

## **EXHIBIT B**

Rules of Usage and Definitions

Rules of Usage

The following rules of usage shall apply to this Annex A and the Operative Agreements (and each appendix, schedule, exhibit and annex to the foregoing) unless otherwise required by the context or unless otherwise defined therein:

- (a) Except as otherwise expressly provided, any definitions defined herein or in any other document shall be equally applicable to the singular and plural forms of the terms defined.
- (b) Except as otherwise expressly provided, references in any document to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits are references to articles, sections, paragraphs, clauses, annexes, appendices, schedules or exhibits in or to such document.
- (c) The headings, subheadings and table of contents used in any document are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof.
- (d) References to any Person shall include such Person, its successors and permitted assigns and transferees.
- (e) Except as otherwise expressly provided, reference to any agreement means such agreement as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof and the other Operative Agreements.
- (f) Except as otherwise expressly provided, references to any law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor.
- (g) When used in any document, words such as "hereunder", "hereto", "hereof" and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof.
- (h) References to "including" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

(i) Each of the parties to the Operative Agreements and their counsel have reviewed and revised, or requested revisions to, the Operative Agreements, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in the construing and interpretation of the Operative Agreements and any amendments or exhibits thereto.

(j) Capitalized terms used in any Operative Agreements which are not defined in this Annex A but are defined in another Operative Agreement shall have the meaning so ascribed to such term in the applicable Operative Agreement.

(k) If there is any conflict between any Operative Agreements, each such Operative Agreement shall be interpreted and construed, if possible, so as to avoid or minimize such conflict but, except as set forth in Section 14.21 of the Participation Agreement, to the extent (and only to the extent) such conflict cannot be avoided, the Participation Agreement shall prevail and control.

(l) In each Operative Agreement, unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determinations and computations shall be made, in accordance with GAAP.

#### Definitions

“ABR” means, for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16th of 1%) equal to the greater of (a) the Prime Rate in effect on such day and (b) the sum of (x) the Federal Funds Effective Rate in effect on such day plus (y) 1/2 of 1%. For purposes hereof, “Prime Rate” means the rate of interest per annum equal to the prime rate publicly announced by the majority of the eleven largest commercial banks chartered under United States Federal or State banking laws as its prime rate (or similar base rate) in effect at its principal office. The determination of such eleven (11) largest commercial banks shall be based upon deposits as of the prior year-end, as reported in the American Banker or such other source as may be mutually agreed upon by the Administrative Agent and the Lessor, and “Federal Funds Effective Rate” means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three (3) federal funds brokers of recognized standing selected by it. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, the ABR shall be determined without regard to clause (b) of the first sentence of this definition until the circumstances giving rise to such inability no longer exist. Any change in the ABR due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

“ABR Loan” means any Loan which is bearing interest based upon ABR.

“Acceleration” is defined in Section 5.1 of the Loan Facility Agreement.

“Administrative Agent” means Chase, in its capacity as Administrative Agent under the Operative Agreements.

“Advance” shall mean an advance of Loans by the Lenders and an advance of the Investor Contribution by the Investors, in each case pursuant to the Participation Agreement and the Loan Facility Agreement to pay Project Costs.

“Advance Amount” is defined in Exhibit I to the Liquidity Agreement.

“Affiliate” means as to any Person, any other Person or group of Persons that, directly or indirectly, controls, is controlled by or is under common control with, such Person; provided, however, that in no case shall the Trust Company be considered to be an Affiliate of any of the Trustee, the Lessor, the Lessee, the Administrative Agent or any Investor, nor shall any of the Trustee, the Lessor, the Lessee, Administrative Agent or any Investor be considered to be an Affiliate of the Trust Company. Neither a director nor any officer of a Person, in such capacity, shall be deemed an “Affiliate” of such Person for purposes of this definition.

“After Tax Basis” means, with respect to any payment to be received, the amount of such payment increased so that, after deduction of the amount of all taxes required to be paid (as estimated in good faith by such recipient) by the recipient (less any tax savings actually realized and the present value of any tax savings projected to be actually realized by the recipient as a result of the payment of the amount of such taxes) with respect to the receipt by the recipient of such amounts, such increased payment (as so reduced) is equal to the payment otherwise required to be made.

“Agency Agreement” shall mean the Agency Agreement dated as of the Initial Closing Date between the Construction Agent and the Lessor, together with any Agency Agreement Supplements.

“Agency Agreement Event of Default” is defined in Section 5.1 of the Agency Agreement.

“Agency Agreement Supplement” means a supplement to the Agency Agreement executed by the Construction Agent and the Lessor on each Property Closing Date in the form attached as Exhibit A to the Agency Agreement.

“Aggregate Tranche A Percentage” means, as of any date of determination, a fraction, expressed as a percentage, equal to the sum of the aggregate of the Maximum Residual Guarantee Amounts with respect to each of the Properties as of such date divided by the aggregate of the Tranche A/B Property Cost of each of the Properties as of such date.

“Allocated Interest” means, with respect to any Construction Period Property, as of any Payment Date, the amount of interest due and payable on such date with respect to a portion of the Loans (which portion shall be designated by the Lessee by written notice to the Administrative Agent (an “Allocation Notice”), which Allocation Notice may be contained in the applicable Requisition) having an aggregate principal amount equal to the Tranche A/B Construction Property Cost of such Construction Period Property as of such date.

“Allocated Investor Yield” means, with respect to any Construction Period Property, as of any Investor Yield Payment Date, the amount of Investor Yield due and payable on such date with respect to a portion of the Investor Contribution (which portion shall be designated by the Lessee by written notice to the Administrative Agent and the Investors (an “Investor Allocation Notice”), which Investor Allocation Notice may be contained in the applicable Requisition) having an aggregate principal amount equal to the Investor Property Cost of such Construction Period Property as of such date.

“Allocation Notice” is defined in the definition of “Allocated Interest”.

“Applicable Lending Office” means, with respect to each Backup Facility Bank and Investor, such Person’s Domestic Lending Office in the case of an ABR Rate Advance, and such Person’s Eurodollar Lending Office in the case of a Eurodollar Rate Advance.

“Applicable Margin” means, with respect to each Loan or Investor Contribution at any date, or, with respect to the Facility Fee payable under the Operative Agreements, the following:

(i) during the period commencing on the Initial Closing Date and ending on the date six (6) months following the Initial Closing Date, the “Facility Fee Rate” shall be 0.10%, the Applicable Margin for the Eurodollar Rate shall be 0.375% and the Applicable Margin for ABR shall be 0%; and

(ii) following such six (6) month period, the applicable percentage amount set forth in the table below based upon, in the case of Loans or Investor Contributions, the Type of such Loan or the Investor Contribution and the Status on such date:

	Level I Status	Level II Status	Level III Status	Level IV Status	Level V Status	Level VI Status
Eurodollar Rate	0.25%	0.34%	0.375%	0.475%	0.60%	0.90%
ABR	0%	0%	0%	0%	0%	0%
Facility Fee Rate	0.075%	0.085%	0.10%	0.125%	0.15%	0.225%

“Appraisal” means, with respect to each Property, an appraisal, ordered by the Administrative Agent, prepared by the Appraiser or another reputable independent appraiser reasonably satisfactory to the Administrative Agent and the Required Investors, of such Property, which in the reasonable judgment of counsel to the Administrative Agent and the Required Investors as of the applicable Property Closing Date, complies with all of the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, the rules and regulations adopted pursuant thereto, and all other applicable Legal Requirements. The Appraisal for each Property shall state (i) the value of such Property on the applicable Property Closing Date on the basis that Lessee is the lessee under the Lease, and (ii) the values of such Property at the end of the Term assuming that such Property is (A) subject to the Lease and (B)

that such Property is unoccupied, and in the case of a Construction Period Property, such Appraisal shall also state (i) the value of such Property as if improved in accordance with the Plans and Specifications for such Construction Period Property and assuming that the such Property is unoccupied, and (ii) the amount of the Projected Completion Value with respect to such Property (excluding any non-transferable tax benefits or governmental incentives).

“Appraiser” means Cushman & Wakefield.

“Appurtenant Rights” means (i) 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 thereon, including, without limitation, the use of any streets, ways, alleys, vaults or strips of land adjoining, abutting, adjacent or contiguous to the Land, and (ii) all permits, licenses and rights, whether or not of record, appurtenant to the Land.

“Arranger” means J.P. Morgan Securities Inc., as arranger and sole book runner.

“Assignment of Leases” means the Assignment of Leases, Rents and Structural Support Agreement dated as of each Property Closing Date from the Lessor to the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit A to the Participation Agreement.

“Authorized Officer” means any officer in the Corporate Trust Department of Trust Company, including any Vice President, Assistant Vice President, Secretary, Assistant Secretary or any other officer of Trust Company customarily performing functions similar to those performed by any of the above designated officers and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Available Backup Facility Loan Commitment” means, as to any Backup Facility Bank at any time, an amount equal to the excess, if any, of (a) the amount of the Backup Facility Loan Commitment of such Backup Facility Bank minus (b) the sum of (i) such Backup Facility Bank’s Backup Facility Loan Commitment Percentage of the aggregate outstanding principal amount of all RFC Loans, plus (ii) the aggregate outstanding principal amount of Backup Facility Loans, if any, held by such Backup Facility Bank.

“Available Investor Commitment” means at any time, an amount equal to the excess, if any, of (a) the aggregate amount of Investor Contribution Commitment over (b) the aggregate amount of all Investor Contributions made by the Investors as of such date.

“Available RFC Loan Commitment” means, an amount equal to the excess, if any, of (a) the amount the RFC Loan Commitment minus (b) the sum of (i) the aggregate outstanding principal amount of all RFC Loans, plus (ii) the aggregate outstanding principal amount of applicable Backup Facility Loans, plus (iii) the remaining amount of all Downgrade Deposits not used to make Backup Facility Loans, plus (iv) the aggregate Advance Amounts outstanding under the Liquidity Agreement.

“Backup Facility Banks” is defined in the Preamble to the Participation Agreement.

“Backup Facility Loan” is any advance of funds made by a Backup Facility Bank under Section 2.2(a) of the Loan Facility Agreement and any portion of an RFC Loan which has been purchased by a Backup Facility Bank and converted pursuant to Section 2.3 of the Loan Facility Agreement.

“Backup Facility Loan Commitment” means, with respect to any Backup Facility Bank on or prior to the Commitment Expiry Date of such Backup Facility Bank (or, if such Commitment Expiry Date has occurred, prior to such Backup Facility Bank making a Downgrade Deposit), the amount listed next to such Backup Facility Bank’s name on the signature pages to the Loan Facility Agreement.

“Backup Facility Loan Commitment Percentage” means for each Backup Facility Bank, the ratio (expressed as a percentage) that such Backup Facility Bank’s Backup Facility Loan Commitment bears to the aggregate Backup Facility Loan Commitments of all Backup Facility Banks.

“Backup Facility Loan Commitment Period” is defined in Section 2.2(a) of the Loan Facility Agreement.

“Backup Facility Loan Commitment Termination Date” means at any date of determination, the latest Commitment Expiry Date then in effect.

“Bank Assignment and Acceptance” means an assignment and acceptance made by a Backup Facility Bank and an assignee of such Backup Facility Bank, and accepted by Administrative Agent (and consented to by the appropriate parties, if required), substantially in the form of Exhibit E-2 to the Participation Agreement.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978.

“Base Term” means (1) with respect to a Construction Period Property, upon Completion thereof, the portion of the Term occurring after the Interim Term, and (2) with respect to any other Property, the Term.

“Basic Rent” means, for each Payment Date, an amount payable by the Lessee to the Lessor under the Lease equal to the sum of (a) the scheduled interest due on the Loans payable by Lessor under the Loan Facility Agreement, plus (b) the Certificate Basic Component of Rent.

“Beneficiary Interest” is defined in Section 19.1(b)(i) of the Lease.

“BI Purchase Closing Date” is defined in Section 20.4 of the Lease.

“BI Purchase Option” is defined in Section 20.4 of the Lease.

“BI Purchase Option Price” is defined in Section 20.4 of the Lease.

“Board” means the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Board of Directors” means, with respect to a corporation, either the board of directors or any duly authorized committee of that board of directors which, pursuant to the by-laws of such corporation, has the same authority as that board of directors as to the matter at issue.

“Borrower” means the Lessor in its capacity as borrower under the Loan Facility Agreement.

“Budget” means with respect to each Property, the estimated Project Costs to be incurred in connection therewith attached as Schedule I hereto, as modified from time to time in accordance with the terms of the Agency Agreement.

“Budgeted Total Property Cost” means, at any date of determination, with respect to any Construction Period Property, an amount equal to the aggregate amount which the Construction Agent in good faith expects to be expended in order to achieve Completion with respect to such Construction Period Property (including amounts expected to be expended to pay Allocated Interest and Allocated Investor Yield with respect to such Construction Period Property).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City (and in Wilmington, Delaware, but only in respect of the usage of the term “Business Day” in Section 9.1(q) of the Participation Agreement and Sections 3.7 and 4.2 of the Trust Agreement) are authorized or required by law to close; provided that when used in connection with the Eurodollar Rate, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee which, in conformity with GAAP, is, or is required to be, accounted for as a capital lease on the balance sheet of that Person, and excluding all obligations with respect to the Lease.

“Casualty” means any damage or destruction of all or any portion of any Property as a result of fire or other casualty.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.

“Certificate” is defined in Section 10.1 of the Trust Agreement.

“Certificate Basic Component of Rent” means, for each Certificate Payment Date, an amount equal to the Investor Yield accrued on the Investor Contributions at the Investor Yield Rate from the first day after the immediately preceding Certificate Payment Date to such date.

“Certificate Payment Date” means (a) each date referred to in Section 3.9 of the Trust Agreement, (b) the date of any prepayment of all or any portion of the Investor Contributions, and (c) the Expiration Date.

“Chase” means The Chase Manhattan Bank, a New York banking corporation.

“Claims” means liabilities, obligations, damages, losses, demands, penalties, interest, fines, claims, actions, suits, judgments, settlements, utility charges, costs, fees, expenses and disbursements (including reasonable legal fees and expenses and costs) whether any of the foregoing be founded or unfounded, of any kind and nature whatsoever.

“Code” means the Internal Revenue Code of 1986.

“Commercial Paper” means promissory notes of the CP Issuer which are issued by the CP Issuer in the commercial paper market.

“Commercial Paper Account” is defined in Exhibit I to the Liquidity Agreement.

“Commitment” is defined in Exhibit I to the Liquidity Agreement.

“Commitment Expiry Date” is defined in Exhibit I to the Liquidity Agreement.

“Commitment Period” means the period from the Initial Closing Date through the second anniversary of such date.

“Commonly Controlled Entity” means, as to any Person, an entity, whether or not incorporated, which is under common control with such Person within the meaning of Section 4001 of ERISA or is part of a group which includes such Person and which is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of determining liability under Section 412 of the Code, which is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

“Competitor of the Lessee” means a Person who either (i) is a Vehicle Company, (ii) has a material non-passive investment interest (whether held directly or indirectly) in, or is otherwise an Affiliate of a Person that is, a Vehicle Company, or (iii) is engaged or has proposed to engage in a line or lines of business that would qualify such Person as a Vehicle Company or an Affiliate of a Vehicle Company.

“Completed Property” means a Property on which the Improvements are in existence as of the Property Closing Date with respect thereto.

“Completion” means, with respect to any Construction Improvements, such time as (i) substantial completion of the Construction Improvements has been achieved in accordance with the Plans and Specifications for such Construction Improvements and in compliance with all material Legal Requirements and Insurance Requirements, and (ii) the Construction Agent shall deliver an Officer’s Certificate to the Administrative Agent certifying to such Completion and to

the matters set forth in Section 7.4(j) of the Participation Agreement (except for the last sentence of such Section).

“Completion Date” means, with respect to a Construction Period Property, the date on which Completion with respect to such Construction Period Property has occurred.

“Condemnation” means any taking or sale of the use, access, occupancy, easement rights or title to any Property or any part thereof, wholly or partially (temporarily or permanently), by or on account of any actual eminent domain or condemnation proceeding or other taking of action by any Person having the power of eminent domain or condemnation, including an action by a Governmental Authority to change the grade of, or widen the streets adjacent to, any Property, or alter the pedestrian or vehicular traffic flow to any Property so as to result in a change in access to such Property, or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action.

“Consent to Assignment” means the Lessee’s Consent dated as of the Initial Closing Date from the Lessee to the Administrative Agent on behalf of the Secured Parties, relating to each Assignment of Lease.

“Construction Agency Person” means (a) Construction Agent, (b) Lessee, (c) any contractor, subcontractor or other Person performing services or providing materials, property or equipment with respect to the construction of the Improvements, (d) any other third party for which the Construction Agent has control or supervisory authority (by contract or otherwise), or (e) any Affiliate of Construction Agent.

“Construction Agent” means General Motors Corporation, a Delaware corporation, as construction agent under the Agency Agreement.

“Construction Commencement Date” means, with respect to any Construction Period Property, the date on which construction of the Construction Improvements to be built thereon commences.

“Construction Improvements” means any Improvements which are located or to be located on any parcel of Construction Land.

“Construction Land” means any Land which when acquired by Lessor did not have fully constructed Improvements located thereon.

“Construction Land Acquisition Cost” means, with respect to any Construction Period Property, the cost to the Lessor to purchase the applicable Construction Land or, in the case of a Construction Period Property subject to a Ground Lease, the initial cost to enter into such Ground Lease, on the Property Closing Date with respect to such Property, including all professional fees, and permitting, survey, title or other similar costs.

“Construction Period” means, with respect to a Construction Period Property, the period commencing on the Property Closing Date for such Construction Period Property and ending on

the earlier to occur of (i) the Completion Date for such Construction Period Property and (ii) the Outside Completion Date.

“Construction Period Amount” means the Property Cost at any given time of each Construction Period Property for which the Construction Commencement Date has occurred and for which the Construction Period has not terminated.

“Construction Period Property” means, at any date of determination, any Construction Land and the Construction Improvements being constructed thereon.

“Contract Assignment” shall mean the Assignment of Contracts dated as of the Initial Closing Date from the Lessor to the Administrative Agent for the benefit of the Secured Parties.

“Contract Consent” means the Consent dated as of the Initial Closing Date from the Construction Agent to the Administrative Agent on behalf of the Secured Parties, relating to the Assignment of Contracts.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, the possession directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Corporate Trust Department” means the principal corporate trust office of Trustee, located in Wilmington, Delaware or at such other office at which the corporate trust business of Trustee shall be administered, which Trustee shall have specified by notice in writing to Lessee, each Participant, and the Administrative Agent.

“CP Breakage Costs” means, with respect to any payment of principal of the RFC Loans (the amount of such payment, the “CP Excess Amount”) on any date (such date, the “CP Payment Date”), an amount equal to the excess, if any, of (i) the sum of (a) all interest that would have accrued (had such CP Payment Date not occurred) on such CP Excess Amount through and including the later to occur of (x) the day on which the principal component of Commercial Paper issued by the CP Issuer and allocated by the CP Issuer to fund advances under the Lexington Parker Credit Agreement and used to fund or maintain one or more RFC Loans that will mature on or after the relevant CP Payment Date equals or exceeds such CP Excess Amount and (y) the day on which the latest maturing rate hedge agreement entered into by the CP Issuer and relating to the Commercial Paper described in clause (x) hereof matures (such later date, the “Relevant Maturity Date”), plus (b) any amounts required to be paid to unwind any relevant rate hedge agreements, over (ii) the amount of income (less the reasonable costs and expenses of obtaining such income), if any, actually received by the CP Issuer from investing the CP Excess Amount for the period from such CP Payment Date until such Relevant Maturity Date.

“CP Cost of Funds” means, for each Settlement Period, the sum of (i) the per annum rate equivalent to the daily weighted average of the per annum rates which may be paid or are payable by the CP Issuer from time to time as interest on or otherwise in respect of the Commercial Paper of the CP Issuer and/or rate hedges that are allocated, in whole or in part, by the CP Issuer to the RFC Loans during the period commencing on the immediately preceding Settlement Date and ending on (but excluding) the current Settlement Date (such period, a “Settlement Period”), which rates shall reflect and give effect to (x) the commissions of placement agents and dealers in respect of Commercial Paper of the CP Issuer allocated to such period, and (y) net payments owed or received by the CP Issuer under any rate hedges entered into by the CP Issuer in connection therewith, plus (ii) the cost of all audit, rating agency and administrative expenses related to the facility, which shall equal 0.02%; provided that if any component of such rate is a discount rate, then in calculating the “CP Cost of Funds” for such Settlement Period, the CP Issuer shall for such component use the rate resulting from converting such discount rate to an interest-bearing equivalent rate per annum.

“CP Issuer” means Lexington Parker Capital Company, LLC, and each other lender under the Lexington Parker Credit Agreement.

“CP Rate” means, for each Settlement Period, the sum of (i) the CP Cost of Funds for such Settlement Period, plus (ii) 0.125%.

“Credit Documents” means the collective reference to the Loan Facility Agreement, the Liquidity Agreement, the Notes (if any), the Structural Support Agreement, the Pledge Agreement, the Lease, and any other Security Document.

“Deed” shall have the meaning set forth in Section 6.2(b) of the Participation Agreement.

“Default” means any event or condition which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

“Defaulting Backup Facility Bank” is defined in Exhibit I to the Liquidity Agreement.

“Defaulting Bank” means a Backup Facility Bank who fails to make its pro rata share of a Backup Facility Loan when required to do so under the Operative Agreements.

“Defaulting Investor” means an Investor who fails to make its pro rata share of an Advance when required to do so under the Operative Agreements.

“Delaware Business Trust Act” means the Delaware Business Trust Act, 12 Del. C. § 3801 et seq.

“Delaware Certificate of Trust” means the certificate of trust with respect to the Lessor, filed with the Office of the Secretary of State of Delaware in accordance with Section 3810 of the Delaware Business Trust Act.

“Directing Party” means Required Participants (or if all Backup Facility Loan Commitments have terminated and all obligations owing under the Loan Facility Agreement finally paid in full, the Required Investors).

“Dollars” and “\$” means dollars in lawful currency of the United States of America.

“Domestic Lending Office” means, with respect to any Backup Facility Bank or Investor, the office of such Backup Facility Bank or Investor specified as its “Domestic Lending Office” opposite its name on Schedule I to the Participation Agreement or in the Assignment and Acceptance pursuant to which it became a Backup Facility Bank or Investor, as applicable, or such other office of such Backup Facility Bank or Investor as such Backup Facility Bank or Investor may from time to time specify to RFC and the Administrative Agent.

“Downgraded Bank” is defined in Exhibit I to the Liquidity Agreement.

“Downgrade Deposit” is defined in Exhibit I to the Liquidity Agreement.

“Eligible Assignee” is defined in Exhibit I to the Liquidity Agreement.

“Employee Benefit Plan” means an employee benefit plan (within the meaning of Section 3(3) of ERISA, including any multi-employer plan (within the meaning of Section 3(37)(A) of ERISA)), or any “plan” as defined in Section 4975(e)(1) of the Code (including an entity deemed to hold the plan assets of any of the foregoing by reason of investment by an employee benefit plan or plan in such entity) and as interpreted by the Internal Revenue Service and the Department of Labor in rules, regulations, releases or bulletins in effect on the Initial Closing Date.

“Environmental Claim” means any claim, notice of claim, complaint, notice of violation, letter, or other assertion or inquiry of any kind concerning any asserted or actual violation of or liability under any Environmental Law or any asserted or actual violation or liability relating to any Hazardous Substance.

“Environmental Engineer” means any environmental engineer selected by Lessee and reasonably acceptable to the Administrative Agent and the Required Investors.

“Environmental Law” means, whenever enacted or promulgated, any federal, state, county or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, approval, covenant, administrative or court order, judgment, decree, injunction, code or requirement of or any agreement with, any Governmental Authority, in any case applicable to any Property:

- (x) relating to pollution (or the cleanup, removal, or remediation thereof, or any other response thereto), or the regulation or protection of human health, safety or the environment, including ambient or indoor air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life, or

(y) concerning exposure to, or the use, containment, storage, recycling, treatment, generation, discharge, emission, Release or threatened Release, transportation, processing, handling, labeling, containment, production, disposal or remediation of any Hazardous Substance, Hazardous Condition or Hazardous Activity,

in each case as amended and as now or hereafter in effect, and any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries (whether personal or property) or damages due to or threatened as a result of the presence of, exposure to, or ingestion of, any Hazardous Substance, whether such common law or equitable doctrine is now or hereafter recognized or developed. Applicable laws include, but are not limited to, CERCLA; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321; the Refuse Act, 33 U.S.C. §§ 401 et seq.; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300 et seq.; and the Occupational Safety and Health Act of 1970, and any similar state or local laws.

“Environmental Site Assessment” means a Phase I environmental assessment of a Property and such additional environmental studies or assessments recommended by such Phase I assessment, in each case prepared by the Environmental Engineer and in accordance with the most recent version of the American Society for Testing and Materials Standard E-1527 (for Phase I assessment) or E-1528 (for Phase II assessment).

“Environmental Violation” means any activity, occurrence or condition relating to a Property that violates or results in non-compliance with any applicable Environmental Laws, gives rise to liability or remedial cleanup obligations under any applicable Environmental Law, or results in a written complaint or other written claim from a Governmental Authority with respect to any Environmental Laws, provided however, Lessee shall be deemed to be in compliance with all Environmental Laws for purposes of the Lease if no remediation, removal or cleanup is required as a result of the activity, occurrence or condition under applicable Environmental Laws and such Environmental Violation could not reasonably be expected to lead to or result in a Release if unattended.

