

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

FORM S-3  
 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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

FIRST INDUSTRIAL, L.P.  
 (Exact name of registrant as specified in its charter)

Maryland  
 (State or other jurisdiction of incorporation or organization)

Delaware  
 (State or other jurisdiction of incorporation or organization)

36-3935116  
 (I.R.S. Employer Identification Number)

36-3924586  
 (I.R.S. Employer Identification Number)

311 S. Wacker Drive, Suite 4000  
 Chicago, Illinois 60606  
 (312) 344-4300  
 (Address, including zip code, and telephone number, including area code, of registrants' principal executive offices)

Copies to:

Michael W. Brennan  
 President and Chief Executive Officer  
 First Industrial Realty Trust, Inc.  
 311 S. Wacker Drive, Suite 4000  
 Chicago, Illinois 60606  
 (312) 344-4300

Gerald S. Tanenbaum, Esq.  
 Roger Andrus, Esq.  
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 New York, New York 10005  
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(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: / /

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: /X/

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: / /

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: / /

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box: / /

CALCULATION OF REGISTRATION FEE

Title of Securities Being Registered(1)	Amount to Be Registered(2)	Proposed Maximum Offering Price Per Unit(3)	Proposed Maximum Aggregate Offering Price(2)(3)(4)	Amount of Registration Fee(5)(6)
First Industrial, L.P. Debt Securities.....	\$375,000,000	N.A.	\$375,000,000	\$47,512.50

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- (1) In addition to the Debt Securities registered hereunder, pursuant to Rule 429 under the Securities Act of 1933, this Registration Statement carries forward unsold securities in an amount of \$514,165,320 of Common Stock, Preferred Stock and Depositary Shares of First Industrial Realty Trust, Inc. registered on the Form S-3 (File No. 333-43641), which was declared effective on January 27, 1998, and \$125,000,000 of Debt Securities of First Industrial, L.P. registered on the Form S-3 (File No. 333-57992), which was declared effective on July 19, 2001 (together, the "Previous Registration Statements"). This Registration Statement constitutes a Post-Effective Amendment to each of the Previous Registration Statements, pursuant to which such unsold securities may be offered and sold by First Industrial Realty Trust, Inc. and First Industrial, L.P.
  - (2) In no event will the aggregate maximum offering price of all Debt Securities registered under this Registration Statement exceed \$375,000,000. Any securities registered hereunder may be sold separately or as units with the \$125,000,000 of Debt Securities and \$514,165,320 of Common Stock, Preferred Stock or Depositary Shares of First Industrial Realty Trust, Inc. registered on the Previous Registration Statements.
  - (3) The proposed maximum offering price per unit (a) has been omitted pursuant to Instruction II.D. of Form S-3 and (b) will be determined, from time to time, by the Registrants in connection with the issuance by the Registrants of the securities registered hereunder and under the Previous Registration Statements.
  - (4) In U.S. dollars, or the equivalent thereof, denominated in one or more foreign currencies or in units of two or more foreign currencies or composite currencies (such as the Euro).
  - (5) Calculated pursuant to Rule 457(o) of the rules and regulations under the Securities Act of 1933, as amended.
  - (6) The Registration Fee was calculated with respect to only the Debt Securities registered hereunder. The Registration Fees with respect to those securities being carried forward from the Previous Registration Statements have been previously paid.

The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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Information contained in this prospectus is subject to completion or amendment. A registration statement relating to these securities has been filed with the Commission. No securities may be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of any securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of the relevant jurisdiction.

SUBJECT TO COMPLETION DATED AUGUST 2, 2004

PROSPECTUS

\$1,014,165,320

FIRST INDUSTRIAL REALTY TRUST, INC.

and

FIRST INDUSTRIAL, L.P.

First Industrial Realty Trust, Inc. may offer the following securities for sale through this prospectus from time to time:

- o shares of common stock;
- o shares of preferred stock; and
- o shares of preferred stock represented by depositary shares.

First Industrial, L.P., the operating partnership of First Industrial Realty Trust, Inc., may offer up to \$500,000,000 of unsecured non-convertible investment grade debt securities for sale through this prospectus from time to time.

We will provide the specific terms of the securities that we are offering in one or more supplements to this prospectus. Any supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the additional information described under "Where You Can Find More Information" before investing in our securities. The aggregate of the offering prices of securities covered by this prospectus will not exceed \$1,014,165,320.

The common stock of First Industrial Realty Trust, Inc. is listed on the New York Stock Exchange under the symbol "FR."

We may sell offered securities through agents, to or through underwriters or through dealers, directly to purchasers or through a combination of these methods of sale. See "Plan of Distribution" for more information.

This prospectus may not be used to consummate sales of offered securities unless accompanied by a prospectus supplement.

Investing in the securities of First Industrial Realty Trust, Inc. or the Operating Partnership involves risks that are described in the "Risk Factors" section beginning on page 3 of this prospectus.

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Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.  
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The date of this prospectus is \_\_\_\_\_, 2004.

TABLE OF CONTENTS

Page

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ABOUT THIS PROSPECTUS.....	1
THE COMPANY AND THE OPERATING PARTNERSHIP.....	1
RISK FACTORS.....	3
RATIOS OF EARNINGS TO FIXED CHARGES.....	4
USE OF PROCEEDS.....	4
PLAN OF DISTRIBUTION.....	5
DESCRIPTION OF DEBT SECURITIES.....	8
DESCRIPTION OF PREFERRED STOCK.....	21
DESCRIPTION OF DEPOSITARY SHARES.....	28
DESCRIPTION OF COMMON STOCK.....	32
CERTAIN PROVISIONS OF MARYLAND LAW AND THE Company'S ARTICLES OF INCORPORATION AND BYLAWS.....	34
RESTRICTIONS ON TRANSFERS OF CAPITAL STOCK.....	37
CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS.....	38
Forward-looking STATEMENTS.....	41
WHERE YOU CAN FIND MORE INFORMATION.....	41
DOCUMENTS INCORPORATED BY REFERENCE.....	42
EXPERTS.....	43
LEGAL MATTERS.....	43

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We have not authorized any dealer, salesperson or other person to give you written information other than this prospectus or any prospectus supplement or to make representations as to matters not stated in this prospectus or any prospectus supplement. You must not rely on unauthorized information. This prospectus and any prospectus supplement are not an offer to sell these securities or our solicitation of your offer to buy the securities in any jurisdiction where that would not be permitted or legal. The delivery of this prospectus or any prospectus supplement at any time does not create an implication that the information contained herein or therein is correct as of any time subsequent to their respective dates.

## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement First Industrial Realty Trust, Inc. (the "Company") and First Industrial, L.P. (the "Operating Partnership") filed with the Securities and Exchange Commission, or SEC, utilizing the "shelf" registration process, relating to the common stock, preferred stock, depositary shares and debt securities described in this prospectus. Under this shelf registration process, the Company and the Operating Partnership may sell any combination of the securities described in this prospectus in one or more offerings up to a total amount of \$1,014,165,320.

This prospectus provides you with a general description of the securities the Company and the Operating Partnership may offer. Each time the Company or the Operating Partnership sells securities, it will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the additional information described under the heading "Where You Can Find More Information."

As used in this prospectus, "we," "us" and "our" refer to the Company and its subsidiaries, including the Operating Partnership, unless the context otherwise requires.

## THE COMPANY AND THE OPERATING PARTNERSHIP

The Company is a real estate investment trust, or REIT, subject to Sections 856 through 860 of the Internal Revenue Code of 1986. The Company and its consolidated partnerships, corporations and limited liability companies are a self-administered and fully integrated real estate company which owns, manages, acquires, sells and develops industrial real estate.

As of March 31, 2004, our portfolio consisted of the following types of properties:

- o 416 light industrial properties -- Light industrial properties generally are of less than 100,000 square feet, have a ceiling height of 16 to 21 feet, are comprised of 5% to 50% office space, contain less than 50% of manufacturing space and have a land use ratio of 4:1. The land use ratio is the ratio of the total property area to that not occupied by the building.
- o 130 bulk warehouse properties-- Bulk warehouse buildings generally are of more than 100,000 square feet, have a ceiling height of at least 22 feet, are comprised of 5% to 15% office space, contain less than 25% of manufacturing space and have a land use ratio of 2:1.
- o 160 R&D/flex properties-- Research and development/flex buildings generally are of less than 100,000 square feet, have a ceiling height of less than 16 feet, are comprised of 50% or more of office space, contain less than 25% of manufacturing space and have a land use ratio of 4:1.
- o 87 regional warehouse properties-- Regional warehouses generally are of less than 100,000 square feet, have a ceiling height of at least 22 feet, are comprised of 5% to 15% of office space, contain less than 25% of manufacturing space and have a land use ratio of 2:1.
- o 32 manufacturing properties-- Manufacturing properties are a diverse category of buildings that generally have a ceiling height of 10 to 18 feet, are comprised of 5% to 15% of office space, contain more than 50% of manufacturing space and have a land use ratio of 4:1.

These properties contain approximately 58.5 million square feet of gross leaseable area located in 22 states.

Our interests in our properties and land parcels are held through partnerships, corporations and limited liability companies controlled by the Company, including the Operating Partnership, of which the Company is the sole general partner. As of March 31, 2004, the Company held approximately 86.1% of the outstanding limited partnership units of the Operating Partnership. At that date, approximately 13.9% of the outstanding limited part-

nership units were held by outside investors, including certain members of the management of the Company. Each limited partnership unit, other than those held by the Company, may be exchanged for one share of the Company common stock, subject to adjustments. Upon each exchange, the number of limited partnership units held by the Company, and its ownership percentage of the Operating Partnership, increases. As of March 31, 2004, the Company also owned preferred general partnership interests in the Operating Partnership with an aggregate liquidation priority of \$250.0 million.

We utilize an operating approach that combines the effectiveness of decentralized, locally based property management, acquisition, sales and development functions with the cost efficiencies of centralized acquisition, sales and development support, capital markets expertise, asset management and fiscal control systems. At March 31, 2004, we had 331 employees.

We have grown and will seek to continue to grow through the development of industrial properties and acquisition of additional industrial properties.

The Company is a Maryland corporation organized on August 10, 1993, and which completed its initial public offering in June 1994. The Operating Partnership is a Delaware limited partnership organized in November 1993. Our principal executive offices are located at 311 S. Wacker Drive, Suite 4000, Chicago, Illinois 60606, telephone number (312) 344-4300. Our website is <http://www.firstindustrial.com>. The information on our website is not a part of, and is not incorporated by reference into, this prospectus.

## RISK FACTORS

Your investment in any of our securities involves certain risks. Prior to making a decision about investing in our securities, and in consultation with your own financial and legal advisers, you should carefully consider, among other matters, the following risk factor, as well as those incorporated by reference in this prospectus, including our most recent Annual Report on Form 10-K, and those included in the applicable prospectus supplement regarding risks particular to each type or series of securities that we are offering under that prospectus supplement.

The Company might fail to qualify or remain qualified as a REIT.

We intend to operate so as to qualify as a REIT under the Internal Revenue Code of 1986 (the "Code") Although we believe that we are organized and will operate in a manner so as to qualify as a REIT, qualification as a REIT involves the satisfaction of numerous requirements, some of which must be met on a recurring basis. These requirements are established under highly technical and complex Code provisions of which there are only limited judicial or administrative interpretations, and involve the determination of various factual matters and circumstances not entirely within our control.

We (through one of our subsidiary partnerships) entered into certain development agreements in 2000 through 2003, the performance of which has been completed. Under these agreements, we provided services to unrelated third parties and certain payments were made by the unrelated third parties for services provided by certain contractors hired by us. We believe that these payments were properly characterized by us as reimbursements for costs incurred by us on behalf of the third parties and do not constitute gross income and did not prevent us from satisfying the gross income requirements of the REIT provisions (the "gross income tests"). We have brought this matter to the attention of the Internal Revenue Service, or IRS. The IRS has not challenged or expressed any interest in challenging our view on this matter. If the IRS were to challenge such position and were successful, we might be found not to have satisfied the gross income tests in one or more of our taxable years. If we were found not to have satisfied the gross income tests, we could be subject to a penalty tax as further discussed under "Certain U.S. Federal Income Tax Considerations" below. However, such noncompliance should not adversely affect our status as a REIT as long as such noncompliance was due to reasonable cause and not to willful neglect, and certain other requirements are met. Although this cannot be assured, we believe that the risk of losing our REIT status as a result of these development agreements is remote.

If we were to fail to qualify as a REIT in any taxable year, we would be subject to federal income tax, including any applicable alternative minimum tax, on our taxable income at corporate rates. This could result in a discontinuation or substantial reduction in dividends to stockholders and in cash to pay interest and principal on debt securities that we issue. Unless entitled to relief under certain statutory provisions, we also would be disqualified from electing treatment as a REIT for the four taxable years following the year during which we failed to qualify as a REIT. See "Certain U.S. Federal Income Tax Considerations" below.

#### RATIOS OF EARNINGS TO FIXED CHARGES

The Company's ratios of earnings to fixed charges and preferred dividend requirements for the three months ended March 31, 2004 and for the years ended December 31, 2003, 2002, 2001, 2000 and 1999 were 1.02x, 1.13x, 1.11x, 1.42x, 1.47x and 1.61x, respectively. For purposes of computing the ratios of earnings to fixed charges and preferred stock dividends, earnings have been calculated by adding fixed charges (excluding capitalized interest) to income from continuing operations before minority interest allocable to continuing operations. Fixed charges consist of interest cost, whether expensed or capitalized and amortization of deferred financing costs.

The Operating Partnership's ratios of earnings to fixed charges for the three months ended March 31, 2004 and for the years ended December 31, 2003, 2002, 2001, 2000 and 1999 were 1.35x, 1.42x, 1.69x, 2.06x, 2.08x and 2.30x, respectively. For purposes of computing the ratios of earnings to fixed charges, earnings have been calculated by adding fixed charges (excluding capitalized interest) to income from continuing operations. Fixed charges consist of interest cost, whether expensed or capitalized and amortization of deferred financing costs.

The ratios set forth above for the five years ended December 31, 2003 are subject to adjustment as a result of the adoption of the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets" ("FAS 144"), as described in Note 3 to the consolidated financial statements in 2003 Annual Report on Form 10-K of the Operating Partnership and of the Company for the year ended December 31, 2003 and in Note 2 to the consolidated financial statements in Quarterly Report on Form 10-Q of the Operating Partnership and of the Company for the quarter ended March 31, 2004. As a result, the adjustment required by FAS 144 will reduce income from continuing operations and the ratios of earnings to fixed charges reported above will not agree to the ratios reported in 2003 Annual Report on Form 10-K of the Operating Partnership and of the Company.

#### USE OF PROCEEDS

Unless otherwise described in the applicable prospectus supplement, the Company and the Operating Partnership intend to use the net proceeds from the sale of securities offered by this prospectus and the applicable prospectus supplement for general corporate purposes, which may include the acquisition and development of additional properties, the repayment of outstanding debt, the redemption of the Company's preferred stock or the improvement of certain properties already in the Company's portfolio. Any proceeds from the sale of common stock, preferred stock or depository shares by the Company will be invested in the Operating Partnership, which will use the proceeds for the same purposes.



## PLAN OF DISTRIBUTION

The Company and/or the Operating Partnership may sell offered securities in any one or more of the following ways from time to time:

- o through agents;
- o to or through underwriters;
- o through dealers;
- o directly to purchasers; or
- o through a combination of these methods of sale.

The prospectus supplement relating to the offered securities will set forth the terms of the offering and of the offered securities, including:

- o the name or names of any underwriters, dealers or agents;
- o the purchase price of the offered securities and the proceeds to the Company and/or the Operating Partnership from such sale;
- o any underwriting discounts and commission or agency fees and other items constituting underwriters' or agents' compensation;
- o any initial public offering price; and
- o any discounts or concessions allowed or reallocated or paid to dealers and any securities exchange on which such offered securities may be listed.

Any initial public offering price, discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

The distribution of the offered securities may be effected from time to time in one or more transactions:

- o at a fixed price or prices, which may be changed;
- o at market prices prevailing at the time of sale;
- o at prices related to prevailing market prices; or
- o at negotiated prices.

Offers to purchase offered securities may be solicited by agents designated by the Company and/or the Operating Partnership from time to time. Any agent involved in the offer or sale of the offered securities in respect of which this prospectus is delivered will be named, and any commissions payable by the Company and/or the Operating Partnership to the agent will be set forth, in the applicable prospectus supplement. Underwriters and agents in any distribution contemplated hereby, including but not limited to at-the-market equity offerings, may from time to time include Banc One Capital Markets, Inc., Brinson Patrick Securities Corporation and/or Cantor Fitzgerald & Co. Underwriters or agents could make sales in sales deemed to be an "at-the-market" offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), including sales made directly on the New York Stock Exchange, or NYSE, the existing trading market for our common stock, or sales made to or through a market maker other than on an exchange. At-the-market offerings made pursuant to this prospectus and

any accompanying prospectus supplement may not exceed 10% of the aggregate market value of our outstanding voting securities held by non-affiliates on a date within 60 days prior to the filing of the registration statement of which this prospectus is a part. Unless otherwise indicated in the prospectus supplement, any agent will be acting on a reasonable best efforts basis for the period of its appointment. Any agent may, and if acting as agent in an at-the-market equity offering will, be deemed to be an underwriter, as that term is defined in the Securities Act, of the offered securities.

If offered securities are sold by means of an underwritten offering, the Company and/or the Operating Partnership will execute an underwriting agreement with an underwriter or underwriters, and the names of the specific managing underwriter or underwriters, as well as any other underwriters, and the terms of the transaction, including commissions, discounts and any other compensation of the underwriters and dealers, if any, will be set forth in the prospectus supplement which will be used by the underwriters to make resales of the offered securities. If underwriters are utilized in the sale of the offered securities, the offered securities may be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at fixed public offering prices or at varying prices determined by the underwriters at the time of sale. Offered securities may be offered to the public either through underwriting syndicates represented by managing underwriters or directly by the managing underwriters. If any underwriter or underwriters are utilized in the sale of the offered securities, unless otherwise indicated in the prospectus supplement, the underwriting agreement will provide that the obligations of the underwriters are subject to certain conditions precedent and that the underwriters with respect to a sale of offered securities will be obligated to purchase all such offered securities of a series if any are purchased.

The Company and/or the Operating Partnership may grant to the underwriters options to purchase additional offered securities to cover over-allotments, if any, at the public offering price, with additional underwriting discounts or commissions, as may be set forth in the prospectus supplement relating thereto. If the Company and/or the Operating Partnership grant any over-allotment option, the terms of the over-allotment option will be set forth in the prospectus supplement relating to the offered securities.

If a dealer is utilized in the sales of offered securities in respect of which this prospectus is delivered, the Company and/or the Operating Partnership will sell the offered securities to the dealer as principal. The dealer may then resell the offered securities to the public at varying prices to be determined by the dealer at the time of resale. Any dealer may be deemed to be an underwriter, as that term is defined in the Securities Act, of the offered securities so offered and sold. The name of the dealer and the terms of the transaction will be set forth in the related prospectus supplement.

Offers to purchase offered securities may be solicited directly by the Company and/or the Operating Partnership and the sale may be made by the Company and/or the Operating Partnership directly to institutional investors or others, who may be deemed to be underwriters within the meaning of the Securities Act with respect to any resale thereof. The terms of any such sales will be described in the related prospectus supplement.

Offered securities may also be offered and sold, if so indicated in the applicable prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as agents for the Company and/or the Operating Partnership. Any remarketing firm will be identified and the terms of its agreements, if any, with the Company and/or the Operating Partnership and its compensation will be described in the applicable prospectus supplement. Remarketing firms may be deemed to be underwriters, as that term is defined in the Securities Act, in connection with the offered securities remarketed thereby.

Agents, underwriters, dealers and remarketing firms may be entitled under relevant agreements entered into with the Company and/or the Operating Partnership to indemnification by the Company and/or the Operating Partnership against certain civil liabilities, including liabilities under the Securities Act, that may arise from any untrue statement or alleged untrue statement of a material fact or any omission or alleged omission to state a material fact in this prospectus, any supplement or amendment hereto, or in the registration statement of which this prospectus forms a part, or to contribution with respect to payments which the agents, underwriters, dealers or remarketing firms may be required to make. The terms of any such indemnification or contribution will be described in the related prospectus supplement.

If so indicated in the prospectus supplement, the Company and/or the Operating Partnership will authorize underwriters or other persons acting as agents to solicit offers by certain institutions to purchase offered securities from the Company and/or the Operating Partnership, pursuant to contracts providing for payments and delivery on a future date. Institutions with which these contracts may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others, but in all cases these institutions must be approved by the Company and/or the Operating Partnership. The obligations of any purchaser under any contract will be subject to the condition that the purchase of the offered securities shall not at the time of delivery be prohibited under the laws of the jurisdiction to which the purchaser is subject. The underwriters and other agents will not have any responsibility in respect of the validity or performance of these contracts.

Each series of offered securities will be a new issue and, other than the common stock of the Company, which is listed on the NYSE, will have no established trading market. The Company and/or the Operating Partnership may elect to list any series of offered securities on an exchange or automated quotation system, and in the case of the common stock of the Company, on any additional exchange, but, unless otherwise specified in the applicable prospectus supplement, the Company and/or the Operating Partnership will not be obligated to do so. No assurance can be given as to the liquidity of the trading market for any of the offered securities.

Underwriters, dealers, agents and remarketing firms may engage in transactions with, or perform services for, the Company and/or the Operating Partnership and their subsidiaries in the ordinary course of business.

## DESCRIPTION OF DEBT SECURITIES

The debt securities will be issued under an indenture, dated as of May 13, 1997, between the Operating Partnership and U.S. Bank National Association (formerly known as First Trust National Association), as trustee, which has been incorporated by reference as an exhibit to the registration statement of which this prospectus is a part, subject to such amendments or supplements as may be adopted from time to time. The indenture is subject to and governed by the Trust Indenture Act of 1939, as amended. The statements made under this heading relating to the debt securities and the indenture are summaries only, do not purport to be complete and are qualified in their entirety by reference to the debt securities and the indenture. All material terms of the debt securities and the indenture, other than those disclosed in the applicable prospectus supplement, are described in this prospectus.

The debt securities to be offered under this prospectus and in any applicable prospectus supplement will be "investment grade" securities, meaning that at the time of the offering of the debt securities, at least one nationally recognized statistical rating organization, as defined in the Securities Exchange Act of 1934, as amended (the "Exchange Act"), will have rated the debt securities in one of its generic rating categories that signifies investment grade. Typically the four highest rating categories, within which there may be sub-categories or gradations indicating relative standing, signify investment grades. An investment grade rating is not a recommendation to buy, sell or hold securities, is subject to revision or withdrawal at any time by the assigning entity and should be evaluated independently of any other rating.

### Terms

General. The debt securities will be direct unsecured obligations of the Operating Partnership. The indebtedness represented by the debt securities will rank equally with all other unsecured and unsubordinated indebtedness of the Operating Partnership. No partner, whether limited or general, including the Company, of the Operating Partnership has any obligation for the payment of principal of, or premium, if any, or interest, if any, on, or any other amount with respect to, the debt securities. The particular terms of the debt securities offered by a prospectus supplement, including any applicable federal income tax considerations, will be described in the applicable prospectus supplement, along with any applicable modifications of or additions to the general terms of the debt securities as described in this prospectus and in the indenture. For a description of the terms of any series of debt securities, you should read both the prospectus supplement relating to the debt securities and the description of the debt securities in this prospectus.

Except as set forth in any prospectus supplement, the debt securities may be issued without limit as to aggregate principal amount, in one or more series, in each case as established from time to time by the Operating Partnership or as set forth in the indenture or in one or more supplemental indentures to the indenture. All debt securities of one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of such series, for issuance of additional debt securities of such series.

The indenture provides that the Operating Partnership may, but need not, designate more than one trustee, each with respect to one or more series of debt securities. Any trustee under the indenture may resign or be removed with respect to one or more series of debt securities, and a successor trustee may be appointed to act with respect to the series. In the event that two or more persons are acting as trustee with respect to different series of debt securities, each trustee shall be a trustee of a trust under the indenture separate and apart from the trust administered by any other trustee. In that event and except as otherwise indicated in this prospectus, any action described in this prospectus to be taken by each trustee may be taken by each such trustee with respect to, and only with respect to, the one or more series of debt securities for which it is trustee under the indenture.

The following summaries set forth general terms and provisions of the indenture and the debt securities. The prospectus supplement relating to the applicable series of debt securities will contain further terms of the debt securities, including the following specific terms:

- o The title of the debt securities;

- o The aggregate principal amount of the debt securities and any limit on the aggregate principal amount;
- o The price, expressed as a percentage of the principal amount thereof, at which the debt securities will be issued and, if other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of maturity;
- o The date or dates, or the method for determining the date or dates, on which the principal of the debt securities will be payable;
- o The rate or rates, which may be fixed or variable, or the method by which the rate or rates shall be determined, at which the debt securities will bear interest, if any;
- o The date or dates, or the method for determining the date or dates, from which any interest will accrue, the dates on which any interest will be payable, the record dates for interest payment dates, or the method by which the dates shall be determined, the persons to whom the interest will be payable, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;
- o The place or places where the principal of and premium or make-whole amount, if any, and interest, if any, on the debt securities will be payable, where the debt securities may be surrendered for registration of transfer or exchange and where notices or demands to or upon the Operating Partnership in respect of the debt securities and the indenture may be served;
- o The period or periods, if any, within which, the price or prices at which, and the other terms and conditions upon which, the debt securities may, under any optional or mandatory redemption provisions, be redeemed, as a whole or in part, at the option of the Operating Partnership;
- o The obligation, if any, of the Operating Partnership to redeem, repay or purchase the debt securities under any sinking fund or analogous provision or at the option of a holder thereof, and the period or periods within which, the price or prices at which, and the other terms and conditions upon which, the debt securities will be redeemed, repaid or purchased, as a whole or in part, pursuant to such obligation;
- o If other than U.S. dollars, the currency or currencies in which the debt securities are denominated and payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies, and the terms and conditions relating thereto;
- o Whether the amount of payments of principal of and premium or make-whole amount, if any, including any amount due upon redemption, if any, or interest, if any, on the debt securities may be determined with reference to an index, formula or other method, which index, formula or method may, but need not, be based on the yield on or trading price of other securities, including United States Treasury securities, or on a currency, currencies, currency unit or units, or composite currency or currencies, and the manner in which such amounts shall be determined;
- o Whether the principal of and premium or make-whole amount, if any, or interest on the debt securities of the series are to be payable, at the election of the Operating Partnership or a holder of debt securities, in a currency or currencies, currency unit or units or composite currency or currencies other than that in which the debt securities are denominated or stated to be payable, the period or periods within which, and the terms and conditions upon which, that election may be made, and the time and manner of, and identity of the exchange rate agent with responsibility for, determining the exchange rate between the currency or currencies, currency unit or units or composite currency or currencies in which the debt securities are denominated or stated to be payable and the currency or currencies, currency unit or units or composite currency or currencies in which the debt securities are to be so payable;

- o Provisions, if any, granting special rights to the holders of debt securities of the series upon the occurrence of such events as may be specified;
- o Any deletions from, modifications of or additions to the events of default or covenants of the Operating Partnership with respect to debt securities of the series, whether or not such events of default or covenants are consistent with the events of default or covenants described herein;
- o Whether and under what circumstances the Operating Partnership will pay any additional amounts on the debt securities in respect of any tax, assessment or governmental charge and, if so, whether the Operating Partnership will have the option to redeem the debt securities in lieu of making such payment;
- o Whether debt securities of the series are to be issuable as registered securities, bearer securities (with or without coupons) or both, any restrictions applicable to the offer, sale or delivery of bearer securities and the terms upon which bearer securities of the series may be exchanged for registered securities of the series and vice versa, if permitted by applicable laws and regulations, whether any debt securities of the series are to be issuable initially in temporary global form and whether any debt securities of the series are to be issuable in permanent global form with or without coupons and, if so, whether beneficial owners of interests in any such permanent global security may exchange such interests for debt securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in the indenture, and, if registered securities of the series are to be issuable as a global security, the identity of the depository for such series;
- o The date as of which any bearer securities of the series and any temporary global security representing outstanding debt securities of the series shall be dated if other than the date of original issuance of the first security of the series to be issued;
- o The person to whom any interest on any registered security of the series shall be payable, if other than the person in whose name that security, or one or more predecessor securities, is registered at the close of business on the regular record date for such interest, the manner in which, or the person to whom, any interest on any bearer security of the series shall be payable, if otherwise than upon presentation and surrender of the coupons appertaining thereto as they severally mature, and the extent to which, or the manner in which, any interest payable on a temporary global security on an interest payment date will be paid if other than in the manner provided in the indenture;
- o Whether the debt securities will be issued in certificated or book-entry form;
- o The applicability, if any, of the defeasance and covenant defeasance provisions of the indenture to the debt securities of the series;
- o If the debt securities of the series are to be issuable in definitive form, whether upon original issue or upon exchange of a temporary security of the series, only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and/or terms of the certificates, documents or conditions; and
- o Any other terms of the series, not inconsistent with the Trust Indenture Act of 1939, as amended.

If so provided in the applicable prospectus supplement, the debt securities may be issued at a discount below their principal amount and provide for less than the entire principal amount thereof to be payable upon declaration of acceleration of the maturity thereof. In such cases, all material U.S. federal income tax, accounting and other considerations applicable to such original issue discount securities will be described in the applicable prospectus supplement.

Except as may be set forth in any prospectus supplement, the indenture does not contain any provisions that would limit the ability of the Operating Partnership to incur indebtedness or that would afford holders of debt securities protection in the event of a highly leveraged or similar transaction involving the Operating Partnership or in the event of a change of control. Restrictions on ownership and transfers of the common stock and preferred stock of the Company under its Articles of Incorporation are designed to preserve the Company's status as a REIT and, therefore, may act to prevent or hinder a change of control. See "Restrictions on Transfers of Capital Stock." Reference is made to the applicable prospectus supplement for information with respect to any deletions from, modifications of, or additions to, the events of default or covenants of the Operating Partnership that are described below, including any addition of a covenant or other provision providing event risk or similar protection.

#### Denomination, Interest, Registration and Transfer

Unless otherwise provided in the applicable prospectus supplement, the debt securities of any series will be issuable in denominations of \$1,000 and integral multiples thereof. Where debt securities of any series are issued in bearer form, the special restrictions and considerations, including special offering restrictions and special federal income tax considerations, applicable to those debt securities and to payment on and transfer and exchange of those debt securities will be described in the applicable prospectus supplement. Bearer debt securities will be transferable by delivery.

Unless otherwise provided in the applicable prospectus supplement, any interest not punctually paid or duly provided for on any interest payment date with respect to a debt security in registered form, or "defaulted interest," will immediately cease to be payable to the holder on the applicable regular record date and may either be paid to the person in whose name the debt security is registered at the close of business on a special record date for the payment of the defaulted interest to be fixed by the trustee, in which case notice thereof shall be given to the holder of the debt security not less than 10 days prior to the special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which such debt securities are listed, all as more completely described in the indenture.

Subject to certain limitations imposed upon debt securities issued in book-entry form, the debt securities of any series will be exchangeable for any authorized denomination of other debt securities of the same series and of a like aggregate principal amount and tenor upon surrender of the debt securities at the corporate trust office of the applicable trustee or at the office of any transfer agent designated by the Operating Partnership for such purpose. In addition, subject to certain limitations imposed upon debt securities issued in book-entry form, the debt securities of any series may be surrendered for registration of transfer or exchange thereof at the corporate trust office of the applicable trustee or at the office of any transfer agent designated by the Operating Partnership for that purpose. Every debt security in registered form surrendered for registration of transfer or exchange must be duly endorsed or accompanied by a written instrument of transfer, and the person requesting that action must provide evidence of title and identity satisfactory to the applicable trustee or transfer agent. No service charge will be made for any registration of transfer or exchange of any debt securities, but the Operating Partnership may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. If the applicable prospectus supplement refers to any transfer agent, in addition to the applicable trustee, initially designated by the Operating Partnership with respect to any series of debt securities, the Operating Partnership may at any time rescind the designation of any such transfer agent or approve a change in the location through which any such transfer agent acts, except that the Operating Partnership will be required to maintain a transfer agent in each place of payment for that series. The Operating Partnership may at any time designate additional transfer agents with respect to any series of debt securities.

Neither the Operating Partnership nor any trustee shall be required to

- o issue, register the transfer of or exchange debt securities of any series during a period beginning at the opening of business 15 days before the selection of any debt securities for redemption and ending at the close of business on
  - if the debt securities are issuable only as registered securities, the day of the mailing of the relevant notice of redemption, and

- if the debt securities are issuable as bearer securities, the day of the first publication of the relevant notice of redemption or, if the debt securities are also issuable as registered securities and there is no publication, the mailing of the relevant notice of redemption;
- o register the transfer of or exchange any debt security, or portion thereof, so selected for redemption, in whole or in part, except the unredeemed portion of any debt security being redeemed in part;
- o exchange any bearer security selected for redemption except that, to the extent provided with respect to the bearer security, the bearer security may be exchanged for a registered security of that series and of like tenor, provided that the registered security shall be simultaneously surrendered for redemption; or
- o issue, register the transfer of or exchange any debt security that has been surrendered for repayment at the option of the holder, except the portion, if any, of the debt security not to be so repaid.

Payment in respect of debt securities in bearer form will be made in the currency and in the manner designated in the applicable prospectus supplement, subject to any applicable laws and regulations, at such paying agencies outside the United States as the Operating Partnership may appoint from time to time. The paying agents outside the United States, if any, initially appointed by the Operating Partnership for a series of debt securities will be named in the applicable prospectus supplement. Unless otherwise provided in the applicable prospectus supplement, the Operating Partnership may at any time designate additional paying agents or rescind the designation of any paying agents, except that

- o if debt securities of a series are issuable in registered form, the Operating Partnership will be required to maintain at least one paying agent in each place of payment for such series, and
- o if debt securities of a series are issuable in bearer form, the Operating Partnership will be required to maintain at least one paying agent in a place of payment outside the United States where debt securities of such series and any coupons appertaining thereto may be presented and surrendered for payment.

#### Merger, Consolidation or Sale of Assets

The indenture provides that the Operating Partnership may, without the consent of the holders of any outstanding debt securities, consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into, any other entity, provided that

- o either the Operating Partnership shall be the continuing entity, or the successor entity, if other than the Operating Partnership, formed by or resulting from any such consolidation or merger or which shall have received the transfer of such assets shall be organized under the laws of any domestic jurisdiction and expressly assume the Operating Partnership's obligations to pay principal of and premium or make-whole amount, if any, and interest on all of the debt securities and the due and punctual performance and observance of all of the covenants and conditions contained in the indenture;
- o immediately after giving effect to such transaction and treating any indebtedness that becomes an obligation of the Operating Partnership or any subsidiary as a result thereof as having been incurred by the Operating Partnership or such subsidiary at the time of such transaction, no event of default under the indenture, and no event which, after notice or the lapse of time, or both, would become an event of default, shall have occurred and be continuing; and
- o an officers' certificate and legal opinion covering those conditions shall be delivered to each trustee. Certain Covenants



The applicable prospectus supplement will describe any material covenants in respect of a series of debt securities that are not described in this prospectus. Unless otherwise indicated in the applicable prospectus supplement, the debt securities will include the following covenants of the Operating Partnership:

**Existence.** Except as permitted under "--Merger, Consolidation or Sale of Assets," the indenture requires the Operating Partnership to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights and franchises; provided, however, that the Operating Partnership shall not be required to preserve any right or franchise if it determines that its preservation is no longer desirable in the conduct of its business.

**Maintenance of properties.** The indenture requires the Operating Partnership to cause all of its material properties used or useful in the conduct of its business or the business of any subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and to cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Operating Partnership may be necessary so that the business carried on may be properly and advantageously conducted at all times; provided, however, that the Operating Partnership and its subsidiaries shall not be prevented from selling or otherwise disposing of their properties for value in the ordinary course of business.

**Insurance.** The indenture requires the Operating Partnership to cause each of its and its subsidiaries' insurable properties to be insured against loss or damage in an amount at least equal to their then full insurable value with insurers of recognized responsibility. If described in the applicable prospectus supplement, such insurer will be required to have a specified rating from a recognized insurance rating service.

**Payment of taxes and other claims.** The indenture requires the Operating Partnership to pay or discharge or cause to be paid or discharged, before the same shall become delinquent,

- o all taxes, assessments and governmental charges levied or imposed upon it or any subsidiary or upon the income, profits or property of the Operating Partnership or any subsidiary; and
- o all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Operating Partnership or any subsidiary;

provided, however, that the Operating Partnership shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith.

#### Events of Default, Notice and Waiver

Unless otherwise provided in the applicable prospectus supplement, the indenture provides that the following events are "events of default" with respect to any series of debt securities issued thereunder:

- (1) default in the payment of any interest on any debt security of such series, when such interest becomes due and payable that continues for a period of 30 days;
- (2) default in the payment of the principal of, or premium or make-whole amount, if any, on, any debt security of such series when due and payable;
- (3) default in making any sinking fund payment as required for any debt security of such series;
- (4) default in the performance, or breach, of any other covenant or warranty of the Operating Partnership in the indenture with respect to the debt securities of such series and continuance of such default or breach for a period of 60 days after written notice as provided in the indenture;

- (5) default under any bond, debenture, note, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Operating Partnership, or by any subsidiary the repayment of which the Operating Partnership has guaranteed or for which the Operating Partnership is directly responsible or liable as obligor or guarantor, having an aggregate principal amount outstanding of at least \$10,000,000, whether such indebtedness now exists or shall hereafter be created, which default shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of 10 days after written notice to the Operating Partnership as provided in the indenture;
- (6) certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of the Operating Partnership or any significant subsidiary; and
- (7) any other event of default provided with respect to a particular series of debt securities.

The term "significant subsidiary" has the meaning ascribed to that term in Regulation S-X promulgated under the Securities Act.

If an event of default under the indenture with respect to debt securities of any series at the time outstanding occurs and is continuing, then in every such case the applicable trustee or the holders of not less than 25% in principal amount of the debt securities of that series will have the right to declare the principal amount of, or, if the debt securities of that series are original issue discount securities or indexed securities, such portion of the principal amount as may be specified in the terms thereof, and premium or make-whole amount, if any, on, all the debt securities of that series to be due and payable immediately by written notice thereof to the Operating Partnership, and to the applicable trustee if given by the holders; provided that in the case of an event of default described under the sixth clause of the preceding paragraph, acceleration is automatic. However, at any time after such a declaration of acceleration with respect to debt securities of the series has been made, but before a judgment or decree for payment of the money due has been obtained by the applicable trustee, the holders of not less than a majority in principal amount of outstanding debt securities of the series may rescind and annul such declaration and its consequences if

- o the Operating Partnership shall have deposited with the applicable trustee all required payments of the principal of, and premium or make-whole amount, if any, and interest on the debt securities of the series, plus certain fees, expenses, disbursements and advances of the applicable trustee, and
- o all events of default, other than the non-payment of accelerated principal, or a specified portion thereof of, and the premium or make-whole amount, if any, on debt securities of the series have been cured or waived as provided in the indenture.

The indenture also provides that the holders of not less than a majority in principal amount of the outstanding debt securities of any series may waive any past default with respect to such series and its consequences, except a default

- o in the payment of the principal of or premium or make-whole amount, if any, or interest on any debt security of the series, or
- o in respect of a covenant or provision contained in the indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security affected thereby.

The indenture requires each trustee to give notice to the holders of debt securities within 90 days of a default under the indenture unless such default shall have been cured or waived; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to the series, except a default in the payment of the principal of, or premium or make-whole amount, if any, or interest on any debt security of the series or in the payment of any sinking fund installment in respect of any debt security of the series if speci-

fied responsible officers of the trustee determine in good faith that such withholding is in the interest of such holders.

The indenture provides that no holders of debt securities of any series may institute any proceedings, judicial or otherwise, with respect to the indenture or for any remedy thereunder, except in the case of failure of the applicable trustee, for 60 days, to act after it has received a written request to institute proceedings in respect of an event of default from the holders of not less than 25% in principal amount of the outstanding debt securities of the series, as well as an offer of indemnity reasonably satisfactory to it. This provision will not prevent, however, any holder of debt securities from instituting suit for the enforcement of payment of the principal of and premium or make-whole amount, if any, and interest on the debt securities at their respective due dates or redemption dates.

