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to be returned to:



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COOK COUNTY RECORDER



[ILLINOIS]

## MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made as of December 14, 1995 by FIRST INDUSTRIAL, L.P., a Delaware limited partnership ("Borrower") with a mailing address of 150 North Wacker Drive, Suite 150, Chicago, Illinois 60606, Attention: Johannson L. Yap, Vice President to MADISON BANK N.A., a national banking association ("Lender"), with a mailing address of 10 South Riverside Plaza, Chicago, Illinois 60606, Attention: Terence W. Keenan, President and pertains to the real estate described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

### I

### RECITALS

A. Pursuant to that certain Secured Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement"), Borrower has executed and delivered to Lender (i) a Term Note of even date herewith (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the "Term Note"), wherein Borrower promises to pay to the order of Lender the maximum principal amount of Eighteen Million Seven Hundred Eighteen Thousand Seven Hundred Eighty-Five and No/100 Dollars (\$18,718,785.00) and (ii) a Revolving Note of even date herewith (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the "Revolving Note"; the Term Note and the Revolving Note are sometimes hereinafter collectively

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referred to as the "Notes") wherein Borrower promises to pay to the order of Lender the maximum principal amount of Five Million Five Hundred Thousand and No/100 Dollars (\$5,500,000.00) in repayment of a loan from Lender in the principal amount of Twenty-Four Million Two Hundred Eighteen Thousand Seven Hundred Eighty-Five and No/100 Dollars (\$24,218,785.00) (the "Loan"), together with interest thereon, at variable rates of interest and otherwise as set forth in the Notes, which Notes are due and payable on or before December 14, 1978; and

B. As security for the repayment of the Loan, in addition to this Mortgage, certain other loan documents have been executed and delivered to Lender (the Loan Agreement, the Notes, this Mortgage, that certain Guaranty Agreement of even date herewith executed by First Industrial Realty Trust, Inc. (the "General Partner"); General Partner, together with any other guarantors of the indebtedness secured hereby, whether now or hereafter existing, are referred to collectively herein as the "Guarantors" and individually as a "Guarantor"), and all other documents or instruments executed and/or delivered as additional evidence of, or security for repayment of, the Loan, whether now or hereafter existing, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are hereinafter sometimes collectively referred to as the "Loan Documents"). The terms and provisions of the other Loan Documents are hereby incorporated herein by this reference.

C. In consideration of advances, credits and other financial accommodations heretofore or hereinafter made to Borrower by Lender under the Loan Documents, Lender has required Borrower hereby to deliver, pledge, assign, transfer, mortgage and warrant to Lender the Mortgaged Property (as that term is hereinafter defined) as security for repayment of the Loan as well as any and all other amounts owed to Lender under the terms of the Loan Documents. All capitalized terms not expressly defined herein shall have the same meanings as set forth in the Loan Agreement.

## II

### THE GRANT

NOW, THEREFORE, to secure the payment of the principal amount of the Notes and interest thereon (at variable rates and as otherwise provided therein) and all fees and premiums, if any, thereon, and all other sums due thereunder or advanced by Lender and all costs and expenses incurred by Lender in connection with any of the Loan Documents (all such obligations and payments are sometimes referred to herein as the "indebtedness secured hereby") and to secure the observance and performance of the agreements contained herein and in the other Loan Documents, Borrower hereby GRANTS, BARGAINS, CONVEYS, and MORTGAGES to Lender, its successors and assigns, forever all of Borrower's estate, right, title and interest, whether now or hereafter acquired, in and to the Premises, together with the following described property, whether now or hereafter acquired (the Premises, together with a security interest in and a lien on the following described property being hereinafter referred to collectively as the

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"Mortgaged Property"), all of which other property is hereby pledged on a parity with the Premises and not secondarily:

(a) All buildings and other improvements of every kind and description now or hereafter erected or placed thereon owned by Borrower and all materials owned by Borrower intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises;

(b) All right, title and interest of Borrower, including, without limitation, any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks and alleys adjoining the Premises;

(c) All right, title and interest of Borrower in each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights and any and all other rights, liberties and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after acquired title, franchise or license and the reversions and remainders thereof,

(d) All right, title and interest of Borrower in all leases now or hereafter on or affecting the Premises, whether written or oral and including, without limitation, that certain Lease dated as of February 3, 1993 (as amended from time to time, the "Lease") between Borrower, as assignee, and Medalist Industries, Inc., a Wisconsin corporation ("Tenant"), covering the Premises, and all right, title and interest of Borrower in all agreements for use of the Premises, together with all rents, issues, deposits, profits and other benefits now or hereafter arising from or in respect of the Premises accruing and to accrue from the Premises and the avails thereof;

(e) All fixtures and personal property now or hereafter owned by Borrower and attached to, contained in or used in connection with the Premises or the aforesaid improvements thereon, including, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, inventory, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being agreed that all such property owned by Borrower and placed on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of

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this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage;

(f) Subject to the limitations contained in this Mortgage, all right, title and interest of Borrower in all judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Premises and the other Mortgaged Property, or any part thereof;

(g) Subject to the limitations contained in this Mortgage, all right, title and interest of Borrower in all compensation, awards, damages, claims, rights of actions and proceeds of or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises and the other Mortgaged Property or any part thereof, (ii) damage to all or any portion of the Premises and the other Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Premises and the other Mortgaged Property, or (iii) the alteration of the grade of any street or highway on or about the Premises and the other Mortgaged Property or any part thereof; and except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and to apply the same toward the payment of the indebtedness and other sums secured hereby;

(h) Subject to the limitations contained in this Mortgage, all right, title and interest of Borrower in all contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Premises or the other Mortgaged Property or any part thereof;

(i) All right, title and interest of Borrower in all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Premises or the other Mortgaged Property;

(j) All right, title and interest of Borrower in all building materials and goods which are procured or to be procured for use on or in connection with the Mortgaged Property, whether or not such materials and goods have been delivered to the Premises;

(k) All right, title and interest of Borrower in all plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services to be rendered Borrower, or otherwise in connection with the Mortgaged Property and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Premises or the other Mortgaged Property or construction of additional improvements thereto; and

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(l) The right, title and interest of Borrower in all proceeds from any sale, transfer, pledge or other disposition by Borrower of any or all of the foregoing described Mortgaged Property:

To have and to hold the same unto Lender and its successors and assigns, for the purposes and uses herein set forth together with all right to possession of the Premises after the occurrence of any Default (as hereinafter defined in Paragraph 4.01 hereof) hereunder subject only to the permitted exceptions as set forth on Exhibit "B" to this Mortgage (the "Permitted Exceptions"); the Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State where the Premises are located.

