

ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Presentation of Non-Exclusive Lease Agreement with St. Charles Downtown Partnership for Placing Murals in Parking Garage Located at 100 Illinois Street
Presenter:	Peter Suhr

Please check appropriate box:

Government Operations	<input checked="" type="checkbox"/>	Government Services 05.23.2011
Planning & Development	<input type="checkbox"/>	City Council

Estimated Cost:	NA	Budgeted:	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
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If NO, please explain how item will be funded:

Executive Summary:

In 2005, the Public Art Committee of the Downtown St. Charles Partnership installed three (3) separate Murals which were installed on the exterior face of a downtown building located on 3rd Street and Cedar Ave. The Murals, which depict classic cars, were originally installed at their present site because of the historic reference and significance to an old auto dealership and showroom. Over the years, the Murals have experienced considerable fading from exposure to sun and weather. Also, in recent years, a fence and dumpster have been installed close to the Murals which block views from the public and expose them to additional damage from garbage removal services and vandalism.

Due to the issues mentioned above, the Downtown St. Charles Partnership is requesting to move the Auto Murals from their current location to the 1st Street Parking Deck. The Auto Murals would be installed on levels 2, 3 and 4, attached to the wall adjacent the south stairwell and visible to cars traveling up the circular ramp. Relocating them to the Parking Deck would provide shelter from weather exposure and the monochrome gray of the Parking Structure could benefit aesthetically from the color and interest added by the Murals. Please find attached a rendering of the Auto Murals as they would appear in the Parking Deck.

Attachments: (please list)

**Non-Exclusive License Agreement
Auto Mural Rendering**

Recommendation / Suggested Action (briefly explain):

Recommend Approval of the Agreement

<i>For office use only:</i>	<i>Agenda Item Number: 4.a</i>
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NON-EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, by and between the City of St. Charles, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (the "Licensor"), and The Downtown St. Charles Partnership, Inc., an Illinois not-for-profit corporation (the "Licensee");

WITNESSETH

WHEREAS, the Licensor is the owner of a parking garage located at 100 Illinois Street, St. Charles, Illinois (the "Property"); and,

WHEREAS, the Licensee is an organization dedicated to the preservation and revitalization of the historic downtown area of the City of St. Charles; and,

WHEREAS, one of the methods that the Licensee utilizes in order to accomplish its purpose is the public display of art work; and,

WHEREAS, the Licensee is the owner of three (3) auto murals, each being a painted fabric canvass approximately 7'-3"(H) X 9'-10"(W) in size and mounted on a wood frame, as depicted on Exhibit "A" attached hereto and incorporated herein (the "Auto Murals"), which it desires to publicly display on a non-permanent basis; and

WHEREAS, Licensor is desirous of granting a license to Licensee, and Licensee is desirous of being granted a license from Licensor, for Licensee to display the Auto Murals on a designated portion of the Property, pursuant to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the terms and conditions hereinafter contained, the adequacy and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Incorporation of Recitals. The preambles set forth hereinabove are incorporated herein as substantive provisions of this Agreement as if fully set out in this Section 1.

Section 2. Grant. Licensor agrees to grant, and does hereby grant, to Licensee, a license to use those portions of the Property depicted on Exhibit "B", attached hereto and incorporated herein, for the display of the Auto Murals (the "License Area"). The license for display of the Auto Murals shall include all protective coatings or coverings on the murals, as well as all associated mounting hardware required for such display.

Section 3. Non-Exclusive Grant. The privilege granted herein is not exclusive and Licensor reserves the right at any time to grant other or similar privileges to use or occupy the Property and/or the License Area.

Section 4. Liens. Licensee, its agents, independent contractors and/or employees, shall not suffer to permit any mechanic's lien, judgment lien or other lien of any nature whatsoever to attach or be against the Property or the License Area, or any portion thereof. The Licensee shall promptly pay all contractors, sub-contractors or material men providing work or materials for the Improvements and shall not suffer or permit the filing of any mechanics lien on behalf of said parties against the Licensor with respect to the Property or the License Area. Should any such lien be filed, the Licensor shall have the right to contest same.

