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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**FORM 8-K**

**Current Report**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**August 21, 2006**

Date of Report (Date of earliest event reported)

**FIRST INDUSTRIAL REALTY TRUST, INC.**  
(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**1-13102**  
(Commission File Number)

**36-3935116**  
(I.R.S. Employer  
Identification No.)

**311 S. Wacker Drive, Suite 4000**  
**Chicago, Illinois 60606**  
(Address of principal executive offices, zip code)

**(312) 344-4300**  
(Registrant's telephone number, including area code)

Not Applicable  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

On August 16, 2006, First Industrial Realty Trust, Inc. (the "Company") and First Industrial, L.P. (the "Operating Partnership") entered into an underwriting agreement (the "Underwriting Agreement") with Wachovia Capital Markets, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as underwriters and as representatives of several other underwriters listed therein (collectively, the "Underwriters"), pursuant to which the Company agreed to issue, and the Underwriters agreed to purchase, 2,000,000 Depositary Shares (the "Depositary Shares"), each representing 1/10,000 of a share of the Company's 7.25% Series K Cumulative Redeemable Preferred Stock (the "Preferred Shares"), \$.01 par value, in a public offering at an offering price of \$25.00 per Depositary Share. The proportionate liquidation preference of each Depositary Share is \$25.00. The offering of the Depositary Shares was consummated on August 21, 2006.

Dividends on the Preferred Shares represented by the Depositary Shares will be cumulative from (and including) the date of original issuance and will be payable quarterly in arrears, commencing on September 30, 2006, at the rate of 7.25% of the liquidation preference per year (equivalent to \$1.8125 per Depositary Share per year).

Except in limited circumstances relating to the Company's qualification as a real estate investment trust, the Preferred Shares will not be redeemable prior to August 15, 2011. On and after August 15, 2011, at any time and from time to time the Preferred Shares (and, therefore the Depositary Shares) will be redeemable in whole or in part at the Company's option, at a cash redemption price of \$250,000 per Preferred Share (equivalent to \$25.00 per Depositary Share), plus all accrued and unpaid dividends (whether or not declared) to the date of redemption.

Affiliates of two of the underwriters in the offering of the Preferred Shares, Wachovia Capital Markets, LLC, and J.P. Morgan Securities Inc., are lenders under the Operating Partnership's credit facility. Net proceeds from the sale of the Depositary Shares are expected to be used for the repayment of borrowings under the Operating Partnership's credit facility, and affiliates of certain of the underwriters as described above will thereby receive proceeds of the offering.

Copies of the Underwriting Agreement, the Articles Supplementary for the Preferred Shares, the Deposit Agreement relating to the Depositary Shares and the Eleventh Amended and Restated Partnership Agreement of the Operating Partnership are filed as Exhibits 1.1, 4.1, 10.1 and 10.2 hereto, respectively, and are incorporated by reference herein.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of Registrant**

The information set forth in Item 1.01 is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(c) Exhibits. The following exhibits are filed herewith:

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<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement dated August 16, 2006 among the Company, the Operating Partnership, Wachovia Capital Markets, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as underwriters and as representatives of several other underwriters listed therein
4.1	Articles Supplementary dated August 17, 2006 relating to the Preferred Shares (incorporated by reference to Exhibit 1.6 of the Form 8-A of the Company, as filed on August 18, 2006, File No. 1-13102).
10.1	Deposit Agreement dated as of August 21, 2006 by and among First Industrial Realty Trust, Inc., Computershare Shareholder Services, Inc. and Computershare Trust Company, N.A. and holders from time to time of Series K Depositary Receipts (incorporated by reference to Exhibit 1.7 of the Form 8-A of the Company, as filed on August 18, 2006, File No. 1-13102).
10.2	Eleventh Amended and Restated Partnership Agreement of First Industrial, L.P. dated August 21, 2006

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## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FIRST INDUSTRIAL REALTY TRUST, INC.

By: /s/ Scott A. Musil

Name: Scott A. Musil

Title: Chief Accounting Officer

Date: August 21, 2006

**First Industrial Realty Trust, Inc.  
2,000,000 Shares**

**Depository Shares Each Representing 1/10,000 of a Share of  
7.25% Series K Cumulative Redeemable Preferred Stock  
(Liquidation Preference Equivalent to \$25.00 per Depository Share)**

August 16, 2006

Wachovia Capital Markets, LLC  
Merrill Lynch, Pierce, Fenner & Smith Incorporated  
As Representatives of the several Underwriters  
named on Schedule I hereto  
c/o Wachovia Capital Markets, LLC  
One Wachovia Center  
301 South College Street  
Charlotte, North Carolina 28288

Ladies and Gentlemen:

First Industrial Realty Trust, Inc., a Maryland corporation (the "Company"), by this agreement (the "Agreement") proposes to issue and sell to the Underwriters named in Schedule I hereto (collectively, the "Underwriters") for whom Wachovia Capital Markets, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated are acting as representatives (the "Representatives"), 2,000,000 depository shares (the "Depository Shares"), each representing 1/10,000 of a share of the 7.25% Series K Cumulative Redeemable Preferred Stock (the "Series K Preferred Shares"), having a liquidation preference equivalent to \$25.00 per Depository Share (the "Securities") to be issued under a deposit agreement (the "Deposit Agreement"), between the Company and Computershare Trust Company, N.A., as Depository (the "Depository").

The Company and First Industrial, L.P., a Delaware limited partnership whose sole general partner is the Company (the "Operating Partnership"), have prepared and filed with the Securities and Exchange Commission (the "Commission") in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Securities Act"), a registration statement (file number 333-117842) on Form S-3, including the related prospectus (the "Base Prospectus"), relating to certain securities (the "Shelf Securities") to be issued from time to time by the Company or the Operating Partnership, as the case may be. The Company also has filed, or proposes to file, with the Commission pursuant to Rule 424 under the Securities Act ("Rule 424") a prospectus supplement specifically relating to the Securities (a "Prospectus Supplement"). The registration statement as amended to the date of this Agreement and including any registration statement filed pursuant to Rule 462(b) under the Securities Act (a "Rule 462(b) Registration Statement") is hereinafter referred to as the "Registration Statement." For purposes of this Agreement, "Effective Time" with respect to the Registration Statement means if the Company has advised the

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Underwriters that it does not propose to amend such registration statement, the date and time as of which such registration statement, or the most recent post-effective amendment thereto (if any) filed prior to the execution and delivery of this Agreement, was declared effective by the Commission or has become effective upon filing pursuant to Rule 462(c). Any reference in this Agreement to the Registration Statement, the Prospectus as defined hereunder or any preliminary prospectus (a "preliminary prospectus"), as the case may be, previously filed with the Commission pursuant to Rule 424 shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act which were filed under the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Exchange Act") on or before the date of this Agreement or the date of the Registration Statement or the Prospectus, as the case may be; and any reference to "amend," "amendment" or "supplement" with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include any documents filed under the Exchange Act after the date of this Agreement, or the date of the Registration Statement or the Prospectus, as the case may be, which are deemed to be incorporated by reference therein. "Registration Statement" without reference to a time means the Registration Statement as of its Effective Time. "Registration Statement" as of any specified time means the Registration Statement in the form then filed with the Commission immediately prior to that time, including any amendment thereto or any document incorporated by reference therein and any prospectus deemed or retroactively deemed to be a part thereof that has not been superseded or modified. For purposes of the previous sentence, information contained in a form of prospectus or prospectus supplement that is deemed retroactively to be a part of the Registration Statement pursuant to Rule 430A shall be considered to be included in the Registration Statement as of the time specified in Rule 430A. "Statutory Prospectus" as of any specified time means the prospectus included in the Registration Statement immediately prior to that time, including any document incorporated by reference therein and any prospectus supplement deemed or retroactively deemed to be a part thereof that has not been superseded or modified. For purposes of the preceding sentence, information contained in a form of prospectus that is deemed retroactively to be a part of the Registration Statement pursuant to Rule 430A shall be considered to be included in the Statutory Prospectus as of the actual time that form of prospectus is filed with the Commission pursuant to Rule 424(b) ("Rule 424(b)") under the Securities Act. "Prospectus" means the Statutory Prospectus in the form first used (or made available upon request of purchasers pursuant to Rule 173) in connection with confirmation of sales of the Securities that discloses the public offering price and other final terms of the Securities and otherwise satisfies Section 10(a) of the Securities Act. "Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 405, relating to the Securities in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g). "General Use Issuer Free Writing Prospectus" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified as such in Schedule II to this Agreement. "Limited Use Issuer Free Writing Prospectus" means any Issuer Free Writing Prospectus that is not a General Use Issuer Free Writing Prospectus. "Applicable Time" means 3.15 p.m. (Eastern time) on the date of this Agreement. All references in this Agreement to financial statements and schedules and other information which is "contained," "included," "described" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement or Prospectus, as the case may be.

At or prior to the Applicable Time, the Company had prepared the following information, (the "Applicable Time Information"): (1) the Issuer Free Writing Prospectus referenced on Schedule II hereto, (2) the preliminary Prospectus Supplement dated August 15, 2006 together with the Base Prospectus and (3) any filing under the 1934 Act which is deemed incorporated by reference in the Registration Statement or the Prospectus.

The Company hereby agrees with the Underwriters as follows:

1. The Company agrees to issue and sell the Securities to each Underwriter as hereinafter provided, and each Underwriter, on the basis of the representations, warranties and agreements herein contained, but subject to the conditions hereinafter stated, agrees to purchase, severally and not jointly, from the Company the number of Securities set forth opposite such Underwriters' name in Schedule I hereto at a purchase price per Depositary Share of \$24.2125 (the "Purchase Price") plus accrued dividends, if any, from the date specified in Schedule III hereto, if any, to the date of payment and delivery.

2. The Company understands that the several Underwriters intend (i) to make a public offering (the "Offering") of their respective portions of the Securities as soon after the execution of this Agreement as in the judgment of the Underwriters is advisable and (ii) initially to offer the Securities upon the terms to be set forth in the Prospectus.

3. Payment for the Securities shall be made to the Company or to its order by wire transfer in immediately available funds on the date and at the time and place set forth in Schedule III hereto in the section entitled "Closing Date and Time of Delivery" (or at such other time and place on the same or such other date, not later than the third Business Day thereafter, as you and the Company may agree in writing). Such payment will be made upon delivery to, or to you for the respective accounts of, the Underwriters of the Securities registered in such names and in such denominations as you shall request not less than two full Business Days prior to the date of delivery, with any transfer taxes payable in connection with transfer to the Underwriters duly paid by the Company. As used herein, the term "Business Day" means any day other than a day on which banks are permitted or required to be closed in New York City or the City of Chicago. The time and date of such payment and delivery with respect to the Securities are referred to herein as the "Closing Date." The Securities will be delivered through the book-entry facilities of The Depository Trust Company ("DTC") and will be made available for inspection by you by 1:00 p.m. New York City time at least 24 hours prior to the Closing Date at such place in New York City as you, DTC and the Company shall agree.

4. (a) Each of the Company and the Operating Partnership severally covenants and agrees with the Underwriters as follows:

(b) In respect of the offering of the Securities, the Company will (i) prepare a Prospectus Supplement setting forth the number of Securities covered thereby and their terms not otherwise specified in the Base Prospectus pursuant to which the Securities are being issued, the name of the Underwriters participating in the offering and the number of Securities which each severally has agreed to purchase, the price at which the Securities are to be purchased by the Underwriters from the Company, the initial public offering price, the selling concession and reallowance, if any, and such other information as the Underwriters and the Company deem appropriate in connection with the offering of the Securities, (ii) file the Statutory Prospectus in a form approved by you pursuant to Rule 424 under the Securities Act within the applicable time period prescribed by such rule for such filing (iii) file any Issuer Free Writing Prospectus to the extent required by Rule 433 under the Securities Act; and file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities; and (iv) furnish copies of the Statutory Prospectus to the Underwriters and to such dealers as you shall specify in New York City prior to 10:00 A.M., New York City time as soon as practicable after the date of this Agreement in such quantities as you may reasonably request. The Company has complied and will comply with Rule 433;

(c) The Company will comply with the Securities Act and the Exchange Act so as to permit the completion of the distribution of the Securities contemplated in this Agreement and in the

Registration Statement and the Prospectus. At any time when the Prospectus is (or but for the exemption in Rule 172 would be) required to be delivered under the Securities Act or the Exchange Act in connection with sales of Securities, the Company will advise you promptly and, if requested by you, confirm such advice in writing, of (i) the effectiveness of any amendment to the Registration Statement, (ii) the transmittal to the Commission for filing of any Prospectus or other supplement or amendment to the Prospectus to be filed pursuant to the Securities Act, (iii) the receipt of any comments from the Commission relating to the Registration Statement, any preliminary prospectus, the Prospectus or any of the transactions contemplated by this Agreement, (iv) any request by the Commission for post-effective amendments to the Registration Statement or amendments or supplements to the Prospectus or for additional information, (v) the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of the suspension of qualification of the Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for such purposes, and (vi) the happening of any event which makes any statement of a material fact made in the Registration Statement, the Prospectus or the Applicable Time Information untrue or which requires the making of any additions to or changes in the Registration Statement, the Prospectus or the Applicable Time Information in order to make the statements therein not misleading. The Company will make every reasonable effort to prevent the issuance of any stop order and, if at any time the Commission shall issue any stop order suspending the effectiveness of the Registration Statement, the Company will make every reasonable effort to obtain the withdrawal or lifting of such order at the earliest possible time;

(d) The Company will furnish to you, without charge, such number of conformed copies of the Registration Statement as first filed with the Commission and of each amendment to it, including all exhibits and documents incorporated by reference, as you may reasonably request. If applicable, the copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to the Commission's Electronic Data Gathering and Retrieval System ("EDGAR"), except to the extent permitted by Regulation S-T;

(e) At any time when the Prospectus is (or but for the exemption in Rule 172 would be) required to be delivered under the Securities Act or the Exchange Act in connection with sales of Securities, not to prepare, use, authorize, approve, refer to or file any Issuer Free Writing Prospectus or any amendment to the Registration Statement or any Rule 462(b) Registration Statement or to make any amendment or supplement to the Prospectus of which you shall not previously have been advised or to which you or counsel for the Underwriters shall reasonably object; and to prepare and file with the Commission, promptly upon your reasonable request, any amendment to the Registration Statement, Rule 462(b) Registration Statement, Issuer Free Writing Prospectus, or amendment or supplement to the Prospectus which, in the opinion of counsel for the Underwriters, may be necessary in connection with the distribution of the Securities by you, and to use its reasonable best efforts to cause the same to become promptly effective. If applicable, the Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T;

(f) (i) If, at any time when the Prospectus is (or but for the exemption in Rule 172 would be) required to be delivered under the Securities Act or the Exchange Act in connection with sales of Securities, any event shall occur as a result of which, in the opinion of counsel for the Underwriters, it becomes necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading, or if it is necessary to amend or supplement the Prospectus to comply with any law, the Company will forthwith prepare and file with the Commission an appropriate amendment or supplement to the Prospectus (in form and substance reasonably satisfactory to counsel for the Underwriters) so that the statements in the Prospectus, as so amended or supplemented, will not contain an untrue statement of a material fact or



omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when it is so delivered, not misleading, or so that the Prospectus will comply with any law, and to furnish to each Underwriter and to such dealers as the Representative may designate, such number of copies thereof as such Underwriter or dealers may reasonably request and (ii) if any time prior to the Closing Date (1) any event shall occur or condition shall exist as a result of which the Applicable Time Information as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances, not misleading or (2) it is necessary to amend or supplement the Applicable Time Information to comply with law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (c) above; file with the Commission (to the extent required) and furnish to each Underwriter and to such dealers as the Representative may designate, such amendments or supplements to the Applicable Time Information as may be necessary so that the statements in the Applicable Time Information as so amended or supplemented will not, in the light of the circumstances, be misleading or so that the Applicable Time Information will comply with law;

(g) The Company will use its reasonable best efforts, in cooperation with the Underwriters, to qualify, register or perfect exemptions for the Securities for offer and sale by the several Underwriters to qualified institutions under the applicable state securities, Blue Sky and real estate syndication laws of such jurisdictions as you may reasonably request; provided, however, the Company will not be required to qualify as a foreign corporation, file a general consent to service of process in any such jurisdiction, subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject, or provide any undertaking or make any change in its charter or by-laws that the Board of Directors of the Company reasonably determines to be contrary to the best interests of the Company and its stockholders. In each jurisdiction in which the Securities have been so qualified or registered, the Company will use all reasonable efforts to file such statements and reports as may be required by the laws of such jurisdiction, to continue such qualification or registration in effect for so long a period as the Underwriters may reasonably request for the distribution of the Securities and to file such consents to service of process or other documents as may be necessary in order to effect such qualification or registration; provided, however, the Company will not be required to qualify as a foreign corporation, file a general consent to service of process in any such jurisdiction, subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject, or provide any undertaking or make any change in its charter or by-laws that the Board of Directors of the Company reasonably determines to be contrary to the best interests of the Company and its stockholders;

(h) To make generally available to the Company's stockholders as soon as reasonably practicable but not later than 60 days after the close of the period covered thereby (90 days in the event the close of such period is the close of the Company's fiscal year), an earning statement (in form complying with the provisions of Rule 158 of the Securities Act) covering a period of at least twelve months after the effective date of the Registration Statement (but in no event commencing later than 90 days after such date) which shall satisfy the provisions of Section 11(a) of the Securities Act, and, if required by Rule 158 of the Securities Act, to file such statement as an exhibit to the next periodic report required to be filed by the Company under the Exchange Act covering the period when such earning statement is released;

(i) During the period when the Prospectus is (or but for the exemption in Rule 172 would be) required to be delivered under the Securities Act or the Exchange Act in connection with sales of the Securities, to file all documents required to be filed by it with the Commission pursuant to Section 13, 14 or 15 of the Exchange Act within the time periods required by the Exchange Act;

(j) The Company will pay all costs, expenses, fees and taxes incident to (i) the preparation, printing, filing and distribution under the Securities Act of the Registration Statement and

any amendment thereto (including financial statements and exhibits), the Prospectus and all amendments and supplements to any of them and for expenses incurred for preparing, printing and distributing any Issuer Free Writing Prospectuses to investors or prospective investors prior to or during the period specified in Section 4(e), (ii) the printing and delivery of this Agreement, the Deposit Agreement and any Blue Sky Memorandum, (iii) the qualification or registration of the Securities for offer and sale under the state securities, Blue Sky or real estate syndication laws of the several states in accordance with Section 4(g) hereof, (iv) the fee of and the filings and clearance, if any, with the National Association of Securities Dealers, Inc. (the "NASD") in connection with the Offering, (v) the fees charged by nationally recognized statistical rating organizations for the rating of the Securities (vi) furnishing such copies of the Registration Statement, the preliminary prospectus, the Prospectus, the Applicable Time Information and all amendments and supplements thereto as may be requested for use in connection with the offering or sale of the Securities by the Underwriters or by dealers to whom Securities may be sold, (vii) the costs and charges of any transfer agent or registrar, (viii) the cost and expense of the Depositary under the Deposit Agreement, (ix) the preparation, issuance and delivery of certificates for the Securities to the Underwriters, (x) any expenses incurred by the Company in connection with a "road show" presentation to potential investors, (xi) any transfer taxes imposed on the sale by the Company of the Securities to the Underwriters and (xii) the fees and disbursements of the Company's counsel and accountants;

(k) The Company will use its reasonable best efforts to do and perform all things required to be done and performed under this Agreement by the Company prior to the Closing Date and to satisfy all conditions precedent to the delivery of the Securities;

(l) The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Registration Statement, the Applicable Time Information and the Prospectus Supplement under "Use of Proceeds;"

(m) The Company will use its best efforts to continue to qualify as a real estate investment trust ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"), unless the Company's board of directors determines that it is no longer in the best interests of the Company to be so qualified;

(n) The Company will not, at any time, directly or indirectly, take any action intended, or which might reasonably be expected to cause or result in, or which will constitute stabilization of the price of the Securities to facilitate the sale or resale of any Securities in violation of the Securities Act;

(o) The Company will cooperate with the Representatives and use commercially reasonable efforts to permit the Securities to be eligible for clearance and settlement through the facilities of DTC;

(p) For the period specified below (the "Lock-Up Period"), the Company will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, or file with the Commission a registration statement under the Securities Act relating to, any additional shares of its Securities or securities convertible into or exchangeable or exercisable for any shares of its Securities, or publicly disclose the intention to make any such offer, sale, pledge, disposition or filing, without the prior written consent of the Representatives except issuances of Securities pursuant to the conversion or exchange of convertible or exchangeable securities or the exercise of warrants or options, in each case outstanding on the date hereof, grants of employee stock options pursuant to the terms of a plan in effect on the date hereof, issuances of Securities pursuant to the exercise of such options or the exercise of any other employee stock options outstanding on the date hereof. The initial Lock-Up Period will commence on the date hereof and will continue and include the date 45 days after the date of the Prospectus or such earlier date that the Representatives consent to in writing; provided, however, that if (1) during the last 17 days of

the initial Lock-Up Period, the Company releases earnings results or material news or a material event relating to the Company occurs or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be extended until the expiration of the 18-day period beginning on the date of release of the earnings results or the occurrence of the materials news or material event, as applicable, unless the Representatives waive, in writing, such extension. The Company will provide the Representatives with notice of any announcement described in clause (2) of the preceding sentence that gives rise to an extension of the Lock-Up Period;

(q) Prior to the Closing Date, the Company will file articles supplementary pertaining to the Series K Preferred Shares (the "Series K Articles Supplementary") with the Maryland State Department of Assessment and Taxation establishing and fixing the rights and preferences of the Securities;

(r) The Company will use its reasonable best efforts to take all reasonable action necessary to enable Standard & Poor's Corporation ("S&P") and Moody's Investor Services, Inc. ("Moody's") or any other nationally recognized rating organization to provide their respective credit ratings;

(s) The Company will prepare and file or transmit for filing with the Commission in accordance with Rule 424(b) of the Securities Act the Prospectus; and

(t) During the remainder of 2006, the Company will use ordinary business care and prudence to restructure its affairs and those of its taxable REIT subsidiary and the Company's other affiliates (including, without limitation, restructuring transactions with third parties) to the extent necessary to ensure that the Company will comply with the gross income test under Section 856(c)(2) of the Code with respect to 2006.

5. Free Writing Prospectuses. The Company represents and agrees that, unless it obtains the prior consent of the Underwriters, and the Underwriters represent and agree that, unless they obtain the prior consent of the Company, neither the Company nor the Underwriters have made nor will make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Underwriters is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company represents that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

6. The Company and the Operating Partnership, jointly and severally, represent and warrant to each Underwriter as of the date hereof and at the Closing Date that:

(a) The Company and the Operating Partnership meet the requirements for use of Form S-3, and the Registration Statement has been declared effective by the Commission;

(b) The Registration Statement and the Prospectus, including the financial statements, schedules and related notes included in the Prospectus and, if applicable, any Issuer Free Writing Prospectus, as of the date hereof, as of the Applicable Time and at the time the Registration Statement became effective, and when any post-effective amendment to the Registration Statement or Rule 462(b) Registration Statement becomes effective or any amendment or supplement to the Prospectus

is filed with the Commission, did or will comply in all material respects with all applicable provisions of the Securities Act and will contain all statements required to be stated therein in accordance with the Securities Act. The Prospectus, including the financial statements, schedules and related notes included or incorporated by reference in the Prospectus, and if applicable, any Issuer Free Writing Prospectus, as the date hereof, as of the Applicable Time and at the time the Registration Statement became effective, and at the Closing Date, and when any post-effective amendment to the Registration Statement or Rule 462(b) Registration Statement becomes effective or any amendment or supplement to the Prospectus is filed with the Commission, did or will comply in all material respects with all applicable provisions of the Securities Act and will contain all statements required to be stated therein in accordance with the Securities Act. On the date the Registration Statement was declared effective, on the date hereof, as of the Applicable Time, on the date of filing of any Rule 462(b) Registration Statement and on the Closing Date no part of the Registration Statement or any amendment did or will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading. On the date the Registration Statement was declared effective, on the date hereof, as of the Applicable Time, on the date of filing of any Rule 462(b) Registration Statement and at the Closing Date, the Prospectus did not and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If a Rule 462(b) Registration Statement is filed in connection with the offering and sale of the Securities, the Company and the Operating Partnership will have complied or will comply with the requirements of Rule 111 under the Securities Act relating to the payment of filing fees therefor. The foregoing representations and warranties in this Section 6(b) do not apply to any statements or omissions made in reliance on and in conformity with information relating to any Underwriters furnished in writing to the Company or the Operating Partnership by the Underwriters specifically for inclusion in the Registration Statement or Prospectus or any amendment or supplement thereto. Neither the Company nor the Operating Partnership has distributed, and prior to the later of the Closing Date and the completion of the distribution of the Securities, will not distribute, any offering material in connection with the offering or sale of the Securities other than the Registration Statement, the preliminary prospectus, the Prospectus or any other materials, if any, permitted by the Securities Act (which were disclosed to the Underwriters and the Underwriters' counsel and are listed on Schedule II hereof other than documents referred to in clause (c) of Section 6(f)).

(c) Each preliminary prospectus supplement, filed pursuant to Rule 424 under the Securities Act and each 462(b) Registration Statement, if any, complied or will comply when so filed in all material respects with all applicable provisions of the Securities Act; did not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with the offering of Securities will, at the time of such delivery, be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T;

(d) The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the Prospectus and the Applicable Time Information pursuant to Item 12 of Form S-3 under the Securities Act, at the time they were, or hereafter are, filed with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together with other information included in, and incorporated by reference in, the Registration Statement, the Prospectus and the Applicable Time Information, at the time the Registration Statement became effective, as of the date of the Prospectus, the Applicable Time and as of the Closing Date, or during the period specified in Section 4(e) did not and will not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The foregoing representations and warranties in this Section 6(d) do not apply to any statements or omissions made in reliance on and in

conformity with information relating to any Underwriters furnished in writing to the Company or the Operating Partnership by the Underwriters specifically for inclusion in the Registration Statement or Prospectus or any amendment or supplement thereto;

(e) At the time of filing the Registration Statement and at the date of this Agreement, each of the Company and the Operating Partnership was not and is not an "ineligible issuer," as defined in Rule 405, including as a result of (x) the Company, the Operating Partnership or any other subsidiary in the preceding three years having been convicted of a felony or misdemeanor or having been made the subject of a judicial or administrative decree or order as described in Rule 405 and (y) the Company or the Operating Partnership in the preceding three years having been the subject of a bankruptcy petition or insolvency or similar proceeding, having had a registration statement be the subject of a proceeding under Section 8 of the Securities Act or being the subject of a proceeding under Section 8A of the Securities Act in connection with the offering of the Securities, all as described in Rule 405.

(f) As of the Applicable Time, neither the Applicable Time Information, nor any individual Limited Use Issuer Free Writing Prospectus, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any prospectus included in the Registration Statement or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by the Underwriters consists of the information described in the second paragraph of Section 7 hereof. No statement of material fact included in the Prospectus has been omitted from the Applicable Time Information and no statement of material fact included in the Applicable Time Information that is required to be included in the Prospectus has been omitted therefrom.

(g) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the Company notified or notifies the Underwriters as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information then contained in the Registration Statement. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, (i) the Company has promptly notified or will promptly notify the Underwriters and (ii) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. The foregoing two sentences do not apply to statements in or omissions from any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by the Underwriters specifically for use therein, it being understood and agreed that the only such information furnished by the Underwriters consists of the information described as such in the second paragraph of Section 7 hereof.

(h) The Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not made, used, prepared, authorized, approved or referred to and will not prepare, make, use, authorize, approve or refer to any Issuer Free Writing Prospectus other than (i) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Securities Act or Rule 134 under the Securities Act or (ii) the documents listed on Schedule II hereto and other written communications approved in writing in advance by the Representatives. Each such Issuer Free Writing Prospectus complied in all material respects with the Securities Act, has been filed in accordance with the

Securities Act (to the extent required thereby) and did not, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in each such Issuer Free Writing Prospectus in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representative expressly for use in any Issuer Free Writing Prospectus.

(i) The Company has been duly organized and is validly existing as a corporation under and by virtue of the laws of the State of Maryland, and is in good standing with the State Department of Assessments and Taxation of Maryland. The Operating Partnership has been duly organized and is validly existing as a limited partnership in good standing under and by virtue of the Delaware Revised Uniform Limited Partnership Act. Each of First Industrial Financing Partnership, L.P. (the "Financing Partnership"), First Industrial Securities, L.P. ("Securities, L.P."), First Industrial Mortgage Partnership, L.P. (the "Mortgage Partnership"), First Industrial Pennsylvania, L.P. ("FIP"), First Industrial Harrisburg, L.P. ("FIH") and First Industrial Indianapolis, L.P. ("FII") (the Financing Partnership, Securities, L.P., the Mortgage Partnership, FIP, FIH and FII are referred to collectively herein as the "Partnership Subsidiaries") has been duly organized and is validly existing as a limited partnership in good standing under and by virtue of the laws of its jurisdiction of organization. Each of First Industrial Securities Corporation ("FISC"), First Industrial Indianapolis Corporation ("FIIC"), First Industrial Finance Corporation ("FIFC"), First Industrial Mortgage Corporation ("FIMC"), First Industrial Development Services, Inc. ("FIDSI") and First Industrial Pennsylvania Corporation ("FIPC"), (FISC, FIIC, FIFC, FIMC, FIDSI and FIPC are referred to collectively herein as the "Corporate Subsidiaries"), FR First Cal, LLC, ("FR First Cal"), FR Bucks Property Holding, L.P. ("FR Bucks"), FR Lehigh Property Holding, L.P. ("FR Lehigh"), FR Aberdeen, LLC ("FR Aberdeen"), FR Metropolitan Select Property Holding, LP ("FR Metropolitan"), FR Summit, LLC, ("FR Summit"), First Industrial Texas, L.P., ("FR Texas"), FR Hagerstown, LLC ("FR Hagerstown"), FR Randolph Drive, LLC ("FR Randolph"), FirstCal2 Industrial Property Manager, LLC ("FirstCal2"), FR OP Fund, LLC ("FR OP"), First Industrial Acquisitions, Inc. ("FIAI"), First Industrial Harrisburg Corporation ("FIHC"), and FI Development Services Corporation ("FIDSC") (FR First Cal, FR Bucks, FR Lehigh, FR Aberdeen, FR Metropolitan, FR Summit, FR Texas, FR Hagerstown, FR Randolph, FirstCal2, FR OP, FIAI, FIHC, and FIDSC are referred to collectively herein as the "Additional Subsidiaries," and the Partnership Subsidiaries, the Corporate Subsidiaries and the Additional Subsidiaries are referred to herein collectively as the "Subsidiaries" or individually as a "Subsidiary"), has been duly organized and is validly existing as a corporation in good standing under and by virtue of the laws of its jurisdiction of incorporation. Other than the Corporate Subsidiaries, the Partnership Subsidiaries and the Additional Subsidiaries, no entity in which the Company owns any equity securities constitute, individually or in the aggregate, is a "significant subsidiary" under Rule 1-02 of Regulation S-X (substituting "net income" for "income from continuing operations") promulgated under the Exchange Act. The Company is the sole general partner of the Operating Partnership. FIFC is a wholly-owned subsidiary of the Company and is the sole general partner of the Financing Partnership. FIMC is a wholly-owned subsidiary of the Company and is the sole general partner of the Mortgage Partnership. FISC is a wholly-owned subsidiary of the Company and is the sole general partner of Securities, L.P. The Operating Partnership and FISC are the only limited partners of Securities, L.P. FIPC is a wholly-owned subsidiary of the Company and is the sole general partner of FIP. FIIC is a wholly-owned subsidiary of the Company and is the sole general partner of FII. FIHC is a wholly-owned subsidiary of the Company and is the sole general partner of FIH. FIDSI is a wholly-owned subsidiary of the Operating Partnership. The Operating Partnership is the sole limited partner of each Partnership Subsidiary (except for Securities, L.P.). The Company, the Operating Partnership and each of the Subsidiaries has, and at the Closing Date will have, full corporate, partnership or limited liability company power and authority, as the case may be, to conduct all the activities conducted by it, to own, lease or operate all the properties and other assets owned, leased or operated by it and to conduct its

business in which it engages or proposes to engage as described in the Prospectus and the transactions contemplated hereby. The Company and each of the Corporate Subsidiaries is, and at the Closing Date will be, duly qualified or registered to do business and in good standing as a foreign corporation in all jurisdictions in which the nature of the activities conducted by it or the character of the properties and assets owned, leased or operated by it makes such qualification or registration necessary, except where failure to obtain such qualifications or registration will not have a material adverse effect on (i) the condition, financial or otherwise, or the earnings, assets or business affairs or prospects of the Operating Partnership, Company and their Subsidiaries, taken as a whole or on the 864 in service properties owned, directly or indirectly, by the Company as of June 30, 2006 (the "Properties") taken as a whole, (ii) the issuance, validity or enforceability of the Securities or (iii) the consummation of any of the transactions contemplated by this Agreement (each a "Material Adverse Effect"). The Operating Partnership and each of the Partnership Subsidiaries is, and at the Closing Date will be, duly qualified or registered to do business and in good standing as a foreign limited partnership in all jurisdictions in which the nature of the activities conducted by it or the character of the assets owned, leased or operated by it makes such qualification or registration necessary, except where failure to obtain such qualification or registration will not have a Material Adverse Effect. Complete and correct copies of the charter documents, partnership agreements and other organizational documents of the Company and its Subsidiaries and all amendments thereto as have been requested by the Underwriters or their counsel have been delivered to the Underwriters or their counsel.

