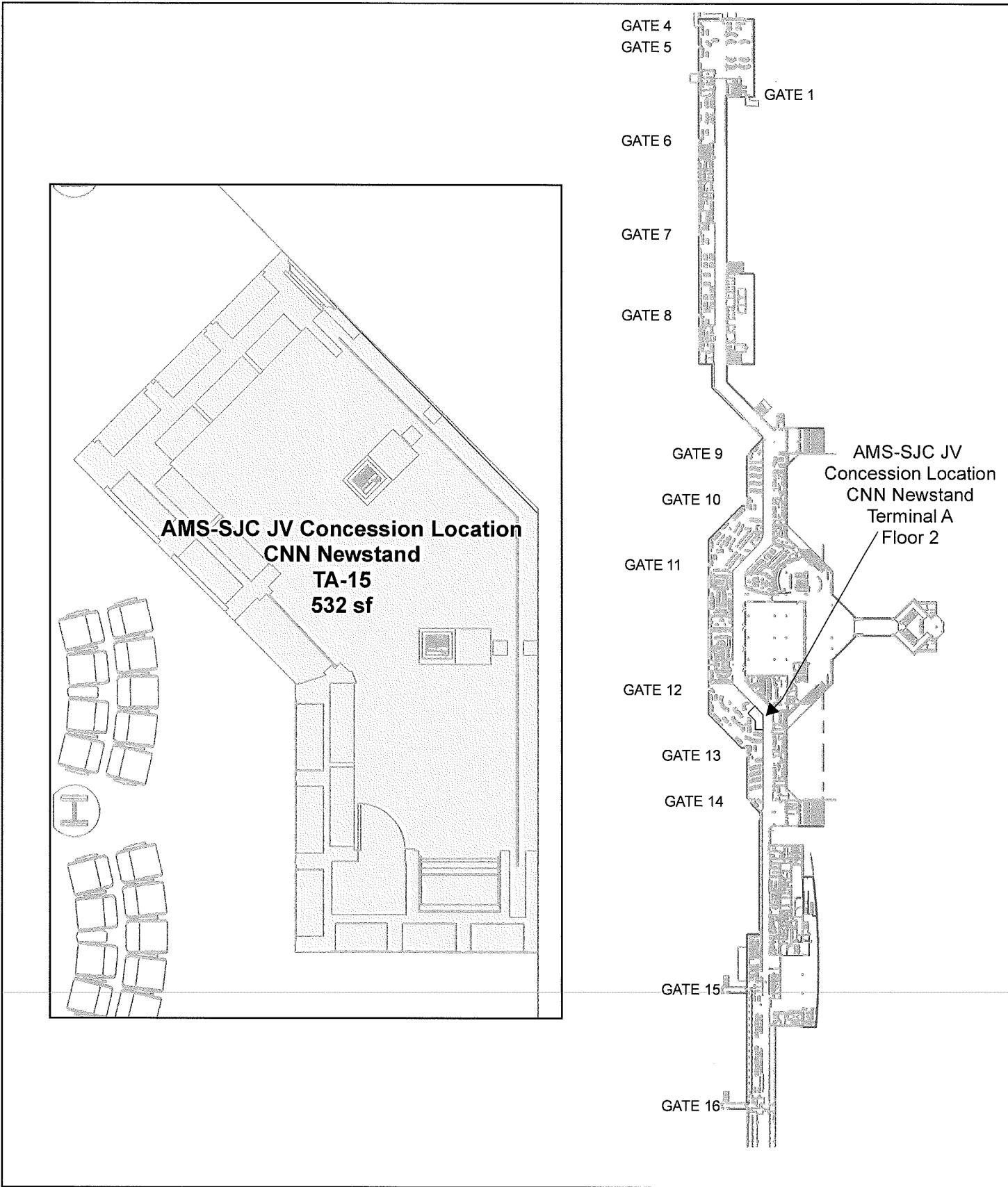
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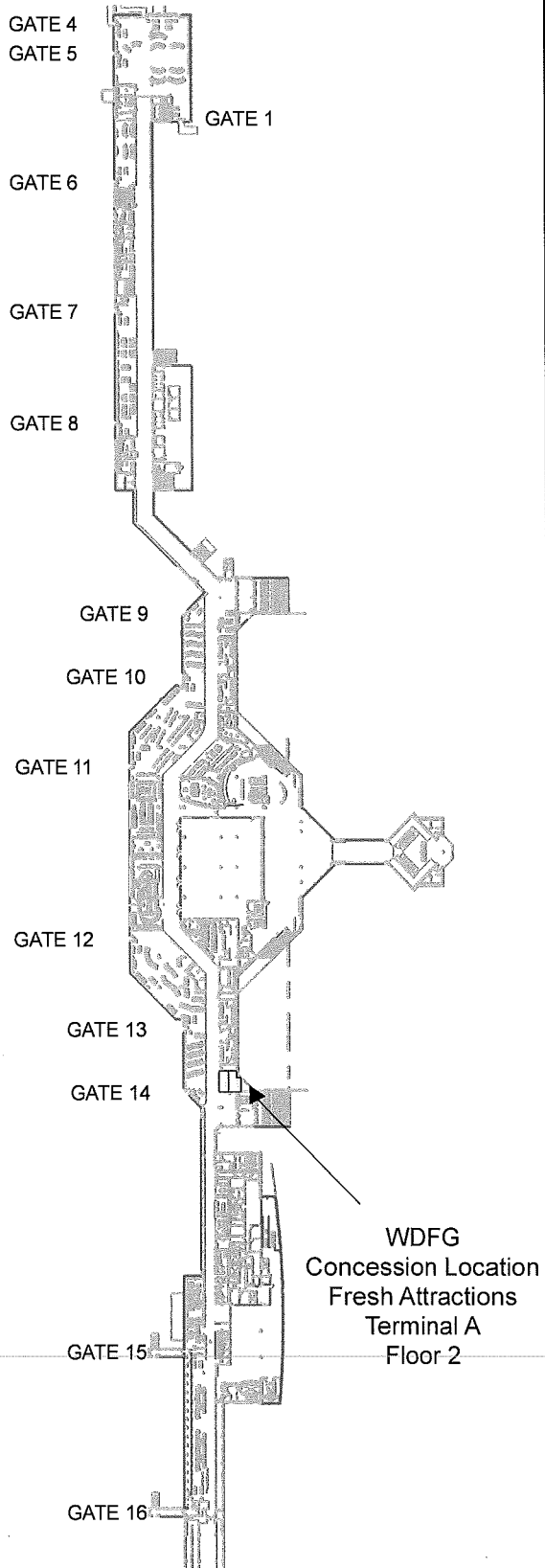
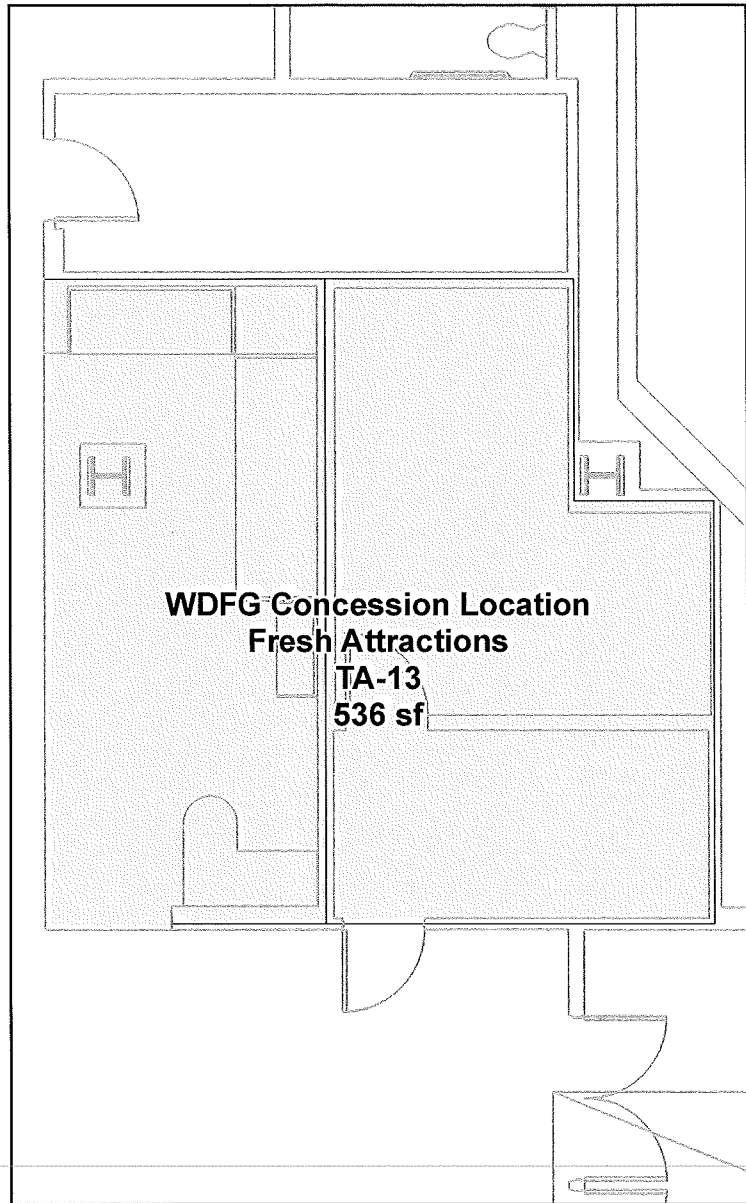