The indenture provides that, subject to provisions in the indenture relating to its duties in case of default, a trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any holders of any series of debt securities then outstanding under the indenture, unless such holders shall have offered to the trustee thereunder reasonable security or indemnity. The holders of not less than a majority in principal amount of the outstanding debt securities of any series, or of all debt securities then outstanding under the indenture, as the case may be, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the applicable trustee, or of exercising any trust or power conferred upon such trustee. However, a trustee may refuse to follow any direction which is in conflict with any law or the indenture, which may involve the trustee in personal liability or which may be unduly prejudicial to the holders of debt securities of such series not joining therein.

Within 120 days after the close of each fiscal year, the Operating Partnership will be required to deliver to each trustee a certificate, signed by one of several specified officers of the Company, stating whether or not such officer has knowledge of any default under the indenture and, if so, specifying each default and the nature and status thereof.

#### Modification of the Indenture

Modifications and amendments of the indenture are permitted to be made only with the consent of the holders of not less than a majority in principal amount of all outstanding debt securities issued under the indenture affected by such modification or amendment. However, no modification or amendment may, without the consent of the holder of each such debt security affected thereby,

- o change the stated maturity of the principal of, or any installment of interest, or premium or make-whole amount, if any, on, any debt security;
- o reduce the principal amount of, or the rate or amount of interest on, or any premium or make-whole amount payable on redemption of, any such debt security, or reduce the amount of principal of an original issue discount security that would be due and payable upon declaration of acceleration of the maturity thereof or would be provable in bankruptcy, or adversely affect any right of repayment of the holder of any debt security;
- o change the place of payment, or the coin or currency, for payment of principal of or premium or make-whole amount, if any, or interest on any debt security;
- o impair the right to institute suit for the enforcement of any payment on or with respect to any debt security;
- o reduce the above-stated percentage of outstanding debt securities of any series necessary to modify or amend the indenture, to waive compliance with certain provisions thereof or certain defaults and consequences thereunder or to reduce the quorum or voting requirements set forth in the indenture; or
- o modify any of the foregoing provisions or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required percentage to effect such action or to

provide that certain other provisions may not be modified or waived without the consent of the holder of the debt security.

The holders of a majority in aggregate principal amount of the outstanding debt securities of each series may, on behalf of all holders of debt securities of that series, waive, insofar as that series is concerned, compliance by the Operating Partnership with certain restrictive covenants of the indenture.

Modifications and amendments of the indenture are permitted to be made by the Operating Partnership and the respective trustee thereunder without the consent of any holder of debt securities for any of the following purposes:

- o to evidence the succession of another person to the Operating Partnership as obligor under the indenture;
- o to add to the covenants of the Operating Partnership for the benefit of the holders of all or any series of debt securities or to surrender any right or power conferred upon the Operating Partnership in the indenture;
- o to add events of default for the benefit of the holders of all or any series of debt securities;
- o to add or change any provisions of the indenture to facilitate the issuance of, or to liberalize certain terms of, debt securities in bearer form, or to permit or facilitate the issuance of debt securities in uncertificated form, provided that such action shall not adversely affect the interests of the holders of the debt securities of any series in any material respect;
- o to change or eliminate any provisions of the indenture, provided that any such change or elimination shall become effective only when there are no debt securities outstanding of any series created prior thereto that are entitled to the benefit of such provision;
- o to secure the debt securities;
- o to establish the form or terms of debt securities of any series;
- o to provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under the indenture by more than one trustee;
- o to cure any ambiguity, defect or inconsistency in the indenture, provided that such action shall not adversely affect the interests of holders of debt securities of any series issued under the indenture in any material respect; or
- o to supplement any of the provisions of the indenture to the extent necessary to permit or facilitate defeasance and discharge of any series of the debt securities, provided that such action shall not adversely affect the interests of the holders of the outstanding debt securities of any series in any material respect.

The indenture provides that in determining whether the holders of the requisite principal amount of outstanding debt securities of a series have given any request, demand, authorization, direction, notice, consent or waiver thereunder or whether a quorum is present at a meeting of holders of debt securities,

- o the principal amount of an original issue discount security that shall be deemed to be outstanding shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon declaration of acceleration of the maturity thereof,

- o the principal amount of any debt security denominated in a foreign currency that shall be deemed outstanding shall be the U.S. dollar equivalent, determined on the issue date for the debt security, of the principal amount of the debt security, or, in the case of an original issue discount security, the U.S. dollar equivalent on the issue date of the debt security of the amount determined as provided in the subparagraph immediately above,
- o the principal amount of an indexed security that shall be deemed outstanding shall be the principal face amount of such indexed security at original issuance, unless otherwise provided with respect to such indexed security pursuant to the indenture, and
- o debt securities owned by the Operating Partnership or any other obligor upon the debt securities or any affiliate of the Operating Partnership or of such other obligor shall be disregarded.

The indenture contains provisions for convening meetings of the holders of debt securities of a series. A meeting will be permitted to be called at any time by the applicable trustee, and also, upon request, by the Operating Partnership or the holders of at least 25% in principal amount of the outstanding debt securities of the series, in any case upon notice given as provided in the indenture. Except for any consent that must be given by the holder of each debt security affected by certain modifications and amendments of the indenture, any resolution presented at a meeting or adjourned meeting duly reconvened at which a quorum is present may be adopted by the affirmative vote of the holders of a majority in principal amount of the outstanding debt securities of that series. However, except as referred to above, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that may be made, given or taken by the holders of a specified percentage, which is less than a majority, in principal amount of the outstanding debt securities of a series may be adopted at a meeting or adjourned meeting or adjourned meeting duly reconvened at which a quorum is present by the affirmative vote of the holders of such specified percentage in principal amount of the outstanding debt securities of that series. Any resolution passed or decision taken at any meeting of holders of debt securities of any series duly held in accordance with the indenture will be binding on all holders of debt securities of that series. The quorum at any meeting called to adopt a resolution, and at any reconvened meeting, will be persons holding or representing a majority in principal amount of the outstanding debt securities of a series. However, if any action is to be taken at the meeting with respect to a consent or waiver that may be given by the holders of not less than a specified percentage in principal amount of the outstanding debt securities of a series, the persons holding or representing such specified percentage in principal amount of the outstanding debt securities of the series will constitute a quorum.

Notwithstanding the foregoing provisions, the indenture provides that if any action is to be taken at a meeting of holders of debt securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver and other action that the indenture expressly provides may be made, given or taken by the holders of a specified percentage in principal amount of all outstanding debt securities affected thereby, or of the holders of such series and one or more additional series:

- o there shall be no minimum quorum requirement for such meeting and
- o the principal amount of the outstanding debt securities of the series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under the indenture.

#### Discharge, Defeasance and Covenant Defeasance

Unless otherwise provided in the applicable prospectus supplement, the Operating Partnership will be permitted, at its option, to discharge certain obligations to holders of any series of debt securities issued under the indenture that have not already been delivered to the applicable trustee for cancellation and that either have become due and payable or will become due and payable within one year, or scheduled for redemption within one year, by irrevocably depositing with the applicable trustee, in trust, funds in such currency or currencies, currency unit or units or composite currency or currencies in which the debt securities are payable in an amount sufficient to pay the entire indebtedness on the debt securities in respect of principal, and premium or make-whole amount, if any, and

interest to the date of such deposit, if the debt securities have become due and payable, or to the stated maturity or redemption date, as the case may be.

The indenture provides that, unless otherwise provided in the applicable prospectus supplement, the Operating Partnership may elect either

- o to defease and be discharged from any and all obligations with respect to the debt securities, except for the obligation to pay additional amounts, if any, upon the occurrence of certain events of tax, assessment or governmental charge with respect to payments on the debt securities and the obligations to register the transfer or exchange of the debt securities, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of the debt securities, and to hold moneys for payment in trust, or "defeasance," or
- o to be released from certain obligations with respect to the debt securities under the indenture, including the restrictions described under "--Certain Covenants" or, if provided in the applicable prospectus supplement, its obligations with respect to any other covenant, and any omission to comply with such obligations shall not constitute an event of default with respect to the debt securities, or "covenant defeasance,"

in either case upon the irrevocable deposit by the Operating Partnership with the applicable trustee, in trust, of an amount, in such currency or currencies, currency unit or units or composite currency or currencies in which the debt securities are payable at stated maturity, or government obligations as defined below, or both, applicable to the debt securities, which through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient to pay the principal of and premium or make-whole amount, if any, and interest on the debt securities, and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates therefor.

Such a trust will only be permitted to be established if, among other things, the Operating Partnership has delivered to the applicable trustee an opinion of counsel, as specified in the indenture, to the effect that the holders of the debt securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance or covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance or covenant defeasance had not occurred, and the opinion of counsel, in the case of defeasance, will be required to refer to and be based upon a ruling received from the IRS or a change in applicable U.S. federal income tax law occurring after the date of the indenture. In the event of such defeasance, the holders of the debt securities would thereafter be able to look only to such trust fund for payment of principal, and premium or make-whole amount, if any, and interest.

"Government obligations" means securities that are

- o direct obligations of the United States or the government which issued the foreign currency in which the debt securities of a particular series are payable, for the payment of which its full faith and credit is pledged or
- o obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States or such government which issued the foreign currency in which the debt securities of the series are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States or such other government,

which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such government obligation or a specific payment of interest on or principal of any such government obligation held by such custodian for the account of the holder of a depository receipt, provided that, except as required by law, the custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the government obligation or the specific payment of interest on or principal of the government obligation evidenced by such depository receipt.

Unless otherwise provided in the applicable prospectus supplement, if after the Operating Partnership has deposited funds and/or government obligations to effect defeasance or covenant defeasance with respect to debt securities of any series,

- o the holder of a debt security of the series is entitled to, and does, elect pursuant to the indenture or the terms of the debt security to receive payment in a currency, currency unit or composite currency other than that in which such deposit has been made in respect of the debt security, or
- o a conversion event, as defined below, occurs in respect of the currency, currency unit or composite currency in which such deposit has been made,

the indebtedness represented by the debt security will be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of and premium or make-whole amount, if any, and interest on the debt security as they become due out of the proceeds yielded by converting the amount so deposited in respect of the debt security into the currency, currency unit or composite currency in which the debt security becomes payable as a result of such election or such cessation of usage based on the applicable market exchange rate.

"Conversion event" means the cessation of use of

- o a currency, currency unit or composite currency both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community,
- o the European Currency Unit both within the European Monetary System and for the settlement of transactions by public institutions of or within the European Communities or
- o any currency unit or composite currency other than the European Currency Unit for the purposes for which it was established.

Unless otherwise provided in the applicable prospectus supplement, all payments of principal of and premium or make-whole amount, if any, and interest on any debt security that is payable in a foreign currency that ceases to be used by its government of issuance shall be made in U.S. dollars.

In the event the Operating Partnership effects covenant defeasance with respect to any debt securities and the debt securities are declared due and payable because of the occurrence of any event of default, other than the event of default described in clause (4) under "--Events of Default, Notice and Waiver" with respect to specified sections of the indenture, which sections would no longer be applicable to the debt securities, or described in clause (7) under "--Events of Default, Notice and Waiver" with respect to any other covenant as to which there has been covenant defeasance, the amount in such currency, currency unit or composite currency in which the debt securities are payable, and government obligations on deposit with the applicable trustee, will be sufficient to pay amounts due on the debt securities at the time of their stated maturity but may not be sufficient to pay amounts due on the debt securities at the time of the acceleration resulting from such event of default. However, the Operating Partnership would remain liable to make payment of those amounts due at the time of acceleration.

The applicable prospectus supplement may further describe the provisions, if any, permitting defeasance or covenant defeasance, including any modifications to the provisions described above, with respect to the debt securities of or within a particular series.

#### No Conversion Rights

The debt securities will not be convertible into or exchangeable for any capital stock of the Company or equity interest in the Operating Partnership.

## Global Securities

The debt securities of a series may be issued in whole or in part in book-entry form consisting of one or more global securities that will be deposited with, or on behalf of, a depository identified in the applicable prospectus supplement relating to the series. Global securities may be issued in either registered or bearer form and in either temporary or permanent form. The specific terms of the depository arrangement with respect to a series of debt securities will be described in the applicable prospectus supplement relating to the series.

## The Trustee

U.S. Bank National Trust is the trustee under the indenture. From time to time, we have and may in the future enter into other transactions with the trustee.

## Payment and Paying Agents

Unless otherwise provided in the applicable prospectus supplement, the principal of and applicable premium or make-whole amount, if any, and interest on any series of debt securities will be payable at the corporate trust office of the trustee, the address of which will be stated in the applicable prospectus supplement. However, at the option of the Operating Partnership, payment of interest may be made by check mailed to the address of the person entitled thereto as it appears in the applicable register for the debt securities or by wire transfer of funds to such person at an account maintained within the United States.

All moneys paid by the Operating Partnership to a paying agent or a trustee for the payment of the principal of or any premium, make-whole amount or interest on any debt security which remain unclaimed at the end of two years after such principal, premium, make-whole amount or interest has become due and payable will be repaid to the Operating Partnership, and the holder of the debt security thereafter may look only to the Operating Partnership for payment thereof.



## DESCRIPTION OF PREFERRED STOCK

The following is a summary of the material terms of our preferred stock. You should also read our articles of incorporation and bylaws, which are incorporated by reference to the registration statement of which this prospectus is a part. All material terms of the preferred stock, except those disclosed in the applicable prospectus supplement, are described in this prospectus.

### General

Under our articles of incorporation, the Company has authority to issue 10 million shares of its preferred stock, par value \$.01 per share. The preferred stock may be issued from time to time, in one or more series, as authorized by the Company's board of directors. Prior to issuance of shares of each series, the Company's board of directors is required by the MGCL and our articles of incorporation to fix for each series, subject to the provisions of the articles of incorporation regarding excess stock, par value \$.01 per share, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption of those shares as may be permitted by Maryland law. These rights, powers, restrictions and limitations could include the right to receive specified dividend payments and payments on liquidation prior to any payments to holders of common stock or other capital stock of the Company ranking junior to the preferred stock. The outstanding shares of preferred stock are, and additional shares of preferred stock will be, when issued, fully paid and nonassessable and will have no preemptive rights. The Company's board of directors could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of discouraging a takeover or other transaction that holders of common stock might believe to be in their best interests or in which holders of some, or a majority, of the shares of common stock might receive a premium for their shares over the then market price of those shares of common stock.

### Outstanding Preferred Stock

At July 15, 2004, the Company had outstanding 20,000 shares of Series C preferred stock, 500 shares of Series F preferred stock and 250 shares of Series G preferred stock, constituting all of the Company's outstanding preferred stock. The terms of the Series C, Series F and Series G preferred stock provide for a preference as to the payment of dividends over shares of common stock and any other capital stock ranking junior to the Series C, Series F and Series G preferred stock. The terms of the Series C preferred stock provide for cumulative quarterly dividends at the rate of \$215.625 per share per year. Through March 31, 2009 and March 31, 2014, respectively, the terms of the Series F and Series G preferred stock provide for cumulative semi-annual dividends at the rate of \$6,236.00 and \$7,236.00, respectively, per share per year. After March 31, 2009 and March 31, 2014, respectively, the terms of the Series F and Series G preferred stock provide for the reset of dividend rates, at the Company's option, on a fixed or floating rate basis for fixed or floating rate periods. Any such fixed rates and periods will be determined through a remarketing procedure, with cumulative dividends payable semi-annually. Any such floating rates during floating rate periods will equal 2.375% (the initial credit spread), plus the greater of (i) the 3-month LIBOR Rate, (ii) the 10-year Treasury CMT Rate and (iii) the 30-year Treasury CMT Rate (the adjustable rate), reset quarterly, with cumulative dividends payable quarterly. On and after May 14, 2002, March 31, 2009 and March 31, 2014, respectively, the Series C, Series F and Series G preferred stock are subject to redemption, in each case in whole or in part, at the option of the Company, at a cash redemption price of \$2,500.00 per share, \$100,000.00 per share and \$100,000.00 per share, respectively, plus accrued and unpaid dividends. The Series C, Series F and Series G preferred stock rank on a parity as to payment of dividends and amounts upon liquidation.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of the Series C, Series F and Series G preferred stock will be entitled to receive out of the Company's assets available for distribution to stockholders, before any distribution of assets is made to holders of common stock or any other shares of capital stock ranking, as to distributions, junior to the Series C, Series F and Series G preferred stock, liquidating distributions in the amount of \$2,500.00 per share, \$100,000.00 per share and \$100,000.00 per share, respectively, plus all accrued and unpaid dividends.

Except as expressly required by law and in some other limited circumstances, the holders of the preferred stock are not entitled to vote. The consent of holders of at least 66% of the outstanding preferred stock and any

other series of preferred stock ranking on a parity with the outstanding preferred stock, voting as a single class, is required to authorize another class of shares senior to the outstanding preferred stock. The affirmative vote or consent of the holders of at least 66% of the outstanding shares of each series of preferred stock is required to amend or repeal any provision of, or add any provision to, our articles of incorporation, including the articles supplementary relating to that series of preferred stock, if that action would materially and adversely alter or change the rights, preferences or privileges of that series of preferred stock.

#### Future Series of Preferred Stock

The following is a description of the general terms and provisions of the preferred stock to which any prospectus supplement may relate. The statements below describing the preferred stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our articles of incorporation and bylaws and any applicable amendment to our articles of incorporation designating terms of a series of preferred stock.

Any prospectus supplement relating to a future series of the preferred stock will contain specific terms, including:

- (1) The title and stated value of the preferred stock;
- (2) The number of shares of the preferred stock offered, the liquidation preference per share and the offering price of the preferred stock;
- (3) The dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation applicable to the preferred stock;
- (4) The date from which dividends on the preferred stock shall accumulate, if applicable;
- (5) The procedures for any auction and remarketing, if any, for the preferred stock;
- (6) The provision for a sinking fund, if any, for the preferred stock;
- (7) The provision for redemption, if applicable, of the preferred stock;
- (8) Any listing of the preferred stock on any securities exchange;
- (9) The terms and conditions, if applicable, upon which the preferred stock will be convertible into common stock, including the conversion price or manner of calculation of the conversion price;
- (10) Any other specific terms, preferences, rights, limitations or restrictions of the preferred stock;
- (11) A discussion of federal income tax considerations applicable to the preferred stock;
- (12) The relative ranking and preference of the preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of the affairs of the Company;
- (13) Any limitations on issuance of any series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of the affairs of the Company; and
- (14) Any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve the status of the Company as a REIT.

Unless otherwise specified in the prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Company, rank:

- o senior to all classes or series of common stock, and to all equity securities ranking junior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Company;
- o on a parity with all equity securities issued by the Company the terms of which specifically provide that those equity securities rank on a parity with the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Company; and
- o junior to all equity securities issued by the Company the terms of which specifically provide that those equity securities rank senior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Company

The term "equity securities" does not include convertible debt securities.

#### Dividends

Holders of the preferred stock of each series will be entitled to receive, when, as and if declared by the Company's board of directors, out of the Company's assets legally available for payment, cash dividends at rates and on dates as will be set forth in the applicable prospectus supplement. Each dividend shall be payable to holders of record as they appear on the share transfer books of the Company on the record dates as shall be fixed by the Company's board of directors.

Dividends on any series of the preferred stock may be cumulative or non-cumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will be cumulative from and after the date set forth in the applicable prospectus supplement. If the Company's board of directors fails to declare a dividend payable on a dividend payment date on any series of the preferred stock for which dividends are non-cumulative, then the holders of that series of the preferred stock will have no right to receive a dividend in respect of the dividend period ending on that dividend payment date, and the Company will have no obligation to pay the dividend accrued for that period, whether or not dividends on that series are declared payable on any future dividend payment date.

If preferred stock of any series is outstanding, no dividends will be declared or paid or set apart for payment on any capital stock of the Company of any other series ranking, as to dividends, on a parity with or junior to the preferred stock of that series for any period unless:

- o if that series of preferred stock has a cumulative dividend, full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment is set apart for that payment on the preferred stock of that series for all past dividend periods and the then current dividend period; or
- o if that series of preferred stock does not have a cumulative dividend, full dividends for the then current dividend period have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for that payment on the preferred stock of that series.

When dividends are not paid in full, or a sum sufficient for full payment is not set apart, upon preferred stock of any series and the shares of any other series of preferred stock ranking on a parity as to dividends with the preferred stock of that series, all dividends declared upon preferred stock of that series and any other series of preferred stock ranking on a parity as to dividends with that preferred stock will be declared pro rata so that the amount of dividends declared per share of preferred stock of that series and other series of preferred stock shall in all cases bear to each other the same ratio that accrued dividends per share on the preferred stock of that series, which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if that preferred stock does not have a cumulative dividend, and the other series of preferred stock bear to each other. No interest, or sum of money

in lieu of interest, shall be payable in respect of any dividend payment or payments on preferred stock of that series that may be in arrears.

Except as provided in the immediately preceding paragraph, unless:

- o if a series of preferred stock has a cumulative dividend, full cumulative dividends on the preferred stock of that series have been or contemporaneously are declared and paid or declared and a sum sufficient for that payment is set apart for payment for all past dividend periods and the then current dividend period, and
- o if a series of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of that series have been or contemporaneously are declared and paid or declared and a sum sufficient for that payment is set apart for payment for the then current dividend period,

no dividends, other than in shares of common stock or other shares of capital stock ranking junior to the preferred stock of that series as to dividends and upon liquidation, shall be declared or paid or set aside for payment nor shall any other distribution be declared or made upon the common stock, or any other capital stock of the Company ranking junior to or on a parity with the preferred stock of that series as to dividends or upon liquidation, nor shall any shares of common stock, or any other shares of capital stock of the Company ranking junior to or on a parity with the preferred stock of that series as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration, or any moneys be paid to or made available for a sinking fund for the redemption of any shares, by the Company, except by conversion into or exchange for other capital stock of the Company ranking junior to the preferred stock of that series as to dividends and upon liquidation.

Any dividend payment made on shares of a series of preferred stock shall first be credited against the earliest accrued but unpaid dividend due with respect to shares of that series which remain payable.

#### Redemption

If provided in the applicable prospectus supplement, the preferred stock will be subject to mandatory redemption or redemption at the option of the Company, as a whole or in part, in each case upon the terms, at the times and at the redemption prices set forth in the applicable prospectus supplement.

The prospectus supplement relating to a series of preferred stock that is subject to mandatory redemption will specify the number of shares of the preferred stock that will be redeemed by the Company in each year commencing after a date to be specified, at a redemption price per share to be specified, together with an amount equal to all accrued and unpaid dividends, which will not, if that preferred stock does not have a cumulative dividend, include any accumulation in respect of unpaid dividends for prior dividend periods, to the date of redemption. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for preferred stock of any series is payable only from the net proceeds of the issuance of shares of capital stock of the Company, the terms of that preferred stock may provide that, if no shares of capital stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, the preferred stock will automatically and mandatorily be converted into the applicable shares of capital stock of the Company pursuant to conversion provisions specified in the applicable prospectus supplement.

However, unless

- o if a series of preferred stock has a cumulative dividend, full cumulative dividends on all shares of that series of preferred stock will have been or contemporaneously are declared and paid or declared and a sum sufficient for that payment set apart for payment for all past dividend periods and the then current dividend period and

- o if a series of preferred stock does not have a cumulative dividend, full dividends on all shares of the preferred stock of that series have been or contemporaneously are declared and paid or declared and a sum sufficient for that payment set apart for payment for the then current dividend period,

no shares of the series of preferred stock will be redeemed unless all outstanding shares of preferred stock of that series are simultaneously redeemed. However, the preceding shall not prevent the purchase or acquisition of preferred stock of that series to preserve the REIT status of the Company or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of preferred stock of that series.

In addition, unless

- o if the series of preferred stock has a cumulative dividend, full cumulative dividends on all outstanding shares of that series of preferred stock have been or contemporaneously are declared and paid or declared and a sum sufficient for that payment set apart for payment for all past dividend periods and the then current dividend period and
- o if the series of preferred stock does not have a cumulative dividend, full dividends on the preferred stock of that series have been or contemporaneously are declared and paid or declared and a sum sufficient for that payment set apart for payment for the then current dividend period,

The Company will not purchase or otherwise acquire directly or indirectly any shares of preferred stock of that series, except by conversion into or exchange for capital shares of the Company ranking junior to the preferred stock of that series as to dividends and upon liquidation. However, the preceding shall not prevent the purchase or acquisition of shares of preferred stock of that series to preserve the REIT status of the Company or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of preferred stock of that series.

If fewer than all of the outstanding shares of preferred stock of any series are to be redeemed, the number of shares to be redeemed will be determined by the Company. Those shares may be redeemed ratably from the holders of record of those shares in proportion to the number of those shares held or for which redemption is requested by that holder, with adjustments to avoid redemption of fractional shares, or by any other equitable manner determined by the Company.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of record of preferred stock of any series to be redeemed at the address shown on the stock transfer books of the Company. Each notice shall state:

- o the redemption date;
- o the number of shares and series of the preferred stock to be redeemed;
- o the redemption price;
- o the place or places where certificates for the preferred stock are to be surrendered for payment of the redemption price;
- o that dividends on the shares to be redeemed will cease to accrue on the redemption date; and
- o the date upon which the holder's conversion rights, if any, as to those shares shall terminate.

If fewer than all the shares of preferred stock of any series are to be redeemed, the notice mailed to each holder of preferred stock shall also specify the number of shares of preferred stock to be redeemed from each holder. If notice of redemption of any preferred stock has been given and if the funds necessary for the redemption have been set aside by the Company in trust for the benefit of the holders of any preferred stock called for redemption,

then from and after the redemption date dividends will cease to accrue on the preferred stock called for redemption, and all rights of the holders of those shares will terminate, except the right to receive the redemption price.

#### Liquidation Preference

Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, then, before any distribution or payment shall be made to the holders of any common stock or any other class or series of capital stock of the Company ranking junior to the preferred stock in the distribution of assets upon any liquidation, dissolution or winding up of the Company, the holders of each series of preferred stock shall be entitled to receive out of assets of the Company legally available for distribution to stockholders liquidating distributions in the amount of the liquidation preference per share, if any, set forth in the applicable prospectus supplement, plus an amount equal to all dividends accrued and unpaid thereon, which shall not include any accumulation in respect of unpaid noncumulative dividends for prior dividend periods. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred stock will have no right or claim to any of the Company's remaining assets. In the event that, upon any voluntary or involuntary liquidation, dissolution or winding up, the Company's available assets are insufficient to pay the amount of the liquidating distributions on all outstanding shares of preferred stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Company ranking on a parity with the preferred stock in the distribution of assets, then the holders of the preferred stock and those other classes or series of capital stock will share ratably in the distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions will have been made in full to all holders of preferred stock, the Company's remaining assets will be distributed among the holders of any other classes or series of capital stock ranking junior to the preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares. For these purposes, the consolidation or merger of the Company with or into any other corporation, trust or entity, or the sale, lease or conveyance of all or substantially all of the property or business of the Company, will not be deemed to constitute a liquidation, dissolution or winding up of the Company.

#### Voting Rights

Holders of the preferred stock will not have any voting rights, except as set forth below or as otherwise from time to time required by law or as indicated in the applicable prospectus supplement.

Unless provided otherwise for any series of preferred stock, so long as any shares of preferred stock of a series remain outstanding, the Company will not, without the affirmative vote or consent of the holders of at least two-thirds of the shares of that series of preferred stock outstanding at the time, given in person or by proxy, either in writing or at a meeting, each series voting separately as a class:

- o authorize or create, or increase the authorized or issued amount of, any class or series of capital stock ranking prior to that series of preferred stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized capital stock of the Company into those shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any of those shares; or
- o amend, alter or repeal the provisions of our articles of incorporation or the designating amendment for that series of preferred stock, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of that series of preferred stock or the holders of that series of preferred stock.

However, with respect to the occurrence of any of the events set forth in the second subparagraph above, so long as the preferred stock remains outstanding with its terms materially unchanged, taking into account that upon the occurrence of an event, the Company may not be the surviving entity, the occurrence of any such event shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting power of holders of preferred stock. Further,

- o any increase in the amount of the authorized preferred stock or the creation or issuance of any other series of preferred stock, or
- o any increase in the amount of authorized shares of that series or any other series of preferred stock, in each case ranking on a parity with or junior to the preferred stock of that series with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up,

will not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers.

These voting provisions will not apply if, at or prior to the time when the act with respect to which that vote would otherwise be required shall be effected, all outstanding shares of that series of preferred stock shall have been redeemed or called for redemption and sufficient funds will have been deposited in trust to effect the redemption.

#### Conversion Rights

The terms and conditions, if any, upon which any series of preferred stock is convertible into common stock will be set forth in the applicable prospectus supplement. The terms will include:

- o the number of shares of common stock into which the shares of preferred stock are convertible,
- o the conversion price (or manner of calculating the conversion price),
- o the conversion period,
- o provisions as to whether conversion will be at the option of the holders of the preferred stock or the Company,
- o the events requiring an adjustment of the conversion price and
- o provisions affecting conversion in the event of the redemption of that series of preferred stock.

#### Restrictions on Ownership

For us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals, as defined in the Code to include certain entities, during the last half of a taxable year. To assist the Company in meeting this requirement, the Company may take certain actions to limit the beneficial ownership, directly or indirectly, by individuals of the Company's outstanding equity securities, including any preferred stock. Therefore, the designating amendment for each series of preferred stock may contain provisions restricting the ownership and transfer of the preferred stock. The applicable prospectus supplement will specify any additional ownership limitation relating to a series of preferred stock. See "Restrictions on Transfers of Capital Stock."

#### Transfer Agent

The transfer agent and registrar for the preferred stock will be set forth in the applicable prospectus supplement.

## DESCRIPTION OF DEPOSITARY SHARES

The Company may, at its option, elect to offer depositary shares rather than full shares of preferred stock. In the event that option is exercised, each of the depositary shares will represent ownership of and entitlement to all rights and preferences of a fraction of a share of preferred stock of a specified series, including dividend, voting, redemption and liquidation rights. The applicable fraction will be specified in the prospectus supplement. The shares of preferred stock represented by the depositary shares will be deposited with a depositary named in the applicable prospectus supplement, under a deposit agreement, among the Company, the depositary and the holders of the depositary receipts. Certificates evidencing depositary shares will be delivered to those persons purchasing depositary shares in the offering. The depositary will be the transfer agent, registrar and dividend disbursing agent for the depositary shares. Holders of depositary receipts agree to be bound by the deposit agreement, which requires holders to take actions such as filing proof of residence and paying charges.

The summary of terms of the depositary shares contained in this prospectus does not purport to be complete and is subject to, and qualified in its entirety by, the provisions of the deposit agreement, our articles of incorporation and the form of designating amendment for the applicable series of preferred stock. All material terms of the depositary shares, except those disclosed in the applicable prospectus supplement, are described in this prospectus.

### Dividends

The depositary will distribute all cash dividends or other cash distributions received in respect of the series of preferred stock represented by the depositary shares to the record holders of depositary receipts in proportion to the number of depositary shares owned by those holders on the relevant record date, which will be the same date as the record date fixed by the Company for the applicable series of preferred stock. The depositary, however, will distribute only an amount as can be distributed without attributing to any depositary share a fraction of one cent, and any balance not so distributed will be added to and treated as part of the next sum received by the depositary for distribution to record holders of depositary receipts then outstanding.

In the event of a distribution other than in cash, the depositary will distribute property received by it to the record holders of depositary receipts so entitled, in proportion, as nearly as may be practicable, to the number of depositary shares owned by those holders on the relevant record date, unless the depositary determines, after consultation with the Company, that it is not feasible to make the distribution, in which case the depositary may, with the Company's approval, adopt any other method for that distribution as it deems equitable and appropriate, including the sale of the property, at a place or places and upon terms that it may deem equitable and appropriate, and distribution of the net proceeds from that sale to the holders.

No distribution will be made in respect of any depositary share to the extent that it represents any preferred stock converted into excess stock.

### Liquidation Preference

In the event of the liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, the holders of each depositary share will be entitled to the fraction of the liquidation preference accorded each share of the applicable series of preferred stock, as set forth in the prospectus supplement.

### Redemption

If the series of preferred stock represented by the applicable series of depositary shares is redeemable, those depositary shares will be redeemed from the proceeds received by the depositary resulting from the redemption, in whole or in part, of preferred stock held by the depositary. Whenever the Company redeems any preferred stock held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing the redeemed preferred stock. The depositary will mail the notice of redemption promptly upon receipt of notice from the Company and not less than 30 nor more than 60 days prior to the date fixed for redemption of the preferred stock and the depositary shares to the record holders of the depositary receipts.



## Voting

Promptly upon receipt of notice of any meeting at which the holders of the series of preferred stock represented by the applicable series of depositary shares are entitled to vote, the depositary will mail the information contained in the notice of meeting to the record holders of the depositary receipts as of the record date for the meeting. Each record holder of depositary receipts will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the number of shares of preferred stock represented by the record holder's depositary shares. The depositary will endeavor, insofar as practicable, to vote the preferred stock represented by depositary shares in accordance with those instructions, and the Company will agree to take all action which may be deemed necessary by the depositary in order to enable the depositary to do so. The depositary will abstain from voting any of the preferred stock to the extent that it does not receive specific instructions from the holders of depositary receipts.

## Withdrawal of Preferred Stock

Upon surrender of depositary receipts at the principal office of the depositary, upon payment of any unpaid amount due the depositary, and subject to the terms of the deposit agreement, the owner of the depositary shares evidenced thereby is entitled to delivery of the number of whole shares of preferred stock and all money and other property, if any, represented by the depositary shares. Partial shares of preferred stock will not be issued. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole shares of preferred stock to be withdrawn, the depositary will deliver to that holder at the same time a new depositary receipt evidencing the excess number of depositary shares. Holders of preferred stock that is withdrawn will not thereafter be entitled to deposit their shares under the deposit agreement or to receive depositary receipts evidencing their depositary shares.

## Amendment and Termination of Deposit Agreement

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may at any time and from time to time be amended by agreement between the Company and the depositary. However, any amendment which materially and adversely alters the rights of the holders of depositary shares, other than any change in fees, will not be effective unless that amendment has been approved by at least a majority of the depositary shares then outstanding. No amendment to the deposit agreement may impair the right, subject to the terms of the deposit agreement, of any owner of any depositary shares to surrender the depositary receipt evidencing its depositary shares with instructions to the depositary to deliver to the holder the preferred stock and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law.

The deposit agreement will be permitted to be terminated by the Company upon not less than 30 days' prior written notice to the applicable depositary if:

- o termination is necessary to preserve the Company's status as a REIT, or
- o a majority of each series of preferred stock affected by termination consents to termination,

whereupon the depositary will be required to deliver or make available to each holder of depositary receipts, upon surrender of the depositary receipts held by that holder, the number of whole or fractional shares of preferred stock as is represented by the depositary shares evidenced by those depositary receipts together with any other property held by the depositary with respect to those depositary receipts.

The Company will agree that if the deposit agreement is terminated to preserve its status as a REIT, then the Company will use its best efforts to list the preferred stock issued upon surrender of the related depositary shares on a national securities exchange.

In addition, the deposit agreement will automatically terminate if:

- o all outstanding depositary shares thereunder shall have been redeemed,

- o there shall have been a final distribution in respect of the related preferred stock in connection with any liquidation, dissolution or winding up of the Company and that distribution shall have been distributed to the holders of depositary receipts evidencing the depositary shares representing that preferred stock or
- o each share of the related preferred stock shall have been converted into stock of the Company not represented by depositary shares.

#### Charges of Depositary

The Company will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. The Company will pay charges of the depositary in connection with the initial deposit of the preferred stock and initial issuance of the depositary shares, and redemption of the preferred stock and all withdrawals of preferred stock by owners of depositary shares. Holders of depositary receipts will pay transfer, income and other taxes and governmental charges and other charges as are provided in the deposit agreement to be for their accounts. In certain circumstances, the depositary may refuse to transfer depositary shares, may withhold dividends and distributions and sell the depositary shares evidenced by those depositary receipts if those charges are not paid.

#### Miscellaneous

The depositary will forward to the holders of depositary receipts all reports and communications from the Company that are delivered to the depositary and that the Company is required to furnish to the holders of the preferred stock. In addition, the depositary will make available for inspection by holders of depositary receipts at the principal office of the depositary, and at other places as it may from time to time deem advisable, any reports and communications received from the Company that are received by the depositary as the holder of preferred stock.

Neither the depositary nor the Company assumes any obligation or will be subject to any liability under the deposit agreement to holders of depositary receipts other than for its negligence or willful misconduct. Neither the depositary nor the Company will be liable if it is prevented or delayed by law or any circumstance beyond its control in performing its obligations under the deposit agreement. The obligations of the Company and the depositary under the deposit agreement will be limited to performance in good faith of their duties under the deposit agreement, and they will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless satisfactory indemnity is furnished. The Company and the depositary may rely on written advice of counsel or accountants, on information provided by holders of the depositary receipts or other persons believed in good faith to be competent to give that information and on documents believed to be genuine and to have been signed or presented by the proper party or parties.

In the event the depositary receives conflicting claims, requests or instructions from any holders of depositary receipts, on the one hand, and the Company, on the other hand, the depositary shall be entitled to act on those claims, requests or instructions received from the Company.

#### Resignation and Removal of Depositary

The depositary may resign at any time by delivering to the Company notice of its election to do so, and the Company may at any time remove the depositary. Any resignation or removal will take effect upon the appointment of a successor depositary and its acceptance of that appointment. The successor depositary must be appointed within 60 days after delivery of the notice for resignation or removal and must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$150,000,000.

#### Federal Income Tax Consequences

Owners of depositary shares will be treated for Federal income tax purposes as if they were owners of the preferred stock represented by depositary shares. Accordingly, those owners will be entitled to take into account, for

Federal income tax purposes, income and deductions to which they would be entitled if they were holders of the preferred stock. In addition,

- o no gain or loss will be recognized for Federal income tax purposes upon the withdrawal of preferred stock in exchange for depositary shares,
- o the tax basis of each share of preferred stock to an exchanging owner of depositary shares will, upon exchange, be the same as the aggregate tax basis of the depositary shares exchanged therefor and
- o the holding period for preferred stock in the hands of an exchanging owner of depositary shares will include the period during which that person owned those depositary shares.

## DESCRIPTION OF COMMON STOCK

The following is a summary of the material terms of our common stock. You should read our articles of incorporation and bylaws, which are incorporated by reference to the registration statement of which this prospectus is a part. All material terms of the common stock, except those disclosed in the applicable prospectus supplement, are described in this prospectus.

### General

Under our articles of incorporation, the Company has authority to issue 100 million shares of its common stock, par value \$.01 per share. Under Maryland law, stockholders generally are not responsible for the corporation's debts or obligations. At July 26, 2004 we had outstanding 41,255,440 shares of common stock.

### Terms

Subject to the preferential rights of any other shares or series of stock, including preferred stock outstanding from time to time, and to the provisions of our articles of incorporation regarding excess stock, common stock holders will be entitled to receive dividends on shares of common stock if, as and when authorized and declared by our board of directors out of assets legally available for that purpose. Subject to the preferential rights of any other shares or series of stock, including preferred stock outstanding from time to time, and to the provisions of our articles of incorporation regarding excess stock, common stockholders will share ratably in the assets of the Company legally available for distribution to its stockholders in the event of its liquidation, dissolution or winding up after payment of, or adequate provision for, all known debts and liabilities of the Company. For a discussion of excess stock, please see "Restrictions on Transfers of Capital Stock."

Subject to the provisions of our articles of incorporation regarding excess stock, each outstanding share of common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors, and, except as otherwise required by law or except as provided with respect to any other class or series of stock, common stock holders will possess the exclusive voting power. There is no cumulative voting in the election of directors, which means that the holders of a majority of the outstanding shares of common stock can elect all of the directors then standing for election, and the holders of the remaining shares of common stock will not be able to elect any directors.

