

LEASE AGREEMENT

BY AND BETWEEN

STATE OF LOUISIANA

AND

BATON ROUGE ENERGY PARTNERS, LLC

[•], 2019

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LIST OF EXHIBITS

- Exhibit “A” – Shaw Center Plant Description
- Exhibit “B” – Scope of Work - Improvements
- Exhibit “C” – Design and Construction Standards
- Exhibit “D” – Scope of Work - Operation and Maintenance Services
- Exhibit “E” – Covered Assets and Excluded Assets
- Exhibit “F” – Non-Disturbance and Attornment Agreement
- Exhibit “G” – BREP Services Period Representative Responsibilities
- Exhibit “H” – Phase I Insurance Requirements

LEASE AGREEMENT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

This Lease Agreement (“**Lease**”) is made and entered into on this [●] day of [●], 2019 (the “**Effective Date**”), by and between:

STATE OF LOUISIANA (“**Lessor**”), appearing herein through Jay Dardenne, the Commissioner of Administration, Division of Administration, duly authorized and empowered by Lessor;

and

BATON ROUGE ENERGY PARTNERS, LLC (“**BREP**”), a Delaware limited liability company, appearing herein through Michael T. Durham, its duly authorized agent;

(Lessor and BREP are collectively referred to as the “**Parties**” and singularly referred to as a “**Party**”)

RECITALS

WHEREAS, Lessor is a party to the Shaw Center CEA pursuant to which Lessor provides thermal services to the Shaw Center Building;

WHEREAS, Lessor owns the Shaw Center Plant from which it supplies the Thermal Services to the Shaw Center Building;

WHEREAS, Lessor and LA Energy Partners, LLC, a Delaware limited liability company and sole member of BREP (“**LEP**”), have entered into a Cooperative Endeavor Agreement dated [●], 2019 (the “**CEA**”), which establishes a framework pursuant to which Lessor and LEP may collaborate (directly or indirectly through Affiliates of LEP) on the lease or concession of Lessor-owned or -controlled facilities for the provision of Work and Services by LEP, directly or indirectly through Project SPEs;

WHEREAS, the Parties desire to enter into the Phase I Project as defined in the CEA, and as a component of such, Lessor will lease to BREP, for a term of twenty (20) years, the Shaw Center Plant and, subject to Section 2.1.b, the Thermal Services Distribution System from the Shaw Center Plant to the Points of Demarcation for the Shaw Center Building as set forth on **Exhibit “A”** to the Shaw Center Thermal Services Agreement (the “**Shaw Center Thermal Services Distribution System**”), and Lessor will grant to BREP the exclusive right to utilize those assets and properties to provide Thermal Services to the Shaw Center Building and Third Party Off-takers pursuant to this Lease;

WHEREAS, pursuant to the CEA and La. R.S. 33:9036, the terms and conditions of this Lease have been negotiated between the Parties and Lessor is authorized to enter into this Lease pursuant to prior written approval of the Commissioner;

WHEREAS, this Lease, the CEA and the Shaw Center Thermal Services Agreement will potentially result in direct economic development for the State through enhancements to the Shaw Center

Plant implemented and privately financed by BREP which will be used to provide Thermal Services to the Shaw Center, as well as similar services to Third Party Off-takers;

WHEREAS, this Lease, the CEA and the Shaw Center Thermal Services Agreement will result in increased revenue, direct budget savings and improved operations and efficiencies for Lessor by, among other things, lowering Lessor's cost to provide Utilities to the Shaw Center Plant and the Shaw Center Building, decreasing Lessor's staff time allocated to the operation and maintenance of the Shaw Center Plant and providing Lessor with annual rental payments (which may be offset by other Lessor obligations owed under the Phase I Ancillary Agreements); and

WHEREAS, this Lease and the CEA will potentially result in further economic development for the State by attracting new industry and business to the downtown Baton Rouge area due to the improved infrastructure and energy efficiencies provided by the enhancements to the Shaw Center Plant implemented and privately financed by BREP and made available by BREP to other Covered Facilities and Third Party Off-takers.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth below, Lessor and BREP, each intending to be legally bound, hereby agree as follows:

ARTICLE 1 **DEFINITIONS**

Section 1.1 **Defined Terms.** Capitalized terms used in this Lease but not otherwise defined herein have the meanings ascribed to them in **Exhibit "A"** of the CEA. Defined terms will be given their common and ordinary meanings when they appear uncapitalized in the text. Undefined terms will be given their common and ordinary meanings pursuant to custom and industry parlance. Notwithstanding the foregoing, any terms defined in this Lease that conflict with the definition provided in **Exhibit "A"** of the CEA shall have the meanings provided herein. BREP is the Project SPE for the Phase I Project as such term and concept are used and referenced in the CEA. BREP's Financier for the Phase I Project is identified in Section 17.1. This Lease constitutes a Phase I Ancillary Agreement.

Section 1.2 **Adoption and Conflicts.** The terms and conditions of the CEA are adopted as if otherwise set forth herein. To the extent any part of this Lease and the CEA conflict, the terms of this Lease shall govern.

Section 1.3 **Exhibits.** The Exhibits attached hereto are hereby included and made part of this Lease.

ARTICLE 2 **LEASE**

Section 2.1 **Lease.**

a. Subject to the terms, obligations and conditions of this Lease and the CEA and in exchange for the consideration described in Section 4.1 (but subject to Section 3.4.b), Lessor hereby (i) leases to BREP, commencing on the Effective Date and continuing for the remainder of the Term of this Lease, (A) the Shaw Center Plant and all rights, with the exception of any mineral rights, belonging or appertaining to the applicable Plant Premises (the "**Shaw Center Plant Premises**") (the Shaw Center Plant and the Shaw Center Plant Premises are described on **Exhibit "A"** attached hereto), and (B) all assets, properties and equipment located at, on or within the Shaw Center Plant Premises (including the Shaw Center Thermal Services Distribution Systems up to the Points of Demarcation) (the "**Shaw Center**

Plant Assets”) (clauses (A) and (B) collectively, the “**Leased Property**”), and (ii) grants to BREP a non-exclusive right of use over the portion of the Shaw Center Plant Yard described on **Exhibit “A”** attached hereto for the purposes of maintaining Covered Assets currently located in the Plant Yard (“**Right of Use**”). BREP shall have the exclusive right during the Term of this Lease to (a) occupy, use, operate, manage, administer and maintain the Leased Property; (b) design, construct, install and finance any Plant Improvements that BREP deems necessary or beneficial in furtherance of providing Thermal Services to the Shaw Center Building or Third Party Off-takers pursuant to the terms of Section 7.3; (c) provide Thermal Services to the Shaw Center Building pursuant to the terms and conditions of the Shaw Center Thermal Services Agreement (but only for the Term of the Shaw Center Thermal Services Agreement); and (d) utilize the Shaw Center Plant Assets to provide Thermal Services to any Third Party Off-takers.

b. The Shaw Center Thermal Services Distribution Systems that constitutes Leased Property will be the portion thereof from the Shaw Center Plant to the Points of Demarcation. Responsibility for any repairs, rebuild or replacement of the Shaw Center Thermal Services Distribution Systems shall be allocated between the Parties as follows: (i) BREP shall be responsible for all such costs to that portion of the Shaw Center Thermal Services Distribution Systems constituting Leased Property; and (ii) Lessor shall be responsible for all such other costs. As of the Effective Date, the Points of Demarcation are located at the exterior wall of the Shaw Center Plant, as illustrated on **Exhibit “A”** to the Shaw Center Thermal Services Agreement. In the event BREP desires to construct and install a Third Party Distribution System from the Shaw Center Plant and elects to install such Third Party Distribution System into the Shaw Center Thermal Services Distribution System at a point before the Shaw Center Thermal Services Distribution System first enters the Shaw Center Building, (i) the point at which the Third Party Distribution System ties into the Shaw Center Thermal Services Distribution System will be deemed the new Point of Demarcation for that piping, and **Exhibit “A”** to the Shaw Center Thermal Services Agreement will automatically be amended and modified accordingly without any further action by the Parties, and (ii) the portion of the Shaw Center Thermal Services Distribution System comprising the Leased Property will be extended to such new Point of Demarcation. Nothing in this subsection b shall be deemed to allow BREP to extend the Leased Property into the Shaw Center Plant Yard without Lessor’s prior written approval.

Section 2.2 Ownership and Title.

a. Subject to the terms and conditions of this Lease and the CEA, throughout the Term of this Lease: (i) Lessor will have legal title to all of the Existing Covered Assets located on or within the Shaw Center Plant (“**Existing Shaw Center Plant Assets**”); (ii) BREP or BREP’s Trustee will have legal title to any Future Equipment installed or located on or within the Shaw Center Plant or the Shaw Center Building (as part of the Energy Optimization Improvements provided by BREP pursuant to Section 7.2); and (iii) BREP will have the sole and exclusive use of all Shaw Center Plant Assets during the Term of this Lease.

b. In furtherance of Section 2.2.a(ii), pursuant to Louisiana Revised Statute 10:9-334, Lessor hereby (i) acknowledges the Future Equipment will be installed in the Shaw Center Plant and Shaw Center Building and classified as “fixtures” as defined by Louisiana Revised Statute 10:9-334, (ii) disclaims any interest in the Future Equipment, (iii) acknowledges BREP or BREP’s Trustee shall be the owner of the Future Equipment, (iv) consents to BREP or BREP’s Trustee granting security interests in the Future Equipment, including to BREP’s Financier, and (v) acknowledges that prior to the installation of any Future Equipment in the Shaw Center Plant or the Shaw Center Building, BREP will perfect a fixture filing and UCC-1 in the mortgage records of East Baton Rouge Parish evidencing any security interests granted by BREP or BREP’s Trustee in the Future Equipment.

c. Notwithstanding the foregoing, it is the intention of the Parties that for Federal income tax purposes only, possession and all of the benefits of ownership with respect to all Existing Shaw Center Plant Assets is hereby conveyed to BREP for the Term of this Lease, and the Parties agree to cooperate and sign additional documents to affect this intent. For property, ad valorem and any other similar taxes, title to the Existing Shaw Center Plant Assets will remain with Lessor.

ARTICLE 3 **TERM AND TERMINATION**

Section 3.1 Term. The term of this Lease (the “**Term**”) will commence on the Effective Date and will continue in full force and effect until the twentieth (20th) anniversary of the Effective Date (the “**Expiry Date**”) or the sooner termination of (i) this Lease as provided in Section 3.2 or (ii) the CEA, in all cases in accordance with the terms and conditions hereof and thereof. The Term of this Lease may be extended only by the written agreement of the Parties. For avoidance of doubt, in no event may the State terminate this Lease (even pursuant to an attempted termination of all of the Phase I Ancillary Agreements pursuant to a Non-Appropriation Event with respect to the entire Phase I Project (Termination by State for Phase I Non-Appropriation Event)) unless and until the State pays the entire Termination Fee due hereunder pursuant to **Exhibit “G”** to the Shaw Center Thermal Services Agreement or **Exhibit “M”** to the CEA, as applicable.

Section 3.2 Grounds for Termination.

a. By Lessor. Lessor may terminate this Lease prior to the Expiry Date only upon:

(1) a BREP Event of Major Default related to this Lease or the Shaw Center Thermal Services Agreement (Termination by State for Cause), in such case to be exercised within sixty (60) days after the expiration of any applicable cure period for such BREP Event of Major Default;

(2) for convenience (Termination by State for Convenience);

(3) a Major Casualty Event affecting the Shaw Center Plant or total cessation of operations and use of the Shaw Center Building through casualty (Termination by State for Necessity), in either case to be exercised within sixty (60) days of the event giving rise to such termination right;

(4) a Change in Law that substantially prevents Lessor from continuing its performance of substantially all of its obligations under this Lease or the Shaw Center Thermal Services Agreement (Termination by State for Necessity);

(5) upon an Extended Force Majeure Event that substantially prevents Lessor or BREP from continuing its performance of substantially all of its obligations under this Lease or the Shaw Center Thermal Services Agreement (Termination by State for Necessity), in such case to be exercised within ninety (90) days after the occurrence of such Extended Force Majeure Event; or

(6) a Non-Appropriation Event with respect to the Phase I Project (Termination by State for Non-Appropriation).

Except as provided in Section 3.3.f, Lessor may not terminate this Lease without simultaneously terminating the Shaw Center Thermal Services Agreement.

b. By BREP. BREP may terminate this Lease prior to the Expiry Date only upon:

(1) a Lessor Event of Major Default related to this Lease or a State Event of Major Default under the Shaw Center Thermal Services Agreement (Termination by BREP for Cause), in such case to be exercised within sixty (60) days after the expiration of any applicable cure period for such Lessor Event of Major Default or State Event of Major Default, as applicable;

(2) a Major Casualty Event affecting the Shaw Center Plant or total cessation of operations and use of the Shaw Center Building through casualty (Termination by BREP for Necessity), in either case to be exercised within sixty (60) days of the event giving rise to such termination right; or

(3) upon an Extended Force Majeure Event that substantially prevents Lessor or BREP from continuing its performance of substantially all of its obligations under this Lease or the Shaw Center Thermal Services Agreement (Termination by BREP for Necessity), in such case to be exercised within ninety (90) days after the occurrence of such Extended Force Majeure Event.

BREP may not terminate this Lease without simultaneously terminating the Shaw Center Thermal Services Agreement.

Section 3.3 Procedures for Termination.

a. By BREP for Cause. Should BREP seek to terminate this Lease pursuant to Section 3.2.b(1), after BREP has delivered any requisite Notices pursuant to Section 15.1.a and all appropriate cure periods have expired, BREP shall provide an additional Notice to Lessor electing to terminate this Lease. BREP shall specify the Termination Date in its Notice; which Termination Date shall not be less than sixty (60) days from the date such Notice is received by Lessor.

b. By BREP for Necessity. Should BREP seek to terminate this Lease due to a Major Casualty Event or an Extended Force Majeure Event, BREP will provide Notice to Lessor at least ninety (90) days prior to the proposed Termination Date.

c. By Lessor for Cause. Should Lessor seek to terminate this Lease pursuant to Section 3.2.a(1), after Lessor has delivered any requisite Notices pursuant to Section 15.1.b and all appropriate cure periods have expired in accordance therewith (including the cure period described in Section 10.2.a), Lessor shall provide an additional Notice to BREP, and BREP will have sixty (60) days from the receipt of such additional Notice to cure the BREP Event of Major Default. If BREP fails to cure the noticed BREP Event of Major Default during such sixty (60) day period, Lessor may terminate this Lease by providing a final Notice of termination to BREP setting forth the Termination Date, which may be no earlier than sixty (60) days after BREP's receipt of such final Notice.

d. By Lessor for Convenience. Should Lessor seek to terminate this Lease pursuant to Section 3.2.a(2), Lessor shall provide Notice to BREP at least ninety (90) days prior to the proposed Termination Date; provided, however, that in no event may Lessor terminate this Lease pursuant to Section 3.2.a(2) unless Lessor simultaneously terminates the Shaw Center Thermal Services Agreement and pays the entire Termination Fee payable with respect to such terminations pursuant to **Exhibit "G"** to the Shaw Center Thermal Services Agreement.

e. By Lessor for Necessity.

(1) Major Casualty Event or Extended Force Majeure Event. Should Lessor seek to terminate this Lease due to a Major Casualty Event or an Extended Force Majeure Event, Lessor will provide Notice to BREP at least ninety (90) days prior to the proposed Termination Date.

(2) Change in Law. Should Lessor seek to terminate this Lease due to a Change in Law, Lessor will provide Notice to BREP at least ninety (90) days prior to the proposed Termination Date of the Change in Law and describe in reasonable detail, including a written opinion of Lessor's legal counsel, how such Change in Law substantially prevents Lessor from continuing its performance of substantially all of its obligations under this Lease and/or the Shaw Center Thermal Services Agreement.

f. By Lessor for Non-Appropriation Event. Upon the occurrence of a Non-Appropriation Event with respect to the Phase I Project, if Lessor desires to terminate this Lease and the other Phase I Ancillary Agreements pursuant to Section 10.2.c of the CEA, Lessor shall provide Notice of the Non-Appropriation Event to BREP as soon as reasonably practicable after Lessor's determination that the Non-Appropriation Event has occurred, but in any event within ninety (90) days thereof. Lessor shall specify the Termination Date in its Notice; which Termination Date shall not be less than ninety (90) days from the date such Notice is received by BREP. Notice of a Non-Appropriation Event shall include reasonable support establishing the occurrence of the Non-Appropriation Event.

Section 3.4 Termination Fee.

a. The Parties acknowledge that this Lease is a component of the Phase I Project under the Phase I Ancillary Agreements and the CEA. Upon termination of this Lease and the Shaw Center Thermal Services Agreement, but not the termination of the other Phase I Ancillary Agreement, by either Party prior to the Expiry Date as permitted herein and therein, Lessor shall owe the Termination Fee to BREP determined in accordance with **Exhibit "G"** to the Shaw Center Thermal Services Agreement. Upon termination of all of the Phase I Ancillary Agreements by the State prior to the Expiry Date as permitted by the CEA or the Phase I Ancillary Agreements, the State shall owe the Termination Fee to BREP determined in accordance with **Exhibit "M"** to the CEA. The Parties acknowledge that the Termination Fees described therein are reasonable estimates, and not penalties, of the presumed actual losses that BREP would suffer due to termination of all or any of the Phase I Ancillary Agreements prior to the Expiry Date, and that the calculation of any such reasonably estimated Termination Fees includes consideration of BREP's Work-related costs (direct and indirect), equity commitments and any debt repayment and costs relating to any Termination hereof and thereof.

b. If a Party elects to terminate this Lease and the other Phase I Ancillary Agreements in accordance with the terms hereof and thereof, and in such event if Lessor does not pay the entire Termination Fee as determined pursuant to **Exhibit "M"** to the CEA at or prior to such proposed Termination Date, BREP may elect in its sole and absolute discretion to have this Lease remain in full force and effect for the remainder of the Term of this Lease by providing Notice to Lessor within twenty (20) days of BREP's receipt of Lessor's Notice of termination, and in such event this Lease shall remain in full force and effect until the Expiry Date, except that from and after such date BREP shall have no further obligations to (i) pay or perform the consideration obligations set forth in ARTICLE 4 or (ii) comply with the terms and conditions of the CEA or the Phase I Project Adoption Agreement.

Section 3.5 Effect of Termination.

a. At the end of the Term of this Lease, upon payment of the applicable Termination Fee(s), if any, possession and use of the Shaw Center Plant (including the Shaw Center Plant Assets and any Plant Improvements constructed during the Term) will revert to Lessor, free and clear of any interest of BREP, BREP's Trustee or BREP's Financier or any other claim or lien arising by or through BREP.

b. Notwithstanding Section 3.5a, if either Party exercises its remedy to terminate this Lease and the Shaw Center Thermal Services Agreement or all of the Phase I Ancillary Agreements, and Lessor fails to pay the Termination Fees that are payable in connection therewith, in the event BREP does not elect to keep this Lease in full force and effect pursuant to Section 3.4.b, Lessor will cooperate with BREP and grant BREP or BREP's Trustee (as applicable) and their agents and representatives reasonable access (which may be outside normal business hours and include non-Business Days) to the Shaw Center Plant Premises and the Shaw Center Building for the purpose of repossessing and removing the Future Equipment, and the State acknowledges and agrees that neither BREP nor BREP's Trustee shall have any obligation to replace any Future Equipment so removed, but BREP will repair any damage caused by BREP, BREP's Trustee or their agents or representatives in the process of such removal; provided, that neither BREP, BREP's Trustee nor any of their agents or representatives shall have any obligation to replace any Future Equipment so removed.

c. No termination of this Lease excuses either Party from any liability arising out of any default as provided in this Lease that occurred prior to such termination.

d. Lessor hereby acknowledges that in the event of a termination of the Shaw Center Thermal Services Agreement due to a Non-Appropriation Event and BREP's election to keep this Lease in full force and effect pursuant to Section 3.3.f, BREP shall have no further obligation or liability under the Shaw Center Thermal Services Agreement except as otherwise expressly stated therein, including no obligation to provide Thermal Services to the Shaw Center Building, and BREP may continue to utilize the Leased Property and Right of Use to provide Thermal Services to Third Party Off-takers for the remainder of the Term of this Lease.

ARTICLE 4 **CONSIDERATION**

Section 4.1 **Consideration.** Subject to Section 3.4.b, the consideration by BREP for this Lease is:

a. an annual base rent ("**Base Rent**") payable in monthly installments by BREP to Lessor. The Base Rent for the first Lease Year shall be \$123,881.00, and will increase annually thereafter on each anniversary of the Effective Date at the rate of 2.77%;

b. the design, construction and installation of Improvements to the Shaw Center Plant and the Shaw Center Building;

c. the design, construction and installation of Future Plant Improvements that BREP deems necessary or beneficial in furtherance of providing Thermal Services to the Shaw Center Building and Third Party Off-takers;

d. the Operation and Maintenance Services described on **Exhibit "D"** attached hereto; and

e. the provision of Thermal Services to the Shaw Center Building pursuant to the Shaw Center Thermal Services Agreement.

