

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “Assignment”), dated as of [_____] [____], 20[____], and is made by and between [ORIGINATING LENDER], a [_____] (the “Assignor”), and [NEW LENDER], a [_____] (the “Assignee”).

RECITALS

A. Under the commercial property assessed clean energy loan program known as the “NYC Accelerator, PACE Financing Program” (the “Program”) sponsored by The City of New York, a municipal corporation organized under the laws of the State of New York (the “City”), the Assignor is a “Qualified Lender” pursuant to that certain Master Lender Agreement, dated as of [DATE] (the “MLA”), by and between Assignor and the New York City Energy Efficiency Corporation, a New York not-for-profit corporation acting in its capacity as Program administrator (the “Administrator”) and in its capacity as Assignor’s designated paying agent (the “Paying Agent”).

B. In connection with the Effective Project undertaken or to be undertaken by [BORROWER], a [_____] (the “Borrower”) at its building located at [*insert complete street address of building*] (the “Project”), Assignor has made a loan to Borrower pursuant to that certain Program Financing Agreement, dated as of [DATE], by and between the Borrower and Assignor (the “Program Financing Agreement”), in the original principal amount of \$[_____] (the “Loan”).

C. In accordance with the MLA, Assignor has entered into that certain PACE Charge Collection Agreement, dated as of [DATE], by and among Assignor, the City, the Administrator, the Paying Agent and the Borrower (the “Collection Agreement”), [and if applicable, the Master Transfer and Remittance Agreement by and among the City, the Administrator, the Assignor and the NYCTL 1998-2 Trust] [(the “MTRA”), and the MTRA] together with the Program Financing Agreement [and the Collection Agreement], the “Loan Documents”).

D. Assignor and Assignee desire to enter into this Assignment to evidence the assumption by Assignee of Assignor’s rights, interests and obligations under the MLA; with respect to the Loan and the Collection Agreement; and to provide certain representations, warranties and covenants to the City, the Administrator, the Paying Agent [and, if applicable, the NYCTL 1998-2 Trust].

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I ASSIGNMENT AND ASSUMPTION

1.1 Assignment and Acceptance. Effective as of the date hereof, Assignor hereby (a) grants, transfers, assigns, sets over and otherwise conveys, without recourse, to Assignee all of Assignor’s right, title and interest in and to (i) the Loan (including all payments of principal and interest due or received in respect of the Loan after the date hereof, and all proceeds of the

foregoing); (ii) the Program Financing Agreement; (iii) the Collection Agreement; and (iv) all of the other applicable documents evidencing, securing, or otherwise relating to the Loan [including, if applicable, the MTRA] (collectively, items (i) - (iv) are referred to herein as the “Transferred PACE Assets”); and (b) delegates to Assignee those certain duties, obligations and liabilities of Assignor as “Lender” arising under the MLA which relate to the Loan or the Project,(collectively, the “MLA Obligations”), and Assignee hereby unconditionally accepts all of the foregoing.

1.2 Assumption. Effective as of the date hereof, Assignee hereby assumes (a) all duties, obligations and liabilities of Assignor under the Transferred PACE Assets, including all indemnifications and limitations on liability of the City, the Administrator, the Paying Agent and/or the Trust, and accepts the delegation to Assignee of all duties of Assignor, if any, under the Transferred PACE Assets; and (b) all of the MLA Obligations. Nothing herein shall be deemed to constitute a release by the Administrator, the Paying Agent, the City or the Trust, in any respect, as to Assignor’s obligations under the MLA or any Loan Documents. Assignor shall be released from such obligations only by a written instrument signed by a duly authorized Representative of Administrator and Paying Agent (with respect to the MLA); and by duly authorized Representatives of Administrator, Paying Agent and of the City (with respect to the Loan Documents). Each such release (if any) must expressly release Assignor from its obligations under the MLA or the applicable Loan Document (as the case may be), and must otherwise be in form and substance acceptable to Administrator, Paying Agent, the City and/or [the Trust, if applicable (as the case may be)].

