

STATE OF ALABAMA     )  
COUNTY OF BALDWIN    )

## **GROUND LEASE**

THIS GROUND LEASE (“Lease”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between AEP RENEWABLE FUELS, LLC, a Georgia limited liability company (“Lessee”), and the BALDWIN COUNTY COMMISSION, a political subdivision of the State of Alabama (“Lessor”).

### **WITNESSETH:**

WHEREAS, Lessor is the owner of that certain real property known as the Magnolia Sanitary Landfill and located at 15140 County Road 49, Town of Summerdale, Baldwin County, Alabama (the “Landfill”);

WHEREAS, contemporaneous with the execution of this Lease, Lessor and Lessee have entered into an agreement pursuant to which Lessor grants to Lessee certain rights to purchase landfill gas collected at the Landfill (the “Landfill Gas Rights Agreement”); and

WHEREAS, Lessor has agreed to lease to Lessee and Lessee has agreed to lease from Lessor, subject to the terms and conditions set forth in this Lease, a certain one (1) acre parcel of land located at the Landfill for Lessee’s commercial production, storage and loading of transportation fuels from landfill gas for sale to others.

NOW, THEREFORE, for and in consideration of the covenants and conditions herein to be kept, performed and observed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE 1. DEMISE OF LEASED PREMISES**

### **Description of Leased Premises**

1.01 Lessor leases to Lessee, and Lessee rents and accepts from Lessor, a certain one (1) acre parcel of land located at the Landfill and further described on Exhibit A, attached hereto and incorporated herein by reference (the “Leased Premises”). All materials, minerals, water, natural gas, and other items existing in, on, or under the Landfill (including, but not by way of limitation, the refuse, cell liners, the landfill gas until title passes to Lessee, leachate, leachate collection system, condensate, and cover) shall at all times remain the property of Lessor, subject to the terms of the Landfill Gas Rights Agreement.

### **Land Subject to Liens, Encumbrances, and Other Conditions**

1.02 Lessee shall be permitted to use the Leased Premises for all purposes set forth in the Landfill Gas Rights Agreement, and ancillary uses related thereto. All other uses are subject to the prior written consent of Lessor, such consent not to be unreasonably withheld, conditioned, or delayed. This Lease is expressly granted by Lessor and accepted by Lessee subject to all

applicable building, zoning and other ordinances and governmental requirements affecting the Leased Premises and to all restrictions, covenants, encumbrances, rights-of-ways, easements, exceptions, reservations and other matters of record encumbering or affecting the Leased Premises. Furthermore, subject to the rights of Lessee hereunder, Lessor reserves the right to grant any, easements, licenses, and other similar agreements affecting the Leased Premises, including, without limitation, utility and pipeline easements (collectively referred to for purposes of this paragraph as "Easements"), provided that, (i) the Easement shall be located in a manner that minimizes interference with the operations of Lessee at the Leased Premises and does not increase any operational cost or risk to Lessee, while also minimizing construction and operational costs and risks for Lessor; and (ii) in connection with any and all work performed and operations conducted within the Leased Premises, the Easement holder, including its employees, agents, invitees, contractors and subcontractors, shall comply with Lessee's standard safety and insurance requirements for contractors performing similar types of work within the Leased Premises. All plans and specifications for an Easement holder's improvements to be located on the Leased Premises shall be subject to Lessee's prior review and approval (such approval not to be unreasonably withheld, conditioned or delayed so long as such improvements meet Lessee's own standards for similar improvements on the Leased Premises). The matters referenced in this paragraph are the "Permitted Exceptions".

### **Representations and Warranties of Lessor**

1.03 Lessee shall satisfy itself of any and all matters in connection with the condition of the Lease Land prior to execution of this Agreement. Lessee has the obligation to determine any and all conditions of the Leased Premises and any improvements thereof, without limitation. Lessor disclaims any and all warranties with regard to the Leased Premises, express or implied. Lessee has had the opportunity to inspect the Leased Premises and to satisfy itself with regard to its condition and Lessee understands, acknowledges and agrees that the Leased Premises is leased by Lessor and accepted by Lessee in its "AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED" condition and without recourse against Lessor. LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND INCLUDING WITHOUT LIMITATION, (I) THE CONDITION OR SUFFICIENCY OF THE LEASED PREMISES FOR LESSEE'S INTENDED USE, (II) THE CONDITION OR ZONING STATUS OF THE LEASED PREMISES, OR ANY OTHER FACT OR MATTER RELATING THERETO, OR (III) WHETHER ANY OF THE LEASED PREMISES CONTAINS ANY SUBSTANCE OR MATERIAL WHICH IS OR MAY BE IN VIOLATION OF ANY ENVIRONMENTAL LAW. Lessee acknowledges that, except as may be otherwise expressly provided herein, in no event shall Lessor have any obligation for any defects in the Leased Premises or any limitation on its use. The taking of possession of the Leased Premises shall be conclusive evidence that the Leased Premises was in good condition at the time possession was taken. Notwithstanding anything herein to the contrary, Lessor hereby represents and warrants that, to its actual knowledge, as of the date of this Lease, the Leased Premises is in compliance with any and all - and that Lessee's permitted use hereunder does not violate any or all - applicable laws, statutes, ordinances and regulations.

