

# UNOFFICIAL COPY

2101-2125 Gardner Road, Broadview, ILLINOIS

This instrument was prepared by  
and after recording should be  
returned to:

94898906

Everett S. Ward, Esq.  
Sonnenschein Nath  
& Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606

. DEPT-01 RECORDING \$41.30  
. T6666 TRAN 9067 10/20/94 15:42:00  
. #2050 LC #94-898906  
. COOK COUNTY RECORDER

94-847 GWT

## ASSIGNMENT OF RENTS AND LEASES

FOR VALUE RECEIVED, FIRST INDUSTRIAL, L.P., a Delaware limited partnership (hereinafter called the "Assignor"), hereby grants, assigns, transfers, sells, conveys, delivers and sets over to THE FIRST NATIONAL BANK OF CHICAGO, individually ("First Chicago"), and as agent for the Lenders (as defined in the Revolving Credit Agreement described below), its and their respective successors and assigns (hereinafter collectively called the "Assignee"), all right, title and interest of the undersigned in and to all present and future leases, subleases, licenses, occupancy agreements and any other agreements creating the right of possession or right of use without transfer of title, together with all modifications, extensions, replacements and renewals thereof (collectively, the "Leases") demising and leasing all or portions of the premises legally described on Exhibit A attached hereto and made a part hereof ("Premises") together with all rents, amounts payable to Assignor on account of maintenance, repairs, taxes, insurance, common area expenses or similar charges and security deposits payable under the Leases, all tenant security deposit accounts, if any, relating to the Leases and the Premises, and all benefits and advantages to be derived therefrom to hold and receive them unto the Assignee and together with all rights against guarantors, if any, of the obligations of the lessees (collectively, the "Lessees") under the Leases.

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1. Subject to the terms of Section 7 hereof, the Assignor does hereby empower the Assignee, its agents or attorneys, to collect, sue for, settle, compromise and give acquittances for all of the rents and security deposits that may become due under the Leases and avail itself of and pursue all remedies for the enforcement of the Leases and Assignor's rights in and under the Leases as the Assignor might have pursued but for this Assignment of Leases ("Assignment").

2. The Assignor represents and warrants: (i) that as of the date hereof, the Leases are in full force and effect; (ii) that Assignor has not heretofore assigned or pledged the same or any interest therein, and no material default exists on the part of the Assignor, as lessor, in the performance on the part of

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either, of the terms, covenants, provisions or agreements in the Leases contained; and (iii) that no rent has been paid by any Lessee for more than one installment in advance, and that the payment of none of the rents to accrue under the Leases has been or, except in the ordinary course of business, will be waived, released, reduced, discounted or otherwise discharged or compromised by the Assignor.

3. The Assignor covenants and agrees:

(a) that the Leases shall remain in full force and effect irrespective of any merger of the interest of the Lessor and Lessee thereunder;

(b) not to collect any of the rent, income and profits arising or accruing under any of the Leases more than thirty (30) days in advance of the time when the same become due under the terms thereof, except as permitted by the Mortgage (as hereinafter defined);

(c) not to discount any future accruing rents, except in Assignor's good faith business judgment in the ordinary course of business;

(d) not to execute any other assignments of any of the Leases or any interest therein or any of the rents thereunder;

(e) to perform all of Assignor's material covenants and agreements as lessor under the Leases and not to suffer or permit to occur, except in the ordinary course of business, (i) any release of liability of any of the Lessees, or (ii) any right of the Lessees to withhold payment of rent;

(f) to give prompt notices to the Assignee of any notices of material default on the part of Assignor with respect to the Leases received from the Lessees thereunder, and to furnish Assignor with complete copies of said notices;

(g) to enforce the Leases and all remedies available to the Assignor against the Lessees, in case of material default under any of the Leases by any of the Lessees;

(h) that none of the rights or remedies of the Assignee under the Mortgage (as defined in Paragraph 4 below) shall be delayed or in any way prejudiced by this Assignment;

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(i) that notwithstanding any variation of the terms of the Mortgage or any extension of time for payment thereunder, the Leases and benefits hereby assigned shall continue as additional security in accordance with the terms hereof until Assignee releases the lien of the Mortgage in accordance with the terms of the Revolving Credit Agreement (as defined below);

(j) not to consent to any assignments of any of the Leases, or any subletting thereunder, except in accordance with their respective terms; and

(k) not to request, consent to, agree to or accept a subordination of any of the Leases to any mortgage or other encumbrance now or hereafter affecting the Premises.