**BORROWER REPRESENTS, WARRANTS AND COVENANTS**, to Lender that Borrower is lawfully seized of the Premises, that the same is unencumbered except by the Permitted Exceptions, if any, and that it has good right, full power and lawful authority to convey and mortgage the same, and that Borrower will warrant and forever defend said parcels and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

If and when the principal amount of the Notes and all interest as provided thereunder has been paid, and Borrower has satisfied all obligations thereunder and under the Loan Agreement and the other Loan Documents, then this Mortgage shall be released at the cost of Borrower, but otherwise shall remain in full force and effect.

## III

### GENERAL AGREEMENTS

**3.01 Principal and Interest.** Borrower shall pay or cause to be paid promptly when due the principal and interest on the indebtedness evidenced by the Notes at the times, at the variable rates and in the manner provided in the Loan Agreement. Any amount not paid after the Credit Termination Date (as defined in the Loan Agreement) shall accrue interest at the Default Interest Rate (as defined in the Loan Agreement).

**3.02 Property Taxes.** Borrower shall pay or cause to be paid prior to any delinquency, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and, if requested by Lender, furnish to Lender duplicate receipts therefor within forty-five (45) days after payment thereof. Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that subject to the provisions of the Loan Agreement:

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(a) such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;

(b) Borrower has notified Lender in writing of the intention of Borrower to contest the same before any tax or assessment has been increased by any interest, penalties or costs; and

(c) Borrower has deposited with Lender, at such place as Lender may from time to time in writing designate, a sum of money or other security acceptable to Lender that is sufficient, in Lender's reasonable judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Lender's reasonable judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Lender's reasonable judgment, such increase is advisable. Upon the consummation of such contest, and provided there is no existing Default hereunder, any excess funds held by Lender shall be returned to Borrower.

In the event Borrower fails to prosecute such contest in good faith and with reasonable diligence, Lender may in the event the contested taxes or assessments are delinquent, at its option, apply the monies and liquidate any securities deposited with Lender in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Borrower shall forthwith, upon demand, either deposit with Lender a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Lender has applied funds on deposit on account of such taxes and assessments, restore such deposit to an amount satisfactory to Lender. Provided no Default exists hereunder, Lender shall, if so requested in writing by Borrower, after final disposition of such contest and upon Borrower's delivery to Lender of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together with all penalties and interest thereon, and any excess security shall be returned to Borrower.

**3.03 Tax Escrow.** Borrower, to provide for the payment of real estate taxes and assessments pertaining to the Premises, shall, simultaneously with Borrower's monthly payments of interest and principal to Lender, deposit monthly with Lender on (1) the first day of each month, or (2) to the extent applicable, the third business day following the date a tenant at the Premises is obligated to pay estimated monthly taxes and assessments to Borrower as landlord, one-twelfth (1/12) of one hundred percent (100%) of the annual real estate taxes as estimated by Lender in such manner as Lender may reasonably prescribe in good faith and in any event based on the most recently ascertainable amount of such taxes so as to provide for the current year's real estate tax obligation for the Mortgaged Property; provided, however, Borrower shall not be required to escrow any tax payments to the extent the tenant at the Premises has the obligation to pay real estate taxes and assessments directly to the taxing authority and to the

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extent such taxes and assessments are actually paid; provided, further, Borrower shall reasonably promptly furnish Lender with written evidence of such payment upon Lender's request. Notwithstanding the foregoing, Borrower shall be liable for and pay any real estate taxes and assessments that any of its tenants are required to pay under their respective leases with Borrower but fail to do so after the date of their delinquency. All such real estate tax and assessment payments shall be made by Borrower into a non-interest bearing real estate tax escrow account held by Lender for payment of real estate taxes when such taxes become due and payable. If the amount estimated to pay said taxes required to be paid by Borrower is not sufficient based on the actual amount of said taxes due and owing, Borrower shall pay the difference within a reasonable period of time after request by Lender but in no event later than twenty-one (21) days on demand by Lender. Should Borrower fail to deposit sufficient amounts with Lender to pay such obligations after notice from Lender, Lender may, but shall not be obligated to, advance monies necessary to make up any deficiency in order to pay such obligations (except to the extent the tenant at the Premises has the obligation to pay real estate taxes and assessments directly to the taxing authority and to the extent such taxes and assessments are actually paid prior to their delinquency). Lender is not obligated to inquire into the validity or accuracy of the real estate tax bills before making payments of the same and nothing herein contained shall be construed as requiring Lender to advance other monies for said purpose nor shall Lender incur any personal liability for anything it may do or omit to do hereunder, except to the extent of Lender's gross negligence or wilful misconduct; provided, however, Lender shall not be deemed to be grossly negligent or engaged in wilful misconduct if Lender relied on any real estate tax bill, statement or estimate for the Mortgaged Property procured from the appropriate public office, and Lender shall have no obligation to inquire into the accuracy thereof or into the validity of any such tax or assessment relating thereto. The amounts held hereby are hereby pledged together with any other account of Borrower, or any Guarantor, held by Lender to further secure the indebtedness secured hereby, and any officer of Lender is authorized to withdraw the same and apply said sums as aforesaid.

**3.04 Payments by Lender.** In the event of a Default hereunder, Lender is hereby authorized to make or advance, in the place and stead of Borrower, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions or liens that may be asserted against the Mortgaged Property or any part thereof, and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture or title or claim relating thereto. In the event of a Default hereunder, Lender is further authorized to make or advance, in the place and stead of Borrower, any payment relating to any adverse title, lien, statement of lien, encumbrance, claim, charge or payment, as well as take any and all actions which Lender deems necessary or appropriate on Borrower's behalf whenever, in Lender's sole and absolute judgment and discretion, such payments or actions seem necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Lender is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Lender's choosing. All payments, costs and other expenses incurred by Lender pursuant to this **Paragraph 3.04**, including without limitation reasonable attorneys' fees, expenses and court

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costs, shall constitute additional indebtedness secured hereby and shall be repayable by Borrower upon demand with interest at the Default Interest Rate

## 3.05 Insurance.

(a) Hazard. (i) Borrower agrees to maintain or to cause Tenant to maintain insurance against loss or damage to the building and all improvements and betterments on the Mortgaged Property ("Loss"), in such amounts and with such limits as Lender may require from time to time. The coverage shall be equivalent or better than the Causes of Loss - Special Form (CP1030) as published by the Insurance Services Office ("ISO") and shall be on a replacement cost, agreed amount basis. Borrower must pay promptly, when due, any premium on such insurance. All such insurance policies and renewals thereof shall be written in companies having a Best's rating of A- or better. All such policies and renewals thereof (or binders evidencing the same) shall be delivered to Lender at least thirty (30) days before the expiration of the existing policies and shall have attached thereto a standard mortgagee clause entitling Lender to collect any and all proceeds payable under such insurance. The policy shall contain a waiver of subrogation in favor of the Lender. If more than one policy is written insuring the Mortgaged Property, this separate policy must also include a standard mortgagee clause and waiver of subrogation in favor of Lender. In the event of a change in ownership or of occupancy of the Mortgaged Property, or any portion thereof, Borrower shall give immediate notice thereof to Lender.

