
Staff Summary Report**Council Meeting Date:** 05/14/09**Agenda Item Number:** 17

SUBJECT: This is the introduction and first public hearing to amend Chapter 32 of the Tempe City Code, relating to towing by amending Sections 32-1, 32-2, 32-4, 32-5 and 32-6 relating to towing fees. The second public hearing is set for May 28, 2009.

DOCUMENT NAME: 20090514pdsam01 **TCC 32 – TOWING FROM PRIVATE PROPERTY (0503-32)** Ordinance No. 2009.11

SUPPORTING DOCS: No

COMMENTS: The ordinance changes policies and procedures regarding the release of vehicles, signage required by towing companies.

PREPARED BY: Shelly A. Macdonald, Management Assistant II **EXT. 8820**

REVIEWED BY: Cindy Clore, Paralegal **EXT. 8646**

LEGAL REVIEW BY: Bill Amato, Police Legal Advisor **EXT. 8610**

DEPARTMENT APPROVAL: Tom Ryff, Chief of Police **EXT. 8214**

FISCAL NOTE: N/A

RECOMMENDATION: Staff recommends adoption of Ordinance No. 2009.11.

ADDITIONAL INFO: N/A

ORDINANCE NO. 2009.11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 32, TEMPE CITY CODE, RELATING TO TOWING FROM PRIVATE PROPERTY BY AMENDING SECTIONS 32-1, 32-2, 32-4, 32-5 AND 32-6; AND ADDING NEW SECTION 32-9 RELATING TO APPLICATION OF LAW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 32-1 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-1. Definition.

For the purposes of this chapter, "private towing carrier" means any person who commercially offers services to tow, transport, IMMOBILIZE or impound motor vehicles from private property without the prior permission of the owner or operator of such vehicle by means or use of a truck or other vehicle OR DEVICE designed for or adopted to that purpose.

Section 2. That Section 32-2 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-2. Maximum charges and fees; release of vehicles.

(a) No private towing carrier shall hold or attempt to hold any vehicle towed from any location within the city without the consent of the owner or operator thereof as security for accrued towing and storage charges. Any such vehicle shall be immediately released, regardless of impound location, to the owner or operator thereof upon the production of proof of ownership or agency, as hereinafter defined.

(b) For the purposes of subsection (a), proof of ownership or agency shall be deemed proven when the claimant displays an actual or photocopy of a vehicle registration or title, whether current or not, OR A CURRENT RENTAL OR LEASE AGREEMENT for the impounded vehicle and one of the following is provided:

- (1) The claimant of the vehicle displays a driver's license or any government piece of photographic identification, whether current or not, issued by any state or other sovereign empowered to issue such a license or identification, such license indicating the same last name as that in which the vehicle is registered; or
- (2) The claimant displays any piece of photographic identification ~~and written authorization from the owner, which includes a copy of any government piece~~

of photographic ISSUED BY ANY STATE OR OTHER SOVEREIGN EMPOWERED TO ISSUE SUCH A LICENSE OR identification of the owner and the keys to the impounded vehicle.

(C) THE PRIVATE TOWING CARRIER, ITS AGENTS AND EMPLOYEES SHALL ALLOW THE CLAIMANT IMMEDIATELY UPON REQUEST TO RETRIEVE ANY OF THE DOCUMENTATION LISTED IN SUBSECTION (B) FROM THE IMPOUNDED VEHICLE.

(e D) Pursuant to A.R.S. § 9-499.05 and this chapter, private towing carriers within this city shall be subject to such maximum charges and fees as the council shall establish by resolution (see Appendix A) at least every five (5) years. A private towing carrier is subject to such maximum charges and fees and other regulations established in this section if the vehicle being towed, transported, IMMOBILIZED or impounded is towed from private property located within the corporate limits of this city. NO FEES OTHER THAN THOSE SPECIFIED IN APPENDIX A SHALL BE PERMITTED.

(d E) A private towing carrier may require a claimant to provide a current address and telephone number to assist such private towing carrier's billing and collection process. A PRIVATE TOWING CARRIER SHALL PROVIDE THE CLAIMANT WITH INFORMATION SHOWING THE PRIVATE TOWING CARRIER'S BILLING AND COLLECTION PROCEDURES. THIS DOCUMENT SHALL CONTAIN NO PROMISSORY NOTE LANGUAGE. No private towing carrier may require as a condition precedent to the release of any vehicle documentation or proof in excess of or different than that described in subsections (b) and (e) (F) of this section.

(e F) A private towing carrier shall MAY require any claimant to sign a receipt for the vehicle claimed; however, such receipt shall contain no language other than the following:

- (1) The name and address of the claimant;
- (2) The name, address and letterhead of the private towing carrier;
- (3) The date and time at which the vehicle was claimed;
- (4) A description, including the license number, of the claimed vehicle; and
- (5) A statement of the unpaid balance, if any.