Common stock holders have no conversion, sinking fund or redemption rights, or preemptive rights to subscribe for any securities of the Company.

Subject to the provisions of our articles of incorporation regarding excess stock, all shares of common stock will have equal dividend, distribution, liquidation and other rights, and will have no preference, appraisal or exchange rights.

Under the MGCL, a corporation generally cannot, subject to certain exceptions, dissolve, amend its articles of incorporation, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders holding at least two-thirds of the shares entitled to vote on the matter unless the corporation's articles of incorporation set forth a lesser percentage, which percentage shall not be less than a majority of all of the votes to be cast on the matter. Our articles of incorporation do not provide for a lesser percentage in such situations.

### Restrictions on Ownership

For the Company to qualify as a REIT under the Code, not more than 50% in value of its outstanding capital stock may be owned, actually or by attribution, by five or fewer individuals, as defined in the Code to include certain entities, during the last half of a taxable year. To assist us in meeting this requirement, we may take certain actions to limit the beneficial ownership, directly or indirectly, by individuals of our outstanding equity securities. See "Restrictions on Transfers of Capital Stock."

## Transfer Agent

The transfer agent and registrar for the common stock is EquiServe Inc. and its fully owned subsidiary, EquiServe Trust Company, Inc.

## Shareholder Rights Plan

On September 4, 1997, the board of directors of the Company adopted a shareholder rights plan. Under the shareholder rights plan, one right was attached to each outstanding share of common stock at the close of business on October 19, 1997, and one right will be attached to each share of common stock thereafter issued. Each right entitles the holder to purchase, under certain conditions, one one-hundredth of a share of our junior participating preferred stock for \$125.00. The rights may also, under certain conditions, entitle the holders to receive common stock, or common stock of an entity acquiring the Company, or other consideration, each having a value equal to twice the exercise price of each right (\$250.00). We have designated 1,000,000 shares as junior participating preferred stock and have reserved such shares for issuance under the shareholder rights plan. In the event of any merger, consolidation, combination or other transaction in which shares of common stock are exchanged for or changed into other stock or securities, cash and/or other property, each share of junior participating preferred stock will be entitled to receive 100 times the aggregate amount of stock, securities, cash and/or other property into which or for which each share of common stock is changed or exchanged, subject to certain adjustments. The rights will expire on October 19, 2007, unless redeemed earlier by the holders at \$.001 per right or exchanged by the holder at an exchange ratio of one share of common stock per right. The description and terms of the rights are set forth in a shareholder rights agreement between us and EquiServe Trust Company, N.A. (formerly First Chicago Trust Company of New York).

CERTAIN PROVISIONS OF MARYLAND LAW AND THE  
Company'S ARTICLES OF INCORPORATION AND BYLAWS

The following summary of certain provisions of Maryland law is not complete and is qualified by reference to Maryland law and our articles of incorporation and bylaws, which are incorporated by reference to the registration statement of which this prospectus is a part.

Business Combinations

Under the MGCL, certain "business combinations" (as defined in the MGCL) between a Maryland corporation and an "Interested Stockholder" (as defined in the MGCL) or, in certain circumstances, an associate or an affiliate thereof, are prohibited for five years after the most recent date on which the Interested Stockholder became an Interested Stockholder. Business combinations for the purposes of the preceding sentence are defined by the MGCL to include certain mergers, consolidations, share exchanges and asset transfers, some issuances and reclassifications of equity securities, the adoption of a plan of liquidation or dissolution or the receipt by an interested stockholder or its affiliate of any loan advance, guarantee, pledge or other financial assistance or tax advantage provided by the Company. After the five-year period, any such business combination must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least

- o 80% of the votes entitled to be cast by holders of outstanding shares of voting stock the corporation and
- o two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than voting stock held by the Interested Stockholder with whom the business combination is to be effected.

The super-majority vote requirements will not apply if, among other things, the corporation's stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the Interested Stockholder for its shares. These provisions of Maryland law do not apply, however, to business combinations that are approved or exempted by the board of directors of the corporation prior to the most recent time that the Interested Stockholder becomes an Interested Stockholder. Our articles of incorporation exempt from these provisions of the MGCL any business combination in which there is no Interested Stockholder other than Jay H. Shidler, the Chairman of our board of directors, or any entity controlled by Mr. Shidler unless Mr. Shidler is an Interested Stockholder without taking into account his ownership of shares of our common stock and the right to acquire shares of our common stock in an aggregate amount that does not exceed the number of shares of our common stock that he owned and had the right to acquire, including through the exchange of limited partnership units of the Operating Partnership, at the time of the consummation of our initial public offering.

Control Share Acquisitions

The MGCL provides that "control shares" (as defined in the MGCL) of a Maryland corporation acquired in a "control share acquisition" (as defined in the MGCL) have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock owned by the acquiror or by officers or by directors who are also employees of the corporation. "Control shares" are voting shares of stock that, if aggregated with all other shares of stock previously acquired by that person, would entitle the acquiror to exercise voting power in electing directors within one of the following ranges of voting power:

- o one-tenth or more but less than one-third,
- o one-third or more but less than a majority or
- o a majority of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A "control share acquisition" means the acquisition of ownership of or power to direct the voting power of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition may compel the board of directors, upon satisfaction of certain conditions, including an undertaking to pay certain expenses, to call a special meeting of stockholders to be held within 50 days after receiving a demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any meeting of stockholders.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the MGCL, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares, except those for which voting rights have previously been approved. The corporation's redemption of the control shares will be for fair value determined, without regard to the absence of voting rights, as of the date of the last control share acquisition or of any meeting of stockholders at which the voting rights of the control shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of the appraisal rights may not be less than the highest price per share paid in the control share acquisition. Certain limitations and restrictions otherwise applicable to the exercise of dissenters' rights do not apply in the context of a control share acquisition.

The control share acquisition statute does not apply to

- o shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or
- o acquisitions approved or exempted by our articles of incorporation or bylaws.

Our bylaws contain a provision exempting any and all acquisitions of our shares of capital stock from the control share provisions of the MGCL. There can be no assurance that this bylaw provision will not be amended or eliminated in the future.

#### Amendment of Articles of Incorporation

Our articles of incorporation, including the provisions on classification of the board of directors discussed below, may be amended only by the affirmative vote of the holders of not less than two-thirds of all of the votes entitled to be cast on the matter.

#### Meetings of Stockholders

Our bylaws provide for annual meetings of stockholders to be held on the third Wednesday in April or on any other day as may be established from time to time by our board of directors. Special meetings of stockholders may be called by

- o our Chairman of the board or our President,
- o a majority of the board of directors or
- o stockholders holding at least 25% of our outstanding capital stock entitled to vote at the meeting.

Our bylaws provide that any stockholder of record wishing to nominate a director or have a stockholder proposal considered at an annual meeting must provide written notice and certain supporting documentation to us relating to the nomination or proposal not less than 75 days nor more than 180 days prior to the anniversary date of the prior year's annual meeting or special meeting in lieu thereof (the "Anniversary Date"). In the event that the annual meeting is called for a date more than seven calendar days before the Anniversary Date, stockholders generally must provide written notice within 20 calendar days after the date on which notice of the meeting is mailed to stockholders or the date of the meeting is publicly disclosed.

The purpose of requiring stockholders to give us advance notice of nominations and other business is to afford our board of directors a meaningful opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposed business and, to the extent deemed necessary or desirable by our board of directors, to inform stockholders and make recommendations about the qualifications or business, as well as to provide a more orderly procedure for conducting meetings of stockholders. Although our bylaws do not give our board of directors any power to disapprove stockholder nominations for the election of directors or proposals for action, they may have the effect of precluding a contest for the election of directors or the consideration of stockholder proposals if the proper procedures are not followed and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposal. Our bylaws may have those effects without regard to whether consideration of the nominees or proposal might be harmful or beneficial to us and our stockholders.

#### Classification of the Board of Directors

Our bylaws provide that the number of our directors may be established by the board of directors but may not be fewer than the minimum number required by Maryland law nor more than twelve. Any vacancy will be filled, at any regular meeting or at any special meeting called for that purpose, by a majority of the remaining directors, except that a vacancy resulting from an increase in the number of directors will be filled by a majority of the entire board of directors. Under the terms of our articles of incorporation, our directors are divided into three classes. One class holds office for a term expiring at the annual meeting of stockholders to be held in 2002, and the other two classes hold office for terms expiring at the annual meetings of stockholders to be held in 2003 and 2004, respectively. As the term of each class expires, directors in that class will be elected for a term of three years and until their successors are duly elected and qualified. We believe that classification of our board of directors will help to assure the continuity and stability of our business strategies and policies as determined by our board of directors.

The classified board provision could have the effect of making the removal of incumbent directors more time consuming and difficult, which could discourage a third party from making a tender offer or otherwise attempting to obtain control of us, even though such an attempt might be beneficial to us and our stockholders. At least two annual meetings of stockholders, instead of one, will generally be required to effect a change in a majority of our board of directors. Thus, the classified board provision could increase the likelihood that incumbent directors will retain their positions. Holders of shares of common stock will have no right to cumulative voting for the election of directors. Consequently, at each annual meeting of stockholders, the holders of a majority of the shares of common stock will be able to elect all of the successors of the class of directors whose term expires at that meeting.



## RESTRICTIONS ON TRANSFERS OF CAPITAL STOCK

For the Company to qualify as a REIT under the Code, among other things, not more than 50% in value of its outstanding capital stock may be owned, actually or by attribution, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year. Our capital stock must also be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter tax year. See "Certain U.S. Federal Income Tax Considerations." To ensure that we remain a qualified REIT, our articles of incorporation, subject to certain exceptions, provide that no holder may own, or be deemed to own by virtue of the attribution provisions of the Code, more than an aggregate of 9.9% in value of our capital stock. Any transfer of capital stock or any security convertible into capital stock that would create a direct or indirect ownership of capital stock in excess of the ownership limit or that would result in our disqualification as a REIT, including any transfer that results in the capital stock being owned by fewer than 100 persons or results in us being "closely held" within the meaning of Section 856(h) of the Code, shall be null and void, and the intended transferee will acquire no rights to the capital stock.

Capital stock owned, or deemed to be owned, or transferred to a stockholder in excess of the ownership limit will automatically be exchanged for shares of "excess stock," as defined in our articles of incorporation, that will be transferred, by operation of law, to us as trustee of a trust for the exclusive benefit of the transferees to whom such capital stock may be ultimately transferred without violating the ownership limit. While the excess stock is held in trust, it will not be entitled to vote, it will not be considered for purposes of any stockholder vote or the determination of a quorum for such vote, and it will not be entitled to participate in the accumulation or payment of dividends or other distributions. A transferee of excess stock may, at any time such excess stock is held by us in trust, designate as beneficiary of the transferee stockholder's interest in the trust representing the excess stock any individual whose ownership of the capital stock exchanged into such excess stock would be permitted under the ownership limit, and may transfer that interest to the beneficiary at a price not in excess of the price paid by the original transferee-stockholder for the capital stock that was exchanged into excess stock. Immediately upon the transfer to the permitted beneficiary, the excess stock will automatically be exchanged for capital stock of the class from which it was converted.

In addition, we will have the right, for a period of 90 days during the time any excess stock is held by us in trust, and, with respect to excess stock resulting from the attempted transfer of our preferred stock, at any time when any outstanding shares of preferred stock of the series are being redeemed, to purchase all or any portion of the excess stock from the original transferee-stockholder at the lesser of the price paid for the capital stock by the original transferee-stockholder and the market price, as determined in the manner set forth in our articles of incorporation, of the capital stock on the date we exercise our option to purchase or, in the case of a purchase of excess stock attributed to preferred stock which has been called for redemption, at its stated value, plus all accumulated and unpaid dividends to the date of redemption. The 90-day period begins on the date of the violative transfer if the original transferee-stockholder gives notice to us of the transfer or, if no such notice is given, the date the board of directors determines that a violative transfer has been made.

## CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

This section is a summary of the material federal income tax matters of general application pertaining to REITs under the Code. This discussion is based upon current law (which is subject to change, possibly on retroactive basis) and does not purport to deal with federal income tax consequences to investors who purchase our debt securities, common stock, preferred stock or preferred stock represented by depositary shares (which consequences will be described in applicable supplements to this prospectus). The provisions of the Code pertaining to REITs are highly technical and complex and sometimes involve mixed questions of fact and law. This section does not discuss U.S. federal estate or gift taxation or state, local or foreign taxation.

You are advised to consult with your own tax advisor regarding the specific U.S. federal, state, local and foreign tax consequences to you of the purchase, ownership and sale of our stock.

In the opinion of Cahill Gordon & Reindel LLP:

- o commencing with our taxable year ended December 31, 1994, we have been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code and
- o our current and proposed method of operation (as represented by us to Cahill Gordon & Reindel LLP in a written certificate) will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code.

Cahill Gordon & Reindel LLP's opinion is based on various assumptions and is conditioned upon certain representations made by us as to factual matters with respect to us and certain partnerships, limited liability companies and corporations through which we hold substantially all of our assets, including an assumption that, if we ultimately were found not to have satisfied the gross income requirements of the REIT provisions as a result of certain development agreements entered into by us (as discussed in "Risk Factors" above), such failure was due to reasonable cause and not due to willful neglect, and we have otherwise satisfied all the requirements for relief under the Code (as discussed in "Risk Factors" above). Moreover, our qualification and taxation as a REIT depends upon our ability to meet, as a matter of fact, through actual annual operating results, distribution levels, diversity of stock ownership and various other qualification tests imposed under the Code discussed below, the results of which will not be reviewed by Cahill Gordon & Reindel LLP. No assurance can be given that the actual results of our operations for any particular taxable year will satisfy those requirements.

To qualify as a REIT under the Code for a taxable year, we must meet certain organizational and operational requirements, which generally require us to be a passive investor in real estate and to avoid excessive concentration of ownership of our capital stock. Generally, at least 75% of the value of our total assets at the end of each calendar quarter must consist of real estate assets, cash or governmental securities. We generally may not own securities possessing more than 10% of the total voting power, or representing more than 10% of the total value, of the outstanding securities of any issuer, and the value of any one issuer's securities may not exceed 5% of the value of our assets. Shares of qualified REITs, qualified temporary investments and shares of certain wholly owned subsidiary corporations known as "qualified REIT subsidiaries" and "taxable REIT subsidiaries" are exempt from these prohibitions. We hold assets through certain qualified REIT subsidiaries and taxable REIT subsidiaries. In the opinion of Cahill Gordon & Reindel LLP, based on certain factual representations, these holdings do not violate the prohibitions in the REIT provisions on ownership of securities.

The 10% and 5% limitations described above will not apply to the ownership of securities of a taxable REIT subsidiary. A REIT may own up to 100% of the securities of a taxable REIT subsidiary subject only to the limitations that the aggregate value of the securities of all taxable REIT subsidiaries owned by the REIT does not exceed 20% of the value of the assets of the REIT, and the aggregate value of all securities owned by the REIT (including the securities of all taxable REIT subsidiaries, but excluding governmental securities) does not exceed 25% of the value of the assets of the REIT. A taxable REIT subsidiary generally is any corporation (other than another REIT and corporations involved in certain lodging, healthcare, franchising and licensing activities) owned by a REIT with respect to which the REIT and such corporation jointly elect that such corporation shall be treated as a taxable REIT subsidiary.

For each taxable year, at least 75% of a REIT's gross income must be derived from specified real estate sources and 95% must be derived from such real estate sources plus certain other permitted sources. Real estate income for purposes of these requirements includes

- o gain from the sale of real property not held primarily for sale to customers in the ordinary course of business,
- o dividends on REIT shares,
- o interest on loans secured by mortgages on real property,
- o certain rents from real property and
- o certain income from foreclosure property.

For rents to qualify, they may not be based on the income or profits of any person, except that they may be based on a percentage or percentages of gross or receipts. Also, subject to certain limited exceptions, the REIT may not manage the property or furnish services to tenants except through an independent contractor which is paid an arm's-length fee and from which the REIT derives no income. However, a REIT may render a de minimis amount of otherwise impermissible services to tenants, or in connection with the management of property, without causing any income from the property (other than the portion of the income attributable to the impermissible services) to fail to qualify as rents from real property. In addition, a taxable REIT subsidiary may provide certain services to tenants of the REIT, which services could not otherwise be provided by the REIT or the REIT's other subsidiaries.

Substantially all of our assets are held through certain partnerships. In general, in the case of a REIT that is a partner in a partnership, applicable regulations treat the REIT as holding directly its proportionate share of the assets of the partnership and as being entitled to the income of the partnership attributable to such share based on the REIT's proportionate share of such partnership capital.

We must satisfy certain ownership restrictions that limit the concentration of ownership of our capital stock and the ownership by us of our tenants. Our outstanding capital stock must be held by at least 100 stockholders during at least 335 days of a taxable year or during a proportionate part of a taxable year of less than 12 months. No more than 50% in value of our outstanding capital stock, including in some circumstances capital stock into which outstanding securities might be converted, may be owned actually or constructively by five or fewer individuals or certain entities at any time during the last half of any taxable year. Accordingly, our articles of incorporation contain certain restrictions regarding the transfer of our common stock, preferred stock and any other outstanding securities convertible into stock when necessary to maintain our qualification as a REIT under the Code. However, because the Code imposes broad attribution rules in determining constructive ownership, no assurance can be given that the restrictions contained in our articles of incorporation will be effective in maintaining our REIT status. See "Restrictions on Transfers of Capital Stock" above.

So long as we qualify for taxation as a REIT, distribute at least 90% of our REIT taxable income, computed without regard to net capital gain or the dividends paid deduction, for each taxable year to our stockholders annually and satisfy certain other distribution requirements, we will not be subject to federal income tax on that portion of such income distributed to stockholders. We will be taxed at regular corporate rates on all income not distributed to stockholders. Our policy is to distribute at least 90% of our taxable income annually. We may elect to pass through to our shareholders on a pro rata basis any taxes paid by us on our undistributed net capital gain income for the relevant tax year. REITs also may incur taxes for certain other activities or to the extent distributions do not satisfy certain other requirements.

Our failure to qualify during any taxable year as a REIT could have a material adverse effect upon our stockholders and might materially affect our ability to pay interest and principal to the holders of our debt securities. If disqualified for taxation as a REIT for a taxable year, we also would be unable to elect to be taxed as a REIT for the next four taxable years, unless certain relief provisions were available. We would be subject to federal income tax at corporate rates on all of our taxable income and would not be able to deduct any dividends paid, which could

have a material adverse affect on our business and could result in a discontinuation of or substantial reduction in dividends to stockholders and might materially affect our ability to pay interest and principal to the holders of our debt securities. Should the failure to qualify as a REIT be determined to have occurred retroactively in one of our earlier tax years, the imposition of a substantial federal income tax liability on us attributable to any nonqualifying tax years may adversely affect our business and our ability to pay dividends to our stockholders and interest and principal to the holders of our debt securities.

In the event that we fail to meet certain gross income tests applicable to REITs, we may nonetheless retain our qualification as a REIT if we pay a penalty tax equal to the amount by which 90% or 75% of our gross income exceeds our gross income qualifying under the 95% or 75% gross income test respectively (whichever amount is greater) multiplied by a fraction intended to reflect our profitability, so long as such failure was considered to be due to reasonable cause and not willful neglect and certain other conditions are satisfied. Any such taxes would adversely affect our ability to pay dividends and distributions to our stockholders and interest and principal to the holders of our debt securities.

## Forward-looking STATEMENTS

This prospectus contains certain forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and are including this statement for the purposes of complying with those safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words "believe," "expect," "intend," "anticipate," "estimate," "project" or similar expressions. Our ability to predict results or the actual effect of future plans or strategies is inherently uncertain. Factors which could have a material adverse effect on our operations and future prospects on a consolidated basis include, but are not limited to, changes in:

- o economic conditions generally and the real estate market specifically,
- o legislative/regulatory changes (including changes to laws governing the taxation of real estate investment trusts),
- o availability of financing,
- o interest rate levels,
- o competition,
- o supply and demand for industrial properties in our current and proposed market areas,
- o potential environmental liabilities,
- o slippage in development or lease-up schedules,
- o tenant credit risks,
- o higher-than-expected costs and
- o changes in general accounting principles, policies and guidelines applicable to real estate investment trusts.

These risks and uncertainties should be considered in evaluating forward-looking statements and undue reliance should not be placed on such statements. Further information concerning us and our business, including additional factors that could materially affect our financial results, is included elsewhere in this prospectus and in the documents we incorporate by reference, including the 2003 Annual Report on Form 10-K of the Operating Partnership and the 2003 Annual Report on Form 10-K of the Company.

## WHERE YOU CAN FIND MORE INFORMATION

The Company and the Operating Partnership are subject to the informational requirements of the Exchange Act and files reports and other information with the SEC. You may read and copy any of the Company's and the Operating Partnership's reports and other materials filed with the SEC at the Public Reference Room of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. In addition, the SEC maintains a website that contains reports and other information regarding registrants that file electronically with the SEC at . The Company's common stock is listed on the NYSE and its filings with the SEC can also be inspected and copied at the offices of the NYSE at 20 Broad Street, New York, New York 10005.

Whenever a reference is made in this prospectus to any of our agreements or other documents, please be aware that the reference herein is only a summary and that you should refer to the exhibits that are part of the registration statement filed with the SEC on Form S-3 for a copy of such agreement or other document.

#### DOCUMENTS INCORPORATED BY REFERENCE

We incorporate by reference information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus and more recent information automatically updates and supersedes more dated information contained or incorporated by reference in this prospectus.

The Company (file no. 1-13102) filed the following documents with the SEC and incorporates them by reference into this prospectus:

- (1) Annual Report on Form 10-K for the year ended December 31, 2003, filed March 15, 2004;
- (2) Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, filed May 10, 2004;
- (3) Current Report on Form 8-K filed May 18, 2004;
- (4) Current Report on Form 8-K filed May 27, 2004; and
- (5) Current Report on Form 8-K filed July 30, 2004.

The Operating Partnership (file no. 333-21873) filed the following documents with the SEC and incorporates them by reference into this prospectus:

- (1) Annual Report on Form 10-K for the year ended December 31, 2003, filed March 15, 2004;
- (2) Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, filed May 10, 2004;
- (3) Current Report on Form 8-K filed May 27, 2004;
- (4) Current Report on Form 8-K filed June 8, 2004;
- (5) Current Report on Form 8-K filed June 17, 2004; and
- (6) Current Report on Form 8-K filed July 30, 2004.

All documents filed by the Company and the Operating Partnership under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this prospectus and prior to the termination of this offering shall be deemed to be incorporated by reference in this prospectus and made a part hereof from the date of the filing of such documents.

We will provide, without charge, to each person to whom this prospectus is delivered a copy of these filings upon written or oral request to First Industrial Realty Trust, Inc., 311 S. Wacker Drive, Suite 4000, Chicago, Illinois 60606, Attention: Investor Relations, telephone number (312) 344-4300.

#### EXPERTS

The financial statements incorporated in this prospectus by reference to the Company's Current Report on Form 8-K dated July 30, 2004 and the Operating Partnership's Current Report on Form 8-K dated July 30, 2004 and the financial statement schedules incorporated in this prospectus by reference to the Annual Report on Form 10-K of the Company for the year ended December 31, 2003 and the Annual Report on Form 10-K of the Operating Partnership for the year ended December 31, 2003 have been so incorporated in reliance on the reports of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

#### LEGAL MATTERS

Certain legal matters will be passed upon for us by Cahill Gordon & Reindel LLP, New York, New York. Cahill Gordon & Reindel LLP will rely as to all matters of Maryland law on the opinion of McGuireWoods LLP, Baltimore, Maryland. If counsel for any underwriter, dealer or agent passes on legal matters in connection with an offering made by this prospectus, we will name that counsel in the prospectus supplement relating to the offering.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the estimated expenses in connection with the issuance and distribution of the securities registered hereby, which will be borne by First Industrial Realty Trust, Inc. (the "Company"). All amounts shown are estimates, except the Securities and Exchange Commission registration fee:

Securities and Exchange Commission registration fee....	\$ 47,512.50
Fees of Rating Agencies.....	670,000.00
Legal fees and expenses.....	600,000.00
Accounting fees and expenses.....	240,000.00
Miscellaneous.....	200,000.00
	-----
Total.....	\$1,757,512.50
	=====

Item 15. Indemnification of Directors and Officers.

The Company's articles of incorporation contain certain provisions limiting the liability of the directors and officers to the fullest extent permitted by Section 5-418 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland ("Courts and Judicial Proceedings Article"). The Company's articles of incorporation and bylaws also provide certain limitations, permitted under Maryland General Corporation Law (the "MGCL"), on each director's personal liability for monetary damages for breach of any duty as a director. Section 5-418 of the Courts and Judicial Proceedings Article permits a Maryland corporation to limit the liability of its directors and officers to the corporation and its stockholders for money damages, except to the extent that: (a) it is proved that the director or officer actually received an improper benefit or profit in money, property or services for the amount of the benefit or profit in money, property, or services actually received or (b) a judgment or other final adjudication is entered in a proceeding based on a finding that the act, or failure to act, of the director or officer was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

In addition, the Company's articles of incorporation and bylaws obligate the Company to indemnify its directors and officers, and permit the Company to indemnify its employees and other agents, against certain liabilities and expenses incurred in connection with their service in such capacities, as well as advancement of costs, expenses and attorneys' fees, to the fullest extent permitted under MGCL. Section 2-418 of the MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by the directors or officers in connection with any proceeding to which they may be made a party by reason of their service in such capacities, unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to such proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

The directors and officers of the Company are entitled to the benefits of liability insurance maintained by the Company for certain losses arising from claims or charges made against any officer or director in connection with his or her service in such capacity.

The Eighth Amended and Restated Agreement of Limited Partnership of First Industrial, L.P. contains provisions indemnifying the Company and its officers, directors and stockholders to the fullest extent permitted by the Delaware Revised Uniform Limited Partnership Act.



Item 16. Exhibits

Exhibit Number	Description
1.1*	Form of Underwriting Agreement.
1.2*	Form of Sales Agreement.
4.1	Amended and Restated Articles of Incorporation of First Industrial Realty Trust, Inc. (incorporated by reference to Exhibit 3.1 of Form 10-Q of First Industrial Realty Trust, Inc. for the fiscal quarter ended June 30, 1996).
4.2	Amended and Restated Bylaws of First Industrial Realty Trust, Inc., dated September 4, 1997 (incorporated by reference to Exhibit 1 of Form 8-K of First Industrial Realty Trust, Inc. dated September 4, 1997, as filed on September 29, 1997).
4.3	Articles of Amendment to First Industrial Realty Trust, Inc.'s Articles of Incorporation, dated June 20, 1994 (incorporated by reference to Exhibit 3.2 of Form 10-Q of First Industrial Realty Trust, Inc. for the fiscal quarter ended June 30, 1996).
4.4	Articles of Amendment to First Industrial Realty Trust, Inc.'s Articles of Incorporation, dated May 31, 1996 (incorporated by reference to Exhibit 3.3 of Form 10-Q of First Industrial Realty Trust, Inc. for the fiscal quarter ended June 30, 1996).
4.5	Articles Supplementary relating to First Industrial Realty Trust, Inc.'s 8 5/8% Series C Cumulative Preferred Stock, \$0.1 par value (incorporated by reference to Exhibit 4.1 of Form 8-K of First Industrial Realty Trust, Inc. dated June 6, 1997).
4.6	Articles Supplementary relating to First Industrial Realty Trust, Inc.'s Junior Participating Preferred Stock, \$.01 par value (incorporated by reference to Exhibit 4.10 of Form S-3 of First Industrial Realty Trust, Inc. and First Industrial, L.P. dated September 24, 1997, Registration No. 333-29879).
4.7**	Articles Supplementary relating to First Industrial Realty Trust, Inc.'s 6.236% Series F Flexible Cumulative Redeemable Preferred Stock, \$.01 par value.
4.8**	Articles Supplementary relating to First Industrial Realty Trust, Inc.'s 7.236% Series G Flexible Cumulative Redeemable Preferred Stock, \$.01 par value.
4.9	Articles Supplementary relating to First Industrial Realty Trust, Inc.'s Junior Participating Preferred Stock, \$.01 par value (incorporated by reference to Exhibit 4.10 of Form S-3 of First Industrial Realty Trust, Inc. and First Industrial, L.P. dated September 24, 1997, Registration No. 333-29879).
4.9	Deposit Agreement, dated June 6, 1997, by and among First Industrial Realty Trust, Inc., First Chicago Trust Company of New York and holders from time to time of Depositary Receipts (incorporated by reference to Exhibit 4.2 of Form 8-K of First Industrial Realty Trust, Inc., dated June 6, 1997).
4.10**	Deposit Agreement, dated May 27, 2004, by and among First Industrial Realty Trust, Inc., EquiServe Inc. and EquiServe Trust Company, N.A. and holders from time to time of Depositary Receipts.
4.11**	Deposit Agreement, dated May 27, 2004, by and among First Industrial Realty Trust, Inc., EquiServe Inc. and EquiServe Trust Company, N.A. and holders from time to time of Depositary Receipts.
4.12	Indenture, dated as of May 13, 1997, between First Industrial, L.P. and First Trust National Association, as Trustee (incorporated by reference to Exhibit 4.1 of Form 10-Q of First Industrial Realty Trust, Inc. for the fiscal quarter ended March 31, 1997, as amended by Form 10-Q/A No. 1 of First Industrial Realty Trust, Inc. filed May 30, 1997).

Exhibit Number -----	Description -----
4.13	Supplemental Indenture No. 1, dated as of May 13, 1997, between First Industrial, L.P. and First Trust National Association as Trustee relating to \$150 million of 7.60% Notes due 2007 and \$100 million of 7.15% Notes due 2027 (incorporated by reference to Exhibit 4.2 of Form 10-Q of First Industrial Realty Trust, Inc. for the fiscal quarter ended March 31, 1997, as amended by Form 10-Q/A No. 1 of First Industrial Realty Trust, Inc. filed May 30, 1997).
4.14	Supplemental Indenture No. 2, dated as of May 22, 1997, between First Industrial, L.P. and First Trust National Association as Trustee relating to \$100 million of 7 3/8% Notes due 2011 (incorporated by reference to Exhibit 4.4 of Form 10-Q of First Industrial, L.P. for the fiscal quarter ended March 31, 1997).
4.15	Supplemental Indenture No. 3 dated October 28, 1997 between First Industrial, L.P. and First Trust National Association providing for the issuance of Medium-Term Notes due Nine Months or more from Date of Issue (incorporated by reference to Exhibit 4.1 of Form 8-K of First Industrial, L.P. dated November 3, 1997).
4.16	6.90% Medium-Term Note due 2005 in principal amount of \$50 million issued by First Industrial, L.P. (incorporated by reference to Exhibit 4.17 of Form 10-K of First Industrial Realty Trust, Inc. for the year ended December 31, 1997).
4.17	7.00% Medium-Term Note due 2006 in principal amount of \$150 million issued by First Industrial, L.P. (incorporated by reference to Exhibit 4.18 of Form 10-K of First Industrial Realty Trust, Inc. for the year ended December 31, 1997).
4.18	7.50% Medium-Term Note due 2017 in principal amount of \$100 million issued by First Industrial, L.P. (incorporated by reference to Exhibit 4.19 of Form 10-K of First Industrial Realty Trust, Inc. for the year ended December 31, 1997).
4.19	Trust Agreement, dated as of May 16, 1997, between First Industrial, L.P. and First Bank National Association, as Trustee (incorporated by reference to Exhibit 4.5 of Form 10-QT of First Industrial, L.P. for the fiscal quarter ended March 31, 1997).
4.20	Rights Agreement, dated as of September 16, 1997, between First Industrial Realty Trust, Inc. and First Chicago Trust Company of New York, as Rights Agent (incorporated by reference to Exhibit 99.1 of Form 8-A12B of First Industrial Realty Trust, Inc. filed on September 24, 1997). 4.21 7.60% Notes due 2028 in principal amount of \$200 million issued by First Industrial, L.P. (incorporated by reference to Exhibit 4.2 of Form 8-K of First Industrial, L.P. dated July 15, 1998).
4.22	Supplemental Indenture No. 5, dated as of July 14, 1998, between First Industrial, L.P. and the U.S. Bank Trust National Association, relating to First Industrial, L.P.'s 7.60% Notes due July 15, 2008 (incorporated by reference to Exhibit 4.1 of Form 8-K of First Industrial, L.P. dated July 15, 1998).
4.23	Supplemental Indenture No. 7 dated as of April 15, 2002, between First Industrial, L.P. and U.S. Bank National Association, relating to First Industrial, L.P.'s 6.875% Notes due 2012 and 7.75% Notes due 2032 (incorporated by reference to Exhibit 4.1 of Form 8-K of First Industrial, L.P. dated April 4, 2002).
4.24	Form of 6.875% Notes due in 2012 in the principal amount of \$200 million issued by First Industrial, L.P. (incorporated by reference to Exhibit 4.2 of Form 8-K of First Industrial, L.P., dated April 4, 2002).
4.25	Form of 7.75% Notes due 2032 in the principal amount of \$50.0 million issued by First Industrial, L.P. (incorporated by reference to Exhibit 4.3 of Form 8-K of First Industrial, L.P., dated April 4, 2002).

Exhibit Number -----	Description -----
4.26	Amended No. 1, dated as of February 25, 2004, to Rights Agreement, dated as of September 16, 1997, between First Industrial Realty Trust, Inc. and EquiServe Trust Company, N.A. (f/k/a First Chicago Trust Company of New York), as Rights Agent (incorporated by reference to Exhibit 4.23 of Form 10-K of First Industrial Realty Trust, Inc. for the year ended December 31, 2003).
4.27	Supplemental Indenture No. 8, dated as of May 17, 2004, between First Industrial, L.P. and U.S. Bank National Association, relating to First Industrial, L.P.'s 6.42% Notes due 2014 (incorporated by reference to Exhibit 4.1 of Form 8-K of First Industrial, L.P. filed May 27, 2004).
4.28	Supplemental Indenture No. 9, dated as of June 14, 2004, between First Industrial, L.P. and U.S. Bank National Association, relating to First Industrial, L.P.'s 5.25% Senior Notes due 2009 (incorporated by reference to Exhibit 4.1 of Form 8-K of First Industrial, L.P. filed June 17, 2004).
4.29**	Eighth Amended and Restated Limited Partnership Agreement of First Industrial, L.P. dated June 2, 2004.
5.1**	Opinion of Cahill Gordon & Reindel LLP, counsel to the Registrants, as to the legality of the securities being registered.
8.1**	Opinion of Cahill Gordon & Reindel LLP, counsel to the Registrants, as to certain tax matters.
12.1**	Computation of ratios of earnings to fixed charges and preferred stock dividends of First Industrial Realty Trust, Inc.
12.2**	Computation of earnings to fixed charges of First Industrial, L.P.
23.1**	Consent of PricewaterhouseCoopers LLP.
23.2**	Consents of Cahill Gordon & Reindel LLP (included in Exhibits 5.1 and 8.1).
24.1**	Power of Attorney (included on the signature pages hereto).
25.1**	Statement of eligibility of Trustee on Form T-1.

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\* To be filed either by amendment or as an exhibit to an Exchange Act report of the Registrant and incorporated herein by reference.

\*\* Filed herewith.

Item 17. Undertakings.

(a) The undersigned registrants hereby undertake:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) under the Securities Act of 1933, if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) herein do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the undersigned registrants pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrants hereby undertake that, for purposes of determining any liability under the Securities Act of 1933, each filing of each of the registrant's annual reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of each of the registrants pursuant to the provisions described under Item 15 above, or otherwise, the registrants have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrants of expenses in-

curred or paid by a director, officer, or controlling person of each of the registrants in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, each of the registrants will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

- (d) The undersigned registrants hereby undertake to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, each registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Chicago, State of Illinois, on July 30, 2004.

FIRST INDUSTRIAL REALTY TRUST, INC.

By: /s/ M.J. Havala  
-----  
Name: Michael J. Havala  
Title: Chief Financial Officer

FIRST INDUSTRIAL, L.P.  
By: First Industrial Realty Trust, Inc.

By: /s/ M.J. Havala  
-----  
Name: Michael J. Havala  
Title: Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Michael W. Brennan and Michael J. Havala, and each of them (with full power to each of them to act alone), his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign this Registration Statement on Form S-3, to sign any and all pre- or post-effective amendments to this Registration Statement on Form S-3 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection with such matters, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

Signature -----	Title -----	Date -----
/s/ Michael W. Brennan ----- Michael W. Brennan	President, Chief Executive Officer and Director (Principal Executive Officer)	July 30, 2004
/s/ M.J. Havala ----- Michael J. Havala	Chief Financial Officer (Principal Financial Officer)	July 30, 2004
/s/ Scott A. Musil ----- Scott A. Musil	Senior Vice President, Controller, Treasurer and Assistant Secretary (Principal Accounting Officer)	July 30, 2004

Signature

Title

Date

-----  
/s/ J. Shidler

Director

July 30, 2004

-----  
Jay H. Shidler

/s/ Michael G. Damone

Director

July 30, 2004

-----  
Michael G. Damone

/s/ Kevin W. Lynch

Director

July 30, 2004

-----  
Kevin W. Lynch

/s/ John Rau

Director

July 30, 2004

-----  
John Rau

/s/ W. Ed Tyler

Director

July 30, 2004

-----  
W. Ed Tyler

/s/ J. Steven Wilson

Director

July 30, 2004

-----  
J. Steven Wilson

Series F Flexible Cumulative Redeemable Preferred Stock  
(Liquidation Preference \$100,000 Per Share)

ARTICLES SUPPLEMENTARY

FIRST INDUSTRIAL REALTY TRUST, INC.

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Articles Supplementary of Board of Directors Classifying  
and Designating a Series of Preferred Stock as  
Series F Flexible Cumulative Redeemable Preferred Stock  
and Fixing Distribution and  
Other Preferences and Rights of Such Series

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Dated as of May 26, 2004

EXECUTION COPY

FIRST INDUSTRIAL REALTY TRUST, INC.

---

Articles Supplementary of Board of Directors Classifying  
and Designating a Series of Preferred Stock as  
Series F Flexible Cumulative Redeemable Preferred Stock  
and Fixing Distribution and  
Other Preferences and Rights of Such Series

---

First Industrial Realty Trust, Inc., a Maryland corporation, having its principal office in the State of Maryland in the City of Baltimore (the "Company"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

Pursuant to authority conferred upon the Board of Directors by the Charter and Bylaws of the Company, the Board of Directors on December 3, 1996, December 4, 1997 and December 3, 1998 adopted resolutions appointing certain members of the Board of Directors to a committee (the "Special Committee") with power to cause the Company to issue, among other things, certain series of Preferred Stock and to determine the number of shares which shall constitute such series and the Distribution Rate (as defined herein) and other terms of such series. The Special Committee pursuant to a resolution dated May 15, 2004 (i) authorized the creation and issuance of the 500 shares of Series F Flexible Cumulative Redeemable Preferred Stock described herein which stock was previously authorized but unissued Preferred Stock, and (ii) determined the preferences, conversion and other rights, voting powers, restrictions, limitations as to distributions, qualifications, distribution rate, and terms and conditions of redemption of the shares of such series. Such preferences, conversion and other rights, voting powers, restrictions, limitations as to distributions, qualifications, and terms and conditions of redemption, number of shares and distribution rate, as determined by such duly authorized committee, as applicable, are as follows:

Section 1. Number of Shares and Designation. This class of Preferred Stock shall be designated Series F Flexible Cumulative Redeemable Preferred Stock (the "Series F Preferred Shares") and the number of shares which shall constitute such series shall not be more than 500 shares, par value \$.01 per share, which number may be decreased (but not below the number thereof then outstanding) from time to time by the Board of Directors.