ARTICLE II REPRESENTATIONS, WARRANTIES, AND COVENANTS

2.1 Assignor Representations and Warranties. Assignor represents and warrants to Assignee, the City, the Administrator, the Paying Agent, and the Trust as follows:

(a) Assignor is a [ENTITY TYPE] duly organized, validly existing and in good standing under the laws of the State of [_____].

(b) Assignor and any individual executing this Assignment on Assignor’s behalf, have (i) the power to execute, deliver and perform this Assignment and have taken all actions required to authorize the due execution and delivery of this Assignment; and (ii) delivered to the Administrator and City a certificate of incumbency in the form attached hereto at Exhibit A, duly executed by an authorized Representative of Assignor.

(c) This Assignment and the provisions hereof are legal, valid and binding against Assignor in accordance with their terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency and other similar laws, by any equitable principles affecting creditors’ rights generally, and by the discretion of the courts in granting equitable remedies, regardless of whether such enforceability is considered in a proceeding at law or in equity and regardless of whether such limitations are derived from constitutions, statutes, judicial decisions or otherwise.

(d) Assignor has obtained any and all necessary consents or approvals to the assignment to, and assumption by, Assignee of the Transferred PACE Assets and to the delegation to Assignee, of the MLA Obligations.

(e) Assignor is the lawful owner and holder of the lender's interest in the Transferred PACE Assets, free and clear of all liens, encumbrances and claims by third parties. Assignor has not conveyed, transferred, or assigned (or agreed to convey, transfer or assign) to any third parties its rights or interests in the Transferred PACE Assets and has not delegated to any third parties any of the MLA Obligations. The aggregate outstanding principal balance of the Loan is \$[_____]. To the best of Assignor's knowledge, there is no default or event of default (as such term, or terms of similar import, are defined in the Loan Documents) continuing under the Loan or the Loan Documents.

(f) True, complete and correct copies of the Program Financing Agreement, the MLA, and the Collection Agreement [and, if applicable, the MTRA] have each been delivered to Assignee, the Administrator and the Paying Agent, together with all amendments, modifications or supplements thereto (if any).

(g) Assignor has delivered to the Administrator and the City a PACE Charge Payment Schedule or an Amendment of PACE Charge Payment Schedule (as the case may be) for the Loan, in accordance with the MLA, that is current within thirty (30) days of the date hereof, and other information and documents, as reasonably requested by the Administrator or the City, with respect to the timing, amounts and other "servicing" related administrative matters related to repayment of the Loan.

(h) Assignee [is]OR[is not]¹ affiliated with, or a subsidiary of, Assignor.

(i) Assignor has taken reasonable and appropriate steps to verify that Assignee is a Qualified Transferee [(as defined in the MLA)] and the Administrator has confirmed in writing that it has received from Assignor and/or Assignee all information and documents sufficient for the Administrator to conduct its customary "know your customer" check of Assignee and with respect to Assignee's status as a Qualified Transferee. Assignor is aware that no Loan payments from Borrower (including payments of Loan principal and/or interest) will be made by the Administrator, or its designee, to Assignee prior to the Administrator's satisfactory completion of such "know your customer" check and assessment of Assignee's status as a Qualified Transferee.

(j) No Early Termination Event, nor any event or occurrence which upon the giving of notice or lapse of time, or both, would constitute an Early Termination Event, has occurred and is ongoing.

2.2 Assignee Representations and Warranties. Assignee represents and warrants to Assignor, the City, the Administrator, the Paying Agent, and the Trust as follows:

(a) Assignee is a [ENTITY TYPE] duly organized, validly existing and in good standing under the laws of the State of [_____].

(b) Assignee and any individual executing this Assignment on Assignee's behalf, have (i) the power to execute, deliver and perform this Assignment and have taken all actions required to authorize the due execution and delivery of this Assignment; and (ii) delivered to the

¹ NOTE TO FORM: Select the applicable option before finalizing this document.