(ii) In case of any Loss, Borrower shall immediately give Lender and the insurance companies that have insured against such risks, notice of such Loss and Borrower is authorized, with Lender's prior written consent, which shall be granted in Lender's sole and absolute discretion, to settle and adjust any claim under insurance policies which insure against such risks. Notwithstanding the foregoing, in the event of a Default, or event or condition which with the giving of notice or the passage of time would constitute a Default, shall have occurred hereunder or under any of the other Loan Documents, Lender (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is, subject to the provisions hereof and subject to the rights of Tenant under the Lease, hereby authorized to either: (1) settle, adjust or compromise any claim under any insurance policies and Lender shall act in its sole and absolute discretion without the consent of Borrower; or (2) allow Borrower to settle, adjust or compromise any claims for Loss with the insurance company or companies on the amount to be paid upon the Loss. In all cases Lender is authorized to collect and receipt for any such insurance proceeds and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be such additional indebtedness secured hereby and shall be reimbursed to Lender upon demand with interest thereon at the Default Interest Rate or may be

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deducted by Lender from said insurance proceeds prior to any other application thereof.

The insurance proceeds shall be made available to Borrower to repair and restore the Mortgaged Property if, and only if, all of the following conditions are satisfied:

- (A) no Default shall have occurred that is continuing hereunder or under any of the other Loan Documents;
- (B) the insurance proceeds shall, in Lender's reasonable judgment, be sufficient to complete the repair and restoration of the buildings, structures and other improvements on the Premises to an architectural and economic unit of substantially the same character and the same value as existed immediately prior to such casualty, or, if Lender shall determine, in its reasonable discretion, that the insurance proceeds are insufficient, Borrower shall have deposited with Lender the amount of the deficiency in cash within fifteen (15) days after Lender's demand therefor;
- (C) after such repair or restoration, the Mortgaged Property along with the other property in the Portfolio (as defined in the Loan Agreement) shall, in Lender's reasonable judgment, adequately secure the outstanding balance of the Loan;
- (D) any and all leases of the Premises including, without limitation, the Lease remain in full force and effect subject to any right of tenant to vacate;
- (E) the insurers do not irrevocably deny liability to any of the insureds;
- (F) the Loss does not occur during the last twelve (12) months of the term of the Loan; and
- (G) Notwithstanding anything to the contrary contained in subsections (A) through (F) hereof or elsewhere, in the event the cost of completing such repair or restoration of the Mortgaged Property is less than or equal to One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00), the insurance proceeds shall in all events be made available to Borrower to repair and restore the Mortgaged Property.

In the event the foregoing conditions are not satisfied, the insurance proceeds may, at the option of Lender, be applied in the reduction of the indebtedness secured hereby, whether due or not, in such order as Lender shall determine in its sole and absolute discretion, whereupon Borrower shall pay to Lender the applicable Percentage Prepayment Charge, if applicable, or be held by Lender and used to reimburse Borrower for the cost of rebuilding or restoring buildings or improvements on the Premises.

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Notwithstanding anything herein to the contrary, in case of any Loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Lender's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of any one or more redemptions made under said decree, each successive redelector may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Nothing contained in this Mortgage shall create any responsibility or obligation on Lender to collect any amount owing on any insurance policy, to rebuild, repair or replace any damaged or destroyed portion of the Mortgaged Property, or to perform any act hereunder.

(iii) Upon Borrower's request, and provided all of the conditions of the second paragraph of Paragraph 3.05(a)(ii) have been satisfied or otherwise upon Lender's election, to apply such insurance proceeds toward repairing, restoring, and rebuilding such improvements or in the event any of the Leases require that improvements be rebuilt or restored upon such casualty and provided, the provisions of Paragraphs 3.05(a)(ii)(A) and (C) are satisfied and the net operating income covenant contained in Paragraph 10.12 of the Loan Agreement remains satisfied, such insurance proceeds shall be made available therefor, by Lender, or such other depository designated by Lender, from time to time, to Borrower or at Lender's option directly to contractors, sub-contractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to ensure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof, provided that Lender is furnished with evidence reasonably satisfactory to Lender of the estimated cost of such repairs, restoration and rebuilding and with architect's and other certificates, waivers of lien, certificates, contractors' sworn statements, and other evidence of the estimated cost thereof and of payments as Lender may require and approve in its sole and absolute discretion. In addition to the foregoing, if the estimated cost of the work exceeds ten (10%) percent of the appraised value for the Premises as set forth in the Appraisal (as defined in the Loan Agreement) for the Premises, Borrower shall also deliver to Lender for its prior approval evidence satisfactory to Lender in its sole and absolute discretion that the appraised value of the Mortgaged Property after such work will not be less than its appraised value established in the appraisal delivered to Lender on or prior to the date hereof and all plans and specifications for such repairs, restoration and rebuilding as Lender may require and approve in its sole and absolute discretion. No payment to a contractor

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made prior to the final completion of the work shall exceed ninety (90%) percent of the value of the repair, restoration or rebuilding work performed, from time to time, and at all times the undisbursed balance of such proceeds remaining in the custody or control of Lender shall be, in Lender's reasonable discretion, at least sufficient to pay for the cost of completion of the work, free and clear of any liens. Lender may, at any time after the occurrence of a Default hereunder, and in its sole and absolute discretion, procure and substitute for any and all of the insurance policies so held as aforesaid, such other policies of insurance in such amounts and carried in such companies as Lender may select. Lender may commingle any such funds held by it hereunder and shall not be obligated to pay any interest with respect to any such funds held by or on behalf of Lender.

(b) Liability. Borrower shall carry and maintain or cause Tenant to carry and maintain commercial general liability insurance against bodily injury and property damage written with companies having a Best's rating of A- or better. Coverage shall be written on an occurrence form equivalent or better than the occurrence form (CG0001) as published by the ISO with minimum limits as set forth in the Loan Agreement. The policy shall name Lender as an additional insured with respect to liability arising out of the Mortgaged Premises. Certificates of insurance showing Lender as additional insured, premiums prepaid, shall be deposited with Lender and shall contain provision for thirty (30) days notice to Lender prior to any cancellation or non-renewal except for ten (10) days notice for non-payment of premium.

(c) Builder's Risk. Upon the request of Lender and if applicable due to construction being performed by Borrower, Borrower shall obtain or shall cause Tenant to obtain builder's risk insurance on a special perils basis for 100% of the insurable value of all construction work in place or in progress from time to time insuring the Mortgaged Property and materials in storage and while in transit. Insurance shall include Replacement Cost, Agreed Amount coverage.

(d) Flood Area. If the Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the "Act"), Borrower, at its sole cost and expense shall, or shall cause Tenant to, keep the Premises insured by flood insurance in an amount not less than the maximum limit of coverage available under the Act.

