

## **EXHIBIT A**

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**PARTICIPATION AGREEMENT**

among

GENERAL MOTORS CORPORATION, as Lessee and Construction Agent,

AUTO FACILITIES REAL ESTATE TRUST 2001-1,  
a Delaware business trust,  
as Lessor,

WILMINGTON TRUST COMPANY, not in its individual capacity except as set forth herein,  
but solely as trustee of the Lessor,

VARIOUS FINANCIAL INSTITUTIONS, as Investors,

RELATIONSHIP FUNDING COMPANY, LLC,

VARIOUS FINANCIAL INSTITUTIONS, as Backup Facility Banks, and

THE CHASE MANHATTAN BANK,  
as Administrative Agent for the Backup Facility Banks and RFC

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J.P. MORGAN SECURITIES INC.,  
as Arranger and Book Runner

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Dated as of October 31, 2001

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Annex A Rules of Usage and Definitions

Exhibits

Exhibit A	Form of Assignment of Leases and Consent to Assignment
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Exhibit C	Form of Requisition
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Schedule I	Addresses for Payments and Other Communications
Schedule II	Investor Contribution Commitments

PARTICIPATION AGREEMENT, dated as of October 31, 2001 (this "Agreement"), among GENERAL MOTORS CORPORATION, a Delaware corporation, as Lessee and Construction Agent (together with its permitted successors and assigns); AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust, as Lessor; WILMINGTON TRUST COMPANY, a Delaware banking corporation, not in its individual corporate capacity, except as expressly stated herein, but solely as trustee of the Lessor; THE VARIOUS FINANCIAL INSTITUTIONS party to the Trust Agreement referred to therein as Investors; THE VARIOUS FINANCIAL INSTITUTIONS party to the Liquidity Agreement referred to therein as Backup Facility Banks (collectively, the "Backup Facility Banks"; each a "Backup Facility Bank"); RELATIONSHIP FUNDING COMPANY, LLC, a Delaware limited liability company; and THE CHASE MANHATTAN BANK, a New York banking corporation, as Administrative Agent for RFC and the Backup Facility Banks. Capitalized terms used but not otherwise defined in this Agreement shall have the meanings set forth in Annex A hereto.

#### Preliminary Statement

A. Pursuant to the Trust Agreement, the Investors, as beneficiaries, have created the Lessor in order to provide equity investments in, and to facilitate the acquisition and construction of, the Properties.

B. The Lessor has entered into the Agency Agreement with the Lessee, whereby the Lessee, as Construction Agent for the Lessor, has agreed to cause the construction and equipping of the Construction Improvements in accordance with the terms thereof.

C. Pursuant to the Loan Facility Agreement, RFC and the Backup Facility Banks will provide RFC Loans and/or Backup Facility Loans to the Lessor to enable it to acquire the Completed Properties, to acquire the Construction Period Properties, to construct the Construction Improvements on the Construction Period Properties, and to pay Project Costs.

D. The RFC Loans will be indirectly funded through the issuance of Commercial Paper by the CP Issuer.

E. Pursuant to the terms hereof and the Trust Agreement, the Investors will provide funding to the Lessor to enable it to acquire the Completed Properties, to acquire the Construction Period Properties, to construct the Construction Improvements on the Construction Period Properties, and to pay Project Costs.

F. Pursuant to the Lease, the Lessor will lease the Properties to the Lessee for the Term.

G. Pursuant to the Structural Support Agreement, the Lessee will provide credit support for certain obligations of the Lessor under the Operative Agreements.

H. Pursuant to the Security Documents, the obligations secured thereby will be secured by the collateral specified therein.

In consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

## SECTION 1. BASIC TRANSACTIONS

1.1 Loans. Upon the terms and subject to the conditions of this Agreement and the Loan Facility Agreement, on the Initial Closing Date and on each Funding Date, RFC and/or the Backup Facility Banks shall make RFC Loans and/or Backup Facility Loans, as applicable, to the Lessor in an aggregate principal amount not to exceed the RFC Loan Commitment and the Backup Facility Loan Commitment, respectively, in order to enable Lessor to acquire the Properties and construct the Construction Improvements and to pay other Project Costs. Pursuant to this Agreement and the Loan Facility Agreement, the Loans will be made to the Lessor from time to time at the request of the Construction Agent through a Requisition in consideration for the Construction Agent's agreeing for the benefit of the Lessor, pursuant to the Agency Agreement, to assist with the acquisition by the Lessor of parcels of Land or other Property and, if such Property is not a Completed Property, to construct Construction Improvements thereon in accordance with the applicable Plans and Specifications. Upon the terms and subject to the conditions of the Loan Facility Agreement and this Agreement, on each Funding Date, (i) RFC may make RFC Loans to the Lessor in immediately available funds in amounts in accordance with Section 5 below, and (ii) to the extent that RFC does not make RFC Loans under the Loan Facility Agreement, the Backup Facility Banks shall make Backup Facility Loans on such Funding Date in accordance with the terms of the Loan Facility Agreement. Pursuant to Section 2.14(c) of the Loan Facility Agreement, RFC may apply portions of Loans funded by RFC to amounts due RFC.

1.2 Investor Contributions. Upon the terms and subject to the conditions of this Agreement and the Trust Agreement, on the Initial Closing Date and on each Funding Date, each of the Investors shall make an investment in the Lessor (each, an "Investor Contribution") by making available in immediately available funds amounts in accordance with Section 5 below for the Initial Closing Date and on each such Funding Date. The Lessor shall use the Investor Contributions to pay a portion of the Project Costs simultaneously and pro rata with the fundings by RFC and/or the Backup Facility Banks under the Loan Facility Agreement. The aggregate amount of Investor Contributions made under this Section 1.2 made by each Investor shall not exceed the "Investor Contribution Commitment" for the applicable Investor (the "Investor Contribution Commitment") set forth on Schedule II attached hereto.

1.3 Investor Yield: Interest. (a) During the Construction Period, if any Requisition submitted pursuant to Section 5.2 specifies a Funding Date which is an Investor Yield Payment Date, such Requisition shall request, among other things, Loans and Investor Contributions in the amount equal to the aggregate amount of Allocated Investor Yield due and payable on such Investor Yield Payment Date with respect to the Construction Period Properties solely for the purpose of paying such Investor Yield which is then due and payable.

(b) During the Construction Period, if any Requisition submitted pursuant to Section 5.2 specifies a Funding Date which is a Settlement Date, such Requisition shall request, among other things, Loans and Investor Contributions in the amount equal to the aggregate

amount of Allocated Interest due and payable on the then outstanding Loans on such Settlement Date with respect to the Construction Period Properties solely for the purpose of paying such interest which is then due and payable. On each such Funding Date, the Tranche A/B Property Cost and the Tranche A/B Construction Property Cost of each Construction Period Property shall be increased by an amount equal to the Allocated Interest paid on such date with respect to such Property.

1.4 Fees. During the Construction Period, if any Requisition submitted pursuant to Section 5.2 specifies a Funding Date which is a date that any fees (including the Facility Fee and other fees payable under the Fee Letter Agreement) are payable (each a "Fee Payment Date"), such Requisition shall request, among other things, Loans in an amount equal to the fees which are due and payable on such Fee Payment Date solely for the purpose of paying such fees which are then due and payable.

1.5 Liquidity Facility. Subject to the terms and conditions hereinafter set forth and set forth in the other Operative Agreements, and in reliance on the representations and warranties contained herein or made pursuant hereto, on the Initial Closing Date, the Backup Facility Banks shall, pursuant to the Liquidity Agreement, and under the terms and conditions set forth in the Liquidity Agreement, agree to purchase RFC Loans.

1.6 Collateral For Loans. The repayment of the Loans and the Investor Contributions, and the obligations of the Lessor under the Loan Facility Agreement and the other Operative Agreements, shall be secured by, inter alia, (i) a first priority perfected assignment of the Lease, granted pursuant to the Assignment of Leases and consented to by the Lessee pursuant to the Consent to Assignment, (ii) a first priority perfected assignment of the Agency Agreement, granted pursuant to the Contract Assignment and consented to by the Construction Agent pursuant to the Consent to Contract Assignment, (iii) a first priority deed of trust or mortgage lien on the applicable Property pursuant to the Mortgages; (iv) the Structural Support Agreement; and (v) the other Security Documents.

1.7 Structural Support Agreement. The obligations of the Lessor hereunder, under the Loan Facility Agreement, and the other Operative Agreements, shall be supported by the Lessee as provided in, and to the extent provided in, the Structural Support Agreement.

## SECTION 2. SUMMARY OF THE TRANSACTIONS; COMPUTATIONS

2.1 Operative Agreements. On the Initial Closing Date, each of the respective parties thereto shall execute and deliver this Agreement, the Lease, the Notes (if any), the Structural Support Agreement, the Loan Facility Agreement, the Liquidity Agreement, the Agency Agreement, the Financing Statements, the Pledge Agreement, the Assignment of Leases, the Consent to Assignment, the Assignment of Contracts, the Contract Consent, the Trust Agreement, the Certificates, the other Security Documents, and such other documents, instruments, certificates and opinions of counsel as agreed to by the parties hereto.

2.2 Property Purchase and Lease. (a) On each Property Closing Date and subject to the terms and conditions of this Agreement and the Loan Facility Agreement (i) the Investors will make Investor Contributions in accordance with Section 1.2 hereof, (ii) the

Lenders will make Loans in accordance with Section 1.1 hereof and the terms and provisions of the Loan Facility Agreement secured by a Mortgage with respect to the applicable Property executed and delivered by the Lessor and the Lessee, (iii) the Lessor will purchase or ground lease all right, title and interest in and to each Property identified by the Construction Agent pursuant to the Agency Agreement with respect to such Property Closing Date, and (iv) the Lessor will simultaneously lease (or sublease, as the case may be) all of its right, title and interest in the applicable Property to the Lessee by executing and delivering a Memorandum of Lease and Supplement which will be recorded in the real estate records in the county where such Property is located. Notwithstanding anything contained herein or in the other Operative Agreements, neither the Lessee nor the Construction Agent shall have any obligation to identify any Property to be purchased by the Lessor or included in the Overall Transaction.

(b) On each Property Closing Date, the Lessee shall certify to the Administrative Agent in the applicable Memorandum of Lease and Supplement the Tranche A Percentage for each Property being acquired on such Property Closing Date. The Tranche A Percentage so certified shall be the Tranche A Percentage for such Property for the duration of the Term.

2.3 Construction of Construction Improvements: Lease of Improvements. On each Property Closing Date for a Construction Period Property, the Lessor and Lessee will execute and deliver an Agency Agreement Supplement, dated as of such Property Closing Date, pursuant to which the Lessee will agree to act as Construction Agent and to perform the Lessor's obligations in connection with the completion of the construction of the Construction Improvements on the Construction Land acquired on such Property Closing Date.

2.4 Aggregate Tranche A Percentage: Tranche A Percentage. Notwithstanding any other provision of this Agreement or the other Operative Agreements, the Lessee agrees that in no event shall the Lessee specify a Property for the Lessor to acquire and lease pursuant to the execution and delivery of a Memorandum of Lease and Supplement if the Aggregate Tranche A Percentage after giving effect to the acquisition and lease pursuant to the execution and delivery of a Memorandum of Lease and Supplement of such Property would be less than 86.00%.

2.5 Computations. (a) All computations of interest in respect of Eurodollar Loans under the Loan Facility Agreement, Investor Yield in respect of the Investor Contributions and other accrued amounts (other than with respect to RFC Loans) pursuant to the Operative Agreements shall be made by Administrative Agent on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such amount is payable over a year comprised of 360 days (or, in the case of computations of amounts accruing interest or Investor Yield by reference to the ABR, 365 days or, if appropriate, 366 days).

(b) Each determination by Administrative Agent of the Interest Rate (other than with respect to RFC Loans), Facility Fees, the Investor Yield Rate or any other amount due pursuant to any provision of this Agreement or any of the other Operative Agreements shall be conclusive and binding on all parties hereto, absent manifest error.

Each of the Investors and the Lessor hereby appoints the Administrative Agent as its agent for purposes of computing Investor Yield in respect of the Investor Contributions and determining the Investor Yield Rate.

2.6 Budgets for Properties. Changes for the Budget for any Property can be made in accordance with Section 3.1(b) of the Agency Agreement.

### SECTION 3. INTENTIONS OF THE PARTIES

3.1 Ownership of the Properties. (a) The parties hereto intend that (i) for financial accounting purposes with respect to Lessee (A) the Lease will be treated as an "operating lease" pursuant to Statement of Financial Accounting Standards (SFAS) No. 13, as amended, and all EITF pronouncements pursuant thereto, (B) Lessor will be treated as the owner and lessor of the Properties, and (C) Lessee will be treated as the lessee of the Properties, but (ii) for federal, state and local income tax purposes, state real estate, commercial law and bankruptcy purposes, remedial purposes and all other purposes (A) the transactions contemplated by the Operative Agreements will be treated as a financing arrangement, (B) the Lenders will be treated as senior lenders making loans to Lessee in an amount equal to the Loans, which Loans will be secured by the Properties, (C) the Investors will be treated as subordinated lenders making loans to Lessee in amounts equal to the Investor Contributions, which loans are secured by the Properties, and (D) Lessee will be treated as the owner of the Properties and will be entitled to all tax benefits ordinarily available to an owner of property like the Properties for such tax purposes.

(b) The parties hereto further intend and agree that, for the purpose of securing Lessee's obligations for the repayment of the above-described loans, (i) the Lease shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the UCC and a real property mortgage or deed of trust, as applicable; (ii) the conveyance provided for in Section 7.1(b) of the Lease shall be deemed a grant of a security interest in and a mortgage lien on the Lessee's right, title and interest in the Properties and all the proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, investments, securities or other property, whether in the form of cash, investments, securities or other property, for the benefit of the Lessor to secure the Lessee's payment of all amounts owed by the Lessee under the Lease and the other Operative Agreements and Lessor holds title to the Properties so as to create and grant (A) a first lien and prior security interest in the Lessor's right, title, and interest in the Lease and all amounts payable thereunder pursuant to the Assignment of Lease, to secure to the Administrative Agent the obligations of the Lessor under the Mortgage and the Loans and (B) a first mortgage lien and prior security interest in the Properties pursuant to the Mortgage to secure to the Administrative Agent the obligations of the Lessor under the Mortgage and the Loans; (iii) the possession by Lessor or any of its agents of notes and such other items of property as constitute instruments, money, negotiable documents or chattel paper evidencing the proceeds referred to in (ii) above shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-313 of the UCC; and (iv) notifications to Persons holding such property, and acknowledgements, receipts or confirmations from financial intermediaries, bankers or agents (as applicable) of Lessee shall be deemed to have been given for the purpose of perfecting such security interest under applicable law. The Participants shall, to the extent consistent with the Lease and the other Operative Agreements, take such actions as

may be necessary to ensure that, if the Lease were deemed to create a security interest in the Properties in accordance with this Section, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the Term. Nevertheless, Lessee acknowledges and agrees that none of the Participants has provided or will provide tax, accounting or legal advice to Lessee regarding the Lease, the Operative Agreements or the transactions contemplated hereby and thereby, or made any representations or warranties concerning the tax, accounting or legal characteristics of the Operative Agreements, and that Lessee has obtained and relied upon such tax, accounting and legal advice concerning the Operative Agreements as it deems appropriate.

(c) The Participants further intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State or Commonwealth thereof affecting Lessee or Lessor, the transactions evidenced by the Lease shall be regarded as loans made by an unrelated third party lender to Lessee.

3.2 Amounts Due Under Lease. (a) Anything else herein or elsewhere to the contrary notwithstanding, it is the intention of Lessee, Lessor, each Investor, the Lenders, and the Administrative Agent that after Completion of a Construction Period Property and after the Property Closing Date for any other Property, the amount and timing of installments of Basic Rent for each such Property due and payable from time to time from Lessee under the Lease shall be equal to the aggregate payments due and payable on that portion of the Loans and Investor Contributions as allocated for such Property on each Settlement Date and Certificate Payment Date, respectively, with respect to interest, Facility Fees and Investor Yield then due.

(b) Notwithstanding anything to the contrary contained in the Operative Agreements, if Lessee makes a payment of Rent to the Funding Account as required under the Operative Agreements, and the amount of and the timing of such payment is based on or defined by a payment due by another party pursuant to the Operative Agreements, payment by Lessee of such amount to such account shall be deemed to also constitute payment of such amount by such other party at the time such amount is received in the Funding Account. By way of illustration, but not by way of limitation, if interest in the amount of \$1,000,000 owing by the Lessor to the Administrative Agent (for the account of the Backup Facility Banks) with respect to Backup Facility Loans is due on July 1, 2001, the same amount is due on such date by Lessee to Lessor as Basic Rent, Lessee pays such amount by wire transfer to the Funding Account and such amount is received in such account on July 1, 2001 within the time period required in the Operative Agreements, then such \$1,000,000 shall be deemed to have been paid in a timely manner (i) by Lessee with respect to Basic Rent, and (ii) by Lessor with respect to the Backup Facility Loans held by the Backup Facility Banks.

#### SECTION 4. THE INITIAL CLOSING

4.1 Initial Closing Date. All documents and instruments required to be delivered on the Initial Closing Date shall be delivered at the offices of Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York, or at such other location as may be determined by the Administrative Agent and the Lessee.

4.2 Trust Company Authorization. The Investors agree that, with respect to the Initial Closing Date and each Funding Date, the satisfaction or waiver of the conditions contained in Section 6 hereof shall constitute, without further act, authorization and direction by the Investors to the Trust Company to take on behalf of the Lessor the actions specified in Section 2.2 of the Trust Agreement.

## SECTION 5. FUNDING OF ADVANCES

5.1 General. To the extent funds have been made available to the Lessor as Loans and Investor Contributions, the Lessor will make advances of such funds to the Construction Agent from time to time in accordance with the terms and conditions of this Agreement and the other Operative Agreements in order to provide sufficient funds to: (i) allow the Lessor, at the direction of the Construction Agent, to acquire the Construction Land or Completed Property in accordance with the terms of this Agreement and the other Operative Agreements; (ii) allow the Lessor to pay Transaction Expenses; (iii) permit the Construction Agent to construct the Construction Improvements in accordance with the Plans and Specifications and the terms of the Agency Agreement, the Lease and the other Operative Agreements; and (iv) pay all other Project Costs.

5.2 Procedures for Funding. (a) Not later than 1:00 P.M. New York City time at least three (3) Business Days prior to the Initial Closing Date, and at least three (3) Business Days prior to each proposed Funding Date (but only one (1) Business Day with regard to funding of an ABR Loan exclusively), the Construction Agent shall deliver to the Administrative Agent a requisition (a "Requisition"), appropriately completed, in the form of Exhibit C attached hereto.

(b) The Requisition relating to the Initial Closing Date shall (i) be irrevocable, and (ii) request funds to pay Project Costs. Each Requisition relating to a Funding Date shall: (i) be irrevocable; (ii) request funds in an amount of at least \$3,500,000 (or such lesser amount as shall be equal to the total aggregate of the Available RFC Loan Commitments plus the Available Investor Commitment at such time or with respect to the last draw being made under this Agreement) for the payment of Project Costs which have previously been incurred or which are to be incurred within the next sixty (60) days and were not the subject of, and funded pursuant to, a prior Requisition, in each case as specified in such Requisition; and (iii) in the event that Loans are being borrowed from the Backup Facility Banks, specify whether the funds requested are to bear interest based upon ABR or the Eurodollar Rate, and the Interest Period with respect thereto. The Construction Agent shall not have the right to submit more than one (1) Requisition in any calendar month and shall in any event submit a Requisition at least one (1) time in each consecutive three (3) calendar months. All Advances shall be allocated by Lessee among the Properties in accordance with the Requisition. Advance amounts which do not specifically relate to an one Property may be allocated and reallocated by the Lessee from time to time among the Properties on a pro rata basis.

(c) As long as the conditions of Section 6.1, 6.2 and/or 6.3, as applicable, have been satisfied when required by the terms hereof, on each Funding Date (i) the Lenders shall, in accordance with the Loan Facility Agreement, make Loans to the Lessor in an aggregate amount equal to 96.84% of the funds specified in any Requisition, up to an aggregate principal amount equal to the Available Loan Commitments; (ii) each Investor shall make an Investor

Contribution in an amount equal to its Percentage Share of 3.16% of the funds specified in any Requisition, up to an amount equal to the Available Investor Commitment; and (iii) the total amount of such Loans and Investor Contribution made on such date shall be paid to the Construction Agent to pay the Project Costs.

(d) Notwithstanding anything to the contrary in this Agreement, (i) the Lenders shall not be required to make Loans with respect to any Construction Period Property in an aggregate amount in excess of 96.84% of the amount allocated to such Property in the Budget, and (ii) no Investor shall be required to make Investor Contributions with respect to any Construction Period Property in an aggregate amount in excess of its Percentage Share of 3.16% of the amount allocated to such Property in the Budget.

## SECTION 6. CONDITIONS OF THE CLOSING AND ADVANCES

6.1 General Conditions to Investor's and Lender's Obligations to Make Advances. The obligation of each Investor, RFC and each Backup Facility Bank to perform its obligations on each Funding Date (including each Property Closing Date), including funding Investor Contributions in the case of each Investor, funding Loans in the case of RFC and the Backup Facility Banks, shall be subject to the fulfillment to the reasonable satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to the addressee or beneficiary thereof) (or the waiver in writing by the Administrative Agent and to the extent the Investors have a right of approval set forth below, the Required Investors (provided the conditions applicable to RFC Loans may only be waived in writing by RFC)), of the following conditions precedent set forth in this Section 6.1 immediately prior to or concurrently with the making of such Advance:

(a) Operative Agreements. Each of the Operative Agreements (other than those which are required to be executed pursuant to Section 6.2 or 6.3) shall have been duly authorized, executed and delivered by the parties thereto, and shall be in full force and effect and the Administrative Agent shall have received a fully executed copy of each such Operative Agreement;

(b) Taxes. All taxes, fees and other charges in connection with the execution, delivery, and, where applicable, recording, filing and registration of the Operative Agreements shall have been paid or provisions for such payment shall have been made by Lessee;

(c) Governmental Actions. Subject to Section 6.6, all necessary Governmental Actions shall have been obtained or made and be in full force and effect;

(d) Litigation. No action or proceeding shall have been instituted, nor to the knowledge of the Lessee shall any action or proceeding be threatened, against Lessee, Lessor, or any Property, before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority which in any case seeks (i) to set aside, restrain, enjoin or prevent the full performance of this Agreement, any other Operative Agreement or any of the

transactions contemplated hereby or thereby, or (ii) which is reasonably likely to have a Material Adverse Effect;

(e) Reserved.

(f) Liquidity Agreement. With respect to RFC Loans only, the Liquidity Agreement shall be in full force and effect;

(g) Representations and Warranties. The representations and warranties of the Lessee and the Lessor contained herein and in each of the other Operative Agreements shall be true and correct in all material respects on and as of the applicable Funding Date as if made on and as of such Funding Date, *provided, however*, that with respect to property-related representations and warranties, the Lessee is only reaffirming those property-related representations and warranties relating to the Property or Properties for which any portion of such Advance is being requested for payment of the costs of acquisition of such Property (or the applicable Land) or construction of the applicable Improvements on such Property;

(h) Reserved.

(i) Reserved.

(j) Lessee's Resolutions and Incumbency Certificate, etc. On the Initial Closing Date, Lessee shall have delivered to the Administrative Agent certificate(s) of its Secretary or an Assistant Secretary attaching, and certifying as to (A) the resolutions of the Board of Directors duly authorizing the execution, delivery and performance by it of each Operative Document to which it is or on any future Funding Date will be a party, (B) its certificate of incorporation and by-laws, (C) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Agreements to which it is or on any future Funding Date will be a party, (D) a good standing certificate for the state of Delaware, and which shall state that the resolutions thereby certified have not been amended, modified, revoked or rescinded;

(k) Corporate Proceedings of the Trust Company. On the Initial Closing Date, the Administrative Agent, the Investors and the Lessee shall have received a certificate(s) of the President or any Vice President, Assistant Vice President, Trust Officer and the Secretary or any Assistant Secretary of the Trust Company attaching, and certifying as to (A) the resolutions of the Board of Directors duly authorizing the execution, delivery and performance by it of each Operative Document to which it or the Lessor is or on any future Funding Date will be a party, (B) its certificate of incorporation and by-laws, (C) the incumbency and signature of persons authorized to execute and deliver on its behalf the Operative Agreements to which it or the Lessor is or on any future Funding Date will be a party, (D) a good standing certificate for the state of Delaware, and which shall state that the resolutions thereby certified have not been amended, modified, revoked or rescinded;

(l) Fees. The Administrative Agent and the Arranger shall have received the fees to be paid on the Initial Closing Date pursuant to the Fee Letter Agreement;

(m) Legal Opinions.

(i) On the Initial Closing Date, the Administrative Agent, the Lessor, the Trust Company and the Investors shall have received the executed legal opinion of internal counsel to the Lessee, in the form of Exhibit D-1 hereto;

(ii) On the Initial Closing Date, the Administrative Agent, the Lessee and the Investors shall have received the executed legal opinion of Morris, James, Hitchins, & Williams LLP, counsel to the Lessor and the Trust Company, in the form of Exhibit D-3 hereto;

(iii) On the Initial Closing Date, the Administrative Agent, the Lessor, the Trust Company and the Investors shall have received the executed legal opinion of Mayer Brown & Platt, counsel to the Lessee in the form of Exhibit D-4 hereto; and

(iv) On the Initial Closing Date, the Administrative Agent, the Lessor, the Trust Company and the Investors shall have received the executed legal opinion of Mayer Brown & Platt, counsel to the Lessee in the form of Exhibit D-5 hereto.

(n) [Intentionally Deleted]

(o) Default. No Default (other than a Default described in Sections 17.1(d), (e), (f), (i) or (j) of the Lease) or Event of Default under any of the Operative Agreements shall have occurred and be continuing nor shall any Default or Event of Default occur by virtue of the Advance requested by such Requisition;

(p) Transaction Expenses. All Transaction Expenses (excluding those set forth in the Fee Letter) shall have been paid in full to the extent then invoiced, and all Transaction Expenses specified in the Fee Letter Agreement shall have been paid in accordance with the terms of the Fee Letter Agreement. Payments of Transaction Expenses to be paid on the Initial Closing Date shall be made out of the requested Advance, provided Lessee shall have received invoices and supporting information for such Transaction Expenses, and made by wire transfer of immediately available funds to the accounts specified by the parties receiving such payments;

(q) Loan Facility Agreement. The conditions precedent set forth in Section 3.2(b) of the Loan Facility Agreement shall have been satisfied or waived; and

(r) Lender Advances. With respect to each Advance, each Investor shall be satisfied that the Lessor shall receive from the Lenders on the relevant Funding Date Loans an amount equal to 96.84% of the applicable Advance.

(s) Legal Prohibition. The transactions contemplated by Operative Agreements shall not violate any Legal Requirement, and no change shall have occurred

or been proposed in any Legal Requirement that would make it illegal for any Participant to participate in such transactions.

6.2 Conditions to the Investor's and the Lenders' Obligations to Make Advances to Pay Property Acquisition Costs. In addition to the conditions set forth in Section 6.1 (other than those that solely relate to the Initial Closing Date), the obligations of each Investor to make each Investor Contribution, and of the Lenders to make Loans to the Lessor, on a Funding Date for the purpose of providing funds to the Lessor necessary to acquire a Property, are subject to the satisfaction (or waiver by the Administrative Agent, and to the extent the Investors have a right of approval set forth below, the Required Investors (provided the conditions applicable to RFC Loans may only be waived by RFC)) of the following conditions precedent:

(a) Requisition. The Administrative Agent, RFC and the Investors shall have received a fully executed counterpart of the Requisition in accordance with Section 5.2;

(b) Deed or Ground Lease. Subject to Section 6.6, there shall have been delivered to the Lessor, as applicable, (i) a deed (the "Deed"), in form and substance appropriate for recording with the applicable Governmental Authorities, with respect to each Property (and all Improvements located thereon) being purchased on such Property Closing Date, conveying fee simple title to such Property to the Lessor, subject only to the Permitted Exceptions, or (ii) a Ground Lease with respect to each Property being ground leased on such Property Closing Date (such Ground Lease, or a Memorandum of such Ground Lease, as appropriate under applicable Legal Requirements, to be in form and substance appropriate for recording with the applicable Governmental Authorities), subject only to Permitted Exceptions;

(c) Memorandum of Lease and Supplement. The Lessee shall have delivered to the Administrative Agent a Memorandum of Lease and Supplement executed by the Lessee and the Lessor with respect to each Property being acquired on such Property Closing Date;

(d) Agency Agreement Supplement. The Construction Agent shall have delivered to the Administrative Agent an Agency Agreement Supplement executed by the Construction Agent and the Lessor with respect to each Construction Period Property being acquired on such Property Closing Date;

(e) Recordation. Subject to Section 6.6, the Administrative Agent and the Investors shall have received evidence reasonably satisfactory to it that the Memorandum of Lease and Supplement, the Mortgage, the Assignment of Lease and the Financing Statements relating to the applicable Property have been recorded or filed (or that such documents are held by the Title Company or a closing agent acceptable to Administrative Agent and are in a position to be so filed and recorded, as applicable) in a manner sufficient to properly secure the interests of Administrative Agent and Lessor therein;

(f) Consent to Assignment of Lease. The Lessee shall have delivered to the Administrative Agent a Consent to Assignment executed by the Lessee with respect to each Property being acquired on such Property Closing Date;

(g) Environmental Site Assessment. The Administrative Agent and the Investors shall have received not less than five (5) Business Days prior to the Funding Date with respect to such Property Closing Date (i) an Environmental Site Assessment with respect to each Property being acquired on such Property Closing Date, prepared by the Environmental Engineer and the results of the Environmental Site Assessment shall be in form and substance satisfactory to the Administrative Agent and reasonably satisfactory to the Required Investors; and (ii) letters from the Environmental Engineer stating, among other things, that the Administrative Agent, the Lenders, the Lessor and the Investors may rely on the Environmental Site Assessment with respect to each Property being acquired on such Property Closing Date which were prepared by such firm as if they were originally addressed to them in all respects;

(h) Appraisal. The Administrative Agent and the Investors shall have received an Appraisal of each Property being acquired on such Property Closing Date and such Appraisal shall show that the value of each Property, as specified in clause (i) of the definition of "Appraisal" is at least equal to the projected Project Costs for such Property as set forth on the Budget, and such Appraisal shall be reasonably satisfactory in all respects to the Administrative Agent and the Required Investors;

(i) Survey. The Administrative Agent, the Lessor, the Investors and the Title Company shall have each received a survey of each Property being acquired on such Property Closing Date, certified to the Administrative Agent, the Lessor, the Investors and the Title Company as of a date within ninety (90) days of such Property Closing Date, by an independent professionally licensed land surveyor reasonably satisfactory to the Administrative Agent and the Investors, which survey shall be made in accordance with the Minimum Standard Detail Requirements for Land Title Surveys jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1992, and, without limiting the generality of the foregoing, there shall be surveyed and shown on such survey the following: (i) the locations on such Property of all the buildings, structures and other improvements, if any, and the established building setback lines; (ii) the lines of streets abutting such Property; (iii) all access and other easements appurtenant to such Property; (iv) all roadways, paths, driveways, easements, encroachments and overhanging projections and similar encumbrances burdening such Property, whether or not recorded, apparent from a physical inspection of such Property or otherwise known to the surveyor; (v) any encroachments on any adjoining property by the building, structures and improvements on such Property; (vi) if such Property is described as being on a filed map, a legend relating the survey to said map; and (vii) the flood hazard determination referred to in Section 7.4(c);

(j) Mortgagee's Title Insurance Policy. Subject to Section 6.6, with respect to each Property being acquired on such Property Closing Date, the Administrative Agent shall have received with respect to the Mortgage a mortgagees' title policy, or marked up

unconditional binder for such insurance dated such Property Closing Date or other evidence, satisfactory to Administrative Agent, of the commitment of the Title Company to issue a mortgagee's title policy; such title insurance policy shall (i) be in an amount equal to 96.84% of the aggregate amount of Project Costs shown on the Budget for any Construction Period Property (with a pending disbursements clause) and 96.84% of the Property Cost for any Completed Property; (ii) insure that the Mortgage insured thereby creates a valid first Lien on such Property, free and clear of all defects and encumbrances, except Permitted Exceptions; (iii) name the Administrative Agent for the benefit of the Lenders as the insured thereunder; (iv) be in the form of ALTA Loan Policy - 1970 (Amended 10/17/70) (to the extent such policy is available, or if unavailable, then such other ALTA Loan Policy form as is available in the state in which the applicable Property is situated); (v) contain, where available, comprehensive, access, tax lot, revolving credit, zoning (unless the cost of a zoning endorsement is more than nominal and the Lessee has delivered other evidence of zoning compliance reasonably acceptable to the Administrative Agent, and such other endorsements and affirmative coverage as the Administrative Agent may reasonably request; and (vi) be issued by the Title Company; and the Administrative Agent shall have received evidence reasonably satisfactory to it that all premiums in respect of such title insurance policy, and all charges for any mortgage recording tax with respect to the Mortgage have been paid or provision made therefor;

(k) Owner's or Leasehold Title Insurance Policy. Subject to Section 6.6, the Lessor shall have received an owner's or leasehold, as applicable, title policy, or marked up unconditional binder for such insurance or other evidence, satisfactory to Administrative Agent and the Required Investors, of the commitment of the Title Company to issue an ALTA owner's or leasehold, as applicable, title policy, dated such Property Closing Date, and containing a "recharacterization" endorsement and where available, the other endorsements referred to in clause (v) of Section 6.2(j), for each Property being acquired on such Property Closing Date, in standard forms and shall be in an amount equal to the aggregate amount of Project Costs shown on the Budget for any Construction Period Property (with a pending disbursements clause) and 100% of the Property Cost with respect to any Completed Property, and the Lessor and the Investors shall have received evidence reasonably satisfactory to it that all premiums in respect of such policy have been paid or provision made therefor;

(l) Lien Searches. The Administrative Agent shall have received the results of a recent search by a Person reasonably satisfactory to the Administrative Agent, of the Uniform Commercial Code, judgment and tax lien filings which may have been filed in the State of Delaware, and other appropriate jurisdictions, with respect to the Lessor, and the results of such search shall be satisfactory to the Administrative Agent;

(m) Construction Schedule. With respect to each Construction Period Property being acquired on such Property Closing Date, the Administrative Agent and the Investors shall have received a copy of the schedule prepared by or at the direction of the Construction Agent showing, to the satisfaction of the Administrative Agent and the Required Investors, the estimated (i) a schedule of certain construction milestones relating to the completion of the Construction Improvements showing in any event that

Completion with respect to such Construction Period Property is anticipated to occur on or before the Outside Completion Date, and (ii) timetable for the making of Loans and Investor Contributions with respect to such Construction Period Property;

(n) Budget. With respect to each Construction Period Property being acquired on such Property Closing Date, the Administrative Agent and the Investors shall have received a copy of the Budget, and such Budget shall be in form and substance satisfactory to the Administrative Agent and the Required Investors;

(o) Plans and Specifications. With respect to each Construction Period Property being acquired on such Property Closing Date, the Administrative Agent and the Investors shall have received, if available, a copy of the Plans and Specifications;

(p) Legal Opinions. With respect to each Property being acquired on such Property Closing Date:

- (i) the Administrative Agent, the Lessor, the Trust Company and the Investors shall have received the executed legal opinion of internal counsel to Lessee, substantially in the form of Exhibit D-1 hereto, limited to those Operative Agreements executed on such Property Closing Date, which opinion shall be reasonably satisfactory to the Administrative Agent; and
- (ii) the Administrative Agent, the Lessor, the Trust Company and the Investors shall have received the executed legal opinion of local counsel to the Lessee in the state in which such Property is located, substantially in the form of Exhibit D-2 hereto, with such changes as may be appropriate based upon applicable local law and practice, which opinion shall be reasonably satisfactory to the Administrative Agent; and
- (iii) the Administrative Agent, the Lessor, the Trust Company and the Investors shall have received the executed legal opinion of counsel to Lessor, the Trust and the Trust Company, substantially in the form of Exhibit D-3 hereto, limited to those Operative Agreements executed on such Property Closing Date, which opinion shall be reasonably satisfactory to the Administrative Agent; and
- (iv) the Administrative Agent, the Lessor, the Trust Company and the Investors shall have received the executed legal opinion of counsel to Lessee, substantially in the form of Exhibit D-4 hereto, limited to those Operative Agreements executed on such Property Closing Date, which opinion shall be reasonably satisfactory to the Administrative Agent;

(q) Insurance. Subject to Section 6.6, with respect to the Properties for which such Advance is being requested, the Administrative Agent and the Investors each shall have received evidence in form and substance satisfactory to each of the Administrative

Agent and the Required Investors that all of the requirements of Section 14 of the Lease and Section 6 of the Agency Agreement shall have been satisfied (which evidence shall include insurance certificates and may include copies of all applicable insurance policies and riders and endorsements);

(r) FIRPTA Affidavit. Subject to Section 6.6, the Administrative Agent and the Investors shall have received either (i) a FIRPTA Affidavit from the seller of the applicable Property in customary form or (ii) if such seller is a "foreign person" as defined in Section 1445 of the Code, evidence that a portion of the sales price to be paid to such seller has been withheld, if so required, in accordance with the provisions of the Code;

(s) No Event of Loss. Subject to Section 6.6, no Casualty or loss (other than one which is immaterial) shall have occurred in respect of a Construction Period Property unless covered by insurance (other than any Casualty or loss which is subject to an insurance deductible amount, which when aggregated with insurance deductibles associated with any other casualties or losses subject to insurance deductibles with respect to such Property, does not exceed the amount allocated to insurance deductibles in the applicable Budget). No action shall be pending or threatened by a Governmental Authority to initiate a Condemnation (other than one which is immaterial) by such Governmental Authority in respect of such Property; and

(t) Flood Zone. No portion of any Property being acquired by the Lessor on such Property Closing Date shall be located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, or if any such Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, then flood insurance shall have been obtained for such Property in accordance with Section 14.2(b) of the Lease and in accordance with the National Flood Insurance Act of 1968, as amended.

6.3 Conditions to the Investor's and the Lenders' Obligations to Make Advances to Pay Project Costs for Construction on any Construction Period Property. In addition to the conditions set forth in Section 6.1 (other than those that solely relate to the Initial Closing Date), the obligations of each Investor to make each Investor Contribution, and of the Lenders to make Loans to the Lessor, on a Funding Date for the purpose of providing funds to the Lessor necessary to pay for the construction of the Construction Improvements or the payment of Transaction Costs or other Project Costs (other than Property Acquisition Costs) are subject to the satisfaction (or waiver by the Administrative Agent, and to the extent the Investors have a right of approval set forth below, the Required Investors (provided the conditions applicable to RFC Loans may only be waived by RFC)) of the following conditions precedent:

(a) Requisition. The Administrative Agent, RFC and the Investors shall have received a fully executed counterpart of the Requisition, in accordance with Section 5.2;

(b) Budget in Balance. Based upon the Budget for the Properties, the Available RFC Loan Commitment and the Available Investor Commitment will be

sufficient to acquire such Properties, and complete the Construction Improvements on, such Properties;

(c) Lien Waivers. With respect to each Construction Period Property to which such Requisition relates, the Administrative Agent shall have received lien waivers, in form and substance reasonably satisfactory to the Administrative Agent, from each contractor, subcontractor, supplier and materialmen which the Lessee reasonably believes will receive total compensation for services rendered or materials supplied in connection with the construction of the related Construction Improvements of \$250,000 or more; each such lien waiver shall evidence that such contractor, subcontractor, supplier or materialmen has been paid in full for all work performed or materials supplied to the date which is thirty (30) days prior to the date of the request for such Advance, other than work which is the subject of such request; and

(d) Plans and Specifications. With respect to each Property to which such Requisition relates, the Administrative Agent and the Investors shall have received a copy of the Plans and Specifications with respect to each Improvement to be constructed and installed on such Property, if such Plan and Specifications have not already been provided pursuant to Section 6.2(o), above.

6.4 Backup Facility. Notwithstanding anything to the contrary contained in Section 6.1, 6.2 or 6.3 of this Agreement, the Liquidity Agreement and the Loan Facility Agreement solely as they relate to transactions among the Administrative Agent, RFC and the Backup Facility Banks shall be effective upon the execution of such agreements by all such parties.

6.5 Approvals. (a) The remittance by any Lender (other than RFC) of its portion of the Loans and the remittance by any Investor of its portion of the Investor Contributions shall evidence such Lender's or Investor's, as applicable, satisfaction that the conditions precedent to such Advance have been met or waived.

(b) Each of the Lessor, the Administrative Agent, and the Lenders shall be deemed to have approved (x) all items set forth in Sections 6.1, 6.2, 6.3, 8.1(b) and Section 9.16 which are subject to the approval of such Person, or (y) any item for which the Lessee requests approval under Sections 10.2, 11.1(c) and 15 of the Lease or Sections 3.1, 6.1(b) and 6.2(a) of the Agency Agreement, unless such Person shall have provided express written notice to the Lessee, (in the case of approvals of any Person other than the Administrative Agent) the Administrative Agent, and (in the case of approvals of the Administrative Agent) the Lessor, on or prior to the applicable Funding Date (assuming in each case that such Person has been provided with the item or items subject to such approval at least five (5) Business Days prior to the date such approval is required), or (for approvals not related to any such dates) within five (5) Business Days after the Lessee's or Construction Agent's request for such approval, of any such disapproval, which notice shall be in writing and shall specifically indicate: (i) that it is a disapproval notice under this Section 6.5(b), (ii) the item so disapproved and (iii) the specific reason for such disapproval. In any case where any Investor has a right of consent or approval, such consent or approval shall not be unreasonably withheld or delayed.

6.6 Property Acquisitions. Notwithstanding anything to the contrary in Section 6, if Lessee requires a Property Closing Date to occur on a date which is not a Funding Date, the Administrative Agent, the Lessor, each Investor, RFC and each Backup Facility Bank agree that pursuant to Section 5.2(b), Lessee may submit a Requisition to fund Project Costs with respect to such Property on the Funding Date immediately preceding the applicable Property Closing Date. In such event, the following provisions shall be applicable:

(i) Such amounts will be advanced into the Funding Account on such Funding Date;

(ii) In connection with such acquisition Lessee shall (x) not be required to satisfy the conditions of Sections 6.1(c), 6.2(b), 6.2(e), 6.2(j), 6.2(k), 6.2(q), 6.2(r) and 6.2(s) until such Property Closing Date, and (y) on or prior to such Property Closing Date (or through the Property closing escrow), satisfy such conditions, at which time the Administrative Agent shall release to or as directed by Lessee the amounts held in the Funding Account pursuant to the immediately preceding clause (i) with respect to the applicable Property;

(iii) In the event that Lessee is unable to satisfy the conditions of Sections 6.1(c), 6.2(b), 6.2(e), 6.2(j), 6.2(k), 6.2(q), 6.2(r) or 6.2(s) prior to such Property Closing Date, or if after such Funding Date, Lessee elects at its sole discretion not to acquire such Property, the funds deposited in the Funding Account shall be applied in accordance with Section 13.10(a)(i) and all documents in escrow or delivered by Lessee in connection with such Property shall be released to Lessee; *provided, however*, that in such event the Lessee shall have the right, subject to the terms and conditions of this Agreement, to include in a subsequent Requisition a request for an Advance of such funds for the acquisition of such Property; and

(iv) Interest on the Loans and Investor Yield on the Investor Contributions shall begin accruing on the date such funds are advanced by the Participants.

## SECTION 7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of each Investor on the Initial Closing Date and as of each Funding Date. Each Investor represents and warrants to each of the other parties hereto as of the Initial Closing Date and as of each Funding Date as follows:

(a) Due Organization, etc. It is a duly organized and validly existing corporation in good standing under the laws of the jurisdiction of its organization and has the power and authority to carry on its business as now conducted and to enter into and perform its obligations under this Agreement, each Operative Agreement to which it is or will be a party and each other agreement, instrument and document executed and delivered by it in connection with or as contemplated by each such Operative Agreement.

(b) Authorization; No Conflict. The execution, delivery and performance by such Investor of each Operative Agreement to which it is a party has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance

by it with any of the terms and provisions thereof (i) requires or will require any approval of (which approval has not been obtained) the shareholders of, or approval or consent of any trustee or holders of any indebtedness or obligations of such Investor, (ii) contravenes or will contravene any Legal Requirement applicable to or binding on it as of the date hereof, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lessor Lien upon the Properties or any of the Improvements, its articles of incorporation or by-laws, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it or its properties may be bound, or (iv) does or will require any Governmental Action by any Governmental Authority.

(c) Enforceability, etc. Each Operative Agreement to which it is a party has been duly executed and delivered by it and constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation of such Investor enforceable against it in accordance with the terms thereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) ERISA. Such Investor is making the Investor Contributions contemplated to be made by it hereunder for its own account and with its general corporate assets in the ordinary course of its business, and no part of such amount constitutes the plan assets of any Employee Benefit Plan.

(e) Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to such Investor's knowledge, threatened by or against such Investor (a) with respect to any of the Operative Agreements or any of the transactions contemplated hereby or thereby, or (b) which could reasonably be expected to have a material adverse effect on such Investor's ability to perform its obligations under the Operative Agreements.

(f) Source of Funds. The Investor Contributions to be made by such Investor will be made from equity held by such Investor, or if such funds are to be borrowed by such Investor, such borrowing is recourse to such Investor and to such Investor's knowledge, it has assets (other than its interest in the Overall Transaction) to fully pay such debt and all amounts due with respect thereto when due.

(g) Lessor Liens. There are no Lessor Liens attributable to such Investor.

(h) Offer of Securities, etc. Neither such Investor nor any Person authorized to act on its behalf has, directly or indirectly, offered to sell the Certificates or any other similar securities (the sale or offer of which would be integrated with the sale or offer of the Certificates), for sale to, or solicited any offer to acquire any of the same from, any Person.

(i) No Registration. Such Investor understands and acknowledges that the Certificates have not been and will not be registered under the Securities Act in reliance

upon the exemption provided in Section 4(2) of the Securities Act or any other applicable exemption, that the Certificates have not and will not be registered or qualified under the securities or "blue sky" laws of any jurisdiction, that the Certificates may be resold or otherwise transferred only if so registered or qualified or if an exemption from registration or qualification is available, that none of the Lessee, the Lessor or the Administrative Agent is required to register the Certificates and that any transfer must comply with the provisions of the Operative Agreements relating thereto. Such Investor will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Certificates held by it.

(j) Institutional Investor. Such Investor is a sophisticated institutional investor and an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) of the Securities Act, and has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of its investment in the Certificates and is able to bear the economic risk of such investment. Such Investor has been given such information concerning the Certificates, the other Operative Agreements, the Properties, the Lessor and the Lessee as it has requested.

(k) Legend. Such Investor understands and acknowledges that the Certificate which it is acquiring will bear a legend as set forth in the form of Certificate included in the Trust Agreement.

(l) Funding Dates. As of such Funding Date, the representations and warranties of such Investor set forth herein and in each of the other Operative Agreements are true and correct in all respects on and as of such Funding Date as if made on and as of such Funding Date, and such Investor is in compliance with its obligations under the Operative Agreements.

7.2 Representations and Warranties of Lessor on the Initial Closing Date and each Property Closing Date. Lessor represents and warrants to each of the other parties hereto as of the Initial Closing Date and each Property Closing Date as follows:

(a) Due Organization, etc. Lessor is a duly formed and validly existing business trust in good standing under the laws of the State of Delaware and has the power and authority to carry on its business as now conducted and to enter into and perform its obligations under this Agreement, each Operative Agreement to which it is a party and each other agreement, instrument and document executed and delivered by it in connection with or as contemplated by each such Operative Agreement.

(b) Authorization: No Conflict. The execution, delivery and performance by Lessor of each Operative Agreement to which it is a party has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) requires or will require any approval of (which approval has not been obtained) any party or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessor (ii) contravenes or will contravene any Legal Requirement applicable to or binding on it as of the date hereof, (iii) does or will

contravene or result in any breach of or constitute any default under, or result in the creation of any Lessor Lien upon the Property or any of the Improvements or the Trust Agreement, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it or its properties may be bound, or (iv) does or will require any Governmental Action by any Governmental Authority.

(c) Enforceability, etc. Each Operative Agreement to which it is a party has been duly executed and delivered by it and constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation of Lessor enforceable against it in accordance with the terms thereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or threatened by or against the Lessor (a) with respect to any of the Operative Agreements or any of the transactions contemplated hereby or thereby, or (b) which could reasonably be expected to have a material adverse effect on the assets, liabilities, operations, business or financial condition of the Lessor.

(e) Assignment. Lessor has not assigned or transferred any of its right, title or interest in or under the Lease, any other Operative Agreement or any of the Properties, except in accordance with the other Operative Agreements.

(f) No Default. The Lessor is not in default under or with respect to any of its Contractual Obligations in any respect which could have a material adverse effect on the assets, liabilities, operations, business or financial condition of the Lessor. No Default or Event of Default attributable to it has occurred and is continuing.

(g) Chief Place of Business. The Lessor's chief place of business, chief executive office and office where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Agreement are kept are located at Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware.

(h) Federal Reserve Regulations. The Lessor is not engaged principally in, and does not have as one of its most important activities, the business of extending credit for the purpose of purchasing or carrying any Margin Stock, and no part of the proceeds of the Loans will be used by it, directly or indirectly, to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations of the Board, including but not limited to, T, U or X of the Board.

(i) Investment and Holding Company Status. The Lessor is not (i) an "investment company" as defined in, or subject to regulation under the Investment

Company Act of 1940, or (ii) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

(j) Securities Act. Neither the Lessor nor any Person authorized by the Lessor to act on its behalf has offered or sold any interest in the Properties, the Loans, the Notes (if any), or the Certificates, or in any similar security or interest relating to the Properties, or in any security the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the aforementioned securities to, or solicited any offer to acquire any of the same from, any Person other than, in the case of the Loans, the Notes (if any), or the Certificates, the Administrative Agent or the Arranger, and neither the Lessor nor any Person authorized by the Lessor to act on its behalf will take any action which would subject the issuance or sale of any interest in the Properties, the Loans, the Notes (if any) or the Certificates, to the provisions of Section 5 of the Securities Act or require the qualification of any Operative Agreement under the Trust Indenture Act of 1939, as amended.

(k) Reserved.

(l) Lessor Liens. The Properties are free and clear of all Lessor Liens.

(m) Purpose; No Other Assets. Lessor was organized exclusively for the purposes of (i) acquiring the fee and leasehold interests in the Properties, (ii) leasing the Land and the Improvements to Lessee pursuant to the Lease, and (iii) conducting any ancillary business necessary to accomplish the purpose set forth in clauses (i) and (ii), and it has not engaged in any business unrelated to such purposes. It has no assets other than those related to its leasing, ownership and operation of the Properties.

(n) Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required by the Lessor in connection with the Overall Transaction, except such as have been given, made or obtained are in full force and effect.

(o) Representations and Warranties. The representations and warranties of the Lessor set forth herein and in each of the other Operative Agreements are true and correct in all material respects on and as of the Initial Closing Date and each Property Closing Date as if made on such date.

7.3 Representations and Warranties of the Lessee on the Initial Closing Date and each Funding Date. The Lessee represents and warrants to each of the other parties hereto as of the Initial Closing Date and each Funding Date (including each Property Closing Date, except as specifically set forth below) as follows:

(a) Organization; Powers. The Lessee (i) is duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (iii) is qualified to do business in every jurisdiction where such qualification is required, except where the failure so to qualify would not result in a Material Adverse Effect, and (iv) has the power and authority to execute,

deliver and perform its obligations under each of the Operative Agreements and each other agreement or instrument contemplated thereby to which it is or will be a party.

(b) Authorization. The execution, delivery and performance by the Lessee, Support Provider, and the Construction Agent of each of the Operative Agreements to which it is a party (a) has been duly authorized by all necessary corporate action and (b) will not (i) violate (A) any Legal Requirements applicable to Lessee, (B) any order of any Governmental Authority or (C) any provision of any indenture, agreement or other instrument to which the Lessee or the Construction Agent is a party or by which it or any of its property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under any such indenture, agreement or other instrument of Lessee, (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by the Lessee or any of its Subsidiaries except in accordance with the Operative Agreements or (iv) require any approval of stockholders or any approval or consent of any Person under any Contractual Obligation of Lessee, except for such approvals or consents which will be obtained on or before the Initial Closing Date (or, in the case of any Operative Agreement executed and delivered after the Initial Closing Date, on or before such date of execution or delivery) and disclosed in writing to the Administrative Agent and the Investors.

(c) Enforceability. This Agreement and each of the other Operative Agreements to which the Lessee, Support Provider, and/or the Construction Agent is a party has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery thereof on the part of the parties thereto (other than Lessee and the Construction Agent), constitutes a legal, valid and binding obligation of the Lessee and the Construction Agent, enforceable against the Lessee and the Construction Agent, in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required by the Lessee, Construction Agent or Support Provider in connection with the Overall Transaction, except such as have been given, made or obtained, or which will be given, made or obtained in a timely manner, and those theretofore given, made or obtained are in full force and effect. All material Governmental Actions necessary for the construction, operation, use, leasing and ownership of the Land and Improvements then owned by Lessor or to be acquired on such Funding Date or that are required for the construction work which is the subject of the applicable Advance have been obtained, and such Governmental Actions are in full force and effect, and are not currently subject to any appeal or further proceeding,

(e) No Legal Bar. The execution, delivery and performance of this Agreement and the other Operative Agreements, and the Loans and Investor Contributions, and the use of the proceeds thereof, will not violate any Legal

Requirement or Contractual Obligation of the Lessee, Construction Agent or Support Provider, and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any such Legal Requirement or Contractual Obligation, except as contemplated hereby or thereby and except to the extent any such violation of creation or imposition of a Lien would not reasonably be expected to have a Material Adverse Effect.

(f) Financial Statements. The Lessee has heretofore furnished to the Backup Facility Banks and the Investors the consolidated balance sheet and statement of income and cash flow of the Lessee, as of and for the fiscal year ended December 31, 2000, audited by and accompanied by the opinion of their independent public accountants. Such financial statements present fairly the financial condition and results of operations of the Lessee and its Subsidiaries as of such dates and for such periods. Such financial statements were prepared in accordance with GAAP applied on a consistent basis.

(g) No Material Adverse Change. As of the Initial Closing Date, there has been no material adverse change in the financial condition of the Lessee and its Subsidiaries, taken as a whole, since June 30, 2001, and as of each Funding Date other than the Initial Closing Date, there has been no material adverse change in the financial condition of the Lessee and its Subsidiaries, taken as a whole, since June 30, 2001 which materially impairs the ability of the Lessee, the Construction Agent or the Support Provider to perform their obligations under the Operative Agreements.

(h) Strikes, Lockouts, Etc. There are no strikes, lockouts, or other material labor disputes, or grievances against the Lessee relating to the construction of any Construction Period Property or, to the Lessee's knowledge, threatened against or affecting the Lessee relating to the construction of any Construction Period Property, and no significant unfair labor practice, charges, or grievances are pending against the Lessee relating to the construction of any Construction Period Property, or to the Lessee's knowledge, threatened against the Lessee relating to construction of any Construction Period Property before any Governmental Authority, any of which would have a Material Adverse Effect.

(i) Title to Properties: Possession Under Leases. (i) Lessee has (A) valid leasehold interests in (in the case of leasehold interests in real or personal property), or (B) good title to (in the case of all other personal property), all its properties and assets material to its business, except for minor defects that do not interfere with the ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes.

(ii) Lessee has complied with all obligations under all leases to which it is a party and all such leases are in full force and effect. Lessee enjoys peaceful and undisturbed possession under all such leases.

(j) Litigation: Compliance with Laws. (i) Except as disclosed in the financial statements described in Section 7.3(f), there are not any actions,

suits or proceedings, arbitration or governmental investigations at law or in equity by or before any Governmental Authority now pending, or to the knowledge of Lessee, threatened, against or affecting the Lessee or any business, property or rights of Lessee (x) which involve any Operative Agreements or the Overall Transactions, (y) which might reasonably be expected to have a Material Adverse Effect or (z) which adversely affect the title to, or the use, operation or value of, any Property.

