

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

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FORM 8-K

CURRENT REPORT

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

Date of Report: February 6, 1998

Date of earliest event reported: February 4, 1998

First Industrial Realty Trust, Inc.  
(Exact name of registrant as specified in its charter)

Maryland  
(State or other  
jurisdiction of organization)

1-13102  
(Reporting File  
Number)

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

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

60606  
(Zip Code)

(312) 344-4300

(Registrant's telephone number, including area code)

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Item 7. Financial Statements and Exhibits

Exhibit  
Number Exhibit

- 1 Underwriting Agreement relating to Depositary Shares each representing 1/100 of a share of 7.95% Series D Cumulative Preferred Stock of First Industrial Realty Trust, Inc. (the "Company") with a liquidation preference equivalent to \$25.00 per Depositary Share.
- 4.1 Articles Supplementary to the Amended and Restated Articles of Incorporation of the Company relating to the Company's Series D Cumulative Preferred Stock, par value \$.01.
- 4.2 Deposit Agreement.
- 4.3 Certificate representing Depositary Receipts to be issued pursuant to the Deposit Agreement.
- 4.4 Stock Certificate for Series D Cumulative Preferred Stock.

SIGNATURES

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

FIRST INDUSTRIAL REALTY TRUST, INC.

By: /s/ Michael J. Havala

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Name: Michael J. Havala  
Title: Chief Financial Officer, Treasurer  
and Secretary

Date: February 6, 1998

Exhibit Index

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4.1	Articles Supplementary to the Amended and Restated Articles of Incorporation of the Company relating to the Company's Series D Cumulative Preferred Stock, par value \$.01.
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5,000,000 Shares  
FIRST INDUSTRIAL REALTY TRUST, INC.  
Depositary Shares Each Representing 1/100 of a  
Share of 7.95% Series D Cumulative Preferred Stock  
(Liquidation Preference Equivalent to \$25.00 per Depositary Share)

UNDERWRITING AGREEMENT

January 30, 1998

SMITH BARNEY INC.  
DONALDSON, LUFKIN & JENRETTE  
SECURITIES CORPORATION  
BT ALEX. BROWN INCORPORATED  
MERRILL LYNCH, PIERCE, FENNER  
& SMITH INCORPORATED  
J.P. MORGAN SECURITIES INC.  
PRUDENTIAL SECURITIES INCORPORATED  
as Representatives of the several  
Underwriters listed on Schedule  
I hereto

c/o Smith Barney Inc.  
388 Greenwich Street  
New York, New York 10013

Dear Ladies and Gentlemen:

First Industrial Realty Trust, Inc., a Maryland corporation (the "Company"), proposes to issue and sell 5,000,000 depositary shares each representing 1/100 of a share of 7.95% Series D Cumulative Preferred Stock (Liquidation Preference Equivalent to \$25.00 per Depositary Share) of the Company, par value \$.01 per share (the "Firm Shares"), to be issued under a deposit agreement (the "Deposit Agreement") between the Company and First Chicago Trust Company, as Depositary (the "Depositary"), to the several underwriters named in Schedule I hereto (the "Underwriters") for whom you are acting as Representatives (the "Representatives"). The Company also proposes to issue and sell to the several Underwriters not more than 750,000 additional depositary shares each representing 1/100 of a share of 7.95% Series D Cumulative Preferred Stock (Liquidation Preference Equivalent to \$25.00 per Depositary Share), par value \$.01 per share (the "Additional Shares"), if requested by the Underwriters as provided in Section 2 hereof. The Firm Shares and the Additional Shares are herein collectively called the "Shares." The Shares to be outstanding after giving effect to the sales contemplated hereby are hereinafter referred to as the Series D Preferred Stock.

1. Registration Statement and Prospectus. The Company and the Operating Partnership have prepared and filed with the Securities and Exchange Commission (the "Commission") in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder (collectively called the "Act"), a registration statement on Form S-3 (Registration No. 333-43641) including a preliminary prospectus relating to the registration of the Shares and such other securities which may be offered from time to time by the Company and/or the Operating Partnership, as the case may be, in accordance with Rule 415 under the Act. Such registration statement (as amended) was declared effective by the Commission on January 27, 1998. Such registration statement (as amended), on the one hand, and the prospectus constituting a part thereof and the prospectus supplement relating to the offering of the Shares provided to the Underwriters by the Company (whether or not such prospectus supplement is required to be filed with the Commission by the Company pursuant to the Act) (the "Prospectus Supplement"), on the other hand, including all documents incorporated therein by reference pursuant to Item 12 of Form S-3 under the Act, as from time to time amended or supplemented pursuant to the Act, the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder (collectively called the "Exchange Act"), are referred to herein as the "Registration Statement" and the "Prospectus," respectively; provided, however, that a Prospectus Supplement shall be deemed to have supplemented the Prospectus only with respect to the offering of the Shares to which it relates. Any registration statement

(including any amendment or supplement thereto or information which is deemed part thereof) filed by the Company under Rule 462(b) of the Act (a "Rule 462(b) Registration Statement") shall be deemed to be part of the "Registration Statement" as defined herein and any prospectus or any term sheet as contemplated by Rule 434 of the Act (a "Term Sheet") (including any amendment or supplement thereto or information which is deemed part thereof) included in such registration statement shall be deemed to be part of the "Prospectus," as defined herein. All references in this Agreement to financial statements and schedules and other information which is "contained," "included," "described" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement or Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include, without limitation, even though not specifically stated, any document filed under the Exchange Act which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be. Capitalized terms used but not otherwise defined herein shall have the meanings given to those terms in the Prospectus.

2. Agreements to Sell and Purchase. On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to issue and sell the Firm Shares and each Underwriter agrees, severally and not jointly, to purchase from the Company at a price per share of \$24.2125 (the "Purchase Price"), the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto (or such number of Firm Shares increased as set forth in Section 9 hereof).

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to issue and sell the Additional Shares, and the Underwriters shall have the right to purchase, severally and not jointly, the Additional Shares from the Company at the Purchase Price. Additional Shares may be purchased solely for the purpose of covering over-allotments made in connection with the offering of the Firm Shares. The Underwriters may exercise their right to purchase Additional Shares in whole or in part from time to time by giving written notice thereof to the Company within thirty (30) days after the date of this Agreement, provided that if such thirtieth (30th) day is not a New York Stock Exchange (the "NYSE") trading day, the thirtieth (30th) day will be the next succeeding NYSE trading day. Such notice shall specify the aggregate number of Additional Shares to be purchased pursuant to such exercise and the date for payment and delivery thereof. The date specified in any such notice shall be a business day (i) no earlier than the Closing Date (as hereinafter defined), (ii) no later than seven business days after such notice has been given and (iii) no earlier than two (2) business days after such notice has been given, unless otherwise agreed upon by the Underwriters and the Company. If any Additional Shares are to be purchased, each Underwriter, severally and not jointly, agrees to purchase from the Company the number of Additional Shares (subject to such adjustments to eliminate fractional shares as you may determine) which bears the same proportion to the total number of Additional Shares to be purchased from the Company as the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I bears to the total number of Firm Shares (or such number of Firm Shares increased as set forth in Section 9 hereof).

3. Terms of Public Offering. The Company is advised by you that the Underwriters propose (i) to make a public offering (the "Offering") of their respective portions of the Shares as soon after the execution and delivery hereof as in your judgment is advisable (and, if necessary, any post-effective amendment to the Registration Statement) and (ii) initially to offer the Shares upon the terms set forth in the Prospectus.

4. Delivery and Payment. Delivery to the Underwriters of certificates for and payment of the Purchase Price for the Firm Shares shall be made, subject to Section 9, at 10:00 A.M., New York City time, on the fourth business day (or the third

business day if required under Rule 15c6-1 of the Exchange Act) following the date hereof, or such other time not later than ten business days after such date as shall be agreed upon by the Underwriters and the Company (such time and date of payment and delivery being herein called the "Closing Date") at the offices of Rogers & Wells, 200 Park Avenue, New York, New York 10166. The Closing Date and the location of, delivery of and the form of payment for the Firm Shares may be varied by agreement between you and the Company.

Delivery to the Underwriters of certificates for and payment of the Purchase Price for any Additional Shares to be purchased by the Underwriters shall be made at the offices of Rogers & Wells, 200 Park Avenue, New York, New York 10166, or at such other place as you shall designate, at 10:00 A.M., New York City time, on the date specified in the applicable exercise notice given by you pursuant to Section 2 (an "Option Closing Date"). Any such Option Closing Date and the location of, delivery of and the form of payment for such Additional Shares may be varied by agreement between you and the Company.

Certificates for the Shares shall be registered in such names and issued in such denominations as you shall request in writing not later than two full business days prior to the Closing Date or an applicable Option Closing Date, as the case may be. Such certificates shall be made available to you for inspection not later than 9:30 A.M., New York City time, on the business day next preceding the Closing Date or an applicable Option Closing Date, as the case may be. Certificates in temporary form evidencing the Shares shall be delivered to you on the Closing Date or an applicable Option Closing Date, as the case may be, with any transfer taxes thereon duly paid by the Company, for the respective accounts of the several Underwriters, against payment of the Purchase Price therefor by intra-bank transfer or wire transfer of same day funds to such account as may be designated by the Company at least two business days prior to the Closing Date. Any Underwriter may (but shall not be obligated to) make payment of the Purchase Price for the Firm Shares or the Additional Shares, if any, to be purchased by any other Underwriter whose payment has not been received by the Closing Date or the applicable Option Closing Date, as the case may be, but any such payment shall not relieve such Underwriter from its obligations hereunder.

5. Agreements of the Company and the Operating Partnership. Each of the Company and the Operating Partnership severally agrees with you as follows:

(a) In respect of the offering of Shares, the Company will (i) prepare a Prospectus Supplement setting forth the number of Shares covered thereby and their terms not otherwise specified in the Prospectus pursuant to which the Shares are being issued, the names of the Underwriters participating in the offering and the number of Shares which

each severally has agreed to purchase, the names of the Underwriters acting as co-managers in connection with the offering, the price at which the Shares are to be purchased by the Underwriters from the Company, the initial public offering price, the selling concession and reallowance, if any, and such other information as the Underwriters and the Company deem appropriate in connection with the offering of the Shares, (ii) file the Prospectus in a form approved by you pursuant to Rule 424 under the Act no later than the Commission's close of business on the second Business Day following the date of determination of the offering price of the Shares and (iii) furnish copies of the Prospectus to the Underwriters and to such dealers as you shall specify in New York City as soon as practicable after the date of this Agreement in such quantities as you may reasonably request.