(e) Rent or Business Interruption. Borrower shall carry and maintain rent and rental value or business loss insurance for the same perils described in 3.05(a) above payable at the rate per month and for the period specified from time to time by Lender. Lender acknowledges that Borrower's existing business loss insurance is acceptable and comparable amounts of such insurance shall be acceptable for the term of the Loan.

(f) Other Insurance. Upon Lender's reasonable written request, Borrower at its sole cost and expense, shall, or shall cause Tenant to, carry and maintain or cause to

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carry and maintain such other insurance coverage(s) relating solely to the Mortgaged Property as Lender may, in its reasonable discretion, deem necessary or appropriate in such amounts, with such companies and in such form as is commercially reasonable, all at Borrower's sole expense, which insurance may include without limitation broad form boiler and sprinkler damage insurance.

**3.06 Condemnation and Eminent Domain.** Any and all awards heretofore or hereafter made or to be made to the present or any subsequent owner of the Mortgaged Property by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereof, and the issuance of a warrant for payment thereof), are hereby assigned by Borrower to Lender, which awards, subject to the provisions of Paragraph 3.05(a) hereof, Lender is hereby authorized to negotiate, collect and receive from the condemnation authorities. Lender is hereby authorized to give appropriate receipts and acquittances therefor. Borrower shall give Lender immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings of which it has knowledge affecting all or any part of the Mortgaged Property (including severance of, consequential damage to or change in grade of streets), and shall immediately deliver to Lender copies of any and all papers served in connection with any such proceedings. Borrower further agrees to make, execute and deliver to Lender, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore, now and hereafter made to Borrower for any taking, either permanent or temporary, under any such proceeding. Any such award shall be applied toward the indebtedness secured by this Mortgage or applied toward restoring the Mortgaged Property in accordance with the provisions of and in the same manner as is provided for insurance proceeds in Paragraph 3.05(a) hereof. Notwithstanding the foregoing, any expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds, shall be reimbursed to Lender out of the proceeds.

**3.07 Maintenance of Property.** No material portion of the Mortgaged Property shall be altered, removed or demolished, severed, removed, sold or mortgaged by Borrower, without the prior written consent of Lender. In the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered by this Mortgage or by any separate security agreement executed in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in value, quality and condition to those replaced, free from any other security interest therein, encumbrances thereon or reservation of title thereto. Borrower shall, or shall cause Tenant to, promptly repair, restore or rebuild any building or other improvement or any part thereof now or hereafter situated on the Premises that may become damaged or be destroyed provided proceeds of insurance are available for such purpose. Any such building or other improvement or any part thereof that is rebuilt or restored shall be repaired, restored or rebuilt so as to be of

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to accelerate the maturity of the Notes, causing the entire principal balance thereof and all interest accrued thereon to be immediately due and payable.

Excluding transfers specifically authorized pursuant to the Loan Agreement, including without limitation Section 6.5 thereof, which rights are incorporated herein by reference thereto, if Borrower, without Lender's prior written consent, sells, leases, transfers, conveys, assigns, pledges, hypothecates or otherwise disposes of the title to all or any portion of the Mortgaged Property (subject to any rights of tenants under the Leases), or any partnership interest in Borrower, whether by operation of law, voluntarily or otherwise, or any interest (beneficial or otherwise) thereto, or enters into any agreement to do any of the foregoing, Lender shall have the unqualified right, at its option, to accelerate the maturity of the Notes, causing the entire principal balance, and accrued interest to be immediately due and payable. Notwithstanding the foregoing, transfers or agreements to transfer (including sales, encumbrances, assignments, pledges, hypothecations, conveyances or other dispositions) or the creation of partnership interests shall be permitted as long as Guarantor retains a fifty-one percent (51%) ownership and controlling interest in Borrower.

Any waiver by Lender of the provisions of this **Paragraph 3.09** shall not be deemed to be a waiver of the right of Lender in the future to insist upon strict compliance with the provisions hereof.

**3.10 Subrogation to Prior Lienholder's Rights.** If the proceeds of the Loan secured hereby or any part thereof, or any amount paid out or advanced by Lender is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

**3.11 Lender's Dealings with Transferee.** In the event of the sale or transfer in violation of **Paragraph 3.09**, by operation of law, voluntarily or otherwise, of all or any part of the Mortgaged Property, Lender shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby and any of the terms or conditions hereof as fully and to the same extent as it might with Borrower, without in any way releasing or discharging Borrower from its covenants hereunder, specifically including those contained in **Paragraph 3.09** hereof, and without waiving Lender's right of acceleration pursuant to **Paragraph 3.09** hereof.

**3.12 Stamp Taxes.** If at any time the United States government or any federal, state or municipal governmental subdivision requires Internal Revenue or other documentary stamps, levies or any tax on this Mortgage or on the Notes, or requires payment of the United States Interest Equalization Tax on any of the indebtedness secured hereby, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of the Lender, thirty (30) days after the mailing by Lender of notice of such election to Borrower; provided, however, that such election shall be unavailing, and this Mortgage and the Notes shall be and

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remain in effect, if Borrower may and does lawfully pay for such stamps or tax, including interest and penalties thereon, to or on behalf of Lender.

**3.13 Change in Tax Laws.** In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Premises are located deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon, or imposing upon Lender the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Borrower's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof then Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if, in the opinion of counsel for Lender, it might be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to become due and payable thirty (30) days after the giving of such notice. Nothing contained in this **Paragraph 3.13** shall be construed as obligating Lender to pay any portion of Borrower's federal income tax.

**3.14 Inspection of Property.** Subject to the rights of tenants under any Leases at the Premises, Borrower shall permit Lender and its representatives and agents to inspect the Mortgaged Property from time to time upon reasonable prior telephonic notice during normal business hours and as frequently as Lender considers reasonable.

**3.15 Inspection of Books and Records.** Borrower or its property manager shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and after written demand therefor by Lender shall permit Lender and its agents and representatives upon reasonable notice and during reasonable business hours to visit its offices, discuss its financial affairs with its officers and independent public accountants provided Borrower has the opportunity to have any representative of Borrower present and to examine such books and records and all supporting vouchers and data, copies of any leases, including, without limitation, the Lease, encumbering the Premises and such other information as Lender may deem reasonably necessary or appropriate at any time and from time to time on Lender's request at Borrower's offices, at the address hereinabove identified or at the Mortgaged Property.

**3.16 Financial Information.** Borrower shall deliver, or cause to be delivered any and all financial and other information required pursuant to **Paragraph 9.1** of the Loan Agreement, or otherwise under the Loan Agreement.

**3.17 Acknowledgment of Debt.** Borrower shall furnish from time to time, within ten (10) business days after Lender's request, a written statement, duly acknowledged, specifying the amount due under the Notes, this Mortgage, the Loan Agreement and any of the other Loan

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Documents and disclosing whether any alleged offsets or defenses exist against the indebtedness secured hereby.