(ii) Lessee is not in violation of any Legal Requirements or in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could reasonably be anticipated to result in a Material Adverse Effect.

Reserved.

(k) Federal Reserve Regulations. Lessee is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(l) Investment Company Act; Public Utility Holding Company Act. Lessee is not (i) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, or (ii) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

(m) Tax Returns. Lessee has filed or caused to be filed all Federal, state, local and foreign tax returns required to have been filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns or on any assessments received by it, except taxes that are being contested in good faith by appropriate proceedings and for which the Lessee shall have set aside on its books adequate reserves.

(n) No Material Misstatements; Full Disclosure. No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Lessee to the Administrative Agent, any Investor or any Lender pursuant to any Operative Agreement or included therein, contains any material misstatement of fact or, omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, made, not misleading. The Lessee has disclosed to the Administrative Agent and the Lessor in writing, any and all facts the failure of which to disclose would have a Material Adverse Effect.

(o) Employee Benefit Plans. Each of the Lessee and its ERISA Affiliates is in compliance in all material respects with all applicable provisions of ERISA and the regulations and published interpretations thereunder. No Reportable Event has occurred as to which the Lessee or any ERISA Affiliate was required to file a report with the PBGC, and the present value of all benefit liabilities (as defined in Section 4001(a)(16) of ERISA) under each Single Employer Plan (based on those assumptions used to fund such Plan) did not, as of the last annual valuation date applicable thereto, exceed by more than \$5,000,000 the value of the assets of such Single Employer Plan. Neither the Lessee nor

any ERISA Affiliate has incurred any Withdrawal Liability which remains unpaid and that could result in a Material Adverse Effect. Neither Lessee nor any ERISA Affiliate has received any notification that any Multiemployer Plan is in reorganization or has been terminated for purposes of Title IV of ERISA, and to the best knowledge of the Lessee no Multiemployer Plan is reasonably expected to be in reorganization or to be terminated for purposes of Title IV of ERISA, where such reorganization or termination has resulted or could reasonably be expected to result, through increases in the contributions required to be made to such Multiemployer Plan or otherwise, in a Material Adverse Effect.

(p) Representations and Warranties; Defaults. The representations and warranties of the Construction Agent and the Lessee set forth herein and in each of the other Operative Agreements are true and correct in all respects on and as of such Funding Date as if made on and as of such Funding Date. The Lessee is in compliance with its obligations under the Operative Agreements and there exists no Default or Event of Default under any of the Operative Agreements, before the making of, as a result of, or after giving effect to, the Advance requested by the Requisition on such Funding Date.

(q) Conditions Precedent in Operative Agreements. All conditions precedent contained in this Agreement and in the other Operative Agreements relating to the funding of such Advance have been satisfied in full or waived by the appropriate parties.

#### 7.4 Representations and Warranties of the Lessee on Property Closing Dates.

The Lessee hereby represents and warrants to each of the other parties hereto as of each Property Closing Date as follows:

(a) Recording of Documents. Each of the Deed, or the Ground Lease or a Memorandum of Ground Lease, as applicable, the Memorandum of Lease and Supplement, the Assignment of Lease, the Consent of the Assignment, and the Mortgage delivered on such Property Closing Date has been recorded with the appropriate Governmental Authorities in the order set forth in this paragraph (or have been delivered to the Title Company for recording with appropriate recording instructions and effective "gap" coverage), and the Lessee Financing Statements and Lessor Financing Statements with respect to the Property being acquired have been, or will be, filed with the appropriate Governmental Authorities.

(b) Priority of Liens. (i) Upon recording in the appropriate offices in the State where the applicable Property is located, each Mortgage, each Assignment of Lease and each Memorandum of Lease and Supplement delivered on such Property Closing Date, constitutes a valid and perfected first lien on each applicable Property in an amount not less than the Tranche A/B Property Cost with respect to such Property, subject only to the Permitted Exceptions or Permitted Liens, and (ii) upon filing with the appropriate Governmental Authorities, the Lessor Financing Statements perfect the Lessor's interest under the Lease to the extent the Lease is a security agreement governed by Article 9 of the Uniform Commercial Code.

(c) Flood Zone. No portion of any Property being acquired by the Lessor on such Property Closing Date is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, or if any such Property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, then flood insurance has been obtained for such Property in accordance with Section 14.2(b) of the Lease and in accordance with the National Flood Insurance Act of 1968, as amended.

(d) Insurance Coverage. The Lessee maintains insurance coverage for each Property being acquired by the Lessor on such Property Closing Date which meets the requirements of Section 14.1 of the Lease (if applicable), Section 6 of the Agency Agreement, and the other Operative Agreements, and such coverage is in full force and effect.

(e) Consents, etc. All Governmental Actions required by all Legal Requirements as of the applicable Property Closing Date for construction, completion, occupancy and operation of each Property being acquired on such Property Closing Date have been obtained and are in full force and effect.

(f) Governmental Actions. (i) The Property being acquired on such Property Closing Date is zoned in such a manner that will permit construction, occupancy and use of the Improvements as a matter of right, and (ii) the Lessee has no reason to believe that all Governmental Actions necessary for the construction, operation, use, leasing, ownership and routine maintenance of the Property being acquired on such Property Closing Date that have not been obtained on or prior to such Property Closing Date will not be obtained in the ordinary course of business on or prior to the date such Governmental Actions will be required to permit the timely construction, operation, use, leasing, ownership and routine maintenance of the Property being acquired on such Property Closing Date.

(g) Environmental Matters. Except as disclosed in any Environmental Site Assessment delivered to the Administrative Agent and the Investors prior to the applicable Property Closing Date:

- (i) the Property being acquired on such Property Closing Date does not contain any Hazardous Substances in amounts or concentrations which constitute a Material Environmental Violation or would reasonably be expected to result in material liability under Environmental Laws;
- (ii) the Property and all operations at such Property are in compliance in all material respects with all applicable Environmental Laws;
- (iii) Lessee is conducting its business in compliance in all material respects with all applicable Environmental Laws and Lessee has not received notice of any failure so to comply. The Lessee's and the Subsidiaries' facilities do not manage any hazardous wastes, hazardous substances, hazardous materials, toxic substances, toxic pollutants or

substances similarly denominated, as those terms or similar terms are used in the Environmental Laws, in violation in any material respect of any such law or any regulations promulgated pursuant thereto;

(iv) Lessee has not received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding compliance with Environmental Laws with regard to the Property being acquired on such Property Closing Date, nor does the Lessee have knowledge that any such notice will be received or is being threatened;

(v) no Person has transported or disposed of Hazardous Substances from the Property being acquired on such Property Closing Date in violation of any Environmental Law, nor has any Person generated, treated, stored or disposed of any Hazardous Substances at, on or under such Property in violation of any applicable Environmental Law;

(vi) no judicial proceeding or governmental or administrative action is pending or, to the best knowledge of the Lessee, threatened, under any Environmental Law to which the Lessee is or will be named as a party with respect to the Property being acquired on such Property Closing Date, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to such Property;

(vii) there has been no release or threat of release of Hazardous Substances at or from the Property being acquired on such Property Closing Date, or arising from or related to the operations of the Lessee in connection with such Property, in violation of or in amounts or in a manner that could reasonably be expected to give rise to any Environmental Violation or could reasonably be expected to result in any Environmental Violation or in material liability under Environmental Laws; and

(viii) all applicable licenses, approvals, authorizations, consents, permits (including, without limitation, building, demolition and environmental permits, licenses, approvals, authorizations and consents), easements and rights-of-way, including proof of dedication, required for the use, treatment, storage, transport, disposal or disposition of any Hazardous Substance on, at, under or from the Property being acquired on such Property Closing Date during the construction of the Construction Improvements thereon have been obtained, or will be obtained in a timely manner, from the appropriate Governmental Authorities having jurisdiction or from private parties.

(h) Title to the Property. The Lessor has good and marketable title to the Property being acquired on such Property Closing Date in fee simple, or good and valid

leasehold title to such Property leased under any Ground Lease, subject in each case only to the Permitted Exceptions or Permitted Liens. The Lessor has the right to grant the Mortgage on such Property.

(i) Conditions Precedent in Operative Agreements. To Lessee's knowledge all conditions precedent contained in this Agreement and in the other Operative Agreements relating to the acquisition of a Property by the Lessor have been satisfied in full or waived by the appropriate parties.

(j) Property-Related Matters. Each Construction Period Property, when improved in accordance with the Plans and Specifications, will comply in all material respects, and each Completed Property complies in all material respects with all Legal Requirements (including all applicable zoning and land use laws and Environmental Laws) and Insurance Requirements. The Plans and Specifications have been prepared in accordance with all applicable Legal Requirements (including all applicable Environmental Laws and building, planning, zoning and fire codes) and upon completion of the applicable Construction Improvements in accordance with the Plans and Specifications, such Construction Improvements on the Construction Period Properties will not encroach in any manner onto any adjoining land (except as permitted by express written easements or variance) and such Improvements and the use thereof by the Lessee and its agents, assignees, employees, invitees, lessees, licensees and tenants will comply with all applicable Legal Requirements (including all applicable Environmental Laws and building, planning, zoning and fire codes). Upon completion of such Construction Improvements in accordance with the Plans and Specifications, all water, sewer, electric, gas, telephone and drainage facilities and all other utilities required to adequately service each Property for its intended use will be available pursuant to adequate permits (including any that may be required under applicable Environmental Laws) and all utilities serving the Properties, or proposed to serve the Properties in accordance with the Plans and Specifications, are located in, and in the future will be located in, and vehicular access to the Improvements on each of the Properties is or will be provided by, either public rights-of-way abutting the Properties or Appurtenant Rights. No Casualty with respect to any Completed Property has occurred which Casualty has had a material adverse effect on the Lessee's ability to perform its obligations under the Agency Agreement and the other Operative Agreements or which is a Significant Casualty.

7.5 Representations and Warranties of the Trust Company on the Initial Closing Date and each Funding Date. The Trust Company represents and warrants to each of the other parties hereto as of the Initial Closing Date and each Funding Date as follows:

(a) Due Organization, etc. It is a banking corporation duly organized and validly existing and in good standing under the laws of the State of Delaware and has the power and authority to enter into and perform its obligations under the Trust Agreement and has the corporate power and authority to act as the trustee under the Trust Agreement and to enter into and perform the obligations under each of the other Operative Agreements to which Trust Company is or will be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Initial

Closing Date in connection with or as contemplated by each such Operative Agreement to which the Trust Company is or will be a party.

(b) Authorization: No Conflict. The execution, delivery and performance of each Operative Agreement which it has executed, either in its individual capacity or (assuming due authorization, execution and delivery of the Trust Agreement by the Investors) as trustee of the Lessor, as the case may be, has been duly authorized by all necessary action on its part and neither the execution and delivery thereof, nor the consummation of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof (i) does or will require any approval or consent of any trustee or holders of any of its indebtedness or obligations, (ii) does or will contravene any current United States federal law, governmental rule or regulation governing its banking or trust powers, (iii) does or will contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any of its property under, its charter or by-laws, or any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement or other agreement or instrument to which it is a party or by which it or its properties may be bound or affected, or (iv) does or will require any Governmental Action by any Governmental Authority of the United States or the State of Delaware governing its banking or trust powers.

(c) Trust Company Enforceability, etc. The Trust Agreement and, assuming the Trust Agreement is the legal, valid and binding obligation of the Investors, each other Operative Agreement to which Trust Company or the Lessor, as the case may be, is or will be a party have been, or will be, duly executed and delivered by Trust Company, and the Trust Agreement and each such other Operative Agreement to the extent entered into by the Trust Company constitutes, or upon execution and delivery will constitute, a legal, valid and binding obligation enforceable against Trust Company in accordance with the terms thereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or threatened by or against the Trust Company with respect to any of the Operative Agreements or any of the transactions contemplated hereby or thereby.

(e) Securities Act. Neither the Trust Company nor anyone authorized to act on behalf of the Trust Company has, directly or indirectly, in violation of Section 5 of the Securities Act or any state securities laws, offered or sold any interest in the Loans, the Notes (if any), the Certificates, or the Lease, or in any security or lease the offering of which, for purposes of the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned securities or leases, or solicited any offer to acquire any of the aforementioned securities or leases.

(f) Authority of the Lessor. The execution and delivery of each Operative Agreement delivered by the Trust Company on behalf of the Lessor on such date and the

performance of the obligations of the Lessor under each Operative Agreement has been duly authorized by all requisite action of the Lessor.

(g) Execution and Delivery by the Lessor. Each Operative Agreement delivered by the Trust Company on behalf of the Lessor on such date has been duly executed and delivered by the Lessor.

(h) Representations and Warranties: No Default. The representations and warranties of the Trust Company set forth herein and in each of the other Operative Agreements are true and correct in all respects on and as of such Funding Date as if made on and as of such Funding Date, and the Trust Company is in compliance with its respective obligations under the Operative Agreements.

7.6 Representations and Warranties of the Lessor on Each Funding Date. The Lessor hereby represents and warrants to each of the other parties hereto as of each Funding Date as follows:

(a) Representations and Warranties: No Default. The representations and warranties of the Lessor set forth herein and in each of the other Operative Agreements are true and correct in all respects on and as of such Funding Date as if made on and as of such Funding Date. The Lessor is in compliance with its respective obligations under the Operative Agreements and there exists no Default or Event of Default under any of the Operative Agreements. No Default or Event of Default will occur under any of the Operative Agreements as a result of, or after giving effect to, the Advance requested by the Requisition on such Funding Date.

(b) Authority of the Lessor. The execution and delivery of each Operative Agreement delivered by the Lessor on such date and the performance of the obligations of the Lessor under each Operative Agreement has been duly authorized by all requisite action of the Lessor.

(c) Execution and Delivery by the Lessor. Each Operative Agreement delivered by the Lessor on such date has been duly executed and delivered by the Lessor.

(d) Valid and Binding Obligations of the Lessor. Each Operative Agreement delivered by the Lessor on such date is a legal, valid and binding obligation of the Lessor, enforceable against the Lessor in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(e) Conditions Precedent Contained in the Operative Agreements. All conditions precedent contained in this Agreement and in the other Operative Agreements to be satisfied by the Lessor relating to the relevant Advance have been satisfied in full.

7.7 Representations and Warranties of RFC. As of the Initial Closing Date and as of each Funding Date, RFC represents and warrants to the other parties to this Agreement that:

(a) Due Organization, etc. RFC (i) is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware and has the power and authority to carry on its business as now conducted, and (ii) has duly qualified and is authorized to do business and is in good standing in all jurisdictions where the failure to do so would have a material adverse effect on it or its assets.

(b) Company Power and Authority; Enforceability. RFC has the power and authority to execute, deliver and carry out the terms and provisions of the Operative Agreements to which it is or will be a party (each an "RFC Operative Agreement") and has taken all necessary company action to authorize the execution, delivery and performance of each RFC Operative Agreement and has duly executed and delivered each RFC Operative Agreement required to be executed and delivered by it and, assuming the due authorization, execution and delivery thereof on the part of each other party thereto, each RFC Operative Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by insolvency, bankruptcy, reorganization or other laws relating to or affecting the enforcement of creditors' rights or by general equitable principles.

(c) Assignment. RFC has not assigned or transferred any of its right, title or interest in or under the RFC Loans or any other Operative Agreement, except as expressly contemplated by the Operative Agreements.

(d) Chief Place of Business. RFC's chief place of business, chief executive office and office where the documents, accounts and records relating to the transactions contemplated by this Agreement and each other Operative Agreement are and will be kept is located at c/o The Liberty Hampshire Company, LLC, 227 West Monroe Street, Suite 4000, Chicago, Illinois, 60606.

(e) No Approvals, etc. The execution and delivery by RFC of the RFC Operative Agreements do not require the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority having jurisdiction over RFC.

(f) Litigation. There is no action, proceeding or investigation pending or, to the knowledge of RFC, threatened against RFC which questions the validity of the RFC Operative Agreements, and there is no action, proceeding or investigation pending or threatened which is likely to result, either in any case or in the aggregate, in any material adverse change in the ability of RFC to perform its respective obligations under the RFC Operative Agreements.

(g) No Conflict. Neither the execution and delivery by RFC of this Agreement or the Loan Facility Agreement, nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on RFC or its constituent documents or the provisions, of any indenture, instrument or agreement to which RFC is a party or is subject, or by which it, or its property, is bound, or conflict with or constitute a default thereunder, or result in the

creation or imposition of any Lien in, of or on the property of RFC pursuant to the terms of any such indenture, instrument or agreement.

(h) Taxes. RFC has filed all U.S. federal tax returns and all other tax returns which are required to be filed and has paid all taxes due pursuant to said returns or pursuant to any assessment received by RFC except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. No tax liens have been filed and no claims are being asserted with respect to any taxes. The charges, accruals and reserves on the books of RFC in respect of any taxes or other governmental charges are adequate.

(i) Contingent Obligations. RFC has no material contingent obligations.

(j) ERISA. No part of the Loans contemplated to be made by RFC constitute the plan assets of any Employee Benefit Plan.

(k) Accuracy of Information. No information, exhibit or report furnished by (i) RFC to the Administrative Agent or Lessee in connection with the negotiation of, or compliance with, this Agreement or the Loan Facility Agreement contained any material misstatement of fact or (ii) omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

(l) Material Agreements. RFC is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any material agreement to which it is a party or (ii) any agreement or instrument evidencing or governing indebtedness.

(m) Compliance With Laws. RFC has complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof, having jurisdiction over the conduct of its business or the ownership of its property. RFC has not received any notice to the effect that its operations are not in material compliance with any of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations or the subject of any federal, state or local investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment.

(n) Investment Company Act. RFC is not an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

#### 7.8 Representations of Administrative Agent and the Backup Facility Banks.

As of the Initial Closing Date (or, with respect to any Backup Facility Bank becoming party hereto after the Initial Closing Date, as of the date such Backup Facility Bank becomes party hereto), and as of each subsequent Funding Date each of (with respect to clauses (a), (b), (d) and (e)) Administrative Agent and (with respect to clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k)) each Backup Facility Bank hereby represents and warrants to Lessor, Lessee and each of the other Participants that:

(a) Corporate Existence and Power. It is, respectively, a banking association or corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all corporate powers and authority and all material governmental licenses, authorizations and approvals required to perform its obligations under each of the Operative Agreements to which it is a party.

(b) Binding Effect. This Agreement and the other Operative Agreements to which it is a party constitute the legal, valid and binding obligations of it, enforceable against it in accordance with their respective terms except as such enforceability may be limited by any applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity. It has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and each other Operative Agreement to which it is a party and has duly executed and delivered each Operative Agreement required to be executed and delivered by it.

(c) Loans. Such Backup Facility Bank is making its Loans and entering into the transaction contemplated hereby for its own account and not with a view to any distribution thereof; except that the disposition of any interest in such loans shall be at all times within the control of such Backup Facility Bank, subject to the restrictions of Section 11.

(d) No Violation. Neither the execution, delivery and performance by it of the Operative Agreements to which it is or will be a party nor compliance with the terms and provisions thereof, nor the consummation of the transactions contemplated therein, (i) will contravene any Legal Requirements or (ii) will violate any provision of its certificate of incorporation or by-laws.

(e) No Approvals, etc. The execution and delivery by it of the Operative Agreements to which it is a party does not require the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of any Governmental Authority having jurisdiction over it.

(f) ERISA. No part of the Loans contemplated to be made by such Backup Facility Bank constitute the plan assets of any Employee Benefit Plan.

(g) Lessor Liens. There are no Lessor Liens attributable to Administrative Agent or such Backup Facility Bank, respectively.

(h) Offer of Securities, etc. Neither such Backup Facility Bank nor any Person authorized to act on its behalf has, directly or indirectly, offered to sell the Notes (if any) or any other similar securities (the sale or offer of which would be integrated with the sale or offer of the Notes (if any)), for sale to, or solicited any offer to acquire any of the same from, any Person.

(i) No Registration. Such Backup Facility Bank understands and acknowledges that the Notes (if any) have not been and will not be registered under the Securities Act in reliance upon the exemption provided in Section 4(2) of the Securities

Act or any other applicable exemption, that the Notes (if any) have not been and will not be registered or qualified under the securities or "blue sky" laws of any jurisdiction, that the Notes (if any) may be resold or otherwise transferred only if so registered or qualified or if an exemption from registration or qualification is available, that none of the Lessee, the Lessor or the Administrative Agent is required to register the Notes (if any) and that any transfer must comply with the provisions of the Operative Agreements relating thereto. Such Backup Facility Bank will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Notes (if any) held by it.

(j) Institutional Investor. Such Backup Facility Bank is a sophisticated institutional investor and an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) of the Securities Act, and has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of its investment in the Notes (if any) and is able to bear the economic risk of such investment. Such Backup Facility Bank has been given such information concerning the Notes (if any), the other Operative Agreements, the Properties, the Lessor and the Lessee as it has requested.

(k) Legend. Such Backup Facility Bank understands and acknowledges that the Note, if any, which it may acquire will bear a legend similar to that set forth in the form of Certificate included in the Trust Agreement.

## SECTION 8. PAYMENT OF CERTAIN FEES AND EXPENSES

Lessee agrees, for the benefit of the Participants, as follows:

8.1 Transaction Expenses. (a) On the Initial Closing Date, to pay, or cause to be paid, all Transaction Expenses incurred by each of the Lessor, the Trust Company, RFC, the Administrative Agent, the Investors, the CP Issuer, and the Securities Intermediary in connection with the transactions contemplated by the Operative Agreements and incurred in connection with the Initial Closing Date; *provided, however*, that if the Lessee has not received written invoices and supporting information therefor prior to such date, such Transaction Expenses shall be paid within thirty (30) Business Days after the Lessee has received written invoices and supporting information thereof as reasonably requested by the Lessee. Transaction Expenses may, subject to the conditions hereof, be paid with the proceeds of an Advance. In the event that the Transaction Expenses relating to a Property not yet subject to the Lease are paid directly by Lessee, Lessee shall be reimbursed for such Transaction Expenses in the first Advance for such Property.

(b) On each Property Closing Date, to pay, or cause to be paid, all Transaction Expenses incurred by each of (i) the counsel to Administrative Agent, (ii) the counsel to the Investors, (iii) the counsel to the Trust Company, (iv) the counsel to RFC, and (v) the local counsel in each State in which a Property is located selected by Lessee and reasonably approved by the Administrative Agent, all in connection with the transactions contemplated by the Operative Agreements and incurred in connection with such Property Closing Date, including all Transaction Expenses arising from such Property Closing Date; *provided, however*, that if the Lessee has not received written invoices and supporting information therefor prior to such date, such Transaction Expenses shall be paid within thirty (30) Business Days after the Lessee has

received written invoices and supporting information therefor as reasonably requested by the Lessee.

8.2 Certain Fees and Expenses. To pay or cause to be paid (i) the Transaction Expenses relating to the Trust Company and any necessary co-trustees or any successor owner trustee, for acting as trustee under the Trust Agreement, (ii) all Transaction Expenses incurred by the Lessee, the Administrative Agent, the Securities Intermediary, the Investors, the Lenders, the Trust Company or the Lessor in entering into any future amendments or supplements with respect to any of the Operative Agreements, whether or not such amendments or supplements are ultimately entered into, or giving or withholding of waivers of consents hereto or thereto, which have been requested by the Lessee, and (iii) all Transaction Expenses incurred by the Lessor, the Lessee, the Investors, the Lenders, the Trust Company or the Administrative Agent in connection with the purchase of the Property by the Lessee pursuant to Section 20 or Section 21 of the Lease, *provided, however*, that the Lessee has received written invoices and supporting information therefor on the date such payment is requested, and if Lessee has not so received such written invoices and supporting information, such Transaction Expenses shall be paid within thirty (30) Business Days after the Lessee has received written invoices and supporting information therefor as reasonably requested by the Lessee.

8.3 Operative Agreements and Related Obligations. (a) To pay, or cause to be paid, on or prior to the due date thereof, all costs, fees, expenses and other amounts (other than principal and interest on the Loans, but including breakage costs and interest on overdue amounts) pursuant to the Operative Agreements required to be paid by the Lessor under any Operative Agreement.

(b) Facility Fees. To pay, or cause to be paid, to Administrative Agent for the account of each Backup Facility Bank, a facility fee (individually, a "Facility Fee" and in the aggregate, the "Facility Fees"), which shall accrue at the applicable Facility Fee Rate on the daily amount of the Backup Facility Bank's Backup Facility Loan Commitment (to the extent unused) during the period (including any portion thereof when the obligation of any Backup Facility Bank to make or purchase Loans is suspended by reason of any failure of the conditions set forth in Section 3.2 of the Loan Facility Agreement or Section 1.2(e) of the Liquidity Agreement to be satisfied) commencing on the Initial Closing Date, in the case of each Backup Facility Bank that is signatory hereto, or the effective date specified in the Assignment and Acceptance pursuant to which it became a Backup Facility Bank, in the case of each other Backup Facility Bank, and continuing until the Backup Facility Loan Commitment Termination Date, provided that, if such Backup Facility Bank continues to have Loans outstanding after its commitment terminates, then such Facility Fee shall continue to accrue on the daily amount of such Backup Facility Bank's Backup Facility Loans from and including the date on which its commitment terminates to but excluding the date on which such Backup Facility Bank ceases to have any Loans outstanding. The Facility Fees shall be paid quarterly in arrears on each Settlement Date for the period ending on such Settlement Date and on the Backup Facility Loan Commitment Termination Date, and the date of any reduction or termination of the Backup Facility Loan Commitments in accordance with the provisions of Section 2.6 or Article V of the Loan Facility Agreement. All payments made by Lessee under this Section 8.3(d) shall be made not later than 1:00 p.m. (New York City time) on the date when due and shall be made in freely transferable Dollars and in immediately available funds at the Payment Office of Administrative

Agent. Facility Fees payable pursuant hereto shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed.

8.4 Advances. Transaction Expenses may, subject to the conditions hereof, be paid with the proceeds of an Advance.

## SECTION 9. OTHER COVENANTS AND AGREEMENTS

9.1 Covenants of the Lessor, the Lessee, the Trust Company, Administrative Agent, and each Participant. Each party named below specifically hereby agrees with the other parties hereto as provided below on its own behalf that so long as this Agreement is in effect:

(a) Discharge of Liens. Each of the Investors, the Lessor, the Trust Company and the Administrative Agent, in its individual capacity, will not create, incur, assume, or permit to exist at any time, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, or to cause to be discharged, all Lessor Liens on the Lease, the Improvements, the Land or the Properties attributable to it or any of its Affiliates; *provided, however,* that each Investor, the Lessor and the Trust Company shall not be required to so discharge any such Lessor Lien while the same is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings shall not involve any material danger of impairment of the Liens of the Security Documents or of the sale, forfeiture or loss of, and shall not interfere with the use or disposition of the Improvements, the Land or, the Properties or title thereto or any interest therein or the payment of Rent.

(b) Trust Agreement. Without prejudice to any right under the Trust Agreement of the Trust Company to resign, or any Investor's right under the Trust Agreement to remove the institution acting as Trustee, each of the Investors and the Trust Company hereby agrees with the Lessee and the Administrative Agent (i) not to terminate or revoke the trust created by the Trust Agreement except as permitted by Section 8 of the Trust Agreement, and (ii) not to amend, supplement, terminate or revoke or otherwise modify any provision of the Trust Agreement without the prior written consent of any party hereto adversely affected by such amendment.

(c) Successor Trust Company. The Trust Company or any successor may resign or be removed by the Investors as Trustee, a successor Trustee may be appointed, and a corporation may become the Trustee under the Trust Agreement, only in accordance with the provisions of Section 8 of the Trust Agreement and with the consent of the Lessee, which consent shall not be unreasonably withheld or delayed.

(d) Indebtedness; Other Business. The Lessor shall not conduct, transact or otherwise engage in, or commit to transact, conduct or otherwise engage in, any business or operations other than the entry into, and exercise of rights and performance of obligations in respect of the Operative Agreements and other activities incidental or related to the foregoing. The Lessor shall not contract for, create, incur, assume, suffer to exist, or otherwise become or remain liable in respect of any, Indebtedness, and will not

acquire, by long-term or operating lease or otherwise, any property or other assets, in each case other than pursuant to or under the Operative Agreements.

(e) No Violation. The Investors will not instruct the Lessor to take any action in violation of the terms of any Operative Agreement.

(f) No Voluntary Bankruptcy. The Lessor shall not (i) commence any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seek appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial benefit of its creditors; and so long as no Lease Event of Default has occurred and is continuing, neither the Investors nor the Lessor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in this paragraph.

(g) Change of Chief Place of Business or Name. The Lessor shall give prompt notice to the Lessee, the Investors, and the Administrative Agent if the office where the records concerning the accounts or contract rights relating to the transactions contemplated in the Operative Agreements are kept shall cease to be located at Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware, or if the Lessor shall change its name or identity.

(h) Compliance with Operative Agreements. Each of the Investors, the Trustee, the Trust Company, the Administrative Agent and the Lessor shall at all times observe and perform all of the covenants, conditions and obligations required to be performed by it under each Operative Agreement to which it is a party.

(i) Disposition of Assets. The Lessor shall not convey, sell, lease, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of (by operation of law or otherwise) any Property, Improvements or Fixtures acquired with the proceeds or Advances, or its interest in the Loans and the Investor Contributions, whether now owned or hereafter acquired, except to the extent expressly contemplated by the Operative Agreements.

(j) Investments. The Lessor will not make, incur, or suffer to exist any loan, advance, extension of credit or other investment in any Person other than pursuant to the Loan Facility Agreement and the Trust Agreement.

(k) No Other Agreements. The Lessor will not (i) enter into or be a party to any agreement or instrument other than any Operative Agreement or any documents and agreements incidental thereto or (ii) except as otherwise provided for in Section 14.5 of this Agreement, amend, modify or waive any provision of any Operative Agreement to which it is a party.

(l) Maintenance of Separate Existence. The Lessor will do all things necessary to maintain its trust existence separate and apart from that of each Investor, Affiliates of each Investor and any other Person, including, without limitation:

- (i) practicing and adhering to trust formalities, such as maintaining appropriate Lessor books and records;
- (ii) owning or leasing (including through shared arrangements with Affiliates) all office furniture and equipment necessary to operate its business;
- (iii) refraining from (A) guaranteeing or otherwise becoming liable for any obligations of any of its Affiliates or any other Person, (B) having its obligations guaranteed by its Affiliates or any other Person (except as otherwise contemplated by the Operative Agreements), (C) holding itself out as responsible for debts of any of its Affiliates or any other Person or for decisions or actions with respect to the affairs of any of its Affiliates or any other Person, and (D) being directly or indirectly named as a direct or contingent beneficiary or loss payee on any insurance policy of any Affiliate;
- (iv) maintaining its deposit and other bank accounts and all of its assets separate from those of any other Person;
- (v) maintaining its financial records separate and apart from those of any other Person;
- (vi) compensating all its employees, officers, consultants and agents for services provided to it by such Persons, or reimbursing any of its Affiliates in respect of services provided to it by employees, officers, consultants and agents of such Affiliate, out of its own funds;
- (vii) maintaining any owned or leased office space separate and apart from that of any of its Affiliates (even if such office space is subleased from or is on or near premises occupied by any of its Affiliates);
- (viii) accounting for and managing all of its liabilities separately from those of any of its Affiliates and any other Person, including, without limitation, payment directly by the Lessor of all payroll, accounting and other administrative expenses and taxes;
- (ix) allocating, on an arm's-length basis, all shared Lessor operating services, leases and expenses, including, without limitation, those associated with the services of shared consultants and Administrative Agents and shared computer and other office equipment and software;
- (x) refraining from filing or otherwise initiating or supporting the filing of a motion in any bankruptcy or other insolvency proceeding involving it, Lessor, any Investor, any Affiliate of it, Lessor or any Investor or any other Person to substantively consolidate it with Lessor, any Investor, any Affiliate of it, Lessor or any Investor or any other Person;

- (xi) remaining solvent;
- (xii) conducting all of its business (whether written or oral) solely in its own name;
- (xiii) refraining from commingling its assets with those of any of its Affiliates or any other Person;
- (xiv) maintaining an arm's-length relationship with all of its Affiliates;
- (xv) refraining from acquiring obligations or securities of any Investor or any Affiliate of it or any Investor;
- (xvi) refraining from pledging its assets for the benefit of any of its Affiliates or any other Person or making any loans or advances to any of its Affiliates or any other Person (in each case, except as otherwise permitted pursuant to the Operating Documents); and
- (xvii) correcting any known misunderstanding regarding its separate identity.

For purposes of this Section 9.1(m), each Investor shall be deemed to be an Affiliate of the Lessor.

(m) Use of Proceeds. The proceeds of the Loans and the Investor Contributions shall be applied by the Lessor solely in accordance with the provisions of the Operative Agreements.

(n) Knowledge of Default. If on any date an Authorized Officer of Trustee shall obtain actual knowledge of the occurrence of a Lease Default or Lease Event of Default, Trustee shall give written notice thereof to Administrative Agent, RFC and each Investor promptly but in no event later than two (2) Business Days after the date it obtains actual knowledge thereof.

(o) No Issuance of Certificates. The Trustee shall not issue or sell Certificates, except as expressly contemplated by the Operative Agreements.

(p) Compliance with Laws. The Trustee shall comply with all requirements of the Delaware Business Trust Act the non-compliance with which would reasonably be anticipated to have a material adverse effect upon the ability of the Trustee to perform its obligations under the Operative Agreements to which it is a party or the validity or enforceability against the Trustee of any of the Operative Agreements to which it is a party.

(q) Litigation. The Trustee shall notify the Administrative Agent and the Lessee of the institution of any litigation against it which would reasonably be anticipated to have a material adverse effect upon the ability of the Trustee to perform its obligations

under the Operative Agreements to which it is a party or the validity or enforceability against the Trustee of any of the Operative Agreements to which it is party.

(r) Subleases. The Lessor, Administrative Agent, the Trust Company and each Participant hereby acknowledge and accept the provisions of Section 24 of the Lease and, to the extent that such Sublease is a Minor Sublease or the Required Investors approve of a Market Sublease, authorize and direct the Trustee to execute and deliver subordination and non-disturbance agreements (or non-disturbance agreements) provided for therein with respect to such Minor Subleases or Market Subleases from time to time upon the Lessee's request.

(s) Investor Amount. The Investors shall maintain an aggregate Investor Amount in the Trust equal to not less than three percent of the sum of the Advances made from time to time (determined in accordance with the requirements of EITF 96-21); provided, that this Section 9.1(t) shall not be construed to increase or otherwise affect each Participant's Backup Facility Loan Commitment or Investor Contribution Commitment, as applicable.

(t) Acceptance of Provisions of the Lease and Lease Supplements. The Lessor, the Trust Company, Administrative Agent and each Participant hereby acknowledge, accept and will comply with, as applicable, the provisions of Sections 14.4, 15.1, 19.1(a)(iv) and (vi), and 24.2 of the Lease.

#### 9.2 RFC Covenants. RFC covenants as follows:

(a) No Sale. RFC shall not transfer any of its interests in the RFC Loans except as provided in the RFC Operative Agreements.

(b) No Plan Assets. No part of the Loans to be made by RFC will be made with assets that constitute the plan assets of any Employee Benefit Plan.

9.3 Proceeds of Casualty. The Lessor and the Investors agree, for the benefit of the Administrative Agent and the Lenders, that if at any time either the Lessor or any Investor receives any proceeds as a result, directly or indirectly, of any Casualty or Condemnation with respect to any Property which the Lessor is entitled to retain and hold in accordance with the terms of the Lease, the Lessor and the Investors agree that they will promptly deposit such amounts in an account with the Administrative Agent in the Funding Account. The Lessor and the Investors also agree that they will execute and deliver such documents and instruments as the Administrative Agent may request in order to grant the Administrative Agent, for the benefit of the Lenders, and the Investors, a valid and perfected, first priority security interest in such proceeds.

9.4 Intercreditor Agreement. Each of the parties hereto hereby agree and confirm that the provisions of Section 13 hereof are intended to constitute an intercreditor agreement and a subordination agreement under Section 510 of the Bankruptcy Code or any similar provision therein.

9.5 No Proceedings. (a) Each of the parties hereto (other than the Lessor) hereby covenants and agrees that prior to the date which is one (1) year and one day after the payment in full of the Loans, the amounts due each Investor, and all other obligations of Lessee under any Operative Agreement to which Lessee is a party, it will not institute against, or join or assist any other Person in instituting against Lessor, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States (each a "Proceeding"). In the event that any party hereto takes action in violation of this Section 9.5(a), the petitioned party hereby agrees it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such a petition by the applicable instituting party against such petitioned party or the commencement of such action and raise the defense that the instituting party has agreed in writing not to take such action and should be estopped and precluded therefrom and such other defenses, if any, as its counsel advises that it may assert. The provisions of this Section 9.5(a) shall survive the termination of this Agreement and the other Operative Agreements.

(b) Each of the parties hereto (other than RFC) hereby covenants and agrees that prior to the date which is one (1) year and one day after the payment in full of the indebtedness of RFC, it will not institute against, or join or assist any other Person in instituting against RFC any Proceeding. In the event that any party hereto takes action in violation of this Section 9.5(b), the petitioned party hereby agrees it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such a petition by the applicable instituting party against such petitioned party or the commencement of such action and raise the defense that the instituting party has agreed in writing not to take such action and should be estopped and precluded therefrom and such other defenses, if any, as its counsel advises that it may assert. The provisions of this Section 9.5(b) shall survive the termination of this Agreement and the other Operative Agreements.

9.6 Notice of Credit Rating Decline. Each Backup Facility Bank severally agrees that it shall immediately notify Lessee, RFC and the Administrative Agent in writing in the event that it is placed on negative credit watch by any Rating Agency or its short-term debt rating is downgraded below A-1 by S&P or below P-1 by Moody's, or withdrawn by any Rating Agency.

9.7 Waiver of Set-off and Other Rights. Each party hereto hereby waives, to the extent not specifically arising under this Agreement, any right of set-off, banker's lien or other security interest which it may have with respect to any funds in the Funding Account.

9.8 Repayment of Certain Amounts on Maturity Date. The Investors, the Lessor and the Administrative Agent hereby agree that if (i) on the Maturity Date (after giving effect to all payments made by the Lessee under the Lease and the application of all sales proceeds pursuant to Section 13 of this Agreement) there remains any outstanding principal or accrued and unpaid interest under the Tranche B Loans (the aggregate amount of such outstanding principal, the "Tranche B Deficit") and (ii) during the Marketing Period the Lessor or the Investors have received any Marketing Period Equity Return, then on the Maturity Date the Investors shall pay to the Administrative Agent an amount up to the amount of the Tranche B Deficit, but in no event greater than the Marketing Period Equity Return received by it.

9.9 Covenants of the Administrative Agent and RFC. (a) Release of Documents. The Administrative Agent hereby agrees that, (i) upon the request of Lessee the Administrative Agent shall release or subordinate Liens in connection with action under Section 12.2 of the Lease or Section 9.16 hereof, and (ii) upon a sale of any Property pursuant to Sections 20 or 21 of the Lease and payment of all amounts due and owing from the Lessee under the Operative Agreements with respect to such Property or repayment in full of all Loans and Investor Contributions and all other amounts due and owing from the Lessee under the Operative Agreements with respect to such Property to Administrative Agent, the Lenders, and the Investors, the Administrative Agent shall execute and deliver to the Lessee (at the Lessee's reasonable expense) each of the following documents which the Lessee shall tender to the Administrative Agent for execution: (A) a release of the applicable Mortgage, (B) releases of the applicable Assignment of Leases, (C) releases of all other Liens created by the Operative Agreements with respect to such Property, and (D) termination statements for any Financing Statements relating to such Property which are then of record naming the Administrative Agent as secured party or assignee thereof.

(b) Loan Facility Agreement, Liquidity Agreement and Notes. The Administrative Agent covenants and agrees, for the benefit of the Lessee and the Participants, (i) to duly and timely perform its obligations under the Loan Facility Agreement and the Liquidity Agreement, and (ii) in the case of any assignment of any Note (if any) or any portion thereof under Section 11.3, to hold the original Note (if any) upon the issuance of any one or more amended and restated Notes.

(c) Statements of Basic Rent, Fees, Interest and Yield. Not later than the fifth (5<sup>th</sup>) Business Day prior to each Payment Date, the Administrative Agent (in the case of clause (i), (ii) (except as it relates to RFC), and (iii) below) and RFC (in the case of clause (ii) as it relates to RFC and clause (iii)) shall deliver to the Lessee (i) a written statement for each Property subject to the Lease setting forth and itemizing the amounts due and payable by the Lessee on such Payment Date as Basic Rent on account of Facility Fees, Backup Facility Loans and Investor Yield; (ii) a written statement setting forth and itemizing the amounts due and payable to RFC, each of the Backup Facility Banks and each of the Investors on such Payment Date (including, without limitation, amounts due for fees under Section 8, interest and Yield), and (iii) the method and manner of determination of each such amount.

9.10 Covenants of Lessee. The Lessee hereby agrees that, so long as the Backup Facility Loan Commitments and/or the Investor Contribution Commitments remain in effect, or any amount is owing to any Participant under any Operative Agreement, the Lessee shall:

(a) Financial Statements. Furnish to each Lender and each Investor:

(i) as soon as available, but in any event within one hundred ten (110) days after the end of each fiscal year of the Lessee, a copy of the consolidated balance sheet of the Lessee and its consolidated Subsidiaries, taken as a whole, as at the end of such year and the related consolidated statements of income and shareholders equity and of cash flows for such

year, setting forth in each case in comparative form the figures for the previous year; and

(ii) as soon as available, but in any event not later than sixty (60) days after the end of each of the first three quarterly periods of each fiscal year of the Lessee, the unaudited consolidated balance sheet of the Lessee and its consolidated Subsidiaries, taken as a whole, as at the end of such quarter and the related unaudited consolidated statements of income and of condensed cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year;

all such financial statements shall be prepared in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

(b) Certificates: Other Information. Furnish to:

(i) each Lender and each Investor, concurrently with the delivery of the financial statements referred to in subsection 9.10(a)(i), a certificate of a Responsible Officer stating that, to the best of such Responsible Officer's knowledge (A) such financial statements present fairly the financial condition and results of operations of the Lessee and its Subsidiaries for the period referred to therein (subject, in the case of interim statements, to normal year-end audit adjustments), and (B) during such period the Lessee has performed all of its covenants and other agreements contained in the Operative Agreements to be performed by it, and that no Default or Event of Default has occurred, except as specified in such certificate;

(ii) each Lender and each Investor, within fifteen (15) Business Days after the same become public, copies of all 10-K's and 10-Q's which the Lessee may make to, or file with, the SEC or any successor or analogous Governmental Authority to the extent not otherwise provided above; and

(iii) the Administrative Agent, within ten (10) Business Days after the occurrence thereof, written notice of any change in Status; provided that the failure to provide such notice shall not delay or otherwise affect any change in the Applicable Margin or other amount payable under the Operative Agreements which is to occur upon a change in Status pursuant to the terms of the Operative Agreements.

(c) Notices. Promptly upon obtaining knowledge thereof, give notice to the Administrative Agent, each Lender and each Investor of the occurrence of any Default or Event of Default, accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the Lessee proposes to take with respect thereto.

(d) Merger, Consolidation, etc. Not, directly or indirectly merge or consolidate with any other Person or sell or convey all or substantially all of its assets to any Person unless, in the case of mergers and consolidations, (a) the Lessee shall be the continuing corporation and (b) immediately before and immediately after giving effect to such merger or consolidation, no Default or Event of Default shall have occurred and be continuing.

9.11 Repayment of Investor Contributions. The Lessee shall prepay the Investor Contributions in connection with the exercise by the Lessee of its right to direct the Lessor to prepay the Loans in accordance with Section 10.1(a). Such prepayment shall be in an amount such that after giving effect to such prepayment of Investor Contributions and Loans, the ratio of the unreturned Investor Contributions to the outstanding principal balance of the Loans is the same as it was immediately prior to such prepayment.

9.12 Mandatory Prepayment of Loans by Lessee. Subject to the provisions of Section 5.4(a) of the Agency Agreement with respect to a Construction Period Property, if a Lease Event of Default has occurred and is continuing, and to the extent that Lessee has not paid such amounts pursuant to Section 17.2 of the Lease, Administrative Agent may immediately demand payment of the Termination Value and the accrued but unpaid Basic Rent from Lessee pursuant to the Lease.

9.13 Additional Covenants of Lessee and Construction Agent.

(a) Lessee, as lessee under the Lease, and as Construction Agent under the Agency Agreement,

(i) agrees to pay and deliver to the Administrative Agent (or its designees) all Lease Rent (as defined in the Assignment of Leases) and other sums payable under the Lease (except for Excepted Payments), and all Contract Payments (as defined in the Assignment of Contracts) and other sums payable to the Lessor under the Agency Agreement (except for Excepted Payments), each without any offset, deduction, defense, abatement, deferment, diminution or counterclaim, and the Lessee will not assert any offset, deduction, defense (other than the defense of payment to the Administrative Agent (or its designee)), abatement, deferment, diminution or counterclaim in any proceeding brought under the Assignment of Leases or Assignment of Contracts or with respect to the transactions contemplated therein or herein;

(ii) will not, for any reason whatsoever, seek to recover from the Administrative Agent (or its designee) any moneys paid to the Administrative Agent (or its designee) by virtue of the Assignment of Leases or the Assignment of Contracts or with respect to the transactions contemplated therein or herein; and

(iii) agrees (A) to deliver to the Administrative Agent (or its designee), each Investor and the Lessor, at their addresses set forth herein, duplicate

original or copies of all notices, undertakings, demands, statements, documents and other communications which the Lessee is required or permitted to deliver pursuant to the Lease, the Assignment of Leases, the Agency Agreement or the Assignment of Contracts; (B) that, subject to the Excepted Rights, any notice delivered or declaration made to the lessee by the Administrative Agent (or its designee) pursuant to the Lease or the Agency Agreement shall be effective as a notice given or declaration made to the Lessee by the Lessor; (C) that the Administrative Agent (and its designee) shall not by reason of the Assignment of Leases or Assignment of Contracts be subject to any liability or obligation under the Lease or the Agency Agreement; and (D) that, subject to the Excepted Rights, any waiver, consent or approval by the Lessor under the Lease or the Agency Agreement shall not be valid unless approved in writing by the Administrative Agent (or its designee).

(b) The Lessee and the Construction Agent shall cause the Lease Rents (as defined in the Assignment of Leases) and the Contract Payments (as defined in the Assignment of Contracts) and other sums payable to the Lessor under the Lease and the Agency Agreement respectively to be delivered to the Administrative Agent (or its designee), as an absolute net sum, in such manner that the Administrative Agent (or its designee) shall have "collected funds" on the date and at the time payments are due under the Lease or the Agency Agreement.

(c) The Lessee and the Construction Agent agree to remain obligated under the Lease and the Agency Agreement in accordance with their respective terms, and to take no action to terminate (except in accordance with the express terms of the Lease), annul, rescind or avoid the Lease or the Agency Agreement or to abate, reduce, offset, suspend or defer or make any counterclaim or raise any defense (other than the defense of payment to the Administrative Agent (or its designee)) with respect to the Lease Rents (as defined in the Assignment of Leases) or Contract Payments (as defined in the Assignment of Contracts) payable thereunder or to cease paying such Lease Rents (as defined in the Assignment of Leases) or Contract Payments (as defined in the Assignment of Contracts) to the Administrative Agent (or its designee) as provided therein.

(d) The Lessee agrees that upon the occurrence of a Lease Default or a Lease Event of Default, the Administrative Agent (or its designee) shall have the right to deliver a notice of default under the Lease and make demand for payment under the Structural Support Agreement, which shall be effective for all purposes as if sent by the Lessor.

(e) Subject to the Excepted Rights, the Lessee and the Construction Agent agree that they will not, unilaterally or by agreement, subordinate, amend, supplement, modify, extend (except in accordance with the express terms of the Lease or the Agency Agreement), discharge, waive or terminate (except in accordance with the express terms of the Lease or the Agency Agreement) the Lease or the Agency Agreement respectively or any provision thereof without the Administrative Agent's prior written consent, which consent may be withheld in the Administrative Agent's sole discretion, and that any

attempted subordination, amendment, supplement, modification, extension, discharge, waiver or termination without such consent shall be null and void. In the event that the Lease or the Agency Agreement shall be amended or supplemented as herein permitted, the Lease or the Agency Agreement respectively, as so amended or supplemented, shall continue to be subject to the provisions of the Assignment of Leases and the Assignment of Contracts without the necessity of any further act by any of the parties thereto. Nothing in this Section 9.13(e) shall be construed as limiting or otherwise affecting in any way the Excepted Rights or Shared Rights.

(f) Neither the execution and delivery of the Assignment or Leases or Assignment of Contracts, nor any action or inaction on the part of the Administrative Agent shall impair or diminish any obligations of the Lessor or the Lessee under the Lease or the Lessor or the Construction Agent under the Agency Agreement, and shall not impose on the Administrative Agent, the Backup Facility Banks or RFC (or their designees) any such obligations, nor shall it impose on the Administrative Agent (or its designee) a duty to produce Rents or cause the Administrative Agent to be a mortgagee in possession for any purpose.

(g) The Lessee agrees to provide to the Participants within sixty (60) days following a Property Closing Date with respect to a Construction Period Property complete copies of the Builder's Risk Insurance policy required to be obtained pursuant to Section 6.1(b) of the Agency Agreement.

9.14 Tax Deferred Exchanges. From time to time, the Lessee may propose to enter into an Exchange Transaction (defined below). Each of the Lessor, the Administrative Agent and the Participants agrees to cooperate with the Lessee and take such action and deliver such documents as the Lessee may from time to time reasonably require in connection with the consummation of such Exchange Transaction; provided, that no such party will provide any assurance that any such Exchange Transaction proposed, and documented as requested, by the Lessee will satisfy the requirements for a tax-deferred exchange, the determination that the Lessee's proposed Exchange Transaction will satisfy such requirements being solely the responsibility of the Lessee. All reasonable costs and expenses incurred by the Lessor, the Administrative Agent and the Participants in connection with any proposed Exchange Transaction shall constitute Transaction Expenses and shall be payable (x) out of Advances in connection with the acquisition of the applicable Property or (y) if the Exchange Transaction is not consummated, by Lessee. If the Required Participants consent to any action requested by the Lessee to be taken in connection with any Exchange Transaction, the Lessor or the Administrative Agent, as applicable, shall take such action. As used herein, an "Exchange Transaction" shall mean (i) the disposition by the Lessee of a Property (or Properties) pursuant to Section 20 of the Lease and release of the Liens of the Operative Agreements encumbering such Property, and the acquisition of a replacement property (or properties) by the Lessee (and not the Lessor), or (ii) the disposition by the Lessee of a property and the acquisition of a Property (or Properties) by the Lessor in replacement thereof, in either case, in a manner which the Lessee believes will satisfy the requirements for tax-deferred exchanges of property under Section 1031 or 1033 of the Code (including, without limitation, through transfer of Properties, replacement properties or contract rights thereto to and from certain intermediaries).

9.15 Governmental Incentive Transactions. The Lessor, the Administrative Agent and the Participants agree as follow:

(a) Upon notice from the Lessee to the Lessor and the Administrative Agent and delivery of the Officer's Certificate specified in clause (d) below, the Lessee may elect (consistent with its general policies and procedures) to have a bond authority, economic development agency, corporation or other entity or other governmental authority of any state or municipality engage in a transaction contemplated by applicable law which may require transfer of title or execution of a lease or security instrument, or other document or agreement with respect to any of the real and/or personal property comprising the applicable Property, by such governmental or development entity and/or by Lessor, Administrative Agent or the Participants, with the intent to receive ad valorem tax, sales/use tax, or other tax related or other governmental incentives for any one or more of the Properties.

(b) At the request of the Lessee, each of the Lessor, the Administrative Agent and the Participants hereby covenants and agrees to cooperate with the others in connection with the consummation of the transactions described in clause (a) above, including, without limitation, by the timely execution and delivery to the Lessee of documents, agreements or instruments reasonably requested by the Lessee under this clause (b); provided, however, that all reasonable costs, including reasonable legal fees and expenses as provided in clause (j) of the definition of Transaction Expenses, in connection with such cooperation shall be paid by the Lessee (subject, in the case of any Construction Period Property, to Section 14.23).

(c) Lessee shall possess (i) a limited power of attorney to execute and deliver, as attorney-in-fact on behalf of the Lessor, and/or (ii) the right and power, without the further direction or consent of the Investors or the Administrative Agent, to direct the Trustee to execute and deliver, such documents as are necessary or appropriate in furtherance of the transactions with, or involving, the respective agencies or other entities described in clause (a) above, and for the purposes described therein, such as incentive or abatement applications or agreements and amendments thereto, project submissions, certificates, and similar documents; *provided, however,* that the power of attorney granted hereunder shall not extend to or include documents, agreements or instruments that purport to create, modify, transfer or subordinate an interest in real property, including, without limitation, a deed, lease, ground lease, easement, or security instrument. Lessee shall deliver to Lessor and Administrative Agent copies of all agreements and documents executed pursuant to this clause (c).

(d) In connection with any transaction contemplated by clause (a) above, Lessee shall deliver to Lessor and the Administrative Agent an Officer's Certificate stating that: (i) the applicable transaction, agreement or other action does not impair (in more than a de minimis manner) the value or the utility or remaining useful life of the applicable Property, or the security for the Loans and Investor Contributions; (ii) such transaction, agreement or other action is, in Lessee's reasonable business judgment, necessary or desirable in connection with the ownership, lease, construction, use, maintenance, alteration, renovation or improvement of the applicable Property; (iii) Lessee shall remain obligated under this Lease and under any other Operative Agreement to which it is a party, in each such case in accordance with their terms, as though such transaction, agreement or other action had not been effected, and (iv) Lessee shall pay and perform any obligations of Lessor under such transaction.