(j) The Company's authorized capitalization consists of 10,000,000 shares of preferred stock, par value \$.01 per share, 100,000,000 shares of common stock, par value \$.01 per share, and 65,000,000 shares of excess stock, par value \$.01 per share. All of the Company's issued and outstanding shares of common stock and preferred stock have been duly authorized and are validly issued, fully paid and non-assessable and will have been offered and sold in compliance, in all material respects, with all applicable laws (including, without limitation, federal or state securities laws). The Securities have been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement and, when validly issued and delivered pursuant to this Agreement against payment of the Purchase Price, will be duly authorized, validly issued, fully paid and non-assessable and will not be subject to any preemptive or similar right and will have been offered and sold in compliance, in all material respects, with all applicable laws (including, without limitation, federal or state securities laws). The description of the Securities, and the statements related thereto, contained in the Registration Statement or the Prospectus are, and at the Closing Date, will be, complete and accurate in all material respects. Upon payment of the Purchase Price and delivery of certificates representing the Securities in accordance herewith, each of the Underwriters will receive good, valid and marketable title to the Securities, free and clear of all security interests, mortgages, pledges, liens, encumbrances, claims and equities. The form of depositary receipts to be used to evidence the Securities will be in due and proper form and will comply, in all material respects, with all applicable legal requirements. No shares of common or preferred stock of the Company are reserved for any purpose other than securities to be issued pursuant to this Agreement and except as disclosed in the Prospectus.

(k) The partnership agreement of the Operating Partnership is duly authorized, executed and delivered by the Company, as general partner and a limited partner, and the partnership agreement of each Partnership Subsidiary is duly authorized, validly executed and delivered by each partner thereto and (assuming in the case of the Operating Partnership the due authorization, execution and delivery of the partnership agreement by each limited partner other than the Company) each such partnership agreement will be a valid, legally binding and enforceable in accordance with its terms immediately following the Closing Date subject to (i) the effect of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors and (ii) the effect of general principles of equity, whether enforcement is considered in a proceeding in equity or at law, and the discretion of the court before which any proceeding therefor may

be brought. All of the issued and outstanding shares of capital stock of the Company and each Corporate Subsidiary, all of the outstanding units of general, limited and/or preferred partner interests of the Operating Partnership and each Partnership Subsidiary will have been duly authorized and are validly issued, fully paid and non-assessable; and (except as described in the Prospectus) will be owned directly or indirectly (except in the case of the Company) by the Company or the Operating Partnership, as the case may be, free and clear of all security interests, liens and encumbrances (except for pledges in connection with the loan agreements of the Company, the Operating Partnership and the Subsidiaries), and all of the partnership interests in each Partnership Subsidiary will have been duly authorized and are validly issued, fully paid, and (except as described in the Prospectus) will be owned directly or indirectly by the Company or the Operating Partnership, free and clear of all security interests, liens and encumbrances (except for pledges in connection with the loan agreements of the Company, the Operating Partnership and the Subsidiaries);

(l) The financial statements, supporting schedules and related notes included in, or incorporated by reference in, the Registration Statement, the Applicable Time Information and the Prospectus comply in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and present fairly the consolidated financial condition of the entity or entities or group presented or included therein, as of the respective dates thereof, and its consolidated results of operations and cash flows for the respective periods covered thereby, are all in conformity with generally accepted accounting principles applied on a consistent basis throughout the entire period involved, except as otherwise disclosed in the Prospectus. The financial information and data included in the Registration Statement, the Applicable Time Information and the Prospectus present fairly the information included or incorporated by reference therein and have been prepared on a basis consistent, except as may be noted therein, with that of the financial statements, schedules and notes included or incorporated by reference in the Registration Statement, the Applicable Time Information and the Prospectus and the books and records of the respective entity or entities or group presented or included therein. Except as otherwise noted in the Registration Statement, the Applicable Time Information and the Prospectus, pro forma and/or as adjusted financial information included or incorporated by reference in the Registration Statement, Applicable Time Information and the Prospectus has been prepared in accordance with the applicable requirements of the Securities Act and the American Institute of Certified Public Accountants ("AICPA") guidelines with respect to pro forma and as adjusted financial information, and includes all adjustments necessary to present fairly the pro forma and/or as adjusted financial condition of the entity or entities or group presented or included therein at the respective dates indicated and the results of operations and cash flows for the respective periods specified. The Company's ratios of earnings to combined fixed charges and preferred stock dividends included in the Prospectus and in Exhibit 12.1 to the current report on Form 8-K filed by the Company on August 10, 2006 have been calculated in compliance with Item 503(d) of Regulation S-K of the Commission. No other financial statements (or schedules) of the Company, the Operating Partnership and the Partnership Subsidiaries or any predecessor of the Company and/or the Operating Partnership and the Partnership Subsidiaries are required by the Securities Act or the Exchange Act to be included in the Registration Statement, the Applicable Time Information or the Prospectus. PricewaterhouseCoopers LLP (the "Accountants") who have reported on such financial statements, schedules and related notes, are independent registered public accountants with respect to the Company, the Operating Partnership and the Partnership Subsidiaries with the applicable rules and regulations adopted by the Commission and the Public Accounting Oversight Board (United States) and as required by the Securities Act, and there have been no disagreements with any accountants or "reportable events" (as defined in Item 304 of Regulation S-K promulgated by the Commission) required to be disclosed in the Prospectus or elsewhere pursuant to such Item 304 which have not been so disclosed;

(m) Subsequent to the respective dates as of which information is given in the Registration Statement, the Applicable Time Information and the Prospectus and prior to the Closing



Date, (i) there has not been and will not have been, except as set forth in or contemplated by the Registration Statement, the Applicable Time Information, the Prospectus and this Agreement, any change in the capitalization, long term or short term debt or in the capital stock or equity of each of the Company, the Operating Partnership or any of the Subsidiaries which would be material to the Company, the Operating Partnership and the Subsidiaries considered as one enterprise (anything which would be material to the Operating Partnership, the Company and the Subsidiaries, considered as one enterprise, being hereinafter referred to as "Material"), (ii) except as described in the Registration Statement, the Applicable Time Information or the Prospectus, neither the Operating Partnership, the Company nor any of the Subsidiaries has incurred nor will any of them incur any liabilities or obligations, direct or contingent, which would be Material, nor has any of them entered into nor will any of them enter into any transactions, other than pursuant to this Agreement and the transactions referred to herein or as contemplated in the Registration Statement, the Applicable Time Information, the Prospectus and this Agreement, which would be Material, (iii) there has not been any Material Adverse Effect, (iv) except for regular quarterly distributions on the Company's shares of common stock, par value \$0.01 per share (the "Common Stock"), and the dividends on, and any distributions on redemption of, the shares of the Company's (a) 8% Series C Cumulative Preferred Stock, (b) 6.236% Series F Flexible Cumulative Redeemable Preferred Stock, (c) 7.236% Series G Flexible Cumulative Redeemable Preferred Stock, (d) Series I Flexible Cumulative Redeemable Preferred Stock, or (e) Series J Cumulative Redeemable Preferred Stock, the Company has not paid or declared and will not pay or declare any dividends or other distributions of any kind on any class of its capital stock, and (v) except for distributions in connection with regular quarterly distributions on partnership units, the Operating Partnership has not paid any distributions of any kind on its partnership units;

(n) None of the Company, the Operating Partnership or any of the Subsidiaries is, or as of the Closing Date will be, required to be registered under the Investment Company Act of 1940, as amended (the "1940 Act");

(o) To the knowledge of the Company or the Operating Partnership, after due inquiry, except as set forth in the Registration Statement, the Applicable Time Information and the Prospectus, there are no actions, suits, proceedings, investigations or inquiries, pending or, after due inquiry, threatened against or affecting the Operating Partnership, the Company or any of the Subsidiaries or any of their respective officers or directors in their capacity as such or of which any of their respective properties or assets or any Property is the subject or bound, before or by any Federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, wherein an unfavorable ruling, decision or finding would reasonably be expected to have a Material Adverse Effect;

(p) The Company, the Operating Partnership and each of the Subsidiaries (i) has, and at the Closing Date will have, (A) all governmental licenses, permits, consents, orders, approvals and other authorizations necessary to carry on its business as contemplated in the Registration Statement, the Applicable Time Information or the Prospectus and are in material compliance with such, and (B) complied in all material respects with all laws, regulations and orders applicable to it or its business and (ii) are not, and at the Closing Date will not be, in breach of or default in the performance or observance of any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement, lease, contract, joint venture or partnership agreement or other agreement or instrument (collectively, a "Contract or Other Agreement") or under any applicable law, rule, order, administrative regulation or administrative or court decree to which it is a party or by which any of its other assets or properties or by which the Properties are bound or affected, except where such default, breach or failure will not, either singly or in the aggregate, have a Material Adverse Effect. To the knowledge of the Operating Partnership, the Company and each of the Subsidiaries, after due inquiry, no other party under any Material contract or

other agreement to which it is a party is in default thereunder, except where such default will not have a Material Adverse Effect. None of the Operating Partnership, the Company or any of the Subsidiaries is, nor at the Closing Date will any of them be, in violation of any provision of its articles of incorporation, by-laws, certificate of limited partnership, partnership agreement or other organizational document, as the case may be;

(q) No Material consent, approval, authorization or order of, or any filing or declaration with, any court or governmental agency or body or any other entity is required in connection with the offering, issuance or sale of the Securities hereunder except such as have been obtained under the Securities Act, the Exchange Act and such as may be required under state securities, Blue Sky or real estate syndication laws or the by-laws, the corporate financing rules or the conflict of interest rules of the National Association of Securities Dealers, Inc. (the "NASD") in connection with the purchase and distribution by the Underwriters of the Securities or such as have been received prior to the date of this Agreement, and except for the filing of this Agreement and the form of Securities with the Commission as exhibits to a Form 8-K, which the Company agrees to make in a timely manner;

(r) The Company and the Operating Partnership have full corporate or partnership power, as the case may be, to enter into each of this Agreement and the Deposit Agreement and to execute, deliver and file the Series K Articles Supplementary, to the extent each is a party thereto. This Agreement has been duly and validly authorized, executed and delivered by the Company and the Operating Partnership, to the extent a party thereto, constitutes a valid and binding agreement of the Company and the Operating Partnership, and assuming due authorization, execution and delivery by the Underwriters, and is enforceable against the Operating Partnership in accordance with the terms hereof and thereof, subject to (i) the effect of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors and (ii) the effect of general principles of equity, whether enforcement is considered in a proceeding in equity or at law, and the discretion of the court before which any proceeding therefor may be brought. The execution, delivery and performance of this Agreement, the Series K Articles Supplementary and the Deposit Agreement and the consummation of the transactions contemplated hereby, and compliance by each of the Company, the Operating Partnership and the Subsidiaries with its obligations hereunder to the extent each is a party thereto, will not result in the creation or imposition of any lien, charge or encumbrance upon any of the assets or properties of the Operating Partnership, the Company or any of the Subsidiaries pursuant to the terms or provisions of, or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or give any other party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, (a) the certificate of incorporation, by-laws, certificate of limited partnership, partnership agreement or other organizational documents of the Operating Partnership, the Company or any of the Subsidiaries, (b) any Contract or Other Agreement to which the Company, the Operating Partnership or any of the Subsidiaries is a party or by which the Company, the Operating Partnership or any of the Subsidiaries or any of their assets or properties are bound or affected, or violate or conflict with (c) any judgment, ruling, decree, order, statute, rule or regulation of any court or other governmental agency (foreign or domestic) or body applicable to the business or properties of the Operating Partnership, the Company or any of the Subsidiaries or to the Properties, in each case (other than with respect to subclause (a) of this sentence as it applies to the Company, the Operating Partnership and their significant subsidiaries (as defined in Section 6(i)) except for liens, charges, encumbrances, breaches, violations, defaults, rights to terminate or accelerate obligations, or conflicts, the imposition or occurrence of which would not have a Material Adverse Effect;

(s) As of the Closing Date, the Company, the Operating Partnership and each of the Subsidiaries will have good and marketable title to all properties and assets described in the Registration Statement, the Applicable Time Information and the Prospectus as owned by it, free and clear of all liens,

encumbrances, claims, security interests and defects, except such as are described in the Registration Statement, the Applicable Time Information or the Prospectus, or such as secure the loan facilities of the Operating Partnership, the Company and the Subsidiaries, or would not result in a Material Adverse Effect;

(t) The Deposit Agreement has been duly authorized by the Company and, at the Closing Date, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery of the Deposit Agreement by the other respective parties thereto, the Deposit Agreement will, at the Closing Date, constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (except to the extent that enforcement thereof may be limited by (i) the effect of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors and (ii) the effect of general principles of equity, whether enforcement is considered in a proceeding in equity or at law, and the discretion of the court before which any proceeding therefor may be brought), and the Deposit Agreement will conform in all material respects to all statements relating thereto contained in the Prospectus;

(u) The Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Securities Exchange Act of 1934 and files reports with the Commission on EDGAR.

(v) To the knowledge of the Company: (i) no lessee of any portion of the Properties is in default under any of the leases governing such Properties and there is no event which, but for the passage of time or the giving of notice, or both, would constitute a default under any of such leases, except in each case such defaults that would not have a Material Adverse Effect; (ii) the current use and occupancy of each of the Properties complies in all material respects with all applicable codes and zoning laws and regulations, except for such failures to comply which would not individually or in the aggregate have a Material Adverse Effect; and (iii) there is no pending or threatened condemnation, zoning change, environmental or other proceeding or action that will in any material respect affect the size of, use of, improvements on, construction on, or access to the Properties except such proceedings or actions that would not have a Material Adverse Effect;

(w) The Operating Partnership, the Company and the Partnership Subsidiaries have property, title, casualty and liability insurance in favor of the Operating Partnership, the Company or the Partnership Subsidiaries with respect to each of the Properties, in an amount and on such terms as is reasonable and customary for businesses of the type conducted by the Operating Partnership, the Company and the Partnership Subsidiaries except in such instances where the tenant is carrying such insurance or the tenant is self-insuring such risks;

(x) Except as disclosed in the Registration Statement, the Applicable Time Information and the Prospectus, and except for activities, conditions, circumstances or matters that would not have a Material Adverse Effect, (i) to the knowledge of the Company and the Subsidiaries, after due inquiry, the operations of the Operating Partnership, the Company and the Subsidiaries are in compliance with all Environmental Laws (as defined below) and all requirements of applicable permits, licenses, approvals and other authorizations issued pursuant to Environmental Laws; (ii) to the knowledge of the Operating Partnership, the Company and the Subsidiaries, after due inquiry, none of the Operating Partnership, the Company or the Subsidiaries has caused or suffered to occur any Release (as defined below) of any Hazardous Substance (as defined below) into the Environment (as defined below) on, in, under or from any Property, and no condition exists on, in, under or adjacent to any Property that could reasonably be expected to result in the incurrence of liabilities under, or any violations of, any Environmental Law or give rise to the imposition of any Lien (as defined below), under any Environmental Law; (iii) none of the Operating Partnership, the Company or the Subsidiaries has received any written notice of a claim under

or pursuant to any Environmental Law or under common law pertaining to Hazardous Substances on, in, under or originating from any Property; (iv) none of the Operating Partnership, the Company or the Subsidiaries has actual knowledge of, or received any written notice from any Governmental Authority (as defined below) claiming, any violation of any Environmental Law or a determination to undertake and/or request the investigation, remediation, clean-up or removal of any Hazardous Substance released into the Environment on, in, under or from any Property; and (v) no Property is included or, to the knowledge of the Operating Partnership, the Company or the Subsidiaries, after due inquiry, proposed for inclusion on the National Priorities List issued pursuant to CERCLA (as defined below) by the United States Environmental Protection Agency (the "EPA"), or included on the Comprehensive Environmental Response, Compensation, and Liability Information System database maintained by the EPA, and none of the Operating Partnership, the Company or the Subsidiaries has actual knowledge that any Property has otherwise been identified in a published writing by the EPA as a potential CERCLA removal, remedial or response site or, to the knowledge of the Company and its Subsidiaries, is included on any similar list of potentially contaminated sites pursuant to any other Environmental Law;

As used herein, "Hazardous Substance" shall include any hazardous substance, hazardous waste, toxic substance, pollutant or hazardous material, including, without limitation, oil, petroleum or any petroleum-derived substance or waste, asbestos or asbestos-containing materials, PCBs, pesticides, explosives, radioactive materials, dioxins, urea formaldehyde insulation or any constituent of any such substance, pollutant or waste which is subject to regulation under any Environmental Law (including, without limitation, materials listed in the United States Department of Transportation Optional Hazardous Material Table, 49 C.F.R. § 172.101, or in the EPA's List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302); "Environment" shall mean any surface water, drinking water, ground water, land surface, subsurface strata, river sediment, buildings, structures, and ambient, workplace and indoor and outdoor air; "Environmental Law" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.) ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901, et seq.), the Clean Air Act, as amended (42 U.S.C. § 7401, et seq.), the Clean Water Act, as amended (33 U.S.C. § 1251, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601, et seq.), the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. § 651, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.), and all other federal, state and local laws, ordinances, regulations, rules and orders relating to the protection of the environment or of human health from environmental effects; "Governmental Authority" shall mean any federal, state or local governmental office, agency or authority having the duty or authority to promulgate, implement or enforce any Environmental Law; "Lien" shall mean, with respect to any Property, any mortgage, deed of trust, pledge, security interest, lien, encumbrance, penalty, fine, charge, assessment, judgment or other liability in, on or affecting such Property; and "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, emanating or disposing of any Hazardous Substance into the Environment, including, without limitation, the abandonment or discard of barrels, containers, tanks (including, without limitation, underground storage tanks) or other receptacles containing or previously containing and containing a residue of any Hazardous Substance.

None of the environmental consultants which prepared environmental and asbestos inspection reports with respect to any of the Properties was employed for such purpose on a contingent basis or has any substantial interest in the Operating Partnership, the Company or any of the Subsidiaries, and none of them nor any of their directors, officers or employees is connected with the Operating Partnership, the Company or any of the Subsidiaries as a promoter, selling agent, voting trustee, director, officer or employee.

(y) The Company, the Operating Partnership and the Subsidiaries are organized and operate in a manner so that the Company qualifies as a real estate investment trust ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code") and the Company has elected to be taxed as a REIT under the Code commencing with the taxable year ended December 31, 1994. The Company, the Operating Partnership and the Subsidiaries intend to continue to be organized and operate so that the Company shall qualify as a REIT for the foreseeable future, unless the Company's board of directors determines that it is no longer in the best interests of the Company to be so qualified;

(z) There is no material document or contract of a character required to be described or referred to in the Registration Statement, the Applicable Time Information or the Prospectus or to be filed as an exhibit to the Registration Statement which is not described or filed as required therein, except for the filing of this Agreement, the Deposit Agreement and the form of Securities with the Commission as exhibits to a Form 8-K, which the Company agrees to make in a timely manner, and the descriptions thereof or references thereto are accurate in all material respects;

(aa) None of the Operating Partnership, the Company or any of the Subsidiaries is involved in any labor dispute nor, to the knowledge of the Operating Partnership, the Company or the Subsidiaries, after due inquiry, is any such dispute threatened which would be Material;

(bb) The Operating Partnership, the Company and the Subsidiaries own, or are licensed or otherwise have the full exclusive right to use, all material trademarks and trade names which are used in or necessary for the conduct of their respective businesses as described in the Prospectus. To the knowledge of the Company or the Operating Partnership, no claims have been asserted by any person to the use of any such trademarks or trade names or challenging or questioning the validity or effectiveness of any such trademark or trade name. The use, in connection with the business and operations of the Operating Partnership, the Company and the Subsidiaries, of such trademarks and trade names does not, to the Company's or the Operating Partnership's knowledge, infringe on the rights of any person;

(cc) Each of the Operating Partnership, the Company and the Subsidiaries has filed all federal, state, local and foreign income tax returns which have been required to be filed (except in any case in which the failure to so file would not result in a Material Adverse Effect) and has paid all taxes required to be paid and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing would otherwise be delinquent, except, in all cases, for any such tax, assessment, fine or penalty that is being contested in good faith and except in any case in which the failure to so pay would not result in a Material Adverse Effect;

(dd) The Operating Partnership and each of the Partnership Subsidiaries is properly treated as a partnership for U.S. federal income tax purposes and not as a "publicly traded partnership" taxable as a corporation for U.S. federal income tax purposes;

(ee) No relationship, direct or indirect, exists between or among the Company, the Operating Partnership or the Subsidiaries on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company, the Operating Partnership or the Subsidiaries on the other hand, which is required by the Securities Act to be described in the Registration Statement and the Prospectus which is not so described in such documents and in the Applicable Time Information;

(ff) The Company has not taken and will not take, directly or indirectly, any action designed to, or that might be reasonably expected to, cause or result in stabilization or manipulation of the price of the Securities, and the Company and the Operating Partnership have not distributed and have

agreed not to distribute any prospectus or other offering material in connection with the offering and sale of the Securities other than the Prospectus, any preliminary prospectus filed with the Commission or other material permitted by the Securities Act (which were disclosed to you and your counsel);

(gg) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets, financial and corporate books and records is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(hh) Any certificate or other document signed by any officer or authorized representative of the Operating Partnership, the Company or any Subsidiary, and delivered to the Underwriters or to counsel for the Underwriters in connection with the sale of the Securities shall be deemed a representation and warranty by such entity or person, as the case may be, to each Underwriters as to the matters covered thereby;

(ii) The Securities will have an investment grade rating from one or more nationally recognized statistical rating organizations as specified in Schedule III hereto;

(jj) The Registration Statement has been declared effective by the Commission under the Securities Act; no stop order suspending the effectiveness of the Registration Statement or any part thereof has been issued and no proceeding for that purpose has been instituted, or to the knowledge of the Company or the Operating Partnership, threatened by the Commission or by the state securities authority of any jurisdiction. No order preventing or suspending the use of the Prospectus or any preliminary prospectus has been issued and no proceeding for that purpose has been instituted or, to the knowledge of the Company, threatened by the Commission or by the state securities authority of any jurisdiction.

(kk) Except for contracts, agreements or understandings entered into in connection with the transfer of properties or other assets to the Operating Partnership, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to include any Common Stock of the Company owned or to be owned by such person in the offering contemplated by this Agreement.

(ll) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 under the Exchange Act), which (i) are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to each of the Company's principal executive officer and principal financial officer by others within those entities, particularly during the period which the Company's quarterly report on Form 10-Q for the quarter ended June 30, 2006 was prepared; (ii) have been evaluated for effectiveness as of the date of the filing of the Prospectus Supplement with the Commission; and (iii) are effective in all material respects to perform the functions for which they were established, except where a failure to be so effective will not have a Material Adverse Effect.

(mm) Based on its evaluation of its internal controls over financial reporting at December 31, 2005, the Company, the Operating Partnership and their subsidiaries are not aware of (i) any significant deficiency or material weakness in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; or (ii) any fraud, whether or not material, that

involves management or other employees who have a significant role in the Company's internal control over financial reporting. Since the date of the most recent evaluation of such disclosure controls and procedures, there have been no changes in internal controls over financial reporting of the Company, the Operating Partnership or their subsidiaries or in other factors that has materially affected, or is reasonably likely to materially affect, the Company, the Operating Partnership or their subsidiaries' internal control over financial reporting.

(nn) There is and has been no failure on the part of the Operating Partnership or any of the Operating Partnership's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes Oxley Act"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

7. The Company and the Operating Partnership, jointly and severally, agree to indemnify and hold harmless the Underwriters and each person, if any, who controls any Underwriters within the meaning of either Section 15 of the Securities Act or Section 20(a) of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including without limitation the legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, each Statutory Prospectus, the Prospectus, any Issuer Free Writing Prospectus (as amended or supplemented if the Company or the Operating Partnership shall have furnished any amendments or supplements thereto) or any preliminary prospectus, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to any Underwriters furnished to the Company or the Operating Partnership in writing by such Underwriters through you expressly for use therein.

Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company and the Operating Partnership, and the Company's and the Operating Partnership's officers and directors and each person who controls the Company or the Operating Partnership within the meaning of Section 15 of the Securities Act and Section 20(a) of the Exchange Act, to the same extent as the foregoing indemnity from the Company and the Operating Partnership to such Underwriter, but only with reference to information relating to each Underwriters furnished to the Company and the Operating Partnership in writing by such Underwriters through you expressly for use in the Registration Statement, each Statutory Prospectus, the Prospectus, any Issuer Free Writing Prospectus, any amendment or supplement thereto. For purposes of this Section 7 and Sections 8(b), (f) and (g) the only written information furnished by the Underwriters to the Company expressly for use in the Registration Statement and the Prospectus Supplement is the information in the third (last two sentences only), fifth and eighth paragraphs under the caption "Underwriting."

If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnity may be sought pursuant to either of the two preceding paragraphs, such person (the "Indemnified Person") shall promptly notify the person against whom such indemnity may be sought (the "Indemnifying Person") in writing, and the Indemnifying Person, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually

agreed to the contrary, (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person or (iii) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for the Underwriters and such control persons of the Underwriters shall be designated in writing by the Representatives and any such separate firm for the Company, the Operating Partnership, their directors, their officers and such control persons of the Company and the Operating Partnership or authorized representatives shall be designated in writing by the Company or the Operating Partnership. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. If it is ultimately determined that an Indemnified Person was not entitled to indemnification hereunder, such Indemnified Person shall be responsible for repaying or reimbursing the Indemnifying Person for any amounts so paid or incurred by such Indemnifying Person pursuant to this paragraph. No Indemnifying Person shall, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement (i) includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or behalf of an Indemnified Person. In no event shall any Indemnified Person have any liability or responsibility in respect of the settlement or compromise of, or consent to the entry of any judgment with respect to any pending or threatened action or claim effected without its prior written consent.

If the indemnification provided for in the first and second paragraphs of this Section 7 is unavailable or insufficient to hold harmless an Indemnified Person in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (a) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Operating Partnership on the one hand and the Underwriters on the other hand from the offering of the Securities or (b) if the allocation provided by clause (a) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (a) above but also the relative fault of the Company and the Operating Partnership on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Operating Partnership on the one hand and the Underwriters on the other shall be deemed to be in the same respective proportions as the net proceeds from the offering of such Securities (before deducting expenses) received by the Company and the Operating Partnership and the total underwriting discounts and the commissions received by the Underwriters bear to the aggregate public offering price of the Securities. The relative fault of the Company and the Operating Partnership on the one hand and the Underwriters on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and the Operating Partnership on the one hand or by the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.



The Company, the Operating Partnership and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 7 are several in proportion to the respective principal amounts of Securities set forth opposite their names in Schedule I hereto, and not joint.

The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

The indemnity and contribution agreements contained in this Section 7 and the representations, warranties and covenants of the Company and the Operating Partnership set forth in this Agreement shall remain operative and in full force and effect regardless of (a) any termination of this Agreement, (b) any investigation made by or on behalf of any Underwriters or any person controlling any Underwriters or by or on behalf of the Company, its officers or directors or any other person controlling the Company or the Operating Partnership and (c) acceptance of and payment for any of the Securities.

8. The several obligations of the Underwriters hereunder shall be subject to the performance by the Company and the Operating Partnership of their respective obligations hereunder and to satisfaction of each of the following conditions:

(a) the Registration Statement, including any Rule 462(b) Registration Statement, shall have become effective under the Securities Act; the Statutory Prospectus and each Issuer Free Writing Prospectus shall have been filed with the Commission pursuant to Rule 424(b) (in the case of such Issuer Free Writing Prospectus, to the extent required under Rule 433 of the Securities Act) within the applicable time period prescribed for such filing by such Rule; no stop order suspending the effectiveness of the Registration Statement or the Statutory Prospectus shall be in effect, and no proceedings for such purpose shall have been commenced or shall be pending before or threatened by the Commission to the knowledge, after due inquiry, of the Company or the Operating Partnership; no stop order suspending the effectiveness of the Registration Statement or the Statutory Prospectus shall be in effect and no proceedings for such purpose shall have been commenced or shall be pending before or threatened by the state securities authority of any jurisdiction, to the knowledge of the Company or the Operating Partnership; and all requests for additional information on the part of the Commission shall have been complied with to your satisfaction;

(b) all the representations and warranties of the Company and the Operating Partnership contained in this Agreement shall be true and correct on the Closing Date, with the same force and effect as if made on and as of the Closing Date, and each of the Company and the Operating Partnership shall have complied with all agreements and all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date;

(c) subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have occurred any downgrading, nor shall any notice have been given of (i) any intended or potential downgrading or (ii) any review or possible change that does not indicate an improvement, in the rating accorded any securities of or guaranteed by the Company or the Operating Partnership by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act;

(d) since the respective dates as of which information is given in the Registration Statement and the Prospectus there shall not have been any material change in the capital stock, partners' equity or long-term debt of the Company, the Operating Partnership or any of the Subsidiaries on a consolidated basis, except as described or contemplated in the Prospectus, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, business, prospects, management, properties, financial position, stockholders' equity, partners' equity or results of operations of the Company, the Operating Partnership and the Subsidiaries, taken as a whole, otherwise than as set forth or contemplated in the Prospectus, the effect of which in the judgment of Representatives makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities on the terms and in the manner contemplated in the Prospectus; and other than as set forth in the Prospectus, no proceedings shall be pending or, to the knowledge of the Company or the Operating Partnership, after due inquiry, threatened against the Operating Partnership or the Company or any Property before or by any federal, state or other commission, board or administrative agency, where an unfavorable decision, ruling or finding could reasonably be expected to result in a Material Adverse Effect;

(e) you shall have received on and as of the Closing Date a certificate signed by the Chief Executive Officer of the Company and the Chief Financial Officer of the Company, in their capacities as officers of the Company, on behalf of the Company for itself and as general partner of the Operating Partnership, satisfactory to you to the effect set forth in subsections (a) through (d) of this Section 8(e);

(f) you shall have received on the Closing Date, an opinion or opinions (satisfactory to you and counsel for the Underwriters), dated the Closing Date, of Cahill Gordon & Reindel llp, counsel for the Company and the Operating Partnership, to the effect that:

(i) The Company is duly qualified or registered as a foreign corporation to transact business and is in good standing in each jurisdiction listed on Schedule IV hereto.

(ii) The Operating Partnership and each of the Partnership Subsidiaries has been duly formed and is validly existing as a limited partnership in good standing under the laws of its state of organization. The Operating Partnership and each of the Partnership Subsidiaries has all requisite partnership power and authority to own, lease and operate its properties and other assets and to conduct the business in which it is engaged and proposes to engage, in each case, as described in the Prospectus, and the Operating Partnership has the partnership power to enter into and perform its obligations under this Agreement. The Operating Partnership is duly qualified or registered as a foreign partnership and is in good standing in each jurisdiction listed on Schedule IV hereto.