“Equity Investor” is defined in the Preamble to the Trust Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended and any regulations promulgated thereunder.

“ERISA Affiliate” means, as to any Person, an entity that is a Commonly Controlled Entity.

“Eurocurrency Reserve Requirements” means, for any day as applied to a Eurodollar Loan or an Investor Contribution, the aggregate (without duplication) of the maximum rates

(expressed as a decimal fraction) of reserve requirements in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System or other Governmental Authority having jurisdiction with respect thereto) dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of such Board) maintained by a member bank of such System.

"Eurodollar Lending Office" means, with respect to any Backup Facility Bank or Investor, the office of such Backup Facility Bank or Investor specified as its "Eurodollar Lending Office" opposite its name on Schedule I to the Participation Agreement or in the Assignment and Acceptance pursuant to which it became a Backup Facility Bank (or, if no such office is specified, its Domestic Lending Office), or such other office of such Backup Facility Bank or Investor as such Backup Facility Bank or Investor may from time to time specify to the Administrative Agent.

"Eurodollar Loan" means any Loan which is bearing interest based upon the Eurodollar Rate.

"Eurodollar Rate" means, with respect to each day during each Interest Period pertaining to a Eurodollar Loan or Investor Contribution, the rate of interest determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on Page 3750 of the Telerate screen as of 11:00 A.M., London time, two (2) Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on Page 3750 of the Telerate Service (or otherwise on such service), the "Eurodollar Rate" shall be determined by reference to such other publicly available service for displaying eurodollar rates as may be agreed upon by the Administrative Agent and the Lessor or, in the absence of such agreement, the "Eurodollar Rate" shall instead be the rate per annum equal to the average (rounded upward to the nearest 1/16<sup>th</sup> of 1%) of the respective rates notified to the Administrative Agent by each of the Reference Lenders as the rate at which such Reference Lender is offered Dollar deposits at or about 10:00 A.M., New York City time, two (2) Business Days prior to the beginning of such Interest Period in the interbank eurodollar market where the eurodollar and foreign currency and exchange operations in respect of its Eurodollar Loans are then being conducted for delivery on the first day of such Interest Period for the number of days comprised therein, and in an amount comparable to the amount of its Eurodollar Loan to be outstanding during such Interest Period.

"Eurodollar Reserve Rate" means, with respect to each day during each Interest Period pertaining to a Eurodollar Loan or an Investor Contribution, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100<sup>th</sup> of 1%):

Eurodollar Rate

1.00 - Eurocurrency Reserve Requirements

"Eurodollar Tranche" means the collective reference to Eurodollar Loans for the then current Interest Period with respect to all of which begin on the same date and end on the same

later date (whether or not such Eurodollar Loans shall originally have been made on the same day).

“Event of Default” means a Lease Event of Default, a Loan Facility Agreement Event of Default or an Agency Agreement Event of Default.

“Excepted Payments” means:

- (a) all indemnity payments (including indemnity payments made pursuant to Section 12 of the Participation Agreement) and expenses to which Lessor or any Investor is entitled pursuant to the Operative Agreements;
- (b) any amounts (other than Basic Rent, Termination Value, the Maximum Residual Guaranteed Amount, and the Purchase Option Price) payable under any Operative Agreement to reimburse Lessor or any Investor (including the reasonable expenses of any such Person incurred in connection with any such payment) for performing or complying with any of the obligations of Lessee under and as permitted by any Operative Agreement;
- (c) any insurance proceeds (or payments with respect to risks self-insured or policy deductibles) under liability policies payable to Lessor or any Investor (or any such Person’s successors, assigns, agents, trustees, officers, directors or employees);
- (d) any insurance proceeds under policies maintained by Lessor or any Investor and not required to be maintained by Lessee under the Lease or by the Construction Agent under the Agency Agreement;
- (e) any amount payable by Lessee pursuant to Section 6.1(p) of the Participation Agreement, whether or not such amounts are or can be characterized as Supplemental Rent;
- (f) any amount payable to any Investor by any transferee of the interest of such Investor as the purchase price of such Investor’s interest in the Trust Estate (or a portion thereof);
- (g) Transaction Expenses or other amounts or expenses paid or payable to or for the benefit of the Trust Company or any Investor;
- (h) any payments of interest or Investor Yield on payments referred to in clauses (a) through (g) above; and
- (i) any rights of the Investors or the Trust Company to demand, collect, sue for or otherwise receive and enforce payment of any of the foregoing amounts.

“Excepted Rights” means the following rights of the Lessor and the Investors, which shall at all times be exercised by the Required Investors to the exclusion of the Administrative Agent: (A) all rights to Excepted Payments including the right to demand, collect or commence

an action at law to obtain such payments and to enforce any judgment with respect thereto, (B) all of their respective rights under the Participation Agreement, (C) all right, title and interest of the Lessor and the Investors in the Shared Rights, and (D) with respect to the Investors, all rights specifically granted to the Investors pursuant to the Operative Agreements.

“Excess Amounts” is defined in Exhibit I to the Liquidity Agreement.

“Excess Sales Proceeds” is defined in Section 13.5(a) of the Participation Agreement.

“Expiration Date” means the final day of the Term.

“Exposure Percentage” means, for each Backup Facility Bank, the result (expressed as a percentage) obtained by dividing (a) the amount of a Backup Facility Bank’s unutilized Commitment and the outstanding principal balance of the Loans held by such Backup Facility Bank (together with any Downgrade Deposits of such Backup Facility Bank which exist in the Commercial Paper Account), by (b) the sum of the total unutilized Commitments of all the Backup Facility Banks and the principal balance of all the Loans held by the Backup Facility Banks (together with any Downgrade Deposits of such Backup Facility Banks which exist in the Commercial Paper Account).

“Extension Request” is defined in Exhibit I to the Liquidity Agreement.

“Facility Fee Rate” is defined in the definition of “Applicable Margin”.

“Facility Fees” is defined in Section 8.3(b) of the Participation Agreement.

“Fair Market Rental Value” means, with respect to any Land held by Lessor pursuant to a Ground Lease, the cash rent that would be obtained in an arm’s-length lease between an informed and willing lessee (under no compulsion to lease) and an informed and willing lessor (under no compulsion to lease) of such Land, or interest therein, on an “as-is, where is” basis and without any warranty, express or implied, as to merchantability, fitness for a particular use or otherwise, provided such Land, or interest therein, is in the condition required by the Lease, such rent to be determined, as of any given point in time, by agreement of Lessee, as ground lessor, and Lessor, as ground lessee, or, failing agreement, by an Appraiser in accordance with the applicable Ground Lease.

“Fair Market Sales Value” means, with respect to any Property, the amount, which in any event shall not be less than zero, that would be paid in cash in an arm’s-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, for the ownership of such Property. Fair Market Sales Value shall be determined based on the assumption that, except for purposes of Section 21.3 of the Lease, such Property is in the condition and state of repair required under Section 10.1 of the Lease and the Lessee is in compliance with the other requirements of the Operative Agreements.

“Federal Funds Effective Rate” is defined in the definition of “ABR”.

“Fee Letter Agreement” means that certain fee letter agreement dated as of May 30, 2001 among Lessee, Chase and the Arranger.

“Financing Statements” means, collectively, the Lessor Financing Statements and the Lessee Financing Statements.

“Fixtures” means all fixtures (as such term is defined in the relevant UCC) relating to the Improvements, including all components thereof, located in or on such Improvements which fixtures were acquired with proceeds of Advances, together with all replacements, modifications and alterations thereto.

“Force Majeure Event” means any event beyond the control of the Construction Agent, other than a Casualty or Condemnation, including strikes, lockouts, acts of God, adverse weather conditions, inability to obtain labor or materials, governmental activities, civil commotion and enemy action and delays in obtaining necessary permits and approvals from any Governmental Authority; but excluding any event, cause or condition that results from the Construction Agent’s financial condition or failure to pay, or any event, cause or condition which could have been avoided or which could be remedied through the exercise of commercially reasonable efforts or the commercially reasonable expenditure of funds.

“Full Recourse Interim Term Event” means, with respect to a Construction Period Property, an Agency Agreement Event of Default arising in whole or in part as a consequence of any of the following:

- (i) any fraudulent act or omission of Lessee, Construction Agent or any Construction Agency Person in connection with (x) the negotiation, execution, delivery, consummation and/or performance of any Operative Agreement or any purchase contract or construction document relating to such Construction Period Property or (y) the acquisition, design construction, installation or operation of such Construction Period Property;
- (ii) the misapplication of any Advance or any portion thereof or any other funds made available to Lessee, Construction Agent, Support Provider or any other Construction Agency Person, in each case with respect to such Construction Period Property;
- (iii) an insolvency event effecting Lessee or Construction Agent; or
- (iv) Lessee, Construction Agent or any Construction Agency Person shall willfully breach any of their respective obligations, covenants, representatives or warranties under any Operative Agreement, purchase contract or construction document, or any other contractual agreement or governmental approval, in each case relating to such Construction Period Property.

“Fully Indemnifiable Event” means the occurrence of any of the following events: (i) an Event of Default that is Within the Construction Agent’s Control, (ii) a Construction Agency Person has committed fraud, intentional misapplication of funds, illegal acts or willful

misconduct in respect of any Property, the Operative Agreements or any actions or transactions in connection therewith, (iii) a Claim that is imposed, incurred or asserted pursuant to (x) clause (iii) of Section 12.1(a) of the Participation Agreement with respect to Environmental Laws and Environmental Claims, (y) a breach of the representations made by Lessee pursuant to Section 7.4(g) of the Participation Agreement, or (z) a violation by Lessee of (1) the covenants contained in Section 9.1 or Section 10.1 of the Lease and Section 2.7(a) of the Agency Agreement in each case with respect to Environmental Laws, or (2) Section 9.2 of the Lease, or (iv) a Claim by any third party based upon (A) the action or inaction of a Construction Agency Person, or (B) any matter that is otherwise within the direct or indirect control of a Construction Agency Person.

“Funded Amount” means, on any date of determination, the sum of (i) the outstanding principal balance of the RFC Loans on such date, plus (ii) all Yield on such date.

“Funding Account” means the special purpose, segregated account (Account No. 323-2-25799) established by and maintained by the Securities Intermediary for the benefit of Secured Parties for the purposes of facilitating the transactions contemplated by the Loan Facility Agreement; the operation of the Funding Account shall be governed by the Pledge Agreement.

“Funding Date” shall mean a Business Day on which the Construction Agent, on behalf of the Lessor, requests the Lenders to make Loans and the Investors to make Investor Contributions, in each case, to the Lessor in accordance with the Participation Agreement and the Loan Facility Agreement in order to fund Project Costs, which day shall be the fifth (5th) day of each calendar month (or if such day is not a Business Day, the next succeeding Business Day).

“GAAP” means generally accepted accounting principles in the U.S. as in effect from time to time and as applied by Lessee in the preparation of its public financial statements. The term “consistently applied,” as used in connection therewith, means that the accounting principles applied are consistent in all material respects with those applied at prior dates or for prior periods.

“GAAP Project Costs” means at any date, the total Project Costs (including Property Acquisition Costs) incurred as of such date, as determined in accordance with GAAP.

“Governmental Action” means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, rules, written interpretations, regulations, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority, or required by any Legal Requirement, and shall include, without limitation, all environmental and operating permits and licenses that are required for the full use, occupancy, zoning and operation of each Property.

“Governmental Authority” means any applicable foreign, federal, state, county, municipal or other government, quasi-government or regulatory governmental authority, agency, board, body, commission, instrumentality, court or tribunal of competent jurisdiction, or any political subdivision of any thereof, or arbitrator or panel of arbitrators.

“Gross Proceeds” means the proceeds of the sale of any Property pursuant to Section 21.1(b) of the Lease.

“Ground Lease” shall mean a ground lease between the Lessor, as ground lessee, or assignee of a ground lessee, and the owner of the fee interest in the applicable parcel of Land, as ground lessor, as such Land is described on Schedule 1 of the Lease Supplement for each Property that is subject to a Ground Lease, which is in form and substance reasonably acceptable to the Administrative Agent, the Lessor, the Required Investors and their respective counsel, and substantially in the form of Exhibit F to the Participation Agreement.

“Hazardous Activity” means any activity, process, procedure or undertaking that directly or indirectly (i) produces, generates or creates any Hazardous Substance, (ii) causes or results in the Release of any Hazardous Substance into the environment (including ambient or indoor air, water vapor, surface water, groundwater, drinking water, land (including surface or subsurface), plant, aquatic and animal life); (iii) involves the containment or storage of any Hazardous Substance, or (iv) would be regulated as hazardous waste treatment, storage or disposal within the meaning of any Environmental Law.

“Hazardous Condition” means any condition that violates or that results in noncompliance with any Environmental Law.

“Hazardous Substance” means any of the following: (i) any petroleum or petroleum product, explosives, radioactive materials, asbestos, formaldehyde, polychlorinated biphenyls, lead or radon gas; or (ii) any substance, material, product, derivative, compound or mixture, mineral, chemical, waste, gas, medical waste or pollutant that would support the assertion of any claim under any Environmental Law, whether or not defined as hazardous under any Environmental Laws.

“Highest Lawful Rate” is defined in Section 14.13(b) of the Participation Agreement.

“Impositions” means any and all liabilities, losses, expenses and costs of any kind whatsoever for fees, taxes, payments in lieu of taxes, levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever imposed by any foreign, U.S. Federal, state or local authority (“Taxes”) (including, without limitation, (i) real and personal property taxes, including personal property taxes on any property covered by the Lease that is classified by Governmental Authorities as personal property, and real estate or ad valorem taxes in the nature of property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangibles taxes); (iii) any excise taxes; (iv) real estate transfer taxes, conveyance taxes, mortgage taxes, intangible taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are, or are in the nature of, franchise, income, value added, gross receipts, privilege and doing business taxes, license and registration fees or taxes; and (vi) assessments on any Property, including all assessments for public improvements or benefits, whether or not such improvements are commenced or completed within the Term), and in each case all interest, additions to tax and penalties thereon, which at any time may be levied, assessed or imposed upon or with respect to (a) any Indemnitee, any Property or any part thereof or interest therein, or the Lessee or any sublessee or user of any Property; (b) the purchase, sale, leasing, financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, occupancy, servicing, maintenance, repair, ownership, possession, purchase, rental, lease, activity conducted on, delivery, insuring, use, operation, improvement, transfer, return or other

disposition of any Property or any part thereof or interest therein; (c) the Loans, Notes (if any), the Commercial Paper, the Certificates, interest therein or transfer thereof; (d) the Rent and all other rentals, receipts or earnings arising from any Property or any part thereof or interest therein; (e) the Operative Agreements or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to any Property or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract (including the Agency Agreement) relating to the construction, acquisition or delivery of any Property or any part thereof or interest therein; (h) the issuance of Notes (if any) or the Commercial Paper; or (i) otherwise in connection with the transactions contemplated by the Operative Agreements.

The term "Impositions" shall not mean or include the following Taxes, unless such Taxes are incurred or increased, directly or indirectly, by actions of the Lessee (other than actions specifically required of the Lessee hereunder or under any other Operative Agreement):

(i) Taxes (other than Taxes that are, or are in the nature of, sales, use, rental, value added, transfer or property taxes) that are imposed on an Indemnitee by any foreign or the U.S. Federal government (other than any Taxes imposed by the U.S. Federal government by means of withholding at source to the extent Lessee is obligated to indemnify therefor pursuant to Sections 12.2 and 12.3 of the Participation Agreement) that are based on or measured by the gross or net income (including taxes based on capital gains, Taxes on or measured by items of tax preference, and minimum taxes) of such Person or that are imposed by any state or local jurisdiction or taxing authority within any state or local jurisdiction and that are based upon or measured by the gross or net income (including the Indiana Gross Income Tax, Indiana Financial Institution's Tax, the Indiana Adjusted Gross Income Tax and the Indiana Supplemental Income Tax and the Michigan Single Business Tax) on such Person; provided that this clause (i) shall not be interpreted to prevent a payment from being made on an After Tax Basis if such payment is otherwise required to be so made;

(ii) Taxes on, based on, or in the nature of or measure by doing business, business privilege, franchise, capital, capital stock, net worth, or mercantile license or similar taxes other than any Taxes that are or are in the nature of sales, use, rental, license, or property Taxes relating to the Property;

(iii) Any Tax to the extent, but only to such extent, it relates to any act, event or omission that occurs, or relates to a period, after the termination of the Lease, except when such termination is the result of the exercise of remedies after an Event of Default occurs, in which case such exclusion shall commence only after the sale of any Property (but not any Tax or Imposition that relates to any period prior to the termination of the Lease);

(iv) any interest or penalties imposed on an Indemnitee as a result of the failure of such Indemnitee to file any return or other documents timely and as prescribed by Applicable Law; provided that this clause (iv) shall not apply (x) if such interest or penalties arise as a result of a position taken (or requested to be taken) by the Lessee in a contest controlled by the Lessee under Section 12.2(b) of the Participation Agreement or

(y) if such failure is attributable to a failure by the Lessee to fulfill its obligations under the Lease with respect to any such return and such failure is not the direct result of the failure of such Indemnitee to fulfill its obligations under the Operative Agreements;

(v) any Taxes imposed upon the Lessor with respect to any voluntary or involuntary transfer, sale, financing or other voluntary or involuntary disposition by the Lessor (other than (1) a transfer contemplated and permitted by the Operative Agreements, including any transfer in connection with the exercise by the Lessee of its Purchase Option, the Maturity Date Purchase Option, the BI Purchase Option or any termination option or other purchase or sale of any Property by the Lessee, (2) the occurrence of an Event of Default and/or the exercise of any remedies in connection therewith, (3) a Casualty or Condemnation affecting any Property, or (4) any sublease, modification or addition to any Property by the Lessee);

(vi) any Taxes imposed against or payable by an Indemnitee that would not have been imposed but for the gross negligence or willful misconduct of such Indemnitee;

(vii) Taxes to the extent resulting from such Indemnitee's failure to comply with the provisions of Section 12.2(b) of the Participation Agreement, which failure demonstrably materially adversely affects the ability of Lessee or such Indemnitee to conduct a contest pursuant to Section 12.2(b) of the Participation Agreement (unless such failure is caused by the Lessee's breach of its obligations thereunder);

(viii) Taxes or Impositions imposed on or with respect to or payable by an Indemnitee resulting from, or that would not have been imposed but for the existence of, any Lessor Lien created by or through such Indemnitee or an Affiliate thereof and not caused by any acts or omissions of Lessee;

(ix) Taxes imposed on or with respect to or payable by an Indemnitee that would not have been imposed but for an amendment, supplement, modification, consent or waiver to any Operative Agreement not initiated, requested or consented to by the Lessee unless such amendment, supplement, modification, consent or waiver (A) arises due to, or in connection with there having occurred, an Event of Default or (B) is required by the terms of the Operative Agreements or is executed in connection with any amendment to the Operative Agreements required by law;

(x) Taxes that are based on, or measured by, the fees or other compensation received by a Person acting as Administrative Agent (in its individual capacities) or any Affiliate thereof for acting as trustee under the Credit Documents;

(xi) Any Tax which is being contested in accordance with the provisions of Section 12.2(b) of the Participation Agreement, during the pendency of such contest, provided however, that the full amount of payments owed to such Indemnitee are paid to such Indemnitee as if no withholding were required;

(xii) Any Tax that results from an Indemnitee engaging, with respect to any Property, in transactions other than those permitted by the Operative Agreements;

(xiii) Taxes that have been included in Project Costs or Transaction Expenses which have been paid by Lessee; or

(xiv) Taxes that result from a failure by an Indemnitee to comply with any certification or other procedure reasonably required by any Legal Requirements as a condition to any exemption from, or reduction of, such Taxes to which such Indemnitee would be entitled, so long as (a) the Lessee shall have notified such Indemnitee promptly of such requirement, (b) no such procedure would expose such Indemnitee, in its good faith determination, to any materially adverse consequence, and (c) such failure is not caused by the Lessee's failure to provide information reasonably requested or reasonable assistance in complying with such requirement, it being understood that all certification requirements with respect to United States withholding taxes shall be deemed to be reasonably required and the foregoing clauses (a) through (c) shall be deemed to have been satisfied by the Lessee.

Notwithstanding the foregoing, the exclusions from the definition of Impositions set forth in clauses (i) through (xiv) above shall not apply to any Taxes or any increase in Taxes imposed on an Indemnitee, to the extent that such Taxes or tax increase would not have been imposed or have occurred if on the applicable Property Closing Date or Funding Date the Indemnitees had advanced funds to the Lessee in the form of a loan or a secured loan in an amount equal to the allocable portion of Project Costs funded by such Indemnitee on such date secured by the Properties, with debt service for such loan equal to the corresponding portion of the Basic Rent payable on each Payment Date and a principal balance at the maturity of such loans in an amount equal to the corresponding portion of the then outstanding Termination Value at the end of the Term.

"Improvements" means the buildings, structures, Fixtures, and other improvements of every kind existing at any time and from time to time on or under any parcel of 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, 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 any Property, 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.

“Increased Costs” means any amounts payable by Lessee pursuant to Section 12.4 of the Participation Agreement.

“Indebtedness” means as to any Person at any date, the amount outstanding on such date under notes, bonds, debentures, or other similar evidences of indebtedness for money borrowed (including, without limitation, indebtedness for borrowed money evidenced by a loan account) owed by such Person.

“Indemnatee” means Lessor, Trustee, each Investor, the Trust Company, each Lender, the Administrative Agent, the Securities Intermediary, the CP Issuer, the Arranger, and their respective Affiliates, and the respective successors, permitted assigns, permitted transferees, invitees, trustees, contractors, servants, employees, officers, directors, shareholders, members, partners, participants, representatives and agents of the foregoing Persons; provided, however, that in no event shall Lessee or any Affiliate of Lessee be an Indemnatee.

“Independent Engineer” means any construction engineering firm selected by the Administrative Agent and reasonably satisfactory to the Administrative Agent and the Required Investors.

“Initial Closing Date” means October 31, 2001.

“Insolvent” means, with respect to any Multi-employer Plan, the condition that such Multi-employer Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insurance Requirements” means all terms and conditions of any insurance policy required by the Lease to be maintained by the Lessee, or required by the Agency Agreement to be maintained by the Construction Agent, and all requirements of the issuer of any such insurance policy.

“Interest Period” means, with respect to Eurodollar Loans or Investor Contributions:

(i) initially, the period commencing on (and including) the date of the borrowing of such loans or the date of conversion of ABR Loans into such loans or the date such Investor Contributions are made, as the case may be (provided, that in each such case notice of such borrowing, conversion, or making of Eurodollar Loans or Investor Contributions is given to the Administrative Agent at least three (3) Business Days prior thereto), and ending on (but excluding) the date which numerically corresponds to such date, one (1), two (2), three (3), or six (6) months thereafter, as selected by Lessee, on behalf of Lessor, in its applicable Requisition or notice of conversion, as the case may be, given with respect thereto; unless such date is the commencement of an Interest Period, in which case, clause (ii) below shall apply to the initial Interest Period; and

(ii) thereafter, each period commencing on (and including) the last day of the immediately preceding Interest Period applicable to such Loan or Investor Contributions and ending on (but excluding) the date which numerically corresponds to such date one (1), two (2), three (3), or six (6) months thereafter, as selected by Lessee, on behalf of Lessor in its applicable Requisition or by irrevocable notice to the Administrative Agent

not less than three (3) Business Days prior to the last day of then current Interest Period with respect thereto;

provided, however, that the foregoing provisions relating to Interest Periods are subject to the following:

- (i) if any Interest Period pertaining to a Eurodollar Loan or Investor Contributions would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;
- (ii) any Interest Period that would otherwise extend beyond the Maturity Date shall end on the Maturity Date; and
- (iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month.

“Interest Rate” means, with respect to any Loan held by a Backup Facility Bank, (a) for Eurodollar Loans, the Eurodollar Rate for Eurodollar Loans for the Interest Period specified plus the Applicable Margin for Eurodollar Loans, and (b) for ABR Loans, the ABR in effect from time to time.

“Interim Term” means, with respect to any Construction Period Property, the date commencing on (and including) the applicable Property Closing Date and ending on the earlier of the date of Completion of such Property and the occurrence of an Agency Agreement Event of Default.

“Investment” is defined in Exhibit I to the Liquidity Agreement.

“Investment Company Act” means the Investment Company Act of 1940.

“Investor Allocation Notice” is defined in the definition of “Allocated Investor Yield”.

“Investor Amount” means the amount owed to an Investor as evidenced by a Certificate.

“Investor Assignment and Acceptance” means an assignment and acceptance made by a Investor and an assignee of such Investor, and accepted by Administrative Agent and Lessor (and consented to by the appropriate parties, if required), substantially in the form of Exhibit E-1 to the Participation Agreement.

“Investor Contribution” is defined in Section 1.2 of the Participation Agreement.

“Investor Contribution Commitment” is defined in Section 1.2 of the Participation Agreement.

“Investor Property Cost” means with respect to a Property an amount equal to the Investor Contribution attributable to such Property outstanding from time to time, if any.

“Investor Yield” is defined in Section 10.1 of the Trust Agreement.

“Investor Yield Payment Date” means any Payment Date upon which any Certificate Basic Component of Rent is payable.

“Investor Yield Rate” means (a) the rate per annum equal to the Eurodollar Rate plus a margin of one hundred twenty five (125) basis points per annum, or (b) in the event ABR is applicable under Section 12.5 of the Participation Agreement, the rate per annum equal to the ABR plus a margin of one hundred twenty five (125) basis points per annum, as applicable.