## **ARTICLE 2. TERM AND RENT**

### **Term of Lease**

2.01 This Lease shall be for a term of fifteen (15) years ("Initial Term"), commencing on \_\_\_\_\_, 2021, and ending on \_\_\_\_\_, 2036, unless terminated at an earlier date for any reason set forth in this Lease. Thereafter, this Lease shall automatically renew on a year-to-year basis unless Lessor or Lessee provides the other with written notice of termination of the Lease prior to the expiration of any renewal term. Notwithstanding the foregoing, the term of this Lease and the term of the Landfill Gas Rights Agreement shall be co-terminus, such that in the event of termination or extension of the term of the Landfill Gas Rights Agreement, this term of this Lease shall immediately be deemed so terminated or extended, as applicable.

### **Rent**

2.02 Lessee shall pay to Lessor annual rental in the amount of \$1,200.00, payable in equal installments of \$100.00 per month in advance on the first day of each month for that month's rental, during the term of this Lease.

### **Holdover**

2.03 If Lessee holds over after the expiration of the Initial Term of this lease agreement or any renewals thereof, then Lessee's tenancy shall be from month to month on all the terms and conditions as set forth in this Lease.

## **ARTICLE 3. USE AND CONSTRUCTION OF IMPROVEMENTS**

### **Permitted Use of Leased Premises**

3.01 Lessee shall have the right to use the Leased Premises solely and exclusively for activities related to Lessee's purchase of landfill gas from Lessor and the commercial production, storage and loading of transportation fuels for sale to others from landfill gas and ancillary uses incidental thereto; provided that such use shall be in accordance with the parties' Landfill Gas Rights Agreement all applicable Governmental Laws Environmental Laws and for no other purpose ("Permitted Use").

3.02 At all times, all uses of the Leased Premises shall be under the direction, supervision and control of agents and employees of Lessee so as to insure safe and appropriate use of the Leased Premises.

3.03 Lessee's use of the Leased Premises shall be in accordance with all applicable policies and procedures of Lessor of which Lessee has prior written notice and which do not unreasonably interfere or adversely affect Lessee's ability to perform at the Leased Premises as permitted under this lease agreement.

### **Construction of Buildings and Other Improvements**

3.04 Lessee shall not commence any renovation, restoration or construction activities without the prior written approval of Lessor, such approval not to be unreasonably withheld, conditioned, or delayed. Lessee shall provide sufficient detail so that Lessor can make an informed decision with regard to any proposed renovation, restoration or constructions activities. All renovation, restoration or constructions activities shall be in accordance with the approved details. There shall be no additions or modifications to the approved details without the prior written permission of Lessor. Notwithstanding anything herein to the contrary, all renovation, restoration and construction activities permitted pursuant to the Landfill Gas Rights Agreement shall be deemed approved and permitted under this Lease Agreement. Further, notwithstanding anything herein to the contrary, if Lessor fails to respond to Lessee's request for approval within thirty (30) days after Lessee's said request, and such failure to respond continues for another thirty (30) days after a reminder notice from Lessee, then Lessor shall be deemed to have approved same.

3.05 Upon written approval of Lessor (or upon Lessor's deemed approval as set forth above), Lessee shall have the right to construct structures, buildings, and other improvements ("Improvements") on the Leased Premises, at Lessee's sole cost and expense, and in connection with any construction, Lessee shall be permitted to grade, level, and fill the land, remove trees and shrubs, install roadways and walkways, and install utilities, provided all of the foregoing serve the approved plans or the Improvements erected on the Leased Premises. Lessor shall have no liability for any costs or expenses in connection with the construction of Improvements on the Leased Premises.

3.06 Lessor acknowledges that, pursuant to the parties' Landfill Gas Rights Agreement, Lessee shall, at its sole expense, design, install, permit, and construct, a Processing Station at the Landfill (including any expansions thereof), all in accordance with federal, state and industry standards, and that no further approvals from Lessor are required with respect to same. As set forth in said Agreement, the design and permitting documents shall be signed and sealed by a professional engineer registered in the State of Alabama.

3.07 Lessee shall keep and maintain cost records for all restoration, renovation and/or construction activities undertaken on the Leased Premises, copies of which shall be provided to Lessor upon Lessor's written request for same on no less than an annual basis.