Section 5. Display of Auto Murals. The Auto Murals shall be installed in the locations depicted on Exhibit "B" previously attached hereto. The Licensee shall be responsible for transporting the Auto Murals to the Property. The Auto Murals shall be placed so as not to obstruct ingress and egress between the stairs, elevator and parking area of the Property. The Licensee shall be solely responsible for the installation, maintenance and repair of the Auto

Murals. Licensee shall install, maintain, and repair the Auto Murals in good condition and in strict compliance with any applicable federal, state and local laws, ordinances, orders, regulations and administrative rulings.

Upon expiration or other termination of this Agreement, Licensee shall remove the Auto Murals from the License Area and restore the License Area to the condition that it was in at the time of installation.

Section 6. Representations and Warranties Regarding Copyright. Licensee warrants that it has all right, title and ownership interest in the Auto Murals, and that the Auto Murals are not subject to any ownership, lien, encumbrance, copyright infringement or other claim by any other person or entity. Licensee agrees that it shall not take any action to limit or affect this warranty during the term of this Agreement unless it obtains the advance written agreement of the Licensor.

Section 7. Access. Licensee, its officers, agents and employees, shall at all times have the right of access to the License Area.

Section 8. Assignment. Licensee shall not assign or otherwise transfer its right in whole or in part under this Agreement without the express written consent of Licensor.

Section 9. Insurance/Waiver of Liability. It shall be Licensee's responsibility to maintain insurance on the Auto Murals. Licensee acknowledges and agrees that the Licensor shall not be liable for any loss, theft of or damage to the Auto Murals and/or the related materials associated with the display of the Auto Murals. LICENSEE HEREBY RELEASES THE LICENSOR, ITS OFFICERS, CONTRACTORS, AGENTS AND/OR EMPLOYEES, FROM, AND WAIVES ANY AND ALL RIGHTS TO ANY AND ALL CLAIMS FOR DAMAGES, OR OTHERWISE, LICENSEE MAY HAVE WITH REGARD TO

LOST, STOLEN AND/OR DAMAGED AUTO MURALS AND/OR RELATED MATERIALS ASSOCIATED WITH THE DISPLAY OF THE AUTO MURALS.

This Section shall survive termination of this Agreement.

Section 10. Hold Harmless and Indemnification. Licensee hereby indemnifies, releases and holds Licensor harmless, and agrees to defend Licensor from any and all liability, causes of action, suits, damages or demands of whatever nature arising out of the conduct of Licensee, its officers, contractors, agents and/or employees under the exercise of the privileges herein granted. This indemnity is intended as a full and complete general indemnity and shall include Licensee's responsibility for any attorney's fees incurred by Licensor in defense of any claims or actions brought by third parties against Licensor as a result of the privileges granted to Licensee herein.

This Section shall survive termination of this Agreement.

Section 11. Financial Responsibility/No Third-Party Beneficiaries. Licensor shall have no financial responsibility or obligation to Licensee or any third party as a result of Licensor's granting the privileges described herein to Licensee. This Agreement creates no rights, title or interest in any person or entity whatsoever (whether under a third party beneficiary theory or otherwise) other than the Licensee and the Licensor.

Section 12. No Lease or Easement. Licensee expressly acknowledges that nothing herein is intended to create a corporal or possessory interest of Licensee and, accordingly, this Agreement shall not be construed as a lease, easement or any other interest running with the land. Neither this Agreement nor any summary or memorandum thereof shall be recorded with any public authority.

Section 13. Relationship of the Parties. Under no circumstances shall this Agreement be construed to create a relationship of agency, partnership, joint venture, or employment between the Licensor and the Licensee.

Section 14. Waste. In the exercise of the privileges herein granted, Licensee will conduct all of its operations in a careful and proper manner, and will not commit any waste or damage to the Property or License Area or permit any nuisance upon or at the Property or the License Area.

Section 15. Term/Termination. This Agreement shall remain in effect until _____, 2012; provided, however, that this Agreement shall automatically renew for successive one (1) year periods unless one of the parties hereto provides a written notice of termination to the other party not less than thirty (30) days prior to the expiration of the then-current term. If the Licensee breaches any of the provisions of this Agreement, the Licensor may declare this Agreement terminated upon thirty (30) days written notice to the Licensee. In addition, either party may, for any reason and in its sole discretion, declare this Agreement terminated upon ninety (90) days written notice to the other party.