“Investors” means, collectively, the Secured Investors and the Equity Investor named in the Trust Agreement, and each other future holder of a Certificate.

“knowledge” means, with respect to the Lessee or Construction Agent, the actual knowledge of any of the following persons: (i) with respect to facts or occurrences relating to the Property, employees of the Lessee or Construction Agent regularly engaged in supervising operations of the Lessee or Construction Agent under the Operative Documents with respect to the Property, and (ii) with respect to facts or occurrences unrelated to the Property, any Responsible Officer of the Lessee or Construction Agent.

“Land” means the parcel or parcels of land described on Schedule 1 of the Memorandum of Lease and Supplement for such parcel or parcels of land, and all Appurtenant Rights attached thereto.

“Lease” means the Lease, dated as of the Initial Closing Date between the Lessor and the Lessee, together with any Memoranda of Lease and Supplements.

“Lease Default” means any event or condition which, with the lapse of time or the giving of notice, or both, would constitute a Lease Event of Default.

“Lease Event of Default” is defined in Section 17.1 of the Lease.

“Legal Requirements” means, at any time (i) all U.S. Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting any Person, any Property or the demolition, construction, renovation, use or alteration thereof, at such time, including any that require repairs, modifications or alterations in or to any Property or in any way limit the use and enjoyment thereof (including all building, zoning and fire codes and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. and any other similar U.S. Federal, state or local laws or ordinances and the regulations promulgated thereunder) and any that may relate to environmental requirements (including all Environmental Laws), and any law, treaty, rule or regulation or determination of an arbitrator or a court of competent jurisdiction or other Governmental Authority, in each case of competent jurisdiction and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, and all permits, certificates of occupancy,

licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments which are either of record or known to the Lessee affecting any Property, the Appurtenant Rights and any easements, licenses or other agreements entered into pursuant to Section 12.2 of the Lease, and (ii) as to any Person, the certificate of incorporation, by-laws, articles of association or other organizational or governing documents of such Person.

“Lenders” means, collectively, (i) RFC and (ii) the Backup Facility Banks.

“Lessee” means General Motors Corporation, a Delaware corporation.

“Lessee Financing Statements” means UCC financing statements made by Lessee, as debtor, and Lessor, as secured party, appropriately completed and executed for filing in the appropriate state and county offices in the State in which each Property is located and the State of Delaware, as the same shall be assigned to the Administrative Agent on behalf of the Secured Parties pursuant to such Lessee Financing Statements.

“Lessor” means Auto Facilities Real Estate Trust 2001-1, a Delaware business trust, or its successors and assigns.

“Lessor Financing Statements” means UCC financing statements made by Lessor, as debtor, and Administrative Agent, as secured party, appropriately completed and executed for filing in the appropriate state and county offices in the State where the applicable Property is located and the State of Delaware.

“Lessor Lien” means any Lien, true lease or sublease or disposition of title arising as a result of (a) any claim against the Lessor or the Trust Company or Administrative Agent or any Investor, not resulting from the transactions contemplated by the Operative Agreements, (b) any act or omission of the Lessor or the Trust Company or Administrative Agent or any Investor, which is not required by the Operative Agreements or is in violation of any of the terms of the Operative Agreements, (c) any claim against the Lessor or the Trust Company or Administrative Agent or any Investor, with respect to Taxes or Transaction Expenses against which the Lessee is not required to indemnify the Lessor or the Trust Company or Administrative Agent or any Investor, pursuant to the Participation Agreement, or (d) any claim against the Lessor or Administrative Agent or any Investor arising out of any transfer by the Lessor or Administrative Agent or any Investor of all or any portion of the interest of the Lessor or Administrative Agent or any Investor in any Property, the Trust Estate or the Operative Agreements other than the transfer of title to or possession of any Property by the Lessor pursuant to and in accordance with the Lease, the Loan Facility Agreement or the Participation Agreement or pursuant to the exercise of the remedies set forth in Section 17 of the Lease.

“Lessor Parties” means the collective reference to the Lessor, the Investors, the Trustee, and the Trust Company.

“Level I Status” exists at any date if, at such date, the Lessee has senior unsecured long-term debt outstanding, without third-party credit enhancement, which is rated A+ or better by S&P or A1 or better by Moody's; provided that if either S&P or Moody's shall cease to issue

ratings of debt securities generally, then the Administrative Agent and the Lessor shall negotiate in good faith to agree upon a substitute rating agency (and to correlate the system of ratings of such substitute rating agency with that of the rating agency for which it is substituting) and (a) until such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other such rating agency and (b) after such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other rating agency or such substitute rating agency.

“Level II Status” exists at any date if, at such date, Level I Status does not exist and the Lessee has senior unsecured long-term debt outstanding, without third-party credit enhancement, which is rated A by S&P or A2 by Moody’s; provided that if either S&P or Moody’s shall cease to issue ratings of debt securities generally, then the Administrative Agent and the Lessor shall negotiate in good faith to agree upon a substitute rating agency (and to correlate the system of ratings of such substitute rating agency with that of the rating agency for which it is substituting) and (a) until such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other such rating agency and (b) after such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other rating agency or such substitute rating agency.

“Level III Status” exists at any date if, at such date, neither Level I Status nor Level II Status exists and the Lessee has senior unsecured long-term debt outstanding, without third party credit enhancement, which is rated A- by S&P or A3 by Moody’s; provided that if either S&P or Moody’s shall cease to issue ratings of debt securities generally, then the Administrative Agent and the Lessor shall negotiate in good faith to agree upon a substitute rating agency (and to correlate the system of ratings of such substitute rating agency with that of the rating agency for which it is substituting) and (a) until such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other such rating agency and (b) after such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other rating agency or such substitute rating agency.

“Level IV Status” exists at any date if, at such date, none of Level I Status, Level II Status or Level III Status exists and the Lessee has senior unsecured long-term debt outstanding, without third party credit enhancement, which is rated BBB+ by S&P or Baal by Moody’s; provided that if either S&P or Moody’s shall cease to issue ratings of debt securities generally, then the Administrative Agent and the Lessor shall negotiate in good faith to agree upon a substitute rating agency (and to correlate the system of ratings of such substitute rating agency with that of the rating agency for which it is substituting) and (a) until such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other such rating agency and (b) after such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other rating agency or such substitute rating agency.

“Level V Status” exists at any date if, at such date, none of Level I Status, Level II Status, Level III Status or Level IV exists and the Lessee has senior unsecured long-term debt outstanding, without third party credit enhancement, which is rated BBB by S&P or Baa2 by Moody’s; provided that if either S&P or Moody’s shall cease to issue ratings of debt securities

generally, then the Administrative Agent and the Lessor shall negotiate in good faith to agree upon a substitute rating agency (and to correlate the system of ratings of such substitute rating agency with that of the rating agency for which it is substituting) and (a) until such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other such rating agency and (b) after such substitute rating agency is agreed upon, the foregoing test may be satisfied on the basis of the rating assigned by the other rating agency or such substitute rating agency.

“Level VI Status” exists at any date if, at such date, none of Level I Status, Level II Status, Level III Status, Level IV Status or Level V Status exists.

“Lexington Parker Credit Agreement” means that certain Credit Agreement dated December 12, 2000 among the CP Issuer, the other lenders and RFC.

“Liabilities” is defined in Section 1 of the Structural Support Agreement.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, Capital Lease or title retention agreement relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party excluding rights of first refusal) with respect to such securities.

“Limited Deficiency Amount” means, with respect to each Property, the amount equal to the sum of the Termination Value with respect to such Property on each Payment Date less the Maximum Residual Guarantee Amount as of such date with respect to such Property.

“Limited Recourse Event of Default” means the occurrence of any Lease Event of Default under Sections 17.1(d), (e) or (f) of the Lease (A) the existence of which is solely premised on the breach of one or more representations, warranties or covenants that contain the words or clauses “material”, “immaterial”, “in all material respects”, or “Material Adverse Effect” (except for the representations, warranties and covenants set forth in Sections 7.3(a), 7.3(d), 7.3(e), 7.3(j)(i)(x), 7.3(j)(i)(z), 7.4(g)(i), (ii), (iv), (v), (vi), (vii) and (viii), 7.4(j) and 9.10(a) of the Participation Agreement, Sections 9.1, 9.2 and 13.1 of the Lease, Sections 2.7(b), 2.7(i), 3.1(b), 6.1(e) and 6.2(a) of the Agency Agreement) and (B) with respect to which the party enforcing such Event of Default did not or could not apply commercially reasonable standards in determining that such Event of Default occurred.

“Liquidity Agreement” means that certain Liquidity Agreement dated as of the Initial Closing Date among RFC, the Backup Facility Banks and the Administrative Agent.

“Loans” means the collective reference to Backup Facility Loans and RFC Loans.

“Loan Facility Agreement” means the Loan Facility Agreement dated as of the Initial Closing Date among Borrower, RFC, the Backup Facility Banks, and the Administrative Agent.

“Loan Facility Agreement Default” means any event which, with notice or lapse of time or both, would become a Loan Facility Agreement Event of Default.

“Loan Facility Agreement Event of Default” is defined in Section 5.1 of the Loan Facility Agreement.

“Majority Lenders” means, as of any date of determination, Backup Facility Banks with Exposure Percentages aggregating more than 50%.

“Margin Stock” shall have the meaning given to such term in Regulation U of the Board of Governors of the Federal Reserve System.

“Marketing Period” means, provided that Lessee has given the Maturity Date Election Notice in accordance with Section 20.2 of the Lease, the period commencing on the date twelve (12) months prior to the Maturity Date, and ending on the Maturity Date.

“Marketing Period Equity Return” means the total of all amounts received by the Lessor or the Investors during the Marketing Period with respect to the Lessee’s payment of the Purchase Option Price or the proceeds of any sale of a Property pursuant to Section 21 of the Lease, provided that “Marketing Period Equity Return” shall in no event include any payment made by the Lessee in respect of Investor Yield.

“Market Sublease” is defined in Section 24.2 of the Lease.

“Material Adverse Effect” means any change or changes, effect or effects or condition or conditions that individually or in the aggregate are, or are reasonably expected to be, materially adverse to (i) the assets, business, operations, income, prospects, or condition (financial or otherwise) of Lessee and its Subsidiaries on a Consolidated basis, which materially adversely affects the ability of Lessee to perform its obligations under the Operative Agreements to which it is a party, or (ii) the validity or enforceability against Lessee of any of the Operative Agreements to which it is a party, or any rights or remedies under any thereof or (iii) the value, utility and remaining useful life of the Properties.

“Material Environmental Violation” means an Environmental Violation the cost of which to cure or otherwise remediate in the reasonable good faith judgment of Lessee is reasonably anticipated to be in excess of \$500,000.

“Maturity Date” means October 31, 2008.

“Maturity Date Election Notice” is defined in Section 20.2 of the Lease.

“Maturity Date Purchase Option” means the Lessee’s Purchase Option to purchase all (but not less than all of) the Properties then subject to the Lease on the Maturity Date.

“Maximum Purchase Option Amount” means 75% of the highest outstanding aggregate amount of Loans and Investor Contributions during the Term.

“Maximum Residual Guarantee Amount” for each Property at any time means an amount equal to the product of (x) the Tranche A/B Property Cost in respect of such Property at such time and (y) the Tranche A Percentage in respect of such Property.

“Memorandum of Lease and Supplement” is defined in Section 2.4 of the Lease.

“Minor Sublease” is defined in Section 24.2 of the Lease.

“Modifications” is defined in Section 11.1(a) of the Lease.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Mortgage” means each (i) Mortgage, Assignment of Rents and Leases and Security Agreement from Lessor and Lessee to the Administrative Agent on behalf of the Secured Parties, substantially in the form of Exhibit B-1 to the Participation Agreement and in form and substance suitable for recording, and (ii) Deed of Trust, Assignment of Rents and Leases and Security Agreement from Lessor and Lessee in favor of the Administrative Agent on behalf of the Secured Parties, substantially in the form of Exhibit B-2 to the Participation Agreement and in form and substance appropriate for recording. The decision to use the “Mortgage” form or the “Deed of Trust” form on any Property Closing Date shall be made by Administrative Agent with respect to each Property, and each “Deed of Trust” form on any Property Closing Date shall be made by Administrative Agent with respect to each Property, and each such form shall be modified as necessary or desirable in Administrative Agent’s opinion to comply with all applicable laws and to set forth the provisions and remedies customarily used by secured lenders with respect to the applicable jurisdiction in which such instrument is to be recorded.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which the Lessee or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five (5) plan years made or accrued an obligation to make contributions and in respect of which the Lessee or an ERISA Affiliate has any liability (contingent or otherwise), such plan being maintained pursuant to one or more collective bargaining agreements.

“Net Proceeds” means all amounts paid in connection with any Casualty or Condemnation, and all interest earned thereon, less the expense of claiming and collecting such amounts, including all reasonable costs and expenses in connection therewith for which the Administrative Agent or Lessor are entitled to be reimbursed pursuant to the Lease.

“Net Sale Proceeds” means Gross Proceeds minus all Remarketing Sale Expenses.

“Net Sale Proceeds Shortfall” means, for any Property, the amount by which the Net Sale Proceeds for such Property are less than the Limited Deficiency Amount for such Property.

“Non-Completed Property” is defined in Section 5.4(a) of the Agency Agreement.

“Non-Completion Amount” means with respect to a Non-Completed Property, an amount equal to the sum of (i) 89% of the GAAP Project Costs (excluding Construction Land Acquisition Costs relating to such Non-Completed Property) relating to such Non-Completed Property, and (ii) 100% of the Construction Land Acquisition Costs relating to such Non-Completed Property.

“Non-Consenting Bank” is defined in Exhibit I to the Liquidity Agreement.

“Non-Consenting Purchase” is defined in Exhibit I to the Liquidity Agreement.

“Non-Consenting Purchase Price” is defined in Exhibit I to the Liquidity Agreement.

“Non-U.S. Person” means any Person which is, or under U.S. tax law is treated as, other than (i) a citizen or resident of the U.S. or (ii) a corporation or partnership created or organized in the U.S. or under the law of the U.S. or of any state in the U.S. or the District of Columbia.

“Note” means any promissory note delivered to any Lender pursuant to Section 2.17(e) of the Loan Facility Agreement.

“Notice of Borrowing” is defined in Section 2.5 of the Loan Facility Agreement.

“Officer’s Certificate” (i) of a Person (other than Lessee) means a certificate signed by any individual holding the office of vice president or higher, and (ii) in respect of Lessee means a certificate signed by any Responsible Officer of Lessee.

“Operative Agreements” means, collectively, the following: (a) the Participation Agreement (including Annex A attached thereto); (b) the Lease and each Memorandum of Lease and Supplement; (c) the Consent to Assignment; (d) the Structural Support Agreement; (e) the Liquidity Agreement; (f) the Trust Agreement; (g) the Certificates; (h) the Loan Facility Agreement; (i) the Notes (if any); (j) the Financing Statements; (k) the Contract Assignment; (l) the Agency Agreement and each Agency Agreement Supplement; (m) each Assignment of Leases and each Consent to Assignment; (n) the Pledge Agreement; (o) the Mortgages; (p) any other Security Documents; and (q) the Requisitions.

“Outside Completion Date” with respect to each Property means the earliest of (i) the date which is twenty four (24) months after the Initial Closing Date, and (ii) the Completion Date for such Property.

“Overall Transaction” means all or any of the transactions and activities referred to in or contemplated by the Operative Agreements.

“Overdue Rate” means, with respect to each Loan or Investor Contribution then outstanding, the lesser of (a) the highest interest rate permitted by Legal Requirements, and (b) the sum of (i) 1% plus (ii) the Interest Rate and/or CP Rate applicable to such Loan or the Investor Yield Rate, as the case may be.

“Participants” means collectively, the Lenders and the Investors.

“Participating Bank” is defined in Section 11.3(c) of the Participation Agreement.

“Participation Agreement” means the Participation Agreement dated as of the Initial Closing Date among Lessee, Lessor, Trustee, the Investors, RFC, the Backup Facility Banks, and Chase, as Administrative Agent.

“Payment Date” means any date that is any of the following: (a) each Certificate Payment Date, (b) the Maturity Date, and (c) each Settlement Date.

“Payment Office” means the offices of the Administrative Agent at 270 Park Avenue, New York, New York 10017, or such other office as Administrative Agent may designate in writing to Lessee, Lessor, and the Lenders.

“PBGC” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

“Pension Plan” means a “pension plan” (as such term is defined in section 3(2) of ERISA), which is subject to Title IV of ERISA (other than a multiemployer plan as defined in section 4001(a)(3) of ERISA), and to which the Lessee or any corporation, trade or business that is, along with Lessee, a member of a Controlled Group, may have liability, including any liability by reason of having been a substantial employer within the meaning of section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under section 4069 of ERISA.

“Percentage Share” for each Investor means the Investor Contribution Commitment of any Investor as a percentage of the aggregate Investor Contribution Commitments of all the Investors.

“Permits” means all material licenses, approvals, authorizations, consents, permits (including environmental permits, licenses, approvals, authorizations and consents), easements and rights-of-way, including proof and dedication, required for the lawful use and operation of the Properties.

“Permitted Exceptions” means: (i) Liens or matters of the types described in clauses (i), (ii), (v), (viii) and (ix) of the definition of Permitted Liens; (ii) Liens for Taxes not yet due; (iii) all non-monetary encumbrances, exceptions, restrictions, easements, rights of way, servitudes, encroachments and irregularities in title, other than any such Liens which arise or are created after the Property Closing Date for a Property and, in the reasonable assessment of the Administrative Agent and the Required Investors, do not materially impair the use of any Property for its intended purpose or its value as Collateral and (iv) Liens that are expressly set forth as title exceptions on the title policy or binder delivered in satisfaction of Section 6.2(j) and (k) of the Participation Agreement.

“Permitted Investments” means any one or more of the following types of investments which are denominated in Dollars and which in accordance with their respective terms mature not later than the Business Day next preceding the Payment Date next succeeding the date of such investment:

- (i) marketable obligations of, or obligations guaranteed as to full and timely payment of principal and interest by, the United States of America or an agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States;

(ii) bankers' acceptances and certificates of deposit and other interest-bearing obligations denominated in Dollars and issued by any bank with capital, surplus and undivided profits aggregating at least \$100,000,000, the short-term obligations of which are rated by the Rating Agencies at least as highly as the then current rating on the Commercial Paper;

(iii) repurchase obligations for underlying securities of the types described in clauses (i) and (ii) above entered into with any counterparty whose short-term securities are rated by the Rating Agencies at least as highly as the then current rating on the Commercial Paper; and

(iv) commercial paper rated A-1/P-1 by the Rating Agencies (provided funds in any collateral account only may be invested in commercial paper issued by the Lessee).

"Permitted Liens" means: (i) the respective rights and interests of the parties to the Operative Agreements as provided in the Operative Agreements; (ii) the rights of any sublessee or assignee under a sublease or an assignment permitted by the terms of the Lease; (iii) Liens for Taxes that either are not yet due or are being contested in accordance with the provisions of Section 12.2(b) of the Participation Agreement; (iv) Liens arising by operation of law, materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's and other like Liens in connection with the construction of the Improvements or any Modifications or arising in the ordinary course of business for amounts that either are not more than thirty (30) days past due or are being diligently contested in good faith by appropriate proceedings, so long as such proceedings satisfy the conditions for the continuation of such proceedings set forth in Section 13.1 of the Lease; (v) Liens of any of the types referred to in clause (iv) above that have been bonded for not less than the full amount in dispute (or as to which other security arrangements reasonably satisfactory to the Lessor have been made), which bonding (or arrangements) shall comply with applicable Legal Requirements, and shall have effectively stayed any execution or enforcement of such Liens; (vi) Liens arising out of judgments or awards with respect to which appeals or other proceedings for review are being prosecuted in good faith and for the payment of which adequate reserves have been provided as required by GAAP or other appropriate provisions have been made, so long as such proceedings have the effect of staying the execution of such judgments or awards and satisfy the conditions for the continuation of proceedings to contest Taxes set forth in Section 12.2 of the Participation Agreement; (vii) Permitted Exceptions; (viii) easements, rights of way and other encumbrances on title to real property pursuant to Section 12.2 of the Lease; and (ix) Liens pursuant to Section 9.15 of the Participation Agreement.

"Permitted Transferee" means a Person (A) that is organized under the laws of the United States, any state thereof or the District of Columbia; (B) that has a combined capital and surplus (after deduction of the amount of intangible assets) (or, if applicable, consolidated tangible net worth or its equivalent) of not less than \$75,000,000; (C) that shall not be, nor be an Affiliate of, a Competitor of the Lessee; and (D) with respect to which there shall be no litigation or regulatory or administrative proceeding in which the Lessee and such Person or any Affiliate shall be engaged and adverse to each other and no such litigation or regulatory or administrative proceeding involving the Lessee and such Person or any Affiliate shall be threatened; provided,

however, that the transferor Investor shall have provided the Trustee, the Administrative Agent and the Lessee with at least ten (10) Business Days' written notice prior to such transfer (which notice shall specify the date of the proposed transfer and the name, location, direct and indirect ownership and character of business of the proposed transferee) and have attached to it (or cause to be separately delivered) the most recent annual audited and quarterly financial statements of the proposed transferee confirming satisfaction of the requirements of clause (B) above.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated organization, or Governmental Authority or any other entity.

“Plans and Specifications” means, for any Construction Period Property, the plans and specifications for the Construction Improvements to be constructed on such Property which are attached as Schedule 2 to the Agency Agreement Supplement delivered at the time of the acquisition by Lessor of such Construction Period Property, as such Plans and Specifications may be amended, modified or supplemented from time to time in accordance with the terms of the Operative Agreements.

“Pledge Agreement” means that certain Pledge Agreement and Control Agreement dated as of the Initial Closing Date made by and among the Lessor, the Administrative Agent, and the Securities Intermediary.

“Prescribed Forms” means duly executed and filed form(s) or statement(s), and in such number of copies, which may, from time to time, be prescribed by law and which, pursuant to applicable provisions of (a) an income tax treaty between the United States and the country of residence of the Participant providing the form(s) or statement(s), (b) the Code, or (c) any applicable rule or regulation under the Code, permit the Lessor to make payments under the Loan Facility Agreement and the other Operative Agreements free of deduction or withholding of U.S. Tax.

“Proceeding” is defined in Section 9.5(a) of the Participation Agreement.

“Prohibited Transaction” means a transaction that is prohibited under Code Section 4975 or ERISA Section 406 and not exempt under Code Section 4975 or ERISA Section 408 or a regulatory or administrative exemption issued thereunder.

“Project Costs” means all costs and expenses incurred by the Construction Agent or otherwise expended in connection with the acquisition of any Land and the Improvements thereon, and the design, construction and installation of any Improvements, including Property Acquisition Costs, the costs of processing all government and regulatory applications for authorizations, entitlements, permits and approvals associated with any Improvements, all professional fees and other soft costs incurred in connection therewith, Transaction Expenses and other pre-closing and closing costs incurred by the Lessee in connection with the Overall Transactions and the following:

- (a) the costs of development, architectural and engineering services related to the Properties, including the costs of preparation of studies, surveys, reports, tests, plans and specifications;
- (b) the costs of legal, accounting and other services related to the acquisition of the Properties and the construction of the Construction Improvements;
- (c) the fees and charges incurred in connection with securing all Governmental Actions required to be taken, given or obtained in connection with the development, construction, ownership, financing of the Properties;
- (d) any title fees, premiums and escrow costs and other expenses relating to title insurance and the closings contemplated by the Operative Agreements;
- (e) payment of the interest on the Tranche A Loans and the Tranche B Loans and payment of the Investor Yield during the Construction Period;
- (f) all expenses relating to Environmental Audits;
- (g) fees and expenses relating to Appraisals;
- (h) the fees of the Administrative Agent pursuant to the Fee Letter Agreement;
- (i) costs and expenses of obtaining the insurance required under the Operative Agreements and any insurance deductibles; and
- (j) such other items as the Administrative Agent may approve in writing.

“Projected Completion Value” means, with respect to any Construction Period Property, the estimated value of the Land and any Construction Improvements relating to such Construction Period Property assuming such Construction Improvements are complete in accordance with the applicable Plans and Specifications, and on the basis that the Lessee is the lessee under the Lease as established by an Appraisal as the same may be adjusted pursuant to Section 3.1 of the Agency Agreement.

“Property” or “Properties” means either individually or collectively, as the case may be, each parcel of Land (including all Appurtenant Rights attached thereto) or, in the case of Land subject to a Ground Lease, the ground leasehold estate to be acquired by the Lessor pursuant to the provisions of the Participation Agreement, as more particularly described in the Requisition and the Memorandum of Lease and Supplement with respect to such Land, together with all of the Improvements at any time located on or under such Land, or multiple parcels of Land with Improvements, as the context may require.

“Property Acquisition Cost” means, with respect to any Property, the cost to the Lessor to purchase such Property or, in the case of a Property subject to a Ground Lease, the initial cost to enter into such Ground Lease, on a Property Closing Date with respect to such Property, including all professional fees, and permitting, survey, title, and other similar costs.

“Property Closing Date” means each Funding Date on which the Lessor purchases or ground leases any Property, or such other date as otherwise provided in Section 6.6 of the Participation Agreement.

“Property Cost” means with respect to a Property the aggregate amount of Tranche A/B Property Cost allocated to such Property pursuant to the Loan Facility Agreement, plus the Investor Property Cost for such Property, plus any Allocated Interest and Allocated Investor Yield with respect to such Property.

“Purchase” is defined in Exhibit I to the Liquidity Agreement.

“Purchase Notice” is defined in Section 20.1 of the Lease.