## SECTION 10. LESSEE'S RIGHTS

10.1 Lessee's Rights. Notwithstanding anything to the contrary contained in the Operative Agreements, the Lessor, the Administrative Agent and the other Participants hereby agree that, so long as no Event of Default has occurred and is continuing:

(a) Lessee shall have the right to give all Requisitions (and if any such Requisition contains all of the requisite information, the giving of such Requisition by Lessee shall be deemed the giving by Lessor of a Notice of Borrowing), Notice of Borrowings, conversion notices, continuation notices, Interest Period selections, and prepayment notices relating to the Loan Facility Agreement and pursuant to Section 3.7 of the Trust Agreement;

(b) Lessee shall have the right, in place of the Lessor, to give Extension Requests pursuant to the Liquidity Agreement;

(c) Lessee shall have the right to approve any successor "Administrative Agent" to the extent permitted pursuant to Section 14.15;

(d) Lessee shall receive copies of all notices delivered to the Lessor under the Loan Facility Agreement and the other Operative Agreements and such notices shall not be effective until received by Lessee;

(e) Lessee shall have the right to cure, to the extent susceptible to a cure, any Default or Event of Default of the Lessor under the Loan Facility Agreement;

(f) Lessee shall have the right, on behalf of the Lessor, to select any person or persons (including the Lessee) to whom funds may be paid at the discretion of the Lessor in accordance with Section 13 of this Agreement;

(g) Lessee shall have the right to designate the portion of the Loans on which interest is due and payable for purposes of the definitions of "Allocated Interest" and "Allocated Investor Yield";

(h) Lessee shall have the right, in the place of the Lessor, to give notice of the prepayment of any Loans or reductions of any RFC Loan Commitments and Backup Facility Loan Commitments in accordance with the Loan Facility Agreement;

(i) Lessee shall have the right, in place of the Lessor to replace any Backup Facility Bank in accordance with the terms of the Loan Facility Agreement (subject to the terms of the Liquidity Agreement);

(j) Lessee shall have the right, in the place of the Lessor, (i) to replace any Backup Facility Bank (or any replacement thereof) in accordance with the Liquidity Agreement with an Eligible Assignee if the Backup Facility Bank is a Defaulting Bank, Defaulting Backup Facility Bank, a Downgraded Bank or a Non-Consenting Bank or any replacement of any thereof, (ii) to consent to a financial institution which is nominated pursuant to clause (y) of Section 1.4(a) of the Liquidity Agreement or (iii) to consent to any assignment or sale pursuant to clause (y) of Section 3.5(a) of the Liquidity Agreement;

(k) Lessee has the right to replace any Investor if the Investor is a Defaulting Investor by requiring by written notice to the Defaulting Investor that it assign its Investor Contribution Commitment to another Investor or to another Person which is willing to accept such assignment, as the case may be, subject to the Defaulting Investor being paid by such other Investor or Person, as the case may be, in full, all amounts owing to such Defaulting Investor hereunder and under the Operative Agreements in respect thereof on or prior to the date of replacement;

(l) In the event that, upon the Maturity Date, Lessee desires to renew the term of the Lease and keep the Operative Agreements in effect and a particular Participant does not so agree (which no party to this Agreement has any obligation to do), Lessee shall have the right, subject to the terms and conditions of the Liquidity Agreement (if RFC is consenting to the renewal, and if RFC does not consent to the renewal, all RFC Loans shall be paid in full as a condition to such renewal), to replace such Participant by requiring by written notice to the replaced Participant that it assign its Loans or Investor Contributions, as applicable, to another Participant or to another Person which is willing to accept such assignment, as the case may be, subject to the replaced Participant being paid by such other Participant or Person, as the case may be, in full, of all amounts owing

to the Participant hereunder and under the Operative Agreements in respect thereof on or prior to the date of replacement;

(m) without limiting the foregoing clauses (a) through (l), and in addition thereto, (x) the Lessor shall not exercise any right under the Loan Facility Agreement without giving the Lessee at least ten (10) Business Days' prior written notice (or such shorter period as may be required but in no case less than three (3) Business Days) and, following such notice, the Lessor shall take such action, or forbear from taking such action, as the Lessee shall direct and (y) the Lessee shall have the right to exercise any other right of the Lessor under the Loan Facility Agreement upon not less than two (2) Business Days' prior written notice from the Lessee to the Lessor. Notwithstanding the foregoing, the Investors shall retain the exclusive right to direct the Lessor with respect to the exercise of the Excepted Rights;

(n) In addition to Section 12.9(c), Lessee shall have the right to replace any Backup Facility Bank or any Investor if such Backup Facility Bank or Investor fails to consent to a request for a consent, waiver, amendment, supplement or modification and such failure shall result in such consent or waiver not being granted or such amendment, supplement or modification not being approved or entered into, by requiring (x) in the case of a Backup Facility Bank, by written notice to the replaced Backup Facility Bank that it assign its interest in the Operative Agreements to another Backup Facility Bank or to another Person which is willing to accept such assignment, which assignment is made in accordance with Section 3.5(a) of the Liquidity Agreement, subject to the replaced Backup Facility Bank being paid by such other Backup Facility Bank or Person, as the case may be, in full, all amounts owing to such Backup Facility Bank hereunder and under the Operative Agreements in respect thereof on or prior to the date of replacement, and (y) in the case of an Investor, by written notice to the replaced Investor that it assign its Investor Contribution Commitment to another Investor or to another Person which is willing to accept such assignment, as the case may be, subject to the replaced Investor being paid by such other Investor or Person, as the case may be, in full, all amounts owing to such Investor hereunder and under the Operative Agreements in respect thereof on or prior to the date of replacement;

(o) Lessee shall have the right to income or interest as provided in Section 2.1(a) of the Pledge Agreement and shall have the right, in place of the Administrative Agent, to exercise the rights of the Administrative Agent under Section 2.1(b) of the Pledge Agreement; and

(p) Lessee shall have the right to approve the form of promissory note issued from time to time pursuant to Section 2.17(e) of the Loan Facility Agreement.

## SECTION 11. TRANSFER OF INTEREST

11.1 Transfers by Investors. (a) The following provisions shall be applicable to any assignment, conveyance or other transfer by any Investor of its right, title and interest in or to the Trust Estate, the Lessor or the Trust Agreement:

(A) during the Commitment Period, any Investor may assign, convey or otherwise transfer any of its right, title or interest in or to the Trust Estate, the Lessor or the Trust Agreement to a Permitted Transferee with the consent of the Administrative Agent and, if no Lease Event of Default then exists, the Lessee (which consents may be withheld at the sole discretion of the Administrative Agent and the Lessee (except in the case of an assignment to an existing Backup Facility Bank or Investor or an Affiliate thereof or to a bank that is a lender in Lessee's corporate revolver, in which case, such consents shall not be unreasonably withheld)); provided, however, that if the transferor Investor shall certify to the Lessee that (x) such proposed transfer is being made by virtue of a Legal Requirement applicable to such Investor and (y) compliance with such Legal Requirement or order cannot be satisfied by the Investor granting a participation to the proposed transferee, such transfer shall not be subject to the consent of the Administrative Agent or the Lessee;

(B) after the Commitment Period, any Investor may assign, convey or otherwise transfer any of its right, title or interest in or to the Trust Estate, provided that the Person to whom the transfer is made is a Permitted Transferee; provided, however, that if the transferor Investor shall certify to the Lessee that (x) such proposed transfer is being made by virtue of a Legal Requirement or order of a Governmental Authority with jurisdiction over such Investor and (y) compliance with such Legal Requirement or order cannot be satisfied by the Investor granting a participation to the proposed transferee, such transfer shall not be subject to the consent of the Administrative Agent or the Lessee;

provided, that (i) prior to offering such interest, the transferor Investor shall provide the Lessee with at least ten (10) Business Day's notice of its election to assign such interest and, if the Lessee identifies a proposed transferee satisfying the requirements of clauses (ii) through (v) of this Section 11.1, the transferor Investor will transfer such interest to a Person designated by the Lessee, (ii) no such assignment shall be in an aggregate amount less than \$2,500,000 of Investor Contributions and Investor Contribution Commitments (other than in the case of an assignment of all of an Investor's interests under the Operative Agreements), (iii) each assignment or transfer shall comply with all applicable securities laws, (iv) no purchasing Investor shall then be entitled to receive any greater amount pursuant to subsection 12.3, 12.4, 12.5 and 12.6 than the assigning Investor would have been entitled to receive thereunder in respect of the rights and obligations assigned by such assigning Investor to such purchasing Investor had no such assignment occurred, (v) each assignee or transferee (A) acknowledges that the obligations to be performed from and after the date of such transfer or assignment under this Participation Agreement and all other Operative Agreements are its obligations, including the obligations imposed by this Section 11.1(a) (and the transferor and transferee Investor shall deliver to the Lessee, the Lessor and the Administrative Agent an Assignment and Acceptance, in substantially the form of Exhibit E-1, and an investor's letter in substantially the form of Schedule 2 to Exhibit E-1, executed by the assignee or transferee), (B) further represents and warrants to the Lessee, the Lessor, the Administrative Agent and each Participant as set forth in Section 7.1 and that: (w) it has the requisite power and authority to accept such assignment or transfer and to engage in the transactions contemplated by the Operative agreements; (x) it will not take any action with respect to the Certificate that would violate any applicable securities laws; (y) it will not assign or transfer any Certificate except in compliance with this Section 11.1; and (z) it will not transfer any Certificate unless the proposed transferee makes the foregoing representations and covenants. Notwithstanding anything to the contrary contained herein or in

any other Operative Agreement, the Equity Investor shall not assign, convey or transfer its right, title and interest in or to the Trust Estate, the Lessor or the Trust Agreement except to (i) the Secured Investor or (ii) any permitted transferee of the Secured Investor, and in either event, no such transfer by the Equity Investor shall be permitted unless it shall otherwise satisfy the requirements of this Section 11.1.

(b) Notwithstanding the provisions of Section 11.1(a) to the contrary, an Investor may at any time sell to an Affiliate of such Investor, or to any Backup Facility Bank or any Affiliate of any Backup Facility Bank, or to any special purpose funding vehicle formed by such Investor, participating interests in the economic interest held by such Investor in the Trust Estate or the Trust Agreement, provided that (i) such Investor's obligations under this Agreement and the other Operative Agreements to the other parties hereto and thereto shall remain unchanged, such Investor shall remain solely responsible for the performance thereof (ii) the Administrative Agent, the Lessee and the other parties to the Operative Agreements shall continue to deal solely and directly with such Investor in connection with such Investor's rights and obligations under this Agreement and the other Operative Agreements (iii) the Investor shall make the same ERISA and other similar representations that the lead Investor made, and (iv) the terms of the participation shall contain customary limitations on the participant's right to vote or control the lead Investor's actions. Lessee agrees that each participating Investor shall be entitled to the benefits of Section 12 (other than Section 12.3) with respect to such participating Investor's participating interests, provided that no participating Investor shall be entitled to receive any greater benefits (proportionate to its participation interest) pursuant to such Section than the selling Investor would have been entitled to receive in respect of the participating interests transferred by the selling Investor to such participating Investor had no such transfer occurred.

(c) From and after any transfer effected in accordance with this Section 11.1, the transferor shall be released, to the extent of such transfer, from its liability hereunder and under the other documents to which it is a party in respect of obligations to be performed on or after the date of such transfer, except if the transferee is an Affiliate of the transferor; provided, however, that any transferor Investor shall remain liable under the Trust Agreement to the extent that the transferee Investor shall not have assumed the obligations of the transferor Investor thereunder. Upon any transfer by an Investor as above provided, any such transferee shall assume the obligations of such Investor, and shall be deemed an "Investor" for all purposes of such documents and each reference herein to the transferor shall thereafter be deemed a reference to such transferee for all purposes, except as provided in the preceding sentence. Notwithstanding any transfer of all or a portion of the transferor's interest as provided in this Section 11.1, the transferor shall be entitled to all benefits accrued and all rights vested prior to such transfer, including rights to indemnification under any Operative Agreement. Any transfer in violation of the requirements of this Section 11.1 shall be void ab initio and of no force or effect.

(d) The Lessee authorizes each Investor to disclose to any prospective investor any and all financial information in such Investor's and its Affiliates' possession which has been delivered to such Investor by or on behalf of the Lessee pursuant to this Agreement or which has been delivered to all Investors by or on behalf of the Lessee in connection with their respective credit evaluations of the Lessee and its Affiliates prior to becoming a party to this Agreement; provided that (i) such prospective investor has executed and delivered to the Lessee a written confidentiality agreement substantially in the form of that which has been executed and delivered

by each Investor prior to the date hereof, and (ii) in the case of any information other than that contained in the Confidential Information Memorandum, the Lessee has been informed of the identity of such prospective investor and has consented to the disclosure of such information thereto. Nothing contained in this Section 11.1(d) shall be deemed to prohibit the delivery to any prospective investor of any financial information which is otherwise publicly available.

(e) In the event that after a transfer, the transferee becomes a Competitor, or an Affiliate of a Competitor, of the Lessee or a Person which fails to satisfy the provisions of clause (D) of the definition of "Permitted Transferee," thereupon, such transferee shall promptly notify the Trustee, the Administrative Agent and the Lessee, and so long as such transferee is a Competitor, or an Affiliate of a Competitor of the Lessee or fails to satisfy clause (D) of the definition of "Permitted Transferee", shall no longer have any rights to consent to any matter or document, amendment, modification, supplement or waiver under any Operative Agreement, and such transferee's Certificate shall be ignored (and shall be deemed to not be outstanding) for purposes of determining whether the Required Investors or Required Participants shall have approved any such matter, document, amendment, modification, supplement or waiver.

11.2 Transfers by RFC. RFC may not transfer or assign any or all of its rights and obligations under this Agreement, the Loan Facility Agreement or any other Operative Agreement without the prior written consent of each Backup Facility Bank, Lessor, and provided no Lease Default shall exist at the time of such assignment, the Lessee, provided, that nothing contained herein shall prohibit RFC from transferring or assigning the Investment to the Backup Facility Banks as contemplated by the Liquidity Agreement.

11.3 Transfers by Backup Facility Banks. (a) Any Backup Facility Bank may, in the ordinary course of its business and in accordance with Legal Requirements, at any time and from time to time assign to (i) any Affiliate of such Backup Facility Bank (in which event the assigning Backup Facility Bank shall not be released from its obligations) without the consent of the Lessee or the Administrative Agent, (ii) except during the Commitment Period, any other Backup Facility Bank or any Affiliate of any Backup Facility Bank without the consent of Lessee or Administrative Agent, and (iii) in any other case with the consent of Lessee (unless a Lease Default shall have occurred and be continuing) and Administrative Agent, which consent shall not be unreasonably withheld or delayed (except that during the Commitment Period Lessee's consent is subject to the sole discretion of Lessee (except in the case of an assignment to an existing Backup Facility Bank or an Affiliate thereof or Investor or to a bank that is a lender under Lessee's corporate revolver)), to any Person (each, a "Purchasing Bank") all or any ratable part of its rights and obligations under this Agreement, the Loan Facility Agreement and the other Operative Agreements (excluding the Liquidity Agreement) pursuant to an Assignment and Acceptance, substantially in the form of Exhibit E-2, executed by such Purchasing Bank, such assigning Backup Facility Bank (and, in the case of a Purchasing Bank that is not a Backup Facility Bank or an Affiliate thereof, by Lessee and Administrative Agent) and delivered to Administrative Agent for its acceptance and recording in the Register; *provided, however*, that (i) no such assignment to a Purchasing Bank (other than any Backup Facility Bank or any Affiliate thereof that is an Eligible Assignee) shall be in an aggregate principal amount less than \$5,000,000 of Backup Facility Loans and Backup Facility Loan Commitments (other than in the case of an assignment of all of a Backup Facility Bank's interests under the Operative Agreements), (ii) after giving effect to any such assignment (other than an assignment of all of a

Backup Facility Bank's interests under the Operative Agreements), the assigning Backup Facility Bank (together with any Backup Facility Bank which is an Affiliate of such assigning Backup Facility Bank) shall retain Backup Facility Loans and/or Backup Facility Loan Commitments aggregating not less than \$5,000,000, (iii) each such assignment by a Backup Facility Bank of any of its Loans shall be made in such manner so that, after giving effect to such assignment, the percentage held by the assignee of the aggregate outstanding principal amount of all Tranche A Loans is the same as the percentage held by such assignee of the aggregate outstanding principal amount of all Tranche B Loans, (iv) at the time of any such assignment, the Purchasing Bank shall purchase an identical percentage of such Backup Facility Bank's Backup Facility Loan Commitment in accordance with the Liquidity Agreement, (v) no Purchasing Bank shall then be entitled to receive any greater amount pursuant to subsection 12.3, 12.4, 12.5 and 12.6 than the assigning Backup Facility Bank would have been entitled to receive thereunder in respect of the rights and obligations assigned by such assigning Backup Facility Bank to such Purchasing Bank had no such assignment occurred), (vi) each assignment or transfer shall comply with all applicable securities laws, and (vii) each assignee or transferee further represents and warrants to the Lessee, the Lessor, the Administrative Agent and each Participant as set forth in Section 7.8. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Purchasing Bank thereunder shall be a party to this Agreement and the Loan Facility Agreement and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Backup Facility Bank under this Agreement, the Loan Facility Agreement and the other Operative Agreements (excluding the Liquidity Agreement), and (y) the assigning Backup Facility Bank thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement and the Loan Facility Agreement except in the case of any assignment by a Backup Facility Bank to an Affiliate thereof (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Backup Facility Bank's rights and obligations under the Operative Agreements (excluding the Liquidity Agreement), such assigning Backup Facility Bank shall cease to be a party to this Agreement and the Loan Facility Agreement).

Upon satisfaction of the conditions set forth in the preceding paragraph and upon its receipt of an Assignment and Acceptance executed by an assigning Backup Facility Bank and a Purchasing Bank (and, in the case of a Purchasing Bank that is not a Backup Facility Bank or an Affiliate thereof, by Lessee and Administrative Agent to the extent required) together with payment to Administrative Agent by the assigning Backup Facility Bank of a registration and processing fee of \$3,500, which shall not be a payment obligation of Lessee under the Operative Agreements, Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) promptly after the effective date determined pursuant thereto, record the information contained therein in the Register and give notice of such acceptance and recordation to the Lenders, Lessor, and Lessee. Any transfer in violation of the requirements of this Section 11.3 shall be void ab initio and of no force or effect.

(b) Administrative Agent shall maintain at its address referred to in Section 14.3 a copy of each Assignment and Acceptance delivered to it and a register (the "Register") for the recordation of the names and addresses of the Backup Facility Banks, the Investors, each Backup Facility Banks' Backup Facility Loan Commitment, each Investor's Investor Contribution Commitment, the principal amount of the Loans owing to each Lender from time to time and the

amount of each Investor Contribution owing to each Investor from time to time. The entries in the Register shall be conclusive, in the absence of clearly manifest error, and Lessee, Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loan recorded therein for all purposes of this Agreement. The Register shall be available for inspection by Lessee, Lessor, the Investors or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(c) Any Backup Facility Bank may, in the ordinary course of its business and in accordance with Legal Requirements, at any time sell to one or more banks, financial institutions or other entities (each a "Participating Bank") participating interests in any Loan owing to such Backup Facility Bank. In the event of any such sale by a Backup Facility Bank of such a participating interest to a Participating Bank, such Backup Facility Bank's obligations under the Loan Facility Agreement to the other parties to the Loan Facility Agreement shall remain unchanged, such Backup Facility Bank shall remain solely responsible for the performance thereof, such Backup Facility Bank shall remain the holder of any such Loan for all purposes under the Loan Facility Agreement and the other Operative Agreements, and the Lenders and Administrative Agent shall continue to deal solely and directly with such Backup Facility Bank in connection with such Backup Facility Bank's rights and obligations under the Loan Facility Agreement, the Notes (if any), and the other Operative Agreements. Such transferring Backup Facility Bank shall pay all costs and expenses incurred in connection with a sale pursuant to this Section 11.3(c) which shall not be a payment obligation of Lessee under the Operative Agreements. In no event shall any Participating Bank have any right to approve any amendment or waiver of any provision of this Agreement or any other Operative Agreement, or any consent to any departure by Lessee or any other Person therefrom, except to the extent that such amendment, waiver or consent would (i) reduce the principal of, or interest on, any Loan or postpone the date of the final maturity of any Loan or reduce the amount of any Facility Fee, in each case to the extent subject to such participation, (ii) permit a Participating Bank to require the transferring Backup Facility Bank to be a Non-Consenting Bank pursuant to Section 1.4 of the Liquidity Agreement to the extent of such participating interest if the Participating Bank funds to such Backup Facility Bank the amount of its participating interest on the applicable Commitment Expiry Date or (iii) release all or substantially all of the Collateral. Lessee agrees that each Participating Bank shall be entitled to the benefits of Section 12 (other than Section 12.3) with respect to such Participating Bank's participating interests, provided that no Participating Bank shall be entitled to receive any greater benefits (proportionate to its participation interest) pursuant to such Section than the selling Backup Facility Bank would have been entitled to receive in respect of the participating interests transferred by the selling Backup Facility Bank to such Participating Bank had no such transfer occurred.

(d) Notwithstanding any of the foregoing or any other provision herein, any Backup Facility Bank may at any time assign or pledge all or a portion of its rights hereunder, including without limitation its Loans, to a Federal Reserve Bank as collateral in accordance with Regulation A of the Board of Governors of the Federal Reserve System and the applicable circular of such Federal Reserve Bank.

(e) The Lessee authorizes each Backup Facility Bank to disclose to any prospective Participating Bank, any Participating Bank or any prospective Purchasing Bank (each, a "Transferee") any and all financial information in such Backup Facility Bank's and its

Affiliates' possession which has been delivered to such Backup Facility by or on behalf of the Lessee pursuant to this Agreement or which has been delivered to all Backup Facility Banks by or on behalf of the Lessee in connection with their respective credit evaluations of the Lessee and its Affiliates prior to becoming a party to this Agreement; provided that (i) such Transferee has executed and delivered to the Lessee a written confidentiality agreement substantially in the form of that which has been executed and delivered by each Backup Facility Bank prior to the date hereof, and (ii) in the case of any information other than that contained in the Confidential Information Memorandum, the Lessee has been informed of the identity of such Transferee and has consented to the disclosure of such information thereto. Nothing contained in this Section 11.3(e) shall be deemed to prohibit the delivery to any Transferee of any financial information which is otherwise publicly available.

(f) Notwithstanding anything herein to the contrary, the parties acknowledge that any assignment or participation by a Backup Facility Bank of its Commitment shall be made pursuant to, and in accordance with, Section 3.5 of the Liquidity Agreement.

## SECTION 12. INDEMNIFICATION

12.1 General Indemnity. (a) Subject to and limited by Section 12.1(b), the Lessee, whether or not any of the transactions contemplated hereby shall be consummated, hereby assumes liability for and agrees to defend, indemnify and hold harmless each Indemnitee on an After Tax Basis from and against any Claims which may be imposed on, incurred by or asserted against an Indemnitee in any way relating to or arising or alleged to arise out of (i) the financing, refinancing, purchase, acceptance, rejection, ownership, design, construction, delivery, acceptance, non-delivery, leasing, subleasing, possession, use, operation, repair, modification, transportation, condition, sale, return, repossession (whether by summary proceedings or otherwise), or any other disposition of the Properties or any part thereof; (ii) any latent or other defects in any Property whether or not discoverable by an Indemnitee or the Lessee; (iii) a violation of Environmental Laws, Environmental Claims or other loss of or damage relating to the Property; (iv) the Operative Agreements, or any transaction contemplated thereby; (v) any breach by the Lessee or the Construction Agent of any of its representations or warranties under the Operative Agreements, any failure by the Lessee or the Construction Agent to perform or observe any covenant or agreement to be performed by it under any of the Operative Agreements, and any other Lease Default or Lease Event of Default; (vi) personal injury, death or property damage relating to any Property, including Claims based on strict liability in tort; (vii) the transactions contemplated hereby or by any other Operative Agreement in respect of any Prohibited Transaction (except with respect to any Claims arising out of a violation of ERISA or Section 4975 of the Code that is attributable to any act or omission of such Indemnitee or any Commonly Controlled Entity of such Indemnitee); (viii) the borrowing of the Loans in accordance with the terms of the Operative Agreements; or (ix) a Fully Indemnifiable Event; but in any event excluding (1) Claims against a particular Indemnitee to the extent resulting from the gross negligence or willful misconduct of such Indemnitee or any Related Person thereto or the breach of a representation, warranty or covenant of such Indemnitee or any Related Person thereto in any Operative Agreement, (2) except as provided in Section 5.4(a) of the Agency Agreement with respect to any Claim relating to a specific Property Claims to the extent such Claims arise solely out of events occurring after the expiration of the Term and after the Lessee's discharge of all its obligations under the Lease and which relate solely to Properties

that Lessee has not purchased, (3) any Taxes except to the extent indemnified pursuant to either Section 12.2 or 12.3, (4) any Claim resulting from Lessor Liens, (5) any Claim resulting from the Mortgage or other Liens contemplated by any of the Operative Agreements to the extent the applicable Indemnatee is in breach of any obligation under the Operative Agreements to discharge such Liens, or (6) any Claim arising from a breach by any of the Participants, the Administrative Agent or the Lessor of any agreement entered into in connection with the assignment or participation of any Note or any Certificate. The Lessee shall be entitled to assume and control the defense and settlement of any Claim and any action, suit or proceeding related thereto, except that the Lessee shall not be entitled to assume and control the defense and (other than in accordance with the immediately succeeding paragraph) settlement thereof if and to the extent that: (A) in the reasonable opinion of such Indemnatee, (w) such action, suit or proceeding involves any risk of imposition of criminal liability or (x) such action, suit or proceeding involves any material risk of material civil liability on such Indemnatee or (y) such action, suit or proceeding will involve any material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on, such Property or any part thereof unless, if requested by the applicable Indemnatee, the Lessee shall have posted a bond or other security reasonably satisfactory to the relevant Indemnatee in respect of such risk or (z) the control of such action, suit or proceeding would involve an actual or potential conflict of interest, (B) such proceeding involves Claims with respect to which the Lessee is not obligated to indemnify hereunder and the Lessee and the Indemnatee have been unable to sever such Claims from the indemnified Claim(s), or (C) a Lease Event of Default has occurred and is continuing. The Indemnatee will join in the Lessee's efforts to sever such action if applicable. The Indemnatee may participate in a reasonable manner at its own expense and with its own counsel in any proceeding conducted by the Lessee in accordance with the foregoing. The Lessee agrees to give the applicable Indemnatee prompt written notice of any Claim hereby indemnified against but the giving of any such notice shall not be a condition to the Lessee's obligations under this Section 12.1(a). An Indemnatee shall, after obtaining actual knowledge thereof, promptly notify Lessee of any Claim as to which indemnification is sought; *provided, however*, that the failure to give such notice shall not release Lessee from any of its obligations under this Section 12.1(a), except to the extent that failure to give notice of such Claim is shown to increase Lessee's liability under such Claim from that which would have existed if the failure to give notice had not occurred. The applicable Indemnatee and each Related Person thereto agrees, at the expense of the Lessee, to cooperate with the Lessee.

The Lessee may enter into any settlement or other compromise with respect to any Claim entitled to be indemnified under this Section 12.1 without the consent of the applicable Indemnatee or any other Person; provided, however, that, without the prior written consent of such Indemnatee, the Lessee shall not enter into any settlement or other compromise with respect to any Claim entitled to be indemnified under Section 12.1 that involves, would be deemed to be, or would have the effect of, an admission of liability by such Indemnatee or the obligation of such Indemnatee to act or refrain from acting in any way (other than the payment of money which the Lessee shall have acknowledged in writing to such Indemnatee is the Lessee's obligation pursuant to this Section 12.1 to pay); and provided, further, that the Lessee shall not enter into any settlement or other compromise with respect to any Claim entitled to be indemnified under Section 12.1 that causes a Lease Default or Lease Event of Default to occur. Unless a Lease Event of Default shall have occurred and be continuing, no Indemnatee shall enter into any settlement or other compromise with respect to any Claim against such Indemnatee

which is entitled to be indemnified under Section 12.1 without the prior written consent of the Lessee (which consent shall not be unreasonably withheld) unless such Indemnatee waives its right to be indemnified under Section 12.1 with respect to such Claim.

(b) Notwithstanding anything to the contrary herein or any other Operative Agreement, prior to Completion of a Construction Period Property, the Lessee shall not be obligated under any of the Operative Agreements to indemnify any Indemnatee with respect to a Claim relating to such Construction Period Property other than: (i) the Lessor Parties with respect to any costs arising from third-party damage Claims caused by, resulting from or constituting, a Fully Indemnifiable Event, and (ii) any Indemnatee with respect to a Claim described in clause (iii) of the definition of Fully Indemnifiable Event.

12.2 General Tax Indemnity. (a) Indemnification. (i) The Lessee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend the Properties and all Indemnitees, and hold them harmless against, all Impositions on an After Tax Basis.

(ii) It is intended that all payments to or for the benefit of any Indemnatee under the Lease and/or the other Operative Agreements (including without limitation, payments of Supplemental Rent and Basic Rent under the Lease, payments of principal and interest under the Loans, and payments of Investor Yield and Investor Amount to the Investors), shall be made free and clear of and without deduction for any and all present or future Impositions. If the Lessee, any Indemnatee or any other Person ("Applicable Payor") shall be required by law to deduct any Impositions from or in respect of any amounts payable under the Lease or any other Operative Agreement to or for the benefit of the any Indemnatee ("Applicable Payee"), if such deductions are the result of a change in any U.S. treaty, law or regulation or occur for a reason described in Section 12.3(d), (A) the amounts payable by such Applicable Payor (as rent, interest or otherwise) shall be increased by the amount necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 12.2(a)(ii)) the Applicable Payee shall receive an amount equal to the sum it would have received had no such deductions been required, (B) the Applicable Payor shall make such deductions and (C) the Applicable Payor shall pay the full amount deducted to the relevant taxing authority or other Governmental Authority in accordance with all applicable laws and legal requirements. The Lessee will indemnify each Indemnatee on demand for the full amount of any sums required to be increased by such Applicable Payor pursuant to clause (C) of the second sentence of this Section 12.2(a)(ii) on an After Tax Basis and any liability the Indemnatee may incur or be required to pay.

(iii) Subject to the terms of Section 12.2(b), the Lessee shall pay or cause to be paid all Impositions directly to the taxing authorities where feasible and otherwise to the Indemnatee, as appropriate, and the Lessee shall at its own expense, upon such Indemnatee's reasonable request, furnish to such Indemnatee copies of official receipts or other satisfactory proof evidencing such payment.

(iv) In the case of Impositions for which no contest is conducted pursuant to Section 12.2(b) and which the Lessee pays directly to the taxing authorities, the Lessee shall pay such Impositions (together with any interest thereon) prior to the latest time

permitted by the relevant taxing authority for timely payment (other than in the case of withholding taxes, which shall be paid simultaneously with the payment under the Operative Agreement requiring such withholding). In the case of Impositions for which the Lessee reimburses an Indemnatee, the Lessee shall do so (together with any interest thereon) within twenty (20) days after receipt by the Lessee of written demand by such Indemnatee describing in reasonable detail the nature of the Impositions and the basis for the demand (including the computation of the amount payable and interest thereon), but in no event shall the Lessee be required to pay such reimbursement prior to five (5) Business Days before the latest time permitted by the relevant taxing authority for timely payment. In the case of Impositions for which a contest is conducted pursuant to Section 12.2(b), the Lessee shall pay such Impositions or reimburse such Indemnatee for such Impositions, to the extent not previously paid or reimbursed pursuant to subsection (i), prior to the latest time permitted by the relevant taxing authority for timely payment after conclusion of all contests under Section 12.2(b) unless payment shall be required before commencement of such contest, in which case the Lessee shall pay such Impositions or reimburse the Indemnatee for such Impositions prior to the latest time permitted by the relevant taxing authority for timely payment prior to commencement of such contest.

(v) Impositions imposed for a billing period during which the Lease expires or terminates (unless the Lessee has exercised the Purchase Option) shall be adjusted and prorated on a daily basis between the Lessee and the Lessor, whether or not such Imposition is imposed before or after such expiration or termination and each party shall pay or reimburse the other for each party's pro rata share thereof.

(vi) The determination of all Impositions to be paid or indemnified against by the Lessee under this Section 12.2(a) on an After Tax Basis shall first be made (in good faith) by the Indemnatee. Such determination shall state with reasonable clarity and detail the basis for such determination. At the Lessee's request, the amount of any indemnity payment by the Lessee pursuant to Section 12.2 or payment by an Indemnatee to the Lessee pursuant to Section 12.3(c) shall be verified and certified by an independent public accounting firm selected by the Lessee and reasonably acceptable to the Indemnatee. Unless such verification shall disclose an error in the Indemnatee's favor of 5% or more of the related indemnity payment, the costs of such verification shall be borne by the Lessee (but in no event shall RFC have any obligation to pay any such costs). In no event shall the Lessee have the right to review the Indemnatee's tax returns or receive any other confidential information from the Indemnatee in connection with such verification. The Indemnatee agrees to cooperate with the independent public accounting firm performing the verification and to supply such firm with all information reasonably necessary to permit such firm to accomplish such verification, provided that the information provided to such firm by such Indemnatee shall be for its confidential use. The parties agree that the sole responsibility of the independent public accounting firm shall be to verify the amount of the payment at issue pursuant to this Agreement and that matters of interpretation of this Agreement are not within the scope of the independent accounting firm's responsibilities.

(b) Contests. If any claim shall be made against any Indemnatee or if any proceeding shall be commenced against any Indemnatee (including a written notice of

such proceeding) for any Imposition as to which the Lessee may have an indemnity obligation pursuant to this Section 12.2, or if any Indemnatee shall determine that any Imposition to which the Lessee may have an indemnity obligation pursuant to this Section 12.2 may be payable, such Indemnatee shall, within thirty (30) days, notify the Lessee in writing (provided that failure to so notify the Lessee within thirty (30) days shall not alter such Indemnatee's rights under this Section 12.2 except to the extent such failure demonstrably materially adversely affects the ability to conduct a contest of any indemnified Taxes) and shall not take any action with respect to such claim, proceeding or Imposition without the written consent of the Lessee (such consent not to be unreasonably withheld or unreasonably delayed, such determination based solely on the merits of the claim at issue) for thirty (30) days after the receipt of such notice by the Lessee; *provided, however*, that in the case of any such claim or proceeding, if such Indemnatee shall be required by law or regulation to take action prior to the end of such 30-day period, such Indemnatee shall in such notice to the Lessee, so inform the Lessee, and such Indemnatee shall not take any action with respect to such claim, proceeding or Imposition without the consent of the Lessee (such consent not to be unreasonably withheld or unreasonably delayed based solely on the merits of the claim at issue) for ten (10) days after the receipt of such notice by the Lessee unless such Indemnatee shall be required by law or regulation to take action prior to the end of such 10-day period; further provided that the failure of the Indemnatee to give notice referred to in this sentence shall not diminish Lessee's obligations hereunder except to the extent that such failure precludes Lessee from contesting all or part of such Claim.

The Lessee shall be entitled for a period of sixty (60) days from receipt of such notice from such Indemnatee (or such shorter period as such Indemnatee has notified the Lessee is required by law or regulation for such Indemnatee to commence such contest), to request in writing that such Indemnatee contest the imposition of such Tax, at the Lessee's expense. If (x) such contest can be pursued in the name of the Lessee and independently from any other proceeding involving a Tax liability of such Indemnatee for which the Lessee has not agreed to indemnify such Indemnatee or (y) such Indemnatee so requests, then, provided no Default or Event of Default then exists, the Lessee shall be permitted to control the contest of such claim, provided, that by taking control of the contest, the Lessee acknowledges that it is responsible for the Impositions ultimately determined to be due by reason of such claim. In all other claims requested to be contested by the Lessee, such Indemnatee shall control the contest of such claim, acting through counsel reasonably acceptable to the Lessee. In no event shall the Lessee be permitted to contest (or such Indemnatee required to contest) any claim (A) if such Indemnatee provides the Lessee with a legal opinion of counsel reasonably acceptable to the Lessee that such action, suit or proceeding involves a risk of imposition of criminal liability or will involve a material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on any Property or any part of any thereof unless the Lessee shall have posted and maintained a bond or other security satisfactory to the relevant Indemnatee in its sole discretion in respect to such risk, (B) if a Lease Event of Default has occurred and is continuing, unless the Lessee shall have posted and maintained a bond or other security satisfactory to the relevant Indemnatee in its sole discretion in respect of the Taxes subject to such claim and any and all expenses for which the Lessee is responsible hereunder is reasonably foreseeable in connection with

the contest of such claim, (C) unless the Lessee shall have agreed to pay and shall pay, to such Indemnatee on demand all reasonable out-of-pocket costs and expenses that such Indemnatee may incur in connection with contesting such Impositions including all reasonable legal, accounting and investigatory fees and disbursements, or (D) if such contest shall involve the payment of the Tax prior to the contest, unless the Lessee shall provide to such Indemnatee an interest-free advance in an amount equal to the Impositions that the Indemnatee is required to pay (with no additional net after-tax costs to such Indemnatee). In addition, for Indemnatee controlled contests and claims contested in the name of such Indemnatee, no contest shall be required: (A) unless the amount of the potential indemnity (taking into account all similar or logically related claims that have been or could be raised in any audit involving such Indemnatee with respect to any period for which the Lessee may be liable to pay an indemnity under this Section 12.2(b)) exceeds \$50,000, (B) unless, if requested by such Indemnatee, the Lessee shall have provided to such Indemnatee an opinion of counsel selected by the Lessee and reasonably acceptable to such Indemnatee (except, in the case of income taxes indemnified hereunder, in which case such opinion shall be an opinion of independent tax counsel selected by such Indemnatee and reasonably acceptable to the Lessee) that a reasonable basis exists to contest such claim (or, in the case of an appeal of an adverse determination, and opinion of such counsel to the effect that there is substantial authority for the position asserted in such appeal), and (C) unless Lessee shall have acknowledged in writing to the Indemnatee its obligation to pay the costs and expenses thereof and to indemnify such Indemnatee pursuant to this Section 12 for the Taxes subject to the proposed contest, if such contest is unsuccessful; provided that the acknowledgment with respect to Taxes (and not the costs of the contest) shall be of no force and effect if the final determination demonstrates that the contest was unsuccessful as the result of a non-indemnifiable event or circumstance. In no event shall an Indemnatee be required to appeal an adverse judicial determination to the United States Supreme Court (nor shall the Lessee be required to pay for the cost of such an appeal unless agreed by the Lessee in writing). In addition, an Indemnatee shall not be required to contest any claim in its name (or that of an Affiliate) if the subject matter thereof shall be of a continuing nature and shall have previously been decided adversely by a court of competent jurisdiction pursuant to the contest provisions of this Section 12.2(b), unless there shall have been a change in law (or interpretation thereof) and the Indemnatee shall have received, at the Lessee's expense, an opinion of independent tax counsel selected by the Lessee and reasonably acceptable to the Indemnatee stating that as a result of such change in law (or interpretation thereof), it is more likely than not that the Indemnatee will prevail in such contest.

The party conducting the contest shall consult in good faith with the other party and its counsel with respect to the contest of such claim for Taxes but the decisions regarding what actions to be taken shall be made by the controlling party in its sole judgment. In addition, the controlling party shall keep the non-controlling party reasonably informed as to the progress of the contest, and shall provide the non-controlling party with a copy of (or appropriate excerpts from) any reports or claims issued by the relevant auditing agents or taxing authority to the controlling party thereof, in connection with such claim or the contest thereof. The non-controlling party shall be

permitted to attend all conferences with the relevant auditing agents or taxing authority solely to the extent the discussion pertains to the claim at issue.

Each Indemnatee shall, at the Lessee's expense, supply the Lessee with such information and documents reasonably requested by the Lessee as are necessary or advisable for the Lessee to participate in any action, suit or proceeding to the extent permitted by this Section 12.2(b). Notwithstanding anything in this Section 12.2(b) to the contrary, no Indemnatee shall enter into any settlement or other compromise or fail to appeal an adverse ruling with respect to any claim which is entitled to be indemnified under this Section 12.2 (and with respect to which contest is required under this Section 12.2(b)) without the prior written consent of the Lessee, unless such Indemnatee waives its right to be indemnified under this Section 12.2 with respect to such claim. No settlement of any contest may be made by the Lessee without the Indemnatee's written consent, which consent shall not be unreasonably withheld such determination based solely upon the claim at issue.

Notwithstanding anything contained herein to the contrary, an Indemnatee will not be required to contest (and the Lessee shall not be permitted to contest) a claim with respect to the imposition of any Tax if such Indemnatee shall waive its right to indemnification under this Section 12.2 with respect to such claim (and any claim with respect to such year or any other taxable year the contest of which is materially adversely affected as a result of such waiver).

(c) Reports. The Lessee shall be responsible for preparing and filing any real and personal property or ad valorem tax returns in respect of the Properties. In case any other report or tax return shall be required to be made with respect to any obligations of the Lessee under or arising out of subsection (a) and of which the Lessee has knowledge, the Lessee, at its sole cost and expense, shall notify the relevant Indemnatee of such requirement and (except if such Indemnatee notifies the Lessee that such Indemnatee intends to file such report or return) (A) to the extent required or permitted by and consistent with Requirements of Law, make and file in its own name such return, statement or report; and (B) in the case of any other such return, statement or report required to be made in the name of such Indemnatee, advise such Indemnatee of such fact and prepare such return, statement or report for filing by such Indemnatee or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Lessee under or arising out of subsection (a), provide such Indemnatee at the Lessee's expense with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Lessee under or arising out of subsection (a). Such Indemnatee shall, upon the Lessee's request and at the Lessee's expense, provide any data regularly maintained by such Indemnatee (and not otherwise within the control of the Lessee) with respect to the Property, which the Lessee may reasonably require to prepare any required tax returns or reports.

(d) When and if a Participant actually receives any refund, credit or deduction from any taxing authority which such Participant can reasonably determine, in good faith, is fairly attributable to the payment by Lessee of any United States federal, state or local Tax, pursuant to Section 12.2, such Participant thereupon shall repay to Lessee an amount with respect to such refund, credit or deduction equal to any net reduction in Taxes actually obtained

by such Participant which is attributable to such refund, credit or deduction (but not in excess of the amount of all prior payments paid by Lessee to, or for, the Participant pursuant to this Section 12.2 (reduced by all prior payments under this Section 12.2(d)).

(e) Tax Shelter Registration. Each party hereto authorizes each other party hereto (and each party hereto which is deemed to be a promoter of the transaction which is the subject of the Operative Agreements hereby authorizes each offeree (and each employee, representative, or other agent of such offeree), all within the meaning of Treas. Reg. Sec. 301.6111-2T(c) and related Treasury Regulations) to disclose the structure and tax aspects of the transaction which is the subject of the Operative Agreements to any and all persons, without limitation of any kind on such disclosure. The Lessee agrees to indemnify, protect and defend each Indemnitee from, and hold them harmless against, any taxes (including penalties and interest) resulting from (i) the failure of the Lessee to register the transactions contemplated under the Operative Agreements with the Internal Revenue Service in accordance with the immediately preceding sentence, or (ii) the failure to properly so register.

(f) Survival. It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under the Lease or any other Operative Agreement.

12.3 Withholding Tax. (a) On the Initial Closing Date, or in the case of a Person that actually becomes a Participant after the Initial Closing Date at least thirty (30) Business Days prior to the first date on which any payment is due hereunder to such Participant, each Participant that is a Non-U.S. Person shall deliver to each of Lessee, RFC and the Trustee the Prescribed Forms. If any Participant that is a Non-U.S. Person is unable to so deliver the Prescribed Forms, Lessee and the Trustee or RFC shall be entitled to withhold from any payments to such Participant under this Agreement, the Loan Facility Agreement and the Liquidity Agreement, as the case may be, such amounts of Tax as may be required by law to be so withheld, after taking into account any reduction in the rate of applicable withholding Tax to which such Participant may establish its eligibility by duly filing an IRS Form W-8BEN or W-8ECI (or successor form) with Lessee, RFC and the Trustee, and neither Lessee, RFC or the Trustee shall have any obligation to pay such Participant for any Taxes so withheld, except as provided in Section 12.3(b).

(b) If any change occurs after a Non-U.S. Person becomes a Participant which renders the Prescribed Forms previously delivered by such Participant inapplicable or, in the case of any Prescribed Form that is not, by its terms, effective for the Term, which would prevent such Person from duly completing and delivering any renewal, extension or continuation of a Prescribed Form previously filed by such Person, such Participant shall promptly (after obtaining actual knowledge of such change) advise Lessee, RFC and the Trustee that it is no longer capable of receiving payments without the withholding of United States Tax and that Lessee, RFC and the Trustee are obligated to withhold United States Tax from payments by them to such Participant. If any such change involves a change in a treaty, law or regulation, Lessee shall be obligated to pay such Participant, on an After-Tax Basis, for any United States Tax which must be withheld from payments made to such Participant under this Agreement, but only if and to the extent that the obligation to withhold such United States Tax arises solely by reason of a change

in treaty, law, or regulation which takes effect after the date on which such Participant became a Participant.

(c) Should a Participant ever receive any refund, credit or deduction from any taxing authority to which such Participant would not be entitled but for the payment by Lessee of any United States federal, state or local Tax, pursuant to Section 12.3(b), such Participant thereupon shall repay to Lessee an amount with respect to such refund, credit or deduction equal to any net reduction in Taxes actually obtained by such Participant which is attributable to such refund, credit or deduction (but not in excess of the amount of all prior payments paid by Lessee to, or for, the Participant pursuant to this Section 12.3(b) (reduced by all prior payments under this Section 12.3(b)).

(d) Notwithstanding anything herein to the contrary, Lessee shall indemnify any Indemnatee against any Taxes imposed by way of withholding by a jurisdiction outside of the United States as a result of (i) the payment by Lessee of any amount pursuant to this Agreement or the other Operative Agreements from, or (ii) the booking by Lessee of some or all of the transactions contemplated by the Operative Agreements in, such jurisdiction.

12.4 Increased Costs. (a) If (i) there shall be any increase in the cost to any Participant of agreeing to make or making, funding or maintaining any Loans or Investor Contributions (or in the case of RFC, the CP Issuer or any financial institution providing liquidity or credit support for the Commercial Paper) or (ii) any reduction in any amount receivable in respect thereof, and such increased cost or reduced amount receivable is due to either:

(x) the introduction of or any change in or in the interpretation of any law or regulation after the date hereof; or

(y) the compliance with any guideline or request made after the date hereof from any central bank or other Governmental Authority (whether or not having the force of law),

then (subject to the provisions of Section 12.9) the Lessee shall from time to time, within ten (10) days of receipt of such notice by such Participant pay such Participant additional amounts sufficient to compensate such Participant for such increased cost or reduced amount receivable. Notwithstanding the foregoing, the Lessee shall have no obligation to pay for any such additional amounts arising out of such event with respect to any period more than one hundred eight (180) days prior to the date of notice of such event to the Lessee.

(b) If any Participant shall have reasonably determined that (i) the applicability of any law, rule, regulation or guideline adopted after the date hereof pursuant to or arising out of the July 1988 paper of the Basle Committee on Banking Regulations and Supervisory Practices entitled "International Convergence of Capital Measurement and Capital Standards," or (ii) the adoption after the date hereof of any other law, rule, regulation or guideline regarding capital adequacy affecting such Participant, or (iii) any change arising after the date hereof in the foregoing or in the interpretation or administration of any of the foregoing by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration

thereof, or (iv) compliance by such Participant (or the Applicable Lending Office of such Participant), or any holding company for such Participant which is subject to any of the capital requirements described above, with any request or directive of general application issued after the date hereof regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Participant's capital or on the capital of any such holding company as a direct consequence of such Participant's obligations under the Operative Agreements to a level below that which such Participant or any such holding company could have achieved but for such adoption, change or compliance (taking into consideration such Participant's policies and the policies of such holding company with respect to capital adequacy) by an amount deemed by such Participant to be material, then (subject to the provisions of Section 12.9) from time to time such Participant may request the Lessee to pay to such Participant such additional amounts as will compensate such participant or any such holding company for any such reduction suffered, net of the savings (if any) which may be reasonably projected to be associated with such increased capital requirement. Any certificate as to such amounts which is delivered pursuant to Section 12.9(a) shall, in addition to any items required by Section 12.9(a), include the calculation of the savings (if any) which may be reasonably projected to be associated with such increased capital requirement.

(c) In the event that any Governmental Authority shall impose any Eurocurrency Reserve Requirements which increase the cost of any Participant of making or maintaining Eurodollar Loans, then (subject to the provisions of Section 12.9) the Lessee shall thereafter pay in respect of the Eurodollar Loans or Investor Contributions of such Participant a rate of interest based upon the Eurodollar Reserve Rate (rather than upon the Eurodollar Rate). From and after the delivery to the Lessee of the certificate required by Section 12.9(a), all references contained in this Agreement to the Eurodollar Rate shall be deemed to be references to the Eurodollar Reserve Rate with respect to each such affected Participant.

12.5 Illegality. (a) Notwithstanding any other provision of this Agreement, if the adoption of or any change in any Legal Requirement or in the interpretation or application thereof shall make it unlawful for any Participant or its Applicable Lending Office to honor its obligation to make or maintain Eurodollar Loans under the Loan Facility Agreement or to make or to maintain the Investor Contributions, then the Participant shall promptly notify Lessee thereof and such Participant's obligation to make Eurodollar Loans or to make or maintain its Investor Contributions, as the case may be, shall be suspended until such time as such Participant may again make and maintain Eurodollar Loans or Investor Contributions (in which case the provisions of Section 12.5(b) hereof shall be applicable).

(b) If the obligation of any Participant to make Eurodollar Loans or to make or maintain its Investor Contributions, as the case may be, shall be suspended pursuant to Section 12.5(a), all Loans and Investor Contributions which would otherwise have been made by such Participant as Eurodollar Loans or with reference to the Eurodollar Rate, respectively, shall be made instead as ABR Loans or with reference to ABR and, if an event referred to in Section 12.5(a) has occurred and such Participant has so requested by notice to Lessee, all Eurodollar Loans and Investor Contributions then outstanding shall be automatically converted into ABR Loans and bear Investor Yield with respect to ABR, respectively, on the date specified by such Participant in such notice. To the extent that Eurodollar Loans and Investor Contributions are

made (or converted into ABR Loans or the equivalent), all payments of principal which would otherwise be applied to such Participant's Eurodollar Loans and Eurodollar Rate Investor Contributions shall be applied instead to its ABR Loans and ABR Investor Contributions.

12.6 Compensation. Lessee shall pay, as Supplemental Rent under the Lease, to the Participants such amount or amounts as shall be shown by any Participant to be necessary to compensate it for any loss, cost or expense (which, in the case of RFC Loans, shall be CP Breakage Costs) attributable to: (a) any prepayment or conversion of a Eurodollar Loan or a Eurodollar Rate Investor Contribution on a date other than the last day of the Interest Period for such Loan or Investor Contribution; (b) any payment or prepayment of a RFC Loan other than a payment in full of the RFC Loans on the Maturity Date; (c) any failure for any reason of a Loan or an Investor Contribution to be continued as, or converted into, a Eurodollar Loan or a Eurodollar Rate Investor Contribution on the date for such continuation or conversion specified in the relevant notice given pursuant to the Loan Facility Agreement, this Agreement, or the Trust Agreement, as the case may be; or (d) default by the Lessor in making a prepayment after notice thereof has been given in accordance with the Operative Agreements.

12.7 Indemnity Payments in Addition to Lease Obligations. Lessee acknowledges and agrees that its obligations to make indemnity payments under this Section 12 are separate from, in addition to, and do not reduce, its obligation to pay Basic Rent or any other payment required hereunder or the Lease in accordance with the provisions hereof or thereof.

12.8 Indemnity from Lessor. To the extent that the Lessor is indemnified by the Lessee hereunder, the Lessor hereby assumes liability for, and agrees to defend, indemnify and hold harmless each Indemnified Person on an After Tax Basis from and against, any Claims which may be imposed on, incurred by or asserted against an Indemnatee under or pursuant to any Operative Agreement that would, but for the operation of Section 12.1(b), be payable by Lessee or Construction Agent. To the extent that neither the Lessor nor an Indemnatee is indemnified for a Claim as a result of the operation of Section 12.1(b), such amounts shall be payable solely from distributions of Unreimbursed Indemnity Amounts pursuant to Section 13 and Lessor shall have no indemnification obligation pursuant to this Section 12.8.

12.9 Notice of Amounts Payable; Relocation of Lending Office; Mandatory Assignment. (a) In the event that any Participant becomes aware that any amounts are or will be owed to it pursuant to subsection 12.3, 12.4, 12.5, or 12.6, then it shall promptly notify the Lessee thereof and, as soon as possible thereafter, such Participant shall submit to the Lessee a certificate indicating the amount owing to it and the calculation thereof. The amounts set forth in such certificate shall be prima facie evidence of the obligations of the Lessee hereunder; *provided, however,* that the failure of the Lessee to pay any amount owing to any Participant pursuant to subsection 12.3, 12.4, 12.5, or 12.6 shall not be deemed to constitute a Default or an Event of Default to the extent that the Lessee is contesting in good faith its obligation to pay such amount by ongoing discussions diligently pursued with such Participant or by appropriate proceedings.

(b) If a Participant claims any additional amounts payable pursuant to subsection 12.3, 12.4 or 12.5 or provides a notice under Section 12.5, it shall use its reasonable efforts (consistent with legal and regulatory restrictions) to avoid the need for paying such additional

amounts, including changing the jurisdiction of its Applicable Lending Office, provided that the taking of any such action would not, in the reasonable judgment of the Participant, be disadvantageous to such Participant.

(c) In the event that any Participant (other than RFC) delivers to the Lessee a certificate in accordance with subsection 12.9(a) (other than a certificate as to amounts payable pursuant to Section 12.6), or the Lessee is required to pay any additional amounts or other payments in accordance with Section 12.3, 12.4 or 12.5, the Lessee may, at its own expense and its sole discretion require such Participant to transfer or assign, in whole or in part, without recourse (in accordance with Section 11.3 and Section 3.5 of the Liquidity Agreement), all or part of its interests, rights and obligations under this Agreement to another Person (provided that the Lessee, with the full cooperation of such Participant, can identify a Person who is ready, willing and able to be an assignee with respect thereto) which shall assume such assigned obligations (which assignee may be another Lender or Investor, if such assignee Lender or Investor accepts such assignment); provided that (x) the Lessee or the assignee, as the case may be, shall have paid to such Participant in immediately available funds the principal of and interest or Investor Yield accrued to the date of such payment on the Loans or Investor Contributions made by it and (subject to Section 12.6) all other amounts owned to it under the Operative Agreements and (y) such assignment of the Backup Facility Loan, RFC Commitment, or Investor Contribution Commitment, as applicable, of such Participant and prepayment of Loans or Investor Contributions does not conflict with any law, rule or regulation or order of any court or Governmental Authority.

Notwithstanding anything to the contrary contained in Section 14.5, in the event that the Lessee requests that this Agreement or any other Operative Agreement be modified, amended, supplemented or waived in a manner which would require the unanimous consent of all of the Backup Facility Banks and the Investors and such modification or amendment is agreed to by Backup Facility Banks having Exposure Percentages aggregating more than 66 2/3% and Investors holding more than 66 2/3% of the face amount of the Certificates ("Supermajority Participants"), then with the consent of the Lessee and the Supermajority Participants, the Lessee and the Supermajority Participants shall be permitted to amend this Agreement without the consent of the Backup Facility Banks and/or Investors which did not agree to the modification or amendment requested by the Lessee (such Participants, collectively, the "Minority Participants") to provide for (w) the termination of the Backup Facility Loan Commitment and Investor Contribution Commitment of each of the Minority Participants (provided that such termination shall not terminate any Commitments of such Minority Participants under the Liquidity Agreement unless such Minority Bank's Commitment is replaced with an equal Commitment of a replacement bank in accordance with Section 3.5 of the Liquidity Agreement), (x) the addition to this Agreement of one or more other financial institutions in accordance with the provisions of Section 11.1 and 11.3 hereof and Section 3.5 of the Liquidity Agreement, or an increase in the Backup Facility Loan Commitment or Investor Contribution Commitment of one or more of the Supermajority Participants, so that the Backup Facility Loan Commitments, and Investor Contribution Commitments, after giving effect to such amendment, shall be in the same amount as the Backup Facility Loan Commitments and Investor Contribution Commitments immediately before giving effect to such amendment, (y) if any Backup Facility Loans or Investor Contributions are outstanding at the time of amendment referred to in clause (w) and (x) above, the making of such additional Backup Facility Loans and Investor Contributions by such new

financial institutions or Supermajority Participant, as the case may be, as may be necessary to repay in full the outstanding Backup Facility Loans and Investor Contributions of the Minority Participants immediately before giving effect to such amendment, and (z) subject to the consent of RFC as required under Section 14.5, such other modifications to this Agreement as may be appropriate.

### SECTION 13. DISTRIBUTIONS OF PAYMENTS AND GROSS PROCEEDS

In order to provide for the priority and allocation of payments received from Lessee, Gross Proceeds and the proceeds of the exercise of remedies by any of the Participants pursuant to the Lease and the Security Documents, the parties hereto agree as follows:

13.1 Agreement of Administrative Agent and Participants. Pursuant to the Loan Facility Agreement, the Pledge Agreement and the Assignment of Leases, all of the payments (other than the Excepted Payments) under the Lease, the Participation Agreement and the Loan Facility Agreement have been assigned by the Participants to the Administrative Agent for the ratable benefit of all of the Participants. Except as otherwise provided in Section 13.2 or Section 13.8, the Administrative Agent hereby agrees to deposit all such payments, receipts and other consideration of any kind whatsoever (other than Excepted Payments) received by the Administrative Agent pursuant to the Loan Facility Agreement and any other Security Document in the form received into the Funding Account other than any such payments received after the Expiration Date which shall be distributed by the Administrative Agent, upon receipt, in accordance with the requirements of the Operative Agreements. The Administrative Agent shall make withdrawals from the Funding Account pursuant to the requirements of the Operative Agreements and the provisions of the Loan Facility Agreement and the Pledge Agreement and distribute such amounts to each Participant or other Person entitled thereto (it being understood that any such payment received on a timely basis in accordance with the provisions of the Lease, this Agreement and the other Operative Agreements shall be distributed by the Administrative Agent by 3:00 P.M. New York City time on the same Business Day as received to the extent practicable).