Section 16. Damage and Destruction. Licensor and its officers, contractors, agents and/or employees shall not be liable or responsible to Licensee for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, or court order, or for any damage or inconvenience which may arise from this Agreement.

Licensee and its officers, contractors, agents and/or employees shall not be liable or responsible to Licensor for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, or for any

damage or inconvenience which may arise from this Agreement, other than that caused by its own officers, contractors, agents and/or employees.

Section 17. Miscellaneous. This Agreement sets forth the entire understanding of the parties, and may only be amended, modified or terminated by a written instrument signed by the parties unless herein otherwise provided. Either party's waiver of any breach of failure to enforce any of the terms or conditions of this Agreement, at any time, shall not in any way affect, limit or waive that party's right thereafter to enforce or compel strict compliance with every term and condition hereof.

Section 18. Effective Date. This Agreement shall become effective upon execution by both parties hereto.

Section 19. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois.

Section 20. Notices. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. Licensor at:

The Downtown St. Charles Partnership, Inc.
213 Walnut Street
St. Charles, Illinois 60174
Attn: Executive Director

B. Licensee at:

City of St. Charles
2 E. Main Street
St. Charles, Illinois 60174
Attn: Director of Public Works

C. To such other person or place with either party hereto by its written notice shall designate for notice to it from the other party hereto.

Section 21. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first above written.

CITY OF ST. CHARLES

By: _____
Mayor

ATTEST:

City Clerk

THE DOWNTOWN ST. CHARLES PARTNERSHIP,
INC.

By: _____

ATTEST:

EXHIBIT "A"

DEPICTION OF AUTO MURALS

New Place to Park the Cars

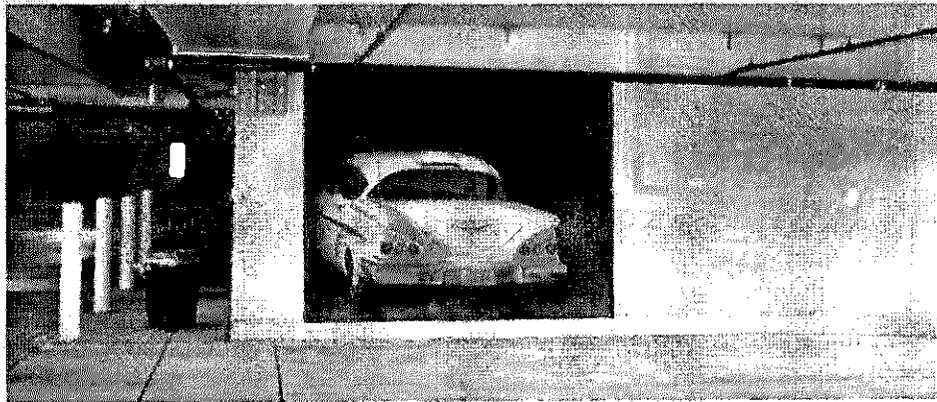
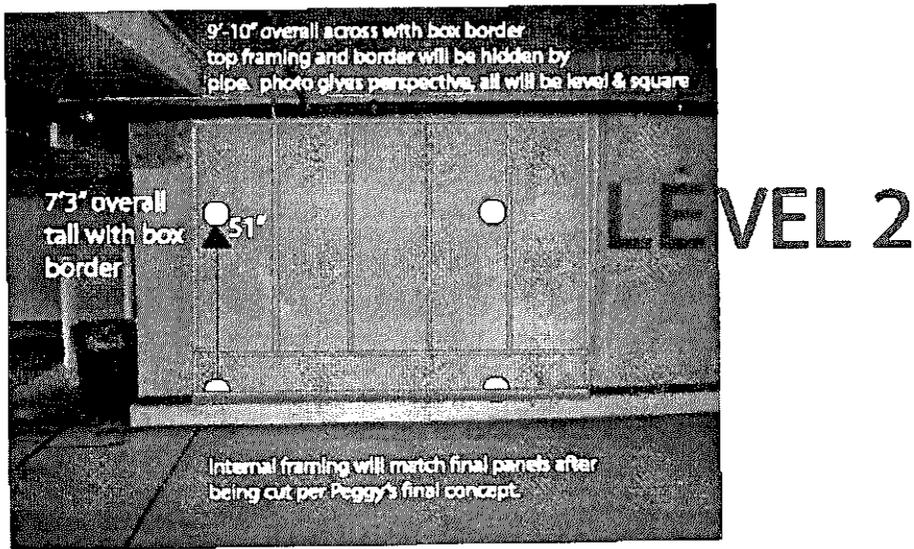