Section 4.2 **Net Rent Payments.** BREP's obligation to pay Lessor monthly installments of the Base Rent shall be netted against Lessor's obligation to pay BREP the Thermal Services Charges for Thermal Services provided by BREP to the Shaw Center Building pursuant to the Shaw Center Thermal Services Agreement. The Thermal Services Charges shall be calculated pursuant to ARTICLE 6 of the

Shaw Center Thermal Services Agreement and the amount of the Base Rent shall be deducted therefrom as described on **Exhibit “D”** thereto.

ARTICLE 5
USE OF LEASED PROPERTY

The Leased Property shall be used to provide Thermal Services to the Shaw Center Building and Third Party Off-takers, and for no other purpose without the prior written consent of Lessor; provided, however, that if Lessor attempts to terminate this Lease pursuant to Section 3.2.a(6) but does not pay the entire Termination Fee due and payable therefrom and if BREP elects to keep this Lease in full force and effect pursuant to Section 3.3.f, BREP may use the Leased Property for any lawful purpose.

ARTICLE 6
ENVIRONMENTAL MATTERS

Section 6.1 Condition Reports. Lessor has delivered to BREP all studies, reports, surveys, analysis and/or plans and specifications related to the Shaw Center Plant Premises, including: (i) environmental reports; (ii) soil reports; and (iii) existing surveys, but Lessor makes no representations or warranties as to the accuracy, completeness or reliability of any of the aforementioned items. Lessor has further disclosed to BREP any information Lessor has Knowledge of pertaining to Hazardous Materials, Environmental Conditions or other Concealed Conditions at the Shaw Center Plant Premises that may reasonably be expected to affect BREP’s ability to perform Future Plant Improvements, provide Thermal Services to the Shaw Center Building and Third Party Off-takers or otherwise operate the Shaw Center Plant Assets. BREP has inspected the Shaw Center Plant Premises for any Concealed Conditions that may reasonably be expected to affect BREP’s performance of the Services and the Work.

Section 6.2 Remediation. In the event any Hazardous Materials, Environmental Conditions or Concealed Conditions are discovered at the Shaw Center Plant Premises that prevent, prohibit or adversely affect BREP’s ability to perform any Future Plant Improvements, provide Thermal Services to the Shaw Center Building and Third Party Off-takers or otherwise operate the Shaw Center Plant Assets, unless BREP is responsible therefor pursuant to Section 6.4, Lessor will either, in its sole discretion, (i) remediate at its sole expense any conditions related to Hazardous Materials, Environmental Conditions or Concealed Conditions within thirty (30) days of Lessor obtaining Knowledge thereof, but only to the extent necessary to comply with all Applicable Legal Requirements or so that BREP may provide Thermal Services to the Shaw Center Building and Third Party Off-takers or otherwise operate the Shaw Center Plant Assets, or (ii) request BREP to undertake such remediation at Lessor’s expense; provided, that where applicable the Parties will use Commercially Reasonable Efforts to minimize the costs of any remediation due to Concealed Conditions, including changes in routing of the Shaw Center Thermal Services Distribution Systems. To the extent Lessor makes an election under clause (i) above, it may do so using means, methods and techniques selected by Lessor so long as such means, methods and techniques comply with applicable laws and are reasonably acceptable to BREP.

Section 6.3 Excluded Environmental Conditions. Notwithstanding anything in this Lease and/or any other Contract Document, Lessor acknowledges that neither BREP nor any BREP Person will have any responsibility, whatsoever, now and in the future for any Excluded Environmental Conditions.

Section 6.4 BREP Responsibility. BREP will be responsible for all Hazardous Materials BREP or any BREP Person introduces onto, or any Environmental Conditions it creates at, on or under the Shaw Center Plant Premises.

Section 6.5 Due Diligence; “AS IS” Condition. Lessor has provided BREP with reasonable access to the Leased Property to perform due diligence and determine the condition thereof (for their operational functionality and working conditions). BREP accepts the Leased Property “AS IS, WHERE IS”, without representation or warranty, expressed or in writing, in fact or in law, oral or written, by Lessor. BREP, to the extent allowed by law and except as expressly provided herein, hereby assumes and agrees to accept all risk and responsibility for any and all defects, infirmities, and conditions in the Leased Property other than any Concealed Conditions.

ARTICLE 7

IMPROVEMENTS AND ADDITIONAL WORKS

Section 7.1 Demolition. BREP shall have the right, subject to the written approval of Lessor, which shall not be unreasonably withheld, at BREP’s expense, to demolish and remove any and all existing improvements and other constructions within the Shaw Center Plant to the extent that such demolition does not unreasonably disrupt the provision of Thermal Services to the Shaw Center Building. BREP shall be solely responsible for all costs associated with any such demolitions.

Section 7.2 Shaw Center Building Improvements. BREP will cause to be performed, and is responsible for the financing and payment of, the design, construction and installation of the Shaw Center Building Improvements described in **Exhibit “B”** attached hereto. BREP will perform the Shaw Center Building Improvements in compliance with the terms and conditions of this Lease, Applicable Legal Requirements and Applicable Standards. BREP will coordinate all Shaw Center Building Improvements to be conducted within the Shaw Center Building with Lessor in a manner that causes the minimum amount of disruption to the operation of the Shaw Center Building, and Lessor shall provide, or cause to be provided, to BREP reasonable and safe access to the Shaw Center Building in order for BREP to perform the Shaw Center Building Improvements from the Effective Date until completion of the Shaw Center Building Improvements. If BREP anticipates or should reasonably anticipate that any Improvement will necessitate a significant interruption to or restriction of any portion of the Shaw Center Building for a continuous period of eight (8) hours or more, BREP will provide Lessor with sufficient advance notice as is reasonable under the circumstances (in any event, no less than ten (10) Business Days) before the commencement of work on such Improvement of the nature of such work and the likely disruption to any portion of the Shaw Center Building or the provision of Thermal Services thereto.

Section 7.3 Shaw Center Plant Improvements. BREP will cause to be performed, and is responsible for the financing and payment of, the design, construction and installation of the Shaw Center Plant Improvements described in **Exhibit “B”** attached hereto. Throughout the Term of this Lease, BREP shall have the right to develop and construct Future Plant Improvements at the Leased Property (“**Future Shaw Center Plant Improvements**”). BREP shall provide Notice to Lessor of the desire to build Future Shaw Center Plant Improvements which Notice shall include (i) a detailed description of the proposed Future Shaw Center Plant Improvements, (ii) the estimated cost of the Future Shaw Center Plant Improvements, and (iii) the reason the Future Shaw Center Plant Improvements are necessary or beneficial to BREP in the provision of Thermal Services to the Shaw Center Building or similar service to Third Party Off-takers. Lessor shall have thirty (30) days to provide comments or make objections to the Future Shaw Center Plant Improvements; provided, however, that Lessor shall have the right to request an extension of the review period if a reasonable analysis of the Future Shaw Center Plant Improvements by Lessor requires a longer period. BREP will take all comments and suggestions into account before undertaking the development and construction of any Future Shaw Center Plant Improvement.

Section 7.4 Additional Works. In the event a Material Change under the Shaw Center Thermal Services Agreement requires Additional Work, BREP will cause to be performed, but Lessor

shall be responsible for the financing and payment of, the design, construction and installation of all such Additional Works.

Section 7.5 Design and Construction Standards. All Improvements and Additional Works performed under this Lease will be designed, constructed, completed and implemented in compliance with **Exhibit “C”** attached hereto, Applicable Legal Requirements and Applicable Standards. BREP will give Lessor prior Notice of the commencement of any Work relating to such Improvements or Additional Works. Prior to the commencement of such Work, the Lessor Services Period Representative(s) and BREP Services Period Representative(s) will meet to discuss the applicable Scope of Work and the specific manner in which such Work will be performed.

Section 7.6 Permitting; Timing of Improvements. No Work on any Future Shaw Center Plant Improvement may be commenced until BREP has obtained and paid for all required permits and authorizations of all governmental authorities having jurisdiction with respect to such Improvement; provided, that Lessor shall use Commercially Reasonable Efforts to assist BREP in obtaining such permits. The Parties agree that any Work relating to Future Shaw Center Plant Improvements will be completed by BREP using appropriate due diligence and Commercially Reasonable Efforts within a timeframe acceptable to the Parties and designed to minimize disruption and interference to the Shaw Center Building.

ARTICLE 8 **MAINTENANCE, REPAIRS, SERVICE UTILITIES**

Section 8.1 Operation and Maintenance Obligations/Services.

a. Operation and Maintenance Services Generally. BREP will perform or cause to be performed all of the Operation and Maintenance Services diligently and in compliance with this Lease and the CEA, Applicable Legal Requirements and Applicable Standards. The Operation and Maintenance Services to be performed by or on behalf of BREP under this Lease will include those tasks indicated on **Exhibit “D”** attached hereto.

b. Fault of Party. Notwithstanding anything in this ARTICLE 8 to the contrary, if any repair, replacement, renewal or upgrade to a Covered Asset is caused by the fault or negligence of a Party or that Party’s Persons (*i.e.*, State Persons in the case of Lessor or BREP Persons, respectively) or by a Party’s breach of its obligations under this Lease, the Shaw Center Thermal Services Agreement or the CEA, all costs associated with such repair, replacement, renewal or upgrade will be at the sole expense of such Party.

c. Covered Assets and Excluded Assets. The Covered Assets and Excluded Assets within the Shaw Center Plant under this Lease are described on **Exhibit “E”** attached hereto. BREP will have no obligation to perform any Services on Excluded Assets. With respect to the Shaw Center Thermal Services Distribution System, those portion from the Shaw Center Plant to the Points of Demarcation (as may be adjusted pursuant to Section 2.1.b) will constitute a Covered Asset and all other portions will constitute an Excluded Asset. Further, BREP will have the authority to specify all Covered Assets operating procedures and policies, consistent with all other provisions of this Lease and the CEA, Applicable Legal Requirements and Applicable Standards.

d. Electronic Document Archive. BREP will develop, install and maintain an Electronic Document Archive of the Shaw Center Plant Assets during the Term of this Lease. To ensure that Lessor can access, copy, and/or download the archived materials, BREP will provide Lessor with sufficient log-in credentials to the Electronic Document Archive. All related drawings, reports and

materials prepared by BREP that are not contained in the Electronic Document Archive will, upon reasonable request, be made available to Lessor in an electronic format.

Section 8.2 Qualified Personnel; Delivery of Services. BREP will perform the Operation and Maintenance Services by:

a. ensuring that the Shaw Center Plant Assets are operated and maintained at all times by properly trained and qualified personnel, which will include at a minimum one of the BREP Services Period Representatives, whose responsibilities are defined in **Exhibit “G”** attached hereto; and

b. delivering and performing those services twenty-four (24) hours a day, seven (7) days a week, except (i) during any event of Force Majeure and, then, subject to the provisions of Section 15.4, or (ii) when delivery or performance is directly and adversely affected due to: (a) a Lessor Event of Default, or any act or omission of Lessor or a Lessor Person that would constitute a Lessor Event of Default with the passage of time and/or giving of notice, that directly limits or prohibits BREP’s ability to deliver and perform the applicable service; or (b) a loss of or interruption in the provision of Utilities to the Shaw Center Plant or the Shaw Center Building.

Section 8.3 Maintaining the Assets.

a. General. BREP will take good care of the Covered Assets, and keep them in good working and operating condition (ordinary wear and tear excepted) by conducting all required maintenance (including Maintenance Repairs) for the Term of this Lease. Lessor will allow BREP to use any existing inventory, parts and equipment related specifically to the Covered Assets located within the Shaw Center Plant as of the Effective Date.

b. Timing. BREP will begin to assess any Maintenance Event as soon as is reasonably practical, but no later than two (2) hours after its discovery (whether by notice received by BREP from Lessor or other discovery by a BREP Person); and in all instances will diligently pursue resolution of such Maintenance Event until it is completed.

c. No Right of Lessor to Perform. Except in the case of an Emergency that BREP is not responding, Lessor may not perform or cause to be performed any maintenance or repair on a Covered Asset.

Section 8.4 Lengthy Repairs. Routine or otherwise contemplated Maintenance Repairs will be specified in the applicable Annual Service Plan described in **Exhibit “D”** attached hereto. If BREP anticipates or should reasonably anticipate that a Maintenance Repair will necessitate a significant interruption to delivery of Thermal Services to the Shaw Center Building for a continuous period exceeding thirty (30) minutes, except in the event of an Emergency, BREP will provide Lessor with sufficient advance notice as is reasonable under the circumstances (in any event, no less than five (5) days) before the commencement of such Work, of the nature of such Work and the likely disruption to the provision of Thermal Services to the Shaw Center Building. Without limiting the generality of the foregoing, BREP will coordinate any such Maintenance Repairs with the Lessor Representative in advance of commencing such Work so as to mutually agree on the anticipated duration of the Work and any Excused Loss of Availability under the Shaw Center Thermal Services Agreement as a result thereof, and to implement reasonably acceptable procedures to minimize disruption, including backup Thermal Services in the interim. To the extent that any Shaw Center Plant Assets are shut down as a result of any Maintenance Repairs, such shutdowns will be deemed Excused Losses of Availability under the Shaw Center Thermal Services Agreement, but only for so long as previously agreed to by the Parties pursuant

to the provisions of this Section 8.4 and, in any event, to the extent not due to a breach by BREP of any of its obligations under this Lease and the CEA or the negligence of BREP or a BREP Person.

Section 8.5 Measurement & Verification Services. BREP will perform the M & V Services described in **Exhibit “K”** to the CEA. The M & V Services will rely upon data indicated on the Public Services Invoices and measurements recorded by the Meters. BREP’s records derived from the M & V Services will be relied upon by BREP and Lessor for the purpose of determining the amount of any Off-taker Purchased Utility Reimbursement (as defined in **Exhibit “D”** to the Shaw Center Thermal Services Agreement) owed by BREP to Lessor pursuant to the Shaw Center Thermal Services Agreement.

Section 8.6 Provision of Utilities. Lessor will contract with all applicable Utility providers for the delivery and purchase of sufficient Utilities (and with respect to water, within acceptable industry standards) to the Shaw Center Plant in sufficient quantities in order that BREP may perform its obligations under the Phase I Ancillary Agreements. The costs of all such Utilities shall be borne by Lessor, subject to the Off-taker Purchased Utility Reimbursement as described in **Exhibit “K”** to the CEA; provided, however, that if Lessor elects to terminate the Phase I Ancillary Agreements due to a Non-Appropriation Event and fails to pay the full Termination Fee due as a result thereof, and if BREP elects to keep this Lease in full force and effect pursuant to Section 3.3.f, then BREP shall be responsible for the costs of all such Utilities and shall reimburse Lessor therefor within thirty (30) days of BREP’s receipt of any invoices relating thereto.

Section 8.7 Renewal Work. BREP will provide the Renewal Work for which it is responsible as set forth in **Exhibit “D”** attached hereto at its sole cost and expense. BREP will give Lessor at least thirty (30) days’ prior notice of its commencement of any Renewal Work.

Section 8.8 Operations Manual. BREP will deliver the Operations Manual to Lessor no later than the Effective Date, and will update from time to time as provided in **Exhibit “D”** attached hereto.

Section 8.9 Shaw Center Plant Asset Testing.

a. The Lessor Representatives may attend any tests and verifications conducted pursuant to the performance of the Operation and Maintenance Services hereunder.

b. BREP will provide Lessor at least three (3) days’ notice of any tests or verifications to be conducted on the Shaw Center Plant Assets; provided, that in the event of an Emergency, BREP will only be required to provide Lessor with such notice as is practical under the circumstances.

c. Following the completion of all testing, BREP will provide all test results and reports to Lessor within five (5) Business Days after BREP receives the reports.

Section 8.10 Annual Service Plans. BREP will implement, or cause to be implemented, an Annual Service Plan setting forth the annual operational and maintenance plan for the performance of the Services, as determined by BREP after giving due consideration to any advice and input from Lessor. The Annual Service Plan for the first Lease Year will be delivered to Lessor within thirty (30) days of the Effective Date. Thereafter, BREP will submit to Lessor no later than one (1) month prior to commencement of each subsequent Lease Year the Annual Service Plan proposed for such Lease Year.

Section 8.11 Meetings. Throughout the Term of this Lease, the Lessor Representatives and BREP Services Period Representatives will meet at least monthly to review the performance of each Party under this Lease and to discuss and attempt to resolve any matters regarding the performance of either Party's obligations under this Lease, the status or condition of the Shaw Center Plant Assets, and any means to improve the optimization or efficiency of the Shaw Center Plant Assets.

Section 8.12 Physical Security. During the Term of this Lease, BREP will provide the necessary security and make all necessary arrangements to ensure the protection of the Shaw Center Plant Assets, and the safety and security of all individuals within the Shaw Center Plant. Authorized personnel of Lessor will be granted access the Shaw Center Plant for permitted purposes. BREP shall not be responsible for safety and security related to the Shaw Center Building.

Section 8.13 Service Contracts. As of the Effective Date, Lessor will either terminate all service contracts with third parties that affect or relate to the Operation and Maintenance Services (or will modify and amend all such service contracts to exclude and no longer apply to the Shaw Center Plant Assets). In no event will BREP assume any rights or obligations of Lessor relating to any such service contracts.

Section 8.14 Handback Condition of Shaw Center Plant Assets. At the end of the Term of this Lease, BREP will deliver possession, use and title to the extent vested in BREP or BREP's Trustee, of the Covered Assets back to Lessor at no charge (but subject to payment of the Termination Fee, if applicable). Notwithstanding the foregoing, BREP shall have no obligation under this Lease with respect to the working order or condition of the Shaw Center Plant Premises or the Shaw Center Plant Assets at the end of the Term hereof. With respect to any Shaw Center Plant Assets that have been damaged by an event of casualty during the Term of this Lease that have not been repaired or replaced as of the termination or expiration hereof, BREP shall have no obligation to repair or replace such Shaw Center Plant Assets and Lessor will be entitled to receive any insurance proceeds receivable by BREP, if any, on account of such Shaw Center Plant Assets.

ARTICLE 9

THIRD PARTY OFF-TAKERS

Section 9.1 Obligations with Regard to Third Party Off-Takers. Lessor acknowledges that BREP anticipates utilizing the Shaw Center Plant Assets to provide Thermal Services to Third Party Off-takers for compensation payable to BREP. Accordingly, BREP may enter into Third Party Agreements with Third Party Off-takers on such commercial and other terms and conditions as BREP may deem appropriate with any Person; provided, that all such Third Party Agreements will expressly state (i) that the provision of Thermal Services to such Third Party Off-taker is subordinate to BREP's obligation to provide Thermal Services to the Shaw Center Building, (ii) that the Third Party Agreement may be terminated by BREP upon termination of this Lease, and (iii) that such Third Party Off-taker will release Lessor and its Affiliates from any claims arising thereunder (unless Lessor later assumes such Third Party Agreement pursuant to Section 9.2). BREP shall provide a copy of any Third Party Agreement with Third Party Off-takers upon written request of Lessor, subject to BREP's right to redact certain commercial terms therefrom. BREP shall be responsible for designing and constructing any Third Party Distribution Systems necessary to supply Third Party Off-takers with Thermal Services. Title to all Third Party Distribution Systems shall be vested in BREP or BREP's Trustee.

Section 9.2 Conveyance of Third Party Agreements and Third Party Distribution Systems. Upon termination or expiration of this Lease, and following payment of any applicable Termination Fee, Lessor shall purchase the related Third Party Distribution System and shall assume all related Third Party Agreements without any further consideration. At least ninety (90) days prior to the

termination or expiration of this Lease, BREP will give Lessor Notice of the terms and conditions of all Third Party Agreements. The transfer and conveyance of the Third Party Distribution Systems and assignment of the Third Party Agreements with Third Party Off-takers pursuant to this Section 9.2 will be “AS IS, WHERE IS,” with no representations or warranties from BREP other than such assets will be free and clear of any third party liens created by BREP.