Section 2. Distribution Rights. (1) The following terms shall have the meanings assigned to them in this Section 2:



"3-month LIBOR Rate" means, for each Distribution Period, the arithmetic average of the two most recent weekly quotes for deposits for U.S. Dollars having a term of three months, as published on the first Business Day of each week during the relevant Calendar Period immediately preceding the Distribution Period for which the Floating Rate is being determined. Such quotes will be taken from the Bloomberg interest rate page most nearly corresponding to Telerate Page 3750 (or such other page as may replace such page for the purpose of displaying comparable rates) at approximately 11:00 a.m. London time on the relevant date. If such rate does not appear on the Bloomberg interest rate page most nearly corresponding to Telerate Page 3750 (or such other page as may replace such page for the purpose of displaying comparable rates) on the Distribution Determination Date, the 3-month LIBOR Rate will be the arithmetic mean of the rates quoted by three major banks in New York City selected by the Calculation Agent, at approximately 11:00 a.m., New York City time, on the Distribution Determination Date for loans in U.S. Dollars to leading European banks for a period of three months.

"10-year Treasury CMT" means the rate determined in accordance with the following provisions:

(i) With respect to any Distribution Determination Date and the Distribution Period that begins immediately thereafter, the 10-year Treasury CMT means the rate displayed on the Bloomberg interest rate page most nearly corresponding to Telerate Page 7051 containing the caption "...Treasury Constant Maturities... Federal Reserve Board Release H.15...Mondays Approximately 3:45 P.M.," and the column for the Designated CMT Maturity Index.

(ii) If such rate is no longer displayed on the relevant page, or is not so displayed by 3:00 P.M., New York City time, on the applicable Distribution Determination Date, then the 10-year Treasury CMT for such Distribution Determination Date will be such treasury constant maturity rate for the Designated CMT Maturity Index as is published in H.15(519).

(iii) If such rate is no longer displayed on the relevant page, or if not published by 3:00 P.M., New York City time, on the applicable Distribution Determination Date, then the 10-year Treasury CMT for such Distribution Determination Date will be such constant maturity treasury rate for the Designated CMT Maturity Index (or other United States Treasury rate for the Designated CMT Maturity Index) for the applicable Distribution Determination Date with respect to such Distribution reset date as may then be published by either the Board of Governors of the Federal Reserve System or the United States Department of the Treasury that the Calculation Agent determines to be comparable to the rate formerly displayed on the the Bloomberg interest rate page most nearly corresponding to Telerate Page 7051 and published in H.15(519).

(iv) If such information is not provided by 3:00 P.M., New York City time, on the applicable Distribution Determination Date, then the 10-year Treasury CMT for such Distribution Determination Date will be calculated by the Calculation Agent and will be a yield to maturity, based on the arithmetic mean of the secondary market offered

rates as of approximately 3:30 P.M., New York City time, on such Distribution Determination Date reported, according to their written records, by three leading primary United States government securities dealers in The City of New York (each, a "Reference Dealer") selected by the Calculation Agent (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for the most recently issued direct noncallable fixed rate obligations of the United States ("Treasury Debentures") with an original maturity of approximately the Designated CMT Maturity Index and a remaining term to maturity of not less than such Designated CMT Maturity Index minus one year.

(v) If the Calculation Agent is unable to obtain three such Treasury Debentures quotations, the 10-year Treasury CMT for the applicable Distribution Determination Date will be calculated by the Calculation Agent and will be a yield to maturity based on the arithmetic mean of the secondary market offered rates as of approximately 3:30 P.M., New York City time, on the applicable Distribution Determination Date of three Reference Dealers in The City of New York (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for Treasury Debentures with an original maturity of the number of years that is the next highest to the Designated CMT Maturity Index and a remaining term to maturity closest to the Designated CMT Maturity Index and in an amount of at least \$100 million.

(vi) If three or four (and not five) of such Reference Dealers are quoting as set forth above, then the 10-year Treasury CMT will be based on the arithmetic mean of the offered rates obtained and neither the highest nor lowest of such quotes will be eliminated; provided, however, that if fewer than three Reference Dealers selected by the Calculation Agent are quoting as set forth above, the 10-year Treasury CMT with respect to the applicable Distribution Determination Date will remain the 10-year Treasury CMT for the immediately preceding interest period. If two Treasury Debentures with an original maturity as described in the second preceding sentence have remaining terms to maturity equally close to the Designated CMT Maturity Index, then the quotes for the Treasury Debentures with the shorter remaining term to maturity will be used.

"30-year Treasury CMT" has the meaning specified under the definition of 10-year Treasury CMT, except that the Designated CMT Maturity Index for the 30-year Treasury CMT shall be 30 years.

"Bloomberg" means Bloomberg Financial Markets Commodities News.

"Business Day" means a day other than (i) a Saturday or Sunday; (ii) a day on which banks in New York, New York are authorized or obligated by law or executive order to remain closed; or (iii) a day on which the Company's principal executive office is closed for business.

"Calculation Agent" means the Bank of New York, or its successor appointed by the Company, acting as calculation agent.

"Calendar Period" means a period of 180 calendar days.

"Clearing Agency" means an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act. The Depository Trust Company will be the initial Clearing Agency.

"Clearing Agency Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Clearing Agency effects book-entry transfers and pledges of securities deposited with the Clearing Agency.

"Definitive Series F Preferred Share Certificates" means any Series F Preferred Share Certificate issued in certificated, fully registered form, other than any global certificate registered in the name of the Clearing Agency.

"Designated CMT Maturity Index" means the original period to maturity of the U.S. Treasury securities (10 years) with respect to which the 10-year Treasury CMT will be calculated.

"Distribution Determination Date" means the second London Business Day immediately preceding the first day of the relevant Distribution Period in the Floating Rate Period.

"Distribution Payment Date" means each day on which Distributions are payable determined based on the then-applicable Distribution Period.

"Distribution Period" means each semiannual period in a Fixed Rate Period and each quarterly period in a Floating Rate Period for which Distributions are payable; provided that the last Distribution Period in a Fixed Rate Period may be shorter than six (6) months and the last Distribution Period in a Floating Rate Period may be shorter than three (3) months.

"Distribution Rate" means the rate at which Distributions will accrue in respect of any Distribution Period, as determined pursuant to the terms of this Section 2, whether by Remarketing or otherwise.

"Distributions" means amounts payable in respect of the Series F Preferred Shares as provided in this Section 2.

"Election Date" means, with respect to any proposed Remarketing, a date as determined by the Company that is no later than the fifth Business Day prior to the proposed Remarketing Date.

"Fixed Rate" means the Distribution Rate during the Initial Fixed Rate Period and any subsequent Fixed Rate Period as determined by a Remarketing.

"Fixed Rate Period" means the Initial Fixed Rate Period and each period set by the Company during a Remarketing for which the Fixed Rate determined in such Remarketing will apply; provided, however, that a Fixed Rate Period must be for a duration of at least six months and may not end on a day other than a Distribution Payment Date.

"Floating Rate" means the Distribution Rate during a Floating Rate Period calculated pursuant to Section 2(10) hereof.

"Floating Rate Period" means any period during which a Floating Rate is in effect.

"Initial Distribution Rate" means 6.236% per annum.

"Initial Fixed Rate Period" means the Issue Date through March 31, 2009.

"Issue Date" means the date of the delivery of the Series F Preferred Shares.

"Owners" means each Person who is the beneficial owner of a Series F Preferred Share Certificate as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the Owner, then as reflected in the records of a Person maintaining an account with the Clearing Agency (directly or indirectly, in accordance with the rules of the Clearing Agency).

"Person" means an individual, corporation, partnership, joint venture, trust, limited liability company or corporation, unincorporated organization or government or any agency or political subdivision thereof.

"Redemption Date" means, with respect to any Series F Preferred Shares to be redeemed, the date fixed for such redemption by or pursuant to this Articles Supplementary.

"Remarketing" means the conduct by which a Fixed Rate shall be determined in accordance with the Remarketing Procedures.

"Remarketing Agent" means Lehman Brothers, Inc., its successors or assigns, or such other remarketing agent appointed to such capacity by the Company.

"Remarketing Agreement" means the agreement among the Company, First Industrial L.P., a Delaware limited partnership, and Lehman Brothers Inc., as Remarketing Agent, dated May 27, 2004.

"Remarketing Date" means any Business Day no later than the third Business Day prior to any Remarketing Settlement Date.

"Remarketing Procedures" means those procedures set forth in Section 2(12) hereof.

"Remarketing Settlement Date" means, to the extent applicable, (i) the first Business Day of the next Distribution Period following the expiration of the Initial Fixed Rate Period; (ii) any Distribution Payment Date during a Floating Rate Period; or (iii) any Distribution Payment Date during a time in which Series F Preferred Shares are not redeemable in a subsequent Fixed Rate Period and the date set by the Company during a time in which the Series F Preferred Shares are redeemable in a subsequent Fixed Rate Period.

"Series F Preferred Share Certificate" means a certificate evidencing ownership of a Series F Preferred Share.

Notwithstanding the foregoing, in the event the Company issues depositary shares each representing 1/100th of a Series F Preferred Share (the "Depositary Shares") in respect of all of the issued and outstanding Series F Preferred Shares, then (i) the provisions of this Section 2 relating to the Remarketing of and establishment of Distribution Rates for the Series F Preferred Shares shall be deemed to refer to the Depositary Shares, (ii) the Distribution Rate per share on the Series F Preferred Shares for each Distribution Period shall be equal to the Distribution Rate per share on the Depositary Shares for such Distribution Period determined in accordance with this Section (2) and (iii) in the definitions of "Definitive Series F Preferred Share Certificate," "Owners" and "Series F Preferred Share Certificate," the term "Preferred Share Certificate" shall be deemed to refer to the Depositary Shares.

"Telerate Page 3750" means the display designated on page 3750 on MoneyLine Telerate (or such other pages as may replace the 3750 page on the service or such other service as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. Dollars deposits).

"Telerate Page 7051" means the display on MoneyLine Telerate (or any successor service), on such page (or any other page as may replace such page on that service), for the purpose of displaying Treasury Constant Maturities as reported in H.15(519).

(2) Distributions shall be payable in cash on the Series F Preferred Shares when and as declared by the Board of Directors, out of assets legally available therefore. Distributions shall accrue from the Issue Date until the Redemption Date. During the Initial Fixed Rate Period, Distributions will be payable semiannually in arrears on March 31 and September 30 of each year, commencing on September 30, 2004. During any subsequent Fixed Rate Period Distributions will be payable semiannually in arrears determined based on the Remarketing Date (for example, if the Series F Preferred Shares are remarketed for a new Fixed Rate Period that begins on January 1 or July 1, Distributions will be payable on June 30 and December 31 of each year, and if the Series F Preferred Shares are remarketed for a new Fixed Rate Period that begins on April 1 or October 1, Distributions will be payable on September 30 and March 31 of each year), and on each other date on which a Fixed Rate Period ends. Any Fixed Rate Period may not end on a day other than a Distribution Payment Date. During any Floating Rate Period, Distributions will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, and on each other date on which a Floating Rate

Period ends. Distributions not paid on a Distribution Payment Date will accumulate additional Distributions (to the extent permitted by law) compounded semiannually at the Fixed Rate or quarterly at the Floating Rate, as applicable, then in effect.

Each such Distribution shall be paid to the holders of record of Series F Preferred Shares as they appear on the stock register of the Company as of the opening of business on the Business Day immediately preceding such Distribution Payment Date. After full Distributions on the Series F Preferred Shares have been paid or declared and funds set aside for payment for all past Distribution Periods and for the then current Distribution Period, the holders of the Series F Preferred Shares will not be entitled to any further Distributions with respect to that Distribution Period.

(3) If any Distribution Payment Date with respect to a Fixed Rate Period is not a Business Day, then Distributions will be payable on the first Business Day following such Distribution Payment Date, with the same force and effect as if payment was made on the date such payment was originally payable. If any Distribution Payment Date with respect to a Floating Rate Period is not a Business Day, then Distributions will be payable on the first Business Day following such Distribution Payment Date and Distributions shall accrue to the actual payment date (except for a Distribution Payment Date that coincides with the Redemption Date).

(4) The amount of Distributions payable on each Distribution Payment Date relating to a Fixed Rate Period will be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions payable on each Distribution Payment Date relating to a Floating Rate Period will be computed by multiplying the per annum Distribution Rate in effect for such Distribution Period by a fraction, the numerator of which will be the actual number of days in such Distribution Period (or portion thereof) (determined by including the first day thereof and excluding the last thereof) and the denominator of which will be 360, and multiplying the rate so obtained by (i) \$100,000 with respect to each Series F Preferred Share or (ii) \$1,000 in the event the Company has issued Depositary Shares in respect of all of the issued and outstanding Series F Preferred Shares.

(5) When Distributions are not paid in full upon the Series F Preferred Shares and any other series of preferred stock of the Company ranking on a parity therewith as to dividends, all Distributions declared upon the Series F Preferred Shares and any other series of preferred stock of the Company ranking on a parity therewith as to dividends shall be declared pro rata so that the amount of dividends declared per share on the Series F Preferred Shares and such other series of preferred stock shall in all cases bear to each other that same ratio that the accumulated dividends per share on the Series F Preferred Shares and such other series of preferred stock bear to each other. Except as provided in the preceding sentence, unless an amount equal to full cumulative Distributions on the Series F Preferred Shares has been paid to holders of record of Series F Preferred Shares entitled to receive Distributions as set forth above by the Company for all past Distribution Periods, no Distributions (other than in shares of the Company's common stock, par value \$.01 per share (together with any other shares of capital stock of the Company into which such shares shall be reclassified or changed "Common Stock"), or other shares of capital stock of the Company ranking junior to the Series F Preferred Shares as to dividends and upon liquidation) shall be declared or paid or set aside for payment nor shall

any other distribution be made upon the Common Stock or any other shares of capital stock of the Company ranking junior to or on a parity with the Series F Preferred Shares as to dividends or upon liquidation. Unless an amount equal to full cumulative Distributions on the Series F Preferred Shares has been paid to holders of record of Series F Preferred Shares entitled to receive Distributions as set forth above by the Company for all past Distribution Periods, no Common Stock or any other shares of capital stock of the Company ranking junior to or on a parity with the Series F Preferred Shares as to dividends or upon liquidation shall be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Company or any subsidiary of the Company, except by conversion into or exchange for shares of capital stock of the Company ranking junior to the Series F Preferred Shares as to dividends and upon liquidation.

(6) During the Initial Fixed Rate Period, the Distribution Rate shall be the Initial Distribution Rate.

(7) Prior to the expiration of the Initial Fixed Rate Period, the Company will have the option to remarket the Series F Preferred Shares to establish a new Fixed Rate with respect to the Series F Preferred Shares (to be in effect after the Initial Fixed Rate Period). Any new Fixed Rate so established will be in effect for such Fixed Rate Period as the Company determines in connection with the Remarketing, provided that a Fixed Rate Period must be for a duration of at least six months and may not end on a day other than a Distribution Payment Date. Prior to the expiration of any Fixed Rate Period after the Initial Fixed Rate Period during which the Series F Preferred Shares are not redeemable, the Company will have the option to remarket the Series F Preferred Shares to establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Distribution Period). The Company also has the option to remarket the Series F Preferred Shares for the purpose of establishing a new Fixed Rate for a new Fixed Rate Period prior to any Distribution Payment Date in any subsequent Fixed Rate Period during a time in which the Series F Preferred Shares are redeemable.

If the Company elects to conduct a Remarketing of the Series F Preferred Shares for the purpose of establishing a new Fixed Rate for a new Fixed Rate Period, the Company shall, not less than 10 nor more than 35 Business Days prior to the related Election Date, notify in writing the Clearing Agency, the Remarketing Agent and the Calculation Agent. If the Series F Preferred Shares are not issued in global, fully registered form to the Clearing Agency, such notice shall be delivered to the Owners instead of the Clearing Agency. Such notice shall describe the Remarketing and shall indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that will apply during such new Fixed Rate Period. The Company shall have the right to terminate a Remarketing at any time prior to the Election Date by notice of such termination to the Clearing Agency (or the Owners, as applicable), the Remarketing Agent and the Calculation Agent.

(8) If the Remarketing Agent has determined that it will be able to remarket all Series F Preferred Shares tendered or deemed tendered for purchase in the Remarketing at a Fixed Rate and at a price of \$100,000 per Series F Preferred Share (or \$1,000 per Depositary Share), prior to 4:00 P.M., New York City time, on any Remarketing Date, the Distribution Rate for the new Fixed Rate Period will be the Fixed Rate determined by the Remarketing Agent,

which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent per annum) that the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum that will enable it to remarket all Series F Preferred Shares tendered or deemed tendered for Remarketing at a price of \$100,000 per Series F Preferred Share (or \$1,000 per Depositary Share).

(9) If the Series F Preferred Shares are not redeemed and the Company does not elect to remarket the Series F Preferred Shares pursuant to this Section 2 or has terminated a Remarketing or if the Remarketing Agent is unable to remarket all of the Series F Preferred Shares tendered or deemed tendered for a purchase price of \$100,000 per Series F Preferred Share (or \$1,000 per Depositary Share) pursuant to the Remarketing procedures described above, Distributions on the Series F Preferred Shares will thereafter be cumulative from such date and the Distribution Rate shall be the Floating Rate and the new Distribution Period shall be a Floating Rate Period, subject to the Company's right to subsequently remarket the Series F Preferred Shares to again establish a Fixed Rate for a new Fixed Rate Period. During any Floating Rate Period, the Company may elect to remarket the Series F Preferred Shares prior to any Distribution Payment Date relating to a Floating Rate Period in order to again establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Distribution Period).

(10) The Calculation Agent shall calculate the Floating Rate on the applicable Distribution Determination Date as follows:

Except as provided below, the Floating Rate for any Floating Rate Period for the Series F Preferred Shares will be equal to the Adjustable Rate (as defined below) plus 2.375%. The "Adjustable Rate" for any Distribution Period will be equal to the highest of the 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT (each as defined above and collectively referred to as the "Benchmark Rates") for such Distribution Period during the Floating Rate Period. In the event that the Calculation Agent determines in good faith that for any reason:

(i) any one of the Benchmark Rates cannot be determined for any Distribution Period, the Adjustable Rate for such Distribution Period will be equal to the higher of whichever two of such rates can be so determined;

(ii) only one of the Benchmark Rates can be determined for any Distribution Period, the Adjustable Rate for such Distribution Period will be equal to whichever such rate can be so determined; or

(iii) none of the Benchmark Rates can be determined for any Dividend Period, the Adjustable Rate for the preceding Distribution Period will be continued for such Distribution Period.

The 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT shall each be rounded to the nearest hundredth of a percent.



The Floating Rate with respect to each Floating Rate Period will be calculated as promptly as practicable by the Calculation Agent according to the appropriate method described above.

(11) If a new Fixed Rate for a new Fixed Rate Period is set in a Remarketing (as described in this Section 2), a new Fixed Rate Period shall commence following the expiration of the then current Distribution Period. If a new Fixed Rate for a new Fixed Rate Period is not set, for any reason, including after the expiration of the Initial Fixed Rate Period, in accordance with the terms of Section 2(12) of these Articles Supplementary, a Floating Rate Period and the corresponding Floating Rate determined or redetermined in accordance with Section 2(10) shall be in effect unless and until the Company remarkets the Series F Preferred Shares and sets a new Fixed Rate for a new Fixed Rate Period in accordance with this Section 2 and the Remarketing Procedures.

(12) (a) If the Company elects to conduct a Remarketing, the Company, not less than 10 nor more than 35 Business Days prior to the related Election Date, is required pursuant to Section 2(7) to give the written notice of proposed Remarketing of the Series F Preferred Shares to the Clearing Agency, the Remarketing Agent and the Calculation Agent. If the Series F Shares are not issued in global, fully registered form to the Clearing Agency, such notice shall be delivered to the Owners instead of the Clearing Agency. As required by Section 2(7), such notice will describe the Remarketing and will indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that will apply during such new Fixed Rate Period. At any time prior to the Election Date, the Company may elect to terminate a Remarketing by giving the Clearing Agency (or the holders, as applicable), the Remarketing Agent and the Calculation Agent written notice of such termination.

(b) Not later than 4:00 P.M., New York City time, on an Election Date, each Owner of Series F Preferred Shares may give, through the facilities of the Clearing Agency in the case of book-entry Series F Preferred Share Certificates, a written notice to the Company of its election ("Notice of Election") (i) to retain and not to have all or any portion of the Series F Preferred Shares owned by it remarketed in the Remarketing or (ii) to tender all or any portion of such Series F Preferred Shares for purchase in the Remarketing (such portion, in either case, is to be in the Liquidation Amount of \$100,000 (or \$1,000 per Depository Share) or any integral multiple thereof). Any Notice of Election given to the Company will be irrevocable and may not be conditioned upon the level at which the Fixed Rate is established in the Remarketing. Promptly after 4:30 P.M., New York City time, on such Election Date, the Company, based on the Notices of Election received by it through the Clearing Agency (or from the Owners, if Definitive Series F Preferred Share Certificates have been issued) prior to such time, will notify the Remarketing Agent of the number of Series F Preferred Shares to be retained by holders of Series F Preferred Shares and the number of Series F Preferred Shares tendered or deemed tendered for purchase in the Remarketing.

(c) If any holder gives a Notice of Election to tender Series F Preferred Shares as described in Section 12(b)(ii) above, the Series F Preferred Shares so subject to such Notice of Election will be deemed tendered for purchase in the Remarketing, notwithstanding any failure by such holder to deliver or properly deliver such Series F Preferred Shares to the Remarketing

Agent for purchase. If any holder of Series F Preferred Shares fails timely to deliver a Notice of Election, as described above, such Series F Preferred Shares will be deemed tendered for purchase in such Remarketing, notwithstanding such failure or the failure by such holder to deliver or properly deliver such Series F Preferred Shares to the Remarketing Agent for purchase.

(d) The right of each holder of Series F Preferred Shares to have Series F Preferred Shares tendered for purchase in the Remarketing shall be limited to the extent that (i) the Remarketing Agent conducts a Remarketing pursuant to the terms of the Remarketing Agreement, (ii) Series F Preferred Shares tendered have not been called for redemption, (iii) the Remarketing Agent is able to find a purchaser or purchasers for tendered Series F Preferred Shares at a Fixed Rate and (iv) such purchaser or purchasers deliver the purchase price therefore to the Remarketing Agent.

(e) Any holder of Series F Preferred Shares that desires to continue to retain a number of Series F Preferred Shares, but only if the Fixed Rate is not less than a specified rate per annum, shall submit a Notice of Election to tender such Series F Preferred Shares pursuant to this Section 2(12) and separately notify the Remarketing Agent of its interest at the telephone number set forth in the notice of Remarketing delivered pursuant to this Section 2(12). If such holder so notifies the Remarketing Agent, the Remarketing Agent will give priority to such holder's purchase of such number of Series F Preferred Shares in the Remarketing, providing that the Fixed Rate is not less than such specified rate.

(f) If holders submit Notices of Election to retain all of the Series F Preferred Shares then outstanding, the Fixed Rate will be the rate determined by the Remarketing Agent, in its sole discretion, as the rate that would have been established had a Remarketing been held on the related Remarketing Date.

(g) On any Remarketing Date on which the Remarketing is to be conducted, the Remarketing Agent will use commercially reasonable efforts to remarket, at a price equal to 100% of the Liquidation Amount thereof, Series F Preferred Shares tendered or deemed tendered for purchase. If, as a result of such efforts, on any Remarketing Date, the Remarketing Agent has determined that it will be able to remarket all Preferred Securities tendered or deemed tendered for purchase in the Remarketing at a Fixed Rate and at a price of \$100,000 per Series F Preferred Share (or \$1,000 per Depository Share), prior to 4:00 P.M., New York City time, on such Remarketing Date, the Remarketing Agent will determine the Fixed Rate, which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent per annum) which the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum, if any, that will enable it to remarket all Series F Preferred Shares tendered or deemed tendered for Remarketing at a price of \$100,000 per Series F Preferred Share (or \$1,000 per Depository Share). By approximately 4:30 P.M., New York City time, on a Remarketing Date, the Remarketing Agent shall advise, by telephone, (i) the Clearing Agency Participant, the Company and the Calculation Agent of any new Fixed Rate established pursuant to the Remarketing and the number of remarketed Series F Preferred Shares sold in the Remarketing; (ii) each purchase of a remarketed Series F Preferred Shares (or the Clearing Agency Participant thereof) of such new Fixed Rate and the number of remarketed Series F Preferred Shares such purchaser is to

purchase; and (iii) each purchaser to give instructions to its Clearing Agency Participant to pay the purchase price on the Remarketing Settlement Date in same day funds against delivery of the remarketed Series F Preferred Shares purchased through the facilities of the Clearing Agency Participant.

(h) If the Remarketing Agent is unable to remarket by 4:00 P.M., New York City time on the third Business Day prior to the Remarketing Settlement Date, all Series F Preferred Shares tendered or deemed tendered for purchase at a price of \$100,000 per Series F Preferred Share (or \$1,000 per Depository Share), the Distribution Rate for the next Distribution Period shall be the Floating Rate and the new Distribution Period shall be a Floating Rate Period. In such case, no Series F Preferred Shares will be sold in the Remarketing and each Holder will continue to hold its Series F Preferred Shares at such Floating Rate during such Floating Rate Period.

(i) All Series F Preferred Shares tendered or deemed tendered in the Remarketing will be automatically delivered to the account of the Remarketing Agent through the facilities of the Clearing Agency against payment of the purchase price therefore on the Remarketing Settlement Date. The Remarketing Agent will make payment to the Clearing Agency Participant of each tendering holder of Series F Preferred Shares in the Remarketing through the facilities of the Clearing Agency by the close of business on the Remarketing Settlement Date. In accordance with the Clearing Agency's normal procedures, on the Remarketing Settlement Date, the transaction described above with respect to each Series F Preferred Share tendered or deemed tendered for purchase and sold in the Remarketing will be executed through the Clearing Agency and the account of the Clearing Agency Participant, will be debited and credited and such Series F Preferred Shares delivered by book entry as necessary to effect purchases and sales of such Series F Preferred Shares. The Clearing Agency is expected to make payment in accordance with its normal procedures. This Section 2(12)(i) shall not apply if Definitive Preferred Securities Certificates have been issued.

(j) If any holder selling Series F Preferred Shares in the Remarketing fails to deliver such Series F Preferred Shares, the Clearing Agency Participant of such selling holder and of any other person that was to have purchased Series F Preferred Shares in the Remarketing may deliver to any such other person a number of Series F Preferred Shares that is less than the number of Series F Preferred Shares that otherwise was to be purchased by such person. In such event the number of Series F Preferred Shares to be so delivered will be determined by such Clearing Agency Participant and delivery of such lesser number of Series F Preferred Shares will constitute good delivery. This Section 2(12)(j) shall not apply if Definitive Preferred Securities Certificates have been issued.

(k) The Remarketing Agent is not obligated to purchase any Series F Preferred Shares that would otherwise remain unsold in a Remarketing. Neither the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Series F Preferred Shares for Remarketing.

Section 3. Liquidation. (1) In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Company, the holders of Series F Preferred Shares

are entitled to receive out of the assets of the Company available for distribution to stockholders, before any distribution of assets is made to holders of Common Stock or any other class or series of shares ranking junior to the Series F Preferred Shares upon liquidation, liquidating distributions in the amount of the stated value of \$100,000 per share (equivalent to \$1,000 per Depository Share), plus all accumulated and unpaid Distributions (whether or not declared) for the then current and all past Distribution Periods. If, upon any voluntary or involuntary liquidation, dissolution, or winding up of the Company, the amounts payable with respect to the Series F Preferred Shares and any other shares of the Company ranking as to any such Distribution on a parity with the Series F Preferred Shares are not paid in full, the holders of Series F Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Company in proportion to the full respective preferential amounts to which they are entitled. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of Series F Preferred Shares will not be entitled to any further participation in any distribution of assets by the Company.

(2) Written notice of any such liquidation, dissolution or winding up of the Company, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage prepaid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series F Preferred Shares at the respective addresses of such holders as the same shall appear on the stock transfer records of the Company.

(3) For purposes of liquidation rights, a consolidation or merger of the Company with or into any other corporation or corporations or a sale of all or substantially all of the assets of the Company shall be deemed not to be a liquidation, dissolution or winding up of the Company.

Section 4. Redemption. (1) The Series F Preferred Shares are redeemable at the option of the Company, in whole or in part (i) on the last Distribution Payment Date relating to the Initial Fixed Rate Period, (ii) on such dates with respect to any other Fixed Rate Period as the Company may determine prior to the commencement of such Fixed Rate Period or (iii) at any time during a Floating Rate Period, at a cash redemption price of \$100,000 per share (equivalent to \$1,000 per Depository Share), plus all accumulated and unpaid Distributions (whether or not declared) to and including the date of redemption (the "Redemption Price").

(2) If fewer than all of the outstanding Series F Preferred Shares are to be redeemed, the number of shares to be redeemed will be determined by the Board of Directors of the Company and such shares shall be redeemed pro rata from the holders of record of such shares in proportion to the number of such shares held by such holders (with adjustments to avoid redemption of fractional shares) or by lot in a manner determined by the Board of Directors of the Company.

(3) Notwithstanding the foregoing, if an amount equal to full Distributions for all past Distribution Periods on the Series F Preferred Shares has not been paid to holders of record of Series F Preferred Shares entitled to receive Distributions as set forth above by the Company, no Series F Preferred Shares shall be redeemed (except as provided in clause (9) below) unless all outstanding Series F Preferred Shares are simultaneously redeemed, and the

Company shall not purchase or otherwise acquire, directly or indirectly, any Series F Preferred Shares; provided, however, that the foregoing shall not prevent the purchase or acquisition of Series F Preferred Shares pursuant to a purchase or exchange offer if such offer is made on the same terms to all holders of Series F Preferred Shares.

(4) Except as expressly provided hereinabove, the Company shall make no payment or allowance for unpaid Distributions, whether or not in arrears, on Series F Preferred Shares called for redemption.

(5) Notice of redemption shall be given by publication in a newspaper of general circulation in The City of New York, such publication to be made once a week for two successive weeks, commencing not less than 30 or more than 60 days prior to the date fixed for redemption thereof. A similar notice will be mailed by the Company by first class mail, postage prepaid, to each record holder of the Series F Preferred Shares to be redeemed, not less than 30 nor more than 60 days prior to such redemption date, to the respective addresses of such holders as the same shall appear on the stock transfer records of the Company. Each notice shall state: (i) the Redemption Date; (ii) the number of Series F Preferred Shares to be redeemed; (iii) the Redemption Price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price; and (v) that Distributions on the shares to be redeemed will cease to accumulate on such Redemption Date. If fewer than all the Series F Preferred Shares held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of Series F Preferred Shares to be redeemed from such holder.

(6) In order to facilitate the redemption of Series F Preferred Shares, the Board of Directors may fix a record date for the determination of the shares to be redeemed, such record date to be not less than 30 nor more than 60 days prior to the date fixed for such redemption.

(7) Notice having been given as provided above, from and after the date fixed for the redemption of Series F Preferred Shares by the Company (the "Redemption Date") (unless the Company shall fail to make available the money necessary to effect such redemption), all Distributions on the Series F Preferred Shares called for redemption will cease to accrue. From and after the Redemption Date the holders of shares selected for redemption shall cease to be stockholders with respect to such shares and shall have no interest in or claim against the Company by virtue thereof and shall have no voting or other rights with respect to such shares, except the right to receive the Redemption Price from the Company, less any required tax withholding amount, without interest thereon. Upon surrender in accordance with such Notice of the certificate representing such Series F Preferred Shares (and endorsement or assignment of transfer, if required by the Company and so stated in the Notice) the Redemption Price shall be paid out of the funds provided by the Company and the shares represented thereby shall no longer be deemed to be outstanding. If fewer than all the shares represented by a certificate are redeemed, a new certificate shall be issued, without cost to the holder thereof, representing the unredeemed shares.

(8) Any Series F Preferred Shares that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued preferred stock, without

designation as to series until such shares are once more designated as part of a particular series by the Board of Directors.

(9) The Series F Preferred Shares are subject to the provisions of Article IX of the Charter, including, without limitation, the provisions for the redemption of Excess Stock (as defined in such Article). Notwithstanding the provisions of Article IX of the Charter, Series F Preferred Shares which have been exchanged pursuant to such Article for Excess Stock may be redeemed, in whole or in part, and, if in part, pro rata from the holders of record of such shares in proportion to the number of such shares held by such holders (with adjustments to avoid redemption of fractional shares) or by lot in a manner determined by the Board of Directors, at any time when outstanding Series F Preferred Shares are being redeemed.

Section 5. Voting Rights. The Series F Preferred Shares shall not have any voting powers either general or special, except as required by law and except that:

(1) If full cumulative Distributions on the Series F Preferred Shares, or any other series of preferred stock of the Company ranking on a parity with the Series F Preferred Shares as to dividends or upon liquidation (any such series, a "Parity Preferred Series"), for six quarterly Distribution Payment Periods, whether or not consecutive, are in arrears and unpaid, (such failure to pay by the Company, a "Distribution Default"), the holders of all outstanding Series F Preferred Shares and any Parity Preferred Series, voting as a single class without regard to series, will be entitled to elect two additional Directors until all Distributions in arrears and unpaid on the Series F Preferred Shares and any Parity Preferred Series have been paid or declared and funds therefor set apart for payment. At any time when such right to elect Directors separately as a class shall have so vested, the Company may, and upon the written request of the holders of record of not less than 20% of the total number of Series F Preferred Shares and shares of any Parity Preferred Series of the Company then outstanding shall, call a special meeting of stockholders for the election of such Directors. In the case of such a written request, such special meeting shall be held within 90 days after the delivery of such request and, in either case, at the place and upon the notice provided by law and in the Bylaws of the Company, provided that the Company shall not be required to call such a special meeting if such request is received less than 120 days before the date fixed for the next ensuing Annual Meeting of Stockholders of the Company and the holders of all outstanding Series F Preferred Shares and shares of any Parity Preferred Series are afforded the opportunity to elect such Directors (or fill any vacancy) at such Annual Meeting of Stockholders. Directors elected as aforesaid shall serve until the next Annual Meeting of Stockholders of the Company or until their respective successors shall be elected and qualified, or, if sooner, until an amount equal to all Distributions in arrears and unpaid have been paid or declared and funds therefor set apart for payment. If, prior to the end of the term of any Director elected as aforesaid, a vacancy in the office of such Director shall occur during the continuance of a Distribution Default by reason of death, resignation, or disability, such vacancy shall be filled for the unexpired term by the appointment of a new Director for the unexpired term of such former Director, such appointment to be made by the remaining Director or Directors elected as aforesaid.

(2) The affirmative vote or consent of the holders of at least two-thirds of the outstanding Series F Preferred Shares and any Parity Preferred Series, voting as a single class without regard to series, will be required to issue, authorize or increase the authorized amount of

any class or series of shares ranking senior to the Series F Preferred Shares and shares of each Parity Preferred Series as to dividends or upon liquidation or to issue or authorize any obligation or security convertible into or evidencing a right to purchase any such security. Subject to the preceding sentence, the affirmative vote or consent of the holders of at least two-thirds of the outstanding Series F Preferred Shares, voting separately as a class, will be required to amend or repeal any provision of, or add any provision to, the Articles of Incorporation, including the Articles Supplementary, if such action would materially and adversely alter or change the powers, preferences, privileges or rights of the Series F Preferred Shares.

(3) Nothing herein shall be taken to require a class vote or consent in connection with the authorization, designation, increase or issuance of shares of any class or series (including additional preferred stock of any series) that rank junior to or on a parity with the Series F Preferred Shares as to dividends and liquidation rights or in connection with the authorization, designation, increase or issuance of any bonds, mortgages, debentures or other debt obligations of the Company.

Section 6. Conversion. The Series F Preferred Shares are not convertible into shares of any other class or series of the capital stock of the Company.

IN WITNESS WHEREOF, the Company has caused these Articles Supplementary to be signed in its name and on its behalf and attested to by the undersigned on this 26th day of May, 2004 and the undersigned acknowledges under the penalties of perjury that these Articles Supplementary are the corporate act of said Company and that to the best of his knowledge, information and belief, the matters and facts set forth herein are true in all material respects.

FIRST INDUSTRIAL REALTY TRUST, INC.

By: /s/ John Clayton  
-----  
Name: John H. Clayton  
Title: Vice President -- Corporate  
Legal and Secretary

Attest:

By: /s/ Scott A. Musil  
-----  
Name: Scott A. Musil  
Title: Senior Vice President,  
Controller, Treasurer  
and Assistant Secretary



Series G Flexible Cumulative Redeemable Preferred Stock  
(Liquidation Preference \$100,000 Per Share)

ARTICLES SUPPLEMENTARY

FIRST INDUSTRIAL REALTY TRUST, INC.

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Articles Supplementary of Board of Directors Classifying  
and Designating a Series of Preferred Stock as  
Series G Flexible Cumulative Redeemable Preferred Stock  
and Fixing Distribution and  
Other Preferences and Rights of Such Series

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Dated as of May 26, 2004

FIRST INDUSTRIAL REALTY TRUST, INC.

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Series G Flexible Cumulative Redeemable Preferred Stock  
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First Industrial Realty Trust, Inc., a Maryland corporation, having its principal office in the State of Maryland in the City of Baltimore (the "Company"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

Pursuant to authority conferred upon the Board of Directors by the Charter and Bylaws of the Company, the Board of Directors on December 3, 1996, December 4, 1997 and December 3, 1998 adopted resolutions appointing certain members of the Board of Directors to a committee (the "Special Committee") with power to cause the Company to issue, among other things, certain series of Preferred Stock and to determine the number of shares which shall constitute such series and the Distribution Rate (as defined herein) and other terms of such series. The Special Committee pursuant to a resolution dated May 24, 2004 (i) authorized the creation and issuance of up to 250 shares of Series G Flexible Cumulative Redeemable Preferred Stock which stock was previously authorized but unissued Preferred Stock, and (ii) determined the preferences, conversion and other rights, voting powers, restrictions, limitations as to distributions, qualifications, distribution rate, and terms and conditions of redemption of the shares of such series. Such preferences, conversion and other rights, voting powers, restrictions, limitations as to distributions, qualifications, and terms and conditions of redemption, number of shares and distribution rate, as determined by such duly authorized committee, as applicable, are as follows:

Section 1. Number of Shares and Designation. This class of Preferred Stock shall be designated Series G Flexible Cumulative Redeemable Preferred Stock (the "Series G Preferred Shares") and the number of shares which shall constitute such series shall not be more than 250 shares, par value \$.01 per share, which number may be decreased (but not below the number thereof then outstanding) from time to time by the Board of Directors.

Section 2. Distribution Rights. (1) The following terms shall have the meanings assigned to them in this Section 2:

"3-month LIBOR Rate" means, for each Distribution Period, the arithmetic average of the two most recent weekly quotes for deposits for U.S. Dollars having a term of three months, as published on the first Business Day of each week during the relevant Calendar Period immediately preceding the Distribution Period for which the Floating Rate is being determined. Such quotes will be taken from the Bloomberg interest rate page most nearly corresponding to Telerate Page 3750 (or such other page as may replace such page for the purpose of displaying comparable rates) at approximately 11:00 a.m. London time on the relevant date. If such rate does not appear on the Bloomberg interest rate page most nearly corresponding to Telerate Page 3750 (or such other page as may replace such page for the purpose of displaying comparable rates) on the Distribution Determination Date, the 3-month LIBOR Rate will be the arithmetic mean of the rates quoted by three major banks in New York City selected by the Calculation Agent, at approximately 11:00 a.m., New York City time, on the Distribution Determination Date for loans in U.S. Dollars to leading European banks for a period of three months.

"10-year Treasury CMT" means the rate determined in accordance with the following provisions:

(i) With respect to any Distribution Determination Date and the Distribution Period that begins immediately thereafter, the 10-year Treasury CMT means the rate displayed on the Bloomberg interest rate page most nearly corresponding to Telerate Page 7051 containing the caption "...Treasury Constant Maturities... Federal Reserve Board Release H.15...Mondays Approximately 3:45 P.M.," and the column for the Designated CMT Maturity Index.

(ii) If such rate is no longer displayed on the relevant page, or is not so displayed by 3:00 P.M., New York City time, on the applicable Distribution Determination Date, then the 10-year Treasury CMT for such Distribution Determination Date will be such treasury constant maturity rate for the Designated CMT Maturity Index as is published in H.15(519).