EXHIBIT "B"

DEPICTION OF LICENSED AREA

(Auto Murals are located on Level 2, Level 3 & Level 4. At each level, one (1) Auto Mural is mounted to the exterior face of the West wall of the South Stairwell. Each Auto Mural will be facing West towards the vehicle ramp.)

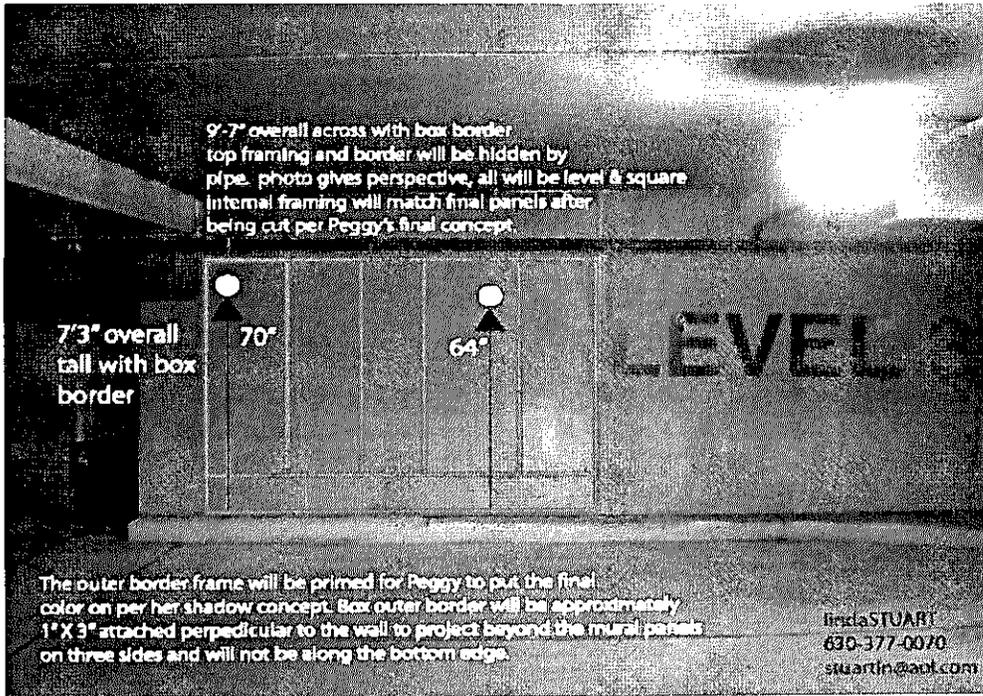
Downtown Partnership
Parking Deck framing concept



Bottom framing will have to be cut for the pods at the floor
The outer border frame will be primed for Peggy to put the final
color on per her shadow concept. Box outer border will be approximately
1" X 3" attached perpendicular to the wall to project beyond the mural panels
on three sides and will not be along the bottom edge.

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630-377-0070
stuartin@aol.com