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

(c) The Company will furnish to you without charge, such number of conformed copies of the Registration Statement as first filed with the Commission and of each amendment to it, including all exhibits and documents incorporated by reference therein, and furnish to you such number of conformed copies of the Registration Statement as so filed and of each amendment to it and document incorporated



by reference therein, as you may reasonably request. If applicable, the copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

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

(e) If, at any time when the Prospectus is required to be delivered under the Act or the Exchange Act in connection with sales of Shares, any event shall occur as a result of which, in the opinion of counsel for the Underwriters, it becomes necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances existing when the Prospectus is delivered to a purchaser, not misleading, or if it is necessary to amend or supplement the Prospectus to comply with any law, the Company will forthwith prepare and file with the Commission an appropriate amendment or supplement to the Prospectus (in form and substance reasonably satisfactory to counsel for the Underwriters) so that the statements in the Prospectus, as so amended or supplemented, will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when it is so delivered, not misleading, or so that the Prospectus will comply with any law, and to furnish to each Underwriter and to such dealers as you shall specify, such number of copies thereof as such Underwriter or dealers may reasonably request.

(f) The Company will use its best efforts, in cooperation with the Underwriters, to qualify, register or perfect exemptions for the Shares for offer and sale by the several Underwriters under the applicable state securities or Blue

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

(g) To make generally available to the Company's stockholders as soon as reasonably practicable but not later than sixty (60) days after the close of the period covered thereby (ninety (90) days in the event the close of such period is the close of the Company's fiscal year), an earnings statement (in form complying with the provisions of Rule 158 of the Act) covering a period of at least twelve (12) months after the effective date of the Registration Statement (but in no event commencing later than ninety (90) days after such date) which shall satisfy the provisions of Section 11(a) of the Act, and, if required by Rule 158 of the Act, to file such statement as an exhibit to the next periodic report required to be filed by the Company under the Exchange Act covering the period when such earnings statement is released.

(h) During the period of five years after the date of this Agreement, the Company will furnish to you as soon as available (x) a copy of each regular and periodic report, financial statement or other publicly available information of the Company and any of its Subsidiaries mailed to the holders of the Shares or filed with the Commission or any securities exchange and (y) such other publicly available information concerning the Company and any of its Subsidiaries as you may reasonably request.

(i) During the period when the Prospectus is required to be delivered under the Act or the Exchange Act in connection with sales of the Shares, to file all documents required to be filed by it with the Commission pursuant to Section 13, 14 or 15 of the Exchange Act within the time periods required by the Exchange Act.

(j) The Company will pay all costs, expenses, fees and taxes incident to (i) the preparation, printing, filing and distribution under the Act of the Registration Statement and any amendment thereto (including financial statements and exhibits), the Prospectus and all amendments and supplements to any of them prior to or during the period specified in Section 5(c), (ii) the printing and delivery of this Agreement, the Deposit Agreement and the Blue Sky Memorandum, (iii) the qualification or registration of the Shares for offer and sale under the securities, Blue Sky laws or real estate syndication laws of the several states in accordance with Section 5(g) hereof, (iv) the fee of and the filings and clearance, if any, with the National Association of Securities Dealers, Inc. (the "NASD") in connection with the Offering, (v) the fees charged by nationally recognized statistical rating organizations for the rating of the Shares, (vi) the fee of and the listing of the Shares on the New York Stock Exchange, Inc. ("NYSE"), (vii) furnishing such copies of the Registration Statement, the Prospectus and all amendments and supplements thereto as may be requested for use in connection with the offering or sale of the Shares by the Underwriters or by dealers to whom Shares may be sold, (viii) the preparation, issuance and delivery of certificates for the Shares to the Underwriters, (ix) the costs and charges of any transfer agent or registrar, (x) the costs and expenses of the Depositary under the Deposit Agreement, (xi) any expenses incurred by the Company in connection with a "road show" presentation to potential investors, (xii) any transfer taxes imposed on the sale by the Company of the Shares to the Underwriters and (xiii) the fees and disbursements of the Company's counsel and accountants.

(k) The Company will use its best efforts to maintain the listing of the Shares on the NYSE for a period of two years after the Closing Date and thereafter unless the Company's Board of Directors determines that it is no longer in the best interests of the Company for the Shares to continue to be so listed.

(l) The Company will use its best efforts to do and perform all things required to be done and performed under this Agreement by the Company prior to the Closing Date or any Option Closing Date, as the case may be, and to satisfy all conditions precedent to the delivery of the Shares.

(m) The Company will use the net proceeds received by it from the sale of the Shares in the manner specified in the Prospectus Supplement under "Use of Proceeds."

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

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

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

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

(b) The Registration Statement and the Prospectus, including the financial statements, schedules and related notes included in the Prospectus and, if applicable, any Term Sheet to the Prospectus, as of the date hereof and at the time the Registration Statement became effective, and when any post-effective amendment to the Registration Statement or Rule 462(b) Registration Statement becomes effective or any amendment or supplement to the Prospectus is filed with the Commission, did or will comply in all material respects with all applicable provisions of the Act and will contain all statements required to be stated therein in accordance with the Act. The Prospectus, including the financial statements, schedules and related notes included or incorporated by reference in the Prospectus and, if applicable, any Term Sheet to the Prospectus, as of the date hereof and at the time the Registration Statement became effective, and at the Closing Date, and when any post-effective amendment to the Registration Statement or Rule 462(b) Registration Statement becomes effective or any amendment or supplement to the Prospectus is filed with the Commission, did or will comply in all material respects with all applicable provisions of the Act and will contain all statements required to be stated therein in accordance with the Act. On the date the Registration Statement was declared effective, on the date hereof, on the date of filing of any Rule 462(b) Registration Statement and on the Closing Date no part of the Registration Statement or any amendment did or will con-

tain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading. On the date the Registration Statement was declared effective, on the date hereof, as of its date, on the date of filing of any Rule 462(b) Registration Statement and at the Closing Date, the Prospectus did not and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If a Rule 462(b) Registration Statement is filed in connection with the offering and sale of the Shares, the Company will have complied or will comply with the requirements of Rule 111 under the Act relating to the payment of filing fees therefor. The foregoing representations and warranties in this Section 6(b) do not apply to any statements or omissions made in reliance on and in conformity with information relating to any Underwriter furnished in writing to the Company by the Underwriters specifically for inclusion in the Registration Statement or Prospectus or any amendment or supplement thereto. The Company has not distributed, and prior to the later of the Closing Date and the completion of the distribution of the Shares, will not distribute, any offering material in connection with the offering or sale of the Shares other than the Registration Statement, the Prospectus or any other materials, if any, permitted by the Act (which were disclosed to the Underwriters and Underwriters' counsel).

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

(d) The documents incorporated or deemed to be incorporated by reference in the Prospectus pursuant to Item 12 of Form S-3 under the Act, at the time they were, or hereafter are, filed with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together with other information included and incorporated by reference in the Prospectus, at the time the Registration Statement became effective, as of the date of the Prospectus, and as of the Closing Date, or during the period specified in Section 5(c), did not and will not include an untrue statement of a material fact or omit to state a material fact necessary to make the state-

ments therein, in the light of the circumstances under which they were made, not misleading. The foregoing representations and warranties in this Section 6(d) do not apply to any statements or omissions made in reliance on and in conformity with information relating to any Underwriter furnished in writing to the Company by the Underwriters specifically for inclusion in the Registration Statement or Prospectus or any amendment or supplement thereto.

(e) The Company has been duly organized and is validly existing as a corporation under and by virtue of the laws of the State of Maryland, and is in good standing with the State Department of Assessments and Taxation of Maryland. The Operating Partnership has been duly organized and is validly existing as a limited partnership in good standing under and by virtue of the Delaware Uniform Limited Partnership Act. Each of First Industrial Financing Partnership, L.P. (the "Financing Partnership"), First Industrial Securities, L.P. ("Securities, L.P."), First Industrial Mortgage Partnership, L.P. (the "Mortgage Partnership"), First Industrial Indianapolis, L.P. ("FII"), First Industrial Harrisburg, L.P. ("FIH"), First Industrial Development Services L.P. ("DSG") and First Industrial Pennsylvania Partnership, L.P. ("FIP") (the Financing Partnership, Securities, L.P., the Mortgage Partnership, FII, FIH, DSG and FIP are referred to collectively herein as the "Partnership Subsidiaries") has been duly organized and is validly existing as a limited partnership in good standing under and by virtue of the laws of its jurisdiction of organization. FR Development Services, L.L.C. ("FRDS") has been duly organized and is validly existing as a limited liability corporation in good standing under and by virtue of the laws of its jurisdiction of organization. Each of First Industrial Securities Corporation ("FISC"), First Industrial Finance Corporation ("FIFC"), First Industrial Mortgage Corporation ("FIM"), First Industrial Pennsylvania Corporation ("FIPC"), First Industrial Indianapolis Corporation ("FIIC"), First Industrial Harrisburg Corporation ("FIHC"), FI Development Services Corporation ("FIDSG"), FR Development Services, Inc. ("FRD"), FR Acquisitions, Inc. ("FRA") and First Industrial Management Corporation ("FIMC," and together with FISC, FIFC, FIM, FIPC, FIIC, FIHC, FIDSG and FRA referred to collectively herein as the "Corporate Subsidiaries," and the Partnership Subsidiaries and the Corporate Subsidiaries are referred to herein collectively as the "Subsidiaries") has been duly organized and is validly existing as a corporation in good standing under and by virtue of the laws of its jurisdiction of incorporation. Other than the Corporate Subsidiaries and the Partnership Subsidiaries, no entities in which the Company owns any equity securities constitute, individually or in the aggregate, a "significant subsidiary" under Rule 1-02 of Regulation S-X promulgated under the Exchange Act. The Company is the sole general partner of the Operating Partnership. FIFC is a wholly-owned subsidiary of the Company

and is the sole general partner of the Financing Partnership. FIM is a wholly-owned subsidiary of the Company and is the sole general partner of the Mortgage Partnership. FISC is a wholly-owned subsidiary of the Company and is the sole general partner of Securities, L.P. The Operating Partnership and FISC are the only limited partners of Securities, L.P. FIPC is a wholly-owned subsidiary of the Company and is the sole general partner of FIP. FIIC is a wholly-owned subsidiary of the Company and is the sole general partner of FII. FIHC is a wholly-owned subsidiary of the Company and is the sole general partner of FIH. FIDSG is a wholly-owned subsidiary of the Company and is the sole general partner of DSG. FRDS is a wholly-owned subsidiary of the Operating Partnership. FRD is a subsidiary controlled by the Operating Partnership. The Operating Partnership is the sole limited partner of each Partnership Subsidiary (except for Securities, L.P.). The Company, the Operating Partnership and each of the Subsidiaries has, and at the Closing Date and, if later, at the Option Closing Date will have, full corporate or partnership power and authority, as the case may be, to conduct all the activities conducted by it, to own, lease or operate all the properties and other assets owned, leased or operated by it and to conduct the business in which it engages or proposes to engage as described in the Registration Statement or the Prospectus and the transactions contemplated hereby and thereby. The Company and each of the Corporate Subsidiaries is, and at the Closing Date and, if later, an Option Closing Date, will be, duly qualified or registered to do business and in good standing as a foreign corporation in all jurisdictions in which the nature of the activities conducted by it or the character of the properties and assets owned, leased or operated by it makes such qualification or registration necessary, ex-

cept where failure to obtain such qualification or registration will not have a material adverse effect on (1) the condition, financial or otherwise, or the earnings, assets or business affairs or prospects of the Operating Partnership, the Company and their Subsidiaries, taken as a whole, or on the 493 in service properties owned, directly or indirectly, by the Company as of September 30, 1997 (the "Properties",) taken as a whole, (2) the issuance, validity or enforceability of the Securities or the enforceability of the Indenture or (3) the consummation of any of the transactions contemplated by this Agreement, any Terms Agreement and/or the Indenture (each a "Material Adverse Effect"), which jurisdictions of foreign qualification or registration are attached on Schedule II hereto. The Operating Partnership and each of the Partnership Subsidiaries is, and at the Closing Date and, if later, the Option Closing Date will be, duly qualified or registered to do business and in good standing as a foreign limited partnership in all jurisdictions in which the nature of the activities conducted by it or the character of the assets owned, leased or operated by it makes such qualification or registration necessary, except where failure to obtain such qualification or registration will not have a Material Adverse Effect, which jurisdictions of foreign qualification or registration are attached on Schedule II hereto. Complete and correct copies of the articles of incorporation and of the by-laws of the Company, the certificate of limited partnership and agreement of limited partnership of the Operating Partnership and the charter documents, partnership agreements and other organizational documents of the Subsidiaries and all amendments thereto as have been requested by the Underwriters or their counsel have been delivered to the Underwriters or their counsel.