(iii) To the knowledge of such counsel, other than shares reserved for issuance pursuant to the Company's Shareholder Rights Plan, no shares of preferred stock of the Company are reserved for any purpose. To the knowledge of such counsel,

there are no outstanding securities convertible into or exchangeable for any preferred stock of the Company and no outstanding options, rights (preemptive or otherwise) or warrants to purchase or to subscribe for Depositary Shares or preferred stock of the Company. To the knowledge of such counsel, all of the outstanding partnership interests of the Operating Partnership and each of the Partnership Subsidiaries have been duly authorized, validly issued and fully paid and, except for partnership interests not owned by the Company, are owned directly or indirectly by the Company or the Operating Partnership.

(iv) To the knowledge of such counsel, none of the Company, the Operating Partnership or the Subsidiaries is in violation of or default under its charter, bylaws, certificate of limited partnership or partnership agreement, as the case may be, and none of such entities is in default in the performance or observance of any obligation, agreement, covenant or condition contained in any document (as in effect on the date of such opinion) listed as an exhibit to the Registration Statement, the Company's and the Operating Partnership's Annual Report on Form 10-K for the year ended December 31, 2005 or the Company's and the Operating Partnership's Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2006, in each case as amended, if applicable, to which such entity is a party or by which such entity may be bound, or to which any of the property or assets of such entity may be subject or by which they may be bound (it being understood that (i) such counsel need express no opinion with respect to matters relating to any contract, indenture, mortgage, loan agreement, note lease, joint venture or partnership agreement or other instrument or agreement relating to the acquisition, transfer, operation, maintenance, management or financing of any property or assets of such entity or any other Property and (ii) such counsel may assume compliance with the financial covenants contained in any such document), except in each case for violations or defaults which in the aggregate are not reasonably expected to have a Material Adverse Effect.

(v) This Agreement was duly and validly authorized, executed and delivered by each of the Company and the Operating Partnership and the Deposit Agreement is duly and validly authorized executed and delivered by the Company.

(vi) The Registration Statement has been declared effective under the Securities Act, the Prospectus was filed with the Commission pursuant to Rule 424, within the applicable time period prescribed by Rule 424, and, to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement or the Prospectus has been issued and no proceeding for that purpose is pending or threatened by the Commission.

(vii) The execution and delivery of this Agreement, the Series K Articles Supplementary and the Deposit Agreement, the issuance and sale of the Depositary Shares, the performance by the Company and the Operating Partnership of their respective obligations under the Depositary Shares, this Agreement and the Deposit Agreement to the extent they are a party thereto, and the consummation of the transactions herein and therein contemplated will not require, to such counsel's knowledge, any consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental body (except such as may be required under the Securities Act and the state securities, Blue Sky or real estate syndication laws in connection with the purchase and distribution of the Depositary Shares by the Underwriters) and did not and do not conflict with or constitute a breach or violation of

or default under: (1) any document (as in effect as of the date of such opinion) listed as an exhibit to the Registration Statement, each of the Company's and the Operating Partnership's Annual Report on Form 10-K for the year ended December 31, 2005 or Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2006, in each case as amended, if applicable, to which any such entity is a party or by which it or any of them or any of their respective properties or other assets may be bound or subject and of which such counsel is aware (it being understood that (i) such counsel need express no opinion with respect to matters relating to any contract, indenture, mortgage, loan agreement, note lease, joint venture or partnership agreement or other instrument or agreement relating to the acquisition, transfer, operation, maintenance, management or financing of any property or assets of such entity or any other Property and (ii) such counsel may assume compliance with the financial covenants contained in any such document); (2) the certificate of limited partnership or partnership agreement, as the case may be, of the Operating Partnership, Securities, L.P. and the Financing Partnership or the articles of incorporation or bylaws, as the case may be, of the Company, FIFC or FISC; or (3) any applicable law, rule or administrative regulation, except in each case for conflicts, breaches, violations or defaults that in the aggregate are not reasonably expected to have a Material Adverse Effect.

(viii) To the knowledge of such counsel, no Material authorization, approval, consent or order of any court or governmental authority or agency or any other entity is required in connection with the offering, issuance or sale of the Depositary Shares hereunder, except such as may be required under the Securities Act, the by-laws, corporate financing rules and the conflict of interest rules of the NASD, or state securities, Blue Sky or real estate syndication laws, or such as have been received prior to the date of such opinion.

(ix) The Registration Statement, at the time it became effective, and the Prospectus, as of the date of the Prospectus Supplement (in each case, other than the financial statements, including the notes and schedules thereto, and other financial and statistical data that is found in or derived from the internal accounting records of the Company and its Subsidiaries set forth in or incorporated by reference therein or the information under the caption "Notice to Canadian Residents" in the Prospectus Supplement, as to which no opinion need be rendered), complied as to form in all material respects with the requirements of the Securities Act and the Exchange Act.

(x) Each of the Underwriters is receiving good, valid and marketable title to the Depositary Shares, free and clear of all security interests, mortgages, pledges, liens, encumbrances, claims and equities if such Underwriter acquires such Depositary Shares in good faith and without notice of any such security interests, mortgages, pledges, liens, encumbrances, claims or equities.

(xi) The information in the Prospectus Supplement under "Description of Series K Preferred Shares and Depositary Shares" and "Certain U.S. Federal Income Tax Considerations," and in the Prospectus under "Risk Factors," "Description of Preferred Stock," "Description of Depositary Shares," "Restrictions on Transfer of Capital Stock" and "Certain U.S. Federal Income Tax Considerations" (as modified by the information in the Prospectus Supplement), to the extent that it constitutes statements of law, descriptions of statutes, rules or regulations, or summaries of documents or legal conclusions, has been reviewed by us and is correct in all material respects and presents fairly the information required to be disclosed therein.

(xii) To such counsel's knowledge, there is no document or contract of a character required to be described or referred to in the Registration Statement and the Prospectus by the Securities Act other than those described or referred to therein, and the descriptions thereof or references thereto are accurate in all material respects; and to such counsel's knowledge, there is no document or contract of a character required to be filed as an exhibit to the Registration Statement which is not filed as required.

(xiii) The partnership agreement of each of the Operating Partnership, Securities, L.P. and the Financing Partnership has been duly authorized, validly executed and delivered by each of the Company and the Partnership Subsidiaries, to the extent they are parties thereto, and is valid, legally binding and enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(xiv) The Company and the Operating Partnership satisfied all conditions and requirements for filing the Registration Statement on Form S-3 under the Securities Act.

(xv) None of the Company or the Subsidiaries is required to be registered as an investment company under the Investment Company Act of 1940, as amended.

(xvi) Commencing with the Company's taxable year ended December 31, 1994, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and the Company's current and proposed method of operation (as represented by the Company to us in a written certificate) will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code.

In addition, Cahill Gordon & Reindel llp shall state, in a separate letter, that they have participated in conferences with officers and other representatives of the Company and the Operating Partnership, representatives of the independent registered public accounting firm for the Company and representatives of the Underwriters at which the contents of the Registration Statement, the Applicable Time Information and the Prospectus and related matters were discussed. On the basis thereof, (relying to the extent such counsel deems appropriate upon the opinions of officers and other representatives of the Company as to the materiality to the Company of the matters discussed) but without independent verification by such counsel of, and without passing upon or assuming any responsibility for, the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Applicable Time Information or the Prospectus or any amendments or supplements thereto, no facts have come to the attention of such counsel that lead them to believe that (i) the Registration Statement, including the documents incorporated therein by reference, at the time the Registration Statement became effective, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading, (ii) the Prospectus, as of its date or as of the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or (iii) the Applicable Time Information, as of the Applicable Time, contained any untrue statement of a material fact or omitted to state material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that such counsel need express no comment with respect to the financial statements, including the notes and schedules thereto, or any other financial or statistical data that is found in or derived from the internal accounting records of the

Company or the Operating Partnership, in each case as set forth in or incorporated by reference into the Registration Statement, the Prospectus, the Applicable Time Information or the information under the caption “Notice to Canadian Residents”).

In giving its opinion, such counsel may rely (i) as to all matters of fact, upon representations, statements or certificates of public officials and statements of officers, directors, partners, employees and representatives of and accountants for each of the Company and its Subsidiaries, (ii) as to matters of Maryland law, on the opinion of McGuireWoods LLP, Baltimore, Maryland, (iii) as to matters of Illinois law, on the opinion of Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLP, Chicago, Illinois, and (iv) as to the good standing and qualification of the Company and the Operating Partnership to do business in any state or jurisdiction, upon certificates of appropriate government officials and letters from Corporation Service Company, copies of which have been furnished to you.

(g) You shall have received on the Closing Date, an opinion (satisfactory to you and counsel for the Underwriters), dated as of the Closing Date, of McGuireWoods LLP, special Maryland counsel for the Company, to the effect that:

(i) Each of the Company and the Corporate Subsidiaries has been duly incorporated and is validly existing as a corporation in good standing under the laws of its respective jurisdiction of incorporation.

(ii) Each of the Company and the Corporate Subsidiaries has corporate power and authority to own, lease and operate its properties and other assets and to conduct the business in which it is engaged or proposes to engage, in each case, as described in the Prospectus, and the Company has the corporate power and authority to enter into and perform its obligations under this Agreement and the Deposit Agreement.

(iii) The Company's authorized capitalization consists of 10,000,000 shares of preferred stock, par value \$.01 per share, 100,000,000 shares of common stock, par value \$.01 per share and 65,000,000 shares of excess stock, par value \$.01 per share. All of the issued and outstanding shares of capital stock of the Company have been duly authorized and are validly issued, fully paid and non-assessable. All the issued and outstanding shares of capital stock of the Corporate Subsidiaries have been duly authorized and are validly issued, fully paid and non-assessable and are owned by the Company.

(iv) Each of the Securities has been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement and the Deposit Agreement, when validly issued and delivered pursuant to this Agreement against payment of the Purchase Price, will be duly authorized, validly issued, fully paid and non-assessable. To the extent Maryland law provides the basis for determination, each of the Underwriters is receiving good, valid and marketable title to the Securities, free and clear of all security interests, mortgages, pledges, liens, encumbrances, claims and equities if the Underwriters acquire such Securities in good faith and without notice of any such security interests, mortgages, pledges, liens, encumbrances, claims or equities. The terms of the Securities conform in all material respects to all statements and descriptions related thereto contained in the Registration Statement, the Series K Articles Supplementary and the Prospectus. The form of depositary receipts used to evidence the Securities are in due and proper form and comply in all material respects with all applicable legal requirements. The issuance of the Securities is not subject to any preemptive or other similar rights arising under Maryland General Corporation Law, the Company's charter or by-laws, as amended to date, or any agreement of which such counsel is aware.

(v) Each of this Agreement, the Series K Articles Supplementary and the Deposit Agreement was duly and validly authorized by the Company, on behalf of itself and the Operating Partnership.

(vi) The execution and delivery of this Agreement, the Series K Articles Supplementary and the Deposit Agreement, the performance of the obligations and the consummation of the transaction set forth herein and therein by the Company will not require, to the knowledge of such counsel, any consent, approval, authorization or other order of any Maryland court, regulatory body, administrative agency or other governmental body (except as such may be required under the Securities Act or other securities or blue sky or real estate syndication laws) and did not and do not conflict with or constitute a breach or violation of or default under: (A) the charter or by-laws, as the case may be, of the Company; and (B) any applicable Maryland law, rule or administrative regulation or any order or administrative or court decree of which such counsel is aware, except in the case of clause (B) above for conflicts, breaches, violations or defaults that in the aggregate would not have a Material Adverse Effect.

(vii) To the knowledge of such counsel, no Material authorization, approval, consent or order of any Maryland court, governmental authority, agency or other entity is required in connection with the offering, issuance or sale of the Securities hereunder, except such as may be required under Maryland securities, blue sky or real estate syndication laws.

(viii) The information in the Prospectus under "Certain Provisions of Maryland Law and First Industrial Realty Trust, Inc.'s Articles of Incorporation and Bylaws" and "Restrictions on Transfers of Capital Stock", and "Description of Preferred Stock" and in Part II of the Registration Statement under Item 15, to the extent that it constitutes statements of law, descriptions of statutes, rules or regulations, summaries of documents or legal conclusions, has been reviewed by such counsel and, as to Maryland law, is correct in all material respects and presents fairly the information required to be disclosed therein.

(ix) The Company and each of the Corporate Subsidiaries was authorized to enter into the partnership agreement of each Partnership Subsidiary for which the Company, the Operating Partnership or such Corporate Subsidiary, as the case may be, is the general partner.

(h) You shall have received on the Closing Date, an opinion (satisfactory to you and counsel for the Underwriters), dated as of the Closing Date, of Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLP, special Illinois counsel for the Company, to the effect that:

(i) To the knowledge of such counsel, none of the Company or the Operating Partnership, FIMC, the Mortgage Partnership, FIPC or FIP is in violation of, or default in connection with the performance or observance of any obligation, agreement, covenant or condition contained in any or all of that certain Fourth Amended Restated Unsecured Revolving Credit Facility, dated as of August 23, 2005, among the Operating Partnership, as Borrower, the Company, as Guarantor and General Partner, JPMorgan Chase Bank, N.A., and certain other banks as lenders, J.P. Morgan Securities Inc., as Lead Arranger and Sole Book Runner, Wachovia Bank, National Association, as Syndication Agent, Commerzbank AG, PNC Bank, National Association and Wells Fargo Bank, N.A., as Documentation Agents, and AmSouth Bank, The Bank of New

York, The Bank of Nova Scotia, Bank of Montreal and SunTrust Bank as Co-Agents (all such indebtedness collectively, the "Credit Documents"), except in each case for defaults that, in the aggregate, are not reasonably expected to have a Material Adverse Effect.

(ii) The execution and delivery of this Agreement, the performance of the obligations and consummation of transactions set forth herein and therein by the Company and the Operating Partnership did not and do not conflict with, or constitute a breach or violation of, or default under: (A) any or all of the Credit Documents; (B) any applicable law, rule or administrative regulation of the federal government (or agency thereof) of the United States; or (C) any order or administrative or court decree issued to or against, or concerning any or all of the Company, the Operating Partnership, the Partnership Subsidiaries and the Corporate Subsidiaries, of which, in the cases of clauses (B) and (C) above, such counsel is aware, except in each case for conflicts, breaches, violations or defaults that, in the aggregate, would not have a Material Adverse Effect.

(iii) To the knowledge of such counsel, there are no legal or governmental proceedings pending or threatened against the Company, the Operating Partnership, the Partnership Subsidiaries, the Corporate Subsidiaries or the Additional Subsidiaries that do, or are likely to, have a Material Adverse Effect.

(iv) The information in the Company's Annual Report on Form 10-K for the year ending December 31, 2005 filed with the Commission under Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Year Ended December 31, 2005" to the extent that it constitutes statements of law, descriptions of statutes, summaries of principal financing terms of Credit Documents or legal conclusions, has been reviewed by such counsel and is correct in all material respects and presents fairly the information disclosed therein.

(i) On the date hereof, the Accountants shall have furnished to the Underwriters a letter, dated the date of its delivery, addressed to the Underwriters and in form and substance satisfactory to the Underwriters (and to its counsel), confirming that they are independent registered public accountants with respect to the Company, the Operating Partnership and the Subsidiaries as required by the Securities Act and with respect to the financial and other statistical and numerical information contained in the Registration Statement and the Prospectus and containing statements and information of the type ordinarily included in accountants' "comfort letters" as set forth in the AICPA's Statement on Auditing Standards 72. At the Closing Date, the Accountants shall have furnished to the Underwriters a letter, dated the date of its delivery, which shall confirm, on the basis of a review in accordance with the procedures set forth in the letter from it, that nothing has come to its attention during the period from the date of the letter referred to in the prior sentence to a date (specified in the letter) not more than five days prior to the Closing Date, which would require any change in its letter dated the date hereof if it were required to be dated and delivered at the Closing Date.

(j) You shall have received on the Closing Date an opinion, dated as of the Closing Date, of Clifford Chance US LLP ("CC"), counsel for the Underwriters, as to the matters referred to in clauses (ii) (with respect to the Operating Partnership and the first sentence only), (v), (vi), (ix) and (x) of Section 8(f), and to clause (i) (with respect to the Company only) of Section 8(g) and, in addition, CC shall make statements similar to those contained in the second paragraph following Section 8(f)(xvi) hereto and shall be entitled to rely on those persons described in the third paragraph following Section 8(f)(xvi) hereto with respect to the matters described therein.



In giving its opinion, such counsel may rely (A) as to matters of Maryland law, on the opinion of McGuireWoods LLP, Baltimore, Maryland, which opinion shall be in form and substance reasonably satisfactory to counsel for the Underwriters and (B) as to the good standing and qualification of the Company, the Corporate Subsidiaries and the Partnership Subsidiaries to do business in any state or jurisdiction, upon certificates of appropriate governmental officials or opinions of counsel in such jurisdictions.

(k) At the Closing Date, the Securities shall have the ratings accorded by any “nationally recognized statistical organization,” as defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act if and as specified in Schedule III hereto, and the Company shall have delivered to the Underwriters a letter, dated as of such date, from each such rating organization, or other evidence satisfactory to the Underwriters, confirming that the Securities have such ratings. Since the date hereof, there shall not have occurred a downgrading in the rating assigned to the Securities or any of the Company's securities or the Operating Partnership's other securities by any such rating organization, and no such rating organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of the Securities or any of the Company's other securities or the Operating Partnership's securities.

(l) If the Registration Statement or an offering of Securities has been filed with the NASD for review, the NASD shall not have raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

(m) The Company and its Subsidiaries shall not have failed at or prior to the Closing Date to perform or comply with any of the agreements pursuant to Section 4 herein contained or required to be performed or complied with by the Company at or prior to the Closing Date.

(n) At the Closing Date, the Deposit Agreement shall have been duly and validly authorized, executed and delivered by each of the Company and the Operating Partnership, to the extent they are a party thereto.

(o) The Depositary Shares shall be approved for listing on the New York Stock Exchange, Inc.

(p) At the Closing Date, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Securities, as herein contemplated and related proceedings, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Operating Partnership and the Company in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Underwriters and counsel for the Underwriters.

Except to the extent the text of such is as set forth herein, the opinions and certificates mentioned in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in all material respects satisfactory to you and to CC, counsel for the Underwriters.

9. Notwithstanding anything herein contained, this Agreement may be terminated in your absolute discretion by notice given to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (a) the Company and the Operating Partnership shall have failed, refused or been unable, at or prior to the Closing Date, to perform any agreements on its part to be performed hereunder, (b) any other conditions to the Underwriters' obligations hereunder are not fulfilled, (c) trading generally shall have been suspended or materially limited on or by, as the case may be, any of the New

York Stock Exchange, the American Stock Exchange, the NASD, the Chicago Board Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (d) trading of any securities of or guaranteed by the Company and the Operating Partnership shall have been suspended on any exchange or in any over-the-counter market, (e) a general moratorium on commercial banking activities in New York shall have been declared by either Federal or New York State authorities; (f) there shall have occurred any major disruption of settlements of securities or clearance services in the United States; or (g) there shall have occurred any outbreak or escalation of hostilities or act of terrorism involving the United States or any change in financial markets or any calamity or crisis that, in the judgment of the Representatives is material and adverse and which, in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the offer, sale or delivery of the Securities on the terms and in the manner contemplated, by this Agreement, the Applicable Time Information, and the Prospectus.

10. If, on the Closing Date, any one or more of the Underwriters shall fail or refuse to purchase Securities which it or they have agreed to purchase under this Agreement, and the number of Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the number of the Securities to be sold on the Closing Date, the other Underwriters shall be obligated severally in the proportions that the amount of Securities set forth opposite their respective names in Schedule I hereto bears to the number of Securities set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as the non-defaulting Underwriters may specify, provided that, such Securities of the defaulting Underwriters are purchased, to purchase the Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; provided that in no event shall the principal amount of Securities that any Underwriter has agreed to purchase pursuant to Section 10 be increased pursuant to this Section 10 by an amount in excess of one-ninth of such principal amount of Securities without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Securities, and the number of Securities with respect to which such default occurs is more than one-tenth of the number of Securities to be purchased, and arrangements satisfactory to the Underwriters and the Company for the purchase of such Securities are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriters or the Company. In any such case either you or the Company and the Operating Partnership shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement and in the Prospectus or in any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriters from liability in respect of any default of such Underwriters under this Agreement.

11. If this Agreement shall be terminated by the Underwriters, or any of them, because of any failure or refusal on the part of the Company and the Operating Partnership to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company and the Operating Partnership shall be unable to perform their obligations under this Agreement or any condition of the Underwriters' obligations cannot be fulfilled, the Company and the Operating Partnership agree to reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and expenses of their counsel) reasonably incurred by the Underwriters in connection with this Agreement or the offering of Securities contemplated hereunder, and the Company and the Operating Partnership shall then be under no further liability to any Underwriters pursuant to this Agreement except as provided in Sections 4(i) and 7 of this Agreement.

12. In the event of termination of this Agreement, the provisions of Sections 4(i) and 7 remain operative and in full force and effect.

13. This Agreement shall inure to the benefit of and be legally binding upon the Company, the Operating Partnership, the Underwriters, any controlling persons referred to herein and their respective successors and assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person, firm or corporation any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. No purchaser of Securities from any Underwriters shall be deemed to be a successor by reason merely of such purchase.

14. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be given to the Underwriters, c/o Wachovia Capital Markets LLC at One Wachovia Center, 301 South College Street, Charlotte, North Carolina 28288 hereto, with a copy to Clifford Chance US LLP, 31 West 52<sup>nd</sup> Street, New York, New York 10019, Attention: Larry P. Medvinsky, Esq. Notices to the Company shall be given to it at First Industrial Realty Trust, Inc., 311 South Wacker Drive, Suite 4000, Chicago, Illinois, 60606, Attention: John H. Clayton, Esq., with a copy to Cahill Gordon & Reindel llp, 80 Pine Street, New York, New York, 10005, Attention: Gerald S. Tanenbaum, Esq.

15. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:

(a) The Underwriters have been retained solely to act as underwriters in connection with the sale of the Company's securities and that no fiduciary, advisory or agency relationship between the Company and the Underwriters has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Underwriters have advised or is advising the Company on other matters;

(b) the price of the securities set forth in this Agreement was established by the Company following discussions and arms-length negotiations with the Underwriters, and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) it has been advised that the Underwriters and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of Company and that the Underwriters have no obligation to disclose such interests and transactions to Company by virtue of any fiduciary, advisory or agency relationship; and

(d) it waives, to the fullest extent permitted by law, any claims it may have against the Underwriters for breach of fiduciary duty or alleged breach of fiduciary duty in respect of the transactions contemplated by this Agreement and agrees that the Underwriters shall have no liability (whether direct or indirect) to Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

16. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflicts of laws provisions thereof.

[Signatures begin on following page.]

Very truly yours,

FIRST INDUSTRIAL REALTY TRUST, INC.

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

FIRST INDUSTRIAL, L.P.

By: First Industrial Realty Trust, Inc., as its sole  
general partner

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

Accepted: August 16, 2006  
WACHOVIA CAPITAL MARKETS, LLC  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED  
As representatives of the several Underwriters

By: WACHOVIA CAPITAL MARKETS, LLC

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

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<u>Underwriters</u>	<u>Number of Depositary Shares to be Purchased</u>
Wachovia Capital Markets, LLC	600,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	600,000
Credit Suisse Securities (USA) LLC	300,000
J.P. Morgan Securities Inc.	300,000
BB&T Capital Markets, a Division of Scott & Stringfellow, Inc.	100,000
Raymond James & Associates, Inc.	100,000

Term Sheet dated August 16, 2006

Underwriters:	Wachovia Capital Markets, LLC Merrill Lynch, Pierce, Fenner & Smith Incorporated Credit Suisse Securities (USA) LLC J.P. Morgan Securities Inc. BB&T Capital Markets, a Division of Scott & Stringfellow, Inc. Raymond James & Associates Inc.
Underwriting Agreement dated:	August 16, 2006
Registration Statement No.:	333 - 117842
Title of Securities	Depository Shares Each Representing 1/10,000 of a Share of 7.25 % Series K Cumulative Redeemable Preferred Stock
Aggregate Number of Shares:	2,000,000 shares
Price to Public:	\$25.0000
Purchase Price:	\$24.2125
Significant Provisions	As set forth in the Prospectus
Ratings:	Moody's Investors Service : "Baa3"  Standard & Poor's "BBB-"
Closing Date and Time of Delivery:	The Closing will be held at 9:00 a.m. (New York City time) on August 21, 2006, with the Securities being delivered through the book-entry facilities of The Depository Trust Company and made available for review by DTC at least 24 hours prior to the First Closing Date
Closing Location:	Clifford Chance US LLP 31 West 52nd Street New York, NY 10019

JURISDICTIONS OF FOREIGN QUALIFICATION OF THE COMPANY  
AND THE OPERATING PARTNERSHIP

<u>ENTITY:</u>	<u>JURISDICTION</u>
First Industrial Realty Trust, Inc.	California Florida Georgia Illinois Indiana Michigan Minnesota New Jersey New York North Carolina Oregon Utah
First Industrial, L.P.	Arizona California Colorado Connecticut Florida Georgia Illinois Indiana Iowa Kansas Kentucky Louisiana Maryland Michigan Minnesota Missouri New Jersey New York North Carolina Ohio Oregon Pennsylvania Tennessee Texas Utah Virginia Wisconsin





**FIRST INDUSTRIAL, L.P.**  
**ELEVENTH AMENDED AND RESTATED**  
**LIMITED PARTNERSHIP AGREEMENT**

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS PURSUANT TO A REGISTRATION OR EXEMPTION THEREFROM.

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**FIRST INDUSTRIAL, L.P.**

**ELEVENTH AMENDED AND RESTATED**

**LIMITED PARTNERSHIP AGREEMENT**

The undersigned, being the sole general partner of First Industrial, L.P. (the "Partnership"), a limited partnership formed under the Delaware Revised Uniform Limited Partnership Act, does hereby amend and restate the Tenth Amended and Restated Partnership Agreement (as described below) this 21<sup>st</sup> day of August, 2006 as follows:

**R E C I T A L S:**

**A.**The Partnership was formed pursuant to a Certificate of Limited Partnership filed on November 23, 1993 with the Secretary of State of the State of Delaware under the name "ProVest, L.P." and a Limited Partnership Agreement dated November 23, 1993 (the "Original Partnership Agreement").

**B.**The Original Partnership Agreement was amended and restated as of January 28, 1994 (such amended and restated partnership agreement, the "Prior Partnership Agreement").

**C.**A Second Amended and Restated Limited Partnership Agreement was executed as of June 30, 1994, a Third Amended and Restated Partnership Agreement was executed as of May 14, 1997, a Fourth Amended and Restated Partnership Agreement was executed as of June 6, 1997, a Fifth Amended and Restated Partnership Agreement was executed as of February 4, 1998, a Sixth Amended and Restated Partnership Agreement was executed as of March 18, 1998, a Seventh Amended and Restated Partnership Agreement was executed as of May 26, 2004, an Eighth Amended and Restated Partnership Agreement was executed as of June 2, 2004, a Ninth Amended and Restated Partnership Agreement was executed as of November 8, 2005, a Tenth Amended and Restated Limited Partnership Agreement was executed as of January 13, 2006 (the "Tenth Partnership Agreement").

**D.**The General Partner desires to amend and restate the Tenth Partnership Agreement to (i) reflect the interests granted to the Class K Limited Partner (as hereinafter defined) and (ii) set forth the understandings and agreements, including certain rights and obligations, among the Partners (as hereinafter defined) with respect to the Partnership.

**ARTICLE I - INTERPRETIVE PROVISIONS**

**Section 1.1 Certain Definitions.** The following terms have the definitions hereinafter indicated whenever used in this Agreement with initial capital letters:

**Act:** The Delaware Revised Uniform Limited Partnership Act, Sections 17-101 to 17-1109 of the Delaware Code Annotated, Title 6, as amended from time to time.

**Additional Limited Partner:** A Person admitted to the Partnership as a Limited Partner in accordance with Section 8.7 hereof and who is shown as such on the books and records of the Partnership.

**Adjusted Capital Account:** With respect to any Partner, such Partner's Capital Account maintained in accordance with Section 4.4 hereof, as of the end of the relevant Fiscal Year of the Partnership, after giving effect to the following adjustments:

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(A) Credit to such Capital Account such Partner's share of Partnership Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(g)(1) and such Partner's share of Partner Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(i)(5).

(B) Debit to such Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of "Adjusted Capital Account" is intended to comply with the provisions of Treasury Regulations Sections 1.704-1(b)(2)(ii) and 1.704-2 and shall be interpreted consistently therewith.

**Adjusted Capital Account Deficit:** With respect to any Partner, the deficit balance, if any, in that Partner's Adjusted Capital Account as of the end of the relevant Fiscal Year of the Partnership.

**Affiliate:** With respect to any referenced Person, (i) a member of such Person's immediate family; (ii) any Person who directly or indirectly owns, controls or holds the power to vote ten percent (10%) or more of the outstanding voting securities of the Person in question; (iii) any Person ten percent (10%) or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the Person in question; (iv) any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with the Person in question; (v) if the Person in question is a corporation, any executive officer or director of such Person or of any corporation directly or indirectly controlling such Person; and (vi) if the Person in question is a partnership, any general partner of the partnership or any limited partner owning or controlling ten percent (10%) or more of either the capital or profits interest in such partnership. As used herein, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

**Aggregate Protected Amount:** With respect to the Contributor Partners, as a group, the aggregate balances of the Protected Amounts, if any, of the Contributor Partners, as determined on the date in question.

**Agreed Value:** In the case of any (i) Contributed Property acquired pursuant to a Contribution Agreement, the value of such Contributed Property as set forth in such Contribution Agreement or, if no such value is set forth for such Contributed Property, the portion of the consideration provided for under such Contribution Agreement allocable to such Contributed Property, as determined by the General Partner in its reasonable discretion, (ii) Contributed Property acquired other than pursuant to a Contribution Agreement, the fair market value of such property at the time of contribution, as determined by the General Partner using such method of valuation as it may adopt in its reasonable discretion and (iii) property distributed to a Partner by the Partnership, the Partnership's Book Value of such property at the time such property is distributed without taking into account, in the case of each of (i), (ii) and (iii), the amount of any related indebtedness assumed by the Partnership (or the Partner in the case of clause (iii)) or to which the Contributed Property (or distributed property in the case of clause (iii)) is taken subject.

**Agreement:** This Eleventh Amended and Restated Limited Partnership Agreement and all Exhibits attached hereto, as the same may be amended or restated and in effect from time to time.

**Assignee:** Any Person to whom one or more Partnership Units have been Transferred as permitted under this Agreement but who has not become a Substituted Limited Partner in accordance with the provisions hereof.

**Bankruptcy:** Either (i) a referenced Person's making an assignment for the benefit of creditors, (ii) the filing by a referenced Person of a voluntary petition in bankruptcy, (iii) a referenced Person's being adjudged insolvent or having entered against him an order for relief in any bankruptcy or insolvency proceeding, (iv) the filing by a referenced Person of an answer seeking any reorganization, composition, readjustment, liquidation, dissolution, or similar relief under any law or regulation, (v) the filing by a referenced Person of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of

reorganization, composition, readjustment, liquidation, dissolution, or for similar relief under any statute, law or regulation or (vi) a referenced Person's seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator for all or substantially all of his property (or court appointment of such trustee, receiver or liquidator).

**Book-Tax Disparity:** With respect to any item of Contributed Property, or property the Book Value of which has been adjusted in accordance with Section 4.4(D), as of the date of determination, the difference between the Book Value of such property and the adjusted basis of such property for federal income tax purposes.

**Book Value:** With respect to any Contributed Property, the Agreed Value of such property reduced (but not below zero) by all Depreciation with respect to such property properly charged to the Partners' Capital Accounts, and with respect to any other asset, the asset's adjusted basis for federal income tax purposes; *provided, however*, (a) the Book Value of all Partnership Assets shall be adjusted in the event of a revaluation of Partnership Assets in accordance with Section 4.4(D) hereof, (b) the Book Value of any Partnership Asset distributed to any Partner shall be the fair market value of such asset on the date of distribution as determined by the General Partner and (c) such Book Value shall be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**Capital Account:** The account maintained by the Partnership for each Partner described in Section 4.4 hereof.