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Terminal A Floor 2
B-14

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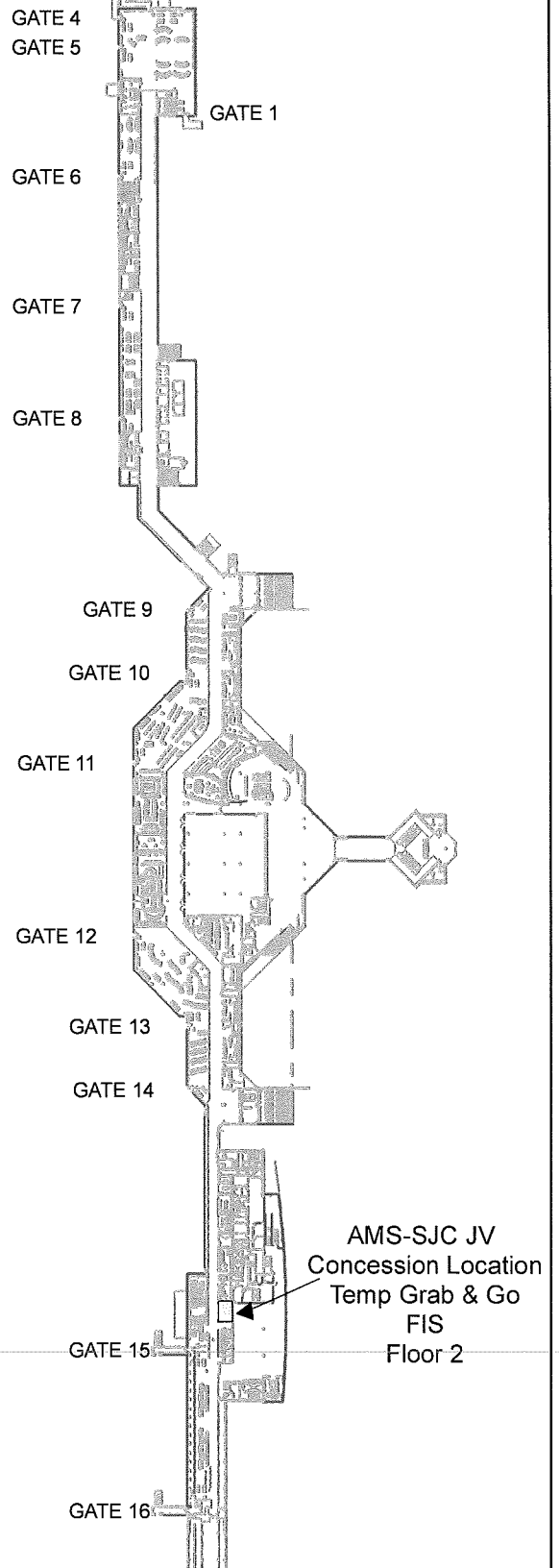
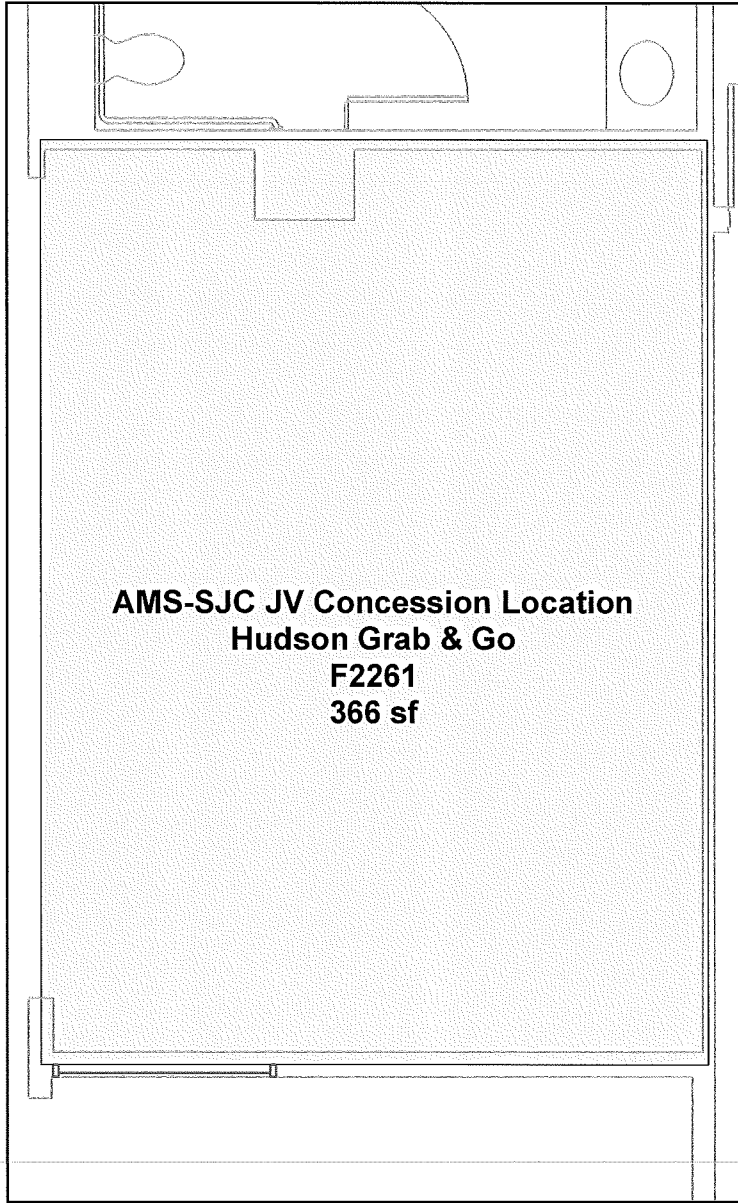
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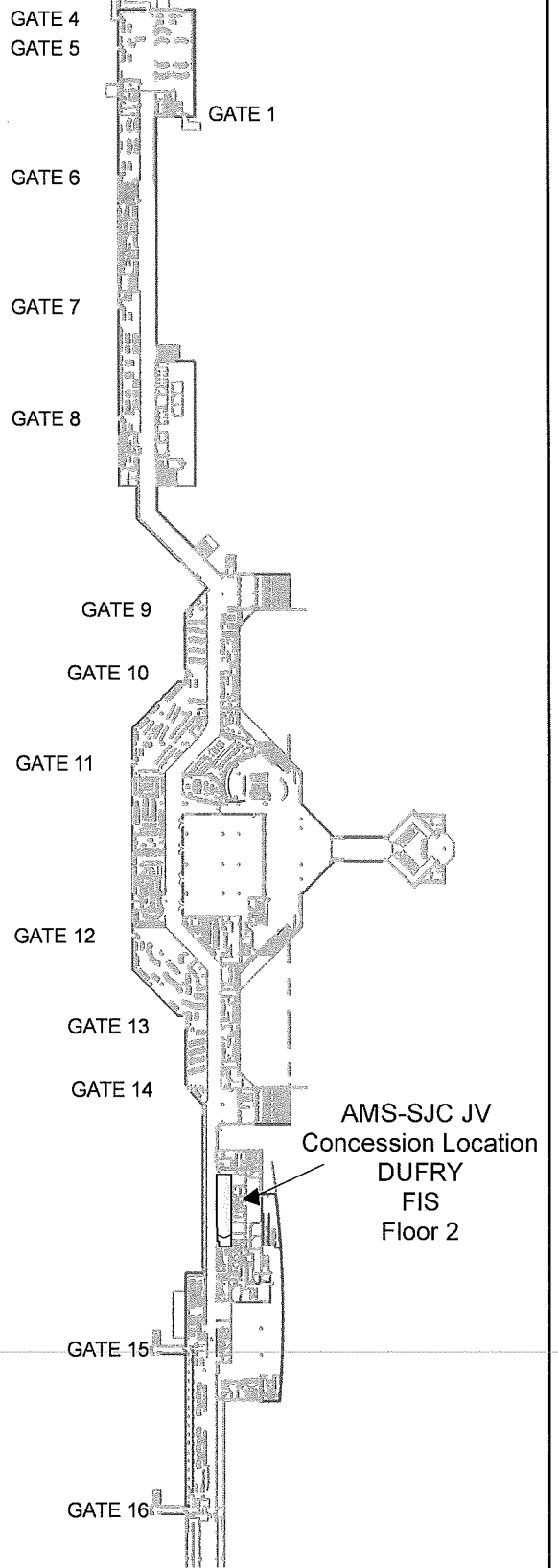
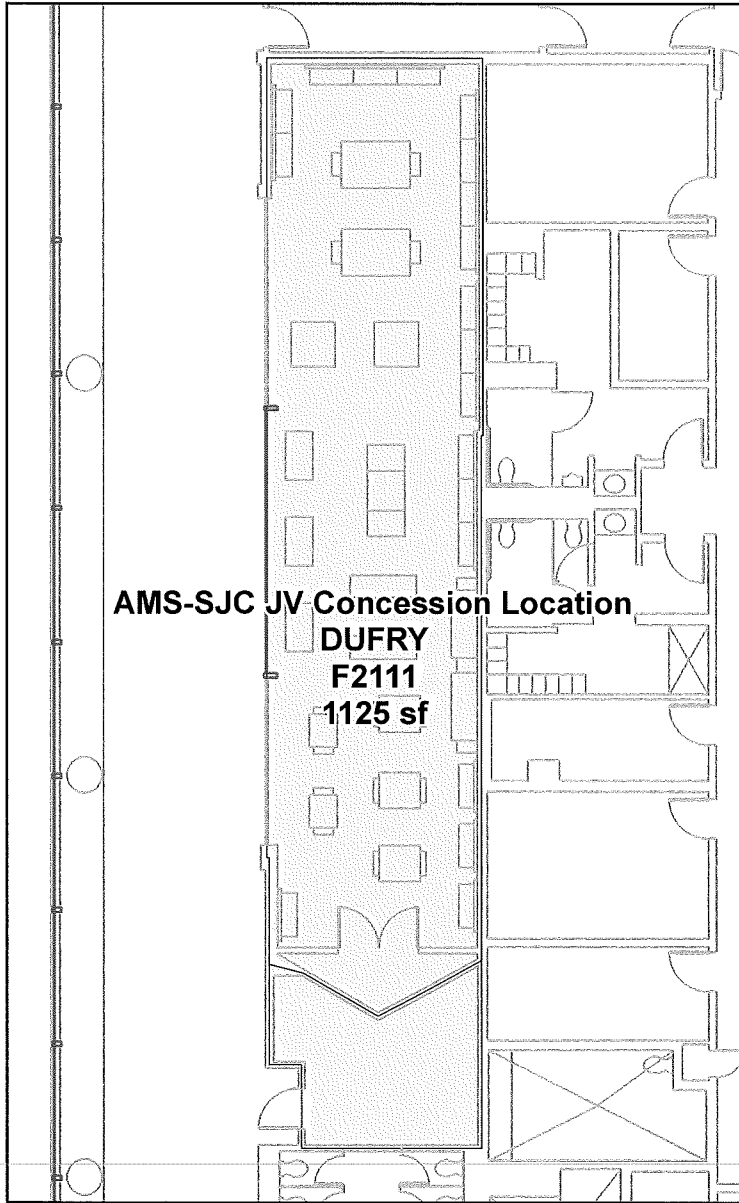