~~(f) A private towing carrier shall provide the claimant with a copy of the receipt and the private towing carrier's billing and collection procedures.~~

(g) Notwithstanding any of the foregoing provisions, no private towing carrier shall release any vehicle after having been advised by any law enforcement agency that such vehicle has been reported as stolen.

(H) A PRIVATE TOWING CARRIER SHALL RELEASE AN IMPOUNDED VEHICLE FROM THE LOCATION WHERE THE CLAIMANT IS DIRECTED BY SIGNS,

PURSUANT TO SECTION 32-6, TO RETRIEVE THE VEHICLE. THE VEHICLE SHALL BE RELEASED AT (1) THE TIME THE TOWING AND IMPOUND FEE IS PAID OR (2) PROOF OF OWNERSHIP IS PROVIDED PURSUANT TO SUBSECTION (A). A PRIVATE TOWING CARRIER SHALL BE DEEMED TO BE OPERATING BUSINESS AND REQUIRED TO RELEASE VEHICLES IF THEY ARE TOWING OR IMPOUNDING VEHICLES.

(I) THE PRIVATE TOWING CARRIER SHALL POST A SIGN WITH A MINIMUM ONE INCH LETTERING WITH THE MAXIMUM CHARGES AND FEES AS ESTABLISHED BY COUNCIL RESOLUTION (SEE APPENDIX A) AT THE MAIN BUSINESS ENTRY OF THE IMPOUND LOCATION.

(J) A PRIVATE TOWING CARRIER SHALL POST SIGNS VISIBLE TO CUSTOMERS AT THE LOCATION OF PAYMENT NO SMALLER THAN TWELVE (12) INCHES BY EIGHTEEN (18) INCHES AT THEIR PLACE OF BUSINESS WITH THE FOLLOWING INFORMATION:

- (1) TEMPE CITY CODE SECTIONS 32-1 THROUGH 32-9;
- (2) A LIST OF SPECIFIC FEES AUTHORIZED BY TEMPE CITY CODE, INCLUDING TOWING FEES, STORAGE FEES AND ANY OTHER CHARGES THAT COULD RESULT FROM THE DISPOSITION OF THE VEHICLE; AND
- (3) NAME OF PRIVATE TOWING CARRIER, RESPONSIBLE PARTY AND BUSINESS TELEPHONE NUMBER.

(K) A PRIVATE TOWING CARRIER SHALL ACCEPT CREDIT AND DEBIT CARD PAYMENTS FOR ALL LISTED FEES. THERE SHALL BE NO ADDITIONAL CHARGES FOR SUCH PAYMENT METHODS.

Section 3. That Section 32-4 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-4. Notice to police.

No private towing carrier shall tow, IMMOBILIZE or transport any vehicle without the express permission of the owner thereof, unless the private towing carrier has notified the city police department ~~within one hour after~~ PRIOR TO towing, IMMOBILIZING or transporting the vehicle and provided the following information:

- (1) The name and address of the owner of the vehicle, if known;
- (2) The vehicle license number, vehicle identification number (VIN) and description;
- (3) The reason the vehicle was moved OR IMMOBILIZED without the owner's permission;

- (4) The location where the vehicle was IMMOBILIZED OR taken; and
- (5) The name, ~~and address~~ AND DRIVERS LICENSE NUMBER of the person ~~or~~ THAT TOWED OR IMMOBILIZED THE VEHICLE AND THE NAME AND ADDRESS OF THE company that towed, IMMOBILIZED or transported the vehicle.

Section 4. That Section 32-5 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-5. Authority to tow.

(A) It shall be unlawful for a private towing carrier to tow or transport a motor vehicle from private property OR IMMOBILIZE A VEHICLE ON PRIVATE PROPERTY without the permission of the owner or operator of the vehicle unless such private towing carrier receives a request from a law enforcement agency or the express written permission from the owner of the property or the agent of the owner, who has complied with requirements of this section. The owner or the owner's agent shall either sign each towing order or authorize the tow by a written contract which is valid for a specific length of time NOT TO EXCEED ONE YEAR. The private towing carrier may not act as the agent of the owner. A copy of the written contract shall be made readily available to the law enforcement agency upon request and include the owner's or owner's agent name and current telephone numbers.

(B) A PRIVATE TOWING CARRIER SHALL ONLY BE AUTHORIZED TO TOW OR TRANSPORT A MOTOR VEHICLE FROM THE TOW LOCATION TO THE CARRIER'S DESIGNATED LOT.

Section 5. That Section 32-6 of the Tempe City Code is hereby amended to read as follows:

Sec. 32-6. Notice to public of right to tow.