(iii) If such rate is no longer displayed on the relevant page, or if not published by 3:00 P.M., New York City time, on the applicable Distribution Determination Date, then the 10-year Treasury CMT for such Distribution Determination Date will be such constant maturity treasury rate for the Designated CMT Maturity Index (or other United States Treasury rate for the Designated CMT Maturity Index) for the applicable Distribution Determination Date with respect to such Distribution reset date as may then be published by either the Board of Governors of the Federal Reserve System or the United States Department of the Treasury that the Calculation Agent determines to be comparable to the rate formerly displayed on the Bloomberg interest rate page most nearly corresponding to Telerate Page 7051 and published in H.15(519).

(iv) If such information is not provided by 3:00 P.M., New York City time, on the applicable Distribution Determination Date, then the 10-year Treasury CMT for such Distribution Determination Date will be calculated by the Calculation Agent and will be a yield to maturity, based on the arithmetic mean of the secondary market offered

rates as of approximately 3:30 P.M., New York City time, on such Distribution Determination Date reported, according to their written records, by three leading primary United States government securities dealers in The City of New York (each, a "Reference Dealer") selected by the Calculation Agent (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for the most recently issued direct noncallable fixed rate obligations of the United States ("Treasury Debentures") with an original maturity of approximately the Designated CMT Maturity Index and a remaining term to maturity of not less than such Designated CMT Maturity Index minus one year.

(v) If the Calculation Agent is unable to obtain three such Treasury Debentures quotations, the 10-year Treasury CMT for the applicable Distribution Determination Date will be calculated by the Calculation Agent and will be a yield to maturity based on the arithmetic mean of the secondary market offered rates as of approximately 3:30 P.M., New York City time, on the applicable Distribution Determination Date of three Reference Dealers in The City of New York (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for Treasury Debentures with an original maturity of the number of years that is the next highest to the Designated CMT Maturity Index and a remaining term to maturity closest to the Designated CMT Maturity Index and in an amount of at least \$100 million.

(vi) If three or four (and not five) of such Reference Dealers are quoting as set forth above, then the 10-year Treasury CMT will be based on the arithmetic mean of the offered rates obtained and neither the highest nor lowest of such quotes will be eliminated; provided, however, that if fewer than three Reference Dealers selected by the Calculation Agent are quoting as set forth above, the 10-year Treasury CMT with respect to the applicable Distribution Determination Date will remain the 10-year Treasury CMT for the immediately preceding interest period. If two Treasury Debentures with an original maturity as described in the second preceding sentence have remaining terms to maturity equally close to the Designated CMT Maturity Index, then the quotes for the Treasury Debentures with the shorter remaining term to maturity will be used.

"30-year Treasury CMT" has the meaning specified under the definition of 10-year Treasury CMT, except that the Designated CMT Maturity Index for the 30-year Treasury CMT shall be 30 years.

"Bloomberg" means Bloomberg Financial Markets Commodities News.

"Business Day" means a day other than (i) a Saturday or Sunday; (ii) a day on which banks in New York, New York are authorized or obligated by law or executive order to remain closed; or (iii) a day on which the Company's principal executive office is closed for business.

"Calculation Agent" means the Bank of New York, or its successor appointed by the Company, acting as calculation agent.

"Calendar Period" means a period of 180 calendar days.

"Clearing Agency" means an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act. The Depository Trust Company will be the initial Clearing Agency.

"Clearing Agency Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Clearing Agency effects book-entry transfers and pledges of securities deposited with the Clearing Agency.

"Definitive Series G Preferred Share Certificates" means any Series G Preferred Share Certificate issued in certificated, fully registered form, other than any global certificate registered in the name of the Clearing Agency.

"Designated CMT Maturity Index" means the original period to maturity of the U.S. Treasury securities (10 years) with respect to which the 10-year Treasury CMT will be calculated.

"Distribution Determination Date" means the second London Business Day immediately preceding the first day of the relevant Distribution Period in the Floating Rate Period.

"Distribution Payment Date" means each day on which Distributions are payable determined based on the then-applicable Distribution Period.

"Distribution Period" means each semiannual period in a Fixed Rate Period and each quarterly period in a Floating Rate Period for which Distributions are payable; provided that the last Distribution Period in a Fixed Rate Period may be shorter than six (6) months and the last Distribution Period in a Floating Rate Period may be shorter than three (3) months.

"Distribution Rate" means the rate at which Distributions will accrue in respect of any Distribution Period, as determined pursuant to the terms of this Section 2, whether by Remarketing or otherwise.

"Distributions" means amounts payable in respect of the Series G Preferred Shares as provided in this Section 2.

"Election Date" means, with respect to any proposed Remarketing, a date as determined by the Company that is no later than the fifth Business Day prior to the proposed Remarketing Date.

"Fixed Rate" means the Distribution Rate during the Initial Fixed Rate Period and any subsequent Fixed Rate Period as determined by a Remarketing.

"Fixed Rate Period" means the Initial Fixed Rate Period and each period set by the Company during a Remarketing for which the Fixed Rate determined in such Remarketing will apply; provided, however, that a Fixed Rate Period must be for a duration of at least six months and may not end on a day other than a Distribution Payment Date.

"Floating Rate" means the Distribution Rate during a Floating Rate Period calculated pursuant to Section 2(10) hereof.

"Floating Rate Period" means any period during which a Floating Rate is in effect.

"Initial Distribution Rate" means 7.236% per annum.

"Initial Fixed Rate Period" means the Issue Date through March 31, 2014.

"Issue Date" means the date of the delivery of the Series G Preferred Shares.

"Owners" means each Person who is the beneficial owner of a Series G Preferred Share Certificate as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the Owner, then as reflected in the records of a Person maintaining an account with the Clearing Agency (directly or indirectly, in accordance with the rules of the Clearing Agency).

"Person" means an individual, corporation, partnership, joint venture, trust, limited liability company or corporation, unincorporated organization or government or any agency or political subdivision thereof.

"Redemption Date" means, with respect to any Series G Preferred Shares to be redeemed, the date fixed for such redemption by or pursuant to this Articles Supplementary.

"Remarketing" means the conduct by which a Fixed Rate shall be determined in accordance with the Remarketing Procedures.

"Remarketing Agent" means Lehman Brothers, Inc., its successors or assigns, or such other remarketing agent appointed to such capacity by the Company.

"Remarketing Agreement" means the agreement among the Company, First Industrial L.P., a Delaware limited partnership, and Lehman Brothers Inc., as Remarketing Agent, dated May 27, 2004.

"Remarketing Date" means any Business Day no later than the third Business Day prior to any Remarketing Settlement Date.

"Remarketing Procedures" means those procedures set forth in Section 2(12) hereof.

"Remarketing Settlement Date" means, to the extent applicable, (i) the first Business Day of the next Distribution Period following the expiration of the Initial Fixed Rate Period; (ii) any Distribution Payment Date during a Floating Rate Period; or (iii) any Distribution Payment Date during a time in which Series G Preferred Shares are not redeemable in a subsequent Fixed Rate Period and the date set by the Company during a time in which the Series F Preferred Shares are redeemable in a subsequent Fixed Rate Period.

"Series G Preferred Share Certificate" means a certificate evidencing ownership of a Series G Preferred Share.

Notwithstanding the foregoing, in the event the Company issues depositary shares each representing 1/100th of a Series G Preferred Share (the "Depositary Shares") in respect of all of the issued and outstanding Series G Preferred Shares at a defined multiple thereof, then (i) the provisions of this Section 2 relating to the Remarketing of and establishment of Distribution Rates for the Series G Preferred Shares shall be deemed to refer to the Depositary Shares, (ii) the Distribution Rate per share on the Series G Preferred Shares for each Distribution Period shall be equal to the Distribution Rate per share on the Depositary Shares for such Distribution Period determined in accordance with this Section (2) and (iii) in the definitions of "Definitive Series G Preferred Share Certificate," "Owners" and "Series G Preferred Share Certificate," the term "Preferred Share Certificate" shall be deemed to refer to the Depositary Shares.

"Telerate Page 3750" means the display designated on page 3750 on MoneyLine Telerate (or such other pages as may replace the 3750 page on the service or such other service as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. Dollars deposits).

"Telerate Page 7051" means the display on MoneyLine Telerate (or any successor service), on such page (or any other page as may replace such page on that service), for the purpose of displaying Treasury Constant Maturities as reported in H.15(519).

(2) Distributions shall be payable in cash on the Series G Preferred Shares when and as declared by the Board of Directors, out of assets legally available therefore. Distributions shall accrue from the Issue Date until the Redemption Date. During the Initial Fixed Rate Period, Distributions will be payable semiannually in arrears on March 31 and September 30 of each year, commencing on September 30, 2004. During any subsequent Fixed Rate Period Distributions will be payable semiannually in arrears determined based on the Remarketing Date (for example, if the Series G Preferred Shares are remarketed for a new Fixed Rate Period that begins on January 1 or July 1, Distributions will be payable on June 30 and December 31 of each year and if the Series G Preferred Shares are remarketed for a new Fixed Rate Period that begins on April 1 or October 1, Distributions will be payable on September 30 and March 31 of each year), and on each other date on which a Fixed Rate Period ends. Any Fixed Rate Period may not end on a day other than a Distribution Payment Date. During any Floating Rate Period, Distributions will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, and on each other date on which a Floating Rate Period ends. Distributions not paid on a Distribution Payment Date will accumulate additional

Distributions (to the extent permitted by law) compounded semiannually at the Fixed Rate or quarterly at the Floating Rate, as applicable, then in effect.

Each such Distribution shall be paid to the holders of record of Series G Preferred Shares as they appear on the stock register of the Company as of the opening of business on the Business Day immediately preceding such Distribution Payment Date. After full Distributions on the Series G Preferred Shares have been paid or declared and funds set aside for payment for all past Distribution Periods and for the then current Distribution Period, the holders of the Series G Preferred Shares will not be entitled to any further Distributions with respect to that Distribution Period.

(3) If any Distribution Payment Date with respect to a Fixed Rate Period is not a Business Day, then Distributions will be payable on the first Business Day following such Distribution Payment Date, with the same force and effect as if payment was made on the date such payment was originally payable. If any Distribution Payment Date with respect to a Floating Rate Period is not a Business Day, then Distributions will be payable on the first Business Day following such Distribution Payment Date and Distributions shall accrue to the actual payment date (except for a Distribution Payment Date that coincides with the Redemption Date).

(4) The amount of Distributions payable on each Distribution Payment Date relating to a Fixed Rate Period will be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions payable on each Distribution Payment Date relating to a Floating Rate Period will be computed by multiplying the per annum Distribution Rate in effect for such Distribution Period by a fraction, the numerator of which will be the actual number of days in such Distribution Period (or portion thereof) (determined by including the first day thereof and excluding the last thereof) and the denominator of which will be 360, and multiplying the rate so obtained by (i) \$100,000 with respect to each Series G Preferred Share or (ii) \$1,000 in the event the Company has issued Depositary Shares in respect of all of the issued and outstanding Series G Preferred Shares.

(5) When Distributions are not paid in full upon the Series G Preferred Shares and any other series of preferred stock of the Company ranking on a parity therewith as to dividends, all Distributions declared upon the Series G Preferred Shares and any other series of preferred stock of the Company ranking on a parity therewith as to dividends shall be declared pro rata so that the amount of dividends declared per share on the Series G Preferred Shares and such other series of preferred stock shall in all cases bear to each other that same ratio that the accumulated dividends per share on the Series G Preferred Shares and such other series of preferred stock bear to each other. Except as provided in the preceding sentence, unless an amount equal to full cumulative Distributions on the Series G Preferred Shares has been paid to holders of record of Series G Preferred Shares entitled to receive Distributions as set forth above by the Company for all past Distribution Periods, no Distributions (other than in shares of the Company's common stock, par value \$.01 per share (together with any other shares of capital stock of the Company into which such shares shall be reclassified or changed "Common Stock"), or other shares of capital stock of the Company ranking junior to the Series G Preferred Shares as to dividends and upon liquidation) shall be declared or paid or set aside for payment nor shall any other distribution be made upon the Common Stock or any other shares of capital stock of

the Company ranking junior to or on a parity with the Series G Preferred Shares as to dividends or upon liquidation. Unless an amount equal to full cumulative Distributions on the Series G Preferred Shares has been paid to holders of record of Series G Preferred Shares entitled to receive Distributions as set forth above by the Company for all past Distribution Periods, no Common Stock or any other shares of capital stock of the Company ranking junior to or on a parity with the Series G Preferred Shares as to dividends or upon liquidation shall be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Company or any subsidiary of the Company, except by conversion into or exchange for shares of capital stock of the Company ranking junior to the Series G Preferred Shares as to dividends and upon liquidation.

(6) During the Initial Fixed Rate Period, the Distribution Rate shall be the Initial Distribution Rate.

(7) Prior to the expiration of the Initial Fixed Rate Period, the Company will have the option to remarket the Series G Preferred Shares to establish a new Fixed Rate with respect to the Series G Preferred Shares (to be in effect after the Initial Fixed Rate Period). Any new Fixed Rate so established will be in effect for such Fixed Rate Period as the Company determines in connection with the Remarketing, provided that a Fixed Rate Period must be for a duration of at least six months and may not end on a day other than a Distribution Payment Date. Prior to the expiration of any Fixed Rate Period after the Initial Fixed Rate Period during which the Series G Preferred Shares are not redeemable, the Company will have the option to remarket the Series G Preferred Shares to establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Distribution Period). The Company also has the option to remarket the Series G Preferred Shares for the purpose of establishing a new Fixed Rate for a new Fixed Rate Period prior to any Distribution Payment Date in any subsequent Fixed Rate Period during a time in which the Series G Preferred Shares are redeemable.

If the Company elects to conduct a Remarketing of the Series G Preferred Shares for the purpose of establishing a new Fixed Rate for a new Fixed Rate Period, the Company shall, not less than 10 nor more than 35 Business Days prior to the related Election Date, notify in writing the Clearing Agency, the Remarketing Agent and the Calculation Agent. If the Series G Preferred Shares are not issued in global, fully registered form to the Clearing Agency, such notice shall be delivered to the Owners instead of the Clearing Agency. Such notice shall describe the Remarketing and shall indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that will apply during such new Fixed Rate Period. The Company shall have the right to terminate a Remarketing at any time prior to the Election Date by notice of such termination to the Clearing Agency (or the Owners, as applicable), the Remarketing Agent and the Calculation Agent.

(8) If the Remarketing Agent has determined that it will be able to remarket all Series G Preferred Shares tendered or deemed tendered for purchase in the Remarketing at a Fixed Rate and at a price of \$100,000 per Series G Preferred Share (or \$1,000 per Depositary Share), prior to 4:00 P.M., New York City time, on any Remarketing Date, the Distribution Rate for the new Fixed Rate Period will be the Fixed Rate determined by the Remarketing Agent, which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent



per annum) that the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum that will enable it to remarket all Series G Preferred Shares tendered or deemed tendered for Remarketing at a price of \$100,000 per Series G Preferred Share (or \$1,000 per Depositary Share).

(9) If the Series G Preferred Shares are not redeemed and the Company does not elect to remarket the Series G Preferred Shares pursuant to this Section 2 or has terminated a Remarketing or if the Remarketing Agent is unable to remarket all of the Series G Preferred Shares tendered or deemed tendered for a purchase price of \$100,000 per Series G Preferred Share (or \$1,000 per Depositary Share) pursuant to the Remarketing procedures described above, Distributions on the Series G Preferred Shares will thereafter be cumulative from such date and the Distribution Rate shall be the Floating Rate and the new Distribution Period shall be a Floating Rate Period, subject to the Company's right to subsequently remarket the Series G Preferred Shares to again establish a Fixed Rate for a new Fixed Rate Period. During any Floating Rate Period, the Company may elect to remarket the Series G Preferred Shares prior to any Distribution Payment Date relating to a Floating Rate Period in order to again establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Distribution Period).

(10) The Calculation Agent shall calculate the Floating Rate on the applicable Distribution Determination Date as follows:

Except as provided below, the Floating Rate for any Floating Rate Period for the Series G Preferred Shares will be equal to the Adjustable Rate (as defined below) plus 2.500%. The "Adjustable Rate" for any Distribution Period will be equal to the highest of the 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT (each as defined above and collectively referred to as the "Benchmark Rates") for such Distribution Period during the Floating Rate Period. In the event that the Calculation Agent determines in good faith that for any reason:

(i) any one of the Benchmark Rates cannot be determined for any Distribution Period, the Adjustable Rate for such Distribution Period will be equal to the higher of whichever two of such rates can be so determined;

(ii) only one of the Benchmark Rates can be determined for any Distribution Period, the Adjustable Rate for such Distribution Period will be equal to whichever such rate can be so determined; or

(iii) none of the Benchmark Rates can be determined for any Dividend Period, the Adjustable Rate for the preceding Distribution Period will be continued for such Distribution Period.

The 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT shall each be rounded to the nearest hundredth of a percent.

The Floating Rate with respect to each Floating Rate Period will be calculated as

promptly as practicable by the Calculation Agent according to the appropriate method described above.

(11) If a new Fixed Rate for a new Fixed Rate Period is set in a Remarketing (as described in this Section 2), a new Fixed Rate Period shall commence following the expiration of the then current Distribution Period. If a new Fixed Rate for a new Fixed Rate Period is not set, for any reason, including after the expiration of the Initial Fixed Rate Period, in accordance with the terms of Section 2(12) of these Articles Supplementary, a Floating Rate Period and the corresponding Floating Rate determined or redetermined in accordance with Section 2(10) shall be in effect unless and until the Company remarkets the Series G Preferred Shares and sets a new Fixed Rate for a new Fixed Rate Period in accordance with this Section 2 and the Remarketing Procedures.

(12) (a) If the Company elects to conduct a Remarketing, the Company, not less than 10 nor more than 35 Business Days prior to the related Election Date, is required pursuant to Section 2(7) to give the written notice of proposed Remarketing of the Series G Preferred Shares to the Clearing Agency, the Remarketing Agent and the Calculation Agent. If the Series G Shares are not issued in global, fully registered form to the Clearing Agency, such notice shall be delivered to the Owners instead of the Clearing Agency. As required by Section 2(7), such notice will describe the Remarketing and will indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that will apply during such new Fixed Rate Period. At any time prior to the Election Date, the Company may elect to terminate a Remarketing by giving the Clearing Agency (or the holders, as applicable), the Remarketing Agent and the Calculation Agent written notice of such termination.

(b) Not later than 4:00 P.M., New York City time, on an Election Date, each Owner of Series G Preferred Shares may give, through the facilities of the Clearing Agency in the case of book-entry Series G Preferred Share Certificates, a written notice to the Company of its election ("Notice of Election") (i) to retain and not to have all or any portion of the Series G Preferred Shares owned by it remarketed in the Remarketing or (ii) to tender all or any portion of such Series G Preferred Shares for purchase in the Remarketing (such portion, in either case, is to be in the Liquidation Amount of \$100,000 (or \$1,000 per Depository Share) or any integral multiple thereof). Any Notice of Election given to the Company will be irrevocable and may not be conditioned upon the level at which the Fixed Rate is established in the Remarketing. Promptly after 4:30 P.M., New York City time, on such Election Date, the Company, based on the Notices of Election received by it through the Clearing Agency (or from the Owners, if Definitive Series G Preferred Share Certificates have been issued) prior to such time, will notify the Remarketing Agent of the number of Series G Preferred Shares to be retained by holders of Series G Preferred Shares and the number of Series G Preferred Shares tendered or deemed tendered for purchase in the Remarketing.

(c) If any holder gives a Notice of Election to tender Series G Preferred Shares as described in Section 12(b)(ii) above, the Series G Preferred Shares so subject to such Notice of Election will be deemed tendered for purchase in the Remarketing, notwithstanding any failure by such holder to deliver or properly deliver such Series G Preferred Shares to the Remarketing Agent for purchase. If any holder of Series G Preferred Shares fails timely to

deliver a Notice of Election, as described above, such Series G Preferred Shares will be deemed tendered for purchase in such Remarketing, notwithstanding such failure or the failure by such holder to deliver or properly deliver such Series G Preferred Shares to the Remarketing Agent for purchase.

(d) The right of each holder of Series G Preferred Shares to have Series G Preferred Shares tendered for purchase in the Remarketing shall be limited to the extent that (i) the Remarketing Agent conducts a Remarketing pursuant to the terms of the Remarketing Agreement, (ii) Series G Preferred Shares tendered have not been called for redemption, (iii) the Remarketing Agent is able to find a purchaser or purchasers for tendered Series G Preferred Shares at a Fixed Rate and (iv) such purchaser or purchasers deliver the purchase price therefore to the Remarketing Agent.

(e) Any holder of Series G Preferred Shares that desires to continue to retain a number of Series G Preferred Shares, but only if the Fixed Rate is not less than a specified rate per annum, shall submit a Notice of Election to tender such Series G Preferred Shares pursuant to this Section 2(12) and separately notify the Remarketing Agent of its interest at the telephone number set forth in the notice of Remarketing delivered pursuant to this Section 2(12). If such holder so notifies the Remarketing Agent, the Remarketing Agent will give priority to such holder's purchase of such number of Series G Preferred Shares in the Remarketing, providing that the Fixed Rate is not less than such specified rate.

(f) If holders submit Notices of Election to retain all of the Series G Preferred Shares then outstanding, the Fixed Rate will be the rate determined by the Remarketing Agent, in its sole discretion, as the rate that would have been established had a Remarketing been held on the related Remarketing Date.

(g) On any Remarketing Date on which the Remarketing is to be conducted, the Remarketing Agent will use commercially reasonable efforts to remarket, at a price equal to 100% of the Liquidation Amount thereof, Series G Preferred Shares tendered or deemed tendered for purchase. If, as a result of such efforts, on any Remarketing Date, the Remarketing Agent has determined that it will be able to remarket all Preferred Securities tendered or deemed tendered for purchase in the Remarketing at a Fixed Rate and at a price of \$100,000 per Series G Preferred Share (or \$1,000 per Depository Share), prior to 4:00 P.M., New York City time, on such Remarketing Date, the Remarketing Agent will determine the Fixed Rate, which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent per annum) which the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum, if any, that will enable it to remarket all Series G Preferred Shares tendered or deemed tendered for Remarketing at a price of \$100,000 per Series G Preferred Share (or \$1,000 per Depository Share). By approximately 4:30 P.M., New York City time, on a Remarketing Date, the Remarketing Agent shall advise, by telephone, (i) the Clearing Agency Participant, the Company and the Calculation Agent of any new Fixed Rate established pursuant to the Remarketing and the number of remarketed Series G Preferred Shares sold in the Remarketing; (ii) each purchase of a remarketed Series G Preferred Shares (or the Clearing Agency Participant thereof) of such new Fixed Rate and the number of remarketed Series G Preferred Shares such purchaser is to purchase; and (iii) each purchaser to give instructions to its Clearing Agency Participant to pay

the purchase price on the Remarketing Settlement Date in same day funds against delivery of the remarketed Series G Preferred Shares purchased through the facilities of the Clearing Agency Participant.

(h) If the Remarketing Agent is unable to remarket by 4:00 P.M., New York City time on the third Business Day prior to the Remarketing Settlement Date, all Series G Preferred Shares tendered or deemed tendered for purchase at a price of \$100,000 per Series G Preferred Share (or \$1,000 per Depository Share), the Distribution Rate for the next Distribution Period shall be the Floating Rate and the new Distribution Period shall be a Floating Rate Period. In such case, no Series G Preferred Shares will be sold in the Remarketing and each Holder will continue to hold its Series G Preferred Shares at such Floating Rate during such Floating Rate Period.

(i) All Series G Preferred Shares tendered or deemed tendered in the Remarketing will be automatically delivered to the account of the Remarketing Agent through the facilities of the Clearing Agency against payment of the purchase price therefore on the Remarketing Settlement Date. The Remarketing Agent will make payment to the Clearing Agency Participant of each tendering holder of Series G Preferred Shares in the Remarketing through the facilities of the Clearing Agency by the close of business on the Remarketing Settlement Date. In accordance with the Clearing Agency's normal procedures, on the Remarketing Settlement Date, the transaction described above with respect to each Series G Preferred Share tendered or deemed tendered for purchase and sold in the Remarketing will be executed through the Clearing Agency and the account of the Clearing Agency Participant, will be debited and credited and such Series G Preferred Shares delivered by book entry as necessary to effect purchases and sales of such Series G Preferred Shares. The Clearing Agency is expected to make payment in accordance with its normal procedures. This Section 2(12)(i) shall not apply if Definitive Preferred Securities Certificates have been issued.

(j) If any holder selling Series G Preferred Shares in the Remarketing fails to deliver such Series G Preferred Shares, the Clearing Agency Participant of such selling holder and of any other person that was to have purchased Series G Preferred Shares in the Remarketing may deliver to any such other person a number of Series G Preferred Shares that is less than the number of Series G Preferred Shares that otherwise was to be purchased by such person. In such event the number of Series G Preferred Shares to be so delivered will be determined by such Clearing Agency Participant and delivery of such lesser number of Series G Preferred Shares will constitute good delivery. This Section 2(12)(j) shall not apply if Definitive Preferred Securities Certificates have been issued.

(k) The Remarketing Agent is not obligated to purchase any Series G Preferred Shares that would otherwise remain unsold in a Remarketing. Neither the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Series G Preferred Shares for Remarketing.

Section 3. Liquidation. (1) In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Company, the holders of Series G Preferred Shares are entitled to receive out of the assets of the Company available for distribution to stockholders,

before any distribution of assets is made to holders of Common Stock or any other class or series of shares ranking junior to the Series G Preferred Shares upon liquidation, liquidating distributions in the amount of the stated value of \$100,000 per share (equivalent to \$1,000 per Depository Share), plus all accumulated and unpaid Distributions (whether or not declared) for the then current and all past Distribution Periods. If, upon any voluntary or involuntary liquidation, dissolution, or winding up of the Company, the amounts payable with respect to the Series G Preferred Shares and any other shares of the Company ranking as to any such Distribution on a parity with the Series G Preferred Shares are not paid in full, the holders of Series G Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Company in proportion to the full respective preferential amounts to which they are entitled. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of Series G Preferred Shares will not be entitled to any further participation in any distribution of assets by the Company.

(2) Written notice of any such liquidation, dissolution or winding up of the Company, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage prepaid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series G Preferred Shares at the respective addresses of such holders as the same shall appear on the stock transfer records of the Company.

(3) For purposes of liquidation rights, a consolidation or merger of the Company with or into any other corporation or corporations or a sale of all or substantially all of the assets of the Company shall be deemed not to be a liquidation, dissolution or winding up of the Company.

Section 4. Redemption. (1) The Series G Preferred Shares are redeemable at the option of the Company, in whole or in part (i) on the last Distribution Payment Date relating to the Initial Fixed Rate Period, (ii) on such dates with respect to any other Fixed Rate Period as we may determine prior to the commencement of such Fixed Rate Period or (iii) at any time during a Floating Rate Period, at a cash redemption price of \$100,000 per share (equivalent to \$1,000 per Depository Share), plus all accumulated and unpaid Distributions (whether or not declared) to and including the date of redemption (the "Redemption Price").

(2) If fewer than all of the outstanding Series G Preferred Shares are to be redeemed, the number of shares to be redeemed will be determined by the Board of Directors of the Company and such shares shall be redeemed pro rata from the holders of record of such shares in proportion to the number of such shares held by such holders (with adjustments to avoid redemption of fractional shares) or by lot in a manner determined by the Board of Directors of the Company.

(3) Notwithstanding the foregoing, if an amount equal to full Distributions for all past Distribution Periods on the Series G Preferred Shares has not been paid to holders of record of Series G Preferred Shares entitled to receive Distributions as set forth above by the Company, no Series G Preferred Shares shall be redeemed (except as provided in clause (9) below) unless all outstanding Series G Preferred Shares are simultaneously redeemed, and the Company shall not purchase or otherwise acquire, directly or indirectly, any Series G Preferred

Shares; provided, however, that the foregoing shall not prevent the purchase or acquisition of Series G Preferred Shares pursuant to a purchase or exchange offer if such offer is made on the same terms to all holders of Series G Preferred Shares.

(4) Except as expressly provided hereinabove, the Company shall make no payment or allowance for unpaid Distributions, whether or not in arrears, on Series G Preferred Shares called for redemption.

(5) Notice of redemption shall be given by publication in a newspaper of general circulation in The City of New York, such publication to be made once a week for two successive weeks, commencing not less than 30 or more than 60 days prior to the date fixed for redemption thereof. A similar notice will be mailed by the Company by first class mail, postage prepaid, to each record holder of the Series G Preferred Shares to be redeemed, not less than 30 nor more than 60 days prior to such redemption date, to the respective addresses of such holders as the same shall appear on the stock transfer records of the Company. Each notice shall state: (i) the Redemption Date; (ii) the number of Series G Preferred Shares to be redeemed; (iii) the Redemption Price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price; and (v) that Distributions on the shares to be redeemed will cease to accumulate on such Redemption Date. If fewer than all the Series G Preferred Shares held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of Series G Preferred Shares to be redeemed from such holder.

(6) In order to facilitate the redemption of Series G Preferred Shares, the Board of Directors may fix a record date for the determination of the shares to be redeemed, such record date to be not less than 30 nor more than 60 days prior to the date fixed for such redemption.

(7) Notice having been given as provided above, from and after the date fixed for the redemption of Series G Preferred Shares by the Company (the "Redemption Date") (unless the Company shall fail to make available the money necessary to effect such redemption), all Distributions on the Series G Preferred Shares called for redemption will cease to accrue. From and after the Redemption Date the holders of shares selected for redemption shall cease to be stockholders with respect to such shares and shall have no interest in or claim against the Company by virtue thereof and shall have no voting or other rights with respect to such shares, except the right to receive the Redemption Price from the Company, less any required tax withholding amount, without interest thereon. Upon surrender in accordance with such Notice of the certificate representing such Series F Preferred Shares (and endorsement or assignment of transfer, if required by the Company and so stated in the Notice) the Redemption Price shall be paid out of the funds provided by the Company and the shares represented thereby shall no longer be deemed to be outstanding. If fewer than all the shares represented by a certificate are redeemed, a new certificate shall be issued, without cost to the holder thereof, representing the unredeemed shares.

(8) Any Series G Preferred Shares that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued preferred stock, without designation as to series until such shares are once more designated as part of a particular series by the Board of Directors.

(9) The Series G Preferred Shares are subject to the provisions of Article IX of the Charter, including, without limitation, the provisions for the redemption of Excess Stock (as defined in such Article). Notwithstanding the provisions of Article IX of the Charter, Series G Preferred Shares which have been exchanged pursuant to such Article for Excess Stock may be redeemed, in whole or in part, and, if in part, pro rata from the holders of record of such shares in proportion to the number of such shares held by such holders (with adjustments to avoid redemption of fractional shares) or by lot in a manner determined by the Board of Directors, at any time when outstanding Series G Preferred Shares are being redeemed.

Section 5. Voting Rights. The Series G Preferred Shares shall not have any voting powers either general or special, except as required by law and except that:

(1) If full cumulative Distributions on the Series G Preferred Shares, or any other series of preferred stock of the Company ranking on a parity with the Series G Preferred Shares as to dividends or upon liquidation (any such series, a "Parity Preferred Series"), for six quarterly Distribution Payment Periods, whether or not consecutive, are in arrears and unpaid, (such failure to pay by the Company, a "Distribution Default"), the holders of all outstanding Series G Preferred Shares and any Parity Preferred Series, voting as a single class without regard to series, will be entitled to elect two additional Directors until all Distributions in arrears and unpaid on the Series G Preferred Shares and any Parity Preferred Series have been paid or declared and funds therefor set apart for payment. At any time when such right to elect Directors separately as a class shall have so vested, the Company may, and upon the written request of the holders of record of not less than 20% of the total number of Series G Preferred Shares and shares of any Parity Preferred Series of the Company then outstanding shall, call a special meeting of stockholders for the election of such Directors. In the case of such a written request, such special meeting shall be held within 90 days after the delivery of such request and, in either case, at the place and upon the notice provided by law and in the Bylaws of the Company, provided that the Company shall not be required to call such a special meeting if such request is received less than 120 days before the date fixed for the next ensuing Annual Meeting of Stockholders of the Company and the holders of all outstanding Series G Preferred Shares and shares of any Parity Preferred Series are afforded the opportunity to elect such Directors (or fill any vacancy) at such Annual Meeting of Stockholders. Directors elected as aforesaid shall serve until the next Annual Meeting of Stockholders of the Company or until their respective successors shall be elected and qualified, or, if sooner, until an amount equal to all Distributions in arrears and unpaid have been paid or declared and funds therefor set apart for payment. If, prior to the end of the term of any Director elected as aforesaid, a vacancy in the office of such Director shall occur during the continuance of a Distribution Default by reason of death, resignation, or disability, such vacancy shall be filled for the unexpired term by the appointment of a new Director for the unexpired term of such former Director, such appointment to be made by the remaining Director or Directors elected as aforesaid.

(2) The affirmative vote or consent of the holders of at least two-thirds of the outstanding Series G Preferred Shares and any Parity Preferred Series, voting as a single class without regard to series, will be required to issue, authorize or increase the authorized amount of any class or series of shares ranking senior to the Series G Preferred Shares and shares of each Parity Preferred Series as to dividends or upon liquidation or to issue or authorize any obligation or security convertible into or evidencing a right to purchase any such security. Subject to the

preceding sentence, the affirmative vote or consent of the holders of at least two-thirds of the outstanding Series G Preferred Shares, voting separately as a class, will be required to amend or repeal any provision of, or add any provision to, the Articles of Incorporation, including the Articles Supplementary, if such action would materially and adversely alter or change the powers, preferences, privileges or rights of the Series G Preferred Shares.

(3) Nothing herein shall be taken to require a class vote or consent in connection with the authorization, designation, increase or issuance of shares of any class or series (including additional preferred stock of any series) that rank junior to or on a parity with the Series G Preferred Shares as to dividends and liquidation rights or in connection with the authorization, designation, increase or issuance of any bonds, mortgages, debentures or other debt obligations of the Company.

Section 6. Conversion. The Series G Preferred Shares are not convertible into shares of any other class or series of the capital stock of the Company.



IN WITNESS WHEREOF, the Company has caused these Articles Supplementary to be signed in its name and on its behalf and attested to by the undersigned on this 26th day of May, 2004 and the undersigned acknowledges under the penalties of perjury that these Articles Supplementary are the corporate act of said Company and that to the best of his knowledge, information and belief, the matters and facts set forth herein are true in all material respects.

FIRST INDUSTRIAL REALTY TRUST, INC.

By: /s/ John Clayton  
-----  
Name: John H. Clayton  
  
Title: Vice President -- Corporate  
Legal and Secretary

Attest:

By: /s/ Scott A. Musil  
-----  
Name: Scott A. Musil  
  
Title: Senior Vice President,  
Controller, Treasurer  
and Assistant Secretary

EXECUTION COPY  
FIRST INDUSTRIAL REALTY TRUST, INC.,  
EQUISERVE INC. AND EQUISERVE TRUST COMPANY, N.A.  
AS DEPOSITARY,

AND

THE HOLDERS FROM TIME TO TIME OF  
THE DEPOSITARY RECEIPTS DESCRIBED HEREIN  
RELATING TO SERIES F FLEXIBLE CUMULATIVE REDEEMABLE PREFERRED STOCK

DEPOSIT AGREEMENT

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Dated as of May 27, 2004

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TABLE OF CONTENTS

Page

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ARTICLE I

DEFINITIONS

ARTICLE II

FORM OF RECEIPTS, DEPOSIT OF STOCK, EXECUTION AND DELIVERY,  
TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.1. Form and Transfer of Receipts.....2

SECTION 2.2. Deposit of Stock; Execution and Delivery of Receipts in  
Respect Thereof.....4

SECTION 2.3. Registration of Transfer of Receipts.....5

SECTION 2.4. Split-ups and Combinations of Receipts; Surrender of Receipts  
and Withdrawal of Stock.....5

SECTION 2.5. Limitations on Execution and Delivery, Transfer, Surrender  
and Exchange of Receipts.....6

SECTION 2.6. Lost Receipts, etc.....7

SECTION 2.7. Cancellation and Destruction of Surrendered Receipts.....7

SECTION 2.8. Redemption of Stock.....7

SECTION 2.9. Stock Constituting Excess Stock.....9

ARTICLE III

CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.1. Filing Proofs, Certificates and Other Information.....9

SECTION 3.2. Payment of Taxes or Other Governmental Charges.....9

SECTION 3.3. Warranty as to Stock.....10

ARTICLE IV

THE DEPOSITED SECURITIES; NOTICES

SECTION 4.1. Cash Distributions.....10

SECTION 4.2. Distributions Other than Cash, Rights, Preferences or  
Privileges.....10

SECTION 4.3. Subscription Rights, Preferences or Privileges.....11

SECTION 4.4. Notice of Dividends, etc.; Fixing Record Date for Holders  
of Receipts.....12

SECTION 4.5. Voting Rights.....12

SECTION 4.6. Changes Affecting Deposited Securities and Reclassifications,  
Recapitalizations, etc.....13  
SECTION 4.7. Delivery of Reports.....13  
SECTION 4.8. List of Receipt Holders.....13

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S  
AGENTS, THE REGISTRAR AND THE COMPANY

SECTION 5.1. Maintenance of Offices, Agencies and Transfer Books by the  
Depositary; Registrar.....14  
SECTION 5.2. Prevention of or Delay in Performance by the Depositary, the  
Depositary's Agents, the Registrar or the Company .....15  
SECTION 5.3. Obligation of the Depositary, the Depositary's Agents, the  
Registrar and the Company.....15  
SECTION 5.4. Resignation and Removal of the Depositary; Appointment of  
Successor Depositary.....17  
SECTION 5.5. Corporate Notices and Reports.....18  
SECTION 5.6. Indemnification by the Company.....18  
SECTION 5.7. Charges and Expenses.....18  
SECTION 5.8. Tax Compliance.....18

ARTICLE VI

AMENDMENT AND TERMINATION

SECTION 6.1. Amendment.....19  
SECTION 6.2. Termination.....19

ARTICLE VII

MISCELLANEOUS

SECTION 7.1. Counterparts.....20  
SECTION 7.2. Exclusive Benefit of Parties.....20  
SECTION 7.3. Invalidity of Provisions.....20  
SECTION 7.4. Notices.....20  
SECTION 7.5. Appointment of Registrar.....21  
SECTION 7.6. Holders of Receipts Are Parties.....21  
SECTION 7.7. Governing Law.....21  
SECTION 7.8. Inspection of Deposit Agreement.....21  
SECTION 7.9. Headings.....22

DEPOSIT AGREEMENT, dated as of May 27, 2004, among FIRST INDUSTRIAL REALTY TRUST, INC., a Maryland corporation (the "Company"), EquiServe Trust Company, N.A., a national banking association and EquiServe, Inc., a Delaware corporation, (collectively EquiServe Trust Company, N.A. and EquiServe, Inc. shall be referenced herein as "Depository" or individually as the "Trust Company" and "EQI", respectively), and the holders from time to time of the Receipts described herein.

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series F Flexible Cumulative Redeemable Preferred Stock of the Company with the Depository for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts evidencing Depository Shares in respect of the Stock so deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A annexed hereto, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

NOW, THEREFORE, in consideration of the promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

#### ARTICLE I

##### DEFINITIONS

The following definitions shall, for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement:

"Articles Supplementary" shall mean the Articles Supplementary filed with the Secretary of State of the State of Maryland establishing the Stock as a series of preferred stock of the Company.

"Deposit Agreement" shall mean this Deposit Agreement, as amended or supplemented from time to time.

"Depository" shall mean EquiServe Inc. and its fully owned subsidiary, EquiServe Trust Company, N.A. and any successor as Depository hereunder.

"Depository Shares" shall mean Depository Shares, each representing 1/100 of a share of Stock and evidenced by a Receipt.

"Depository's Agent" shall mean one or more agents appointed by the Depository pursuant to Section 5.1 hereof and shall include the Registrar if such Registrar is not the Depository.

"Depository's Office" shall mean any office of the Depository at which at any particular time its depository receipt business shall be administered.

"Excess Stock" shall mean Excess Stock as defined in Section 7.4 of the Company's Amended and Restated Articles of Incorporation.