**3.18 Other Amounts Secured; Maximum Indebtedness.** Borrower acknowledges and agrees that this Mortgage secures the entire principal amount of the Notes and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part and future advances made at a later date, as well as any amounts owed to Lender pursuant to **Paragraphs 3.02 and 3.04** hereof, any and all litigation and other expenses pursuant to **Paragraphs 4.05 and 4.06** hereof and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed Seventy-Five Million and No/100 Dollars (\$75,000,000.00).

**3.19 Declaration of Subordination.** At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Mortgaged Property including, without limitation, the Lease upon the execution by Lender and recording thereof, at any time hereafter, in the appropriate official records of the county wherein the Premises are situated, of a unilateral declaration to that effect.

**3.20 Releases.** Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party pursuant to the Notes, this Mortgage or any of the other Loan Documents, including, without limitation, any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Mortgaged Property.

**3.21 Borrower's Representations.** Borrower hereby remakes any and all representations and covenants to Lender contained in the Loan Agreement.

**3.22 Utilities.** Borrower will (except to the extent paid by lessees) pay all utility charges incurred in connection with the Premises and all improvements thereon, and shall maintain all utility services now or hereafter available for use at the Premises.

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**3.23 Hazardous Waste.** (a) Borrower hereby renounces any and all representations, warranties and agreements made in that certain Environmental Indemnity Agreement of even date herewith from Borrower and General Partner in favor of Lender.

**3.24 Assignment of Rents.** (a) As further security for the repayment of the Notes, and any amounts due pursuant to this Mortgage, Borrower does hereby sell, assign and transfer to Lender all rents, leases, issues, deposits and profits now due and which may hereinafter become due under or by reason of any lease or any letting of, or any agreement for the use, sale, or occupancy of the Premises or any portion thereof (whether written or verbal), which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Lender under the powers herein granted, including without limitation sale contracts, leases (including the Lease), escrow and other agreements, it being Borrower's intention hereby to establish an absolute transfer and assignment of all such leases, contracts, escrows and agreements pertaining thereto (such leases, contracts, escrows and agreements being collectively referred to hereinbelow as "**agreements**" and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an "**agreement**"), and all the avails thereof, to Lender.

Borrower does hereby irrevocably appoint Lender as its true and lawful attorney in its name and stead (with or without taking possession of the Premises) to rent, lease, let, or sell all or any portion of the Premises to any party or parties at such price and upon such term as Lender in its sole discretion may determine, to exercise any and all rights including rights of first refusal and options of any Borrower to purchase and otherwise acquire title to all or any part of the Mortgaged Property, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions set forth hereinbelow.

This assignment confers upon Lender a power coupled with an interest and it cannot be revoked by Borrower.

(b) Borrower represents and agrees that without the prior written consent of the Lender, which consent shall not be unreasonably withheld, no rent for right of future possession will be paid by any person in possession of any portion of the Premises in excess of two installments thereof paid in advance and that no payment of rents to become due for any portion of the Premises has been or will be waived, conceded, released, reduced, discounted, or otherwise discharged or compromised by Borrower. Borrower shall not exercise or permit (except to the extent permitted by the Lease) any right of set-off against any person in possession of any portion of the Premises without the prior written consent of Lender. Borrower agrees that it will not assign any of such rents, issues, profits, deposits or avails, and shall not agree to any modification of the

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terms, or a voluntary surrender, of any such lease or agreement without the prior written consent of Lender.

(c) Borrower further agrees to assign and transfer to Lender all future leases and agreements pertaining to all or any portion of the Premises and to execute and deliver to Lender, immediately upon demand of Lender, all such further assurances and assignments pertaining to the Premises as Lender may from time to time require.

(d) Borrower shall, at its own cost: (i) at all times perform and observe all of the covenants, conditions and agreements of the lessor under the terms of any or all lease or similar agreements affecting all or any part of the Premises; (ii) at all times enforce and secure the performance and observance of all of the material covenants, conditions and agreements of the lessees under the terms of any or all of said leases or other agreements; (iii) appear in and defend any action or other proceeding arising out of or in any manner connected with said leases and other agreements, and to pay any and all costs of Lender incurred by reason of or in connection with said proceedings, including, without limitation, reasonable attorneys' fees, expenses and court costs; and (iv) promptly furnish Lender with copies of any notices of default either sent or received by Borrower under the terms of or pursuant to any of said leases or other occupancy agreements.

(e) Although it is the intention of Borrower and Lender that the assignment, including, without limitation, the power of attorney appointment, contained in this **Paragraph 3.24** is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein unless and until a Default hereunder has occurred, or a condition which with the passage of time or giving of notice or both, would constitute a Default hereunder.

(f) Lender, in the exercise of the rights and powers conferred upon it herein after a Default hereunder, shall have full power to use and apply the rents, issues, deposits, profits and avails of the Premises to the payment of or on account of the following, in such order as Lender may, in its sole and absolute discretion, determine:

(i) operating expenses of the Premises (including without limitation all costs of management, sale and leasing thereof, which shall include reasonable compensation to Lender and its agents, if management be delegated thereto, reasonable attorneys' fees, expenses and court costs, and lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establishing any claims for damages, and premiums on insurance authorized hereinabove;

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(ii) taxes, special assessments, water and sewer charges on the Premises now due or that may hereafter become due;

(iii) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises (including without limitation the cost from time to time of installing or replacing personal property therein, and of placing the Premises in such condition as will, in the sole judgment of Lender, make them readily rentable or salable);

(iv) any indebtedness secured hereby or any deficiency that may result from any foreclosure sale pursuant thereto; and

(v) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

(g) Borrower does further specifically authorize and instruct Tenant and each and every present and future lessee or purchaser of all or any portion of the Premises to pay all unpaid rentals or deposits agreed upon in any lease or agreement pertaining to the Premises to Lender upon receipt of demand from Lender after a Default has occurred to pay the same without any further notice or authorization by Borrower, and Borrower hereby waives any rights or claims it may have against any lessee by reason of such payments to Lender.

(h) Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease or agreement pertaining to the Premises, and Borrower shall and does hereby agree to indemnify and hold Lender harmless from and against any and all liability, loss and damage that Lender may or might incur under any such lease or agreement or under or by reason of the assignment thereof, as well as any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or conditions contained in such leases or agreements. Should Lender incur any such liability, loss or damage under any such lease or agreement, or under or by reason of the assignment thereof, or in the defense of any claims or demands relating thereto, Borrower shall reimburse Lender for the amount thereof (including, without limitation, reasonable attorneys' fees, expenses and court costs) immediately upon demand. Nothing contained herein shall obligate Borrower to indemnify or hold Lender harmless for any such liability, loss or damage arising or occurring solely on account of Lender's gross negligence or willful misconduct.