(a) The owner or person in possession of any private parking area shall be deemed to have given consent to unrestricted parking by the general public in such parking area unless such parking area is posted with signs as prescribed by this section which are clearly visible and readable from a ~~distance of fifty (50) feet away~~ ANY POINT WITHIN THE PARKING AREA and at all points of entry. The owner of a subdivision or area containing private streets may prohibit parking on one or both sides of the street if signs as prescribed by this section are posted at each entrance to the subdivision or area and near every intersecting street at a location where the sign is visible and readable upon entry to any such street from the intersecting street. Such signs shall contain, at a minimum, the following information:

- (1) Restrictions on parking;
- (2) Disposition of vehicles found in violation of parking restrictions;
- (3) Maximum cost to the violator, including storage fees and any other charges that could result from the disposition of his vehicle parked in violation of parking restrictions;

(4) Telephone number and address where the violator can locate RETRIEVE his vehicle; and

(5) Each sign shall state, "Tempe City Code, Section 32-6."

(b) Signs AT THE ENTRANCE OF THE PARKING AREA will be a minimum of twelve (12) inches by eighteen (18) inches in size and will be mounted at a minimum height of ~~five~~ (5) THREE (3) feet and a maximum height of ten (10) feet above the ground. SIGNS WITHIN THE PARKING AREA WILL BE A MINIMUM OF SIX (6) INCHES BY NINE (9) INCHES IN SIZE AND MUST BE VISIBLE FROM ANY LOCATION WITHIN THE PARKING AREA. ALL SIGNS PURSUANT TO THIS SUBSECTION SHALL CONSIST OF A WHITE BACKGROUND WITH RED LETTERING.

(c) No private towing carrier shall tow a vehicle from a private parking area OR IMMOBILIZE THE VEHICLE unless the signs CONFORM WITH AND are posted as required by this section ~~and conform with subsections (a), (b) and (e).~~

(d) This section shall not apply to any vehicle left in a private parking area for over seventy-two (72) consecutive hours. The owner or person in possession of any private parking area in which a vehicle has been left for over seventy-two (72) consecutive hours shall comply with § 32-4 provisions of this chapter before towing OR IMMOBILIZING such vehicle.

~~(e) The private towing carrier shall post a sign with a minimum one inch lettering with the maximum charges and fees as established by council resolution (see Appendix A) at the main business entry of the impound location.~~

Section 6. That Chapter 32 of the Tempe City Code is hereby amended by adding new Section 32-9 entitled "Application of Law" and renumbering Section 32-9 entitled "Violation; Penalties" to Section 32-10.

SEC. 32-9. APPLICATION OF LAW.

A PRIVATE TOWING CARRIER IS SUBJECT TO THE PROVISIONS OF THIS CHAPTER IF IT TOWS, IMMOBILIZES OR TRANSPORTS A VEHICLE WITHIN THE CITY LIMITS REGARDLESS OF THE IMPOUND LOCATION.

Section 7. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2009.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

BRIAN A. HATCH PLLC
ATTORNEY AT LAW

add'l info
AGENDA ITEM 17
DATE 5-14-09

May 8, 2009

Sent via Hand Delivery

Mayor, Vice Mayor and City Council Members
City of Tempe
31 E. Fifth St.
Tempe, AZ 85281

Re: Ordinance No. 2009.11, Proposed Amendments to Tempe City Code,
Chapter 32, Relating to Towing From Private Property

Ladies and Gentlemen:

I am writing this letter on behalf of SWAT Towing, E&R Towing, Diamondback Recovery and Daryl's Towing, and the many Tempe property owners with whom my clients contract for towing and impound services. These are the stakeholders who will suffer the greatest impact if the proposed amendments to the Code are approved. The ordinance generally addresses the impounding of vehicles from private property which have been illegally parked. Most of the proposed amendments to the current ordinance are designed to impose the force of law for the convenience of those who have parked illegally, at the expense of the various Tempe merchants and property owners.

My clients have participated in a number of meetings with Bill Amato and other city staff in order to provide input and help with making reasonable revisions to the current towing ordinance. Such input, however, has apparently fallen of deaf ears. Therefore, I have set out below some of the problems and concerns with the amendments proposed.

Section 32-2(b) would allow for the use of a rental contract as proof of ownership to reclaim a vehicle. Such a provision is not reasonable due to the fact that in this situation, many rental companies require the vehicle be returned to the company and not to the renter. Most rental contracts provide that when a vehicle is used in any illegal manner, the contract is void. (Please see rental contract excerpts attached as Exhibits 1 and 2). Such a provision also intrudes on the contract rights of the rental company in that Arizona law provides that the owner of the vehicle is responsible for the towing charges and fees. (Please see A.R.S. § 28-4837(B)).