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Terminal A Floor 2
P. 16

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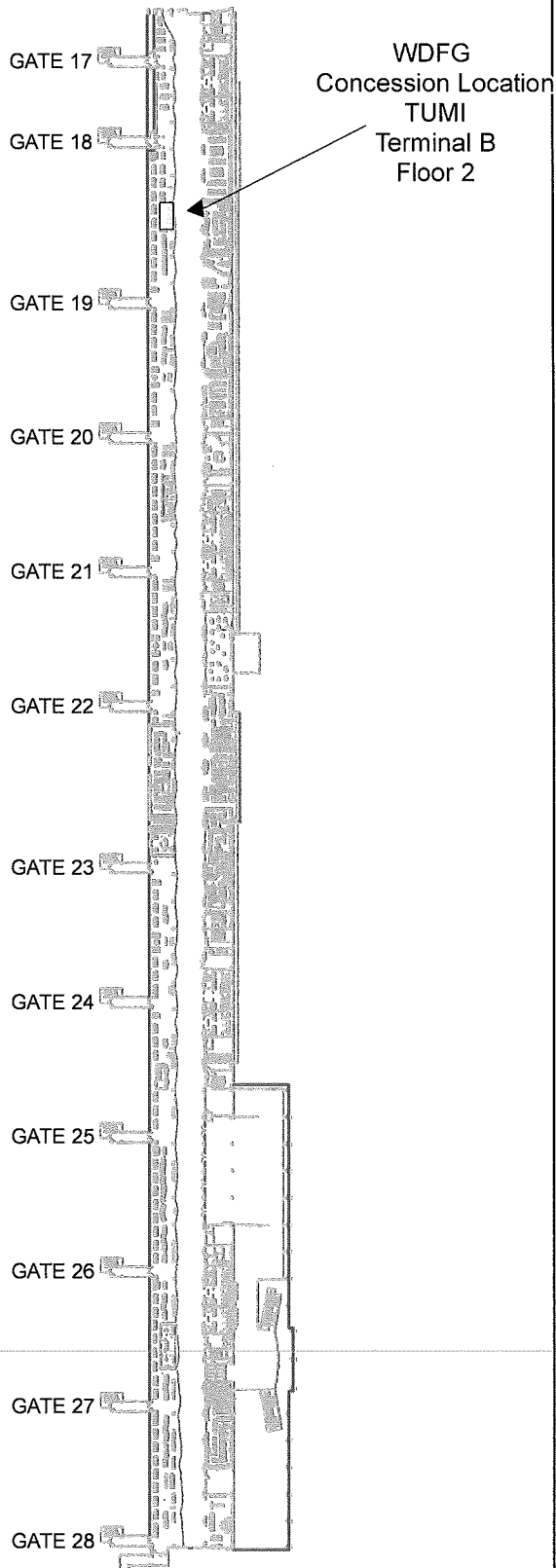
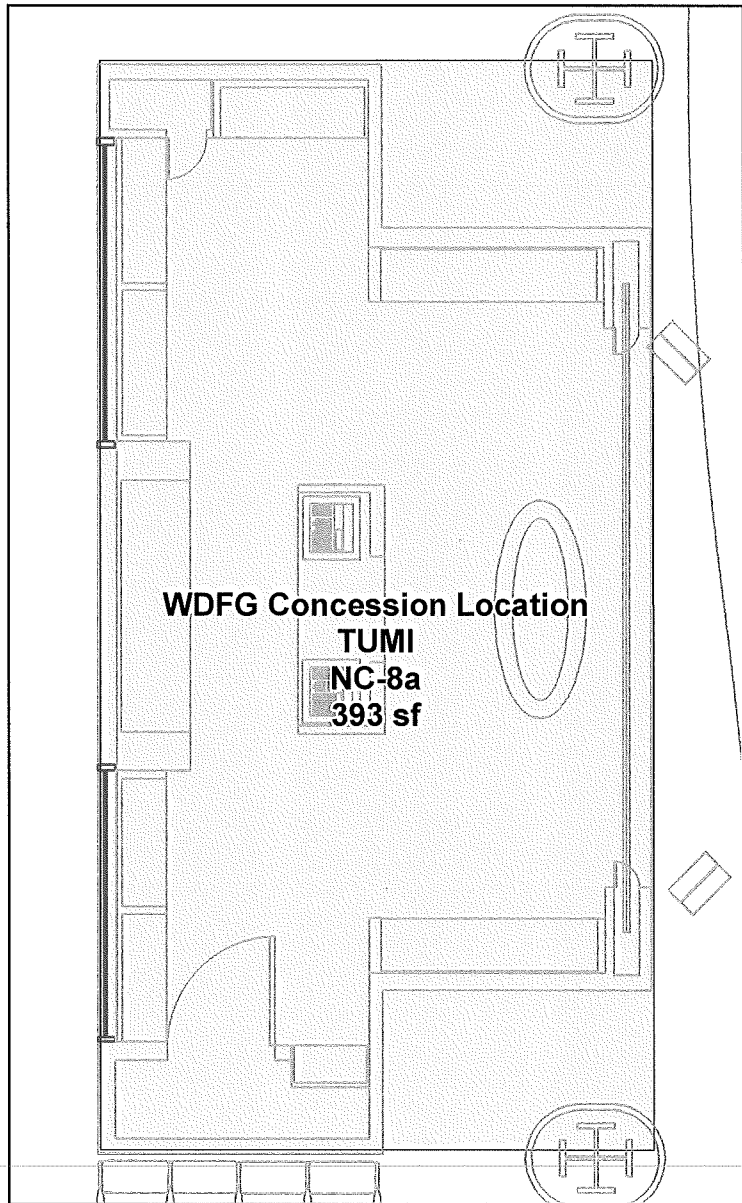