3.08 No review or approval of plans, specifications or other information or documentation by Lessor shall constitute a representation or warranty by Lessor that such plans, specifications or other information or documentation satisfy any applicable laws or other requirements or will provide for a safe operation, and no such review or approval shall make Lessor otherwise liable with respect thereto. Lessee shall be solely responsible for determining whether its plans, specifications, construction and maintenance meet its needs, satisfy applicable laws and other requirements and will provide for a safe operation.

#### **ARTICLE 4. OPERATING COSTS AND IMPOSITIONS**

##### **Maintenance and Operating Costs**

4.01 During the term of this Lease, Lessee, at its own expense, shall maintain and keep the Leased Premises and the facilities constructed thereon in a state of good condition and repair. Lessee shall pay all “Operating Costs” and “Impositions” defined in Paragraphs 4.02 and 4.03, below, in connection with the Leased Premises.

#### **Definition of Operating Costs**

4.02 “Operating Costs” shall include, but shall not be limited to, all expenses paid or incurred in connection with the following activities: all commercially reasonable expenses, whether or not mentioned in this Lease, that are incurred with regard to operation, repair or maintenance of the Leased Premises. Notwithstanding the foregoing, Lessor shall be responsible for all costs incurred in Lessor’s use of the Leased Premises.

#### **Definition of Impositions**

4.03 “Impositions” shall include all fines and levies that result from construction activities or the normal operation of the Leased Premises, all real estate property taxes, assessments, and other governmental charges that are laid, assessed, levied, or imposed on the Leased Premises and become due and payable during the Term of this Lease, or any lien that arises during the time of this Lease on the Leased Premises or Improvements, any portion of these, or any sidewalks or streets in front of or adjoining the Leased Premises and Improvements.

### **ARTICLE 5. LAWS AND GOVERNMENTAL REGULATIONS**

#### **Compliance**

5.01 Throughout the entire term of this Lease, including any renewals, and without any cost to Lessor, Lessee shall promptly comply with all laws and ordinances, and all orders, rules, regulations, and requirements of all Governing Authorities. “Governmental Authority” means any federal, state, tribal, foreign or local governmental entity, authority, department, court or agency, including any political subdivision thereof, exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature, and including any arbitrating body, commission or quasi-governmental authority or self-regulating organization of competent authority exercising or enlisted to exercise similar power or authority.

### **ARTICLE 6. LIENS AND ENCUMBRANCES**

#### **Creation Not Allowed**

6.01 Lessee shall not create, permit, or suffer any mechanics’ or other liens or encumbrances on or affecting the Leased Premises or the fee estate or reversion of Lessor.

#### **Discharge After Filing or Imposition**

6.02 If any lien or encumbrance shall at any time be filed or imposed against the Leased Premises or the fee estate or reversion of Lessor, Lessee shall cause the lien or encumbrance to be

discharged of record within sixty (60) days after notice of the filing or imposition by payment, deposit, bond, order of a court of competent jurisdiction, or as otherwise permitted by law. If Lessee shall fail to cause the lien or encumbrance to be discharged within the sixty (60) day period, and if Lessee is not diligently pursuing the discharge or bonding over of said lien or encumbrance, then in addition to any other right or remedy of Lessor, and upon at least ten (10) days prior written notice to Lessee, Lessor shall be entitled but not obligated to discharge the lien or encumbrance either by paying the amount claimed to be due or by procuring the discharge by deposit or by bonding proceedings. In any event, Lessor shall be entitled to compel the prosecution of an action for the foreclosure of any lien or encumbrance by the lienor and to pay the amount of the judgment for and in favor of the lienor with interest, costs, and allowances if Lessor elects to take this action. All amounts paid by Lessor and all of its costs and expenses in connection with the actions taken by Lessor, including court costs, reasonable attorneys' fees, and interest at the highest legal rate in effect at the time these moneys are due, shall be deemed to be additional rent under this Lease and shall be paid by Lessee to Lessor promptly on demand by Lessor.

#### **Lessor Not Liable for Labor, Services, or Materials Furnished to Lessee**

6.03 Lessor shall not be liable for any labor, services, or materials furnished or to be furnished to Lessee in connection with any work performed on or at the Leased Premises.

### **ARTICLE 7. INSURANCE AND INDEMNITY**

#### **Property and Personal Injury Liability Insurance**

7.01 At all times during the Term of this Lease, Lessee shall maintain, at its sole cost, comprehensive broad-form public liability insurance against claims and liability for personal injury, death, and property damage arising from the use, occupancy, disuse, or condition of the Leased Premises and Improvements, and adjoining areas, and shall be in an amount no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for property damage and bodily injury.