Section 32-2(c) would allow a vehicle claimant to enter the towing company's premises and enter a vehicle to retrieve documentation of ownership. Please note that the claimant need not show any evidence of ownership or other interest in such vehicle at all. Such a situation creates immediate liability, insurance and safety issues for the towing company and its employees. A towing yard is generally not set up for the convenience of a retail-type patron and can be a difficult place to navigate. Similarly, there is no practical way to exercise control over the claimant's access to the claimed vehicle, or

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indeed to any vehicle in the yard. Likewise, the towing company has no practical control over the items which a claimant might remove from any vehicle – which could easily include a weapon.

Section 32-2(h) would, in part, impose an hours-of-operation requirement, which is not within the City's authority to regulate.

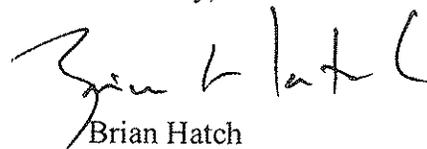
Section 32-2(k) would impose a credit/debit card method of payment requirement, which is not within the City's authority to regulate.

Section 32-4 includes amendments which would change the current requirement of notifying the police department within one hour after the tow to a requirement of notification prior to such towing. Such a requirement is impractical in that it will necessarily implicate a number of false notifications – in the time between the notification call and the tow there will always be a number of vehicles removed by owners. More importantly, such a requirement creates immediate liability and safety issues for the towing company and its employees. A tow driver in such a situation must wait on hold during the notification, and is therefore more likely to be subject to a violent or hostile situation involving the vehicle owner. Police personnel will necessarily be dispatched to many of these situations, wasting everyone's resources.

Section 32-5 includes amendments which would limit the term of a contract between the property owner and the towing company to no longer than one year. Such a regulation intrudes into private contract rights and is not within the City's authority to regulate.

At this time we would respectfully request that the amendments proposed as Ordinance No. 2009.11 be pulled from May 14th City Council meeting agenda for submission to a new *ad hoc* committee to be created for resolution of these and related issues.

Sincerely,



Brian Hatch

cc: SWAT Towing, E&R Towing,
Diamondback Recovery, Daryl's Towing

EXHIBIT 1

contingent, available to You (or to any Authorized Driver while operating the Vehicle) sufficient to meet applicable minimum financial responsibility law requirements then, **EXCEPT AS TO RENTALS OCCURRING IN CALIFORNIA, LOUISIANA, OR GEORGIA, WHERE NO PROTECTION IS PROVIDED**, National shall provide protection against liability for bodily injury, death or property damage to others up to the minimum financial responsibility limits required by applicable law. If such protection is provided, National has no duty to defend after paying the limits of such protection. You agree that any amounts over this minimum will be covered by You or by Your liability policy, and You will defend, indemnify and hold National harmless for any losses. **NATIONAL PROVIDES NO BODILY INJURY LIABILITY PROTECTION FOR YOU OR ANYONE RESIDING IN THE SAME HOUSEHOLD AS YOU. NATIONAL PROVIDES NO PROTECTION IN MEXICO. SUBJECT TO LAW, ANY LIABILITY PROTECTION PROVIDED BY NATIONAL IS VOID AND OF NO FORCE OR EFFECT IF AT THE TIME OF THE ACCIDENT OR LOSS YOU OR ANY AUTHORIZED DRIVER WERE ENGAGED IN ANY OF THE "PROHIBITED USES AND VIOLATIONS" DESCRIBED HEREIN.**

An automobile liability insurance policy or qualified self-insurance arrangement provides National with the minimum limits required by applicable law. **9. REJECTION OF UNINSURED/UNDERINSURED MOTORIST PROTECTION:** Uninsured/Underinsured Motorist protection ("UM/UMI") protects the driver and passengers of a Vehicle for losses and damages sustained if injury is caused by the negligence of a driver of another vehicle who either does not have any, or has inadequate, insurance to pay for losses and damages. **EXCEPT TO THE EXTENT PROVIDED IN ANY OPTIONAL INSURANCE PRODUCT THAT YOU SELECT AND PAY NATIONAL FOR, YOU REJECT UM/UMI COVERAGE UNDER THIS AGREEMENT, AND ANY POLICY OF INSURANCE OR SELF-INSURANCE ISSUED UNDER THIS AGREEMENT, FOR YOURSELF AND ALL OTHER PASSENGERS IN THE VEHICLE.** **10.**