**Capital Contribution:** The total amount of cash or cash equivalents and the Agreed Value (reduced to take into account the amount of any related indebtedness assumed by the Partnership, or to which the Contributed Property is subject) of Contributed Property which a Partner contributes or is deemed to contribute to the Partnership pursuant to the terms of this Agreement.

**Cash Payment:** The payment to a Redeeming Party of a cash amount determined by multiplying (i) the number of Partnership Units tendered for redemption by such Redeeming Party pursuant to a validly proffered Redemption Notice by (ii) the Unit Value on the date the Redemption Notice is received by the General Partner.

**Certificate:** The Partnership's Certificate of Limited Partnership filed in the office of the Secretary of State of the State of Delaware, as amended from time to time.

**Class C Deemed Original Issue Date:** (i) In the case of any Class C Unit which is part of the first issuance of such units or part of a subsequent issuance of such units prior to October 1, 1997, the date of such first issuance and (ii) in the case of any such unit which is part of a subsequent issuance of such units on or after October 1, 1997, the later of (x) October 1, 1997 and (y) the last Class C Distribution Period Commencement Date which precedes the date of issuance of such unit and which succeeds the last Class C Distribution Period for which full cumulative Class C Priority Return Amounts have been paid; *provided, however*, that, in the case of any such unit which is part of a subsequent issuance on or after October 1, 1997, the date of issuance of which falls between (a) the record date for dividends payable on the Series C Preferred Shares on the first succeeding dividend payment date on such stock and (b) such dividend payment date, the "Class C Deemed Original Issue Date" means the date of the Class C Distribution Period Commencement Date that immediately follows the date of issuance of such unit.

**Class C Distribution Period:** The Class C Initial Distribution Period and each quarterly distribution period thereafter, commencing on January 1, April 1, July 1 and October 1 of each year and ending on and including the day preceding the next Class C Distribution Period Commencement Date.

**Class C Distribution Period Commencement Date:** January 1, April 1, July 1 and October 1 of each year commencing October 1, 1997.



**Class C Initial Distribution Period:** The period from the Class C Deemed Original Issue Date for a Class C Unit to, but excluding, October 1, 1997.

**Class C Limited Partner:** First Industrial Realty Trust, Inc., a Maryland corporation, in its capacity as a limited partner in the Partnership holding Class C Units.

**Class C Priority Return Amount:** With respect to each Class C Unit, (i) for the Class C Initial Distribution Period, the pro rata portion of the amount referred to in clause (ii) of this definition, computed in accordance with the last sentence of Section 5.3(A) hereof, and (ii) for each Class C Distribution Period thereafter, an amount equal to 2.15625% of that portion of the Capital Contribution of the Class C Limited Partner allocable to each such unit. Class C Priority Return Amounts on each Class C Unit that are not distributed as provided in Section 5.3(A) shall be cumulative from the Class C Deemed Original Issue Date of such unit.

**Class C Redemption:** As defined in Section 9.1(C) hereof.

**Class C Redemption Price:** As defined in Section 9.1(C) hereof.

**Class C Unit:** The Partnership Interest held by the Class C Limited Partner, each full Class C Unit representing a \$2,500 Capital Contribution.

**Class F Distribution Date:** Each dividend payment date for the Series F Preferred Shares.

**Class F Limited Partner:** First Industrial Realty Trust, Inc., a Maryland corporation, in its capacity as a limited partner in the Partnership holding Class F Units.

**Class F Priority Return Amount:** With respect to each Class F Unit, that portion of the Capital Contribution of the Class F Limited Partner, allocable to each such unit, multiplied by the Dividend Rate in effect for the Series F Preferred Shares, in each case during the period with respect to which the Class F Priority Return Amount is to be determined.

**Class F Redemption:** As defined in Section 9.1(D) hereof.

**Class F Redemption Price:** As defined in Section 9.1(D) hereof.

**Class F Unit:** The Partnership Interest held by the Class F Limited Partner, each full Class F Unit representing a \$100,000 Capital Contribution.

**Class G Distribution Date:** Each dividend payment date for the Series G Preferred Shares.

**Class G Limited Partner:** First Industrial Realty Trust, Inc., a Maryland corporation, in its capacity as a limited partner in the Partnership holding Class G Units.

**Class G Priority Return Amount:** With respect to each Class G Unit, that portion of the Capital Contribution of the Class G Limited Partner, allocable to each such unit, multiplied by the Dividend Rate in effect for the Series G Preferred Shares, in each case during the period with respect to which the Class G Priority Return Amount is to be determined.

**Class G Redemption:** As defined in Section 9.1(E) hereof.

**Class G Redemption Price:** As defined in Section 9.1(E) hereof.

**Class G Unit:** The Partnership Interest held by the Class G Limited Partner, each full Class G Unit representing a \$100,000 Capital Contribution.

**Class I Distribution Date:** Each dividend payment date for the Series I Preferred Shares.

**Class I Limited Partner:** First Industrial Realty Trust, Inc., a Maryland corporation, in its capacity as a limited partner in the Partnership holding Class I Units.

**Class I Priority Return Amount:** With respect to each Class I Unit, that portion of the Capital Contribution of the Class I Limited Partner, allocable to each such unit, multiplied by the Dividend Rate in effect for the Series I Preferred Shares, in each case during the period with respect to which the Class I Priority Return Amount is to be determined.

**Class I Redemption:** As defined in Section 9.1(F) hereof.

**Class I Redemption Price:** As defined in Section 9.1(F) hereof.

**Class I Unit:** The Partnership Interest held by the Class I Limited Partner, each full Class I Unit representing a \$250,000 Capital Contribution.

**Class J Distribution Date:** Each dividend payment date for the Series J Preferred Shares.

**Class J Limited Partner:** First Industrial Realty Trust, Inc., a Maryland corporation, in its capacity as a limited partner in the Partnership holding Class J Units.

**Class J Priority Return Amount:** With respect to each Class J Unit, that portion of the Capital Contribution of the Class J Limited Partner, allocable to each such unit, multiplied by the Dividend Rate in effect for the Series J Preferred Shares, in each case during the period with respect to which the Class J Priority Return Amount is to be determined.

**Class J Redemption:** As defined in Section 9.1(G) hereof.

**Class J Redemption Price:** As defined in Section 9.1(G) hereof.

**Class J Unit:** The Partnership Interest held by the Class J Limited Partner, each full Class J Unit representing a \$250,000 Capital Contribution.

**Class K Distribution Date:** Each dividend payment date for the Series K Preferred Shares.

**Class K Limited Partner:** First Industrial Realty Trust, Inc., a Maryland corporation, in its capacity as a limited partner in the Partnership holding Class K Units.

**Class K Priority Return Amount:** With respect to each Class K Unit, that portion of the Capital Contribution of the Class K Limited Partner, allocable to each such unit, multiplied by the Dividend Rate in effect for the Series K Preferred Shares, in each case during the period with respect to which the Class K Priority Return Amount is to be determined.

**Class K Redemption:** As defined in Section 9.1(G) hereof.

**Class K Redemption Price:** As defined in Section 9.1(G) hereof.

**Class K Unit:** The Partnership Interest held by the Class K Limited Partner, each full Class K Unit representing a \$250,000 Capital Contribution.

**Code:** The Internal Revenue Code of 1986, as amended from time to time.

**Consent:** Either the written consent of a Person or the affirmative vote of such Person at a meeting duly called and held pursuant to this Agreement, as the case may be, to do the act or thing for which the consent is required or solicited, or the act of granting such consent, as the context may require.

**Contributed Property:** Each property or other asset (excluding cash and cash equivalents) contributed or deemed contributed to the Partnership.

**Contribution Agreements:** Those certain agreements among one or more of the Initial Limited Partners (or Persons in which such Initial Limited Partners have direct or indirect interests) and the Partnership pursuant to which, *inter alia*, the Initial Limited Partners (or such Persons), directly or indirectly, are contributing property to the Partnership on the Effective Date in exchange for Partnership Units.

**Contributor Partner(s):** That or those Limited Partner(s) listed as Contributor Partner(s) on Exhibit 1D attached hereto and made a part hereof, as such Exhibit may be amended from time to time by the General Partner, whether by express amendment to this Partnership Agreement or by execution of a written instrument by and between any additional Contributor Partner(s) being affected thereby and the General Partner, acting on behalf of the Partnership and without the prior consent of the Limited Partners (whether or not Contributor Partners other than the Contributor Partner(s) being affected thereby). For purposes hereof, any successor, assignee, or transferee of the Interest of a Contributor Partner (other than the Partnership in connection with a redemption pursuant to Article IX hereof) shall be considered a Contributor Partner for purposes hereof.

**Conversion Factor:** The factor applied for converting Partnership Units to REIT Shares, which shall initially be 1.0; *provided, however*, in the event that the REIT (i) declares or pays a dividend on its outstanding REIT Shares in REIT Shares or makes a distribution to all holders of its outstanding REIT Shares in REIT Shares, (ii) subdivides its outstanding REIT Shares or (iii) combines its outstanding REIT Shares into a smaller number of REIT Shares, the Conversion Factor shall be adjusted by multiplying the Conversion Factor by a fraction, the numerator of which shall be the number of REIT Shares issued and outstanding on the record date (assuming for such purposes that such dividend, distribution, subdivision or combination has occurred as of such time), and the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on the record date for such dividend, distribution, subdivision or combination; *provided, further*, in the event that the Partnership (a) declares or pays a distribution on the outstanding Partnership Units in Partnership Units or makes a distribution to all Partners in Partnership Units, (b) subdivides the outstanding Partnership Units or (c) combines the outstanding Partnership Units into a smaller number of Partnership Units, the Conversion Factor shall be adjusted by multiplying the Conversion Factor by a fraction, the numerator of which shall be the actual number of Partnership Units issued and outstanding on the record date (determined without giving effect to such dividend, distribution, subdivision or combination), and the denominator of which shall be the actual number of Partnership Units (determined after giving effect to such dividend, distribution, subdivision or combination) issued and outstanding on such record date. Any adjustment to the Conversion Factor shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

**Depreciation:** For each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be adjusted as necessary so as to be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to the beginning adjusted tax basis; *provided, however*, that if the federal income tax

depreciation, amortization or other cost recovery deduction for such year or other period is zero, Depreciation for such year or other period shall be determined with reference to such beginning Book Value using any reasonable method approved by the General Partner.

**Distributable Cash:** With respect to any period, and without duplication:

(i) all cash receipts of the Partnership during such period from all sources;

(ii) less all cash disbursements of the Partnership during such period, including, without limitation, disbursements for operating expenses, taxes, debt service (including, without limitation, the payment of principal, premium and interest), redemption of Partnership Interests and capital expenditures;

(iii) less amounts added to reserves in the sole discretion of the General Partner, plus amounts withdrawn from reserves in the reasonable discretion of the General Partner.

**Effective Date:** June 30, 1994.

**ERISA:** The Employee Retirement Income Security Act of 1976, as amended from time to time.

**First Highland Limited Partners:** Those Limited Partners identified on Exhibit 1A hereto.

**First Highland Properties:** Those certain properties acquired by the Partnership pursuant to that certain Contribution Agreement, dated as of March 19, 1996.

**First Highland Units:** The Partnership Units issued to the First Highland Limited Partners in connection with the acquisition of the First Highland Properties by the Partnership.

**Fiscal Year:** The calendar year or in the event of a termination of the Partnership pursuant to Code Section 708, an appropriate portion of such year.

**General Partner:** First Industrial Realty Trust, Inc., a Maryland corporation, and its respective successor(s) who or which become Successor General Partner(s) in accordance with the terms of this Agreement.

**General Partner Interest:** A Partnership Interest held by the General Partner including both its General Partner and Limited Partner Interests. A General Partner Interest may be expressed as a number of Partnership Units.

**Involuntary Withdrawal:** As to any (i) individual shall mean such individual's death, incapacity or adjudication of incompetence, (ii) corporation shall mean its dissolution or revocation of its charter (unless such revocation is promptly corrected upon notice thereof), (iii) partnership shall mean the dissolution and commencement of winding up of its affairs, (iv) trust shall mean the termination of the trust (but not the substitution of trustees), (v) estate shall mean the distribution by the fiduciary of the estate's complete interest in the Partnership and (vi) any Partner shall mean the Bankruptcy of such Partner.

**IRS:** The Internal Revenue Service, which administers the internal revenue laws of the United States.

**LB Closing Date:** January 31, 1997.

**LB Partners:** The persons identified on Exhibit 1C hereto, following their admission to the Partnership as Additional Limited Partners.

**LB Units:** The Partnership Units issued to the LB Partners in connection with the acquisition by the Partnership of certain properties on the LB Closing Date.

**Limited Partner:** Those Persons listed as such on Exhibit 1B attached hereto and made a part hereof, as such Exhibit may be amended from time to time, including any Person who becomes a Substituted Limited Partner or an Additional Limited Partner in accordance with the terms of this Agreement; *provided* such term shall not include the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner or the Class K Limited Partner.

**Limited Partner Interest:** A Partnership Interest held by a Limited Partner that is a limited partner interest. A Limited Partner Interest may be expressed as a number of Partnership Units.

**Nonrecourse Liability:** A liability as defined in Treasury Regulations Section 1.704-2(b)(3).

**Notice:** A writing containing the information required by this Agreement to be communicated to a Person and delivered to such Person in accordance with Section 12.4; *provided, however*, that any written communication containing such information actually received by such Person shall constitute Notice for all purposes of this Agreement.

**Partner Minimum Gain:** The gain (regardless of character) which would be realized by the Partnership if property of the Partnership subject to a partner nonrecourse debt (as such term is defined in Treasury Regulations Section 1.704-2(b)(4)) were disposed of in full satisfaction of such debt on the relevant date. The adjusted basis of property subject to more than one partner nonrecourse debt shall be allocated in a manner consistent with the allocation of basis for purposes of determining Partnership Minimum Gain hereunder. Partner Minimum Gain shall be computed hereunder using the Book Value, rather than the adjusted tax basis, of the Partnership property in accordance with Treasury Regulations Section 1.704-2(d)(3).

**Partner Nonrecourse Deductions:** With respect to any partner nonrecourse debt (as such term is defined in Treasury Regulations Section 1.704-2(b)(4)), the increase in Partner Minimum Gain during the tax year plus any increase in Partner Minimum Gain for a prior tax year which has not previously generated a Partner Nonrecourse Deduction hereunder. The determination of which Partnership items constitute Partner Nonrecourse Deductions shall be made in a manner consistent with the manner in which Partnership Nonrecourse Deductions are determined hereunder.

**Partners:** The General Partner, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner and the Limited Partners as a group. The term "Partner" shall mean a General Partner, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner, the Class K Limited Partner or a Limited Partner. Such terms shall be deemed to include such other Persons who become Partners pursuant to the terms of this Agreement.

**Partnership:** The Delaware limited partnership referred to herein as First Industrial, L.P., as such partnership may from time to time be constituted.

**Partnership Assets:** At any particular time, any assets or property (tangible or intangible, choate or inchoate, fixed or contingent) owned by the Partnership.

**Partnership Interest or Interest:** As to any Partner, such Partner's ownership interest in the Partnership and including such Partner's right to distributions under this Agreement and any other rights or benefits which such Partner has in the Partnership, together with any and all obligations of such Person to comply with the terms and provisions of this Agreement. A Partnership Interest may be expressed as a number of Partnership Units.

**Partnership Minimum Gain:** The aggregate gain (regardless of character) which would be realized by the Partnership if all of the property of the Partnership subject to nonrecourse debt (other than partner nonrecourse debt as such term is defined in Treasury Regulations Section 1.704-2(b)(4)) were disposed of in full satisfaction of such debt and for no other consideration on the relevant date. In the case of any Nonrecourse Liability of the Partnership which is not secured by a mortgage with respect to any specific property of the Partnership, any and all property of the Partnership to which the holder of said liability has recourse shall be treated as subject to such Nonrecourse Liability for purposes of the preceding sentence. Partnership Minimum Gain shall be computed separately for each Nonrecourse Liability of the Partnership. For this purpose, the adjusted basis of property subject to two or more liabilities of equal priority shall be allocated among such liabilities in proportion to the outstanding balance of such liabilities, and the adjusted basis of property subject to two or more liabilities of unequal priority shall be allocated to the liability of inferior priority only to the extent of the excess, if any, of the adjusted basis of such property over the outstanding balance of the liability of superior priority. Partnership Minimum Gain shall be computed hereunder using the Book Value, rather than the adjusted tax basis, of the Partnership property in accordance with Treasury Regulations Section 1.704-2(d)(3).

**Partnership Nonrecourse Deductions:** The amount of Partnership deductions equal to the increase, if any, in the amount of the aggregate Partnership Minimum Gain during the tax year (plus any increase in Partnership Minimum Gain for a prior tax year which has not previously generated a Partnership Nonrecourse Deduction) reduced (but not below zero) by the aggregate distributions made during the tax year of the proceeds of a Nonrecourse Liability of the Partnership which are attributable to an increase in Partnership Minimum Gain within the meaning of Treasury Regulations Section 1.704-2(d). The Partnership Nonrecourse Deductions for a Partnership tax year shall consist first of depreciation or cost recovery deductions with respect to each property of the Partnership giving rise to such increase in Partnership Minimum Gain on a pro rata basis to the extent of each such increase, with any excess made up pro rata of all items of deduction.

**Partnership Unit:** A fractional, undivided share of the Partnership Interests of all Partners (other than the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner and the Class K Limited Partner) issued pursuant to Section 4.1 hereof.

**Percentage Interest:** As to any Partner, the percentage in the Partnership, as determined by dividing the Partnership Units then owned by such Partner by the total number of Partnership Units then outstanding, as the same may be automatically adjusted from time to time to reflect the issuance and redemption of Partnership Units in accordance with this Agreement, without requiring the amendment of Exhibit 1B to reflect any such issuance or redemption.

**Person:** Any individual, partnership, corporation, trust or other entity.

**Profits and Losses:** For each Fiscal Year or other period, an amount equal to the Partnership's taxable income or loss (as the case may be) for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

a. Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

b. Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition, shall be subtracted from such taxable income or loss;

c. Gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of notwithstanding that the adjusted tax basis of such property differs from such Book Value;

d. In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with the definition of "Depreciation" herein; and

e. In the event that any item of income, gain, loss or deduction that has been included in the initial computation of Profit or Loss is subject to the special allocation rules of Sections 5.2(C), 5.2(D) and 5.2(I) through 5.2(L), Profit or Loss shall be recomputed without regard to such item.

**Protected Amount:** With respect to any Contributor Partner, the amount set forth or otherwise described opposite the name of such Contributor Partner on Exhibit 1D attached hereto and made a part hereof, as such Exhibit may be modified from time to time by an amendment to the Partnership Agreement or by execution of a written instrument by and between the Contributor Partner being affected thereby and the General Partner, acting on behalf of the Partnership and without the prior written consent of the Limited Partners (whether or not Contributor Partners other than the Contributor Partner being affected thereby); *provided, however*, that no Contributor Partner shall be considered to have a Protected Amount from and following the first date upon which such Partner is no longer a Partner of the Partnership.

**Record Date:** The record date established by the General Partner for distributions pursuant to Section 5.3 hereof, which record date shall be the same as the record date established by the General Partner for a distribution to its stockholders of some or all of its portion of such distribution.

**Recourse Liabilities:** The amount of liabilities owed by the Partnership (other than nonrecourse liabilities and liabilities to which Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)).

**Redeeming Party:** A Limited Partner or Assignee (other than the General Partner) who tenders Partnership Units for redemption pursuant to a Redemption Notice.

**Redemption Date:** The date for redemption of Partnership Units as set forth in Section 9.2.

**Redemption Effective Date:** The first date on which a Redeeming Party may elect to redeem Partnership Units, which date shall be the later of (i) the first anniversary of the date such Partnership Units are issued and (ii) the effective date of any registration statement filed by the Partnership with respect to the REIT Shares to be issued upon redemption of Partnership Units by a Redeeming Party.

**Redemption Notice:** A Notice to the General Partner by a Redeeming Party, substantially in the form attached as Exhibit 2, pursuant to which the Redeeming Party requests the redemption of Partnership Units in accordance with Article IX.

**Redemption Obligation:** The obligation of the Partnership to redeem the Partnership Units as set forth in Section 9.1(A).

**Redemption Period:** The 45-day period immediately following the filing with the SEC by the General Partner of an annual report of the General Partner on Form 10-K or a quarterly report of the General Partner on Form 10-Q or such other period or periods as the General Partner may otherwise determine.

**Redemption Restriction:** A restriction on the ability of the Partnership to redeem the Partnership Units as set forth in Section 9.1(A).

**Registration Rights Agreement:** A Registration Rights Agreement, substantially in the form of Exhibit 3 hereto, pursuant to which First Industrial will agree to register under the Securities Act of 1933, as amended, REIT Shares issued in connection with Share Payments made under Article IX hereof.

**REIT:** A real estate investment trust, as defined in Code Section 856.

**REIT Charter:** The Articles of Incorporation of First Industrial filed with the Department of Assessments and Taxation of the State of Maryland on August 10, 1993, as the same may be amended or restated and in effect from time to time.

**REIT Share:** A share of common stock representing an ownership interest in the General Partner.

**REIT Share Rights:** Rights to acquire additional REIT Shares issued to all holders of REIT Shares, whether in the form of rights, options, warrants or convertible or exchangeable securities, to the extent the same have been issued without additional consideration after the initial acquisition of such REIT Shares.

**SEC:** The Securities and Exchange Commission.

**Series C Preferred Shares:** 8 5/8% Series C Cumulative Preferred Stock of First Industrial Realty Trust, Inc.

**Series F Preferred Shares:** Series F Flexible Cumulative Redeemable Preferred Stock of First Industrial Realty Trust, Inc.

**Series G Preferred Shares:** Series G Flexible Cumulative Redeemable Preferred Stock of First Industrial Realty Trust, Inc.

**Series I Preferred Shares:** Series I Flexible Cumulative Redeemable Preferred Stock of First Industrial Realty Trust, Inc.

**Series J Preferred Shares:** Series J Cumulative Redeemable Preferred Stock of First Industrial Realty Trust, Inc.

**Series K Preferred Shares:** Series K Cumulative Redeemable Preferred Stock of First Industrial Realty Trust, Inc.

**Share Payment:** The payment to a Redeeming Party of a number of REIT Shares determined by multiplying (i) the number of Partnership Units tendered for redemption by such Redeeming Party pursuant to a validly proffered Redemption Notice by (ii) the Conversion Factor. In the event the General Partner grants any REIT Share Rights prior to such payment, any Share Payment shall include for the Redeeming Party his ratable share of such REIT Share Rights other than REIT Share Rights which have expired.

**Subsidiary:** With respect to any Person, any corporation or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests is owned, directly or indirectly, by such Person.

**Substituted Limited Partner:** That Person or those Persons admitted to the Partnership as substitute Limited Partner(s), in accordance with the provisions of this Agreement. A Substituted Limited Partner, upon his



admission as such, shall succeed to the rights, privileges and liabilities of his predecessor in interest as a Limited Partner.

**Successor General Partner:** Any Person who is admitted to the Partnership as substitute General Partner pursuant to this Agreement. A Successor General Partner, upon its admission as such, shall succeed to the rights, privileges and liabilities of its predecessor in interest as General Partner, in accordance with the provisions of the Act.

**Tax Matters Partner:** The General Partner or such other Partner who becomes Tax Matters Partner pursuant to the terms of this Agreement.

**Terminating Capital Transaction:** The sale or other disposition of all or substantially all of the Partnership Assets or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the Partnership Assets.

**Threshold Percentage:** A percentage equal to 85% on the LB Closing Date and thereafter adjusted upwards (but not downwards) immediately prior to each solicitation of any vote of, or the seeking of any consent, approval or waiver from, the Limited Partners generally, to the sum of (i) 85% and (ii) the number of percentage points equal to the positive difference, if any, between (a) the aggregate Percentage Interest represented by the LB Units immediately following the LB Closing Date and (b) the aggregate Percentage Interest represented by the LP Units immediately prior to any such solicitation. For example, if on the LB Closing Date the LB Units represent a 10% aggregate Percentage Interest, and if immediately prior to a solicitation the Threshold Percentage is 85% and the aggregate Percentage Interest represented by the LB Units is 8%, the Threshold Percentage would be increased to 87% (85% + (10% - 8%)).

**Transfer:** With respect to any Partnership Unit shall mean a transaction in which a Partner assigns his Partnership Interest to another Person and includes any sale, assignment, gift, pledge, mortgage, exchange, hypothecation, encumbrance or other disposition by law or otherwise; *provided, however*, the redemption of any Partnership Interest pursuant to Article IX hereof shall not constitute a "Transfer" for purposes hereof.

**Transfer Restriction Date:** June 23, 1995.

**Treasury Regulations:** The Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

**Unit Value:** With respect to any Partnership Unit, the average of the daily market price for a REIT Share for the ten (10) consecutive trading days immediately preceding the date of receipt of a Redemption Notice by the General Partner multiplied by the Conversion Factor. If the REIT Shares are traded on a securities exchange or the NASDAQ-National Market System, the market price for each such trading day shall be the reported last sale price on such day or, if no sales take place on such day, the average of the closing bid and asked prices on such day. If the REIT Shares are not traded on a securities exchange or the NASDAQ-National Market System, the market price for each such trading day shall be determined by the General Partner using any reasonable method of valuation. If a Share Payment would include any REIT Share Rights, the value of such REIT Share Rights shall be determined by the General Partner using any reasonable method of valuation, taking into account the Unit Value determined hereunder and the factors used to make such determination and the value of such REIT Share Rights shall be included in the Unit Value.

**Voting Termination Date:** The first date after the LB Closing Date on which either (i) the General Partner holds 90% or more of all Partnership Units or (ii) the aggregate number of Partnership Units held by the General Partner and the LB Partners is less than the product of the Threshold Percentage and the total number of Partnership Units then outstanding.

**Section 1.2 Rules of Construction.** The following rules of construction shall apply to this Agreement:

(A) All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

(B) All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa, as the context may require.

(C) Each provision of this Agreement shall be considered severable from the rest, and if any provision of this Agreement or its application to any Person or circumstances shall be held invalid and contrary to any existing or future law or unenforceable to any extent, the remainder of this Agreement and the application of any other provision to any Person or circumstances shall not be affected thereby and shall be interpreted and enforced to the greatest extent permitted by law so as to give effect to the original intent of the parties hereto.

(D) Unless otherwise specifically and expressly limited in the context, any reference herein to a decision, determination, act, action, exercise of a right, power or privilege, or other procedure by the General Partner shall mean and refer to the decision, determination, act, action, exercise or other procedure by the General Partner in its sole and absolute discretion.

## ARTICLE II - CONTINUATION

**Section 2.1 Continuation.** The Partners hereby continue the Partnership as a limited partnership under the Act. The General Partner shall take all action required by law to perfect and maintain the Partnership as a limited partnership under the Act and under the laws of all other jurisdictions in which the Partnership may elect to conduct business, including but not limited to the filing of amendments to the Certificate with the Delaware Secretary of State, and qualification of the Partnership as a foreign limited partnership in the jurisdictions in which such qualification shall be required, as determined by the General Partner. The General Partner shall also promptly register the Partnership under applicable assumed or fictitious name statutes or similar laws.

**Section 2.2 Name.** The name of the Partnership is First Industrial, L.P. The General Partner may adopt such assumed or fictitious names as it deems appropriate in connection with the qualifications and registrations referred to in Section 2.1.

**Section 2.3 Place of Business; Registered Agent.** The principal office of the Partnership is located at 311 S. Wacker Drive, Suite 4000, Chicago, Illinois 60606, which office may be changed to such other place as the General Partner may from time to time designate. The Partnership may establish offices for the Partnership within or without the State of Delaware as may be determined by the General Partner. The initial registered agent for the Partnership in the State of Delaware is The Corporation Trust Company, whose address is c/o Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

## ARTICLE III - BUSINESS PURPOSE

**Section 3.1 Business.** The business of the Partnership shall be (i) conducting any business that may be lawfully conducted by a limited partnership pursuant to the Act including, without limitation, acquiring, owning,

managing, developing, leasing, marketing, operating and, if and when appropriate, selling, industrial properties, (ii) entering into any partnership, joint venture or other relationship to engage in any of the foregoing or the ownership of interests in any entity engaged in any of the foregoing, (iii) making loans, guarantees, indemnities or other financial accommodations and borrowing money and pledging its assets to secure the repayment thereof, (iv) to do any of the foregoing with respect to any Affiliate or Subsidiary and (v) doing anything necessary or incidental to the foregoing; *provided, however*, that business of the Partnership shall be limited so as to permit the General Partner to elect and maintain its status as a REIT (unless the General Partner determines no longer to qualify as a REIT).

**Section 3.2 Authorized Activities.** In carrying out the purposes of the Partnership, but subject to all other provisions of this Agreement, the Partnership is authorized to engage in any kind of lawful activity, and perform and carry out contracts of any kind, necessary or advisable in connection with the accomplishment of the purposes and business of the Partnership described herein and for the protection and benefit of the Partnership; *provided* that the General Partner shall not be obligated to cause the Partnership to take, or refraining from taking, any action which, in the judgment of the General Partner, (i) could adversely affect the ability of the General Partner to qualify and continue to qualify as a REIT, (ii) could subject the General Partner to additional taxes under Code Section 857 or 4981 or (iii) could violate any law or regulation of any governmental body or agency having jurisdiction over the General Partner or its securities.

#### ARTICLE IV - CAPITAL CONTRIBUTIONS

##### **Section 4.1 Capital Contributions.**

(A) Upon the contribution to the Partnership of property in accordance with a Contribution Agreement, Partnership Units shall be issued in accordance with, and as contemplated by, such Contribution Agreement, and the Persons receiving such Partnership Units shall become Partners and shall be deemed to have made a Capital Contribution as set forth on Exhibit 1. Exhibit 1 also sets forth the initial number of Partnership Units owned by each Partner and the Percentage Interest of each Partner, which Percentage Interest shall be adjusted from time to time by the General Partner to reflect the issuance of additional Partnership Units, the redemption of Partnership Units, additional Capital Contributions and similar events having an effect on a Partner's Percentage Interest. Except as set forth in Section 4.2 (regarding issuance of additional Partnership Units) or Section 7.6 (regarding withholding obligations), no Partner shall be required under any circumstances to contribute to the capital of the Partnership any amount beyond that sum required pursuant to this Article IV.

(B) Anything in the foregoing Section 4.1(A) or elsewhere in this Agreement notwithstanding, the Partnership Units held by the General Partner shall, at all times, be deemed to be General Partner units and shall constitute the General Partner Interest.

##### **Section 4.2 Additional Partnership Interests.**

(A) The Partnership may issue additional limited partnership interests in the form of Partnership Units for any Partnership purpose at any time or from time to time, to any Partner or other Person (other than the General Partner, except in accordance with Section 4.2(B) below).

(B) The Partnership also may from time to time issue to the General Partner additional Partnership Units or other Partnership Interests in such classes and having such designations, preferences and relative rights (including preferences and rights senior to the existing Limited Partner Interests) as shall be determined by the General Partner in accordance with the Act and governing law. Except as provided in Article IX, any such issuance of Partnership Units or Partnership Interests to the General Partner shall be conditioned upon (i) the undertaking by the General Partner of a related issuance of its capital stock (with such shares having

designations, rights and preferences such that the economic rights of the holders of such capital stock are substantially similar to the rights of the additional Partnership Interests issued to the General Partner) and the General Partner making a Capital Contribution (a) in an amount equal to the net proceeds raised in the issuance of such capital stock, in the event such capital stock is sold for cash or cash equivalents or (b) the property received in consideration for such capital stock, in the event such capital stock is issued in consideration for other property or (ii) the issuance by the General Partner of capital stock under any stock option or bonus plan and the General Partner making a Capital Contribution in an amount equal to the exercise price of the option exercised pursuant to such stock option or other bonus plan.

(C) Except as contemplated by Article IX (regarding redemptions) or Section 4.2(B), the General Partner shall not issue any (i) additional REIT Shares, (ii) rights, options or warrants containing the right to subscribe for or purchase REIT Shares or (iii) securities convertible or exchangeable into REIT Shares (collectively, "Additional REIT Securities") other than to all holders of REIT Shares, pro rata, unless (x) the Partnership issues to the General Partner (i) Partnership Interests, (ii) rights, options or warrants containing the right to subscribe for or purchase Partnership Interests or (iii) securities convertible or exchangeable into Partnership Interests such that the General Partner receives an economic interest in the Partnership substantially similar to the economic interest in the General Partner represented by the Additional REIT Securities and (y) the General Partner contributes to the Partnership the net proceeds from, or the property received in consideration for, the issuance of the Additional REIT Securities and the exercise of any rights contained in any Additional REIT Securities.