Administrator and City a certificate of incumbency in the form attached hereto at Exhibit A, duly executed by an authorized Representative of Assignee.

(c) This Assignment and the provisions hereof are legal, valid and binding against Assignee in accordance with their terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency and other similar laws, by any equitable principles affecting creditors' rights generally, and by the discretion of the courts in granting equitable remedies, regardless of whether such enforceability is considered in a proceeding at law or in equity and regardless of whether such limitations are derived from constitutions, statutes, judicial decisions or otherwise.

(d) Assignee has obtained any and all necessary consents or approvals to the assignment and assumption of the Loan and the Loan Documents.

(e) The representations and warranties set forth on Schedule I attached hereto are true and correct in all respects.

(f) Attached hereto at Exhibit B is a new replacement Schedule III to the Collection Agreement ("Replacement Schedule III") which contains true, correct and complete account information for all payments, to Assignee, of all PACE Charges in respect of the Loan that are to be made in accordance with the Collection Agreement.

(g) Assignee [is]OR[is not]² affiliated with, or a subsidiary of, Assignor.

(h) Assignee is a Qualified Transferee and the Administrator has confirmed in writing that it has received from Assignor and/or Assignee all information and documents sufficient for the Administrator to conduct its customary "know your customer" check of Assignee and with respect to Assignee's status as a Qualified Transferee. Assignee is aware that no Loan payments from Borrower (including payments of Loan principal and/or interest) will be made by the Administrator, or its designee, to Assignee prior to the Administrator's satisfactory completion of such "know your customer" check and assessment of Assignee's status as a Qualified Transferee.

(i) Pursuant to Section 9(c) of the Collection Agreement and Section 14.2(iv) of the MLA, Assignee has delivered to Administrator and the City a letter of acknowledgment, in the form attached hereto at Exhibit C, duly executed by an authorized Representative of Assignee.

2.3 Assignor Covenants. Assignor covenants to the City, the Administrator, the Paying Agent, and the Trust as follows:

(a) Assignor releases the City, the Administrator, the Paying Agent, and the Trust from any and all claims, complaints, demands, or causes of action arising out of or otherwise relating to the Loan and the Loan Documents that Assignor may have, whether presently known or unknown, other than claims which may not be released by applicable law.

(b) Assignor shall indemnify, defend and hold harmless the City, the Administrator, the Paying Agent, and the Trust from and against all claims, causes of action, damages, liability

² NOTE TO FORM: Select the applicable option before finalizing this document.

and costs (including reasonable attorneys' fees) incurred by the City, the Administrator, the Paying Agent, or the Trust in relation to the Loan or the Loan Documents to the extent caused by the acts or omissions of Assignor on or prior to the date hereof.

(c) With respect to all Loan Collections to be disbursed to Assignee (or its designee, if any) by Paying Agent or Administrator pursuant to any PACE Financing Documents, to the best of the Assignee's knowledge after due inquiry (including after consulting with Assignee's accountants and other appropriate advisors) no backup withholding or other taxes should be payable by Paying Agent or Administrator or should need to be retained by Paying Agent or Administrator under applicable law.

(d) Assignor shall promptly, but in no event more than five (5) Business Days following the date hereof, notify Borrower of the transfer of the Loan to Assignee and of this Assignment.

2.4 Assignee Covenants. Assignee covenants to the City, the Administrator, the Paying Agent, and the Trust as follows:

(a) Assignee shall promptly, but in no event more than five (5) business days following the date hereof, notify Borrower of this Assignment and deliver to Borrower any and all payment and notice information required to be provided to Borrower under the Loan Documents; and

(b) Assignee shall perform the MLA Obligations as though Assignee were an original party to the MLA.