"Receipt" shall mean one of the Depository Receipts, substantially in the form set forth as Exhibit A hereto, issued hereunder, whether in definitive or temporary form and evidencing the number of Depository Shares held of record by the record holder of such Depository Shares. If the context so requires, the term "Receipt" shall be deemed to include the DTC Receipt (as defined in Section 2.1 hereof).

"record holder" or "holder" as applied to a Receipt shall mean the person in whose name a Receipt is registered on the books of the Depository maintained for such purpose.

"Registrar" shall mean the Depository or such other bank or trust company which shall be appointed to register ownership and transfers of Receipts as herein provided.-

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Stock" shall mean shares of the Company's Series F Flexible Cumulative Redeemable Preferred Stock, \$.01 par value per share.

## ARTICLE II

### FORM OF RECEIPTS, DEPOSIT OF STOCK, EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.1. Form and Transfer of Receipts. The Company and the Depository shall make application to The Depository Trust Company ("DTC") for acceptance of all or a portion of the Receipts for its book-entry settlement system. The Company hereby appoints the Depository acting through any authorized officer thereof as its attorney-in-fact, with full power to delegate, for purposes of executing any agreements, certifications or other instruments or documents necessary or desirable in order to effect the acceptance of such Receipts for DTC eligibility. So long as the Receipts are eligible for book-entry settlement with DTC, unless otherwise required by law, all Depository Shares shall be represented by a single receipt (the "DTC Receipt"), which shall be deposited with DTC (or its designee) evidencing all such Depository Shares and registered in the name of the nominee of DTC (initially expected to be Cede & Co.). EquiServe Trust Company, N.A. or such other entity as is agreed to by DTC may hold the DTC

Receipt as custodian for DTC. Ownership of beneficial interests in the DTC Receipt shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) DTC or its nominee for such DTC Receipt or (ii) institutions that have accounts with DTC.

If DTC subsequently ceases to make its book-entry settlement system available for the Receipts, the Company may instruct the Depositary regarding making other arrangements for book-entry settlement. In the event that the Receipts are not eligible for, or it is no longer desirable to have the Receipts available in, book-entry form, the Depositary shall provide written instructions to DTC to deliver to the Depositary for cancellation the DTC Receipt, and the Company shall instruct the Depositary to deliver to the beneficial owners of the Depositary Shares previously evidenced by the DTC definitive Receipts in physical form evidencing such Depositary Shares. Such definitive receipts shall be in substantially the form annexed hereto as Annex A, with appropriate insertions, modifications and omissions, as hereafter provided.

The beneficial owners of Depositary Shares shall, except as stated above with respect to Depositary Shares in book-entry form represented by the DTC Receipt, be entitled to receive Receipts in physical, certificated form as herein provided.

The definitive Receipts shall be engraved or printed or lithographed on steel-engraved borders, with appropriate insertions, modifications and omissions, as hereinafter provided, if and to the extent required by any securities exchange on which the Receipts are listed. The DTC Receipt shall bear such legend or legends as may be required by DTC in order for it to accept the Depositary Shares for its book-entry settlement system. Pending the preparation of definitive Receipts or if definitive Receipts are not required by any securities exchange on which the Receipts are listed, the Depositary, upon the written order of the Company, delivered in compliance with Section 2.2 hereof, shall execute and deliver temporary Receipts which are printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine, as evidenced by their execution of such Receipts. If temporary Receipts are issued, the Company and the Depositary will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Depositary's Office or at such other place or places as the Depositary shall determine, without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts. Such exchange shall be made at the Company's expense and without any charge to the holder therefor. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Stock, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual and/or facsimile signature of a duly authorized officer of the Depositary. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed in accordance with the foregoing sentence. The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided.

Receipts shall be in denominations of any number of whole Depositary Shares. The Company shall deliver to the Depositary from time to time such quantities of Receipts as the Depositary may request to enable the Depositary to perform its obligations under this Deposit Agreement.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Company or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the Stock, the Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject, all as directed by the Company.

Title to Depositary Shares evidenced by a Receipt which is properly endorsed or accompanied by a properly executed instrument of transfer shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that until transfer of a Receipt shall be registered on the books of the Depositary as provided in Section 2.3, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions or to any notice provided for in this Deposit Agreement and for all other purposes.

SECTION 2.2. Deposit of Stock; Execution and Delivery of Receipts in Respect Thereof. Subject to the terms and conditions of this Deposit Agreement, the Company may from time to time deposit shares of Stock under this Deposit Agreement by delivery to the Depositary of a certificate or certificates for the Stock to be deposited, properly endorsed or accompanied, if required by the Depositary, by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with (i) all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement, including the resolutions of the Board of Directors of the Company, as certified by the Secretary or any Assistant Secretary of the Company on the date thereof as being as being complete, accurate and in effect, relating to issuance and sale of the Preferred Stock, (ii) a letter of counsel to the Company authorizing reliance on such counsel's opinions delivered to the underwriters named therein relating to (A) the existence and good standing of the Company, (B) the due authorization of the Depositary Shares and the status of the Depositary Shares as validly issued, fully paid and non-assessable, and (C) the effectiveness of any registration statement under the Securities Act relat-

ing to the Depositary Shares, and (iii) a written letter of instruction of the Company or such holder, as the case may be, directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts for the number of Depositary Shares representing such deposited Stock.

Deposited Stock shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine.

Upon receipt by the Depositary of a certificate or certificates for Stock deposited in accordance with the provisions of this Section, together with the other documents required as above specified, and upon recordation of the Stock on the books of the Company in the name of the Depositary or its nominee, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver, to or upon the order of the person or persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section 2.2, a Receipt or Receipts for the whole number of Depositary Shares representing, in the aggregate, the Stock so deposited and registered in such name or names as may be requested by such person or persons. The Depositary shall execute and deliver such Receipt or Receipts at the Depositary's Office or such other offices, if any, as the Depositary may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery.

SECTION 2.3. Registration of Transfer of Receipts. Subject to the terms and conditions of applicable law and of this Deposit Agreement, the Depositary shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder in person or by a duly authorized attorney, agent or representative, properly endorsed or accompanied by a properly executed instrument of transfer including a guarantee of the signature thereon by a participant in a signature guarantee medallion program approved by the Securities Transfer Association ("Signature Guarantee"). Thereupon, the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Depositary Shares as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the person entitled thereto.

SECTION 2.4. Split-ups and Combinations of Receipts; Surrender of Receipts and Withdrawal of Stock. Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the authorized denomination or denominations requested, evidencing the aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered; provided, however, that the Depositary shall not issue any Receipt evidencing a fractional Depositary Share.

Any holder of a Receipt or Receipts representing any number of whole shares of Stock may (unless the related Depositary Shares have previously been called for redemption) withdraw the Stock and all money and other property, if any, represented thereby by surrender-



ing such Receipt or Receipts at the Depository's Office or at such other offices as the Depository may designate for such withdrawals and paying any unpaid amount due the Depository. If such holder's Depository Shares are being held by DTC or its nominee pursuant to Section 2.1 hereof, such holder shall request withdrawal from the book-entry system of Receipts representing any number of whole shares. Thereafter, without unreasonable delay, the Depository shall deliver to such holder or to the person or persons designated by such holder as hereinafter provided the number of whole shares of Stock and all money and other property, if any, represented by the Receipt or Receipts so surrendered for withdrawal, but holders of such whole shares of Stock will not thereafter be entitled to deposit such Stock hereunder or to receive Depository Shares therefor. If a Receipt delivered by the holder to the Depository in connection with such withdrawal shall evidence a number of Depository Shares in excess of the number of Depository Shares representing the number of whole shares of Stock to be so withdrawn, the Depository shall at the same time, in addition to such number of whole shares of Stock and such money and other property, if any, to be so withdrawn, deliver to such holder, or upon his order, a new Receipt evidencing such excess number of Depository Shares; provided, however, that the Depository shall not issue any Receipt evidencing a fractional Depository Share.

Delivery of the Stock and money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depository may deem appropriate, which, if required by the Depository, shall be properly endorsed or accompanied by proper instruments of transfer.

If the Stock and the money and other property being withdrawn are to be delivered to a person or persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Stock, such holder shall execute and deliver to the Depository a written order so directing the Depository and the Depository may require that the Receipt or Receipts surrendered by such holder for withdrawal of such shares of Stock be properly endorsed in blank or accompanied by a properly executed instrument of transfer in blank.

Delivery of the Stock and the money and other property, if any, represented by Receipts surrendered for withdrawal shall be made by the Depository at the Depository's Office, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

SECTION 2.5. Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depository, any of the Depository's Agents or the Company may require payment to it of a sum sufficient for the payment (or, in the event that the Depository or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to Sections 3.2 and 5.7 hereof, may require the production of evidence satisfactory to it as to the

identity and genuineness of any signature including a Signature Guarantee, and may also require compliance with such regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement.

The deposit of Stock may be refused, the delivery of Receipts against Stock may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed, or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Deposit Agreement.

SECTION 2.6. Lost Receipts, etc. In case any Receipt shall be mutilated, destroyed, lost or stolen, the Depositary in its reasonable discretion may execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt, or in lieu of and in substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence reasonably satisfactory to the Depositary of such destruction or loss or theft of such Receipt, of the authenticity thereof and of his or her ownership thereof, (ii) the furnishing of the Depositary with reasonable indemnification and the provision of an open penalty surety bond satisfactory to the Depositary and holding it and the Company harmless, and (iii) the payment of any reasonable expense (including reasonable fees, charges and expenses of the Depositary) in connection with such execution and delivery.

Cancellation and Destruction of Surrendered Receipts. All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Company is authorized to destroy all Receipts so cancelled.

SECTION 2.7. Redemption of Stock. Whenever the Company shall be permitted and shall elect to redeem shares of Stock in accordance with the provisions of the Company's Articles of Incorporation or Articles Supplementary, it shall (unless otherwise agreed to in writing with the Depositary) give or cause to be given to the Depositary not less than 45 days notice of the date of such proposed redemption or exchange of Stock and of the number of such shares held by the Depositary to be so redeemed and the applicable redemption price, as set forth in the Articles Supplementary, which notice shall be accompanied by a certificate from the Company stating that such redemption of Stock is in accordance with the provisions of the Company's Articles of Incorporation or Articles Supplementary. On the date of such redemption, provided that the Company shall then have paid or caused to be paid in full to the Depositary the redemption price of the Stock to be redeemed, plus an amount equal to any accrued and unpaid dividends thereon to the date fixed for redemption, in accordance with the provisions of the Articles Supplementary, the Depositary shall redeem the number of Depositary Shares representing such Stock. The Depositary shall mail notice of

the Company's redemption of Stock and the proposed simultaneous redemption of the number of Depositary Shares representing the Stock to be redeemed by first-class mail, postage prepaid, not less than 30 and not more than 60 days prior to the date fixed for redemption of such Stock and Depositary Shares (the "Redemption Date") to the record holders of the Receipts evidencing the Depositary Shares to be so redeemed, at the address of such holders as they appear on the records of the Depositary; but neither failure to mail any such notice of redemption of Depositary Shares to one or more such holders nor any defect in any notice of redemption of Depositary Shares to one or more such holders shall affect the sufficiency of the proceedings for redemption as to the other holders. The Company will provide the Depositary with the information necessary for the Depositary to prepare such notice and each such notice shall state: (i) the Redemption Date; (ii) the number of Depositary Shares to be redeemed and, if fewer than all the Depositary Shares held by any such holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; (iii) the redemption price per Depositary Share; (iv) the place or places where Receipts evidencing Depositary Shares are to be surrendered for payment of the redemption price; and (v) that dividends in respect of the Stock represented by the Depositary Shares to be redeemed will cease to accrue on such Redemption Date and will bear no interest. In case fewer than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be determined pro rata or by lot in a manner determined by the Board of Directors.

Notice having been mailed by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to provide the funds necessary to redeem the Stock evidenced by the Depositary Shares called for redemption) (i) dividends on the shares of Stock so called for redemption shall cease to accrue from and after such date, (ii) the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, (iii) all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price) shall, to the extent of such Depositary Shares, cease and terminate and (iv) upon surrender in accordance with such redemption; notice of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned for transfer, if the Depositary or applicable law shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to the same fraction of the redemption price per share paid with respect to the shares of Stock as the fraction each Depositary Share represents of a share of Stock plus the same fraction of all money and other property, if any, represented by such Depositary Shares, including all amounts paid by the Company in respect of dividends which on the Redemption Date have accumulated on the shares of Stock to be so redeemed and have not theretofore been paid. Any funds deposited by the Company with the Depositary for any Depositary Shares that the holders thereof fail to redeem will, upon the written request of the Company, be returned to the Company after a period of five years from the date such funds are so deposited.

If fewer than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the

Depository, together with the redemption payment, a new Receipt evidencing the Depository Shares evidenced by such prior Receipt and not called for redemption; provided, however, that the Depository shall not issue any Receipt evidencing a fractional Depository Share.

SECTION 2.8. Stock Constituting Excess Stock. As provided in the Articles of Incorporation or Articles Supplementary, upon the happening of certain events, shares of Stock shall be deemed to automatically constitute Excess Stock. In the event of such a conversion, the Receipt representing the deposited Stock so converted shall no longer represent, to the extent of the shares so converted, such deposited Stock. Promptly upon its knowledge of the conversion of such deposited Stock into Excess Shares, the Company shall notify the Depository of such conversion, the number of shares of deposited Stock so converted, and the identity of the holder of the Receipt so affected, whereupon the Depository shall promptly notify the holder of such Receipt as to the foregoing information and the requirement for the holder to surrender such Receipt to the Depository for cancellation of the number of Depository Shares evidenced thereby equal to the deposited Stock constituting Excess Shares represented thereby.

If fewer than all of the Depository Shares evidenced by a Receipt are required to be surrendered for cancellation, the Depository will deliver to the holder of such Receipt upon its surrender to the Depository a new Receipt evidencing the Depository Shares evidenced by such prior Receipt and not required to be surrendered for cancellation. Upon the conversion of the deposited Stock and cancellation of the Depository Shares represented thereby, the Depository will make appropriate adjustments in its records to reflect such conversion and cancellation (including the reduction of any fractional share of deposited Stock and the issuance of any Excess Shares).

### ARTICLE III

#### CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.1. Filing Proofs, Certificates and Other Information. Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to execute such certificates and to make such representations and warranties as the Depository or the Company may reasonably deem necessary or proper or otherwise reasonably request. Subject to applicable law, the Depository or the Company may withhold the delivery, or delay the registration of transfer, redemption or exchange, of any Receipt or the withdrawal or conversion of the Stock represented by the Depository Shares evidenced by any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

SECTION 3.2. Payment of Taxes or Other Governmental Charges. Holders of Receipts shall be obligated to make payments to the Depository of certain charges and ex-

penses, as provided in Section 5.7 hereof. Subject to applicable law, registration of transfer of any Receipt or any withdrawal of Stock and all money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or any part of or all the Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.3. Warranty as to Stock. The Company hereby represents and warrants that the Stock, when issued, will be duly authorized, validly issued, fully paid and nonassessable. Such representation and warranty shall survive the deposit of the Stock and the issuance of Receipts.

#### ARTICLE IV

##### THE DEPOSITED SECURITIES; NOTICES

SECTION 4.1. Cash Distributions. Whenever the Depositary shall receive any cash dividend or other cash distribution on Stock, the Depositary shall, subject to Sections 3.1 and 3.2 hereof, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 hereof such amounts of such dividend or distribution as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required to withhold and shall withhold from any cash dividend or other cash distribution in respect of the Stock an amount on account of taxes or as otherwise required by law, regulation or court process, the amount made available for distribution or distributed in respect of Depositary Shares shall be reduced accordingly. In the event that the calculation of any such cash dividend or other cash distribution to be paid to any record holder on the aggregate number of Depositary Receipts held by such holder results in an amount which is a fraction of a cent, the amount the Depositary shall distribute to such record holder shall be rounded to the next highest whole cent if such fraction of a cent is equal to or greater than \$.005; otherwise such fractional interest shall be disregarded; and upon request of the Depositary, the Company shall pay the additional amount to the Depositary for distribution.

SECTION 4.2. Distributions Other than Cash, Rights, Preferences or Privileges. Whenever the Depositary shall receive any distribution other than cash, rights, preferences or privileges upon Stock, the Depositary shall, subject to Sections 3.1 and 3.2 hereof, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 hereof such amounts of the securities or property received by it as are, as nearly as may be practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts

held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems (after consultation with the Company) such distribution not to be feasible, the Depositary may, with the approval of the Company, adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received, or any part thereof, at such place or places and upon such terms as it may deem equitable and appropriate. The net proceeds of any such sale shall, subject to Sections 3.1 and 3.2 hereof, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of Receipts as provided by Section 4.1 hereof in the case of a distribution received in cash.

SECTION 4.3. Subscription Rights, Preferences or Privileges. If the Company shall at any time offer or cause to be offered to the persons in whose names Stock is recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, the offering of such rights, preferences or privileges shall in each such instance be communicated to the Depositary and thereafter made available by the Depositary to the record holders of Receipts in such manner as the Depositary may determine, either by the issue to such record holders of warrants representing such rights, preferences or privileges or by such other method as may be approved by the Depositary in its discretion with the approval of the Company; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Depositary determines that it is not lawful or (after consultation with the Company) not feasible to make such rights, preferences or privileges available to holders of Receipts by the issue of warrants or otherwise, or (ii) if and to the extent so instructed by holders of Receipts who do not desire to execute such rights, preferences or privileges, then EQI, in its discretion (with approval of the Company, in any case where the Depositary has determined that it is not feasible to make such rights, preferences or privileges available), may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.1 and 3.2 hereof, be distributed by EQI to the record holders of Receipts entitled thereto as provided by Section 4.1 hereof in the case of a distribution received in cash.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until it has received written notice from the Company that such registration statement shall have become effective, or that the offering and sale of such securities to such holders are exempt from registration under the provisions of the Securities Act and the Company shall have provided to the Depositary an opinion of counsel reasonably satisfactory to the Depositary to such effect.

If any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company will use its reasonable best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

SECTION 4.4. Notice of Dividends, etc.; Fixing Record Date for Holders of Receipts. Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or if rights, preferences or privileges shall at any time be offered, with respect to Stock, or whenever the Depositary shall receive notice of any meeting at which holders of Stock are entitled to vote or of which holders of Stock are entitled to notice, or whenever the Depositary and the Company shall decide it is appropriate, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Company with respect to or otherwise in accordance with the terms of the Stock) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who shall be entitled to notice of such meeting or for any other appropriate reasons.

SECTION 4.5. Voting Rights. Upon receipt of notice of any meeting at which the holders of Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Receipts a notice which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders may, subject to any applicable restrictions, instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Stock represented by their respective Depositary Shares (including an express indication that instructions may be given to the Depositary to give a discretionary proxy to a person designated by the Company) and a brief statement as to the manner in which such instructions may be given. Upon the written request of the holders of Receipts on the relevant record date, the Depositary shall use its best efforts to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum number of whole shares of Stock represented by the Depositary Shares evidenced by all Receipts as to which any particular voting instructions are received. The Company hereby agrees to take all action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such Stock or cause such Stock to be voted. In the absence of specific instructions from

the holder of a Receipt, the Depositary will not vote to the extent of the Stock represented by the Depositary Shares evidenced by such Receipt.

SECTION 4.6. Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, etc. Upon any change in par value or liquidation preference, split-up, combination or any other reclassification of the Stock, or upon any recapitalization, reorganization, merger or consolidation affecting the Company or to which it is a party, the Depositary may in its discretion with the approval (not to be unreasonably withheld) of, and shall upon the instructions of, the Company, and (in either case) in such manner as the Depositary may deem equitable, (i) make such adjustments in the fraction of an interest in one share of Stock represented by one Depositary Share as may be necessary (as certified by the Company) fully to reflect the effects of such change in par value or liquidation preference, split-up, combination or other reclassification of Stock, or of such recapitalization, reorganization, merger or consolidation and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the Stock as new deposited securities so received in exchange for or upon conversion or in respect of such Stock. In any such case, the Depositary may in its discretion, with the approval of the Company, execute and deliver additional Receipts or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited securities. Anything to the contrary herein notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in par value or liquidation preference, split-up, combination or other reclassification of the Stock or any such recapitalization, reorganization, merger or consolidation to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the Stock represented thereby only into or for, as the case may be, the kind and amount of shares of stock and other securities and property and cash into which the Stock represented by such Receipts would have been converted or for which such Stock would have been exchanged or surrendered had such Receipt been surrendered immediately prior to the effective date of such transaction.

SECTION 4.7. Delivery of Reports. The Depositary shall furnish to holders of Receipts any reports and communications received from the Company which are received by the Depositary as the holder of Stock.

SECTION 4.8. List of Receipt Holders. Promptly upon request from time to time by the Company, the Depositary shall furnish to it a list, as of the most recent practicable date, of the names, addresses and holdings of Depositary Shares of all record holders of Receipts. The Company shall be entitled to receive such list four times annually.



ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S  
AGENTS, THE REGISTRAR AND THE COMPANY

SECTION 5.1. Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar. Upon execution of this Deposit Agreement, the Depositary shall maintain at the Depositary's Office facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement, provided that, to the extent provisions of this Deposit Agreement regarding transfer or registrar functions of the Depositary conflict with the terms of any transfer agency agreement into which the Company and the Depositary may enter, the transfer agency agreement shall control.

The Depositary shall keep books at the Depositary's Office for the registration and registration of transfer of Receipts, which books during normal business hours shall be open for inspection by the record holders of Receipts; provided that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by the Receipts. Books kept hereunder by the Depositary may be maintained in electronic form.

The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

The Depositary may, with the approval of the Company, appoint a Registrar for registration of the Receipts or the Depositary Shares evidenced thereby. If the Receipts or the Depositary Shares evidenced thereby or the Stock represented by such Depositary Shares shall be listed on one or more national securities exchanges, the Depositary will appoint a Registrar (acceptable to the Company) for registration of such Receipts or Depositary Shares in accordance with any requirements of such exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of any such exchange) may be removed and a substitute registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, such Depositary Shares or such Stock is listed on one or more other stock exchanges, the Depositary will, at the request and at the expense of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, such Depositary Shares or such Stock as may be required by law or applicable securities exchange regulation.

The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will notify the Company of any such action.

SECTION 5.2. Prevention of or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Company. Neither the Depositary nor any Depositary's Agent nor the Registrar nor the Company shall incur any liability to any holder of any Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Company's Amended and Restated Articles of Incorporation or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented, delayed or forbidden from, or subjected to any penalty on account of, doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, the Registrar or the Company incur liability to any holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement shall provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement except, in the case of any such exercise or failure to exercise discretion not caused as aforesaid, if caused by the gross negligence or willful misconduct of the party charged with such exercise or failure to exercise.

SECTION 5.3. Obligation of the Depositary, the Depositary's Agents, the Registrar and the Company. Neither the Depositary nor any Depositary's Agent nor the Registrar nor the Company assumes any obligation or shall be subject to any liability under this Deposit Agreement or any Receipt to holders of Receipts other than for its gross negligence, willful misconduct or bad faith.

Neither the Depositary nor any Depositary's Agent nor the Registrar nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Stock, the Depositary Shares or the Receipts which in its reasonable opinion may involve it in expense or liability unless indemnity reasonably satisfactory to it against expense and liability be furnished as often as may be reasonably required.

Neither the Depositary nor any Depositary's Agent nor the Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the written advice of legal counsel or accountants, or information from any person presenting Stock for deposit, any holder of a Receipt or any other person believed by it in good faith to be competent to give such information. The Depositary, any Depositary's Agent, the Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the shares of Stock or for the manner or effect of any such vote made, as long as

any such action or inaction is in good faith. The Depositary will indemnify the Company and hold it harmless from any loss, liability or expense (including the reasonable costs and expenses of defending itself) which arises from its negligence, wilful misconduct or bad faith. The Depositary undertakes and any Registrar shall be required to undertake only such duties as specifically set forth herein and no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or Registrar. In no event shall the Depositary's aggregate liability during the term of this Deposit Agreement with respect to, arising from, or arising in connection with this Deposit Agreement, or from all services provided or omitted to be provided under this Deposit Agreement, whether in contract, or in tort, or otherwise, exceed an amount equal to three (3) times the amounts paid by the Company to Depositary as fees and charges, but not including reimbursable expenses. The indemnification obligations of the Depositary set forth in this Section 5.3 hereof shall survive any termination of this Deposit Agreement and any succession of any Depositary.

The Depositary, its parent, affiliates or subsidiaries, the Depositary's Agents and the Registrar may own, buy, sell and deal in any class of securities of the Company and its affiliates and in Receipts or Depositary Shares or become pecuniarily interested in any transaction in which the Company or its affiliates may be interested or contract with or lend money to any such person or otherwise act as fully or as freely as if it were not the Depositary, parent, affiliate or subsidiary or Depositary's Agent or Registrar hereunder. The Depositary may also act as trustee, transfer agent or registrar of any of the securities of the Company and its affiliates.

It is intended that neither the Depositary nor any Depositary's Agent nor the Registrar, acting as the Depositary's Agent or Registrar, as the case may be, shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary, any Depositary's Agent and the Registrar are acting only in a ministerial capacity as Depositary or Registrar for the Stock.

Neither the Depositary (or its officers, directors, employees or agents) nor any Depositary's Agent nor the Registrar makes any representation or has any responsibility as to the validity of the registration statement pursuant to which the Depositary Shares are registered under the Securities Act, the Stock, the Depositary Shares or the Receipts (except for its counter-signatures thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made therein or herein.

The Depositary assumes no responsibility for the correctness of the description that appears in the Receipts. Notwithstanding any other provision herein or in the Receipts, the Depositary makes no warranties or representations as to the validity or genuineness of any Stock at any time deposited with the Depositary hereunder or of the Depositary Shares, as to the validity or sufficiency of this Deposit Agreement, as to the value of the Depositary Shares or as to any right, title or interest of the record holders of Receipts in and to the Depositary Shares. The De-

pository shall not be accountable for the use or application by the Company of the Depository Shares or the Receipts or the proceeds thereof.

The Depository shall not be liable for any incidental, indirect, special or consequential damages of any nature whatsoever, including, but not limited to, loss of anticipated profits, occasioned by breach of any provisions of this Agreement even if apprised of the possibility of such damages.

SECTION 5.4. Resignation and Removal of the Depository; Appointment of Successor Depository. The Depository may at any time resign as Depository hereunder by delivering notice of its election to do so to the Company, such resignation to take effect upon the appointment of a successor Depository and its acceptance of such appointment as hereinafter provided.

The Depository may at any time be removed by the Company by notice of such removal delivered to the Depository, such removal to take effect upon the appointment of a successor Depository and its acceptance of such appointment as hereinafter provided.

In case at any time the Depository acting hereunder shall resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depository, which shall be a bank or trust company having its principal office in the United States of America and having a combined capital and surplus of at least \$150,000,000. If no successor Depository shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depository may petition any court of competent jurisdiction for the appointment of a successor Depository. Every successor Depository shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor Depository, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depository under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Stock and any moneys or property held hereunder to such successor, and shall deliver to such successor a list of the record holders of all outstanding Receipts and such records, books and other information in its possession relating thereto. Any successor Depository shall promptly mail notice of its appointment to the record holders of Receipts.

Any corporation into or with which the Depository may be merged, consolidated or converted shall be the successor of such Depository without the execution or filing of any document or any further act, and notice thereof shall not be required hereunder. Such successor Depository may authenticate the Receipts in the name of the predecessor Depository or in the name of the successor Depository.

SECTION 5.5. Corporate Notices and Reports. The Company agrees that it will deliver to the Depository, and the Depository will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the addresses recorded in the Depository's books, copies of all notices and reports (including without limitation financial statements) required by law or by the rules of any national securities exchange upon which the Stock, the Depository Shares or the Receipts are listed, to be furnished to the record holders of Receipts. Such transmission will be at the Company's expense and the Company will provide the Depository with such number of copies of such documents as the Depository may reasonably request.

SECTION 5.6. Indemnification by the Company. The Company shall indemnify the Depository, any Depository's Agent and the Registrar against, and hold each of them harmless from, any loss, liability or expense (including the reasonable costs and expenses of defending itself) which may arise out of acts performed or omitted in connection with this Deposit Agreement and the Receipts by the Depository, any Registrar or any of their respective agents (including any Depository's Agent), except for any liability arising out of negligence, willful misconduct or bad faith on the respective parts of any such person or persons, subject to the provisions of Section 5.3, above. The obligations of the Company set forth in this Section 5.6 hereof shall survive any termination of this Deposit Agreement or any succession of any Depository or Depository's Agent.

SECTION 5.7. Charges and Expenses. The Company shall pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. The Company shall pay charges of the Depository in connection with the initial deposit of the Stock and the initial issuance of the Depository Shares, all withdrawals of shares of the Stock by owners of Depository Shares, and any redemption of the Stock at the option of the Company. All other transfer and other taxes and governmental charges shall be at the expense of holders of Depository Shares. If, at the request of a holder of Receipts, the Depository incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses. All other charges and expenses of the Depository and any Depository's Agent hereunder (including, in each case, reasonable fees and expenses of counsel) incident to the performance of their respective obligations hereunder will be paid upon consultation and agreement between the Depository and the Company as to the amount and nature of such charges and expenses. The Depository shall present its statement for charges and expenses to the Company at such intervals as the Company and the Depository may agree.

SECTION 5.8. Tax Compliance. EQI and, where applicable, the Depository, on its own behalf and on behalf of the Company, will comply with all applicable certification, information reporting and withholding (including "backup" withholding) requirements imposed by applicable tax laws, regulations or administrative practice with respect to (i) any payments made with respect to the Depository Shares or (ii) the issuance, delivery, holding,

transfer, redemption or exercise of rights under the Depositary Receipts or the Depositary Shares. Such compliance shall include, without limitation, the preparation and timely filing of required returns and the timely payment of all amounts required to be withheld to the appropriate taxing authority or its designated agent.

The Depositary shall comply with any direction received from the Company with respect to the application of such requirements to particular payments or holders or in other particular circumstances, and may for purposes of this Deposit Agreement rely on any such direction in accordance with the provisions of Section 5.3 hereof.

The Depositary shall maintain all appropriate records documenting compliance with such requirements, and shall make such records available on request to the Company or to its authorized representatives.

#### ARTICLE VI

##### AMENDMENT AND TERMINATION

SECTION 6.1. Amendment. The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment (other than any change in the fees) which shall materially adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the holders of at least a majority of the Depositary Shares then outstanding. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to be bound by the Deposit Agreement as amended thereby. Subject to Section 2.9 hereof, notwithstanding the foregoing, in no event may any amendment impair the right of any holder of any Depositary Shares, upon surrender of the Receipts evidencing such Depositary Shares and subject to any conditions specified in this Deposit Agreement, to receive shares of Stock and any money or other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law.

SECTION 6.2. Termination. This Deposit Agreement may be terminated by the Company at any time upon not less than 30 days' prior written notice to the Depositary, in which case, on a date that is not later than 30 days after the date of such notice, the Depositary shall deliver or make available for delivery to holders of Depositary Shares, upon surrender of the Receipts evidencing such Depositary Shares, such number of whole or fractional shares of Stock as are represented by such Depositary Shares. This Deposit Agreement will automatically terminate after (i) all outstanding Depositary Shares have been redeemed pursuant to Section 2.8 hereof or (ii) there shall have been made a final distribution in respect of the Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have

been distributed to the holders of Depositary Receipts pursuant to Section 4.1 or 4.2 hereof, as applicable.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, the Registrar and any Depositary's Agent under Sections 5.6 and 5.7 hereof.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1. Counterparts. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

SECTION 7.2. Exclusive Benefit of Parties. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.3. Invalidity of Provisions. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

SECTION 7.4. Notices. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to the Company at:

First Industrial Realty Trust, Inc.  
311 S. Wacker Drive, Suite 4000  
Chicago, Illinois 60606  
Attn: John Clayton, Esq.  
Facsimile No.: (312) 922-6320

or at any other address of which the Company shall have notified the Depositary in writing.

Any and all notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram or facsimile transmission confirmed by letter, addressed to the Depositary at the Depositary's Office, at:

EquiServe Trust Company, N.A.  
c/o EquiServe Inc.  
150 Royall Street  
Canton, Massachusetts 02021  
Attn: General Counsel  
Facsimile No.: 781-575-4210

or at any other address of which the Depositary shall have notified the Company in writing.

Any and all notices to be given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary, or if such holder shall have filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by telegram or facsimile transmission shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a telegram or facsimile transmission) is deposited for mailing by first class mail, postage prepaid. The Depositary or the Company may, however, act upon any telegram or facsimile transmission received by it from the other or from any holder of a Receipt, notwithstanding that such telegram or facsimile transmission shall not subsequently be confirmed by letter or as aforesaid.

SECTION 7.5. Appointment of Registrar. The Company hereby also appoints the Depositary as Registrar in respect of the Receipts and the Depositary hereby accepts such appointments.

SECTION 7.6. Holders of Receipts Are Parties. The holders of Receipts from time to time shall be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof.

SECTION 7.7. Governing Law. THIS DEPOSIT AGREEMENT AND THE RECEIPTS AND ALL RIGHTS HEREUNDER AND THEREUNDER AND PROVISIONS HEREOF AND THEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS APPLICABLE TO CONTRACTS MADE IN AND TO BE PERFORMED IN THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF.

SECTION 7.8. Inspection of Deposit Agreement. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agent and shall be open to



inspection during business hours at the Depository's office or respective offices of the Depository's Agent, if any, by any holder of a Receipt.

SECTION 7.9. Headings. The headings of articles and sections in this Deposit Agreement have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

FIRST INDUSTRIAL REALTY TRUST, INC.

/s/ John Clayton

-----  
Name: John Clayton  
Title: Vice President -- Corporate Legal,  
Secretary

EQUISERVE, INC.

/s/ Thomas Ferrari

-----  
Name: Thomas Ferrari  
Title: Senior Managing Director

EQUISERVE TRUST COMPANY, N.A.

/s/ John Ruocco

-----  
Name: John Ruocco  
Title: Senior Account Manager

[FORM OF FACE OF RECEIPT]

NUMBER SHARES  
DR- (CUSIP 32054K863)  
see reverse for certain definitions

THIS CERTIFICATE IS TRANSFERABLE  
IN NEW YORK, NY

[Logo]

RECEIPT FOR DEPOSITARY SHARES,  
EACH REPRESENTING 1/100 OF A SHARE OF  
SERIES F FLEXIBLE CUMULATIVE REDEEMABLE PREFERRED STOCK

FIRST INDUSTRIAL REALTY TRUST, INC.  
(INCORPORATED UNDER THE LAWS OF THE STATE OF MARYLAND)

EquiServe Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America, and EquiServe, Inc., a Delaware corporation, with an office at the time of execution of the Deposit Agreement (as defined below) at 150 Royall Street, Canton, Massachusetts 02021, as Depositary (the "Depositary"), hereby certifies that \_\_\_\_\_ is a registered owner of \_\_\_\_\_ DEPOSITARY SHARES ("Depositary Shares"), each Depositary Share representing 1/100 of one fully paid and non-assessable share of Series F Flexible Cumulative Redeemable Preferred Stock, \$.01 par value per share (the "Shares"), of First Industrial Realty Trust, Inc., a Maryland corporation (the "Company"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of May 27, 2004 (the "Deposit Agreement"), among the Company, the Depositary and the holders from time to time of Receipts for Depositary Shares. By accepting this Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Receipt shall not be valid or obligatory for any purpose or be entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized officer or, if a Registrar in respect of the Receipts (other than the Depositary) shall have been appointed, by the manual signature of a duly authorized officer of such Registrar.

Dated:  
Countersigned and Registered:  
EQUISERVE TRUST COMPANY, N.A.  
Depositary and Registrar

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

By: \_\_\_\_\_  
SECRETARY AND TREASURER

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

[FORM OF REVERSE OF RECEIPT]  
FIRST INDUSTRIAL REALTY TRUST, INC.

THE SHARES OF STOCK REPRESENTED BY THIS DEPOSITARY RECEIPT ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS QUALIFICATION AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. NO PERSON MAY BENEFICIALLY OWN SHARES OF STOCK IN EXCESS OF 9.9% (OR SUCH GREATER PERCENTAGE AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS OF THE CORPORATION) OF THE OUTSTANDING STOCK OF THE CORPORATION. ANY PERSON WHO ATTEMPTS TO BENEFICIALLY OWN SHARES OF STOCK IN EXCESS OF THE ABOVE LIMITATION MUST IMMEDIATELY NOTIFY THE CORPORATION. ALL CAPITALIZED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CORPORATION'S ARTICLES OF INCORPORATION, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER, WILL BE SENT WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS. IF THE RESTRICTIONS ON TRANSFER ARE VIOLATED, THE SHARES OF STOCK REPRESENTED HEREBY MAY BE AUTOMATICALLY EXCHANGED FOR SHARES OF EXCESS STOCK WHICH WILL BE HELD IN TRUST BY THE CORPORATION.

THE CORPORATION WILL FURNISH TO ANY STOCKHOLDER ON REQUEST AND WITHOUT CHARGE A FULL STATEMENT OF THE DESIGNATIONS AND ANY PREFERENCES, CONVERSIONS AND OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DIVIDENDS, QUALIFICATIONS, AND TERMS AND CONDITIONS OF REDEMPTION OF THE STOCK OF EACH CLASS WHICH THE CORPORATION IS AUTHORIZED TO ISSUE AND, WITH RESPECT TO ANY PREFERRED OR SPECIAL CLASS IN A SERIES, THE DIFFERENCES IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SERIES TO THE EXTENT THEY HAVE BEEN SET AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO SET THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES.

The following abbreviations, when used in the inscription on the face of this Depositary Receipt, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM-- as tenants in common	UNIF GIFT MIN ACT - . . . Custodian . . . .
TEN ENT-- tenants by the entireties	(Cust)
JT TEN-- as joint tenants with right of survivorship and not as tenants in common	Minor under Uniform Gifts to Minors Act . . . . . (State)

Additional abbreviations may also be used though not in the above list.

For Value Received, \_\_\_\_\_ hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE

Depositary Shares represented by the within Depositary Receipt, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Depositary Shares on the books of the within named Depositary with full power of substitution in the premises.