“Purchase Option” is defined in Section 20.1 of the Lease.

“Purchase Option Price” is defined in Section 20.1 of the Lease.

“Purchasing Bank” is defined in Section 11.3(a) of the Participation Agreement.

“Rating Agencies” means S&P, Moody’s and Fitch, Inc..

“Reference Lenders” means Chase and Citibank, N.A.

“Register” is defined in Section 11.3(b) of the Participation Agreement.

“Regulations” means the income tax regulations promulgated from time to time under and pursuant to the Code.

“Related Persons” for any Indemnitee means its respective Affiliates, successors, assigns, transferees, invitees, trustees, contractors, servants, employees, officers, directors, shareholders, members, partners participants, representatives and agents of the foregoing Persons.

“Release” means the release, deposit, disposal or leak of any Hazardous Substance into or upon or under any land or water or air, or otherwise into the environment, including by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement and the like.

“Remarketing Sales Expense” means all charges, costs and expenses of Lessor, Lessee, the Administrative Agent, and each Participant in connection with a sale of any Property pursuant to Section 21 of the Lease.

“Rent” means the sum of the Basic Rent plus Supplemental Rent, in each case payable under the Lease.

“Reorganization” means, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .13, .14, .16, .18, .19 or .20 of PBGC Reg. § 2615.

“Required Investors” means at any time Secured Investors holding more than 50% of the aggregate face amount of the Certificates at the time outstanding.

“Required Participants” means, at any time, Lenders and Investors holding interests (i.e. Loans and Certificates) representing over 50% of the aggregate of the Loans and Investor Contributions at such time; provided, however, that, for purposes of this definition, the CP Issuer and RFC shall be ignored in determining the Required Participants, and the Backup Facility Banks shall be allocated their respective shares of the outstanding principal amount of all Loans.

“Required Recipient” is defined in Section 14.22 of the Participation Agreement.

“Requisition” is defined in Section 5.2(a) of the Participation Agreement.

“Responsible Officer” means (a) with respect to any Person, the chief executive officer, president, the executive vice president, treasurer or secretary of such Person, or, with respect to financial matters, the chief financial officer or treasurer of the applicable Person; (b) in the case of the Lessee or Construction Agent, with respect to Property-related matters, any Director, Worldwide Real Estate, and (c) with respect to the Trust Company, any officer of the Corporate Trust Department of Trustee, including any Vice President, Assistant Vice President, Secretary, Assistant Secretary or any other officer of Trustee customarily performing functions similar to those performed by any of the above designated officers.

“RFC” means Relationship Funding Company, LLC, a Delaware limited liability company.

“RFC Loan Commitment” means \$314,925,000.

“RFC Loans” means any advance of funds made by RFC pursuant to Section 2.1 of the Loan Facility Agreement, and the portion of any Backup Facility Loan which is repurchased by RFC pursuant to Section 3.11 of the Liquidity Agreement.

“RFC Operative Agreements” is defined in Section 7.8(b) of the Participation Agreement.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and its successors.

“SEC” means the United States Securities and Exchange Commission.

“Secured Investor” is defined in the Preamble to the Trust Agreement.

“Secured Parties” means the collective reference to the Lenders and the Investors.

“Securities Act” means the Securities Act of 1933.

“Securities Exchange Act” means the Securities Exchange Act of 1934.

“Securities Intermediary” means Chase in its capacity as Securities Intermediary under the Pledge Agreement.

“Security Documents” means the collective reference to the Mortgages, the Lease, each Assignment of Leases, the Contract Assignment, the Structural Support Agreement, the Pledge Agreement, and all other security documents hereafter delivered to the Administrative Agent granting a Lien on any asset or assets of any Person to secure the obligations and liabilities of the Lessor under the Loan Facility Agreement and/or under any of the other Credit Documents.

“Settlement Date” means each December 5, March 5, June 5 and September 5, commencing December 5, 2001, and the Maturity Date; provided, however, that if any such date is not a Business Day, the Settlement Date shall be the next succeeding Business Day.

“Settlement Period” is defined in the definition of “CP Cost of Funds”.

“Shared Rights” means the following rights retained by the Lessor and the Investors, which rights shall be exercised by the Required Investors, but not to the exclusion of the Administrative Agent:

- (a) the right to receive from the Lessee all notices, certificates and other documents and all information that the Lessee is permitted or required to give or furnish to the Lessor pursuant to the Lease, the Participation Agreement or any other Operative Agreement,
- (b) the right to inspect the Properties and otherwise exercise rights of the Lessor under Section 10.3 and 10.4 of the Lease,
- (c) all rights with respect to insurance that Section 14 of the Lease specifically confers upon the Lessor,
- (d) the right to provide such insurance as the Lessee shall have failed to maintain,
- (e) the right to enforce compliance by the Lessee with the provisions of Sections 8, 9, 10, 11 and 14 of the Lease,
- (f) the right to reject any bid for any Property pursuant to Section 21.1(b) of the Lease and to exercise the rights granted pursuant to Section 21.5 of the Lease; and
- (g) the right to perform for the Lessee under Section 17 of the Lease.

“Significant Casualty” means a Casualty that (x) in the reasonable, good faith judgment of the Lessee (as evidenced by an Officer’s Certificate) either (a) renders a Property unsuitable for continued use as commercial property of the type of the affected Property immediately prior to such Casualty or (b) is so substantial in nature that restoration of such Property to substantially its condition as existed immediately prior to such Casualty would be impracticable or impossible,

or (y) the Lessee elects to have treated as a Significant Casualty; provided, however, that the Lessee shall not have the right under this clause (v) for any Construction Period Property during the Construction Period therefor.

“Significant Condemnation” means a Condemnation that (x) in the reasonable, good faith judgment of the Lessee (as evidenced by an Officer’s Certificate) either (a) renders a Property unsuitable for continued use as commercial property of the type of such Property immediately prior to such Condemnation or (b) is such that restoration of a Property to substantially its condition as existed immediately prior to such Condemnation would be impracticable or impossible, or (y) the Lessee elects to have treated as a Significant Condemnation; provided, however, that the Lessee shall not have the right under this clause (v) for any Construction Period Property during the Construction Period therefor.

“Single Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA which is subject to Title IV of ERISA, that (a) is maintained for employees of the Lessee or an ERISA Affiliate and no Person other than the Lessee, the Lessee, and its ERISA Affiliates, or (b) was so maintained and in respect of which the Lessee or an ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

“Status” means, as to the Lessee, the existence of Level I Status, Level II Status, Level III Status, Level IV Status, Level V Status or Level VI Status, as the case may be.

“Structural Support Agreement” means the Structural Support Agreement dated as of the Initial Closing Date from the Lessee in favor of the Lessor, the Investors, and the Administrative Agent for the benefit of the Secured Parties.

“Subsidiary” means, as to any Person, any corporation of which at least a majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person, or by one or more Subsidiaries, or by such Person and one or more Subsidiaries. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Lessee.

“Supermajority Participants” is defined in Section 12.9 of the Participation Agreement.

“Supplemental Rent” means any and all amounts, liabilities and obligations (other than Basic Rent) which Lessee assumes, agrees or is obligated to pay to Lessor, the Administrative Agent, the Securities Intermediary, any Participant or any other Person under the Operative Agreements (other than the Structural Support Agreement), including Transaction Expenses, Facility Fees, amounts owing in connection with indemnities (including indemnities under Section 8 and Section 12 of the Participation Agreement) and damages for breach of any covenants, representations, warranties or agreements.

“Support Provider” means General Motors Corporation in its capacity as support provider under the Structural Support Agreement.

“Taxes” is defined in the definition of “Impositions”.

“Term” means (i) for each Construction Period Property, the Interim Term and upon Completion of such Property, the period commencing on (and including) the day after the expiration of the Interim Term and ending on the Maturity Date, and (ii) for any other Property, the period commencing on (and including) the Property Closing Date for such Property and ending on the Maturity Date.

“Termination Date” is defined in Section 16.2(a) of the Lease.

“Termination Notice” is defined in Section 16.1(a) of the Lease.

“Termination Value” means with respect to all Properties, as of any determination date, an amount equal to the sum (without duplication) of (i) the aggregate outstanding principal of the Loans, accrued and unpaid interest on the Loans, breakage costs, including CP Breakage Costs, and any other amounts due under the Loan Facility Agreement, plus (ii) the aggregate outstanding amount of the Investor Contributions, all accrued amounts due on account of the Investor Yield, and any breakage costs thereon, (iii) all other amounts due and owing by the Lessee to the Investors, the Administrative Agent, or the Lenders under any Operative Agreements, including, without limitation, breakage costs (including CP Breakage Costs, if any), and (iv) any Unreimbursed Indemnity Amounts. “Termination Value” with respect to a particular Property means an amount equal to the product of the Termination Value of all the Properties times a fraction, the numerator of which is the Property Cost allocable to the particular Property in question and the denominator of which is the aggregate Property Cost for all the Properties. If it is necessary to allocate the Termination Value of a Property between Land and Improvements, the Termination Value shall be allocated pro rata between the Land and the Improvements based on the Property Cost of each of the Land and the Improvements.

“Title Company” means First American Title Insurance Company, or such other title insurance company reasonably acceptable to the Administrative Agent.

“Total Condemnation” means a Condemnation that involves a taking of Lessor’s entire title to a Property.

“Tranche A Basic Rent” means the interest due on the Tranche A Loans on any Payment Date pursuant to the Loan Facility Agreement (but not including interest on overdue amounts under Section 2.11(d) of the Loan Facility Agreement or otherwise).

“Tranche A Loans” is defined in Section 2.4 of the Loan Facility Agreement.

“Tranche A Percentage” means, with respect to a Property, upon the date on which the Borrower first borrows any Loans in connection with the payment of Tranche A/B Property Cost for such Property, the maximum percentage of the Tranche A/B Property Cost in respect of such Property which may be allocated to Tranche A Loans as of such date without causing the Lease

to be treated as a Capital Lease for the purposes of Statement of Financial Accounting Standards (SFAS) No. 13, as determined in good faith by the Lessee and certified to the Administrative Agent in the applicable Memorandum of Lease and Supplement provided, however, in no event shall such percentage be less than 86.0%. The Tranche A Percentage for a Property, as determined upon the date on which the Borrower first borrows any Loans in connection with the payment of Tranche A/B Property Cost for such Property, shall be the Tranche A Percentage for such Property at all times thereafter. The Land which constitutes a part of a Property shall have a Tranche A Percentage equal to 100%.

"Tranche A/B Construction Property Cost" shall mean with respect to each Construction Period Property, at any date of determination, an amount equal to (a) the aggregate principal amount of Loans made on or prior to such date with respect to such Property, minus (b) the aggregate principal amount of prepayments of the Loans allocated to reduce the Tranche A/B Construction Property Cost of such Property pursuant to Section 2.8 of the Loan Facility Agreement.

"Tranche A/B Property Cost" shall mean, with respect to each Property, at any date of determination, an amount equal to (a) the aggregate principal amount of Loans made on or prior to such date with respect to such Property minus (b) the aggregate amount of prepayments of the Loans allocated to reduce the Tranche A/B Property Cost of such Property pursuant to Section 2.8 of the Loan Facility Agreement.

"Tranche B Basic Rent" shall mean the scheduled interest due on the Tranche B Loans on any Payment Date pursuant to the Loan Facility Agreement (but not including interest on overdue amounts under Section 2.11(d) of the Loan Facility Agreement or otherwise).

"Tranche B Deficit" is defined in Section 9.12 of the Participation Agreement.

"Tranche B Percentage" means 100% minus the Tranche A Percentage.

"Tranche B Loans" is defined in Section 2.4 of the Loan Facility Agreement.

"Transaction Expenses" means

(a) the reasonable fees and expenses of the Appraiser and the Environmental Engineer;

(b) the fees and reasonable expenses of Administrative Agent, the Arranger, and the Securities Intermediary as set forth in the Fee Letter Agreement (including reasonable counsel fees and expenses and Facility Fees);

(c) all lien search fees, Impositions (to the extent provided in Section 12.2 of the Participation Agreement), recording taxes, charges or other expenses reasonably incurred in connection with the perfection of Liens and the consummation of any and all Impositions (to the extent provided in Section 12.2 of the Participation Agreement) and fees incurred in recording or filing any Operative Agreement or any other transaction document, any deed, declaration, deed of trust, security agreement, notice or financing

statement with any public office, registry or governmental agency in connection with the transactions contemplated by the Operative Agreements;

(d) the reasonable out-of-pocket expenses, disbursements or costs (including reasonable costs, fees and expenses of counsel) of the Lessee, the Lessor, Dechert, as counsel to the Investors, Administrative Agent, the Arranger, CP Issuer, RFC, and the Securities Intermediary, incurred in connection with the transactions contemplated by the Operative Agreements;

(e) the reasonable fees and reasonable out-of-pocket expenses of the Trust Company in connection with the transactions contemplated by the Operative Agreements, including, without limitation, the initial and annual Trust Company's fee pursuant to the Trust Agreement and its fee letter with the Lessee, and all reasonable out-of-pocket expenses of the Trust Company and any necessary co-trustees (including reasonable counsel fees and expenses) or any successor trustee, for acting as trustee under the Trust Agreement and all reasonable out-of-pocket expenses incurred by the Trust Company in connection with filing any tax returns pursuant to the Trust Agreement ;

(f) any real estate brokers' fees and any and all stamp, transfer and other similar taxes, fees and excises, if any, including any interest and penalties, which are payable in connection with the acquisition of any Property;

(g) all reasonable out-of-pocket costs and expenses incurred in connection with the enforcement or preservation of any rights under the Operative Agreements, including, without limitation, the reasonable fees and disbursements of counsel to the Investors, the Administrative Agent and RFC (to the extent Administrative Agent fails to properly enforce or preserve rights under the Operative Agreements (other than the Liquidity Agreement));

(h) all reasonable out-of-pocket costs and expenses incurred by the Administrative Agent, any Participant, or the Trust Company in connection with any amendment, supplement or modification to the Operative Agreements requested by or consented to by Lessee and any other documents reasonably prepared in connection therewith, and the consummation and administration of the transactions contemplated thereby, including, without limitation, the reasonable fees and disbursements of counsel to the Investors, the Administrative Agent and the other Secured Parties; and

(i) all reasonable out-of-pocket costs and expenses incurred by the Lessor, the Lessee, the Investors or the Administrative Agent in connection with any purchase of any Property by the Lessee pursuant to the Lease or pursuant to Section 21 of the Lease if the Purchase Option is exercised during the Marketing Period.

Any Transaction Expenses or other amounts which (x) relate to more than one Property will be allocated and reallocated from time to time by the Lessee between or among the applicable Properties, and (y) are general in nature and do not relate to any particular Property shall be allocated and reallocated from time to time by the Lessee between or among all Properties from time to time subject to the Lease.

"Trust" is defined in the Preliminary Statement of the Trust Agreement.

"Trust Agreement" means the Trust Agreement of Auto Facilities Real Estate Trust 2001-1 dated as of the Initial Closing Date among the Investors and the Trust Company.

"Trust Company" means Wilmington Trust Company, a Delaware banking corporation, in its individual capacity.

"Trust Estate" is defined in Section 2.3 of the Trust Agreement.

"Trustee" means Wilmington Trust Company, not in its individual capacity but solely in its trust capacity under the Trust Agreement, and any co-trustee or successor appointed pursuant to the Trust Agreement.

"Type" means as to any Loan, its nature as an ABR Loan or a Eurodollar Loan.

"UCC" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"Unallocated Contingency" means the amount set forth in Schedule 1 to Annex A to the Participation Agreement, which may start at zero, which would be available to fund costs related to any one or more Properties as such amount may change from time to time.

"Unfunded Amount" is defined in Section 3.1 of the Agency Agreement.

"Unreimbursed Indemnity Amounts" means any amounts that became due under Article 12 of the Participation Agreement but were not payable during the Construction Period as a result of the application of Section 12.1(b) of the Participation Agreement.

"Unused Commitments" is defined in Exhibit I to the Liquidity Agreement.

"Upfront Fee" means, as to any Backup Facility Bank, the upfront fees payable to it pursuant to the Fee Letter Agreement.

"U.S." means the United States of America.

"Vehicle Company" means any company commonly known to be engaged in the business of (i) the design, manufacturing, marketing, sale or resale of automobiles, trucks or other vehicles, or (ii) manufacturing or supplying parts for the manufacturing of, or for the aftermarket for, automobiles, trucks or other vehicles, or (iii) participating (or having announced its intention to participate) on a material non-passive basis in the activities in (i) or (ii) above.

"Walk-Away Event" shall mean, with respect to any Construction Period Property, a Total Condemnation, a Significant Casualty, or Significant Condemnation (with respect to which however the evaluation of whether the applicable Casualty or Condemnation, as appropriate, constitutes a Total Condemnation, Significant Condemnation or Significant Casualty is made by an Independent Engineer and not the Lessee) that (i) occurs during the Construction Period, (ii) is not Within The Construction Agent's Control, and (iii) is not a Full Recourse Interim Term Event.

“Withdrawal Liability” has the meaning given such term under Part I of Subtitle E of Title IV of ERISA.

“Within the Construction Agent’s Control” means, with respect to any event or circumstance, that such event or circumstance was caused by or arose from (a) the action or inaction of a Construction Agency Person, or any matter that is otherwise within the direct or indirect control of a Construction Agency Person, (b) any willful misconduct, fraud, illegal acts or intentional misapplication of funds by a Construction Agency Person, or (c) an Agency Agreement Event of Default specified in Section 5.1(e) of the Agency Agreement.

“Yield” is defined in Exhibit I to the Liquidity Agreement.

# SCHEDULE I

## Budget for Properties

	Automotive Parts Distribution Warehouse Bolingbrook, IL	SPO Warehouse Kansas City, MO	SPO Warehouse Reno, NV	SPO Warehouse Denver, CO	SPO Warehouse Ontario, CA	SPO Warehouse Minneapolis, MN	SPO Warehouse Boston, MA	Transmission Prints Distribution Center Indianapolis, IN	Mixed Use Facility adjacent to Renaissance Ctr	Unallocated Contingency	Total
Land	\$4,442,300	\$3,600,000	\$3,250,000	\$4,600,000	\$5,000,000	\$4,000,000	\$4,600,000	\$20,137,912	\$58,000,000		\$29,492,300
Land/Building Improvements*	\$57,700	\$540,000	\$487,500	\$690,000	\$200,000	\$600,000	\$690,000				\$3,265,200
Construction Contingency	\$18,500,000	\$18,744,400	\$20,286,688	\$21,469,650	\$19,000,000	\$20,360,000	\$22,520,650				\$219,019,300
Capitalized Interest/Yield	\$500,000	\$3,500,000	\$3,600,000	\$4,000,000	\$3,800,000	\$3,800,000	\$4,200,000				\$32,330,000
Structuring	6,234	27,111	27,777	31,105	1,105,416	37,001	39,105	\$30,000	\$8,700,000		\$4,039,225
Legal Fees	108,817	122,069	128,460	141,495	129,263	132,816	147,048	6,095	2,759,321		\$1,307,100
RV Insurance	130,000	130,000	130,000	130,000	130,000	130,000	130,000	89,677	301,654		\$1,170,000
Title Insurance	2,477	3,046	3,206	3,531	3,331	3,311	3,671	2,042	130,000		\$32,400
Undrawn Fac. Fees	7,428	10,125	10,063	12,000	12,250	11,000	12,250	25,210	7,784		\$184,950
Construction Consultant	8,791	40,924	43,069	49,920	22,448	56,070	62,179	7,185	84,625		\$362,806
Real Estate Taxes		50,000	50,000	50,000	50,000	50,000	50,000		100,000		\$400,000
Appraisal Insurance	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000		\$180,000
Additional Contingency	1,000,000	1,049,930	1,050,769	1,051,329	1,053,679	1,050,769	1,051,888		1,088,350		\$8,396,713
Cost of Ins/Addl Conting	16,253	2,638,440	2,782,419	3,075,965	2,800,000	2,876,000	3,201,065		6,670,000		\$24,343,889
Totals:	\$24,800,000	\$30,500,000	\$32,100,000	\$35,400,000	\$33,400,000	\$33,200,000	\$38,800,000	\$20,600,000	\$78,000,000	\$300,000	\$325,000,000

\* Includes developers' interests

## **EXHIBIT C**

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**LEASE**

between

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

and

GENERAL MOTORS CORPORATION,  
as Lessee

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Dated as of October 31, 2001

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THIS LEASE IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF THE CHASE MANHATTAN BANK, AS ADMINISTRATIVE AGENT (THE "ADMINISTRATIVE AGENT"), UNDER THE LOAN FACILITY AGREEMENT, DATED AS OF OCTOBER 31, 2001 AMONG AUTO FACILITIES REAL ESTATE TRUST 2001-1, RELATIONSHIP FUNDING COMPANY, LLC, THE BACKUP FACILITY BANKS A PARTY THERETO, AND THE ADMINISTRATIVE AGENT, AS AMENDED OR SUPPLEMENTED. THIS LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE OF THE STATE WHERE ANY PROPERTY IS LOCATED), NO SECURITY INTEREST IN THIS LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY THE ADMINISTRATIVE AGENT ON THE SIGNATURE PAGE HEREOF.

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## EXHIBITS

Exhibit A Form of Short Form Memorandum of Lease and Lease Supplement

LEASE (this "Lease"), dated as of October 31, 2001 between AUTO FACILITIES REAL ESTATE TRUST 2001-1, a Delaware business trust, having its principal office c/o Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19890, as lessor (the "Lessor"), and GENERAL MOTORS CORPORATION, a Delaware corporation, having its principal office at Worldwide Real Estate, 200 Renaissance Center, Tower 200, 38<sup>th</sup> Floor, Detroit, Michigan, 48265-2000, as lessee (the "Lessee").

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

## SECTION 1. DEFINITIONS; INTERPRETATIONS

1.1 Definitions; Interpretation. Capitalized terms used and not defined herein shall have the meanings assigned thereto in Annex A to that certain Participation Agreement, dated as of the date hereof, among Lessee, Wilmington Trust Company, not in its individual capacity except as set forth therein, but solely as Trustee, the Lessor, the financial institutions listed on Schedule II thereto as Investors, the financial institutions listed on Schedule I thereto as Backup Facility Banks, The Chase Manhattan Bank, as Administrative Agent, and Relationship Funding Company, LLC; and the rules of usage and interpretation set forth in Annex A to the Participation Agreement shall apply to this Lease.

## SECTION 2. PROPERTY AND TERM

2.1 Property. Subject to the terms and conditions hereinafter set forth and contained in the respective Memorandum of Lease and Supplement relating to each Property, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Properties.

2.2 Lease Term. The Properties are leased for the Term, unless this Lease is earlier terminated with respect to any Property in accordance with the provisions of this Lease.

2.3 Title. The Properties are leased to Lessee without any representation or warranty, express or implied, by Lessor, and subject to the rights of parties in possession, the state of title existing on the applicable Property Closing Date (including, without limitation, the Permitted Exceptions), and all applicable Legal Requirements. Lessee shall in no event have any recourse against Lessor for any defect in Lessor's title to the Property.

2.4 Memorandum of Lease and Supplement. This Lease shall not be recorded, but on each Property Closing Date, Lessee and Lessor shall each execute and deliver a memorandum of lease and lease supplement (a "Memorandum of Lease and Supplement") for the Property to be leased on such Property Closing Date in substantially the form of Exhibit A attached hereto and otherwise in form suitable for recording under the laws of the jurisdiction in which the Property covered thereby is located, and thereafter such Property shall be subject to the terms of this Lease, which memorandum shall be recorded at Lessee's sole cost and expense (provided that such costs shall be Transaction Expenses).

### SECTION 3. RENT

3.1 Rent. (a) On each applicable Payment Date occurring after the applicable Completion Date with respect to a Construction Period Property and on each applicable Payment Date after the Property Closing Date with respect to a Completed Property, Lessee shall pay the Basic Rent.

(b) Basic Rent shall be due and payable in lawful money of the United States and shall be paid by wire transfer of immediately available funds on the due date therefor to the Funding Account or such other account or accounts at such bank or banks or to such other Person or in such other manner as Lessor shall from time to time direct in accordance with the Operative Agreements.

(c) Neither Lessee's inability or failure to take possession of all, or any portion, of any Property when delivered by Lessor, nor Lessor's inability or failure to deliver all or any portion of any Property to Lessee, whether or not attributable to any act or omission of Lessee or any act or omission of Lessor, or for any other reason whatsoever, shall delay or otherwise affect Lessee's obligation to pay Rent in accordance with the terms of this Lease.

3.2 Supplemental Rent. Lessee shall pay to Lessor or the Person entitled thereto any and all Supplemental Rent promptly as the same shall become due and payable, and if Lessee fails to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Basic Rent. Lessee shall pay to Lessor as Supplemental Rent, among other things, on demand, to the extent permitted by applicable Legal Requirements, interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due for the period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded by Lessor for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid. The expiration or other termination of Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this Lease or any other Operative Agreement, in the event of any failure on the part of Lessee to pay and discharge any Supplemental Rent as and when due, Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent. Notwithstanding anything to the contrary contained herein, during the Construction Period with respect to any Construction Period Property, Lessee shall pay Supplement Rent relating to such Construction Period Property using only the proceeds of Advances.