7.02 At all times during the Term of this Lease, Lessee shall maintain, at its sole cost, umbrella or excess liability insurance against claims and liability for personal injury, death, and property damage arising from the use, occupancy, disuse, or condition of the Leased Premises and Improvements, and adjoining areas in an amount of not less than \$5,000,000 per occurrence and annual aggregate (inclusive of the requirements and in addition to the GL, CA, and EL limits listed in Paragraph 7.01 above.

#### **Construction Liability Insurance**

7.03 Lessee agrees to obtain and maintain (to the extent reasonably procurable) construction liability insurance at all times when demolition, excavation, or construction work is in progress on the Leased Premises. The insurance shall have limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for property damage and bodily injury. The insurance shall be maintained for the mutual benefit of Lessor and Lessee against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the Leased Premises.

## **Certificates of Insurance**

7.04 Each insurance policy required under this Article 7 shall be carried by insurance companies authorized to transact business in the State of Alabama, shall name both Lessor and Lessee as insureds, and shall be maintained for the mutual benefit of Lessor and Lessee, any succeeding owners of the fee title in the Leased Premises, and any successors and assigns of this Lease.

7.05 Lessee shall furnish Lessor with certificates of all insurance required by this Article 7. Lessee agrees that if it does not keep this insurance in full force and effect, Lessor may notify Lessee of this failure, and if Lessee does not deliver to Lessor certificates showing all of the required insurance to be in full force and effect within ten (10) days after this notice, Lessor may, at its option, take out and pay the premiums on the insurance needed to fulfill Lessee's obligations under the provisions of this Article 7. On demand from Lessor, Lessee shall reimburse Lessor the full amount of any insurance premiums paid by Lessor, with interest at the rate of ten percent (10%) per annum from the date of Lessor's demand until reimbursement by Lessee.

7.06 Lessee acknowledges and agrees that the amount of liability insurance shall be subject to any increases that may be reasonably required by Lessor from time-to-time to account for inflation or other market conditions shall be made in cooperation between Lessor and Lessee. Notwithstanding the foregoing, the amount of liability insurance shall not be decreased without the prior written authorization of the Lessor.

## **Indemnification of Lessor**

7.07 Lessee agrees to indemnify, defend and hold harmless the Lessor, its elected officials, officers, employees, agents, representatives, successors and assigns ("Lessor Indemnified Parties") from and against any and all Losses, defined below, which may be imposed on, incurred by or asserted against the Lessor Indemnified Parties, in any way and to the extent relating to or arising out of (i) any actions taken or omissions by Lessee or its members, officers, managers, employees, agents, successors, assigns, guests and invitees, vendors, equipment lessors, licensees, carriers, contractors or subcontractors (together, "Lessee") in connection with the occupancy, use or operation of the Leased Premises or surrounding areas, or any accident or occurrence in connection therewith, (ii) any failure to perform any covenant or agreement made or undertaken by Lessee in this Lease beyond any applicable notice and cure period, (iii) the occupancy, use and/or occupation of the Leased Premises, by Lessee and/or (iv) any injury or damage to any person, including death, or property, occurring in or about the Leased Premises; provided, however, that Lessee shall not be required to indemnify the Lessor Indemnified Parties for any Losses under clauses (i), (ii), (iii) or (iv), to the extent resulting from or arising out of the gross negligence or willful misconduct of any of the Lessor Indemnified Parties. For purposes of this Lease, "losses" shall mean any losses, damages, liabilities, claims, demands, causes of action, judgments, settlements, fines, penalties, costs and expenses (including court costs and reasonable attorney's and expert's fees) of any and every kind or character, known or unknown, fixed or contingent. Lessee waives all claims and demands against Lessor for any loss, damage, or injury arising out of or related to Lessee's occupancy, use or operation of the Leased Premises or related

to the condition of the Leased Premises caused other than by the negligent or intentional act or omission of Lessor.

7.08 Notwithstanding anything contained in this Lease to the contrary, the provisions of this Article 7 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 8. ENVIRONMENTAL**

### **Compliance**

8.1 During the entire term of this Lease, including any renewals, at no cost to Lessor, Lessee shall comply with all Environmental Laws applicable to its operations and business at or on the Leased Premises which compliance shall include handling, storing, and disposing of all substances at, in or on the Leased Premises in compliance with all applicable Environmental Laws and satisfying any and all environmental enforcement, permitting, notifications or reporting requirements directly arising out of Lessee's use of the Leased Premises, as required by any applicable law. Without limiting the foregoing, Lessee shall not (a) use or knowingly permit the use by or under Lessee or any vendors, equipment lessors, invitees, licensees, carriers, contractors or subcontractors of any tier of any of Lessee (collectively, the "Lessee") on or about the Leased Premises for the on-site disposal of Hazardous Substances or any other activities in violation of Environmental Laws, or (b) release, or knowingly allow the release by or under Lessee of any Hazardous Substances onto the Leased Premises or adjacent lands or waters in violation of or at concentrations that exceed those allowed by Environmental Laws. Lessor hereby represents and warrants to Lessee that, to its actual knowledge, as of the date of this lease agreement, the Leased Premises is not in violation of any Environmental Laws.