13.2 Basic Rent. Subject to Section 13.8, each payment of Basic Rent (and any payment of interest on overdue installments of Basic Rent) shall be paid directly by Lessee to the Funding Account and shall be distributed from the Funding Account by the Administrative Agent on the days set forth below as follows:

first, to each Lender an amount equal to all interest then due and owing on each Settlement Date to each such Lender pursuant to the terms of the Loan Facility Agreement (provided that in the event that the amounts so distributed pursuant to this clause First are insufficient to pay such interest in full, such amounts shall be distributed to each Lender in accordance with such Lender's pro rata share thereof based on the amounts of interest then due and owing to each Lender),

second, to each Investor an amount equal to all accrued but unpaid Investor Yield on such Investor's Investor Contribution then due and owing on each Certificate Payment Date (together with any overdue interest thereon) (provided that in the event that the amounts so distributed pursuant to this clause Second are insufficient to pay such

Investor Yield (and interest thereon) in full, such amounts shall be distributed to each Investor in accordance with such Investor's Percentage Share).

13.3 Purchase Payments by Lessee. Subject to Section 13.8, any payment on any day (other than payments with respect to Excepted Payments) made by Lessee pursuant to the Lease as a result of Lessee's exercise of its Purchase Option (including the BI Purchase Option under Section 20.3 of the Lease), the Maturity Date Purchase Option, or pursuant to Section 16.2 of the Lease, shall be made by Lessee to the Funding Account, which amount may, at Lessee's option, be credited toward the purchase price for the Properties or the affected Property and shall be withdrawn from the Funding Account and distributed by the Administrative Agent in the following order of priority:

first, ratably to the payment of the principal of Tranche B Loans then outstanding in an amount not to exceed the product of (x) the Tranche A/B Property Cost in respect of such Property and (y) the Tranche B Percentage in respect of such Property and all interest (and breakage costs, including CP Breakage Costs, if any) due and payable on such amount,

second, ratably to the payment of the principal of Tranche A Loans then outstanding in an amount not to exceed the product of (x) the Tranche A/B Property Cost in respect of such Property and (y) the Tranche A Percentage in respect of such Property, and all interest (and breakage costs, including CP Breakage costs, if any) due and payable on such amount,

third, to the payment to the Investors of an amount not to exceed the outstanding Investor Property Cost in respect of such Property and the Investor Yield due and payable on such amount (and all breakage costs, if any), and

fourth, to the payment of any Unreimbursed Indemnity Amounts, if any, owing to the Participants in respect of such Property or Properties, and in the case that the amount to be so distributed shall be insufficient to pay in full as aforesaid, then such amount shall be distributed pro rata among the Participants (other than Lessee and its Affiliates to the extent of their respective interests, if any, in any Loans), without priority of one Participant over the other, in the proportion that each such Participant's Unreimbursed Indemnity Amount bears to the aggregate Unreimbursed Indemnity Amounts of all of such Participants.

13.4 Maximum Residual Guaranty Amount. The Maximum Residual Guaranty Amount paid by Lessee as Supplemental Rent pursuant to the Lease shall be made by Lessee to the Funding Account and withdrawn from the Funding Account and distributed by the Administrative Agent to the Lenders to pay in full the outstanding principal amount of the Tranche A Loans and accrued and unpaid interest thereon.

### 13.5 Sales Proceeds.

(a) Gross Proceeds. Any payments received by the Administrative Agent as Gross Proceeds from the sale of any Property shall be deposited into and withdrawn from the Funding Account upon the date such payment is due, and distributed by the Administrative Agent (simultaneously with the payment by the Administrative Agent out of the Funding

Account of the Maximum Residual Guarantee Amount pursuant to Section 13.4 and the Non-Completion Amount, if applicable) in the following order of priority:

first, in the case of Gross Proceeds, so much of such payment or amount as shall be required to reimburse Lessor, Trustee, Trust Company, the Administrative Agent, the Securities Intermediary, and any other Participant for any Remarketing Sale Expenses incurred by such Person in connection with such disposition and in the case of a Construction Period Property, such payment or amount as shall be required to reimburse the Administrative Agent, the Securities Intermediary, the Trustee, Trust Company, the Lenders, the Investors or Lessor for any tax, expense or other loss incurred by the Administrative Agent, the Securities Intermediary, Trustee, Trust Company, the Lenders, the Investors or Lessor incurred in connection with the collection of such amounts (to the extent not previously reimbursed) shall be distributed to the Administrative Agent, the Securities Intermediary, Trustee, Trust Company, the Lenders, the Investors or Lessor, as applicable (to be divided among such parties pro rata to the extent insufficient to satisfy all claims),

second, ratably to the payment of the principal of Tranche B Loans then outstanding in an amount not to exceed the product of (x) the Tranche A/B Property Cost in respect of such Property and (y) the Tranche B Percentage in respect of such Property, and all interest (and breakage costs, including CP Breakage Costs, if any) then due and payable on such amount,

third, to the payment to the Investors of an amount not to exceed the outstanding Investor Property Cost in respect of such Property (provided that if the amounts distributed pursuant to this clause third are insufficient to pay such amounts in full, such amounts shall be distributed to each Investor in accordance with such Investor's Percentage Share), and all Investor Yield (and breakage costs, if any) then due and payable on such amount,

fourth, to the payment to the Lessee of the Maximum Residual Guarantee Amount or Non-Completion Amount paid by the Lessee in respect of such Property,

fifth, to the payment of any Unreimbursed Indemnity Amounts, if any, owing to the Participants in respect of such Property or Properties, and in the case that the amount to be so distributed shall be insufficient to pay in full as aforesaid, then such amount shall be distributed pro rata among the Participants (other than Lessee and its Affiliates to the extent of their respective interests, if any, in any Loans), without priority of one Participant over the other, in the proportion that each such Participant's Unreimbursed Indemnity Amount bears to the aggregate Unreimbursed Indemnity Amounts of all of such Participants,

sixth, the remainder of such amount other than any amounts payable from a sale of a Property under the Agency Agreement ("Excess Sale Proceeds") shall be held in the Funding Account until the Maturity Date (or, if earlier, the date of an Acceleration) for application in accordance with Section 13.5(b) or 13.8, as the case may be, and the

remainder of such amount which was payable from a sale of a Property under the Agency Agreement shall be paid to Lessee.

(b) Excess Sales Proceeds. On the Maturity Date any Excess Sale Proceeds contained in the Funding Account shall be applied as follows:

first, ratably to the payment of the principal and interest on the Loans then outstanding,

second, to the Investors an amount not to exceed the aggregate Investor Property Cost with respect to all Properties (whether or not the Lease has terminated with respect to any such Property) and the Investor Yield due and payable on such amount (provided that if the amounts distributed pursuant to this clause second are insufficient to pay such amounts in full, such amounts shall be distributed to each Investor in accordance with such Investor's Percentage Share), and

third, to the extent money remains after application pursuant to clauses first and second above, in the manner specified in Section 13.8.

13.6 Supplemental Rent. Any payment of Supplemental Rent received by Administrative Agent for which no provision as to the application thereof is made elsewhere in this Section 13 shall be withdrawn from the Funding Account on the date such payment is due and distributed immediately by the Administrative Agent upon receipt thereof to the Persons entitled thereto pursuant to the Operative Agreements.

13.7 Excepted Payments. Notwithstanding any other provision of this Agreement or the Operative Agreements, any Excepted Payments received at any time by the Administrative Agent or any Participant shall be distributed promptly to the Person entitled to receive such Excepted Payment pursuant to the Operative Agreements.

13.8 Distribution of Payments After Event of Default: Remaining Amounts. Notwithstanding any other provision of this Section 13, (a) all payments (other than amounts distributable pursuant to Section 13.6 or 13.7) received and amounts realized by the Administrative Agent or Lessor after an Event of Default has occurred and is continuing, including Gross Proceeds from the sale of any Property or other collateral (other than a Construction Period Property), proceeds of any amounts from any insurer or any Governmental Authority in connection with any loss, casualty or condemnation, from Lessee as payment in accordance with the Lease or payments pursuant to or under the Structural Support Agreement, and (b) all moneys contained in the Funding Account on the date of an Acceleration or on the Maturity Date (excluding, in the case of any application made pursuant to this Section 13.8 on the Maturity Date, an amount equal to the aggregate amount of Excess Sale Proceeds or Maximum Residual Guarantee Amount deposited in the Funding Account on or prior to such date, which amounts shall instead be applied on the Maturity Date in accordance with clauses first and second of Section 13.5(b) (with any remaining Excess Sales Proceeds being paid as set forth below in this Section 13.8), and Section 13.4, respectively), or deposited in the Funding Account thereafter, shall be immediately paid to the Administrative Agent and shall be immediately distributed by the Administrative Agent (which shall forgo deposit of such

payments into the Funding Account if such amount is not already in the Funding Account), in the following order of priority:

first, so much of such payment or amount as shall be required to reimburse the Administrative Agent, the Securities Intermediary, the Trustee, Trust Company, the Lenders, the Investors or Lessor for any tax, expense or other loss incurred by the Administrative Agent, the Securities Intermediary, Trustee, Trust Company, the Lenders, the Investors or Lessor incurred in connection with the collection of such amounts (to the extent not previously reimbursed) shall be distributed to the Administrative Agent, the Securities Intermediary, Trustee, Trust Company, the Lenders, the Investors or Lessor, as applicable (to be divided among such parties pro rata to the extent insufficient to satisfy all claims),

second, to the Lenders to pay in full the accrued interest on and the principal of each Lender's Loans (and breakage costs, including CP Breakage Costs), and in the case that the amount to be so distributed shall be insufficient to pay in full as aforesaid, then such amount shall be distributed pro rata among the Lenders (other than Lessee and its Affiliates to the extent of their respective interests, if any, in any Loans) without priority of one Lender over the other in the proportion that each such Lender's Loans bear to the aggregate Loans of all of such Lenders,

third, the balance, if any, to be distributed to each Investor to pay in full the Investor Contributions and accrued Investor Yield thereon (and breakage costs, if any), provided that if the amounts distributed pursuant to this clause third are insufficient to pay such amounts in full, such amounts shall be distributed to each Investor in accordance with such Investor's Percentage Share,

fourth, to the payment of any Unreimbursed Indemnity Amounts, if any, owing to the Participants in respect of such Property or Properties, and in the case that the amount to be so distributed shall be insufficient to pay in full as aforesaid, then such amount shall be distributed pro rata among the Participants (other than Lessee and its Affiliates to the extent of their respective interests, if any, in any Loans), without priority of one Participant over the other, in the proportion that each such Participant's Unreimbursed Indemnity Amount bears to the aggregate Unreimbursed Indemnity Amounts of all of such Participants,

fifth, the balance, if any, of such payment or amounts remaining thereafter shall be promptly distributed to, or as directed by, Lessor to the Persons entitled thereto *pari passu* pursuant to the Operative Agreements, to pay all other obligations of Lessee under the Operative Agreements, and

sixth, the balance, if any, to be distributed to Lessee, to the extent permitted under Section 13.11.

13.9 Certain Lease Payments. Any payment made by the Lessee pursuant to Section 21.3 of the Lease shall be paid out of the Funding Account by the Administrative Agent promptly after receipt, and shall be applied, first, ratably to the payment of the principal of

Tranche B Loans then outstanding in an amount equal to the product of the Tranche B Percentage with respect to such Property and the Tranche A/B Property Cost with respect to such Property (in each case determined as of the date of sale of such Property pursuant to Section 21 of the Lease immediately prior to giving effect thereto) and all interest (and breakage costs, including CP Breakage Costs) due and payable on such amount, and second, the remainder of such amount shall be paid out of the Funding Account by the Administrative Agent to the Lessor.

13.10 Other Payments. (a) Except as otherwise provided in Sections 13.2, 13.3, 13.8 and clause (ii) below,

- (i) any payment received by the Administrative Agent for which no provision as to the application thereof is made in the Operative Agreements or elsewhere in this Section 13, and
- (ii) all payments and amounts received by the Administrative Agent under the Lease or otherwise with respect to any realization of any of the Collateral,

shall be withdrawn from the Funding Account and distributed forthwith by the Administrative Agent in the order of priority set forth in Section 13.3 (in the case of any payment described in clause (i) above) or in Section 13.8 hereof (in the case of any payment described in clause (ii) above).

(b) Except as otherwise provided in Sections 13.2, 13.3 and 13.8 hereof and except after a Lease Event of Default has occurred and is continuing, any payment received by the Administrative Agent for which provision as to the application thereof is made in an Operative Agreement but not elsewhere in this Section 13 shall be withdrawn from the Funding Account and distributed forthwith by the Administrative Agent to the Person and for the purpose for which such payment was made in accordance with the terms of such Operative Agreement.

13.11 Remaining Funds. Upon the permanent termination of the Backup Facility Commitments and the payment in full of (i) the Loans, the Investor Contributions and all accrued and unpaid interest and Investor Yield, and (ii) all other amounts owing by Lessee or Lessor to any Person under the Operative Agreements, all remaining moneys in the Funding Account shall be paid to Lessee, and Lessee shall not be entitled to receive any amounts from the Funding Account until such time, except as expressly provided in this Section 13.

13.12 Time of Payment. Except as otherwise provided in the Operative Agreements, each payment due from Lessee under the Operative Agreements shall be made in immediately available funds prior to 11:00 a.m., New York City time on the date when due in immediately available funds consisting of lawful currency of the United States of America, unless such date shall not be a Business Day, in which case payment shall be made on the next succeeding Business Day. Except as otherwise provided in the Operative Agreements, payments received after 11:00 a.m., New York City time shall be deemed received on the next succeeding Business Day.

13.13 Defaulting Backup Facility Bank. Notwithstanding anything to the contrary contained in this Section 13, any amounts which are otherwise distributable to a Defaulting Backup Facility Bank under this Section 13 shall first be applied to the payment of any amounts owed by such Defaulting Backup Facility Bank pursuant to Section 1.2(d) of the Liquidity Agreement.

13.14 Operating Rules for Distributions from Funding Account. If on any day there are funds deposited into the Funding Account from more than one source, distributions on such date shall be made taking into account the following rules, as well as the other provisions of the Operative Agreements, governing such distributions:

Distributions under Section 13.1 through Section 13.10 shall be made only to the extent funds in the Funding Account on such date are attributable to Rent, Maximum Residual Guaranty Amount, the purchase price paid by Lessee for any Property, insurance proceeds, condemnation awards or Gross Proceeds;

#### SECTION 14. MISCELLANEOUS

14.1 Survival of Agreements. The representations, warranties, covenants, indemnities and agreements of the parties provided for in the Operative Agreements, and the parties' obligations under any and all thereof, shall survive the execution and delivery of this Agreement, the transfer of each Property to the Lessor, the construction of any Construction Improvements, the making of any Modifications, any disposition of any interest of the Lessor in any Property or the Improvements or any interest of the Investor in the Lessor, the payment of the Loans and any disposition thereof and shall be and continue in effect notwithstanding any investigation made by any party and the fact that any party may waive compliance with any of the other terms, provisions or conditions of any of the Operative Agreements. Except as otherwise expressly set forth herein or in other Operative Agreements, the indemnities of the parties provided for in the Operative Agreements shall survive the expiration or termination of any thereof.

14.2 No Broker, etc. Each of the parties hereto represents to the others that it has not retained or employed any broker, finder or financial adviser to act on its behalf in connection with this Agreement or the transactions contemplated herein, nor has it authorized any broker, finder or financial adviser retained or employed by any other Person so to act, except for the Arranger, the fees of which shall be paid by the Lessee through Advances. Any party who is in breach of this representation shall indemnify and hold the other parties harmless from and against any liability arising out of such breach of this representation.

14.3 Notices. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person shall be given in writing by nationally recognized courier service, by hand or, in the case of Requisitions by facsimile and any such notice shall become effective upon the applicable party's receipt thereof (or refusal to accept receipt), and shall be directed to the address of such Person as indicated on Schedule I, and, in the case of notice by facsimile, telephone or bank wire, when transmitted during business hours on a Business Day and, if not transmitted during business hours on a Business Day, the first

Business Day thereafter, addressed as provided on Schedule I, or to such other address as any of the parties hereto may designate by written notice. Copies of all notices given by facsimile or bank wire shall be contemporaneously sent by overnight courier. Notwithstanding any other provision of this Agreement or the Operative Agreements, if (x) Lessee is required to deliver notice or documents to the Investors, notice or delivery of such documents to the Investors or Required Investors shall be deemed to have been duly given by Lessee by delivering any such notice or documents to the Secured Investor (or to the Administrative Agent in accordance with the succeeding clause (y)); and (y) Lessee is required to deliver to one or more of the parties to the Operative Agreements (other than or in addition to the Administrative Agent), or one or more parties to the Operative Agreements (other than or in addition to the Administrative Agent) is entitled to receive notice or documents, notice or delivery of such documents to all such parties shall be deemed to have been duly given by Lessee by delivering any such notice or documents to the Administrative Agent, who shall in turn promptly deliver such notice or documents to the appropriate party hereto (which in the case of the Investors, shall be the Secured Investor). From time to time any party may designate a new address for purposes of notice hereunder by notice to each of the other parties hereto.

14.4 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

14.5 Amendments and Termination. Neither this Agreement, nor any other Operative Agreement (other than the Liquidity Agreement), nor any terms hereof or thereof, may be terminated, amended, supplemented or modified except in accordance with the provisions of this Section; *provided, however*, that no termination, amendment, supplement or modification to the Liquidity Agreement shall be effective without the consent of the Lessee if such termination, amendment, supplement or modification would materially adversely affect the Lessee. This Agreement and any other Operative Agreement (other than the Liquidity Agreement), including any terms hereof or thereof, may be terminated, amended, supplemented, waived or modified and shall be binding on Lessee, Lessor, Administrative Agent, all Investors and all Lenders:

(a) in the case of any ambiguity, defect or inconsistency in any Operative Agreement, or any amendment, supplement or waiver that would not have an adverse effect on the Lessor's, or any Lender's rights under the Loan Facility Agreement, with the written agreement or consent of the Administrative Agent and Lessee, ,

(b) regardless of whether the Participants, the Administrative Agent and the Lessor are parties thereto, in the case of a termination, amendment, supplement, waiver or modification with respect to any Operative Agreement, with the written agreement or consent of Lessee and the Required Participants,

(c) regardless of whether the Investors are parties thereto, in the case of a termination, amendment, supplement, waiver or modification with respect to any Operative Agreement, which adversely affects Investors in a materially different manner than the Back-up Facility Banks (and for this purpose the existing subordination of the rights of the Investors to the rights of the Lenders shall not, in and of itself, be considered a materially different manner), with the written consent of Lessee and the Required Investors, and

(d) in the case of any termination with respect to a Property, such termination is made (x) with respect to a Construction Period Property, in accordance with the provisions of the Agency Agreement, (y) with respect to any Property, upon payment in full of the Termination Value for such Property and all other amounts due and owing by Lessee under the Operative Agreements for such Property or (z) with respect to any Property, upon effective exercise and consummation of the sale of such Property in accordance with Section 21 of the Lease and payment in full of all amounts due in accordance therewith;

*provided, however, that:*

(i) no such termination, amendment, supplement, waiver or modification shall without written agreement or consent of each Participant and each other Person (other than Lessor) affected thereby:

(x) (A) modify any of the provisions of this Section 14.5, change the definition of "Majority Lenders," "Required Investors," "Majority Participants," or modify any provision of an Operative Agreement requiring action by Majority Lenders or Required Investors; (B) amend, modify, waive or supplement any of the provisions of Sections 6.5 or Article III of the Loan Facility Agreement or the representations of such Participant in Section 7 or the covenants in Section 9 of this Agreement; (C) reduce any fees or reduce or modify any indemnities in favor of any Participant, the Arranger, the Trustee or the Administrative Agent, including amounts payable pursuant to Section 8 (except that any Person may consent to any reduction, modification, amendment or waiver of any indemnity payable to it); (D) subject to Section 10.1(l), extend the Maturity Date, or (E) postpone, reduce or forgive, in whole or in part, any payment of Rent (other than pursuant to the terms of any Operative Agreement), any Loan or any portion of any Investor Contribution, the Termination Value, the Maximum Residual Guaranty Amount, amounts due pursuant to Sections 19, 20 and 21 of the Lease, interest or Investor Yield or, subject to clause (C) above, any other amount payable under the Lease or this Agreement, or modify the definition or method of calculation of Rent (other than pursuant to the terms of any Operative Agreement), any Loan or any Investor Contribution, the Termination Value, Maximum Residual Guaranty Amount, or any other definition which would affect the amounts to be advanced or which are payable under the Operative Agreements or any of the other matters set forth above; or

(y) have the effect of (A) consent to any assignment of the Lease, (B) releasing Lessee from its obligations in respect of the payment of Rent, the Termination Value and the other items set forth in clause (x)(E) above, or (C) changing the absolute and unconditional character of such obligations;

(ii) no termination, amendment, supplement, waiver or modification shall, without the written agreement or consent of each Participant (other than the Lessor) and Lessee, be made to Section 13 of this Agreement;

(iii) no termination, amendment, supplement, waiver or modification shall, without the written agreement or consent of the Administrative Agent, be made to Section 14 of this Agreement or any other provision of any Operative Agreement relating to the rights liabilities and obligations of the Administrative Agent;

(iv) any provisions relating to release of all or substantially all of the Collateral (other than any release of Collateral required or permitted under the terms of the Operative Agreements) may only be amended, waived or permitted or terminated with the prior written consent of all the Backup Facility Banks and RFC;

(v) each termination, amendment, supplement, waiver or modification of any Operative Agreement shall be subject to the consent rights of the Trust Company and Trustee as set forth in Section 9 of the Trust Agreement;

(vi) notwithstanding anything to the contrary contained herein or in any other Operative Agreement, no termination, amendment, supplement, waiver or modification adversely affecting Lessee shall, without the written consent of Lessee, be made to any Operative Agreement;

(vii) to the extent a definition contained in Annex A hereto is to be amended such amendment shall be accomplished by an amendment only to the Operative Agreements in which such defined term is used or otherwise incorporated in such Operative Agreement;

(viii) notwithstanding anything to the contrary contained herein or in any other Operative Agreement, no termination, amendment, supplement, waiver or modification of the Loan Facility Agreement, the Liquidity Agreement, or this Agreement shall be made without the prior written consent of RFC; and

(ix) Notwithstanding anything to the contrary contained herein or in any other Operative Agreement, without the prior written consent of the Required Investors:

(x) no termination, amendment, supplement, waiver or modification of this Agreement (including Annex A) shall terminate, amend, supplement, waive or modify any right granted to the Investors or the Lessor pursuant to this Agreement (including Annex A);

(y) prior to a Lease Event of Default, none of the terms of Sections 2.2, 10, 14, 15, 20, 21, 22 and 24 of the Lease may be terminated, amended, supplemented, waived or modified and no termination, amendment, supplement, waiver or modification of any other provision of the Lease shall impose or create any obligation on the part of Lessor thereunder; and

(z) prior to an Agency Agreement Event of Default, none of the terms of the Agency Agreement may be terminated, amended, supplemented, waived or modified;

provided, however, that with respect to clauses (y) and (z) above, following the occurrence and continuance of a Lease Event of Default or Agency Agreement Event of Default, the prior written consent of the Required Investors shall not be required in connection with a termination, amendment, supplement, waiver or modification of the Lease or the Agency Agreement, except to the extent that such termination, amendment, supplement, waiver or modification (A) relates to the return, maintenance, repair, insurance, use, replacement, modification or subleasing of any Property, the title or perfection of the interest of the Lessor, the discharge of Liens, the payment of Basic Rent, Termination Value and other amounts payable under the Lease and the other Operative Agreements; (B) imposes or creates any obligation on the part of the Lessor under such documents; or (C) extends or shortens the duration of the Term.

Notwithstanding the foregoing and without limiting the rights of the Lessee in the proviso to the first sentence of this Section 14.5, the Liquidity Agreement may only be amended in accordance with Section 3.1(b) thereof.

For so long as any Participant shall be a Defaulting Investor, Defaulting Backup Facility Bank or a Defaulting Bank, the Defaulting Investor, the Defaulting Bank or Defaulting Backup Facility Bank shall (unless the Lessee and the Required Participants, determined as if the Defaulting Investor, Defaulting Backup Facility Bank or a Defaulting Bank were not an "Equity Investor" or "Lender" shall otherwise consent in writing) be deemed for all purposes relating to terminations, amendments, supplements, waivers or modifications under the Operative Agreements to have no Investor Contributions, Investor Contribution Commitment, Loans or Exposure Percentage, shall not be treated as an "Equity Investor" or "Lender" when performing the computation of Required Investors, Majority Lenders or Required Participants, and shall have no rights under this Section 14.5; provided that any action taken pursuant to clause (i) and (ii) of the proviso immediately following Section 14.5(d) shall not be effective as against the Defaulting Investor, Defaulting Backup Facility Bank or Defaulting Bank, as applicable.

14.6 Parties in Interest. Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person except the parties hereto.

14.7 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

14.8 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14.9 Rights of Lessee. Notwithstanding any provision of the Operative Agreements, if at any time all obligations (i) of the Lessor under the Loan Facility Agreement and the Security Documents and (ii) of the Lessee under the Operative Agreements have in each case been satisfied or discharged in full and all Commitments thereunder terminated, then the Lessee shall be entitled to (a) terminate the Lease (to the extent not previously terminated) and

(b) receive all amounts then held under the Operative Agreements and all proceeds with respect to the Properties. Upon the fulfillment of the obligations contained in clauses (i) and (ii) above, the Lessor shall transfer to the Lessee all of its right, title and interest in and to the Properties (to the extent not previously transferred to the Lessee in accordance with the Lease) and any amounts or proceeds referred to in the foregoing clause (b) shall be paid over to the Lessee.

14.10 Further Assurances. The parties hereto shall promptly cause to be taken, executed, acknowledged or delivered, at the sole expense of the Lessee, all such further acts, conveyances, documents and assurances as the other parties may from time to time reasonably request in order to carry out and effectuate the intent and purposes of this Agreement, the other Operative Agreements and the transactions contemplated hereby and thereby (including, without limitation, the preparation, execution and filing of any and all Uniform Commercial Code financing statements and other filings or registrations which the parties hereto may from time to time request to be filed or effected), *provided, however*, that the Lessee shall not be required to pay expenses of the Lessor, the Administrative Agent, any Lender or any Investor pursuant to this Section 14.10 to the extent arising from a breach or alleged breach by such Person of any agreement entered into in connection with the assignment or participation of any Loan or Investor Contribution. The Lessee, at its own expense, shall take such action as may be reasonably requested in order to maintain and protect all security interests provided for hereunder or under any other Operative Agreement.

14.11 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

14.12 No Representation or Warranty. Nothing contained herein, in any other Operative Agreement or in any other materials delivered to the Lessee in connection with the transactions contemplated hereby or thereby shall be deemed a representation or warranty by the Administrative Agent, the Lenders, the Arranger or any of their Affiliates as to the proper accounting treatment, legal treatment or tax treatment that should be afforded to the Lease and the Lessor's ownership of the Property and the Administrative Agent expressly disclaims any representation or warranty with respect to such matters.

14.13 Highest Lawful Rate. It is the intention of the parties hereto to conform strictly to applicable usury laws and, anything herein to the contrary notwithstanding, the obligations of the Lessee, the Lessor or the Investors or any other party under any Operative Agreement, shall be subject to the limitation that payments of interest or of other amounts constituting interest shall not be required to the extent that receipt thereof would be in excess of the Highest Lawful Rate, or otherwise contrary to provisions of law applicable to the recipient limiting rates of interest which may be charged or collected by the recipient. Accordingly, if the transactions or the amount paid or otherwise agreed to be paid for the use, forbearance or detention of money under this Agreement, the Lease and any other Operative Agreement would exceed the Highest Lawful Rate or otherwise be usurious with respect to the recipient of any such amount, then, in that event, notwithstanding anything to the contrary in this Agreement, the Lease or any other Operative Agreement, it is agreed as follows as to the recipient of any such amount:

(a) the provisions of this Section 14.13 shall govern and control over any other provision in this Agreement, the Lease and any other Operative Agreement and each provision set forth therein is hereby so limited;

(b) the aggregate of all consideration which constitutes interest that is contracted for, charged or received under this Agreement, the Lease, or any other Operative Agreement shall under no circumstances exceed the maximum amount of interest allowed by any Legal Requirements (such maximum lawful interest rate, if any, with respect to such recipient herein called the "Highest Lawful Rate"), and all amounts owed under this Agreement, the Lease and any other Operative Agreement shall be held subject to reduction and (i) the amount of interest which would otherwise be payable to the recipient hereunder and under the Lease, the Loan Documents and any other Operative Agreement, shall be automatically reduced to the amount allowed under any Legal Requirements and (ii) any unearned interest paid in excess of the Highest Lawful Rate shall be credited to the payor by the recipient (or, if such consideration shall have been paid in full, refunded to the payee);

(c) all sums paid, or agreed to be paid for the use, forbearance and detention of the money under this Agreement, the Lease, or any other Operative Agreement shall, to the extent permitted by any Legal Requirements, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest is uniform throughout the full term thereof; and

(d) if at any time the interest, together with any other fees, late charges and other sums payable pursuant to or in connection with this Agreement, the Lease, and any other Operative Agreement executed in connection herewith or therewith, and deemed interest under any Legal Requirements exceeds that amount which would have accrued at the Highest Lawful Rate, the amount of interest and any such fees, charges and sums to accrue to the recipient of such interest, fees, charges and sums pursuant to the Operative Agreement shall be limited, notwithstanding anything to the contrary in the Operative Agreement to that amount which would have accrued at the Highest Lawful Rate for the recipient, but any subsequent reductions, as applicable, shall not reduce the interest to accrue pursuant to the Operative Agreement below the recipient's Highest Lawful Rate until the total amount of interest payable to the recipient (including all consideration which constitutes interest) equals the amount of interest which would have been payable to the recipient (including all consideration which constitutes interest), plus the amount of fees which would have been received but for the effect of this Section 14.13.

14.14 Appointment of the Administrative Agent. (a) Except as otherwise provided in Section 1.2(f) of the Liquidity Agreement, each Participant hereby irrevocably appoints the Administrative Agent as its agent hereunder and under the other Operative Agreements and hereby authorizes the Administrative Agent to take such action on its behalf and to exercise such rights, remedies, powers and privileges hereunder or thereunder as are specifically authorized to be exercised by the Administrative Agent by the terms hereof or thereof, together with such rights, remedies, powers and privileges as are reasonably incidental thereto (including the right with respect to fractional amounts of less than one U.S. cent to round up to the next whole cent). The Administrative Agent may execute any of its duties hereunder

and under the other Operative Agreements, by or through Administrative Agents or employees. The relationship between the Administrative Agent and each Participant is that of agent and principal only, and nothing herein shall be deemed to constitute the Administrative Agent a trustee for any Participant or impose on the Administrative Agent any obligations other than those for which express provision is made herein or in the other Operative Agreements.

(b) Except as required by the specific terms of the Operative Agreements, the Administrative Agent shall not have any duty to exercise any right, power, remedy or privilege granted or assigned to it thereby, or to take any affirmative action or exercise any discretion hereunder or thereunder, unless directed to do so by the Directing Party (and shall be fully protected in acting or refraining from acting pursuant to such directions which shall be binding upon the Participants), and shall not, without the prior approval of the Directing Party, consent to any material departure by Lessee or the Lessor from the terms of the Lease or any Security Document, waive any default on the part of any such party under any such agreement or instrument or amend, modify, supplement or terminate, or agree to any surrender of, any such agreement or instrument; *provided, however*, that the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement, the other Operative Agreements or any Legal Requirements.

(c) Neither the Administrative Agent nor any of its or their respective directors, officers, agents or employees shall be liable to any Participant, Lessee, or the Lessor, as the case may be, for any action taken or omitted to be taken by it or them hereunder, under the other Operative Agreements, or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct; nor shall the Administrative Agent be responsible to any Participant for the validity, effectiveness, value, sufficiency or enforceability against Lessee, the Lessor, any Lender, or the Administrative Agent, of this Agreement, the other Operative Agreements, or any other document furnished pursuant hereto or thereto or in connection herewith or therewith. Without limitation of the generality of the foregoing, the Administrative Agent: (i) may consult with legal counsel (including counsel for Lessee or the Lessor), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Participant and shall not be responsible to any Participant for any statements, warranties or representations made in or in connection with this Agreement, the other Operative Agreements, any other document furnished pursuant hereto or thereto or in connection herewith or therewith; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Operative Agreements, on the part of any party hereto or thereto or to inspect the Properties (including the books and records) of Lessee or the Lessor; (iv) shall not be responsible to any Participant for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto; and (v) shall incur no liability under or in respect of the Operative Agreements by acting upon any notice, consent, certificate or other instrument or writing to the extent authorized herein or therein believed by it to be genuine and signed or sent by the proper party or parties.

(d) Each Participant (other than the Administrative Agent in its capacity as such and RFC) hereby severally agrees, in the ratio that the sum of such Participant's Investor

Contribution and Exposure Percentages bears to the sum of all Investor Contributions and Exposure Percentages, to indemnify and hold harmless the Administrative Agent, from and against any and all losses, liabilities (including liabilities for penalties), actions, suits, judgments, demands, damages, costs and expenses of any kind whatsoever (including, without limitation, reasonable fees and expenses of attorneys, accountants and experts) incurred or suffered by the Administrative Agent in its capacity as Administrative Agent hereunder as a result of any action taken or omitted to be taken by the Administrative Agent in such capacity or otherwise incurred or suffered by, made upon, or assessed against the Administrative Agent in such capacity; *provided, however*, that no Participant shall be liable for any portion of any such losses, liabilities (including liabilities for penalties), actions, suits, judgments, demands, damages, costs or expenses that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct on the part of the Administrative Agent. Without limiting the generality of the foregoing, each Participant (other than RFC) hereby agrees, in the ratio aforesaid, to reimburse the Administrative Agent promptly following its demand for any reasonable out-of-pocket expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Administrative Agent under the Operative Agreements, and not promptly reimbursed to the Administrative Agent by Lessee, or the Lessor. Each Participant's obligations under this paragraph shall survive the termination of the Operative Agreements and the discharge of Lessee's and the Lessor's obligations thereunder.

(e) The Participants agree that, with respect to their obligation to fund under the Operative Agreements and the Investor Contributions or Loans made by them, the Participant acting as the Administrative Agent shall have the same rights and powers hereunder as any other Participant and may exercise the same as though it were not performing the duties specified herein; and the terms "Participants," "Directing Party," or any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent and the Administrative Agent may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with Lessee, the Lessor, or any of their respective affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Lessee, the Lessor, any Lender, or any of their respective Affiliates for services in connection with the Operative Agreements and otherwise without having to account for the same to any Participant.

(f) The Administrative Agent may execute any of its duties under this Agreement and the other Operative Agreements by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(g) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has actual knowledge or has received notice from a Lender, a Lessor Party or the Lessee referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall promptly give notice thereof to the Participants. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Participants (or, if so specified by this Agreement, all Participants) subject to

any Excepted Rights retained by the Lessor and the Investors; provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Participants.

(h) Each Lender expressly acknowledges that neither the Administrative Agent nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Lessee or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Lessee and its Affiliates and made its own decision to make its Loans hereunder and enter into this Agreement and the other Operative Agreements. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Operative Agreements, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Lessee and its Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Participants by the Administrative Agent hereunder or under any other Operative Agreement, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Lessee or any of its Affiliates that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

**14.15 Resignation by the Administrative Agent.** (a) The Administrative Agent may resign as such at any time upon at least thirty (30) days' notice, in writing, to Lessee, the Lessor, and the Participants provided such resignation shall not be effective until a successor has been appointed pursuant to Section 14.15(b).

(b) In the event of such resignation, the Directing Party shall as promptly as practicable appoint a successor agent to replace the Administrative Agent, subject to the prior written consent of Lessee and RFC (provided that such consent shall not (x) with respect to Lessee, be required during the continuance of an Event of Default and (y) with respect to RFC and Lessee, in any event, be unreasonably withheld). If no successor Administrative Agent shall have been so appointed by the Directing Party, and shall have accepted such appointment, within thirty (30) days' after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent shall, on behalf of the Participants, petition a court of competent jurisdiction to appoint a successor Administrative Agent. Any successor Administrative Agent shall (1) be a commercial bank organized under the laws of the United States of America or of any State thereof having a combined capital and surplus of at least \$200,000,000, (2) have commercial paper ratings of A-1+ from S&P and P-1 from Moody's, and (3) have been approved

in writing by RFC and Lessee (provided that such approval shall not (x) with respect to Lessee, be required during the continuance of an Event of Default and the exercise of remedies under the Operative Agreements as a result thereof and (y) with respect to RFC and Lessee, in any event, be unreasonably withheld). Upon the appointment of a successor as Administrative Agent by such court, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. Notwithstanding the resignation of the Administrative Agent or any Administrative Agent hereunder, the provisions of Article 12 and Section 14.14 shall continue to inure to the benefit of the Administrative Agent in respect of any action taken or omitted to be taken by the Administrative Agent in its capacity as such while it was such under the Operative Agreements.

(c) In the event that, at the end of the term, Lessee desires to renew the term of the Lease and keep the Operative Agreements in effect and the Administrative Agent does not so agree (which no party to this Agreement has any obligation to do), Lessee shall have the right, with the consent of each Lender that would have any Loans outstanding after such renewal, to replace the Administrative Agent with a new agent reasonably acceptable to such Lenders.

14.16 Limitation of Liability of Trustee and Equity Investor. (a) It is expressly understood and agreed by the parties hereto that (i) except as specifically provided for in the Operative Agreements, each of the Operative Agreements executed by Wilmington Trust Company is executed and delivered by Wilmington Trust Company not individually or personally but solely as trustee of Lessor, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of Lessor is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose of binding only the Lessor, (iii) except as specifically provided for in the Operative Agreements nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto, and (iv) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of any party hereto, or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Lessor or Investors under the Operative Agreements; *provided, however*, that nothing in this Section 14.16 shall be construed to limit or expand the liability of the Trust Company in its individual capacity for the consequences of its own willful misconduct or gross negligence (or simple negligence in the handling of funds received by it) or breach of its representations, warranties, or covenants made in its individual capacity.

(b) No Participant shall have any obligation to any other Participant or party hereto with respect to transactions contemplated by the Operative Agreements, except those obligations of such Participant expressly set forth in the Operative Agreements or except as set forth in the instruments delivered in connection therewith, and no Participant shall be liable for performance by any other party hereto of such other party's obligations under the Operative Agreements except as otherwise so set forth.

(c) No Personal Liability of Equity Investor. The Equity Investor shall not in any way be liable or responsible or have any obligation in its individual capacity to the holders of the Notes for the validity, effectiveness, enforceability or payment thereof or to another Person for the payment or performance of any obligation of Lessor pursuant to any other Operative Agreement to which Lessor shall be a party. Except with respect to (i) Lessor Liens attributable to or arising by, through or under the Equity Investor, (ii) the breach of any representation, warranty or covenant made by the Equity Investor in any Operative Agreement, or (iii) any Claim resulting from the gross negligence, fraud or willful misconduct of the Equity Investor, no Person shall have any recourse to the personal assets of the Equity Investor, under any rule of law, statute or constitution or by the enforcement of any assessments or penalties or otherwise, for the payment of any amounts due pursuant to the Operative Agreements or for any claim based herein or otherwise in respect hereof against the Equity Investor, or any past, present or future officer, director, owner, shareholder or employee thereof, provided, however, that nothing herein shall prevent recourse to the Trust Estate.

14.17 SUBMISSION TO JURISDICTION. EACH PARTY HERETO HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER OPERATIVE AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

14.18 WAIVER OF JURY TRIAL. THE PARTIES HERETO VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER OPERATIVE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY OF THE PARTIES HERETO. THE PARTIES HERETO HEREBY AGREE THAT THEY WILL NOT SEEK TO CONSOLIDATE ANY SUCH LITIGATION WITH ANY OTHER LITIGATION IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THE PROVISIONS OF THIS SECTION 14.19 HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO AND SHALL BE SUBJECT TO NO EXCEPTIONS. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER OPERATIVE AGREEMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH OF THE OTHER PARTIES ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER OPERATIVE AGREEMENT.

14.19 Entire Agreement. This Participation Agreement and the other Operative Agreements represent the entire agreement among the parties hereto and thereto with respect to the subject matter thereof.

14.20 Limited Recourse to RFC. Each of the parties hereto (other than RFC) hereby acknowledges and agrees that (i) all Purchases and any other transactions with RFC under the Operative Agreements shall be without recourse of any kind to RFC, and (ii) RFC shall have no obligation to pay any amounts owing under the Operative Agreements unless and until RFC has received such amounts pursuant to the Investment and such amounts are not required to pay obligations of RFC. In addition, each of the parties hereto agrees that RFC shall have no obligation to pay any of the parties hereto any amounts constituting commitment fees, a reimbursement for expenses or indemnities, (collectively, "Expense Claims") and such Expense Claims shall not constitute a claim against RFC (as defined in Section 101 of Title 11 of the United States Bankruptcy Code), unless or until RFC has received amounts pursuant to the Investment sufficient to pay such Expense Claims and such amounts are not required to pay obligations of RFC. The agreements set forth in this Section and the parties' respective obligations in this Section shall survive the termination of this Agreement and the Loan Facility Agreement.

14.21 Conflict With Liquidity Agreement. Notwithstanding anything contained in this Agreement to the contrary, to the extent of any conflict between the provisions hereof and the Liquidity Agreement, the provisions of the Liquidity Agreement shall govern and control, *provided, however*, that this provision shall not limit the obligations of the Backup Facility Banks to the Lessee under the Participation Agreement and the Loan Facility Agreement which obligations, for the avoidance of doubt, shall be subordinate to the obligations of the Backup Facility Banks to RFC under the Liquidity Agreement.

14.22 Confidentiality. (a) Wilmington Trust Company, Administrative Agent and each Participant acknowledge and agree that the Environmental Site Assessments and any other information relating to environmental conditions at any of the Properties (collectively, the "Environmental Information") shall be kept confidential by it and will not be discussed with or provided to any third party, other than (i) those employees, agents or advisors of Wilmington Trust Company, Administrative Agent or such Participant or of counsel to Wilmington Trust Company, Administrative Agent or such Participant who are essential to the transactions contemplated by the Operative Agreements, (ii) any applicable governmental bank regulatory agencies, and (iii) any Person who is entitled to such access by applicable law, court order or other governmental regulatory requirements (any Person under clause (i), (ii), (iii), and in the case of Section 14.22 (b) (but not Section 14.22 (a)) with respect to RFC, the Rating Agencies, is herein called a "Required Recipient"), unless the Lessee otherwise provides its prior written consent. Wilmington Trust Company, Administrative Agent and each Participant acknowledge and agree that they will inform their employees, agent, advisors or counsel of the confidential nature any Environmental Information delivered to them, and the Environmental Information provided to it or its employees, agent or counsel shall be promptly returned to the Lessee in the event that the transactions contemplated by the Operative Agreements are not consummated. The Lessee shall be entitled to obtain injunctive relief against any such Person if it fails to so deliver such information to the Lessee promptly after the Lessee requests in writing such delivery. Wilmington Trust Company, Administrative Agent and each Participant agree that any Person to

whom it provides access to the Environmental Information (other than a Required Recipient) shall sign an acknowledgment of confidentiality, in form and substance satisfactory to the Lessee, to the effect that such Person agrees for the benefit of the Lessee to keep confidential all Environmental Information and to promptly return all Environmental Information in accordance with the third sentence of this Section 14.22(a). Wilmington Trust Company, Administrative Agent and each Participant further agree to be responsible for any disclosure or use of any of the Environmental Information by each such Person (other than a Required Recipient referred to in clause (ii) and (iii) of the definition thereof) in violation of the provisions hereof. Wilmington Trust Company, Administrative Agent and each Participant agree not to disclose the Environmental Information to any person who is an officer or director of any organization which competes with Lessee or any of its Affiliates engaged in the manufacturing or assembling of vehicles. Notwithstanding the foregoing, Wilmington Trust Company, Administrative Agent and each Participant shall, except to the extent prohibited by applicable law, court order, or governmental regulatory requirement, notify the Lessee in writing and provide the Lessee with copies of all information that such Person so disclosed to a Required Recipient referred to in clause (ii) or (iii) of the definition thereof (other than in connection with a bank audit or review conducted in the course of business) within ten (10) Business Days after disclosing the same to such Required Recipient (or as earlier, including prior to disclosure, as is reasonably practicable). Each party to this Participation Agreement agrees that neither this Section nor the substance hereof shall be disclosed to any third party, except as expressly required herein, without each other party hereto providing its prior written consent. Wilmington Trust Company, Administrative Agent and each Participant acknowledge that the Lessee, and its Affiliates will be irreparably harmed if any Environmental Information is wrongfully disclosed and shall be entitled to equitable relief, including, but not limited to, injunctive relief, in addition to any rights at law to damages (including reasonable legal fees and other expenses) in respect of any harm arising from such wrongful disclosure.

(b) Wilmington Trust Company, Administrative Agent and each Participant acknowledge and agree that the Confidential Information (defined below) shall be kept confidential by it and will not be discussed with or provided to any third party, other than a Required Recipient, unless the Lessee otherwise provides its prior written consent. Wilmington Trust Company, Administrative Agent and each Participant acknowledge and agree that they will inform their employees, agent, advisors, counsel, and in the case of RFC, the Rating Agencies, of the confidential nature any Confidential Information delivered to them, and the Confidential Information provided to it or its employees, agent, advisor or counsel shall be promptly returned to the Lessee in the event that the transaction contemplated by the Operative Agreements are not consummated. The Lessee shall be entitled to obtain injunctive relief against any such Person if its fails to so deliver such Confidential Information to the Lessee promptly after the Lessee requires in writing such delivery. Wilmington Trust Company, Administrative Agent and each Participant agree that any Person to whom it provides access to the Confidential Information (other than a Required Recipient or any other Participant) shall sign an acknowledgment of confidentiality, in form and substance satisfactory to the Lessee, to the effect that such Person agrees for the benefit of the Lessee to keep confidential all Confidential Information and to promptly return all Confidential Information in accordance with the second sentence of this Section 14.22(b). Each of Wilmington Trust Company, Administrative Agent and each Participant further agrees to be responsible for any disclosure or use of any of the Confidential Information by each such Person (other than a Required Recipient referred to in clause (ii) and

(iii) of the definition thereof, and in the case of RFC, the Rating Agencies) in violation of the provisions hereof. Wilmington Trust Company, Administrative Agent and each Participant agree not to disclose the Confidential Information to any person who is an officer or director of any organization which competes with Lessee or any of its Affiliates engaged in the manufacturing or assembling of vehicles. Notwithstanding the foregoing, Wilmington Trust Company, Administrative Agent and each Participant shall, except to the extent prohibited by applicable law, court order, or governmental regulatory requirement, notify Lessee in writing and provide the Lessee with copies of all Confidential Information that such Person so disclosed to a Required Recipient (other than a Required Recipient referred to in clause (i) of the definition thereof) (other than in connection with a bank audit or review done in the normal course of business) within ten (10) Business Days after disclosing the same to such Required Recipient (or as earlier, including prior to disclosure, as is reasonably practicable). Notwithstanding the foregoing, RFC may disclose to RFC's commercial paper dealers or placement agents and to investors and prospective investors in such commercial paper, certain information concerning the transactions contemplated by the Operative Agreements (but not the identity of the Lessee or any of its Affiliates), as required by RFC's agreements with such dealers or placement agents and such dealers and placement agents shall not be required to sign an acknowledgment of confidentiality in connection therewith, provided, that RFC shall inform such parties of the confidential nature any such information that is delivered to them.

Each party to this Participation Agreement agrees that neither this Section nor the substance hereof shall be disclosed to any third party, except as expressly required herein, without each other party hereto providing its prior written consent. Wilmington Trust Company, Administrative Agent and each Participant acknowledge that the Lessee and its Affiliates will be irreparably harmed if any Confidential Information is wrongfully disclosed and shall be entitled to equitable relief, including, but not limited to, injunctive relief, in addition to any rights at law to damages (including reasonable legal fees and other expenses) in respect of any harm arising from such wrongful disclosure.

For the purposes of this Section 14.22(b), "Confidential Information" shall include the Operative Agreements (other than those recorded or filed in the public records), the Commitment Letter, the Fee Letter, any fee letter with the Trustee, and any and all information and material of any type, scope, or subject matter whatsoever concerning or relating to Lessee or any of its Affiliates, whether oral or written, and howsoever evidenced or embodied which Lessee has furnished to Wilmington Trust Company, Administrative Agent or any Participant pursuant to, or in connection with the transactions contemplated by, the Operative Agreements.

**14.23 Payments Prior to Completion.** Prior to Completion of any Construction Period Property, (a) any payments, costs, expenses and other amounts payable by Lessee pursuant to the Operative Agreements that relate solely to such Construction Period Property shall be paid out of Advances made with respect to such Construction Period Property, and (b) with respect to a Construction Period Property for which Completion has not yet occurred, the provisions of Section 5.4 of the Agency Agreement shall supersede any provisions of this Agreement or any other Operative Agreement that is inconsistent therewith. In the event that prior to Completion of any Construction Period Property there are any payments, costs, expenses or other amounts payable by Lessee pursuant to the Operative Agreements that do not relate solely to one or more of such Construction Period Properties, an amount equal to the Applicable

Amount shall be paid out of Advances made with respect to each such Construction Period Property and the balance shall be paid by Lessee. "Applicable Amount" means, with respect to any amounts payable by Lessee as set forth above, such amount multiplied by a fraction the numerator of which is the Property Cost of the Construction Period Property or Properties then subject to the Lease, and the denominator of which is the Property Cost of all Properties then subject to the Lease.

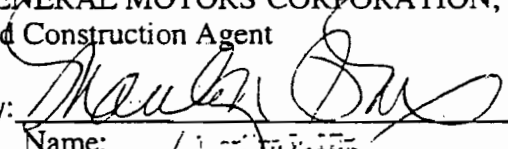
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

**AUTO FACILITIES REAL ESTATE TRUST**  
2001-1, as Lessor

By: Wilmington Trust Company, not in its individual capacity but solely as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GENERAL MOTORS CORPORATION, as Lessee**  
and Construction Agent

By:  \_\_\_\_\_  
Name: Jeffrey P. Pitts  
6.5/ Title: Director  
Worldwide Real Estate

**THE CHASE MANHATTAN BANK, as**  
Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WILMINGTON TRUST COMPANY, in its**  
individual capacity, only to the extent expressly set forth herein

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

AUTO FACILITIES REAL ESTATE TRUST  
2001-1, as Lessor


By: Wilmington Trust Company, not in its  
individual capacity but solely as Trustee

By: \_\_\_\_\_  
Name:  
Title:

GENERAL MOTORS CORPORATION, as Lessee  
and Construction Agent

By: \_\_\_\_\_  
Name:  
Title:

THE CHASE MANHATTAN BANK, as  
Administrative Agent

By: \_\_\_\_\_  
Name:   
Title: RICHARD W. DUKER  
VICE PRESIDENT

WILMINGTON TRUST COMPANY, in its  
individual capacity, only to the extent expressly set  
forth herein

By: \_\_\_\_\_  
Name:  
Title:

RELATIONSHIP FUNDING COMPANY, LLC

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

AUTO FACILITIES REAL ESTATE TRUST  
2001-1, as Lessor

By: Wilmington Trust Company, not in its  
individual capacity but solely as Trustee

By: \_\_\_\_\_  
Name: **PATRICIA A. EVANS**  
Title: Senior Financial Services Officer

GENERAL MOTORS CORPORATION, as Lessee  
and Construction Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CHASE MANHATTAN BANK, as  
Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WILMINGTON TRUST COMPANY, in its  
individual capacity, only to the extent expressly set  
forth herein

By: \_\_\_\_\_  
Name: **PATRICIA A. EVANS**  
Title: Senior Financial Services Officer

RELATIONSHIP FUNDING COMPANY, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

AUTO FACILITIES REAL ESTATE TRUST  
2001-1, as Lessor

By: Wilmington Trust Company, not in its  
individual capacity but solely as Trustee

By: \_\_\_\_\_  
Name:  
Title:

GENERAL MOTORS CORPORATION, as Lessee  
and Construction Agent

By: \_\_\_\_\_  
Name:  
Title:

THE CHASE MANHATTAN BANK, as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

WILMINGTON TRUST COMPANY, in its  
individual capacity, only to the extent expressly set  
forth herein

By: \_\_\_\_\_  
Name:  
Title:

RELATIONSHIP FUNDING COMPANY, LLC

By:     *T J Irvin*      
Name:  
Title: **Thomas J. Irvin**  
**Manager**

## BTM CAPITAL CORPORATION

By: Rory P. Laughna  
Name: Rory P. Laughna  
Title: Executive Vice President

## JH EQUITY REALTY INVESTORS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CHASE MANHATTAN BANK, as a Backup  
Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## CITIBANK, N.A., as a Backup Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## BNP PARIBAS, as a Backup Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## BTM CAPITAL CORPORATION

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

## JH EQUITY REALTY INVESTORS, INC.

By: Karen Anne Granquist  
 Name: Karen A. Granquist  
 Title: Secretary

By: R. Douglas Donaldson  
 Name: R. Douglas Donaldson  
 Title: Treasurer

THE CHASE MANHATTAN BANK, as a Backup  
Facility Bank

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

## CITIBANK, N.A., as a Backup Facility Bank

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

## BNP PARIBAS, as a Backup Facility Bank

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

BTM CAPITAL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

JH EQUITY REALTY INVESTORS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CHASE MANHATTAN BANK, as a Backup  
Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



RICHARD W. DUKER  
VICE PRESIDENT

CITIBANK, N.A., as a Backup Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BNP PARIBAS, as a Backup Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BTM CAPITAL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

JH EQUITY REALTY INVESTORS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CHASE MANHATTAN BANK, as a Backup  
Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITIBANK, N.A., as a Backup Facility Bank

By:  \_\_\_\_\_  
Name: **WAYNE BECKMANN**  
Title: **Senior Banker**  
**Citibank, N.A.**  
**388 Greenwich Street - 23rd Fl**  
**212-816-5566**

BNP PARIBAS, as a Backup Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BTM CAPITAL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

JH EQUITY REALTY INVESTORS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CHASE MANHATTAN BANK, as a Backup  
Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITIBANK, N.A., as a Backup Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BNP PARIBAS, as a Backup Facility Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
**Arnaud Collin du Bocage**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
**WILLIAM VAN NOSTRAND**  
**Director**

HSBC BANK USA, as a Backup Facility Bank

By: \_\_\_\_\_

Name: Johan Sorensen

Title: First Vice President

CREDIT SUISSE FIRST BOSTON, as a Backup  
Facility Bank

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

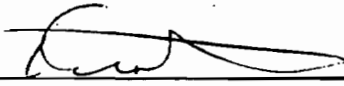
HSBC BANK USA, as a Backup Facility Bank

By: \_\_\_\_\_

Name:

Title:

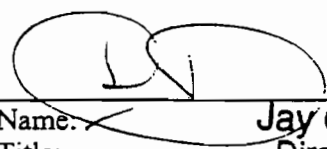
CREDIT SUISSE FIRST BOSTON, as a Backup  
Facility Bank

By:  \_\_\_\_\_

Name:

DAVID W. KRATOVIL  
DIRECTOR

Title:

By:  \_\_\_\_\_

Name:

Jay Chall  
Director

Title:

**SCHEDULE I**  
**to Participation Agreement**

Addresses for Payment and Other Communications

(a) Lessee and Construction Agent

General Motors Corporation  
767 Fifth Avenue  
New York, New York 10153  
Attention: Treasurer  
Telecopy: (212) 418-3632

with a copy to

General Motors Corporation  
World Wide Real Estate  
Mail code 482-B38-C96  
200 Renaissance Center  
Tower 200 - 38<sup>th</sup> floor  
Detroit, MI 48265  
Attention: Executive Director

(b) Lessor

**Auto Facilities Real Estate Trust 2001-1**  
c/o Wilmington Trust Company  
1100 North Market Street  
Wilmington, Delaware 19890-0001

Attention: Corporate Trust Administration  
Telephone: 302-651-1000  
Facsimile: 302-651-8882

(c) Trust Company

**Wilmington Trust Company**  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890-0001

Attention: Corporate Trust Administration  
Telephone: 302-651-1000  
Facsimile: 302-651-8882  
ABA No.: 031100092

(d) RFC:

**Relationship Funding Company, LLC**  
 227 West Monroe, Suite 4000  
 Chicago, IL 60606

Attention: Ops Department  
 Telephone: 312-977-4560  
 Facsimile: 312-977-1967/1699

Domestic Lending Office: Same as above  
 Name of Account: Lexington Parker Capital Company, LLC  
 Re: Relationship Funding Company, LLC/General Motors  
 Bank: Bankers Trust Company  
 Account No.: 00-353-180  
 Crediting Bank ABA No.: 021-001-033

(e) Administrative Agent

Administrative Agent

**The Chase Manhattan Bank**  
 1 Chase Manhattan Plaza  
 New York, New York 10081

Credit Contact:  
 Attention: Richard Duker, Vice President  
 Telephone: 212-270-3057  
 Facsimile: 212-270-5127

Administrative Contact:  
 Attention: Doris Mesa  
 Telephone: 212-552-7265  
 Facsimile: 212-552-5650

(f) Investors

(i) **BTM Capital Corporation**  
 125 Summer Street  
 Boston, Massachusetts, 02110

Credit Contact:  
 Attention: Michael Lewicki  
 Telephone: 617-345-5145  
 Facsimile: 617-345-5757

## Administrative/Operative Matters:

Attention: Ellen Henry  
 Telephone: 617-345-5718  
 Facsimile: 617-345-1444

Domestic Lending Office: Same as above

Eurodollar Lending Office: N/A

## Account Information:

c/o Bank of Boston, N.A.