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

(g) As of the Closing Date, the partnership agreement of the Operating Partnership will have been duly authorized, executed and delivered by the Company, as the general partner and as a limited partner, and the partnership agreement of each Partnership Subsidiary, other than the Operating



Partnership, will have been duly authorized, validly executed and delivered by each partner thereto and is valid, legally binding and enforceable in accordance with its terms subject to (i) the effect of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors and (ii) the effect of general principles of equity, whether enforcement is considered in a proceeding in equity or at law, and the discretion of the court before which any proceeding therefor may be brought; immediately following the Closing Date, all of the issued and outstanding shares of capital stock of each Corporate Subsidiary will have been duly authorized and are validly issued, fully paid and non-assessable and (except as described in the Prospectus) will be owned directly or indirectly by the Company or the Operating Partnership, free and clear of all security interests, liens and encumbrances, (except for pledges in connection with the loan agreements of the Company and the Subsidiaries) and all of the partnership interests in each Partnership Subsidiary will have been duly authorized, validly issued and fully paid and (except as described in the Prospectus) will be owned directly or indirectly by the Company or the Operating Partnership, free and clear of all security interests, liens and encumbrances (except for pledges in connection with the loan agreements of the Company and the Subsidiaries).

(h) The financial statements, supporting schedules and related notes included, or incorporated by reference, in the Registration Statement and the Prospectus comply in all material respects with the requirements of the Act and the Exchange Act, as applicable, and present fairly the consolidated financial condition of the entity or entities or group presented or included therein, as of the respective dates thereof, and its consolidated results of operations and cash flows for the respective periods covered thereby, are all in conformity with generally accepted accounting principles applied on a consistent basis throughout the entire period involved, except as otherwise disclosed in the Prospectus. The financial information and data included or incorporated by reference in the Registration Statement and the Prospectus present fairly the information included or incorporated by reference therein and have been prepared on a basis consistent, except as may be noted therein, with that of the financial statements, schedules and notes included or incorporated by reference in the Registration Statement and the Prospectus and the books and records of the respective entity or entities or group presented or included therein. Except as otherwise noted in the Prospectus, pro forma and/or as adjusted financial information included in the Prospectus has been prepared in accordance with the applicable requirements of the Act and the American Institute of Certified Public Accountants ("AICPA") guidelines with respect to pro forma and as adjusted financial information,

and includes all adjustments necessary to present fairly the pro forma and/or as adjusted financial condition of the entity or entities or group presented or included or incorporated by reference therein at the respective dates indicated and the results of operations and cash flows for the respective periods specified. The Company's ratio of earnings to fixed charges and preferred dividend requirements included in the Prospectus and in Exhibit 12 to the Registration Statement have been calculated in compliance with Item 503(d) of Regulation S-K of the Commission. No other financial statements (or schedules) of the Company, or any predecessor of the Company are required by the Act or the Exchange Act to be included in the Registration Statement or the Prospectus. Coopers & Lybrand L.L.P. (the "Accountants"), who have reported on such financial statements, schedules and related notes, are independent public accountants with respect to the Company as required by the Act.

(i) Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus and prior to the Closing Date, (i) there has not been and will not have been, except as set forth in or contemplated by the Registration Statement and the Prospectus, any change in the capitalization, long term or short term debt or in the capital stock or equity of the Company or any of its Subsidiaries which would be material to the Company and its Subsidiaries considered as one enterprise (anything which would be material to the Company and its Subsidiaries, considered as one enterprise, being hereinafter referred to as "Material"), (ii) except as described in the Prospectus, neither the Company nor any of its Subsidiaries has incurred nor will any of them incur any liabilities or obligations, direct or contingent, which would be Material, nor has any of them entered into nor will any of them enter into any transactions, other than pursuant to this Agreement and the transactions referred to herein or as contemplated in the Prospectus, which would be Material, (iii) there has not been any Material Adverse Effect, and (iv) except for regular quarterly distributions on the Company's shares of common stock, par value \$0.01 per share (the "Common Stock"), and the dividends on the shares of the Company's (a) Series A Preferred Stock, par value \$0.01 per share (the "Series A Preferred Stock"), (b) Depositary Shares each representing 1/100 of a share of 8 3/4 Series B Preferred Stock (the "Series B Preferred Stock") and (c) Depositary Shares each representing 1/100 of a share of 8 Series C Preferred Stock (the "Series C Preferred Stock"), the Company has not paid or declared and will not pay or declare any dividends or other distributions of any kind on any class of its capital stock.

(j) Neither the Company nor any of its Subsidiaries is, or as of the Clos-

ing Date or, if later, an Option Closing Date, will be, required to be registered under the Investment Company Act of 1940, as amended (the "1940 Act").

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

(l) The Company and each of its Subsidiaries (i) has, and at the Closing Date or, if later, an Option Closing Date, will have, (A) all governmental licenses, permits, consents, orders, approvals and other authorizations necessary to carry on its business as contemplated in the Prospectus and are in material compliance with such, and (B) complied in all material respects with all laws, regulations and orders applicable to it or its business and (ii) is not, and at the Closing Date or, if later, an Option Closing Date, will not be, in breach of or default in the performance or observance of any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement, lease, contract, joint venture or partnership agreement or other agreement or instrument (collectively, a "Contract or Other Agreement") or under any applicable law, rule, order, administrative regulation or administrative or court decree to which it is a party or by which any of its other assets or properties or by which the Properties are bound or affected, except where such default, breach or failure will not, either singly or in the aggregate, have a Material Adverse Effect. To the knowledge of the Company and each of its Subsidiaries, after due inquiry, no other party under any Material contract or other agreement to which it is a party is in default thereunder, except where such default will not have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is, nor at the Closing Date or, if later, an Option Closing Date, will any of them be, in violation of any provision of its articles of incorporation, by-laws, certificate of limited partnership, partnership agreement or other organizational document, as the case may be.

(m) No Material consent, approval, authorization or order of, or any filing or declaration with, any court or governmental agency or body or any other entity is required in connection with the offering, issuance or sale of the

Shares hereunder except such as have been obtained under the Act and the Exchange Act and such as may be required under state securities, Blue Sky or real estate syndication laws, or the by-laws, the corporate financing rule or the conflict of interest rule of the NASD or the requirements of the NYSE in connection with the purchase and distribution by the Underwriters of the Shares or such as have been received prior to the date of this Agreement.

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

conflicts, the imposition or occurrence of which would not have a Material Adverse Effect.

(o) As of the Closing Date or, if later, an Option Closing Date, the Company and each of its subsidiaries will have good and marketable title to all Material properties and assets described in the Prospectus as owned by it, free and clear of all liens, encumbrances, claims, security interests and defects, except such as are described in the Registration Statement or the Prospectus, or such as secure the loan facilities of the Company and the Subsidiaries, or would not result in a Material Adverse Effect.

(p) To the knowledge of the Company: (i) no lessee of any portion of the Properties is in default under any of the leases governing such properties and there is no event which, but for the passage of time or the giving of notice, or both, would constitute a default under any of such leases, except in each case such defaults that would not have a Material Adverse Effect; (ii) the current use and occupancy of each of the Properties complies in all material respects with all applicable codes and zoning laws and regulations, except for such failures to comply which would not individually or in the aggregate have a Material Adverse Effect; and (iii) there is no pending or threatened condemnation, zoning change, environmental or other proceeding or action that will in any material respect affect the size of, use of, improvements on, construction on, or access to the Properties except such proceedings or actions that would not have a Material Adverse Effect. (q) The Company and the Partnership Subsidiaries have property, title, casualty and liability insurance in favor of the Company or the Partnership Subsidiaries with respect to each of the Properties, in an amount and on such terms as is reasonable and customary for businesses of the type conducted by the Company and the Partnership Subsidiaries except in such instances where the tenant is carrying such insurance or the tenant is self-insuring such risks.

(r) Except as disclosed in the Prospectus, and, except for activities, conditions, circumstances or matters that would not have a Material Adverse Effect, (A) to the knowledge of the Company and its Subsidiaries, after due inquiry, the operations of the Company and its Subsidiaries are in compliance with all Environmental Laws (as defined below) and all requirements of applicable permits, licenses, approvals and other authorizations issued pursuant to Environmental Laws; (B) to the knowledge of the Company and its Subsidiaries, after due inquiry, none of the Company or its Subsidiaries has caused or suffered to occur any Release (as defined below) of any Hazardous Substance (as defined below) into the Environment (as defined below) on, in, under or from any Property, and no condition exists on, in, under or

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

As used herein, "Hazardous Substance" shall include any hazardous substance, hazardous waste, toxic substance, pollutant or hazardous material, including, without limitation, oil, petroleum or any petroleum-derived substance or waste, asbestos or asbestos-containing materials, PCBs, pesticides, explosives, radioactive materials, dioxins, urea formaldehyde insulation or any constituent of any such substance, pollutant or waste which is subject to regulation under any Environmental Law (including, without limitation, materials listed in the United States Department of Transportation Optional Hazardous Material Table, 49 C.F.R. ss. 172.101, or in the EPA's List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302); "Environment" shall mean any surface water, drinking water, ground water, land surface, subsurface strata, river sediment, buildings, structures, and ambient, workplace and indoor and outdoor air; "Environmental Law" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. ss. 9601 et seq.) ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. ss. 6901, et seq.), the Clean Air Act, as amended (42 U.S.C. ss. 7401, et seq.), the Clean Water Act, as amended (33 U.S.C. ss. 1251, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. ss. 2601, et seq.), the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. ss. 651, et

seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801, et seq.), and all other federal, state and local laws, ordinances, regulations, rules and orders relating to the protection of the environment or of human health from environmental effects; "Governmental Authority" shall mean any federal, state or local governmental office, agency or authority having the duty or authority to promulgate, implement or enforce any Environmental Law; "Lien" shall mean, with respect to any Property, any mortgage, deed of trust, pledge, security interest, lien, encumbrance, penalty, fine, charge, assessment, judgment or other liability in, on or affecting such Property; and "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, emanating or disposing of any Hazardous Substance into the Environment, including, without limitation, the abandonment or discard of barrels, containers, tanks (including, without limitation, underground storage tanks) or other receptacles containing or previously containing and containing a residue of any Hazardous Substance.