### **Hazardous Substances**

8.2 "Environmental Laws" as used in this Lease shall mean any and all applicable federal, state, municipal and local laws, statutes, rules, regulations, ordinances, codes, restrictions, permitting requirements, licensing requirements and any other governmental requirements or obligations of any kind or nature relating to (i) environmental pollution, contamination or other impairment of any kind or nature, (ii) the construction, installation, repair, maintenance or operation of the Gas Collection System and/or (iii) any hazardous waste or other toxic substances of any nature, whether liquid, solid and/or gaseous, including, without limitation, smoke, vapor, fumes, soot, radiation, acids, alkalis, chemicals, wastes, by-products and recycled materials. These Environmental Laws shall include, but not be limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, all as amended from time to time, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Commission, regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect and all applicable local ordinances, rules, regulations and permitting or licensing requirements. This definition shall not be interpreted to include the laws relating primarily to health and safety such as the Occupational Safety & Health Administration and similar state laws.

This definition shall also include rules and regulations of the Alabama Department of Environmental Management (ADEM).

### **Notices**

8.4 Lessee shall provide Lessor with material safety data sheets (“MSDS”) on all Hazardous Substances brought onto and produced on the Leased Premises.

8.5 Except with respect to those Hazardous Substances used, stored and otherwise handled by Lessee in conjunction with the operation of the Leased Premises in accordance with the Permitted Use and used, stored, and otherwise handled in compliance with applicable Environmental Laws, Lessee shall notify Lessor promptly upon the discovery by Lessee of any Hazardous Substances at, on or in the Leased Premises, at concentrations exceeding those allowed by Environmental Laws or upon receipt of written communication from any governmental agency concerning the actual or alleged violation of an applicable Environmental Law in any way related to the Leased Premises.

8.6 Lessee shall provide notice to Lessor of any suit filed against Lessee or with respect to the Leased Premises by any non-governmental third party alleging violations of applicable Environmental Law by Lessee (or anyone acting on behalf of Lessee) at the Leased Premises.

8.7 Lessor shall promptly notify Lessee of any release of Hazardous Substances at or associated with Lessor’s refinery process to the extent adversely affecting the Leased Premises or that could present an unreasonable risk to Lessee’s employees

### **Cleanup**

8.8 If during the Term, Lessee discovers any leak, spill, overflow, outflow or escape of any Hazardous Substances brought onto or produced on the Leased Premises by or on behalf of Lessee at concentrations exceeding those allowed by Environmental Laws, Lessee shall promptly, at its sole cost and expense: (a) notify applicable federal, state and local agencies, if required by Environmental Laws; (b) make all reasonable and necessary arrangements for stopping such leak, spill, overflow, outflow or escape; and (c) clean up, remove and dispose of, pursuant to applicable Environmental Laws, such Hazardous Substances wherever such may be found (“Environmental Cleanup”). If Lessee fails to perform or complete any legally required Environmental Cleanup, Lessor may (at its option) conduct the Environmental Cleanup and Lessee hereby agrees to reimburse Lessor for Lessor’s reasonable out-of-pocket costs and expenses in conducting such Environmental Cleanup within thirty (30) days after Lessee’s receipt of a bill therefor including a written itemization and documentation for such costs and expenses.

### **Indemnification of Lessor**

8.9 In addition to Lessee’s indemnity obligations set forth in Paragraph 7.07 of Article 7 herein, Lessee shall indemnify, defend and hold harmless the Lessor Indemnified Parties from and against all Losses suffered or incurred by any of the Lessor Indemnified Parties, directly or indirectly, including as a result of any claim by a third party, by reason of or arising out of: (a)

intentionally omitted; or (b) intentionally omitted; or (c) any breach or violation of any applicable laws, including without limitation, Environmental Laws, by Lessee; or (d) intentionally omitted; or (e) intentionally omitted; (f) any contamination or other environmental problems or difficulties whether now known or hereafter discovered that arises from any negligent, act or omission of Lessee or Lessee's operation of the Leased Premises; and (g) any environmental remediation or corrective action that is required by Environmental Law by Lessee at the Leased Premises: including (i) the cost and expense of any investigation, assessment, evaluation, monitoring, containment, cleanup, repair, restoration, remediation, risk-based closure activities, or other corrective action required or necessary under Environmental Laws, and (ii) the cost and expense of the preparation and implementation of any closure, remedial, corrective action, or other plans required or necessary under Environmental Laws.