Downtown Partnership
Parking Deck framing concept



Downtown Partnership
Parking Deck framing concept

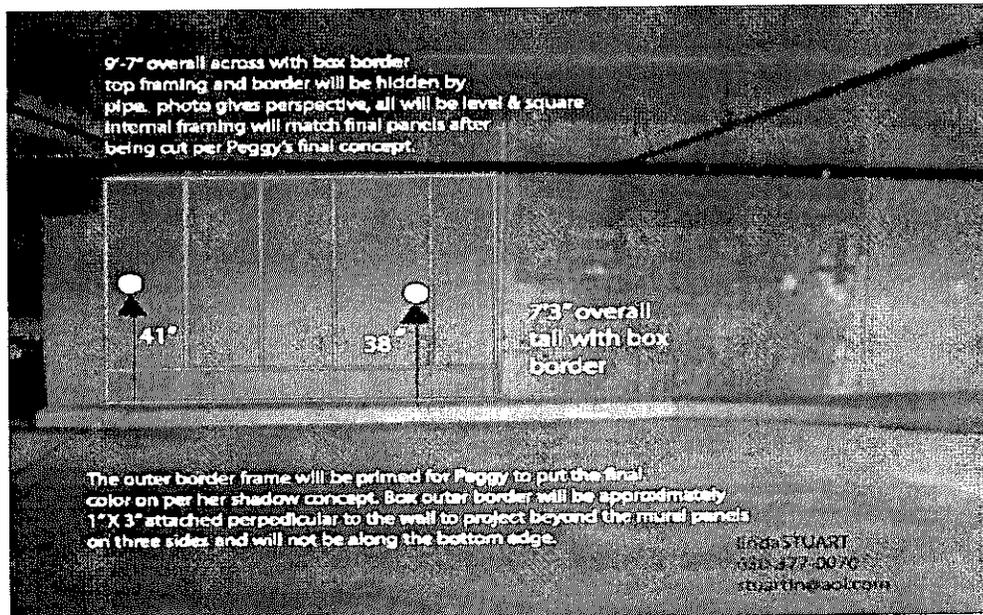
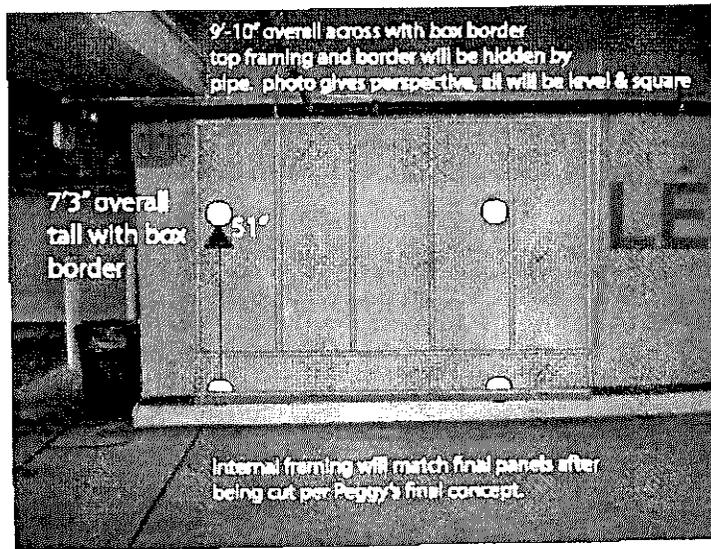


EXHIBIT "A"