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Terminal A Floor 2
R 17



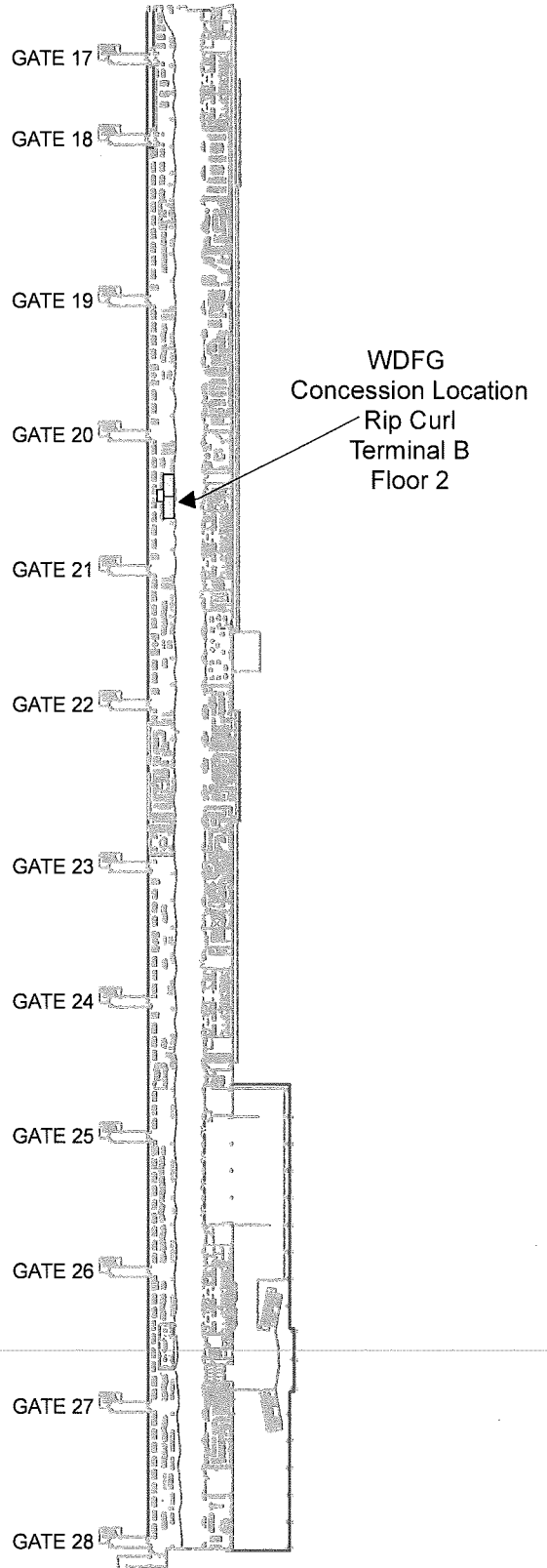
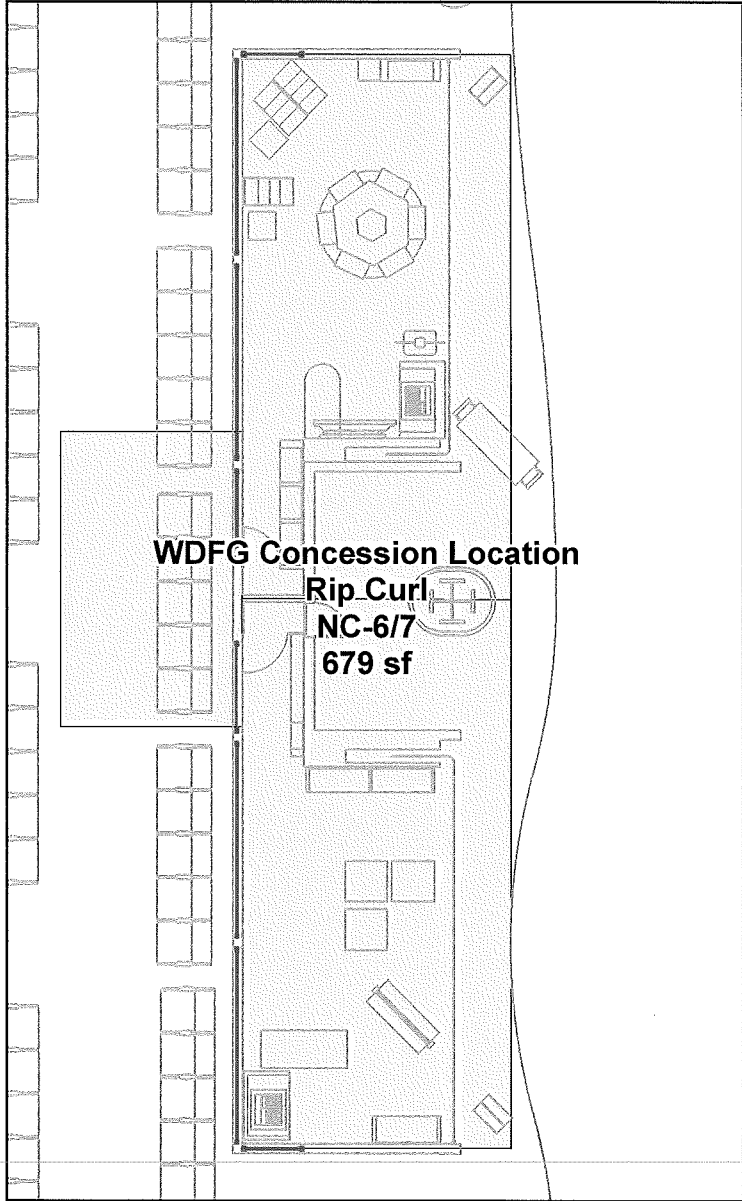