8.10 Notwithstanding anything contained in this Lease to the contrary, the provisions of this Article 8 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 9. DAMAGE OR DESTRUCTION OF IMPROVEMENTS**

### **Damage or Destruction; Option to Terminate or Repair**

9.01 In the event that the Leased Premises, the Improvements, or any part of them are damaged or destroyed by any cause whatsoever, Lessee may elect either of the following options:

(a) Within one hundred twenty (120) days, Lessee shall commence and diligently pursue to completion the repair, restoration, or replacement of the damaged or destroyed Leased Premises and Improvement, and this Lease shall remain in full force and effect. Excess insurance proceeds, if any, shall be paid to Lessee.

or

(b) In the event that Lessee does not proceed in accordance with subsection (a) above, then Lessor or Lessee may terminate this Lease with one hundred twenty (120) days written notice to the other party..

## **ARTICLE 10. CONDEMNATION**

10.01 If the whole or any substantial part, in Lessor's discretion of the Leased Premises should be taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "Taking"), this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective when the physical taking of the Leased Premises shall occur. If there is a Taking of less than a substantial part of the Leased Premises, this Lease shall not terminate, but the rent payable hereunder during the unexpired portion of this Lease shall be reduced to such extent as may be fair and reasonable under all of the circumstances. In the event of any such Taking, Lessor and Lessee shall each be entitled to receive and retain such separate awards and/or portion of lump sum awards as may be allocated to their respective interests in any condemnation proceedings. Lessor shall be entitled to any award and all damages payable as a result of any condemnation or taking of the fee

of the Leased Premises. Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damage to the Improvements and/or Lessee's business by reason of the condemnation, including loss of value of any unexpired portion of the Term, and for or on account of any cost or loss to which Lessee might be put in removing Lessee's personal property or fixtures.

10.02 Nothing in this Article 10 prohibits Lessor from voluntarily conveying all or art of the Leased Premises and Improvements to a public utility, agency, or authority under threat of a taking under the power of eminent domain. Any voluntary conveyance shall be treated as a taking within the meaning of this Article.

## **ARTICLE 11. LEASEHOLD MORTGAGES**

### **Leasehold Mortgages Permitted**

11.01 In addition, notwithstanding anything herein to the contrary, notwithstanding anything in the Landfill Gas Rights Agreement to the contrary, Lessee shall have the right, without the consent of Lessor, to execute and deliver a mortgage, deed of trust, pledge and or collateral assignment of this Lease ("Mortgage") as security for any indebtedness in any form whatsoever. Lessor, however, shall not be required to subordinate its fee simple interest in the leased premises to any such leasehold mortgage. In the event Lessee shall execute and deliver a Mortgage, and if the holder of the indebtedness secured by this Lease ("Mortgagee") notifies Lessor of the execution of such Mortgage, and the name and place for service of notices upon such Mortgagee, then and in such event, Lessor hereby agrees for the benefit of Lessee and such Mortgagee from time to time:

a. That Lessor will give to any Mortgagee simultaneously with service on Lessee a duplicate of any and all notices or demands given by Lessor to Lessee and no such notice shall be effective unless a copy is so serviced upon Mortgagee;

b. Lessor shall not terminate this Lease or Lessee's right of possession for any default of Lessee if, within a period of thirty (30) days after the expiration of the period of time within which Lessee might cure such default, such default is cured or caused to be cured by Mortgagee or, if within a period of thirty (30) days after the expiration of the period of time within which Lessee might commence to eliminate the cause of such default, Mortgagee diligently commences to eliminate the cause of such default; and

c. Upon written notice from Mortgagee, (i) Lessor shall recognize Mortgagee as Lessee hereunder (but Mortgagee will not by reason of such recognition or by reason of any the collateral assignment of the Lease or by the exercise by Lender of any of its rights under this Lease be deemed to have assumed or become liable for any obligations, covenants, conditions or terms of the Lease to be performed and observed by Lessee), and (ii) Mortgagee shall have the right to assign this Lease without the consent of Lessor provided that Mortgagee exercises commercially reasonable efforts to vet any assignee in accordance with standards a prudent governmental body would follow.

Within thirty (30) days after written request from Lessee, Lessor shall execute any documents required by Mortgagee to evidence the above-referenced provisions and any other commercially reasonable provisions requested by Mortgagee.

For avoidance of doubt, in the event of a conflict between the provisions of this Article 11 and any assignment provision in the Landfill Gas Rights Agreement, the provisions of this Article 11 shall prevail.