**Section 4.3 No Third Party Beneficiaries.** The foregoing provisions of this Article IV are not intended to be for the benefit of any creditor of the Partnership or other Person to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Partnership or any of the Partners and no such creditor or other Person shall obtain any right under any such foregoing provision against the Partnership or any of the Partners by reason of any debt, liability or obligation (or otherwise).

**Section 4.4 Capital Accounts.**

(A) The Partnership shall establish and maintain a separate Capital Account for each Partner in accordance with Code Section 704 and Treasury Regulations Section 1.704-1(b)(2)(iv). The Capital Account of each Partner shall be credited with:

- (1) the amount of all Capital Contributions made to the Partnership by such Partner in accordance with this Agreement; plus
- (2) all income and gain of the Partnership computed in accordance with this Section 4.4 and allocated to such Partner pursuant to Article V (including for purposes of this Section 4.4(A), income and gain exempt from tax);

and shall be debited with the sum of:

- (1) all losses or deductions of the Partnership computed in accordance with this Section 4.4 and allocated to such Partner pursuant to Article V,
- (2) such Partner's distributive share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and
- (3) all cash and the Agreed Value (reduced to take into account the amount of any related indebtedness assumed by the Partner, or to which the distributed property is subject) of any property actually distributed or deemed distributed by the Partnership to such Partner pursuant to the terms of this Agreement.

Any reference in any section or subsection of this Agreement to the Capital Account of a Partner shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time as set forth above.

(B) For purposes of computing the amount of any item of income, gain, deduction or loss to be reflected in the Partners' Capital Accounts, the determination, recognition and classification of each such item shall be the same as its determination, recognition and classification for federal income tax purposes, determined in accordance with Code Section 703(a) and accounting for those adjustments set forth in the definition of Profits and Losses, with the following additional adjustments:

(1) the computation of all items of income, gain, loss and deduction shall be made without regard to any Code Section 754 election that may be made by the Partnership, except to the extent required in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv)(m); and

(2) in the event the Book Value of any Partnership Asset is adjusted pursuant to Section 4.4(D) below, the amount of such adjustment shall be treated as gain or loss from the disposition of such asset.

(C) Any transferee of a Partnership Interest shall succeed to a *pro rata* portion of the transferor's Capital Account transferred.

(D) Consistent with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv)(f), (i) immediately prior to the acquisition of an additional Partnership Interest by any new or existing Partner in connection with the contribution of money or other property (other than a *de minimis* amount) to the Partnership, (ii) immediately prior to the distribution by the Partnership to a Partner of Partnership property (other than a *de minimis* amount) as consideration for a Partnership Interest, (iii) immediately prior to the liquidation of the Partnership as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(g) and (iv) immediately prior to any other event for which the Treasury Regulation Section 1.704-1(b)(2)(iv)(f) permits an adjustment to book value, the Book Value of all Partnership Assets shall be revalued upward or downward to reflect the fair market value of each such Partnership Asset as determined by the General Partner using such reasonable method of valuation as it may adopt.

(E) The foregoing provisions of this Section 4.4 are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Partners' Capital Accounts are computed hereunder in order to comply with such Treasury Regulations, the General Partner may make such modification if such modification is not likely to have a material effect on the amount distributable to any Partner under the terms of this Agreement and the General Partner notifies the other Partners in writing of such modification prior to making such modification.

**Section 4.5 Return of Capital Account; Interest.** Except as otherwise specifically provided in this Agreement, (i) no Partner shall have any right to withdraw or reduce its Capital Contributions or Capital Account, or to demand and receive property other than cash from the Partnership in return for its Capital Contributions or Capital Account; (ii) no Partner shall have any priority over any other Partners as to the return of its Capital Contributions or Capital Account; (iii) any return of Capital Contributions or Capital Accounts to the Partners shall be solely from the Partnership Assets, and no Partner shall be personally liable for any such return; and (iv) no interest shall be paid by the Partnership on Capital Contributions or on balances in Partners' Capital Accounts.

**Section 4.6 Preemptive Rights.** No Person shall have any preemptive or similar rights with respect to the issuance or sale of additional Partnership Units.

**Section 4.7 REIT Share Purchases.** If the General Partner acquires additional REIT Shares pursuant to Article IX of the REIT Charter, the Partnership shall purchase from the General Partner that number of

Partnership Units determined by applying the Conversion Multiple to the number of REIT Shares purchased by the General Partner at the same price and on the same terms as those upon which the General Partner purchased such REIT Shares.

## ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS

**Section 5.1 Limited Liability.** For bookkeeping purposes, the Profits of the Partnership shall be shared, and the Losses of the Partnership shall be borne, by the Partners as provided in Section 5.2 below; *provided, however*, that except as expressly provided in this Agreement, neither any Limited Partner (in its capacity as a Limited Partner), the Class C Limited Partner (in its capacity as Class C Limited Partner), the Class F Limited Partner (in its capacity as Class F Limited Partner), the Class G Limited Partner (in its capacity as Class G Limited Partner), the Class I Limited Partner (in its capacity as Class I Limited Partner), the Class J Limited Partner (in its capacity as Class J Limited Partner) nor the Class K Limited Partner (in its capacity as Class K Limited Partner) shall be personally liable for losses, costs, expenses, liabilities or obligations of the Partnership in excess of its Capital Contribution required under Article IV hereof.

### Section 5.2 Profits, Losses and Distributive Shares.

(A) **Profits.** After giving effect to the special allocations, if any, provided in Sections 5.2(C), (D), (I), (J), (K) and (L), Profits in each Fiscal Year shall be allocated in the following order:

(1) First, to the General Partner until the cumulative Profits allocated to the General Partner under this Section 5.2(A)(1), whether in the current or in any prior Fiscal Year equal the cumulative Losses allocated to such Partner under Section 5.2(B)(6), whether in the current or in any prior Fiscal Year;

(2) Second, to the Class C Limited Partner, Class F Limited Partner, Class G Limited Partner, Class I Limited Partner, Class J Limited Partner and Class K Limited Partner, in proportion to the cumulative Losses allocated to each such Partner under Section 5.2(B)(5), whether in the current or in any prior Fiscal Year until the cumulative Profits allocated to each such Partner under this Section 5.2(A)(2) equal the cumulative Losses allocated to each such Partner under Section 5.2(B)(5), whether in the current or in any prior Fiscal Year;

(3) Third, to each Partner in proportion to the cumulative Losses allocated to such Partner under Section 5.2(B)(4), whether in the current or in any prior Fiscal Year, until the cumulative Profits allocated to such Partner under this Section 5.2(A)(3) equal the cumulative Losses allocated to such Partner under Section 5.2(B)(4), whether in the current or in any prior Fiscal Year;

(4) Fourth, to the General Partner until the cumulative Profits allocated to the General Partner under this Section 5.2(A)(4), whether in the current or in any prior Fiscal Year equal the cumulative Losses allocated to such Partner under Section 5.2(B)(3), whether in the current or in any prior Fiscal Year;

(5) Fifth, to each Partner in proportion to the cumulative Losses allocated to such Partner under Section 5.2(B)(2), whether in the current or in any prior Fiscal Year, until the cumulative Profits allocated to such Partner under this Section 5.2(A)(5) equal the cumulative Losses allocated to such Partner under Section 5.2(B)(2), whether in the current or in any prior Fiscal Year;

(6) Sixth, to each Partner in proportion to the cumulative Losses allocated to such Partner under Section 5.2(B)(1), whether in the current or in any prior Fiscal Year, until the cumulative Profits

allocated to such Partner under this Section 5.2(A)(6) equal the cumulative Losses allocated to such Partner under Section 5.2(B)(1), whether in the current or in any prior Fiscal Year; and

(7) Then, the balance, if any, to the Partners in proportion to their respective Percentage Interests.

(B) **Losses.** After giving effect to the special allocations, if any, provided in Sections 5.2(C), (D), (I), (J), (K) and (L), Losses in each Fiscal Year shall be allocated in the following order of priority:

(1) First, to the Partners (other than the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner and the Class K Limited Partner), in proportion to their respective Percentage Interests, but not in excess of the positive Adjusted Capital Account balance of any Partner prior to the allocation provided for in this Section 5.2(B)(1);

(2) Second, to the Partners (other than the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner and the Class K Limited Partner) with positive Adjusted Capital Account balances prior to the allocation provided for in this Section 5.2(B)(2), in proportion to the amount of such balances until all such balances are reduced to zero;

(3) Third, to the General Partner until (i) the excess of (a) the cumulative Losses allocated under this Section 5.2(B)(3), whether in the current or in any prior Fiscal Year, over (b) the cumulative Profits allocated under Section 5.2(A)(4), whether in the current or in any prior Fiscal Year, equals (ii) the excess of (a) the amount of Recourse Liabilities over (b) the Aggregate Protected Amount;

(4) Fourth, to and among the Contributor Partners, in accordance with their respective Protected Amounts, until the excess of (a) the cumulative Losses allocated under this Section 5.2(B)(4), whether in the current or in any prior Fiscal Year, over (b) the cumulative Profits allocated under 5.2(A)(3), whether in the current or in any prior Fiscal Year, equals the Aggregate Protected Amount (as of the close of the Fiscal Year to which such allocation relates);

(5) Fifth, to the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner and the Class K Limited Partner, in accordance with their respective Adjusted Capital Accounts, until their Adjusted Capital Accounts are reduced to zero; and

(6) Thereafter, to the General Partner;

*provided, however*, (i) that, from and following the first Fiscal Year upon which a Contributor Partner is no longer a Partner of the Partnership, the provisions of this Section 5.2(B) shall be null, void and without further force and effect with respect to such Contributor Partner; (ii) that this Section 5.2(B) shall control, notwithstanding any reallocation or adjustment of taxable income, loss or other items by the Internal Revenue Service or any other taxing authority; *provided, however*, that neither the Partnership nor the General Partner (nor any of their respective affiliates) is required to indemnify any Contributor Partner (or its affiliates) for the loss of any tax benefit resulting from any reallocation or adjustment of taxable income, loss or other items by the Internal Revenue Service or other taxing authority; and (iii) that, during such period as there are Contributor Partners in the Partnership, the provisions of Section 5.2(B)(4) shall not be amended in a manner which adversely affects the Contributor Partners (without the consent of each Contributor Partner so affected).

(C) **Special Allocations.** Except as otherwise provided in this Agreement, the following special allocations will be made in the following order and priority:

(1) **Partnership Minimum Gain Chargeback.** Notwithstanding any other provision of this Article V, if there is a net decrease in Partnership Minimum Gain during any tax year or other period for which allocations are made, each Partner will be specially allocated items of Partnership income and gain for that tax year or other period (and, if necessary, subsequent periods) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain during such tax year or other period determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 5.2(C)(1) is intended to comply with the minimum gain chargeback requirements set forth in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith, including the exceptions to the minimum gain chargeback requirement set forth in Treasury Regulations Section 1.704-2(f) and (3). If the General Partner concludes, after consultation with tax counsel, that the Partnership meets the requirements for a waiver of the minimum gain chargeback requirement as set forth in Treasury Regulations Section 1.704-2(f)(4), the General Partner may take steps reasonably necessary or appropriate in order to obtain such waiver.

(2) **Partner Nonrecourse Debt Minimum Gain Chargeback.** Notwithstanding any other provision of this Section (other than Section 5.2(C)(1) which shall be applied before this Section 5.2(C)(2)), if there is a net decrease in Partner Minimum Gain during any tax year or other period for which allocations are made, each Partner with a share of Partner Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(i)(5) shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in an amount equal to such Partner's share of the net decrease in Partner Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(i)(4). The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii). This Section 5.2(C)(2) is intended to comply with the minimum gain chargeback requirements of Treasury Regulations Section and shall be interpreted consistently therewith, including the exceptions set forth in Treasury Regulations Section 1.704-2(f)(2) and (3) to the extent such exceptions apply to Treasury Regulations Sections 1.704-2(i)(4). If the General Partner concludes, after consultation with tax counsel, that the Partnership meets the requirements for a waiver of the Partner Minimum Gain chargeback requirement set forth in Treasury Regulation 1.704-2(f), but only to the extent such exception applies to Treasury Regulations Section 1.704-2(i)(4), the General Partner may take steps necessary or appropriate to obtain such waiver.

(3) **Qualified Income Offset.** A Partner who unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) will be specially allocated items of Partnership income and gain in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulations 1.704-1(b)(2)(ii)(d), the Adjusted Capital Account Deficit of the Partner as quickly as possible, *provided* that an allocation pursuant to this Section 5.2(C)(3) shall be made if and only to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Section 5.2(C)(3) were not contained in this Agreement.

(4) **Partnership Nonrecourse Deductions.** Partnership Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated among the Partners in proportion to their respective Percentage Interests.

(5) **Partner Nonrecourse Deductions.** Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the liability to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(6) **Code Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Partnership asset under Code Section 734(b) or 743(b) is required to be taken into account in determining Capital Accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or (4), the amount of the



adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset), and the gain or loss will be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted under Treasury Regulations Section 1.704-1(b)(2)(iv)(m).

(7) **Depreciation Recapture.** In the event there is any recapture of Depreciation or investment tax credit, the allocation thereof shall be made among the Partners in the same proportion as the deduction for such Depreciation or investment tax credit was allocated.

(8) **Interest in Partnership.** Notwithstanding any other provision of this Agreement, no allocation of Profit or Loss (or item of Profit or Loss) will be made to a Partner if the allocation would not have “economic effect” under Treasury Regulations Section 1.704-1(b)(2)(ii)(a) or otherwise would not be in accordance with the Partner’s interest in the Partnership within the meaning of Treasury Regulations Section 1.704-1(b)(3).

(D) **Curative Allocations.** The allocations set forth in Section 5.2(C)(1) through (8) (the “Regulatory Allocations”) are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may not be consistent with the manner in which the Partners intend to divide Partnership distributions. Accordingly, the General Partner is authorized to further allocate Profits, Losses, and other items among the Partners in a reasonable manner so as to prevent the Regulatory Allocations from distorting the manner in which Partnership distributions would be divided among the Partners under Section 5.3, but for application of the Regulatory Allocations. In general, the reallocation will be accomplished by specially allocating other Profits, Losses and items of income, gain, loss and deduction, to the extent they exist, among the Partners so that the net amount of the Regulatory Allocations and the special allocations to each Partner is zero. The General Partner may accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Treasury Regulations.

**(E) Tax Allocations.**

(1) Except as otherwise provided in Section 5.2(E)(2), each item of income, gain, loss and deduction shall be allocated for federal income tax purposes in the same manner as each correlative item of income, gain, loss or deduction, is allocated for book purposes pursuant to the provisions of Section 5.1 hereof.

(2) Notwithstanding anything to the contrary in this Article V, in an attempt to eliminate any Book-Tax Disparity with respect to a Contributed Property, items of income, gain, loss or deduction with respect to each such property shall be allocated for federal income tax purposes among the Partners as follows:

(a) *Depreciation, Amortization and Other Cost Recovery Items.* In the case of each Contributed Property with a Book-Tax Disparity, any item of depreciation, amortization or other cost recovery allowance attributable to such property shall be allocated as follows: (x) first, to Partners (the “Non-Contributing Partners”) other than the Partners who contributed such property to the Partnership (or are deemed to have contributed the property pursuant to Section 4.1(A)) (the “Contributing Partners”) in an amount up to the book allocation of such items made to the Non-Contributing Partners pursuant to Section 5.1 hereof, *pro rata* in proportion to the respective amount of book items so allocated to the Non-Contributing Partners pursuant to Section 5.1 hereof; and (y) any remaining depreciation, amortization or other cost recovery allowance to the Contributing Partners in proportion to their Percentage Interests. In no event shall the total depreciation, amortization or other cost recovery allowance allocated hereunder exceed the amount of the Partnership’s depreciation, amortization or other cost recovery allowance with respect to such property.

(b) *Gain or Loss on Disposition.* In the event the Partnership sells or otherwise disposes of a Contributed Property with a Book-Tax Disparity, any gain or loss recognized by the Partnership in connection with such sale or other disposition shall be allocated among the Partners as follows: (x) first, any gain or loss shall be allocated to the Contributing Partners in proportion to their Percentage Interests to the extent required to eliminate any Book-Tax Disparity with respect to such property; and (y) any remaining gain or loss shall be allocated among the Partners in the same manner that the correlative items of book gain or loss are allocated among the Partners pursuant to Section 5.1 hereof.

(3) In the event the Book Value of a Partnership Asset (including a Contributed Property) is adjusted pursuant to Section 4.4(D) hereof, all items of income, gain, loss or deduction in respect of such property shall be allocated for federal income tax purposes among the Partners in the same manner as provided in Section 5.2(E)(2) hereof to take into account any variation between the fair market value of the property, as determined by the General Partner using such reasonable method of valuation as it may adopt, and the Book Value of such property, both determined as of the date of such adjustment.

(4) The General Partner shall have the authority to elect alternative methods to eliminate the Book-Tax Disparity with respect to one or more Contributed Properties, as permitted by Treasury Regulations Sections 1.704-3 and 1.704-3T, and such election shall be binding on all of the Partners.

(5) The Partners hereby intend that the allocation of tax items pursuant to this Section 5.2(E) comply with the requirements of Code Section 704(c) and Treasury Regulations Sections 1.704-3 and 1.704-3T.

(6) The allocation of items of income, gain, loss or deduction pursuant to this Section 5.2(E) are solely for federal, state and local income tax purposes, and the Capital Account balances of the Partners shall be adjusted solely for allocations of "book" items in respect of Partnership Assets pursuant to Section 5.1 hereof.

(F) **Other Allocation Rules.** The following rules will apply to the calculation and allocation of Profits, Losses and other items:

(1) Except as otherwise provided in this Agreement, all Profits, Losses and other items allocated to the Partners will be allocated among them in proportion to their Percentage Interests.

(2) For purposes of determining the Profits, Losses or any other item allocable to any period, Profits, Losses and other items will be determined on a daily, monthly or other basis, as determined by the General Partner using any permissible method under Code Section 706 and the related Treasury Regulations.

(3) Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss and deduction, and other allocations not provided for in this Agreement will be divided among the Partners in the same proportions as they share Profits and Losses, *provided* that any credits shall be allocated in accordance with Treasury Regulations Section 1.704-1(b)(4)(ii).

(4) For purposes of Treasury Regulations Section 1.752-3(a), the Partners hereby agree that any Nonrecourse Liabilities of the Partnership in excess of the sum of (i) the Partnership Minimum Gain and (ii) the aggregate amount of taxable gain that would be allocated to the Partners under Section 704(c) (or in the same manner as Section 704(c) in connection with a revaluation of Partnership property) if the Partnership disposed of (in a taxable transaction) all Partnership property subject to one or more Nonrecourse Liabilities of the Partnership in full satisfaction of such Liabilities and for no other consideration, shall be allocated among the Partners in accordance with their respective Partnership Interests; *provided* that the General Partner shall have

discretion in any Fiscal Year to allocate such excess Nonrecourse Liabilities among the Partners (a) in a manner reasonably consistent with allocations (that have substantial economic effect) of some other significant item of Partnership income or gain or (b) in accordance with the manner in which it is reasonably expected that the deductions attributable to the excess Nonrecourse Liabilities will be allocated.

(G) **Partner Acknowledgment.** The Partners agree to be bound by the provisions of this Section 5.2 in reporting their shares of Partnership income, gain, loss, deduction and credit for income tax purposes.

(H) **Regulatory Compliance.** The foregoing provisions of this Section 5.2 relating to the allocation of Profits, Losses and other items for federal income tax purposes are intended to comply with Treasury Regulations Sections 1.704-1(b), 1.704-2, 1.704-3 and 1.704-3T and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

(I) **Class C Priority Allocation.** The holders of the Class C Units shall be allocated gross income such that, from the inception of the partnership through the end of the Fiscal Year to which the allocation relates, including the year of liquidation of the Partnership in accordance with Article X, the sum of all priority allocations pursuant to this Section 5.2(I) equals (or approaches as nearly as possible) the sum of all Class C Priority Return Amounts accrued through the end of the fiscal year to which the allocation relates.

(J) **Class F Priority Allocation.** The holders of Class F Units shall be allocated gross income such that, from the inception of the partnership through the end of the fiscal year to which the allocation relates, including the year of liquidation of the Partnership in accordance with Article X, the sum of all priority allocations pursuant to this Section 5.2(J) equals (or approaches as nearly as possible) the sum of all Class F Priority Return Amounts accrued through the end of the fiscal year to which the allocation relates.

(K) **Class G Priority Allocation.** The holders of Class G Units shall be allocated gross income such that, from the inception of the partnership through the end of the fiscal year to which the allocation relates, including the year of liquidation of the Partnership in accordance with Article X, the sum of all priority allocations pursuant to this Section 5.2(K) equals (or approaches as nearly as possible) the sum of all Class G Priority Return Amounts accrued through the end of the fiscal year to which the allocation relates.

(L) **Class I Priority Allocation.** The holders of Class I Units shall be allocated gross income such that, from the inception of the partnership through the end of the fiscal year to which the allocation relates, including the year of liquidation of the Partnership in accordance with Article X, the sum of all priority allocations pursuant to this Section 5.2(L) equals (or approaches as nearly as possible) the sum of all Class I Priority Return Amounts accrued through the end of the fiscal year to which the allocation relates.

(M) **Class J Priority Allocation.** The holders of Class J Units shall be allocated gross income such that, from the inception of the partnership through the end of the fiscal year to which the allocation relates, including the year of liquidation of the Partnership in accordance with Article X, the sum of all priority allocations pursuant to this Section 5.2(M) equals (or approaches as nearly as possible) the sum of all Class J Priority Return Amounts accrued through the end of the fiscal year to which the allocation relates.

(N) **Class K Priority Allocation.** The holders of Class K Units shall be allocated gross income such that, from the inception of the partnership through the end of the fiscal year to which the allocation relates, including the year of liquidation of the Partnership in accordance with Article X, the sum of all priority allocations pursuant to this Section 5.2(M) equals (or approaches as nearly as possible) the sum of all Class K Priority Return Amounts accrued through the end of the fiscal year to which the allocation relates.

### Section 5.3 Distributions.

(A) The General Partner shall cause the Partnership to distribute to the holder of each Class C Unit an amount in cash equal to the cumulative undistributed Class C Priority Return Amount with respect to each such unit (*provided* that the amount distributable pursuant to this Section 5.3(A) shall not be in excess of the Distributable Cash) on March 31, June 30, September 30 and December 31 of each year, commencing on September 30, 1997 (or in the case of a Class C Unit with a Class C Deemed Original Issue Date after September 30, 1997, on the first such distribution date following the applicable Class C Deemed Original Issue Date); *provided* that if any such distribution date shall be a Saturday, Sunday or day on which banking institutions in the State of New York are authorized or obligated by law to close, or a day which is declared a national or New York State holiday (any of the foregoing, a "Non-business Day"), then such distribution shall be made on the next succeeding day which is not a Non-business Day. Class C Priority Return Amounts that are distributable with respect to a period greater or less than a full Class C Distribution Period shall be computed on the basis of a 360-day year consisting of 12 30-day months.

(B) The General Partner shall cause the Partnership to distribute to the holder of each Class F Unit an amount in cash equal to the cumulative undistributed Class F Priority Return Amount with respect to each such unit (*provided* that the amount distributable pursuant to this section 5.3(B) shall not be in excess of the Distributable Cash) on each Class F Distribution Date.

(C) The General Partner shall cause the Partnership to distribute to the holder of each Class G Unit an amount in cash equal to the cumulative undistributed Class G Priority Return Amount with respect to each such unit (*provided* that the amount distributable pursuant to this section 5.3(C) shall not be in excess of the Distributable Cash) on each Class G Distribution Date.

(D) The General Partner shall cause the Partnership to distribute to the holder of each Class I Unit an amount in cash equal to the cumulative undistributed Class I Priority Return Amount with respect to each such unit (*provided* that the amount distributable pursuant to this section 5.3(D) shall not be in excess of the Distributable Cash) on each Class I Distribution Date.

(E) The General Partner shall cause the Partnership to distribute to the holder of each Class J Unit an amount in cash equal to the cumulative undistributed Class J Priority Return Amount with respect to each such unit (*provided* that the amount distributable pursuant to this section 5.3(E) shall not be in excess of the Distributable Cash) on each Class J Distribution Date.

(F) The General Partner shall cause the Partnership to distribute to the holder of each Class K Unit an amount in cash equal to the cumulative undistributed Class K Priority Return Amount with respect to each such unit (*provided* that the amount distributable pursuant to this section 5.3(F) shall not be in excess of the Distributable Cash) on each Class K Distribution Date.

(G) After giving effect to Sections 5.3(A), (B), (C), (D), (E) and (F), if applicable, the General Partner shall have the authority to cause the Partnership to make distributions from time to time as it determines, including without limitation, distributions which are sufficient to enable the General Partner to (i) maintain its status as a REIT, (ii) avoid the imposition of any tax under Code Section 857 and (iii) avoid the imposition of any excise tax under Code Section 4981. Except as otherwise expressly set forth in this Section 5.3(G), all Distributions pursuant to this Section 5.3 shall be made on a *pari passu* basis.

(H) Distributions pursuant to Section 5.3(G) shall be made *pro rata* among the Partners of record on the Record Date established by the General Partner for the distribution, in accordance with their respective Percentage Interests, without regard to the length of time the record holder has been such except that the first distribution paid on Units issued after June 1, 1996 shall be pro rated to reflect the actual portion of the period for

which the distribution is being paid during which such Units were outstanding, or shall be in such other amount or computed on such other basis as may be agreed by the General Partner and the holders of such Units, *provided* that such other amount or the amount so computed, as applicable, may not exceed the aforementioned pro rated amount.

(I) The General Partner shall use its reasonable efforts to make distributions to the Partners so as to preclude any distribution or portion thereof from being treated as part of a sale of property to the Partnership by a Partner under Section 707 of the Code or the Treasury Regulations thereunder; *provided* that the General Partner and the Partnership shall not have liability to a Limited Partner under any circumstances as a result of any distribution to a Partner being so treated.

**Section 5.4 Distribution upon Redemption.** Notwithstanding any other provision hereof, proceeds of (i) a Class C Redemption shall be distributed to the Class C Limited Partner in accordance with Section 9.1(C), (ii) a Class F Redemption shall be distributed to the Class F Limited Partner in accordance with Section 9.1(D), (iii) a Class G Redemption shall be distributed to the Class G Limited Partner in accordance with Section 9.1(E), (iv) a Class I Redemption shall be distributed to the Class I Limited Partner in accordance with Section 9.1(F), (v) a Class J Redemption shall be distributed to the Class J Limited Partner in accordance with Section 9.1(G) and (vi) a Class K Redemption shall be distributed to the Class K Limited Partner in accordance with Section 9.1(H).

**Section 5.5 Distributions upon Liquidation.** Notwithstanding any other provision hereof, proceeds of a Terminating Capital Transaction shall be distributed to the Partners in accordance with Section 10.2.

**Section 5.6 Amounts Withheld.** All amounts withheld pursuant to the Code or any provision of state or local tax law and Section 7.6 of this Agreement with respect to any allocation, payment or distribution to the General Partner, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner, the Class K Limited Partner, the Limited Partners or Assignees shall be treated as amounts distributed to such General Partner, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner, the Class K Limited Partner, the Limited Partners or Assignees, as applicable, pursuant to Section 5.3 of this Agreement.

## ARTICLE VI - PARTNERSHIP MANAGEMENT

### Section 6.1 Management and Control of Partnership Business.

(A) Except as otherwise expressly provided or limited by the provisions of this Agreement, the General Partner shall have full, exclusive and complete discretion to manage the business and affairs of the Partnership, to make all decisions affecting the business and affairs of the Partnership and to take all such action as it deems necessary or appropriate to accomplish the purposes of the Partnership as set forth herein. Except as set forth in this Agreement, the Limited Partners shall not have any authority, right, or power to bind the Partnership, or to manage, or to participate in the management of the business and affairs of the Partnership in any manner whatsoever. Such management shall in every respect be the full and complete responsibility of the General Partner alone as herein provided.

(B) In carrying out the purposes of the Partnership, the General Partner shall be authorized to take all actions it deems necessary and appropriate to carry on the business of the Partnership. The Limited Partners, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner and the Class K Limited Partner, by execution hereof, agree that the General Partner is authorized to execute, deliver and perform any agreement and/or transaction on behalf of the Partnership.

(C) The General Partner and its Affiliates may acquire Limited Partner Interests from Limited Partners who agree so to transfer Limited Partner Interests or from the Partnership in accordance with Section 4.2(A). Any Limited Partner Interest acquired by the General Partner shall be converted into a General Partner Interest. Upon acquisition of any Limited Partner Interest, any Affiliate of the General Partner shall have all the rights of a Limited Partner.

### **Section 6.2 No Management by Limited Partners; Limitation of Liability.**

(A) Neither the Limited Partners, in their capacity as Limited Partners, the Class C Limited Partner, in its capacity as Class C Limited Partner, the Class F Limited Partner, in its capacity as Class F Limited Partner, the Class G Limited Partner, in its capacity as Class G Limited Partner, the Class I Limited Partner, in its capacity as Class I Limited Partner, the Class J Limited Partner, in its capacity as Class J Limited Partner, nor the Class K Limited Partner, in its capacity as Class K Limited Partner, shall take part in the day-to-day management, operation or control of the business and affairs of the Partnership or have any right, power, or authority to act for or on behalf of or to bind the Partnership or transact any business in the name of the Partnership. Neither the Limited Partners, the Class C Limited Partner, in its capacity as Class C Limited Partner, the Class F Limited Partner, in its capacity as Class F Limited Partner, the Class G Limited Partner, in its capacity as Class G Limited Partner, the Class I Limited Partner, in its capacity as Class I Limited Partner, the Class J Limited Partner, in its capacity as Class J Limited Partner, nor the Class K Limited Partner, in its capacity as Class K Limited Partner, shall have any rights other than those specifically provided herein or granted by law where consistent with a valid provision hereof. Any approvals rendered or withheld by the Limited Partners, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner or the Class K Limited Partner pursuant to this Agreement shall be deemed as consultation with or advice to the General Partner in connection with the business of the Partnership and, in accordance with the Act, shall not be deemed as participation by the Limited Partners, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner or the Class K Limited Partner in the business of the Partnership and are not intended to create any inference that the Limited Partners, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner or the Class K Limited Partner should be classified as general partners under the Act.

(B) Neither the Limited Partner, the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner nor the Class K Limited Partner shall have any liability under this Agreement except with respect to withholding under Section 7.6, in connection with a violation of any provision of this Agreement by such Limited Partner, Class C Limited Partner, Class F Limited Partner, Class G Limited Partner, Class I Limited Partner, Class J Limited Partner or Class K Limited Partner or as provided in the Act.

(C) The General Partner shall not take any action which would subject a Limited Partner (in its capacity as Limited Partner), the Class C Limited Partner (in its capacity as Class C Limited Partner), the Class F Limited Partner (in its capacity as Class F Limited Partner), the Class G Limited Partner (in its capacity as Class G Limited Partner), the Class I Limited Partner (in its capacity as Class I Limited Partner), the Class J Limited Partner (in its capacity as Class J Limited Partner) or the Class K Limited Partner (in its capacity as Class K Limited Partner) to liability as a general partner.

### **Section 6.3 Limitations on Partners.**

(A) No Partner or Affiliate of a Partner shall have any authority to perform (i) any act in violation of any applicable law or regulation thereunder, (ii) any act prohibited by Section 6.2(C), or (iii) any act which is required to be Consented to or ratified pursuant to this Agreement without such Consent or ratification.

(B) No action shall be taken by a Partner if it would cause the Partnership to be treated as an association taxable as a corporation for federal income tax purposes or, without the consent of the General Partner, as a publicly-traded partnership within the meaning of Section 7704 of the Code. A determination of whether such action will have the above described effect shall be based upon a declaratory judgment or similar relief obtained from a court of competent jurisdiction, a favorable ruling from the IRS or the receipt of an opinion of counsel.