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Terminal B Floor 2
R 18



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SIXTH REVISED EXHIBIT B



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Terminal B Floor 2
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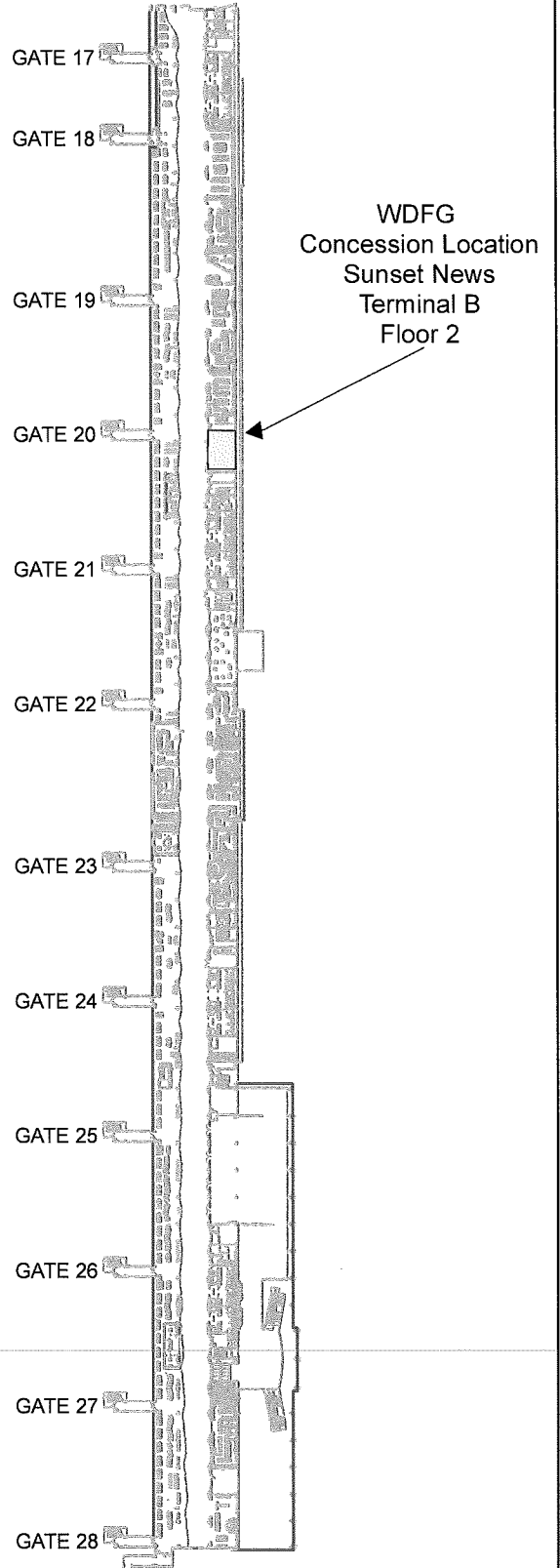
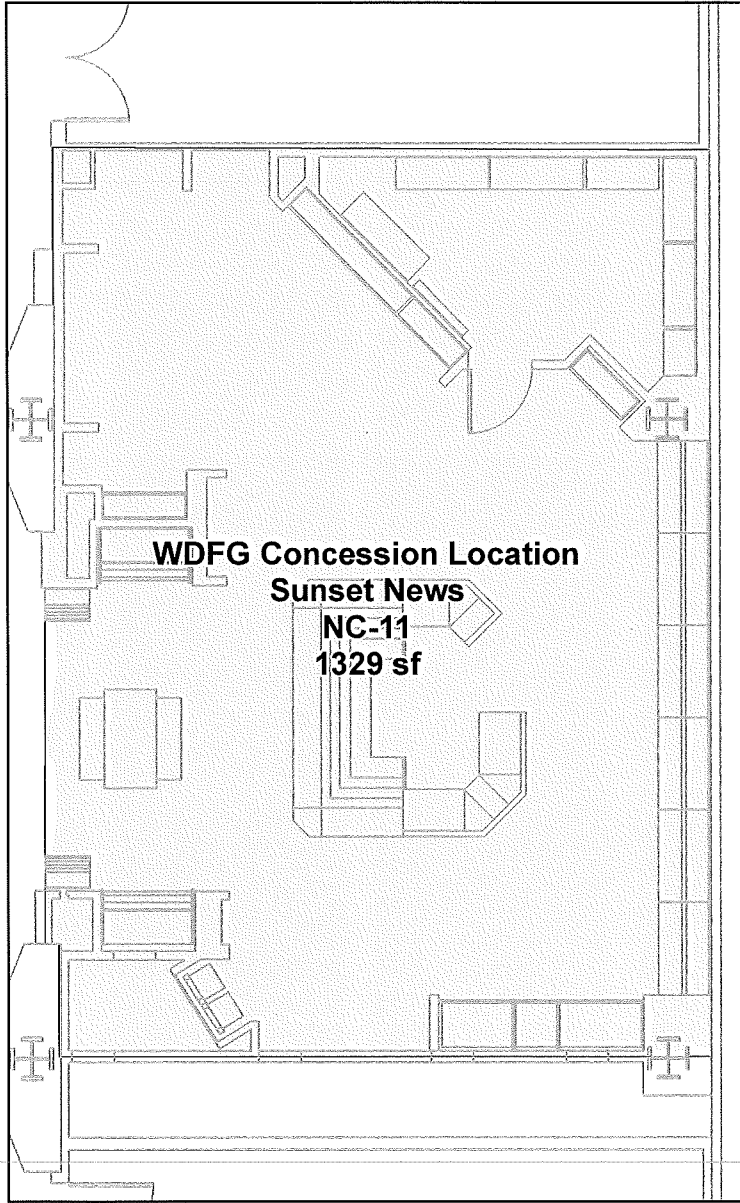
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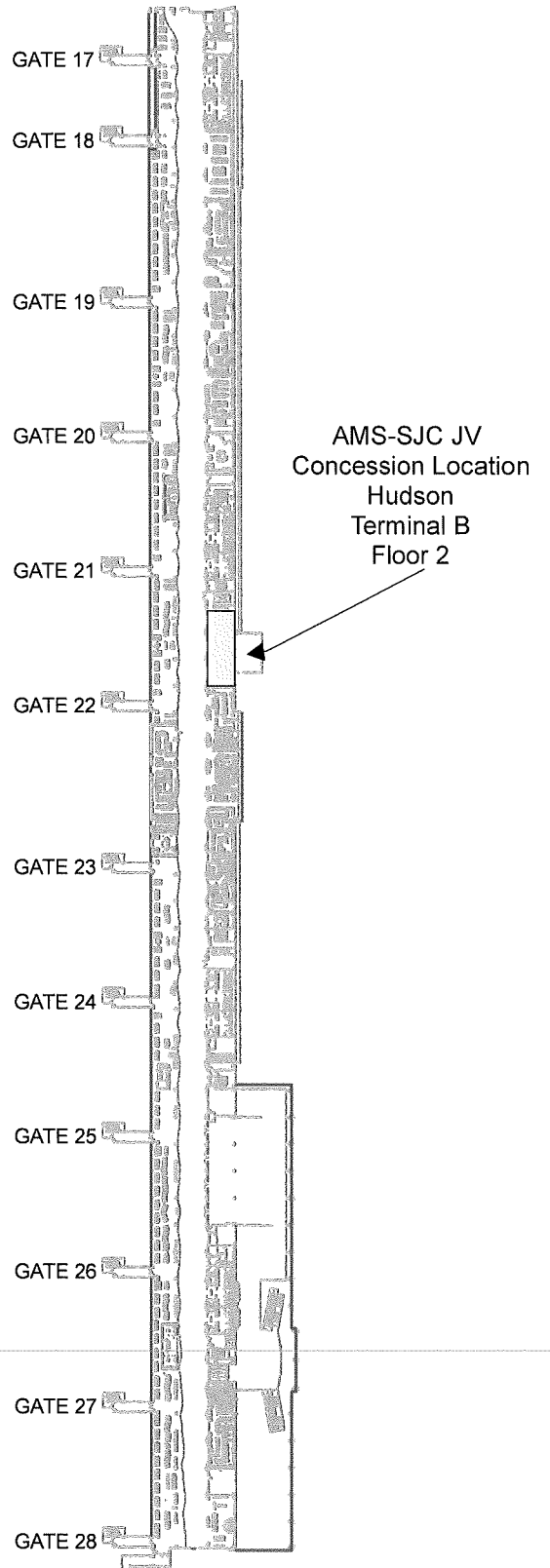
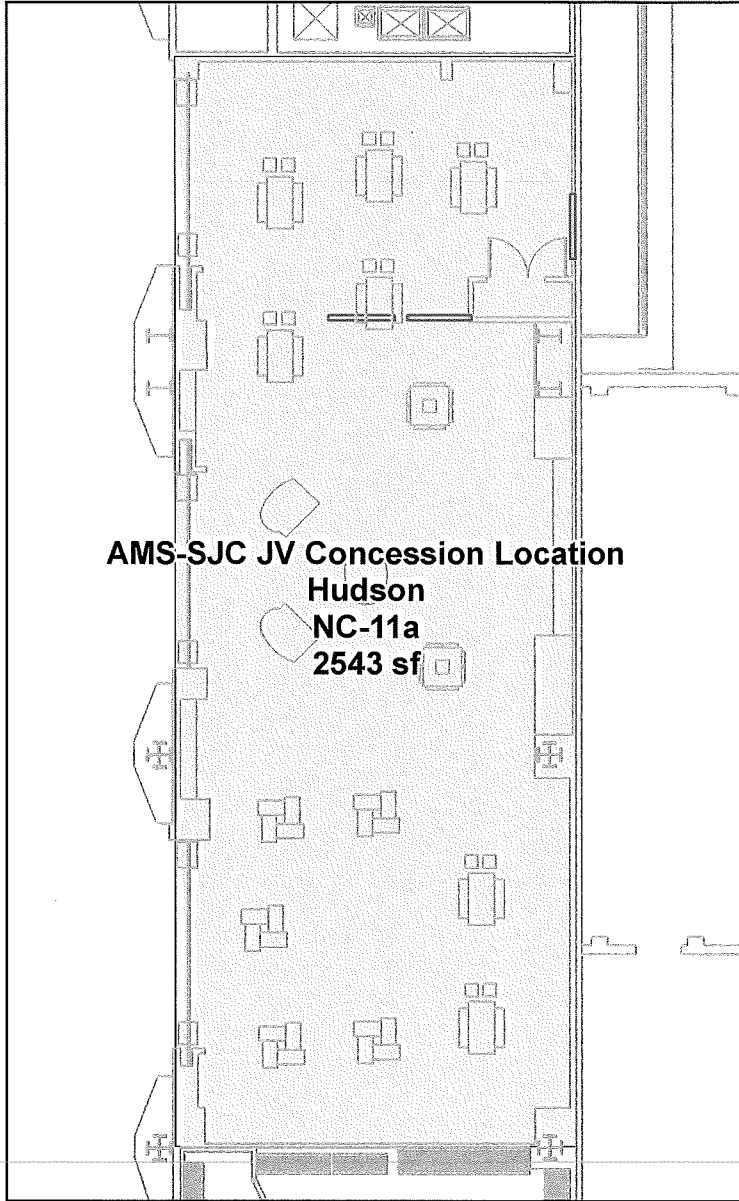