ARTICLE 10
MORTGAGE, ATTORNMENT AND SECURITY INTERESTS

Section 10.1 Mortgage of the Lease. At any time and from time to time during the Term of this Lease, BREP may grant one or more Mortgages over its interests in this Lease and any Plant Improvements made to the Leased Property to the extent they constitute “fixtures” as defined by La. R.S. 10:9-334 in favor of a Mortgagee, containing such terms and provisions as BREP may deem fit and proper; provided, that any such Mortgage shall not be for a period beyond the Term of this Lease. In furtherance thereof, Lessor shall enter into the NDA in the form of **Exhibit “F”**. Subject to Section 10.3, any Mortgage under the terms of this Section 10.1 shall not be secured by any other future Ancillary Agreement and no other mortgage secured by any future Ancillary Agreement shall be secured by BREP’s interests in this Lease or any Plant Improvements made to the Leased Property, and in no event shall an Event of Default under a Phase I Ancillary Agreement constitute a breach or event of default under any future Ancillary Agreements and vice versa.

Section 10.2 Obligations Relative to Leasehold Mortgage. During the existence of any leasehold Mortgage:

a. Defaults. Upon occurrence of a BREP Event of Default under this Lease or the Shaw Center Thermal Services Agreement, if prior to the expiration of the applicable grace period provided for in Section 3.3.c or Section 11.1.2 of the Shaw Center Thermal Services Agreement, a Mortgagee gives Lessor Notice that it intends to undertake a curing of all such BREP Events of Default, and the Mortgagee commences curing within such grace period and thereafter pursues to conclusion the curing of all such BREP Events of Default continuously and diligently in good faith, then Lessor will not take action to reenter or take possession of the Leased Property as a consequence of such BREP Events of Default. However, if (i) a BREP Event of Default is of such a nature that the curing thereof cannot be effected by the Mortgagee until it shall have obtained possession of the Leased Property, and (ii) prior to Lessor reentering or taking possession of the Leased Property, the Mortgagee shall give Notice to Lessor that it intends to institute foreclosure or other legal proceedings or to exercise any of its remedies under the Mortgage concerned in order to gain possession of BREP’s interest in the Leased Property and within such grace period takes action to institute such remedies, then Lessor will not take any action to reenter or take possession of the Leased Property as a consequence of such BREP Events of Default so long as such Mortgagee shall continue to prosecute its remedies under the Mortgage (except during any such time it may be stayed or otherwise legally prevented from doing so) and cure all other BREP Events of Default (if any) which may occur from time to time and which are susceptible of being cured by the Mortgagee without its obtaining possession of the Leased Property and such Mortgagee shall upon taking possession of the Leased Property, cure such BREP Events of Default within the period reasonably required to cure the same.

b. Foreclosure. In the event a Mortgagee acquires rights in this Lease or any Plant Improvements made to the Leased Property pursuant to any proceedings for foreclosure of a Mortgage, or by a voluntary assignment or transfer in lieu of foreclosure or otherwise, the Mortgagee shall be deemed an assignee of all the rights and obligations of the mortgagor (or its successor or assign, as applicable) under this Lease.

c. **Bankruptcy.** If this Lease shall be rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights or if this Lease is terminated for any other reason whatsoever, within thirty (30) days of request by the Mortgagee, Lessor will enter into a new lease with BREP's Mortgagee for the remainder of the Term of this Lease effective as of the date of such rejection or disaffirmance or termination, upon all the terms and provisions contained in this Lease; provided, that (i) such Mortgagee makes a written request to Lessor for such new lease within ninety (90) days after the effective date of such rejection or disaffirmance or termination, and such written request is accompanied by a copy of such proposed new lease, duly executed and acknowledged by the Mortgagee and (ii) upon taking possession of the Leased Property such Mortgagee cures any outstanding BREP Events of Default within the period reasonably required to cure the same. Any new lease made pursuant to this paragraph shall have the same priority with respect to other interests in the Leased Property and Right of Use as this Lease. The provisions of this Section 10.2.c shall survive the rejection or disaffirmance or termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this paragraph were a separate and independent lease made by Lessor and the Mortgagee.

d. **Modifications.** So long as a Mortgage is in effect (i) Lessor will not accept a voluntary surrender of this Lease and (ii) this Lease shall not be modified in any material respect without, in each case, the prior written consent of each Mortgagee. Any act in violation of this paragraph shall be void.

e. **Reliance.** The provisions of this Section 10.2 are for the benefit of any Mortgagee and may be relied upon and shall be enforceable by any Mortgagee. No Mortgagee shall be liable upon the covenants, agreements or obligations of BREP contained in this Lease except as expressly provided herein or in the NDA.

Section 10.3 Additional Mortgages. In addition to the foregoing, Lessor consents to BREP's grant of a mortgage, security interest, pledge or assignment to BREP's Financier in, to and under all rights of BREP arising under the Phase I Ancillary Agreements, including BREP's right to receive Thermal Services Payments under the Shaw Center Thermal Services Agreement and the Termination Fee under any Phase I Ancillary Agreement, as well as the exclusive right during the Term of the Shaw Center Thermal Services Agreement to provide Thermal Services to the Shaw Center Building and use and control the Shaw Center Plant Assets and any expansions, renewals or replacements thereof (including any Plant Improvements made to the Leased Property) pursuant to the Phase I Ancillary Agreements.

Section 10.4 Remedies. Following the entry of an award pursuant to ARTICLE 14 of the CEA by a court of competent jurisdiction that this Lease has been terminated and the failure of Lessor to pay the applicable Termination Fee(s) pursuant to either **Exhibit "G"** to the Shaw Center Thermal Services Agreement or **Exhibit "M"** to the CEA, as applicable, BREP and BREP's Financier (either by way of assignment or as titled owner) may exercise any and all remedies granted to a creditor under the Louisiana Commercial Laws (La. R.S. 10:9-101, et seq.), as amended, to enforce the security interests, mortgages or other liens granted by Lessor to BREP (and by way of assignment to BREP's Financier) hereunder in and to the Shaw Center Plant Assets, including, but not limited to, seizure thereof.

ARTICLE 11 **ASSET LOSS**

Section 11.1 Casualty Events.

a. In the event of a Casualty Event at the Shaw Center Plant that in the reasonable judgment of BREP does not constitute a Major Casualty Event, this Lease will remain in full force and

effect, BREP will repair or replace the Covered Assets as quickly as practicable, and BREP will be obligated to apply any proceeds of insurance with respect to such Casualty Event maintained by BREP, but excluding business interruption proceeds, as necessary to complete such repair and replacement. To the extent that BREP will not be fully compensated by the insurance proceeds for the cost of repairing and/or replacing the Covered Assets following such Casualty Event, BREP will be responsible for the entire amount of any such shortfall (including any deductible amount and any uninsured loss).

b. In the event of a Casualty Event that in the reasonable judgment of BREP constitutes a Major Casualty Event, the Parties will, within thirty (30) days following the occurrence of such Major Casualty Event, determine whether BREP will repair or replace the Covered Assets. In the event either Party elects to terminate this Lease (and also the Shaw Center Thermal Services Agreement) pursuant to the provisions of Section 3.2, following payment of the applicable Termination Fee determined pursuant to **Exhibit "G"** to the Shaw Center Thermal Services Agreement, Lessor will be entitled to all proceeds of insurance with respect to such Major Casualty Event (but excluding business interruption proceeds) free and clear of any interest of BREP's Financier or any other claim or lien arising by or through BREP or BREP's Financier, and BREP will have no obligation for any shortfall. If the Parties agree to repair or replace the Covered Assets (or if neither Party elects to terminate this Lease pursuant to Section 3.2): (i) BREP will cause the repair or replacement of the applicable Covered Assets to be undertaken and completed as quickly as practicable, and (ii) BREP will apply any proceeds of insurance with respect to such Casualty Event maintained by BREP, but excluding business interruption proceeds, as necessary to complete such repair and replacement. To the extent that BREP will not be fully compensated by the insurance proceeds for the cost of repairing and/or replacing the Covered Assets following such Casualty Event, BREP will be responsible for the entire amount of any such shortfall (including any deductible amount and any uninsured loss).

ARTICLE 12 **REPRESENTATIVES**

Within five (5) Business Days of the Effective Date, Lessor shall appoint three (3) Lessor Services Period Representatives and BREP shall appoint three (3) BREP Services Period Representatives, each of whom will be authorized to act as a designated contact person(s) for matters concerning this Lease; provided, however, that throughout the Term of this Lease, the Party's representatives may have different levels of authority to act on behalf of the appointing Party. In addition to the responsibilities defined in this ARTICLE 12, the BREP Services Period Representatives shall have the authority and responsibility described in **Exhibit "G"** attached hereto. A Party will be bound by the written communications from its representative to the other Party. In addition, in cooperation with BREP, Lessor will designate which Lessor Services Period Representatives (but in any event at least one (1)) will be available twenty-four (24) hours per day, seven (7) days per week and the means by which such representatives may be contacted at all times. These particular Lessor Representatives are to be notified by BREP at any time that BREP has Knowledge of an Emergency. A party may remove and replace a representative upon providing the other parties with Notice. The parties will be entitled to rely on the genuineness of such Notice from another party.

ARTICLE 13 **INSURANCE**

Section 13.1 Insurance. BREP agrees to comply with the insurance obligations set forth in **Exhibit "H"** attached hereto and **Exhibit "E"** to the CEA, and further certifies that all such insurance is in place as of the Effective Date.

Section 13.2 Additional Insured. The State and BREP's Financier will be named as additional insureds in each general liability policy obtained by BREP and as additional insureds and loss payees in each property insurance and boiler and machinery policy obtained by BREP.

ARTICLE 14
ASSIGNMENT AND TRANSFER

Neither Party will assign or otherwise transfer its rights or obligations under this Lease except in accordance with the provisions of ARTICLE 9 of the CEA.

ARTICLE 15
EVENTS OF DEFAULT AND REMEDIES

Section 15.1 Events of Default.

a. By Lessor. Subject to Force Majeure as provided in Section 15.4, the occurrence of any of the following events shall constitute a Lessor Event of Default:

(1) Lessor fails to cure its breach of a non-monetary obligation under this Lease within thirty (30) days after Lessor receives notice from BREP of the breach; provided, that if such breach cannot reasonably be cured during such 30-day period, Lessor will be entitled to an additional thirty (30)-day period within which to cure its breach, so long as it will have begun to cure such breach within the initial thirty (30)-day period and is diligently pursuing such cure;

(2) Lessor fails to make any monetary payment due BREP under this Lease within thirty (30) days after Lessor receives notice from BREP of such payment being past due; or

(3) There shall occur a State Event of Default under the Shaw Center Thermal Services Agreement (as such term is defined therein).

For purposes of this Lease, each of (i) a Lessor Event of Default described in Section 15.1a(2) and (ii) a State Event of Default that constitutes a State Event of Major Default under the Shaw Center Thermal Services Agreement (as such term is defined therein), will be deemed to constitute a "**Lessor Event of Major Default.**"

b. By BREP. Subject to Force Majeure as provided in Section 15.4, the occurrence of any of the following events shall constitute a BREP Event of Default:

(1) BREP fails to cure its breach of a non-monetary obligation under this Lease within thirty (30) days after BREP receives notice from Lessor of the breach; provided, that if such breach cannot reasonably be cured during such 30-day period, BREP will be entitled to an additional thirty (30)-day period within which to cure its breach, so long as it will have begun to cure such breach within the initial thirty (30)-day period and is diligently pursuing such cure;

(2) BREP fails to make any monetary payment due Lessor under this Lease within thirty (30) days after BREP receives notice from Lessor of such payment being past due; or

(3) There shall occur a BREP Event of Default under the Shaw Center Thermal Services Agreement (as such term is defined therein).

For purposes of this Lease, each of (i) a BREP Event of Default described in Section 15.1b(2) and (ii) a BREP Event of Default that constitutes a BREP Event of Major Default under the Shaw Center Thermal Services Agreement (as such term is defined therein), will be deemed to constitute a “**BREP Event of Major Default.**”

Section 15.2 Remedies.

a. For Lessor. Upon the occurrence of a BREP Event of Default, Lessor may: (i) seek specific performance of BREP’s obligations under this Lease; and/or (ii) seek any other remedy available to Lessor in law, including injunctive relief, but excluding termination. Upon the occurrence of a BREP Event of Major Default, subject to Sections 3.3 and 10.2.a, Lessor may seek to terminate this Lease. Lessor’s ability to terminate this Lease shall be subject to Lessor’s obligation to pay the applicable Termination Fees pursuant to **Exhibit “G”** to the Shaw Center Thermal Services Agreement, and if Lessor is not able to pay the entirety of such Termination Fees as provided therein (either due to lack of appropriation or otherwise), Lessor may not terminate this Lease pursuant to this Section 15.2 under any circumstance.

b. For BREP. Upon the occurrence of a Lessor Event of Default, BREP may pursue any remedy at law, equity or as provided for under this Lease, including claims for damages, but excluding termination. In addition to the foregoing, upon the occurrence and continuation of a Lessor Event of Major Default, BREP may terminate this Lease in accordance with Section 3.2.b.

Section 15.3 Delay or Omission; Waiver. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach of this Lease by the other Party shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. No provision of this Lease will be considered waived unless the waiver is in writing and signed by an authorized representative of the Party granting the waiver. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

Section 15.4 Force Majeure.

a. Subject to the provisions of Section 15.4b, to the extent a Party is prevented by an event of Force Majeure from carrying out any of its obligations under this Lease and such Party gives notice and details of the event of Force Majeure and the obligations it is prevented from performing to the other Party as soon as practicable (and in any event within five (5) days after such event of Force Majeure first prevents performance by that Party), then the Party seeking relief will be temporarily excused during the continuance of the Force Majeure event from the performance of such of its obligations under this Lease as are affected by the event of Force Majeure; provided, however, that no event of Force Majeure will excuse the monetary obligations of the Parties.

b. The Party affected by the event of Force Majeure will use Commercially Reasonable Efforts to eliminate or avoid the effects thereof and resume performing those obligations for which it was excused pursuant to Section 15.4a.

ARTICLE 16
TAXES, FEES AND LICENSES

Section 16.1 Payment of Taxes. Pursuant to the ownership and tax status of the Parties as defined in Section 2.2, each Party shall pay to the appropriate collecting authorities all federal, state and

local taxes, fees and assessments becoming due and payable with respect to the Leased Property, Plant Improvements and Shaw Center Building Energy Optimization Improvements, and all taxes or other charges imposed during the Term of this Lease with respect to any business operations on the Leased Property. A Party shall have the right to contest the validity or the amount of any taxes through any appropriate proceedings. BREP may institute proceedings with respect to the assessed valuation of the Leased Property and the Improvements for the purpose of securing a tax reduction.

Section 16.2 Licenses and Permits.

a. BREP shall maintain in effect all federal, state and local licenses and permits required for the operation of the business conducted by BREP on the Leased Property.

b. BREP must apply for, obtain, renew, replace, extend the validity of and arrange necessary amendments to, all Permits legally required in connection with its performance under this Lease. Lessor will cooperate with BREP and use Commercially Reasonable Efforts to assist BREP to obtain, renew or transfer any construction or operational permits necessary for BREP to accomplish its obligations under this Lease, and any disputes between the Parties regarding such operational permits will be resolved pursuant to the dispute resolution provisions of ARTICLE 14 of the CEA.

ARTICLE 17
NOTICES

Section 17.1 Notice. Any Notice required or permitted to be given under or in connection with this Lease shall be in writing and shall be delivered by: (i) hand-delivered by courier, with signed receipt; (ii) mailed through the United States Postal Service, postage prepaid, first-class, with return receipt requested; or (iii) delivered by private, commercial carrier, such as Federal Express, with signature for delivery; provided, that any Notice to BREP will also be sent to BREP's Financier as provided in this Section. All such communications shall be delivered to the officer, agent or representative (or their respective successor) identified in this Section at the address set forth below, or to such other Person and address as may be subsequently designated by such Party upon five (5) days written Notice to the other Parties.

To Lessor: [Name]
[State Entity]
[Address]
Telephone: (____) ____-____

With a copy to: [Name]
[Company]
[Address]
Telephone: (____) ____-____

To BREP: Michael T. Durham
Baton Rouge Energy Partners, LLC
8555 United Plaza Boulevard, Suite 201
Baton Rouge, Louisiana 70809
Telephone: (225) 706-9280

With a copy to: Charles A. Landry
Fishman Haygood, LLP
100 North Street, Suite 800
Baton Rouge, Louisiana 70802
Telephone: (225) 706-4080

To BREP's Financier: [Name]
[Company]
[Address]
Telephone: (____) ____-____

With copies to: [Name]
[Company]
[Address]
Telephone: (____) ____-____

ARTICLE 18
MISCELLANEOUS

Section 18.1 Lessor's Right to Enter Leased Property. Subject to the terms and conditions of this Lease, during the Term of this Lease, BREP will grant authorized personnel and contractors of Lessor reasonable access to the Shaw Center Plant (with reasonable prior notice, either by phone or e-mail, except for cases of Emergency) for purposes of verifying compliance with this Lease and the CEA.

Section 18.2 Quiet Enjoyment. BREP, upon observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Leased Property during the Term of this Lease and any renewal or extension thereof, without hindrance or molestation by anyone.

Section 18.3 Relationship of Parties. Nothing in this Lease will be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The Parties' respective obligations are individual and not collective in nature.

Section 18.4 Severability. To the fullest extent possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under law, but if any provisions of this Lease shall be prohibited or invalid under any law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Lease.

Section 18.5 Recordation of Lease. Upon execution of this Lease, it shall be the responsibility of BREP to have this Lease, or a memorandum of this Lease, recorded in the Office of the Mortgage Records for the Parish of East Baton Rouge. If a memorandum of this Lease is recorded, it shall be in a form approved by the Parties. BREP shall provide Lessor with a certified copy of the recorded Lease or memorandum thereof. Recordation of the Lease or a memorandum thereof shall be at BREP's expense.

Section 18.6 Successors and Assigns. This Lease shall be binding on and will inure to the benefit of the Parties to this Lease and their respective successors and assigns.

Section 18.7 Counterparts. This Lease may be executed in counterparts, each of which will be deemed an original and all of which will constitute one agreement. The signatures of any Party to a counterpart will be deemed to be a signature to, and may be appended to, any other counterpart. Digital signatures and other electronic signatures and copies of manual signatures transmitted by facsimile, e-mail or other electronic means will be binding and considered fully effective as if they were authentic original signatures.

Section 18.8 Entire Agreement. This Lease, together with the CEA and the other Phase I Ancillary Agreements (to the extent such other Phase I Ancillary Agreements remain in full force and effect during the Term of this Lease), constitute the Parties' entire agreement with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. Except as otherwise provided in this Lease, no amendment, supplement or modification of this Lease will be binding upon any Party unless executed in writing by such Party.

Section 18.9 No Personal Liability. Except to the extent provided by law, no covenant or agreement contained in this Lease shall be deemed to be the covenant or agreement of any official, officer, agent or employee of any Party hereto in his individual capacity, and neither the officers of any Party hereto nor any official or agent executing this Lease shall be liable personally with respect to this Lease or be subject to any personal liability or accountability by reason of the execution and delivery of this Lease. However, any Person may be held personally liable for such Person's individual fraudulent acts.

Section 18.10 Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Louisiana. Any action for injunctive relief, damages, or any other purpose other than those set forth in ARTICLE 14 of the CEA shall be brought in the Nineteenth Judicial District Court in Baton Rouge, Louisiana.

Section 18.11 Estoppel Certification. Any Party shall, without charge, at any time and from time to time hereafter within sixty (60) days after written request of another Party (such request to specify this Agreement and Section), certify by written instrument duly executed and acknowledged to any Person or entity specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default thereunder by such Party or, to such Party's Knowledge, the other Party; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other Party for which such Party has Knowledge; (e) as to the commencement and expiration dates of the Term of this Lease; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the requesting Party and any other Person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the Party executing same. Any estoppel certification delivered pursuant to this Section 18.11 shall only speak as to the facts contained in such certification and shall not be deemed to constitute an amendment or modification to this Lease.

Section 18.12 Confidential Proprietary or Trade Secret Information. All records containing proprietary or trade secret information which BREP intends to be maintained by Lessor as confidential pursuant to La. R.S. 44:3.2 shall be submitted with a cover sheet that provides in bold type "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION", and with each instance of information which BREP believes to be proprietary or trade secret information clearly marked.

Section 18.13 No Authorship Presumption. Each of the Parties has had an opportunity to obtain legal advice and negotiate the language of this Lease. No presumption shall arise or adverse inference be drawn by virtue of authorship, and each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Lease, including but not limited to any rule of law to the effect that any provision of this Lease shall be interpreted or construed against the Party whose counsel drafted that provision.

Section 18.14 Further Assurances. From time to time, and at any time, at and after the Effective Date, each Party will execute, acknowledge and deliver such documents and assurances, reasonably requested by any other Party (in such form reasonably acceptable to the requested Party) and will take any other action consistent with the terms of any Contract Document that may be reasonably requested by a Party for the purpose of effecting or confirming any of the transactions contemplated hereby or thereby.