Name of Account: BTM Capital Corporation  
 Re: GM  
 Attention: Connie Ko (617-345-5756)  
 Account No.: 521-11235  
 ABA No.: 011-000-390

## (g) Backup Facility Banks:

- (i) **The Chase Manhattan Bank**  
 1 Chase Manhattan Plaza  
 New York, New York 10081

## Credit Contact:

Attention: Richard Duker, Vice President  
 Telephone: 212-270-3057  
 Facsimile: 212-270-5127

## Administrative Contact:

Attention: Doris Mesa  
 Telephone: 212-552-7265  
 Facsimile: 212-552-5650

Domestic Lending Office: Same as above

Eurodollar Lending Office: Same as above

## Account Information:

Name of Account: Auto Facilities Real Estate  
 Re: GM  
 Attention: Doris Mesa (212-552-7265)  
 Account No.: 323-225-799  
 ABA No.: 021-000-021

(ii) **Citibank, N.A.**  
2 Penns Way, Del 2-2  
New Castle, DE 19720

Credit Contact:  
Attention: Wayne Beckman  
Telephone: 212-816-5566  
Facsimile: TBD

Administrative Contact:  
Attention: Christine Kanicki  
Telephone: 302-894-6089  
Facsimile: 302-894-6120

Domestic Lending Office: Same as above

Eurodollar Lending Office: Same as above

Account Information:  
Name of Account: Motor Vehicle  
Re: GM  
Attention: Christine Kanicki  
Account No.: 30424461  
ABA No.: 021-000-089

(iii) **BNP Paribas**  
787 Seventh Avenue  
New York, NY, 10019

Credit Contact:  
Attention: William Van Nostrand  
Telephone: 212-841-2786  
Facsimile: 212-841-3049

Administrative Contact:  
Attention: James Broadus  
Telephone: 212-471-6630  
Facsimile: 212-471-6696, 6695, 6697

Domestic Lending Office: Same as above

Eurodollar Lending Office: Same as above

Account Information:  
Name of Account: BNP Paribas New York

Re: GM Real Estate Trust 2001/Relationship Funding Corporation  
Attention: Loan Servicing Clearing Account  
Account No.: 103-130-001-03  
ABA No.: 026-007-689

- (iv) **HSBC Bank USA**  
452 Fifth Avenue, 5<sup>th</sup> Floor  
New York, NY, 10018

Credit Contact:

Attention: Mike Cutlip, Senior Vice President  
Telephone: 212-575-2472  
Facsimile: 212-575-2469

Administrative Contact:

Attention: Marie Bax  
Telephone: 716-841-5668  
Facsimile: 716-841-0269

Domestic Lending Office: Same as above

Eurodollar Lending Office: Same as above

Account Information:

Name of Account: Syndication & Asset Trading  
Re: GM  
Attention: Maria Bax  
Account No.: 001-940503  
ABA No.: 021-001-088

- (v) **Credit Suisse First Boston**  
11 Madison Avenue  
New York, NY, 10010-3629

Credit Contact:

Attention: David W. Kratovil, Director  
Telephone: 212-325-9155  
Facsimile: 212-325-8615

Administrative Contact:

Attention: Edward Markowski  
Telephone: 212-538-3380  
Facsimile: 212-538-3477

Domestic Lending Office: Same as above

Eurodollar Lending Office: Same as above

Account Information:

c/o The Bank of New York

Name of Account: CSFB NY Loan Clearing

Re: GE Real Estate Trust 2001

Attention: N/A

Account No.: 890-0329-262

ABA No.: 021-001-018

**SCHEDULE II**  
**to Participation Agreement**

**Investors and Commitments**

<b>Investor</b>	<b>Investor's Contribution Commitment</b>
<b>BTM Capital Corporation</b>	<b>\$10,269,000</b>
<b>JH Equity Realty Investors, Inc.</b>	<b>\$1,000</b>

ASSIGNMENT OF LEASES, RENTS AND STRUCTURAL SUPPORT AGREEMENT

from

AUTO FACILITIES REAL ESTATE TRUST 2001-1, Assignor

to

THE CHASE MANHATTAN BANK, as Administrative Agent, Assignee

[ ], 200[ ]

This Instrument was prepared by,  
should be recorded  
and then returned to:

Sasan S. Mehrara  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
212-455-2783

## ASSIGNMENT OF LEASES, RENTS AND STRUCTURAL SUPPORT AGREEMENT

THIS ASSIGNMENT OF LEASES, RENTS AND STRUCTURAL SUPPORT AGREEMENT dated as of [     ], 200[   ] (this "Assignment"), made by AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust (the "Assignor"), to THE CHASE MANHATTAN BANK, a New York banking corporation, in its capacity as Administrative Agent (in such capacity, the "Assignee") for the benefit of (i) various financial institutions, as Backup Facility Banks and RFC, and (ii) the Investors.

### Preliminary Statement

A. On the date hereof, the Assignor has acquired an interest in the Land more particularly described in Exhibit A attached hereto (the "Land" and the Land and all Improvements therein being referred to hereof as the "Property")

B. On October 31, 2001, the Assignor and General Motors Corporation (the "Lessee") entered in a Lease of a certain property, whereby the Assignor agreed to lease the Property to the Lessee. Pursuant to the Lease, on the date the Property is acquired by the Assignor, the Assignor and the Lessee shall execute and deliver a Memorandum of Lease and Supplement to subject such Property to the Lease. On the date hereof, the Assignor and the Lessee have executed a Memorandum of Lease and Supplement for the lease of the Property by the Assignor to the Lessee. Simultaneously with the execution of the Lease, the Support Provider entered into the Structural Support Agreement which, among other obligations, providing certain credit support for the Lessee's obligations under the Lease.

C. (i) Pursuant to the Loan Facility Agreement, RFC has agreed to make Loans to the Assignor, and (ii) pursuant to the Liquidity Agreement, the Backup Facility Banks have agreed to purchase Loans upon the terms and subject to the conditions set forth therein.

D. Pursuant to the Trust Agreement and the Participation Agreement, the financial institutions a party thereto (the "Investors") have agreed to advance Investor Contributions to the Assignor upon the terms and subject to the conditions set forth therein, to be evidenced by Certificates issued by the Assignor under the Trust Agreement.

E. It is a condition, among others, to the obligation of RFC to make Loans under the Loan Facility Agreement, of the Investors to make advances to the Assignor under the Trust Agreement and the Participation Agreement, and of the Backup Facility Banks to enter into the Liquidity Agreement, that the Assignor shall have executed and delivered, and the Lessee, and the Support Provider shall have consented to, this Assignment to the Assignee, for the benefit of the Backup Facility Banks and RFC, and the Investors.

F. In order to further secure payment of all amounts advanced under the Loan Facility Agreement, the Loans, the Trust Agreement and the Certificates, the Assignor has agreed to execute and deliver this Assignment.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used but not otherwise defined in this Assignment shall have the respective meanings specified in Annex A to the Participation Agreement dated as of October 31, 2001, among the Assignor, the Lessee, RFC, Assignee, the Investors, the various financial institutions as Backup Facility Banks (as the same may be amended, supplemented or otherwise modified from time to time, the "Participation Agreement"). A copy of the Participation Agreement or of the other agreements referenced herein or therein may be obtained from any of the parties hereto at the addresses set forth herein.

2. Assignment. The Assignor hereby irrevocably assigns, transfers, sets over and conveys to the Assignee, all the following-described property relating to or arising in connection with the Property, whether now owned or held or hereafter acquired, exclusively and without any reservation thereof unto the Assignor:

(a) Except as hereinafter provided, all of the estate, right, title, interest, benefits, powers and privileges of the Assignor, as lessor, under the Lease, including, without limitation, (i) the immediate and continuing right, on a non-exclusive basis, to make claim for, receive, collect and receipt for all rents, income, revenues, issues, profits, insurance proceeds, condemnation awards, sales proceeds and other sums payable to or receivable by the Assignor under the Lease, or pursuant to any provisions thereof, whether as rent or as the purchase price or termination payment for any interest in the Property or otherwise (including, without limitation, the Maximum Residual Guarantee Amount, the Purchase Option Price, the BI Purchase Option, Termination Value, Basic Rent, Supplemental Rent, Investor Yield and any sales proceeds payable to the Assignor pursuant to the Lease) (collectively, the "Lease Rents"), including all cash, securities or letters of credit delivered or deposited pursuant thereto to secure performance by the Lessee of its obligations thereunder (in each case other than Excepted Payments), (ii) the right and power (which right and power are coupled with an interest) upon the purchase by the Lessee of the interest of the Assignor in the Property in accordance with the Lease to execute and deliver as irrevocable agent and attorney-in-fact of the Assignor an appropriate instrument necessary to convey the interest of the Assignor therein, or to pay over or assign to the Assignee those sums to which Assignor is entitled if the Lessee becomes obligated to purchase the interest of the Assignor in the Property and to perform all other necessary or appropriate acts as said agent and attorney-in-fact with respect to any such purchase and conveyance, (iii) the right to perform, on a non-exclusive basis, all other necessary or appropriate acts as said agent and attorney-in-fact with respect to any purchase or conveyance referred to in clause (ii) above, (iv) the right (subject to the consent of the Required Participants and the Excepted Rights), on a non-exclusive basis, to declare the Lease to be in default under Section 17.1 thereof and to give notices with respect thereto, (v) subject to the terms of the Operative Agreements and the Excepted Rights (and to the consent of the Required Participants) the right to exercise remedies under or with respect to the Lease, (vi) the right (subject to the consent of the Required Participants and the Excepted Rights) to make all waivers and agreements on behalf of the Assignor under the Lease provided for or permitted under the Lease, (vii) the right (subject to the consent of the Required Participants and the Excepted Rights) to give all notices, consents, releases and other instruments provided under the Lease, (viii) the right to give all notices of default and to take all action upon the happening of a Lease Default or a Lease Event of Default, including the commencement, conduct and consummation of proceedings as shall be permitted

under any provision of the Lease, or by law or in equity, (ix) the right, on a non-exclusive basis, to receive all notices sent to the Assignor under the Lease, (x) the Assignor's interest under the Lease in the Lessee's tangible and intangible property used or arising in connection with the Property, including, but not limited to, permits, licenses, contract rights and prepaid expenses, (xi) the grant of lien and security interest by the Lessee pursuant to the Lease and the Memorandum of Lease and Supplement; and (xii) the right (subject to the consent of the Required Participants) to do any and all other things whatsoever which the Assignor is or any lessor or mortgagor or secured party is, or may be entitled to do under the Lease; provided, that (i) the Lease Rents shall be applied in accordance with the Participation Agreement; and (ii) the Assignor shall retain, and the Lease Rents shall not include, the Excepted Payments and the Assignor shall retain and the rights and powers assigned herein shall in no event include the Excepted Rights and shall be subject to the Shared Rights.

(b) All of the estate, right, title, interest, benefits, powers and privileges of the Assignor, to and under all other leases (excluding specifically any subleases, licenses or similar rights) of the Property, any license, concession, management or other agreements of a similar kind that permit the use or occupancy of the Property or any part thereof for any purpose in return for any payment, now or hereafter entered into by the Assignor (collectively, the "Other Leases") and, together with the Lease, the "Leases"), together with all estate, rights, title, interest, benefits, powers and privileges of the Assignor, as lessor, under the Other Leases including the immediate and continuing right, on a non-exclusive basis, to make claim for, receive, collect and receipt for all charges, fees, income, issues, profits, receipts, rents, revenues or royalties payable under any of the Other Leases (collectively, the "Other Lease Rents") and all estate, right, title and interest of the Assignor thereunder, including all cash, securities or letters of credit delivered or deposited thereunder to secure performance by the lessees under Other Leases of their obligations thereunder; provided, that (i) any such amounts shall be applied in accordance with the Participation Agreement; and (ii) the Assignor shall retain, and the Lease Rents shall not include, the Excepted Payments and rent payments to Assignor under subleases at the Property entered into pursuant to Section 24 of the Lease so long as no Lease Event of Default has occurred, and the Lessor shall retain and the rights and powers assigned herein shall in no event include the Excepted Rights and shall be subject to the Shared Rights.

(c) All of the estate, right, title, interest, benefits, powers and privileges of the Assignor, to and under all agreements or contracts for the sale or other disposition of all or any part of the Property, now or hereafter entered into by the Assignor (collectively, the "Contracts"), together with all estate, rights, title, interest, benefits, powers and privileges of the Assignor under the Contracts including, without limitation, the immediate and continuing right, on a non-exclusive basis, to make claim for, receive, collect and receipt for all charges, fees, income, issues, profits, receipts, rents, revenues or royalties payable under any of the Contracts (collectively, the "Contract Rents") and, together with the Lease Rents and the Other Lease Rents, the "Rents") and all right, title and interest of the Assignor thereunder, including all cash, securities or letters of credit deposited thereunder to secure performance by the obligors of their obligations thereunder; provided, that (i) any such amounts shall be applied in accordance with the Participation Agreement; and (ii) the Assignor shall retain, and the Lease Rents shall not include, the Excepted Payments and the Lessor shall retain and the rights and powers assigned herein shall in no event include the Excepted Rights and shall be subject to the Shared Rights.

(d) All of the estate, right, title, interest, benefits, powers and privileges of the Assignor under the Structural Support Agreement including, without limitation, (i) the immediate and continuing right on a non-exclusive basis to make claim for, receive, collect and receipt for all Liabilities and other sums payable to or receivable by the Assignor under the Structural Support Agreement, or pursuant to any provisions thereof, (ii) the right, on a non-exclusive basis, to exercise remedies under or with respect to the Structural Support Agreement, (iii) the right, on a non-exclusive basis, to make all waivers and agreements on behalf of the Assignor under the Structural Support Agreement provided for or permitted under the Structural Support Agreement, (iv) the right, on a non-exclusive basis, to give all notices, consents, releases and other instruments provided under the Structural Support Agreement, and (v) the right, on a non-exclusive basis, to give all notices of default and to take all action upon the happening of a Lease Default or a Lease Event of Default, as shall be permitted under any provision of the Structural Support Agreement or by law or in equity; provided, that (i) any such amounts shall be applied in accordance with the Participation Agreement; and (ii) the Assignor shall retain the Excepted Payments and the Lessor shall retain and the rights and powers assigned herein shall in no event include the Excepted Rights and shall be subject to the Shared Rights.

(e) On a non-exclusive basis, all of the right, title and interest of the Assignor in and to all claims and rights to the payment of money at any time arising in connection with any repudiation, rejection or breach of the Lease by the Lessee or a trustee or receiver of the Lessee (whether pursuant to the Lease, the Structural Support Agreement or any Other Lease by any lessee thereunder, trustee or receiver of any such lessee) under any insolvency statute, law or regulation, including all rights to recover damages arising out of such breach or rejection, all rights to charges payable by the Lessee or such trustee or receiver (or by such lessee, trustee or receiver) in respect of the Property or any portions thereof following rejection, repudiation or disaffirmance of the Lease or following the entry of an order for relief under any insolvency statute, law or regulation in respect of the Lessee (or such lessee) and all rentals and other charges outstanding under the Lease (or Other Lease) as of the date of entry of such order for relief; provided, that (i) any such amounts shall be applied in accordance with the Participation Agreement; and (ii) the Assignor shall retain and the Lease Rents shall not include, the Excepted Payments and the Lessor shall retain and the rights and powers assigned herein shall in no event include, the Excepted Rights and shall be subject to the Shared Rights.

The Assignor hereby agrees that any action taken by the Assignee (or its designee) pursuant to this Assignment shall be exclusive, and no party relying on such action of the Assignee (or such designee) pursuant hereto shall be required to obtain the concurrence or consent of the Assignor to such action or to a request for such action.

3. Receipt of Payments. The Assignor hereby irrevocably designates the Assignee (or its designee) to receive all payments of (i) the Lease Rents, the Other Lease Rents and the Contract Rents and any other sums payable to the Assignor under the Lease, any Other Lease or any Contract (except for Excepted Payments) and (ii) all Liabilities and any other sums payable to the Assignor under the Structural Support Agreement (except for Excepted Payments). The Assignor agrees to direct the Lessee, any other lessees and any contracting parties to deliver to the Assignee (or its designee), at its address set forth herein or at such other address or to such other Person as the Assignee shall designate, all such payments and sums on account of the Rents. The Rents shall for all purposes be considered the property of the Assignee and not of the Assignor, whether before or after the occurrence of an Event of Default.

4. Receipt of Notices. The Assignor hereby designates the Assignee (or its designee) to receive (in addition to, and not to the exclusion of, the Assignor) duplicate originals or copies of all notices, undertakings, demands, statements, documents, financial statements and other communications which the Lessee, the Support Provider, any other lessee or any contracting party is required or permitted to give, make, deliver to or serve pursuant to the Lease, the Structural Support Agreement, any Other Lease or any Contract. The Assignor hereby directs the Lessee, the Support Provider, and such other lessees and contracting parties to deliver to the Assignee (or its designee), at its address set forth herein or at such other address or to such other Person as the Assignee shall designate, duplicate originals or copies of all such notices, undertakings, demands, statements, documents, financial statements and other communications.

5. Irrevocability; Supplemental Instruments. The Assignor agrees that this Assignment and the designation and direction to the Lessee set forth in Section 9.14 of the Participant Agreement are irrevocable and that it will not take any action as lessor under the Lease, or under the Structural Support Agreement, or otherwise which is inconsistent with this Assignment and that any action, assignment, designation or direction inconsistent herewith shall be void. The Assignor will from time to time execute and deliver all instruments of further assurance and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Assignment.

6. Validity. The Assignor represents and warrants (on a continuing basis) and covenants to the Assignee that (i) the Assignor has not assigned or executed any assignment of, and will not assign or execute any assignment of its interest in the Lease, of the Structural Support Agreement, of any Other Lease, of any Contract or of any Rents or of any other subject matter of this Assignment to anyone other than the Assignee and any assignment, designation or direction by the Assignor inconsistent herewith shall be void, (ii) no Lease Event of Default has occurred and is continuing and (iii) the Assignor has not done any act or executed any document that impairs the rights of the Assignee to the Lease or the Lease Rents or to the Structural Support Agreement under this Assignment.

7. The Assignor Remains Liable. While the assignment made hereby is present, direct, absolute and continuing, it has been made for the sole purpose of providing the Assignee with security for the performance of the Assignor's obligations to the Administrative Agent, the Lenders and the Investors under the Loan Facility Agreement, the Participation Agreement, the Trust Agreement and the Certificates and the execution and delivery hereof shall not impair or diminish in any way the obligations of the Assignor under the Lease or impose any of such obligations on the Assignee. This Assignment shall not operate to cause the Assignee (or its designee) to be regarded as a mortgagee in possession. Neither the Assignee nor its designee shall be responsible or liable for performing any of the obligations of the Assignor under the Lease, any Other Lease or any Contract, for any waste by the Lessee or others, for any dangerous or defective conditions of the Property, for negligence in the management, upkeep, repair or control of the Property or any other act or omission by any other Person. Nothing contained herein shall operate or be construed to (i) obligate the Assignee (or its designee) to assume the obligations of the Assignor under the Lease, any Other Lease or any Contract, to perform any of the terms and conditions contained in the Lease, any Other Lease or any Contract or otherwise to impose any obligation upon the Assignee with respect to the Lease, any Other Lease or any Contract, (ii) place upon the Assignee (or its designee) any responsibility for the operation, control, care, management or repair of the Property or any part thereof or (iii) obligate the

Assignee (or its designee) to in any way take benefit or performance of the rights granted herein or place on the Assignee any obligations in any manner whatsoever. Subject at all times to the terms and conditions of this Assignment, the Assignor will at all times promptly and faithfully perform in all respects, or cause to be performed in all respects, all of its covenants, conditions and agreements contained in the Lease, any Other Lease or any Contract now or hereafter existing on the part of the Assignor to be kept and performed.

8. Amendments: Lessee's and Support Provider's Consent. The Assignor will not enter into any agreement subordinating, amending, extending or terminating the Lease or the Structural Support Agreement, except as provided in Section 14.5 of the Participation Agreement, and any such attempted subordination, amendment, modification, extension or termination not in compliance with such Section 14.5 shall be void. If the Lease, the Structural Support Agreement, any Other Lease or any Contract shall be amended, it shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto. The Assignor and the Assignee hereby consent to the provisions of Lessee's and Support Provider's Consent attached to this Assignment and agree to be bound thereby. The parties hereto acknowledge and agree, for the benefit of Lessee, to comply with the provisions of Section 24 of the Lease.

9. Absolute Assignment. The Assignor has, subject to and in accordance with the terms and conditions of this Assignment, assigned and transferred unto the Assignee all of the Assignor's right, title and interest in and to Rents now or hereafter arising from (i) the Lease, any Other Lease or any Contract heretofore or hereafter made or agreed to by the Assignor and (ii) the Structural Support Agreement, it being intended to establish an absolute transfer and assignment, subject to and in accordance with the terms and conditions of this Assignment, of all such Rents, Liabilities, the Lease, the Structural Support Agreement, the Other Leases and the Contracts to the Assignee and not merely to grant a security interest therein. Subject to the terms of the Lease, the Assignee (or its designee) may in the Assignor's name and stead operate the Property and rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such terms as the Assignee (or its designee) shall, in its discretion, determine. Notwithstanding anything to the contrary herein, this Assignment shall automatically, and without further action, be released and terminated as to the Property at such time the applicable Mortgage is released. Upon the written request of a party hereto the other party shall deliver a confirmation of such termination and release in recordable form.

10. Ongoing Right to Collect Rents: Receivers. If notwithstanding the terms of this Assignment, a petition or order for sequestration of rents, or the appointment of a receiver or some similar judicial action or order is deemed required under applicable state law to allow the Assignee to continue to collect the moneys described in paragraphs 2 (a), (b), (c), (d) and (e) of this Assignment, then it is agreed by the Assignor that any proof of claim or similar document filed by the Assignee in connection with the breach or rejection of the Lease by the Lessee thereunder or the trustee of any lessee under any federal or state insolvency statute shall for the purpose of perfecting the Assignee's rights conferred in said paragraph 2(e) be deemed to constitute action required under such state law. Upon the occurrence and during the continuance of an Event of Default, the Assignor hereby consents to the appointment of a receiver for the Property as a matter of right and without any requirement for notice to the Assignor and without regard to the solvency of the Assignor or to the collateral that may be available for the

satisfaction of the Loans, the Certificates and all other obligations under the Loan Facility Agreement and the other Operative Agreements.

11. Amendment. This Assignment may not be amended or otherwise modified except in accordance with the terms of the Participation Agreement.

12. Notices. All notices, demands, requests, consents, approvals and other instruments under this Assignment shall be made in accordance with the notice provisions of the Participation Agreement.

13. Successors and Assigns. All covenants, agreements, representations and warranties in this Assignment by the Assignor and the Assignee shall bind, and shall inure to the benefit of and be enforceable by, their respective permitted successors and assigns, provided that this provision is subject to the provisions of the Participant Agreement.

14. Severability. If any provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of law of competent jurisdiction to be in violation of any local, state or Federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of the parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the obligations of the Assignor under the remainder of this Assignment shall continue in full force and effect.

15. Governing Law. **THIS ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF ASSIGNOR UNDER THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, EXCEPT AS TO MATTERS RELATING TO THE CREATION AND PERFECTION OF LIENS AND SECURITY INTERESTS AND ASSIGNMENTS AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE LAND IS LOCATED.**

16. Conflicts. In the event of any conflicts between the terms and provisions hereof and the terms and provisions of the other Operative Agreements, the terms and provisions of the other Operative Agreements shall be controlling.

17. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

18. Liability of Wilmington Trust Company. It is expressly understood and agreed by the parties hereto that (i) this Assignment is executed and delivered by Wilmington Trust Company not individually or personally but solely as trustee of the Assignor, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of the Assignor is made and intended not

as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose of binding only the Assignor, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (iv) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of any party hereto, or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Assignor under this Assignment.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed as of the day and year first above written, with actual execution on the date set forth in the acknowledgement below.

AUTO FACILITIES REAL ESTATE TRUST  
2001-1

By: Wilmington Trust Company, not in its  
individual capacity but solely as Trustee

By: \_\_\_\_\_

Name:

Title:

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )     ss:

On the \_\_\_\_ day of [    ] in the year 200[    ] before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity as \_\_\_\_\_ of Wilmington Trust Company, not in its individual capacity, but solely as trustee of AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

(Affix official seal, if applicable)

EXHIBIT A

Description of the Land

CONSENT AND ACKNOWLEDGMENT BY GENERAL MOTORS CORPORATION

The undersigned hereby acknowledges receipt of a counterpart original of, and consents to, the foregoing Assignment

The foregoing is furnished for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the undersigned, and the undersigned understands and intends that the Assignee will rely on the foregoing and the undersigned will be legally bound by the foregoing. This Consent and Acknowledgment shall inure to the benefit of the Assignee and its successors and assigns.

IN WITNESS THEREOF, the undersigned has executed and delivered this Consent and Acknowledgment as of this \_\_\_\_\_ day of \_\_\_\_\_, 200[ ], pursuant to proper authority duly granted.

GENERAL MOTORS CORPORATION, a  
Delaware Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT B-1  
FORM OF MORTGAGE

MORTGAGE, ASSIGNMENT OF  
RENTS AND LEASES AND SECURITY  
AGREEMENT

from

AUTO FACILITIES REAL ESTATE TRUST 2001-1, Mortgagor

and

GENERAL MOTORS CORPORATION, as Lessee

to

THE CHASE MANHATTAN BANK, as Administrative Agent,  
Mortgagee

DATED AS OF [    ], 200[ ]

Recording requested by, and when  
recorded, please return to:  
Sasan S. Mehrara

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
212-455-2783

MORTGAGE ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT, dated as of [     ], 200[   ], is made by AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust ("Mortgagor"), having its principal office c/o Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19809-0001, and GENERAL MOTORS CORPORATION, a Delaware corporation ("Lessee"), to THE CHASE MANHATTAN BANK, as Administrative Agent (in such capacity "Mortgagee"), whose address is 450 West 33<sup>rd</sup> Street, 15<sup>th</sup> Floor, New York, New York 10001 on behalf of the Backup Facility Banks and RFC, and the various financial institutions party to the Participation Agreement, as investors (the "Investors"). References to this "Mortgage" shall mean this instrument and any and all renewals, modifications, amendments, supplements, extensions, consolidations, substitutions, spreaders and replacements of this instrument.

W I T N E S S E T H

Capitalized terms used but not otherwise defined in this Mortgage shall have the meanings assigned to them in Annex A attached to the Participation Agreement dated as of October 31, 2001 among Lessee, Mortgagor, Mortgagee, Wilmington Trust Company, the Backup Facility Banks named therein, the Investors and Relationship Funding Company, LLC. The rules of usage and documentary conventions set forth in such Annex are also applicable hereto.

Granting Clauses

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Lessee agree that to secure:

(a) the repayment of the indebtedness evidenced by the Loan Facility Agreement, the Loans, the Notes (if any), and the Investor Contributions evidenced by the Certificates, and  
(ii) all interest, Investor Yield and fees payable thereon (the items set forth in clauses (i) and (ii) being referred to collectively as the "Indebtedness"); and

(b) the performance of all covenants, agreements, obligations and liabilities of Mortgagor (the "Obligations") under or pursuant to the provisions of the Loan Facility Agreement, the Notes (if any), the Trust Agreement, the Certificates, this Mortgage, the Participation Agreement, the Security Documents and any amendments, supplements, extensions, renewals, restatements, replacements or modifications of any of the foregoing (the Loan Facility Agreement, the Notes (if any), the Trust Agreement, the Certificates, this Mortgage, the Participation Agreement, the Security Documents and all other documents and instruments from time to time evidencing, securing or guaranteeing the payment of the Indebtedness or the performance of the Obligations, as any of the same may be amended, supplemented, extended, renewed, restated, replaced or modified from time to time, are collectively referred to as the "Credit Documents");

MORTGAGOR AND LESSEE (EXCEPT AS TO CLAUSES (E) AND (G), AND CLAUSE (A) TO THE EXTENT ANY OF THE PROPERTY OR INTEREST DESCRIBED THEREIN

WERE ACQUIRED THROUGH ADVANCES) HEREBY IRREVOCABLY MORTGAGE, WARRANT, CONVEY, GRANT, ASSIGN, TRANSFER AND SET OVER AND BY THESE PRESENT DO HEREBY MORTGAGE, WARRANT, CONVEY, GRANT, ASSIGN, TRANSFER AND SET OVER UNTO MORTGAGEE AND HEREBY GRANT TO MORTGAGEE A LIEN AND CONTINUING SECURITY INTEREST, WHETHER NOW OWNED OR HEREAFTER ACQUIRED IN ALL OF THEIR RESPECTIVE RIGHT, TITLE, AND INTEREST, IN, TO, AND UNDER ALL OF THE FOLLOWING:

(A) the parcel of real property described on Schedule A (the "Land"), together with (i) the buildings, structures, and other improvements of every kind existing at any time and from time to time on or under the Land, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, curbs, gutters, flood controls, sanitary tie-ins, utility pipes, conduits and lines, parking areas and roadways, and including all additions to or changes in the Improvements at any time but excluding any additions or Improvements or other property in which Lessee retains ownership under the terms of the Lease, and all equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever purchased, leased or otherwise acquired by the Lessee using the proceeds of Loans or the Investor Contributions and now or subsequently attached to, contained in or used or usable in any way in connection with any operation or letting of the Land, including but without limiting the generality of the foregoing, all screens, awnings, shades, blinds, curtains, draperies, artwork, holiday decorations, bidets, toilets, carpets, rugs, storm doors and windows, shelving, furniture and furnishings, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilation, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description (collectively, the "Improvements"), (ii) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to the Land or the Improvements, including, without limitation, the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land and all permits, licenses and rights, whether or not of record, appurtenant to the Land, and (iii) all fixtures relating to the Improvements, including all components thereof, located in or on such Improvements, together with all replacements, modifications, alterations and additions thereto, but specifically excluding trade fixtures and other personal property of any subtenant at the Property (the property and interests described in clauses (i), (ii) and (iii), together with the Land, are collectively referred to as the "Property");

(B) all the estate, right, title, claim or demand whatsoever of Mortgagor and Lessee, in possession or expectancy, in and to the Property or any part thereof;

(C) all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water and riparian rights, development rights, air

rights, mineral rights and all estates, rights, titles, interests, privileges, licenses, tenements, hereditaments and appurtenances belonging, relating or appertaining to the Property, and any reversions, remainders, rents, issues, profits and revenue thereof and all land lying in the bed of any street, road or avenue, in front of or adjoining the Property to the center line thereof;

(D) all substitutes and replacements of, and all additions and improvements to the Property subsequently acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor and Lessee on the Property, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Property or offsite, and, in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor and Lessee;

(E) all leases, subleases, underlettings, concession agreements, management agreements, licenses and other agreements relating to the use or occupancy of the Property or any part thereof, now existing or subsequently entered into by Mortgagor and whether written or oral and all guarantees of any of the foregoing (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, the "Leases"), and all rights of Mortgagor in respect of cash and securities deposited thereunder and the right to receive and collect the revenues, income, rents, issues and profits thereof, together with all other rents, royalties, issues, profits, revenue, income and other benefits arising from the use and enjoyment of the Mortgaged Property (as defined below) (collectively, the "Rents");

(F) all unearned premiums under insurance policies now or subsequently obtained by Mortgagor relating to the Property and Mortgagor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Property for the taking by eminent domain, condemnation or otherwise, of all or any part of the Property or any easement or other right therein;

(G) (i) all contracts from time to time executed by Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Property or any part thereof and all agreements relating to the purchase or lease of any portion of the Property, together with the right to exercise such options and all leases of equipment, including, without limitation, the Agency Agreement, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any part thereof, (iii) all drawings, plans, specifications and similar or related items relating to the Property, and (iv) all books and records pertaining to the Property;

(H) all amendments, modifications, substitutions, replacements and additions of any of the foregoing, and all proceeds, both cash and noncash, of any of the foregoing;

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by Mortgagor and described in the foregoing clauses (A) through (H) are collectively referred to as the "Mortgaged Property"; provided, however, that notwithstanding anything to the contrary contained herein or in any Operative Agreement, the "Mortgaged Property" shall not include, and Mortgagor shall not be deemed to have granted to Mortgagee hereby, the Excepted Rights, Excepted Payments and all Property of Lessee which is not subject to the Lease.

TO HAVE AND TO HOLD the Mortgaged Property and the rights and privileges hereby mortgaged (excluding the Excepted Rights and the Excepted Payments), together with the right to retain possession of the Mortgaged Property after the occurrence of an Event of Default, unto Mortgagee, its successors and assigns for the uses and purposes set forth, until the Indebtedness is fully paid and the Obligations fully performed.

On and prior to the Maturity Date and so long as no Lease Event of Default has occurred and is continuing, this Mortgage shall be subject and subordinate to this Lease and following the Maturity Date or if a Lease Event of Default shall have occurred and is continuing, the Mortgage, at the sole election of the Administrative Agent, shall be senior to this Lease without any further act by any Person.

#### Terms and Conditions

Mortgagor and Lessee (as applicable) further represent, warrant, covenant and agree with Mortgagee as follows:

1. Payment of Indebtedness. Mortgagor shall pay the Indebtedness at the times and places and in the manner specified in the Loan Facility Agreement, the Notes (if any), the Participation Agreement, the Trust Agreement and the Certificates, and shall perform all the Obligations.
2. Requirements. From and after the date of this Mortgage, Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any Legal Requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subsection shall be void.
3. Further Assurances. To further assure Mortgagee's rights under this Mortgage, Mortgagor agrees upon demand of Mortgagee to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty included or to be included in the Mortgaged Property) as may be required by Mortgagee to confirm the lien of this Mortgage and all other rights or benefits conferred on Mortgagee.

4. Mortgagee's Right to Perform. If Mortgagor fails to perform any of the covenants or agreements of Mortgage, Mortgagee, without waiving or releasing Mortgagor from any obligation or an Event of Default, may, at any time (but shall be under no obligation to) pay or perform the same, and the amount or cost thereof, with interest at the Overdue Rate, shall immediately be due from Mortgagor to Mortgagee. No payment or advance of money by Mortgagee under this Section shall be deemed or construed to cure Mortgagor's default or waive any right or remedy of Mortgagee.

5. Existence, etc. Mortgagor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and its right to own property and transact business in the State of [ ]. This Mortgage constitutes the legal, valid and binding obligation of Mortgagor and Lessee, enforceable against Mortgagor and Lessee in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

6. Events of Default. It shall be an event of default under this Mortgage (an "Event of Default") if an Event of Default (as defined in Annex A to the Participation Agreement) shall occur.

7. Remedies. Upon the occurrence of any Event of Default which is continuing, in addition to any other rights and remedies Mortgagee may have pursuant to the Credit Documents, or as provided by law, and without limitation, the Obligations and all other amounts payable with respect to this Mortgage and the other applicable Credit Documents shall immediately become due and payable as provided in the Loan Facility Agreement. Except as expressly provided above in this Section or as may be prohibited under applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived. In addition, upon the occurrence of any Event of Default, to the extent permitted by applicable law, Mortgagee may immediately take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and Lessee and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property or any part thereof, with or without legal action, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or the value of this Mortgage (including entering into new leases of all or any part of the Mortgaged Property) and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon the Indebtedness, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder

or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in any of the Credit Documents or by law.

(b) Bring an action in any court of competent jurisdiction to foreclose this Mortgage, to appoint a receiver or to enforce any of the covenants, terms or conditions hereof and Mortgagee shall have the right to specific performance, injunction and any other equitable right or remedy as though other remedies were not provided in this Mortgage. In case of a foreclosure sale, the Mortgaged Property may be sold, at Mortgagee's election, in one parcel or in more than one parcel and Mortgagee is specifically empowered, (without being required to do so, and in its sole and absolute discretion) to cause successive sales of portions of the Mortgaged Property to be held.

(c) To the extent permitted by Law, elect to cause the Mortgaged Property or any part thereof to be sold as follows, Mortgagor hereby expressly waiving any right which it may have to direct the order in which any of the Mortgaged Property may be sold:

(i) Mortgagee may proceed as if all of the Mortgaged Property were real property, in accordance with subparagraph (iii) below, or Mortgagee may elect to treat any of the Mortgaged Property which consists of personal property, in accordance with the Section of this Mortgage entitled "Security Agreement under Uniform Commercial Code", separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property;

(i) Mortgagee may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Should Mortgagee desire that more than one such sale or other disposition be conducted, Mortgagee may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interest;

(ii) Should Mortgagee elect to sell the Mortgaged Property and Mortgagee elects to proceed under the laws governing foreclosure of or sales pursuant to mortgages, Mortgagee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Mortgagee, at the time and place specified by the notice of sale, shall sell such Mortgaged Property, or any portion thereof specified by Mortgagee, at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the provisions of the Section of this Mortgage entitled "Right of Mortgagee to Credit Sale". Mortgagee may, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Mortgaged Property consists of several lots or parcels, Mortgagee may elect to sell the Mortgaged Property either as a whole or in separate lots or parcels. If Mortgagee

elects to sell in separate lots or parcels, Mortgagee may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Mortgagee or Mortgagee, may purchase at the sale;

(iii) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as an Event of Default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payments of purchase money, and any other fact affecting the regularity or validity of such sale or disposition shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein;

(iv) Mortgagee shall apply the proceeds of any sale or disposition hereunder in the order as provided in the Section of this Mortgage entitled "Sale of the Properties; Application of Proceeds"; and

(d) Exercise all other rights and remedies provided herein, in the other Credit Documents or otherwise available at law of equity.

**[insert other remedies or provisions appropriate or required by law]**

Notwithstanding the foregoing, the remedies set forth above as to Lessee (but not Lessor) with respect to a Construction Period Property shall be limited by the provisions of the Agency Agreement.

8. Sale of the Property: Application of Proceeds. Subject to the requirements of applicable law, the proceeds or avails of any foreclosure sale and all moneys received by Mortgagee pursuant to any right given or action taken under the provisions of this Mortgage shall be applied in accordance with Section 13 of the Participation Agreement.

9. Successor Mortgagor. In the event ownership of the Mortgaged Property or any portion thereof becomes vested in a person other than the Mortgagor or Lessee herein named, Mortgagee may, without notice to the Mortgagor or Lessee herein named, whether or not Mortgagee has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Mortgage and the Indebtedness and the Obligations, and in the same manner as with the Mortgagor or Lessee herein named, without in any way vitiating or discharging Mortgagor's or Lessee's liability hereunder or under the Indebtedness and the Obligations.

10. Right of Mortgagee to Credit Sale. Upon the occurrence of any sale made under this Mortgage, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof. In lieu of paying cash therefor, Mortgagee may make settlement for the purchase price by crediting upon the Indebtedness or other sums secured by this Mortgage the net sales price after deducting therefrom the expenses of sale and the cost of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. In such event, this Mortgage, any Notes and documents evidencing expenditures secured hereby

may be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon the Indebtedness as having been paid.

11. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Mortgagee as a matter of right and without notice to Mortgagor or Lessee, unless otherwise required by applicable law, and without regard to the adequacy or inadequacy of the Mortgaged Property or any other collateral as security for the Indebtedness and Obligations or the interest of Mortgagor or Lessee therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers or other manager of the Mortgaged Property, without requiring the posting of a surety bond and without reference to the adequacy or inadequacy of the value of the Mortgaged Property or the solvency or insolvency of Mortgagor or Lessee or any other party obligated for payment of all or any part of the Indebtedness, and whether or not waste has occurred with respect to the Mortgaged Property. Mortgagor and Lessee hereby irrevocably consent to such appointment and waive notice of any application therefor (except as may be required by law). Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in this Mortgage, including, without limitation and to the extent permitted by law, the right to enter into leases of all or any part of the Mortgaged Property, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated.

12. Extension. Release, etc.; Leases. (a) Without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of the Indebtedness, Mortgagee may, from time to time and without notice, agree to (i) release any person liable for the Indebtedness, (ii) extend the maturity or alter any of the terms of the Indebtedness or any guaranty thereof, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto. If at any time this Mortgage shall secure less than all of the principal amount of the Indebtedness, it is expressly agreed that any repayments of the principal amount of the Indebtedness shall not reduce the amount of the lien of this Mortgage until the lien amount shall equal the principal amount of the Indebtedness outstanding.

(b) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect the encumbrance of this Mortgage or any liens, rights, powers or remedies of Mortgagee hereunder, and such liens, rights, powers and remedies shall continue unimpaired.

(c) If Mortgagee shall have the right to foreclose this Mortgage, Mortgagor and Lessee authorize Mortgagee at its option to foreclose the lien of this Mortgage subject to the rights of any tenants of the Mortgaged Property. The failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights, or to provide notice to such tenants as required in any statutory procedure governing a sale of the Mortgaged Property by Mortgagee, or to terminate such tenant's rights in such sale, will not be asserted by Mortgagor or Lessee as a defense to any proceeding instituted by Mortgagee to collect the Indebtedness or to foreclose this Mortgage.

(d) Unless expressly provided otherwise, in the event that ownership of this Mortgage and title to the Mortgaged Property or any estate therein shall become vested in the same person or entity, this Mortgage shall not merge in such title but shall continue as a valid charge on the Mortgaged Property for the amount secured hereby.

13. Security Agreement under Uniform Commercial Code. (a) It is the intention of the parties hereto that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (as the same may be amended or modified, the "UCC") of the State of [ ]. If an Event of Default shall occur under this Mortgage, then in addition to having any other right or remedy available at law or in equity, Mortgagee shall have the option of either (i) proceeding under the UCC and exercising such rights and remedies as may be provided to a secured party by the UCC with respect to all or any portion of the Mortgaged Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Mortgaged Property in accordance with Mortgagee's rights, powers and remedies with respect to the real property (in which event the default provisions of the UCC shall not apply). If Mortgagee shall elect to proceed under the UCC, then ten (10) days' notice of sale of such personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses. At Mortgagee's request during the continuance of an Event of Default, Mortgagor shall assemble such personal property and make it available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties.

(b) Mortgagor, Lessee and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Equipment" are or are to become fixtures on the Property; (ii) this Mortgage upon recording or registration in the real estate records of the proper office shall constitute a financing statement filed as a "fixture filing" within the meaning of Sections 9-102 and 9-502 of the UCC; (iii) Mortgagor is the record owner of the Real Estate; and (iv) the addresses of Mortgagor and Mortgagee are as set forth on the first page of this Mortgage.

(c) Mortgagor or Lessee, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee one or more separate security agreements, in form satisfactory to Mortgagee, covering all or any part of the Mortgaged Property (to the extent of its respective interest therein) and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue or extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document and all reasonable costs and expenses of any record searches for financing statements Mortgagee shall reasonably require. Mortgagor shall from time to time, on request of Mortgagee, deliver to Mortgagee an inventory in reasonable detail of any of the Mortgaged Property which constitutes personal property. If Mortgagor shall fail to furnish any financing or continuation statement within ten (10) days after request by Mortgagee, then pursuant to the provisions of the UCC, to the extent permitted

thereby, Mortgagor hereby authorizes Mortgagee, without the signature of Mortgagor, to execute and file any such financing and continuation statements. The filing of any financing or continuation statements in the records relating to personal property or chattels shall not be construed as in any way impairing the right of Mortgagee to proceed against any personal property encumbered by this Mortgage as real property, as set forth above.

(d) Mortgagor hereby irrevocable constitutes and appoints the Administrative Agent and any officer or agent thereof, as assignee of all of Mortgagor's right under this Mortgage, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Mortgagor and in the name of Mortgagor or in its own name, from time to time in the Administrative Agent's discretion, for the purpose of carrying out the terms of this Mortgage, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Mortgage, and, without limiting the generality of the foregoing, Mortgagor hereby gives the Administrative Agent the power and right, on behalf Mortgagor, without notice to or assent by Mortgagor, to do any or all of the following:

(i) pay or discharge taxes and Liens levied or placed on or threatened against the Mortgaged Property, effect any repairs or any insurance called for by the terms of this Mortgage and to pay all or any part of the premiums therefor and the costs thereof;

(ii) execute, in connection with the sale provided for in Section 7 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Mortgaged Property; and

(iii) (1) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with the Mortgaged Property; (2) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to enforce any other right in respect of the Mortgaged Property; (3) defend any suit, action or proceeding brought against Mortgagor with respect to the Mortgaged Property; (4) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, to give such discharges or releases as the Administrative Agent may deem appropriate; and (5) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with the Mortgaged Property as fully and completely as thought the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and the Mortgagor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Mortgaged Property and the Administrative Agent's security interests therein and to effect the intent of this Mortgage, all as fully and effectively as the Mortgage might do. In no event shall the foregoing authorize or be deemed to authorize the Administrative Agent to confess judgment against Mortgagor or Lessee.

Anything in this subsection to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this subsection unless an Event of Default shall have occurred and be continuing.

14. Additional Rights. The holder of any subordinate lien on the Mortgaged Property shall have no right to terminate any lease affecting the Property whether or not such lease is subordinate to this Mortgage nor shall any holder of any subordinate lien join any tenant under any lease in any action to foreclose the lien or modify, interfere with, disturb or terminate the rights of any tenant under any lease. By recordation of this Mortgage all subordinate lienholders are subject to and notified of this provision, and any action taken by any such lienholder contrary to this provision shall be null and void.

15. Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been sufficiently given or served if made in accordance with the notice provisions contained in Section 14.3 of the Participation Agreement to Mortgagor, Mortgagee and Lessee as specified therein.

16. No Oral Modification. This Mortgage may not be changed or terminated orally. Any agreement made by Mortgagor, Mortgagee and Lessee after the date of this Mortgage relating to this Mortgage shall be superior to the rights of the holder of any intervening or subordinate lien or encumbrance.

17. Partial Invalidity. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.

18. Waiver of Right of Redemption and Other Rights. To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that may subsequently be enacted providing for (i) any appraisalment before sale of any portion of the Mortgaged Property, (ii) any extension of the time for the enforcement of the collection of the Indebtedness or the creation or extension of a period of redemption from any sale made in collecting such debt and (iii) exemption of the Mortgaged Property from attachment, levy or sale under execution or exemption from civil process. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Mortgage before exercising any other remedy granted hereunder and Mortgagor, for Mortgagor and its successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created.

19. Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment of the Indebtedness and performance of the Obligations and to exercise all rights and powers under this Mortgage or under any of the other Credit Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Indebtedness and Obligations may now or hereafter be otherwise secured, whether by deed of trust, mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may determine in its absolute discretion. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Credit Documents to Mortgagee or to which either may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee; provided, however, that no right or remedy may be enforced against Lessee unless a Lease Event of Default shall have occurred and is continuing. In no event shall Mortgagee, in the exercise of the remedies provided in this Mortgage (including, without limitation, in connection with the appointment of a receiver and the entry of such receiver on to all or any part of the Mortgaged Property), be deemed a "mortgagee in possession," and Mortgagee shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

20. Multiple Security. If (a) the Land shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Mortgage, Mortgagee shall now or hereafter hold or be the Mortgagee of one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) for the Indebtedness upon other property in the State in which the Property is located (whether or not such property is owned by Mortgagor or Lessee) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Mortgagee may, at its election, commence or consolidate in a single foreclosure action all foreclosure proceedings against all such collateral securing the Indebtedness (including the Mortgaged Property), which action may be brought or consolidated in the courts of, or sale conducted in, any county in which any of such collateral is located. Mortgagor and Lessee acknowledge that the right to maintain a consolidated foreclosure action is a specific inducement to Mortgagee to extend the Indebtedness, and Mortgagor and Lessee expressly and irrevocably waive any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. Mortgagor and Lessee further agree that if Mortgagee shall be prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any collateral other than the Mortgaged Property, which collateral secures the Indebtedness, or if Mortgagee shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral, then, whether or not such proceedings are being maintained or judgments were obtained in or outside the State in which the Property is located, Mortgagee may commence or continue any foreclosure proceedings and exercise its other remedies granted in this Mortgage against all or any part of the Mortgaged Property and Mortgagor and Lessee waive any objections to the commencement or continuation of a foreclosure of this Mortgage or

exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay, remove, transfer or consolidate either any action under this Mortgage or such other proceedings on such basis. Neither the commencement nor continuation of proceedings to foreclose this Mortgage nor the exercise of any other rights hereunder nor the recovery of any judgment by Mortgagee in any such proceedings shall prejudice, limit or preclude Mortgagee's right to commence or continue one or more foreclosure or other proceedings or obtain a judgment against any other collateral (either in or outside the State in which the Property is located) which directly or indirectly secures the Indebtedness, and Mortgagor and Lessee expressly waives any objections to the commencement of, continuation of, or entry of a judgment in such other proceedings or exercise of any remedies in such proceedings based upon any action or judgment connected to this Mortgage, and Mortgagor and Lessee also waive any rights to seek to dismiss, stay, remove, transfer or consolidate either such other proceedings or any action under this Mortgage on such basis. It is expressly understood and agreed that to the fullest extent permitted by law, Mortgagee may, at its election, cause the sale of all collateral which is the subject of a single foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Indebtedness (directly or indirectly) in the most economical and least time-consuming manner.

21. Successors and Assigns. All covenants of Mortgagor and Lessee contained in this Mortgage are imposed solely and exclusively for the benefit of Mortgagee and its permitted successors and assigns, and no other person or entity shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Mortgagee at any time if in its sole discretion it deems such waiver advisable. All such covenants of Mortgagor shall run with the land and bind Mortgagor, the permitted successors and assigns of Mortgagor (and each of them) and all subsequent owners, encumbrances and tenants of the Mortgaged Property, and shall inure to the benefit of Mortgagee, its successors and assigns.

22. No Waivers, etc. Any failure by Mortgagee to insist upon the strict performance by Mortgagor or Lessee of any of the terms and provisions of this Mortgage shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor or Lessee of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor or Lessee. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the security held for the obligations secured by this Mortgage without, as to the remainder of the security, in anyway impairing or affecting the lien of this Mortgage or the priority of this Mortgage over any subordinate lien.

23. Governing Law, etc. This Mortgage shall be governed by and construed in accordance with the laws of the State of [ ], except that Mortgagor expressly acknowledges that by its terms the Loan Facility Agreement and the Participation Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to principles of conflict of law, and for purposes of consistency, Mortgagor agrees that in any in personam proceeding related to this Mortgage the rights of the parties to this Mortgage shall also be

governed by and construed in accordance with the laws of the State of New York governing contracts made and to be performed in that State, without regard to principles of conflict of law.

24. Receipt of Copy. Mortgagor and Lessee acknowledge that they have each received a true copy of this Mortgage.

25. Liability of Wilmington Trust Company. It is expressly understood and agreed by the parties hereto that (i) this Mortgage is executed and delivered by Wilmington Trust Company not individually or personally but solely as trustee of the Mortgagor, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of Mortgagor is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose of binding only the Mortgagor, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto, and (iv) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of any party hereto, or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Mortgagor under this Mortgage or the other Operative Agreements.

This Mortgage has been duly executed by Mortgagor and Lessee as of the date first above written.

AUTO FACILITIES REAL ESTATE TRUST  
2001-1,  
a Delaware business trust, Mortgagor

By: Wilmington Trust Company, not in its  
individual capacity but solely as Trustee

By: \_\_\_\_\_  
Name:  
Title:

GENERAL MOTORS CORPORATION, a  
Delaware corporation, Lessee

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )

ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2001 before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as \_\_\_\_\_ of Wilmington Trust Company, not in its individual capacity, but solely as trustee of AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

(Affix official seal, if applicable)

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )

ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2001 before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (he)(she) executed the same in (his)(her) capacity as \_\_\_\_\_ of GENERAL MOTORS CORPORATION, a Delaware corporation, and that by (his)(her) signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, after first having been duly authorized by said company so to do.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

(Affix official seal, if applicable)

Schedule A

Description of Land

EXHIBIT B-2  
FORM OF DEED OF TRUST

DEED OF TRUST, ASSIGNMENT OF  
RENTS AND LEASES AND SECURITY  
AGREEMENT

from

AUTO FACILITIES REAL ESTATE TRUST 2001-1, Grantor

and

GENERAL MOTORS CORPORATION, as Lessee

to

[ ], Trustee  
for the use and benefit of

THE CHASE MANHATTAN BANK, as Administrative Agent,  
in such capacity, Beneficiary

DATED AS OF [ ], 200[ ]

Recording requested by, and when  
recorded, please return to:

Sasan S. Mehrara  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
212-455-2783

DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES  
AND SECURITY AGREEMENT

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT, dated as of [ ], 200[ ], is made by AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust ("Grantor"), having its principal office c/o Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19809-0001, and GENERAL MOTORS CORPORATION, a Delaware corporation ("Lessee"), whose address is [ ] to [ ] ("Trustee"), whose address is [ ], for the use and benefit of THE CHASE MANHATTAN BANK, as Administrative Agent (in such capacity "Beneficiary"), whose address is 450 West 33<sup>rd</sup> Street, 15<sup>th</sup> Floor, New York, New York 10001, on behalf of the Backup Facility Banks and RFC and the various financial institutions party to the Participation Agreement, as investors (the "Investors"). References to this "Deed of Trust" shall mean this instrument and any and all renewals, modifications, amendments, supplements, extensions, consolidations, substitutions, spreaders and replacements of this instrument.

W I T N E S S E T H

Capitalized terms used but not otherwise defined in this Deed of Trust shall have the meanings assigned to them in Annex A attached to the Participation Agreement dated as of October 31, 2001 among Lessee, Grantor, Beneficiary, Wilmington Trust Company, the Backup Facility Banks named therein, the Investors, and Relationship Funding Company, LLC. The rules of usage and documentary conventions set forth in such Annex are also applicable hereto.