### SECTION 4. UTILITY CHARGES

4.1 Utility Charges. Subject to Lessee's rights of permitted contest pursuant to Section 13.1, Lessee shall pay, or cause to be paid, all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents and utilities used in or on each Property during the Term. Lessee shall be entitled to receive any credit, rebate or refund with respect to any utility charge paid by Lessee and the amount of any credit, rebate or refund

received by Lessor on account of any utility charges paid by Lessee, net of the costs and expenses incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. All charges for utilities imposed with respect to any Property for a billing period during which this Lease expires or terminates shall be adjusted and prorated on a daily basis between Lessor and Lessee, and each party shall pay or reimburse the other for each party's pro rata share thereof.

## SECTION 5. QUIET ENJOYMENT

5.1 Quiet Enjoyment. So long as no Lease Event of Default shall have occurred and be continuing, Lessee shall peaceably and quietly have, hold and enjoy each Property for the Term, free of any claim or other action by Lessor, or anyone rightfully claiming by, through or under Lessor. Lessor hereby assigns, transfers and conveys to Lessee during the Term all right, title and interest, if any, of Lessor in and to the purchase agreement relating to the purchase of any Property (including, without limitation, any environmental or other indemnities). Upon Lessee's request from time to time, Lessor will cooperate with Lessee in enforcing any rights and remedies thereunder; provided, however, that Lessee shall pay (out of Advances during any applicable Construction Period) the expenses incurred by Lessor in connection therewith.

## SECTION 6. NET LEASE

6.1 Net Lease; No Setoff; Etc. This Lease shall constitute a net lease and, notwithstanding any other provision of this Lease, Lessee shall pay Basic Rent and Supplemental Rent without counterclaim, setoff, deduction or defense of any kind and without abatement, suspension, deferment, diminution or reduction of any kind, and Lessee's obligation to pay all such amounts is absolute and unconditional. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected for any reason, including, without limitation, to the maximum extent permitted by law: (a) any defect in the condition, merchantability, design, construction, quality or fitness for use of any portion of any Property, or any failure of any Property to comply with all Legal Requirements, including any inability to occupy or use any Property by reason of such non-compliance; (b) any damage to, abandonment, loss, contamination of or Release from or destruction of or any requisition or taking of any Property or any part thereof, including eviction; (c) any restriction, prevention or curtailment of or interference with any use of any Property or any part thereof (including eviction); (d) any defect in title to or rights to any Property or any Lien on such title or rights or on any Property (provided that the foregoing shall not relieve any Person from its obligation to remove Lessor Liens attributable to it); (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by a Participant; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to a Participant or any other Person, or any action taken with respect to this Lease by any trustee or receiver of a Participant or any other Person, or by any court, in any such proceeding; (g) any claim that Lessee has or might have against any Person, including, without limitation, a Participant; (h) any failure on the part of Lessor to perform or comply with any of the terms of this Lease, any other Operative Agreement or of any other agreement; (i) any invalidity or unenforceability or disaffirmance against or by Lessee of this

Lease or any provision hereof or any of the other Operative Agreements or any provision of any thereof; (j) the impossibility of performance by Lessee, Lessor or both; (k) any action by any court, administrative agency or other Governmental Authority; (l) any restriction, prevention or curtailment of or any interference with the construction on or any use of any Property or any part thereof; or (m) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Lessee shall have notice or knowledge of any of the foregoing. Lessee's agreement in the preceding sentence shall not affect any claim, action or right Lessee may have against Lessor, any Participant or any other Person. Notwithstanding the foregoing provisions, nothing contained in this Section 6.1 shall provide Lessor with any right to payment by Lessee under this Lease with respect to a Construction Period Property prior to the Completion Date for such Property which is contrary to Lessor's remedies and the limitations thereon under the Agency Agreement; it being the express intention of the parties hereto that Lessee's liability hereunder with respect to any Construction Period Property shall not exceed the liability of the Construction Agent under the Agency Agreement prior to the Completion Date for such Construction Period Property. This Lease shall be noncancellable by Lessee for any reason whatsoever except as expressly provided herein, and Lessee, to the extent permitted by Legal Requirements, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease, or to any diminution, abatement or reduction of Rent payable by Lessee hereunder. Unless a Lease Event of Default then exists, if for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as otherwise expressly provided herein or in any other Operative Agreement, Lessee shall, unless prohibited by Legal Requirements, nonetheless pay to Lessor (or, in the case of Supplemental Rent, to whomever shall be entitled thereto) an amount equal to each Rent payment at the time and in the manner that such payment would have become due and payable under the terms of this Lease if it had not been terminated in whole or in part, and in such case, so long as such payments are made and no Lease Event of Default shall have occurred and be continuing, Lessor will deem this Lease to have remained in effect. Each payment of Rent made by Lessee hereunder shall be final and, absent manifest error in the computation of the amount thereof, Lessee shall not seek or have any right to recover all or any part of such payment from a Participant or any party to any agreements related thereto for any reason whatsoever. Lessee assumes the sole responsibility for the condition, use, operation, maintenance, and management of the Property and Lessor shall have no responsibility in respect thereof and shall have no liability for damage to the property of Lessee or any subtenant of Lessee on any account or for any reason whatsoever.

6.2 No Termination or Abatement. Except as set forth in Sections 15, 16, 19 and 20, Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting Lessor, or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator of Lessor or by any court with respect to Lessor, except as otherwise expressly provided herein. Lessee hereby waives all right (i) to terminate or surrender this Lease, except as otherwise expressly provided herein, or (ii) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with respect to any Rent. Lessee shall remain obligated under this Lease in accordance with its terms and Lessee hereby waives any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict

compliance with its obligations under this Lease. Notwithstanding any such statute or otherwise, Lessee shall be bound by all of the terms and conditions contained in this Lease.

6.3 No Bar. Notwithstanding the foregoing, except as may be expressly waived hereby, nothing set forth herein shall bar, limit, preclude, prevent, stay or otherwise adversely affect Lessee's right or ability to bring and pursue any action against Lessor, any Participant or any other Person for any breach or alleged breach of such Person's obligations hereunder or under any other Operative Agreement.

## SECTION 7. OWNERSHIP OF PROPERTY

7.1 Ownership of the Property. (a) Lessor and Lessee intend that (i) for financial accounting purposes with respect to Lessee (A) this Lease will be treated as an "operating lease" pursuant to Statement of Financial Accounting Standards (SFAS) No. 13, as amended, (B) Lessor will be treated as the record 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 taxes and all other purposes (A) this Lease will be treated as a financing arrangement, (B) the Lenders will be treated as senior lenders making loans to Lessee in amounts equal to the Loans, which Loans are secured by the Properties, (C) the Investors (or Lessor) 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 beneficial owner of the Properties and will be entitled to all tax benefits ordinarily available to an owner of property similar to the Properties for such tax purposes.

(b) Lessor and Lessee further intend and agree that, for the purpose of securing Lessee's obligations under this Lease, (i) this Lease shall also be deemed to be a security agreement and financing statement within the meaning of Article 9 of the Uniform Commercial Code and a real property mortgage or deed of trust, as applicable; (ii) Lessee hereby grants to Lessor a security interest in and a mortgage lien on the Lessee's right, title and interest in the Properties and the leasehold estate under any Ground Lease and all 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 this Lease and the other Operative Agreements, and Lessor holds title to the Properties so as to create and grant a first mortgage lien and prior security interest in each Property (A) pursuant to this Lease for the benefit of the Administrative Agent under the Assignment of Lease, to secure to the Administrative Agent for the benefit of the Secured Parties the obligations of the Lessee under the Lease and (B) pursuant to the Mortgages to secure to the Administrative Agent for the benefit of the Secured Parties the obligations of the Lessor under the Loan Facility Agreement, Mortgages and the Notes (if any); (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 shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-305 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. Lessor and Lessee shall, to the extent

consistent with this Lease and other Operative Agreements, take such actions as may be necessary to ensure that, if this 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.

(c) Lessor and Lessee 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 this Lease shall be regarded as loans made by an unrelated third party lender to Lessee.

7.2 Property Taxes. The Lessee shall be responsible for preparing and filing any real and personal property or ad valorem tax returns in respect of the Properties ("Property Taxes"). Any notices, correspondence and other documents with respect to such taxes received by Lessor shall be promptly forwarded to Lessee or any designated representative of the Lessee. Lessee may contest any appraised value of any Property with respect to Property Taxes or any items contained in such notices, correspondence and other documents with respect to Property Taxes with the appropriate Government Authority and shall have the sole control of such contest; provided, however, that where such contest relates to an Imposition subject to indemnification under Article 12 of the Participation Agreement, Lessee's right to contest shall be subject to Section 12.2(b) of the Participation Agreement.

7.3 Lessor Grant. (a) The Lessor hereby grants a Lien upon and mortgages and warrants to the Lessee the Properties to secure (i) the Lessor's obligations hereunder in respect of the due and punctual transfer by the Lessor to the Lessee of all of the Lessor's right, title and interest in and to the Properties when required by and in accordance with this Lease, and (ii) if the Lessor shall then be the subject of any bankruptcy, insolvency or similar proceeding, satisfaction of the Lessee's right to damages and other claims arising out of the rejection of this Lease or unilateral termination of such obligation to transfer to the Lessee all of the Lessor's right, title and interest in and to the Properties, against all of the Lessor's right, title and interest in and to the Properties.

(b) During the existence and only during the existence of a Lessor Default (as defined below), the Lessee shall have the power and authority, to the extent provided by Legal Requirements, to exercise any or all of the rights and powers and pursue any and all of the remedies provided under the Operative Agreements or by Legal Requirements in respect of the obligations secured in accordance with clause (a) above (including specific performance of any covenant or agreement contained in this Lease or any other Operative Agreement, in aid of the execution of any power granted in this Lease or any other Operative Agreement, or for the enforcement of any other appropriate legal or equitable remedy). The Lessor shall have all the rights available to a mortgagor under the laws of the jurisdiction in which the applicable Property is located. The following shall constitute a Lessor default ("Lessor Default"): the Lessee shall have exercised any of its purchase options in this Lease for any or all of the Properties in accordance with the terms hereof and shall have tendered in full all amounts to be paid by Lessee in connection therewith and complied with all other requirements hereunder in connection with

such purchase and all of the Lessor's right, title and interest in and to the applicable Property shall not have been transferred to the Lessee in accordance with this Lease.

(c) The Lien created in clause (a) shall automatically terminate and be deemed released without further act or consideration upon (i) the commencement by the Lessor of the exercise of any remedy in respect of the applicable Property pursuant to Article XVI (except in the case of a sale to the Lessee thereunder) or (ii) a Lease Event of Default under Section 17.1(a) or (g).

## SECTION 8. CONDITION OF PROPERTY

8.1 Condition of the Property. LESSEE ACKNOWLEDGES AND AGREES THAT IT IS RENTING EACH PROPERTY "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR (EXCEPT AS EXPRESSLY PROVIDED IN THE OPERATIVE AGREEMENTS) AND SUBJECT TO (A) THE EXISTING STATE OF TITLE (EXCLUDING LESSOR LIENS), (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (C) ANY STATE OF FACTS WHICH AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW, AND (D) VIOLATIONS OF LEGAL REQUIREMENTS WHICH MAY EXIST ON THE APPLICABLE PROPERTY CLOSING DATE. NO PARTICIPANT HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED), INCLUDING THE CONDITION OF ANY IMPROVEMENTS THEREON, THE SOIL CONDITION, OR ANY ENVIRONMENTAL VIOLATION OR HAZARDOUS CONDITION OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE (OTHER THAN LESSOR LIENS), VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, OR FITNESS FOR USE OF THE PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY (OR ANY PART THEREOF) AND NO PARTICIPANT SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN (OTHER THAN LESSOR LIENS) OR THE FAILURE OF ANY PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REQUIREMENT.

8.2 Possession and Use of the Property. Each Property shall be used in a manner consistent with the Agency Agreement and all applicable Legal Requirements. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Properties. Lessee shall not commit or permit any waste of any Property or any part thereof, other than ordinary wear and tear on any Property.

## SECTION 9. COMPLIANCE

9.1 Compliance with Legal Requirements and Insurance Requirements. Subject to the terms of Section 13 relating to permitted contests, Lessee, at its sole cost and expense, shall (a) comply in all material respects with all Legal Requirements (including all Environmental Laws) and Insurance Requirements relating to each Property now and hereafter in effect, including the use, construction, operation, maintenance, repair and restoration thereof,

whether or not compliance therewith shall require structural or extraordinary changes in the Improvements or interfere with the use and enjoyment of each Property, and (b) procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, renovation, use, maintenance and operation of each Property and for the use, operation, maintenance, repair and restoration of the Improvements.

9.2 Environmental Matters. (a) Promptly upon Lessee's actual knowledge of a Material Environmental Violation, Lessee shall notify Lessor in writing of such Material Environmental Violation. In the event of such Material Environmental Violation, Lessee shall, not later than thirty (30) days after Lessee has actual knowledge of such Material Environmental Violation, either deliver to Lessor and the Administrative Agent an Officer's Certificate and a Termination Notice with respect to such Property pursuant to Section 16.1, if applicable, or, at Lessee's sole cost and expense, promptly and diligently undertake any response, clean up, remedial or other action necessary to remove, cleanup or remediate the Material Environmental Violation in accordance with the terms of Section 9.1. If Lessee does not deliver a Termination Notice with respect to such Property pursuant to Section 16.1, Lessee shall, upon completion of remedial action by Lessee, deliver to Lessor a report describing the Material Environmental Violation and the actions taken by Lessee (or its agents) in response to such Material Environmental Violation, and a statement by the Environmental Engineer that such Material Environmental Violation has been remedied in compliance in all material respects with applicable Environmental Laws and stating that no further remediation is required.

(b) Lessee shall implement, and comply with, all contingency plans, and all asbestos abatement or maintenance plans, established or recommended from time to time with respect to any Property by the Environmental Engineer.

(c) Lessee shall provide to Lessor, within thirty (30) Business Days of receipt, copies of all written or electronic communications with any Governmental Authority relating to any Material Environmental Violation in connection with any Property. Lessee shall also promptly provide such detailed reports of any such Environmental Claims as reasonably may be requested by Lessor, any Investor or the Administrative Agent. In the event that Lessor receives written notice of any pending or threatened claim, action or proceeding involving any Environmental Law or any Release on or in connection with any Property, Lessor shall promptly give notice thereof to the Lessee only (provided, that, subject to Section 14.22 of the Participation Agreement, Lessor may give notice of any such claim, action or proceeding (i) to any Participant and (ii) as required by any Governmental Authority or applicable Legal Requirements).

## SECTION 10. MAINTENANCE AND REPAIR

10.1 Maintenance and Repair; Return. (a) Lessee, at its sole cost and expense, shall maintain each Property in good condition (ordinary wear and tear excepted) and make all necessary repairs thereto, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural, or foreseen or unforeseen, in each case as required by Section 9.1 and on a basis reasonably consistent with the operation and maintenance of commercial properties comparable in type and location to the applicable Property subject, however, to the provisions of Section 15 with respect to Condemnation and Casualty.

(b) Lessor shall under no circumstances be required to build any Improvements on any Property, make any repairs, replacements, alterations or renewals of any nature or description to any Property, make any expenditure whatsoever in connection with this Lease (other than Advances made in accordance with and pursuant to the terms of the Participation Agreement and the Agency Agreement), or maintain any Property in any way. Lessor shall not be required to maintain, repair or rebuild all or any part of any Property, and Lessee waives the right to (i) require Lessor to maintain, repair, or rebuild all or any part of any Property, or (ii) make repairs at the expense of Lessor pursuant to any Legal Requirement, Insurance Requirement, contract, agreement, covenants condition or restriction at any time in effect.

10.2 Return Requirements. (a) Lessee shall, upon the expiration or earlier termination of the Term with respect to a Property (other than as a result of Lessee's (or its designee's) purchase of such Property from Lessor as provided herein), vacate, surrender and transfer such Property to Lessor, at Lessee's own expense, or to the purchaser in connection with a sale under Section 21 (at Lessee's expense except for Remarketing Sale Expenses), free and clear of all Liens other than the Liens of the Security Documents, Permitted Liens described in clauses (ii) (but only with respect to a sublease for which Lessor has executed a non-disturbance agreement), (iii), (vii), (viii) and (ix) of the definition of Permitted Liens, Liens described in clause (ii) of the definition of Permitted Exceptions, and Lessor Liens, in the condition which such Property is required to be maintained under Section 10.1, and in compliance with all Legal Requirements and the other requirements of this Lease (and in any event without (x) any asbestos or asbestos containing materials installed or maintained in any part of such Property, (y) any polychlorinated biphenyls (PCBs) in, on or used, stored or located at such Property in violation of Environmental Laws, and (z) any other Hazardous Substances in violation of any Environmental Laws).

(b) Unless Lessee has previously irrevocably exercised or been deemed to have exercised the Maturity Date Purchase Option, Lessee shall provide, or cause to be provided or accomplished, at the sole cost and expense of Lessee, to or for the benefit of Lessor or a purchaser, at least thirty (30) Business Days prior to the expiration or earlier termination of the Term with respect to a Property, each of the following: (i) an endorsement to the title policy issued for such Property showing (A) record title of the Lessor in the leasehold or fee estate, as the case may be, subject to no Liens other than the Liens of the Security Documents, Permitted Liens described in clauses (ii) (but only with respect to a sublease for which Lessor has executed a non-disturbance agreement), (iii), (vii), (viii) and (ix) of the definition of Permitted Liens, Liens described in clause (ii) of the definition of Permitted Exceptions, and Lessor Liens, and (B) the Mortgage as a valid and perfected first lien subject to the Permitted Liens, (ii) an environmental assessment for such Property satisfying the requirements set forth in Section 10.4 below, (iii) an assignment (to the extent assignable) of all of the Lessee's right, title and interest in and to each agreement executed by Lessee in connection with the construction of such Property (including all warranty, performance, service and indemnity provisions), (iv) Plans and Specifications relating to the design, construction, renovation or development of such Property, (v) an assignment (to the extent assignable) of all permits, licenses, approvals and other authorizations from all Governmental Authorities in connection with the construction, of such Property, (vi) copies of all books and records and in the case of any Non Completed Property, all Budgets and construction schedules, with respect to the construction, renovation, maintenance, repair, operation or use of such Property, (vii) for Construction Period Properties, Lessee shall

deliver an as-built survey of such Property that complies with the requirements set forth in Section 6.2(i) of the Participation Agreement and that is accurate as of the Completion Date for such Property, and for Completed Properties which have been subject to Modifications after the applicable Property Closing Date, Lessee shall deliver any updated survey of such Property after giving effect to such Modification or any repairs after such Casualty, if the Lessee shall have such a survey (but the Lessee shall not be obligated to obtain such a survey, whether at the time of such Modification or repair or in connection with this Section 10.2 or otherwise), (viii) in the case of any Non Completed Property, (x) evidence satisfactory to Lessor that all building materials purchased or contracted for purchase, and funded by Lessor, which have not been incorporated into the Improvements at such Property are owned by Lessor free from Liens, (y) evidence satisfactory to Lessor that adequate provision has been made for the protection of materials stored on site which were funded by Lessor and for the protection of the Construction Improvements, to the extent then constructed, against deterioration and against other loss or damage or theft, and (z) an agreement, in form and substance reasonably satisfactory to Lessor, from all major contractors, construction managers, architects, engineers and other design professionals that each will continue to perform under their respective contracts for the benefit of Lessor or its assignee, and (ix) evidence satisfactory to the Lessor that the costs incident to any Permitted Contest engaged in pursuant to Section 13.1 hereof have been paid and satisfied in full. Lessee shall have also paid the total cost for the completion (or removal and restoration of the Improvements following such removal) of all Modifications commenced after Completion of the applicable Property but prior to such expiration or earlier termination of the Term.

(c) The obligation of Lessee under this Section 10.2 shall survive the expiration or termination of this Lease.

10.3 Right of Inspection. Lessor and/ or the Investors may, at reasonable times and with reasonable prior notice to Lessee, enter upon, inspect and examine at its own cost and expense (unless a Lease Event of Default exists, in which case the out-of-pocket costs and expenses of Lessor and/ or the Investors shall be paid by Lessee), any Property, provided, that such inspections shall not unreasonably interfere with Lessee's or any tenant's, subtenant's or licensee's business operations at the Property. Such inspections shall be (i) during normal business hours and subject to Lessee's and the Property's normal security and safety procedures, and (ii) at the inspecting party's risk. Upon request from time to time, Lessee shall furnish to Lessor and/ or the Investors statements, no more than once per year, accurate in all material respects, regarding the condition and state of repair of each Property. Lessor and/ or the Investors shall have no duty to make any such inspection or inquiry and shall not incur any liability or obligation by reason of not making any such inspection or inquiry.

10.4 Environmental Inspection. Not more than nine (9) months prior to the Maturity Date (unless Lessee has previously irrevocably exercised or been deemed to have exercised the Purchase Option, the BI Purchase Option or the Maturity Date Purchase Option) and not less than thirty (30) Business Days prior to surrender of possession of a Property for any reason, Lessee shall, at Lessee's sole cost and expense (unless such surrender of possession arises prior to the Completion of such Property, in which case the limitations of Section 5.4(a) of the Agency Agreement shall be applicable to such costs and expenses), obtain a report by an environmental consultant selected by Lessor certifying that each Property or any portion thereof (i) does not contain Hazardous Substances under circumstances or in concentrations that could

result in a violation of or liability under any Environmental Law, and (ii) is in compliance with all Environmental Laws. If such is not the case on either such date, then Lessee shall be deemed to have irrevocably exercised the Maturity Date Purchase Option pursuant to Section 20.2. Lessee shall deliver the foregoing reports promptly to Lessor, but in any event within thirty (30) days of obtaining the same.

## SECTION 11. MODIFICATIONS

11.1 Modifications, Substitutions and Replacements. (a) So long as no Lease Event of Default has occurred and is continuing, Lessee, at its sole cost and expense, may at any time and from time to time make modifications, alterations, renovations, improvements and additions to a Property or any part thereof (collectively, "Modifications"); provided, that: (i) except for any Modification required to be made pursuant to a Legal Requirement or an Insurance Requirement, no Modification, individually, or when aggregated with any other Modification, shall impair the value of such Property or the utility or remaining useful life of the Property in more than a de minimis manner from that which existed immediately prior to such Modification, (ii) the Modification shall be performed in a good and workmanlike manner, (iii) Lessee shall comply with all Legal Requirements (including all Environmental Laws) and Insurance Requirements applicable to the Modification, including the obtaining of all permits and certificates of occupancy, and the structural integrity of such Property shall not be adversely affected, (iv) Lessee shall maintain or cause to be maintained commercially reasonable builders' risk insurance at all times when a Modification is in progress to the extent such insurance is required by Section 14.2(a), (v) subject to the terms of Section 13 relating to permitted contests, Lessee shall pay all costs and expenses and discharge (or cause to be insured or bonded over) within sixty (60) days after the same shall be filed (or otherwise become effective) any Liens arising with respect to the Modification, (vi) such Modifications shall comply with Sections 8.2 and 10.1 and unless required by Legal Requirements or Insurance Requirements shall not change the primary character of such Property or diminish in more than a de minimis manner the utility or Fair Market Sales Value of such Property, and (vii) unless required by Legal Requirements or Insurance Requirements no Improvements shall be demolished, except to the extent such demolition does not impair the value, utility or useful life of such Property. All Modifications (other than Modifications owned by sublessees under any subleases which Modifications are readily removable without more than de minimis damage to the applicable Property) shall remain part of the realty and shall be subject to this Lease, and title thereto shall immediately vest in Lessor, except Modifications that have not been financed with Advances and can be readily removed without impairing the value, utility or remaining useful life of such Property. So long as no Lease Event of Default has occurred and is then continuing, Lessee may place upon a Property any inventory, fixtures, machinery, equipment or other property belonging to Lessee or third parties, and may remove the same at any time during the term of this Lease; provided that such inventory, fixtures, machinery, equipment or other property, or their respective operations, can be removed without causing material damage to or diminution in the value, utility or remaining useful life of such Property; and further provided, that any damage actually caused by such removal, shall be repaired by Lessee.

(b) Following the Completion Date with respect to any Property, Lessee shall notify Lessor of the undertaking of any Modifications to the Property the cost of which is anticipated to

exceed \$5,000,000 (\$10,000,000 in the case of the Property adjacent to the property commonly known as Renaissance Center, Detroit, Michigan). Prior to undertaking any such Modifications, Lessee shall deliver to Lessor (i) a brief narrative of the work to be done and, upon request of Lessor, and in any event upon completion of the Modifications, a copy of the plans and specifications relating to such work; and (ii) an Officer's Certificate stating that such work when completed will not impair the value, utility or remaining life of such Property. Lessor, by itself or its agents, shall have the right, but not the obligation, from time to time to inspect such Modifications in accordance with Section 10.3 to ensure that the same is completed consistent with the plans and specifications therefor.

(c) Following the Completion Date with respect to any Property Lessee shall not, without the consent of Lessor, be permitted to undertake any Modifications to such Property if any such Modifications cannot, in the reasonable judgment of the Lessor, be completed by the commencement of the Marketing Period, unless Lessee shall have exercised the Purchase Option for such Property under Section 20.1 or 20.2.

## SECTION 12. TITLE

12.1 Warranty of Title. (a) Lessee agrees that, except as otherwise provided herein or in the other Operative Agreements and subject to the terms of Section 13 relating to permitted contests, Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, attachment, levy, title retention agreement or claim upon any Property or any Modifications or any Lien, attachment, levy or claim with respect to the Rent or with respect to any amounts held by the Administrative Agent pursuant to the Loan Facility Agreement, other than Lessor Liens and Permitted Liens and Liens on machinery, equipment, general intangibles and other personal property not financed by the proceeds of Advances. Lessee shall promptly notify Lessor in the event it receives knowledge that a Lien (other than a Lessor Lien or Permitted Lien) exists with respect to any Property.