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

(s) The Company and its Subsidiaries are organized and operate in a manner so as to qualify as a REIT under Sections 856 through 860 of the Code and have elected to be taxed as a REIT under the Code commencing with the taxable year ending December 31, 1994. The Company and its Subsidiaries intend to continue to qualify as a REIT for the foreseeable future.

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

(u) On the Closing Date, the Shares will be duly authorized for listing on the NYSE subject to official notice of issuance.

(v) None of the Company or any of its Subsidiaries is involved in any labor dispute nor, to the knowledge of the

Company or its Subsidiaries, after due inquiry, is any such dispute threatened which would have a Material Adverse Effect.

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

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

(y) Each of the Partnership Subsidiaries is properly treated as a partnership for federal income tax purposes and not as a "publicly traded partnership."

(z) No relationship, direct or indirect, exists between or among the Company or the Subsidiaries on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or the Subsidiaries on the other hand, which is required by the Act to be described in the Registration Statement and the Prospectus which is not so described.

(aa) The Company has not taken and will not take, directly or indirectly, any action designed to, or that might be reasonably expected to, cause or result in stabilization or manipulation of the price of the Shares, and the Company has not distributed and have agreed not to distribute any prospectus or other offering material in connection with the offering and sale of the Shares other than the Prospectus, any preliminary prospectus filed with the Commission or other material permitted by the Securities Act (which were disclosed to you and your counsel).

(bb) The Company maintains a system of internal accounting controls sufficient to provide reasonable assur-



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

(cc) The Shares will have the following investment grade ratings from each of Standard & Poor's Corporation ("S&P") ("BBB-"), Moody's Investors Service, Inc. ("Moody's") ("baa3"), Fitch Investors Services, L.P. ("Fitch") ("BBB") and Duff & Phelps ("D&P") ("BBB-"), at the Closing Date, and, if later, the Option Closing Date.

(dd) No stop order suspending the effectiveness of the Registration Statement or any part thereof has been issued and no proceeding for that purpose has been instituted, or to the knowledge of the Company, threatened by the Commission or by the state securities authority of any jurisdiction. No order preventing or suspending the use of the Prospectus has been issued and no proceeding for that purpose has been instituted or, to the knowledge of the Company, threatened by the Commission or by the state securities authority of any jurisdiction.

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

7. Indemnification and Contribution. (a) The Company agrees to indemnify and hold harmless each of you and each other Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages, liabilities and expenses (including reasonable costs of investigation) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or the Prospectus or in any amendment or supplement thereto, or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements not misleading, except insofar as such losses, claims, damages, liabilities or expenses arise out of or are based upon any untrue statement or omission or alleged untrue statement or omission which has been made therein or omitted therefrom in reliance upon and in

conformity with the information relating to such Underwriter furnished in writing to the Company by or on behalf of any Underwriter through you expressly for use in connection therewith. The foregoing indemnity agreement shall be in addition to any liability which the Company may otherwise have.

(b) If any action, suit or proceeding shall be brought against any Underwriter or any person controlling any Underwriter in respect of which indemnity may be sought against the Company, such Underwriter or such controlling person shall promptly notify the Company and the Company shall assume the defense thereof, including the employment of counsel and payment of all fees and expenses. Such Underwriter or any such controlling person shall have the right to employ separate counsel in any such action, suit or proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Underwriter or such controlling person unless (i) the Company has agreed in writing to pay such fees and expenses, (ii) the Company has failed to assume the defense and employ counsel, or (iii) the named parties to any such action, suit or proceeding (including any impleaded parties) include both such Underwriter or such controlling person and the Company and such Underwriter or such controlling person shall have been advised by its counsel that representation of such indemnified party and the Company by the same counsel would be inappropriate under applicable standards of professional conduct (whether or not such representation by the same counsel has been proposed) due to actual or potential differing interests between them (in which case the Company shall not have the right to assume the defense of such action, suit or proceeding on behalf of such Underwriter or such controlling person). It is understood, however, that the Company shall, in connection with any one such action, suit or proceeding or separate but substantially similar or related actions, suits or proceedings in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys (in addition to any local counsel) at any time for all such Underwriters and controlling persons not having actual or potential differing interests with you or among themselves, which firm shall be designated in writing by Smith Barney Inc., and that all such fees and expenses shall be reimbursed as they are incurred. The Company shall not be liable for any settlement of any such action, suit or proceeding effected without its written consent, but if settled with such written consent, or if there be a final judgment for the plaintiff in any such action, suit or proceeding, the Company agrees to indemnify and hold harmless any Underwriter, to the extent provided in the preceding paragraph, and any such controlling person from and against any loss, claim, damage, liability or expense by reason of such settlement or judgment.

(c) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers who sign the Registration Statement, and any person who controls the Company within the meaning of Section 15

of the Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with respect to information relating to such Underwriter furnished in writing by or on behalf of such Underwriter through you expressly for use in the Registration Statement, the Prospectus, or any amendment or supplement thereto. If any action, suit or proceeding shall be brought against the Company, any of its directors, any such officer, or any such controlling person based on the Registration Statement, the Prospectus, or any amendment or supplement thereto, and in respect of which indemnity may be sought against any Underwriter pursuant to this paragraph (c), such Underwriter shall have the rights and duties given to the Company by paragraph (b) above (except that if the Company shall have assumed the defense thereof, such Underwriter shall not be required to do so, but may employ separate counsel therein and participate in the defense thereof, but the fees and expenses of such counsel shall be at such Underwriter's expense), and the Company, its directors, any such officer, and any such controlling person shall have the rights and duties given to the Underwriters by paragraph (b) above. The foregoing indemnity agreement shall be in addition to any liability which the Underwriters may otherwise have.

(d) If the indemnification provided for in this Section 7 is unavailable to an indemnified party under paragraphs (a) or (c) hereof in respect of any losses, claims, damages, liabilities or expenses referred to therein, then an indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Shares, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of the Company on the one hand and the Underwriters on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or by the Underwriters on the other hand and the parties' relative

intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by a pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities and expenses referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating any claim or defending any such action, suit or proceeding. Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price of the Shares underwritten by it and distributed to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 7 are several in proportion to the respective numbers of Firm Shares set forth opposite their names in Schedule I hereto (or such numbers of Firm Shares increased as set forth in Section 9 and not joint.

(f) No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

(g) Any losses, claims, damages, liabilities or expenses for which an indemnified party is entitled to indemnification or contribution under this Section 7 shall be paid by the indemnifying party to the indemnified party as such losses, claims, damages, liabilities or expenses are incurred. The indemnity and contribution agreements contained in this Section 7 and the representations and warranties of the Company set forth in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Underwriter or any person control-

ling any Underwriter, the Company, its directors or officers, or any person controlling the Company, (ii) acceptance of any Shares and payment therefor hereunder, and (iii) any termination of this Agreement. A successor to any Underwriter or any person controlling any Underwriter, or to the Company, its directors or officers, or any person controlling the Company, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Section 7.

8. Conditions of Underwriters' Obligations. The several obligations of the Underwriters to purchase the Firm Shares and the Additional Shares, as the case may be, under this Agreement are subject to the satisfaction of each of the following conditions:

(a) All the representations and warranties of the Company and the Operating Partnership contained in this Agreement shall be true and correct, in all material respects, on the Closing Date, with the same force and effect as if made on and as of the Closing Date; and as of an Option Closing Date, if any, to the knowledge of the Company and the Operating Partnership, such representations and warranties were true and correct, in all Material respects, as of the date of this Agreement and on the Closing Date. On or before any Option Closing Date, if any, the Company shall disclose to the Underwriters the information which would make such representations and warranties not true and correct, in all Material respects, as of such Option Closing Date and the Company shall have complied with all agreements and all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date.

(b) The Registration Statement, including any Rule 462(b) Registration Statement, has become effective under the Act; the Prospectus shall have been filed with the Commission pursuant to Rule 424(b) within the applicable time period prescribed for such filing by such Rule; no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been commenced or shall be pending before or threatened by the Commission to the knowledge, after due inquiry, of the Company. No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been commenced or shall be pending before or threatened by the state securities authority of any jurisdiction, to the knowledge of the Company.

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

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

(e) You shall have received on and as of the Closing Date and on and as of any applicable Option Closing Date, as the case may be, a certificate signed by the Chairman of the Board of Directors or President or Chief Executive Officer of the Company and the Chief Financial or Accounting Officer of the Company, in their capacities as officers of the Company, on behalf of the Company for itself and as general partner of the Operating Partnership, satisfactory to you, to the effect set forth in subsections (a) through (d) of this Section.

(f) You shall have received on the Closing Date and, if later, an Option Closing Date an opinion or opinions (satisfactory to you and counsel for the Underwriters), dated the Closing Date, and the Option Closing Date, as the case may be, of Cahill Gordon & Reindel, counsel for the Company and the Operating Partnership, to the effect that:

(i) The Company is duly qualified or registered as a foreign corporation to transact business and is in good standing in each jurisdiction identified with an asterisk in Schedule II hereto. Each of the Corporate Subsidiaries is duly qualified or registered as a foreign corporation to transact business and is in good standing in each jurisdiction identified with an asterisk in Schedule II hereto.

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

(iii) To the knowledge of such counsel, other than the Additional Shares and shares reserved for issuance pursuant to the Company's Shareholders Rights Plan, no shares of preferred stock of the Company are reserved for any purpose. To the knowledge of such counsel, there are no outstanding securities convertible into or exchangeable for any preferred stock of the Company and no outstanding options other than as provided in this Agreement, rights (preemptive or otherwise) or warrants to purchase or to subscribe for shares of preferred stock of the Company. To the knowledge of such counsel, all of the outstanding partnership interests of the Operating Partnership, the Financing Partnership and Securities, L.P. have been duly authorized, validly issued and fully paid and, except for Units not owned by the Company, are owned directly or indirectly by the Company or the Operating Partnership.