Dated

Signed

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS DEPOSITARY RECEIPT IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

SIGNATURE(S) GUARANTEED

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

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

EXECUTION COPY  
FIRST INDUSTRIAL REALTY TRUST, INC.,  
EQUISERVE INC. AND EQUISERVE TRUST COMPANY, N.A.  
AS DEPOSITARY,

AND

THE HOLDERS FROM TIME TO TIME OF  
THE DEPOSITARY RECEIPTS DESCRIBED HEREIN  
RELATING TO SERIES G FLEXIBLE CUMULATIVE REDEEMABLE PREFERRED STOCK

DEPOSIT AGREEMENT

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Dated as of May 27, 2004

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TABLE OF CONTENTS

Page  
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ARTICLE I

DEFINITIONS

ARTICLE II

FORM OF RECEIPTS, DEPOSIT OF STOCK, EXECUTION AND DELIVERY,  
TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.1. Form and Transfer of Receipts.....2

SECTION 2.2. Deposit of Stock; Execution and Delivery of Receipts in  
Respect Thereof.....4

SECTION 2.3. Registration of Transfer of Receipts.....5

SECTION 2.4. Split-ups and Combinations of Receipts; Surrender of Receipts  
and Withdrawal of Stock.....5

SECTION 2.5. Limitations on Execution and Delivery, Transfer, Surrender and  
Exchange of Receipts.....6

SECTION 2.6. Lost Receipts, etc.....7

SECTION 2.7. Cancellation and Destruction of Surrendered Receipts.....7

SECTION 2.8. Redemption of Stock.....7

SECTION 2.9. Stock Constituting Excess Stock.....9

ARTICLE III

CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.1. Filing Proofs, Certificates and Other Information.....9

SECTION 3.2. Payment of Taxes or Other Governmental Charges.....9

SECTION 3.3. Warranty as to Stock.....10

ARTICLE IV

THE DEPOSITED SECURITIES; NOTICES

SECTION 4.1. Cash Distributions.....10

SECTION 4.2. Distributions Other than Cash, Rights, Preferences or  
Privileges.....10

SECTION 4.3. Subscription Rights, Preferences or Privileges.....11

SECTION 4.4. Notice of Dividends, etc.; Fixing Record Date for Holders  
of Receipts.....12

SECTION 4.5. Voting Rights.....12

SECTION 4.6. Changes Affecting Deposited Securities and Reclassifications,  
Recapitalizations, etc.....13  
SECTION 4.7. Delivery of Reports.....13  
SECTION 4.8. List of Receipt Holders.....13

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S  
AGENTS, THE REGISTRAR AND THE COMPANY

SECTION 5.1. Maintenance of Offices, Agencies and Transfer Books by the  
Depositary; Registrar.....14  
SECTION 5.2. Prevention of or Delay in Performance by the Depositary, the  
Depositary's Agents, the Registrar or the Company.....15  
SECTION 5.3. Obligation of the Depositary, the Depositary's Agents, the  
Registrar and the Company.....15  
SECTION 5.4. Resignation and Removal of the Depositary; Appointment of  
Successor Depositary.....17  
SECTION 5.5. Corporate Notices and Reports.....18  
SECTION 5.6. Indemnification by the Company.....18  
SECTION 5.7. Charges and Expenses.....18  
SECTION 5.8. Tax Compliance.....18

ARTICLE VI

AMENDMENT AND TERMINATION

SECTION 6.1. Amendment.....19  
SECTION 6.2. Termination.....19

ARTICLE VII

MISCELLANEOUS

SECTION 7.1. Counterparts.....20  
SECTION 7.2. Exclusive Benefit of Parties.....20  
SECTION 7.3. Invalidity of Provisions.....20  
SECTION 7.4. Notices.....20  
SECTION 7.5. Appointment of Registrar.....21  
SECTION 7.6. Holders of Receipts Are Parties.....21  
SECTION 7.7. Governing Law.....21  
SECTION 7.8. Inspection of Deposit Agreement.....21  
SECTION 7.9. Headings.....22

DEPOSIT AGREEMENT, dated as of May 27, 2004, among FIRST INDUSTRIAL REALTY TRUST, INC., a Maryland corporation (the "Company"), EquiServe Trust Company, N.A., a national banking association and EquiServe, Inc., a Delaware corporation, (collectively EquiServe Trust Company, N.A. and EquiServe, Inc. shall be referenced herein as "Depository" or individually as the "Trust Company" and "EQI", respectively), and the holders from time to time of the Receipts described herein.

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series G Flexible Cumulative Redeemable Preferred Stock of the Company with the Depository for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts evidencing Depository Shares in respect of the Stock so deposited; and

WHEREAS, the Receipts are to be substantially in the form of Exhibit A annexed hereto, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

NOW, THEREFORE, in consideration of the promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

#### ARTICLE I

##### DEFINITIONS

The following definitions shall, for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement:

"Articles Supplementary" shall mean the Articles Supplementary filed with the Secretary of State of the State of Maryland establishing the Stock as a series of preferred stock of the Company.

"Deposit Agreement" shall mean this Deposit Agreement, as amended or supplemented from time to time.

"Depository" shall mean EquiServe Inc. and its fully owned subsidiary, EquiServe Trust Company, N.A. and any successor as Depository hereunder.

"Depository Shares" shall mean Depository Shares, each representing 1/100 of a share of Stock and evidenced by a Receipt.



"Depository's Agent" shall mean one or more agents appointed by the Depository pursuant to Section 5.1 hereof and shall include the Registrar if such Registrar is not the Depository.

"Depository's Office", shall mean any office of the Depository at which at any particular time its depository receipt business shall be administered.

"Excess Stock" shall mean Excess Stock as defined in Section 7.4 of the Company's Amended and Restated Articles of Incorporation.

"Receipt" shall mean one of the Depository Receipts, substantially in the form set forth as Exhibit A hereto, issued hereunder, whether in definitive or temporary form and evidencing the number of Depository Shares held of record by the record holder of such Depository Shares. If the context so requires, the term "Receipt" shall be deemed to include the DTC Receipt (as defined in Section 2.1 hereof).

"record holder" or "holder" as applied to a Receipt shall mean the person in whose name a Receipt is registered on the books of the Depository maintained for such purpose.

"Registrar" shall mean the Depository or such other bank or trust company which shall be appointed to register ownership and transfers of Receipts as herein provided.-

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Stock" shall mean shares of the Company's Series G Flexible Cumulative Redeemable Preferred Stock, \$.01 par value per share.

## ARTICLE II

### FORM OF RECEIPTS, DEPOSIT OF STOCK, EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.1. Form and Transfer of Receipts. The Company and the Depository shall make application to The Depository Trust Company ("DTC") for acceptance of all or a portion of the Receipts for its book-entry settlement system. The Company hereby appoints the Depository acting through any authorized officer thereof as its attorney-in-fact, with full power to delegate, for purposes of executing any agreements, certifications or other instruments or documents necessary or desirable in order to effect the acceptance of such Receipts for DTC eligibility. So long as the Receipts are eligible for book-entry settlement with DTC, unless otherwise required by law, all Depository Shares shall be represented by a single receipt (the "DTC Receipt"), which shall be deposited with DTC (or its designee) evidencing all such Depository Shares and registered in the name of the nominee of DTC (initially expected to be Cede & Co.). EquiServe Trust Company, N.A. or such other entity as is agreed to by DTC may hold the DTC

Receipt as custodian for DTC. Ownership of beneficial interests in the DTC Receipt shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) DTC or its nominee for such DTC Receipt or (ii) institutions that have accounts with DTC.

If DTC subsequently ceases to make its book-entry settlement system available for the Receipts, the Company may instruct the Depositary regarding making other arrangements for book-entry settlement. In the event that the Receipts are not eligible for, or it is no longer desirable to have the Receipts available in, book-entry form, the Depositary shall provide written instructions to DTC to deliver to the Depositary for cancellation the DTC Receipt, and the Company shall instruct the Depositary to deliver to the beneficial owners of the Depositary Shares previously evidenced by the DTC definitive Receipts in physical form evidencing such Depositary Shares. Such definitive receipts shall be in substantially the form annexed hereto as Annex A, with appropriate insertions, modifications and omissions, as hereafter provided.

The beneficial owners of Depositary Shares shall, except as stated above with respect to Depositary Shares in book-entry form represented by the DTC Receipt, be entitled to receive Receipts in physical, certificated form as herein provided.

The definitive Receipts shall be engraved or printed or lithographed on steel-engraved borders, with appropriate insertions, modifications and omissions, as hereinafter provided, if and to the extent required by any securities exchange on which the Receipts are listed. The DTC Receipt shall bear such legend or legends as may be required by DTC in order for it to accept the Depositary Shares for its book-entry settlement system. Pending the preparation of definitive Receipts or if definitive Receipts are not required by any securities exchange on which the Receipts are listed, the Depositary, upon the written order of the Company, delivered in compliance with Section 2.2 hereof, shall execute and deliver temporary Receipts which are printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine, as evidenced by their execution of such Receipts. If temporary Receipts are issued, the Company and the Depositary will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Depositary's Office or at such other place or places as the Depositary shall determine, without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts. Such exchange shall be made at the Company's expense and without any charge to the holder therefor. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Stock, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual and/or facsimile signature of a duly authorized officer of the Depositary. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed in accordance with the foregoing sentence. The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided.

Receipts shall be in denominations of any number of whole Depositary Shares. The Company shall deliver to the Depositary from time to time such quantities of Receipts as the Depositary may request to enable the Depositary to perform its obligations under this Deposit Agreement.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Company or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the Stock, the Depositary Shares or the Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject, all as directed by the Company.

Title to Depositary Shares evidenced by a Receipt which is properly endorsed or accompanied by a properly executed instrument of transfer shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that until transfer of a Receipt shall be registered on the books of the Depositary as provided in Section 2.3, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions or to any notice provided for in this Deposit Agreement and for all other purposes.

SECTION 2.2. Deposit of Stock; Execution and Delivery of Receipts in Respect Thereof. Subject to the terms and conditions of this Deposit Agreement, the Company may from time to time deposit shares of Stock under this Deposit Agreement by delivery to the Depositary of a certificate or certificates for the Stock to be deposited, properly endorsed or accompanied, if required by the Depositary, by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with (i) all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement, including the resolutions of the Board of Directors of the Company, as certified by the Secretary or any Assistant Secretary of the Company on the date thereof as being as being complete, accurate and in effect, relating to issuance and sale of the Preferred Stock, (ii) a letter of counsel to the Company authorizing reliance on such counsel's opinions delivered to the underwriters named therein relating to (A) the existence and good standing of the Company, (B) the due authorization of the Depositary Shares and the status of the Depositary Shares as validly issued, fully paid and non-assessable, and (C) the effectiveness of any registration statement under the Securities Act relat-

ing to the Depositary Shares, and (iii) a written letter of instruction of the Company or such holder, as the case may be, directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts for the number of Depositary Shares representing such deposited Stock.

Deposited Stock shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine.

Upon receipt by the Depositary of a certificate or certificates for Stock deposited in accordance with the provisions of this Section, together with the other documents required as above specified, and upon recordation of the Stock on the books of the Company in the name of the Depositary or its nominee, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver, to or upon the order of the person or persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section 2.2, a Receipt or Receipts for the whole number of Depositary Shares representing, in the aggregate, the Stock so deposited and registered in such name or names as may be requested by such person or persons. The Depositary shall execute and deliver such Receipt or Receipts at the Depositary's Office or such other offices, if any, as the Depositary may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery.

SECTION 2.3. Registration of Transfer of Receipts. Subject to the terms and conditions of applicable law and of this Deposit Agreement, the Depositary shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder in person or by a duly authorized attorney, agent or representative, properly endorsed or accompanied by a properly executed instrument of transfer including a guarantee of the signature thereon by a participant in a signature guarantee medallion program approved by the Securities Transfer Association ("Signature Guarantee"). Thereupon, the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Depositary Shares as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the person entitled thereto.

SECTION 2.4. Split-ups and Combinations of Receipts; Surrender of Receipts and Withdrawal of Stock. Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the authorized denomination or denominations requested, evidencing the aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered; provided, however, that the Depositary shall not issue any Receipt evidencing a fractional Depositary Share.

Any holder of a Receipt or Receipts representing any number of whole shares of Stock may (unless the related Depositary Shares have previously been called for redemption) withdraw the Stock and all money and other property, if any, represented thereby by surrender-

ing such Receipt or Receipts at the Depository's Office or at such other offices as the Depository may designate for such withdrawals and paying any unpaid amount due the Depository. If such holder's Depository Shares are being held by DTC or its nominee pursuant to Section 2.1 hereof, such holder shall request withdrawal from the book-entry system of Receipts representing any number of whole shares. Thereafter, without unreasonable delay, the Depository shall deliver to such holder or to the person or persons designated by such holder as hereinafter provided the number of whole shares of Stock and all money and other property, if any, represented by the Receipt or Receipts so surrendered for withdrawal, but holders of such whole shares of Stock will not thereafter be entitled to deposit such Stock hereunder or to receive Depository Shares therefor. If a Receipt delivered by the holder to the Depository in connection with such withdrawal shall evidence a number of Depository Shares in excess of the number of Depository Shares representing the number of whole shares of Stock to be so withdrawn, the Depository shall at the same time, in addition to such number of whole shares of Stock and such money and other property, if any, to be so withdrawn, deliver to such holder, or upon his order, a new Receipt evidencing such excess number of Depository Shares; provided, however, that the Depository shall not issue any Receipt evidencing a fractional Depository Share.

Delivery of the Stock and money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depository may deem appropriate, which, if required by the Depository, shall be properly endorsed or accompanied by proper instruments of transfer.

If the Stock and the money and other property being withdrawn are to be delivered to a person or persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Stock, such holder shall execute and deliver to the Depository a written order so directing the Depository and the Depository may require that the Receipt or Receipts surrendered by such holder for withdrawal of such shares of Stock be properly endorsed in blank or accompanied by a properly executed instrument of transfer in blank.

Delivery of the Stock and the money and other property, if any, represented by Receipts surrendered for withdrawal shall be made by the Depository at the Depository's Office, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

SECTION 2.5. Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depository, any of the Depository's Agents or the Company may require payment to it of a sum sufficient for the payment (or, in the event that the Depository or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to Sections 3.2 and 5.7 hereof, may require the production of evidence satisfactory to it as to the

identity and genuineness of any signature including a Signature Guarantee, and may also require compliance with such regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement.

The deposit of Stock may be refused, the delivery of Receipts against Stock may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed, or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission or under any provision of this Deposit Agreement.

SECTION 2.6. Lost Receipts, etc. In case any Receipt shall be mutilated, destroyed, lost or stolen, the Depositary in its reasonable discretion may execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt, or in lieu of and in substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence reasonably satisfactory to the Depositary of such destruction or loss or theft of such Receipt, of the authenticity thereof and of his or her ownership thereof, (ii) the furnishing of the Depositary with reasonable indemnification and the provision of an open penalty surety bond satisfactory to the Depositary and holding it and the Company harmless, and (iii) the payment of any reasonable expense (including reasonable fees, charges and expenses of the Depositary) in connection with such execution and delivery.

Cancellation and Destruction of Surrendered Receipts. All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Company is authorized to destroy all Receipts so cancelled.

SECTION 2.7. Redemption of Stock. Whenever the Company shall be permitted and shall elect to redeem shares of Stock in accordance with the provisions of the Company's Articles of Incorporation or Articles Supplementary, it shall (unless otherwise agreed to in writing with the Depositary) give or cause to be given to the Depositary not less than 45 days notice of the date of such proposed redemption or exchange of Stock and of the number of such shares held by the Depositary to be so redeemed and the applicable redemption price, as set forth in the Articles Supplementary, which notice shall be accompanied by a certificate from the Company stating that such redemption of Stock is in accordance with the provisions of the Company's Articles of Incorporation or Articles Supplementary. On the date of such redemption, provided that the Company shall then have paid or caused to be paid in full to the Depositary the redemption price of the Stock to be redeemed, plus an amount equal to any accrued and unpaid dividends thereon to the date fixed for redemption, in accordance with the provisions of the Articles Supplementary, the Depositary shall redeem the number of Depositary Shares representing such Stock. The Depositary shall mail notice of

the Company's redemption of Stock and the proposed simultaneous redemption of the number of Depositary Shares representing the Stock to be redeemed by first-class mail, postage prepaid, not less than 30 and not more than 60 days prior to the date fixed for redemption of such Stock and Depositary Shares (the "Redemption Date") to the record holders of the Receipts evidencing the Depositary Shares to be so redeemed, at the address of such holders as they appear on the records of the Depositary; but neither failure to mail any such notice of redemption of Depositary Shares to one or more such holders nor any defect in any notice of redemption of Depositary Shares to one or more such holders shall affect the sufficiency of the proceedings for redemption as to the other holders. The Company will provide the Depositary with the information necessary for the Depositary to prepare such notice and each such notice shall state: (i) the Redemption Date; (ii) the number of Depositary Shares to be redeemed and, if fewer than all the Depositary Shares held by any such holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; (iii) the redemption price per Depositary Share; (iv) the place or places where Receipts evidencing Depositary Shares are to be surrendered for payment of the redemption price; and (v) that dividends in respect of the Stock represented by the Depositary Shares to be redeemed will cease to accrue on such Redemption Date and will bear no interest. In case fewer than all the outstanding Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be determined pro rata or by lot in a manner determined by the Board of Directors.

Notice having been mailed by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to provide the funds necessary to redeem the Stock evidenced by the Depositary Shares called for redemption) (i) dividends on the shares of Stock so called for redemption shall cease to accrue from and after such date, (ii) the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, (iii) all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price) shall, to the extent of such Depositary Shares, cease and terminate and (iv) upon surrender in accordance with such redemption; notice of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned for transfer, if the Depositary or applicable law shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to the same fraction of the redemption price per share paid with respect to the shares of Stock as the fraction each Depositary Share represents of a share of Stock plus the same fraction of all money and other property, if any, represented by such Depositary Shares, including all amounts paid by the Company in respect of dividends which on the Redemption Date have accumulated on the shares of Stock to be so redeemed and have not theretofore been paid. Any funds deposited by the Company with the Depositary for any Depositary Shares that the holders thereof fail to redeem will, upon the written request of the Company, be returned to the Company after a period of five years from the date such funds are so deposited.

If fewer than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the

Depository, together with the redemption payment, a new Receipt evidencing the Depository Shares evidenced by such prior Receipt and not called for redemption; provided, however, that the Depository shall not issue any Receipt evidencing a fractional Depository Share.

SECTION 2.8. Stock Constituting Excess Stock. As provided in the Articles of Incorporation or Articles Supplementary, upon the happening of certain events, shares of Stock shall be deemed to automatically constitute Excess Stock. In the event of such a conversion, the Receipt representing the deposited Stock so converted shall no longer represent, to the extent of the shares so converted, such deposited Stock. Promptly upon its knowledge of the conversion of such deposited Stock into Excess Shares, the Company shall notify the Depository of such conversion, the number of shares of deposited Stock so converted, and the identity of the holder of the Receipt so affected, whereupon the Depository shall promptly notify the holder of such Receipt as to the foregoing information and the requirement for the holder to surrender such Receipt to the Depository for cancellation of the number of Depository Shares evidenced thereby equal to the deposited Stock constituting Excess Shares represented thereby.

If fewer than all of the Depository Shares evidenced by a Receipt are required to be surrendered for cancellation, the Depository will deliver to the holder of such Receipt upon its surrender to the Depository a new Receipt evidencing the Depository Shares evidenced by such prior Receipt and not required to be surrendered for cancellation. Upon the conversion of the deposited Stock and cancellation of the Depository Shares represented thereby, the Depository will make appropriate adjustments in its records to reflect such conversion and cancellation (including the reduction of any fractional share of deposited Stock and the issuance of any Excess Shares).

### ARTICLE III

#### CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.1. Filing Proofs, Certificates and Other Information. Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to execute such certificates and to make such representations and warranties as the Depository or the Company may reasonably deem necessary or proper or otherwise reasonably request. Subject to applicable law, the Depository or the Company may withhold the delivery, or delay the registration of transfer, redemption or exchange, of any Receipt or the withdrawal or conversion of the Stock represented by the Depository Shares evidenced by any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

SECTION 3.2. Payment of Taxes or Other Governmental Charges. Holders of Receipts shall be obligated to make payments to the Depository of certain charges and ex-



penses, as provided in Section 5.7 hereof. Subject to applicable law, registration of transfer of any Receipt or any withdrawal of Stock and all money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or any part of or all the Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.3. Warranty as to Stock. The Company hereby represents and warrants that the Stock, when issued, will be duly authorized, validly issued, fully paid and nonassessable. Such representation and warranty shall survive the deposit of the Stock and the issuance of Receipts.

#### ARTICLE IV

##### THE DEPOSITED SECURITIES; NOTICES

SECTION 4.1. Cash Distributions. Whenever the Depositary shall receive any cash dividend or other cash distribution on Stock, the Depositary shall, subject to Sections 3.1 and 3.2 hereof, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 hereof such amounts of such dividend or distribution as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required to withhold and shall withhold from any cash dividend or other cash distribution in respect of the Stock an amount on account of taxes or as otherwise required by law, regulation or court process, the amount made available for distribution or distributed in respect of Depositary Shares shall be reduced accordingly. In the event that the calculation of any such cash dividend or other cash distribution to be paid to any record holder on the aggregate number of Depositary Receipts held by such holder results in an amount which is a fraction of a cent, the amount the Depositary shall distribute to such record holder shall be rounded to the next highest whole cent if such fraction of a cent is equal to or greater than \$.005; otherwise such fractional interest shall be disregarded; and upon request of the Depositary, the Company shall pay the additional amount to the Depositary for distribution.

SECTION 4.2. Distributions Other than Cash, Rights, Preferences or Privileges. Whenever the Depositary shall receive any distribution other than cash, rights, preferences or privileges upon Stock, the Depositary shall, subject to Sections 3.1 and 3.2 hereof, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 hereof such amounts of the securities or property received by it as are, as nearly as may be practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts

held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems (after consultation with the Company) such distribution not to be feasible, the Depositary may, with the approval of the Company, adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received, or any part thereof, at such place or places and upon such terms as it may deem equitable and appropriate. The net proceeds of any such sale shall, subject to Sections 3.1 and 3.2 hereof, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of Receipts as provided by Section 4.1 hereof in the case of a distribution received in cash.

SECTION 4.3. Subscription Rights, Preferences or Privileges. If the Company shall at any time offer or cause to be offered to the persons in whose names Stock is recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, the offering of such rights, preferences or privileges shall in each such instance be communicated to the Depositary and thereafter made available by the Depositary to the record holders of Receipts in such manner as the Depositary may determine, either by the issue to such record holders of warrants representing such rights, preferences or privileges or by such other method as may be approved by the Depositary in its discretion with the approval of the Company; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Depositary determines that it is not lawful or (after consultation with the Company) not feasible to make such rights, preferences or privileges available to holders of Receipts by the issue of warrants or otherwise, or (ii) if and to the extent so instructed by holders of Receipts who do not desire to execute such rights, preferences or privileges, then EQI, in its discretion (with approval of the Company, in any case where the Depositary has determined that it is not feasible to make such rights, preferences or privileges available), may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.1 and 3.2 hereof, be distributed by EQI to the record holders of Receipts entitled thereto as provided by Section 4.1 hereof in the case of a distribution received in cash.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until it has received written notice from the Company that such registration statement shall have become effective, or that the offering and sale of such securities to such holders are exempt from registration under the provisions of the Securities Act and the Company shall have provided to the Depositary an opinion of counsel reasonably satisfactory to the Depositary to such effect.

If any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company will use its reasonable best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

SECTION 4.4. Notice of Dividends, etc.; Fixing Record Date for Holders of Receipts. Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or if rights, preferences or privileges shall at any time be offered, with respect to Stock, or whenever the Depositary shall receive notice of any meeting at which holders of Stock are entitled to vote or of which holders of Stock are entitled to notice, or whenever the Depositary and the Company shall decide it is appropriate, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Company with respect to or otherwise in accordance with the terms of the Stock) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who shall be entitled to notice of such meeting or for any other appropriate reasons.

SECTION 4.5. Voting Rights. Upon receipt of notice of any meeting at which the holders of Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Receipts a notice which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders may, subject to any applicable restrictions, instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Stock represented by their respective Depositary Shares (including an express indication that instructions may be given to the Depositary to give a discretionary proxy to a person designated by the Company) and a brief statement as to the manner in which such instructions may be given. Upon the written request of the holders of Receipts on the relevant record date, the Depositary shall use its best efforts to vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum number of whole shares of Stock represented by the Depositary Shares evidenced by all Receipts as to which any particular voting instructions are received. The Company hereby agrees to take all action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such Stock or cause such Stock to be voted. In the absence of specific instructions from

the holder of a Receipt, the Depositary will not vote to the extent of the Stock represented by the Depositary Shares evidenced by such Receipt.

SECTION 4.6. Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, etc. Upon any change in par value or liquidation preference, split-up, combination or any other reclassification of the Stock, or upon any recapitalization, reorganization, merger or consolidation affecting the Company or to which it is a party, the Depositary may in its discretion with the approval (not to be unreasonably withheld) of, and shall upon the instructions of, the Company, and (in either case) in such manner as the Depositary may deem equitable, (i) make such adjustments in the fraction of an interest in one share of Stock represented by one Depositary Share as may be necessary (as certified by the Company) fully to reflect the effects of such change in par value or liquidation preference, split-up, combination or other reclassification of Stock, or of such recapitalization, reorganization, merger or consolidation and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the Stock as new deposited securities so received in exchange for or upon conversion or in respect of such Stock. In any such case, the Depositary may in its discretion, with the approval of the Company, execute and deliver additional Receipts or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited securities. Anything to the contrary herein notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in par value or liquidation preference, split-up, combination or other reclassification of the Stock or any such recapitalization, reorganization, merger or consolidation to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the Stock represented thereby only into or for, as the case may be, the kind and amount of shares of stock and other securities and property and cash into which the Stock represented by such Receipts would have been converted or for which such Stock would have been exchanged or surrendered had such Receipt been surrendered immediately prior to the effective date of such transaction.

SECTION 4.7. Delivery of Reports. The Depositary shall furnish to holders of Receipts any reports and communications received from the Company which are received by the Depositary as the holder of Stock.

SECTION 4.8. List of Receipt Holders. Promptly upon request from time to time by the Company, the Depositary shall furnish to it a list, as of the most recent practicable date, of the names, addresses and holdings of Depositary Shares of all record holders of Receipts. The Company shall be entitled to receive such list four times annually.

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S  
AGENTS, THE REGISTRAR AND THE COMPANY

SECTION 5.1. Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar. Upon execution of this Deposit Agreement, the Depositary shall maintain at the Depositary's Office facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement, provided that, to the extent provisions of this Deposit Agreement regarding transfer or registrar functions of the Depositary conflict with the terms of any transfer agency agreement into which the Company and the Depositary may enter, the transfer agency agreement shall control.

The Depositary shall keep books at the Depositary's Office for the registration and registration of transfer of Receipts, which books during normal business hours shall be open for inspection by the record holders of Receipts; provided that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by the Receipts. Books kept hereunder by the Depositary may be maintained in electronic form.

The Depositary may close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

The Depositary may, with the approval of the Company, appoint a Registrar for registration of the Receipts or the Depositary Shares evidenced thereby. If the Receipts or the Depositary Shares evidenced thereby or the Stock represented by such Depositary Shares shall be listed on one or more national securities exchanges, the Depositary will appoint a Registrar (acceptable to the Company) for registration of such Receipts or Depositary Shares in accordance with any requirements of such exchange. Such Registrar (which may be the Depositary if so permitted by the requirements of any such exchange) may be removed and a substitute registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, such Depositary Shares or such Stock is listed on one or more other stock exchanges, the Depositary will, at the request and at the expense of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, such Depositary Shares or such Stock as may be required by law or applicable securities exchange regulation.

The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will notify the Company of any such action.

SECTION 5.2. Prevention of or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Company. Neither the Depositary nor any Depositary's Agent nor the Registrar nor the Company shall incur any liability to any holder of any Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Company's Amended and Restated Articles of Incorporation or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented, delayed or forbidden from, or subjected to any penalty on account of, doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, the Registrar or the Company incur liability to any holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement shall provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement except, in the case of any such exercise or failure to exercise discretion not caused as aforesaid, if caused by the gross negligence or willful misconduct of the party charged with such exercise or failure to exercise.

SECTION 5.3. Obligation of the Depositary, the Depositary's Agents, the Registrar and the Company. Neither the Depositary nor any Depositary's Agent nor the Registrar nor the Company assumes any obligation or shall be subject to any liability under this Deposit Agreement or any Receipt to holders of Receipts other than for its gross negligence, willful misconduct or bad faith.

Neither the Depositary nor any Depositary's Agent nor the Registrar nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Stock, the Depositary Shares or the Receipts which in its reasonable opinion may involve it in expense or liability unless indemnity reasonably satisfactory to it against expense and liability be furnished as often as may be reasonably required.

Neither the Depositary nor any Depositary's Agent nor the Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the written advice of legal counsel or accountants, or information from any person presenting Stock for deposit, any holder of a Receipt or any other person believed by it in good faith to be competent to give such information. The Depositary, any Depositary's Agent, the Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the shares of Stock or for the manner or effect of any such vote made, as long as

any such action or inaction is in good faith. The Depositary will indemnify the Company and hold it harmless from any loss, liability or expense (including the reasonable costs and expenses of defending itself) which arises from its negligence, wilful misconduct or bad faith. The Depositary undertakes and any Registrar shall be required to undertake only such duties as specifically set forth herein and no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or Registrar. In no event shall the Depositary's aggregate liability during the term of this Deposit Agreement with respect to, arising from, or arising in connection with this Deposit Agreement, or from all services provided or omitted to be provided under this Deposit Agreement, whether in contract, or in tort, or otherwise, exceed an amount equal to three (3) times the amounts paid by the Company to Depositary as fees and charges, but not including reimbursable expenses. The indemnification obligations of the Depositary set forth in this Section 5.3 hereof shall survive any termination of this Deposit Agreement and any succession of any Depositary.

The Depositary, its parent, affiliates or subsidiaries, the Depositary's Agents and the Registrar may own, buy, sell and deal in any class of securities of the Company and its affiliates and in Receipts or Depositary Shares or become pecuniarily interested in any transaction in which the Company or its affiliates may be interested or contract with or lend money to any such person or otherwise act as fully or as freely as if it were not the Depositary, parent, affiliate or subsidiary or Depositary's Agent or Registrar hereunder. The Depositary may also act as trustee, transfer agent or registrar of any of the securities of the Company and its affiliates.

It is intended that neither the Depositary nor any Depositary's Agent nor the Registrar, acting as the Depositary's Agent or Registrar, as the case may be, shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary, any Depositary's Agent and the Registrar are acting only in a ministerial capacity as Depositary or Registrar for the Stock.

Neither the Depositary (or its officers, directors, employees or agents) nor any Depositary's Agent nor the Registrar makes any representation or has any responsibility as to the validity of the registration statement pursuant to which the Depositary Shares are registered under the Securities Act, the Stock, the Depositary Shares or the Receipts (except for its counter-signatures thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made therein or herein.

The Depositary assumes no responsibility for the correctness of the description that appears in the Receipts. Notwithstanding any other provision herein or in the Receipts, the Depositary makes no warranties or representations as to the validity or genuineness of any Stock at any time deposited with the Depositary hereunder or of the Depositary Shares, as to the validity or sufficiency of this Deposit Agreement, as to the value of the Depositary Shares or as to any right, title or interest of the record holders of Receipts in and to the Depositary Shares. The De-

pository shall not be accountable for the use or application by the Company of the Depository Shares or the Receipts or the proceeds thereof.

The Depository shall not be liable for any incidental, indirect, special or consequential damages of any nature whatsoever, including, but not limited to, loss of anticipated profits, occasioned by breach of any provisions of this Agreement even if apprised of the possibility of such damages.

SECTION 5.4. Resignation and Removal of the Depository; Appointment of Successor Depository. The Depository may at any time resign as Depository hereunder by delivering notice of its election to do so to the Company, such resignation to take effect upon the appointment of a successor Depository and its acceptance of such appointment as hereinafter provided.

The Depository may at any time be removed by the Company by notice of such removal delivered to the Depository, such removal to take effect upon the appointment of a successor Depository and its acceptance of such appointment as hereinafter provided.

In case at any time the Depository acting hereunder shall resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depository, which shall be a bank or trust company having its principal office in the United States of America and having a combined capital and surplus of at least \$150,000,000. If no successor Depository shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depository may petition any court of competent jurisdiction for the appointment of a successor Depository. Every successor Depository shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor Depository, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depository under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Stock and any moneys or property held hereunder to such successor, and shall deliver to such successor a list of the record holders of all outstanding Receipts and such records, books and other information in its possession relating thereto. Any successor Depository shall promptly mail notice of its appointment to the record holders of Receipts.

Any corporation into or with which the Depository may be merged, consolidated or converted shall be the successor of such Depository without the execution or filing of any document or any further act, and notice thereof shall not be required hereunder. Such successor Depository may authenticate the Receipts in the name of the predecessor Depository or in the name of the successor Depository.



SECTION 5.5. Corporate Notices and Reports. The Company agrees that it will deliver to the Depository, and the Depository will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the addresses recorded in the Depository's books, copies of all notices and reports (including without limitation financial statements) required by law or by the rules of any national securities exchange upon which the Stock, the Depository Shares or the Receipts are listed, to be furnished to the record holders of Receipts. Such transmission will be at the Company's expense and the Company will provide the Depository with such number of copies of such documents as the Depository may reasonably request.

SECTION 5.6. Indemnification by the Company. The Company shall indemnify the Depository, any Depository's Agent and the Registrar against, and hold each of them harmless from, any loss, liability or expense (including the reasonable costs and expenses of defending itself) which may arise out of acts performed or omitted in connection with this Deposit Agreement and the Receipts by the Depository, any Registrar or any of their respective agents (including any Depository's Agent), except for any liability arising out of negligence, willful misconduct or bad faith on the respective parts of any such person or persons, subject to the provisions of Section 5.3, above. The obligations of the Company set forth in this Section 5.6 hereof shall survive any termination of this Deposit Agreement or any succession of any Depository or Depository's Agent.

SECTION 5.7. Charges and Expenses. The Company shall pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. The Company shall pay charges of the Depository in connection with the initial deposit of the Stock and the initial issuance of the Depository Shares, all withdrawals of shares of the Stock by owners of Depository Shares, and any redemption of the Stock at the option of the Company. All other transfer and other taxes and governmental charges shall be at the expense of holders of Depository Shares. If, at the request of a holder of Receipts, the Depository incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses. All other charges and expenses of the Depository and any Depository's Agent hereunder (including, in each case, reasonable fees and expenses of counsel) incident to the performance of their respective obligations hereunder will be paid upon consultation and agreement between the Depository and the Company as to the amount and nature of such charges and expenses. The Depository shall present its statement for charges and expenses to the Company at such intervals as the Company and the Depository may agree.

SECTION 5.8. Tax Compliance. EQI and, where applicable, the Depository, on its own behalf and on behalf of the Company, will comply with all applicable certification, information reporting and withholding (including "backup" withholding) requirements imposed by applicable tax laws, regulations or administrative practice with respect to (i) any payments made with respect to the Depository Shares or (ii) the issuance, delivery, holding,

transfer, redemption or exercise of rights under the Depositary Receipts or the Depositary Shares. Such compliance shall include, without limitation, the preparation and timely filing of required returns and the timely payment of all amounts required to be withheld to the appropriate taxing authority or its designated agent.

The Depositary shall comply with any direction received from the Company with respect to the application of such requirements to particular payments or holders or in other particular circumstances, and may for purposes of this Deposit Agreement rely on any such direction in accordance with the provisions of Section 5.3 hereof.

The Depositary shall maintain all appropriate records documenting compliance with such requirements, and shall make such records available on request to the Company or to its authorized representatives.

#### ARTICLE VI

##### AMENDMENT AND TERMINATION

SECTION 6.1. Amendment. The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment (other than any change in the fees) which shall materially adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the holders of at least a majority of the Depositary Shares then outstanding. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to be bound by the Deposit Agreement as amended thereby. Subject to Section 2.9 hereof, notwithstanding the foregoing, in no event may any amendment impair the right of any holder of any Depositary Shares, upon surrender of the Receipts evidencing such Depositary Shares and subject to any conditions specified in this Deposit Agreement, to receive shares of Stock and any money or other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law.

SECTION 6.2. Termination. This Deposit Agreement may be terminated by the Company at any time upon not less than 30 days' prior written notice to the Depositary, in which case, on a date that is not later than 30 days after the date of such notice, the Depositary shall deliver or make available for delivery to holders of Depositary Shares, upon surrender of the Receipts evidencing such Depositary Shares, such number of whole or fractional shares of Stock as are represented by such Depositary Shares. This Deposit Agreement will automatically terminate after (i) all outstanding Depositary Shares have been redeemed pursuant to Section 2.8 hereof or (ii) there shall have been made a final distribution in respect of the Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have

been distributed to the holders of Depositary Receipts pursuant to Section 4.1 or 4.2 hereof, as applicable.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, the Registrar and any Depositary's Agent under Sections 5.6 and 5.7 hereof.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1. Counterparts. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

SECTION 7.2. Exclusive Benefit of Parties. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.3. Invalidity of Provisions. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

SECTION 7.4. Notices. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to the Company at:

First Industrial Realty Trust, Inc.  
311 S. Wacker Drive, Suite 4000  
Chicago, Illinois 60606  
Attn: John Clayton, Esq.  
Facsimile No.: (312) 922-6320

or at any other address of which the Company shall have notified the Depositary in writing.

Any and all notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram or facsimile transmission confirmed by letter, addressed to the Depositary at the Depositary's Office, at:

EquiServe Trust Company, N.A.  
c/o EquiServe Inc.  
150 Royall Street  
Canton, Massachusetts 02021  
Attn: General Counsel  
Facsimile No.: 781-575-4210

or at any other address of which the Depositary shall have notified the Company in writing.

Any and all notices to be given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by telegram or facsimile transmission confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary, or if such holder shall have filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by telegram or facsimile transmission shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a telegram or facsimile transmission) is deposited for mailing by first class mail, postage prepaid. The Depositary or the Company may, however, act upon any telegram or facsimile transmission received by it from the other or from any holder of a Receipt, notwithstanding that such telegram or facsimile transmission shall not subsequently be confirmed by letter or as aforesaid.

SECTION 7.5. Appointment of Registrar. The Company hereby also appoints the Depositary as Registrar in respect of the Receipts and the Depositary hereby accepts such appointments.

SECTION 7.6. Holders of Receipts Are Parties. The holders of Receipts from time to time shall be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof.

SECTION 7.7. Governing Law. THIS DEPOSIT AGREEMENT AND THE RECEIPTS AND ALL RIGHTS HEREUNDER AND THEREUNDER AND PROVISIONS HEREOF AND THEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS APPLICABLE TO CONTRACTS MADE IN AND TO BE PERFORMED IN THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF.

SECTION 7.8. Inspection of Deposit Agreement. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agent and shall be open to

inspection during business hours at the Depositary's office or respective offices of the Depositary's Agent, if any, by any holder of a Receipt.

SECTION 7.9. Headings. The headings of articles and sections in this Deposit Agreement have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

FIRST INDUSTRIAL REALTY TRUST, INC.

/s/ John Clayton

-----  
Name: John Clayton  
Title: Vice President -- Corporate Legal,  
Secretary

EQUISERVE, INC.

/s/ Thomas Ferrari

-----  
Name: Thomas Ferrari  
Title: Senior Managing Director

EQUISERVE TRUST COMPANY, N.A.

/s/ John Ruocco

-----  
Name: John Ruocco  
Title: Senior Account Manager

[FORM OF FACE OF RECEIPT]

NUMBER SHARES  
DR- (CUSIP 32054K830)  
see reverse for certain definitions

THIS CERTIFICATE IS TRANSFERABLE  
IN NEW YORK, NY

[Logo]

RECEIPT FOR DEPOSITARY SHARES,  
EACH REPRESENTING 1/100 OF A SHARE OF  
SERIES G FLEXIBLE CUMULATIVE REDEEMABLE PREFERRED STOCK

FIRST INDUSTRIAL REALTY TRUST, INC.  
(INCORPORATED UNDER THE LAWS OF THE STATE OF MARYLAND)

EquiServe Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America, and EquiServe, Inc., a Delaware corporation, with an office at the time of execution of the Deposit Agreement (as defined below) at 150 Royall Street, Canton, Massachusetts 02021, as Depositary (the "Depositary"), hereby certifies that \_\_\_\_\_ is a registered owner of \_\_\_\_\_ DEPOSITARY SHARES ("Depositary Shares"), each Depositary Share representing 1/100 of one fully paid and non-assessable share of Series G Flexible Cumulative Redeemable Preferred Stock, \$.01 par value per share (the "Shares"), of First Industrial Realty Trust, Inc., a Maryland corporation (the "Company"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of May 27, 2004 (the "Deposit Agreement"), among the Company, the Depositary and the holders from time to time of Receipts for Depositary Shares. By accepting this Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Receipt shall not be valid or obligatory for any purpose or be entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized officer or, if a Registrar in respect of the Receipts (other than the Depositary) shall have been appointed, by the manual signature of a duly authorized officer of such Registrar.

Dated:  
Countersigned and Registered:  
EQUISERVE TRUST COMPANY, N.A.  
Depositary and Registrar

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

By: \_\_\_\_\_  
SECRETARY AND TREASURER

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

[FORM OF REVERSE OF RECEIPT]  
FIRST INDUSTRIAL REALTY TRUST, INC.