Granting Clauses

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Lessee agree that to secure:

(a) the repayment of the indebtedness evidenced by the Loan Facility Agreement, the Loans, the Notes (if any), and the Investor Contributions evidenced by the Certificates, and (ii) all interest, Investor Yield and fees payable thereon (the items set forth in clauses (i) and (ii) being referred to collectively as the "Indebtedness"); and

(b) the performance of all covenants, agreements, obligations and liabilities of Grantor (the "Obligations") under or pursuant to the provisions of the Loan Facility Agreement, the Notes (if any), the Trust Agreement, the Certificates, this Deed of Trust, the Participation Agreement, the Security Documents and any amendments, supplements, extensions, renewals, restatements, replacements or modifications of any of the foregoing (the Loan Facility Agreement, the Notes (if any), the Trust Agreement, the Certificates, this Deed of Trust, the Participation Agreement, the Security Documents and all other documents and instruments from time to time evidencing, securing or guaranteeing the payment of the Indebtedness or the performance of the Obligations, as any of the same may be amended, supplemented, extended, renewed, restated, replaced or modified from time to time, are collectively referred to as the "Credit Documents");

GRANTOR AND LESSEE (EXCEPT AS TO CLAUSES (E) AND (G), AND CLAUSE (A) TO THE EXTENT ANY OF THE PROPERTY OR INTEREST DESCRIBED THEREIN WERE

ACQUIRED THROUGH ADVANCES) HEREBY IRREVOCABLY MORTGAGE, WARRANT, CONVEY, GRANT, ASSIGN, TRANSFER AND SET OVER AND BY THESE PRESENT DO HEREBY MORTGAGE, WARRANT, CONVEY, GRANT, ASSIGN, TRANSFER AND SET OVER UNTO TRUSTEE, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND INSPECTION, A LIEN AND CONTINUING SECURITY INTEREST, WHETHER NOW OWNED OR HEREAFTER ACQUIRED IN ALL OF THEIR RIGHT, TITLE, AND INTEREST, IN, TO, AND UNDER ALL OF THE FOLLOWING:

(A) the parcel of real property described on Schedule A (the "Land"), together with (i) the buildings, structures, and other improvements of every kind existing at any time and from time to time on or under the Land, together with any and all appurtenances to such buildings, structures or improvements, including sidewalks, curbs, gutters, flood controls, sanitary tie-ins, utility pipes, conduits and lines, parking areas and roadways, and including all additions to or changes in the Improvements at any time but excluding any additions or Improvements or other property in which Lessee retains ownership under the terms of the Lease, and all equipment, apparatus, furnishings, fittings and personal property of every kind and nature whatsoever purchased, leased or otherwise acquired by the Lessee using the proceeds of Loans or the Investor Contributions and now or subsequently attached to, contained in or used or usable in any way in connection with any operation or letting of the Land, including but without limiting the generality of the foregoing, all screens, awnings, shades, blinds, curtains, draperies, artwork, holiday decorations, bidets, toilets, carpets, rugs, storm doors and windows, shelving, furniture and furnishings, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilation, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description (collectively, the "Improvements"), (ii) all agreements, easements, rights of way or use, rights of ingress or egress, privileges, appurtenances, tenements, hereditaments and other rights and benefits at any time belonging or pertaining to the Land or the Improvements, including, without limitation, the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land and all permits, licenses and rights, whether or not of record, appurtenant to the Land, and (iii) all fixtures relating to the Improvements, including all components thereof, located in or on such Improvements, together with all replacements, modifications, alterations and additions thereto, but specifically excluding trade fixtures and other personal property of any subtenant at the Property (the property and interests described in clauses (i), (ii) and (iii), together with the Land, are collectively referred to as the "Property");

(B) all the estate, right, title, claim or demand whatsoever of Grantor and Lessee, in possession or expectancy, in and to the Property or any part thereof;

(C) all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water and riparian rights, development rights, air

rights, mineral rights and all estates, rights, titles, interests, privileges, licenses, tenements, hereditaments and appurtenances belonging, relating or appertaining to the Property, and any reversions, remainders, rents, issues, profits and revenue thereof and all land lying in the bed of any street, road or avenue, in front of or adjoining the Property to the center line thereof;

(D) all substitutes and replacements of, and all additions and improvements to the Property subsequently acquired by or released to Grantor and Lessee or constructed, assembled or placed by Grantor and Lessee on the Property, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Property or offsite, and, in each such case, without any further mortgage, conveyance, assignment or other act by Grantor and Lessee;

(E) all leases, subleases, underlettings, concession agreements, management agreements, licenses and other agreements relating to the use or occupancy of the Property or any part thereof, now existing or subsequently entered into by Grantor and whether written or oral and all guarantees of any of the foregoing (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, the "Leases"), and all rights of Grantor in respect of cash and securities deposited thereunder and the right to receive and collect the revenues, income, rents, issues and profits thereof, together with all other rents, royalties, issues, profits, revenue, income and other benefits arising from the use and enjoyment of the Trust Property (as defined below) (collectively, the "Rents");

(F) all unearned premiums under insurance policies now or subsequently obtained by Grantor relating to the Property and Grantor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Property for the taking by eminent domain, condemnation or otherwise, of all or any part of the Property or any easement or other right therein;

(G) (i) all contracts from time to time executed by Grantor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Property or any part thereof and all agreements relating to the purchase or lease of any portion of the Property, together with the right to exercise such options and all leases of equipment, including, without limitation, the Agency Agreement, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any part thereof, (iii) all drawings, plans, specifications and similar or related items relating to the Property, and (iv) all books and records pertaining to the Property;

(H) all amendments, modifications, substitutions, replacements and additions of any of the foregoing, and all proceeds, both cash and noncash, of any of the foregoing;

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by Grantor and described in the foregoing clauses (A) through (H) are collectively referred to as the "Trust Property"); provided, however, that notwithstanding anything to the contrary contained herein or in any Operative Agreement, the "Mortgaged Property" shall not include, and Mortagor shall not be deemed to have granted to Mortgagee hereby, the Excepted Rights, Excepted Payments and all Property of Lessee which is not subject to the Lease.

TO HAVE AND TO HOLD the Trust Property and the rights and privileges hereby mortgaged (excluding Excepted Rights and the Excepted Payments), together with the right to retain possession of the Trust Property after the occurrence of an Event of Default, unto Beneficiary, its successors and assigns for the uses and purposes set forth, until the Indebtedness is fully paid and the Obligations fully performed.

On and prior to the Maturity Date and so long as no Lease Event of Default has occurred and is continuing, this Mortgage shall be subject and subordinate to the Lease and following the Maturity Date or if a Lease Event of Default shall have occurred and is continuing, the Mortgage, at the sole election of the Administrative Agent, shall be senior to this Lease without any further act by any Person.

#### Terms and Conditions

Grantor and Lessee (as applicable) further represent, warrant, covenant and agree with Trustee and Beneficiary as follows:

1. Payment of Indebtedness. Grantor shall pay the Indebtedness at the times and places and in the manner specified in the Loan Facility Agreement, the Notes (if any), the Participation Agreement, the Trust Agreement and the Certificates, and shall perform all the Obligations.
2. Requirements. From and after the date of this Deed of Trust, Grantor shall not by act or omission permit any building or other improvement on any premises not subject to this Deed of Trust to rely on the Property or any part thereof or any interest therein to fulfill any Legal Requirement, and Grantor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Any act or omission by Grantor which would result in a violation of any of the provisions of this subsection shall be void.
3. Further Assurances. To further assure Beneficiary's and Trustee's rights under this Deed of Trust, Grantor agrees upon demand of Beneficiary or Trustee to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty included or to be included in the Trust Property) as may be required by Beneficiary or Trustee to confirm the encumbrance of this Deed of Trust and all other rights or benefits conferred on Beneficiary or Trustee by this Deed of Trust.

4. Beneficiary's Right to Perform. If Grantor fails to perform any of the covenants or agreements of Grantor, Beneficiary, without waiving or releasing Grantor from any obligation or an Event of Default, may, at any time (but shall be under no obligation to) pay or perform the same, and the amount or cost thereof, with interest at the Overdue Rate, shall immediately be due from Grantor to Beneficiary. No payment or advance of money by Beneficiary under this Section shall be deemed or construed to cure Grantor's default or waive any right or remedy of Beneficiary.

5. Existence, etc. Each of Grantor and Lessee shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and its right to own property and transact business in the State of [ ]. This Deed of Trust constitutes the legal, valid and binding obligation of Grantor and Lessee, enforceable against Grantor and Lessee in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

6. Events of Default. It shall be an event of default under this Deed of Trust (an "Event of Default") if an Event of Default (as defined in Annex A to the Participation Agreement) shall occur.

7. Remedies. Upon the occurrence of any Event of Default which is continuing, in addition to any other rights and remedies Beneficiary may have pursuant to the Credit Documents, or as provided by law, and without limitation, the Obligations and all other amounts payable with respect to this Deed of Trust and the other applicable Credit Documents shall immediately become due and payable as provided in the Loan Facility Agreement. Except as expressly provided above in this Section or as may be prohibited under applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived. In addition, upon the occurrence of any Event of Default, to the extent permitted by applicable law, Beneficiary may immediately take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and Lessee and in and to the Trust Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Property or any part thereof, with or without legal action, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Property, or any part thereof or the value of this Deed of Trust (including entering into new leases of all or any part of the Trust Property) and, with or without taking possession of the Trust Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon the Indebtedness, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the

continuance in possession of the Trust Property or the collection, receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in any of the Credit Documents or by law.

(b) Bring an action in any court of competent jurisdiction to foreclose this Deed of Trust, to appoint a receiver or to enforce any of the covenants, terms or conditions hereof and Beneficiary shall have the right to specific performance, injunction and any other equitable right or remedy as though other remedies were not provided in this Deed of Trust. In case of a foreclosure sale, the Trust Property may be sold, at Beneficiary's election, in one parcel or in more than one parcel and Beneficiary is specifically empowered, (without being required to do so, and in its sole and absolute discretion) to cause successive sales of portions of the Trust Property to be held.

(c) To the extent permitted by Law, elect to cause the Trust Property or any part thereof to be sold as follows, Grantor hereby expressly waiving any right which it may have to direct the order in which any of the Trust Property may be sold:

(i) Beneficiary may proceed as if all of the Trust Property were real property, in accordance with subparagraph (iii) below, or Beneficiary may elect to treat any of the Trust Property which consists of personal property, in accordance with the Section of this Deed of Trust entitled "Security Agreement under Uniform Commercial Code", separate and apart from the sale of real property, the remainder of the Trust Property being treated as real property;

(ii) Beneficiary may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided or Beneficiary may delay any such sale or other disposition for such period of time as Beneficiary deems to be in its best interest. Should Beneficiary desire that more than one such sale or other disposition be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interest;

(iii) Should Beneficiary elect to sell the Trust Property and Beneficiary elects to proceed under the laws governing foreclosure of or sales pursuant to this Deed of Trusts, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any portion thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the provisions of the Section of this Deed of Trust entitled "Right of Beneficiary to Credit Sale". Trustee may from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Trust Property consists of several lots or parcels, Beneficiary may elect to sell the Trust Property either as a whole or in separate lots or parcels. If Beneficiary elects to sell in separate lots or parcels, Beneficiary may designate the order in which such lots or

parcels shall be offered for sale or sold. Any person, including Grantor, Trustee or Beneficiary, may purchase at the sale. Upon any sale, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession;

(iv) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as an Event of Default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payments of purchase money, and any other fact affecting the regularity or validity of such sale or disposition shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein;

(v) Beneficiary and/or Trustee shall apply the proceeds of any sale or disposition hereunder in the order as provided in the Section of this Deed of Trust entitled "Sale of the Properties; Application of Proceeds"; and

(d) Exercise all other rights and remedies provided herein, in the other Credit Documents or otherwise available at law of equity.

[insert other remedies or provisions appropriate or required by law]

Notwithstanding the foregoing, the remedies set forth above as to Lessee (but not Lessor) with respect to a Construction Period Property shall be limited by the provisions of the Agency Agreement.

8. Sale of the Property; Application of Proceeds. Subject to the requirements of applicable law, the proceeds or avails of any foreclosure sale and all moneys received by Beneficiary pursuant to any right given or action taken under the provisions of this Deed of Trust shall be applied in accordance with [Section 13] of the Participation Agreement.

#### 9. Trustee's Powers and Liabilities.

(a) Powers of Trustee. At any time or from time to time, without liability therefor and without notice, upon the written request of Beneficiary and presentation of the Note and this Deed of Trust for endorsement, without affecting the personal liability of any person for the payment of the indebtedness secured hereby, and without affecting the encumbrance of this Deed of Trust upon the Trust Property for the full amount of all amounts secured hereby, Trustee may (i) reconvey all or any part of the Trust Property, (ii) consent to the making of any map or plat thereof, (iii) join in granting any easement thereon or in creating any covenants or conditions restricting use or occupancy thereof, or (iv) join in any extension agreement or in any agreement subordinating the lien or charge hereof.

(b) Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Notes to Trustee for cancellation and retention, and upon payment of its fees, Trustee shall reconvey,

without warranty, the property then held hereunder. The recitals in any such reconveyance of any matters or facts shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(c) Trustee Notice. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

(d) Compensation and Indemnification of Trustee. Trustee shall be entitled to reasonable compensation for all services rendered or expenses incurred in the administration or execution of the trusts hereby created and Grantor hereby agrees to pay the same. Trustee shall be indemnified, held harmless and reimbursed by Grantor for any liability, damage or expense, including reasonable attorneys' fees and amounts paid in settlement, which Trustee may incur or sustain in connection with this Deed of Trust or in the doing of any act which Trustee is required or permitted to do by the terms hereof or by law.

(e) Substitute Trustees. Beneficiary may from time to time substitute the Trustee hereunder in any manner now or hereafter provided by law, or in lieu thereof, Beneficiary may from time to time, by an instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county or counties where the Trust Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall thereupon, and without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, powers and duties.

(f) Acceptance by Trustee. The acceptance by Trustee of this trust shall be evidenced when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

(g) Trust Irrevocable; No Offset. The trust created hereby is irrevocable by Grantor. No offset or claim that Grantor now or may in the future have against Beneficiary shall relieve Grantor from paying the Indebtedness or performing the Obligations.

(h) Corrections. Grantor will, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgement hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Beneficiary or Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interests hereby created any of Grantor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

10. Successor Grantor. In the event ownership of the Trust Property or any portion thereof becomes vested in a person other than the Grantor or Lessee herein named, Beneficiary may, without notice to the Grantor or Lessee herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the Indebtedness and the

Obligations, and in the same manner as with the Grantor or Lessee herein named, without in any way vitiating or discharging Grantor's or Lessee's liability hereunder or under the Indebtedness and the Obligations.

11. Right of Beneficiary to Credit Sale. Upon the occurrence of any sale made under this Deed of Trust, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Trust Property or any part thereof. In lieu of paying cash therefor, Beneficiary may make settlement for the purchase price by crediting upon the Indebtedness or other sums secured by this Deed of Trust the net sales price after deducting therefrom the expenses of sale and the cost of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust. In such event, this Deed of Trust, any Notes and documents evidencing expenditures secured hereby may be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon the Indebtedness as having been paid.

12. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary as a matter of right and without notice to Grantor or Lessee, unless otherwise required by applicable law, and without regard to the adequacy or inadequacy of the Trust Property or any other collateral as security for the Indebtedness and Obligations or the interest of Grantor or Lessee therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers or other manager of the Trust Property, without requiring the posting of a surety bond and without reference to the adequacy or inadequacy of the value of the Trust Property or the solvency or insolvency of Grantor or Lessee or any other party obligated for payment of all or any part of the Indebtedness, and whether or not waste has occurred with respect to the Trust Property. Grantor and Lessee hereby irrevocably consent to such appointment and waive notice of any application therefor (except as may be required by law). Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided in this Deed of Trust, including, without limitation and to the extent permitted by law, the right to enter into leases of all or any part of the Trust Property, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Trust Property unless such receivership is sooner terminated.

13. Extension. Release, etc.: Leases. (a) Without affecting the encumbrance or charge of this Deed of Trust upon any portion of the Trust Property not then or theretofore released as security for the full amount of the Indebtedness, Beneficiary may, from time to time and without notice, agree to (i) release any person liable for the Indebtedness, (ii) extend the maturity or alter any of the terms of the Indebtedness or any guaranty thereof, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Trust Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto. If at any time this Deed of Trust shall secure less than all of the principal amount of the Indebtedness, it is expressly agreed that any repayments of the principal amount of the Indebtedness shall not reduce the amount of the encumbrance of this Deed of Trust until the lien amount shall equal the principal amount of the Indebtedness outstanding.

(b) No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Trust Property or upon any other property of Grantor shall affect the encumbrance of this Deed of Trust or any liens, rights, powers or remedies of Beneficiary hereunder, and such liens, rights, powers and remedies shall continue unimpaired.

(c) If Beneficiary shall have the right to foreclose this Deed of Trust or to direct the Trustee to exercise its power of sale, Grantor and Lessee authorize Beneficiary at its option to foreclose the lien of this Deed of Trust (or direct the Trustee to sell the Trust Property, as the case may be) subject to the rights of any tenants of the Trust Property. The failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights, or to provide notice to such tenants as required in any statutory procedure governing a sale of the Trust Property by Beneficiary, or to terminate such tenant's rights in such sale, will not be asserted by Grantor or Lessee as a defense to any proceeding instituted by Beneficiary to collect the Indebtedness or to foreclose this Deed of Trust.

(d) Unless expressly provided otherwise, in the event that Beneficiary's interest in this Deed of Trust and title to the Trust Property or any estate therein shall become vested in the same person or entity, this Deed of Trust shall not merge in such title but shall continue as a valid charge on the Trust Property for the amount secured hereby.

14. Security Agreement under Uniform Commercial Code. (a) It is the intention of the parties hereto that this Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (as the same may be amended or modified, the "UCC") of the State of [     ]. If an Event of Default shall occur under this Deed of Trust, then in addition to having any other right or remedy available at law or in equity, Beneficiary shall have the option of either (i) proceeding under the UCC and exercising such rights and remedies as may be provided to a secured party by the UCC with respect to all or any portion of the Trust Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Trust Property in accordance with Beneficiary's rights, powers and remedies with respect to the real property (in which event the default provisions of the UCC shall not apply). If Beneficiary shall elect to proceed under the UCC, then ten (10) days' notice of sale of such personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Beneficiary shall include, but not be limited to, reasonable attorneys' fees and legal expenses. At Beneficiary's request during the continuance of an Event of Default, Grantor shall assemble such personal property and make it available to Beneficiary at a place designated by Beneficiary which is reasonably convenient to both parties.

(b) Grantor, Lessee and Beneficiary agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Equipment" are or are to become fixtures on the Property; (ii) this Deed of Trust upon recording or registration in the real estate records of the proper office shall constitute a financing statement filed as a "fixture filing" within the meaning of Sections 9-102 and 9-502 of the UCC (iii) Grantor is the record owner of the Real Estate; and (iv) the addresses of Grantor and Beneficiary are as set forth on the first page of this Deed of Trust.

(c) Grantor or Lessee, upon request by Beneficiary from time to time, shall execute, acknowledge and deliver to Beneficiary one or more separate security agreements, in form satisfactory to Beneficiary, covering all or any part of the Trust Property (to the extent of its respective interest therein) and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Beneficiary may reasonably request in order to perfect, preserve, maintain, continue or extend the security interest under and the priority of this Deed of Trust and such security instrument. Grantor further agrees to pay to Beneficiary on demand all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing and re-filing of any such document and all reasonable costs and expenses of any record searches for financing statements Beneficiary shall reasonably require. Grantor shall from time to time, on request of Beneficiary, deliver to Beneficiary an inventory in reasonable detail of any of the Trust Property which constitutes personal property. If Grantor shall fail to furnish any financing or continuation statement within ten (10) days after request by Beneficiary, then pursuant to the provisions of the UCC, Grantor hereby authorizes Beneficiary, without the signature of Grantor, to execute and file any such financing and continuation statements. The filing of any financing or continuation statements in the records relating to personal property or chattels shall not be construed as in any way impairing the right of Beneficiary to proceed against any personal property encumbered by this Deed of Trust as real property, as set forth above.

(d) Grantor hereby irrevocable constitutes and appoints the Administrative Agent and any officer or agent thereof, as assignee of all of Grantor's right under this Deed of Trust, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantor and in the name of Grantor or in its own name, from time to time in the Administrative Agent's discretion, for the purpose of carrying out the terms of this Deed of Trust, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Deed of Trust, and, without limiting the generality of the foregoing, Grantor hereby gives the Administrative Agent the power and right, on behalf Grantor, without notice to or assent by Grantor, to do any or all of the following:

(i) pay or discharge taxes and Liens levied or placed on or threatened against the Trust Property, effect any repairs or any insurance called for by the terms of this Deed of Trust and to pay all or any part of the premiums therefor and the costs thereof;

(ii) execute, in connection with the sale provided for in Section 7 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Trust Property; and

(iii) (1) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with the Trust Property; (2) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to enforce any other right in respect of the Trust Property; (3) defend any suit, action or proceeding brought against Grantor with respect to the Trust Property; (4) settle,

compromise or adjust any such suit, action or proceeding and, in connection therewith, to give such discharges or releases as the Administrative Agent may deem appropriate; and (5) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with the Trust Property as fully and completely as thought the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and the Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Trust Property and the Administrative Agent's security interests therein and to effect the intent of this Deed of Trust, all as fully and effectively as the Deed of Trust might do. In no event shall the foregoing authorize or be deemed to authorize the Administrative Agent to confess judgment against Grantor or Lessee.

Anything in this subsection to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this subsection unless an Event of Default shall have occurred and be continuing.

15. Additional Rights. The holder of any subordinate lien or subordinate deed of trust on the Trust Property shall have no right to terminate any lease affecting the Property whether or not such lease is subordinate to this Deed of Trust nor shall any holder of any subordinate lien or subordinate deed of trust join any tenant under any lease in any action to foreclose the lien or modify, interfere with, disturb or terminate the rights of any tenant under any lease. By recordation of this Deed of Trust all subordinate lienholders and the trustees and beneficiaries under subordinate deeds of trust are subject to and notified of this provision, and any action taken by any such lienholder or trustee or beneficiary contrary to this provision shall be null and void.

16. Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been sufficiently given or served if made in accordance with the notice provisions contained in Section 14.3 of the Participation Agreement and any notices to the Trustee shall be made in such manner at the Trustee's address indicated in the preamble of this Deed of Trust Grantor, Beneficiary and Lessee as specified therein.

17. No Oral Modification. This Deed of Trust may not be changed or terminated orally. Any agreement made by Grantor, Beneficiary and Lessee after the date of this Deed of Trust relating to this Deed of Trust shall be superior to the rights of the holder of any intervening or subordinate lien or encumbrance. Trustee's execution of any written agreement between Grantor and Beneficiary shall not be required for the effectiveness thereof as between Grantor and Beneficiary.

18. Partial Invalidity. In the event any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.

19. Waiver of Rights. To the fullest extent permitted by law, Grantor waives the benefit of all laws now existing or that may subsequently be enacted providing for (i) any

appraisement before sale of any portion of the Trust Property, (ii) any extension of the time for the enforcement of the collection of the Indebtedness or the creation or extension of a period of redemption from any sale made in collecting such debt and (iii) exemption of the Trust Property from attachment, levy or sale under execution or exemption from civil process. To the full extent Grantor and Lessee may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Deed of Trust before exercising any other remedy granted hereunder and Grantor, for Grantor and its successors and assigns, and for any and all persons ever claiming any interest in the Trust Property, to the extent permitted by law, hereby waive and release all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of exercise by Trustee or Beneficiary of the power of sale or other rights hereby created. Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Trust Property are insufficient to pay the Obligations and the fees and disbursements of any attorneys employed by Grantor to collect such deficiency.

20. Remedies Not Exclusive. Beneficiary and Trust shall be entitled to enforce payment of the Indebtedness and performance of the Obligations and to exercise all rights and powers under this Deed of Trust or under any of the other Credit Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Indebtedness and Obligations may now or hereafter be otherwise secured, whether by deed of trust, mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, shall prejudice or in any manner affect Beneficiary's or Trustee's right to realize upon or enforce any other security now or hereafter held by Beneficiary or Trustee, it being agreed that Beneficiary and Trustee shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as Beneficiary or Trustee may determine in their absolute discretion. No remedy herein conferred upon or reserved to Beneficiary or Trustee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Credit Documents to Beneficiary or Trustee or to which either may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary or Trustee, as the case may be; provided, however, that no right or remedy may be enforced against Lessee unless a Lease Event of Default shall have occurred and is continuing. In no event shall Beneficiary or Trustee, in the exercise of the remedies provided in this Deed of Trust (including, without limitation, in connection with the appointment of a receiver and the entry of such receiver on to all or any part of the Trust Property), be deemed a "mortgagee in possession," and neither Beneficiary nor Trustee shall in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

21. Multiple Security. If (a) the Land shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Deed of Trust, Beneficiary shall now or hereafter hold or be the beneficiary of one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) for the Indebtedness upon other property in the State in which the Property is located (whether or not

such property is owned by Grantor or Lessee) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Beneficiary may, at its election, commence or consolidate in a single trustee's sale or foreclosure action all trustee's sale or foreclosure proceedings against all such collateral securing the Indebtedness (including the Trust Property), which action may be brought or consolidated in the courts of, or sale conducted in, any county in which any of such collateral is located. Grantor and Lessee acknowledge that the right to maintain a consolidated foreclosure action is a specific inducement to Beneficiary to extend the Indebtedness, and Grantor and Lessee expressly and irrevocably waive any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. Grantor and Lessee further agree that if Trustee or Beneficiary shall be prosecuting one or more foreclosure or other proceedings against a portion of the Trust Property or against any collateral other than the Trust Property, which collateral secures the Indebtedness, or if Beneficiary shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral (or, in the case of a trustee's sale, shall have met the statutory requirements therefore with respect to such collateral), then, whether or not such proceedings are being maintained or judgments were obtained in or outside the State in which the Property is located, Beneficiary may commence or continue any foreclosure proceedings and exercise its other remedies granted in this Deed of Trust against all or any part of the Trust Property and Grantor and Lessee waive any objections to the commencement or continuation of a foreclosure of this Deed of Trust or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay, remove, transfer or consolidate either any action under this Deed of Trust or such other proceedings on such basis. The commencement or continuation of proceedings to sell the Trust Property in a trustee's sale, to foreclose this Deed of Trust or the exercise of any other rights hereunder or the recovery of any judgment by Beneficiary or the occurrence of any sale by the Trustee in any such proceedings shall not prejudice, limit or preclude Beneficiary's right to commence or continue one or more trustee's sales, foreclosure or other proceedings or obtain a judgment against (or, in the case of a trustee's sale, to meet the statutory requirements for, any such sale of) any other collateral (either in or outside the State in which the Property is located) which directly or indirectly secures the Indebtedness, and Grantor and Lessee expressly waives any objections to the commencement of, continuation of, or entry of a judgment in such other sales or proceedings or exercise of any remedies in such sales or proceedings based upon any action or judgment connected to this Deed of Trust, and Grantor and Lessee also waive any rights to seek to dismiss, stay, remove, transfer or consolidate either such other proceedings or any action under this Deed of Trust on such basis. It is expressly understood and agreed that to the fullest extent permitted by law, Beneficiary may, at its election, cause the sale of all collateral which is the subject of a single foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Indebtedness (directly or indirectly) in the most economical and least time-consuming manner.

22. Successors and Assigns. All covenants of Grantor and Lessee contained in this Deed of Trust are imposed solely and exclusively for the benefit of Beneficiary and Trustee and their respective permitted successors and assigns, and no other person or entity shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in

whole or in part by Beneficiary or Trustee at any time if in the sole discretion of either of them such waiver is deemed advisable. All such covenants of Grantor shall run with the land and bind Grantor, the permitted successors and assigns of Grantor (and each of them) and all subsequent owners, encumbrances and tenants of the Trust Property, and shall inure to the benefit of Beneficiary, Trustee and their respective permitted successors and assigns. Without limiting the generality of the foregoing, any successor to Trustee appointed by Beneficiary shall succeed to all rights of Trustee as if such successor had been originally named as Trustee hereunder.

23. No Waivers, etc. Any failure by Beneficiary to insist upon the strict performance by Grantor or Lessee of any of the terms and provisions of this Deed of Trust shall not be deemed to be a waiver of any of the terms and provisions hereof, and Beneficiary, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Grantor or Lessee of any and all of the terms and provisions of this Deed of Trust to be performed by Grantor or Lessee. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the beneficiary of any subordinate deed of trust or the holder of any subordinate lien on the Trust Property, any part of the security held for the obligations secured by this Deed of Trust without, as to the remainder of the security, in anyway impairing or affecting the lien of this Deed of Trust or the priority of this Deed of Trust over any subordinate lien..

24. Governing Law, etc. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of [ ], except that Grantor expressly acknowledges that by its terms the Loan Facility Agreement and the Participation Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to principles of conflict of law, and for purposes of consistency, Grantor agrees that in any in personam proceeding related to this Deed of Trust the rights of the parties to this Deed of Trust shall also be governed by and construed in accordance with the laws of the State of New York governing contracts made and to be performed in that State, without regard to principles of conflict of law.

25. Receipt of Copy. Grantor and Lessee acknowledge that they have each received a true copy of this Deed of Trust.

26. Liability of Wilmington Trust Company. It is expressly understood and agreed by the parties hereto that (i) this Deed of Trust is executed and delivered by Wilmington Trust Company not individually or personally but solely as trustee of the Trust, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of Grantor is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose of binding only the Grantor, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto, and (iv) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of any party hereto, or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Grantor under this Deed of Trust or the other Operative Agreements.

This Deed of Trust has been duly executed by Grantor and Lessee as of the date first above written.

AUTO FACILITIES REAL ESTATE TRUST  
2001-1, a Delaware business trust, Grantor

By: Wilmington Trust Company, not in its  
individual capacity but solely as Trustee

By: \_\_\_\_\_  
Name:  
Title:

GENERAL MOTORS CORPORATION, a  
Delaware corporation, Lessee

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity as \_\_\_\_\_ of Wilmington Trust Company, not in its individual capacity, but solely as trustee of AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

(Affix official seal, if applicable)

STATE OF )  
 )  
COUNTY OF ) ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (he)(she) executed the same in (his)(her) capacity as \_\_\_\_\_ of GENERAL MOTORS CORPORATION, a Delaware corporation, and that by (his)(her) signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, after first having been duly authorized by said company so to do.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

(Affix official seal, if applicable)

Schedule A

Description of Land

EXHIBIT D-1

FORM OF OPINION OF INTERNAL COUNSEL TO LESSEE

[Letterhead of GM Legal Staff]

October \_\_, 2001

To Participants, Administrative Agent  
and Trustee, as each  
such term is defined in the Participation  
Agreement hereinafter referred to

Re: General Motors Corporation Synthetic Lease Transaction  
Eight Properties  
Auto Facilities Real Estate Trust 2001-1

Ladies and Gentlemen:

I am an attorney and member of the Legal Staff of General Motors Corporation, a Delaware corporation ("GM"). The Legal Staff has acted as counsel for GM (the "Lessee"), in connection with the transactions contemplated by the Participation Agreement, dated as of October \_\_, 2001 (the "Participation Agreement"), among Lessee, Auto Facilities Real Estate Trust 2001-1, a Delaware business trust ("Lessor"), Wilmington Trust Company, as trustee, BTM Capital Corporation and JH Equity Realty Investors, Inc., as Investors, Relationship Funding Company, LLC, various financial institutions referred to on Schedule I attached hereto, as Backup Facility Banks, and The Chase Manhattan Bank, as Administrative Agent. Capitalized terms used but not defined herein shall have the meanings assigned thereto in Annex A to the Participation Agreement. This opinion is being furnished pursuant to Section 6.1(m) of the Participation Agreement.

In connection with the opinions contained herein, I or members of the Legal Staff have examined and are familiar with originals of or copies identified to our satisfaction of the Operative Agreements to which the Lessee is a party (the "Lessee Documents"). In addition, I or members of the Legal Staff have examined such other documents, certificates, records and other matters as we have deemed necessary in connection with the expression of opinions hereinafter set forth.

We have assumed with your permission, without investigation, the genuineness of the signatures on all documents and instruments (other than the signatures of the Lessee upon the Lessee Documents), the authenticity of all documents presented to us as originals and the

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October \_\_, 2001

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conformity to originals of all documents presented to us as certified, photostatic, reproduced or conformed copies.

Based upon the foregoing, I am of the opinion that:

1. The Lessee is a corporation validly existing and in good standing under the laws of the State of Delaware, and the Lessee is duly qualified and is authorized to do business and is in good standing in each state in which any Property is located. The Lessee has full corporate power and authority to conduct its business as presently conducted.
2. The Lessee has the full corporate power and authority, and the legal right, to enter into, make, deliver, and perform its obligations under, each of the Lessee Operative Agreements. The Lessee has taken all necessary corporate action to authorize the execution, delivery and performance of the Lessee Operative Agreements. No consent or authorization of, approval by, notice to, filing with or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the execution, delivery or performance of the Lessee Operative Agreements by the Lessee.
3. Each of the Lessee Operative Agreements has been duly executed and delivered on behalf of the Lessee.
4. The execution and delivery of the Lessee Operative Agreements, the performance by the Lessee of its obligations thereunder, the consummation of the transactions contemplated thereby and, the compliance by the Lessee with any of the provisions thereof, all as provided therein, (a) will not violate, or constitute a default under, or contravene, any Legal Requirements of any Federal or Michigan law or, to the best of my knowledge, any Contractual Obligations of the Lessee, (b) will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues, except the security interests created pursuant to the Security Documents, (c) will not require any approval of the stockholders of Lessee, or approval or consent of any trustee or holder of any of Lessee's indebtedness or obligations, and (d) will not conflict with, result in any breach of, or constitute any default under, (i) Lessee's certificate of incorporation or (ii) Lessee's by-laws or board or shareholders' resolutions.
5. To the best of my knowledge, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or threatened by or against the Lessee: (a) with respect to the Lessee Operative Agreements, or (b) which could have a Material Adverse Effect.

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6. The Lessee is not (a) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended, or (b) a "holding company" as defined in, or otherwise subject to regulation under, the Public Utility Holding Company Act of 1935. The Lessee is not subject to regulation under any Federal or state statute or regulation which limits its ability to incur Indebtedness.

I am a member of the Bar of the State of Michigan. The opinions expressed herein are limited exclusively to the laws of the State of Michigan, the general corporation law of the State of Delaware and the Federal laws of the United States. Certain of the Lessee Documents purport to be governed by the laws of the State of New York or other states (other than the State of Michigan). I have assumed for purposes of this opinion letter that notwithstanding any statement in the Lessee Documents to the contrary, the Lessee Documents are solely governed by the laws of the State of Michigan.

This opinion is being furnished to you in connection with the Lessee Documents and the transactions described therein, and, except as may be required by applicable law or regulation, may not be used, quoted from, circulated to or relied upon by any other Person (other than any permitted assignee or transferee pursuant to the Participation Agreement) or used in any other context without my prior written consent. I assume no obligation to supplement this opinion if, after the date hereof, any applicable law changes or I become aware of any facts that might change the opinions set forth herein.

Very truly yours,

- DRAFT -

M. Gordon Ing

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**SCHEDULE I  
to Opinion**

List of Backup Facility Banks

The Chase Manhattan Bank  
Citibank, N.A.  
BNP Paribas  
HSBC  
CSFB

## EXHIBIT C TO PARTICIPATION AGREEMENT

### [CONSTRUCTION AGENT] REQUISITION

General Motors Corporation (the "Lessee"), acting as agent (in such capacity, the "Construction Agent") for AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust (the "Lessor"), pursuant to an Agency Agreement dated as of October 31, 2001 (the "Agency Agreement"), submits this Requisition and certifies, represents and warrants to each of the Lessor, the Backup Facility Banks, RFC, the Investors, and The Chase Manhattan Bank, as Administrative Agent (in such capacity, the "Administrative Agent"), as follows (capitalized terms used in this Requisition and not otherwise defined herein shall have the meaning assigned to such terms in Annex A to the Participation Agreement dated as of October 31, 2001 (as amended or otherwise modified from time to time), among the Lessee, the Lessor, the Backup Facility Banks, Relationship Funding Company, LLC, the Investors, Wilmington Trust Company, and The Chase Manhattan Bank, as Administrative Agent) in each case as of the date hereof:

1. Amount. (a) The total amount of the Advance requested by this Requisition is \$[ ]. The Advance will be comprised of Loans totaling 96.84% of the amount requested and Investor Contributions in the amount of 3.16% of the amount requested. The attached spreadsheet shows the dollar amount of Loans and Investor Contributions being requested by this Requisition.

(b) The attached spreadsheet shows the aggregate amount of Loans and Investor Contributions outstanding as of the date of this Requisition after giving effect to the Advances requested by this Requisition. The information on the attached spreadsheet is true and correct. There are currently \_\_\_\_ Properties under construction (including the Properties to which this Requisition relates) and, based upon the Budget, \$[ ] in the aggregate will be required to complete the Construction Improvements on such Properties on or before the Outside Completion Date [only for Construction Period Properties].

(c) The proceeds of this Advance will be used to pay the costs specified on the attached spreadsheet.

2. Date of Advance. The Construction Agent requests that the Advance be made on \_\_\_\_\_, 200[ ].

3. Type of Investor Contribution or Loan. The Construction Agent requests that the Investor Contributions referred to above shall bear Investor Yield based upon [the Eurodollar Rate with an Interest Period of \_\_\_\_ months] [and the Backup Facility Loans requested above shall bear interest based upon [ABR] [the Eurodollar Rate with an Interest Period of \_\_\_\_ months] [in the event funding is not through CP].

4. Proceeds. The Construction Agent represents and warrants that the proceeds of the Advance shall be used solely to pay the Project Costs (including interest on the

Loans during the Construction Period, Investor Yield during the Construction Period and Facility Fees payable during the Construction Period) and Transaction Expenses with respect to the Properties identified in this Requisition.

5. Representations and Warranties. The Construction Agent hereby represents and warrants as follows in each case as of the date hereof:

(a) The representations and warranties of the Construction Agent and the Lessee set forth in the Operative Agreements are true and correct on and as of the date hereof provided, that, with respect to property-related representations and warranties, the Lessee is only reaffirming those property-related representations and warranties relating to the Property or Properties for which any portion of such Advance is being requested for payment of the costs of acquisition of such Property (or the applicable Land) or construction of the applicable Improvements on such Property. The Construction Agent and the Lessee are in compliance with their respective obligations under the Operative Agreements and there exists no Default or Event of Default (other than a Lessor Default) under any of the Operative Agreements. No Default or Event of Default (other than a Lessor Default) will occur under any of the Operative Agreements as a result of the Advance requested by this Requisition.

(b) All conditions precedent contained in the Participation Agreement and in the other Operative Agreements relating to the Advance requested herein have been satisfied in full.

(c) The Budget for the Construction Period Properties is set forth in the attached spreadsheet.

(d) The attached spreadsheet shows how much has been expended to date for construction of the Construction Period Properties; and how much is needed to complete the construction of the Construction Period Properties.

6. Survival. The agreements, statements, representation and warranties contained in this Requisition shall survive and remain effective until the Loans and all other obligations under the Participation Agreement, Loan Facility Agreement and the other Operative Agreements are paid or otherwise satisfied in full by the Lessee and the Construction Agent, as applicable.

Date: \_\_\_\_\_

GENERAL MOTORS CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

[Spreadsheet To Be Attached to Requisition]

EXHIBIT D-1

FORM OF OPINION OF INTERNAL COUNSEL TO LESSEE  
[Letterhead of GM Legal Staff]

October \_\_, 2001

To Participants, Administrative Agent  
and Trustee, as each  
such term is defined in the Participation  
Agreement hereinafter referred to

Re: General Motors Corporation Synthetic Lease Transaction  
Eight Properties  
Auto Facilities Real Estate Trust 2001-1

Ladies and Gentlemen:

I am an attorney and member of the Legal Staff of General Motors Corporation, a Delaware corporation ("GM"). The Legal Staff has acted as counsel for GM (the "Lessee"), in connection with the transactions contemplated by the Participation Agreement, dated as of October \_\_, 2001 (the "Participation Agreement"), among Lessee, Auto Facilities Real Estate Trust 2001-1, a Delaware business trust ("Lessor"), Wilmington Trust Company, as trustee, BTM Capital Corporation and JH Equity Realty Investors, Inc., as Investors, Relationship Funding Company, LLC, various financial institutions referred to on Schedule I attached hereto, as Backup Facility Banks, and The Chase Manhattan Bank, as Administrative Agent. Capitalized terms used but not defined herein shall have the meanings assigned thereto in Annex A to the Participation Agreement. This opinion is being furnished pursuant to Section 6.1(m) of the Participation Agreement.

In connection with the opinions contained herein, I or members of the Legal Staff have examined and are familiar with originals of or copies identified to our satisfaction of the Operative Agreements to which the Lessee is a party (the "Lessee Documents"). In addition, I or members of the Legal Staff have examined such other documents, certificates, records and other matters as we have deemed necessary in connection with the expression of opinions hereinafter set forth.

We have assumed with your permission, without investigation, the genuineness of the signatures on all documents and instruments (other than the signatures of the Lessee upon the Lessee Documents), the authenticity of all documents presented to us as originals and the

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conformity to originals of all documents presented to us as certified, photostatic, reproduced or conformed copies.

Based upon the foregoing, I am of the opinion that:

1. The Lessee is a corporation validly existing and in good standing under the laws of the State of Delaware, and the Lessee is duly qualified and is authorized to do business and is in good standing in each state in which any Property is located. The Lessee has full corporate power and authority to conduct its business as presently conducted.

2. The Lessee has the full corporate power and authority, and the legal right, to enter into, make, deliver, and perform its obligations under, each of the Lessee Operative Agreements. The Lessee has taken all necessary corporate action to authorize the execution, delivery and performance of the Lessee Operative Agreements. No consent or authorization of, approval by, notice to, filing with or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the execution, delivery or performance of the Lessee Operative Agreements by the Lessee.

3. Each of the Lessee Operative Agreements has been duly executed and delivered on behalf of the Lessee.

4. The execution and delivery of the Lessee Operative Agreements, the performance by the Lessee of its obligations thereunder, the consummation of the transactions contemplated thereby and, the compliance by the Lessee with any of the provisions thereof, all as provided therein, (a) will not violate, or constitute a default under, or contravene, any Legal Requirements of any Federal or Michigan law or, to the best of my knowledge, any Contractual Obligations of the Lessee, (b) will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues, except the security interests created pursuant to the Security Documents, (c) will not require any approval of the stockholders of Lessee, or approval or consent of any trustee or holder of any of Lessee's indebtedness or obligations, and (d) will not conflict with, result in any breach of, or constitute any default under, (i) Lessee's certificate of incorporation or (ii) Lessee's by-laws or board or shareholders' resolutions.

5. To the best of my knowledge, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or threatened by or against the Lessee: (a) with respect to the Lessee Operative Agreements, or (b) which could have a Material Adverse Effect.

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6. The Lessee is not (a) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended, or (b) a "holding company" as defined in, or otherwise subject to regulation under, the Public Utility Holding Company Act of 1935. The Lessee is not subject to regulation under any Federal or state statute or regulation which limits its ability to incur Indebtedness.

I am a member of the Bar of the State of Michigan. The opinions expressed herein are limited exclusively to the laws of the State of Michigan, the general corporation law of the State of Delaware and the Federal laws of the United States. Certain of the Lessee Documents purport to be governed by the laws of the State of New York or other states (other than the State of Michigan). I have assumed for purposes of this opinion letter that notwithstanding any statement in the Lessee Documents to the contrary, the Lessee Documents are solely governed by the laws of the State of Michigan.

This opinion is being furnished to you in connection with the Lessee Documents and the transactions described therein, and, except as may be required by applicable law or regulation, may not be used, quoted from, circulated to or relied upon by any other Person (other than any permitted assignee or transferee pursuant to the Participation Agreement) or used in any other context without my prior written consent. I assume no obligation to supplement this opinion if, after the date hereof, any applicable law changes or I become aware of any facts that might change the opinions set forth herein.

Very truly yours,

- DRAFT -

M. Gordon Ing

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**SCHEDULE I  
to Opinion**

List of Backup Facility Banks

The Chase Manhattan Bank  
Citibank, N.A.  
BNP Paribas  
HSBC  
CSFB

EXHIBIT D-2

Form of Opinion of Special Local Counsel to Lessee

[The following form may be modified, as appropriate, for use in each state with respect to which an opinion of local counsel is required.]

\_\_\_\_\_, 2001

To Participants, Administrative Agent and Trustee, as each such term is defined in the Participation Agreement hereinafter referred to

*Re: 2001 Synthetic Lease Financing*

Ladies and Gentlemen:

We have acted as special counsel in the State of \_\_\_\_\_ (the "State") to General Motors Corporation, a Delaware corporation (the "Borrower"), in connection with the execution and delivery by Borrower of (a) the Lease (the "Lease"), dated as of \_\_\_\_\_, 2001, between Borrower as lessee and Auto Facilities Real Estate Trust 2001-1 ("Owner") as lessor, (b) the Lease Supplement (the "Lease Supplement"), dated as of \_\_\_\_\_, 2001, between Borrower and Owner, (c) the Participation Agreement dated as of \_\_\_\_\_, 2001 (the "Participation Agreement"), by and among (i) Borrower, (ii) Owner, (iii) Wilmington Trust Company, a Delaware banking corporation, as Trustee of Owner ("Owner Trustee"), (iv) the Investors (as defined in the Trust Agreement), (v) Relationship Funding Company, LLC, a Delaware limited liability company ("RFC"), (vi) the Backup Facility Banks (as defined in Appendix A to the Participation Agreement), and (vii) The Chase Manhattan Bank, a New York banking corporation, as Administrative Agent for RFC and the Backup Facility Banks ("Agent") and (d) the Mortgage dated as of \_\_\_\_\_, 2001 (the "Lender Mortgage") from Owner and Borrower to Agent. RFC and the Backup Facility Banks are sometimes collectively referred to hereinafter as "Lenders"; and Lenders and Investors are sometimes collectively referred to hereinafter as "Participants."

You have informed us that (i) pursuant to the Participation Agreement and related documents, Lenders will, on the date hereof, and from time to time thereafter, advance certain funds to Owner (the "Loan"); (ii) Owner will expend a portion of the Loan and the funds contributed by the Investors (the "Equity Amount") for the ultimate benefit of Borrower to finance the construction of certain improvements, including \_\_\_\_\_

To Participants, Administrative Agent and Trustee, as each such term is defined in the Participation Agreement hereinafter referred to

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\_\_\_\_\_ (the "Improvements"), on a parcel of land located in the City of \_\_\_\_\_ County, \_\_\_\_\_ (the "Land"); (iii) the Land is owned by Riverfront Holdings, Inc., a Delaware corporation and Borrower's wholly-owned subsidiary, and is being leased to Owner pursuant to a certain Ground Lease dated as of \_\_\_\_\_, 2001 (the "Ground Lease"); (iv) pursuant to the Agency Agreement and Agency Agreement Supplement (as referred to in Section I (D) below), Borrower will construct the Improvements on the Land; and (v) pursuant to the Lease and Lease Supplement, Borrower will lease or acquire from Owner beneficial ownership of the Land (subject to the Ground Lease) and the Improvements. In our capacity as special counsel in the State to Borrower, we are delivering these opinions to you pursuant to Section 6.2(p)(ii) of the Participation Agreement. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in Appendix A to the Participation Agreement.<sup>1</sup>

#### I. DOCUMENTS AND MATERIALS EXAMINED

In providing these opinions, we have examined the following documents:

- (A) The Participation Agreement.
- (B) The Lease.
- (C) The Lease Supplement.
- (D) Agency Agreement, dated as of \_\_\_\_\_, 2001, by and between Borrower and Owner, and supplemented by Agency Agreement Supplement dated as of \_\_\_\_\_, 2001, between such parties.<sup>2</sup>
- (E) UCC financing statement designating Borrower, as debtor, Owner, as secured party and Agent, as assignee (the "Borrower Financing Statement").
- (F) Structural Support Agreement dated as of \_\_\_\_\_, 2001 from General Motors Corporation, a Delaware corporation, to the Participants.
- (G) The Loan Facility Agreement, dated as of \_\_\_\_\_, 2001, among Owner, the Backup Facility Banks, RFC, and Agent.
- (H) The Lender Mortgage.

<sup>1</sup> To be revised appropriately for non-construction properties and non-ground leased properties.

<sup>2</sup> To be deleted for non-construction properties.

To Participants, Administrative Agent and Trustee, as each such term is defined in the Participation Agreement hereinafter referred to

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(I) Assignment of Leases, Rents and Structural Support Agreement, dated as of \_\_\_\_\_, 2001, from Owner to Agent and consented to by Borrower (the "Assignment of Leases").

(J) UCC financing statement designating Owner, as debtor, and Agent, as secured party (the "Lender Financing Statement").

(K) Pledge Agreement and Control Agreement dated as of \_\_\_\_\_, 2001, from Owner to Agent.

(L) Assignment of Contracts dated as of \_\_\_\_\_, 2001 from Owner to Agent and consented to by Borrower.

(M) Liquidity Agreement dated as of \_\_\_\_\_, 2001, among RFC, the Backup Facility Banks and Agent.

(N) Trust Agreement for Auto Facilities Real Estate Trust 2001-1 dated as of \_\_\_\_\_, 2001 (the "Trust Agreement") among Investors and Owner Trustee.

(O) Ground Lease for the Land and Short Form of Lease, each dated \_\_\_\_\_, 2001, from Borrower as lessor to Owner as lessee (the "Ground Lease" and "Ground Lease Memorandum", respectively).<sup>3</sup>

The documents described in this Section I are sometimes collectively referred to as the "Documents." The Documents described in Subsections (B) through (E) of this Section I are sometimes collectively referred to as the "Borrower Documents." The Documents described in Subsections (G) through (L) are sometimes collectively referred to as the "Lender Documents."

## II. ASSUMPTIONS

In rendering the opinions set forth in Section III hereof, we have relied upon the following assumptions (none of which we have independently investigated or verified):

(A) All Documents submitted to us as originals are authentic, true, accurate and complete, all Documents submitted to us as copies conform to original documents which are themselves authentic, true, accurate and complete; and the factual matters and statements asserted therein were true, accurate and complete when asserted and remain true, accurate and

<sup>3</sup> To be deleted for non-ground leased properties.

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complete as of the date hereof. All Documents have been executed and delivered in the respective forms most recently reviewed by us, except that all blanks have been properly filled in and all exhibits have been attached. All signatures on the Documents are genuine, and all individual signatories have the requisite legal capacity.

(B) Without intending to subsume our opinions in Sections III (F), (G) and (H) hereof, all documents required to be recorded and/or filed in order to be effective against third parties, to perfect the rights of Owner, Agent or Participants under the Documents, as applicable, or for any other reason have been or will be duly and properly recorded and/or filed within any applicable time period.

(C) Owner owns a [leasehold interest as the ground lessee] [fee interest] in the Land; Borrower or Owner, as applicable, owns or will acquire the remainder of the respective (corresponding) interests in the real and/or personal property collateral intended to be encumbered by the Borrower Documents or Lender Documents, as applicable; such collateral is fully, accurately and consistently described in the respective Documents; none of such collateral consists of equipment used in farming operations, property subject to an agricultural lien, farm products or accounts or general intangibles arising from or relating to the sale of farm products, consumer goods, crops, timber, timber to be cut, as-extracted collateral, minerals or the like (including oil and gas) or accounts or general intangibles resulting from the sale thereof, claims against or receivables due from the United States or any state government or any agency or department thereof, beneficial interests in a decedent's estate, letters of credit or letter-of-credit rights, certificated or uncertificated securities, investment property, deposit accounts, instruments, mobile goods, or property that is subject to a requirement of any jurisdiction that provides for a registration or certificate of title or a filing other than a filing under Article 9 of the UCC as in effect in the State (the "UCC"); none of such collateral is subject to a possessory security interest; no prior or competing lien, encumbrance, lease, judgment, order, contract or agreement impairs the rights of Borrower, Owner, Riverfront Holdings, Inc., Agent, or any of the Participants to lease the Land or to perform or enforce the Borrower Documents or the Lender Documents, as applicable; and all real and tangible personal property collateral is located in Wayne County in the State.

(D) All provisions of the Documents purporting to be governed by the law of a jurisdiction other than the State are legal, valid and binding under the law of such other jurisdiction.

(E) Owner Trustee is a duly formed and validly existing Delaware banking corporation, in good standing under the laws of the State of Delaware and is duly appointed and constituted as Owner Trustee for Investors under and pursuant to the terms of the Trust Agreement. Owner Trustee has the requisite power and authority under the laws applicable to it, its organizational documents and resolutions and the Trust Agreement to act as the Trustee of

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Owner and in such capacity to cause Owner to borrow the Loan and to advance all amounts to be advanced under the Borrower Documents, to execute, deliver, and perform its obligations under the Lender Documents and the Borrower Documents, as applicable, and to acquire and own its leasehold interest as the ground lessee under the Ground Lease in the Land and construct or cause Borrower to construct the Improvements thereon (such Improvements, together with all interests in the Land acquired by Owner under the Ground Lease, being referred to herein as the "Premises") and to lease the Premises to Borrower and accept and hold a mortgage thereon; Owner Trustee has duly executed and delivered each of the Documents to be executed by it in its individual capacity and has executed in its capacity as trustee each of the Documents to be executed by Owner; Owner Trustee is and will be in compliance with the Trust Agreement and all laws, rules and regulations relevant to borrowing the Loan, acquiring and leasing the Premises, acting as mortgagee with respect thereto, performing of its obligations under any applicable Documents and enforcing its rights with respect thereto; the Documents executed by or accepted by or on behalf of Owner Trustee constitute the legal, valid and binding obligations of Owner Trustee, enforceable against Owner Trustee in its individual capacity in accordance with their terms.

(F) Owner is a duly formed and validly existing Delaware business trust, in good standing under the laws of the State of Delaware. Owner has the requisite power and authority under Delaware law and the Trust Agreement to borrow the Loan and to advance all amounts to be advanced under the Borrower Documents, to execute, deliver and perform its obligations under the Lender Documents, the Borrower Documents and the Ground Lease, as applicable, to acquire and hold its interest in the Premises and lease, or convey beneficial ownership of, the Premises to Borrower, and to accept and hold a mortgage thereon; Owner has duly executed and delivered each of the Documents to be executed by it; Owner is and will be in compliance with all laws, rules and regulations relevant to borrowing the Loan, acquiring, and leasing or conveying the Premises, acting as lessor or mortgagee with respect thereto, performance of its obligations under any applicable Documents and enforcing its rights with respect thereto.

(G) Each of Participants is a duly formed and validly existing banking corporation or business corporation and is in good standing under the laws of its respective jurisdiction of formation; each of Participants has full power and authority under applicable foreign, federal and state banking, corporation and other applicable laws, rules and regulations, to advance or expend the Loan or Equity Amount, to execute, deliver, incur and perform its obligations under the Documents and to enforce its rights thereunder; the making of the Loan by Lenders and the contribution of funds by Investors to Owner have been authorized by all requisite corporate action by each of the Participants, as applicable; the Participants have duly executed and delivered each of the Documents to be executed by each. Each of the Participants is and will be in compliance with all laws, rules and regulations relevant to its contributing, lending or advancing of funds to Owner or for the benefit of Borrower, the performance of its obligations under the Documents and with respect to the enforcement of its rights with respect thereto; and

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the Documents executed by or accepted by or on behalf of each of the Participants constitute the legal, valid and binding obligations of such Participant, enforceable against such Participant in accordance with their terms. The assumptions in this Subsection II (G) relating to laws, rules and regulations are not intended to subsume our opinions in Sections III (I) and (K) and shall not be deemed to extend to the specific matters on which we have opined in those Sections.

(H) Owner has advanced and expended or will advance and expend funds to or for the benefit of Borrower in accordance with the terms of the Documents. The Lenders have advanced or will advance the Loan to Owner pursuant to the terms of the Lender Documents. The Investors have contributed or will contribute the Equity Amount to Owner Trustee under the terms of the documents governing such transactions.