AMS-SJC JV
Terminal B Floor 2
R 20

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SAN JOSE
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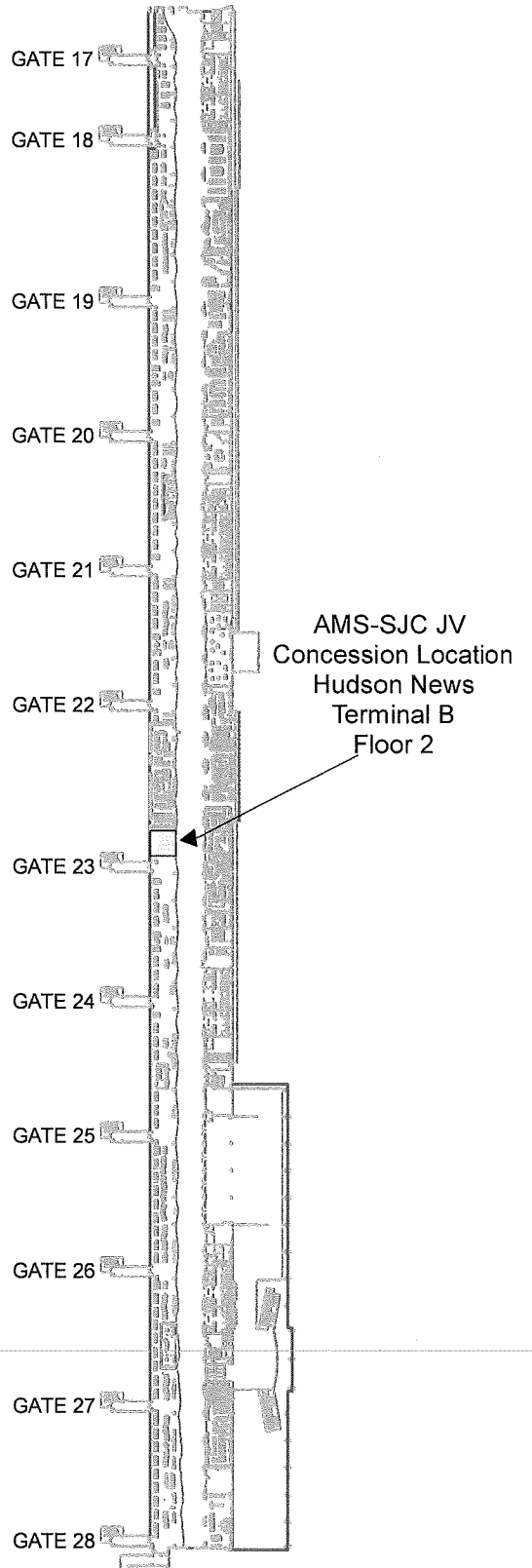
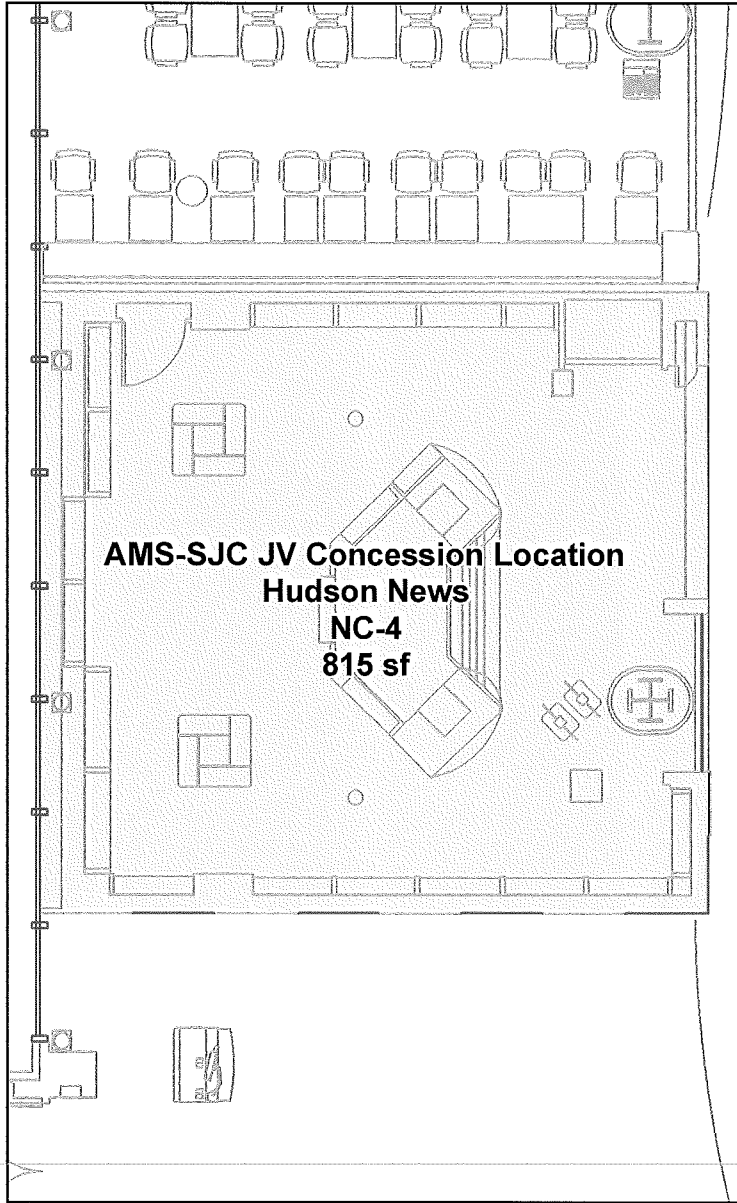
AMS-SJC JV
Terminal B Floor 2
R 21