Other Protections: Except to the extent included within any optional insurance coverage which You have purchased, any other protections or benefits (such as, for example, basic no-fault) are provided only if (A) Required by state law, and (B) There is no other valid and collectible insurance available; and then only up to state required minimum limits. National provides no coverage whatsoever to unauthorized drivers. **11. Optional Loss Damage Waiver (LDW) & Optional Insurance Products:** Your own auto or umbrella policies or credit card coverage may provide rental car damage or loss coverage; however, National cannot interpret or advise You with respect to what they may cover. **THE ELECTION OF ANY OPTIONAL INSURANCE COVERAGE OR OPTIONAL LDW OFFERED BY NATIONAL MIGHT DUPLICATE, VOID OR CAUSE YOUR OWN POLICIES OR CREDIT CARD COVERAGE TO BECOME EXCESS COVERAGE. THE PURCHASE OF OPTIONAL INSURANCE COVERAGES OR OPTIONAL LDW IS NOT REQUIRED TO RENT A VEHICLE. SEE BELOW FOR LDW AND OPTIONAL INSURANCE PRODUCT DETAILS AND RESTRICTIONS.** **12. Fines, Expenses, and Collections:** You will promptly pay any parking and traffic fines, towing, storage, and related costs (collectively, "Fine(s)") incurred during the rental. You hereby authorize National to supply Your name and contact information to relevant governmental agencies and collection firms in connection with any Fines. In the event that Your name and contact information are so supplied, You authorize National to collect an administrative fee from You in the amount of \$15.00. If National has to pay any Fines on Your behalf, You agree to reimburse National for the amount of each Fine, together with a \$25.00 administrative fee (\$20.00 in Hawaii). All charges, fees and expenses, including payment for loss of, damage to, or repossession of, the Vehicle are due at National's request, and You assign to National any and all proceeds from coverage under credit card plans or other insurance. You agree to pay a late charge of up to 1 1/2% per month on all past due balances. You will pay any collection costs, including attorneys' fees. National may contact You at Your place of business in connection with National's collections. **13. Credit Card Charges:** You authorize National to charge Your credit card for the pre-calculated charges once You sign this Agreement, for any additional charges upon return of the Vehicle, and for any Fines, related expenses, administrative fees and costs of collection. If You are overcharged or under-charged, National may charge or credit Your credit card. **14. Property Left in National's Possession:** National will not be responsible for loss or damage to any property left in or on the Vehicle, National's premises or National's service vehicles. **15. Lawuits:** You agree that the county within the state in which You entered into

this Agreement is the only place where National or You may file any action relating to this Agreement. In any such action, the law of the state in which You entered into this Agreement shall apply. You agree to pay National's reasonable attorneys' fees and costs in any lawsuit relating to this Agreement, including appeals. If You make a claim against National, You agree to provide National with a detailed statement under oath in support of the claim. You must not aid or encourage the filing of any third-party claim or lawsuit against National and you must cooperate fully with National and National's insurer, if any, in investigating and defending any such claim or lawsuit. You must immediately deliver to National at the rental location (or at such other address specified by National) every summons, complaint, or paper of any kind received by You in any way relating to an accident or theft involving the Vehicle. **YOU WAIVE YOUR RIGHT TO A JURY TRIAL IN ANY LAWSUIT RELATING TO THIS AGREEMENT.** **16. Limits on Liability: NATIONAL SHALL NOT BE LIABLE TO YOU OR ANY AUTHORIZED DRIVER FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING FROM OR RELATED TO THE VEHICLE, ITS USE, OR THIS AGREEMENT.** **17. General Provisions:** You understand that in no event shall any Authorized Driver be deemed to be National's agent, servant, or employee for any purpose. You understand that National does not waive any rights under this Agreement except in writing signed by one of National's officers or another authorized representative. **18. State Law:** The law of the state of rental may change, limit or prohibit any part of this Agreement (such as LDW, Authorized Drivers, Prohibited Uses and Violations, or damage losses allowed.) If so, that law applies. This Agreement is not an application for insurance. NATIONAL, P.O. Box 22233, TULSA, OK 74121-2233

THE FOLLOWING TWO PARAGRAPHS APPLY TO NEW YORK RENTALS ONLY
NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, OPTIONAL VEHICLE PROTECTION [ALSO REFERRED TO HEREIN AS LDW] TO COVER YOUR FINANCIAL RESPONSIBILITY FOR DAMAGE OR LOSS TO THE RENTAL VEHICLE. THE PURCHASE OF OPTIONAL VEHICLE PROTECTION IS OPTIONAL AND MAY BE DECLINED. YOU ARE ADVISED TO CAREFULLY CONSIDER WHETHER TO PURCHASE THIS PROTECTION IF YOU HAVE RENTAL VEHICLE COLLISION COVERAGE PROVIDED BY YOUR CREDIT CARD OR AUTOMOBILE INSURANCE POLICY. BEFORE DECIDING WHETHER TO PURCHASE OPTIONAL VEHICLE PROTECTION, YOU MAY WISH TO DETERMINE WHETHER YOUR CREDIT CARD OR YOUR VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF DEDUCTIBLE UNDER SUCH COVERAGE.