(iv) To the knowledge of such counsel, none of the Company, the Operating Partnership, the Financing Partnership, Securities, L.P., FIFC or FISC is in violation of or default under its charter, by-laws, certificate of limited partnership or partnership agreement, as the case may be, and none of such entities is in default in the performance or observance of any obligation, agreement, covenant or condition contained in any document (as in effect on the date of such opinion) listed as an exhibit to the Registration Statement, the Company's Annual Report on Form 10-K, as amended, if applicable, and the Company's most recent Quarterly Report on Form 10-Q, as amended, if applicable, to which such entity is a party or by which such entity may be bound, or to which any of the property or assets of such entity or any Property is subject to or bound by (it being understood that (i) such counsel need express

no opinion with respect to matters relating to any contract, indenture, mortgage, loan agreement, note lease, joint venture or partnership agreement or other instrument or agreement relating to the acquisition, transfer, operation, maintenance, management or financing of any property or assets of such entity or any other Property and (ii) such counsel may assume compliance with the financial covenants contained in any such document), except in each case for violations or defaults which in the aggregate are not reasonably expected to have a Material Adverse Effect.

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

(vi) The execution and delivery of this Agreement and the Deposit Agreement, the issuance and sale of the Shares and the performance by the Company and the Operating Partnership of their respective obligations under the Shares, this Agreement and the Deposit Agreement and the consummation of the transactions herein and therein contemplated will not require, to such counsel's knowledge, any consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental body (except such as may be required under the Act, the state securities, Blue Sky or real estate syndication laws in connection with the purchase and distribution of the Shares by the Underwriters) and did not and do not conflict with or constitute a breach or violation of or default under: (1) any document (as in effect on the date of such opinion) listed as an exhibit to the Registration Statement, the Company's Annual Report on Form 10-K, as amended, if applicable, and the Company's most recent Quarterly Report on Form 10-Q, as amended, if applicable, to which any such entity is a party or by which it or any of them or any of their respective properties or other assets may be bound or subject and of which such counsel is aware (it being understood that (i) such counsel need express no opinion with respect to matters relating to any contract, indenture, mortgage, loan agreement, note lease, joint venture or partnership agreement or other instrument or agreement relating to the acquisition, transfer, operation, maintenance, management or financing of any property or assets of such entity or any other Property and (ii) such counsel may assume compliance with the financial covenants contained in any such document); (2) the certificate of limited partnership or partnership agreement, as the case may be, of the Operating Partnership, the Financing Partnership, and Securities, L.P. or the articles of incorporation or bylaws, as the case may be,



of the Company, FIFC or FISC; (3) any applicable law, rule or administrative regulation, except in each case for conflicts, breaches, violations or defaults that in the aggregate would not have a Material Adverse Effect.

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

(viii) The Registration Statement, at the time it became effective and the Prospectus, as of the date of the Prospectus Supplement (in each case, other than the financial statements and supporting schedule and other financial and statistical data included or incorporated by reference therein, as to which no opinion need be rendered), complied as to form in all material respects with the requirements of the Act and the Exchange Act.

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

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

(xi) To such counsel's knowledge, there is no document or contract of a character required to be described or referred to in the Registration Statement and Prospectus or to be filed as exhibits thereto by the Act other than those described or referred to therein or filed as exhibits thereto, and the descrip-

tions thereof or references thereto are accurate in all material respects.

(xii) The Shares have been approved for listing on the NYSE subject to official notice of issuance.

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

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

(xv) The documents filed pursuant to the Exchange Act and incorporated by reference in the Prospectus (other than the financial statements and supporting schedules therein and other financial and statistical data, as to which no opinion need be rendered), when they were filed with the Commission, complied as to form in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder.

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

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

In addition, Cahill Gordon & Reindel shall confirm that the opinion filed as Exhibit 8 to the Registration Statement is true and correct as of the date thereof and shall authorize the Underwriters to rely on such opinion as if it were addressed to the Underwriters.

In addition, Cahill Gordon & Reindel shall state that they have participated in conferences with officers and other representatives of the Company, the Operating Partnership and the Subsidiaries, representatives of the independent public accountants for the Company, the Operating Partnership and the Subsidiaries and representatives of the Underwriters at which the contents of the Registration Statement and the Prospectus and related matters were discussed. On the basis thereof, but without independent verification by such counsel of, and without passing upon or assuming any responsibility for, the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Prospectus or any amendments or supplements thereto, no facts have come to the attention of such counsel that lead them to believe that (i) the Registration Statement, including the documents incorporated therein by reference, at the time such Registration Statement became effective, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading or (ii) the Prospectus, as of its date or at the Closing Date, or, if later, an Option Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that such counsel need express no opinion with respect to the financial statements, schedules and other financial and statistical data included in the Registration Statement or the Prospectus).

In giving its opinion, such counsel may rely (A) as to all matters of fact, upon certificates and written statements of officers, directors, partners and employees of and accountants for each of the Company, the Corporate Subsidiaries and the Partnership Subsidiaries, (B) as to matters of Maryland law, on the opinion of McGuire, Woods, Battle & Boothe, L.L.P., Baltimore, Maryland, which opinion shall be in form and substance reasonably satisfactory to counsel for the Underwriters, (C) as to matters of Illinois law, on the opinion of Barack Ferrazzano Kirschbaum Perlman & Nagelberg, Chicago, Illinois, which opinion shall be in form and substance reasonably satisfactory to counsel for the Underwriters, and (D) as to the good standing and qualification of the Company, the Corporate Subsidiaries and the Partnership Subsidiaries to do business in any state or jurisdiction, upon certificates of appropriate government officials or opinions of counsel in such jurisdictions. Counsel need express no opinion (i) as to the enforceability of forum selection clauses in the federal courts or (ii) with respect to the requirements of, or compliance with, any state securities, Blue Sky or real estate syndication laws.

(g) You shall have received on the Closing Date and, if later, an Option Closing Date, an opinion or opinions (satisfactory to you and counsel for the Underwriters), dated the Closing Date, and the Option Closing Date, as the case may be, of McGuire, Woods, Battle & Boothe, L.L.P.,

special Maryland counsel for the Company, to the effect that:

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

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

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

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

pany's charter or by-laws, as amended to date, or any agreement of which such counsel is aware.

(v) Each of this Agreement and the Deposit Agreement was duly and validly authorized and executed by the Company.

(vi) The execution and delivery of this Agreement and the Deposit Agreement and the performance of the obligations and the consummation of the transactions set forth herein and therein by the Company will not require, to the knowledge of such counsel, any consent, approval, authorization or other order of any Maryland court, regulatory body, administrative agency or other governmental body (except as such may be required under the Act or other securities laws) and did not and do not conflict with or constitute a breach or violation of or default under: (1) the charter or by-laws, as the case may be, of the Company; (2) any applicable Maryland law, rule or administrative regulation or any order or administrative or court decree of which such counsel is aware, except in each case for conflicts, breaches, violations or defaults that in the aggregate would not have a Material Adverse Effect.

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

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

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

(h) You shall have received on the Closing date and, if later, an Option Closing Date, an opinion or opinions

(satisfactory to you and counsel for the Underwriters), dated the Closing Date, or the Option Closing Date, as the case may be, of Barack Ferrazzano Kirschbaum, Perlman & Nagelberg, special Illinois counsel for the Company, to the effect that:

(i) To the knowledge of such counsel, none of the Company, FRA, the Operating Partnership, FIMC, the Mortgage Partnership, FIH, FII, FIHC and FIIC is in violation of or in default in connection with the performance or observance of any obligation, agreement, covenant or condition contained in any or all of (a) the documentation evidencing and/or securing (1) a certain unsecured term loan made available to the Operating Partnership by Union Bank of Switzerland, New York Branch, (2) a certain loan made available to Harrisburg, L.P. by ORIX USA, Inc., (3) a certain mortgage loan made available to the Financing Partnership by Nomura Asset Capital Corporation, (4) a certain mortgage loan made available to the Mortgage Partnership by Nomura Asset Capital Corporation, (5) a certain revolving credit facility made available to the Operating Partnership by The First National Bank of Chicago and the Union Bank of Switzerland, New York Branch, (6) the assumption by the Operating Partnership of a certain mortgage loan from PFL Life Insurance Company made available to Fourth Brookville Associates Limited Partnership, (7) the assumption by the Operating Partnership of a certain loan from Monumental Life Insurance Company made available to Lincoln Center Associates Limited Partnership, (8) the origination of a certain mortgage loan made available to FII by Connecticut General Life Insurance Company ("CIGNA"), (9) the origination of a certain mortgage loan made available to the Operating Partnership by CIGNA, (10) the acquisition of property by the Operating Partnership subject to a certain mortgage loan from Smithkline Beecham Clinical Laboratories, Inc. made available to 290 Industrial Co., LLC and (11) the acquisition of property by the Operating Partnership subject to a certain mortgage loan from Patomi Realty Co. made available to Lazarus Burman Associates (such documentation, collectively, the "Credit Documents") and (b) various pending agreements of purchase and sale which FR Acquisitions, Inc. has entered into for the purchase of certain real properties (collectively, the "Pending Contracts"), except in each case for defaults that, in the aggregate, are not reasonably expected to have a Material Adverse Effect.

(ii) The execution and delivery of this Agreement and the Deposit Agreement and the performance of the obligations and the consummation of the transaction set forth herein and therein by the Company and the Op-

erating Partnership did not and do not conflict with or constitute a breach or violation of, or default under: (A) the Credit Documents and the Pending Contracts; (B) any applicable law, rule or administrative regulation of the federal government (or agency thereof) of the United States; or (C) any order or administrative or court decree issued to or against or concerning the Company, the Operating Partnership, FIMC, the Mortgage Partnership, FIH, FII, FIHC, or FIIC, of which in the cases of clauses (B) and (C) above, such counsel is aware, except in each case for conflicts, breaches, violations or defaults that in the aggregate would not have a Material Adverse Effect.

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

(iv) The information in the 10-K under Item 2 "The Properties--Mortgage Loans" (except for the 1994 Mortgage Loan), to the extent that it constitutes statements of law, descriptions of statutes, summaries of principal financing terms of Credit Documents or legal conclusions, has been reviewed by such counsel and is correct in all material respects and presents fairly the information disclosed therein.

(i) You shall have received on the Closing Date and the Option Closing Date, as the case may be, an opinion, dated the Closing Date and the Option Closing Date, as the case may be, of Rogers & Wells, counsel for the Underwriters, as to the matters referred to in clause (i) (with respect to the Company only) and (iv) (with respect to the first and last sentences only) of Section 8(g) and clauses (v) and (viii) of Section 8(f) and in addition, Rogers & Wells shall make statements similar to those contained in the second paragraph following clause (xviii) of Section 8(f) hereto and shall be entitled to rely on those persons described in the third paragraph following clause (xvii) Section 8(f) hereto with respect to the matters described therein.