Section 18.15 Time of the Essence. Time is of the essence of this Lease.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, this Lease Agreement has been signed in four originals by the undersigned duly authorized representatives, in the presence of the undersigned competent witnesses, on the dates indicated below.

WITNESSES:

STATE OF LOUISIANA

Signature

By: _____

Printed Name

Name: _____

Title: _____

Signature

Dated: [●], 2019

Printed Name

IN WITNESS WHEREOF, this Lease Agreement has been signed in four originals by the undersigned duly authorized representatives, in the presence of the undersigned competent witnesses, on the dates indicated below.

WITNESSES:

BATON ROUGE ENERGY PARTNERS, LLC

Signature

By: _____

Printed Name

Name: _____

Title: _____

Signature

Dated: [●], 2019

Printed Name

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“**NDA**”) is made as of the [●] day of [●], 2019 by:

THE STATE OF LOUISIANA (“**State**”),

BATON ROUGE ENERGY PARTNERS, LLC,
a Delaware limited liability company (“**BREP**”),

and

[●],
a [●] [●],

as collateral agent for the Secured Parties (“**Collateral Agent**”).

RECITALS

WHEREAS, the State and LA Energy Partners, LLC, a Delaware limited liability company, (“**LEP**”) have entered into a Cooperative Endeavor Agreement dated [●], 2019 (the “**CEA**”), which establishes a framework pursuant to which the State and LEP may collaborate (directly or indirectly through wholly-owned subsidiaries of LEP) on the lease or concession of State-owned or -controlled facilities for the provision of work and services by LEP, directly or indirectly;

WHEREAS, the State owns a utility plant located in Baton Rouge, Louisiana (the “**Shaw Center Plant**”), that provides chilled water and heating water to the Shaw Center for the Arts located adjacent thereto (the “**Shaw Center Building**”);

WHEREAS, the State and BREP have entered into a Lease Agreement dated as of [●], 2019 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the “**Lease**”), pursuant to which the State has granted BREP an exclusive twenty (20) year lease over the Shaw Center Plant and all assets and properties located therein and thereon in exchange for BREP (i) paying to the State an annual base rent, (ii) funding certain improvements to the Shaw Center Plant and the Shaw Center Building (the “**Improvements**”), and (iii) supplying all of the Shaw Center Building’s requirements for chilled water and heating water as well as undertaking other obligations set forth in the Thermal Services Agreement by and between the State and BREP dated as of [●], 2019 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the “**Thermal Services Agreement**”);

WHEREAS, BREP and certain institutional investors party thereto (the “**Note Purchasers**,” such term to include holders from time to time of the Notes (as defined below)) have entered into a Note Purchase Agreement, as of [●], 2019 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the “**Note Purchase Agreement**”), pursuant to which BREP issued (or will issue concurrently with the execution of the Note Purchase Agreement) its senior secured notes in an aggregate principal amount of \$[●] (the “**Notes**”) and the Note Purchasers have purchased (or will purchase concurrently with the execution of the BREP Financing Documents) the Notes;

WHEREAS, the proceeds of the issuance and sale of the Notes will be used in part to fund the Improvements;

WHEREAS, BREP has entered into, or will concurrently with the execution of the Note Purchase Agreement enter into, a Collateral Security and Account Agreement dated as of [●], 2019 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the “**Collateral Security Agreement**”), in favor of the Collateral Agent, for the benefit of the Secured Parties (as defined therein), pursuant to which BREP will, with the State’s acknowledgment and consent, (i) vest in the Collateral Agent title to all equipment purchased by or on behalf of BREP and installed in the Shaw Center Plant and the Shaw Center Building as part of the Improvements (the “**Equipment**”) and (ii) grant security interests in the Collateral (as defined therein) other than the Equipment;

WHEREAS, BREP has entered into, or will concurrently with the execution of the Note Purchase Agreement enter into, a Multiple Indebtedness Mortgage, dated as of [●], 2019 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the “**Mortgage**”), granting to Collateral Agent for the benefit of the Secured Parties a mortgage lien in and to all of BREP’s rights under the Lease and the Servitude;

WHEREAS, BREP’s sole member has pledged 100% of its equity interest in BREP (the “**BREP Equity**”) to the Collateral Agent pursuant to that certain Pledge Agreement between such sole member and the Collateral Agent dated as of [●], 2019, (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the “**Pledge Agreement**”); and

WHEREAS, it is a condition precedent to the closing under the Note Purchase Agreement and BREP entering into the Lease and Thermal Services Agreement, that the State, BREP and Collateral Agent execute and deliver this NDA.

AGREEMENT

Accordingly, State, BREP and the Collateral Agent agree that:

1. DEFINITIONS.

(a) “**Acceptable Operator**” means (1) a licensed operator (i) of, one or more facilities similar to the Shaw Center Plant, or (ii) who currently operates one or more facilities that, in the aggregate, has/have the capacity to deliver Thermal Energy at least equal to the capacity of the Shaw Center Plant, or (iii) who does not currently operate one or more facilities, but has entered into arrangements satisfactory to the Required Holders (as defined in the Note Purchase Agreement) with an operator that has significant experience in operating facilities similar to the Shaw Center Plant; or (2) an operator that is satisfactory to the Required Holders and the State.

(b) “**BREP Financing Documents**”: means:

- (i) the Note Purchase Agreement,
- (ii) the Notes,
- (iii) the Collateral Security Agreement,
- (iv) the Mortgage, and
- (v) the Pledge Agreement.

(c) “**BREP Financing Security**”: means:

- (i) the Mortgage,
- (ii) title to the Equipment,
- (iii) the collateral assignment of the Contract Documents pursuant to the Collateral Security Agreement, and
- (iv) the Pledge Agreement,

individually and collectively, and such other collateral as granted by BREP to Collateral Agent in the Collateral Security Agreement.

(d) **“BREP Group”**: means BREP, BREP’s agents, subcontractors, employees, managers, directors, employees, and any BREP Successor Party, individually and collectively.

(e) **“BREP Group Documents”**: means the Contract Documents and/or the BREP Financing Documents, individually and collectively.

(f) **“BREP Property”**: means the Contract Rights and the other rights of BREP under the CEA and BREP under the Lease and Thermal Services Agreement.

(g) **“BREP Successor Party”**: means (i) Collateral Agent, or (ii) any other Person who acquires the BREP Property or the BREP Equity by way of an Enforcement Transfer, and as a result thereof succeeds to (w) the Contract Rights of BREP, and (x) the rights and obligations of BREP under the Contract Documents (collectively, **“BREP Rights and Obligations”**); provided, however, that with respect to a BREP Successor Party (including the Collateral Agent or a Keeper) of the BREP Rights and Obligations, such BREP Successor Party (including the Collateral Agent and a Keeper) (y) must be the sole successor to BREP of the BREP Rights and Obligations; and (z) must be or must engage an Acceptable Operator to operate and undertake the BREP Rights and Obligations.

(h) **“Contract Document(s)”**: means each of and collectively, as the context may require, the CEA, the Phase I Adoption Agreement, the Lease, the Thermal Services Agreement and the Phase I Facility Optimization Services Agreement.

(i) **“Contract Rights”**: means any and all rights granted by the State to BREP under, and subject to the terms of, the Contract Documents, including, but not limited to, the exclusive right to occupy the Shaw Center Plant and use and enjoy the assets located therein and thereon, and provide Thermal Services to the Shaw Center Building, all under, pursuant to and in accordance with the applicable terms and conditions of the Contract Documents.

(j) **“Date”**: means [●], 2019.

(k) **“Enforcement Transfer”**: means any transfer of BREP’s interest in any BREP Property or the BREP Equity pursuant to a Foreclosure Proceeding, by sale or assignment in an Insolvency Proceeding or by a Transfer in Lieu.

(l) **“Foreclosure Proceeding”**: means any proceeding to foreclose or otherwise enforce the Mortgage, the Collateral Security Agreement or the Pledge Agreement.

(m) **“Insolvency Proceeding”**: means any action or proceeding involving BREP in connection with:

- (i) a receiver, receiver manager, liquidator or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of BREP,
 - (ii) the filing of a bankruptcy petition by BREP,
 - (iii) the filing of an involuntary bankruptcy petition against BREP by any Person other than BREP which proceeding is not dismissed within ninety (90) days of its filing,
 - (iv) an involuntary assignment for the benefit of all the creditors of BREP, or the liquidation of BREP, or
 - (v) BREP admitting in writing its inability to pay its debts generally as they become due, becoming insolvent, or ceasing to carry on business.
- (n) “**Keeper**”: means a keeper, receiver or similar party designated by Collateral Agent to act as such in connection with a Foreclosure Proceeding, pursuant to applicable provisions of Louisiana law.
- (o) “**FOSA Charge**”: means the periodic payments to BREP for the Work and the Services performed by BREP or a BREP Person under the Phase I Facility Optimization Services Agreement pursuant to the terms thereof.
- (p) “**Person**”: means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a governmental authority.
- (q) “**Representative**”: means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is responsible at law or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “**Representative**.”
- (r) “**Servitude**”: means the Right of Use and Servitude Agreement attached as Schedule 5 to the Phase I Facility Optimization Services Agreement.
- (s) “**Termination Fee**”: has the meaning given that term in the CEA. For avoidance of doubt, any reference to the payment of the Termination Fee in this NDA means the payment in full by the State of each component of the Termination Fee that is due and payable in accordance with the provisions of Section 10.4 and **Exhibit “K”** of the CEA.
- (t) “**Thermal Services Charge**”: has the meaning given that term in **Exhibit “A”** to the CEA.
- (u) “**Transfer in Lieu**”: means any *dation en paiement*, deed in lieu of foreclosure or any other sale, assignment or other transfer in satisfaction of the Collateral Security Agreement, the Mortgage or the Pledge Agreement in connection with a Foreclosure Proceeding or Insolvency Proceeding.

Initially capitalized terms used in this NDA but not otherwise defined herein have the meaning ascribed to them in the Lease.

2. CONSENT AND ACKNOWLEDGEMENT.

(a) The State acknowledges and agrees that BREP is entitled to the possession, use, enjoyment and occupancy of the Contract Rights as provided in, and subject to the terms and conditions of, the Contract Documents.

(b) The State acknowledges and consents to the BREP Financing Security and recognizes and consents to the security thereof. To the extent its consent is required under a Contract Document, the State shall not consent to an assignment by BREP of, or a grant by BREP of any mortgage, lien, pledge or security interest encumbering, any of the BREP Property to any Person other than Collateral Agent. The State acknowledges and agrees that Collateral Agent, in its capacity as collateral agent for the Note Purchasers, constitutes "Project SPE's Financier" for the Phase I Project as defined and used in the CEA, and that Collateral Agent shall have the rights, privileges, benefits and protections granted to a Project SPE's Financier under the Contract Documents. Except as otherwise set forth in this NDA, Collateral Agent shall have no liability or obligation under any Contract Document as a result of the collateral assignment thereof nor shall Collateral Agent be obligated or required to perform any of BREP's obligations under any Contract Document or to take any action to collect or enforce any claim for payment assigned under the BREP Financing Documents, as a result of the collateral assignment thereof. The State further acknowledges the right of Collateral Agent, subject to the terms of this NDA, to exercise certain rights and remedies in respect of the BREP Financing Documents in its capacity as Collateral Agent thereunder during the period while an "**Event of Default**" (as defined under the BREP Financing Documents) shall have occurred and be continuing (a "**Default Period**"), and to make all demands, give all notices, take all actions and exercise all rights of BREP under the Contract Documents during a Default Period. From and after notice from Collateral Agent to the State that an Event of Default has occurred under the BREP Financing Documents and that Collateral Agent has elected to do so, the State will accept performance by Collateral Agent of the obligations of BREP under the Contract Documents during a Default Period. BREP consents to the foregoing and directs the State to accept such performance by Collateral Agent.

(c) Except as otherwise expressly provided herein, the State further agrees that during the occurrence and continuance of a BREP Event of Default, from and after notice from the Collateral Agent to the State that a Default Period then exists, the State shall render to Collateral Agent all performance due by the State to BREP under the Contract Documents during a Default Period, and shall not (i) suspend its performance under any Contract Document unless the grounds for suspension of performance are the failure of Collateral Agent to perform BREP's obligations under the Contract Documents following notice to Collateral Agent of such failure and Collateral Agent's failure to cure such failure within any time periods provided for cure in the applicable Contract Document (provided the State shall not suspend payment of the Thermal Services Charge, the FOSA Charge or its obligation to pay the Termination Fee), or (ii) take or support any Insolvency Proceeding in relation to BREP or any part of the BREP Property (but the State may file claims and otherwise participate in any such Insolvency Proceeding; provided, however, that such claims and participation shall not seek any clawback or claim against Thermal Services Charges, FOSA Charges or the Termination Fee in any respect previously paid by the State, subject to BREP's Financier's timely satisfaction of its obligation to release its lien against the Collateral and convey title to the Equipment to the State following full payment of the Termination Fee).

(d) Except as permitted by the Contract Documents, the State agrees not to sell, assign, or otherwise dispose of or alienate (by operation of law or otherwise) all or any part of its right, title and interest in the Contract Documents without causing any successor, assignee or acquirer of any of the State's right, title or interest in the Contract Documents to be bound by this NDA. Likewise, Collateral Agent agrees not to sell, assign, or otherwise dispose of or alienate (by operation of law or otherwise) all

or any part of its right, title and interest in the BREP Financing Documents without causing any successor, assignee or acquirer of any of Collateral Agent's right, title or interest in the BREP Financing Documents to be bound by this NDA.

(e) The State acknowledges and agrees that none of the following shall constitute a default or event of default by BREP under the Contract Documents: (i) the vesting of title to the Equipment in the Collateral Agent; (ii) the grant of the BREP Financing Security; (iii) subject to compliance with the Contract Documents and this NDA, the acquisition by a BREP Successor Party of the rights of BREP under the Contract Documents by an Enforcement Transfer; (iv) subject to compliance with the Contract Documents and this NDA, the acquisition of control or management rights over, ownership of, or any other rights with respect to any BREP Property by any BREP Successor Party; or (v) subject to compliance with the Contract Documents and this NDA, the acquisition by the Collateral Agent or any other BREP Successor Party of the BREP Equity.

(f) Commencing on the Date and so long as the BREP Financing Documents remain in effect, the State agrees to make all payments required to be made by it to BREP under the Contract Documents in U.S. dollars in immediately available funds, directly to Collateral Agent as provided in writing to the State, or to such other Person and/or at such other address or account as Collateral Agent may from time to time specify in writing to the State. BREP hereby instructs the State, and the State hereby accepts such instructions, to make all payments due and payable to BREP under the Contract Documents as set forth in the immediately preceding sentence.

(g) The State is not a party to the Mortgage, and the Mortgage shall not subject to the lien thereof any property other than BREP's rights under the Lease or the Servitude. Without limiting the generality of the foregoing, the Mortgage is not intended to encumber: (a) any fee title to or leasehold interest of the State in the Shaw Center Plant, or (b) any of the State's rights under the Contract Documents. BREP shall not have the right to encumber or grant a security interest in and to any property owned by the State, except for the Collateral.

3. NONDISTURBANCE.

(a) The State hereby agrees that in the event Collateral Agent exercises any of its rights under the Mortgage or any other BREP Financing Documents and, as a result thereof, a BREP Successor Party acquires control or management rights over, ownership of, or any other rights with respect to any of the BREP Property, whether pursuant to an Enforcement Transfer or otherwise, (i) the Contract Documents and Contract Rights shall not terminate or be terminated as a result of such occurrence and the rights of the BREP Successor Party thereunder shall continue in full force and effect, subject to the terms and conditions of the Contract Documents, (ii) the State shall not disturb any of the BREP Successor Party's rights under any of the BREP Property, except as specifically permitted by the terms and conditions of the Contract Documents, and (iii) the State shall recognize the BREP Successor Party's rights to continue to enjoy the rights and benefits of the BREP Property as provided in the Contract Documents, but subject to the terms and conditions of the Contract Documents.

(b) Collateral Agent agrees that in the event Collateral Agent exercises any of its rights under the BREP Financing Documents and, as a result thereof, a BREP Successor Party acquires or seeks to acquire control or management rights over, ownership of, or any other rights with respect to any of the BREP Group Documents or BREP Property, whether pursuant to an Enforcement Transfer or otherwise: (i) none of the Contract Documents shall terminate or be terminated and the rights of the State thereunder and with respect to the Collateral shall continue in full force and effect, subject to the terms of the Contract Documents (including, without limitation, termination rights); and (ii) without limiting the

generality of the foregoing, Collateral Agent may not take any action to enforce the security interest in the Collateral, whether by seizure, writ of sequestration, public or private sale or otherwise.

(c) Collateral Agent further agrees not to name or join the State as a defendant in any exercise of Collateral Agent's rights and remedies arising upon a default under the BREP Financing Documents unless applicable law requires the State to be made a party thereto as a condition to proceeding against BREP solely for prosecuting such rights and remedies.

4. ATTORNMEN AND ASSUMPTION.

(a) If a BREP Successor Party succeeds to BREP's interest in the BREP Property, the State will be bound to such BREP Successor Party and such BREP Successor Party will be bound to the State according to the Contract Documents and Contract Rights in force at the time of the Enforcement Transfer and for the balance of the term of the Contract Documents and any extensions of the Contract Documents, as if the BREP Successor Party were an original party to the Contract Documents. Upon an Enforcement Transfer to a BREP Successor Party, the BREP Successor Party shall assume all of BREP's obligations under the Contract Documents from and after the date of the Enforcement Transfer, and (i) the Contract Documents shall continue in full force and effect, (ii) the rights and obligations of BREP Group and the State will be the same as they would have been if the BREP Successor Party had been in BREP's position under the Contract Documents, and (iii) all references in the Contract Documents to BREP shall be deemed to include such BREP Successor Party. The provisions of this Section shall be effective and self-operative without any need for the State or a BREP Successor Party to execute any further documents. The BREP Successor Party and the State shall, however, confirm the provisions of this Section in writing upon request by either of them.

(b) The date of an Enforcement Transfer to a BREP Successor Party shall be referred to as the "date of attornment", with respect to the applicable parties to which the attornment applies.

5. PROTECTION OF BREP SUCCESSOR. Notwithstanding anything to the contrary in the Contract Documents, neither Collateral Agent nor any BREP Successor Party shall be liable for or bound by any of the following matters:

(a) Any right that the State may have against BREP or its successors and assigns as to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by BREP or its successors and assigns that occurred before the date of attornment. The foregoing, however, shall not limit the BREP Successor Party's obligation to correct any conditions which violated BREP's obligations under the Contract Documents that existed as of the date of attornment, and which after the date of attornment continue to violate BREP's obligations under the Contract Documents.

(b) Any act, omission, default, misrepresentation, or breach of warranty, of BREP or its successors and assigns or obligations accruing prior to the date of attornment, except for any act, omission, default, misrepresentation or breach of warranty of BREP or its successors and assigns for which the State has provided written notice to Collateral Agent prior to the date of attornment.

(c) Any obligation to credit payment under the Contract Documents that the State may have made to BREP or its successors and assigns more than thirty (30) days before the date such payment was first due and payable under the Contract Documents with respect to any period after the date of attornment, except for any payment(s) expressly required by Contract Documents or any such payment(s) actually received by Collateral Agent.

(d) Any amendment, modification, cancellation, termination, extension or reduction of the Contract Documents made without Collateral Agent's prior written consent (which shall not be unreasonably withheld, except that Collateral Agent may refuse to consent in its sole discretion to any amendment, modification, cancellation, termination, extension or reduction that changes the Term of a Contract Document or could reasonably be expected to affect repayment of the Notes (including anything related to the Thermal Services Charge, FOSA Charge, security therefor, title to the Equipment or the Termination Fee)), excluding, however, any termination or cancellation of a Contract Document pursuant to the express terms of the Contract Document not requiring the consent of BREP or Collateral Agent (subject further to Collateral Agent's rights under Section 7(b) of this NDA with respect to a cancellation or termination of a Contract Document), and further provided that BREP, not the State, shall be responsible for any costs associated with obtaining Collateral Agent's prior written consent to any such matters.