(i) Nothing herein contained shall be construed as making or constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Lender pursuant to the provisions set forth herein. In the exercise of

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the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

**3.25 Security Agreement.** (a) This Mortgage shall be deemed a "Security Agreement" as defined in the Illinois Uniform Commercial Code, and creates a security interest in favor of Lender in all property including, without limitation, all personal property, fixtures and goods affecting property either referred to or described herein or in any way connected with the use or enjoyment of the Mortgaged Property. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law or, as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such a Financing Statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Mortgaged Property whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender under this Mortgage or impugning the priority of the Lender's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Lender in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Lender's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Illinois Uniform Commercial Code records.

(b) Borrower shall execute, acknowledge and deliver to Lender, within ten (10) days after request by Lender, any and all security agreements, financing statements and any other similar security instruments reasonably required by Lender, in form and of content reasonably satisfactory to Lender, covering all property in or at the Mortgaged Property whatsoever owned by Borrower that, in the reasonable opinion of Lender, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein

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perfected, by this Mortgage under the laws of the state in which the Premises are located. Borrower shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Lender may request in order to perfect, preserve, maintain, continue and extend such security instruments. Borrower further agrees to pay to Lender all reasonable fees, costs and expenses (including, without limitation, all reasonable attorneys' fees and expenses and court costs) incurred by Lender in connection with the preparation, execution, recording, filing and re-filing of any such document.

**3.26 Fixture Financing Statement.** From the date of its recording, this Mortgage shall be effective as a fixture financing statement with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

First Industrial, L.P.  
150 North Wacker Drive  
Suite 150  
Chicago, Illinois 60606

(b) Name and Address of Secured Party:

Madison Bank N.A.  
10 South Riverside Plaza  
Chicago, Illinois 60606

(c) This document covers goods which are or are to become fixtures.

**3.27 Interest Laws.** It being the intention of Lender and Borrower to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Notes, the Loan Agreement, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Notes. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Notes, the Loan Agreement, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this **Paragraph 3.27** shall govern and control; (b) neither Borrower nor any other party obligated under the terms of the Notes or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the then unpaid principal balance under the Notes, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the Interest Rate (as that term is defined in the Notes) shall

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be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Notes, the Loan Agreement, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the Interest Rate; and (e) neither Borrower nor any other party obligated under the terms of the Notes or any of the other Loan Documents shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

## IV

### DEFAULTS AND REMEDIES

**4.01 Events Constituting Defaults.** Each of the following events shall constitute a default (a "Default") under this Mortgage:

(a) Failure of Borrower to pay when due any sum secured hereby, including, but not limited to, any installment of principal or interest or both thereon and any such default is not cured within five (5) days after Borrower receives written notice thereof from Lender;

(b) Failure of Borrower to comply with any of the requirements of **Paragraph 3.09**;

(c) Failure of Borrower to perform or observe any other covenant, warranty or other provision contained in this Mortgage and not otherwise covered in any of the other provisions of this **Paragraph 4.01**; provided, if such default is capable of being cured, Borrower shall have a period of thirty (30) days after the date on which notice of the nature of such failure is given by Lender to Borrower to cure such default; provided, however, that so long as Borrower is diligently pursuing such action is, in Lender's reasonable discretion necessary to cure said failure to comply, the foregoing shall not be a Default hereunder; or

(d) Borrower or any Guarantor shall be in default beyond any applicable cure period under any of the Loan Documents; or any of the Loan Documents shall fail to remain in full force and effect; or any action shall be taken by Borrower to discontinue any of the Loan Documents or to assert the invalidity of any thereof.

**4.02 Acceleration of Maturity.** Upon the occurrence of any Default, at the election of Lender, the entire principal balance then outstanding under the Notes, together with all unpaid interest accrued thereon and all other sums due from Borrower thereunder, under this Mortgage or any other Loan Document shall become immediately due and payable with interest thereon at the Default Interest Rate.

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**4.03 Foreclosure of Mortgage.** Upon the occurrence of any Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

**4.04 Lender's Continuing Options.** The failure of Lender to declare a Default or exercise any one or more of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under the Notes, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Default.

**4.05 Litigation Expenses.** In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Notes, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Mortgaged Property in which Lender is named as a party, there shall be allowed and included, as additional indebtedness secured hereby in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, reasonable attorney's fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Premises as Lender may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the IMF Law (as such term is hereinafter defined in Paragraph 4.09) to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Notes, this Mortgage or any of the other Loan Documents or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Borrower with interest thereon at the Default Interest Rate.

**4.06 Performance by Lender.** In the event of any Default Lender may, but need not, make any payment or perform any act on Borrower's behalf in any form and manner deemed

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expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including without limitation reasonable attorneys' fees and court costs, and any other monies advanced by Lender to protect the Mortgaged Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender without notice and with interest thereon at the Default Interest Rate from the date an advance is made to and including the date the same is paid. The action or inaction of Lender shall never be construed to be waiver of any right accruing to Lender by reason of any default by Borrower. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, except on account of Lender's gross negligence or wilful misconduct, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

**4.07 Right of Possession.** In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Borrower shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts of Borrower or the then owner of the Mortgaged Property solely relating thereto, and may exclude Borrower, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Borrower or such owner, or in its own name as Lender and under the powers herein granted:

(a) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Mortgaged Property, including, without limitation, actions for recovery of rent, and actions in forcible detainer, all without notice to Borrower;

(b) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(c) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien hereof;

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(d) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

(e) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

Without limiting the generality of the foregoing, Lender shall have all right, power, authority and duties as provided in the IMF Law. Nothing herein contained shall be construed as constituting Lender as Mortgagee in possession in the absence of the actual taking of possession of the Premises.

**4.08 Priority of Payments.** Any rents, issues, deposits, profits and avails of the Property received by Lender after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage shall be applied in payment of or on account of the following in such order as Lender or, in case of a receivership, as the court, may in its sole and absolute discretion determine:

(a) operating expenses of the Mortgaged Property not otherwise paid by lessees (including, without limitation, reasonable compensation to Lender, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including lease commission, and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) taxes, special assessments, water and sewer charges now due or that may hereafter become due on the Mortgaged Property not otherwise paid by lessees, or that may become a lien thereon prior to the lien of this Mortgage;

(c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including, without limitation, the cost, from time to time, of installing or replacing any personal property

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therein, and of placing the Mortgaged Property in such condition as will, in the judgment of Lender or any receiver thereof, make it readily rentable or salable);

(d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and

(e) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

**4.09 Appointment of Receiver.** Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may appoint upon petition of Lender, and at Lender's sole option, a receiver of the Mortgaged Property pursuant to the Illinois Mortgage Foreclosure Law as amended (Illinois Code Ann. 735 ILCS 5/15-1001, et. seq.) (the "IMF Law"). Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Law, including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the indebtedness secured by this Mortgage, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

**4.10 Foreclosure Sale.** In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

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**4.11 Application of Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in **Paragraphs 4.05 and 4.06** hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Notes, with interest thereon at the Default Interest Rate; (c) all principal and interest, together with any prepayment charge, remaining unpaid under the Notes, in the order of priority specified by Lender in its sole and absolute discretion; and (d) the balance, if any, to Borrower or its successors or assigns, as their interests and rights may appear.