Even if You purchase LDW, You will still be held responsible if (1) the damage or loss is caused intentionally or as a result of willful, wanton or reckless conduct of the driver; (2) damage or loss arises out of the driver's operation of the vehicle while intoxicated or impaired by the use of alcohol or drugs; (3) National entered into the rental based on fraudulent or materially false information provided by You or another Authorized Driver; (4) the damage or loss arises out of use of the Vehicle while engaged in the commission of a crime other than a traffic infraction; (5) the damage or loss arises out of the use of the Vehicle to carry persons or property for hire, to push or tow anything, while engaged in a speed contest, operating off-road or for driver's training; (6) the damage or loss arises out of the use of the Vehicle by a person other than an Authorized Driver or the authorized driver's duly licensed parent or child over the age of 18 who permanently resides in the same household as the authorized driver, or a parking valet or parking garage attendant for compensation and in the normal course of employment; (7) the damage or loss arises out of the use of the Vehicle outside of the United States and Canada, unless the agreement authorizes travel elsewhere or; (8) the authorized driver has failed to report the damage or loss to National as set forth by New York law. If the Vehicle is damaged, You have a right to inspect it within specified time limits.

ADDITIONAL TERMS AND CONDITIONS

A2. WARNING: ARIZONA REVISED STATUTE SECTION 13-1608 PROVIDES THE FOLLOWING: "A PERSON COMMITS UNLAWFUL FAILURE TO RETURN RENTED PROPERTY IF, WITHOUT NOTICE TO AND PERMISSION OF THE LESSOR OF PROPERTY, SUCH PERSON KNOWINGLY FAILS, WITHOUT GOOD CAUSE TO RETURN SUCH PROPERTY WITHIN SEVENTY-TWO HOURS AFTER THE TIME PROVIDED FOR SUCH RETURN IN THE RENTAL AGREEMENT UNLESS THE FAILURE TO RETURN RENTED PROPERTY IS A CLASS B FELONY." Renter agrees by Renter's signature on Page 1 that Renter has read, is aware of, and accepts full responsibility for and is bound by the terms and conditions contained in this Rental Agreement (Agreement), which consists of Pages 1 through 4. Renter expressly acknowledges that Renter and Owner are the only parties to this Agreement, notwithstanding that a reservation for Vehicle may have been arranged by a third party; that a third party may pay for all or part of the rental bill; and/or that a third party may negotiate certain terms of the rental, including but not limited to the type of Vehicle, length of rental, rental rate and/or selection of optional products. For matters arising from this Agreement, Renter authorizes Owner to verify and/or obtain through credit agencies or other sources Renter's personal, credit and/or insurance information. This Agreement is the entire Agreement between Renter and Owner, and cannot be altered by another document or oral agreement unless agreed to in writing and signed by Renter and Owner.

1. Definitions: For the purposes of this Agreement, the following terms are specifically defined:
 a. "ADDITIONAL AUTHORIZED DRIVER(S)" (AAD(S)) means any individual in addition to Renter who is permitted by Owner to operate Vehicle. This includes individuals identified on Page 1 as ADDITIONAL AUTHORIZED DRIVER(S), and with the permission of Renter, includes Renter's spouse who meets the minimum rental age and has a valid license.
 b. "OWNER" means "Owner of Vehicle" shown on the top of Page 1.
 c. "RENTAL PERIOD" means the period between the time Renter takes possession of Vehicle until Vehicle is returned and checked in by Owner.
 d. "RENTER" means the person, or entity identified on Page 1 as "RENTER".
 e. "VEHICLE" means the "ORIGINAL VEHICLE" or any replacement vehicle(s).

2. **Granting Vehicle Conditionally Exclusion:** Renter acknowledges that Vehicle is, by ownership, transferred interest or lease, property of Owner, even if owned, registered or titled to a third party. Renter agrees Renter received Vehicle in good physical and mechanical condition. RENTER IS RENTING VEHICLE "AS IS" AND HAS HAD AN ADEQUATE OPPORTUNITY TO INSPECT VEHICLE AND ITS OPERATION BEFORE LEAVING OWNER'S PREMISES. OWNER EXCLUDES ALL WARRANTIES, BOTH EXPRESS AND IMPLIED, WITH RESPECT TO THE VEHICLE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. If Renter or AAD(S) declines Vehicle is unsafe. Renter or AAD(S) shall stop operating Vehicle and notify Owner immediately. Renter agrees to return Vehicle to Owner on or before return date stated on Page 1 or on Owner's demand and in same condition as received, ordinary wear and tear excepted.