6. STATE'S RIGHT TO CURE.

(a) Collateral Agent shall give the State written notice (each such notice being referred to herein as a "**BREP Default Notice**") promptly upon becoming aware of the occurrence of any default or breach by BREP under the BREP Financing Documents, or upon becoming aware of the occurrence or non-occurrence of any event or condition under the BREP Financing Documents which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Collateral Agent to foreclose the lien of the Mortgage or otherwise exercise any remedies thereunder or under the BREP Financing Documents (a "**BREP Default**"). Any BREP Default Notice shall specify the nature of the BREP Default in detail sufficient to enable the State to assess the scope and amount of any liability of BREP resulting from the BREP Default. Collateral Agent shall give the State a BREP Default Notice at the same time it gives BREP notice of a BREP Default. The failure of Collateral Agent to give a BREP Default Notice to the State shall not invalidate or otherwise impact the underlying BREP Default or impair any rights granted or derived by Collateral Agent under the BREP Financing Documents. In no event, however, shall Collateral Agent exercise any foreclosure or dispossessory remedies against BREP (all of which remedies shall be subject to the non-disturbance provisions set forth in Section 3(b) above), or take any action to perform any of BREP's obligations under the Contract Documents as a result of a BREP Default, unless Collateral Agent has provided the State with a BREP Default Notice with respect thereto and afforded the State the same opportunity to cure such BREP Default as provided to BREP in the BREP Financing Documents; provided, however, that in no event shall the State be obligated to remedy or cure any such BREP Default. Unless the State otherwise agrees in writing, BREP shall remain solely liable to perform BREP's obligations under the BREP Financing Documents both before and after the exercise of any right or remedy under this NDA. Without limiting the foregoing, if the State, in its discretion, elects to fully cure a BREP Default, Collateral Agent will accept such cure to the extent all of BREP Defaults are cured.

(b) Collateral Agent and/or the Required Holders shall give the State notice of any change in the Collateral Agent, replacement of the Collateral Agent or substitution of the Collateral Agent, within a reasonable time of the change, replacement or substitution.

7. COLLATERAL AGENT'S RIGHT TO CURE.

(a) The State shall deliver to Collateral Agent copies of (1) all notices delivered by the State to BREP with respect to (i) any "default" or "event of default" (howsoever defined) by BREP under any Contract Document, or (ii) the occurrence of any other event giving rise to the suspension of performance by the State of its obligations under the Contract Documents, or (iii) the occurrence of any other event which gives the State the right to terminate any Contract Document, and (2) any information reasonably requested by Collateral Agent relating to any of the foregoing.

(b) The State shall not terminate the Contract Documents with respect to an event giving rise to the State's right to terminate the Contract Documents unless the State pays the BREP's Financier the Termination Fee due with respect to such termination. In addition, the State shall not terminate the Contract Documents without first affording Collateral Agent any rights BREP may have under Section 10.3 of the CEA or that BREP may have under Section 3.3 of the Lease, Section 10.3 of the Thermal Services Agreement or Section 21 of the Phase I Facility Optimization Services Agreement. In furtherance of the foregoing, the State shall permit the Collateral Agent and its Representatives (including a Keeper) the same access to the Contract Rights as is permitted to BREP under the Contract Documents, subject to the same terms and conditions, and provided that the Collateral Agent, or its applicable Representative (including a Keeper), satisfies the criteria for an Acceptable Operator. The State shall accept any such performance by Collateral Agent or any BREP Successor Party as though the same had been done or performed by BREP. Any exercise of Collateral Agent's rights to cure hereunder shall not, by itself, result in the assumption by Collateral Agent of BREP's obligations under the Contract Documents unless and until an Enforcement Transfer occurs or Collateral Agent otherwise gains management rights or control over the Contract Documents. Notwithstanding the foregoing, in the event the State seeks to terminate all or any Contract Document in contravention of this Section 7(b) and does not at that time pay the entirety of the Termination Fee, the State shall grant or cause to be granted to Collateral Agent and/or BREP's Financier reasonable access to the Shaw Center Plant, the Shaw Center Building and the Covered Facilities in order for Collateral Agent and/or BREP's Financier to remove and take possession of all Equipment located therein.

(c) Except as provided in Section 7(b), unless and until Collateral Agent (i) forecloses or has otherwise taken ownership of the BREP Property or (ii) has taken possession or control of the BREP Property, whether directly or by a Keeper, and the Keeper has taken possession or control of the BREP Property by reference to the Mortgage or the Collateral Security Agreement, the Collateral Agent shall not be responsible for any of BREP's obligations under the Contract Documents or be entitled to any of BREP's rights and benefits contained in the Contract Documents, except by way of security. If Collateral Agent itself or by a Keeper is the owner, or is in control or possession of, the BREP Property, it shall be bound by and agrees to thereafter perform all obligations of BREP under the Contract Documents. Once the Collateral Agent goes out of possession or control of the BREP Property or transfers the BREP Property to another BREP Successor Party, the Collateral Agent shall cease to be responsible for performing any of BREP's obligations under the Contract Documents accruing thereafter and shall cease to be entitled to any of BREP's rights and benefits contained in the Contract Documents, except, if the BREP Financing Security remains outstanding, by way of security. Notwithstanding anything to the contrary contained in this NDA or the Contract Documents, failure of any BREP Successor Party to exercise any right to cure or to cure any default under the Contract Documents shall not in any way affect the State's obligation to pay the Thermal Services Charge, FOSA Charge or the Termination Fee, provided that the State shall retain all other rights and remedies available to the State under the Contract Documents, including, subject to the provisions of Section 7(b) above, the right to terminate the Contract Documents in accordance with the terms thereof.

(d) Notwithstanding anything to the contrary contained in this NDA, any Keeper in possession or control of any of the BREP Property must be an Acceptable Operator, or must have engaged and at all times be acting through an Acceptable Operator to perform the work and provide the services required of BREP under the Contract Documents.

(e) Notwithstanding anything to the contrary contained in this NDA or any Contract Document, none of the Contract Document shall terminate prior to the expiration of their scheduled terms without the payment of the Termination Fee to BREP's Financier.

(f) Notwithstanding anything to the contrary contained in this NDA, the liability of any BREP Successor Party shall be limited to its interest in the BREP Property, the Collateral and, subject to the limitations on offset set forth in the Contract Documents, any revenues or proceeds derived by the BREP Successor Party by virtue of the BREP Property or the BREP Group Documents (for ease of reference, collectively, the “**BREP Successor Party Assets**”); provided, however, that in no event shall the BREP Successor Party Assets include (x) the Termination Fee or (y) prior to BREP’s Financier having received all amounts owed to it by BREP and such BREP Successor Party, if any, the Thermal Services Charges and FOSA Charges. Any judgment in favor of the State or any party claiming by, through or under the State against any BREP Successor Party shall be collectible only out of such BREP Successor Party Assets, and in no event shall any judgment for damages be entered against such BREP Successor Party which is in excess of the value of such interest.

8. REPLACEMENT CONTRACT DOCUMENTS; AMENDMENT OR TERMINATION OF CONTRACT DOCUMENTS.

(a) If (i) during a Default Period, Collateral Agent shall have exercised remedies under any Finance Document and any BREP Successor Party shall have succeeded to BREP’s interest under any Contract Document (whether by Enforcement Transfer or otherwise) in compliance with the terms and conditions of this NDA, or (ii) any Contract Document shall have been rejected or terminated in whole or in part as a result of an Insolvency Proceeding, the State will, at the request the BREP Successor Party, enter into a new agreement with the BREP Successor Party, having identical terms as such Contract Document (subject to conforming changes necessitated by the substitution of the parties and other changes as the parties may mutually agree), provided that the term under such new agreement shall be no longer than the remaining balance of the term specified in the applicable Contract Document, provided the request is made by the BREP Successor Party within seventy-five (75) days of the event described in clause (i) or (ii) above, and provided that the BREP Successor Party has cured any defaults by BREP under the Contract Documents that are reasonably susceptible to cure by the BREP Successor Party. References in this NDA to any such Contract Document shall be deemed also to refer to such new agreement.

(b) The State shall not, without the prior written consent of Collateral Agent, (i) cancel, terminate or surrender any Contract Document, or (ii) consent to or accept any cancellation, surrender or termination of any Contract Document by BREP, provided that this Section 8(b) will not preclude any termination of the Contract Documents by the State in accordance with its rights under the Contract Documents (subject to the provisions of Section 7(b) and Section 7(e) of this NDA), or in connection with an Insolvency Proceeding of BREP, that the State did not commence or support.

9. AMENDMENTS AND BINDING EFFECT.

(a) This NDA may be modified only by an agreement in writing signed by the State, BREP and Collateral Agent. This NDA will inure to the benefit of and will be binding upon the State, BREP and Collateral Agent, together with their respective successors and assigns (including, without limitation, any Keeper and all other BREP Successor Parties). The parties hereto shall give notice of this NDA to their successors and assigns and cause them to be bound hereby.

(b) The State agrees that any transferee of any part of the Shaw Center Plant will be bound by the terms of this NDA.

10. COUNTERPARTS. This NDA may be executed in counterparts, and, when executed by the State, BREP, and Collateral Agent, will constitute one agreement, binding upon them, even though they are not signatories to the original or the same counterpart.

11. NOTICES. All notices, demands, requests, consents or other communications required or permitted to be given or made under this NDA will be in writing and addressed to the following:

To the State: [Name]
The State of Louisiana
[Address]
Telephone: (____) ____-____
E-mail: _____

With a copy to: [Name]
[Company]
[Address]
Telephone: (____) ____-____
E-mail: _____

To BREP: Michael T. Durham
Baton Rouge Energy Partners, LLC
8555 United Plaza Boulevard, Suite 201
Baton Rouge, Louisiana 70809
Telephone: (225) 706-9280
E-mail: mdurham@bernhard.com

With copies to: Charles A. Landry
Fishman Haygood, LLP
100 North Street, Suite 800
Baton Rouge, Louisiana 70802
Telephone: (225) 706-4040
E-mail: clandry@fishmanhaygood.com

To Collateral Agent: [Name]
[Address]
Telephone: (____) ____-____
E-mail: _____

With copies to: [Name]
[Company]
[Address]
Telephone: (____) ____-____
E-mail: _____

Notices hereunder will be deemed properly served if sent by: (a) hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this NDA; (b) mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this NDA; or (c) Federal Express or other reputable express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this NDA. On the same day notice is sent, a copy will be sent by electronic mail to the same Persons to whom the original notice is being sent, at the e-mail addresses shown above, but such delivery will not itself constitute valid delivery of notice hereunder. Any party may change its address and contact person for the purposes of this Section 11 by giving notice thereof in the manner required herein. Attorneys for a party may give notices on behalf of such party.

12. MISCELLANEOUS.

(a) If any term or provision of this NDA shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.

(b) Except as expressly provided herein, the provisions of this NDA shall be self-operative and effective without the execution of any further instruments on the part of either party hereto.

(c) This NDA shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

(d) All remedies which any party to this NDA may have against any other party to this NDA, if any, are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between the parties. If any party consists of multiple individuals or entities, each of same shall be jointly and severally liable for the obligations of such party hereunder.

13. HEADINGS. All title or headings to sections or other divisions of this NDA are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such sections or other divisions, such other content being controlling as to the agreement among the parties hereto.

14. GOVERNING LAW. THIS NDA WILL BE GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF LOUISIANA.

15. RECORDATION. This NDA may be recorded with the Clerk and Recorder of East Baton Rouge Parish, Louisiana.

16. ATTORNEY FEES. In any lawsuit, arbitration, or injunctive proceeding between the Parties concerning any part of this NDA or the rights and duties of either Party under this NDA, the Party prevailing in that matter (as determined by the court or arbitral panel) will be entitled to recover its reasonable attorneys' fees and court costs, to the extent permitted by applicable law. This includes its reasonable attorneys' fees and costs related to any post-judgment collection or enforcement proceedings.

17. JURISDICTION. Collateral Agent and each BREP Successor Party irrevocably submits to the non-exclusive jurisdiction of the 19th Judicial District, East Baton Rouge Parish, Louisiana State Court, and or any federal court sitting in the City of Baton Rouge, Louisiana, over any suit, action or proceeding arising out of or relating to this NDA. To the fullest extent permitted by applicable law, the Collateral Agent and each BREP Successor Party irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such courts, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such courts and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

[Signature page follows.]

IN WITNESS WHEREOF, State has executed this Non-Disturbance and Attornment Agreement on the Date (as defined in Section 1 hereof).

STATE OF LOUISIANA

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, BREP has executed this Non-Disturbance and Attornment Agreement on the Date (as defined in Section 1 hereof).

BATON ROUGE ENERGY PARTNERS, LLC

By: _____
Name: _____
Title: _____

BREP Signature Page to NDA

IN WITNESS WHEREOF, Collateral Agent has executed this Non-Disturbance and Attornment Agreement on the Date (as defined in Section 1 hereof).

[●]

By: _____
Name: _____
Title: _____

Collateral Agent Signature Page to NDA

EXHIBIT "A"