(b) Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to any Property or any part thereof. NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING ANY PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO ANY PROPERTY.

12.2 Grants and Releases of Easements. Provided that no Lease Event of Default shall have occurred and be continuing and subject to the provisions of Sections 8, 9, 10 and 11, Lessor hereby consents to the following actions by Lessee, in the name and stead of Lessor, as the true and lawful attorney-in-fact of Lessor with full power and authority to execute documents on behalf of Lessor for the following purposes, but at Lessee's sole cost and expense: (a) the granting of, or entering into agreements in connection with, easements, licenses,

rights-of-way, building and/or use restrictions and covenants, and other rights and privileges in the nature of easements or similar interests and burdens reasonably necessary or desirable for the construction, use, repair, renovation or maintenance of any Property as herein provided, (b) the release of existing easements or other rights in the nature of easements, (c) the dedication or transfer (unencumbered by the Lien of the Mortgage and the other Operative Agreements) of unimproved portions of any Property for road, highway or other public purposes, (d) the execution of petitions, the seeking of zoning variances and modifications to existing zoning or to have any Property annexed to any municipal corporation or utility district, (e) the execution of closing statements and transfer affidavits required to be signed at the initial purchase or closing of the applicable Property, provided such transfer affidavits are specifically without recourse to the Lessor, and (f) the execution of amendments to, or waivers or releases of, any easements, licenses, covenants and restrictions affecting the Property; provided, that in each case Lessee shall have delivered to Lessor an Officer's Certificate stating that: (i) such grant, release, dedication, transfer, amendment, 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, (ii) such grant, release, dedication, transfer, amendment, agreement or other action is, in Lessee's reasonable business judgment, necessary or desirable in connection with the 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 grant, release, dedication, transfer, amendment, agreement or other action had not been effected, and (iv) Lessee shall pay and perform any obligations of Lessor under such grant, release, dedication or transfer. Without limiting the effectiveness of the foregoing, provided that no Lease Event of Default shall have occurred and be continuing, Lessor shall, upon the request of Lessee, and at Lessee's sole cost and expense, execute and deliver any instruments appropriate or necessary to confirm or effect any such grant, release, dedication, transfer, amendment, agreement or other action to any Person permitted under this Section, including landlord waivers with respect to any of the foregoing.

12.3 Personal Property Financings. Lessor acknowledges Lessee's and any existing or future sublessee's right to finance and to secure under the Uniform Commercial Code, inventory, furnishings, furniture, equipment, machinery, leasehold improvements and other personal property located at the Property, other than any personal property which was purchased with the proceeds of Advances and Lessor agrees to execute Lessor waiver forms and releases of Lessor's Liens in favor of any purchase money seller, lessor or lender which has financed or may finance in the future such personal property.

## SECTION 13. PERMITTED CONTESTS

13.1 Permitted Contests Other Than in Respect of Impositions. Except to the extent otherwise provided for in Section 12.2 of the Participation Agreement, Lessee, on its own or on Lessor's behalf but at Lessee's sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Legal Requirement, or utility charges payable pursuant to Section 4.1, or any Lien, attachment, levy, tax, encumbrance or encroachment, and Lessor agrees not to pay, settle or otherwise compromise any such item,

provided, that (a) the commencement and continuation of such proceedings shall suspend the collection thereof from, and suspend the enforcement thereof against the applicable Properties and the Participants, (b) there shall not be imposed during such proceeding a Lien (other than a Permitted Lien or Lessor Lien) on any Property and no part of any Property nor any Rent would be in any material danger of being sold, forfeited, lost or deferred during the pendency of such contest, (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability on any Participant for failure to comply therewith, and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the Expiration Date, then Lessee shall deliver to Lessor an Officer's Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1. Lessor, at Lessee's sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in connection with any such contest and, if a provision of any Legal Requirement requires that any proceeding be brought by or in the name of Lessor or it is customary in the applicable jurisdiction for the title holder to join in such proceeding, or if reasonably requested by Lessee, Lessor shall join as a party therein at Lessee's sole cost and expense.

## SECTION 14. INSURANCE

14.1 Public Liability and Workers' Compensation Insurance. During the Term, Lessee shall procure and carry, at Lessee's sole cost and expense, commercial general liability insurance for claims for injuries or death sustained by persons or damage to property while on each Property. Such insurance shall be on terms and in amounts that are no less favorable than insurance maintained by Lessee and its Affiliates on properties similar to such Property, and that are in accordance with normal industry practice. The policy shall be endorsed to name Participants as additional insureds. The policy shall also specifically provide that the policy shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which a Participant may have in force. Lessee shall, in the operation of the Property, comply with the applicable workers' compensation laws and protect Lessor against any liability under such laws.

14.2 Hazard and Other Insurance. (a) During the Term, Lessee shall keep each Property insured against loss or damage on an All-Risk basis including Earthquake and Ordinance or Law (including the peril of collapse) on terms and in amounts that are no less favorable than insurance maintained by Lessee and its Affiliates on similar properties, that are in accordance with normal industry practice, are in amounts equal to the actual replacement cost of the Improvements.

(b) Notwithstanding this Section 14, during the Construction Period for any Construction Period Property, Lessee will maintain insurance as required under the Agency Agreement. So long as no Lease Event of Default exists, any loss payable under the insurance policies required by this Section will be paid to and adjusted solely by Lessee, subject to Section 15.

(c) If at any time during the Term the area in which any Property is located is designated a "special flood-hazard area" area pursuant to the Flood Disaster Protection Act of

1973 or any amendments or supplements thereto, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as may be amended. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any other Legal Requirement, concerning flood insurance to the extent that it applies to any Property.

14.3 Coverage. (a) Lessee shall furnish Lessor with certificates showing the insurance required under Sections 14.1 and 14.2 to be in effect and naming the Participants, the Lessor, the Trustee and the Administrative Agent as an additional insured with respect to liability insurance and showing the mortgagee endorsement required by Section 14.3(c). All such insurance shall be at the cost and expense of Lessee. Such certificates shall include a provision in which the insurer agrees to provide thirty (30) days' advance written notice by the insurer to Lessor and the Administrative Agent in the event of cancellation of or any modification affecting the insurance coverage required to be maintained by Lessee pursuant to this Lease. If a Lease Event of Default has occurred and is continuing and Lessor so requests, Lessee shall deliver to Lessor certified copies of all insurance policies required by this Lease.

(b) Lessee agrees that the insurance policy or policies required by this Lease shall include an appropriate clause pursuant to which such policy shall provide that it will not be invalidated should Lessee waive, in writing, prior to a loss, any or all rights of recovery against any party for losses covered by such policy. Lessee hereby waives any and all such rights against a Participant to the extent of payments made under such policies.

(c) All insurance policies required by Section 14.2 shall include a "New York" or comparable standard form non-contributing mortgagee loss payable endorsement in favor of the Administrative Agent.

(d) Neither Lessor nor Lessee shall carry separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required under this Lease except that Lessor may carry separate liability insurance so long as (i) Lessee's insurance is designated as primary and in no event excess or contributory to any insurance Lessor may have in force which would apply to a loss covered under Lessee's policy and (ii) each such insurance policy will not cause Lessee's insurance required under this Lease to be subject to a coinsurance exception of any kind.

(e) Lessee shall pay as they become due all premiums for the insurance required by this Lease, shall renew or replace each policy prior to the expiration date thereof and shall promptly deliver to Lessor and the Administrative Agent certificates for renewal and replacement policies.

(f) So long as Level V Status or better exists, Lessee may maintain insurance required by this Lease by means of (i) self-insurance (including by way of deductibles) to the extent provided under, and in a manner consistent with, Lessee's comprehensive all risk policy and risk management program in effect from time to time, or (ii) one or more blanket insurance policies maintained by Lessee; provided, however, that (A) any such blanket policy shall specify, or Lessee shall furnish to Lessor a written statement from the insurer so specifying, the

maximum amount of the total insurance afforded by such blanket policy that is allocated to any Property and any sublimits in such blanket policy applicable to any Property, (B) in the event of a loss resulting from an insured peril, insurance proceeds shall be allocated to such Property in an amount equal to the coverages required to be maintained by Lessee as provided above, and (C) the protection afforded under any such blanket policy shall be no less than that which would have been afforded under a separate policy or policies relating only to such Property.

14.4 Additional Insurance. Nothing in this Section 14 shall prohibit the Lessee, the Lessor, the Trust Company, any Participant or the Administrative Agent from acquiring or maintaining, at its own expense, additional insurance for its own account with respect to loss or damage to any Property or any part thereof provided that any such additional insurance shall not interfere with or in any way limit insurance maintained under Sections 14.1, 14.2 and 14.3 or increase the amount of any premium payable with respect to any such insurance. The proceeds of any such additional insurance will be for the account of the party maintaining such additional insurance. The cost of such additional insurance shall not constitute a Transaction Expense.

## SECTION 15. CONDEMNATION AND CASUALTY

15.1 Casualty and Condemnation. (a) Subject to the provisions of this Section 15 and Section 16 (in the event Lessee delivers, or is obligated to deliver, or is deemed to have delivered a Termination Notice), and prior to the occurrence and continuation of a Lease Event of Default or a Lease Default (other than a Lease Default that could ripen into a Lease Event of Default of the type set forth in Sections 17.1 (d), (e), (f), (i) and (j) of the Lease), Lessee shall be entitled to receive (and, subject to the proviso below, Lessor hereby irrevocably assigns to Lessee all of Lessor's right, title and interest in and shall promptly remit to Lessee) any award, compensation or insurance proceeds to which Lessee or Lessor may become entitled by reason of their respective interests in a Property if, prior to the commencement of or during the Term (i) all or a portion of such Property is damaged or destroyed in whole or in part by a Casualty or (ii) the use, access, occupancy, easement rights or title to such Property or any part thereof is the subject of a Condemnation; provided, however, if a Lease Event of Default or a Lease Default (other than a Lease Default under Sections 17.1 (d), (e), (f), (i) and (j)) shall have occurred and be continuing such award, compensation or insurance proceeds shall promptly be paid directly to Lessor or, if received by Lessee, shall be held in trust for Lessor, and shall be paid over by Lessee to Lessor, and provided further that in the event of any single Casualty or Condemnation, the estimated cost of restoration of which is in excess of \$5,000,000 (\$10,000,000 in the case of the Property adjacent to the property commonly known as Renaissance Center, Detroit, Michigan) any such award, compensation or insurance proceeds shall be paid directly to Lessor, or if received by Lessee, shall be held in trust for Lessor and promptly shall be paid over by Lessee to Lessor to be held in trust by Lessor in a segregated account and applied by Lessor toward payment of the cost of restoration in accordance with Section 15.1(e), or, if applicable, in accordance with Section 16. Any such amounts held by Lessor shall be invested by Lessor at the direction of the Lessee from time to time, with all interest and earnings on such investments being payable to the Lessee promptly upon receipt thereof by Lessor from time to time. All amounts held by Lessor, the Administrative Agent or any of the Participants on account of any award, compensation or insurance proceeds paid directly to or otherwise received by the Lessor, the Administrative Agent or any of the Participants shall promptly be remitted to the Lessee (or

if the immediately preceding sentence is applicable, Lessor) to be applied in accordance with this Section 15.1.

(b) So long as no Lease Event of Default has occurred and is continuing, Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any award, compensation or insurance payment on account of any such Casualty or Condemnation and shall pay all expenses thereof; provided that if the estimated cost of restoration of the Property is in excess of \$5,000,000 (\$10,000,000 in the case of the Property adjacent to the property commonly known as Renaissance Center, Detroit, Michigan), then Lessor, at no cost to Lessee, shall be entitled to participate in any such proceeding or action. At Lessee's reasonable request, and at Lessee's sole cost and expense, Lessor and the Administrative Agent shall participate in any such proceeding, action, negotiation, prosecution or adjustment. Lessor and Lessee agree that this Lease shall control the rights of Lessor, the Administrative Agent, the Participants, and Lessee in and to any such award, compensation or insurance payment.

(c) If Lessor or the Administrative Agent shall receive notice of a Casualty or an actual, pending or threatened Condemnation of a Property or any interest therein, Lessor or Administrative Agent, as the case may be, shall give notice thereof to Lessee and the other two promptly after the receipt of such notice.

(d) In the event of a Casualty or receipt of notice by Lessee of a Condemnation, Lessee shall, not later than thirty (30) days after such occurrence or receipt of such notice, deliver to Lessor, the Investors, and the Administrative Agent an Officer's Certificate stating that either (i) (x) such Casualty is not a Significant Casualty or (y) such Condemnation is neither a Total Condemnation nor a Significant Condemnation and that this Lease shall remain in full force and effect with respect to the applicable Property and, at Lessee's sole cost and expense (including with the use of insurance proceeds, awards or compensation), Lessee shall promptly and diligently restore the applicable Property in accordance with the terms of Section 15.1(e) or (ii) this Lease shall terminate with respect to the applicable Property in accordance with Section 16.1.

(e) Subject to the provisions of Section 6 of the Agency Agreement, if pursuant to this Section 15.1, this Lease shall continue in full force and effect following a Casualty or Condemnation with respect to the affected Property, or if with respect to a particular Completed Property, the Term of this Lease shall commence with respect to such Property and such Property shall be subject to a Casualty that occurred prior to the commencement of the Term, Lessee shall, at its sole cost and expense, promptly and diligently repair any damage to the Property caused by such Casualty or Condemnation in conformity with the requirements of Sections 10.1 and 11.1 using the plans and specifications for the applicable Property (as modified to give effect to any subsequent Modifications, any Condemnation affecting the applicable Property and all applicable Legal Requirements and Insurance Requirements) so as to restore the applicable Property to substantially the same condition, operation, function and value as existed immediately prior to such Casualty or Condemnation, with such Modifications as Lessee may elect in accordance with Section 11.1. In such event, title to the Property shall remain with Lessor subject to the terms of this Lease. To the extent that Lessor receives any Net Proceeds of insurance or Condemnation awards covering the cost of such repairs in accordance with Section 15.1, Lessor shall make disbursements from time to time of any award, compensation or

insurance proceeds held by it to Lessee for application to the cost of restoration subject to the satisfaction of the following conditions: (i) Lessor shall have received a fully executed counterpart of a Requisition requesting funds in an amount not exceeding the cost of work completed or incurred since the last disbursement, together with reasonably satisfactory evidence of the stage of completion and of performance of the work in a good and workman-like manner and in accordance with the as-built plans and specifications, (ii) at the time of any such disbursement, no Lease Default shall have occurred and be continuing, and no mechanic's or materialmen's liens shall have been filed and remain undischarged, except those discharged by the disbursement of the requested funds or bonded, (iii) Lessor shall be reasonably satisfied that sufficient funds are available to complete such restoration and (iv) title to the Property shall conform to the representation set forth in Section 7.4(m) of the Participation Agreement. Provided no Lease Default shall have occurred and be continuing, any award, compensation or insurance proceeds remaining after restoration of the applicable Property as herein provided shall promptly be paid to Lessee or Lessee's designee.

(f) Subject to the provisions of Section 6 of the Agency Agreement, in no event shall a Casualty or Condemnation with respect to which this Lease remains in full force and effect under this Section 15.1 affect Lessee's obligations to pay Rent pursuant to Section 3.1.

(g) Notwithstanding anything to the contrary set forth in Section 15.1(a) or Section 15.1(e), if during the Term a Casualty occurs with respect to a Property or Lessee receives notice of a Condemnation with respect to a Property, and following such Casualty or Condemnation, a Property cannot reasonably be restored on or before the date which is twelve (12) months prior to the Maturity Date to substantially the same condition as existed immediately prior to such Casualty or Condemnation or before such day such Property is not in fact so restored, then Lessee shall exercise its Purchase Option with respect to such Property on the next Payment Date or irrevocably agree in writing to exercise the Maturity Date Purchase Option and in either such event such remaining Casualty or Condemnation proceeds shall be paid to the Administrative Agent, which shall pay such funds to Lessee upon the closing of the purchase of such Property.

(h) Notwithstanding anything to the contrary contained herein and subject to the limitations set forth in Section 5.4 of the Agency Agreement, during the Construction Period, the provisions of this Section 15 shall apply except to the extent that such provisions conflict with the applicable provisions of the Agency Agreement relating to Casualty and Condemnation with respect to a Construction Period Property.

## SECTION 16. LEASE TERMINATION

16.1 Termination upon Certain Events. (a) If Lessor or Lessee shall have received notice of a Total Condemnation, then Lessee shall be obligated, within thirty (30) days after Lessee receives notice thereof, to deliver a written notice in the form described in Section 16.2(a) (a "Termination Notice") of the termination of this Lease with respect to the affected Property.

(b) In the event Lessee or Lessor shall have received notice of a Condemnation, Casualty or Environmental Violation, the Lessee shall be required to deliver an Officer's

Certificate stating the following: (i) if a Condemnation occurs, the Officer's Certificate shall state whether or not such Condemnation is a Significant Condemnation or Total Condemnation and whether Section 15.1(g) applies; or (ii) if a Casualty occurs, the Officer's Certificate shall state whether or not such Casualty is a Significant Casualty and whether Section 15.1(g) applies; or (iii) if an Environmental Violation occurs or is discovered, the Officer's Certificate shall state whether or not, in the reasonable, good-faith judgment of Lessee, the cost to remediate the same will exceed \$2,500,000. If Lessee confirms the occurrence of a Significant Condemnation, Significant Casualty or an Environmental Violation involving, in the reasonable good faith judgment of Lessee, remediation costs reasonably anticipated to be in excess of \$2,500,000 then, Lessee shall, simultaneously with the delivery of the Officer's Certificate pursuant to the preceding clause (i) or (ii), or within thirty (30) days after the delivery of the Officer's Certificate pursuant to the preceding clause (iii), deliver a Termination Notice with respect to the affected Property.

16.2 Procedures. (a) A Termination Notice shall contain: (i) notice of termination of this Lease with respect to the affected Property on a date not more than sixty (60) days after the Lessor's receipt of such Termination Notice (the "Termination Date"), (ii) a binding and irrevocable agreement of Lessee (A) to pay or cause to be paid (1) if the termination of this Lease is with respect to a Construction Period Property prior to the Completion Date for such Property, the amounts, if any, for which the Construction Agent is liable under Section 5.4(a) of the Agency Agreement, or (2) if the termination of this Lease occurs on or after the Completion Date of a Construction Period Property or with respect to a Completed Property, the Termination Value, and purchase the Property on the Termination Date, and (B) in the event that clause (A)(1) above applies and Lessee does not elect to purchase the Property, to comply with the provisions of Section 10.2 hereof, and (iii) the Officer's Certificate described in Section 16.1(b).

(b) On the Termination Date, Lessee shall pay to Lessor the Termination Value for the applicable Property, plus all amounts owing in respect of all Basic Rent for such Property and the Supplemental Rent theretofore accruing and, unless Lessee does not elect to purchase a Construction Period Property under Section 5.4(a) of the Agency Agreement, Lessor shall convey the affected Property to Lessee (or Lessee's designee) all in accordance with Section 19.1.

16.3 Construction Period. Notwithstanding anything in the foregoing provisions of this Section 16 to the contrary, in the event of a Significant Casualty, Significant Condemnation or Total Condemnation of any Construction Period Property during the Construction Period, the terms of Section 6 of the Agency Agreement shall apply and the provisions of Section 16.1(b) shall be at the option of the Lessee). Lessor and Lessee agree that the Lease may, at Lessee's option, be terminated pursuant to the terms of Section 20.1 hereof in the case of a Significant Condemnation during the Construction Period.

## SECTION 17. DEFAULT

17.1 Lease Events of Default. If any one or more of the following events (each a "Lease Event of Default") shall occur:

(a) Lessee shall fail to make payment of (i) any Basic Rent within five (5) Business Days after the same has become due and payable, or (ii) any Maximum Residual Guarantee Amount (including, without limitation, pursuant to Section 17.2 below), Purchase Option Price or Termination Value after the same has become due and payable; or

(b) Lessee shall fail to make payment of any Supplemental Rent (other than as set forth in Section 17.1(a)(ii)) due and payable within twenty (20) Business Days after receipt of notice thereof; or

(c) Lessee shall fail to maintain insurance as required by Section 14; or

(d) Lessee shall fail to observe or perform any term, covenant or condition (other than an immaterial term, covenant or condition) of Lessee under this Lease, the Participation Agreement, the Structural Support Agreement, or any other Operative Agreement to which it is a party (other than those set forth in Section 17.1(a), (b), or (c) hereof) and such failure shall continue for thirty (30) days after Lessee's receipt of written notice thereof from Lessor, provided, however, that if such failure is capable of cure but cannot be cured by payment of money or cannot be cured by diligent efforts within such thirty (30)-day period but such diligent efforts shall be properly commenced within the cure period and Lessee is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time as may be necessary to cure, not to extend beyond an additional 180 days, and provided further, that failure by Lessee to fully comply with the requirements of Section 21.1 hereof shall not be subject to any cure period, or

(e) any representation or warranty made by Lessee set forth in this Lease, the Structural Support Agreement, or in any other Operative Agreement to which it is a party, or in any document entered into in connection herewith or therewith or in any document, certificate or financial or other statement delivered in connection herewith or therewith, shall have been inaccurate in any material respect at the time made and such inaccuracy (i) is reasonably likely to have a material adverse effect on the overall financial condition of Lessee, or (ii) relates to a fact or matter which materially affects the Fair Market Sales Value of any Property; or (iii) adversely affects the enforceability of this Lease or any other Operative Agreement against Lessee or the ability of the Lease to perform its obligations under any Operative Agreement; or

(f) an Agency Agreement Event of Default shall have occurred and be continuing; or

(g) (i) The Lessee shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Lessee shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Lessee any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there shall be

commenced against the Lessee any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or

(h) The Lessee shall default in any payment of \$50,000,000 or more of principal or interest on any Indebtedness or in the payment of \$50,000,000 or more on account of any guarantee in respect of Indebtedness, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness or guarantee was created; or

(i) One or more judgments or decrees shall (i) be entered against the Lessee, (ii) not have been vacated, discharged, satisfied, stayed or bonded pending appeal within sixty (60) days from the entry thereof and (iii) involve a liability (not paid or fully covered by insurance) of either (A) \$100,000,000 or more, in the case of any single judgment or decree or (B) \$200,000,000 or more in the aggregate, in the case of all such judgments and decrees; or

(j) a Loan Facility Agreement Event of Default due to any act or omission of Lessee shall have occurred and be continuing; or

(k) any material provision of any Security Document to which Lessee is a party or has consented to (other than termination of the Agency Agreement pursuant thereto) shall cease to be in full force and effect, or shall cease to give the Administrative Agent the Liens, rights, powers and privileges purported to be created thereby, in favor of the Secured Parties, superior to and prior to the rights of all third Persons and subject to no other Liens (except in each case (x) to the extent expressly permitted herein or in the other Operative Agreements, or (y) by virtue of affirmative action of Lessor that Lessee did not direct or authorize ) and (i) if such loss of priority or security cannot be readily cured by a replacement or modification thereto, and (ii) such loss of priority or security is not covered by title insurance; or

(l) the Structural Support Agreement or any material provision thereof shall cease to be in full force and effect or the Lessee shall deny or disaffirm its obligations under the Structural Support Agreement;

then, in any such event, so long as such Lease Event of Default is continuing, Lessor may, in addition to the other rights and remedies provided for in this Section 17 and in Section 18.1, terminate this Lease by giving Lessee five (5) Business Days' notice of such termination, and this Lease shall terminate. Lessee shall, to the fullest extent permitted by law, pay as Supplemental Rent all costs and expenses incurred by or on behalf of Lessor, including fees and expenses of counsel, as a result of any Lease Event of Default hereunder.

17.2 Final Payment. (a) If a Lease Event of Default shall have occurred and be continuing, then Lessor shall have the right to recover, by demand to Lessee and at Lessor's election, and Lessee shall pay to Lessor, as and for a final payment, but exclusive of the indemnities payable under Section 12 of the Participation Agreement, and in lieu of all damages beyond the date of such demand, (i) for any Lease Event of Default that is not a Limited Recourse Event of Default, the sum of (a) the Termination Value of all the Properties, plus (b) all

other amounts owing in respect of Basic Rent and Supplemental Rent theretofore accruing under this Lease, and (ii) for any Limited Recourse Event of Default (provided no other Lease Event of Default has occurred and is then continuing), the Maximum Residual Guarantee Amount for all of the Properties; provided, however, if an Event of Default has occurred pursuant to Section 17.1(g), such final payment shall be immediately due and payable without demand or notice.

(b) Upon payment of the amount specified pursuant to clause (i) of the first sentence of Section 17.2(a), Lessor shall comply with the transfer provisions of Section 19.1. Upon payment of the amount specified pursuant to clause (ii) of the first sentence of Section 17.2(a), Lessee shall immediately surrender the Property to Lessor.

(c) If any statute or rule of law shall limit the amount of such final payment to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law. It is the intent of the Lessor and the Lessee that the payment required to be made pursuant to this Section, together with the payment of the Maximum Residual Guarantee Amount, shall be treated as an obligation on the part of the Lessee to repay a loan obligation to the Lenders and the Lessor in such amounts; provided, that Lessee shall not be entitled to receive an assignment of Lessor's interest in the Property unless Lessee shall have paid in full the Termination Value of all the Properties.