3. **Payment by Renter:**
 a. For all day rates designates as "day on Page 1.
 (1) If Page 1 indicates "day = 24 hour period", a day is each consecutive 24 hour period.
 (2) If Page 1 indicates "day = calendar day", a day is each consecutive full or partial day of the week.
 (3) Except as expressly modified on Page 1, all charges are for a minimum of 1 day.
 b. For all rental terms shown as "hour", "week" or "month" on Page 1:
 (1) If Page 1 indicates "hour", an hour is 60 consecutive minutes or any portion thereof, beginning at the start time of the rental.
 (2) If Page 1 indicates "week", a week is 7 consecutive 24 hour days beginning at the start time of the rental.
 (3) If Page 1 indicates "month", a month is 30 consecutive 24 hour days beginning at the start time of the rental.
 c. Renter shall pay Owner on demand as set forth on Page 1.
 (1) The hour, day, week and month charges on Page 1 for the Rental Period. The "hour" charge if shown on Page 1 shall apply to each full or partial hour in excess of a rental day. The "hour" charges shall not exceed the cost of one additional day. If Vehicle is returned during non-business hours or to any place other than the Branch Address on Page 1, rental charges incurred through the time an employee of Owner checks in Vehicle are Renter's responsibility.

(2) The mileage charge per mile for all miles exceeding the free miles set forth on Page 1 provided for the Rental Period.
 (3) The optional equipment, services and/or products charges for those items accepted by Renter.
 (4) The optional Vehicle Carbon Offsets (CO2 OFFSET) accepted by Renter and provided by RentPass, Inc. which is an optional environmental service designed to offset the greenhouse gases emitted by Vehicles which it burns fuel and releases carbon dioxide (CO2). See www.rentpass.com/rentpass for more information. The estimated emissions produced by Vehicle are based on the average mileage and fuel economy of vehicles in the rental fleet and are not calculated based on the emissions of a particular vehicle.
 (5) The fuel charge at the rate shown on Page 1. If based on consumption and Vehicle is returned with less fuel than when rented, the charge is for the estimated difference in fuel level shown on the fuel gauge from the time Vehicle is rented to the time it is returned. Renter shall receive a refund or credit if Vehicle is returned with more fuel than when Renter received it, or if Renter purchased prepaid fuel indicated on Page 1.
 (6) The drop charge.
 (7) The taxes.
 (8) The other fees and charges (none of which are taxes) including but not limited to:
 (a) Any airport Consolidated Facility Charge (CFC), which is required to be paid by Owner or collected from Renter in connection with this rental, for the construction, financing, operation and/or maintenance of this consolidated rental car facility, other airport facilities, and/or transportation related facilities.
 (b) The Concession Fee Recovery (CONC REC) which is Owner's charge to recover the concession fee paid by Owner to this airport's owner or operator in connection with this rental; and
 (c) The Vehicle License Fee Recovery (VLF REC), which is Owner's charge to recover Owner's estimated average daily cost per vehicle of the charges imposed by governmental authorities to file, register and plate all vehicles in its rental fleet, registered in Arizona. The VLF REC is not calculated based on the costs incurred upon a particular vehicle.

d. Additional Obligations of Renter - Unless prohibited by law, Renter shall pay Owner on demand:
 (1) A vehicle recovery fee of \$100.00 or \$50 per mile between rental location and original rental office, whichever

4. **Limits on Use and Termination of Right to Use:**
 a. Renter agrees to the following limits on use:
 (1) Vehicle shall not be used for any person other than Renter or AAD(S) without Owner's prior written consent.
 (2) Vehicle shall not be driven for hire, as a school bus, or for other training purposes.
 (3) Vehicle shall not be used for any illegal purposes, in any illegal or reckless manner, in a race or speed contest, or to tow or push anything.
 (4) Vehicle shall not be used to carry passengers in excess of the number of seat belts provided by manufacturer.
 (5) Vehicle shall not be driven by any person impaired by the use of tobacco, alcohol, intoxicants, or drugs, used with or without a prescription.
 (6) Vehicle shall not be driven outside the states authorized on Page 1.
 (7) Vehicle shall not be driven on an unpaved road or off-road.
 (8) Vehicle shall not be operated by anyone who has given a fictitious name, false address, or a false or invalid driver's license, whose driver's license becomes invalid during the Rental Period, who has obtained the keys without permission of Owner, or who misrepresents or withholds facts from Owner material to rental, use or operation of Vehicle.

(10) Renter shall not transfer or assign this Agreement and/or sublease Vehicle.
 (11) Vehicle shall not be used to transport explosives, chemicals, cosmetics or other hazardous materials or pollutants of any kind or nature.

In the event of any violation of the limits on use or any other provision of this Agreement, Owner automatically without any further notice to Renter or AAD(S), terminates their right to use Vehicle and Owner claims any other rights and remedies provided by law. Owner has the right to seize Vehicle without legal process or notice to Renter or AAD(S). Renter and AAD(S) hereby waive all claims for damages connected with such seizure, and shall pay all expenses incurred by Owner in returning Vehicle to the original rental office.

c. If Renter or AAD(S) continues to operate Vehicle after the right to do so is terminated, Owner has the right to notify police Vehicle has been stolen. Renter and AAD(S) hereby release and discharge Owner from and indemnify defend and hold Owner harmless against any liability arising from such notice.