**Section 6.4 Business with Affiliates.**

(A) The General Partner, in its discretion, may cause the Partnership to transact business with any Partner or its Affiliates for goods or services reasonably required in the conduct of the Partnership's business; *provided* that any such transaction shall be effected only on terms competitive with those that may be obtained in the marketplace from unaffiliated Persons. The foregoing proviso shall not apply to transactions between the Partnership and its Subsidiaries. In addition, neither the General Partner nor any Affiliate of the General Partner may sell, transfer or otherwise convey any property to, or purchase any property from, the Partnership, except (i) on terms competitive with those that may be obtained in the marketplace from unaffiliated Persons or (ii) where the General Partner determines, in its sole judgment, that such sale, transfer or conveyance confers benefits on the General Partner or the Partnership in respect of matters of tax or corporate or financial structure; *provided*, in the case of this clause (ii), such sale, transfer, or conveyance is not being effected for the purpose of materially disadvantaging the Limited Partners.

(B) In furtherance of Section 6.4(A), the Partnership may lend or contribute to its Subsidiaries on terms and conditions established by the General Partner.

**Section 6.5 Compensation; Reimbursement of Expenses.** In consideration for the General Partner's services to the Partnership in its capacity as General Partner, the Partnership shall pay on behalf of or reimburse to the General Partner (i) all expenses of the General Partner incurred in connection with the management of the business and affairs of the Partnership, including all employee compensation of employees of the General Partner and indemnity or other payments made pursuant to agreements entered into in furtherance of the Partnership's business, (ii) all amounts payable by the General Partner under the Registration Rights Agreement and (iii) all general and administrative expenses incurred by the General Partner. Except as otherwise set forth in this Agreement, the General Partner shall be fully and entirely reimbursed by the Partnership for any and all direct and indirect costs and expenses incurred in connection with the organization and continuation of the Partnership pursuant to this Agreement. In addition, the General Partner shall be reimbursed for all expenses incurred by the General Partner in connection with (i) the initial public offering of REIT Shares by the General Partner and (ii) any other issuance of additional Partnership Interests or REIT Shares.

**Section 6.6 Liability for Acts and Omissions.**

(A) The General Partner shall not be liable, responsible or accountable in damages or otherwise to the Partnership or any of the other Partners for any act or omission performed or omitted in good faith on behalf of the Partnership and in a manner reasonably believed to be (i) within the scope of the authority granted by this Agreement and (ii) in the best interests of the Partnership or the stockholders of the General Partner. In exercising its authority hereunder, the General Partner may, but shall not be under any obligation to, take into account the tax consequences to any Partner of any action it undertakes on behalf of the Partnership. Neither the General Partner nor the Partnership shall have any liability as a result of any income tax liability incurred by a Partner as a result of any action or inaction of the General Partner hereunder and, by their execution of this Agreement, the Limited Partners acknowledge the foregoing.

(B) Unless otherwise prohibited hereunder, the General Partner shall be entitled to exercise any of the powers granted to it and perform any of the duties required of it under this Agreement directly or through

any agent. The General Partner shall not be responsible for any misconduct or negligence on the part of any agent; *provided* that the General Partner selected or appointed such agent in good faith.

The General Partner acknowledges that it owes fiduciary duties both to its stockholders and to the Limited Partners and it shall use its reasonable efforts to discharge such duties to each; *provided, however*, that in the event of a conflict between the interests of the stockholders of the General Partner and the interests of the Limited Partners, the Limited Partners agree that the General Partner shall discharge its fiduciary duties to the Limited Partners by acting in the best interests of the General Partner's stockholders. Nothing contained in the preceding sentence shall be construed as entitling the General Partner to realize any profit or gain from any transaction between the General Partner and the Partnership (except in connection with a distribution in accordance with this Agreement), including from the lending of money by the General Partner to the Partnership or the contribution of property by the General Partner to the Partnership, it being understood that in any such transaction the General Partner shall be entitled to cost recovery only.

#### **Section 6.7 Indemnification.**

(A) The Partnership shall indemnify the General Partner and each director, officer and stockholder of the General Partner and each Person (including any Affiliate) designated as an agent by the General Partner in its reasonable discretion (each, an "Indemnified Party") to the fullest extent permitted under the Act (including any procedures set forth therein regarding advancement of expenses to such Indemnified Party) from and against any and all losses, claims, damages, liabilities, expenses (including reasonable attorneys' fees), judgments, fines, settlements and any other amounts arising out of or in connection with any claims, demands, actions, suits or proceedings (civil, criminal or administrative) relating to or resulting (directly or indirectly) from the operations of the Partnership, in which such Indemnified Party becomes involved, or reasonably believes it may become involved, as a result of the capacity referred to above.

(B) The Partnership shall have the authority to purchase and maintain such insurance policies on behalf of the Indemnified Parties as the General Partner shall determine, which policies may cover those liabilities the General Partner reasonably believes may be incurred by an Indemnified Party in connection with the operation of the business of the Partnership. The right to procure such insurance on behalf of the Indemnified Parties shall in no way mitigate or otherwise affect the right of any such Indemnified Party to indemnification pursuant to Section 6.7(A) hereof.

(C) The provisions of this Section 6.7 are for the benefit of the Indemnified Parties, their heirs, successors, assigns and administrators and shall not be deemed to create any rights in or benefit to any other Person.

### **ARTICLE VII - ADMINISTRATIVE, FINANCIAL AND TAX MATTERS**

**Section 7.1 Books and Records.** The General Partner shall maintain at the office of the Partnership full and accurate books of the Partnership showing all receipts and expenditures, assets and liabilities, profits and losses, names and current addresses of Partners, and all other records necessary for recording the Partnership's business and affairs. Each Limited Partner shall have, upon written demand and at such Limited Partner's expense, the right to receive true and complete information regarding Partnership matters to the extent required (and subject to the limitations) under Delaware law.

**Section 7.2 Annual Audit and Accounting.** The books and records of the Partnership shall be kept for financial and tax reporting purposes on the accrual basis of accounting in accordance with generally accepted accounting principles ("GAAP"). The accounts of the Partnership shall be audited annually by a nationally



recognized accounting firm of independent public accountants selected by the General Partner (the "Independent Accountants").

**Section 7.3 Partnership Funds.** The General Partner shall have responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in its direct or indirect possession or control. All funds of the Partnership not otherwise invested shall be deposited in one or more accounts maintained in such banking institutions as the General Partner shall determine, and withdrawals shall be made only in the regular course of Partnership business on such signatures as the General Partner may from time to time determine.

**Section 7.4 Reports and Notices.** The General Partner shall provide all Partners with the following reports no later than the dates indicated or as soon thereafter as circumstances permit:

(A) By March 31 of each year, IRS Form 1065 and Schedule K-1, or similar forms as may be required by the IRS, stating each Partner's allocable share of income, gain, loss, deduction or credit for the prior Fiscal Year;

(B) Within ninety (90) days after the end of each of the first three (3) fiscal quarters, as of the last day of the fiscal quarter, a report containing unaudited financial statements of the Partnership, or of the General Partner if such statements are prepared on a consolidated basis with the General Partner, and such other information as may be legally required or determined to be appropriate by the General Partner; and

(C) Within one hundred twenty (120) days after the end of each Fiscal Year, as of the close of the Fiscal Year, an annual report containing audited financial statements of the Partnership, or of the General Partner if such statements are prepared on a consolidated basis with the General Partner, presented in accordance with GAAP and certified by the Independent Accountants.

**Section 7.5 Tax Matters.**

(A) The General Partner shall be the Tax Matters Partner of the Partnership for federal income tax matters pursuant to Code Section 6231(a)(7)(A). The Tax Matters Partner is authorized and required to represent the Partnership (at the expense of the Partnership) in connection with all examinations of the affairs of the Partnership by any federal, state, or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of the Partnership for professional services and costs associated therewith. The Tax Matters Partner shall deliver to the Limited Partners within ten (10) business days of the receipt thereof a copy of any notice or other communication with respect to the Partnership received from the IRS (or other governmental tax authority), or any court, in each case with respect to any administrative or judicial proceeding involving the Partnership. The Partners agree to cooperate with each other in connection with the conduct of all proceedings pursuant to this Section 7.5(A).

(B) The Tax Matters Partner shall receive no compensation for its services in such capacity. If the Tax Matters Partner incurs any costs related to any tax audit, declaration of any tax deficiency or any administrative proceeding or litigation involving any Partnership tax matter, such amount shall be an expense of the Partnership and the Tax Matters Partner shall be entitled to full reimbursement therefor.

(C) The General Partner shall cause to be prepared all federal, state and local income tax returns required of the Partnership at the Partnership's expense.

(D) Except as set forth herein, the General Partner shall determine whether to make (and, if necessary, revoke) any tax election available to the Partnership under the Code or any state tax law; *provided, however*, upon the request of any Partner, the General Partner shall make the election under Code Section 754 and

the Treasury Regulations promulgated thereunder. The Partnership shall elect to deduct expenses, if any, incurred by it in organizing the Partnership in accordance with the provisions of Code Section 709.

**Section 7.6 Withholding.** Each Partner hereby authorizes the Partnership to withhold from or pay to any taxing authority on behalf of such Partner any tax that the General Partner determines the Partnership is required to withhold or pay with respect to any amount distributable or allocable to such Partner. Any amount paid to any taxing authority which does not constitute a reduction in the amount otherwise distributable to such Partner shall be treated as a loan from the Partnership to such Partner, which loan shall bear interest at the "prime rate" as published from time to time in *The Wall Street Journal* plus two (2) percentage points, and shall be repaid within ten (10) business days after request for repayment from the General Partner. The obligation to repay any such loan shall be secured by such Partner's Partnership Interest and each Partner hereby grants the Partnership a security interest in his Partnership Interest for the purposes set forth in this Section 7.6, this Section 7.6 being intended to serve as a security agreement for purposes of the Uniform Commercial Code with the General Partner having in respect hereof all of the remedies of a secured party under the Uniform Commercial Code. Each Partner agrees to take such reasonable actions as the General Partner may request to perfect and continue the perfection of the security interest granted hereby. In the event any Partner fails to repay any deemed loan pursuant to this Section 7.6 the Partnership shall be entitled to avail itself of any rights and remedies it may have. Furthermore, upon the expiration of ten (10) business days after demand for payment, the General Partner shall have the right, but not the obligation, to make the payment to the Partnership on behalf of the defaulting Partner and thereupon be subrogated to the rights of the Partnership with respect to such defaulting Partner.

## ARTICLE VIII - TRANSFER OF PARTNERSHIP INTERESTS; ADMISSIONS OF PARTNERS

**Section 8.1 Transfer by General Partner.** The General Partner may not voluntarily withdraw or Transfer all or any portion of its General Partner Interest. Notwithstanding the foregoing, the General Partner may pledge its General Partner Interest in furtherance of the Partnership's business (including without limitation, in connection with a loan agreement under which the Partnership is a borrower) without the consent of any Partner.

**Section 8.2 Obligations of a Prior General Partner.** Upon an Involuntary Withdrawal of the General Partner and the subsequent Transfer of the General Partner's Interest, such General Partner shall (i) remain liable for all obligations and liabilities (other than Partnership liabilities payable solely from Partnership Assets) incurred by it as General Partner before the effective date of such event and (ii) pay all costs associated with the admission of its Successor General Partner. However, such General Partner shall be free of and held harmless by the Partnership against any obligation or liability incurred on account of the activities of the Partnership from and after the effective date of such event, except as provided in this Agreement.

**Section 8.3 Successor General Partner.** A successor to all of a General Partner's General Partner Interest who is proposed to be admitted to the Partnership as a Successor General Partner shall be admitted as the General Partner, effective upon the Transfer. Any such transferee shall carry on the business of the Partnership without dissolution. In addition, the following conditions must be satisfied:

(A) The Person shall have accepted and agreed to be bound by all the terms and provisions of this Agreement by executing a counterpart thereof and such other documents or instruments as may be required or appropriate in order to effect the admission of such Person as a General Partner; and

(B) An amendment to this Agreement evidencing the admission of such Person as a General Partner shall have been executed by all General Partners and an amendment to the Certificate shall have been filed for recordation as required by the Act.

(C) Any consent required under Section 10.1(A) hereof shall have been obtained.

#### **Section 8.4 Restrictions on Transfer and Withdrawal by Limited Partner.**

(A) Subject to the provisions of Section 8.4(D), no Limited Partner may Transfer all or any portion of his Partnership Interest without first obtaining the Consent of the General Partner, which Consent may be granted or withheld in the sole and absolute discretion of the General Partner. Any such purported transfer undertaken without such Consent shall be considered to be null and void *ab initio* and shall not be given effect. Each Limited Partner acknowledges that the General Partner has agreed not to grant any such consent prior to the Transfer Restriction Date.

(B) No Limited Partner may withdraw from the Partnership other than as a result of a permitted Transfer (i.e., a Transfer consented to as contemplated by clause (A) above or clause (D) below or a Transfer pursuant to clause (C) below) of all of his Partnership Units pursuant to this Article VIII or pursuant to a redemption or exchange of all of his Partnership Units pursuant to Article IX. Upon the permitted Transfer or redemption of all of a Limited Partner's Partnership Units, such Limited Partner shall cease to be a Limited Partner.

(C) Upon the Involuntary Withdrawal of any Limited Partner (which shall under no circumstance cause the dissolution of the Partnership), the executor, administrator, trustee, guardian, receiver or conservator of such Limited Partner's estate shall become a Substituted Limited Partner upon compliance with the provisions of Section 8.5(A)(1)-(3).

(D) Subject to Section 8.4(E), a Limited Partner may Transfer, with the Consent of the General Partner, all or a portion of his Partnership Units to (a) a parent or parents, spouse, natural or adopted descendant or descendants, spouse of such a descendant, or brother or sister, or a trust created by such Limited Partner for the benefit of such Limited Partner and/or any such person(s), of which trust such Limited Partner or any such person(s) is a trustee, (b) a corporation controlled by a Person or Persons named in (a) above, or (c) if the Limited Partner is an entity, its beneficial owners, and the General Partner shall grant its Consent to any Transfer pursuant to this Section 8.4(D) unless such Transfer, in the reasonable judgment of the General Partner, would cause (or have the potential to cause) the General Partner to fail to qualify for taxation as a REIT, in which case the General Partner shall have the absolute right to refuse to permit such Transfer, and any purported Transfer in violation of this Section 8.4(D) shall be null and void *ab initio*.

(E) No Transfer of Limited Partnership Units shall be made if such Transfer would (i) in the opinion of Partnership counsel, cause the Partnership to be terminated for federal income tax purposes or to be treated as an association taxable as a corporation (rather than a partnership) for federal income tax purposes; (ii) be effected through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Code Section 7704 and the Treasury Regulations thereunder, (iii) in the opinion of Partnership counsel, violate the provisions of applicable securities laws; (iv) violate the terms of (or result in a default or acceleration under) any law, rule, regulation, agreement or commitment binding on the Partnership; (v) cause the Partnership to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in Section 3(14) of ERISA) or a "disqualified person" (as defined in Section 4975(e) of the Code); (vi) in the opinion of counsel to the Partnership, cause any portion of the underlying assets of the Partnership to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.3-101; or (vii) result in a deemed distribution to any Partner attributable to a failure to meet the requirements of Treasury Regulations Section 1.752-2(d) (1), unless such Partner consents thereto.

(F) Prior to the consummation of any Transfer under this Section 8.4, the transferor and/or the transferee shall deliver to the General Partner such opinions, certificates and other documents as the General Partner shall request in connection with such Transfer.

**Section 8.5 Substituted Limited Partner.**

(A) No transferee shall become a Substituted Limited Partner in place of his assignor unless and until the following conditions have been satisfied:

- (1) The assignor and transferee file a Notice or other evidence of Transfer and such other information reasonably required by the General Partner, including, without limitation, names, addresses and telephone numbers of the assignor and transferee;
- (2) The transferee executes, adopts and acknowledges this Agreement, or a counterpart hereto, and such other documents as may be reasonably requested by the General Partner, including without limitation, all documents necessary to comply with applicable tax and/or securities rules and regulations;
- (3) The assignor or transferee pays all costs and fees incurred or charged by the Partnership to effect the Transfer and substitution; and
- (4) The assignor or transferee obtains the written Consent of the General Partner, which may be given or withheld in its sole and absolute discretion.

(B) If a transferee of a Limited Partner does not become a Substituted Limited Partner pursuant to Section 8.5(A), such transferee shall be an Assignee and shall not have any rights to require any information on account of the Partnership's business, to inspect the Partnership's books or to vote or otherwise take part in the affairs of the Partnership (such Partnership Units being deemed to have been voted in the same proportion as all other Partnership Units held by Limited Partners have been voted). Such Assignee shall be entitled, however, to all the rights of an assignee of a limited partnership interest under the Act. Any Assignee wishing to Transfer the Partnership Units acquired shall be subject to the restrictions set forth in this Article VIII.

**Section 8.6 Timing and Effect of Transfers.** Unless the General Partner agrees otherwise, Transfers under this Article VIII may only be made as of the first day of a fiscal quarter of the Partnership. Upon any Transfer of a Partnership Interest in accordance with this Article VIII or redemption of a Partnership Interest in accordance with Article IX, the Partnership shall allocate all items of Profit and Loss between the assignor Partner and the transferee Partner in accordance with Section 5.2(F)(2) hereof. The assignor Partner shall have the right to receive all distributions as to which the Record Date precedes the date of Transfer and the transferee Partner shall have the right to receive all distributions thereafter.

**Section 8.7 Additional Limited Partners.** Other than in accordance with the transactions specified in the Contribution Agreements, after the initial execution of this Agreement and the admission to the Partnership of the Initial Limited Partners, any Person making a Capital Contribution to the Partnership in accordance herewith shall be admitted as an Additional Limited Partner of the Partnership only (i) with the Consent of the General Partner and (ii) upon execution, adoption and acknowledgment of this Agreement, or a counterpart hereto, and such other documents as may be reasonably requested by the General Partner, including without limitation, the power of attorney required under Section 12.3. Upon satisfaction of the foregoing requirements, such Person shall be admitted as an Additional Limited Partner effective on the date upon which the name of such Person is recorded on the books of the Partnership.

**Section 8.8 Amendment of Agreement and Certificate.** Upon any admission of a Person as a Partner to the Partnership, the General Partner shall make any necessary amendment to this Agreement to reflect such admission and, if required by the Act, to cause to be filed an amendment to the Certificate.

## ARTICLE IX - REDEMPTION

### Section 9.1 Right of Redemption.

(A) Subject to any restriction on the General Partner, which restriction may arise as a result of the REIT Charter, the laws governing the General Partner or otherwise (a "Redemption Restriction"), beginning on the Redemption Effective Date, during each Redemption Period each Redeeming Party shall have the right to require the Partnership to redeem all or a portion of the Partnership Units held by such Redeeming Party by providing the General Partner with a Redemption Notice. A Limited Partner may invoke its rights under this Article IX with respect to 100 Partnership Units or an integral multiple thereof or all of the Partnership Units held by such Limited Partner. Upon the General Partner's receipt of a Redemption Notice from a Redeeming Party, the Partnership shall be obligated (subject to the existence of any Redemption Restriction) to redeem the Partnership Units from such Redeeming Party (the "Redemption Obligation").

(B) Upon receipt of a Redemption Notice from a Redeeming Party, the General Partner shall either (i) cause the Partnership to redeem the Partnership Units tendered in the Redemption Notice, (ii) assume the Redemption Obligation, as set forth in Section 9.4 hereof, or (iii) provide written Notice to the Redeeming Party of each applicable Redemption Restriction.

(C) On and after June 6, 2007 at any time or from time to time, the Partnership may redeem all or such other number of Class C Units (any such redemption, a "Class C Redemption") at a cash redemption price per Class C Unit equal to that portion of the Capital Contribution of the Class C Limited Partner allocable to each such unit, plus all accumulated and unpaid Class C Priority Return Amounts to the date of Class C Redemption (such price, the "Class C Redemption Price"). Upon any Class C Redemption, an amount equal to the product of the Class C Redemption Price and the number of Class C Units redeemed by the Partnership shall be distributed by the Partnership to the Class C Limited Partner.

(D) The Partnership may redeem all or such other number of Class F Units (any such redemption, a "Class F Redemption") on any applicable date of redemption of any Class F Preferred Shares, at a cash redemption price per Class F Unit equal to that portion of the Capital Contribution of the Class F Limited Partner allocable to each such unit, plus all accumulated and unpaid Class F Priority Return Amounts to the date of Class F Redemption (such price, the "Class F Redemption Price"). Upon any Class F Redemption, an amount equal to the product of the Class F Redemption Price and the number of Class F Units redeemed by the Partnership shall be distributed by the Partnership to the Class F Limited Partner.

(E) The Partnership may redeem all or such other number of Class G Units (any such redemption, a "Class G Redemption") on any applicable date of redemption of any Class G Preferred Shares, at a cash redemption price per Class G Unit equal to that portion of the Capital Contribution of the Class G Limited Partner allocable to each such unit, plus all accumulated and unpaid Class G Priority Return Amounts to the date of Class G Redemption (such price, the "Class G Redemption Price"). Upon any Class G Redemption, an amount equal to the product of the Class G Redemption Price and the number of Class G Units redeemed by the Partnership shall be distributed by the Partnership to the Class G Limited Partner.

(F) The Partnership may redeem all or such other number of Class I Units (any such redemption, a "Class I Redemption") on any applicable date of redemption of any Class I Preferred Shares, at a cash redemption price per Class I Unit equal to that portion of the Capital Contribution of the Class I Limited Partner allocable to each such unit multiplied by the redemption premium then applicable to the Class I Preferred Shares, plus all accumulated and unpaid Class I Priority Return Amounts to the date of Class I Redemption (such price, the "Class I Redemption Price"). Upon any Class I Redemption, an amount equal to the product of the Class I

Redemption Price and the number of Class I Units redeemed by the Partnership shall be distributed by the Partnership to the Class I Limited Partner.

(G) The Partnership may redeem all or such other number of Class J Units (any such redemption, a “Class J Redemption”) on any applicable date of redemption of any Class J Preferred Shares, at a cash redemption price per Class J Unit equal to that portion of the Capital Contribution of the Class J Limited Partner allocable to each such unit multiplied by the redemption premium then applicable to the Class J Preferred Shares, plus all accumulated and unpaid Class J Priority Return Amounts to the date of Class J Redemption (such price, the “Class J Redemption Price”). Upon any Class J Redemption, an amount equal to the product of the Class J Redemption Price and the number of Class J Units redeemed by the Partnership shall be distributed by the Partnership to the Class J Limited Partner.

(H) The Partnership may redeem all or such other number of Class K Units (any such redemption, a “Class K Redemption”) on any applicable date of redemption of any Class K Preferred Shares, at a cash redemption price per Class K Unit equal to that portion of the Capital Contribution of the Class K Limited Partner allocable to each such unit multiplied by the redemption premium then applicable to the Class K Preferred Shares, plus all accumulated and unpaid Class K Priority Return Amounts to the date of Class K Redemption (such price, the “Class K Redemption Price”). Upon any Class K Redemption, an amount equal to the product of the Class K Redemption Price and the number of Class K Units redeemed by the Partnership shall be distributed by the Partnership to the Class K Limited Partner.

**Section 9.2 Timing of Redemption.** The Redemption Obligation (or the obligation to provide Notice of an applicable Redemption Restriction, if one exists) shall mature on the date which is seven (7) business days after the receipt by the General Partner of a Redemption Notice from the Redeeming Party (the “Redemption Date”).

**Section 9.3 Redemption Price.** On or before the Redemption Date, the Partnership (or the General Partner if it elects pursuant to Section 9.4 hereof) shall deliver to the Redeeming Party, in the sole and absolute discretion of the General Partner either (i) a Share Payment or (ii) a Cash Payment. In order to enable the Partnership to effect a redemption by making a Share Payment pursuant to this Section 9.3, the General Partner in its sole and absolute discretion may issue to the Partnership the number of REIT Shares required to make such Share Payment in exchange for the issuance to the General Partner of Partnership Units equal in number to the quotient of the number of REIT Shares issued and Conversion Factor.

**Section 9.4 Assumption of Redemption Obligation.** Upon receipt of a Redemption Notice, the General Partner, in its sole and absolute discretion, shall have the right to assume the Redemption Obligation of the Partnership. In such case, the General Partner shall be substituted for the Partnership for all purposes of this Article IX and, upon acquisition of the Partnership Units tendered by the Redeeming Party pursuant to the Redemption Notice shall be treated for all purposes of this Agreement as the owner of such Partnership Units. Such exchange transaction shall be treated for federal income tax purposes by the Partnership, the General Partner and the Redeeming Party as a sale by the Redeeming Party as seller to the General Partner as purchaser.

**Section 9.5 Further Assurances; Certain Representations.** Each party to this Agreement agrees to execute any documents deemed reasonably necessary by the General Partner to evidence the issuance of any Share Payment to a Redeeming Party. Notwithstanding anything herein to the contrary, each holder of First Highland Units agrees that, if the General Partner shall elect to satisfy a Redemption Obligation with respect to First Highland Units by making a Share Payment, such Redemption Obligation shall mature on the date which is seven (7) business days after receipt by the Partnership and the General Partner of documents similar to the “Investor Materials” submitted in connection with the sale of the First Highland Properties to the Partnership and any other similar documents reasonably required by, and in form reasonably satisfactory to, the Partnership. Each Limited Partner, by executing this Agreement, shall be deemed to have represented to the General Partner and the Partnership that (i) its

acquisition of its Partnership Interest on the date hereof is made as a principal for its own account, for investment purposes only and not with a view to the resale or distribution of such Partnership Interest and (ii) if it shall receive REIT Shares pursuant to this Article IX other than pursuant to an effective registration statement under the Securities Act of 1933, as amended, that its acquisition of such REIT Shares is made as a principal for its own account, for investment purposes only and not with a view to the resale or distribution of such REIT Shares and agrees that such REIT Shares may bear a legend to the effect that such REIT Shares have not been so registered and may not be sold other than pursuant to such a registration statement or an exemption from the registration requirements of such Act.

**Section 9.6 Effect of Redemption.** Upon the satisfaction of the Redemption Obligation by the Partnership or the General Partner, as the case may be, the Redeeming Party shall have no further right to receive any Partnership distributions in respect of the Partnership Units so redeemed and shall be deemed to have represented to the Partnership and the General Partner that the Partnership Units tendered for redemption are not subject to any liens, claims or encumbrances. Upon a Class C Redemption by the Partnership, the Class C Limited Partner shall have no further right to receive any Partnership distributions or allocations in respect of the Class C Units so redeemed. Upon a Class F Redemption by the Partnership, the Class F Limited Partner shall have no further right to receive any Partnership distributions in respect of the Class F Units so redeemed. Upon a Class G Redemption by the Partnership, the Class G Limited Partner shall have no further right to receive any Partnership distributions in respect of the Class G Units so redeemed. Upon a Class I Redemption by the Partnership, the Class I Limited Partner shall have no further right to receive any Partnership distributions in respect of the Class I Units so redeemed. Upon a Class J Redemption by the Partnership, the Class J Limited Partner shall have no further right to receive any Partnership distributions in respect of the Class J Units so redeemed. Upon a Class K Redemption by the Partnership, the Class K Limited Partner shall have no further right to receive any Partnership distributions in respect of the Class K Units so redeemed.

**Section 9.7 Registration Rights.** In the event a Limited Partner receives REIT Shares in connection with a redemption of Partnership Units originally issued to Initial Limited Partners on June 30, 1994 pursuant to this Article IX, such Limited Partner shall be entitled to have such REIT Shares registered under the Securities Act of 1933, as amended, as provided in the Registration Rights Agreement.

**Section 9.8 Redemption upon REIT Share Repurchases by the General Partner.** If the General Partner acquires outstanding REIT Shares then the Partnership shall redeem from the General Partner the General Partner's interest in the Partnership representing such acquired REIT Shares and pay to the General Partner, in cash, an amount equal to the consideration, if any, paid by or for the account of the General Partner for the acquired REIT Shares. The Partnership shall make such cash payment, if any, to the General Partner within three (3) business days after the General Partner notifies the Partnership that the General Partner is committed to acquiring REIT Shares and requests payment under this Section 9.8. Any REIT Shares acquired by the General Partner that are thereafter disposed of by the General Partner (which term shall not include cancellation) shall for the purposes of Sections 4.2(B) and (C), be deemed issued at the time of such disposition.

## ARTICLE X - DISSOLUTION AND LIQUIDATION

**Section 10.1 Term and Dissolution.** The Partnership commenced as of November 23, 1993, and shall continue until December 31, 2092, at which time the Partnership shall dissolve or until dissolution occurs prior to that date for any one of the following reasons:

(A) An Involuntary Withdrawal or a voluntary withdrawal, even though in violation of this Agreement, of the General Partner unless, within ninety (90) days after such event of withdrawal all the remaining

Partners agree in writing to the continuation of the Partnership and to the appointment of a Successor General Partner;

- (B) Entry of a decree of judicial dissolution of the Partnership under the Act; or
- (C) The sale, exchange or other disposition of all or substantially all of the Partnership Assets.

**Section 10.2 Liquidation of Partnership Assets.**

(A) Subject to Section 10.2(E), in the event of dissolution pursuant to Section 10.1, the Partnership shall continue solely for purposes of winding up the affairs of, achieving a final termination of, and satisfaction of the creditors of, the Partnership. The General Partner (or, if there is no General Partner remaining, any Person elected by a majority in interest of the Limited Partners (the "Liquidator")) shall be responsible for oversight of the winding up and dissolution of the Partnership. The Liquidator shall obtain a full accounting of the assets and liabilities of the Partnership and such Partnership Assets shall be liquidated (including, at the discretion of the Liquidator, in exchange, in whole or in part, for REIT Shares) as promptly as the Liquidator is able to do so without any undue loss in value, with the proceeds therefrom applied and distributed in the following order:

(1) First, to the discharge of Partnership debts and liabilities to creditors other than Partners;

(2) Second, to the discharge of Partnership debts and liabilities to the Partners;

(3) Third, after giving effect to all contributions, distributions, and allocations for all periods, to (i) the Class C Limited Partner in an amount equal to any unpaid Class C Priority Return Amounts, (ii) the Class F Limited Partner in an amount equal to any unpaid Class F Priority Return Amounts, (iii) the Class G Limited Partner in an amount equal to any unpaid Class G Priority Return Amounts, (iv) the Class I Limited Partner in an amount equal to any unpaid Class I Return Amounts, (v) the Class J Limited Partner in an amount equal to any unpaid Class J Return Amounts and (vi) the Class K Limited Partner in an amount equal to any unpaid Class K Return Amounts; *provided* that if the proceeds are inadequate to pay all of the unpaid Class C Priority Return Amounts, the unpaid Class F Priority Return Amounts, the unpaid Class G Priority Return Amounts, the unpaid Class I Priority Return Amounts, the unpaid Class J Priority Return Amounts and the unpaid Class K Priority Return Amounts, such proceeds shall be distributed to the Class C Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class I Limited Partner, the Class J Limited Partner and the Class K Limited Partner *pro rata* based on the unpaid Class C Priority Return Amounts, the unpaid Class F Priority Return Amounts, the unpaid Class G Priority Return Amounts, the unpaid Class I Priority Return Amounts, the unpaid Class J Priority Return Amounts and the unpaid Class K Priority Return Amounts;

(4) The balance, if any, to the Partners in accordance with their positive Capital Accounts after giving effect to all contributions, distributions and allocations for all periods.

(B) In accordance with Section 10.2(A), the Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Partnership Assets; *provided, however*, that if the Liquidator shall determine that an immediate sale of part or all of the Partnership Assets would cause undue loss to the Partners, the Liquidator may defer the liquidation except (i) to the extent provided by the Act or (ii) as may be necessary to satisfy the debts and liabilities of the Partnership to Persons other than the Partners.

(C) If, in the sole and absolute discretion of the Liquidator, there are Partnership Assets that the Liquidator will not be able to liquidate, or if the liquidation of such assets would result in undue loss to the Partners, the Liquidator may distribute such Partnership Assets to the Partners in-kind, in lieu of cash, as tenants-in-



common in accordance with the provisions of Section 10.2(A). The foregoing notwithstanding, such in-kind distributions shall only be made if in the Liquidator's good faith judgment that is in the best interest of the Partners.