17.3 Lease Remedies. Lessor and Lessee intend that for commercial law and bankruptcy law purposes, this Lease will be treated as a financing arrangement, as set forth in Section 7. If, as a result of applicable state law, which cannot be waived, this Lease is deemed to be a lease of the Properties, rather than a financing arrangement, and Lessor is unable to enforce the remedies set forth in Section 17.2, the following remedies shall be available to Lessor:

(a) Surrender of Possession. If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall, upon thirty (30) days written notice, surrender to Lessor possession of the Property and Lessee shall quit the same. Lessor may, to the extent and in any manner not prohibited by applicable Legal Requirements, enter upon and repossess the Properties by such means as are available at law or in equity, and may remove Lessee and all other Persons (other than subtenants under subleases who have executed a non-disturbance agreement with Lessor) and any and all Lessee's personal property and Lessee's equipment and personalty and severable Modifications from any Property. Lessor shall have no liability by reason of any such entry, repossession or removal performed in accordance with applicable law.

(b) Reletting. If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessor may, but shall be under no obligation to, relet all, or any portion, of any Property, for the account of Lessee or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor may determine, and Lessor may collect, receive and retain the rents resulting from such reletting, and upon each such reletting all rentals actually received by Lessor from such reletting (less all reasonable costs and expenses of such reletting) shall be applied to Lessee's obligations hereunder and under the other Operative Agreements (other than such obligations relating solely to one or more of the other

Properties if the applicable Lease Event of Default does not relate to such Properties) in such order, proportion and priority as Lessor may elect. Lessor shall not be liable to Lessee for any failure to relet any Property or for any failure to collect any rent due upon such reletting.

(c) Damages. None of (i) the termination of this Lease pursuant to Section 17.1; (ii) the repossession of any Property; or (iii) except to the extent required by applicable law, the failure of Lessor to relet all, or any portion, of any Property, the reletting of all or any portion thereof, nor the failure of Lessor to collect or receive any rentals due upon any such reletting shall relieve Lessee of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any Lease Event of Default shall have occurred and be continuing and notwithstanding any termination of this Lease pursuant to Section 17.1, Lessee shall forthwith pay to Lessor all Basic Rent and other sums due and payable hereunder to and including the date of such termination. Unless and until Lessee makes the payments required by Section 17.2 or Section 17.7, thereafter, on the days on which the Basic Rent or Supplemental Rent, as applicable, are payable under this Lease or would have been payable under this Lease if the same had not been terminated pursuant to Section 17.1 and until the end of the Term or what would have been the Term in the absence of such termination, Lessee shall pay Lessor, as current liquidated damages (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the Basic Rent and Supplemental Rent that are payable under this Lease or would have been payable by Lessee hereunder if this Lease had not been terminated pursuant to Section 17.1, less the net proceeds, if any, which are actually received by Lessor with respect to the period in question of any reletting of the Property or any portion thereof; provided that Lessee's obligation to make payments of Basic Rent and Supplemental Rent under this Section 17.3 shall continue only so long as Lessor shall not have received the amounts specified in Section 17.2. In calculating the amount of such net proceeds from reletting, there shall be deducted (without duplication) all of Lessor's, the Administrative Agent's, the Investors' and the Lenders' expenses in connection therewith, including repossession costs, brokerage commissions, fees and expenses for counsel and any necessary repair or alteration costs and expenses incurred in preparation for such reletting. To the extent Lessor receives any damages pursuant to this Section 17.3, such amounts shall be regarded as amounts paid on account of Rent.

(d) Acceleration of Rent. If a Lease Event of Default shall have occurred and be continuing, and this Lease shall not have been terminated pursuant to Section 17.1, and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.3(c), unless and until Lessee makes the payments required by Section 17.2 or Section 17.7, Lessor may upon written notice to Lessee accelerate all payments of Basic Rent due hereunder and, upon such acceleration, Lessee shall immediately pay Lessor, as and for final liquidated damages and in lieu of all current liquidated damages on account of such Lease Event of Default beyond the date of such acceleration (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the sum of (a) all Basic Rent (assuming interest at a rate per annum equal to the Overdue Rate), as applicable, due from the date of such acceleration until the end of the Term, plus (b) the Maximum Residual Guarantee Amount that would be payable under Section 21.1(c) assuming the proceeds of the sale pursuant to such Section 21.1(c) are equal to zero, which sum is then discounted to present value at a rate equal to the rate then being paid on United States treasury securities with maturities corresponding to the then remaining Term, as reduced by any payment made under Section 17.2. Following payment of such amount

by Lessee, Lessee will be permitted to stay in possession of the Property for the remainder of the Term, subject to the terms and conditions of this Lease, including the obligation to pay Supplemental Rent, provided that no further Lease Event of Default shall occur and be continuing, following which Lessor shall have all the rights and remedies set forth in this Section 17 (but not including those set forth in this Section 17.3). If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law.

17.4 Waiver of Certain Rights. If this Lease shall be terminated pursuant to Section 17.1, Lessee waives, to the fullest extent permitted by law (except as set forth in Section 17.1), (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or repossession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (d) any other rights which might otherwise limit or modify any of Lessor's rights or remedies under this Section 17, other than payment under Section 17.2 or 17.7.

17.5 Assignment of Rights Under Contracts. If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall upon Lessor's demand immediately assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to each agreement executed by Lessee in connection with the construction, renovation, development, use or operation of any Property (including all right, title and interest of Lessee with respect to all warranty, performance, service and indemnity provisions), as and to the extent that the same relate to the construction, renovation, and operation of any Property.

17.6 Remedies Cumulative. The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise including, without limitation, any mortgage foreclosure remedies contained in any Memorandum of Lease and Supplement. Lessor shall be entitled to enforce payment of the indebtedness and performance of the obligations secured hereby and to exercise all rights and powers under this instrument or under any of the other Operative Agreements or other agreement or any laws now or hereafter in force, notwithstanding some or all of the obligation secured hereby may now or hereafter be otherwise secured, whether by mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this instrument nor its enforcement, shall prejudice or in any manner affect Lessor's right to realize upon or enforce any other security now or hereafter held by Lessor, it being agreed that Lessor shall be entitled to enforce this instrument and any other security now or hereafter held by Lessor in such order and manner as Lessor may determine in its absolute discretion. No remedy herein conferred upon or reserved to Lessor 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 give hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Operative Agreements to Lessor or to which it may otherwise be entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lessor. In no event shall Lessor, in the exercise of the remedies provided in this instrument, be deemed a "mortgagee in possession," and Lessor shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

17.7 Lessee's Rights to Purchase. If a Lease Event of Default has occurred and is continuing and whether or not this Lease has been terminated in accordance with Section 17.1, Lessor agrees that for thirty (30) days after the declaration of the occurrence of a Lease Event of Default, Lessor shall forebear from exercising the remedies set forth in clauses (b) or (d) of Section 17.3, during which time Lessee may tender to the Lessor in immediately available funds the Termination Value of all the Properties, upon the receipt of which Lessor shall transfer all Properties to the Lessee or its designee in accordance with Section 20.1 hereof. The terms of this Section 17.7 shall survive the termination of this Lease; Lessee may cure a Lease Event of Default under clause (b), (c), (d), (e), (f), (j) or (k) of Section 17.1 in the event such Lease Event of Default solely relates to one or more specific Properties by (i) purchasing such Property or Properties for its or their respective Termination Values and (ii) terminating this Lease with respect to such Properties in accordance with Section 19.1 within ten (10) Business Days of the declaration of such Lease Event of Default, during which time the Lessor will forbear from exercising its remedies set forth in clauses (b) and (d) of Section 17.3.

17.8 Construction Period. Notwithstanding anything to the contrary contained herein, the remedies for a Lease Default or Lease Event of Default with respect to a Construction Period Property shall be as set forth in the Agency Agreement.

#### SECTION 18. LESSOR'S RIGHT TO CURE

18.1 Lessor's Right to Cure Lessee's Lease Defaults. Lessor, without waiving or releasing any obligation or Lease Event of Default, may (but shall be under no obligation to), upon five (5) Business Days notice to Lessee, remedy any Lease Event of Default for the account and at the sole cost and expense of Lessee, subject to Section 17.7, including the failure by Lessee to maintain any insurance required by Section 14 or Section 6 of the Agency Agreement, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee, enter upon any Property for such purpose and take all such action thereon as may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. Subject to Section 17.8, all reasonable out-of-pocket costs and expenses so incurred (including the fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by Lessor, shall be paid by Lessee to Lessor on demand as Supplemental Rent.

#### SECTION 19. TRANSFER UPON LEASE TERMINATION

19.1 Exercise of Options. (a) In connection with any termination of this Lease with respect to any Property pursuant to the terms of Section 16.2, or in connection with Lessee's exercise of its Purchase Option or Maturity Date Purchase Option, upon the date on which this Lease is to terminate with respect to the applicable Property or upon the Expiration Date with respect to all the Properties, and upon tender by Lessee of the amounts set forth in Section 16.2(b), 20.1 or 20.2, as applicable:

- (i) Lessor shall, execute and deliver to Lessee (or to Lessee's designee) at Lessee's cost and expense an assignment of Lessor's entire interest in the applicable

Property or Properties, including (A) a quitclaim deed in the case of real property, (B) a bill of sale with respect to the other types of property located at the applicable Property, (C) a discharge of mortgage with respect to this Lease and the applicable Memorandum of Lease and Supplement, and (C) an assignment of all of Lessor's right, title and interest in and to any Net Proceeds with respect to the applicable Property not previously received by Lessor, in each case in recordable form and otherwise in conformity with local custom and free and clear of the Lien of this Lease and the applicable Memorandum of Lease and Supplement, the applicable Mortgage and the other Operative Agreements, and any Lessor Liens;

(ii) Lessor shall execute and deliver to Lessee any real estate tax affidavits, a FIRPTA affidavit and any other similar document required to be executed and delivered by law and in conformity with local custom;

(iii) The applicable Property shall be conveyed to Lessee (or its designee) "AS IS" and in then present physical condition;

(iv) Lessor shall, and shall request that each of Administrative Agent and the Participants, execute and deliver a written representation and warranty as to the absence of any Liens created by the Operative Agreements that are attributable to such Person and any Lessor Liens attributable to such Person;

(v) Lessor shall convey to the Lessee any Net Proceeds with respect to the Casualty or Condemnation giving rise to the termination of this Lease theretofore received by Lessor or at the request of Lessee, and such amounts shall be applied against sums due hereunder; and

(vi) Lessor shall execute and deliver to Lessee and Lessee's title insurance company an affidavit as to the absence of Lessor Liens and any Liens created by the Operative Agreements attributable to Lessor, and shall execute and deliver to Lessee a statement of termination of the applicable Memorandum of Lease and Supplement and the applicable Agency Agreement Supplement, in each case to the extent such Operative Agreements relate to such Property, and shall request that the Administrative Agent execute and deliver a release of the applicable Mortgage, a release of the Assignment of Leases to the extent relating to the Property, releases of any Liens created by the Operative Agreements attributable to the Administrative Agent, and termination statements for any financing statements (solely to the extent that such financing statements relate to such Property) which are then of record naming the Administrative Agent as the secured party.

(b) Upon compliance with the provisions of Section 20.3 and the tender of the amounts required thereunder:

(i) Lessor shall cause the Investors to execute and deliver to Lessee (or to Lessee's designee) at Lessee's cost and expense an assignment of all of the Investors' beneficiary interest in the Lessor and all of the Investors' Certificates (collectively, the "Beneficiary Interest") in conformity with local custom, with title to the applicable

Properties free and clear of the Lien of the applicable Mortgage, the Liens of the other Operative Agreements, and any Lessor Liens; and

(ii) The Beneficiary Interest shall be conveyed to Lessee "AS IS", with no representations or warranties (except as provided in Section 19.1(a)(iv)).

(c) After Lessee has irrevocably exercised its right to purchase any Property or the Beneficiary Interest, provided Lessee is not released with respect to its obligations relating to such purchase, then Lessee, effective as of the closing of the sale of any Property or the Beneficiary Interest (in the case of all the Properties), as the case may be, may assign to a third party the right to take title to such Property or the Beneficiary Interest, as the case may be.

## SECTION 20. PURCHASE OPTION

20.1 Purchase Option. Provided that no Lease Default or Lease Event of Default shall have occurred and be continuing (other than that which would be cured by the exercise of the Purchase Option), Lessee shall have the option at any time during the Term (exercisable by giving Lessor irrevocable written notice (the "Purchase Notice") of Lessee's election) to purchase one or more of the Properties on the date specified in such Purchase Notice, at a price equal to the Termination Value (the "Purchase Option Price") (which the parties do not intend to be a "bargain" purchase price) of such Property. If Lessee exercises its option to purchase one or more of the Properties pursuant to this Section 20.1 (the "Purchase Option"), Lessor shall transfer to Lessee or Lessee's designee all of Lessor's interest in and to and to such Property as of the date specified in the Purchase Notice upon receipt of the Purchase Option Price and all Rent and other amounts then due and payable under this Lease and any other Operative Agreement, all in accordance with Section 19.1. Lessee may designate, in the Purchase Notice, the transferee or transferees to whom the conveyance shall be made (if other than to Lessee), in which case such conveyance shall (subject to the terms and conditions set forth herein) be made to such designee; provided, however, that such designation of a transferee or transferees shall not cause Lessee to be released, fully or partially, from any of its obligations under this Lease, including, without limitation, the obligation to pay to Lessor the Purchase Option Price on the date specified in the Purchase Notice.

20.2 Maturity Date Purchase Option. Not less than twelve (12) months prior to the Maturity Date, Lessee may give Lessor irrevocable written notice (the "Maturity Date Election Notice") that Lessee does not intend to exercise its Maturity Date Purchase Option. If Lessee does not give a Maturity Date Election Notice on or before the date twelve (12) months prior to the Maturity Date, then Lessee shall be deemed to have irrevocably exercised the Maturity Date Purchase Option. If Lessee does timely give a Maturity Date Election Notice, Lessee shall be obligated to remarket the Properties pursuant to Section 21. If Lessee exercises or is deemed to have exercised the Maturity Date Purchase Option, then on the Maturity Date (or such earlier date as is specified by Lessee in a written notice delivered at least thirty (30) days prior to such earlier date) Lessee shall pay to Lessor an amount equal to the Termination Value for all the Properties, (which the parties do not intend to be a "bargain" purchase price) and, upon receipt of such amount plus all Rent and other amounts then due and payable under this Lease and any other Operative Agreement, Lessor shall either (i) transfer to Lessee or Lessee's

designee all of Lessor's right, title and interest in and to the Properties in accordance with Section 19.1(a), or (ii) cause to be transferred all of the Investors' right, title and interest in and to the Certificates and the Beneficiary Interest in accordance with Section 19.1(b), as elected by Lessee. Failure by Lessee to make such election shall be deemed Lessee's election to acquire Lessor's right, title and interest in and to the Properties in accordance with Section 19.1(a).

20.3 Obligation to Purchase All Properties. If on the date which is twelve (12) months prior to the Maturity Date the then outstanding principal amount of Loans and Investor Contributions is less than the Maximum Purchase Option Amount, then Lessee shall be deemed to have exercised the Maturity Date Purchase Option and shall have the obligations set forth in Section 20.2.

20.4 Beneficiary Interest Purchase Option. (a) In lieu of exercising Lessee's Purchase Option with respect to the entire remaining Properties, as provided in Section 20.1, Lessee shall have the option exercisable by giving Lessor irrevocable written notice (the "BI Purchase Notice") at Lessee's election, to purchase the Investors' entire right, title and interest in the Certificates and the Beneficiary Interest on the date specified in such BI Purchase Notice (the "BI Purchase Closing Date"), which closing date must occur prior to the Maturity Date, at a price equal to the Termination Value of all the Properties (the "BI Purchase Option Price") (which the parties do not intend to be a "bargain" purchase price). If Lessee exercises its option to purchase the Investors' Beneficiary Interest pursuant to this Section 20.3 (the "BI Purchase Option"), the Investors shall assign to Lessee or Lessee's designee all of the Investors' Beneficiary Interest and shall convey to Lessee or Lessee's designee their entire right, title and interest in the Certificates as of the date specified in the BI Purchase Notice upon receipt of the BI Purchase Option Price and all Rent and other amounts then due and payable under this Lease and any other Operative Agreement, in accordance with Section 19.1. Lessee may designate, in the BI Purchase Notice, the transferee or transferees of the Beneficiary Interest to whom the assignment and conveyance shall be made (if other than to Lessee), in which case such assignment and conveyance shall (subject to the terms and conditions set forth herein) be made to such designee; provided, however, that such designation of a transferee or transferees shall not cause Lessee to be released, fully or partially, from any of its obligations under this Lease, including, without limitation, the obligation to pay to Lessor the BI Purchase Option Price on the date specified in the BI Purchase Notice. The Lessee shall have the right to elect by written notice to the Lessor and the Lenders to have all or part of the BI Purchase Option Price paid by liquidation of the Collateral.

(b) Upon payment of the BI Purchase Option Price in full on the BI Purchase Closing Date as provided herein, Lessor shall cause the Administrative Agent to release the Mortgage and the other Liens of the Operative Agreements on the Properties, effective as of the BI Purchase Closing Date, and shall cause the Properties to be otherwise free of any other Lessor Liens attributable to Trust Company or Investors on the BI Purchase Closing Date.

(c) Lessee shall indemnify and hold harmless the Lessor and the Investors for any loss, costs, expenses, taxes, Impositions or withholding imposed upon or incurred by Lessor or any Investor in connection with the transfer of any Beneficiary Interest pursuant to this Section 20.4 that would not otherwise have been imposed or payable by such party if the Property were

conveyed in accordance with Section 20.1 hereof (other than with respect to Lessor Liens attributable to the Trust Company and the Investors).

## SECTION 21. SALE OF PROPERTY

21.1 Sale Procedure. (a) With respect to each Property, unless Lessee shall have elected to purchase such Property and has paid the Purchase Option Price with respect thereto, or otherwise terminated this Lease with respect thereto and paid the Termination Value with respect thereto, Lessee shall (i) pay to Lessor the Maximum Residual Guarantee Amount for such Property as provided for in Section 21.1(c), and (ii) use its best efforts to sell such Property to one or more third parties for cash in accordance with Section 21.1(b).

(b) During the Marketing Period, Lessee, as exclusive broker for Lessor, shall use its best efforts to obtain bids for the cash purchase of each Property being sold for the highest price available in the relevant market, shall notify Lessor promptly of the name and address of each prospective purchaser and the cash price which each prospective purchaser shall have offered to pay for such Property and shall provide Lessor with such additional information about the bids and the bid solicitation procedure as Lessor may request from time to time. Lessor and/or the Investors may reject any and all bids and Lessor may assume sole responsibility for obtaining bids by giving Lessee written notice to that effect; provided, however, that notwithstanding the foregoing, Lessor may not reject a bid if such bid, together with any amounts to be paid pursuant to Section 21.3, is greater than or equal to the sum of the Limited Deficiency Amount for the applicable Property and all Remarketing Sale Expenses and is a bona fide offer by a third party purchaser who is not an Affiliate of Lessee. If the highest price which a prospective purchaser shall have offered to pay for all or any of the Properties is less than the sum of the Limited Deficiency Amount for the applicable Property and all Remarketing Sale Expenses, Lessor may elect to retain the applicable Property by giving Lessee at least two (2) days' prior written notice of Lessor's election to retain such Property, and upon receipt of such notice, Lessee shall surrender such Property to Lessor pursuant to Section 10.2, unless Lessee properly elects its Purchase Option with respect to the applicable Property. Unless Lessor shall have elected to retain such Property pursuant to the preceding sentence, Lessor shall sell such Property free of the Lien of this Lease, the Lien of the Mortgage and the other Operative Agreements and any Lessor Liens, without recourse or warranty (other than a warranty against Lessor Liens attributable to it), for cash to the purchaser identified by Lessee; provided, however, Lessee shall make such representations and warranties to such purchaser as are customary for properties of similar size and use in the state where the applicable Property is located. Lessee shall surrender the Properties so sold to each purchaser in the condition specified in Section 10.2, and if Lessee fails to do so, Lessor may elect not to consummate the sale of the applicable Property.

(c) On each date during the Marketing Period on which a Property is sold pursuant to Section 21.1(b), and on the Maturity Date with respect to any Properties remaining unsold, Lessee shall pay to Lessor the Maximum Residual Guarantee Amount with respect to each such Property.

21.2 Application of Proceeds of Sale. The proceeds of sale of each Property shall be delivered to the Administrative Agent to be applied pursuant to the provisions of Section 13.5 of the Participation Agreement.

21.3 Indemnity for Excessive Wear. If the proceeds of the sale described in Section 21.1(b) with respect to any Property, less all expenses incurred by Lessor in connection with such sale, shall be less than the Limited Deficiency Amount for such Property at the time of such sale and if it shall have been determined (pursuant to Section 21.4) that the Fair Market Sales Value shall have been impaired by greater than expected wear and tear during the Term, Lessee shall pay to Lessor within ten (10) days after receipt of Lessor's written statement (i) the amount of such excess wear and tear determined pursuant to Section 21.4, or (ii) the amount of the Net Sale Proceeds Shortfall for such Property, whichever amount is less.

21.4 Appraisal Procedure. The Fair Market Sales Value of a Property or any other amount which may, pursuant to any provision of any Operative Agreement, be determined by an appraisal procedure, shall be determined by the Appraiser pursuant to an Appraisal. The fees and expenses of the Appraiser shall be paid by the Lessee.

21.5 Lessor's Rights: Certain Obligations Continue. Lessor and/or the Investors shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take action in connection with any sale of the Properties, other than as expressly provided in this Section 21. During the Marketing Period, the obligation of Lessee to pay Rent with respect to each Property (including the installment of Basic Rent due on the Maturity Date) shall continue undiminished until payment in full to Lessor of the sale proceeds, the Maximum Residual Guarantee Amount, if any, the amounts due under Section 21.3, if any (but this item shall not require Lessee to pay Rent after the Maturity Date), and all other amounts due to Lessor with respect to the applicable Property.

## SECTION 22. HOLDING OVER

22.1 Holding Over. If Lessee shall for any reason remain in possession of a Property after the expiration or earlier termination of this Lease (unless such Property is conveyed to Lessee), such possession shall be as a tenancy at sufferance during which time Lessee shall continue to pay Supplemental Rent that would be payable by Lessee hereunder were the Lease then in full force and effect with respect to such Property and Lessee shall continue to pay Basic Rent at an annual rate equal to the rate payable hereunder immediately preceding such expiration or earlier termination; provided, however, that from and after the sixtieth (60th) day Lessee shall remain in possession of such Property after such expiration or earlier termination, Lessee shall pay Basic Rent at an annual rate equal to two hundred percent (200%) of the Basic Rent payable hereunder immediately preceding such expiration or earlier termination. Such Basic Rent shall be payable from time to time upon demand by Lessor. During any period of tenancy at sufferance, Lessee shall, subject to the preceding sentence, be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenants at sufferance, to continue its occupancy and use of such Property. Nothing contained in this Section 22.1 shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier

termination of this Lease as to any Property and nothing contained herein shall be read or construed as preventing Lessor from maintaining a suit for possession of any Property or exercising any other remedy available to Lessor at law or in equity.

### SECTION 23. RISK OF LOSS

23.1 Risk of Loss. Subject to the limitations of the Agency Agreement, the risk of loss of or decrease in the enjoyment and beneficial use of the Properties as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor.

### SECTION 24. SUBLETTING AND ASSIGNMENT

24.1 Assignment. Lessee may not assign this Lease or any of its rights or obligations hereunder in whole or in part.

24.2 Subleases. (a) Lessee may, without the consent of Lessor, sublease any Property, or a portion thereof, to any Person. No sublease or other relinquishment of possession of any Property shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder and Lessee shall remain directly and primarily liable under this Lease as to each Property, or any portion thereof, so sublet. Any sublease of any Property shall be made subject to and subordinate to (i) this Lease and to the rights of Lessor hereunder and (ii) to the applicable Mortgage and the rights of the Administrative Agent and the Secured Parties thereunder. Any sublease of any Property shall be terminable by the Lessor upon the termination of this Lease and shall terminate at or prior to the Maturity Date, unless at the time such sublease is entered into (x) the Required Investors determine (in their reasonable judgment) that the applicable sublease's economic terms and provisions are at fair market value, or (y) such sublease shall be a Minor Sublease, in either of which cases the term of such sublease (including any renewal terms) may extend beyond the Term (each such sublease, a "Market Sublease"). If requested, the Lessor and the Administrative Agent will deliver to the applicable sublessee under any Market Sublease a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to the Administrative Agent, the Required Investors and such sublessee. As used herein, the term "Minor Sublease" means with respect to a particular Property, a sublease of space aggregating (together with all other subleases then applicable to such Property) not more than 5% of the total square footage of the Improvements located on such Property.

(b) Promptly following the execution and delivery of any sublease permitted by this Section 24.1, Lessee shall deliver a copy of such executed sublease to Lessor.

(c) Provided no Lease Event of Default shall be continuing, (i) Lessee shall not assign to Lessor, and Lessor shall have no interest in, any sublease, (ii) Lessee shall have the right to collect and enjoy all rents and other sums of money payable under any sublease, and (iii) Lessee shall have the right (without the consent of Lessor) to modify, renew, extend, amend, waive or terminate any or all of the subleases (provided, that after giving effect to any such modification, renewal, extension or modification, such sublease complies with the requirements of this Section 24.2).

## SECTION 25. NO WAIVER

25.1 No Waiver. No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. To the fullest extent permitted by law, no waiver of any default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

## SECTION 26. ACCEPTANCE OF SURRENDER

26.1 Acceptance of Surrender. (a) Notwithstanding any prior election of the Lessee, if as of the Expiration Date, any Lease Default shall have occurred and be continuing, then Lessee shall be deemed to have irrevocably exercised the Maturity Date Purchase Option pursuant to Section 20.2.