THE SHARES OF STOCK REPRESENTED BY THIS DEPOSITARY RECEIPT ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS QUALIFICATION AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. NO PERSON MAY BENEFICIALLY OWN SHARES OF STOCK IN EXCESS OF 9.9% (OR SUCH GREATER PERCENTAGE AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS OF THE CORPORATION) OF THE OUTSTANDING STOCK OF THE CORPORATION. ANY PERSON WHO ATTEMPTS TO BENEFICIALLY OWN SHARES OF STOCK IN EXCESS OF THE ABOVE LIMITATION MUST IMMEDIATELY NOTIFY THE CORPORATION. ALL CAPITALIZED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CORPORATION'S ARTICLES OF INCORPORATION, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER, WILL BE SENT WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS. IF THE RESTRICTIONS ON TRANSFER ARE VIOLATED, THE SHARES OF STOCK REPRESENTED HEREBY MAY BE AUTOMATICALLY EXCHANGED FOR SHARES OF EXCESS STOCK WHICH WILL BE HELD IN TRUST BY THE CORPORATION.

THE CORPORATION WILL FURNISH TO ANY STOCKHOLDER ON REQUEST AND WITHOUT CHARGE A FULL STATEMENT OF THE DESIGNATIONS AND ANY PREFERENCES, CONVERSIONS AND OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DIVIDENDS, QUALIFICATIONS, AND TERMS AND CONDITIONS OF REDEMPTION OF THE STOCK OF EACH CLASS WHICH THE CORPORATION IS AUTHORIZED TO ISSUE AND, WITH RESPECT TO ANY PREFERRED OR SPECIAL CLASS IN A SERIES, THE DIFFERENCES IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SERIES TO THE EXTENT THEY HAVE BEEN SET AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO SET THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES.

The following abbreviations, when used in the inscription on the face of this Depositary Receipt, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM--	as tenants in common	UNIF GIFT MIN ACT - . . . Custodian . . . .
TEN ENT--	tenants by the entirety	(Cust)
JT TEN--	as joint tenants with right of survivorship and not as tenants in common	Minor under Uniform Gifts to Minors Act . . . . . (State)

Additional abbreviations may also be used though not in the above list.

For Value Received, \_\_\_\_\_ hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE

Depositary Shares represented by the within Depositary Receipt, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Depositary Shares on the books of the within named Depositary with full power of substitution in the premises.

Dated

Signed

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS DEPOSITARY RECEIPT IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

SIGNATURE(S) GUARANTEED

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

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.



FIRST INDUSTRIAL, L.P.  
EIGHTH 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.

TABLE OF CONTENTS

ARTICLE I - INTERPRETIVE PROVISIONS	
Section 1.1	Certain Definitions.....1
Section 1.2	Rules of Construction.....13
ARTICLE II - CONTINUATION	
Section 2.1	Continuation.....13
Section 2.2	Name.....13
Section 2.3	Place Of Business; Registered Agent.....13
ARTICLE III - BUSINESS PURPOSE	
Section 3.1	Business.....14
Section 3.2	Authorized Activities.....14
ARTICLE IV - CAPITAL CONTRIBUTIONS	
Section 4.1	Capital Contributions.....14
Section 4.2	Additional Partnership Interests.....14
Section 4.3	No Third Party Beneficiaries.....15
Section 4.4	Capital Accounts.....15
Section 4.5	Return of Capital Account; Interest.....16
Section 4.6	Preemptive Rights.....16
Section 4.7	REIT Share Purchases.....16
ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS	
Section 5.1	Limited Liability.....17
Section 5.2	Profits, Losses and Distributive Shares.....17
Section 5.3	Distributions.....22

Section 5.4	Distribution Upon Redemption.....	24
Section 5.5	Distributions upon Liquidation.....	24
Section 5.6	Amounts Withheld.....	24
ARTICLE VI - PARTNERSHIP MANAGEMENT		
Section 6.1	Management and Control of Partnership Business.....	24
Section 6.2	No Management By Limited Partners; Limitation of Liability.....	25
Section 6.3	Limitations on Partners.....	25
Section 6.4	Business with Affiliates.....	26
Section 6.5	Compensation; Reimbursement of Expenses.....	26
Section 6.6	Liability for Acts and Omissions.....	26
Section 6.7	Indemnification.....	27
ARTICLE VII - ADMINISTRATIVE, FINANCIAL AND TAX MATTERS		
Section 7.1	Books and Records.....	27
Section 7.2	Annual Audit and Accounting.....	27
Section 7.3	Partnership Funds.....	27
Section 7.4	Reports and Notices.....	27
Section 7.5	Tax Matters.....	28
Section 7.6	Withholding.....	28
ARTICLE VIII - TRANSFER OF PARTNERSHIP INTERESTS; ADMISSIONS OF PARTNERS		
Section 8.1	Transfer By General Partner.....	29
Section 8.2	Obligations of a Prior General Partner.....	29

Section 8.3	Successor General Partner.....	29
Section 8.4	Restrictions On Transfer And Withdrawal By Limited Partner.....	29
Section 8.5	Substituted Limited Partner.....	30
Section 8.6	Timing and Effect of Transfers.....	31
Section 8.7	Additional Limited Partners.....	31
Section 8.8	Amendment of Agreement and Certificate.....	31
 ARTICLE IX - REDEMPTION		
Section 9.1	Right of Redemption.....	31
Section 9.2	Timing of Redemption.....	33
Section 9.3	Redemption Price.....	33
Section 9.4	Assumption of Redemption Obligation.....	33
Section 9.5	Further Assurances; Certain Representations.....	33
Section 9.6	Effect of Redemption.....	33
Section 9.7	Registration Rights.....	34
Section 9.8	Redemption upon REIT Share Repurchases by the General Partner.....	34
 ARTICLE X - DISSOLUTION AND LIQUIDATION		
Section 10.1	Term and Dissolution.....	34
Section 10.2	Liquidation of Partnership Assets.....	34
Section 10.3	Effect of Treasury Regulations.....	36
Section 10.4	Time for Winding-Up.....	36
 ARTICLE XI - AMENDMENTS AND MEETINGS		
Section 11.1	Amendment Procedure.....	36
Section 11.2	Meetings and Voting.....	37
Section 11.3	Voting of LB Units.....	37
 ARTICLE XII - MISCELLANEOUS PROVISIONS		
Section 12.1	Title To Property.....	37
Section 12.2	Other Activities of Limited Partners.....	38
Section 12.3	Power of Attorney.....	38
Section 12.4	Notices.....	39
Section 12.5	Further Assurances.....	39
Section 12.6	Titles and Captions.....	39
Section 12.7	Applicable Law.....	39
Section 12.8	Binding Agreement.....	39
Section 12.9	Waiver of Partition.....	39
Section 12.10	Counterparts and Effectiveness.....	39
Section 12.11	Survival of Representations.....	39
Section 12.12	Entire Agreement.....	39

Exhibit 1A	-	First Highland Partners
Exhibit 1B	-	Schedule of Partners
Exhibit 1C	-	LB Partners
Exhibit 1D	-	Contributor Partners
Exhibit 2	-	Form of Redemption Notice
Exhibit 3	-	Form of Registration Rights Agreement

FIRST INDUSTRIAL, L.P.  
EIGHTH 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 Seventh Amended and Restated Partnership Agreement (as described below) this 2nd day of June, 2004 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 and a Seventh Amended and Restated Partnership Agreement was executed as of May 26, 2004 (the "Seventh Partnership Agreement").

D. The General Partner desires to amend and restate the Seventh Partnership Agreement to (i) reflect the interests granted to the Class H 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.

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ARTICLE I - INTERPRETIVE PROVISIONS  
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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:

(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 Eighth 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 D Deemed Original Issue Date: (i) in the case of any Class D Unit which is part of the first issuance of such units or part of a subsequent issuance of such units prior to April 1, 1998, 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 April 1, 1998, the later of (x) April 1, 1998 and (y) the last Class D Distribution Period Commencement Date which precedes the date of issuance of such unit and which succeeds the last Class D Distribution Period for which full cumulative Class D 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 April 1, 1998, the date of issuance of which falls between (a) the record date for dividends payable on the Series D Preferred Shares on the first succeeding dividend payment date on such stock and (b) such dividend payment date, the "Class D Deemed Original Issue Date" means the date of the Class D Distribution Period Commencement Date that immediately follows the date of issuance of such unit.

Class D Distribution Period: The Class D 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 D Distribution Period Commencement Date.

Class D Distribution Period Commencement Date: January 1, April 1, July 1 and October 1 of each year commencing April 1, 1998.

Class D Initial Distribution Period: The period from the Class D Deemed Original Issue Date for a Class D Unit to, but excluding, April 1, 1998.

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

Class D Priority Return Amount: With respect to each Class D Unit, (i) for the Class D 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(B) hereof, and (ii) for each Class D Distribution Period thereafter, an amount equal to 1.9875% of that portion of the Capital Contribution of the Class D Limited Partner allocable to each such unit. Class D Priority Return Amounts on each Class D Unit that are not distributed as provided in Section 5.3(B) shall be cumulative from the Class D Deemed Original Issue Date of such unit.

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

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

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

Class E Deemed Original Issue Date: (i) in the case of any Class E Unit which is part of the first issuance of such units or part of a subsequent issuance of such units prior to July 1, 1998, 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 July 1, 1998, the later of (x) July 1, 1998 and (y) the last Class E Distribution Period Commencement Date which precedes the date of



issuance of such unit and which succeeds the last Class E Distribution Period for which full cumulative Class E 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 July 1, 1998, the date of issuance of which falls between (a) the record date for dividends payable on the Series E Preferred Shares on the first succeeding dividend payment date on such stock and (b) such dividend payment date, the "Class E Deemed Original Issue Date" means the date of the Class E Distribution Period Commencement Date that immediately follows the date of issuance of such unit.

**Class E Distribution Period:** The Class E 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 E Distribution Period Commencement Date.

**Class E Distribution Period Commencement Date:** January 1, April 1, July 1 and October 1 of each year commencing July 1, 1998.

**Class E Initial Distribution Period:** The period from the Class E Deemed Original Issue Date for a Class E Unit to, but excluding, July 1, 1998.

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

**Class E Priority Return Amount:** With respect to each Class E Unit, (i) for the Class E 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(C) hereof, and (ii) for each Class E Distribution Period thereafter, an amount equal to 7.90% of that portion of the Capital Contribution of the Class E Limited Partner allocable to each such unit. Class E Priority Return Amounts on each Class E Unit that are not distributed as provided in Section 5.3(C) shall be cumulative from the Class E Deemed Original Issue Date of such unit.

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

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

**Class E Unit:** The Partnership Interest held by the Class E Limited Partner, each full Class E 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(F) hereof.

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

Class G Redemption Price: As defined in Section 9.1(G) 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 H Distribution Date: Each dividend payment date for the Series H Preferred Shares.

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

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

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

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

Class H Unit: The Partnership Interest held by the Class H Limited Partner, each full Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner or the Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class H Limited Partner and the Limited Partners as a group. The term "Partner" shall mean a General Partner, the Class C Limited Partner, the Class D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner and the Class H 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(N), 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 D Preferred Shares:** 7.95% Series D Cumulative Preferred Stock of First Industrial Realty Trust, Inc.

**Series E Preferred Shares:** 7.90% Series E 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 H Preferred Shares:** Series H Flexible 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 succeeding 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.

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ARTICLE II - CONTINUATION

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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.

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ARTICLE III - BUSINESS PURPOSE

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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.

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ARTICLE IV - CAPITAL CONTRIBUTIONS

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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.

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ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS  
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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 D Limited Partner (in its capacity as Class D Limited Partner), the Class E Limited Partner (in its capacity as Class E 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) nor the Class H Limited Partner (in its capacity as Class H 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 Section 5.2(C), (D), (I), (J), (K), (L), (M), and (N), 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, Class C Limited Partner, Class D Limited Partner, Class E Limited Partner, Class F Limited Partner, Class G Limited Partner and Class H 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 Section 5.2(C), (D), (I), (J), (K), (L), (M) and (N), 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner and the Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner and the Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner and the Class H 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 D Priority Allocation. The holders of Class D 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 D Priority Return Amounts accrued through the end of the fiscal year to which the allocation relates.

(K) Class E Priority Allocation. The holders of Class E 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 E Priority Return Amounts accrued through the end of the fiscal year to which the allocation relates.

(L) 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(L) 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.

(M) 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(M) 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.

(N) Class H Priority Allocation. The holders of Class H 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(N) equals (or approaches as nearly as possible) the sum of all Class H 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 D Unit an amount in cash equal to the cumulative undistributed Class D 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 March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 1998 (or in the case of a Class D Unit with a Class D Deemed Original Issue Date

after March 31, 1998, on the first such distribution date following the applicable Class D 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 D Priority Return Amounts that are distributable with respect to a period greater or less than a full Class D Distribution Period shall be computed on the basis of a 360-day year consisting of 12 30-day months.

(C) The General Partner shall cause the Partnership to distribute to the holder of each Class E Unit an amount in cash equal to the cumulative undistributed Class E 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 March 31, June 30, September 30 and December 31 of each year, commencing on June 30, 1998 (or in the case of a Class E Unit with a Class E Deemed Original Issue Date after June 30, 1998, on the first such distribution date following the applicable Class E 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 E Priority Return Amounts that are distributable with respect to a period greater or less than a full Class E Distribution Period shall be computed on the basis of a 360-day year consisting of 12 30-day months.

(D) 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(D) shall not be in excess of the Distributable Cash) on each Class F Distribution Date.

(E) 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(E) shall not be in excess of the Distributable Cash) on each Class G Distribution Date.

(F) The General Partner shall cause the Partnership to distribute to the holder of each Class H Unit an amount in cash equal to the cumulative undistributed Class H 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 H 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 D Redemption shall be distributed to the Class D Limited Partner in accordance with Section 9.1(D), (iii) a Class E Redemption shall be distributed to the Class E Limited Partner in accordance with Section 9.1(E), (iv) a Class F Redemption shall be distributed to the Class F Limited Partner in accordance with Section 9.1(F), (v) a Class G Redemption shall be distributed to the Class G Limited Partner in accordance with Section 9.1(G) and (vi) a Class H Redemption shall be distributed to the Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class H Limited Partner, the Limited Partners or Assignees shall be treated as amounts distributed to such General Partner, the Class C Limited Partner, the Class D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner, the Class H Limited Partner, the Limited Partners or Assignees, as applicable, pursuant to Section 5.3 of this Agreement.

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ARTICLE VI - PARTNERSHIP MANAGEMENT  
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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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner and the Class H 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 D Limited Partner, in its capacity as Class D Limited Partner, the Class E Limited Partner, in its capacity as Class E 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, nor the Class H Limited Partner, in its capacity as Class H 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 D Limited Partner, in its capacity as Class D Limited Partner, the Class E Limited Partner, in its capacity as Class E 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, nor the Class H Limited Partner, in its capacity as Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner or the Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner or the Class H 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 D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner or the Class H Limited Partner should be classified as general partners under the Act.

(B) Neither the Limited Partner, the Class C Limited Partner, the Class D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner nor the Class H 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, the Class C Limited Partner, the Class D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner or the Class H 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 D Limited Partner (in its capacity as Class D Limited Partner), the Class E Limited Partner (in its capacity as Class E 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) or the Class H Limited Partner (in its capacity as Class H 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.

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ARTICLE VII - ADMINISTRATIVE, FINANCIAL AND TAX MATTERS  
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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.

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

(5) 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.

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ARTICLE IX - REDEMPTION  
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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) On and after February 4, 2003 at any time or from time to time, the Partnership may redeem all or such other number of Class D Units (any such redemption, a "Class D Redemption") at a cash redemption price per Class D Unit equal to that portion of the Capital Contribution of the Class D Limited Partner allocable to each such unit, plus all accumulated and unpaid Class D Priority Return Amounts to the date of Class D Redemption (such price, the "Class D Redemption Price"). Upon any Class D Redemption, an amount equal to the product of the Class D Redemption Price and the number of Class D Units redeemed by the Partnership shall be distributed by the Partnership to the Class D Limited Partner. The Class D Redemption Price (other than the portion thereof consisting of accumulated and unpaid Class D Priority Return Amounts) is payable solely out of the sale proceeds of an issuance of capital stock of the General Partner. For purposes of the immediately preceding sentence "capital stock" means any common stock, preferred stock, depositary shares, interests, participations or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity interests or options to purchase any of the foregoing).

(E) On and after March 18, 2003 at any time or from time to time, the Partnership may redeem all or such other number of Class E Units (any such redemption, a "Class E Redemption") at a cash redemption price per Class E Unit equal to that portion of the Capital Contribution of the Class E Limited Partner allocable to each such unit, plus all accumulated and unpaid Class E Priority Return Amounts to the date of Class E Redemption (such price, the "Class E Redemption Price"). Upon any Class E Redemption, an amount equal to the product of the Class E Redemption Price and the number of Class E Units redeemed by the Partnership shall be distributed by the Partnership to the Class E Limited Partner. The Class E Redemption Price (other than the portion thereof consisting of accumulated and unpaid Class E Priority Return Amounts) is payable solely out of the sale proceeds of an issuance of capital stock of the General Partner. For purposes of the immediately preceding sentence "capital stock" means any common stock, preferred stock, depositary shares, interests, participations or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity interests or options to purchase any of the foregoing).

(F) 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.

(G) 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.

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

the product of the Class H Redemption Price and the number of Class H Units redeemed by the Partnership shall be distributed by the Partnership to the Class H 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 D Redemption by the Partnership, the Class D Limited Partner shall have no further

right to receive any Partnership distributions in respect of the Class D Units so redeemed. Upon a Class E Redemption by the Partnership, the Class E Limited Partner shall have no further right to receive any Partnership distributions in respect of the Class E 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 H Redemption by the Partnership, the Class H Limited Partner shall have no further right to receive any Partnership distributions in respect of the Class H 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.

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ARTICLE X - DISSOLUTION AND LIQUIDATION  
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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 D Limited Partner in an amount equal to any unpaid Class D Priority Return Amounts, (iii) the Class E Limited Partner in an amount equal to any unpaid Class E Priority Return Amounts, (iv) the Class F Limited Partner in an amount equal to any unpaid Class F Priority Return Amounts, (v) the Class G Limited Partner in an amount equal to any unpaid Class G Priority Return Amounts and (vi) the Class H Limited Partner in an amount equal to any unpaid Class H Return Amounts; provided, that if the proceeds are inadequate to pay all of the unpaid Class C Priority Return Amounts, the unpaid Class D Priority Return Amounts, the unpaid Class E Priority Return Amounts, the unpaid Class F Priority Return Amounts, the unpaid Class G Priority Return Amounts and the unpaid Class H Priority Return Amounts, such proceeds shall be distributed to the Class C Limited Partner, the Class D Limited Partner, the Class E Limited Partner, the Class F Limited Partner, the Class G Limited Partner and the Class H Limited Partner pro rata based on the unpaid Class C Priority Return Amounts, the unpaid Class D Priority Return Amounts, the unpaid Class E Priority Return Amounts, the unpaid Class F Priority Return Amounts, the unpaid Class G Priority Return Amounts and the unpaid Class H 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.

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ARTICLE XI - AMENDMENTS AND MEETINGS  
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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.

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### ARTICLE XII - MISCELLANEOUS PROVISIONS

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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:   /s/ John H. Clayton  
-----  
Vice President - Corporate Legal

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

By:   /s/ John H. Clayton  
-----  
Vice President - Corporate Legal

Exhibit 1A

First Highland Partners -----	Number of Units -----
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

Exhibit 1B

Schedule of Partners

General Partner -----	Number of Units -----
First Industrial Realty Trust, Inc.	30,892,739
Limited Partners -----	Number of Units -----
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
Arnold Y. Aronoff	7,955
Daniel J. Aronoff	2,809
Lynn E. Aronoff	2,690
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
Emil Billich	77
Don N. Blurton & Patricia H. Blurton Trustees UA DTD 4-11-96 Blurton 1996 Revocable Family Trust	598
Harriett Bonn TTEE UA DTD 3-5-97 FBO The Harriett Bonn Revocable Living Trust	24,804

Limited Partners -----	Number of Units -----
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
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
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



Limited Partners -----	Number of Units -----
John E. De B Blockey TR of the John E. De B Blockey Trust	8,653
Robert L. Denton	6,286
Henry E. Dietz Trust UA 1-16-81	36,476
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
Charles F. Downs	1,508
Greg & Christina Downs JT TEN	474
Gregory Downs	48
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
Aimee Freyer-Valls	10,000
David Fried	1,326
Ester Fried	3,177

Limited Partners -----	Number of Units -----
Jack Friedman TR of the Jack Friedman Revocable Living Trust UA 3-23-78	26,005
Robert L. Friedman	28,500
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
Timothy Gudim	5,298
H.L. Investors LLC	4,000
H.P. Family Group LLC	103,734
H/Airport Gp Inc.	1,433
Vivian M. Hack TTEE UA DTD 12-26-97 Hack Living Trust	22,522
Clay Hamlin & Lynn Hamlin JT TEN	15,159
Turner Harshaw	1,132
Cathleen Hession	3,137
Edwin Hession & Cathleen Hession JT TEN	7,979
Highland Associates Limited Partnership	69,039
Andrew Holder	97
Ruth Holder	2,612

Limited Partners -----	Number of Units -----
Robert W. Holman, Jr.	150,213
Holman/Shidler Investment Corporation	22,079
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
Jacob Family Trust UA DTD 10-1-92 Thomas V. Clagett Trustee	20,260
Michael W. Jenkins	460
Jernie Holdings Corp.	180,499
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 Kopic	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
Joan R. Krieger TTEE of the Joan R. Krieger Revocable Trust DTD 10-21-97	15,184
William L. Kreiger, Jr.	3,374
Babette Kulka	330
Jack H. Kulka	330
LP Family Group LLC	102,249
Lambert Investment Corporation	13,606
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

Limited Partners -----	Number of Units -----
Stephen Mann	17
Manor LLC	80,556
R. Craig Martin	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
Patricia A. O'Brien	6,387
Peter O'Connor	56,844

Limited Partners -----	Number of Units -----
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	4,426
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
Seymour D. Reich	154
James C. Reynolds	40,247
Andre G. Richard	1,508
Rebecca S. Roberts	8,308

Limited Partners -----	Number of Units -----
Leslie A. Rubin Ltd.	4,048
SPM Industrial LLC	5,262
SRS Partnership	2,142
James Sage	2,156
James R. Sage	3,364
Kathleen Sage	3,350
Wilton Wade Sample	5,449
Debbie B. Schneeman	740
Edward R. Schulak	8,073
Jane Schulak	2,690
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	400,000
Garrett E. Sheehan	513
Jay H. Shidler	68,020

Limited Partners -----	Number of Units -----
Jay H. Shidler and Walette A. Shidler TEN ENT	1,223
Shidler Equities LP	254,541
D.W. Sivers Co.	28,265
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
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
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



Limited Partners -----	Number of Units -----
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
WSW 1998 Exchange Fund L.P.	32,000
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
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	43,988
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

Exhibit 1D

Contributor Partner -----	Protected Amount -----
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
Arnold Y. Aronoff	*See Below
Daniel J. Aronoff	*See Below
Lynn E. Aronoff	*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
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

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
John E. De B Blockey TR of the John E. De B Blockey Trust	*See Below
Robert L. Denton	*See Below
Henry E. Dietz Trust UA 1-16-81	*See Below
Darwin B. Dosch	*See Below
Charles F. Downs	*See Below
Greg & Christina Downs JT TEN	*See Below
Gregory Downs	*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
Robert L. Friedman	*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
Vivian M. Hack TTEE UA DTD 12-26-97 Hack Living Trust	*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
Jacob Family Trust UA DTD 10-1-92 Thomas V. Clagett Trustee	*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
J. Stanley Mattison	*See Below
Henry E. Mawicke	*See Below

Contributor Partner -----	Protected Amount -----
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
Princeton South at Lawrenceville One	*See Below
Abraham Punia	*See Below
RBZ LLC	*See Below
R.E.A. Associates	*See Below

Contributor Partner -----	Protected Amount -----
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
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	*See Below



Contributor Partner -----	Protected Amount -----
Stein Grantor	
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
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

Contributor Partner -----	Protected Amount -----
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
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

Contributor Partner -----	Protected Amount -----
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
Stanley Greenberg & Florence Greenberg JT TEN	80,000
Alvin R. Brown & 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  
EIGHTH AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT  
Form of Redemption Notice

Redemption Notice

The undersigned hereby irrevocably (i) elects to exercise its redemption rights contained in Section 9.1(A) of the Eighth 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:

-----

FIRST INDUSTRIAL, L.P.

EXHIBIT 3

TO

EIGHTH 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.



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: shall mean 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: shall mean 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 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: \_\_\_\_\_

July 30, 2004

First Industrial Realty Trust, Inc.  
311 S. Wacker Drive, Suite 4000  
Chicago, Illinois 60606

Ladies and Gentlemen:

We have acted as counsel for First Industrial Realty Trust, Inc. (the "Company") and First Industrial, L.P. (the "Operating Partnership") in connection with the Registration Statement on Form S-3 (the "Registration Statement") filed by the Company and the Operating Partnership with the Securities and Exchange Commission (the "Commission") for registration under the Securities Act of 1933, as amended (the "Securities Act"), of senior debt securities of the Operating Partnership (the "Debt Securities") to be offered from time to time by the Operating Partnership. The Debt Securities will be issued pursuant to the Indenture (the "Indenture"), dated as of May 13, 1997, between the Operating Partnership and U.S. Bank Trust National Association (formerly known as First Trust National Association), as trustee (the "Trustee") for aggregate proceeds of up to \$375,000,000.

In our examination of such documents, instruments and other papers as we have deemed necessary or appropriate for the purpose of rendering this opinion, we have assumed the genuineness of all signatures on original and certified documents and the conformity to original and certified documents of all copies submitted to us as conformed, photostatic or other copies. We have also assumed that the Registration Statement and any amendments thereto (including any post-effective amendments) will have become effective and will comply with all applicable laws at the time the Debt Securities are offered or issued as contemplated by the Registration Statement. As to matters of fact, we have relied upon representations of officers of the Company.

Based upon the foregoing examination, information supplied and assumptions, it is our opinion that when (a) the definitive terms of any series of Debt Securities and of their issue and sale have been duly established in accordance with the provisions of the Indenture so as not to violate any applicable law or agreement or instrument then binding on the Operating Partnership, (b) such series of Debt Securities has been duly executed by the Operating Partnership and authenticated by the Trustee, (c) such series of Debt Securities has been issued and delivered in the manner contemplated by the Indenture, the Registration Statement, the prospectus contained therein and the applicable prospectus supplement and (d) such series of Debt

-2-

Securities has been duly paid for by the purchasers thereof, such series of Debt Securities will be entitled to the benefits of the Indenture, and will be the valid and binding obligations of the Operating Partnership, enforceable in accordance with its terms, except as the enforceability thereof may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

We are attorneys admitted to practice in the State of New York. We express no opinion concerning the laws of any jurisdiction other than the Delaware Revised Uniform Limited Partnership Act, the laws of the United States of America and the laws of the State of New York.

We hereby consent to the reference to our firm in the Registration Statement under the caption "Legal Matters" and to the inclusion of this opinion as an exhibit to the Registration Statement. Our consent to such reference does not constitute a consent under Section 7 of the Securities Act as in consenting to such reference we have not certified any part of the Registration Statement and do not otherwise come within the categories of persons whose consent is required under Section 7 or under the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Cahill Gordon & Reindel LLP



July 30, 2004

First Industrial Realty Trust, Inc.  
311 S. Wacker Drive, Suite 4000  
Chicago, Illinois 60606

Ladies and Gentlemen:

We have acted as counsel for First Industrial Realty Trust, Inc. (the "Company") and First Industrial, L.P. (the "Operating Partnership") in connection with the Registration Statement on Form S-3 filed by the Company and the Operating Partnership with the Securities and Exchange Commission for registration under the Securities Act of 1933, as amended, on July 30, 2004 (the "Registration Statement"). We have been asked to provide our opinion as to certain federal income tax matters arising under the Internal Revenue Code of 1986, as amended (the "Code"), relating to the Company's qualification for taxation as a real estate investment trust (a "REIT") under the Code .

The opinions set forth in this letter are based on relevant provisions of the Code, Treasury Regulations thereunder and interpretations of the foregoing as expressed in court decisions and administrative determinations as of the date hereof. These provisions and interpretations are subject to changes (possibly on a retroactive basis) that might result in modifications of our opinions.

For purposes of rendering the opinions set forth in this letter, we have reviewed the Registration Statement and such other documents, law and facts as we have deemed necessary. In our review, we have assumed the genuineness of all signatures; the proper execution of all documents; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; and the authenticity of the originals of any copies.

-2-

The opinions set forth in this letter are premised on certain written factual representations made by the Company in a certificate dated as of the date hereof (the "Certificate") and are also premised on an assumption that if the Company ultimately were found not to have satisfied the gross income requirements of the REIT provisions as a result of certain development agreements entered into by the Company, such failure was due to reasonable cause and not due to willful neglect. For purposes of our opinions, we have not made an independent investigation of the representations contained in the Certificate, and consequently we have relied on the representations therein that the information contained in the Certificate or otherwise furnished to us accurately describes all material facts relevant to our opinions. Although we have not independently investigated the representations made to us in the Certificate, nothing has come to our attention that would lead us to question the accuracy of any such representations.

Based upon and subject to the foregoing:

(i) We are of the opinion that, 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 the Certificate) will enable it to continue to meet the requirements for qualification and taxation as a REIT under the Code; and

(ii) The information relating to U.S. federal income tax matters in the Registration Statement under "Risk Factors" and "Certain U.S. Federal Income Tax Considerations," 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.

We express no opinion other than the opinions expressly set forth herein (the "Opinions"). The Opinions are not binding on the Internal Revenue Service (the "IRS") and the IRS may disagree with the Opinions. Although we believe that the Opinions would be sustained if challenged, there can be no assurance that this will be the case.

The Opinions are based upon the law as it currently exists. Consequently, future changes in the law may cause the federal income tax treatment of the matters referred to herein to be materially and adversely different from that

described above (possibly on a retroactive basis). In addition, any variation in the facts from those set forth in the Registration Statement or the representations contained in the Certificate or otherwise provided to us may affect the conclusions stated in the Opinions. Moreover, the Company's qualification and taxation as a REIT depend upon the Company's ability to meet, through actual operating results, distribution levels, diversity of stock ownership and various other qualification tests imposed under the Code, none of which will be reviewed by us. Accordingly, no assurance can be given that the actual results of the Company's operations for any taxable year will satisfy the requirements for the Company to maintain its qualification as a REIT.

Neither this opinion nor any part hereof may be delivered to, or used or relied upon by, any person other than you without our prior written consent.

Very truly yours,

/s/ Cahill Gordon & Reindel LLP

FIRST INDUSTRIAL REALTY TRUST, INC.  
 COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS  
 (DOLLARS IN THOUSANDS)

	Three Months					
	Ended March 31, 2004	Year Ended December 31,				
	2003 (c)	2002 (c)	2001 (c)	2000 (c)	1999 (c)	
Income from Continuing Operations Before Minority Interest Allocable to Continuing Operations.....	\$ 6,051	\$ 35,945	\$ 48,859	\$ 99,166	\$95,711	\$111,374
Plus: Interest Expense and Amortization of Deferred Financing Costs.....	24,144	97,220	92,312	84,389	85,675	81,231
Earnings Before Income Allocated to Minority Interest and Fixed Charges.....	\$ 30,195	\$133,165	\$141,171	\$183,555	\$181,386	\$192,605
Fixed Charges and Preferred Stock Dividends (a).....	\$ 29,579	\$118,157	\$127,243	\$128,917	\$123,722	\$119,643
Ratio of Earnings to Fixed Charges and Preferred Stock Dividends (b).....	1.02x	1.13x	1.11x	1.42x	1.47x	1.61x

(a) Included in Fixed Charges and Preferred Stock Dividends is the write-off of initial offering costs associated with the redemption of Preferred Stock in the amount of \$3,707 and \$4,577 for the years ended December 31, 2002 and 2001, respectively.

(b) For purposes of computing the ratios of earnings to fixed charges and preferred stock dividends, earnings have been calculated by adding fixed charges (excluding capitalized interest) to income from continuing operations before minority interest allocable to continuing operations. Fixed charges consist of interest costs, whether expensed or capitalized and amortization of deferred financing costs.

(c) During the three months ended March 31, 2004, the Company sold twenty industrial properties that met the criteria established by the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets" ("FAS 144") to be included in discontinued operations. At March 31, 2004, the Company also owned two industrial properties classified as held for sale that met the criteria established by FAS 144 to be included in discontinued operations. In accordance with FAS 144, the results of operations of the twenty industrial properties sold during the three months ended March 31, 2004 and the two industrial properties held for sale at March 31, 2004 are included in discontinued operations. Income from continuing operations for the years ended December 31, 1999 through 2003 reported in the table above has been restated to reflect the reclassification of the net income attributable to these properties from continuing operations to discontinued operations. As a result, income from continuing operations and ratio of earnings to fixed charges and preferred stock dividends reported in the table above will not agree to the income from continuing operations and ratio of earnings to fixed charges and preferred stock dividends reported in the Company's 2003 Form 10-K.

FIRST INDUSTRIAL, L.P.  
COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES

(DOLLARS IN THOUSANDS)

	Three Months Ended	Year Ended December 31,				
	March 31, 2004	2003 (b)	2002 (b)	2001 (b)	2000 (b)	1999 (b)
Income from Continuing Operations.....	\$ 8,848	\$ 42,212	\$ 74,745	\$ 106,047	\$ 99,770	\$ 114,729
Plus: Interest Expense and Amortization of Deferred Financing Costs.....	24,098	96,959	89,297	80,583	82,568	78,094
Earnings Before Fixed Charges.....	<u>\$ 32,946</u>	<u>\$ 139,171</u>	<u>\$ 164,042</u>	<u>\$ 186,630</u>	<u>\$ 182,338</u>	<u>\$ 192,823</u>
Fixed Charges.....	<u>\$ 24,489</u>	<u>\$ 97,720</u>	<u>\$ 97,089</u>	<u>\$ 90,533</u>	<u>\$ 87,771</u>	<u>\$ 83,662</u>
Ratio of Earnings to Fixed Charges (a).....	<u>1.35x</u>	<u>1.42x</u>	<u>1.69x</u>	<u>2.06x</u>	<u>2.08x</u>	<u>2.30x</u>

- (a) For purposes of computing the ratios of earnings to fixed charges, earnings have been calculated by adding fixed charges (excluding capitalized interest) to income from continuing operations. Fixed charges consist of interest costs, whether expensed or capitalized and amortization of deferred financing costs.
- (b) During the three months ended March 31, 2004, the Operating Partnership sold 18 industrial properties that met the criteria established by the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets" ("FAS 144") to be included in discontinued operations. At March 31, 2004, the Operating Partnership also owned two industrial properties classified as held for sale that met the criteria established by FAS 144 to be included in discontinued operations. In accordance with FAS 144, the results of operations of the 18 industrial properties sold during the three months ended March 31, 2004 and the two industrial properties held for sale at March 31, 2004 are included in discontinued operations. Income from continuing operations for the years ended December 31, 1999 through 2003 reported in the table above has been restated to reflect the reclassification of the net income attributable to these properties from continuing operations to discontinued operations. As a result, income from continuing operations and ratio of earnings to fixed charges reported in the table above will not agree to the income from continuing operations and ratio of earnings to fixed charges reported in Operating Partnership's 2003 Form 10-K.



CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated March 9, 2004, except for Note 8 and Note 10, as to which the date is July 30, 2004, relating to the financial statements, which appear in First Industrial Realty Trust, Inc.'s Current Report on Form 8-K filed July 30, 2004. We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated March 9, 2004, except for Note 9 and Note 11, as to which the date is July 30, 2004, relating to the financial statements, which appear in First Industrial, L.P.'s Current Report on Form 8-K filed July 30, 2004. We also consent to the incorporation by reference of our reports dated March 9, 2004, relating to the financial statement schedules which appear in First Industrial Realty Trust, Inc.'s and First Industrial, L.P.'s respective Annual Report on Form 10-K for the year ended December 31, 2003. We also consent to the references to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

Chicago, Illinois  
July 30, 2004

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM T-1

Statement of Eligibility Under  
The Trust Indenture Act of 1939 of a  
Corporation Designated to Act as Trustee  
Check if an Application to Determine Eligibility of  
a Trustee Pursuant to Section 305(b)(2)

U.S. BANK NATIONAL  
ASSOCIATION (Exact name of  
Trustee as specified in its  
charter)

31-0841368  
I.R.S. Employer Identification No.

800 Nicollet Mall  
Minneapolis, Minnesota 55402

(Address of principal executive offices) (Zip Code)

Richard Prokosch  
U.S. Bank National Association  
60 Livingston Avenue  
St. Paul, MN 55107  
(651) 495-3918  
(Name, address and telephone number of agent for service)

First Industrial, L.P.  
(Issuer with respect to the Securities)

Delaware 36-3924586

(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

311 South Wacker Drive  
Suite 4000  
Chicago, Illinois 60606

(Address of Principal Executive Offices) (Zip Code)

Debt Securities  
(Title of the Indenture Securities)

FORM T-1

Item 1. GENERAL INFORMATION. Furnish the following information as to the Trustee.

- a) Name and address of each examining or supervising authority to which it is subject.

Comptroller of the  
Currency Washington, D.C.

- b) Whether it is authorized to exercise corporate trust powers. Yes

Item 2. AFFILIATIONS WITH OBLIGOR. If the obligor is an affiliate of the Trustee, describe each such affiliation. None

Items 3-15 Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.

Item 16. LIST OF EXHIBITS: List below all exhibits filed as a part of this statement of eligibility and qualification.

1. A copy of the Articles of Association of the Trustee.\*
2. A copy of the certificate of authority of the Trustee to commence business.\*
3. A copy of the certificate of authority of the Trustee to exercise

corporate trust powers.\*

4. A copy of the existing bylaws of the Trustee.\*
5. A copy of each Indenture referred to in Item 4. Not applicable.
6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939, attached as Exhibit 6.
7. Report of Condition of the Trustee as of March 31, 2004, published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 7.

\* Incorporated by reference to Registration Number 333-67188.

NOTE

The answers to this statement insofar as such answers relate to what persons have been underwriters for any securities of the obligors within three years prior to the date of filing this statement, or what persons are owners of 10% or more of the voting securities of the obligors, or affiliates, are based upon information furnished to the Trustee by the obligors. While the Trustee has no reason to doubt the accuracy of any such information, it cannot accept any responsibility therefor.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of St. Paul, State of Minnesota on the 21st of July, 2004.

U.S. BANK NATIONAL ASSOCIATION

By: /s/ Richard Prokosch

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Richard Prokosch  
Vice President

By: /s/ Benjamin J. Krueger

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Benjamin J. Krueger  
Assistant Vice President

Exhibit 6

CONSENT

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, U.S. BANK NATIONAL ASSOCIATION hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: July 21, 2004

U.S. BANK NATIONAL ASSOCIATION

By: /s/ Richard Prokosch  
-----  
Richard Prokosch  
Vice President

By: /s/ Benjamin J. Krueger  
-----  
Benjamin J. Krueger  
Assistant Vice President

Exhibit 7  
U.S. Bank National Association  
Statement of Financial Condition  
As of 3/31/2004

(\$000's)

	3/31/2004
<hr/>	
Assets	
Cash and Due From Depository Institutions	\$7,180,778
Federal Reserve Stock	0
Securities	45,038,794
Federal Funds	2,593,702
Loans & Lease Financing Receivables	116,474,594
Fixed Assets	1,789,213
Intangible Assets	10,532,022
Other Assets	7,996,466
	<hr/>
Total Assets	\$191,605,569
Liabilities	
Deposits	\$126,605,087
Fed Funds	5,698,785
Treasury Demand Notes	3,981,328
Trading Liabilities	252,912
Other Borrowed Money	23,295,560
Acceptances	148,067
Subordinated Notes and Debentures	5,807,310
Other Liabilities	5,587,914
	<hr/>
Total Liabilities	\$171,376,963
Equity	
Minority Interest in Subsidiaries	\$1,005,645
Common and Preferred Stock	18,200
Surplus	11,677,397
Undivided Profits	7,527,364
	<hr/>
Total Equity Capital	\$20,228,606
Total Liabilities and Equity Capital	\$191,605,569

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To the best of the undersigned's determination, as of the date hereof, the above financial information is true and correct.

U.S. Bank National Association

By: /s/ Richard Prokosch  
-----  
Vice President

Date: July 21, 2004