(D) Upon the complete liquidation and distribution of the Partnership Assets, the Partners shall cease to be Partners of the Partnership, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by law to terminate the Partnership. Upon the dissolution of the Partnership pursuant to Section 10.1, the Liquidator shall cause to be prepared, and shall furnish to each Partner, a statement setting forth the assets and liabilities of the Partnership. Promptly following the complete liquidation and distribution of the Partnership Assets, the Liquidator shall furnish to each Partner a statement showing the manner in which the Partnership Assets were liquidated and distributed.

(E) Notwithstanding the foregoing provisions of this Section 10.2, in the event that the Partnership shall dissolve as a result of the expiration of the term provided for herein or as a result of the occurrence of an event of the type described in Section 10.1(B) or (C), then each Limited Partner shall be deemed to have delivered a Redemption Notice on the date of such dissolution. In connection with each such Redemption Notice, the General Partner shall have the option of either (i) complying with the redemption procedures contained in Article IX or (ii) at the request of any Limited Partner, delivering to such Limited Partner, Partnership property approximately equal in value to the value of such Limited Partner's Partnership Units upon the assumption by such Limited Partner of such Limited Partner's proportionate share of the Partnership's liabilities and payment by such Limited Partner (or the Partnership) of any excess (or deficiency) of the value of the property so delivered over the value of such Limited Partner's Partnership Units. In lieu of requiring such Limited Partner to assume its proportionate share of Partnership liabilities, the General Partner may deliver to such Limited Partner unencumbered Partnership property approximately equal in value to the net value of such Limited Partner's Partnership Units.

### **Section 10.3 Effect of Treasury Regulations.**

(A) In the event the Partnership is "liquidated" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g), distributions made to Partners pursuant to Section 10.2 shall be made within the time period provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Contributor Partner has a deficit balance in its Capital Account (after giving effect to all contributions (without regard to this Section 10.3(A)), distributions and allocations), each such Contributor Partner shall contribute to the capital of the Partnership an amount equal to its respective deficit balance, such obligation to be satisfied within ninety (90) days following the liquidation and dissolution of the Partnership in accordance with the provisions of this Article X hereof. Conversely, if any Partner other than a Contributor Partner has a deficit balance in its Capital Account (after giving effect to all contributions (without regard to this Section 10.3(A)), distributions and allocations), such Partner shall have no obligation to make any contribution to the capital of the Partnership. Any deficit restoration obligation pursuant to the provisions hereof shall be for the benefit of creditors of the Partnership or any other Person to whom any debts, liabilities, or obligations are owed by (or who otherwise has any claim against) the Partnership or the general partner, in its capacity as General Partner of the Partnership. For purposes of computing each Contributor Partner's deficit balance in its Capital Account and its corresponding obligations to contribute additional capital to the Partnership, only items of income, gain and loss actually recognized shall be reflected.

(B) In the event the Partnership is "liquidated" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g) but there has been no dissolution of the Partnership under Section 10.1 hereof, then the Partnership Assets shall not be liquidated, the Partnership's liabilities shall not be paid or discharged and the Partnership's affairs shall not be wound up. In the event of such a liquidation there shall be deemed to have been a distribution of Partnership Assets in kind to the Partners in accordance with Section 10.2 followed by a recontribution of such Partnership Assets by the Partners in the same proportions.

**Section 10.4 Time for Winding-Up.** Anything in this Article X notwithstanding, a reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Partnership and the liquidation of the

Partnership Assets in order to minimize any potential for losses as a result of such process. During the period of winding-up, this Agreement shall remain in full force and effect and shall govern the rights and relationships of the Partners *inter se*.

## ARTICLE XI - AMENDMENTS AND MEETINGS

### Section 11.1 Amendment Procedure.

(A) Amendments to this Agreement may be proposed by the General Partner. An amendment proposed at any time when the General Partner holds less than 90% of all Partnership Units will be adopted and effective only if it receives the Consent of the holders of a majority of the Partnership Units not then held by the General Partner and an amendment proposed at any time when the General Partner holds 90% or more of all Partnership Units may be made by the General Partner without the Consent of any Limited Partner; *provided, however*, no amendment shall be adopted if it would (i) convert a Limited Partner's Interest in the Partnership into a general partner interest, (ii) increase the liability of a Limited Partner under this Agreement, (iii) except as otherwise permitted in this Agreement, alter the Partner's rights to distributions set forth in Article V, or the allocations set forth in Article V, (iv) alter or modify any aspect of the Partners' rights with respect to redemption of Partnership Units, (v) cause the early termination of the Partnership (other than pursuant to the terms hereof) or (vi) amend this Section 11.1(A), in each case without the Consent of each Partner adversely affected thereby. In connection with any proposed amendment of this Agreement requiring Consent, the General Partner shall either call a meeting to solicit the vote of the Partners or seek the written vote of the Partners to such amendment. In the case of a request for a written vote, the General Partner shall be authorized to impose such reasonable time limitations for response, but in no event less than ten (10) days, with the failure to respond being deemed a vote consistent with the vote of the General Partner.

(B) Notwithstanding the foregoing, amendments may be made to this Agreement by the General Partner, without the Consent of any Limited Partner, to (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner herein; (ii) cure any ambiguity, correct or supplement any provision herein which may be inconsistent with any other provision herein or make any other provisions with respect to matters or questions arising hereunder which will not be inconsistent with any other provision hereof; (iii) reflect the admission, substitution, termination or withdrawal of Partners in accordance with this Agreement; or (iv) satisfy any requirements, conditions or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state law. The General Partner shall reasonably promptly notify the Limited Partners whenever it exercises its authority pursuant to this Section 11.1(B).

(C) Within ten (10) days of the making of any proposal to amend this Agreement, the General Partner shall give all Partners Notice of such proposal (along with the text of the proposed amendment and a statement of its purposes).

### Section 11.2 Meetings and Voting.

(A) Meetings of Partners may be called by the General Partner. The General Partner shall give all Partners Notice of the purpose of such proposed meeting not less than seven (7) days nor more than thirty (30) days prior to the date of the meeting. Meetings shall be held at a reasonable time and place selected by the General Partner. Whenever the vote or Consent of Partners is permitted or required hereunder, such vote or Consent shall be requested by the General Partner and may be given by the Partners in the same manner as set forth for a vote with respect to an amendment to this Agreement in Section 11.1(A).

(B) Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if a written consent setting forth the action to be taken is signed by the Partners owning Percentage Interests required to vote in favor of such action, which consent may be evidenced in one or more instruments. Consents need not be solicited from any other Partner if the written consent of a sufficient number of Partners has been obtained to take the action for which such solicitation was required.

(C) Each Limited Partner may authorize any Person or Persons, including without limitation the General Partner, to act for him by proxy on all matters on which a Limited Partner may participate. Every proxy (i) must be signed by the Limited Partner or his attorney-in-fact, (ii) shall expire eleven (11) months from the date thereof unless the proxy provides otherwise and (iii) shall be revocable at the discretion of the Limited Partner granting such proxy.

**Section 11.3 Voting of LB Units.** On any matter on which the Limited Partners shall be entitled to vote, consent or grant an approval or waiver, following the admissions of the LB Partners to the Partnership as Additional Limited Partners and through the Voting Termination Date, each holder of the LB Units shall be deemed (i) in connection with any matter submitted to a vote, to have cast all votes attributable to such holder's LB Units in the same manner as the votes attributable to the Units held by the General Partner are cast on such matter, and (ii) in connection with any consent, approval or waiver, to have taken the same action as the General Partner shall have taken with respect to its Units in connection therewith. If the General Partner shall not have the right to vote, consent or grant an approval or waiver on a matter, each holder of LB Units shall vote or act as directed by the General Partner.

## ARTICLE XII - MISCELLANEOUS PROVISIONS

**Section 12.1 Title to Property.** All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually, shall have any ownership of such property. The Partnership may hold any of its assets in its own name or, in the name of its nominee, which nominee may be one or more individuals, corporations, partnerships, trusts or other entities.

**Section 12.2 Other Activities of Limited Partners.** Except as expressly provided otherwise in this Agreement or in any other agreement entered into by a Limited Partner or any Affiliate of a Limited Partner and the Partnership, the General Partner or any Subsidiary of the Partnership or the General Partner, any Limited Partner or any Affiliate of any Limited Partner may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, including, without limitation, real estate business ventures, whether or not such other enterprises shall be in competition with any activities of the Partnership, the General Partner or any Subsidiary of the Partnership or the General Partner; and neither the Partnership, the General Partner, any such Subsidiary nor the other Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom.

### **Section 12.3 Power of Attorney.**

(A) Each Partner hereby irrevocably appoints and empowers the General Partner (which term shall include the Liquidator, in the event of a liquidation, for purposes of this Section 12.3) and each of their authorized officers and attorneys-in-fact with full power of substitution as his true and lawful agent and attorney-in-fact, with full power and authority in his name, place and stead to:

(1) make, execute, acknowledge, publish and file in the appropriate public offices (a) any duly approved amendments to the Certificate pursuant to the Act and to the laws of any state in which such

documents are required to be filed; (b) any certificates, instruments or documents as may be required by, or may be appropriate under, the laws of any state or other jurisdiction in which the Partnership is doing or intends to do business; (c) any other instrument which may be required to be filed by the Partnership under the laws of any state or by any governmental agency, or which the General Partner deems advisable to file; (d) any documents which may be required to effect the continuation of the Partnership, the admission, withdrawal or substitution of any Partner pursuant to Article VIII, dissolution and termination of the Partnership pursuant to Article X, or the surrender of any rights or the assumption of any additional responsibilities by the General Partner; (e) any document which may be required to effect an amendment to this Agreement to correct any mistake, omission or inconsistency, or to cure any ambiguity herein, to the extent such amendment is permitted by Section 11.1(B); and (f) all instruments (including this Agreement and amendments and restatements hereof) relating to the determination of the rights, preferences and privileges of any class or series of Partnership Units issued pursuant to Section 4.2(B) of this Agreement; and

(2) sign, execute, swear to and acknowledge all voting ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the sole discretion of the General Partner, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action which is made or given by the Partners hereunder or is consistent with the terms of this Agreement and appropriate or necessary, in the sole discretion of the General Partner, to effectuate the terms or intent of this Agreement.

(B) Nothing herein contained shall be construed as authorizing the General Partner to amend this Agreement except in accordance with Article XI or as may be otherwise expressly provided for in this Agreement.

(C) The foregoing grant of authority (i) is a special power of attorney, coupled with an interest, and it shall survive the Involuntary Withdrawal of any Partner and shall extend to such Partner's heirs, successors, assigns and personal representatives; (ii) may be exercised by the General Partner for each and every Partner acting as attorney-in-fact for each and every Partner; and (iii) shall survive the Transfer by a Limited Partner of all or any portion of its Interest and shall be fully binding upon such transferee; except that the power of attorney shall survive such assignment with respect to the assignor Limited Partner for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect the admission of the transferee as a Substitute Limited Partner. Each Partner hereby agrees to be bound by any representations made by the General Partner, acting in good faith pursuant to such power of attorney. Each Partner shall execute and deliver to the General Partner, within fifteen (15) days after receipt of the General Partner's request therefor, such further designations, powers of attorney and other instruments as the General Partner deems necessary to effectuate this Agreement and the purposes of the Partnership.

(D) Each LB Partner hereby irrevocably appoints and empowers the General Partner and the Liquidator, in the event of a liquidation, and each of their authorized officers and attorneys-in-fact with full power of substitution, as the true and lawful agent and attorney-in-fact of such LB Partner with full power and authority in the name, place and stead of such LB Partner to take such actions (including waivers under the Partnership Agreement) or refrain from taking such action as the General Partner reasonably believes are necessary or desirable to achieve the purposes of Section 11.3 of the Partnership Agreement.

**Section 12.4 Notices.** All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, registered first-class mail, telex, telecopier, or any courier guaranteeing overnight delivery, (i) if to a Limited Partner, at the most current address given by such Limited Partner to the General Partner by means of a notice given in accordance with the provisions of this Section 12.4, which address initially is the address contained in the records of the General Partner, or (ii) if to the General Partner, 311 S. Wacker Drive, Suite 4000, Chicago, Illinois 60606, Attn: President.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if hand delivered; five (5) business days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; or when receipt is acknowledged, if telecopied.

**Section 12.5 Further Assurances.** The parties agree to execute and deliver all such documents, provide all such information and take or refrain from taking any action as may be necessary or desirable to achieve the purposes of this Agreement and the Partnership.

**Section 12.6 Titles and Captions.** All article or section titles or captions in this Agreement are solely for convenience and shall not be deemed to be part of this Agreement or otherwise define, limit or extend the scope or intent of any provision hereof.

**Section 12.7 Applicable Law.** This Agreement, and the application or interpretation thereof, shall be governed exclusively by its terms and by the law of the State of Delaware, without regard to its principles of conflicts of laws.

**Section 12.8 Binding Agreement.** This Agreement shall be binding upon the parties hereto, their heirs, executors, personal representatives, successors and assigns.

**Section 12.9 Waiver of Partition.** Each of the parties hereto irrevocably waives during the term of the Partnership any right that it may have to maintain any action for partition with respect to any property of the Partnership.

**Section 12.10 Counterparts and Effectiveness.** This Agreement may be executed in several counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart. Any such counterpart shall be admissible into evidence as an original hereof against each Person who executed it. The execution of this Agreement and delivery thereof by facsimile shall be sufficient for all purposes, and shall be binding upon any party who so executes.

**Section 12.11 Survival of Representations.** All representations and warranties herein shall survive the dissolution and final liquidation of the Partnership.

**Section 12.12 Entire Agreement.** This Agreement (and all Exhibits hereto) contains the entire understanding among the parties hereto and supersedes all prior written or oral agreements among them respecting the within subject matter, unless otherwise provided herein. There are no representations, agreements, arrangements or understandings, oral or written, among the Partners hereto relating to the subject matter of this Agreement which are not fully expressed herein and in said Exhibits.

**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered by the parties hereto as of the day and year first above written.

General Partner:

FIRST INDUSTRIAL REALTY TRUST INC.,  
as sole General Partner of the Partnership

By:

\_\_\_\_\_

Class K Limited Partner

FIRST INDUSTRIAL REALTY TRUST, INC.,  
as Class K Limited Partner

By:

\_\_\_\_\_

<b><u>First Highland Partners</u></b>	<b><u>Number of Units</u></b>
Highland Associates Limited Partnership	69,039
Peter Murphy	56,184
North Star Associates Limited Partnership	19,333
Peter O'Connor	56,844
Partridge Road Associates Limited Partnership	2,751
Shadeland Associates Limited Partnership	42,976
Ellen Margaret Smith	1,000
Joseph Edward Smith	1,000
Kevin Smith	10,571
Olivia Jane Smith	1,000
Jonathan Stott	80,026

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Schedule of Partners

<u>General Partner</u>	<u>Number of Units</u>
First Industrial Realty Trust, Inc.	30,892,739
<u>Limited Partners</u>	<u>Number of Units</u>
Kerry Acker	154
Sanders H. Acker	307
Sterling Alsip Trust DTD 8-1-89 Donald W. Schaumberger Trustee	794
Charles T. Andrews	754
Daniel R. Andrew TR of the Daniel R. Andrew Trust UA 12-29-92	137,489
The Arel Company	307
William J. Atkins	5,691
E. Donald Bafford	3,374
William Baloh	8,731
Thomas K. Barad & Jill E. Barad CO-TTEES of the Thomas K. Barad & Jill E. Barad Trust DTD 10-18-89	2,283
Enid Barden TTEE of the Enid Barden Trust DTD 6-28-95	56,082
Enid Barden TTEE of the Enid Barden Trust of 6-28-96	23,088
Barbara Bell	58,019
Stephen McNair Bell	58,020
Emil Billich	77
Don N. Blurton & Patricia H. Blurton Trustees UA DTD 4-11-96 Blurton 1996 Revocable Family Trust	598

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**Limited Partners****Number of Units**

Harriett Bonn TTEE UA DTD 3-5-97 FBO The Harriett Bonn Revocable Living Trust	24,804
Michael W. Brennan	3,806
Helen Brown	307
Henry D. Bullock & Terri D. Bullock & Shawn Stevenson TR of the Bullock Childrens Education Trust UA 12-20-94, FBO Benjamin Dure Bullock	4,620
Henry D. Bullock & Terri D. Bullock & Shawn Stevenson TR of the Bullock Childrens Education Trust UA 12-20-94, FBO Christine Laurel Bullock	4,620
Edward Burger	9,261
Barbara Lee O'Brien Burke	666
Ernestine Burstyn	5,007
Calamer, Inc.	1,233
Perry C. Caplan	1,388
Carew Corporation	13,650
Magdalena G. Castleman	307
Charles F. Downs & Mary Jane Downs TTEE Charles F. Downs Living Trust UA DTD 12-06-04	754
Cliffwood Development Company	64,823
Collins Family Trust DTD 5-6-69 James Collins Trustee	100,000
Kelly Collins	11,116
Michael Collins	17,369
Charles S. Cook and Shelby H. Cook TEN ENT	634
Cotswold Properties	34,939
Caroline Atkins Coutret	5,845

<b><u>Limited Partners</u></b>	<b><u>Number of Units</u></b>
David Cleborn Crow	5,159
Gretchen Smith Crow	2,602
Michael G. Damone TR of the Michael G. Damone Trust UA 11-4-69	144,296
Robert L. Denton	6,286
John E. De B Blockey TR of the John E. De B Blockey Trust	8,653
Henry E. Dietz Trust UA 1-16-81	36,476
Mark X. DiSanto	14,844
John M. DiSanto	14,844
Steven Dizio & Helen Dizio JT TEN	12,358
Nancy L. Doane	2,429
W. Allen Doane	1,987
Timothy Donohue	100
Darwin B. Dosch	1,388
Draizin Family Partnership, L.P.	357,896
Joseph S. Dresner	149,531
Milton H. Dresner TR of the Milton H. Dresner Revocable Trust UA 10-22-76	149,531
James O'Neil Duffy, Jr.	513
Martin Eglow	330
Rand H. Falbaum	17,022
Patricia O'Brien Ferrell	666
Rowena Finke	154
First & Broadway Limited Partnership	18,203
Fourbur Family Co., L.P.	588,273

**Limited Partners****Number of Units**

Ester Fried	3,177
Jack Friedman TR of the Jack Friedman Revocable Living Trust UA 3-23-78	26,005
Nancy Gabel	14
J. Peter Gaffney	727
Gerlach Family Trust DTD 6-28-85 Stanley & Linda Gerlach Trustees	874
Martin Goodstein	922
Dennis G. Goodwin and Jeannie L. Goodwin TEN ENT	6,166
Jeffrey L. Greenberg	330
Stanley Greenberg & Florence Greenberg JT TEN	307
Thelma C. Gretzinger Trust	450
Stanley Gruber	30,032
Melissa C. Gudim	24,028
H.L. Investors LLC	4,000
H.P. Family Group LLC	103,734
H/Airport Gp Inc.	1,433
Clay Hamlin & Lynn Hamlin JT TEN	15,159
Turner Harshaw	1,132
Edwin Hession & Cathleen Hession JT TEN	11,116
Highland Associates Limited Partnership	69,039
Andrew Holder	97
Ruth Holder	2,612
Robert W. Holman, Jr.	150,213
Holman/Shidler Investment Corporation	22,079

**Limited Partners****Number of Units**

Robert S. Hood Living Trust DTD 1-9-90 & amended 12-16-96 Robert S. Hood Trustee	3,591
Howard Trust DTD 4-30-79 Howard F. Sklar Trustee	653
Steven B. Hoyt	150,000
Jerry Hymowitz	307
Karen L. Hymowitz	154
IBS Delaware Partners LP	2,708
Seymour Israel	15,016
Frederick K. Ito Trustee UA DTD 9-9-98 FBO The Frederick K. Ito Trust	1,940
Frederick K. Ito and June Y. Ito Trustees UA DTD 9-9-98 FBO The June Y. Ito Trust	1,940
JP Trusts LLC	35,957
Michael W. Jenkins	460
Jernie Holdings Corp.	180,499
Joan R. Krieger TTEE of the Joan R. Krieger Revocable Trust DTD 10-21-97	15,184
John E. DE B. Blockey TR of the John E. DE B. Blockey Trust	8,653
Jane Terrell Johnson	3,538
Jeffrey E. Johnson	809
Johnson Living Trust DTD 2-18-83 H. Stanton & Carol A. Johnson Trustees	1,078
Thomas Johnson, Jr. and Sandra L. Johnson TEN ENT	2,142
Martha O'Brien Jones	665
Charles Mark Jordan	57
Mary Terrell Joseph	837
Nourhan Kailian	2,183

**Limited Partners****Number of Units**

H.L. Kaltenbacher, P.P. Kaltenbacher & J.K. Carr TTEES of the Joseph C. Kaltenbacher Credit Shelter TR	1,440
Sarah Katz	307
Carol F. Kaufman	166
KEP LLC	98,626
Peter Kepic	9,261
Jack Kindler	1,440
Kirshner Family Trust #1 DTD 4-8-76 Berton & Barbara Kirshner Trustees	29,558
Kirshner Trust #4 FBO Todd Kirshner DTD 12-30-76 Berton Kirshner Trustee	20,258
Arthur Kligman	307
William L. Kreiger, Jr.	3,374
Babette Kulka	330
Jack H. Kulka	330
LP Family Group LLC	102,249
Paul T. Lambert	39,816
Chester A. Latcham & Co.	1,793
Constance Lazarus	417,961
Jerome Lazarus	18,653
Susan Lebow	740
Arron Leifer	4,801
Duane Lund	617
Barbara Lusen	307
William J. Mallen Trust DTD 4-29-94 William J. Mallen Trustee	8,016
Stephen Mann	17

**Limited Partners****Number of Units**

Manor LLC	80,556
R. Craig Martin	754
Mary Jane Downs & Charles F. Downs TTEES Mary Jane Downs Living Trust UA DTD 12-06-04	754
J. Stanley Mattison	79
Henry E. Mawicke	636
Richard McClintock	623
McElroy Management Inc.	5,478
Eileen Millar	3,072
Linda Miller	2,000
Lila Atkins Mulkey	7,327
Peter Murphy	56,184
Anthony Muscatello	81,654
Ignatius Musti	1,508
New Land Associates Limited Partnership	1,664
Kris Nielsen	178
North Star Associates Limited Partnership	19,333
George F. Obrecht	5,289
Paul F. Obrecht	4,455
Richard F. Obrecht	5,289
Thomas F. Obrecht	5,289
Catherine A. O'Brien	832
Lee O'Brien TTEE of the Martha J. Harbison Testamentary Trust FBO Christopher C. O'Brien	666
Martha E. O'Brien	832

<b><u>Limited Partners</u></b>	<b><u>Number of Units</u></b>
Patricia A. O'Brien	6,387
Peter O'Connor	56,844
Steve Ohren	33,366
P&D Partners LP	1,440
Partridge Road Associates	2,751
Sybil T. Patten	1,816
PeeGee L.P.	4,817
Lawrence Peters	960
Jeffrey Pion	2,879
Pipkin Family Trust DTD 10-6-89 Chester & Janice Pipkin Trustees	3,140
Peter M. Polow	557
Keith J. Pomeroy TTEE of Keith J. Pomeroy Revocable TR Agreement DTD 12-13-76 as Amended & Restated 6-28-95	104,954
Princeton South at Lawrenceville LLC	4,692
Princeton South at Lawrenceville One	4,265
Swift Terminal Properties	183,158
Abraham Punia	307
RBZ LLC	155
R.E.A. Associates	8,908
RJB Ford City Limited Partnership	158,438
RJB II Limited Partnership	40,788
Marilyn Rangel IRA DTD 2-5-86 Custodian Smith Barney Shearson	969
Richard Rapp	23
Jack F. Ream	1,071

<u>Limited Partners</u>	<u>Number of Units</u>
Seymour D. Reich	154
James C. Reynolds	40,284
Andre G. Richard	1,508
Rebecca S. Roberts	8,308
Leslie A. Rubin Ltd.	4,048
James Sage	2,156
James R. Sage	3,364
Kathleen Sage	50
Wilton Wade Sample	5,449
Debbie B. Schneeman	740
Norma A. Schulze	307
Sciport Discovery Center	30
Sealy & Company, Inc.	37,119
Sealy Florida, Inc.	675
Sealy Professional Drive, L.L.C.	2,906
Sealy Real Estate Services, Inc.	148,478
Sealy Unitholder, L.L.C.	31,552
Mark P. Sealy	8,451
Scott P. Sealy	40,902
Shadeland Associates Limited Partnership	42,976
Frances Shankman Insurance Trust, Frances Shankman Trustee	16,540
Sam Shamie, Trustee of the Sam Shamie Trust Agreement DTD 3-16-78, as Restated 11-16-93	375,000
Garrett E. Sheehan	513



<u>Limited Partners</u>	<u>Number of Units</u>
Jay H. Shidler	68,020
Jay H. Shidler and Walette A. Shidler TEN ENT	1,223
Shidler Equities LP	254,541
D.W. Sivers Co.	12,265
Dennis W. Sivers	27,636
Sivers Family Real Property, Limited Liability Company	12,062
Sivers Investment Partnership	283,500
Wendel C. Sivers Marital Trust UW DTD 2-20-81 Dennis W. Sivers & G. Burke Mims CO-TTEES	14,020
Estate of Albert Sklar, Miriam M. Sklar Executrix	3,912
Michael B. Slade	2,829
Ellen Margaret Smith	1,000
Joseph Edward Smith	1,000
Kevin Smith	10,571
Olivia Jane Smith	1,000
Arnold R. Sollar TTEE for the Dorothy Sollar Residuary TR	307
Spencer and Company	154
SPM Industrial LLC	5,262
SRS Partnership	2,142
Robert Stein TTEE UA DTD 5-21-96 FBO Robert Stein	63,630
S. Larry Stein TTEE under Revocable Trust Agreement DTD 9-22-99 S. Larry Stein Grantor	63,630
Sterling Family Trust DTD 3-27-80 Donald & Valerie A. Sterling Trustees	3,559
Jonathan Stott	80,026
Victor Strauss	77

<b><u>Limited Partners</u></b>	<b><u>Number of Units</u></b>
Catherine O'Brien Sturgis	666
Mitchell Sussman	410
Donald C. Thompson TTEE UA DTD 12-31-98 FBO Donald C. Thompson Revocable Family Trust	39,243
Michael T. Tomasz UA DTD 2-5-90 Trustee of the Michael T. Tomasz Trust	36,033
Barry L. Tracey	2,142
William S. Tyrrell	2,906
Burton S. Ury	9,072
L. Gary Waller & Nancy R. Waller JT TEN	37,587
James J. Warfield	330
Phyllis M. Warsaw Living Trust	16,540
Wilson Management Company LLC	35,787
Elmer H. Wingate, Jr.	1,688
Ralph G. Woodley TTEE under Revocable Trust Agreement	16,319
World's Fair Limited Partnership	1,664
WSW 1988 Exchange Fund LP c/o WSW Capital Inc. Credit Suisse Asset Mgt. LLC	32,000
Sam L. Yaker TTEE of the Sam L. Yaker Revocable Trust Agreement DTD 2-14-84	37,870
Johannson Yap	1,680
Richard H. Zimmerman Trustee of the Richard H. Zimmerman Living Trust DTD 10-15-90 as amended	28,988
Gerald & Sharon Zuckerman JT TEN	615

LB Partners

Jernie Holdings Corp., a New York corporation

Fourbur Co., L.L.C., a New York limited liability company

Fourbur Family Co., L.P., a New York limited partnership

Jerome Lazarus

Constance Lazarus

Susan Burman

Judith Draizin

Jan Burman

Judith Draizin as custodian  
under the NYUGMA until  
age 21 for Danielle Draizin

Judith Draizin as custodian  
under the NYUGMA until  
age 21 for Heather Draizin

Judith Draizin as custodian  
under the NYUGMA until  
age 21 for Jason Draizin

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<u>Contributor Partner</u>	<u>Protected Amount</u>
Kerry Acker	*See Below
Sanders H. Acker	*See Below
Charles T. Andrews	*See Below
Daniel R. Andrew, TR of the Daniel R. Andrew Trust UA 12-29-92	*See Below
The Arel Company	*See Below
E. Donald Bafford	*See Below
William Baloh	*See Below
Enid Barden TTEE of the Enid Barden Trust DTD 6-28-95	*See Below
Enid Barden TTE of the Enid Barden Trust of 6-28-96	*See Below
Barbara Bell	*See Below
Stephen McNair Bell	*See Below
Emil Billich	*See Below
Don N. Blurton & Patricia H. Blurton Trustees UA DTD 4-11-96 Blurton Revocable Family Trust	*See Below
Michael W. Brennan	*See Below
Helen Brown	*See Below
Henry D. Bullock & Terri D. Bullock & Shawn Stevenson TR of the Bullock Childrens Education Trust UA 12-20-94, FBO Benjamin Dure Bullock	*See Below
Henry D. Bullock & Terri D. Bullock & Shawn Stevenson TR of the Bullock Childrens Education Trust UA 12-20-94, FBO Christine Laurel Bullock	*See Below
Ernestine Burstyn	*See Below

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**Contributor Partner****Protected Amount**

Calamer, Inc.	*See Below
Perry C. Caplan	*See Below
Carew Corporation	*See Below
Magdalena G. Castleman	*See Below
Cliffwood Development Company	*See Below
Michael G. Damone TR of the Michael G. Damone Trust UA 11-4-69	*See Below
Robert L. Denton	*See Below
John E. De B Blockey TR of the John E. De B Blockey Trust	*See Below
Henry E. Dietz Trust UA 1-16-81	*See Below
John M. DiSanto	*See Below
Mark X. DiSanto	*See Below
Darwin B. Dosch	*See Below
Draizin Family Partnership, L.P.	*See Below
Joseph S. Dresner	*See Below
Milton H. Dresner TR of the Milton H. Dresner Revocable Trust UA 10-22-76	*See Below
Martin Eglow	*See Below
Rand H. Falbaum	*See Below
Rowena Finke	*See Below
First & Broadway Limited Partnership	*See Below
Fourbur Family Co., L.P.	*See Below
Ester Fried	*See Below
Jack Friedman TR of the Jack Friedman Revocable Living Trust UA 3-23-78	*See Below
Nancy Gabel	*See Below

**Contributor Partner****Protected Amount**

Gerlach Family Trust DTD 6-28-85 Stanley & Linda Gerlach Trustees	*See Below
Martin Goodstein	*See Below
Dennis G. Goodwin and Jeannie L. Goodwin TEN ENT	*See Below
Jeffrey L. Greenberg	*See Below
Stanley Greenberg & Florence Greenberg JT TEN	*See Below
Thelma C. Gretzinger Trust	*See Below
Stanley Gruber	*See Below
H.P. Family Group LLC	*See Below
Clay Hamlin & Lynn Hamlin JT TEN	*See Below
Andrew Holder	*See Below
Ruth Holder	*See Below
Robert W. Holman, Jr.	*See Below
Holman/Shidler Investment Corporation	*See Below
Robert S. Hood Living Trust DTD 1-9-90 & amended 12-16-96 Robert S. Hood Trustee	*See Below
Steven B. Hoyt	*See Below
Jerry Hymowitz	*See Below
Karen L. Hymowitz	*See Below
Seymour Israel	*See Below
Frederick K. Ito Trustee UA DTD 9-9-98 FBO The Frederick K. Ito Trust	*See Below
Frederick K. Ito and June Y. Ito Trustees UA DTD 9-9-98 FBO The June Y. Ito Trust	*See Below
JP Trusts LLC	*See Below
Michael W. Jenkins	*See Below
Jernie Holdings Corp.	*See Below