(b) Except as otherwise expressly provided in this Lease, no surrender to Lessor of this Lease or of all or any portion of any Property or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and, prior to the payment or performance of all obligations under the Credit Documents and termination of the Commitments, the Administrative Agent, and no act by Lessor or the Administrative Agent or any representative or agent of Lessor or the Administrative Agent, other than a written acceptance, shall constitute an acceptance of any such surrender.

## SECTION 27. NO MERGER OF TITLE

27.1 No Merger of Title. There shall be no merger of this Lease or of the 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) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) the fee estate in any Property, except as may expressly be stated in a written instrument duly executed and delivered by the appropriate Person, or (c) a beneficial interest in Lessor.

## SECTION 28. NOTICES

28.1 Notices. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any Person to be effective shall be given pursuant to the provisions of Section 14.3 of the Participation Agreement.

## SECTION 29. MISCELLANEOUS

29.1 Miscellaneous. Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of Lessee or Lessor arising from events commencing prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any term or provision of this Lease or any application thereof shall be declared invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby. If any right or option of Lessee provided in this Lease, including any right or option described in Sections 15, 16, 22 or 21, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in or the suspension of the power of alienation of property, then such right or option shall be exercisable only during the period which shall end twenty-one (21) years after the date of death of the last survivor of the descendants of Franklin D. Roosevelt, the former President of the United States, and John D. Rockefeller, the founder of the Standard Oil Company (excluding Michael Rockefeller, the son of Nelson Rockefeller, and his descendants, if any), known to be alive on the date of the execution and delivery of this Lease.

29.2 Amendments and Modifications. Neither this Lease nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing (in recordable form, if appropriate), signed by Lessor and Lessee and in accordance with Section 14.5 of the Participation Agreement.

29.3 Successors and Assigns. All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

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

29.5 GOVERNING LAW. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES (OTHER THAN TITLE 14 OF ARTICLE 5 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT AS TO MATTERS RELATING TO THE CREATION OF THE LEASEHOLD ESTATE AND THE CREATION OF THE LEASEHOLD ESTATE HEREUNDER AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH THE APPLICABLE PROPERTY IS LOCATED. WITHOUT LIMITING THE FOREGOING, IN THE EVENT THAT THIS LEASE IS DEEMED TO CONSTITUTE A FINANCING, WHICH IS THE INTENTION OF THE PARTIES, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN TITLE 14 OF ARTICLE 5 OF THE NEW YORK GENERAL OBLIGATIONS LAW), SHALL GOVERN THE CREATION, TERMS AND PROVISIONS OF THE INDEBTEDNESS EVIDENCED HEREBY, BUT ANY LIEN CREATED HEREBY AND THE CREATION AND PERFECTION OF SAID LIEN AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO SHALL

BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH THE APPLICABLE PROPERTY IS LOCATED.

29.6 Priority. On and prior to the Maturity Date and so long as no Lease Event of Default has occurred and is continuing, the 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.

29.7 Ground Lease. During the Term, Lessee shall observe and perform all of the obligations of Lessor under any Ground Lease (including the payment of all rent and other amounts thereunder) and, in connection therewith, shall, prior to the occurrence and continuation of a Lease Event of Default, have the benefit of all of Lessor's rights as lessee under any Ground Lease.

29.8 Construction Period Limitation. Notwithstanding any provisions in this Lease to the contrary, upon the occurrence of a default by the Lessee with respect to a Construction Period Property during the Construction Period for such Property, the Lessee shall not have any greater obligations hereunder with respect to such Construction Period Property than the Construction Agent has with respect to such Construction Period Property under the Agency Agreement.

29.9 Usury Savings Provision. IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT. TO THE EXTENT ANY RENT OR PAYMENTS HEREUNDER ARE HERINAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THIS SECTION 30.11 SHALL APPLY. ANY SUCH RENT OR PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS "INTEREST." ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING WITHOUT LIMITATION PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS LEASE OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF LESSOR SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS CHARACTERIZED AS INTEREST

WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO LESSEE OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND LESSOR DOES NOT INTEND TO CHARGE OR RECEIVE ANY UNEARNED INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID TO LESSOR SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED, AND SPREAD THROUGHOUT THE FULL TERM (INCLUDING WITHOUT LIMITATION ANY RENEWAL OR EXTENSION) OF THIS LEASE SO THAT THE AMOUNT OF INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.

29.10 Liability of Wilmington Trust Company. It is expressly understood and agreed by the parties hereto that (i) this Lease 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 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) 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 under this Lease.

29.11 Construction Period. Reference is hereby made to section 14.23 of the Participation Agreement.



IN WITNESS WHEREOF, the parties have caused this Lease be duly executed and delivered as of the date first above written.

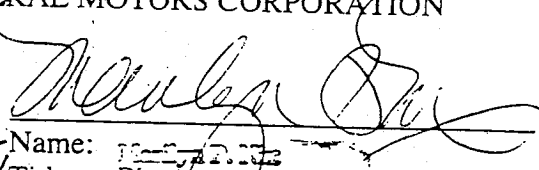
AUTO FACILITIES REAL ESTATE TRUST  
2001-1

By: Wilmington Trust Company, not  
individually but solely as Trustee

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

GENERAL MOTORS CORPORATION

By:



*C.F.* Name: \_\_\_\_\_  
Title: Director  
Worldwide Real Estate

Receipt of this original counterpart of the foregoing Lease is hereby  
acknowledged on this 31<sup>st</sup> day of October, 2001.

THE CHASE MANHATTAN BANK, as the  
Administrative Agent

By: 

Name:

RICHARD W. DUKER

Title:

VICE PRESIDENT

**SHORT FORM MEMORANDUM OF LEASE,  
[MORTGAGE][DEED OF TRUST], SECURITY AGREEMENT  
AND FINANCING STATEMENT  
(INCLUDING FIXTURE FILING) AND LEASE SUPPLEMENT**

**THIS SHORT FORM MEMORANDUM OF LEASE,  
[MORTGAGE][DEED OF TRUST], SECURITY AGREEMENT AND FINANCING  
STATEMENT (INCLUDING FIXTURE FILING) AND LEASE SUPPLEMENT (this  
"Memorandum of Lease")** dated as of [ ], [ ] is made by and between AUTO FACILITIES  
REAL ESTATE TRUST 2001-1, a Delaware business trust with an address c/o Wilmington  
Trust Company, 1100 North Market Street, Wilmington, Delaware 19890-0001, as lessor and as  
mortgagee, beneficiary and secured party (the "Lessor"), and GENERAL MOTORS  
CORPORATION, a Delaware corporation having its principal office at [ ], as lessee  
and as mortgagor and debtor (the "Lessee").

Agreement

In consideration of the premises and the mutual agreements herein contained and  
other good and valuable consideration, the receipt and sufficiency of which are hereby  
acknowledged, Lessor has leased the Property (hereinafter defined) to Lessee and the parties  
hereto agree as follows:

**SECTION 1. Definitions: Interpretation.** Capitalized terms used herein and not  
otherwise defined herein shall have the meanings assigned thereto in the Lease dated as of  
October 31, 2001 between Lessor and Lessee (as supplemented with any Memoranda of Lease  
and Supplements, and as it may be further amended, supplemented or otherwise modified from  
time to time in accordance with the terms thereof or of any other Operative Agreement.

**SECTION 2. Lease Term.**

(a) Pursuant to the terms of the Lease, the Lessor has leased to the Lessee  
certain property (the "Property") described on the attached Exhibit A. Effective upon the  
execution and delivery of this Memorandum of Lease by the Lessor and the Lessee, the Property  
shall be subject to the terms and provisions of the Lease. The Property is leased for a Term  
commencing on the date hereof and terminating on October 31, 2008, unless the Term is earlier  
terminated in accordance with the terms of the Lease.

(b) The Lease contains certain mandatory and optional purchase rights and  
options during the Term pursuant to which the Lessee may acquire the Property.

(c) In addition to those terms referred to herein, the Lease contains numerous  
other terms, covenants and conditions which affect the Property, and notice is hereby given that  
reference should be had to the Lease with respect to the details of such terms, covenants and  
conditions. A copy of the Lease or of the other agreements referenced herein or therein may be  
obtained from any of the parties hereto at the addresses set forth herein.

(d) Lessee hereby certifies that the Tranche A Percentage for the Property is  
 \_\_\_%.<sup>1</sup>

SECTION 3. Ownership of the Property. It is the intent of the parties hereto that: (A) the Lease constitutes an "operating lease" pursuant to Statement of Financial Accounting Standards No. 13, as amended, for purposes of the Lessee's financial reporting, (B) for purposes of Federal, state and local income tax and for all other purposes, (i) the transaction contemplated by the Lease is a financing arrangement and preserves ownership of the Property in the Lessee, (ii) the transaction contemplated by the Lease is a secured borrowing for the purposes of the exercise of remedies hereunder or any enforcement or collection actions pursuant to the term hereof following the occurrence and during the continuance of a Lease Event of Default, and (x) by the Lease, as supplemented by this Memorandum of Lease, the Lessee grants a mortgage upon and a security interest in and a lien on the Lessee's beneficial ownership interest in the 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 (y) the Lessor holds title to or a ground leasehold interest in the Property so as to create and grant a first lien and prior security interest in the Property subject to the Permitted Liens (a) pursuant to the Lease, as supplemented by this Memorandum of Lease, for the benefit of the Administrative Agent under the Assignment of Lease, to secure to the Agent the obligations of Lessee under the Lease, as supplemented by this Memorandum of Lease and (b) pursuant to the [Mortgage][Deed of Trust] to secure to the Administrative Agent the obligations of Lessor under the [Mortgage][Deed of Trust], the Loan Facility Agreement and the Participation Agreement. In addition, the parties acknowledge and agree that the characterization of the transaction and the Lessee's obligations as provided in this Section 3 shall not diminish the Lessee's express rights under the Lease and the other Operative Agreements, including, without limitation, the Lessee's right to purchase the Property.

SECTION 4. Grant of Mortgage Lien and Security Interest: Assignment of Rents. To secure to the Lessor the payment of all amounts owed to Lessor by Lessee under the Lease and the other Operative Agreements:

(a) Subject to the terms and conditions of the Lease as supplemented by this Memorandum of Lease (including, without limitation, the Lessee's rights hereunder and thereunder so long as no Lease Event of Default has occurred and is continuing), the Lessee has caused Lessor to hold title to or a ground leasehold interest in the Property, and does hereby mortgage, grant, bargain, sell, convey, assign, transfer and set over to [the Trustee for the benefit of the Administrative Agent, WITH POWER OF SALE] [the Lessor], to the extent permitted by applicable law: (i) all of the Lessee's right, title and interest in the Property, if any; (ii) all rights and benefits of whatever nature derived or to be derived by the Lessee under or by virtue of the Lease; and (iii) all of the Lessee's right, title and interest in and to all proceeds of the conversion, whether voluntary or involuntary, of any of the above-described property into cash or other liquid claims, including, without limitation, all awards, payments or proceeds, including interest thereon, and the right to receive the same, which may be made as a result of casualty, any

<sup>1</sup> The Tranche A Percentage is the percentage of Tranche A/B Property Cost for the applicable Property, not the percentage of the entire Property Cost for such Property.

exercise of the right of eminent domain or deed in lieu thereof, the alteration of the grade of any street and any injury to or decrease in the value thereof, the foregoing being referred to hereinafter as the "Security Property."

TO HAVE AND TO HOLD the Security Property, subject however to Permitted Liens, unto the Lessor, its successors and assigns IN TRUST, forever, for the uses and purposes herein expressed, but not otherwise.

(b) Subject to the terms and conditions of the Lease as supplemented by this Memorandum of Lease (including, without limitation, the Lessee's rights hereunder and thereunder so long as no Lease Event of Default has occurred and is continuing), the Lessee hereby grants to the Lessor a security interest in the Lessee's interest in that portion of the Security Property (the "UCC Property") subject to the Uniform Commercial Code of the State of [ ] (the "UCC"). The Lease, as supplemented by this Memorandum of Lease, shall also be deemed to be a security agreement and shall support any financing statement showing the Lessor's interest as a secured party with respect to any portion of the UCC Property described in such financing statement. The Lessee agrees, at its sole cost and expense, to execute, deliver and file from time to time such further instruments as may be requested by the Lessor to confirm and perfect the lien of the security interest in the collateral described in this Memorandum of Lease, provided, that during the Construction Period with respect to any Construction Period Property, the costs and expenses thereof shall be Transaction Expenses.

(c) Notwithstanding that this Memorandum of Lease is an absolute assignment of the Profits and the Subleases and not merely the collateral assignment of, or the grant of a lien or security interest in the Profits and the Subleases, the Lessor grants to the Lessee a revocable license to collect and receive the Profits and to retain, use and enjoy such Profits. Such license shall be automatically revoked upon the occurrence and during the continuance of any Lease Event of Default.

**SECTION 5. Remedies. [insert appropriate remedies to conform to state law]**

(a) Upon the occurrence and during the continuance of a Lease Event of Default, the Lessor may exercise any one or more of the following rights and remedies as it, in its sole discretion may deem necessary or appropriate:

- (i) collect interest on all past due sums at the Overdue Rate;
- (ii) terminate the Lease and, 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 security, enter upon and take possession of the Property, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or any part thereof or interest therein, to increase the income therefrom or to protect the security hereof and, with or without taking possession of the Property, to sue for or otherwise to collect the Profits thereof, including, without limitation, those past due and unpaid, and to apply the same, less costs and expenses of operation and collection, including, without limitation, reasonable

attorneys' fees, upon any obligations secured hereby, all in such order as the Lessor may determine. The entering upon and taking possession of the Property, and the collection of such Profits and the application thereof as aforesaid, shall not cure or waive any Lease Event of Default or notice of a Lease Event of Default hereunder or invalidate any act done in response to such Lease Event of Default and, notwithstanding the continuance in possession of the Lessor or the collection, receipt and application of Profits by the Lessor, the Lessor shall be entitled to exercise every right provided for herein or by law upon the occurrence and during the continuance of any Lease Event of Default, including, without limitation, the right to exercise the power of sale;

(iii) declare all sums secured hereby immediately due and payable by delivery to Trustee and to Lessee of written declaration of the occurrence and continuance of a Lease Event of Default and demand for sale and of written notice of the occurrence and continuance of a Lease Event of Default and of election to cause to be sold said Property, which notice Trustee shall cause to be filed for record. After the lapse of such time as may then be required by law following the recordation of said notice of the occurrence and continuance of a Lease Event of Default, and notice of sale having been given as then required by law, Trustee, without demand on the Lessee, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Property by public announcement of postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustee, or the Lessor, may purchase at such sale. After deducting all costs, fees and expenses of Trustee and the Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in accordance with the provisions of Section 21.2 of the Lease;

(iv) in lieu of sale pursuant to the power of sale conferred hereby, foreclose in the manner provided by law for the foreclosure of mortgages or deeds of trust on leasehold interests in real property;

(v) declare immediately due and payable without notice or demand, except as otherwise required hereunder or under applicable law, all amounts payable by the Lessee hereunder or under the other Operative Agreements which are then unpaid, with all interest and sums accrued, and accelerate payment thereof notwithstanding contrary terms of payment stated therein and exercise all rights and remedies available hereunder, at law, in equity or otherwise;

(vi) as a matter of right, and upon notice to the Lessee or anyone claiming under the Lessee and without regard to the adequacy of its security or the then value of the Property or the interest of the Lessee therein, apply to any

court having jurisdiction to appoint a receiver or receivers of the Property and the Lessee hereby irrevocably consents to such appointment and, to the extent permitted by applicable law, waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers of the Lessor provided for in Section 5(a)(ii) above, and shall continue as a receiver and exercise all such powers until the date of confirmation of sale of the Property unless such receivership is sooner terminated by the Lessor in its sole discretion.

Upon the occurrence and during the continuance of a Lease Event of Default, Trustee and the Lessor, and each of them, shall be entitled to enforce payment and performance of any obligations secured hereby and to exercise all rights and powers hereunder or any laws now or hereafter in force, notwithstanding that some or all of said obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, Lien, assignment or otherwise. Neither the acceptance nor the enforcement hereof, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or the Lessor's right to realize upon or enforce any other security now or hereafter held by the Lessor, and each of them shall be entitled to enforce the rights and remedies provided for herein and any other security now or hereafter held by the Lessor in such order and manner as they or either of them may in their absolute discretion determine. No remedy conferred upon or reserved to Trustee or the Lessor is intended to be exclusive of any other remedy, but each shall be cumulative and shall be in addition to every other remedy given hereby or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereby to Trustee or the Lessor or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or the Lessor, and either or both of them may pursue inconsistent remedies.

(b) Upon the occurrence and during the continuance of a Lease Event of Default, the Lessor, in addition to and not in lieu of or in diminution of the rights and remedies provided above shall have all of the rights and remedies of a secured party under the UCC, which rights and remedies may be exercised without application to any court to the extent permitted by the UCC.

(c) It is the intent of the parties hereto that the Lease be treated as a secured borrowing to the extent provided in Section 3 (B) (iii) above, and that, upon the occurrence and during the continuance of a Lease Event of Default, the Lessor shall have the remedies provided for in this Section 5. In the event that, notwithstanding the intention of the parties, a court of competent jurisdiction determines that, for the purpose of remedies, the transaction contemplated by the Lease constitutes a leasing arrangement, the parties hereto acknowledge and agree that the Lessor shall have, as a result of such determination, in lieu of the remedies set forth in this Section 5, all of the rights and remedies of a landlord provided for in Section XVII of the Lease, provided that the parties hereto acknowledge and agree that it is their intent that the Lease be construed as provided in Section 3.

SECTION 6. Lessor Grant. (a) The Lessor hereby grants a Lien<sup>2</sup> upon and mortgages and warrants to the Lessee the Properties to secure (i) the Lessor's obligations hereunder in respect of the due and punctual transfer by the Lessor to the Lessee of all of the Lessor's right, title and interest in and to the Properties when required by and in accordance with this Lease, and (ii) if the Lessor shall then be the subject of any bankruptcy, insolvency or similar proceeding, satisfaction of the Lessee's right to damages and other claims arising out of the rejection of this Lease or unilateral termination of such obligation to transfer to the Lessee all of the Lessor's right, title and interest in and to the Properties, against all of the Lessor's right, title and interest in and to the Properties.

(b) During the existence and only during the existence of a Lessor Default (as defined below), the Lessee shall have the power and authority, to the extent provided by Legal Requirements, to exercise any or all of the rights and powers and pursue any and all of the remedies provided under the Operative Agreements or by Legal Requirements in respect of the obligations secured in accordance with clause (a) above (including specific performance of any covenant or agreement contained in this Lease or any other Operative Agreement, in aid of the execution of any power granted in this Lease or any other Operative Agreement, or for the enforcement of any other appropriate legal or equitable remedy). The Lessor shall have all the rights available to a mortgagor under the laws of the jurisdiction in which the applicable Property is located. The following shall constitute a Lessor default ("Lessor Default"): the Lessee shall have exercised any of its purchase options in this Lease for any or all of the Properties in accordance with the terms hereof and shall have tendered in full all amounts to be paid by Lessee in connection therewith and complied with all other requirements hereunder in connection with such purchase and all of the Lessor's right, title and interest in and to the applicable Property shall not have been transferred to the Lessee in accordance with this Lease.

(c) The Lien created in clause (a) shall automatically terminate and be deemed released without further act or consideration upon (i) the commencement by the Lessor of the exercise of any remedy in respect of the applicable Property pursuant to Article XVI (except in the case of a sale to the Lessee thereunder) or (ii) a Lease Event of Default under Section 17.1(a) or (g) of the Lease.

SECTION 7. Ratification. Except as expressly set forth herein, this Memorandum of Lease does not alter, amend, modify or change the Lease or the exhibits thereto. It is the intent of the parties that this Memorandum of Lease be recorded and give notice of and confirm the Lease and exhibits thereto to the same extent as if all of the provisions of the Lease and exhibits thereto were fully set forth herein. The Lease and exhibits thereto are incorporated by reference in this Memorandum of Lease and, except as expressly modified hereby, the terms and provisions of the Lease are hereby ratified and confirmed and remain in full force and effect.

SECTION 8. Original Memorandum of Lease. Notwithstanding anything to the contrary set forth in the documentary conventions, the single executed original of this Memorandum of Lease marked "THIS COUNTERPART IS THE ORIGINAL EXECUTED COUNTERPART" on the signature page thereof and containing the receipt of the Administrative

<sup>2</sup> Conform to requirements of state law.

Agent therefor on or following the signature page thereof shall be the Original Executed Counterpart of this Memorandum of Lease (the "Original Executed Counterpart"). To the extent that this Memorandum of Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Memorandum of Lease may be created through the transfer or possession of any counterpart other than the Original Executed Counterpart.

SECTION 9. GOVERNING LAW. THIS LEASE AND THIS MEMORANDUM OF LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES (OTHER THAN TITLE 14 OF ARTICLE 5 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT AS TO MATTERS RELATING TO THE CREATION OF THE LEASEHOLD ESTATE AND THE CREATION OF THE LEASEHOLD ESTATE HEREUNDER AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH THE APPLICABLE PROPERTY IS LOCATED. WITHOUT LIMITING THE FOREGOING, IN THE EVENT THAT THE LEASE IS DEEMED TO CONSTITUTE A FINANCING, WHICH IS THE INTENTION OF THE PARTIES, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN TITLE 14 OF ARTICLE 5 OF THE NEW YORK GENERAL OBLIGATIONS LAW), SHALL GOVERN THE CREATION, TERMS AND PROVISIONS OF THE INDEBTEDNESS EVIDENCED THEREBY AND HEREBY, BUT ANY LIEN CREATED HEREBY AND THE CREATION AND PERFECTION OF SAID LIEN AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT THERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH THE APPLICABLE PROPERTY IS LOCATED.

SECTION 10. Merger. If the fee simple title to the Property and the leasehold interest therein shall be held by the same party, the interest in the Property granted to the Lessor pursuant to the Lease and this Memorandum of Lease shall not terminate or be merged, and the Lease and this Memorandum of Lease shall remain in full force and effect.

SECTION 11. Maximum Interest Rate. No provision of this Memorandum of Lease or any transaction related thereto shall require the payment or permit the collection of interest or any other amount in excess of the maximum permitted by applicable law. If any excess of interest or any other amount in such respect is herein or any other Operative Agreement provided for, the Lessee shall not be obligated to pay such excess interest or any other amounts in excess of the amount permitted by applicable law, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any other provision of this Memorandum of Lease and the other Operative Agreements.

SECTION 12. Assignment to Administrative Agent. Pursuant to the Assignment of Lease, the Lessor has assigned to The Chase Manhattan Bank, as Administrative Agent for the Lenders, all of its right, title and interest in and to the Lease, together with all Rent, and in confirmation thereof the Lessor does hereby assign, transfer and set over unto the Administrative Agent, subject to the terms of the Assignment of Lease, all of the right, title and interest of the

Lessor in and to all of the Lease, together with all Rent, all modifications, renewals and extensions thereof and any guarantees of the Lessee's obligations under the Lease.

SECTION 13. Counterparts. This Memorandum of Lease may be executed in several counterparts, each of which shall be an original except as provided in Section 7, above, and all of which together shall constitute but one and the same instrument.

SECTION 14. Security Agreement and Financing Statement. The mailing address of debtor (the Lessee herein) and of the secured party (the Lessor herein) from which information concerning security interests hereunder may be obtained is as set forth in Section 15 hereof. A carbon, photographic or other reproduction of this instrument or of any financing statement related to this instrument shall be sufficient as a financing statement for any of the purposes referenced herein.

SECTION 15. State Law Recitals and Provisions.

[to be inserted]

SECTION 16. Financing Statement. For purposes of this instrument as a fixture filing, and for all other purposes, 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 and any such notice shall become effective (a) five (5) Business Days after being deposited in the mails, certified or registered with appropriate postage prepaid, (b) one (1) Business Day after delivery to a nationally recognized courier service specifying overnight delivery, (c) when delivered by hand, or (d) in the case of facsimile notice, when received (when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office) and shall be directed to the address of such Person as indicated:

Address of Lessee/Debtor:

[ ]

Attention:

Fax:

With copies to:

[ ]

Address of Lessor/Secured Party:

Auto Facilities Real Estate Trust 2001-1  
C/o Wilmington Trust Company  
1100 North Market Street  
Wilmington, Delaware 19890-0001  
Attention: Corporate Trust Administration  
Fax: 302-651-8882

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.

SECTION 17. Liability of Wilmington Trust Company. It is expressly understood and agreed by the parties hereto that (a) this Memorandum of Lease 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, (b) each of the representations, undertakings and agreements herein made on the part of the 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, (c) 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 (d) 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 Lessor under this Memorandum of Lease.

Receipt of this original counterpart of the foregoing Lease is hereby acknowledged on this 31<sup>st</sup> day of October, 2001.

THE CHASE MANHATTAN BANK, as the  
Administrative Agent

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

SHORT FORM MEMORANDUM OF LEASE,  
[MORTGAGE][DEED OF TRUST], SECURITY AGREEMENT  
AND FINANCING STATEMENT  
(INCLUDING FIXTURE FILING) AND LEASE SUPPLEMENT

by and between

AUTO FACILITIES REAL ESTATE TRUST 2001-1,

Lessor

and

GENERAL MOTORS CORPORATION,

Lessee

[ ], [ ]

This Memorandum of Lease has been  
prepared by and after  
recording, please return to:

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017

ATTN: Sasan Mehrara, Esq.