(j) At the Closing Date, the Shares shall have the ratings accorded by the "nationally recognized statistical organizations," as defined by the Commission for purposes of Rule 436(g)(2) under the Act, as specified in Section 6(ac) hereto, and the Company shall have delivered to Smith Barney Inc. a letter, dated as of such date, from each such rating organization, or other evidence satisfactory to Smith Barney Inc., confirming that the Shares have such ratings. Since the date hereof, there shall not have occurred a downgrading in the rating assigned to the Shares or any of the Company's securities or the Operating Partnership's other securities by

any such rating organization, and no such rating organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of the Shares or any of the Company's securities or the Operating Partnership's other securities.

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

(l) At the Closing Date, the Shares shall have been approved for listing on the NYSE upon official notice of issuance.

(m) The Company and its Subsidiaries shall not have failed at or prior to the Closing Date and any applicable Option Closing Date, as the case may be, to perform or comply with any of the agreements pursuant to Section 5 herein contained and required to be performed or complied with by the Company at or prior to the Closing Date and the Option Closing Date, as the case may be.

(n) At the Closing Date and, if later, at any applicable Option Closing Date, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Shares, as herein contemplated and related proceedings, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in con-



nection with the issuance and sale of the Shares as herein contemplated shall be reasonably satisfactory in form and substance to the Underwriters and counsel for the Underwriters.

The opinions and certificates mentioned in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in all material respects satisfactory to you and to Rogers & Wells, counsel for the Underwriters.

9. Effective Date of Agreement; Termination; Default by One or More Underwriters. This Agreement shall become effective upon the execution of this Agreement.

This Agreement may be terminated at any time prior to the Closing Date by you by written notice to the Company if any of the following has occurred: (i) since the respective dates as of which information is given in the Registration Statement and the Prospectus, there has been a Material Adverse Effect, (ii) any outbreak or escalation of hostilities or other national or international calamity or crisis or change in economic conditions or in the financial markets of the United States or elsewhere that, in your judgment, is material and adverse and would, in your judgment, make it impracticable to market the Shares on the terms and in the manner contemplated in the Prospectus or to enforce contracts for the resale of the Shares, (iii) the suspension or material limitation of trading in securities on the NYSE or the American Stock Exchange or material limitation on prices for securities on either of such exchanges, (iv) the enactment, publication, decree or other promulgation of any federal or state statute, regulation, rule or order of any court or other governmental authority which in your opinion would result in a Material Adverse Effect, (v) the declaration of a banking moratorium by either federal or New York State authorities or (vi) the taking of any action by any federal, state or local government or agency in respect of its monetary or fiscal affairs which in your opinion has a material adverse effect on the financial markets in the United States.

If on the Closing Date or on an applicable Option Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase the Firm Shares or Additional Shares, as the case may be, which it or they have agreed to purchase hereunder on such date and the aggregate number of Firm Shares or Additional Shares, as the case may be, which such de-

faulting Underwriter or Underwriters, as the case may be, agreed but failed or refused to purchase is not more than one-tenth of the total number of Firm Shares or Additional Shares, as the case may be, to be purchased on such date by all Underwriters, each non-defaulting Underwriter shall be obligated severally, in the proportion which the number of Firm Shares set forth opposite its name in Schedule I bears to the total number of Firm Shares which all the non-defaulting Underwriters, have agreed to purchase, or in such other proportion as you may specify, to purchase the Firm Shares or Additional Shares, as the case may be, which such defaulting Underwriter or Underwriters, as the case may be, agreed but failed or refused to purchase on such date; provided that in no event shall the number of Firm Shares or Additional Shares, as the case may be, which any Underwriter has agreed to purchase pursuant to Section 2 hereof be increased pursuant to this Section 9 by an amount in excess of one-ninth of such number of Firm Shares or Additional Shares, as the case may be, without the written consent of such Underwriter. If on the Closing Date or on an applicable Option Closing Date, as the case may be, any Underwriter or Underwriters shall fail or refuse to purchase Firm Shares, or Additional Shares, as the case may be, and the aggregate number of Firm Shares or Additional Shares, as the case may be, with respect to which such default occurs is more than one-tenth of the aggregate number of Firm Shares or Additional Shares, as the case may be, to be purchased on such date by all Underwriters and arrangements satisfactory to you and the Company for purchase of such Shares are not made within 48 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Underwriter and the Company. In any such case which does not result in termination of this Agreement, either you or the Company shall have the right to postpone the Closing Date or the applicable Option Closing Date, as the case may be, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement and the Prospectus or any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of any such Underwriter under this Agreement.

10. Information Furnished by the Underwriters. The names of the Underwriters set forth on the cover page, the stabilization legend on the inside front cover, and the statements in the chart and the third, sixth and seventh (with respect to the last sentence only) paragraphs under the caption "Underwriting" in the Prospectus, constitute the only information furnished by or on behalf of the Underwriters through you as such information is referred to in Section 7.

11. Miscellaneous. Notices given pursuant to any provision of this Agreement shall be addressed as follows: (a) if to the Company, to First Industrial Realty Trust, Inc., 311 South Wacker Drive, Suite 4000, Chicago, Illinois 60606, Attention: Michael T. Tomasz, with a copy to Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005, Attention of Gerald S. Tanenbaum, Esq. and (b) if to you, c/o Smith Barney Inc., 388 Greenwich Street, New York, New York 10013, Attention: Manager, Investment Banking Division, with a copy to Rogers & Wells, 200 Park Avenue, New York, New York 10166, Attention of Robert E. King, Jr., or in any case to such other address as the person to be notified may have requested in writing.

The provisions of Sections 5, 6 and 7 shall remain operative and in full force and effect, and will survive delivery of and payment for the Shares, regardless of (i) any investigation,

or statement as to the results thereof, made by or on behalf of any Underwriter or by or on behalf of the Company, the officers or directors of the Company or any controlling person of the Company and (ii) acceptance of the Shares and payment for them hereunder.

In the event of termination of this Agreement, the provisions of Sections 5(k) and 7 shall remain operative and in full force and effect.

If this Agreement shall be terminated by the Underwriters because of any failure or refusal on the part of the Company or the Operating Partnership to comply with the terms or to fulfill any of the conditions of this Agreement, the Company and the Operating Partnership agree to reimburse the several Underwriters for all out-of-pocket expenses (including the fees and disbursements of counsel) reasonably incurred by them.

Except as otherwise provided, this Agreement has been and is made solely for the benefit of and shall be binding upon the Company, the Operating Partnership and the Underwriters, any controlling persons referred to herein and their respective successors and assigns, all as and to the extent provided in this Agreement, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" shall not include a purchaser of any of the Shares from any of the several Underwriters merely because of such purchase.

This Agreement shall be governed and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in New York.

This Agreement may be signed in various counterparts which together shall constitute one and the same instrument.

Please confirm that the foregoing correctly sets forth the agreement among the Company, the Operating Partnership, and the several Underwriters.

Very truly yours,

FIRST INDUSTRIAL REALTY TRUST, INC.

By: /s/ Gary H. Heigl

-----  
Name: Gary H. Heigl  
Title: Senior Vice President

FIRST INDUSTRIAL, L.P.

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

By: /s/ Gary H. Heigl

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Name: Gary H. Heigl  
Title:

SMITH BARNEY INC.  
DONALDSON, LUFKIN & JENRETTE  
SECURITIES CORPORATION  
BT ALEX. BROWN INCORPORATED  
J.P. MORGAN SECURITIES INC.  
MERRILL LYNCH, PIERCE, FENNER  
& SMITH INCORPORATED  
PRUDENTIAL SECURITIES INCORPORATED  
As representatives of the  
several Underwriters listed  
on Schedule I hereto

By: SMITH BARNEY INC.

By: /s/ Daniel E. Sell

-----  
Name: Daniel E. Sell  
Title: Vice President

SCHEDULE I

Underwriters -----	Number of Firm Shares to Be Purchased -----
Smith Barney Inc.....	787,500
Donaldson, Lufkin & Jenrette Securities Corporation.....	787,500
BT Alex. Brown Incorporated.....	787,500
Merrill Lynch, Pierce, Fenner & Smith Incorporated.....	787,500
J.P. Morgan Securities Inc.....	787,500
Prudential Securities Incorporated.....	787,500
Robert W. Baird & Co. Incorporated.....	12,500
BancAmerica Robertson Stephens.....	12,500
Bear, Stearns & Co. Inc.....	12,500
J.C. Bradford & Co.....	12,500
Cowen & Company.....	12,500
Dain Rauscher Incorporated.....	12,500
EVEREN Securities, Inc.....	12,500
Fahnestock & Co. Inc.....	12,500
First Albany Corporation.....	12,500
First of Michigan Corporation.....	12,500
Gibraltar Securities Co.....	12,500
Janney Montgomery Scott Inc.....	12,500
Legg Mason Wood Walker, Incorporated.....	12,500
McDonald & Company Securities, Inc.....	12,500
McGinn, Smith & Co., Inc.....	12,500
Morgan Keegan & Company, Inc.....	12,500
The Ohio Company.....	12,500
Piper Jaffray Inc.....	12,500
Raymond James & Associates, Inc.....	12,500
The Robinson-Humphrey Company, LLC.....	12,500
Tucker Anthony Incorporated.....	12,500
U.S. Clearing Corp.....	12,500
Total	5,000,000

SCHEDULE II

JURISDICTIONS OF FOREIGN QUALIFICATION OF THE COMPANY,  
THE CORPORATE SUBSIDIARIES AND THE PARTNERSHIP SUBSIDIARIES

ENTITY: -----	JURISDICTION -----
First Industrial, L.P.	Georgia* Illinois* Indiana* Michigan Minnesota* Missouri New Jersey* New York* Ohio Pennsylvania Tennessee Wisconsin
First Industrial Realty Trust, Inc.	Georgia* Illinois* Indiana* Michigan* Minnesota* New Jersey* New York* Ohio
First Industrial Securities, L.P.	Illinois Michigan Minnesota Pennsylvania
First Industrial Securities Corporation	Illinois* Michigan*
First Industrial Pennsylvania Partnership, L.P.	Pennsylvania
First Industrial Pennsylvania Corporation	Pennsylvania
First Industrial Harrisburg, L.P.	Pennsylvania
First Industrial Harrisburg Corporation	Pennsylvania
First Industrial Financing Partnership, L.P.	Georgia* Illinois*

Iowa  
Michigan\*  
Minnesota\*  
Missouri  
New Hampshire  
Pennsylvania  
Tennessee

Texas  
Wisconsin

First Industrial Finance Corporation

Georgia\*  
Illinois\*  
Michigan\*  
Wisconsin

First Industrial Management Corporation

Georgia  
Illinois  
Indiana  
Iowa  
Kansas  
Michigan  
Minnesota  
Missouri  
New Hampshire  
Ohio  
Pennsylvania  
Tennessee  
Texas  
Wisconsin

FR Acquisitions, Inc.

Georgia  
Illinois  
Indiana  
Michigan  
Minnesota  
Missouri  
Ohio  
Pennsylvania  
Tennessee  
Wisconsin

First Industrial Mortgage Partnership, L.P.