(I) Agent is a duly formed and validly existing New York banking corporation and is in good standing under the laws of the State of New York. Agent has been duly appointed and constituted as Agent for Lenders and has the requisite power and authority under the laws applicable to it, its organizational documents and resolutions to act in such capacity; Agent has duly executed and delivered each of the documents to be executed by it; Agent is and will be in compliance with all laws, rules and regulations relevant to its appointment as Agent, the performance of its obligations under any applicable Documents and enforcing its rights with respect thereto; the Documents executed by or accepted by or on behalf of Agent constitute the legal, valid and binding obligations of Lenders, enforceable against Lenders in accordance with their terms. Agent's exact full legal name and address is accurately set forth on the Lender Financing Statement in the boxes designating the secured party.

(J) Borrower is a duly formed and validly existing Delaware corporation and is in good standing under the laws of the State of Delaware; Borrower has been duly authorized to transact business, and is in good standing, in the State. Borrower has and will have the requisite corporate power and authority, at all applicable times, (i) to lease as lessor or lessee, own, improve, carry out construction on the Premises, mortgage as owner and operate the Premises and (ii) to execute and deliver, and perform its obligations under, the Documents. Borrower has been duly authorized by all requisite corporate action to enter into the Documents and to incur and perform its obligations thereunder; all Documents to which Borrower is a party have been duly executed and delivered by Borrower.

(K) With respect to any real or personal property collateral subject to the liens or security interests created under the Lender Documents (collectively, the "Owner Collateral"):

(i) Owner has title to each existing item of Owner Collateral existing on the date hereof and has "rights" in and to the Owner Collateral within the meaning of section 9-203 of the UCC consistent with and sufficient for purposes of the Lender

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Documents, and the same will be true of each item of Owner Collateral acquired by Owner after the date hereof; and value has been given.

(ii) Owner is not deemed "located" (as such term is used in Section 9-307 of the UCC) in the State.

(iii) No Uniform Commercial Code financing statement was filed with respect to the Owner Collateral on or before June 30, 2001.

(L) (i) The only contacts of Agent and Lenders with the State are in the capacities (to the extent applicable to each) of secured party and mortgage lien holder under the Lender Documents; (ii) the Loan will be closed and disbursed to Owner from an office in New York and repaid to an office of Agent in New York; (iii) Agent, Lenders and Owner have agreed that the Loan (with the exception of portions of the Lender Mortgage and the Assignment of Leases) is to be governed by New York law; (iv) Agent and Lenders have no offices in the State or contractual arrangements for using offices of other depository institutions in the State; (v) Agent and Lenders have no employees in the State and no trade goods or personal property in the State; (vi) Agent and Lenders are not accepting deposits, paying checks or lending money at offices maintained in the State nor do they benefit from contractual or reciprocal arrangements to do so; (vii) the Loan is not in the course of a number of repeated transactions by Agent or Lenders in the State; (viii) Agent and Lenders conduct no activities in the State not in connection with the Loan which separately or in the aggregate, without reference to the Loan, could cause Agent or Lenders to be deemed to be engaged in the business of banking in the State or otherwise transacting business in the State; and (ix) none of the Lender Documents will be physically maintained by Agent or Lenders in the State (without referring herein to the Lender Documents that have been recorded or filed in governmental offices in the State to provide notice of or perfect liens or security interests).

### III. OPINIONS

Based upon our review of the Documents described in Section I and upon the assumptions set forth in Section II, and subject to the exceptions and limitations set forth in Section IV, it is our opinion that:

(A) To the extent governed by the substantive laws of the State, the Borrower Documents (without referring in this Subsection to the Lease and Lease Supplement, which are addressed in Subsections (F) and (G) below, or to the Borrower Financing Statement) constitute legal, valid and binding obligations enforceable against Borrower in accordance with their respective terms.

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(B) To the extent governed by the substantive laws of the State, the Lender Documents (without referring herein to the Lender Financing Statements) constitute legal, valid and binding obligations of Owner, enforceable against Owner in accordance with their respective terms.

(C) Neither the execution and delivery of the Lender Documents, the execution and delivery of the Borrower Documents nor the incurrence by the parties thereto of their respective obligations thereunder violates any law or regulation of the State or requires the consent or approval of, or any recordation, filing or registration with, any governmental body, agency or authority under any laws of the State, other than the recordings and filings referred to in Sections III(F) and (G) hereafter.

(D) If (hypothetically and notwithstanding the stipulation of the parties to the contrary) all payment terms applicable to Owner with respect to the Loan and to Borrower with respect to the Borrower Obligations were to be governed by the substantive laws of the State, the respective amounts to be charged Owner and Borrower under the Lender Documents or the Borrower Documents, as applicable, would not be usurious under the laws of the State.

(E) The Lender Mortgage, Lease Supplement, Assignment of Leases, Borrower Financing Statement and Lender Financing Statement are in appropriate form for recording in the State.

(F) If the transactions provided for in the Lease and Lease Supplement are determined by a court of competent jurisdiction to constitute a secured borrowing by Borrower for purposes of the exercise of remedies thereunder and any enforcement thereof, which preserves ownership of the Premises in Borrower, and not a lease, then:

(i) To the extent governed by the substantive law of the State, the Lease and Lease Supplement, collectively, constitute legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, except that no opinion is given in this Subsection (F) with respect to the enforceability of any Landlord Remedies (as defined in Subsection (G)(i) below) set forth in the Lease or Lease Supplement.

(ii) The Lease Supplement is sufficient in form to create a valid mortgage lien in favor of Owner in the Premises.

(iii) The Lease Supplement, when duly recorded and indexed with the Register of Deeds for \_\_\_\_\_ County in the State (the "Register of Deeds Office"), will have been recorded in all public offices in the State where recording is necessary so as to give constructive notice thereof to third parties.

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and Trustee, as each such term is defined  
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(iv) To the extent governed by the substantive law of the State, the Lease and Lease Supplement are sufficient in form to create a valid security interest under the UCC in favor of Owner in the personal property collateral owned by Borrower and described in the grant of security interest therein (the "Borrower Collateral").

(v) The Lease Supplement is in form effective to create a right of foreclosure in the Premises in favor of Owner upon a material default of the Borrower thereunder.

(vi) The Assignment of Leases is in form effective to assign the security interest in the Borrower Collateral and the mortgage lien created under the Lease Supplement to the Agent.

(vii) Upon the due recording and proper indexing of the Lease Supplement and Assignment of Leases in the Register of Deeds Office and the due filing, due recording and proper indexing of the Borrower Financing Statement and Lender Financing Statement in the Register of Deeds Office, Agent will have a perfected security interest in that part of the Borrower Collateral constituting fixtures.

(vii) The recordings and filings described in this Subsection (F) are the only recordings and filings necessary to give constructive notice to third parties of the grant by Borrower of a mortgage lien in the Premises and the assignment thereof to Agent and to perfect the security interest of Agent in the fixtures described in the Lease Supplement and Borrower Financing Statement; and no approval or consent of any governmental authority of the State is required therefor.

(G) If, notwithstanding the expressions of the intent of the parties as set forth in the Lease and Lease Supplement, the Lease and Lease Supplement are determined by a court of competent jurisdiction to constitute a true lease or leasing arrangement for purposes of the exercise of remedies thereunder and any enforcement thereof and not a secured borrowing, then;

(i) To the extent governed by the substantive law of the State, the Lease and Lease Supplement, collectively, constitute legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with those terms therein (the "Landlord Remedies") purporting to be applicable to the leasing arrangement thereunder.

(ii) The Lender Mortgage is sufficient in form to create a valid mortgage lien in favor of Agent in the Premises, enforceable in accordance with its terms against Owner and Borrower.

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(iii) The Assignment of Leases is sufficient in form to create a valid and enforceable assignment of rents with respect to the Premises.

(iv) When duly recorded and indexed in the Register of Deeds Office, the Lender Mortgage and the Assignment of Leases will have been filed or recorded in all public offices in the State in which such filing or recording is necessary to give constructive notice to third parties of a valid and enforceable mortgage lien on the Premises and a valid and enforceable assignment of rents. (We note that the Assignment of Rents Statute of the State requires, among other things, separate notice as well as a copy of the assignment document to be served on tenants in the event of the exercise by an assignee of an assignment of rents after a default by the assignor, and requires separate recording of a notice of default with the Register of Deeds Office.)

(v) Upon the due recording and proper indexing of the Lender Mortgage in the Register of Deeds Office and the due filing, due recording and proper indexing of the Lender Financing Statement, agent will have a perfected security interest in that part of the Owner Collateral constituting fixtures.

(vi) The recordings and filings described in this Section I(G) are the only recordings and filings necessary to give constructive notice to third parties of the mortgage lien granted to Agent and to perfect the security interest of Agent in the fixtures described in the Lender Mortgage and Lender Financing Statement; and no approval or consent of any governmental authority of the State is required therefor.

(H) Under Section 9-301 of the UCC, perfection of the security interest in the remaining portion of the Owner Collateral and Borrower Collateral which is subject to the UCC (i.e., other than security interests in goods which are fixtures located in Michigan), is governed by the law of the State of Delaware, which is the jurisdiction under which each of Borrower and Owner is formed.

(I) The question has been raised as to whether the making of the Loan by Lenders, the holding of the Lender Documents by Agent or the foreclosure by Agent of the liens and security interests granted under the Documents (without reference to the exercise of any remedies other than foreclosure and without reference to the owning, operating, managing, selling or receiving of income from the Premises following a foreclosure) (the "Loan Activities") should constitute "doing business" in the State such that Agent or any Lender would be required to "qualify" to transact business in the State.

It is our opinion that solely by virtue of engaging in the Loan Activities, none of the Lenders or Agent should be deemed to be "doing business" in the State such that it would be

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+required to obtain a certificate of authority to transact business in the State, assuming that such party has no activities in the State other than the Loan Activities.

It is also our opinion that solely by virtue of making its respective Investor Contribution and executing and delivering the Trust Agreement and Participation Agreement, none of the Investors will be deemed to be "doing business" in the State such that it would be required to obtain a certificate of authority to transact business in the State, assuming that such Investors have no activities in the State (including without limitation, maintaining any office in the State), other than the foregoing activities.

(J) Except for nominal filing or recording fees, no intangible or documentary stamp taxes, transfer taxes or similar charges are payable to the State, or to any jurisdiction therein, on account of the execution, delivery or recording or filing of any of the Lender Documents or Borrower Documents. You should note, however, that in the process of carrying out a foreclosure, accepting a deed in lieu of foreclosure or other enforcement proceedings, applicable publication, sheriff or court filing and other fees, transfer taxes and recording fees will apply.

(K) There is no law of the State which would prohibit Owner Trustee from acting as a fiduciary in the State in connection with the exercise of its responsibilities under the Trust Agreement, the Participation Agreement or any other Document.

(L) Under the law of the State the Lender Mortgage and Lease Supplement will secure future advances with the same priority as that accorded with respect to the initial advance made thereunder.

(M) The law (statutory or otherwise) of the State does not require a lienholder to make an election of remedies such that, where such lienholder holds security interests and liens on real and/or personal property of a debtor, the secured party would be required to take recourse first or solely against or otherwise exhaust its remedies against its collateral before otherwise proceeding to enforce against such debtor the obligations of such debtor. Further, subject to compliance with the State's statutory and procedural requirements and the need to obtain a deficiency judgment in a separate action after foreclosure by advertisement, and assuming no valid defenses with respect to any deficiency under any foreclosure action or proceeding, under the laws of the State, in general, a lender may obtain a deficiency judgment to the extent any deficiency remains unpaid after application against the indebtedness of the proceeds (or reduction of the indebtedness because of any credit bid made by the holder of a mortgage) arising from the foreclosure of a mortgage.

(N) [Owner is not required to qualify to do business in the State solely by virtue of executing and delivering the Documents to which it is a party or performing its obligations or exercising its rights thereunder.] [Because of its activities in connection with the Premises, Owner may be

To Participants, Administrative Agent  
and Trustee, as each such term is defined  
in the Participation Agreement hereinafter  
referred to

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required to obtain a certificate of authority to transact business in the State. It is legally possible for a Delaware business trust to obtain a certificate of authority to transact business in the State. In the event that Owner does not initially obtain such certificate but it is later determined that Owner should have obtained such certificate, Owner is not prevented from later applying for and receiving such certificate. Under the applicable law of the State, a foreign corporation transacting business in the State without a certificate of authority shall not maintain an action or proceeding in any court of the State until the corporation has obtained a certificate of authority. An action commenced by a foreign corporation having no certificate of authority shall not be dismissed if a certificate of authority has been obtained before the order of dismissal. However, any such order of dismissal shall be without prejudice to the recommencement of such action or proceeding by the foreign corporation after it obtains a certificate of authority; and, furthermore, failure of a foreign corporation to obtain a certificate of authority to transact business in the State does not impair the validity of a contract or act of the corporation and does not prevent the corporation from defending an action or proceeding in a court of the State. In addition, such corporation may be subjected to the following monetary penalties: \_\_\_\_\_

(O) The Documents contain terms and provisions sufficient to enable Agent to avail itself of remedies which are customarily provided to commercial real estate lien holders in similar transactions.

(P) To the extent the Lease and Lease Supplement are determined by a court of competent jurisdiction to be a true lease or leasing arrangement and not a secured borrowing, neither the execution and delivery of the Lease Supplement nor the enforcement by Owner of its Landlord Remedies impairs the mortgage lien on the Owner's interest in the Premises granted in the Lender Mortgage.

#### IV. EXCEPTIONS AND LIMITATIONS

The foregoing opinions are subject to the following exceptions and limitations:

(A) Any limitations imposed by and the effect of all applicable bankruptcy, fraudulent conveyance, reorganization, insolvency, moratorium or similar laws, at any time generally in effect with respect to the enforcement of creditors' rights.

(B) General principles of equity, whether applied by a court of law or equity.

<sup>4</sup> Local counsel to provide appropriate state-specific advice regarding the Owner's need to obtain a certificate of authority to transact business in the State and regarding its ability to do so if necessary.

To Participants, Administrative Agent  
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(C) [Customary state-specific exception for specific rights and remedies.]

(D) No opinion is given with respect to the availability or non-availability of the remedy of specific performance.

(E) No opinion is given with respect to the effect of any state or federal securities, tax (except to the extent of the opinion set forth in Section III (J) hereof), ERISA, antitrust, insurance, banking or truth-in-lending or other credit laws or regulations which may be applicable to this transaction.

(F) No opinion is given with respect to the enforceability of any provisions in the Documents which may provide for compound interest or interest on interest.

(G) No opinion is given as to matters of title, priority, attachment or, except to the extent discussed in Sections III (F), (G) and (H) hereof, perfection with respect to any real or personal property or as to any mortgage, lien or security interest therein. Furthermore, any opinions with respect to the requirements for filing or recording in the State in order to perfect or give record or constructive notice of security interests and real property liens are subject to the qualification that Section 9-515 of the UCC requires the filing of a continuation statement within six months prior to the expiration of each successive five-year period following the original filing of a financing statement in order to continue perfection.

We further call to your attention that (i) in the case of proceeds, continuation of perfection of a security interest therein is limited to the extent set forth in Section 9-315 of the UCC, (ii) the perfection of the security interests will be terminated under Section 9-507 of the UCC as to any collateral acquired by any entity granting the security interest therein more than four months after such entity changes its name so as to make a filed financing statement seriously misleading, unless an appropriate new UCC financing statement is properly filed before the expiration of such four months, and (iii) a buyer may take free of the security interest pursuant to Section 9-320 of the UCC, and (iv) under Section 552 of the United States Bankruptcy Code (11 U.S.C. 552) property acquired by a debtor after the commencement of a case under the Bankruptcy Code may not be subject to a security interest resulting from a security agreement entered into by the debtor before the commencement of the case. Other filings may be required under the UCC in the future in the event that Borrower or Owner changes its location to another jurisdiction or other future circumstances occur which trigger, under specific provisions of the UCC, a filing requirement in order to maintain perfection.

(H) No opinion is given with respect to the enforceability of any "due on encumbrance" clause or as to whether so-called "due-on-sale" as well as "due-on-encumbrance" clauses are enforceable in those circumstances in which they are "triggered" by violations of

To Participants, Administrative Agent and Trustee, as each such term is defined in the Participation Agreement hereinafter referred to

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restrictions on the transfer or encumbering of partnership interests or shares of stock in any corporation.

(I) No opinion is given with respect to any late charges, penalties, forfeitures, liquidated or other pre-measured damages or limitations thereon or any prepayment premiums.

(J) No opinion is given with respect to the granting or enforcement of any lien or security interest in any governmental license, permit or approval.

(K) No opinion is given regarding the enforceability of any provisions of the Documents that provide for a party to act as agent and/or attorney-in-fact for any party, nor regarding any action taken by such agent or attorney-in-fact pursuant to such provision.

(L) No opinion is given with respect to the ultimate legal characterization of the Lease and Lease Supplement (individually or collectively) as a lease, a mortgage, installment sale or other instrument, with respect to the ultimate legal characterization of the Assignment of Leases as an absolute assignment or an assignment for security or with respect to any dual characterization contained in any Document; and except for the specific opinions set forth in Section III(M) above, no opinion is given with respect to (i) any procedural requirements associated with enforcement; (ii) the effect or consequences of the exercise of the Landlord Remedies under the Lease and Lease Supplement on the exercise and availability of the remedy of foreclosure or other rights and remedies under the Lease and Lease Supplement which pertain to the grant by the Borrower thereunder of a mortgage (the "Mortgage Remedies"), (iii) the effect or consequences of the exercise of the Mortgage Remedies under the Lease and Lease Supplement on exercise and availability of the Landlord Remedies, or (iv) the effect or consequences of any attempt by any party other than Agent to exercise any of the remedies provided under the Documents.

(M) No opinion is given with respect to the enforceability of any provisions purporting to make an assignment or other action undertaken in violation thereof void.

(N) No opinion is given with respect to any choice of law, forum selection, venue, service of process, consent to personal or subject matter jurisdiction or waiver of jury trial provisions in any Document.

(O) No opinion is given with respect to the effect of the compliance or non-compliance of any party with any state, federal or other laws or regulations applicable to its legal or regulatory status or the nature of its business, except for the opinions set forth in Sections III (I), (K) and (N).

To Participants, Administrative Agent  
and Trustee, as each such term is defined  
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referred to

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(P) These opinions are based solely on the laws of the State and where applicable, the laws of the United States, but without regard to conflict of laws principles of the State or of the United States, and no opinion is given with respect to the laws of any other jurisdiction, nor do we express any opinion regarding any choice of law provision contained in any of the Documents or as to which jurisdictions' laws actually govern any of the Documents.

(Q) These opinions are given solely to (i) Owner Trustee, (ii) Participants and (iii) any other institutional lenders or institutional investors which are or may become parties to, and advance funds under, the Participation Agreement or any Lender Documents, and these opinions may not be relied upon by any other person or entity or in connection with any other matter.

(R) These opinions are given only as of the date hereof and do not contemplate, and no opinion is given with respect to, future events or subsequent changes in law or fact.

Very truly yours,

DET\_C\452746.4  
PGR 11/01/2001 2:55 PM

EXHIBIT D-3

November \_\_, 2001

To Each of the Parties Listed  
on Schedule A Attached Hereto

Re: Auto Facilities Real Estate Trust 2001-1

Ladies and Gentlemen:

We have acted as special Delaware counsel for Auto Facilities Real Estate Trust 2001-1, a Delaware business trust (the "Trust"), and as Delaware counsel for Wilmington Trust Company, a Delaware banking corporation (in its individual capacity, the "Trust Company," and solely in its capacity as Trustee of the Trust, the "Trustee"), for purposes of giving the opinions set forth herein. This opinion letter is being furnished to you at the request of the Trust Company pursuant to Section 6.1(m)(ii) of the Participation Agreement, dated as of November \_\_, 2001 (the "Participation Agreement"), among General Motors Corporation, as Lessee, the Trust, as Lessor, the Trust Company, not in its individual capacity except as set forth therein, but solely as Trustee, Various Financial Institutions, as Investors, Relationship Funding Company, LLC, Various Financial Institutions, as Backup Facility Banks, and The Chase Manhattan Bank, as Administrative Agent. Capitalized terms used herein and not otherwise defined are used as defined in or by reference in the Participation Agreement, except that reference herein to any documents shall mean such documents as in effect on the date hereof.

For purposes of this letter, our review of documents has been limited to the review of originals or copies furnished to us of the following documents:

- (a) the Trust Agreement;
- (b) the Certificates issued by the Trust on the date hereof (the "Certificates");
- (c) the Participation Agreement;

- (d) the Loan Facility Agreement;
- (e) the Lease, exclusive of any Memorandum of Lease and Supplement (the "Lease");
- (f) the Pledge Agreement;
- (g) the Contract Assignment;
- (h) the Agency Agreement;
- (i) the Lessor Financing Statements;
- (j) the Certificate of Trust of the Trust, as filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on November \_\_, 2001 (the "Certificate of Trust");
- (k) a Certificate of Good Standing for the Trust Company, obtained as of a recent date from the Secretary of State;
- (l) a Certificate of Good Standing for the Trust, obtained as of a recent date from the Secretary of State; and
- (m) one or more certificates of an officer of the Trust Company, dated as of November \_\_, 2001 (the "Officer's Certificate"), certifying as to, among other things, the amended charter of the Trust Company attached thereto (the "Charter") and the amended bylaws of the Trust Company attached thereto (the "Bylaws").

The Participation Agreement and the Trust Agreement are hereinafter referred to collectively as the "Trust Company Documents." The Certificates, the Participation Agreement, the Loan Facility Agreement, the Lease, the Pledge Agreement, the Contract Assignment, and the Agency Agreement are hereinafter referred to collectively as the "Trust Documents." The Participation Agreement, the Loan Facility Agreement, the Lease, the Pledge Agreement, the Contract Assignment, and the Agency Agreement are hereinafter referred to collectively as the "New York Documents". For purposes of this letter, we have not reviewed any documents other than the documents referenced in paragraphs (a) through (m) above and certain written statements of governmental authorities and others referenced in this paragraph. In particular, we have not reviewed and express no opinion as to any other document that is referred to in, incorporated by reference into, or attached to any of the documents reviewed by us. The opinions in this letter relate only to the documents specified in such opinions, and not to any exhibit, schedule, or other attachment to, or any other document referred to in or incorporated by reference into, any of such documents. We have assumed that there exists no provision in any document that we have not reviewed that bears upon or is inconsistent with or contrary to the opinions in this letter. We have conducted no factual investigation of our own, and have relied solely upon the documents reviewed by us, the statements and information set forth in such

To Each of the Parties Listed  
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documents, certain statements of governmental authorities and others (as applicable), and the additional matters recited or assumed in this letter, all of which we assume to be true, complete, and accurate in all respects and none of which we have independently investigated or verified.

Based upon and subject to the foregoing and subject to the assumptions, exceptions, qualifications, and limitations in this letter, it is our opinion that:

1. The Trust Company has been duly incorporated and is validly existing in good standing as a Delaware banking corporation under the laws of the State of Delaware.
2. The Trust Company has corporate power and authority to execute and deliver, and to perform its obligations under, the Trust Company Documents.
3. The Trust Company's execution and delivery of, and performance of its obligations under, each of the Trust Company Documents have been duly authorized by the Trust Company, and each of the Trust Company Documents has been duly executed and delivered by the Trust Company.
4. The Trust Company's execution and delivery of, and performance of its obligations under, the Trust Company Documents: (a) are not prohibited by the Charter or Bylaws, the laws of the State of Delaware, or federal laws of the United States of America governing the banking and trust powers of the Trust Company; (b) to our knowledge, are not prohibited by any judgment or order entered against the Trust Company in an action or proceeding to which the Trust Company is a party by any court or administrative agency of the State of Delaware or by any administrative agency of the United States of America governing the banking and trust powers of the Trust Company; and (c) to our knowledge, do not result in a breach of, or constitute a default under, any indenture, mortgage, contract, or other agreement or instrument (other than the Trust Company Documents) to which the Trust Company is a party.
5. No consent, approval, or authorization of, registration or filing with, or notice to, any administrative agency of the State of Delaware or of the United States of America is required under the laws of the State of Delaware or federal laws of the United States of America governing the banking and trust powers of the Trust Company to be obtained, made, or given by the Trust Company for the Trust Company's execution and delivery of the Trust Company Documents, and the Trust Company's performance of its obligations under the Trust Company Documents.
6. To our knowledge, there are no actions, suits, investigations, or proceedings pending before or by any court of the State of Delaware or any federal court sitting in Delaware,

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or any administrative agency of the State of Delaware or of the United States of America governing the banking and trust powers of the Trust Company against the Trust Company which, if determined adversely to the Trust Company, would materially adversely affect the ability of the Trust Company to perform its obligations under the Trust Company Documents.

7. The Trust has been duly formed and is validly existing in good standing as a business trust under the Delaware Business Trust Act, 12 Del. C. §§ 3801 et seq. (the "DBT Act").

8. The Trust has power and authority under the DBT Act and the Trust Agreement to execute and deliver the Trust Documents and the Lessor Financing Statements, and to perform its obligations under the Trust Documents.

9. The Trust's execution and delivery of the Trust Documents and the Lessor Financing Statements, and performance of its obligations under each of the Trust Documents, have been duly authorized by the Trust, and each of the Trust Documents and the Lessor Financing Statements has been duly executed and delivered by the Trust.

10. The Trust's execution and delivery of the Trust Documents and the Lessor Financing Statements, and performance of its obligations under the Trust Documents: (a) are not prohibited by the Trust Agreement or the laws of the State of Delaware; (b) to our knowledge, are not prohibited by any judgment or order entered against the Trust in an action or proceeding to which the Trust is a party by any court or administrative agency of the State of Delaware; and (c) to our knowledge, do not result in a breach of, or constitute a default under, any indenture, mortgage, contract, or other agreement or instrument (other than the Trust Documents) to which the Trust is a party.

11. No consent, approval, or authorization of, registration or filing with, or notice to, any administrative agency of the State of Delaware is required under the laws of the State of Delaware to be obtained, made, or given by the Trust for the Trust's execution and delivery of the Trust Documents and the Lessor Financing Statements, and the Trust's performance of its obligations under the Trust Documents.

12. To our knowledge, there are no actions, suits, investigations, or proceedings pending before or by any court of the State of Delaware or any federal court sitting in Delaware, or any administrative agency of the State of Delaware which, if determined adversely to the Trust, would materially adversely affect the ability of the Trust to perform its obligations under the Trust Documents.

13. Under Section 3808(a) of the DBT Act: (a) except to the extent otherwise provided in the Trust Agreement, the Trust shall have perpetual existence; and (b) the Trust may not be terminated or revoked by an Investor (as defined in the Trust Agreement) as a beneficial owner of the Trust or other person except in accordance with the terms of the Trust Agreement.

14. Under Section 3805(b) of the DBT Act, no creditor of an Investor as a beneficial owner of the Trust shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the Trust, except in accordance with the terms of the Trust Agreement.

15. Under Section 3805(c) of the DBT Act, except to the extent otherwise provided in the Trust Agreement, an Investor as a beneficial owner of the Trust has no interest in specific business trust property of the Trust.

16. **In a legal proceeding against the Trust relating to the enforcement of the obligations of the Trust under any of the New York Documents, properly commenced in a court of the State of Delaware or a federal court of the United States of America sitting in Delaware, if such court were to hold, notwithstanding the choice of law provision contained in such New York Document that provides that such New York Document is to be governed by the laws of the State of New York or another specified jurisdiction, that such New York Document is to be governed by the laws of the State of Delaware (without regard to principles of conflicts of law), and if the question were properly presented to and decided on its merits by the court, such court, so applying the laws of the State of Delaware (without regard to principles of conflicts of law), would hold that such New York Document constitutes a legal, valid, and binding obligation of the Trust, enforceable against the Trust in accordance with its terms.**

The foregoing opinions are subject to the following assumptions, exceptions and qualifications:

A. The opinions in this letter are limited to the laws of the State of Delaware as enacted and currently in effect and federal laws of the United States of America governing the banking and trust powers of the Trust Company as enacted and currently in effect (other than (i) federal securities laws, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Trust Indenture Act of 1939, as amended, the Investment Company Act of 1940, as amended, and rules, regulations, orders, and decisions relating thereto, (ii) the Employee Retirement Income Security Act of 1974, as amended, and rules, regulations, orders, and decisions relating thereto, (iii) securities laws of the State of Delaware, and rules, regulations, orders, and decisions relating thereto, (iv) laws, rules,

regulations, orders, ordinances, and decisions of any county, town, municipality, or special political subdivision of the State of Delaware, and (v) laws, rules, regulations, orders, and decisions applicable to the particular nature of the property or activities of the Trust) and we have not considered and express no opinion on the effect of, concerning matters involving, or otherwise with respect to any other laws of any jurisdiction, or rules, regulations, orders, or decisions relating thereto.

B. The foregoing opinions relating to enforceability of any document or instrument are subject to (i) bankruptcy, insolvency, moratorium, reorganization, receivership, fraudulent conveyance, preferential transfer, liquidation, and similar laws relating to or affecting rights and remedies of creditors generally, (ii) principles of equity, including, without limitation, applicable law relating to fiduciary duties (regardless of whether considered and applied in a proceeding in equity or at law), (iii) standards of good faith, fair dealing, course of dealing, course of performance, materiality, and reasonableness that may be applied by a court, considerations of public policy, and the exercise of judicial discretion, and (iv) federal or state securities law and public policy considerations relating to indemnification or contribution.

C. We have assumed: (i) except as stated in numbered paragraphs 1 and 7 above, the due incorporation or due formation, as the case may be, due organization, and valid existence in good standing of each of the parties (other than natural persons) to the documents reviewed by us under the laws of all relevant jurisdictions; (ii) the legal capacity of all relevant natural persons, (iii) except as stated in numbered paragraphs 3 and 9 above, the due authorization, execution, and delivery of each of the documents reviewed by us by each of the parties thereto; and (iv) except as stated in numbered paragraphs 2 and 8 above, that each of such parties had and has the power and authority to execute, deliver, and perform such documents.

D. We have assumed that (i) all signatures (other than signatures by officers of the Trust Company, in its individual capacity or as Trustee, as the case may be, on the Trust Company Documents, the Trust Documents and the Lessor Financing Statements) on all documents reviewed by us are genuine, (ii) all documents furnished to us as originals are authentic, (iii) all documents furnished to us as copies or specimens conform to the originals thereof, (iv) each document reviewed by us constitutes the entire agreement among the parties thereto with respect to the subject matter thereof, and (v) all conditions precedent set forth in the documents reviewed by us have been satisfied.

E. We express no opinion concerning (i) ownership of, title to, or any similar interest in any property, (ii) creation or attachment of any lien, pledge, mortgage, or security interest, (iii) perfection of any lien, pledge, mortgage, or security interest, or (iv) priority of any lien, pledge, mortgage, or security interest.

To Each of the Parties Listed  
on Schedule A Attached Hereto  
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F. For purposes of this letter, an opinion that is limited "to our knowledge" means that, in the course of our representation of the Trust Company and the Trust as described above, attorneys in this firm who have worked substantively on this letter and the transactions contemplated by the Trust Company Documents and the Trust Documents, without undertaking any investigation or verification of the subject matter of such opinion, have not obtained actual knowledge that such opinion is incorrect.

G. The opinions in numbered paragraphs 13, 14, and 15 above are subject to the qualifications set forth in paragraph B above.

H. Insofar as our opinion relates to the enforceability of any choice of law provision in any document purporting to choose the laws of a given jurisdiction, we have assumed that the application of the laws of the chosen jurisdiction would not be contrary to a fundamental policy of any other jurisdiction which (i) would be the jurisdiction of applicable law in the absence of an effective choice of law and (ii) has a materially greater interest than the chosen jurisdiction in the determination of any issue arising out of or related to the subject matter of the document containing such choice of law provision.

I. We express no opinion with respect to (i) any covenant in any New York Document prohibiting transfer of the personal property covered thereby to the extent that any such covenant may be limited by the operation of the Uniform Commercial Code as in effect in the State of Delaware, 6 Del. C. §§ 1-101 et seq. (the "Delaware UCC"); (ii) any provision in any New York Document which purports, by implication or otherwise, to confer subject matter jurisdiction on any court; (iii) any provision in any New York Document which purports or would operate to render ineffective any waiver or modification not in writing; (iv) any provision of any New York Document which permits, by implication or otherwise, the collection of attorneys' fees in excess of the limitation of 10 Del. C. § 3912, which statutory limitation permits reasonable attorneys' fees not exceeding twenty percent (20%) of the amount adjudged for principal and interest; (v) any provision of any New York Document which purports to establish any definite time period as reasonable in connection with the notice of sale, disposition or other intended action by any secured party pursuant to the Delaware UCC; (vi) any provision of any New York Document which would conflict with the rules of any court having jurisdiction over any person or property; (vii) any provision of any New York Document which purports or would operate to allow for the appointment of a receiver without notice or court approval; (viii) any provision of any New York Document which purports to permit a person to sell or otherwise dispose of, or exercise remedies with respect to, any collateral except in compliance with the Delaware UCC or other applicable laws, rules or regulations; (ix) any provision of any New York Document which permits a person, by implication or otherwise, to take or enter by force, or

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without a hearing, any property in which collateral may be located, upon a default or otherwise, or otherwise to exercise any self-help, non-judicial remedies; (x) any provision in any New York Document which purports to confer self-help or equitable remedies such as specific performance or injunctive relief; and (xi) any provision of any New York Document which purports to establish evidentiary standards for suits or proceedings or restrict, limit or deny access to courts.

This letter speaks only as of the date hereof, and we assume no obligation to advise anyone of any changes in the foregoing subsequent to the delivery of this letter. We consent to your relying on this letter on the date hereof in connection with the matters set forth herein. Without our prior written consent, this letter may not be furnished or quoted to, or relied upon by, any other person or entity, or any governmental authority, or relied upon for any other purpose; provided, however, that this opinion may be delivered to your regulators, accountants, attorneys and other professional advisers and may be used in connection with any legal or regulatory proceeding relating to the subject matter of this opinion.

In addition, the opinions in this letter are limited to the opinions expressly stated in numbered paragraphs 1 through 16 of this letter, and no other opinions may be inferred beyond such matters expressly stated.

Very truly yours,

NMP/fg/sct

Schedule A

The Chase Manhattan Bank, as Administrative Agent  
140 East 45th Street  
New York, NY 10017

General Motors Corporation, as Lessee

Auto Facilities Real Estate Trust 2001

Wilmington Trust Company, in its individual capacity and as Trustee

Various Financial Institutions Signatory to the Participation Agreement as Investors

Relationship Funding Company, LLC

Various Financial Institutions Signatory to the Participation Agreement  
as Backup Facility Banks

JP Morgan, a Division of Chase Securities Inc.

Standard & Poor's Ratings Services

Moody's Investors Service, Inc.

FORM OF LEGAL OPINION OF SPECIAL COUNSEL TO LESSEE

October \_\_, 2001

To Participants, Administrative Agent  
and Trustee, as each  
such term is defined in the Participation  
Agreement hereinafter referred to

Re: General Motors Corporation Synthetic Lease Transaction  
Eight Properties  
Auto Facilities Real Estate Trust 2001-1

Ladies and Gentlemen:

We have acted as special New York counsel to General Motors Corporation, a Delaware corporation (the "Lessee"), in connection with the execution and delivery of that certain Participation Agreement dated as of the date hereof (the "Participation Agreement") among Lessee, Auto Facilities Real Estate Trust 2001-1, a Delaware business trust ("Lessor"), Wilmington Trust Company, as trustee, BTM Capital Corporation and JH Equity Realty Investors, Inc., as Investors, Relationship Funding Company LLC, various financial institutions, as Backup Facility Banks, and The Chase Manhattan Bank, as Administrative Agent. Capitalized terms used but not defined herein shall have the meanings assigned thereto in Annex A to the Participation Agreement. This opinion is being furnished pursuant to Section 6.1(m) of the Participation Agreement.

In connection with the opinion set forth below, we have reviewed executed counterparts of the Operative Agreements delivered on the Initial Closing Date (the "Operative Agreements"). The Operative Agreements to which the Lessee is a party are referred to herein as the "Lessee Documents."

In rendering the opinions expressed herein, we have assumed: (a) the genuineness of the signatures on all documents and instruments, the authenticity of all documents presented to us as originals, and the conformity to originals of all documents presented to us as certified, photostatic, reproduced or conformed copies; (b) that each of the parties to any of the Operative Agreements (i) is duly organized and established and validly exists (including that the Trust has been duly established and validly exists under the laws of the State of Delaware) and (ii) has all the legal capacity, power, authority and legal right required for it to enter into the Operative Agreements to which it is a party and to perform its respective obligations thereunder; (c) that all

relevant matters have received all corporate, government or other authorizations required by any applicable organizational document (including any charter, articles of association and by-laws), law or regulation, other than New York Law (as hereinafter defined); (d) due execution and delivery of the Operative Agreements by each of the parties thereto; (e) that due consideration for the performance of the Operative Agreements has been received; (f) that there are no agreements between any parties that would alter the agreements set forth in the Operative Agreements; (g) the execution, delivery and performance by the Lessee of the Lessee Documents, and the consummation of the transactions contemplated thereby (i) will not contravene (A) any provision of any law, rule or regulation of any jurisdiction, other than New York Law, (B) any judgment, order or decree of any government authority or (C) any organizational documents (including any charter, articles of association and by-laws) of the Lessee, and (ii) will not conflict or be inconsistent with, or result in any breach of, or constitute a default under, the terms of any indenture, mortgage, lease, agreement or other instrument (other than the Lessee Documents) to which the Lessee is a party or by which the Lessee or any of its properties may be bound or subject; (h) the Operative Agreements constitute the legal, valid and binding obligations of the respective parties thereto, other than the Lessee; and (i) the loans evidenced by the Operative Agreements will satisfy the provisions of Section 5-501(6)(b) of the General Obligations Law of the State of New York. As to questions of fact material to this opinion, we have, with your permission and without independent investigation, relied upon the warranties and representations set forth in the Operative Agreements and the warranties and representations set forth in the documents delivered pursuant to Section 2.1 of the Participation Agreement on or before the date hereof, except to the extent such warranties and representations involve conclusions of law upon which we are rendering opinions herein.

We call to your attention that we have not generally represented the Lessee in its business activities and are not familiar with the nature and extent of such activities, and that our engagement has been limited to such specific matters as to which we have been consulted by the Lessee. Accordingly, we are not generally familiar with the Lessee's legal affairs or the regulatory regimes to which either of it or any of its Affiliates is subject. In addition, with your permission, we have limited our opinions herein to laws, rules and regulations applicable to business corporations generally.

Based upon the foregoing, and subject to the further qualifications set forth at the end of this opinion letter, we are of the opinion that:

1. The Lessee Documents constitute the legal, valid and binding obligations of Lessee, enforceable against the Lessee in accordance with their respective terms.
2. Neither the execution and delivery by the Lessee of the Lessee Documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the

terms, conditions or provisions of New York Law, in each case of general application to corporations applicable to or binding upon the Lessee.

3. The provisions of the Operative Agreements concerning interest, Investor Yield and Rent, including the methods of calculation and payment thereof, are not usurious under, or otherwise violative of, the laws of the State of New York.

The opinions expressed herein are limited by: (a) applicable receivership, conservatorship, bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws affecting the rights of creditors generally, (b) equitable principles, including the availability of equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law), and (c) with respect to the indemnity, waiver and similar provisions contained in the Operative Agreements, public policy considerations.

The opinions expressed herein are further subject to and qualified by the following: (a) we have not made any examination of the laws of New York insofar as they relate to the environment, and are not rendering any opinion with respect thereto, and (b) no opinion is expressed herein as to: (i) the legality, validity or enforceability other than under New York Law of any agreement as to the compounding of interest, (ii) the title of any Person to the Collateral, the Trust Estate, the Properties or any other property, (iii) the existence, perfection or priority of any Lien, (iv) the absence of any Lien on the Collateral, the Trust Estate, the Properties or any other property, (v) the nature of the Collateral, the Trust Estate, the Properties or any other property or any law or regulation specifically pertaining thereto, (vi) any choice of law, forum selection, venue, service of process, consent to jurisdiction (both as to personal jurisdiction and subject matter jurisdiction) or waiver of jury trial provision in any Operative Agreement, (vii) the effect on the opinions expressed herein of (A) the compliance or non-compliance of any party (other than the Lessee) to the Operative Agreements with any state, Federal or other laws or regulations applicable to it or (B) the legal or regulatory status or the nature of the business of any such party, (viii) the severability of any provision of the Operative Agreements that may be unenforceable, (ix) laws relating to banks and their subsidiaries or laws regarding trusts, (x) securities laws, (xi) any provision purporting to waive rights of notice, to restrict legal or equitable remedies, to waive the benefit of defenses or to provide that delay in exercising or failure to exercise a right will not operate as a waiver, (xii) any provision that purports to bind a third party unless such party or its agent is a party to the applicable document, (xiii) any provision purporting to set an evidentiary standard, including those which state that demands and determinations by one party are deemed conclusive, (xiv) any provisions purporting to be subject to agreement by the parties at some future date, (xv) the enforceability of any provision that any purported amendment, supplement, termination, modification or other action in violation of the relevant agreement is void or invalid ab initio, (xvi) the effect of limitations contained in Title 11 of the United States Code, 11 U.S.C. §§ 101 et. Seq. (the "Bankruptcy Code") upon the extent to which property acquired after the commencement of a case thereunder may be subjected to a security interest arising from an agreement entered into before the commencement of that case,

October \_\_, 2001

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(xvii) the enforceability of any power of sale in any document, (xviii) the effectiveness of Section 3.3 of the Pledge Agreement, and (xix) the payment of late fees, prepayment premiums, default interest or other charges payable upon or after the occurrence of a default. We do not express any opinion as to whether any of the parties to the Operative Agreements or the Trust must qualify to do business in the State of New York. We express no opinion as to any accounting treatment, nor do we express any opinion as to whether the Lease constitutes a "true lease" or a financing transaction.

As used herein, the term "Collateral" means all assets of the Lessor or the Lessee, now owned or hereafter acquired, which is subject to any Lien created by any of the Operative Agreements.

We express no opinion as to the law of any jurisdiction other than the State of New York wherein a party seeking to enforce the Operative Agreements may be located that limits the rates of interest legally chargeable or collectible.

We call to your attention that certain remedial and other provisions of the Lessee Documents may be rendered unenforceable by applicable laws or by judicial decisions, but such laws and judicial decisions do not, in our opinion, render the Lessee Documents invalid as a whole or (except in the case of the statutory right of reinstatement referred to above) leave the parties thereto without the practical benefits intended to be afforded thereby. The enforceability of the Operative Agreements by the Lessor or the Administrative Agent may be limited if such party or the Participants fail to act in good faith and in commercially reasonable manner in seeking to exercise its rights and remedies thereunder. Without limiting the generality of the foregoing, we note that a court might hold that a technical or nonmaterial default under the Operative Agreements does not give rise to a right to exercise certain remedies including, without limitation, acceleration.

We understand that you will rely upon title insurance issued by a title insurer acceptable to you and, accordingly, we express no opinion herein regarding any matter the subject of which is covered by said title insurance.

We are members of the Bar of the State of New York. The opinions expressed herein are limited exclusively to the internal laws of the State of New York without regard to principles of conflict of law ("New York Laws"). No opinion is rendered as to any Federal laws of the United States of America.

This opinion is being furnished to you in connection with the Lessee Documents and the transactions described therein, and, except as may be required by applicable law or regulation, may not be used, quoted from, circulated to or relied upon by any other Person (other than any permitted assignee or transferee pursuant to the Participation Agreement) or used in any other

October \_\_, 2001  
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context without our prior written consent. We assume no obligation to supplement this opinion if, after the date hereof, any applicable law changes or we become aware of any facts that might change the opinions set forth herein.

Very truly yours,

MAYER, BROWN & PLATT

MBP: REG: CJM: CAB: BKG

FORM OF LEGAL OPINION RELATING TO PLEDGE AGREEMENT

October \_\_, 2001

To Participants, Administrative Agent  
and Trustee, as each  
such term is defined in the Participation  
Agreement hereinafter referred to

Re: General Motors Corporation Synthetic Lease Transaction  
Eight Properties  
Auto Facilities Real Estate Trust 2001-1

Ladies and Gentlemen:

We have acted as special New York counsel to General Motors Corporation, a Delaware corporation (the "Lessee"), in connection with the execution and delivery of that certain Participation Agreement dated as of the date hereof (the "Participation Agreement") among Lessee, Auto Facilities Real Estate Trust 2001-1, a Delaware business trust ("Lessor"), Wilmington Trust Company, as trustee, BTM Capital Corporation and JH Equity Realty Investors, Inc., as Investors, Relationship Funding Company LLC, various financial institutions, as Backup Facility Banks, and The Chase Manhattan Bank, as Administrative Agent. Capitalized terms used but not defined herein shall have the meanings assigned thereto in Annex A to the Participation Agreement. This opinion is being furnished pursuant to Section 6.1(m) of the Participation Agreement.

In connection with the opinion set forth below, we have reviewed executed counterparts of the Operative Agreements delivered on the Initial Closing Date (the "Operative Agreements"). The Operative Agreements to which the Lessee is a party are referred to herein as the "Lessee Documents."

In rendering the opinions expressed herein, we have assumed: (a) the genuineness of the signatures on all documents and instruments, the authenticity of all documents presented to us as originals, and the conformity to originals of all documents presented to us as certified, photostatic, reproduced or conformed copies; (b) that each of the parties to any of the Operative Agreements (i) is duly organized and established and validly exists (including that the Trust has been duly established and validly exists under the laws of the State of Delaware) and (ii) has all

the legal capacity, power, authority and legal right required for it to enter into the Operative Agreements to which it is a party and to perform its respective obligations thereunder; (c) that all relevant matters have received all corporate, government or other authorizations required by any applicable organizational document (including any charter, articles of association and by-laws), law or regulation, other than New York Law (as hereinafter defined); (d) due execution and delivery of the Operative Agreements by each of the parties thereto; (e) that due consideration for the performance of the Operative Agreements has been received; (f) that there are no agreements between any parties that would alter the agreements set forth in the Operative Agreements; (g) the execution, delivery and performance by the Lessee of the Lessee Documents, and the consummation of the transactions contemplated thereby (i) will not contravene (A) any provision of any law, rule or regulation of any jurisdiction, other than the New York UCC, (B) any judgment, order or decree of any government authority or (C) any organizational documents (including any charter, articles of association and by-laws) of the Lessee, and (ii) will not conflict or be inconsistent with, or result in any breach of, or constitute a default under, the terms of any indenture, mortgage, lease, agreement or other instrument (other than the Lessee Documents) to which the Lessee is a party or by which the Lessee or any of its properties may be bound or subject; and (h) the Operative Agreements constitute the legal, valid and binding obligations of the respective parties thereto. As to questions of fact material to this opinion, we have, with your permission and without independent investigation, relied upon the warranties and representations set forth in the Operative Agreements and the warranties and representations set forth in the documents delivered pursuant to Section 2.1 of the Participation Agreement on or before the date hereof, except to the extent such warranties and representations involve conclusions of law upon which we are rendering opinions herein.

We have also assumed: (a) the Lessor has sufficient rights in the Funding Account and securities entitlements credited thereto for the security interest of the Administrative Agent to attach and, value has been given for the security interest granted by the Lessor to the Administrative Agent as secured party; (b) the Lessor does not control the Administrative Agent or the Securities Intermediary, is not controlled by the Administrative Agent or the Securities Intermediary, and is not under common control with the Administrative Agent or the Securities Intermediary; (c) the Lessor will hold the security entitlements through the Securities Intermediary in accordance with the Pledge Agreement; (d) the Securities Intermediary is not a clearing corporation; (e) the Funding Account constitutes a securities account; (f) the Pledge Agreement will remain in continuous effect without any amendment, modification or waiver.

Based upon the foregoing, and subject to the further qualifications set forth at the end of this opinion letter, we are of the opinion that:

1. The provisions of the Pledge Agreement are effective under the New York UCC to create in favor of the Administrative Agent a valid security interest in the Lessor's rights in the "security entitlements" (as such term is defined in Section 8-102 of the UCC) credited to the Funding Account.

2. When the "Securities Intermediary" (as defined in the Pledge Agreement) indicates by book entry that a "financial asset" (as such term is defined in Section 8-102 of the UCC) has been credited to the Funding Account, a security entitlement shall exist with respect to such financial asset. The agreement by the Securities Intermediary that it will comply with "entitlement orders" (as such term is defined in Section 8-102 of the UCC) originated by the Administrative Agent without further consent by the Lessor will perfect the security interest of the Administrative Agent in such security entitlements, and in the Funding Account.

The opinions expressed herein are limited by: (a) applicable receivership, conservatorship, bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws affecting the rights of creditors generally, (b) the availability of equitable remedies, which may be limited by equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law), and (c) with respect to the indemnity, waiver and similar provisions contained in the Operative Agreements, public policy considerations.

No opinion is expressed herein as to: (i) the title of any Person to the Collateral, the Trust Estate, the Properties or any other property, (ii) the existence, perfection of any Lien (except as expressly stated herein), (iii) the priority of, or the absence of, any Lien on the Collateral, the Trust Estate, the Properties or any other property, (iv) the nature of the Collateral, the Trust Estate, the Properties or any other property or any law or regulation specifically pertaining thereto, (v) the effect of the provisions of Section 3.3 of the Pledge Agreement on the validity or perfection of the security interest of the Administrative Agent in the Funding Account or securities entitlements credited thereto, or the effectiveness of such Section 3.3, (vi) any provision purporting to waive rights of notice, to restrict legal or equitable remedies, to waive the benefit of defenses or to provide that delay in exercising or failure to exercise a right will not operate as a waiver, or the provision purporting to waive rights that, pursuant to 9-602 of the UCC may not be waived, (vii) the effect of limitations contained in Title 11 of the United States Code, 11 U.S.C. §§ 101 et. Seq. (the "Bankruptcy Code") upon the extent to which property acquired after the commencement of a case thereunder may be subjected to a security interest arising from an agreement entered into before the commencement of that case, and (viii) the enforceability of any power of sale in any document. We do not express any opinion as to whether the Lease constitutes a "true lease" or a financing transaction.

We further express no opinion as to (a) any collateral in which the Issuer does not have rights, (b) proceeds of any collateral other than to the extent provided in Section 9-315 of the UCC, (c) the creation, attachment, perfection or priority of any security interest in any commodity contract, (d) the creation, attachment, perfection or priority of any security interest in any obligations of the United States of America or any agency or instrumentality thereof except for obligations subject to the Federal Book-Entry Regulations (as hereinafter defined), (e) the effect of any rule adopted by a clearing corporation governing the rights and obligations among such clearing corporation and the participants in such clearing corporation, (f) the effect of any waiver of the Federal Book-Entry Regulations by any federal official, (g) the effect of a

October \_\_, 2001

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bankruptcy, insolvency, receivership, conservatorship or similar event with respect to a clearing corporation or a securities intermediary, (h) the effect of any lien, claim or right of set-off of a clearing corporation or securities intermediary, (i) the nature or extent of any securities intermediary's rights to any of the financial assets underlying the Security Entitlements and (j) perfection by filing or automatic perfection. Further, our opinion is limited to (A) Articles 8 and 9 of the UCC and (B)(1) 31 C.F.R. Part 357 (marketable securities issued by the United States Treasury and maintained in the form of entries in the TRADES book-entry system in the records of the federal reserve banks) and (2) 24 C.F.R. Part 81 (book-entry securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation) (collectively, the "Federal Book-Entry Regulations"), and therefore those opinions do not address (I) laws of jurisdictions other than New York and the United States of America, and of New York except for Articles 8 and 9 of the UCC and of the United States of America except for the Federal Book-Entry Regulations, (II) collateral of a type not subject to Articles 8 or 9 of the UCC and (III) collateral consisting of security entitlements to the extent that the creation, attachment, perfection or priority of a security interest therein is subject to any law, rule or regulation other than Article 8 of the UCC, Article 9 of the UCC and the Federal Book-Entry Regulations. References to the "UCC" means the Uniform Commercial Code as adopted and in effect in the State of New York on the date of this opinion, without giving effect to any changes thereto that may become effective in the future.

We understand that you will rely upon title insurance issued by a title insurer acceptable to you and, accordingly, we express no opinion herein regarding any matter the subject of which is covered by said title insurance.

This opinion is being furnished to you in connection with the Lessee Documents and the transactions described therein, and, except as may be required by applicable law or regulation, may not be used, quoted from, circulated to or relied upon by any other Person (other than any permitted assignee or transferee pursuant to the Participation Agreement) or used in any other context without our prior written consent. We assume no obligation to supplement this opinion if, after the date hereof, any applicable law changes or we become aware of any facts that might change the opinions set forth herein.

Very truly yours,

MAYER, BROWN & PLATT

MBP: REG: CJM: CAK: BKG

EXHIBIT E-1 TO  
PARTICIPATION AGREEMENT

FORM OF INVESTOR ASSIGNMENT AND ACCEPTANCE

Reference is made to the Participation Agreement, dated as of October 31, 2001 (as amended, supplemented or otherwise modified from time to time, the "Participation Agreement"), among General Motors Corporation, as Lessee and Construction Agent, Auto Facilities Real Estate Trust 2001-1, as Lessor, Wilmington Trust Company, as Trustee, Relationship Funding Company, LLC, various financial institutions as Investors and Backup Facility Banks, and The Chase Manhattan Bank, as Administrative Agent. Unless otherwise defined herein, terms defined in the Participation Agreement and used herein shall have the means given to them in the Participation Agreement.

\_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee") agree as follows:

(a) The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Assignment Date (as defined below), an interest (the "Assigned Interest"), as specified on Schedule 1, in and to the Assignor's rights and obligations in the Trust Estate and under the Trust Agreement (the "Trust Agreement") and the other Operative Agreements with respect to those economic interests contained in the Trust Agreement as are set forth on Schedule 1 (individually, an "Assigned Interest"; collectively, the "Assigned Interests"), in a principal amount for each Assigned Interest as set forth on Schedule 1.

(b) The Assignor (i) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Trust Agreement or with respect to the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Trust Agreement, any other Operative Agreement or any other instrument or document furnished pursuant thereto, other than that the Assignor has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; and (ii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Lessee, any of its Subsidiaries, Lessor, or any other obligor or the performance or observance by Lessee, any of its Subsidiaries, or Lessor or any other obligor of any of their respective obligations under the Operative Agreements or any other instrument or document furnished pursuant hereto or thereto.

(c) The Assignee (i) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (ii) confirms that it has received a copy of the Trust Agreement and the Participation Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (iii) agrees that it will, independently and without reliance upon the Assignor, the Trust Company, the Administrative Agent or any other Participant and based on such documents and information as it shall deem appropriate at the time continue to make its own

credit decisions in taking or not taking action under the Trust Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto; (iv) appoints and authorizes the Trust Company and the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Trust Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Trust Company or the Administrative Agent, as applicable, by the terms thereof, together with such powers as are incidental thereto; (v) agrees that it will be bound by the provisions of the Trust Agreement and the Participation Agreement and will perform in accordance with their terms all the obligations which by the terms of the Trust Agreement and the Participation Agreement are required to be performed by it as an Investor, including, if it is organized under the laws of a jurisdiction outside the United States, its obligations pursuant to Section 12.3 of the Participation Agreement; (vi) makes to the Lessee, the Lessor, the Administrative Agent and each Participant the representations and warranties set forth in Section 7.1 and 7.7 of the Participation Agreement; and (vii) represents, warrants and covenants that (A) it will not take any action with respect to the Certificates that would violate any applicable securities laws, (B) it will not assign or transfer any Certificate except in compliance with Section 11.1 of the Participation Agreement, and (C) it will not transfer any Certificate unless the proposed transferee makes the foregoing representations and covenants.

(d) The effective date of this Assignment and Acceptance shall be \_\_\_\_\_, 200\_\_ (the "Assignment Date"). Following the execution of this Assignment and Acceptance, it will be delivered to the Lessor for acceptance by it and recording by the Lessor, effective as of the Assignment Date (which shall not, unless otherwise agreed to by the Lessor, be earlier than five (5) Business Days after the date of such acceptance and recording by the Lessor).