SHAW CENTER PLANT DESCRIPTION

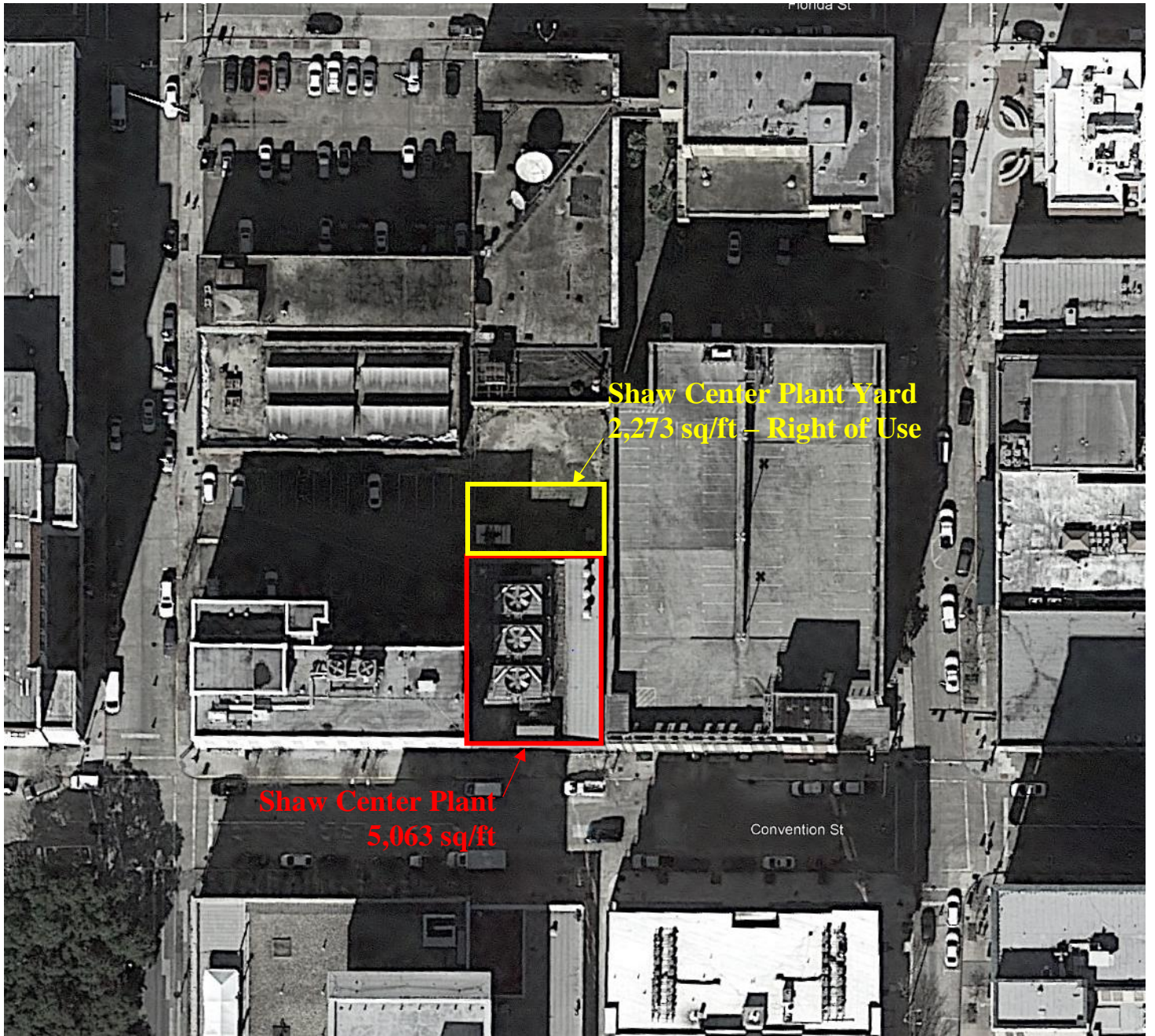


Figure 1 - Shaw Center Plant Site Plan

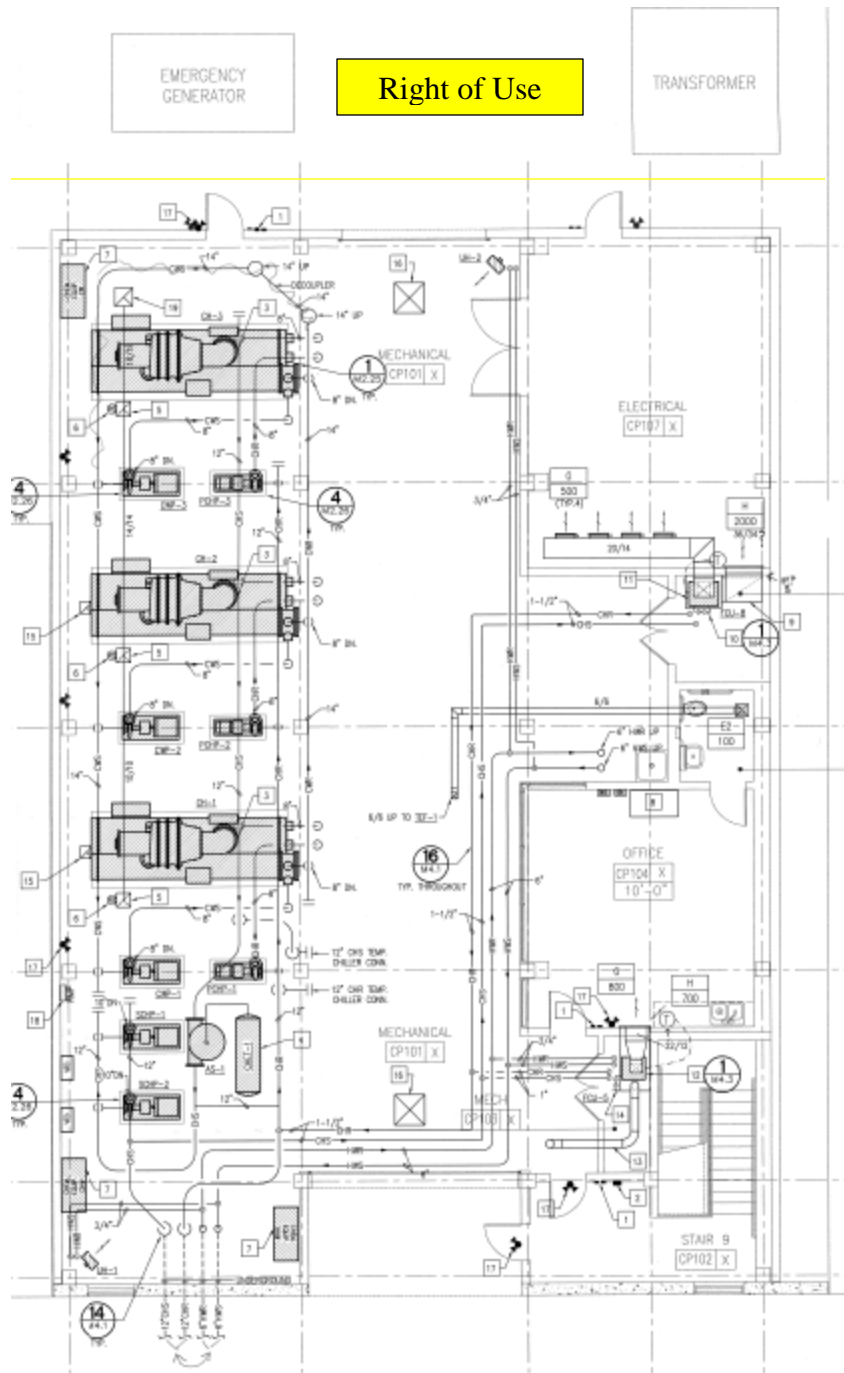


Figure 2 - Shaw Center Plant First Floor

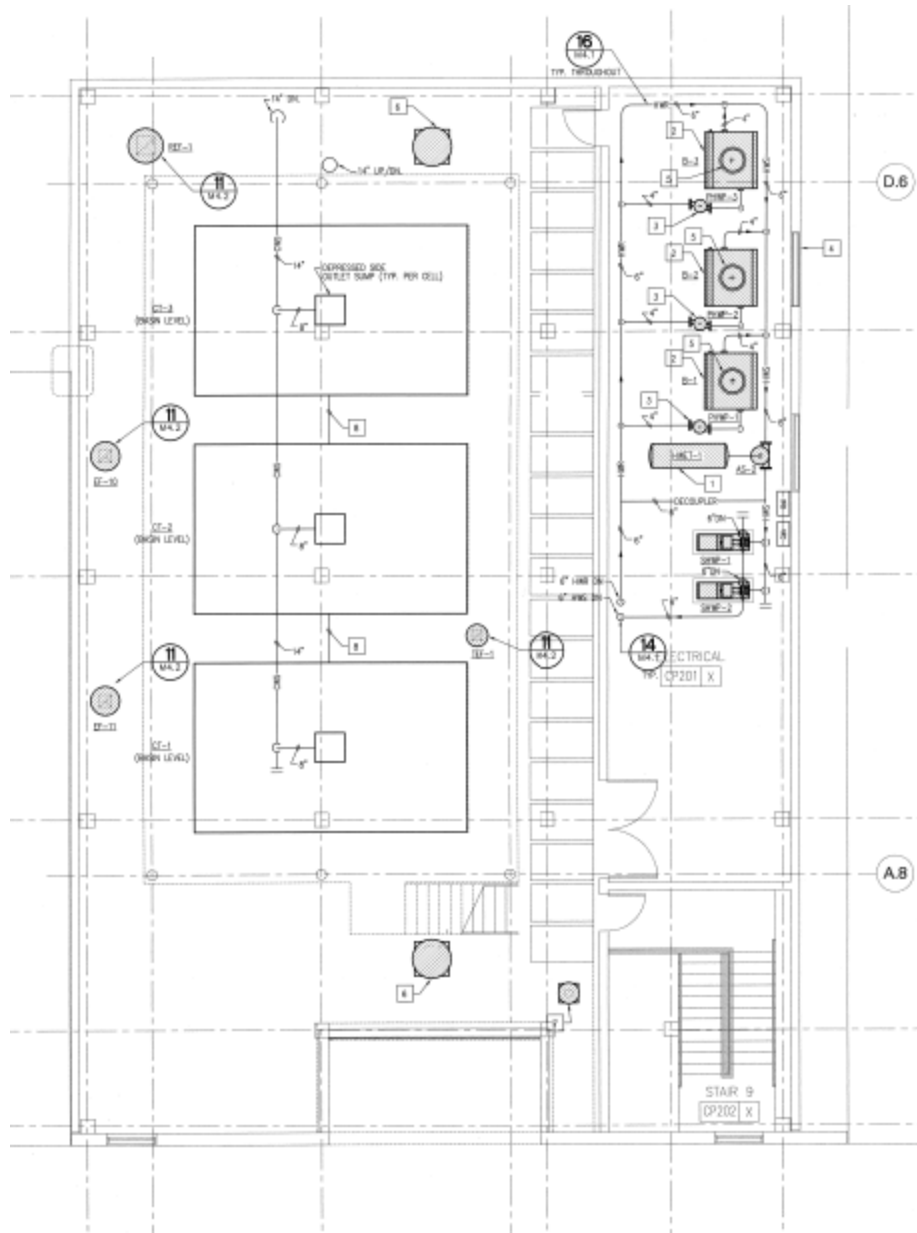


Figure 3 - Shaw Center Plant Second Floor

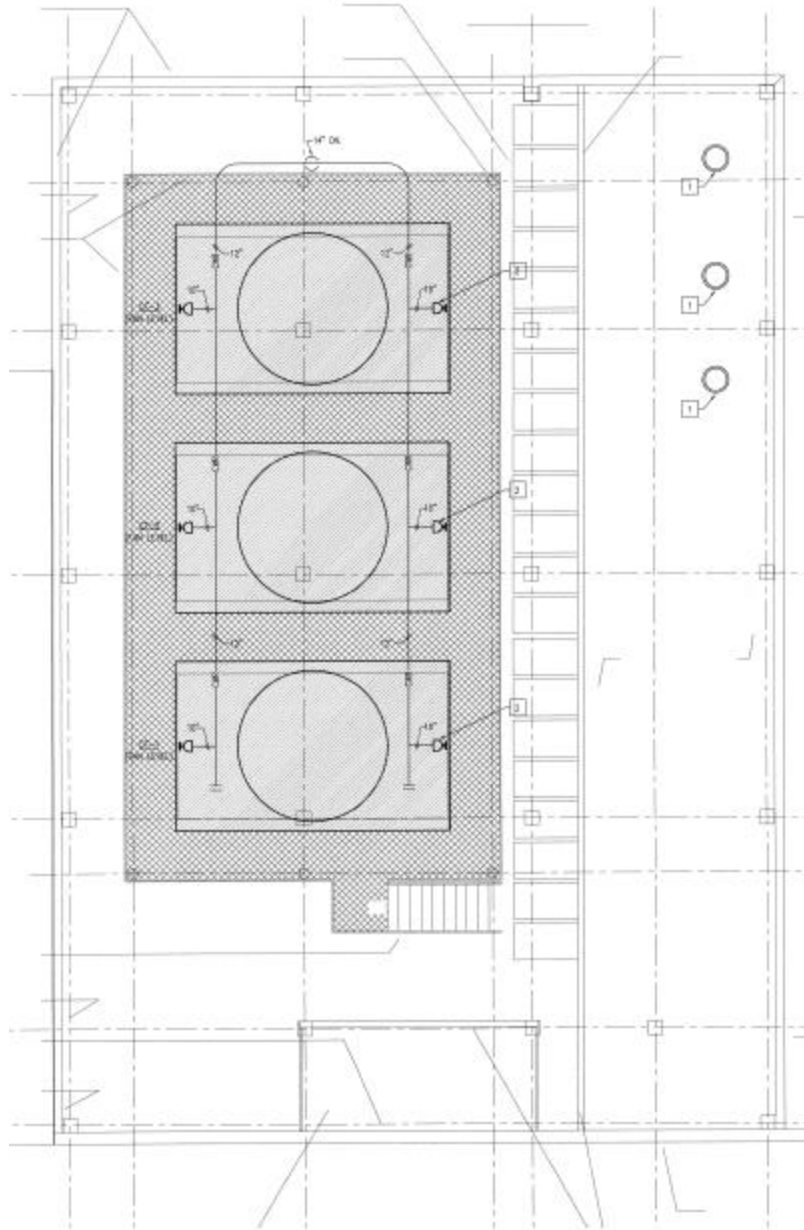


Figure 4 - Shaw Center Plant Roof

EXHIBIT “B”
SCOPE OF WORK – IMPROVEMENTS

A. SHAW CENTER PLANT

1. Upgrade and Retro-Commission Building Automation System (“BAS”)

The scope of work for Upgrade and Retro-Commission BAS includes the items below:

- a. Provide graphics for each piece of equipment including chillers, cooling towers, heating water boilers, pumps, fan coil units, exhaust fans and variable frequency drives (“VFDs”) in the Shaw Center Plant.
- b. Program BAS to operate chilled water equipment in an energy efficient manner.
- c. Sequence equipment in Shaw Center Plant in a manner minimizing the adverse impact of electricity tariff ratchet clauses (billed demands are a percentage of annual peak demands and contract demands).
- d. Sequence equipment in best efficiency manner to satisfy capacity requirements.
- e. Reset chilled water supply temperature setpoint based on outside air temperature.
- f. Reset condenser water supply temperature setpoints based on outside air wet bulb temperature and other factors.
- g. Assign unique BAS log-in and profile for each operator. Operator profiles including permitted access and actions are tailored to each specific operator based on their knowledge and expertise. In general, Level 1 operators have read only access, Level 2 operators can change setpoints, Level 3 operators can review and change programming, and Level 4 operators have unrestricted access.
- h. Implement a policy requiring operators to log-in and log-out each time they use the BAS.
- i. Establish and implement weekly schedules for fan coil units serving the Shaw Center Plant based on expected occupancy start and stop times and optimum start/stop algorithms.
- j. Modify fan coil unit programming as indicated below:
 - i. Develop and implement revised fan coil unit sequences of operation and setpoints for optimum energy efficiency.
 - ii. Set fan coil unit controls to the lowest possible fan speed.
- k. Modify heating water system programming as indicated below:

- i. Verify that each heating water pump is equipped with a functioning variable frequency drive.
 - ii. Verify that all manual balancing valves are fully open.
 - iii. Reset heating water differential pressure setpoint based on Shaw Center valve position.
 - iv. Reset heating water supply temperature setpoint based on outside air temperature.
 1. Modify chilled water system programming as indicated below:
 - i. Verify that all manual balancing valves are fully open.
 - ii. Verify that all control valves are of the 2-way type.
 - iii. Reset chilled water differential pressure setpoint based on valve position.
 - m. Interface existing occupancy sensor control and software program with the BAS such that HVAC system is efficiently controlled based on occupancy and use.
 - n. Implement remote user access to the BAS.
2. Upgrade Interior and Site Lighting

The scope of work for Upgrade Interior and Site Lighting includes the items below:

- a. Retrofit interior Shaw Center Plant fixtures from T8 to LED.
 - b. Retrofit Shaw Center Plant building-mounted wallpacks and other flood lighting to LED.
3. Identify Initial Services Deficiency Corrections (“ISDCs”)

Develop a list of ISDCs during the initial inspection period of specific equipment that is not functioning in accordance within its published specifications and inefficiently within the operating environment. The scope of work for Identify ISDCs includes the items below:

- a. Develop Diagrams
 1. Chilled Water Piping System
 2. Heating Water Piping System
 3. Normal and Standby Power System
 - b. Perform Equipment Inspections and Testing (only the equipment remaining in service)
 - i. Valve Operation including but not limited to the following:
 1. Make-up Water Valves

2. Control Valves
 3. Safety Relief Valves
 4. Check Valves
 5. Manual Isolation Valves
 6. Pressure Reducing Valves
- ii. Water Cooled Chillers
 - iii. Cooling Towers
 - iv. Heating Water Boilers
 - v. Pumps
- c. Review Existing Eddy Current Test Reports of Water-Cooled Cooled Water Chillers
 - d. Review Existing Oil and Refrigerant Test Reports of Water-Cooled Water Chillers

B. SHAW CENTER BUILDING

1. Upgrade and Retro-Commission Building Automation System (“BAS”)

The scope of work for Upgrade and Retro-Commission BAS includes the items below:

- a. Implement energy efficient sequences of operation for fan coil units, air handling units, air terminals, unit heaters, exhaust fans, heating water systems, and chilled water systems in the Shaw Center Building.
- b. Provide graphics for each piece of equipment including air handling units, fan coil units, exhaust fans and variable frequency drives in the Shaw Center Building.
- c. Sequence equipment in best efficiency manner to satisfy capacity requirements.
- d. Assign unique BAS log-in and profile for each operator. Operator profiles including permitted access and actions are tailored to each specific operator based on their knowledge and expertise. In general, Level 1 operators have read only access, Level 2 operators can to change setpoints, Level 3 operators can review and change programming, and Level 4 operators have unrestricted access.
- e. Implement a policy requiring operators to log-in and log-out each time they use the BAS.
- f. Develop and implement AHU weekly schedules based on the expected occupancy start and stop times and optimum start/stop algorithms.
- g. Establish and implement weekly schedules for air terminals and fan coil units serving intermittently occupied areas based on expected occupancy start and stop times and optimum start/stop algorithms.
- h. Develop a detailed room ventilation schedule for the facility. The schedule should identify floor area, ceiling height, room volume, outdoor air change requirement, total air change requirement, pressure relationships, existing airflow setpoints, and proposed

air flow setpoints. The completed RVS identifies the supply, return, and exhaust airflow requirements for each room under. The RVS also identifies the air-handling unit and exhaust fan serving each space. The RVS includes a summary page identifying the supply, return, and minimum outside air (ventilation) airflow requirements for each air-handling unit as well as the exhaust airflow requirement for each exhaust fan.

- i. Modify reheat coil programming as indicated below:
 - i. Reheat control valve is modulated to maintain space temperature at setpoint.
 - ii. Establish and implement minimum and maximum occupied mode thermostat setpoints for each reheat coil.
 - iii. Establish and implement unoccupied heating setpoints for each terminal.
- j. Modify air terminal programming as indicated below:
 - i. Occupancy Mode: Occupancy mode is either occupied or unoccupied. Room occupancy shall be established by a weekly schedule, an occupancy sensor, a relay interlocked with the lights, or a simple wall switch or pushbutton.
 - ii. Proper Sequence of Terminal Damper and Reheat Control Valve: Verify that the reheat control valve is modulated open before the airflow increases from the minimum heating setpoint to the maximum heating setpoint.
 - iii. Occupied Minimum and Maximum Thermostat Setpoints: Establish and implement minimum and maximum occupied mode thermostat setpoints for each air terminal.
 - iv. Unoccupied Heating and Cooling Setpoints: Establish and implement unoccupied heating and cooling setpoints for each terminal.
 - v. Deadbands: Establish and implement heating and cooling deadbands for each air terminal.
 - vi. Air Flow Settings: Adjust airflow settings for each air terminal to match RVS.
 - vii. Parameters: Verify proper terminal size, calibration constant, etc. for each air terminal.
 - viii. Calibration: Verify that each terminal is equipped for automatic calibration.
 - ix. Cooling Control Loop Output: The air terminal controllers cooling control loop output is monitored by BAS to reset the air handling unit supply air temperature between minimum and maximum based upon highest air terminal cooling control loop output. Supply air temperature setpoint overrides as required to prevent space or AHU return air relative humidity from exceeding maximum setpoint.
 - x. Air Flow Control Loop Output: Air terminal controller airflow control loop output is monitored by BAS to reset the air handling unit static pressure setpoint between minimum and maximum setpoints based upon highest air terminal airflow control loop output.
- k. Modify air handling unit programming as indicated below:

- i. Develop and implement revised air-handling unit sequences of operation and setpoints for optimum energy efficiency (supply air temperature control, humidity control, economizer cycles, damper sequencing, supply air temperature setpoint reset, and supply air static pressure setpoint reset).
 - ii. Verify that each AHU supply and return fan is equipped with a functioning variable frequency drive.
 - iii. Use a single PI loop with table statements for each device to control AHU supply air temperature. The single-loop method of control eliminates the possibility of an inadvertent overlap of heating and cooling.
 - iv. Activate dry-bulb economizer cycles when the outdoor air dry bulb temperature is less than the return air dry bulb temperature (for the standard dry bulb type) or when the outdoor air temperature is less than a fixed setpoint (for the differential dry bulb type). Adjust outdoor air dry bulb temperature enable-and-disable setpoints to the climate.
 - v. Activate enthalpy economizers when the outdoor air enthalpy is less than the return air enthalpy (for the standard enthalpy type) or when the outdoor air enthalpy is less than a fixed setpoint (for the differential enthalpy type). Provide accurate and reliable temperature and humidity sensors.
 - vi. Air-side economizer cycles should be disabled as the first stage of humidification (AHU's equipped with humidifiers).
 - vii. Sequence outside air, return air, and relief air dampers in the proper order. Outside air damper should be modulated completely open prior to modulating closed the return air damper and modulating open the relief air damper.
 - viii. Adjust minimum air flow setpoints to match the RVS.
 - ix. Reset supply air static pressure setpoints between minimum and maximum setpoints based on most open air terminal damper position.
 - x. Reset supply air temperature setpoints between minimum and maximum setpoints based on highest air terminal cooling demand.
1. Modify exhaust fan programming as indicated below:
- i. Conduct detailed testing of each large exhaust fan. Measure and record airflow, fan static pressure, fan speed, fan motor current, and fan motor electrical demand.
 - ii. Rebalance exhaust systems to match the quantities indicated on the RVS. Verify that the exhaust fan airflows are equal to the sum of the room exhausts plus a reasonable allowance for duct leakage. If there is a significant discrepancy between the sum of the room exhausts and the fan exhaust airflow (indicating excessive leakage), work with O&M staff to identify and repair the leaks.
 - iii. Verify that exhaust fans are interlocked with their associated air handling units such that exhaust fans are automatically stopped when their associated air

handling unit is stopped and automatically started when their associated air handling unit is started.

- m. Modify fan coil unit programming as indicated below:
 - i. Develop and implement revised fan coil unit sequences of operation and setpoints for optimum energy efficiency.
 - ii. Set fan coil unit controls to the lowest possible fan speed.
- n. Interface existing occupancy sensor control and software program with the BAS such that HVAC system is efficiently controlled based on occupancy and use.
- o. Implement remote user access to the BAS.

2. Upgrade Interior and Site Lighting

The scope of work for Upgrade Interior and Site Lighting includes the items below:

- a. Retrofit interior Shaw Center Building fixtures from Metal-halide, T8, Fluorescent, Incandescent, and MR16 to LED.
- b. Retrofit Shaw Center Building-mounted wallpacks and other flood lighting to LED.

EXHIBIT “C”

DESIGN AND CONSTRUCTION STANDARDS

A. GENERAL PROVISIONS

1. The Project covered by this **Exhibit “C”** shall consist of the design and construction of the Improvements as set forth in **Exhibit “B”** to the Lease and any future Improvements or Additional Works provided under this Lease.

2. Future Improvements or Additional Works under the Lease may be provided at the Shaw Center Plant.

3. BREP shall retain:

- a. Bernhard MCC, LLC as “Design-Builder”;
- b. Bernhard TME, LLC as “Engineer”; and
- c. Other subcontractors and consultants at BREP’s cost.

4. BREP shall confirm that the information included in the design requirements comply with Applicable Legal Requirements.

5. If Lessor’s criteria conflicts with the Applicable Legal Requirements, BREP shall notify Lessor of the conflict.

6. BREP shall, and shall cause Design-Builder and Engineer to, abide by the requirements of the following laws (as amended), to the extent applicable: (i) Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964 and Equal Employment Opportunity Act of 1972; (ii) Federal Executive Order 11246; (iii) the Rehabilitation Act of 1973; (iv) the Vietnam Era Veteran’s Readjustment Assistance Act of 1974; (v) the Uniformed Services Employment and Reemployment Rights Act of 1994; (vi) Title IX of the Education Amendments of 1972; (vii) the Age Discrimination Act of 1975; (viii) the Fair Housing Act of 1968; and (ix) the Americans with Disabilities Act of 1990. BREP further agrees that, to the extent required by Applicable Legal Requirements, it shall, and shall cause Design-Builder and Engineer to, not discriminate in their employment practices and shall render its services without discrimination, and without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

7. BREP shall cause Design-Builder to comply with the terms of Article 7 [Improvements and Additional Works] of the Lease.

8. BREP shall cause Design-Builder to agree in writing to resolve any disputes relating to the Improvements pursuant to the dispute resolution provisions set forth in Article 14 [Dispute Resolution; Independent Engineer] of the CEA.

B. GENERAL REQUIREMENTS OF THE IMPROVEMENTS

1. BREP shall cause Design-Builder to comply with any applicable licensing requirements in the jurisdiction(s) where the Project is located.

2. BREP shall cause Design-Builder to perform the Improvements in compliance with the Applicable Legal Requirements. If Design-Builder performs any portion of the Improvements contrary to the Applicable Legal Requirements, BREP shall correct, or cause to be corrected, such non-compliant Improvements and shall bear all costs attributable to correction.

3. BREP shall be responsible to Lessor for acts and omissions of BREP's employees, Design-Builder, Engineer, subcontractors, consultants and their agents and employees, and other Persons performing portions of the Improvements. All subcontractors must be fully licensed or qualified under any state or local licensing law for contractors in effect at the time. Only the proposals of subcontractors duly licensed under Louisiana Revised Statutes 37:2150 et. seq. will be considered if licensing is required by that law. Design-Builder, subcontractors and sub-subcontractors shall be lawfully licensed in the jurisdiction(s) where the Project is located and for the particular type of Improvements to be performed by such Person. BREP shall be responsible for determining that Design-Builder and its subcontractors are duly licensed in accordance with the Applicable Legal Requirements, and indemnify and hold Lessor harmless from all damages, costs, fines, and expenses, including attorneys' fees, resulting from BREP's failure to fulfill the obligations of this Section B.3.

4. BREP shall schedule and conduct periodic meetings with Lessor and Design-Builder to review matters such as procedures, progress, coordination, and scheduling of the Improvements.

5. BREP shall cause Design-Builder to, with the assistance of Lessor, prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Improvements.

6. BREP shall keep Lessor informed of the progress and quality of the Improvements. BREP shall, or shall cause Design-Builder to, submit on a monthly basis, or as otherwise agreed to by the Parties, progress reports to Lessor showing estimated percentages of completion and the following information:

- a. Work completed for the period;
- b. Submittal schedule and status report, including a summary of outstanding submittals;
- c. Requests for information (“**RFI**”) log;
- d. Financial summaries with “high level” values with changes;
- e. Responses to RFIs to be provided by Lessor;
- f. Approved Change Orders and Change Directives;
- g. Pending Change Order and Change Directive status reports;
- h. Tests and inspection reports;
- i. Punch list items;
- j. Job safety analyses;
- k. Procurement log with equipment installation and substitutions; and
- l. Additional information as agreed to by the Parties.