**4.12 Application of Deposits.** In the event of any Default, Lender may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Lender or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Borrower's obligations under the Notes, this Mortgage or any of the other Loan Documents in such order and manner as Lender may elect in its sole and absolute discretion. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Borrower or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Notes and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Borrower.

**4.13 Indemnification.** Excluding liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses arising out of Lender's gross negligence or wilful misconduct, Borrower will indemnify and hold Lender harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees, expenses and court costs) incurred by or asserted against Lender by reason of (a) the ownership of the Mortgaged Property or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (c) any use, nonuse or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof. Any amounts owed to Lender by reason of this **Paragraph 4.13** shall constitute additional indebtedness which is secured by this Mortgage and shall become immediately due and payable upon demand therefor, and shall bear interest at the Default Interest Rate from the date such loss or damage is sustained by Lender until paid. The obligations of Borrower under this **Paragraph 4.13** shall survive any termination or satisfaction of this Mortgage.

**4.14 Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any

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advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Notes. Borrower acknowledges that the Premises do not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

## V

### MISCELLANEOUS

**5.01 Notices.** Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in the form and manner specified below, and shall be addressed to the party to be notified as follows:

If to Bank at:  
10 S. Riverside Plaza  
Chicago, IL. 60606

Attention: Terence W. Keenan  
President  
Telecopy No.: (312) 454-0807  
Telephone No.: (312) 454-1200

If to Borrower at:  
150 N. Wacker Drive, Suite 150  
Chicago, IL. 60606

Attention: Michael Havalá  
Telecopy No.: (312) 704-6606  
Telephone No.: (312) 704-9000

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together with a copy to: Barack, Ferrazzano, Kirschbaum & Perlman, 333 West Wacker Drive, Suite 2700, Chicago, Illinois 60606; Telecopy No. (312) 984-3150; Attention: Suzanne Bessette-Smith, Esq.; and Holleb & Coff, 55 East Monroe Street, Suite 4100, Chicago, Illinois 60603; Telecopy No. (312) 807-3900; Attention: Kenneth A. Latimer, Esq.; and First Industrial Realty Trust, Inc., 150 N. Wacker Drive, Suite 150, Chicago, IL 60606; Telecopy No. (312) 704-6606; Attention: Michael W. Brennan;

or to such other address as each party designates to the other by notice in the manner herein prescribed. Notice shall be deemed given hereunder if (i) delivered personally or otherwise actually received, (ii) sent by overnight delivery service, (iii) mailed by first-class United States mail, postage prepaid, registered or certified, with return receipt requested, or (iv) sent via telecopy machine with a duplicate signed copy sent on the same day as provided in clause (i) or (ii) above. Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) days after its deposit in the United States mail, and notice telecopied as provided in clause (iv) above shall be effective upon delivery of such telecopy if the duplicate signed copy is sent under clause (iv) above. Notice given in any other manner described in this Section shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender unless expressly set forth in such notice.

Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Mortgage is not required to be given.

**5.02 Time of Essence.** It is specifically agreed that time is of the essence of this Mortgage.

**5.03 Covenants Run with Land.** All of the covenants of this Mortgage shall run with the land constituting the Premises.

**5.04 Governing Law; Litigation.** The place of the location of the Mortgaged Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Lender shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE

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EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH 5.04.

**5.05 Rights and Remedies Cumulative.** All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Notes and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

**5.06 Severability/Inconsistencies.** If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein. If and to the extent any provision of this Mortgage is inconsistent with the provisions of the Loan Agreement, the provisions of the Loan Agreement shall control.

**5.07 Non-Waiver.** Unless expressly provided in this Mortgage, the Loan Agreement or any other Loan Document to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein to or of any breach or default by any other interested party referred to herein regarding the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

**5.08 Headings.** The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

**5.09 Grammar.** As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes" are used in this Mortgage, they should be interpreted in a non-exclusive manner as though the words "without limitation," immediately followed the same.

**5.10 Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon Borrower, its successors, assigns, legal representatives and all other persons or entities claiming under or through Borrower, and the word "Borrower," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed either Notes or this Mortgage. The word "Lender," when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Notes.

**5.11 No Joint Venture.** Borrower and Lender acknowledge and agree that under no circumstances shall Lender be deemed to be a partner or joint venturer with Borrower or any

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beneficiary of Borrower, including, without limitation, by virtue of its becoming a mortgagee in possession or exercising any of its rights pursuant to this Mortgage or pursuant to any of the other Loan Documents, or otherwise.

## **5.12 Additional Fees.**

(a) Borrower agrees to pay on demand all of the reasonable out-of-pocket costs and expenses of Lender (including, without limitation, the reasonable fees and out-of-pocket expenses of Lender's counsel) in connection with the structuring, preparation, negotiation, execution and delivery and administration of the Loan Agreement, the Notes, this Mortgage, any of the other Loan Documents and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith.

(b) The reasonable costs and expenses which Lender incurs in any manner or way with respect to the following shall be part of the indebtedness secured hereby, payable by Borrower on demand if at any time after the date of this Mortgage Lender: (i) employs counsel for advice or other representation (A) with respect to the amendment, modification or enforcement of the Notes, the Loan Agreement, this Mortgage or any of the other Loan Documents; (B) to represent Lender in any work-out or any type of restructuring of the Loan, or any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene in or with respect to any litigation, dispute, suit or proceeding in any way or respect relating to the Notes, the Loan Agreement, this Mortgage, any of the other Loan Documents, Borrower's affairs or any collateral securing the indebtedness secured hereby or (C) to enforce any of the rights and remedies of Lender with respect to Borrower; (ii) takes any action to protect, collect, sell, liquidate or otherwise dispose of any collateral securing the indebtedness secured hereby; and/or (iii) seeks to enforce or enforces any of the rights and remedies of Lender with respect to Borrower. Without limiting the generality of the foregoing, such expenses, costs, charges and fees include: reasonable fees, costs and expenses of attorneys, accountants and consultants; court costs and expenses; court reporter fees, costs and expenses; long distance telephone charges; telegram and telecopier charges; and expenses for travel, lodging and food.

## **5.13 Compliance with the Illinois Mortgage Foreclosure Law.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Law, the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

(b) Borrower and Lender shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Law which is

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specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the IMF Law in the absence of said provision, Lender shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under any provisions of the IMF Law, whether incurred before or after any decree or judgment of foreclosure shall be added to the indebtedness hereby secured or by the judgment of foreclosure.

**5.14 Loan Agreement.** The proceeds of the Loan are to be disbursed by Lender to Borrower in accordance with the provisions contained in the Loan Agreement. All advances and indebtedness arising and accruing under the Loan Agreement from time to time shall be secured hereby to the same extent as though the Loan Agreement were fully incorporated in this Mortgage.