2.5 PACE Charge Payments. Effective as of the date hereof, Assignor and Assignee acknowledge and agree that all PACE Charges in respect of the Loan collected from time to time by the City will be remitted to Assignee, in accordance with the Collection Agreement, to the account identified in Replacement Schedule III. The Administrator, the Paying Agent, the City (and to the extent applicable, the Trust) are hereby authorized and, to the extent applicable, directed, to disregard the original Schedule III attached to the Collection Agreement (and all replacements thereof, if any) in all respects and consider Replacement Schedule III to set forth the true, complete and correct information with respect to the account into which all PACE Charges in respect of the Loan are to be remitted in accordance with the Collection Agreement.

ARTICLE III MISCELLANEOUS PROVISIONS

3.1 Definitions and Rules of Interpretation. Except as otherwise set forth herein, capitalized terms used but not otherwise defined herein have the meanings given in the MLA and the rules of interpretation set forth in Section 1.2 of the MLA shall apply to this Assignment as though fully set forth herein.

3.2 PACE Financing Document. This Assignment is a PACE Financing Document.

3.3 Further Assurances and Corrective Instruments. The parties hereto agree that they will from time-to-time execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such supplements hereto and such further instruments as may be required for carrying out the intention of this Assignment.

3.4 Binding Effect. This Assignment shall be binding upon the parties hereto and their respective permitted successors, assignees and transferees.

3.5 Severability. If any clause, provision or section of this Assignment shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

3.6 No Construction Against Drafter. Each party hereto represents and warrants to the other party that it, together with its counsel, has had the opportunity to review and participate in the drafting and negotiation of this Assignment. As such, this Assignment shall be deemed to be the product of both parties hereto and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Assignment and are expressly waived to the maximum extent permitted by applicable law.

3.7 Amendments and Waiver. No modification, consent, amendment or waiver of any provision of this Assignment shall be effective unless the same shall be in writing and signed by an authorized Representative of Assignor and of Assignee, and then shall be effective only in the specified instance and for the purpose for which given.

3.8 Governing Law. THIS ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

3.9 Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ASSIGNOR AND ASSIGNEE IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

3.10 Third-Party Beneficiaries. The City, the Administrator, the Paying Agent, and the Trust shall each be an express third-party beneficiary of this Assignment with the right to enforce the provisions hereof as if each of the City, the Administrator, the Paying Agent and the Trust were a party to this Assignment, including with respect to the representations, warranties, and covenants made by Assignor and Assignee in Article II hereof.

3.11 Notices to Assignee. All notices and other communications given to Assignee that are given (a) hereunder and/or under the MLA, shall be given in accordance with Section 14.19 of the MLA; and (b) under the Collection Agreement, shall be given in accordance with Section 9(q) of the Collection Agreement. All such notices shall be addressed as follows, or to such other address or party as Assignee may have furnished to Assignor, the Administrator, the Paying Agent, the City and Trustee in writing in accordance with the applicable agreement governing the giving of notices, except that any such notice of change of address or addresses shall only be effective upon receipt.

Address for Assignee: [full legal name of assignee]
[street address]
[City],[State] [zip code]
Attn: [●]

Email: [●]
Telephone: [●]

3.12 Execution in Counterparts; Electronic Signature. This Assignment may be executed in several counterparts all of which shall constitute one agreement, binding on all parties hereto, notwithstanding that all the parties are not signatories to the same counterpart. Documents executed by electronic signature and transmitted electronically in portable document format (.pdf) shall be deemed original signatures for purposes of this Assignment and all matters related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. The parties hereto agree that this Assignment, any addendum thereto or any other document necessary for the consummation of the transaction contemplated by this Assignment may be accepted, executed or agreed to through the use of an electronic signature in accordance with applicable law. Any document accepted, executed or agreed to in conformity with such laws will be binding on the parties thereto the same as if it were physically executed and the parties hereto hereby consent to the use of any third-party electronic signature capture service provider and certificate authority as may be chosen by the parties hereto.

(Signatures contained on following page)

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their duly authorized representatives as of the date of execution set forth above.