7. BREP shall cause Design-Builder to perform the Improvements in general accordance with Section 7.6 [Permitting; Timing of Improvements] of the Lease and amendment by mutual agreement of Parties.

8. BREP warrants that the Improvements will conform to the requirements of the schematic design documents and will be free from defects in design and materials. Work, materials, or equipment not conforming to these requirements shall be considered defective. BREP's warranty excludes remedy for damage or defect caused by abuse, alterations to the Improvements not executed by Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by Lessor, BREP shall, or shall cause Design-Builder to, furnish satisfactory evidence as to the kind and quality of materials and equipment.

9. BREP shall require Design-Builder to agree in writing to indemnify Lessor in the same manner and to the same extent as LEP is required to indemnify such Persons pursuant to Section 13.3.b [Indemnification by LEP] of the CEA.

10. Performance and Payment Bond

a. The State shall have the right to require BREP to furnish bonds covering the faithful performance of the Improvements and payment obligations thereunder.

b. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Lease, BREP shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

c. Upon request, BREP shall obtain and record within thirty (30) days of the execution of the Lease between Lessor and BREP a performance and payment bond with the Clerk of the Court in the Parish in which the Work or Services are to be performed.

C. WORK FOLLOWING EXECUTION OF THE LEASE

1. If Design-Builder performs a construction activity that Design-Builder knows (or in the exercise of reasonable care should know) involves a recognized error, inconsistency, or omission, BREP shall assume full responsibility for such performance and shall bear the cost for correction.

2. BREP shall cause Design-Builder to take field measurements and inspect field conditions and shall carefully compare such field measurements and conditions and other information known to Design-Builder or BREP with the schematic design documents before commencing activities. Errors, inconsistencies or omissions discovered shall be promptly reported to Lessor in writing immediately.

3. BREP shall cause Design-Builder to supervise and direct the Improvements, using Design-Builder's best skill and attention. BREP shall be solely responsible for, and Design-Builder shall have sole control over, construction means, methods, materials, techniques, sequences and procedures, and for coordinating all portions of the Improvements.

4. BREP shall cause Design-Builder to perform the Improvements in general accordance with the applicable Scope of Work set forth in **Exhibit "B"** and this **Exhibit "C"**, subject to amendment with mutual agreement of the Parties.

5. Labor and Materials.

a. Unless otherwise provided in the Lease, BREP shall be responsible for the provision and payment for labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services, necessary for proper execution and completion of the Improvements, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Improvements. Lessor shall provide water, heat and utilities at no cost to BREP.

b. BREP shall enforce discipline and good order among the employees of Design-Builder, Engineer, subcontractors, consultants and any other persons carrying out the Improvements. BREP shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

c. BREP shall cause Design-Builder to only employ or use labor in connection with the Improvements capable of working harmoniously with all trades, crafts, and any other individuals associated with the project. BREP shall also cause Design-Builder to use reasonable efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

6. Permits, Fees, Notices and Compliance with Laws.

a. BREP shall cause Design-Builder to secure, pay for, and, as soon as practicable, furnish Lessor with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Improvements, including without limitation all building permits and other permits and inspections necessary to complete the Improvements. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company shall be BREP's responsibility. Certificates (or copies) of inspection, use, and occupancy, if applicable, shall be delivered to Lessor upon completion of the Improvements in sufficient time for occupation of the project.

b. BREP shall cause Design-Builder to comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Improvements.

7. If, in the course of the Improvements, Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Construction Documents, BREP shall cause Design-Builder to immediately suspend any operations that would affect them and shall notify Lessor. Upon receipt of such notice, Lessor shall promptly take any action necessary to obtain governmental authorization required to resume the operations. BREP shall cause Design-Builder to continue to suspend such operations until otherwise instructed by Lessor but shall continue with all other operations that do not affect those remains or features.

8. Any part of the Improvements performed for BREP by other Persons, including the Design-Builder, shall be pursuant to a written agreement between BREP and such Person. All contracts and subcontracts shall (a) be in writing, (b) name Lessor as third-party beneficiaries, (c) incorporate by reference the requirements of the Lease and the CEA, (d) require such Persons to be bound to and by the terms of the Lease and the CEA, and to assume toward BREP all the obligations and responsibilities, including without limitation the indemnity obligations, the insurance obligations, the obligations that are conditions to payment, and the responsibility for safety of any Person's Improvements, which BREP, by the Lease or CEA, assumes toward Lessor, (e) waive all rights the contracting parties may have against one another or that a subcontractor or consultant may have against Lessor or BREP for damages caused by fire or other perils covered by the insurance described in **Exhibit "H"**. Persons performing any Improvements or providing any services for Lessor or BREP, directly or indirectly, pursuant to the Lease or any other applicable agreement, shall comply with and be subject to the insurance requirements set forth in **Exhibit "H"**.

9. Use of Site

a. BREP shall cause Design-Builder to confine operations to the Project Site, and shall not unreasonably encumber the site with materials or equipment.

b. Only materials and equipment that are to be used directly in the Improvements shall be brought to and stored on the Project Site by BREP, Design-Builder, subcontractors, materialmen or others working directly or indirectly at the direction of or under control of Design-Builder. After equipment is no longer required for the Improvements, it shall be promptly removed from the Project Site. Protection of construction materials and equipment stored at the Project Site from weather, theft, damage, and all other adversity is solely the responsibility of BREP. BREP shall ensure that at all times the Improvements are performed in a manner that affords reasonable access, both vehicular and pedestrian, to adjacent areas of the Project Site. The Improvements shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project Site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

c. BREP shall, and shall cause Design-Builder to, use their Commercially Reasonable Efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the Project Site.

d. Cleaning Up:

i. BREP shall, and shall cause Design-Builder to, keep the Project Site and surrounding area free from accumulation of waste materials or rubbish caused by the Improvements. At completion of the Improvements, BREP shall, or shall cause Design-Builder to, remove waste materials, rubbish, Design-Builder's tools, construction equipment, machinery and surplus materials from and about the project.

ii. If BREP fails to clean up, or cause Design-Builder to clean up, the Project Site after completion of the Improvements, Lessor shall provide BREP with written notice of the affected areas. If BREP does not clean up the areas indicated in the written notice within five (5) Business Days after its receipt of the written notice, Lessor may clean up the affected areas and Lessor shall be entitled to reimbursement of reasonable and prudently incurred costs from BREP.

10. BREP and Design-Builder shall purchase and maintain insurance in accordance with Exhibit "H".

D. LESSOR RESPONSIBILITIES

1. Lessor shall render decisions and approvals required by the Lease or this Exhibit "C" relating to design and construction in a timely manner and in accordance with BREP's schedule agreed to by Lessor.

2. Information and Services Required of Lessor (in all instances to the extent any information, materials or services requested or required exists and is under Lessor's control):

a. Lessor shall furnish information reasonably requested by BREP with reasonable promptness.

b. Lessor shall provide to BREP the extent in Lessor's possession: (i) the results and reports of prior tests, inspections or investigations conducted for the Shaw Center Building, Shaw Center Plant and Shaw Center Plant Premises involving structural or mechanical systems, chemical, air and water pollution, Hazardous Materials, or Environmental Conditions; (ii) surveys describing physical characteristics, legal limitations and utility locations for the Project Site; and (iii) a legal description of the Shaw Center Building and Shaw Center Plant Premises.

c. Lessor shall cooperate with BREP and Design-Builder in securing easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Improvements.

d. Lessor shall cooperate with BREP and Design-Builder in securing building and other permits, licenses and inspections.

e. The services, information, surveys and reports required to be provided by Lessor under this **Exhibit "C"** shall be furnished at Lessor's expense, and except as Lessor advises BREP to the contrary in writing, BREP and Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall BREP or Design-Builder be relieved of their responsibility to exercise proper precautions relating to the safe performance of the Improvements.

f. If Lessor observes or otherwise becomes aware of a fault or defect in the Improvements or non-conformity with this Lease or the CEA, Lessor shall give prompt written notice thereof to BREP.

g. Lessor shall communicate through BREP with Persons employed or retained by BREP.

h. Lessor shall purchase and maintain insurance as set forth in **Exhibit "H"**.

3. Visits to the Project Site by Lessor shall not be construed to create an obligation on the part of Lessor to make on-site inspections to check the quality or quantity of the Improvements. Lessor shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Improvements, because these are solely BREP's rights and responsibilities under the Lease.

4. Lessor shall not be responsible for BREP's failure to perform the Improvements, or cause Design-Builder to perform the Improvements, in accordance with the requirements of the Lease and the CEA. Lessor shall not have control over or charge of, and will not be responsible for acts or omissions of BREP or Persons working for BREP, including Design-Builder, or their agents or employees, or any other Persons performing portions of the Improvements for BREP.

5. Lessor shall have the right to request written evidence from BREP that BREP has properly paid any and all Persons performing portions of the Improvements for BREP. If BREP fails to furnish such evidence within seven (7) days, Lessor shall have the right to contact any such Person to ascertain whether they have been properly paid. Lessor shall have no obligation to pay or to see to the payment of money to any such Person.

EXHIBIT “D”

SCOPE OF WORK – OPERATION AND MAINTENANCE SERVICES

A. GENERAL

1. BREP shall perform the Operation and Maintenance Services set forth in Article 8 of the Lease directly pertaining to the Covered Assets as set forth in **Exhibit “E”** of the Lease, being further subject to the following inclusions and exclusions set forth in this **Exhibit “D”**.
2. BREP shall have authority over operation and maintenance policies and procedures, which must, at a minimum, comply with Shaw Center policies and procedures related to the Covered Assets as of the Effective Date.
3. BREP will provide sufficient operation and maintenance staff to operate and maintain the Covered Assets in accordance with Applicable Legal Requirements, Applicable Standards, industry standards, and manufacturer recommendations.
4. BREP operation and maintenance staff will project a professional appearance in uniform and behavior.
5. BREP operation and maintenance staff will be specifically trained to operate and maintain the Covered Assets.
6. BREP operation and maintenance staff will work at times established by BREP as needed to perform scheduled maintenance tasks so as not to unduly disrupt the facility operations.
7. BREP operation and maintenance staff will be available as needed in the event of an Emergency.
8. BREP will provide its operation and maintenance staff with required personal protective equipment and be instructed in its proper use.
9. BREP will provide its operation and maintenance staff with necessary equipment including tools and test instruments as needed to perform maintenance and conduct repairs.
10. BREP will support its operation and maintenance staff with supervision, instruction, and guidance from operation and engineering personnel.
11. BREP will provide its operation and maintenance staff with identification badges for entry to the Shaw Center Plant.
12. Lessor will assign all applicable Covered Assets warranties to BREP to the extent permissible. In the event the warranties cannot be assigned, Lessor shall cooperate with BREP and its Affiliates in enforcing the warranties.
13. BREP will comply with applicable warranties.
14. BREP will furnish to Lessor reports and other information concerning the Operation and Maintenance Services.

B. OPERATIONS MANUAL

1. Prior to the Effective Date, BREP will develop an Operations Manual for the Covered Assets.
2. BREP will update the Operations Manual annually as part of the Annual Service Plan.
3. The Operations Manual will include the following information:
 - i. Organizational Chart: An organization chart depicting the Covered Assets operation and maintenance staff.
 - ii. Job Descriptions: Job descriptions for the Covered Assets operation and maintenance staff.
 - iii. Communication Protocols: Communication protocols for each Loss of Availability or other Covered Assets fault or event that could reasonably be expected to cause an Emergency based on the duration of the event and documented parameters for assessing potential threats to life, safety, business continuity, and equipment longevity. Communication protocols include contact information for primary responders and standby responders.
 - iv. Performance Requirements: A list of performance requirements/standards for Thermal Services, as it relates to the Covered Assets used in the provision of Thermal Services. The initial Performance Standards shall be as set forth in **Exhibit “B”** of the Shaw Center Thermal Services Agreement.
 - v. Scheduled Service Disruptions: Process for scheduling and executing service disruptions necessary for Maintenance Repairs, Renewal Work and Additional Works, as applicable.
 - vi. Service Restoration Priority: List of service restoration priorities for Thermal Services.
 - vii. Equipment Operating Instructions: Detailed operating instructions for the Covered Assets.
 - viii. Management Plans: Management plans for (i) safety; (ii) security; (iii) Hazardous Material and waste; (iv) fire safety; and (v) Utilities. Each management plan shall address the following topics as applicable: (i) risk assessment; (ii) staff development; (iii) Emergency response and procedures; (iv) inspection, testing, and maintenance; (v) information collection and evaluation; and (vii) annual evaluation.
 - ix. Equipment Preventative Maintenance: Preventative maintenance procedures and frequency for each type of Covered Asset.
 - x. Equipment Repairs, Renewals, and Replacements: Procedures for repairs, renewals, and replacements of the Covered Assets.

- xi. Capital Renewal and Deferred Maintenance Plan: A schedule of planned equipment capital renewal and deferred maintenance investments by BREP (the “CRDM Schedule”), which will be updated annually by BREP in succeeding Annual Service Plans, and Lessor may provide advice and input to BREP with respect to such schedule, which will be given due consideration by BREP; provided, that BREP will be solely responsible for creating the final schedule of equipment capital renewal and deferred maintenance investments taking into consideration all input from Lessor. This schedule will be applicable to the Covered Assets. In the event that BREP does not provide CRDM in the amount of \$2,997,154 prior to the end of the Term, BREP shall reimburse the State for the amount of unperformed CRDM.
- xii. Computerized Maintenance Management System: Procedures for using the Computerized Maintenance Management System.
- xiii. Building Automation System: Procedures for using the Building Automation System (“BAS”) including database, file storage, and user access.
- xiv. Tools Inventory: Annual budget, inventory, training requirements, and check-in and check-out procedures for tools.
- xv. Parts, Materials, and Supplies Inventory: Annual budget, inventories, and check-out procedures for parts, materials and supplies. The fuel oil will be the Lessor’s responsibility to provide.
- xvi. Additional Work Policies and Procedures: Policies and procedures regarding Additional Works arising from or due to Material Changes, consistent with Article 5 [Thermal Services Requirements] of the Shaw Center Thermal Services Agreement.
- xvii. Measurement and Verification Services: Consistent with **Exhibit “B”** to the CEA, the policies and procedures regarding the M&V Services including communication protocols, recordkeeping, and documentation concerning related M&V Reports.
- xviii. Regulatory Compliance: Policies and procedures regarding compliance with Applicable Legal Requirements and Applicable Standards including permits, Governmental Authorities having jurisdiction over the Work and Services, referenced codes and standards, and documentation concerning the same.

C. RENEWAL AND REPLACEMENT OF COVERED ASSETS

1. BREP will renew and replace the assets distinguished as Covered Assets in “**Exhibit E**” of the Lease as needed to provide Thermal Services to the Shaw Center in accordance with the requirements of the Thermal Services Agreement as further set forth in Section 8.3 of the Lease.
2. BREP will transfer to Lessor the benefit of Covered Assets equipment warranties effective as of the date Lessor obtains title to the equipment (and in any event no later than as of the date of installation or replacement).

3. The Lessor will be financially responsible for all other renewal and replacement obligations as set forth in Section 8.3 of the Lease and further distinguished as Excluded Assets in **Exhibit “E”** of the Lease.

D. SERVICE CONTRACTS

1. BREP may, at its sole discretion, enter into service contracts with third parties to perform portions of the Operation and Maintenance Services.
2. At least thirty (30) days prior to each anniversary of the Effective Date, the Lessor Representative and the BREP Representative will meet to discuss the status of all current service contracts with third parties. The representatives will discuss the performance of the third party under each such service contract, and will decide whether to maintain, renew, or terminate such service contract, provided, however, the final decision shall be made by BREP.

E. SERVICES PERIOD JOINT COMMITTEE

1. Prior to the Effective Date, Lessor and BREP will establish, and will maintain throughout the Services Period, a joint liaison committee (the "Services Period Joint Committee").
2. The Services Period Joint Committee shall consist of Services Period Representatives, three (3) being appointed by BREP (“BREP Services Period Representatives”), and three (3) being appointed by Lessor (“Lessor Services Period Representatives”).
3. In addition to those obligations set forth herein, the BREP Services Period Representatives shall perform those duties set forth in Article 12 and **Exhibit “G”** of the Lease.
4. In addition to those obligations set forth herein, the Lessor Services Period Representatives shall perform those duties set forth in Article 12 of the Lease.
5. The purpose of the Services Period Joint Committee is to provide a formal forum for the Parties to consult and cooperate in all matters relating to the Shaw Center Plant during the Services Period; any member appointed to the Services Period Joint Committee will not have any duties or obligations arising out of such appointment independent of such member’s duties or obligations to the Party making such appointment.
6. The Services Period Joint Committee will only have the authority as expressly delegated to it by Lessor and BREP, and both Parties will give reasonable consideration to delegating appropriate authority to permit efficient decision making with respect to the Shaw Center Plant and the Services.
7. The Services Period Joint Committee may strike, establish terms of reference for, delegate authority, and appoint members having the necessary experience and qualifications to such sub-committees as the Services Period Joint Committee may determine are necessary from time to time and all such sub-committees will report to the Services Period Joint Committee.
8. The Services Period Joint Committee will establish protocols and procedures for undertaking the tasks and responsibilities delegated to it.

9. The Services Period Joint Committee may make recommendations to the Parties on all matters relating to the Shaw Center Plant and the Services, which the parties may accept or reject in their complete discretion.
10. The Services Period Joint Committee will have no authority to agree to any amendments or to give any waivers of this Lease.
11. The Services Period Joint Committee will meet (unless otherwise agreed by its members) at least once each month at the designated Lessor Administrative Conference Room and from time to time as necessary.
12. Any member of the Services Period Joint Committee may convene a meeting of the Services Period Joint Committee at any time. Meetings of the Services Period Joint Committee will be convened on not less than seven (7) Business Days' notice (which will also identify the agenda items to be discussed at the meeting) provided that in an Emergency a meeting may be called at any time on such notice as may be reasonable in the circumstances.
13. Minutes of all recommendations and meetings of the Services Period Joint Committee will be kept by BREP and copies circulated promptly to the Parties within seven (7) Business Days of the making of the recommendation or the holding of the meeting.
14. Lessors' rights of review, acceptance, approval, or confirmation of compliance with respect to any aspect of the Services will be for Lessor's benefit only, and no acceptance, approval or confirmation of compliance by Lessor's Services Period Representative or other representative of Lessor's will in any way relieve BREP of its obligation for all aspects of the Services except as may be expressly set out in this Lease.

F. SERVICES PERIOD PLANS

1. BREP will establish and implement a service commencement and startup plan (the "Service Commencement and Startup Plan") incorporating the following items: (i) a schedule identifying the tasks to be completed prior to the Effective Date and the targeted completion dates of such tasks so that BREP will be in a position to commence delivery of the Services on the Effective Date; (ii) the Annual Service Plan for the first Service Year; and (iii) a description of all elements of the Remote Support Services and how such program will be implemented as of the Effective Date.
2. BREP will establish and implement on or before the Effective Date the Annual Service Plan for the first Lease Year which will include detailed operational policies, procedures and practices for the Covered Assets including the methods by which BREP will deliver the Services as further set forth in the Operations Manual.
3. BREP shall additionally implement the following policies and procedures as part of the initial Annual Services Plan.
 - i. Confidentiality and privacy policies consistent with those of Shaw Center related to the Covered Assets as of the Effective Date.
 - ii. Shaw Center Plant orientation.