## **ARTICLE 12. DEFAULT**

### **Events of Default**

12.01 Any one or more of the following events shall constitute a default under this Lease:

(a) Lessee's failure to observe or perform or cause to be observed or performed any other term, covenant, or agreement under this Lease shall constitute a default under this Lease if such failure continues for more than thirty (30) days after written notice to Lessee from Lessor of same (provided, however, if the nature of said failure is such that it cannot be cured within said thirty (30) day period, then Lessee shall have a reasonable amount of time to effectuate said cure provided that Lessee diligently pursues same).

(b) Lessee's assignment of the leasehold interest not otherwise permitted under this Lease shall constitute a default under this Lease if Lessee does not cure same within thirty (30) days after written notice from Lessor.

### **Notice of Election to Terminate Lessee's Possession**

12.02 If any event creating default occurs, Lessor may elect to terminate Lessee's right of possession under this Lease. Upon termination, all of Lessee's rights, title, and interest in the Leased Premises shall expire completely and Lessee shall, within a reasonable time, quit and surrender the Leased Premises. Any Improvements erected on the subject leased premises shall revert back to the Lessor, however, Lessee shall have a reasonable time not to exceed ninety (90) days for removal of any such improvements or equipment and/or may leave the same for the benefit of Lessor, such to be determined at Lessee's option.

### **Lessor's Entry after Termination of Lessee's Possession**

12.03 At any time after the termination of Lessee's right of possession under this Lease pursuant to Paragraph 11.02 or Paragraph 13.01 of this Lease, Lessor may enter and possess the Leased Premises and Improvements by summary proceedings, ejectment, or otherwise, and Lessor may remove Lessee and all other persons and property from the Leased Premises and Improvements. If Lessor takes the actions described in this Paragraph 11.03, Lessor may then possess the Leased Premises and Improvements and Lessor may also sell any of the Improvements.

### **Costs Incurred Due to Breach**

12.04 Lessee expressly agrees to pay all reasonable expenses that Lessor actually incurs for reasonable attorneys' fees, and all other costs paid or incurred by Lessor for enforcing the terms and provisions of this Lease, restoring the Leased Premises and Improvements to good order and condition, and for maintaining the Leased Premises and Improvements.

### **ARTICLE 13. EXPIRATION OF TERM**

#### **Lessee's Delivery of Possession after Termination or Expiration**

13.01 On the expiration date of this Lease as set forth in Paragraph 2.01 of this Lease, or the termination of Lessee's possession under this Lease pursuant to Paragraph 11.03, or any entry or possession of the Leased Premises and Improvements by Lessor pursuant to Paragraph 11.03 (collectively referred to as the "Expiration Date"), Lessee shall promptly quit and surrender the Leased Premises and Improvements, and deliver to Lessor actual possession and ownership of the Leased Premises, less improvements, which the Lessee shall have a right to remove pursuant to paragraph 12.02 but shall otherwise return the Leased Premises without improvements in good condition, wear and tear excepted.

### **ARTICLE 14. TERMINATION BY LESSOR**

14.01 Intentionally omitted.

### **ARTICLE 15. GENERAL PROVISIONS**

#### **No Waiver of Breach by Lessor's Actions**

15.01 The failure of Lessor to seek redress for violation of, or to insist on the strict performance of any covenant, agreement, term, provision, or condition of this Lease shall not constitute a waiver of the covenant, agreement, term, provision, or condition. The receipt by Lessor of rent with knowledge of the breach of any covenant, agreement, term, provision, or condition of this Lease shall not be deemed a waiver of that breach.

#### **Waiver of Any Provision Must Be Written**

15.02 No provision of this Lease shall be deemed to have been waived, unless the waiver is in writing and signed by the party against whom enforcement is sought. Each right and remedy of Lessor provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease, or now or later existing at law, in equity, by statute, or otherwise.

### **Entire Agreement**

15.03 This Lease, any exhibits annexed to this Lease, and the Landfill Gas Rights Agreement contain the entire agreement between Lessor and Lessee, and any agreement made after the execution of this Lease between Lessor and Lessee shall be ineffective to change, modify, waive, release, discharge, terminate, or effect a surrender or abandonment of this Lease, in whole or in part, unless that agreement is in writing and signed by the party against whom enforcement is sought.

### **Notices**

15.04 All notices and demands of any kind that either party may be required or may desire to give to the other in connection with this Lease must be given by registered or certified mail, return receipt requested, with postage fully prepaid, and addressed to the party to be served at the party's address as set forth below, or by reputable national overnight delivery service, or by email to the addresses provided below (and such email notice shall be deemed immediately effective so long as notice by other form permitted under this Section 15.04 is sent within two (2) business days thereafter). Any notice shall be deemed received on first attempted delivery. Any party may change the address to which notices to that party are to be directed by notice given in the manner provided in this Paragraph 14.04.

