

terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 5.06 Successors and Assigns. This Indenture applies to, inures to the benefit of and binds each of the parties hereto, and their respective successors and assigns.

Section 5.07 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Indenture.

Section 5.08 Invalidity of Certain Provisions. If the lien of this Indenture is invalid or unenforceable as to any part of the indebtedness secured hereby, or as to any part of the Trust Estate, the unsecured or partially secured portion of such indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on such indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Indenture.

Section 5.09 Severability. If any term or provision of this Indenture or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Indenture, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Indenture shall be valid and enforceable to the fullest extent permitted by law.

Section 5.10. Subordination. This Indenture shall constitute a first mortgage lien on the Properties described in Part 1 of Schedule I and a second mortgage lien on the Properties described in Part 2 of Schedule I, which second mortgage lien shall be subject only to a lien in favor of Bank of America National Trust and Savings Association securing an indebtedness not exceeding Twenty Five Million Dollars (\$25,000,000) plus interest and other charges relating to the preservation and/or enforcement of such Bank's rights, to be evidenced by debt instruments and/or