Georgia  
Illinois  
Michigan  
  
Minnesota  
Missouri

	Tennessee
First Industrial Mortgage Corporation	Illinois
	Michigan
First Industrial Indianapolis, L.P.	Indiana
First Industrial Indianapolis Corporation	None
First Industrial Development Services Group, L.P.	None
FI Development Services Corporation	None

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\* Denotes jurisdictions on which counsel is opining.



7.95% Series D Cumulative Preferred Stock  
(Liquidation Preference \$2,500.00 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  
7.95% Series D Cumulative Preferred Stock  
and Fixing Distribution and  
Other Preferences and Rights of Such Series

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Dated as of February 3, 1998

FIRST INDUSTRIAL REALTY TRUST, INC.

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Articles Supplementary of Board of Directors Classifying  
and Designating a Series of Preferred Stock as  
7.95% Series D Cumulative Preferred Stock  
and Fixing Distribution and  
Other Preferences and Rights of Such Series

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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 and December 4, 1997 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 Dividend Rate (as defined herein) and other terms of such series. The Special Committee pursuant to a resolution dated January 30, 1998 (i) authorized the creation and issuance of up to 60,000 shares of Series D Cumulative Preferred Stock which stock was previously authorized but not issued and (ii) determined the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of the shares of such series and the Dividend Rate (which rate shall be 7.95%) payable on such series. Such preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption, number of shares and Dividend 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 7.95% Series D Cu-



mulative Preferred Stock (the "Series D Preferred Shares") and the number of shares which shall constitute such series shall not be more than 57,500 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. Dividend Rights. (1) Dividends shall be payable in cash on the Series D Preferred Shares when, as and if declared by the Board of Directors, out of assets legally available therefor: (i) for the period (the "Initial Dividend Period") from the Deemed Original Issue Date (as defined below) to but excluding April 1, 1998, and (ii) for each quarterly dividend period thereafter (the Initial Dividend Period and each quarterly dividend period being hereinafter individually referred to as a "Dividend Period" and collectively referred to as "Dividend Periods"), which quarterly Dividend Periods shall commence on January 1, April 1, July 1, and October 1 in each year (each, a "Dividend Period Commencement Date"), commencing on April 1, 1998, and shall end on and include the day next preceding the next Dividend Period Commencement Date, at a rate per annum equal to 7.95% of the liquidation preference thereof (the "Dividend Rate"). Dividends on each Series D Preferred Share shall be cumulative from the Deemed Original Issue Date of such share and shall be payable, without interest thereon, when, as and if declared by the Board of Directors, on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 1998 or, in the case of Series D Preferred Shares with a Deemed Original Issue Date after March 31, 1998, the first such dividend payment date following such Deemed Original Issue Date; provided, that if any such day shall be a Saturday, Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law to close, or a day which is or is declared a national or a New York state holiday (any of the foregoing a "Non-Business Day"), then the payment date shall be the next succeeding day which is not a Non-Business Day. Each such dividend shall be paid to the holders of record of Series D Preferred Shares as they appear on the stock register of the Company on such record date, not more than 45 days nor less than 15 days preceding the payment date thereof, as shall be fixed by the Board of Directors. Dividends on account of arrears for any past Dividend Periods may be declared and paid at any time, without reference to any regular dividend payment date, to holders of record on such date, not more than 45 days nor less than 15 days preceding the payment date thereof, as may be fixed by the Board of Directors. After an amount equal to full cumulative dividends on this series, including for the then current Dividend Period, has been paid to holders of record of Series D Preferred Shares

entitled to receive dividends as set forth above by the Company, or such dividends have been declared and funds therefor set aside for payment, the holders of Series D Preferred Shares will not be entitled to any further dividends with respect to that Dividend Period.

"Deemed Original Issue Date" means (a) in the case of any share which is part of the first issuance of Series D Preferred Shares or part of a subsequent issuance of Series D Preferred Shares prior to April 1, 1998, the date of such first issuance and (b) in the case of any share which is part of a subsequent issuance of Series D Preferred Shares on or after April 1, 1998, the later of (x) April 1, 1998 and (y) the latest Dividend Period Commencement Date which precedes the date of issuance of such share and which succeeds the last Dividend Period for which full cumulative dividends have been paid; provided that, in the case of any share which is part of a subsequent issuance on or after April 1, 1998, the date of issuance of which falls between (i) the record date for dividends payable on the first succeeding dividend payment date and (ii) such dividend payment date, the "Deemed Original Issue Date" means the date of the Dividend Period Commencement Date that immediately follows the date of issuance.

(2) Dividends payable on Series D Preferred Shares for any period greater or less than a full Dividend Period, including the Initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends payable on Series D Preferred Shares for each full Dividend Period shall be computed by dividing the Dividend Rate by four.

(3) When dividends are not paid in full upon the Series D Preferred Shares and any other series of preferred stock of the Company ranking on a parity therewith as to dividends, (or, in the case of the Company's Series A Preferred Shares, payments in lieu thereof are not made under that certain Guarantee and Payment Agreement dated November 17, 1995 between First Industrial Securities, L.P., a Delaware limited partnership and First Industrial Securities Corporation for the benefit of American National Bank and Trust Company of Chicago for the holders of the Series A Preferred Shares (the "Guarantee")), all dividends declared upon the Series D 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 D 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 D Preferred Shares and such other series of preferred stock (less, in the case of the Series A Preferred Shares, payments under the Guarantee in lieu of such dividends) bear to each other. Except as provided in the preceding sentence, unless an amount equal to full cumulative dividends on the Series D Preferred Shares has been paid to holders of record of Series D Preferred Shares entitled to receive dividends as set forth above by the Company for all past Dividend Periods, no dividends (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 D Preferred Shares as to dividends and upon liquidation) shall be declared or paid or set aside for payment nor (except pursuant to the Guarantee with respect to the Series A Preferred Shares) 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 D Preferred Shares as to dividends or upon liquidation. Unless an amount equal to full cumulative dividends on the Series D Preferred Shares has been paid to holders of record of Series D Preferred Shares entitled to receive dividends as set forth above by the Company for all past Dividend Periods, no Common Stock or any other Shares of capital stock of the Company ranking junior to or on a parity with the Series D 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 D Preferred Shares as to dividends and upon liquidation and except pursuant to the Guarantee with respect to the Series A Preferred Shares.

Section 3. Liquidation. (1) In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Company, the holders of Series D 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 D Preferred Shares upon liquidation, liquidating distributions in the amount of the stated value of \$2,500 per share, plus all accumulated and unpaid dividends (whether or not earned or declared) for the then current and all past Dividend Periods. If, upon any voluntary or involuntary liquidation, dissolution,

or winding up of the Company, the amounts payable with respect to the Series D Preferred Shares and any other shares of the Company ranking as to any such distribution on a parity with the Series D Preferred Shares are not paid in full, the holders of Series D 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 D 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 D 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) Except as provided in clause (9) below, the Series D Preferred Shares are not redeemable prior to February 4, 2003. On and after such date, the Series D Preferred Shares are redeemable at the option of the Company, by resolution of the Board of Directors, in whole or in part, from time to time upon not less than 30 nor more than 60 days' notice, at a cash redemption price of the stated value of \$2,500 per share, plus all accumulated and unpaid dividends (whether or not earned or declared) to the date of redemption (the "Redemption Price"). The Redemption Price (other than the portion consisting of accumulated and unpaid dividends) shall be payable solely out of the proceeds from the sale of capital stock of the Company. For purposes of the preceding sentence "Capital Stock" means common stock, preferred stock, depository shares, interests, participations or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

(2) If fewer than all of the outstanding Series D Preferred Shares are to be redeemed, the number of shares to be redeemed will be determined by the Board of Directors 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.

(3) Notwithstanding the foregoing, if an amount equal to full dividends for all past Dividend Periods on the Series D Preferred Shares has not been paid to holders of record of Series D Preferred Shares entitled to receive dividends as set forth above by the Company, no Series D Preferred Shares shall be redeemed, except pursuant to Article IX of the Charter, unless all outstanding Series D Preferred Shares are simultaneously redeemed, and the Company shall not purchase or otherwise acquire, directly or indirectly, any Series D Preferred Shares; provided, however, that the foregoing shall not prevent the purchase or acquisition of Series D Preferred Shares pursuant to a purchase or exchange offer provided such offer is made on the same terms to all holders of Series D Preferred Shares.

(4) Immediately prior to any redemption of Series D Preferred Shares, the Company shall pay, in cash, any accumulated and unpaid dividends through the redemption date, unless a redemption date falls after a dividend payment record date and prior to the corresponding dividend payment date, in which case each holder of Series D Preferred Shares at the close of business on such dividend payment record date shall be entitled to the dividend payable on such shares on the corresponding dividend payment date notwithstanding the redemption of such shares before such dividend payment date. Except as expressly provided hereinabove, the Company shall make no payment or allowance for unpaid dividends, whether or not in arrears, on Series D 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 nor 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 D 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 D 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 dividends on the shares to be redeemed will cease to accumulate on such redemption date. If fewer than all the Series D Preferred Shares held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of Series D Preferred Shares to be redeemed from such holder.

(6) In order to facilitate the redemption of Series D 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 D Preferred Shares by the Company (unless the Company shall fail to make available the money necessary to effect such redemption), 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 moneys payable upon such redemption from the Company, less any required tax withholding amount, without interest thereon, upon surrender (and endorsement or assignment of transfer, if required by the Company and so stated in the notice) of their certificates, 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. The Company may, at its option, at any time after a notice of redemption has been given, deposit the redemption price for the Series D Preferred Shares designated for redemption and not yet redeemed, plus any accumulated and unpaid dividends thereon to the date fixed for redemption, with the transfer agent or agents for the Series D Preferred Shares, as a trust fund for the benefit of the holders of the Series D Preferred Shares designated for redemption, together with irrevocable instructions and authority to such transfer agent or agents that such funds be delivered upon redemption of such shares and to pay, on and after the date fixed for redemption or prior thereto, the redemption price of the shares to their respective holders upon the surrender of their share certificates. From and after the making of such deposit, the holders



of the shares designated for redemption shall cease to be stockholders with respect to such shares and shall have no interest in or claims against the Company by virtue thereof and shall have no voting or other rights with respect to such shares, except the right to receive from such trust fund the moneys payable upon such redemption, without interest thereon, upon surrender (and endorsement, if required by the Company) of their certificates, and the shares represented thereby shall no longer be deemed to be outstanding. Any balance of such moneys remaining unclaimed at the end of the five-year period commencing on the date fixed for redemption shall be repaid to the Company upon its request expressed in a resolution of its Board of Directors.

(8) Any Series D 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 D 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 D 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 D Preferred Shares are being redeemed.