DEPICTION OF AUTO MURALS

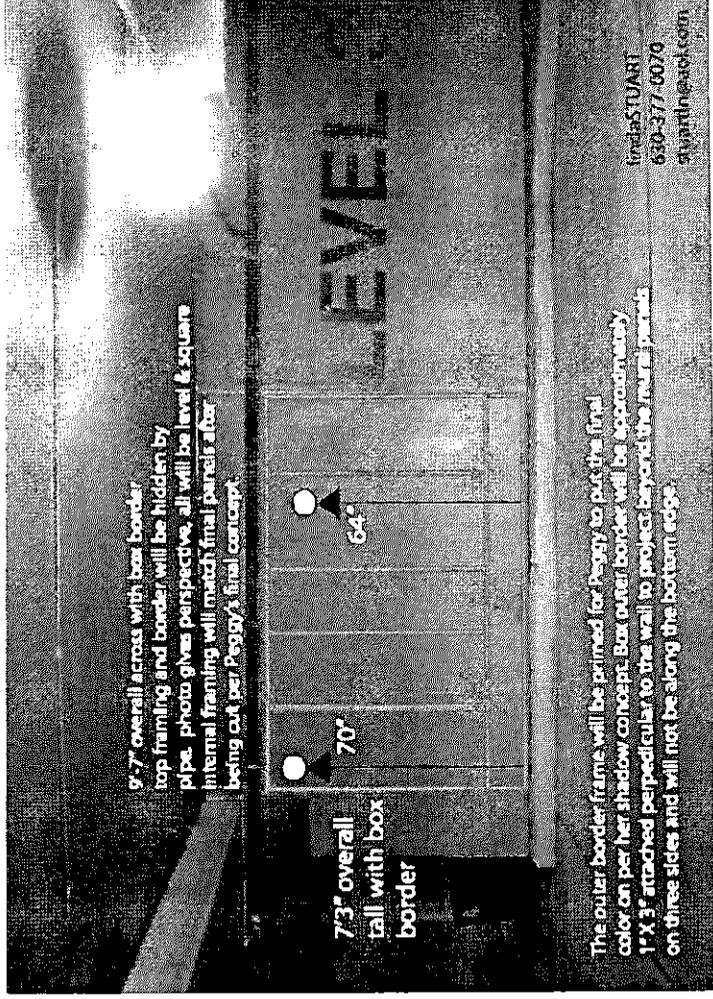
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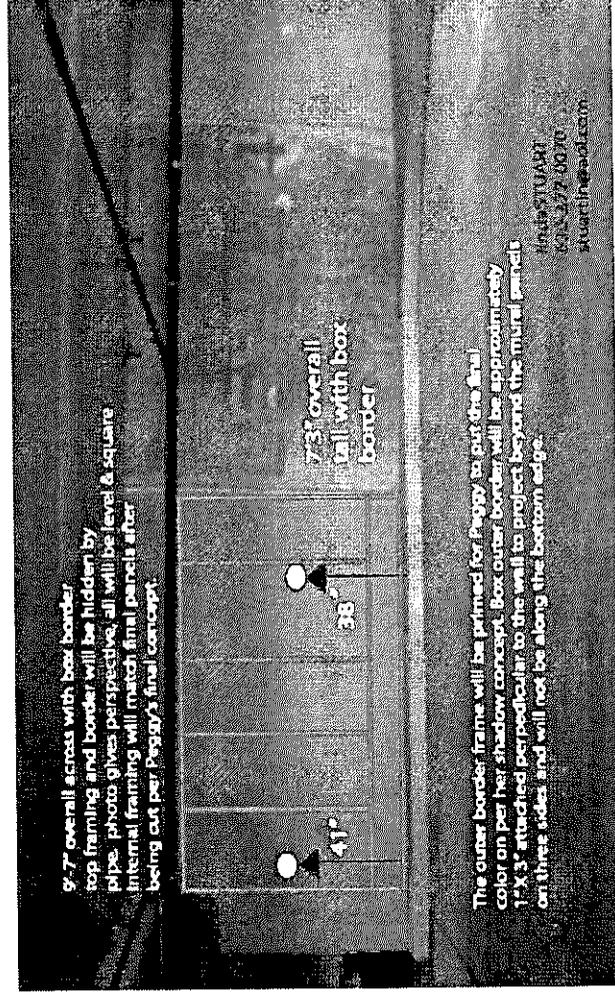
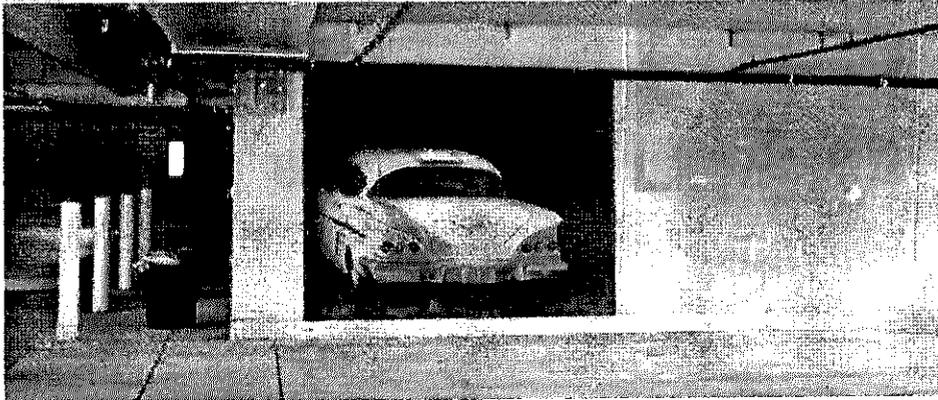


EXHIBIT "B"

DEPICTION OF LICENSED AREA

New Place to Park the Cars



New Place to Park the Cars