**5.15 Recapture.** To the extent Lender receives any payment by or on behalf of Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrower or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the indebtedness hereby secured as of the date such initial payment, reduction or satisfaction occurred.

**5.16 No Lien Management Agreements.** Borrower shall include a "no lien" provision in any property management agreement hereafter entered into by Borrower with a property manager for the Mortgaged Property, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Lender's request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate.

**5.17 Deed in Trust.** If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

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**5.18 JURY WAIVER.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF BORROWER AND LENDER WITH RESPECT TO THIS MORTGAGE, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF BORROWER AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

**5.19 Releases of Mortgage.** Lender agrees to release the Mortgaged Property secured hereunder from the lien of this Mortgage and the other Loan Documents in accordance with the provisions of Section 6 of the Loan Agreement.

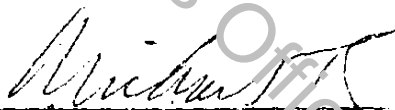
IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date and year first above written.

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

By: First Industrial Realty Trust, Inc., the general partner

By:

Its:

  
\_\_\_\_\_  
President

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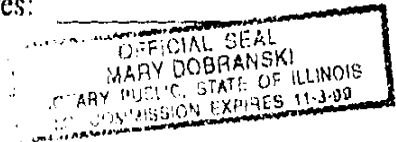
STATE OF IL )  
 ) SS.  
COUNTY OF Cook )

I, M. Dobranski, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that M. Tomasz, personally known to me to be the President of First Industrial Realty Trust, Inc., the general partner of First Industrial, L.P., a Delaware limited partnership, is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as aforesaid for and on behalf of said corporation and partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14<sup>th</sup> day of December, 1995.

Mary Dobranski  
Notary Public

My commission expires:



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## EXHIBIT "A"

### Legal Description

A parcel of land comprised of part of Block 9 and all of Block 10, together with all of the East and West 30 foot strip of land lying between said Block 9 and 10, and all of the North half (1/2) of the East and West 30 foot strip of land lying South of and adjoining the South line of said Block 10; together with a part of the North and South 25 foot strip of land lying East of and adjoining the East line of said Block 9 and 10, and lying East of and adjoining the East and West strips of land aforesaid; all in Packer's Subdivision of the Northeast quarter (1/4) of the Southwest quarter (1/4) of Section 5, Township 38 North, Range 14 East of the Third Principal Meridian; which parcel of land is bounded and described as follows:

Beginning on the South line, extended East, of the North half (1/2) of the East and West 30 foot strip of land lying South of and adjoining the South line of said Block 10 in Packer's Subdivision aforesaid, at a point which is 6.60 feet West from the East line of the Northeast quarter (1/4) of the Southwest quarter (1/4) of said Section 5, (said Point of Beginning being on the West line of South Racine Avenue as opened pursuant to ordinance passed by the City Council of the City of Chicago on the 26th day of March, 1968), and running thence West along said Eastward Extension, along the South line of the North half (1/2) of said East and West 30 foot strip of land, and along a Westward Extension thereof, a distance of 391.06 feet to an intersection with the West line, extended South of Block 10; thence North along said Southward Extension and along the West line of Block 10 a distance of 622.19 feet to an intersection with the South line of the North 40.00 feet of the Northeast quarter (1/4) of the Southwest quarter (1/4) of said Section 5; thence East along the South line of the North 40.00 feet aforesaid (said South line being the South line of the West 43rd Street as opened pursuant to said ordinance passed on the 26th day of March, 1968), a distance of 364.92 feet to a deflection point in said South line which is 32.76 feet West from the East line of the Northeast quarter (1/4) of the Southwest quarter (1/4) of said Section 5; thence Southeastwardly along a straight line, a distance of 35.40 feet to a deflection point in the West line of South Racine Avenue as opened pursuant to said ordinance passed on the 26th day of March, 1968, said deflection point being 65.00 feet South from the North line and 7.71 feet West from the East line of said Northeast quarter (1/4) of the Southwest quarter (1/4) of Section 5; and thence South along said West line of South Racine Avenue as opened, a distance of 597.26 feet to the Point of Beginning, in Cook County, Illinois.

Commonly known as:

4330 South Racine  
Chicago, Illinois

Permanent Tax Numbers:

20-05-302-011  
20-05-302-010

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[Racine]

## EXHIBIT "B"

### PERMITTED EXCEPTIONS

1. General Real Estate Taxes not yet due and payable.
2. Rights of the Public, the Municipality and the State of Illinois in and to that part of the land taken and used for roads and highways, if any.
3. Information and disclosures contained in Environmental Disclosure Document for transfer of real property recorded February 22, 1990 as Document Number 90086088.
4. Easement for utility lines recorded February 18, 1967 as Document Number 20059262, and as shown on Survey dated May 17, 1994, Order Number 940511, by James M. Ellman.  
  
Note: Reservation of easement in Deed recorded April 25, 1966 as Document Number 19806207 for utility purposes, and the terms and provisions thereof.  
  
(Affects that part of the land formerly known as 44th Street South of and adjoining said Block 10)
5. Conditions, covenants and restrictions contained in the Deed recorded December 4, 1968 as Document Number 20693826, and modified by Documents 22627921 and 23154830, relating to location of buildings, parking surfaces, area of buildings, etc., and the terms and provisions thereof.
6. Easement in favor of Northern Illinois Gas for the installation, maintenance, repair, relocation, removal and renewal of gas mains granted by Document Number 4989174 on January 10, 1951, and the terms and conditions thereof.  
  
(Affects that part of the land falling in that part of the land formerly known as 44th Street South of and adjoining said Block 10)
7. Information and disclosures contained in Environmental Disclosure Document for transfer of real property recorded July 5, 1994 as Document Number 94681798.
8. Overhead wire along West line of the land disclosed by Survey Number 940511 dated May 1, 1994 prepared by James M. Ellman.
9. Security Interest of Barclays Business Credit, Inc. (Agent) under an Agreement made with Lewis Screw Co. and others, filed February 3, 1993 as Number 93U01899, and assigned to Shawmut Capital Corp. (4300 S Racine), by Number 95U08475.
10. Security Interest of Barclays Business Credit, Inc., (Agent) under an Agreement made with Medalist Industries, Inc., and filed February 3, 1993 as Number 93U01898, (4300 S Racine) and assigned to Shawmut Capital Corp. by Number 95U08470.
11. Unrecorded lease between First Industrial, L.P., as Landlord, and Medalist Industries, Inc., as Tenant, dated February 3, 1993 for a term commencing on January 1, 1994 and ending December 31, 2003. (PROVIDED THAT THIS EXCEPTION IS SHOWN ONLY ON SCHEDULE B - PART II ON COMMONWEALTH LAND TITLE INSURANCE COMPANY POLICY NUMBER H455-0541.)

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