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

(1) If and whenever full cumulative dividends on the Series D Preferred Shares, or any other series of preferred stock of the Company ranking on a parity with the Series D Preferred Shares as to dividends or upon liquidation (any such series, a "Parity Preferred Series"), for six quarterly dividend payment periods, whether or not consecutive, are in arrears and unpaid, (and, if such an arrearage exists with respect to Series A Preferred Shares, payment has not been made in the amount of such arrearages pursuant to the Guarantee) (such failure to pay by the Company, a "Dividend Default"), the holders of all outstanding Series D Preferred Shares and any Parity

Preferred Series, voting as a single class without regard to series, will be entitled to elect two Directors until all dividends in arrears and unpaid on the Series D Preferred Shares and any Parity Preferred Series have been paid (either directly or, in the case of the Series A Preferred Shares, pursuant to the Guarantee) 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 D 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 D 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 dividends in arrears and unpaid have been paid (either directly or pursuant to the Guarantee) 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 Dividend 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 D 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 prior to the Series D 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 affirma-

tive vote or consent of the holders of at least two-thirds of the outstanding Series D Preferred Shares, voting separately as a class, will be required to amend or repeal any provision of, or add any provision to, the Charter if such action would materially and adversely alter or change the powers, preferences, privileges or rights of the Series D 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 D 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 D 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 30th day of January, 1998 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/ Gary H. Heigl  
-----  
Name: Gary H. Heigl  
Title: Senior Vice President

Attest:

/s/ Scott A. Musil  
-----  
Name: Scott A. Musil  
Title: Assistant Secretary

FIRST INDUSTRIAL REALTY TRUST, INC.,  
FIRST CHICAGO TRUST COMPANY OF NEW YORK,  
AS DEPOSITARY,

AND

THE HOLDERS FROM TIME TO TIME OF  
THE DEPOSITARY RECEIPTS DESCRIBED HEREIN  
RELATING TO SERIES D CUMULATIVE PREFERRED STOCK

DEPOSIT AGREEMENT

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Dated as of February 4, 1998

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DEPOSIT AGREEMENT, dated as of February 4, 1998, among FIRST INDUSTRIAL REALTY TRUST, INC., a Maryland corporation (the "Company"), FIRST CHICAGO TRUST COMPANY OF NEW YORK, a national banking association (the "Depository"), 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 D Cumulative 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 First Chicago Trust Company of New York 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 an agent appointed by the Depository pursuant to Section 5.1 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 7.95% Series D Cumulative 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 to be traded on the New York Stock Exchange with book-entry settlement through DTC 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.). First Chicago Trust Company of New York 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 Depository 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 Depository shall provide written instructions to DTC to deliver to the Depository for cancellation the DTC Receipt, and the Company shall instruct the Depository to deliver to the beneficial owners of the Depository Shares previously evidenced by the DTC definitive Receipts in physical form evidencing such Depository 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 Depository Shares shall, except as stated above with respect to Depository Shares in book-entry form represented by the DTC Receipt, be entitled to receive Receipts in physical, certificated form as herein provided.

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 Depository 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 Depository, upon the written order of the Company, delivered in compliance with Section 2.2, 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 Depository will cause de-

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 Depository's Office or at such other place or places as the Depository shall determine, without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depository shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depository 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 Agreement, and with respect to the Stock, as definitive Receipts.

Receipts shall be executed by the Depository by the manual and/or facsimile signature of a duly authorized officer of the Depository. 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 Depository shall record on its books each Receipt so signed and delivered as hereinafter provided.

Receipts shall be in denominations of any number of whole Depository Shares. The Company shall deliver to the Depository from time to time such quantities of Receipts as the Depository may request to enable the Depository 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 Depository 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 Depository 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.

Title to Depository 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 Depository as provided in Section 2.3, the Depository 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 all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement, and together with a written order 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, 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 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, properly endorsed or accompanied by a properly executed instrument of transfer. 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 Depository'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 Depository shall execute and deliver a new Receipt or Receipts in the authorized denomination or denominations requested, evidencing the aggregate number of Depository Shares evidenced by the Receipt or Receipts surrendered; provided, however, that the Depository shall not issue any Receipt evidencing a fractional Depository Share.

Any holder of a Receipt or Receipts representing any number of whole shares of Stock may (unless the related Depository Shares have previously been called for redemption) withdraw the Stock and all money and other property, if any, represented thereby by surrendering 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, 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 Depositary, 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 Depositary a written order so directing the Depositary and the Depositary 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 Depositary at the Depositary'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, its combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require payment to it of a sum sufficient for the payment (or, in the event that the Depositary 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, may require the production of evidence satisfactory to it as to the identity and genuineness of any signature, 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 indemnification reasonably satisfactory to it and the Company and (iii) the payment of any reasonable expense (including reasonable fees, charges and expenses of the Depositary) in connection with such execution and delivery.

SECTION 2.7. 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 2.8. 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 Depositary, together with the redemption payment, a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called for redemption; provided, however, that the Depositary shall not issue any Receipt evidencing a fractional Depositary Share.

SECTION 2.9. 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 Depositary 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 Depositary 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 Depositary for cancellation of the number of Depositary Shares evidenced thereby equal to the deposited Stock constituting Excess Shares represented thereby.

If fewer than all of the Depositary Shares evidenced by a Receipt are required to be surrendered for cancellation, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary a new Receipt evidencing the Depositary 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 Depositary Shares represented thereby, the Depositary 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 Depositary or the Company may reasonably deem necessary or proper or otherwise reasonably request. The Depositary 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 Depositary 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 Depositary of certain charges and expenses, as provided in Section 5.7. 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, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 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, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.4 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, 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 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, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of Receipts in such manner as the

Depository 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 Depository 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 Depository 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 the Depository, in its discretion (with approval of the Company, in any case where the Depository 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, be distributed by the Depository to the record holders of Receipts entitled thereto as provided by Section 4.1 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 Depository 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 Depository an opinion of counsel reasonably satisfactory to the Depository 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 etc 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.

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.

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 t. 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 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 ex-



pense 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. The indemnification obligations of the Depositary set forth in this Section 5.3 shall survive any termination of this 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 Depositary shall not be accountable for the use or application by the Company of the Depositary Shares or the Receipts or the proceeds thereof.

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

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

In case at any time the Depositary 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 Depositary, 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 Depositary shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depositary may peti-

tion any court of competent jurisdiction for the appointment of a successor Depositary. Every successor Depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor Depositary, 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 Depositary 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 Depositary shall promptly mail notice of its appointment to the record holders of Receipts.

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

SECTION 5.5. Corporate Notices and Reports. The Company agrees that it will deliver to the Depositary, and the Depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the addresses recorded in the Depositary'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 Depositary 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 Depositary with such number of copies of such documents as the Depositary may reasonably request.

SECTION 5.6. Indemnification by the Company. The Company shall indemnify the Depositary, any Depositary'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 Depositary, any Registrar or any of their respective agents (including any Depositary's Agent), except for any liabil-

ity arising out of negligence, willful misconduct or bad faith on the respective parts of any such person or persons. The obligations of the Company set forth in this Section 5.6 shall survive any termination of this Agreement or any succession of any Depositary or Depositary'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 Depositary in connection with the initial deposit of the Stock and the initial issuance of the Depositary Shares, all withdrawals of shares of the Stock by owners of Depositary 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 Depositary Shares. If, at the request of a holder of Receipts, the Depositary 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 Depositary and any Depositary'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 Depositary and the Company as to the amount and nature of such charges and expenses. The Depositary shall present its statement for charges and expenses to the Company at such intervals as the Company and the Depositary may agree.

SECTION 5.8. Tax Compliance. The Depositary, 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 Depositary 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 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 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, 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 Depository, the Registrar and any Depository's Agent under Sections 5.6 and 5.7.

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  
Facsimile No.: (312) 922-6320

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

Any and all notices to be given to the Depository 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 Depository at the Depository's Office, at:

First Chicago Trust Company of New York  
One First National Plaza, Suite 0123  
Chicago, IL 60670  
Attention: John Ruocco  
Facsimile No.: (312) 407-3021

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 Depository 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/ Gary H. Heigl

-----  
Name: Gary H. Heigl  
Title: Senior Vice President

FIRST CHICAGO TRUST COMPANY OF NEW YORK

/s/ Peter Sablich

-----  
Name: Peter Sablich  
Title: Vice President

[FACE OF RECEIPT]

NUMBER SHARES  
DR- (CUSIP\_\_\_\_)  
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 D CUMULATIVE PREFERRED STOCK

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

First Chicago Trust Company of New York, a national banking association  
duly organized and existing under the laws of the United States of America with  
an office at the time of execution of the Deposit Agreement (as defined below)  
at One First National Plaza, Suite 0123, Chicago, IL 60670, 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 7.95% Series D Cumulative 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 February 4, 1998 (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:  
FIRST CHICAGO TRUST COMPANY OF NEW YORK  
Depositary and Registrar

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

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

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



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.

A-2

NUMBER  
DR-

SHARES  
(CUSIP\_\_\_\_)  
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 D CUMULATIVE PREFERRED STOCK

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

First Chicago Trust Company of New York, a national banking association duly organized and existing under the laws of the United States of America with an office at the time of execution of the Deposit Agreement (as defined below) at One First National Plaza, Suite 0123, Chicago, IL 60670, 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 7.95% Series D Cumulative 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 February 4, 1998 (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:  
FIRST CHICAGO TRUST COMPANY OF NEW YORK  
Depositary and Registrar

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

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

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

[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) Minor
JT TEN -- as joint tenants with right of survivorship and not as tenants in common	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  
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-----  
PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE  
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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.

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Dated \_\_\_\_\_ Signed \_\_\_\_\_  
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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.

A-2

NUMBER  
1

SHARES  
50,000

FIRST INDUSTRIAL REALTY TRUST, INC.  
Series D Cumulative Preferred Stock  
INCORPORATED UNDER THE LAWS OF THE STATE OF MARYLAND

This Certifies that FIRST CHICAGO TRUST COMPANY OF NEW YORK, as Depositary is the owner of Fifty Thousand Series D Cumulative Preferred Shares, such Shares are fully paid and non-assessable Shares of the above Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation.

Dated: February 4, 1998

[LOGO]

SECRETARY AND TREASURER

PRESIDENT

[REVERSE OF RECEIPT]

FIRST INDUSTRIAL REALTY TRUST, INC.

THE SHARES OF STOCK REPRESENTED BY THIS CERTIFICATE 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 Certificate, shall be construed as though they were written out in full



according to applicable laws or regulations. Additional abbreviations may also be used though not in the list.

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

For value received, the undersigned hereby PLEASE INSERT SOCIAL SECURITY OR  
OTHER sells, assigns and transfers unto IDENTIFYING NUMBER OF ASSIGNEE

-----  
PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

-----  
-----

\_\_\_\_\_ Shares represented by the within Certificate, and hereby irrevocably constitutes and appoints \_\_\_\_\_ Attorney to transfer the said shares of the within-named Corporation with full power of substitution in the premises.

Dated \_\_\_\_\_

In presence of \_\_\_\_\_

\_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement, or any change whatever.