**Contributor Partner****Protected Amount**

Charles Mark Jordan	*See Below
Nourhan Kailian	*See Below
H.L. Kaltenbacher, P.P. Kaltenbacher & J.K. Carr TTEES of the Joseph C. Kaltenbacher Credit Shelter TR	*See Below
Sarah Katz	*See Below
Carol F. Kaufman	*See Below
KEP LLC	*See Below
Jack Kindler	*See Below
Kirshner Family Trust #1 DTD 4-8-76 Berton & Barbara Kirshner Trustees	*See Below
Kirshner Trust #4 FBO Todd Kirshner DTD 12-30-76 Berton Kirshner Trustee	*See Below
Arthur Kligman	*See Below
Joan R. Krieger TTEE of the Joan R. Krieger Revocable Trust DTD 1021-97	*See Below
William L. Kreiger, Jr.	*See Below
LP Family Group LLC	*See Below
Paul T. Lambert	*See Below
Constance Lazarus	*See Below
Jerome Lazarus	*See Below
Susan Lebow	*See Below
Arron Leifer	*See Below
Barbara Lusen	*See Below
William J. Mallen Trust DTD 4-29-94, William J. Mallen Trustee	*See Below
Stephen Mann	*See Below
R. Craig Martin	*See Below

**Contributor Partner****Protected Amount**

J. Stanley Mattison	*See Below
Henry E. Mawicke	*See Below
Eileen Millar	*See Below
Linda Miller	*See Below
Peter Murphy	*See Below
Anthony Muscatello	*See Below
New Land Associates Limited Partnership	*See Below
Kris Nielsen	*See Below
North Star Associates Limited Partnership	*See Below
George F. Obrecht	*See Below
Paul F. Obrecht	*See Below
Richard F. Obrecht	*See Below
Thomas F. Obrecht	*See Below
Peter O'Connor	*See Below
P&D Partners LP	*See Below
Partridge Road Associates	*See Below
Sybil T. Patten	*See Below
PeeGee L.P.	*See Below
Lawrence Peters	*See Below
Jeffrey Pion	*See Below
Peter M. Polow	*See Below
Keith J. Pomeroy TTEE of Keith J. Pomeroy Revocable TR Agreement DTD 12-13-76 as Amended & Restated 6-28-95	*See Below
Princeton South at Lawrenceville LLC	*See Below



**Contributor Partner****Protected Amount**

Princeton South at Lawrenceville One	*See Below
Abraham Punia	*See Below
RBZ LLC	*See Below
R.E.A. Associates	*See Below
Richard Rapp	*See Below
Jack F. Ream	*See Below
Seymour D. Reich	*See Below
James C. Reynolds	*See Below
Rebecca S. Roberts	*See Below
Leslie A. Rubin Ltd.	*See Below
SRS Partnership	*See Below
Kathleen Sage	*See Below
Debbie B. Schneeman	*See Below
Norma A. Schulze	*See Below
Shadeland Associates Limited Partnership	*See Below
Frances Shankman Insurance Trust, Frances Shankman Trustee	*See Below
Sam Shamie, Trustee of the Sam Shamie Trust Agreement DTD 3-16-78, as Restated 11-16-93	*See Below
Jay H. Shidler	*See Below
Jay H. Shidler and Walette A. Shidler TEN ENT	*See Below
Shidler Equities LP	*See Below
D.W. Sivers Co.	*See Below
Dennis W. Sivers	*See Below
Sivers Family Real Property, Limited Liability Company	*See Below

**Contributor Partner****Protected Amount**

Sivers Investment Partnership	*See Below
Wendel C. Sivers Marital Trust UW DTD 2-20-81 Dennis W. Sivers & G. Burke Mims CO-TTEES	*See Below
Kevin Smith	*See Below
Spencer and Company	*See Below
Robert Stein TTEE UA DTD 5-21-96 FBO Robert Stein	*See Below
S. Larry Stein TTEE under Revocable Trust Agreement DTD 9-22-99 S. Larry Stein Grantor	*See Below
Sterling Family Trust DTD 3-27-80 Donald & Valerie A. Sterling Trustees	*See Below
Jonathan Stott	*See Below
Victor Strauss	*See Below
Mitchell Sussman	*See Below
Donald C. Thompson TTEE UA DTD 12-31-98 FBO Donald C. Thompson Revocable Family Trust	*See Below
Michael T. Tomasz UA DTD 2-5-90 Trustee of the Michael T. Tomasz Trust	*See Below
Barry L. Tracey	*See Below
William S. Tyrrell	*See Below
Burton S. Ury	*See Below
James J. Warfield	*See Below
Phyllis M. Warsaw Living Trust	*See Below
Wilson Management Co. LLC	*See Below
Elmer H. Wingate, Jr.	*See Below
Ralph G. Woodley TTEE under Revocable Trust Agreement	*See Below
World's Fair Limited Partnership	*See Below
Sam L. Yaker TTEE of the Sam L. Yaker Revocable Trust Agreement DTD 2-14-84	*See Below

**Contributor Partner****Protected Amount**

Richard H. Zimmerman Trustee of the Richard H. Zimmerman Living Trust DTD 10-15-90 as amended	*See Below
Gerald & Sharon Zuckerman JT TEN	*See Below
New Land Associates LP	2,195,750
World's Fair Partners, LP	211,208
Princeton South at Lawrenceville	5,267,344
Stanley Gruber	1,388,338
Stephen Mann	120,174
Seymour Israel	120,169
James O'Neil Duffy, Jr.	4,107
Garrett E. Sheehan	4,107
Andrew Holder	10,000
Arron Leifer	300,000
Arthur Kligman	80,000
Barbara Lusen	80,000
Carol F. Kaufman	50,000
Debbie B. Schneeman	30,000
Emil Billich	25,000
Ernestine Burstyn	160,000
H.L. Kaltenbacher, P.P. Kaltenbacher & J.K. Carr TTEES of the Joseph C. Kaltenbacher Credit Shelter TR	100,000
HP Family Group, LLC	16,110,000
Jack Kindler	100,000
Jerry Hymowitz	80,000
JP Trusts LLC	4,729,000

<b><u>Contributor Partner</u></b>	<b><u>Protected Amount</u></b>
Karen L. Hymowitz	45,000
Kerry Acker	45,000
Lawrence Peters	75,000
LP Family Group LLC	16,015,000
Magdalena G. Castleman	80,000
Martin Goodstein	250,000
Mitchell Sussman	110,000
Nancy Gabel	5,000
Norma A. Schulze	80,000
P&D Partners LP	100,000
PeeGee L.P.	25,000
Peter M. Polow	75,000
R.E.A. Associates	4,192,000
Richard Rapp	10,000
Sanders H. Acker	80,000
Sarah Katz	80,000
Seymour D. Reich	45,000
Spencer and Company	45,000
Susan Lebow	30,000
The Arel Company	80,000
Victor Strauss	25,000
WSW 1998 Exchange Fund L.P.	315,000
Rowena Finke	45,000
Ruth Holder	230,000

<b><u>Contributor Partner</u></b>	<b><u>Protected Amount</u></b>
Stanley Greenberg & Florence Greenberg JT TEN	80,000
Helen Brown	80,000
Abraham Punia	80,000
Francis Shankman Insurance Trust, Francis Shankman Trustee	200,000
Jerome Lazarus	17,000,000
Constance Lazarus	3,600,000
Jernie Holdings Corp.	100,000
Fourbur Family Co., L.P.	5,985,000
Robert L. Friedman	249,000
Phyllis M. Warsaw Living Trust	212,000

\* An amount equal to (a) the taxable gain, if any, that would be realized by such Additional Limited Partner if such Additional Limited Partner were to dispose of its Interest for no consideration other than the release or deemed release of liabilities of the partnership assumed by or otherwise allocable to such Additional Limited Partner under Code Section 752, as such hypothetical gain is determined from time to time, less (b) such Additional Limited Partner's share of "qualified nonrecourse financing" as defined in Code Section 465(b)(6) and the Treasury Regulations thereunder, as such share is determined in accordance with Treasury Regulations Section 1.752-3(a).

**FIRST INDUSTRIAL, L.P.**

**EXHIBIT 2**

**TO**

**ELEVENTH AMENDED AND RESTATED**

**LIMITED PARTNERSHIP AGREEMENT**

**Form of Redemption Notice**

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**Redemption Notice**

The undersigned hereby irrevocably (i) elects to exercise its redemption rights contained in Section 9.1(A) of the Eleventh Amended and Restated Limited Partnership Agreement of First Industrial, L.P. (the "Partnership Agreement") with respect to an aggregate of \_\_\_\_\_ Partnership Units (as defined in the Partnership Agreement), (ii) surrenders such Partnership Units and all right, title and interest therein and (iii) directs that the REIT shares (as defined in the Partnership Agreement), or applicable cash amount if so determined by the General Partner (as defined in the Partnership Agreement) in accordance with the Partnership Agreement, deliverable upon redemption of such Partnership Units be delivered to the address specified below.

Dated: \_\_\_\_\_

Name of Limited Partner: \_\_\_\_\_

Social Security or  
Federal Employer ID Number: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Limited Partner)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State)(Zip Code)

Signature Guaranteed by:  
\_\_\_\_\_

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FIRST INDUSTRIAL, L.P.

EXHIBIT 3

TO

ELEVENTH AMENDED AND RESTATED

LIMITED PARTNERSHIP AGREEMENT

Form of Registration Rights Agreement

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**REGISTRATION RIGHTS AGREEMENT**

**Dated as of June \_\_, 1994**

**of**

**First Industrial Realty Trust, Inc.**

**for the benefit of**

**HOLDERS OF LIMITED PARTNERSHIP UNITS**

**of**

**First Industrial, L.P.**

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## Registration Rights Agreement

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement") is made and entered into as of June , 1994, by First Industrial Realty Trust, Inc. (the "Company") for the benefit of the persons who own limited partnership units ("Units") of First Industrial, L.P. (the "Partnership") on the date hereof and their successors, assigns and transferees (herein referred to collectively as the "Holders" and individually as a "Holder").

WHEREAS, on the date hereof each Holder is or will become the owner of Units in the Partnership in connection with the contribution (the "Contributions") of certain real properties and other assets to the Partnership;

WHEREAS, on the date hereof the company is consummating an initial public offering of its common stock and is becoming the sole general partner of the Partnership;

WHEREAS, in connection with the foregoing, the Company has agreed, subject to the terms, conditions and limitations set forth in the limited partnership agreement of the Partnership (the "Partnership Agreement"), to provide the Holders with certain registration rights.

NOW, THEREFORE, the Company for the benefit of the Holders agrees as follows:

### Section 1. Definitions.

As used in this Agreement, the following capitalized defined terms shall have the following meanings:

**Exchange Act:** The Securities Exchange Act of 1934, as amended from time to time.

**Holders or Holders:** As set forth in the preamble.

**Majority Holders:** At any time, Holders of Registrable Securities and Units then redeemable for Registrable Securities, who if all Units were so redeemed, would then hold a majority of the Registrable Securities.

**NASD:** The National Association of Securities Dealers, Inc.

**Person:** Any individual, partnership, corporation, trust or other entity.

**Prospectus:** A prospectus included in the Shelf Registration statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by the Shelf Registration Statement, and by all other amendments and supplements to such prospectus, including post-effective amendments, and in each case including all material incorporated by reference therein.

**Registrable Securities:** The Shares, excluding (i) Shares for which the Shelf Registration Statement shall have become effective under the Securities Act and which have been disposed of under the Shelf Registration Statement (ii) Shares sold or otherwise distributed pursuant to Rule 144 under the Securities Act and (iii) Shares as to which registration under the Securities Act is not required to permit the sale thereof to the public.

**Registration Expenses:** Any and all expenses incident to performance of or compliance with this Agreement, including, without limitation: (i) all SEC, stock exchange or NASD registration and filing fees, (ii) all fees and expenses incurred in connection with compliance with state securities or blue sky laws (including reasonable fees and disbursements of counsel in connection with blue sky qualification of any of the Registrable Securities and the preparation of a Blue Sky Memorandum) and compliance with the rules of the NASD, (iii) all

expenses of any Persons in preparing or assisting in preparing, word processing, printing and distributing the Shelf Registration Statement, any Prospectus, certificates and other documents relating to the performance of and compliance with this Agreement, (iv) all fees and expenses incurred in connection with the listing, if any, of any of the Registrable Securities on any securities exchange or exchanges pursuant to Section 3(1) hereof, and (v) the fees and disbursements of counsel for the Company and of the independent public accountants of the Company, including the expenses of any special audits or “cold comfort” letters, if any, required by or incident to such performance and compliance. Registration Expenses shall specifically exclude underwriting discounts and commissions, brokerage or dealer fees, the fees and disbursements of counsel, accountants or other representatives of a selling Holder, and transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a selling Holder, all of which shall be borne by such Holder in all cases.

**Registration Notice:** As set forth in Section 3(b) hereof.

**Sale Period:** The 45-day period immediately following the filing with the SEC by the Company of an annual report of the Company on Form 1-K or a quarterly report of the Company on Form 10-Q or such other period as the Company may determine.

**SEC:** The Securities and Exchange Commission.

**Securities Act:** The Securities Act of 1933, as amended from time to time.

**Shares:** The shares of common stock, \$.01 par value, of the Company issued to Holders of Units upon redemption or exchange of their Units.

**Shelf Registration:** A registration required to be effected pursuant to Section 2 hereof.

**Shelf Registration Statement:** A “shelf” registration statement of the Company and any other entity required to be a registrant with respect to such shelf registration statement pursuant to the requirements of the Securities Act which covers all of the Registrable Securities on an appropriate form under Rule 415 under the Securities Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all materials incorporated by reference therein.

**Units:** Limited partnership interests in the Partnership issued to the holders in connection with the Contributions.

## **Section 2. Shelf Registration Under the Securities Act.**

(a) *Filing of Shelf Registration Statement.* Within 13 months following the date hereof, the Company shall cause to be filed a Shelf Registration Statement providing for the sale by the Holders of all of the Registrable Securities in accordance with the terms hereof and will use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective by the SEC as soon as reasonably practicable. The Company agrees to use its reasonable best efforts to keep the Shelf Registration Statement continuously effective under the Securities Act until such time as the aggregate number of Units and Registrable Securities outstanding is less than 5% of the aggregate number of Units outstanding on the date hereof (after giving effect to the Contributions) and, subject to Section 3(b) and Section 3(i), further agrees to supplement or amend the Shelf Registration Statement, if and as required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or by the Securities Act or by any other rules and regulations thereunder for Shelf Registration. Each Holder who sells Shares as part of the Shelf Registration shall be deemed to have agreed to all of the terms and conditions of this Agreement and to have agreed to perform any and all obligations of a Holder hereunder.

(b)*Expenses.* The Company shall pay all Registration Expenses in connection with the registration pursuant to Section 2(a). Each Holder shall pay all underwriting discounts and commissions, brokerage or dealer fees, the fees and disbursements of counsel, accountants or other representatives of such Holder and transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Securities pursuant to the Shelf Registration Statement or Rule 144 under the Securities Act.

(c)*Inclusion in Shelf Registration Statement.* Not later than 30 days prior to filing the Shelf Registration Statement with the SEC, the Company shall notify each Holder of its intention to make such filing and request advice from each Holder as to whether such Holder desires to have Registrable Securities held by it or which it is entitled to receive not later than the last day of the first Sale Period occurring in whole or in part after the date of such notice included in the Shelf Registration Statement at such time. Any Holder who does not provide the information reasonably requested by the Company in connection with the Shelf Registration Statement as promptly as practicable after receipt of such notice, but in no event later than 20 days thereafter, shall not be entitled to have its Registrable Securities included in the Shelf Registration Statement at the time it becomes effective, but shall have the right thereafter to deliver to the Company a Sale Notice as contemplated by Section 3(b).

### **Section 3. Registration Procedures.**

In connection with the obligations of the Company with respect to the Shelf Registration Statement pursuant to Section 2 hereof, the Company shall:

(a) prepare and file with the SEC, within the time period set forth in Section 2(a) hereof, a Shelf Registration Statement, which Shelf Registration Statement (i) shall be available for the sale of the Registrable Securities in accordance with the intended method or methods of distribution by the selling Holders thereof and (ii) shall comply as to form in all material respects with the requirements of the applicable form and include all financial statements required by the SEC to be filed therewith.

(b) subject to the last three sentences of this Section 3(b) and to Section 3(i) hereof, (i) prepare and file with the SEC such amendments and post-effective amendments to the Shelf Registration Statement as may be necessary to keep the Shelf Registration Statement effective for the applicable period; (ii) cause each Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 or any similar rule that may be adopted under the Securities Act; (iii) respond promptly to any comments received from the SEC with respect to the Shelf Registration Statement, or any amendment, post-effective amendment or supplement relating thereto; and (iv) comply with the provisions of the Securities Act with respect to the disposition of all securities covered by the Shelf Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the selling Holders thereof. Notwithstanding anything to the contrary contained herein, the Company shall not be required to take any of the actions described in clauses (i), (ii) or (iii) above with respect to each particular Holder of Registrable Securities unless and until the Company has received either a written notice (a "Registration Notice") from a Holder that such Holder intends to make offers or sales under the Shelf Registration Statement as specified in such Registration Notice or a written response from such Holder of the type contemplated by Section 2(c); *provided, however*, that the Company shall have 7 business days to prepare and file any such amendment or supplement after receipt of a Registration Notice. Once a Holder has delivered such a written response or a Registration Notice to the Company, such Holder shall promptly provide to the Company such information as the Company reasonably requests in order to identify such Holder and the method of distribution in a post-effective amendment to the Shelf Registration Statement or a supplement to a Prospectus. Offers or sales under the Shelf Registration Statement may be made only during a Sale Period. Such Holder also shall notify the Company in writing upon completion of such offer or sale or at such time as such Holder no longer intends to make offers or sales under the Shelf Registration Statement.

(c) furnish to each Holder of Registrable Securities that has delivered a Registration Notice to the Company, without charge, as many copies of each applicable Prospectus, including each preliminary Prospectus,

and any amendment or supplement thereto and such other documents as such Holder may reasonably request, in order to facilitate the public sale or other disposition of the Registrable Securities; the Company consents to the use of such Prospectus, including each preliminary Prospectus, by each such Holder of Registrable Securities in connection with the offering and sale of the Registrable Securities covered by such Prospectus or the preliminary Prospectus.

(d) use its reasonable best efforts to register or qualify the Registrable Securities by the time the Shelf Registration Statement is declared effective by the SEC under all applicable state securities or "blue sky" laws of such jurisdictions as any Holder of Registrable Securities covered by the Shelf Registration Statement shall reasonably request in writing, keep each such registration or qualification effective during the period the Shelf Registration Statement is required to be kept effective or during the period offers or sales are being made by a Holder that has delivered a Registration Notice to the Company, whichever is shorter, and do any and all other acts and things which may be reasonably necessary or advisable to enable such Holder to consummate the disposition in each such jurisdiction of such Registrable Securities owned by such Holder; *provided, however*, that the Company shall not be required (i) to qualify generally to do business in any jurisdiction or to register as a broker or dealer in such jurisdiction where it would not be required so to qualify or register but for this Section 3(d), (ii) to subject itself to taxation in any such jurisdiction or (iii) to submit to the general service of process in any such jurisdiction.

(e) notify each Holder when the Shelf Registration Statement has become effective and notify each Holder of Registrable Securities that has delivered a Registration Notice to the Company promptly and, if requested by such Holder, confirm such advice in writing (i) when any post-effective amendments and supplements to the Shelf Registration Statement become effective, (ii) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of any proceedings for that purpose, (iii) if the Company receives any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose and (iv) of the happening of any event during the period the Shelf Registration Statement is effective as a result of which the Shelf Registration Statement or a related Prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading.

(f) make every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of the Shelf Registration Statement at the earliest possible moment.

(g) furnish to each Holder of Registrable Securities that has delivered a Registration Notice to the Company, without charge, at least one conformed copy of the Shelf Registration Statement and any post-effective amendment thereto (without documents incorporated therein by reference or exhibits thereto, unless requested).

(h) cooperate with the selling Holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any Securities Act legend; and enable certificates for such Registrable Securities to be issued for such numbers of shares and registered in such names as the selling Holders may reasonably request at least two (2) business days prior to any sale of Registrable Securities.

(i) subject to the last three sentences of Section 3(b) hereof, upon the occurrence of any event contemplated by Section 3(e)(iv) hereof, use its reasonable best efforts promptly to prepare and file a supplement or prepare, file and obtain effectiveness of a post-effective amendment to the Shelf Registration Statement or a related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities, such Prospectus will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) make available for inspection by representatives of the Holders of the Registrable Securities and any counsel or accountant retained by such Holders, all financial and other records, pertinent corporate documents and properties of the Company, and cause the respective officers, directors and employees of the Company to supply all information reasonably requested by any such representative, counsel or accountant in connection with the Shelf Registration Statement; *provided, however*, that such records, documents or information which the Company determines in good faith to be confidential, and notifies such representatives, counsel or accountants in writing that such records, documents or information are confidential, shall not be disclosed by the representatives, counsel or accountants unless (i) the disclosure of such records, documents or information is necessary to avoid or correct a material misstatement or omission in the Shelf Registration Statement, (ii) the release of such records, documents or information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction or (iii) such records, documents or information have been generally made available to the public otherwise than in violation of this Agreement.

(k) a reasonable time prior to the filing of any Prospectus, any amendment to the Shelf Registration Statement or amendment or supplement to a Prospectus, provide copies of such document (not including any documents incorporated by reference therein unless requested) to the Holders of Registrable Securities that have provided a Registration Notice to the Company.

(l) use its reasonable best efforts to cause all Registrable Securities to be listed on any securities exchange on which similar securities issued by the Company are then listed.

(m) obtain a CUSIP number for all Registrable Securities, not later than the effective date of the Shelf Registration Statement.

(n) otherwise use its reasonable efforts to comply with all applicable rules and regulations of the SEC and make available to its security holders, as soon as reasonably practicable, an earnings statement covering at least 12 months which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

(o) use its reasonable best efforts to cause the Registrable Securities covered by the Shelf Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company to enable Holders that have delivered Registration Notices to the Company to consummate the disposition of such Registrable Securities.

The Company may require each Holder of Registrable Securities to furnish to the Company in writing such information regarding the proposed distribution by such Holder of such Registrable Securities as the Company may from time to time reasonably request in writing.

In connection with and as a condition to the Company's obligations with respect to the Shelf Registration Statement pursuant to Section 2 hereof and this Section 3, each Holder agrees that (i) it will not offer or sell its Registrable Securities under the Shelf Registration Statement until (A) it has either (1) provided a Registration Notice pursuant to Section 3(b) hereof or (2) had Registrable Securities included in the Shelf Registration Statement at the time it became effective pursuant to Section 2(c) hereof and (B) it has received copies of the supplemented or amended Prospectus contemplated by Section 3(b) hereof and receives notice that any post-effective amendment has become effective; (ii) upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(b)(iv) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Shelf Registration Statement until such Holder receives copies of the supplemented or amended Prospectus contemplated by Section 3(i) hereof and receives notice that any post-effective amendment has become effective, and, if so directed by the Company, such Holder will deliver to the Company (at the expense of the Company) all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such registrable Securities current at the time of receipt of such notice; and (iii) all offers and sales under the Shelf Registration Statement shall be completed within forty-five (45) days after the first date on

which offers or sales can be made pursuant to clause (i) above, and upon expiration of such forty-five (45) day period the Holder will not offer or sell its Registrable Securities under the Shelf Registration Statement until it has again complied with the provisions of clauses (i)(A)(1) and (B) above, except that if the applicable Registration Notice was delivered to the Company at a time which was not part of a Sale Period, such forty-five (45) day period shall be the next succeeding Sale Period.

#### **Section 4. Restrictions on Public Sale by Holders of Registrable Securities.**

Each Holder agrees with the Company that:

(a) If the Company determines in its good faith judgment, after consultation with counsel, that the filing of the Shelf Registration Statement under Section 2 hereof or the use of any Prospectus would require the disclosure of important information which the Company has a bona fide business purpose for preserving as confidential or the disclosure of which would impede the Company's ability to consummate a significant transaction, upon written notice of such determination by the Company, the rights of the Holders to offer, sell or distribute any Registrable Securities pursuant to the Shelf Registration Statement or to require the Company to take action with respect to the registration or sale of any Registrable Securities pursuant to the Shelf Registration Statement (including any action contemplated by Section 3 hereof) will be suspended until the date upon which the Company notifies the Holders in writing that suspension of such rights for the grounds set forth in this Section 4(a) is no longer necessary.

(b) In the case of the registration of any underwritten equity offering proposed by the Company (other than any registration by the Company on Form S-8, or a successor or substantially similar form, of (i) an employee stock option, stock purchase or compensation plan or of securities issued or issuable pursuant to any such plan or (ii) a dividend reinvestment plan), each Holder agrees, if requested in writing by the managing underwriter or underwriters administering such offering, not to effect any offer, sale or distribution of Registrable Securities ) or any option or right to acquire Registrable Securities) during the period commencing on the 10th day prior to the expected effective date (which date shall be stated in such notice) of the registration statement covering such underwritten primary equity offering and ending on the date specified by such managing underwriter in such written request to such Holder, which date shall not be later than six months after such expected date of effectiveness;

(c) In the event that any Holder uses a Prospectus in connection with the offering and sale of Registrable Securities covered by such Prospectus, such Holder will use only the latest version of such Prospectus provided to it by the Company.

#### **Section 5. Indemnification Contribution.**

(a) *Indemnification by the Company.* The Company agrees to indemnify and hold harmless each Holder and its officers and directors and each person, if any, who controls any Holder within the meaning of Section 15 of the Securities Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement (or any amendment thereto) or any Prospectus, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any

such untrue statement or omission, or any such alleged untrue statement or omission, if such settlement is effected with the written consent of the Company; and

(iii) against any and all expense whatsoever, as incurred (including reasonable fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, in each case whether or not a party, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under clause (i) or (ii) above;

*provided, however*, that the indemnity provided pursuant to this Section 5(a) does not apply to any Holder with respect to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by such Holder expressly for use in the Shelf Registration Statement (or any amendment thereto) or any Prospectus.

(b) *Indemnification by Holders.* Each Holder severally agrees to indemnify and hold harmless the Company and the other selling Holders, and each of their respective directors and officers (including each director and officer of the Company who signed the Shelf Registration Statement), and each person, if any, who controls the Company or any other selling Holder within the meaning of Section 15 of the Securities Act, to the same extent as the indemnity contained in Section 5(a) hereof (except that any settlement described in Section 5(a)(2) shall be effected with the written consent of such Holder), but only insofar as such loss, liability, claim, damage or expense arises out of or is based upon any untrue statement or omission, or alleged untrue statement or omission, made in the Shelf Registration Statement (or any amendment thereto) or any Prospectus in reliance upon and in conformity with written information furnished to the Company by such selling Holder expressly for use in the Shelf Registration Statement (or any amendment thereto) or such Prospectus. In no event shall the liability of any Holder under this Section 5(b) be greater in amount than the dollar amount of the proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Each indemnified party shall give reasonably prompt notice to each indemnifying party of any action or proceeding commenced against it in respect of which indemnity may be sought hereunder, but failure so to notify an indemnifying party (i) shall not relieve it from any liability which it may have under the indemnity agreement provided in Section 5(a) or (b) unless and to the extent it did not otherwise learn of such action and the lack of notice by the indemnified party results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) shall not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided under Section 5(a) or (b). If the indemnifying party so elects within a reasonable time after receipt of such notice, the indemnifying party may assume the defense of such action or proceeding at such indemnifying party's own expense with counsel chosen by the indemnifying party; *provided, however*, that, if such indemnified party or parties reasonably determine that a conflict of interest exists where it is advisable for such indemnified part or parties to be represented by separate counsel or that, upon advice of counsel, there may be legal defenses available to them which are different from or in addition to those available to the indemnifying party, then the indemnifying party shall not be entitled to assume such defense and the indemnified party or parties in the aggregate shall be entitled to one separate counsel at the indemnifying party's expense. If an indemnifying party is not so entitled to assume the defense of such action or does not assume such defense, after having received the notice referred to in the first sentence of this Section 5(c), the indemnifying party or parties will pay the reasonable fees and expenses of counsel for the indemnified party or parties. In such event however, no indemnifying party will be liable for any settlement effected without the written consent of such indemnifying party. If an indemnifying party is entitled to assume, and assumes, the defense of such action or proceeding in accordance with this paragraph, such indemnifying party shall not be liable for any fees and expenses of counsel for the indemnified parties incurred thereafter in connection with such action or proceeding.



(d) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 5 is for any reason held to be unenforceable although applicable in accordance with its terms, the Company and the selling Holders shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by such indemnity agreement incurred by the Company and the selling Holders, in such proportion as is appropriate to reflect the relative fault of and benefits to the Company on the one hand and the selling Holders on the other (in such proportions that the selling Holders are severally, not jointly, reasonable for the balance), in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations. The relative benefits to the indemnifying party and indemnified parties shall be determined by reference to, among other things, the total proceeds received by the indemnifying party and indemnified parties in connection with the offering to which such losses, liabilities, claims, damages, or expenses relate. The relative fault of the indemnifying party and indemnified parties shall be determined by reference to, among other things, whether the action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or the indemnified parties, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action.

The Company and the Holders agree that it would not be just or equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 5(d), no selling Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities of such selling Holder were offered to the public exceeds the amount of any damages which such selling Holder is otherwise required to pay by reason of such untrue statement or omission.

Notwithstanding the foregoing, no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 5(d), each Person, if any, who controls a Holder within the meaning of Section 15 of the Securities Act and directors and officers of a Holder shall have the same rights to contribution as such Holder, and each director of the Company, each officer of the Company who signed the Shelf Registration Statement and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act shall have the same rights to contribution as the Company.

#### **Section 6. Rule 144 Sales.**

(a) The Company covenants that it will file the reports required to be filed by the Company under the Securities Act and the Exchange Act, so as to enable any Holder to sell Registrable Securities pursuant to Rule 144 under the Securities Act.

(b) In connection with any sale, transfer or other disposition by any Holder of any Registrable Securities pursuant to Rule 144 under the Securities Act, the Company shall cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any Securities Act legend, and enable certificates for such Registrable Securities to be for such number of shares and registered in such names as the selling Holders may reasonably request at least two business days prior to any sale of Registrable Securities.

#### **Section 7. Miscellaneous.**

(a) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given without consent of the Company and Holders constituting Majority Holders; *provided, however*, that no amendment, modification or supplement or waiver or consent to the departure with

respect to the provisions of Sections 2, 3, 4, 5, 6 or 7(a) hereof or the definition of Registrable Securities or which would impair the rights of any Holder under such provisions, shall be effective as against any Holder of Registrable Securities or Units redeemable for Registrable Securities unless consented to in writing by such Holder of Registrable Securities or Units. Notice of any amendment, modification or supplement to this Agreement adopted in accordance with this Section 7(a) shall be provided by Company to each Holder of Registrable Securities or Units redeemable for Registrable Securities at least thirty (30) days prior to the effective date of such amendment, modification or supplement.

(b)*Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, registered first-class mail, telex, telecopier or any courier guaranteeing overnight delivery, (i) if to a Holder, at the most current address given by such Holder to the Company by means of a notice given in accordance with the provisions of this Section 7(b), which address initially is, with respect to each Holder, the address set forth in the Partnership Agreement, or (ii) to the Company, at 150 N. Wacker Drive, Suite 150, Chicago, Illinois 60606, Attention: President.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five (5) business days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt is acknowledged, if telecopied; or at the time delivered if delivered by an air courier guaranteeing overnight delivery.

(c)*Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the Company and the Holders, including without limitation and without the need for an express assignment, subsequent Holders. If any successor, assignee or transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities such Person shall be entitled to receive the benefits hereof and shall be conclusively deemed to have agreed to be bound by all of the terms and provisions hereof.

(d)*Headings.* The headings in this Agreement are for the convenience of reference only and shall not limited or otherwise affect the meaning hereof.

(e)*GOVERNING LAW.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MARYLAND WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PROVISIONS THEREOF.

(f)*Specific Performance.* The Company and the Holders acknowledge that there would be no adequate remedy at law if any party fails to perform any of its obligations hereunder, and accordingly agree that the Company and each Holder, in addition to any other remedy to which it may be entitled at law or in equity, shall be entitled to compel specific performance of the obligations of another under this Agreement in accordance with the terms and conditions of this Agreement in any court of the United States or any State thereof having jurisdictions.

(g)*Entire Agreement.* This Agreement is intended by the Company as a final expression of its agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Company in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings of the Company with respect to such subject matter.

IN WITNESS WHEREOF, the Company has executed this Agreement as of the date first written above.

FIRST INDUSTRIAL REALTY TRUST, INC.

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