4. This Assignment is given as additional security for the payment of the Promissory Note of Assignor dated June 30, 1994, in the original principal amount of \$50,000,000 made in favor of First Chicago (the promissory note) together with any amendments or allonges thereto, or restatements or replacements thereof, and/or new promissory notes to new Lenders under the Revolving Credit Agreement, is collectively referred to herein as the "Note"), all sums due under the Revolving Credit Agreement by and between Assignor, Assignee, First Industrial Realty Trust, Inc. and First Chicago, individually and as agent dated June 30, 1994 (as the same may be amended, modified, supplemented or restated from time to time, the "Revolving Credit Agreement"), and all other sums secured by, among other things, the Mortgage, Security Agreement, Assignment of Leases and Rents, and Financing Statement (the "Mortgage") bearing even date herewith from Assignor, as mortgagor, to Assignee, as mortgagee, conveying the Premises. This assignment is being delivered pursuant to Section 2.15 of the Revolving Credit Agreement with the addition of the Premises (as herein defined) to provide for the availability of additional credit thereunder. The security of this Assignment is and shall be primary and on a parity with the real estate conveyed by the Mortgage and not secondary. All amounts collected hereunder, after deducting the expenses of collection and, at Assignee's option, the expenses of operation of the demised premises, shall be applied on account of the indebtedness secured by the Mortgage, or in such other manner as may be provided for in the Mortgage, or herein, or by law. Nothing herein contained shall be construed as constituting Assignee a trustee or mortgagee in possession.

5. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, all right, title, interest and powers of the Assignor in and to the Leases under the license granted in Paragraph 7 hereof shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or

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grantees in such deed or deeds without any further act or assignment by the Assignor.

6. In the exercise of the powers herein granted the Assignee, no liability shall be asserted or enforced against the Assignee, all such liability being hereby expressly waived and released by the Assignor, except liability arising from Assignee's gross negligence or wilful misconduct. The Assignee shall not be obligated to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of this Assignment, and the Assignor does hereby indemnify the Assignee for, and agrees to defend and hold it harmless of and from any and all liability, loss or damage which it may or might incur under any of the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, except for any and all liability, loss or damage resulting from Assignee's gross negligence or wilful misconduct. Should the Assignee incur any such liability, loss or damage under any of the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, to the fullest extent not prohibited by applicable law, shall be secured hereby, and the Assignor shall reimburse the Assignee therefor immediately upon demand.

7. Although it is the intention of the parties that this instrument shall be an absolute, effective, irrevocable, completed and present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignor shall have the right under a license granted hereby to collect the rents payable under the Leases from time to time, and the Assignee shall not exercise any of the rights or powers herein conferred upon it until an Event of Default (as defined below) shall occur under the terms and provisions of this Assignment, but upon the occurrence of any such Event of Default Assignee shall be entitled, upon notice to the Lessees, and without regard for the adequacy of the security for the indebtedness secured hereby, the commission of waste or the solvency of the Assignor, and with or without the appointment of a receiver by a court, to all rents and other amounts then due under the Leases and thereafter accruing, and this Assignment shall constitute a direction to and full authority to the Lessees to pay all such amounts to the Assignee without proof of the Event of Default relied upon. The Lessees are hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by the Assignee for the payment to the Assignee of any rental or other sums which may be or thereafter become due under the Leases, or any of them, or

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for the performance of any of Lessees' undertakings under the Leases and shall have no right or duty to inquire as to whether any default under the Mortgage has actually occurred or is then existing.

This Assignment is given as security in addition to the security of the Mortgage, and not as a part of the security of the Mortgage, for the purpose of securing: (i) payment of all indebtedness evidenced by the Note (including any amendments, extensions, renewals or replacements thereof), of all other sums secured by the Mortgage and of all sums payable by the Assignor hereunder; and (ii) performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein, in the Note, in the Mortgage and in any other instrument which secures the Note.

The provisions of this Section 7 shall control and take precedence over any contrary provisions contained in this Assignment, it being the clear and overriding intention of the parties that Illinois law shall govern the exercise of any remedies relating to that portion of the Premises located in Illinois.

8. The occurrence of any of the following shall constitute an "Event of Default" hereunder:

- (a) A default by Assignor in the observance or performance of any obligation, covenant, condition or agreement contained in this Assignment involving the payment of money which shall continue for five (5) days after notice from Assignee; or
- (b) A material default by Assignor in the observance or performance of any other covenant, condition or agreement hereof in accordance with the terms contained in this Assignment, not specifically referred to herein, and such default continues unremedied for a period of thirty (30) days after written notice from Assignee, provided, however, that if such default is susceptible of cure but cannot by the use of reasonable efforts be cured within such thirty (30) day period, such default shall not constitute an Event of Default under this Section 8(b) so long as (i) Assignor has commenced a cure within such thirty (30) day period, and (ii) thereafter, Assignor is proceeding to cure such default continuously and diligently and in a manner reasonably satisfactory to

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Assignee, and (iii) such default is cured not later than sixty (60) days after the expiration of such thirty (30) day period; or

- (c) Any representation or warranty made by Assignor herein which is not true and correct in any material respect as of the date hereof; or
- (d) The occurrence of an Event of Default (as defined in the Revolving Credit Agreement) under the Revolving Credit Agreement.

9. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification, or amendment of any of the Leases prohibited by the terms of this Assignment, and any amounts received by Assignor as rents, income, issues, or profits from the Premises from and after the date of any Event of Default under the Revolving Credit Agreement or under any of the Loan Documents (as defined in the Revolving Credit Agreement), which shall be held by Assignor as trustee for Assignee and all such amounts shall be accounted for to Assignee and shall not be commingled with other funds of the Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Lender as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds, County Recorder or Registrar of Titles, as the case may be, of the county in which the Premises are located stating that Assignor has received or will receive such amounts in trust for Assignee, or stating that a proceeding has been commenced to foreclose the Mortgage.