- iii. Obtaining and reviewing with Lessor criminal records checks for all new employees of BREP or any Third Party Contractors (and their employees) within thirty (30) days of hire.
 - iv. Terminating the employment of any person whose criminal record is not satisfactory to Lessor.
 - v. Quality assurance based on Applicable Standards and all aspects of the Shaw Center Plant for which BREP is responsible.
 - vi. Disaster preparedness and post-disaster operational and contingency response including: (i) fire drills on all work shifts in conjunction with Shaw Center policies; (ii) evacuation of the Shaw Center Plant in the event of an Emergency; (iii) BREP role in the event of a declared outbreak or pandemic; (iv) BREP role during and after a natural disaster such as flood or earthquake; (v) BREP business contingency and service resumption plans; (vi) training of BREP staff with respect to fire safety; (vii) provisions that available site-based BREP staff or contractors will provide whatever assistance can be safely provided in response to an Emergency; and (viii) confirmation that Emergency procedures and contingency plans are compliant with Applicable Law and Applicable Standards.
 - vii. Actions to be taken and procedures to be used when responding to Losses of Availability.
 - viii. Protocols for cooperation with Shaw Center (and its contractors) with respect to Shaw Center's operations at the Shaw Center Building, including repair and maintenance protocols for all infrastructure, Utilities, systems and equipment integrated or connected with those of the Shaw Center Building.
 - ix. Preventative maintenance of the Covered Assets (the "Scheduled Maintenance Services").
 - x. Other items as mutually agreed to by the Parties.
4. Some of the above policies, procedures, and plans may be met by current Lessor policies that are in place as of the Effective Date, or as may be updated periodically during the Term.
 5. The BREP Scheduled Maintenance Services shall utilize a computer-based work order program (the "Computerized Maintenance Management System") to schedule and track equipment preventative maintenance, repairs, renewals, and replacements by issuing work orders assigned to BREP operations and maintenance staff or third- party contractors which are then closed upon completion of the work.
 6. The work orders issued by the Computerized Maintenance Management System shall identify the specific actions to be taken, the date and time when the work is to be performed, the tools and other equipment required to perform the work, any potential disruption to the Shaw Center Building and the methods and actions to be taken to minimize such disruptions, a risk assessment in respect to health and safety and the methods and actions to be taken to minimize such risk, and a risk assessment in respect to infection control and

the methods and actions to be taken to minimize such risk, and the personal protective equipment to be used.

7. BREP assistance provided in response to an Emergency shall include: (i) responding to fire or other Emergency alarm; (ii) reporting blocked fire access routes to Lessor; (iii) assisting Shaw Center security personnel; (iv) assisting in the evacuation of affected areas; and (v) communication with other Emergency responders.
8. BREP shall provide Lessor with details of (i) Maintenance Repairs of the Covered Assets; (ii) summary of Loss of Availability events incurred and corrective actions undertaken during the previous year; (iii) Scheduled Maintenance Programs; (iv) any proposals for changes to the manner in which BREP delivers the Services and the anticipated impact of those changes on the Shaw Center Building; and (v) other relevant information that Lessor may reasonably request.

EXHIBIT “E”

COVERED ASSETS AND EXCLUDED ASSETS

Number	Location	Description	Asset Classification
1	Shaw Center Plant	Water Chiller	Covered Asset
2	Shaw Center Plant	Water Chiller	Covered Asset
3	Shaw Center Plant	Water Chiller	Covered Asset
4	Shaw Center Plant	Cooling Tower	Covered Asset
5	Shaw Center Plant	Cooling Tower	Covered Asset
6	Shaw Center Plant	Cooling Tower	Covered Asset
7	Shaw Center Plant	Hydronic Pump	Covered Asset
8	Shaw Center Plant	Hydronic Pump	Covered Asset
9	Shaw Center Plant	Hydronic Pump	Covered Asset
10	Shaw Center Plant	Hydronic Pump	Covered Asset
11	Shaw Center Plant	Hydronic Pump	Covered Asset
12	Shaw Center Plant	Hydronic Pump	Covered Asset
13	Shaw Center Plant	Hydronic Pump	Covered Asset
14	Shaw Center Plant	Hydronic Pump	Covered Asset
15	Shaw Center Plant	Heating Water Boiler	Covered Asset
16	Shaw Center Plant	Heating Water Boiler	Covered Asset
17	Shaw Center Plant	Heating Water Boiler	Covered Asset
18	Shaw Center Plant	Hydronic Pump	Covered Asset
19	Shaw Center Plant	Hydronic Pump	Covered Asset

Number	Location	Description	Asset Classification
20	Shaw Center Plant	Hydronic Pump	Covered Asset
21	Shaw Center Plant	Hydronic Pump	Covered Asset
22	Shaw Center Plant	Hydronic Pump	Covered Asset
23	Shaw Center Plant	Domestic Water Pump Skid	Covered Asset
24	Shaw Center Plant	Domestic Water Pump	Covered Asset
25	Shaw Center Plant	Domestic Water Pump	Covered Asset
26	Shaw Center Plant	Heating Water Air Separator	Covered Asset
27	Shaw Center Plant	Chilled Water Air Separator	Covered Asset
28	Shaw Center Plant	Chemical Treatment Station	Covered Asset
29	Shaw Center Plant	Chemical Treatment Station	Covered Asset
30	Shaw Center Plant	Chemical Treatment Station	Covered Asset
31	Shaw Center Plant	Exhaust Fan	Covered Asset
32	Shaw Center Plant	Exhaust Fan	Covered Asset
33	Shaw Center Plant	Exhaust Fan	Covered Asset
34	Shaw Center Plant	Exhaust Fan	Covered Asset
35	Shaw Center Plant	Expansion Tank	Covered Asset
36	Shaw Center Plant	Expansion Tank	Covered Asset
37	Shaw Center Plant	Expansion Tank	Covered Asset
38	Shaw Center Plant	Unit Heater	Covered Asset
39	Shaw Center Plant	Unit Heater	Covered Asset
40	Shaw Center Plant	Fan Coil Unit	Covered Asset

Number	Location	Description	Asset Classification
41	Shaw Center Plant	Fan Coil Unit	Covered Asset
42	Shaw Center Plant	Domestic Water Heater	Covered Asset
43	Shaw Center Plant	Fire Pump Double Check Valve	Covered Asset
44	Shaw Center Plant	Domestic Water Back Flow Preventer	Covered Asset
45	Shaw Center Plant	MV Switchboard	Covered Asset
46	Shaw Center Plant	Transfer Switch	Covered Asset
47	Shaw Center Plant	Switchboard	Covered Asset
48	Shaw Center Plant	Panelboard	Covered Asset
49	Shaw Center Plant	Transformer	Covered Asset
50	Shaw Center Plant	Panelboard	Covered Asset
51	Shaw Center Plant	Panelboard	Covered Asset
52	Shaw Center Plant	Panelboard	Covered Asset
53	Shaw Center Plant Yard	Transformer	Covered Asset
54	Shaw Center Plant	Panelboard	Covered Asset
55	Shaw Center Plant	Panelboard	Covered Asset
56	Shaw Center Plant	Switchboard	Covered Asset
57	Shaw Center Plant	Data Rack	Excluded Asset
58	Shaw Center Plant	Fiberoptic Patch Panel	Excluded Asset
59	Shaw Center Plant	Telephone Protector Block	Excluded Asset
60	Shaw Center Plant	LAN splice Block	Excluded Asset
61	Shaw Center Plant	Patch Panel	Excluded Asset

Number	Location	Description	Asset Classification
62	Shaw Center Plant	Media Converter	Excluded Asset
63	Shaw Center Plant	Data Switch	Excluded Asset
64	Shaw Center Plant	Safety Switch	Covered Asset
65	Shaw Center Plant	Motor Starter	Covered Asset
66	Shaw Center Plant	Variable Speed Drive	Covered Asset
67	Shaw Center Plant	Variable Speed Drive	Covered Asset
68	Shaw Center Plant	Variable Speed Drive	Covered Asset
69	Shaw Center Plant	Variable Speed Drive	Covered Asset
70	Shaw Center Plant	Variable Speed Drive	Covered Asset
71	Shaw Center Plant	Variable Speed Drive	Covered Asset
72	Shaw Center Plant	Variable Speed Drive	Covered Asset
73	Shaw Center Plant	Variable Speed Drive	Covered Asset
74	Shaw Center Plant	Variable Speed Drive	Covered Asset
75	Shaw Center Plant	Variable Speed Drive	Covered Asset
76	Shaw Center Plant	Variable Speed Drive	Covered Asset
77	Shaw Center Plant	Coiling Overhead Door	Excluded Asset
78	Shaw Center Plant	Coiling Overhead Door	Excluded Asset
79	Shaw Center Plant	Fire Alarm System	Covered Asset
80	Shaw Center Plant	Variable Speed Drive	Covered Asset
81	Shaw Center Plant	Variable Speed Drive	Covered Asset
82	Shaw Center Plant	Variable Speed Drive	Covered Asset

Number	Location	Description	Asset Classification
83	Shaw Center Plant	Variable Speed Drive	Covered Asset
84	Shaw Center Plant	Variable Speed Drive	Covered Asset
85	Shaw Center Plant	Variable Speed Drive	Covered Asset
86	Shaw Center Plant	Variable Speed Drive	Covered Asset
87	Shaw Center Plant	Shaw Center Plant Roof	Excluded Asset
88	Shaw Center Building and Premises	Thermal Services Distribution System	Excluded Asset
89	Shaw Center Plant	Exterior Walls	Excluded Asset
90	Shaw Center Plant	Windows	Excluded Asset
91	Shaw Center Plant	Exterior Doors	Excluded Asset
92	Shaw Center Plant	Electrical System	Covered Asset
93	Shaw Center Plant	Plumbing Fixtures	Covered Asset
94	Shaw Center Plant	Other Plumbing System	Covered Asset
95	Shaw Center Plant	Chilled Water and Tower Water Piping	Covered Asset
96	Shaw Center Plant	Heating Water Piping	Covered Asset
97	Shaw Center Plant	Building Automation System	Covered Asset
98	Shaw Center Plant	HVAC System	Covered Asset
99	Shaw Center Plant	Fire Protection System	Covered Asset
100	Shaw Center Plant	Foundation and Structural System	Excluded Asset
101	Shaw Center Plant	Telecommunications System	Excluded Asset
102	Shaw Center Plant	Security System	Excluded Asset
103	Shaw Center Plant	Interior Partitions and Doors	Excluded Asset

Number	Location	Description	Asset Classification
104	Shaw Center Plant	Shaw Center Plant (includes Cooling Towers) - Interior Finishes	Excluded Asset
105	Shaw Center Plant Yard	Generator	Excluded Asset

EXHIBIT “G”

BREP SERVICES PERIOD REPRESENTATIVES RESPONSIBILITIES

The roles and responsibilities of the BREP Services Period Representatives are as follows:

1. Perform the obligations set forth in **Exhibit “D”**.
2. Coordinate and document monthly meetings between State Representatives and BREP Representatives.
3. Coordinate the implementation of Improvements with State Representatives.
4. Coordinate the Operation and Maintenance Services with State Representatives.
5. Receive and respond to notices from Lessors of Material Changes.
6. Provide notices to Lessors of Material Changes.
7. Provide notice to Lessors of Construction Changes, Change Requests, and Change Orders.
8. Serve as one of the BREP Representatives on the Services Period Joint Committee.
9. Coordinate and document annual review of Annual Services Plan with State Representatives.
10. Correspond with Lessors on repairs of the Covered Assets.
11. Provide notices to Lessors of BREP intentions to renew or replace Covered Assets.
12. Manage Thermal Services Invoices and Thermal Services Payments.
13. Coordinate payments to Lessors for Off-Taker Purchased Utility Cost Reimbursement with State Representatives.

EXHIBIT “H”

PHASE I INSURANCE REQUIREMENTS

When a Party is required under the Lease to procure and maintain insurance, such policies shall conform to the following requirements, unless otherwise waived in writing by the Commissioner and the Lessor:

1. GENERAL

- (a) Prior to commencing any Work or Services under the Lease for which BREP is required to provide insurance (“Required Insurance”), BREP shall provide the Commissioner and the Lessor proof of the Required Insurance coverages. All insurers shall be authorized to do business in the State, and shall have an A. M. Best’s rating of no less than A-:VI; provided, however, that the foregoing rating requirement will be waived for any workers’ compensation coverage.
- (b) Thirty (30) days prior notice of cancellation shall be given to the Commissioner and the Lessor by registered mail, return receipt requested, on each policy of Required Insurance. All notices will name BREP and any applicable subcontractor under the Lease.

2. INSURANCE REQUIREMENTS

- (a) Insurance coverage specified in the GENERAL CONDITIONS (AIA Document A 201, 2017 Edition) to be provided by BREP, and any other insurance described below shall be furnished, if required by the Lease, with the following minimum limits:
 - (i) Workers’ Compensation - Statutory - in compliance with the workers’ compensation law of the State. Exception: Employer’s liability to be \$1,000,000 when Work or Services to be provided under Lease are over water and involve maritime exposures.
 - (ii) Commercial General Liability Insurance with a combined single limit per occurrence for bodily injury and property damage on Insurance Services Office Commercial General Liability coverage (“occurrence”) form CG 0001. (Current form approved for use in the State). The “Claims Made” form is unacceptable. This insurance shall include coverage for bodily injury and property damage, and indicate on the certificate of insurance which of the seven (7) coverages required below are not included in the policy, if any:
 - (1) Premises - Operations;
 - (2) Broad Form Contractual Liability;
 - (3) Products and Completed Operations;
 - (4) Use of Contractors and Subcontractors;
 - (5) Personal Injury;
 - (6) Broad Form Property Damage; and
 - (7) Explosion, Collapse and Underground (XCU) Coverage.

NOTE: On the certificate of insurance, under the description of operations, the following wording will be provided: THE AGGREGATE LOSS LIMIT APPLIES TO EACH PROJECT, or a copy of ISO form CG2503 (Current form approved for use in the State) shall be submitted.

COMBINED SINGLE LIMIT (CSL) - AMOUNT OF INSURANCE REQUIRED

	Projects Under \$100,000	Projects \$100,001- \$1,000,000	Projects Over \$1,000,000
Each Occurrence/ Minimum Limit	\$500,000*** (Depends On Project Value)	\$1,000,000*** (Depends On Project Value)	\$3,000,000*** (Depends On Project Value)
Aggregate (Applicable to this Contract ONLY)	\$500,000*** (Depends On Project Value)	\$1,000,000*** (Depends On Project Value)	\$3,000,000*** (Depends On Project Value)

****While the minimum combined single limit of \$500,000 is required for all Projects, the value of a Project shall be multiplied by 10% and insurance requirements will be increased at \$1,000,000 intervals and rounded to the nearest \$1,000,000. Example: A \$33,000,000 Project would require \$3,000,000 minimum combined single limit of coverage. Maximum limit required is \$5,000,000.00 regardless of Project value.*

- (b) Business Automobile Liability Insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage, unless otherwise indicated. This insurance shall include for bodily injury and property damage the following coverages:
 - (i) Owned automobiles;
 - (ii) Hired automobiles; and
 - (iii) Non-owned automobiles.

- (c) Property Insurance
 - (i) BREP shall purchase and maintain property insurance upon the entirety of the Work or Services included in the Lease for an amount equal to the greater of the fully completed value or the amount of the Lease including any amendments thereto (with the exception of the following sub-limit for flood.) Contractor’s policy shall provide “ALL RISK” Builder’s Risk insurance (extended to include the perils of flood, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure.) Flood sub-limit shall equal an amount no lower than ten percent (10%) of the total Lease value per occurrence. The “All Risk” Builder’s Risk Insurance must also cover architects’ and engineers’ fees that may be necessary to provide plans and specifications and supervision of Work for the repair and/or replacement of property damage caused by a covered peril not to exceed ten percent (10%) of the cost of those repair and/or replacements.

 - (ii) A specialty contractor shall purchase and maintain property insurance upon the specialty system to be installed for an amount equal to the greater of the fully completed value of the specialty system or the amount of the contract for the

system installation including any amendments thereto. The specialty contractor may provide an installation floater with the same coverage as the “ALL RISK” Builder’s Risk insurance policy.

- (iii) The policy shall include the interest of the Lessor, the Division of Administration (“DOA”), BREP and any applicable subcontractors as their interest may appear.
- (iv) Policies insuring Projects involving additions, alterations or repairs to existing buildings or structures must include an endorsement providing the following:

In the event of a disagreement regarding a loss covered by this policy which may also be covered by the State of Louisiana policy of self-insurance or any commercial property insurance policy purchased by the State of Louisiana, Office of Risk Management (“ORM”) covering in excess of the State of Louisiana, policy of self-insurance, this company agrees to follow the following procedure to establish coverage and/or the amount of loss:

Any party to a loss may make written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, this company and either ORM or its commercial insurance company shall each select a competent and impartial appraiser and notify the other of the appraiser selected. The two appraisers will select a competent and impartial umpire. The appraisers will then identify the policy or policies under which the loss is insured and, if necessary, state separately the value of the property and the amount of the loss that must be borne by each policy. If the two appraisers fail to agree, they shall submit their differences to the umpire. A written decision by any two shall determine the policy or policies and the amount of the loss. Each insurance company (or ORM) agrees that the decision of the appraisers and the umpire if involved, will be binding and final and that neither party will resort to litigation. Each of the two parties shall pay its chosen appraiser and bear the cost of the umpire equally.

- (v) All property losses shall be made payable to and adjusted with the Lessor party to the Project.

(d) Other insurance to be provided by BREP:

- (i) Lessor’s Protective Liability Insurance shall be furnished by BREP and naming the Lessor as the Insured.

	<u>Projects Under \$100,000</u>	<u>Projects \$100,001- \$1,000,000</u>	<u>Projects Over \$1,000,000</u>
CSL - Each Occurrence	\$500,000	\$1,000,000	\$3,000,000

- (ii) Asbestos Abatement Liability (required only when asbestos abatement is specifically included in the Work or Services): BREP or a subcontractor who will be doing the asbestos abatement as outlined in the Lease shall obtain and maintain such liability coverage for the asbestos abatement hazard and exposure with minimum limits of \$1,000,000 per occurrence for the duration of the Project. The

policy shall name the State of Louisiana, the Lessor, all State departments, agencies, boards and commissions as an additional insured for the Project. The policy shall be written on an “occurrence” form. Claims-made coverage is unacceptable. The insurance company shall have an A.M. Best rating of at least A-:VI or better.

- (e) Any deductibles or self-insured retentions must be declared to and approved by the Commissioner. At the option of the Commissioner, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Lessor, the DOA, and their respective officers, officials, employees and volunteers; or BREP shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- (f) An umbrella policy may be used to meet minimum requirements.

3. RISKS AND INDEMNIFICATIONS ASSUMED BY BREP

- (a) Neither the acceptance of the completed Work or Services nor payment therefor shall release BREP and its subcontractor(s) from their obligations from the insurance requirements or indemnifications contained in this Lease.
- (b) All property losses shall be made payable to and adjusted with the Lessor.
- (c) All policies and certificates of insurance shall be approved by the Commissioner and the Lessor prior to the inception of any Work or Services.
- (d) If at any time any of the foregoing policies shall be or become unsatisfactory to the Commissioner, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Commissioner, BREP shall, upon notice to that effect from the Commissioner, promptly obtain a new policy, submit the same to the Commissioner for approval and submit a certificate thereof as hereinabove provided. Failure of BREP to take out and/or maintain or the taking out and/or maintenance of any required insurance, shall not relieve BREP from any liability under this Lease, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of BREP concerning indemnification. The Commissioner reserves the right to require complete, certified copies of all required insurance policies, at any time.

4. SUBCONTRACTORS

BREP shall include all subcontractors as insureds under its policies or shall furnish separate certificates from each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

5. CERTIFICATE OF INSURANCE

BREP shall furnish the Commissioner with certificates of insurance for the Required Insurance. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates of insurance must also contain the following in the “Description of Operations” section:

- (a) If BREP is acting as a General Contractor, then so state.

- (b) If BREP is a specialty contractor, then so state and provide the list of specialties for which BREP is insured.

6. OTHER INSURANCE PROVISIONS

- (a) The policies of Required Insurance are to contain, or be endorsed to contain, the following provisions:
 - (i) General Liability and Automobile Liability Coverages
 - (1) The Lessor, the DOA, and their respective officers, officials, employees, Boards and Commissions and volunteers are to be added as “additional insureds” as respects liability arising out of activities performed by or on behalf of BREP; products and completed operations of BREP, premises owned, occupied or used by BREP. The coverage shall contain no special limitations on the scope of protection afforded to the Lessor, the DOA, and their officers, officials, employees or volunteers.
 - (2) It is understood that the business auto policy under “Who is an Insured” automatically provides liability coverage in favor of the State.
 - (3) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Lessor, the DOA, and their officers, officials, employees, Boards and Commissions or volunteers.
 - (4) BREP’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
 - (ii) Workers’ Compensation and Employer’s Liability Coverage: The insurer shall agree to waive all rights of subrogation against the Lessor, the DOA, and their respective officers, officials, employees and volunteers for losses arising from Work or Services performed by BREP under the Lease.
 - (iii) All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the Commissioner.
 - (iv) BREP or the applicable subcontractor’s insurer will have no right of recovery or subrogation against the State or the Lessor, it being the intention of the Parties that Required Insurance shall protect both Parties and be the primary coverage for any and all losses covered by the Required Insurance.
 - (v) The Lessor and the DOA shall be named as an additional insured as regards to negligence by BREP (ISO Forms CG 20 10, Current form approved for use in Louisiana).

- (vi) The insurance companies issuing the policy or policies shall have no recourse against the Lessor and the DOA for payment of any premiums or for assessments under any form of policy.