If to Lessor: Baldwin County Commission  
Attn: Chairman  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507  
Email:

With a copy, which shall not constitute notice, to:

J. Bradford Boyd Hicks  
Stone Crosby, PC  
8820 US Highway 90  
Daphne, AL 36526  
Email:

If to Lessee: AEP Renewable Fuels, LLC  
Attn: David Hopkins  
1400 Buford Highway Suite E-2  
Buford, GA 30518  
Email:

With a copy, which shall not constitute notice, to:

Kathleen Hart  
Andersen, Tate & Carr, P.C.  
1960 Satellite Boulevard  
Suite 4000  
Duluth, Georgia 30097

Email: [khart@atclawfirm.com](mailto:khart@atclawfirm.com)

With a copy to:

Mortgagee as set forth in Section 11.01 above

### **Lessor's Entry and Inspection of Premises**

15.05 Lessor, or its agents or designees, shall have the right to enter the Leased Premises and Improvements during reasonable business hours for inspection, or to complete any work that may be necessary because of Lessee's default under any of the terms, covenants, and conditions of this Lease continuing beyond the applicable periods of grace, or to exhibit the Leased Premises and Improvements to potential buyers and agents.

### **Partial Invalidity or Unenforceability**

15.06 If any term, covenant, or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants, and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

### **Individuals Benefitted by Lease**

15.07 This Lease shall inure to the benefit of and be binding on Lessor and Lessee and their respective distributees, personal representatives, executors, successors, and assigns except as otherwise provided in this Lease.

### **Assignment and Subletting**

15.08 This Lease and the Term and estate granted by this Lease, or any part of this Lease or that Term and estate, may not be subleased or assigned, without Lessor's written consent (not to be unreasonably withheld, conditioned, or delayed).

15.09 Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or of partnership or of joint venture or of any association between Lessee and Lessor, and neither the provisions contained in this Agreement or any acts of the parties shall be deemed to create any relationship between Lessee and Lessor, other than the relationship of Lessor and Lessee.

15.10 Notwithstanding anything herein to the contrary, Lessee shall have the right, without consent of Lessor and without regard to any obligation imposed on Lessee by the Lease, to assign or otherwise transfer the Lease or sublet all or any portion of the Leased Premises to: (a) any entity resulting from a merger or consolidation of Lessee, (b) intentionally omitted, (c) any entity controlled by, controlling or under common control with Lessee, or (d) as part of a foreclosure or sale by any Mortgagee.

(Signature Pages Follow)

IN WITNESS WHEREOF, Lessor and Lessee have executed and signed this Lease or have caused this Lease to be executed and signed effective the date first written above.

**LESSOR:**

BALDWIN COUNTY COMMISSION

By: \_\_\_\_\_  
Joe Davis, III  
Its: Chairman

ATTEST:

\_\_\_\_\_  
Wayne Dyess  
County Administrator

STATE OF ALABAMA     )  
COUNTY OF BALDWIN    )

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that Joe Davis, III, whose name as Chairman, and Wayne Dyess, whose name as County Administrator of the BALDWIN COUNTY COMMISSION, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Commission.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama  
My Commission Expires: \_\_\_\_\_

**LESSEE:**

AEP RENEWABLE FUELS, LLC

By: \_\_\_\_\_  
Tony Erwin  
Its: CEO

STATE OF ALABAMA     )  
COUNTY OF BALDWIN    )

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of AEP RENEWABLE FUELS, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama  
My Commission Expires: \_\_\_\_\_

## **Exhibit A**

### **Legal Description of Leased Premises**

COMMENCE AT A RAILROAD SPIKE AT THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 3 EAST AND RUN THENCE SOUTH 89 DEGREES 48 MINUTES 49 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SECTION 9, A DISTANCE OF 1784.44 FEET; THENCE RUN NORTH 00 DEGREES 22 MINUTES 30 SECONDS WEST, A DISTANCE OF 325.00 FEET; THENCE RUN NORTH 89 DEGREES 48 MINUTES 49 SECONDS EAST, A DISTANCE OF 50.00 FEET TO A CAPPED REBAR (SE CIVIL) FOR THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89 DEGREES 48 MINUTES 49 SECONDS EAST, A DISTANCE OF 275.00 FEET TO A CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 00 DEGREES 22 MINUTES 30 SECONDS WEST, A DISTANCE OF 185.00 FEET TO A CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 88 DEGREES 06 MINUTES 15 SECONDS WEST, A DISTANCE OF 275.22 FEET TO A CAPPED REBAR (SE CIVIL); THENCE RUN SOUTH 00 DEGREES 22 MINUTES 30 SECONDS EAST, A DISTANCE OF 195.00 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 1.20 ACRES, MORE OR LESS.