(e) Upon such acceptance and recording, from and after the Assignment Date, the Trust shall forward all payments in respect of the Assigned Interests including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to the Assignment Date or accrue subsequent to the Assignment Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Trust for periods prior to the Assignment Date or with respect to the making of this assignment directly between themselves.

(f) From and after the Assignment Date, (i) the Assignee shall be a party to the Trust Agreement and the Participation Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of an Investor thereunder and under the other Operative Agreements and shall be bound by the provisions thereof and (ii) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish rights and be released from its obligations under the Trust Agreement and the Participation Agreement.

(g) This Assignment and Acceptance shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

(h) This Assignment and Acceptance may be executed by one or more of the parties to this Assignment and Acceptance on any number of separate counterparts (including by facsimile transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

(i) Each of the parties hereto hereby covenants and agrees, prior to the date which is one (1) year and one (1) day after the payment in full of the indebtedness of RFC, it will not institute against, or join or assist any other person in instituting against RFC any Proceeding. In the event that any party hereto takes action in violation of this paragraph, the petitioned party hereby agrees it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such a petition by the applicable instituting party against such petitioned party or the commencement of such action and raise the defense that the instituting party has agreed in writing not to take such action and should be estopped and precluded therefrom and such other defenses, if any as its counsel advises that it may assert. The provisions of this paragraph shall survive the termination of this Assignment and Acceptance.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed as of the date first above written by their respective duly authorized officers on Schedule 1 hereto.

Accepted for Recordation In  
the Register:

THE CHASE MANHATTAN BANK,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Accepted:

AUTO FACILITIES REAL  
ESTATE TRUST 2001-1, by  
Wilmington Trust Company,  
as Trustee

By: \_\_\_\_\_  
Name:  
Title:

Consented to:

GENERAL MOTORS CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

THE CHASE MANHATTAN BANK,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE 1  
TO INVESTOR ASSIGNMENT AND ACCEPTANCE  
RELATING TO THE PARTICIPATION AGREEMENT,  
DATED AS OF OCTOBER 31, 2001  
AMONG GENERAL MOTORS CORPORATION,  
AUTO FACILITIES REAL ESTATE TRUST 2001-1, as Lessor,  
WILMINGTON TRUST COMPANY, as Trustee,  
RELATIONSHIP FUNDING COMPANY, LLC, VARIOUS FINANCIAL INSTITUTIONS,  
As Investors and Backup Facility Banks, and THE CHASE MANHATTAN BANK, as  
Administrative Agent

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Name of Assignor: \_\_\_\_\_

Name of Assignee: \_\_\_\_\_

Effective Date of Assignment: \_\_\_\_\_, 200\_\_

Amount Assigned

\$ \_\_\_\_\_

[NAME OF ASSIGNEE]

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE 2  
TO INVESTOR ASSIGNMENT AND ACCEPTANCE  
RELATING TO THE PARTICIPATION AGREEMENT,  
DATED AS OF OCTOBER 31, 2001  
AMONG GENERAL MOTORS CORPORATION,  
AUTO FACILITIES REAL ESTATE TRUST 2001-1, as Lessor,  
WILMINGTON TRUST COMPANY, as Trustee,  
RELATIONSHIP FUNDING COMPANY, LLC, VARIOUS FINANCIAL INSTITUTIONS,  
As Investors and Backup Facility Banks, and THE CHASE MANHATTAN BANK, as  
Administrative Agent

Form of Investor Letter

EXHIBIT E-2 TO  
PARTICIPATION AGREEMENT

FORM OF BANK ASSIGNMENT AND ACCEPTANCE

Reference is made to the Participation Agreement, dated as of October 31, 2001 (as amended, supplemented or otherwise modified from time to time, the "Participation Agreement"), among General Motors Corporation, as Lessee and Construction Agent, Auto Facilities Real Estate Trust 2001-1, as Lessor, Wilmington Trust Company, as Trustee, Relationship Funding Company, LLC, various financial institutions as Investors and Backup Facility Banks, and The Chase Manhattan Bank, as Administrative Agent. Unless otherwise defined herein, terms defined in the Participation Agreement and used herein shall have the means given to them in the Participation Agreement.

\_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee") agree as follows:

(a) The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor, as of the Assignment Date (as defined below), an interest (the "Assigned Interest"), as specified on Schedule 1, in and to the Assignor's rights and obligations under the Loan Facility Agreement and the other Operative Agreements with respect to those credit facilities contained in the Loan Facility Agreement as are set forth on Schedule 1 individually, an "Assigned Facility"; collectively, the "Assigned Facilities"), in a principal amount for each Assigned Facility as set forth on Schedule 1.

(b) The Assignor (i) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Facility Agreement or with respect to the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Facility Agreement, any other Operative Agreement or any other instrument or document furnished pursuant thereto, other than that the Assignor has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; and (ii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Lessee, any of its Subsidiaries, Lessor, or any other obligor or the performance or observance by Lessee, any of its Subsidiaries, or Lessor or any other obligor of any of their respective obligations under the Operative Agreements or any other instrument or document or document furnished pursuant hereto or thereto.

(c) The Assignee (i) represents and warrants that it is legally authorized to enter into this assignment and Acceptance; (ii) confirms that it has received a copy of the Loan Facility Agreement, and the Participation Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (iii) agrees that it will, independently and without reliance upon the Assignor, the Administrative Agent, or any other Participant and based on such documents and information as it shall deem appropriate at the time continue to make its own credit decisions in

taking or not taking action under the Loan Facility Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto; (iv) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Facility Agreement, the other Operative Agreements or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (v) agrees that it will be bound by the provisions of the Loan Facility Agreement, and the Participation Agreement and will perform in accordance with its terms all the obligations which by the terms of the Loan Facility Agreement and the Participation Agreement are required to be performed by it as a Back-up Facility Bank including, if it is organized under the laws of a jurisdiction outside the United States, its obligations pursuant to Section 12.3 of the participation Agreement.

(d) The effective date of this Assignment and Acceptance shall be [ ], (the "Assignment Date"). Following the execution of this Assignment and the Acceptance, it will be delivered to the Administrative Agent for acceptance by it and recording by the Administrative Agent pursuant to the Participation Agreement, effective as of the Assignment Date (which shall not, unless otherwise agreed to by the Administrative Agent, be earlier than five (5) Business Days after the date of such acceptance and recording by the Administrative Agent.).

(e) Upon such acceptance and recording, from and after the Assignment Date, the Administrative Agent shall forward all payments in respect of the Assigned interest including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to the Assignment Date or accrue subsequent to the Assignment Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Assignment Date or with respect to the making of this assignment directly between themselves.

(f) From and after the Assignment Date, (i) the Assignee shall be a party to the Participation Agreement and the Loan Facility Agreement, and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Back-up Facility Bank thereunder and under the other Operative Agreements and shall be bound by the provisions thereof and (ii) the assignor shall, to the extent provided in this Assignment and Acceptance, relinquish rights and be released from its obligations under the Loan Facility Agreement and the Participation Agreement.

(g) This Assignment and Acceptance shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

(h) This Assignment and Acceptance may be executed by one or more of the parties to this Assignment and Acceptance on any number of separate counterparts (including by facsimile transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

(i) Each of the parties hereto (other than RFC) hereby covenants and agrees, prior to the date which is one (1) year and one day after the payment in full of the indebtedness of RFC, it will not institute against, or join or assist any other person in instituting against RFC

any Proceeding. In the event that any party hereto takes action in violation of this paragraph, the petitioned party hereby agrees it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such a petition by the applicable instituting party against such petitioned party or the commencement of such action and raise the defense that the instituting party has agreed in writing not to take such action and should be estopped and precluded therefrom and such other defenses, if any as its counsel advises that it may assert. The provisions of this paragraph shall survive the termination of this Assignment and Acceptance.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed as of the date first above written by their respective duly authorized officers on Schedule 1 hereto.

Accepted for Recordation In  
the Register:

THE CHASE MANHATTAN BANK, as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

Consented to: <sup>1</sup>

GENERAL MOTORS CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

THE CHASE MANHATTAN BANK,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

RELATIONSHIP FUNDING COMPANY,  
LLC

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
<sup>1/</sup> If required.

SCHEDULE 1  
TO BANK ASSIGNMENT AND ACCEPTANCE  
RELATING TO THE PARTICIPATION AGREEMENT,  
DATED AS OF OCTOBER 31, 2001  
AMONG GENERAL MOTORS CORPORATION,  
AUTO FACILITIES REAL ESTATE TRUST 2001-1, as Lessor,  
WILMINGTON TRUST COMPANY, as Trustee,  
RELATIONSHIP FUNDING COMPANY, LLC, VARIOUS FINANCIAL INSTITUTIONS,  
As Investors and Backup Facility Banks, and THE CHASE MANHATTAN BANK, as  
Administrative Agent

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Name of Assignor:

Name of Assignee:

Effective Date of Assignment:

Amount Assigned                      Percentage Assigned <sup>1/</sup>

\$ \_\_\_\_\_ \$ \_\_\_\_\_

[NAME OF ASSIGNEE], as Backup

[NAME OF ASSIGNOR], as a Backup  
Facility Bank

Facility Bank

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

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<sup>1/</sup> Calculate the Percentage that is assigned to at least 15 decimal places and show as a percentage of the aggregate Backup Facility Loan Commitments of all Backup Facility Banks.

FORM OF  
GROUND LEASE

THIS GROUND LEASE (this "Ground Lease") is made this \_\_\_\_ day of \_\_\_\_, 200[ ] by and between RIVERFRONT HOLDINGS, INC., a Delaware corporation (in its capacity as landlord hereunder, "Landlord"), and AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust (herein called "Tenant").

WITNESSETH:

WHEREAS, Landlord is the fee simple owner of the land legally described on Exhibit A attached hereto and made a part hereof (together with all rights-of-way or use, easements, servitudes, licenses, tenements, driveways, approaches, pavements, hereditaments, curbs and street front privileges and appurtenances thereunto belonging but excluding the Improvements (as hereinafter defined), the "Land") located in the City of Detroit, County of Wayne;

WHEREAS, Landlord and Tenant desire to enter into a ground lease of the Land pursuant hereto;

WHEREAS, Landlord desires Tenant to cause to be constructed on the Land an eight story mixed-use structure including parking, retail and a fitness center pursuant to the Participation Agreement and the other Operative Agreements; and

WHEREAS, Tenant has entered into that certain Lease dated as of October 31, 2001 (the "Lease") by and between Tenant, as lessor, and the Lessee named therein, covering the Land and certain other properties;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Capitalized Terms. Capitalized terms used herein and not defined herein shall have the meanings assigned to them in Annex A attached to the Participation Agreement dated as of October 31, 2001 among Landlord, Tenant, Relationship Funding Company, The Chase Manhattan Bank, as Administrative Agent and as Agent Bank, Wilmington Trust Company, the Backup Facility Banks named therein, and the Investors named therein. The rules of usage and documentary conventions set forth in such Annex are also applicable hereto.

2. Land. Landlord, for and in consideration of the rents herein reserved and of the agreements herein contained on the part of Tenant to be kept, observed and performed, does by these presents demise and lease to Tenant, and Tenant hereby hires and lets from Landlord, the Land, subject to all Permitted Liens. Landlord hereby consents to the subletting of the Land to the Lessee pursuant to the Lease, and Landlord hereby consents to all rights of such Lessee under the Lease with respect to the Land, and as long as the Lease remains in effect and no Lease Event

of Default has occurred, Landlord waives all of its consent and notice requirements hereunder with respect to Lessee's exercise of its rights under the Lease.

3. Term and Use. To have and to hold, for any and all lawful purposes, for a term commencing on the date hereof and expiring 50 years after the Expiration Date.

4. Rent. The total rent for the term of this Ground Lease ("Rent") is \$50.00. Landlord acknowledges receipt of the sum of \$50.00, which represents a prepayment of the Rent due hereunder during the term hereof. Said Rent shall be absolutely net to Landlord. If Tenant's interest is transferred to a third party as a result of a Lease Event of Default or an Agency Agreement Event of Default or upon the transfer of the Tenant's interest hereunder to a third party under Section 21 of the Lease, the base rent payable hereunder shall increase to the Fair Market Rental Value of the Land (without regard to the Improvements) as of the date of such transfer, such base rent to be payable monthly in advance on the first day of each month during the term hereof.

5. Improvements. During the term of the Lease, Tenant shall have the right to erect, construct, and install, or cause to be erected, constructed and installed, on the Land certain Improvements (as defined below) and Personalty (as defined below) as permitted pursuant to the Operative Agreements. After the expiration or earlier termination of the Lease with respect to the Land, for any reason whatsoever, and upon advance written notice to Landlord but without Landlord's consent, Tenant shall have the right, subject to all Applicable Laws (defined below) and any restrictions of record, at any time and from time to time, to erect, construct, and install on the Land any and all buildings, structures and other improvements, including, but not limited to, any and all utility lines, pipes, connections and fixtures (herein all improvements at any time constructed consistent with the aforesaid, sometimes collectively called "Improvements") and any and all machinery, equipment, signs, trade fixtures, furniture, furnishings, appointments and other personal property to be located therein and utilized in connection with the use and operation thereof ("Personalty"). During the term of the Lease as permitted pursuant to the Operative Agreements and after the expiration or earlier termination of the Lease with respect to the Land, for any reason whatsoever, and upon advance written notice to Landlord but without Landlord's consent, Tenant shall also have the right, subject to all Applicable Laws (defined below) and any restrictions of record, to change, alter, raze, remove or add or cause to be changed, altered, razed, removed or added, to any Improvements, or any part thereof, now existing or hereafter erected, constructed or installed on the Land and remove or cause to be removed the Personalty installed or placed by Tenant in, on, or about the Improvements and the Land.

Landlord acknowledges and agrees that title to the existing Improvements and Personalty and all future Improvements and Personalty is and shall remain in Tenant during the term of this Ground Lease, provided that all Improvements and Personalty, upon termination of this Ground Lease, shall become the property of Landlord, and if so requested by Landlord, Tenant shall execute, acknowledge and deliver to Landlord a proper instrument in writing releasing and quitclaiming to Landlord all right, title and interest of Tenant in and to the Improvements and Personalty remaining on the Land.

In the event Landlord shall fail or unreasonably refuse to sign and deliver any application for building and other permits required, if any, for the erection, construction and installation of Improvements (if same is required to be signed by Landlord) within ten (10) days after Tenant submits same to Landlord for execution, for all building and other permits and licenses necessary for the erection, construction and installation of the Improvements, or for the use and operation of the Land and for certificates of occupancy, then Tenant shall have the right and authority to sign any such application in the name of the Landlord. This provision shall constitute an irrevocable power-of-attorney coupled with an interest, but only for these purposes.

6. Real Estate Taxes. During the term of this Ground Lease, Tenant will pay prior to delinquency all real estate taxes and assessments (or any substitution therefor), both general and special, which shall become due and payable on the Land during the term of this Ground Lease. If any such tax or assessment may, at the option of the taxpayer, be paid in installments, Tenant may exercise the option to pay the same in installments. If Tenant shall elect to pay any such tax or assessment on the installment basis, then Tenant will pay only those installments which become due and payable during the term of this Ground Lease. All real estate taxes and assessments that shall be assessed with respect to the fiscal tax years falling wholly or partially within the first and last calendar years of the term of this Ground Lease shall be apportioned pro rata between Landlord and Tenant on a per diem basis in accordance with the respective numbers of days in said fiscal tax years during which this Ground Lease is in effect. All real estate taxes and assessments which Tenant agrees to pay pursuant to this Ground Lease, and that are not paid when due, may be paid by Landlord and the amounts so paid shall be paid promptly (and in any event, within one Business Day) by Tenant as Rent hereunder.

Tenant, at its expense, shall have the right to contest or review by legal, administrative or other proceedings the amount or validity of any such tax or assessment imposed against the Land. Nothing contained herein shall imply any right on the part of Tenant to postpone such payment unless such proceedings or security given shall stay the imposition of any fines or penalties in connection therewith, the collection thereof and the sale of the Land to satisfy same. Landlord, at Tenant's request, shall join in any such proceedings, but Landlord shall not be liable for any expenses in connection therewith. The proceedings referred to herein shall include, but shall not be limited to, appropriate appeals from any judgments, decrees or orders made in any such proceedings. In the event of any reduction, cancellation or discharge of such taxes or assessments as a result of such proceedings, and if Tenant had not already paid same, then Tenant will do so forthwith as they are finally levied, assessed or imposed. If there shall be any refund payable by the governmental authority with respect thereto, Tenant shall be entitled to receive and retain same.

Nothing contained herein shall obligate Tenant to pay any income, inheritance, estate, gift, succession, sales, use, revenue or transfer tax (or any substitution therefor) of, or levied or assessed against Landlord; nor any other tax, assessment, charge or levy (or any substitution therefor) against Landlord with respect to or because of the rent and other income derived by Landlord under this Ground Lease; nor shall Tenant be deemed obligated to pay any personal property, corporation, franchise, capital stock, payroll, excise, privilege or any other tax of similar nature (or any substitution therefor) which may be levied or assessed against Landlord, except to the extent any of the taxes specified in this paragraph are directly attributable to any of Tenant's personal property or its occupancy or use of the Land or Improvements.

7. Utilities. Tenant will pay all charges for sewer usage or rental, refuse removal, and utilities, including gas, water and electricity, consumed at the Improvements during the term of this Ground Lease as same shall become due and payable.

Subject to the provisions of the Operative Agreements and upon advance written notice to Landlord, Tenant shall have the right to grant any reasonable easements, rights of way, and licenses required by any public or quasi-public utility company with respect to the construction, operation and use of the Improvements and Personalty. Landlord shall execute any instruments any such public or quasi-public utility companies may reasonably request or require from Landlord; provided, however, that in each case such easement, right of way or license (i) does not materially impair the value, utility and remaining useful life of the Land, (ii) is reasonably necessary in connection with the construction, operation or use of the Improvements and the Personalty and (iii) does not cause the Land or any portion thereof to fail to comply with Applicable Law. If Landlord shall fail or unreasonably refuse to execute and deliver same within ten (10) days after Tenant submits the same to Landlord, Tenant shall have the right and authority to execute same in the name of Landlord as if a legal power-of-attorney coupled with an interest had this day been executed by Landlord in favor of Tenant, but only for these purposes.

8. Insurance.

(a) Tenant shall, at its sole cost and expense, at all times during the term hereof maintain and/or cause to be maintained, in full force and effect, comprehensive general liability insurance covering Tenant's operations at the Land, including Landlord as an additional insured. Tenant shall deliver to Landlord a certificate from each insurance carrier as to each such insurance policy.

(b) Landlord agrees that if Tenant or a subtenant of Tenant who is required to maintain the insurance required under this Section 8 maintains a tangible net worth of \$50,000,000 or more, then such party may comply with this Section in whole or in part by means of a reasonable self-insurance program providing the same protections as afforded Landlord under the insurance policies required hereunder, and otherwise consistent with prudent self-insurance practices.

(c) Tenant, or its designee, shall have the sole and exclusive right (without the participation of Landlord) to adjust and settle any and all claims under insurance policies (other than claims against Landlord or which could result in a loss to Landlord) obtained by Tenant or those claiming by or through Tenant in connection with or relating to the Land and Improvements and to receive the proceeds of any such claims.

9. Indemnity.

(a) Subject to Section 9(c) below, Landlord (in its capacity as Landlord, but without limiting Lessee's obligations under the other Operative Agreements), shall not be liable for any loss, damage, death or injury of any kind or character to persons or property, arising from any use of the Land, or any part thereof, or caused by any defect in the building, structure or other Improvement thereon or in any other facility thereof, or caused by or arising from any act

or omission of Tenant, or any of its agents, employees, sublessees, licensees or invitees, or by or from any accident on the Land or any fire or other casualty thereon.

(b) Subject to Section 9(c) below, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord from and against any and all claims arising from Tenant's (or anyone under Tenant's control) use of the Land, or from the conduct of Tenant's business, or from any activity, work or things done, permitted or suffered by Tenant in or about the Land or elsewhere, and shall further indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Ground Lease, or arising from any negligence of Tenant, or any of Tenant's agents, contractors, subtenants or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or any action or proceeding brought against Landlord by reason of any such claims, and Tenant, upon notice from Landlord, shall defend the same, at Tenant's expense, by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Land and the Improvements arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord.

(c) Notwithstanding anything herein to the contrary, Landlord shall be liable for its own gross negligence and willful misconduct, and for the gross negligence or willful misconduct of anyone under Landlord's control.

10. Repairs. So long as there exist any Improvements on the Land, Tenant, at its expense, will keep and maintain the Improvements in good and safe order, condition and repair, ordinary wear and tear excepted. Landlord shall not be required to furnish any services or facilities to the Land, except as otherwise set forth herein.

Tenant, at its expense, will keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the sidewalks, areas, alleys and curbs in front of or adjacent to the Land.

11. Compliance with Laws and Ordinances. Tenant will comply with all federal, state, county and city laws, ordinances and regulations of any duly constituted authority affecting the Land ("Applicable Laws"). Tenant, at its expense, shall have the right to contest or review by legal, administrative or other proceedings the validity of any such law, ordinance and regulation, or the application thereof. During such proceedings, compliance with any such law, ordinance or regulation may be deferred by Tenant upon the condition that Tenant will secure the cost of complying with same to Landlord in such manner as Landlord may reasonably request. Landlord shall join in such proceedings if necessary to do so in order to prosecute such proceedings properly, but Landlord shall not be liable for any expenses in connection therewith. The proceedings referred to herein shall include, but shall not be limited to, appropriate appeals from any judgments, decrees or orders made in any such proceedings.

12. Landlord's Access to Land. Landlord will have access to the Land, at its own risk and expense, at any and all reasonable times during the term of this Ground Lease for the purpose of examining and inspecting same upon reasonable prior notice.

13. Assignment and Subletting. Subject to the terms and provisions of the Lease, Tenant, following reasonable advance written notice to Landlord but without the consent of Landlord, at any time and from time to time during the term of this Ground Lease, shall have the right to assign this Ground Lease, and its rights hereunder and its interest in the Improvements, and to sublet all or any part of the Land and lease the Improvements. In the event this Ground Lease shall be assigned by Tenant to any person with sufficient financial resources to perform Tenant's obligations under this Ground Lease as determined in Landlord's reasonable judgment, then all liabilities and obligations on the part of Tenant accruing after such assignment shall terminate.

14. Performance by Subtenants and Occupancy Tenants. Landlord shall accept performance by any subtenant or occupancy tenant of any of the terms and provisions of this Ground Lease required to be performed by Tenant with the same force and effect as though performed by Tenant.

15. Casualty and Condemnation. If any buildings, structures or other Improvements located on the Land, or any part thereof, shall be damaged or destroyed by fire or other casualty, or in the event of any taking of title to the Land which is not a "Significant Condemnation," Tenant's obligations under this Ground Lease shall not be affected and Landlord shall be entitled to receive any award attributable to a taking of the Land. Except as set forth in Section 10, following any casualty on the Land, Tenant shall have no obligation to restore, repair or rebuild any Improvements on the Land.

As used herein, a "Significant Condemnation" means (a) during the term of the Lease a Condemnation that is determined by the Lessee to be a "Significant Condemnation" under the Lease and (b) after the expiration or earlier termination of the Lease, a Condemnation that in the reasonable, good faith judgment of the Tenant (as evidenced by an Officer's Certificate) either (i) renders the Property unsuitable for continued use as commercial property of the type of such Property immediately prior to such Condemnation, or (ii) is such that restoration of the Property to substantially its condition as existed immediately prior to such Condemnation would be impracticable or impossible.

In the event of a Significant Condemnation, the entire award, or the aggregate of any separate awards, shall be apportioned as follows:

A. There shall be first paid any and all costs, fees and expenses reasonably incurred by Landlord and Tenant in connection with the collection thereof;

B. There shall be next paid to Landlord an amount as shall represent compensation for the value of the Land (excluding all Improvements) as encumbered by the Ground Lease determined in accordance with the fair market appraisal terms and procedures set forth in Section 24 hereof; and

C. Any balance of the award shall be paid to Tenant (and if the Lease is in effect, the same shall be distributed in accordance with the Lease);

and this Ground Lease shall terminate on the following date: (x) if the Lease is in effect and the Base Term has commenced on the date of the Significant Condemnation, the date the Lease terminates with respect to the Land and Improvements pursuant to Sections 16 and 19 of the Lease and Lessee shall have performed all of its obligations thereunder, including (without limitation) its obligations under Sections 16 and 19 thereof, and (y) in all other cases on the date of such Significant Condemnation, and in either case the Rent and other charges shall be apportioned and paid to the date of such Significant Condemnation. The provisions of this Section as to the apportionment of any such awards shall survive such termination.

In the event of a condemnation or exercise of eminent domain which is not a Significant Condemnation, there shall be no abatement of rent and the entire award, or the aggregate of the separate awards to Landlord and Tenant as the case may be (less costs, fees and expenses reasonably incurred by Landlord and Tenant in connection with the collection thereof) shall be paid to Tenant.

16. Ground Lease Events of Default.

(a) Subject to clause (f) of this Section 16, Tenant agrees that the following shall be considered a "Ground Lease Event of Default": Tenant shall default in any of the covenants or agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for ninety (90) days after notice thereof in writing to Tenant (provided Tenant shall have only three (3) days to cure monetary defaults); provided, however, that if such default is not a monetary default and is of a nature that it cannot be reasonably cured within such 90-day period, then Tenant shall have such time as is reasonably required to diligently cure such default.

(b) Upon the occurrence of any Ground Lease Event of Default, it shall be lawful for Landlord, at its election, to declare the term ended and either with or without process of law, to re-enter and to expel, remove and put out Tenant and re-enter the Land again to repossess and enjoy the same, without such re-entry and repossession working a discharge of the rents unpaid and the covenants unperformed by Tenant prior to such re-entry, all without service of process (except to the extent required by law) and without effecting a trespass, or becoming liable for any loss or damage occasioned thereby.

(c) The foregoing provisions for the termination of this Ground Lease for any default in any of its covenants shall not operate to exclude or suspend any other remedy of Landlord for breach of any of said covenants or for the recovery of unpaid accrued rent, but Tenant shall not be liable for any rent or other obligations which would have accrued under this Ground Lease after the date of such termination had this Ground Lease not been terminated. In the event any action is commenced for nonperformance of any provisions of this Ground Lease, Tenant agrees to pay Landlord's reasonable attorneys' fees.

(d) Subject to the limitation set forth herein, no remedy herein reserved to Landlord shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy existing at law or in equity, and every remedy given by this Ground Lease to Landlord may be exercised from time to time and as often as occasion may arise.

(e) Notwithstanding anything to the contrary contained herein, the Landlord's rights and remedies and Tenant's obligations and liabilities are subject to Section 25 hereof.

(f) Notwithstanding anything in this Ground Lease to the contrary, prior to the date ("Transition Date") that either (i) Lessee has acquired Tenant's interest in this Ground Lease or (ii) a third party has acquired both (x) Tenant's interest in this Ground Lease and (y) possession of the Land and Improvements from Lessee:

(A) Landlord will look solely to General Motors Corporation, as lessee under the Lease, directly for the performance of all Tenant's obligations hereunder, including, without limitation, Tenant's indemnification obligations hereunder and Tenant's obligations under Section 6; provided, however, that in the event of any conflict between any obligation of Tenant under this Ground Lease and the obligation of General Motors Corporation as the lessee under the Lease, nothing herein is intended to amend or limit General Motors Corporation's obligations as the lessee under the Lease;

(B) Tenant shall have no liability to Landlord for any obligations of Tenant arising or accruing hereunder, including, without limitation, for any indemnity obligation hereunder;

(C) Landlord shall not have any right to declare a Ground Lease Event of Default hereunder or exercise any right or remedy against Tenant in respect thereof nor shall any Ground Lease Event of Default be deemed to exist hereunder, and to the extent that any of Tenant's obligations hereunder are not performed by Lessee or Tenant when and as required hereby, then so far as Tenant is concerned the Tenant's obligation to perform the same for the benefit of the Landlord shall be deemed waived; and

(D) Tenant's right to quiet and peaceful enjoyment of the Land shall not be disturbed.

17. Tenant's Right to Mortgage.

Tenant may at any time and from time to time (and as many times as it desires) mortgage, hypothecate or pledge this Ground Lease and the leasehold estate created hereby and the interest of the Tenant in and to this Ground Lease, together with Tenant's right, title and interest in the Improvements and Personalty and Tenant's interest in any and all subleases and in and to all rents due or to become due thereunder (herein called a "Leasehold Mortgage"; and the holder of any such Leasehold Mortgage, whether or not the same is recorded of record, is herein called a "Leasehold Mortgagee").

Landlord and Tenant agree that so long as any such Leasehold Mortgage exists:

A. Landlord will simultaneously mail to any Leasehold Mortgagee a copy of any notice given by Landlord to Tenant at the address given by such Leasehold Mortgagee to Landlord for the receipt of such notice. Landlord acknowledges that as of the date of this Ground Lease, the name and address of the Leasehold Mortgagee is as follows:

Chase Manhattan Bank, as Administrative Agent  
270 Park Avenue  
New York, New York 10017

B. Landlord and Tenant acknowledge that the defaults or other events described in Section 16 may be classified as (i) "Curable Defaults" and (ii) "Non-Curable Defaults". The "Non-Curable Defaults" are any defaults which are by their nature not susceptible of being cured by a third person such as the Leasehold Mortgagee; and the Curable Defaults are all other defaults.

C. If a Curable Default occurs and if, prior to the expiration of the applicable grace period provided for in Section 16, the Leasehold Mortgagee shall give to Landlord written notice that it intends to undertake a curing of all Curable Defaults and within such grace period the Leasehold Mortgagee commences upon a curing and thereafter pursues to conclusion the curing of all Curable Defaults continuously and diligently in good faith, then Landlord will not take action to effect a termination of this Ground Lease or to re-enter or take possession of the Land as a consequence of such Curable Default. However, if (i) a Curable Default is of such a nature that the curing thereof cannot be effected by the Leasehold Mortgagee until it shall have obtained possession of the Land and (ii) prior to the effective date of a termination of this Ground Lease by Landlord or Landlord's re-entering or taking possession of the Land pursuant to the provisions of Section 16, the Leasehold Mortgagee shall give to Landlord written notice that it intends to institute foreclosure or other legal proceedings or to exercise any of its remedies under the Leasehold Mortgage concerned in order to gain possession of the Land and within such grace period takes action to institute such remedies, then Landlord will not take any action to effect a termination of this Ground Lease or to re-enter or take possession of the Land as a consequence of such Curable Default so long as such Leasehold Mortgagee shall diligently continue to prosecute its remedies under the Leasehold Mortgage (except during any such time it may be stayed or otherwise legally prevented from doing so) and cure all other Curable Defaults (if any) which may occur from time to time and which are susceptible of being cured by the Leasehold Mortgagee without its obtaining possession of the Land and such Leasehold Mortgagee shall upon taking possession of the Land cure such Curable Defaults within the period reasonably required to cure the same.

D. If a Non-Curable Default occurs and (i) the Leasehold Mortgagee shall then be in the process of curing all then existing Curable Defaults pursuant to the provisions of subsection (C) above and (ii) the Leasehold Mortgagee shall give to Landlord written notice that it intends to institute foreclosure or other legal proceedings or to exercise any of its remedies under the Leasehold Mortgage concerned in order to gain possession of the Land, then Landlord will not take any action to effect a termination of this Ground Lease or to re-enter or take possession of the Land as a consequence of such Non-Curable Default so long as such Leasehold Mortgagee shall continue diligently to prosecute its remedies under the Leasehold Mortgage (except during any such time it may be stayed or

otherwise legally prevented from doing so) and cure all Curable Defaults (if any) which may occur from time to time and which are susceptible of being cured by the Leasehold Mortgagee without its obtaining possession of the Land and such Leasehold Mortgagee shall upon taking possession of the Land cure such Curable Defaults within the period reasonably required to cure the same.

E. In the event a Leasehold Mortgagee or its designee designated for that purpose acquires the Improvements and the leasehold estate pursuant to any proceedings for foreclosure of such Leasehold Mortgage, or by a voluntary assignment or transfer of this Ground Lease and the leasehold estate and the Improvements in lieu of foreclosure or otherwise, the Leasehold Mortgagee or its designee or assignee as aforesaid shall be deemed an assignee of all the rights of Tenant under this Ground Lease.

F. If this Ground Lease shall be rejected or disaffirmed pursuant to any bankruptcy law or other law affecting creditors' rights or if this Ground Lease is terminated for any other reason whatsoever, Landlord will enter into a new lease of the Land with the Leasehold Mortgagee or its designee not less than ten (10) nor more than thirty (30) days after the request of the Leasehold Mortgagee referred to below, for the remainder of the term of this Ground Lease effective as of the date of such rejection or disaffirmance or termination, upon all the terms and provisions contained in this Ground Lease; provided that (i) the Leasehold Mortgagee makes a written request to Landlord for such new Ground Lease within ninety (90) days after the effective date of such rejection or disaffirmance or termination, as the case may be, and such written request is accompanied by a copy of such new lease, duly executed and acknowledged by the Leasehold Mortgagee or its designee and (ii) upon taking possession of the Land the Leasehold Mortgagee cures any outstanding Curable Defaults within the period reasonably required to cure the same. Any new lease made pursuant to this paragraph shall have the same priority with respect to other interests in the Land as this Ground Lease. The provisions of this paragraph shall survive the rejection or disaffirmance or termination of this Ground Lease and shall continue in full force and effect thereafter to the same extent as if this paragraph were a separate and independent contract made by Landlord and the Leasehold Mortgagee.

G. So long as a Leasehold Mortgage is in effect and a matter of public record (i) Landlord will not accept a voluntary surrender of this Ground Lease except pursuant to an exercise of the Purchase Option under the Lease, and (ii) the Ground Lease shall not be modified in any material respect without, in each case, the prior written consent of the Leasehold Mortgagee. Any surrender or modification in violation of this paragraph shall be void.

The provisions of this Section 17 are for the benefit of any Leasehold Mortgagee and may be relied upon and shall be enforceable by any Leasehold Mortgagee. No Leasehold Mortgagee shall be liable upon the covenants, agreements or obligations of Tenant contained in this Ground Lease, except as expressly provided herein.

Landlord shall execute any instruments any such Leasehold Mortgagee may reasonably request or require from Landlord, with respect to the provisions of this Section 17.

18. Right to Mortgage. Landlord shall have the right to place a mortgage or other lien on the Land or Landlord's interest in this Ground Lease at any time during the term of this Ground Lease; provided, however, any such mortgage shall at all times be junior and subordinate to this Ground Lease and any amendments, modifications, replacements or substitutions thereof, including, without limitation, any replacement ground lease entered into in accordance with Section 17 hereof, and the mortgage shall so expressly state.

19. Landlord's and Tenant's Certificates. Landlord and Tenant, on written request from each other, shall execute and deliver to the other party or any Leasehold Mortgagee or prospective purchaser, if so requested, without charge, a certificate certifying that this Ground Lease is in full force and effect, and whether it has been modified (and if there have been modifications, stating them), and whether or not the party executing the certificate knows of any default, breach or violation by the other party under any of the terms of this Ground Lease, and such other matters as may reasonably be requested.

20. Quiet Enjoyment. Landlord agrees that after the Transition Date (so long as no Ground Lease Event of Default exists), and prior to the Transition Date, Tenant's quiet and peaceful enjoyment of the Land shall not be disturbed or interfered with by Landlord or any other person or party, except any person or party (excluding Landlord) claiming by, through or under Tenant.

21. Recording of Memorandum. Upon the execution hereof, Landlord and Tenant shall execute and deliver a short form of Ground Lease hereof in substantially the form of Exhibit B attached hereto, and Landlord (at its expense) shall record such short form of Ground Lease in the real estate records of the state and county in which the Land is located.

22. Inability to Perform. Anything in this Ground Lease to the contrary notwithstanding, Tenant's inability to fulfill any of Tenant's agreements and undertakings under this Ground Lease shall not be considered Ground Lease Events of Default if Tenant is prevented or delayed from so doing by reason of strikes, labor troubles, lockouts, riots, civil commotions, acts of God, governmental restrictions, unavailability of services or materials or any other cause beyond the control of Tenant.

23. Notices. All notices to or demands upon Landlord or Tenant desired or required to be given under the provisions hereof shall be in writing and shall be deemed to have been duly given upon the earlier of actual receipt or, if mailed, three days after being deposited in the United States mails, registered or certified, return receipt requested, postage prepaid and addressed as follows:

If to Landlord:

Riverfront Holdings, Inc.  
Worldwide Real Estate  
200 Renaissance Center  
Tower 200, 38<sup>th</sup> Fl.  
Detroit, Michigan 48265-2000  
Attention: General Director, WRE  
Telephone: (313) 665-6620  
Facsimile: (313) 665-6745

with a copy to:

General Motors Corporation  
767 Fifth Avenue  
New York, New York 10153  
Attention: Treasurer  
Telephone: (212) 418-6219  
Facsimile: (212) 418-3639

If to Tenant:

Auto Facilities Real Estate Trust 2001-1  
c/o Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890-0001  
Attention: Corporate Trust Administration  
Telephone: (302) 651-1000  
Facsimile: (302) 651-8882

or at such other address within the continental United States as any party may notify the other party as herein specified.

24. Liability of Wilmington Trust Company. It is expressly understood and agreed by the parties hereto that (i) this Ground Lease is executed and delivered by Wilmington Trust Company not individually or personally but solely as trustee of Trust, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of Tenant is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose of binding only the Tenant, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto and (iv) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of any party hereto, or be

liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Tenant under this Ground Lease.

25. Limitations on Recourse. Anything in this Ground Lease, Short Form Ground Lease or the other Operative Agreements to the contrary notwithstanding, neither Tenant nor any of its successors or assigns shall have any claim, remedy or right to proceed against Landlord in its individual capacity or any past, present or future stockholder, subscriber of capital stock, officer, director, incorporator or partner of Landlord whether by virtue of any statute or rule of law or by enforcement of any penalty or assessment or otherwise or for the payment of any liability resulting from the breach of any representation, agreement or warranty of any nature whatsoever in this Ground Lease, Short Form Ground Lease or any other Operative Agreement, from any source other than Landlord's interest in the Land and Improvements and the other Operative Agreements; and Tenant by the execution of this Ground Lease and Short Form Ground Lease waives and releases any liability of Landlord in its individual capacity or any past, present or future stockholder, subscriber of capital stock, officer, director, incorporator or partner of Landlord for and on account of such liability, agrees to look solely to Landlord's interest in the Land and Improvements and the other Operative Agreements for the satisfaction of such liability; provided, however, that nothing herein contained shall limit, restrict or impair the rights of Tenant, subject to the limitations hereinabove described, to bring suit and obtain a judgment against Landlord or to exercise all rights and remedies provided under this Ground Lease or otherwise realize upon Landlord's interest in the Land and Improvements and the other Operative Agreements, other than the pursuit of any claim of personal liability; and provided, further, that Landlord shall be liable in its individual capacity for (i) its own willful misconduct or gross negligence, (ii) any Tax based on or measured by any income, fees, commission or compensation received by it for acting as the Landlord as contemplated by the Operative Agreements, (iii) Liens on the Land and Improvements which are attributable to it, (iv) its representations, warranties and agreements made in its individual capacity, and (v) as otherwise expressly provided in the Participation Agreement or any other Operative Agreement.

26. Miscellaneous. (a) All agreements, terms, provisions and conditions in this Ground Lease shall extend and inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

(b) The captions of this Ground Lease are for convenience only, and are not to be construed as a part of this Ground Lease, and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

(c) If any term or provision of this Ground Lease shall be to any extent held invalid or unenforceable, the remaining terms and provisions of this Ground Lease shall not be affected thereby, but each term and provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

(d) This Ground Lease shall be construed and enforced in accordance with the laws of the state where the Land is located.

(e) This Ground Lease represents the entire agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral, including but not limited to any letters of intent.

(f) This Ground Lease may be executed in multiple counterparts each of which taken together shall constitute one and the same instrument.

(g) Nothing herein contained shall be deemed or constructed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship other than Landlord and Tenant.

(h) Any waiver given by either party with respect to performance by the other party of any provision of this Ground Lease shall be construed only as a waiver of the particular provision in question and only then with respect to the particular failure to comply, and such waiver shall not be construed as a waiver of any separate failure to comply or of any other provisions of this Ground Lease.

(i) In the event Tenant remains in possession of the Land after expiration of this Ground Lease without the execution of a new lease, it shall be deemed to be occupying the Land as a tenant at sufferance at a monthly rental equal to 150% of the then current monthly rental, and otherwise subject to all the conditions, provisions and obligations of this Ground Lease insofar as the same are applicable to a tenancy at sufferance.

(j) Whenever herein the singular number is used, the same shall include the plural and words of any gender shall include each other gender.

(k) The individuals executing this instrument on behalf of Landlord and Tenant, respectively, represent that each has been duly authorized so to do by appropriate action taken by Landlord or Tenant, as the case may be.

(l) There shall be no merger of the Ground Lease or of the ground leasehold estate created hereby by reason of the fact that the same person may acquire, own or hold, directly or indirectly, in whole or in part, (a) any interest in this Ground Lease or the ground leasehold estate created hereby, (b) the fee estate or ground leasehold title in the Land, except as may be expressly stated in a written instrument duly executed and delivered by the appropriate person, or (c) beneficial interest in Landlord.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Ground Lease as of the date first above written.

LANDLORD:

RIVERFRONT HOLDINGS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

AUTO FACILITIES REAL ESTATE TRUST  
2001-1

By: Wilmington Trust Company, not in its  
individual capacity, but solely as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2001 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/ she/ they executed the same in his/ her/ their capacity(ies) and that by his / her / their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Signature and Office of individual  
Taking acknowledgement

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2001 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/ she/ they executed the same in his/ her/ their capacity(ies) and that by his / her / their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Signature and Office of individual  
Taking acknowledgement

EXHIBIT A  
LEGAL DESCRIPTION OF LAND

## EXHIBIT B

### SHORT FORM OF GROUND LEASE

THIS SHORT FORM OF GROUND LEASE (this "Short Form") is made this \_\_\_\_ day of \_\_\_\_\_, 200[ ] by and between RIVERFRONT HOLDINGS, INC., a Delaware corporation ("Landlord"), and AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust ("Tenant").

#### WITNESSETH:

WHEREAS, Landlord is the fee simple owner of the land legally described on Exhibit A attached hereto and made a part hereof (together with all rights-of-way or use, easements, servitudes, licenses, tenements, driveways, approaches, pavements, hereditaments, curbs and street front privileges and appurtenances thereunto belonging but excluding the Improvements (as hereinafter defined, the "Land") located in the City of Detroit, County of Wayne;

WHEREAS, Landlord and Tenant have entered into a ground lease of the Land of even date herewith (as amended, modified or supplemented, the "Ground Lease") and desire to enter into and record a Short Form thereof; and

WHEREAS, Tenant has entered into that certain Lease dated as of October 31, 2001 (as amended, modified or supplemented, the "Lease") by and between Tenant, as lessor, and General Motors Corporation ("GM"), as lessee, covering the Land and certain other properties;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to enter into this Short Form, as follows:

1. Capitalized Terms. Capitalized terms used herein but not defined herein shall have the meaning set forth in the Ground Lease. Capitalized terms used herein and not defined in the Ground Lease shall have the meanings assigned to them in Annex A attached to the Participation Agreement dated as of the date hereof among Landlord, Tenant, Relationship Funding Company, The Chase Manhattan Bank, as Administrative Agent and as Agent Bank, Wilmington Trust Company, the Backup Facility Banks named therein, and the Investors named therein ("Participation Agreement"). The rules of usage and documentary conventions set forth in such Annex are also applicable hereto.

2. Land. Landlord, for and in consideration of the rents herein reserved and of the agreements herein contained on the part of Tenant to be kept, observed and performed, does by these presents demise and lease to Tenant, and Tenant hereby hires and lets from Landlord, the Land, subject to all Permitted Exceptions. Landlord hereby consents to the subletting of the Land to the Lessee pursuant to the Lease, and Landlord hereby consents to all rights of such Lessee under the Lease with respect to the Land, and as long as the Lease remains in effect and no Lease Event of Default has occurred, Landlord waives all of its consent and notice requirements hereunder with respect to Lessee's exercise of its rights under the Lease.

3. Term, Use and Rent. To have and to hold, for any and all lawful purposes, for a term commencing on the date hereof and expiring 50 years after the Expiration Date or such earlier date as the Lease shall terminate for a total rent of \$50.00. If Tenant's interest is transferred to a third party as a result of a Lease Event of Default or Agency Agreement Event of Default or upon the transfer of the Tenant's interest hereunder to a third party under Section 21 of the Lease, the base rent payable hereunder shall increase to the Fair Market Rental Value of the Land (without regard to the Improvements) as of the date of such transfer, such based rent to be payable monthly in advance on the first day of each month during the term hereof.

4. Tenant's Right to Mortgage.

Subject to limitations set forth in the Ground Lease, Tenant may at any time and from time to time (and as many times as it desires) mortgage, hypothecate or pledge the Ground Lease and the leasehold estate created thereby and the interest of the Tenant in and to the Ground Lease, together with Tenant's right, title and interest in the Improvements and Personalty and Tenant's interest in any and all subleases and in and to all rents due or to become due thereunder (herein called a "Leasehold Mortgage", and the holder of any such Leasehold Mortgage, whether or not the same is recorded of record, is herein called a "Leasehold Mortgage").

Landlord and Tenant agree that so long as any such Leasehold mortgage exists:

A. Landlord will simultaneously mail to any Leasehold Mortgagee a copy of any notice given by Landlord to Tenant at the address given by such Leasehold Mortgagee to Landlord for the receipt of such notice.

B. Landlord and Tenant acknowledge that the defaults or other events described in Section 16 of the Ground Lease may be classified as (i) "Curable Defaults" and (ii) "Non-Curable Defaults". The Non-Curable Defaults are any defaults which are by their nature not susceptible of being cured by a third person such as the Leasehold Mortgagee; and the Curable Defaults are all other defaults.

C. If a Curable Default occurs and if, prior to the expiration of the applicable grace period provided for in Section 16 of the Ground Lease, the Leasehold Mortgagee shall give to Landlord written notice that it intends to undertake a curing of all Curable Defaults and within such grace period the Leasehold Mortgagee commences upon a curing and thereafter pursues to conclusion the curing of all Curable Defaults continuously and diligently in good faith, then Landlord will not take action to effect a termination of this Ground Lease or to re-enter or take possession of the Land as a consequence of such Curable Default. However, if (i) a Curable Default is of such a nature that the curing thereof cannot be effected by the Leasehold Mortgagee until it shall have obtained possession of the Land and (ii) prior to the effective date of a termination of the Ground Lease by Landlord or Landlord's re-entering or taking possession of the Land pursuant to the provisions of Section 16 of the Ground Lease, the Leasehold Mortgagee shall give to Landlord written notice that it intends to

institute foreclosure or other legal proceedings or to exercise any of its remedies under the Leasehold Mortgage concerned in order to gain possession of the Land and within such grace period takes action to institute such remedies, then Landlord will not take any action to effect a termination of the Ground Lease or to re-enter or take possession of the Land as a consequence of such Curable Default so long as such Leasehold Mortgagee shall diligently continue to prosecute its remedies under the Leasehold Mortgage (except during any such time it may be stayed or otherwise legally prevented from doing so) and cure all other Curable Defaults (if any) which may occur from time to time and which are susceptible of being cured by the Leasehold Mortgagee without its obtaining possession of the Land and such Leasehold Mortgagee shall upon taking possession of the Land cure such Curable Defaults within the period reasonably required to cure the same.

D. If a Non-Curable Default occurs and (i) the Leasehold Mortgagee shall then be in the process of curing all then existing Curable Defaults pursuant to the provisions of subsection (C) above and (ii) the Leasehold Mortgagee shall give to Landlord written notice that it intends to institute foreclosure or other legal proceedings or to exercise any of its remedies under the Leasehold Mortgage concerned in order to gain possession of the Land, then Landlord will not take any action to effect a termination of the Ground Lease or to re-enter or take possession of the Land as a consequence of such Non-Curable Default so long as such Leasehold Mortgagee shall continue diligently to prosecute its remedies under the Leasehold Mortgage (except during any such time it may be stayed or otherwise legally prevented from doing so) and cure all Curable Defaults (if any) which may occur from time to time and which are susceptible of being cured by the Leasehold Mortgagee without its obtaining possession of the Land and such Leasehold Mortgagee shall upon taking possession of the Land cure such Curable Defaults within the period reasonably required to cure the same.

E. In the event a Leasehold Mortgagee or its designee designated for that purpose acquires the Improvements and the leasehold estate pursuant to any proceedings for foreclosure of such Leasehold Mortgage, or by a voluntary assignment or transfer of the Ground Lease and the leasehold estate and the Improvements in lieu of foreclosure or otherwise, the Leasehold Mortgagee or its designee or assignee as aforesaid shall be deemed an assignee of all the rights of Tenant under the Ground Lease.

F. If the Ground Lease shall be rejected or disaffirmed pursuant to any bankruptcy law or other law affecting creditors' rights or if the Ground Lease is terminated for any other reason whatsoever, Landlord will enter into a new lease of the Land with the Leasehold Mortgagee or its designee not less than ten (10) nor more than thirty (30) days after the request of the Leasehold Mortgagee referred to below, for the remainder of the term of the Ground Lease effective as of the date of such rejection or disaffirmance or termination, upon all the terms

and provisions contained in the Ground Lease; provided that (i) the Leasehold Mortgagee makes a written request to Landlord for such new Ground Lease within ninety (90) days after the effective date of such rejection or disaffirmance or termination, as the case may be, and such written request is accompanied by a copy of such new lease, duly executed and acknowledged by the Leasehold Mortgagee or its designee and (ii) upon taking possession of the Land the Leasehold Mortgagee cures any outstanding Curable Defaults within the period reasonably required to cure the same. Any new lease made pursuant to this paragraph shall have the same priority with respect to other interests in the Land as the Ground Lease. The provisions of this paragraph shall survive the rejection or disaffirmance or termination of the Ground Lease and shall continue in full force and effect thereafter to the same extent as if this paragraph were a separate and independent contract made by Landlord and the Leasehold Mortgagee.

G. So long as a Leasehold Mortgage is in effect and a matter of public record (i) Landlord will not accept a voluntary surrender of the Ground Lease except pursuant to an exercise of the Purchase Option under the Lease and (ii) the Ground Lease shall not be modified in any material respect without, in each case, the prior written consent of the Leasehold Mortgagee. Any surrender or modification in violation of this paragraph shall be void.

The provisions of this Section 4 are for the benefit of any Leasehold Mortgagee and may be relied upon and shall be enforceable by any Leasehold Mortgagee. No Leasehold Mortgagee shall be liable upon the covenants, agreements or obligations of Tenant contained in the Ground Lease, except as expressly provided herein.

Landlord shall execute any instruments any such Leasehold Mortgagee may reasonably request or require from Landlord, with respect to the provisions of this Section 4.

5. Right to Mortgage. Landlord shall have the right to place a mortgage or other lien on the Land or Landlord's interest in the Ground Lease at any time during the term of the Ground Lease; provided, however, any such mortgage shall at all times be junior and subordinate to the Ground Lease and any amendments, modifications, replacements or substitutions thereof, including, without limitation, any new lease entered into in accordance with Section 17 of the Ground Lease, and the mortgage shall so expressly state.

6. Notices. All notices to or demands upon Landlord or Tenant desired or required to be given under the provisions hereof shall be in writing and shall be deemed to have been duly given upon the earlier of actual receipt or, if mailed, three days after being deposited in the United States mails, registered or certified, return receipt requested, postage prepaid and addressed as follows:

If to Landlord:

Riverfront Holdings, Inc.  
Worldwide Real Estate  
200 Renaissance Center  
Tower 200, 38<sup>th</sup> Fl.  
Detroit, Michigan 48265-2000  
[Attention: General Director, WRE  
Telephone: (313) 665-6620  
Facsimile: (313) 665-6745

with a copy to:

General Motors Corporation  
767 Fifth Avenue  
New York, New York 10153  
Attention: Treasurer  
Telephone: (212) 418-6219  
Facsimile: (212) 418-3639

If to Tenant:

Auto Facilities Real Estate Trust 2001-1  
c/o Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890-0001  
Attention: Corporate Trust Administration  
Telephone: (302) 651-1000  
Facsimile: (302) 651-8882

or at such other address within the continental United States as any party may notify the other party as herein specified.

7. Liability of Wilmington Trust Company. It is expressly understood and agreed by the parties hereto that (i) this Short Form is executed and delivered by Wilmington Trust Company not individually or personally but solely as trustee of Trust, in the exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made on the part of Tenant is made and intended not as personal representations, undertakings and agreements by Wilmington Trust Company but is made and intended for the purpose of binding only the Tenant, (iii) nothing herein contained shall be construed as creating any liability on Wilmington Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under

the parties hereto and (iv) under no circumstances shall Wilmington Trust Company be personally liable for the payment of any indebtedness or expenses of any party hereto, or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Tenant under this Short Form or the Ground Lease.

8. Limitations on Recourse. Anything in this Ground Lease, Short Form Ground Lease or the other Operative Agreements to the contrary notwithstanding, neither Tenant nor any of its successors or assigns shall have any claim, remedy or right to proceed against Landlord in its individual capacity or any past, present or future stockholder, subscriber of capital stock, officer, director, incorporator or partner of Landlord whether by virtue of any statute or rule of law or by enforcement of any penalty or assessment or otherwise or for the payment of any liability resulting from the breach of any representation, agreement or warranty of any nature whatsoever in this Ground Lease, Short Form Ground Lease or any other Operative Agreement, from any source other than Landlord's interest in the Land and Improvements and the other Operative Agreements; and Tenant by the execution of this Ground Lease and Short Form Ground Lease waives and releases any liability of Landlord in its individual capacity or any past, present or future stockholder, subscriber of capital stock, officer, director, incorporator or partner of Landlord for and on account of such liability, agrees to look solely to Landlord's interest in the Land and Improvements and the other Operative Agreements for the satisfaction of such liability; provided, however, that nothing herein contained shall limit, restrict or impair the rights of Tenant, subject to the limitations hereinabove described, to bring suit and obtain a judgment against Landlord or to exercise all rights and remedies provided under this Ground Lease or otherwise realize upon Landlord's interest in the Land and Improvements and the other Operative Agreements, other than the pursuit of any claim of personal liability; and provided, further, that Landlord shall be liable in its individual capacity for (i) its own willful misconduct or gross negligence, (ii) any Tax based on or measured by any income, fees, commission or compensation received by it for acting as the Landlord as contemplated by the Operative Agreements, (iii) Liens on the Land and Improvements which are attributable to it, (iv) its representations, warranties and agreements made in its individual capacity, and (v) as otherwise expressly provided in the Participation Agreement or any other Operative Agreement.

9. Miscellaneous.

(a) This Short Form shall be construed and enforced in accordance with the laws of the state where the Land is located.

(b) This Short Form may be executed in multiple counterparts each of which taken together shall constitute one and the same instrument.

(c) In the event of any conflict between the terms and provisions hereof and the terms and provisions of the Ground Lease, the terms and provisions of the Ground Lease shall be controlling.

10. Incorporation by Reference. All of the terms, provisions and conditions of the Ground Lease shall be incorporated herein by reference, and this Short Form shall serve as record notice of such terms, provisions and conditions.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Short Form as of the date first above written.

LANDLORD:

RIVERFRONT HOLDINGS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

AUTO FACILITIES REAL ESTATE TRUST  
2001-1

By: Wilmington Trust Company, not individually,  
but solely as Trustee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/ she/ they executed the same in his/ her/ their capacity(ies) and that by his / her / their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Signature and Office of individual  
Taking acknowledgement

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/ she/ they executed the same in his/ her/ their capacity(ies) and that by his / her / their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
Taking acknowledgement

EXHIBIT A SHORT FORM OF GROUND LEASE  
LEGAL DESCRIPTION OF LAND

509420-0198-08617-NY02.2104681.9

JPMCB-STB-00001170