10. In the event any of the Lessees under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Assignor covenants and agrees that if any of the Leases is so terminated or rejected and a Monetary Default or an Event of Default (as such terms are defined in the Revolving Credit Agreement) has occurred, then no settlement for damages shall be made without the prior written consent of Assignee; otherwise, Assignor shall have the right to make a settlement for such damages. Any check in payment of damages for termination or rejection of any such Lease where Assignee has the right to approve the settlement for damages (as provided in the preceding sentence) will be made payable both to the Assignor and Assignee. The Assignor hereby assigns any such

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payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to monthly debt service on the indebtedness secured by this Assignment.

11. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the Mortgage or in any other document.

12. This Assignment shall include any extensions, replacements, modifications and renewals of the Leases, and any subleases, licenses and other tenancies, and any reference herein to the Leases shall be construed as including any such extensions, replacements, modifications and renewals of the Leases and any subleases, licenses and other tenancies.

13. This instrument shall be binding upon and inure to the benefit of (a) Assignee, its successors and assigns, including all holders, from time to time, of the Note, and (b) Assignor and its successors and permitted assigns. The words "Assignor," "Assignee" and "Lessees" wherever used herein, shall include the persons named herein and designated as such and their respective successors and assigns, and all words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender, as may fit the case.

14. All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing or by telex or by facsimile and addressed or delivered to such party at its address set forth below or at such other address as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid, shall be deemed given when received; any notice, if transmitted by telex or facsimile, shall be deemed given when transmitted (answerback confirmed in the case of telexes). Notice may be given as follows:

To Assignor:

First Industrial, L.P.  
c/o First Industrial Realty Trust, Inc.  
150 North Wacker Drive  
Chicago, Illinois 60611  
Attention: Mr. Michael Havala  
Telecopy: (312) 704-6606

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With a copy to:

Shefsky & Froelich, Ltd.  
444 North Michigan Avenue  
Chicago, Illinois 60611  
Attention: Howard A. Nagelberg, Esq.  
Telecopy: 312-527-9285

To Assignee:

The First National Bank of Chicago  
One First National Plaza  
Chicago, Illinois 60670  
Attention: Real Estate Finance Department  
Telecopy: (312) 732-1117

With a copy to:

Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606  
Attention: Patrick G. Moran, Esq.  
Telecopy: (312) 876-7934

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

15. This Assignment is made for collateral purposes only and the duties and obligations of Assignor under this Assignment shall terminate when all sums due Assignee under the Loan Documents are paid in full and all obligations, covenants, conditions and agreements of Assignor contained in the Revolving Credit Agreement are performed and discharged.

16. This Assignment shall be governed and construed by the internal laws of the state in which the Premises is located.

17. ASSIGNOR AND ASSIGNEE, BY ITS ACCEPTANCE OF THIS ASSIGNMENT, EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHT UNDER THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS ASSIGNMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

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IN WITNESS WHEREOF, Assignor has executed this Assignment as of the 4th day of October, 1994.

FIRST INDUSTRIAL, L.P., a Delaware limited partnership

By: First Industrial Realty Trust, Inc., a Maryland corporation, its General Partner

By:

  
Its Chief Investment Officer,  
Assistant Secretary

Property of Cook County Clerk's Office

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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

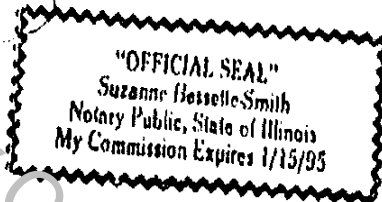
I, Suzanne Bernette Smith, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael J. Horvath, President of First Industrial Realty Trust, Inc., a Maryland corporation, the sole general partner of First Industrial, L.P., a Delaware limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of the general partner of such limited partnership, appeared before me this day in person acknowledged that they signed and delivered said Assignment as an officer of said corporation, as his own free and voluntary act and as the free and voluntary act of the corporation and as the free and voluntary act of First Industrial, L.P., a Delaware Limited Partnership, for the uses and purposes therein set forth.

WITNESS my hand and Notary Seal this 19<sup>th</sup> day of October, 1994.

Suzanne Bernette Smith  
Notary Public

My Commission Expires:

1/15/95



CLERK'S OFFICE OF COOK COUNTY

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## EXHIBIT A

### Legal Description:

15-16-420-004 *off*

THAT PART OF LOT 16 LYING WEST OF THE WEST RIGHT OF WAY LINE OF INDIANA HARBOR BELT RAILROAD COMPANY (EXCEPT THE SOUTH 646.07 FEET THEREOF) IN SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN.

ALSO

THE SOUTH 646.07 FEET OF THAT PART OF LOT 16 LYING WEST OF THE WEST RIGHT OF WAY LINE OF INDIANA HARBOR BELT RAILROAD COMPANY (EXCEPT THAT PART TAKEN FOR ROOSEVELT ROAD) IN THE SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

15-16-420-005

*off*  
*off*

Cook County Clerk's Office

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