5. **Accidents, Damage to, Loss or Theft of Vehicle:** Renter must immediately report in writing to the office where Vehicle was rented, and in no event later than the following business day after the accident, Renter and AAD(S) must immediately advise to the office where Vehicle was rented every process, pleading or paper relating to any claims, suits or proceedings arising from such accident. In the event of a claim, suit or legal proceeding, Renter and AAD(S) shall cooperate fully with Owner. Vehicle may be equipped with an Event Data Recorder or similar device (EDR) installed by the manufacturer for the purpose of retaining data about the operation of Vehicle. To the extent permitted by law, Renter consents to Owner or its representatives reviewing and using such data from the EDR.

6. **Damage to, Loss of, Theft of, Vehicle and Related Costs:** Renter accepts responsibility for damage to, loss or theft of Vehicle or any part or accessory regardless of fault or negligence of Renter or any other person or act of God. Renter shall pay Owner the amount necessary to repair Vehicle. Renter shall not have Vehicle repaired without permission from Owner. If Vehicle is stolen and not recovered or Owner determines Vehicle is salvage, Renter shall pay Owner the fair market value less any sale proceeds. For purposes of this Agreement, fair market value shall be the retail value of Vehicle immediately preceding the loss. Damages for which Renter is also responsible include but are not limited to: loss of use, claim administrative fees, diminution of value, towing, storage or impound fees, and other costs incurred by Owner to recover Vehicle and to establish damages. If Vehicle is returned during non-business hours or to any place other than Branch Address on Page 1, any damage to, loss or theft of Vehicle occurring prior to an employee of Owner checking the vehicle is Renter's responsibility. SEE PARAGRAPH 16 FOR INFORMATION ON OPTIONAL DW.

7. **Responsibility to Third Parties:** Owner accepts with applicable motor vehicle financial responsibility laws as a state certified self-insurer, bondholder, or cash depositor. Except to the extent required by the motor vehicle financial responsibility laws of the applicable state or otherwise by law, Owner does not extend any of its motor vehicle financial responsibility laws or provide insurance coverage to Renter, AAD(S) passengers or third parties through this Agreement. If valid automobile liability insurance or self-insurance is available on any basis to Renter, AAD(S) or any other driver and such insurance or self-insurance satisfies the applicable state motor vehicle financial responsibility law then Owner extends none of its motor vehicle financial responsibility. However, if Renter and AAD(S) are in compliance with the terms and conditions of this Agreement and if Owner is obligated to extend its motor vehicle financial responsibility to Renter, AAD(S) or third parties, then Owner's obligation is limited to the applicable state minimum financial responsibility amounts. Unless required by law, Owner's financial responsibility shall not extend to any claim made by a passenger while riding in or on or getting in or out of Vehicle. Owner's financial responsibility shall not extend to liability imposed or assumed by anyone under any worker's compensation act, pain or contract. SEE PARAGRAPH 17 FOR INFORMATION ON OPTIONAL SLIP.

8. **Identification by Renter:** Renter shall defend, indemnify and hold Owner harmless from all losses, liabilities, damages, injuries, claims, demands, costs, attorney fees, and other expenses incurred by Owner in any manner from this rental transaction, or from the use of Vehicle by any person, including claims of or liabilities to, third parties. Renter may present a claim to Renter's insurance carrier for such events or losses; but in any event, Renter shall have final responsibility to Owner for all such losses. This obligation may be limited if Renter purchases optional DW and/or optional SLIP. SEE PARAGRAPHS 16 AND 17 FOR INFORMATION ON OPTIONAL DW AND OPTIONAL SLIP.

9. **Personal Injury Protection and Uninsured/Underinsured Motorist Protection:** Except as required by law, Owner does not provide Personal Injury Protection, No Fault Benefits or Medical Payment Coverage (collectively PIP & Uninsured/Underinsured Motorist Protection (UUM/UMP)) through this Agreement. If Owner is required by law to provide PIP and/or UUM/UMP, Renter expressly selects such protection at the minimum limits with the maximum deductible and expressly waives and rejects PIP and/or UUM/UMP limits in excess of the minimum limits required by law.

10. **Personal and Business Property:** Owner is not responsible for any damage to, loss or theft of any personal property, whether the damage or theft occurs during or after termination of the rental regardless of fault or negligence. Renter acknowledges and agrees that no bailment is or shall be created upon Owner, whether actual, constructive or otherwise, for any personal property carried in or left in Vehicle or on Owner's premises.

11. **Use in Mexico:** Vehicle shall not be taken into Mexico without Owner's prior written consent. Even with Owner's prior written consent, DW, PIP and SLIP do not apply in Mexico. Renter must maintain or purchase insurance which shall apply in Mexico, as specified and approved by Owner, prior to taking Vehicle into Mexico.

EXHIBIT 2