ASSIGNOR

[_____],
a [_____]

By: _____
Name:
Title:

ASSIGNEE

[_____],
a [_____]

By: _____
Name:
Title:

**CERTIFICATE OF INCUMBENCY
OF
[ASSIGNOR] [or] [ASSIGNEE]**

[DATE]

Reference is made to that certain Assignment and Assumption Agreement dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Agreement”) by and among the [ASSIGNOR], and [ASSIGNEE].

The undersigned, [NAME] hereby certifies as of the date hereof in such officer capacity and not in a personal capacity that the individuals named on Schedule I are duly elected, qualified and acting officers of, and hold the offices set forth opposite their respective names as of the date hereof, and the signature set forth opposite the respective names and titles of said officers are their true and authentic signatures, and the email address set forth opposite the respective signature, and each of such officers is duly authorized to execute and deliver on behalf of [ASSIGNOR] [or] [ASSIGNEE], the Agreement, each of the related documents to which it is a party and any other agreement, instrument or document to be delivered by [ASSIGNOR] [or] [ASSIGNEE] pursuant to the Agreement to which it is a party.

[Signature page follows]

IN WITNESS WHEREOF, I have caused this certificate of incumbency to be duly executed and delivered as of the date and at the place first written above.

By: _____

Name: _____

Title: _____

SCHEDULE I to EXHIBIT A

<u>Name</u>	<u>Title/Office</u>	<u>Specimen Signature</u>	<u>Email</u>

[Incumbency Certificate – [ASSIGNOR] [or] [ASSIGNEE]]

EXHIBIT B
to Assignment and Assumption Agreement

Replacement Schedule III to Collection Agreement

Assignee' Account Information for Wire Transfers	
Bank Name:	[•]
ABA No.:	[•]
Account No.:	[•]
Attn:	[•]
Ref.:	[•]

Form of Acknowledgment Letter

[PRINTED ON ASSIGNEE'S LETTERHEAD]

[DATE], 202[]

BY E-MAIL

The City of New York
Department of Finance
375 Pearl St. Fl. 30
New York, NY 10038-1442
Attention: David Atik
Email: AtikD@finance.nyc.gov

New York City Energy Efficiency Corporation,
acting as Administrator
1359 Broadway 19th Fl.
New York, NY 10018-7839
PACE@nyceec.com

Re. Assignee's acknowledgment concerning assumption of certain NYC
Accelerator, PACE Financing Program agreements.

This letter is being sent by [*full legal name of assignee*] ("Assignee") in connection with (a) the PACE Charge Collection Agreement, dated as of [*date*], among [*full legal name of lender*] ("Lender"), the City of New York, acting by and through its Department of Finance (the "City"), and the other parties thereto (the "Collection Agreement"); and (b) the Assignment and Assumption Agreement, dated as of [*date*], between Lender (as assignor), and Assignee (the "Assignment and Assumption Agreement").

Assignee hereby (a) [confirms that Assignee is a wholly-owned subsidiary of Lender]; (b) acknowledges that pursuant to the Assignment and Assumption Agreement, Assignee has assumed all obligations of "Lender" under the Collection Agreement; and (c) confirms that in accordance with the Assignment and Assumption Agreement, Assignee has agreed to the terms of the Collection Agreement.

Sincerely,

[FULL LEGAL NAME OF ASSIGNEE]

By: _____

Name:

Title:

Copy to:

New York City Law Department; Albert Rodriguez: Albrodri@law.nyc.gov
and Michael Moore: Mmoore@law.nyc.gov

SCHEDULE I
to Assignment and Assumption Agreement

Additional Representations and Warranties of Assignee

(a) (i) Assignee (A) is duly incorporated or organized, validly existing and in good standing under the laws of its state of incorporation or organization, and (B) has full power and authority, and all licenses necessary, to own its properties and to carry on its business as now being conducted and has full power and authority to enter into this Assignment, and to carry out the terms and conditions contained herein and in the Loan Documents; and (ii) the execution of this Assignment and its participation in the transactions specified herein and in the Loan Documents is in the ordinary course of its business and within the scope of its existing corporate, statutory trust, limited liability company, or partnership authority;