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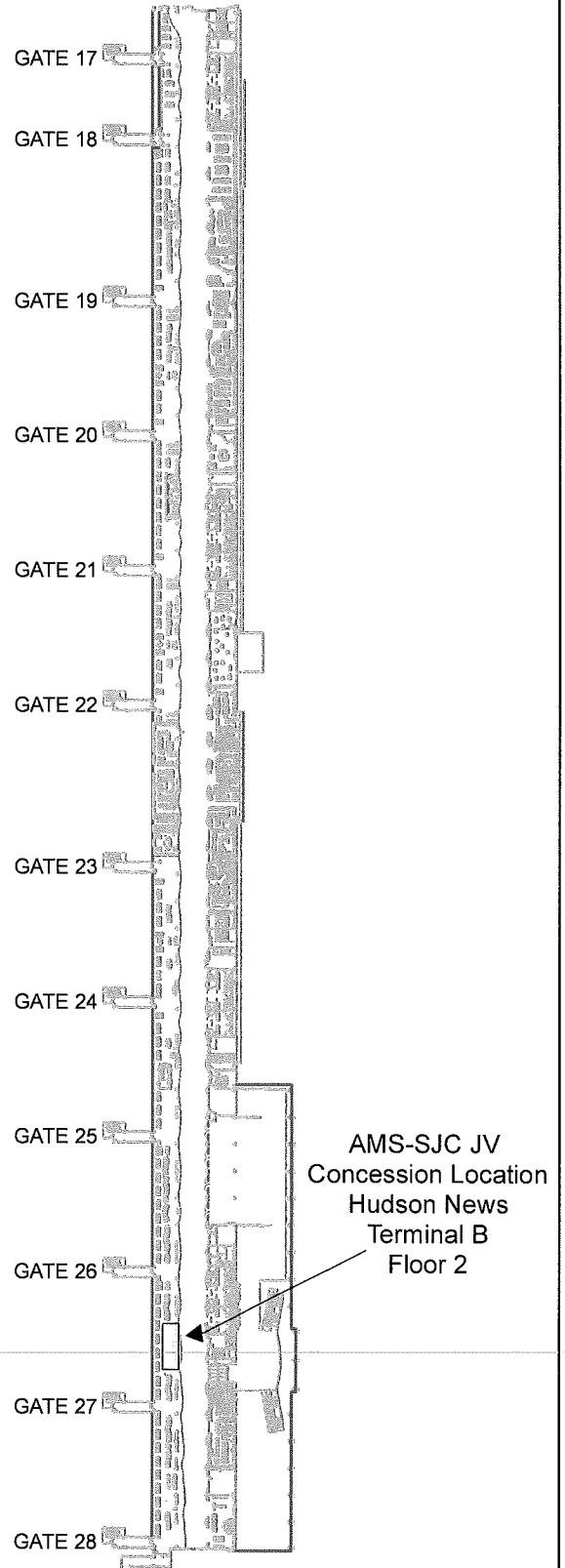
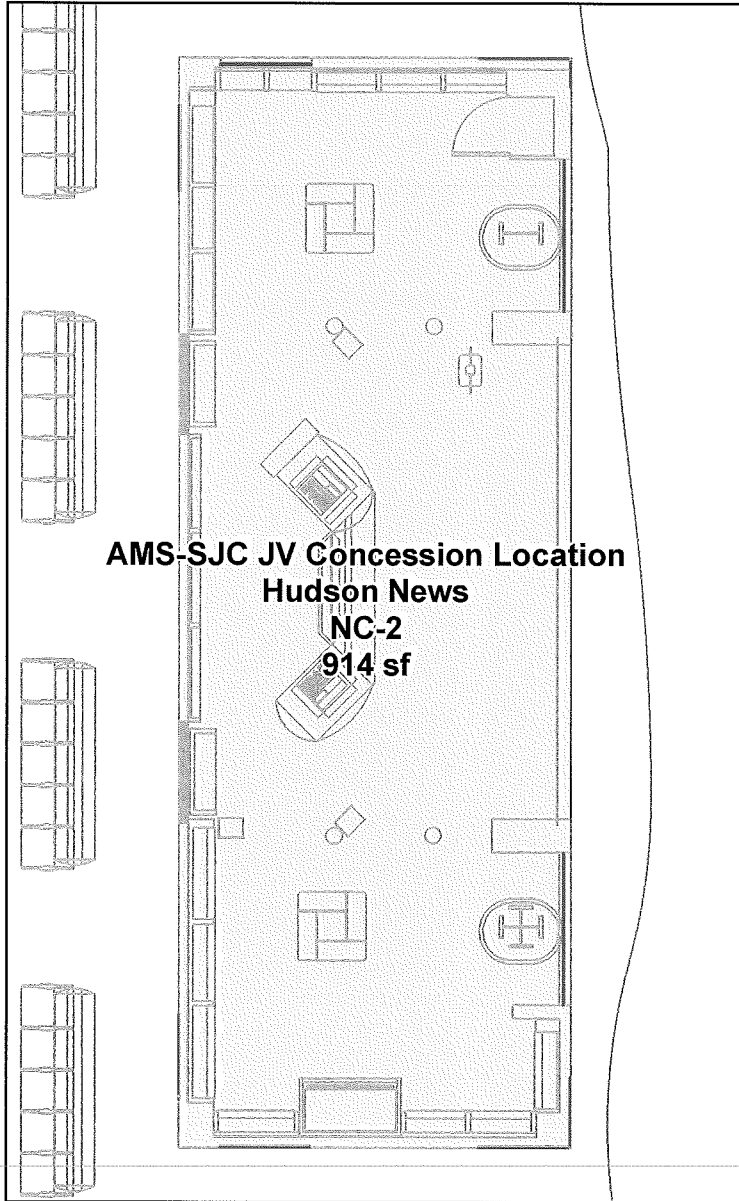


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Terminal B Floor 2
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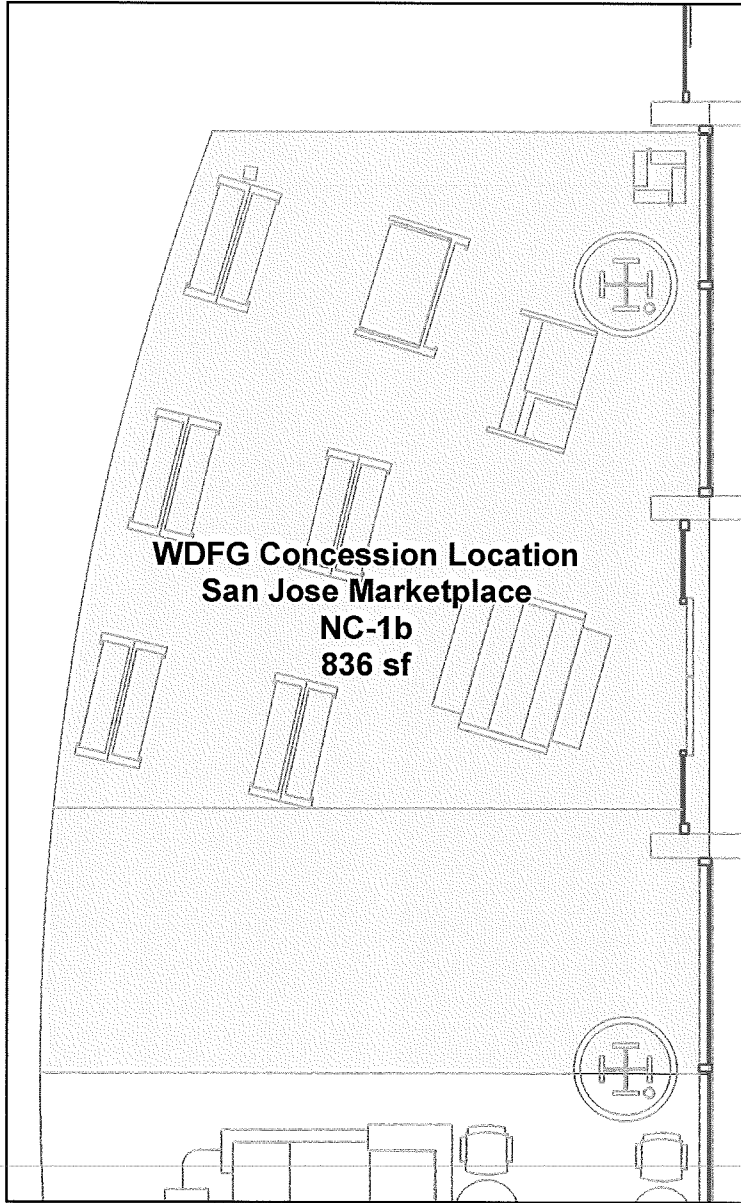
AMS-SJC JV
Terminal B Floor 2
B-23

NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL
AIRPORT

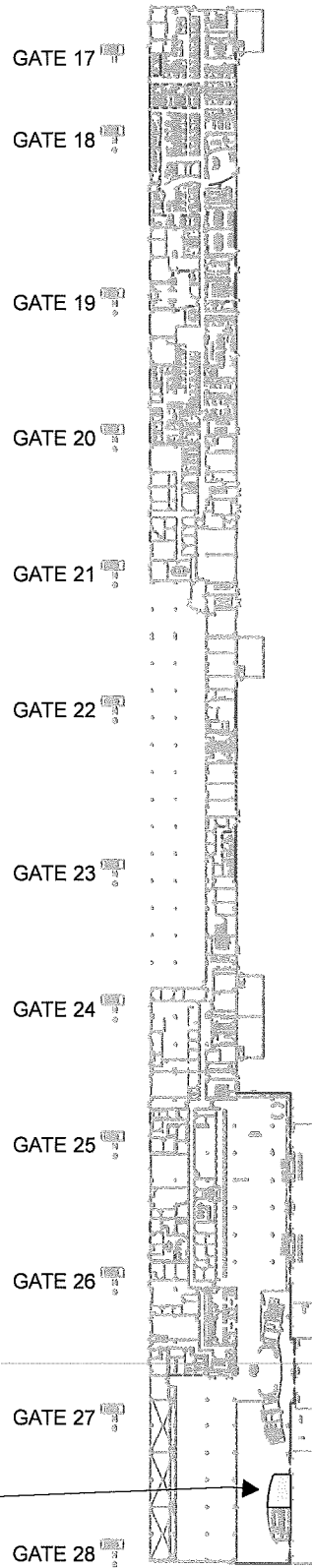


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SIXTH REVISED EXHIBIT B



WDFG
Concession Location
San Jose Marketplace
Terminal B
Floor 1



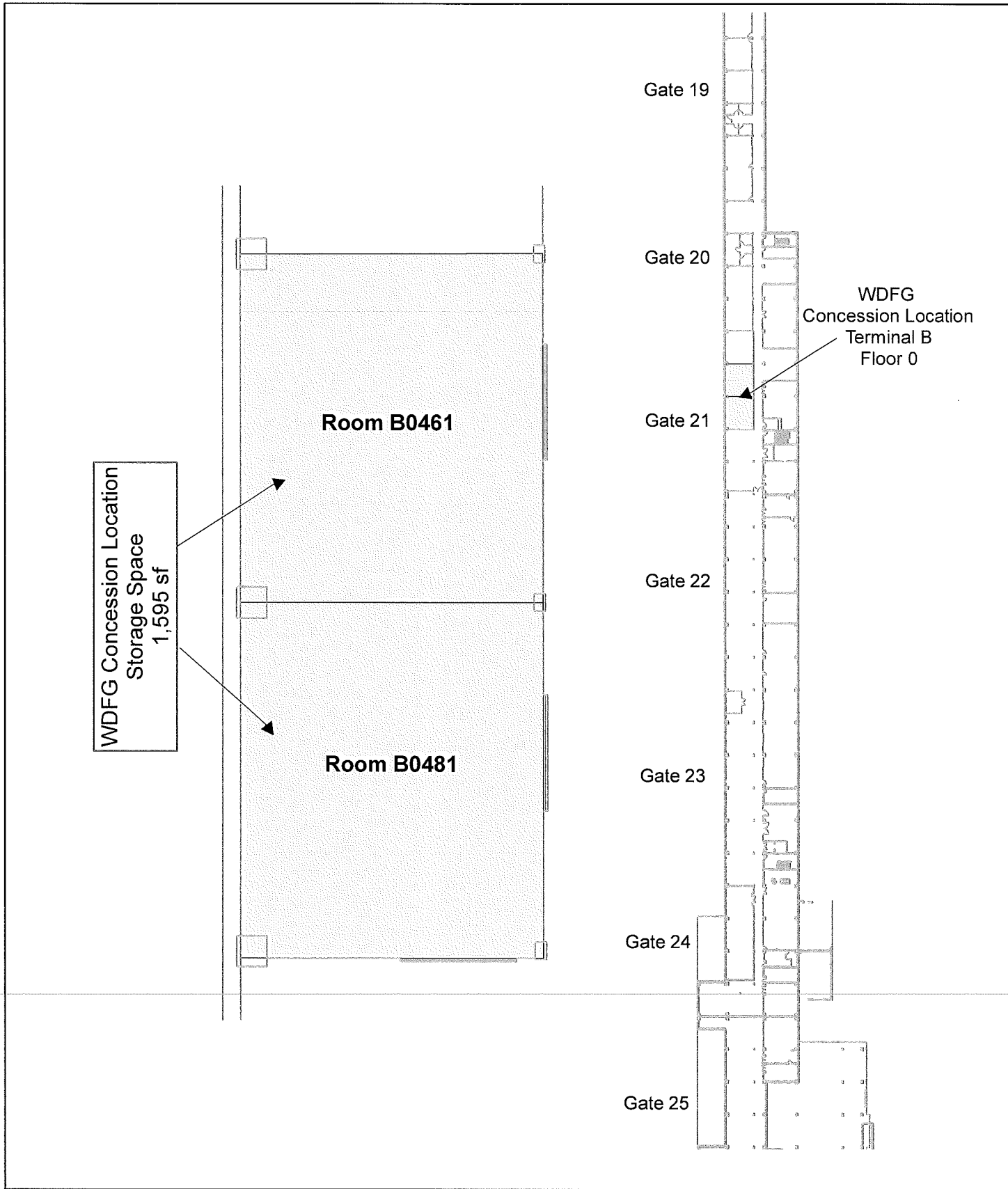
AMS-SJC JV
Terminal B Floor 1
B-24

NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL
AIRPORT



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SIXTH REVISED EXHIBIT B



AMS-SJC JV
Terminal B Floor 0
B.25



**THIRD REVISED EXHIBIT C
TENANT MIX**

AMS SJC JV CONCESSION LOCATIONS

Space Number	Sq Ft	Concept Name	AMS SJC JV Concession Location Expiration Date	Location
TA-15	532	CNN Newsstand	6/30/2024	Post-Security
TA-17	748	Discover San Jose	6/30/2024	Post-Security
TA-20	1,327	Hudson News	6/30/2024	Post-Security
TA-25	337	CNN Newsstand kiosk	6/30/2024	Pre-Security
TA-26	656	Euro Cafe	6/30/2024	Pre-Security
NC-2	914	Hudson News	6/30/2024	Post-Security
NC-4	815	Hudson News	6/30/2024	Post-Security
NC-11a	2,543	Hudson News	6/30/2024	Post-Security
F2111	1,125	DUFY	6/30/2024	Post-Security
A1460	1,602	Duty Free Concession Support Storage Space	6/30/2024	Post-Security
F2261	366	Hudson Grab and Go	6/30/2024	Post-Security
Total Concession Space	10,965			

WDFG CONCESSION LOCATIONS

Space Number	Sq Ft	Concept Name	WDFG Concession Location Expiration Date	Location
TA-+1b	991	Hudson News	6/30/2026	Post-Security
TA-13	536	Fresh Attractions	6/30/2026	Post-Security
TA-19a, b	421	Tech On The Go	6/30/2026	Post-Security
TA-23	853	Authors Bookstore	6/30/2026	Post-Security
NC-6,7	679	Rip Curl	6/30/2026	Post-Security
NC-1b	836	San Jose Market Place	6/30/2026	Pre-Security
NC-8a	393	Tumi	6/30/2026	Post-Security
NC-11	1,329	Sunset News	6/30/2026	Post-Security
B0461, B0481,	1,595	Concession Support Space	6/30/2026	Basement
Total Concession Space	7,633			