(b) there is no action, suit or proceeding pending against Assignee before or by any court, administrative agency or other Governmental Authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by Assignee of its obligations under this Assignment or any of the Loan Documents;

(c) except as expressly disclosed in writing to the Administrator, no notice to, registration with, consent or approval of or any other action by any relevant Governmental Authority or any other entity will be required for Assignee to execute, deliver, and perform its obligations under this Assignment or any of the Loan Documents;

(d) the execution, delivery and performance by Assignee of this Assignment and the performance by Assignee hereunder and under the Loan Documents, (i) do not contravene any provisions of law applicable to Assignee; will not result in a breach or violation of any provision of (A) Assignee's organizational documents, (B) any statute, law, writ, order, rule or regulation of any Governmental Authority applicable to Assignee, or (C) any judgment, injunction, decree or determination of any Governmental Authority applicable to Assignee; and (ii) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any contract, agreement or other instrument to which Assignee is a party, by which Assignee may be bound, or to which Assignee or its property may be subject;

(e) this Assignment constitutes the legal, valid and binding obligation of Assignee, enforceable against Assignee in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and established equitable principals) and judicial decisions which may affect the remedies provided herein;

(f) Assignee has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, the City, the Administrator, the Paying Agent, or any Representative of the City, the Administrator, or the Paying Agent, express or implied, concerning the financial condition of or tax or economic benefits of an investment in the Project financed by the Loan or the Transferred PACE Assets;

(g) Assignee has had (or acknowledges by its execution of this Assignment that Assignee will prior thereto have had) access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the Transferred PACE Assets including the opportunity to ask questions, receive answers and obtain additional information from Borrower necessary to verify the accuracy of information provided;

(h) Assignee acknowledges that the Administrator takes no responsibility for any financial information regarding Borrower furnished to Assignee by the Administrator or Assignor, and Assignee and its Representatives acting on its behalf have such knowledge and experience in business and financial matters necessary to evaluate the merits and risks of an investment in the Project financed by the Loan and in the Transferred PACE Assets, and the execution of an instrument under which it is responsible for performing the MLA Obligations;

(i) Assignee is experienced in making investments in energy upgrade projects similar to the Project financed by the Loan or substantially similar investments and that it is financially able to undertake the risks involved in such investments;

(j) neither Assignee nor any of the Representatives of Assignee is a Prohibited Person and Assignee is not owned or controlled by, nor affiliated with, a Prohibited Person;

(k) none of the documents, applications, agreements, spreadsheets, exhibits, schedules or any other written information (other than projections, pro formas, financial models, budgets, forecasts or other information of a general economic or forward-looking nature) submitted or made available to the Administrator, the Paying Agent or the City by or on behalf of Assignee in connection with the Program or any Loan Documents (collectively, the “Submittals”), taken as a whole, contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, taken as a whole, not misleading in any material respect as of the date such information is dated or made; provided, that to the extent any Submittal was based upon or constitutes a projection, pro forma, financial model, budget, forecast or other information of a general economic or forward-looking nature, Assignee represents only that it acted in good faith and utilized assumptions believed by it to be reasonable at the time made; and

(l) subsequent to the respective dates on which the Submittals were provided or made available to the Administrator, except as otherwise disclosed to the Administrator in writing, (i) Assignee has not incurred any liabilities, direct or contingent, including any losses or interference with its business from fire, explosion, flood, earthquake, pandemic, accident or other calamity or any other act of god, whether or not covered by insurance, or from any strike, labor dispute or any action, order or decree of any Governmental Authority, that are material, individually or in the aggregate, to Assignee taken as a whole; and (ii) there has not been any material adverse change in the properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of Assignee (each of clauses (i) and (ii), a “Material Adverse Change”) and to the knowledge of Assignee, after due inquiry, there is no event that is reasonably likely to occur, which if it were to occur, would, individually or in the aggregate, result in a Material Adverse Change.

* * *