**DONOR ADVISED ENDOWMENT FUND AGREEMENT
BETWEEN Wabash Valley COMMUNITY FOUNDATION, INC.,
AND WABASH VALLEY RESOURCES, LLC (“DONOR”)**

 **THIS AGREEMENT** (the “Agreement”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_, 2024, by and between Wabash Valley Community Foundation, Inc. (the “Community Foundation”), and Wabash Valley Resources, LLC (“Donor”).

**Recitals**

 **WHEREAS**, Donor desires to establish an advised endowment fund in the Community Foundation with respect to which Donor or Donor’s agents can recommend appropriate expenditures or recipients of grants for charitable and similar exempt purposes; and

 **WHEREAS**, the Community Foundation is an Indiana nonprofit corporation exempt from federal income taxes under Internal Revenue Code (“Code”) section 501(c)(3), a public charity described in Code section 170(b)(1)(A)(vi), and accordingly an appropriate institution within which to establish such an advised endowment fund; and

 **WHEREAS**, the Community Foundation is willing and able to hold and administer such an advised endowment fund, subject to the terms and conditions hereof.

**General Provisions**

 **NOW THEREFORE**, the parties agree as follows:

 **1. GIFT AND FUND DESIGNATION.**

a. Within thirty (30) days after Donor commences construction of its West Terre Haute ammonia manufacturing facility (the “Project”) , Donor shall transfer irrevocably to the Community Foundation the sum of one million dollars ($1,000,000.00) (the “Initial Gift”) to establish an advised endowment fund to be known as the WVR Vermillion County Community Benefit Fund (the “Fund”).

b. Within thirty (30) days after the commencement of commercial operations at the Project, Donor shall transfer irrevocably to the Community Foundation an additional sum of two million dollars ($2,000,000.00) (the “Second Gift”), to be added to the Fund.

c. Subject to the right of the Community Foundation to reject any particular gift, from time to time the Community Foundation may accept additional irrevocable gifts of property from Donor or from any other source to be added to the Fund, all subject to the provisions hereof. All gifts, bequests, and devises to this Fund shall be irrevocable once accepted by the Community Foundation.

d. The Community Foundation understands and agrees that a condition precedent to the effectiveness of this Agreement, and Donor’s obligation to make the Initial Gift hereunder, is Donor’s commencement of construction. The Community Foundation further understands and agrees that a condition precedent to Donor’s obligation to make the Second Gift hereunder is commencement of commercial operations at the Project.

 **2. PURPOSE.** The purpose of the Fund shall be to provide support as directed by the Board of Directors (the “Board”) of the Community Foundation for programs or activities that fulfill charitable or other exempt purposes within the meaning of Code section 170(c)(1) or 170(c)(2)(B) and that are consistent with the mission and purposes of the Community Foundation, as more fully set forth in **Exhibit A**.

 **3. DISTRIBUTIONS.** Within thirty (30) days after the initial transfer of cash into the Fund, the sum of Five Hundred Thousand Dollars ($500,000.00) (the “Initial Distribution”) shall be committed, granted, or expended from the Fund for the purposes set forth in **Exhibit A**. The ordinary income allocable to the remainder of the Fund, net of the fees and expenses set forth in this Agreement, may be committed, granted, or expended pursuant to the distribution (or spending) policy of the Community Foundation, as such policy may be amended from time to time by the Community Foundation, solely for purposes described in this Agreement (i) to pay expenditures of charitable or other exempt programs and activities conducted or sponsored by the Community Foundation itself, (ii) to other organizations described in Code section 170(b)(1)(A), or (iii) to other exempt organizations that are not public charities (such as organizations described in Code sections 501(c)(4) or 501(c)(6)), provided that the Community Foundation exercises expenditure responsibility pursuant to Code section 4945(h), to ensure such distributions are used for exclusively charitable purposes, and provided that the distributions are used for the purposes set forth in **Exhibit A**. The Community Foundation’s distribution (or spending) policy, as applied to endowments such as the Fund, shall be designed to take into account total return concepts of investment and spending, with the goal of preserving the real spending power of endowments over time while balancing the need for consistent spending to support the charitable and similar exempt purposes of such endowments.

**4. RESTRICTIONS ON DISTRIBUTIONS.** Gifts to the Community Foundation for the Fund are subject to conditions or restrictions as to the use of the gift or income therefrom, as set forth in **Exhibit A**, subject, however, to the authority of the Board to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Board unnecessary, incapable of fulfillment, or inconsistent with the charitable or other exempt purposes of the Community Foundation or the needs of the community served by the Community Foundation. No distribution shall be made from the Fund that may in the judgment of the Community Foundation jeopardize or be inconsistent with the Community Foundation’s Code section 501(c)(3) status or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code (*e*.*g*., taxes on Code section 4966 taxable distributions to “disqualified supporting organizations”).

 **5. RECOMMENDATIONS FOR DISTRIBUTIONS.** Subject to the Community Foundation’s principles and procedures for advised funds, the commitments, grants, or expenditures from the Fund contemplated in this Agreement shall be made at such time or times and in such amount or amounts as may be determined by the Community Foundation; provided, however, that the Vermillion County Commissioners (or such other agent as Donor may designate) may from time to time submit to the Community Foundation recommendations regarding appropriate expenditures or the names of specified organizations described in Code section 170(b)(1)(A) to which it is recommended that distributions be made. Subject to the provisions of Section 4, the Community Foundation shall accept and act upon recommendations from the Vermillion County Commissioners so long as the recommended distributions comply with applicable law.

 **6. ADMINISTRATIVE PROVISIONS.** Notwithstanding anything herein to the contrary, the Community Foundation shall hold and administer the Fund, and all contributions and assets allocable to the Fund, subject to the provisions of applicable law and the Community Foundation’s Articles of Incorporation and Bylaws, as amended from time to time. The Board shall oversee distributions from the Fund and shall have all powers of modification and removal specified in United States Treasury Regulation section 1.170A-9(f)(11)(v)(B) or corresponding provisions of any subsequent federal tax laws.

 The Board agrees to make available to the Charitable Organization a copy of any annual examination of the finances of the Community Foundation as reported by independent certified public accountants.

 This Agreement and all related proceedings shall be governed by and interpreted under the laws of the State of Indiana. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in Indiana.

 **6. CONDITIONS FOR ACCEPTANCE OF GIFTS.** Donor agrees and acknowledges that the establishment of the Fund is made in recognition of, and subject at all times to, applicable law and the terms and conditions of the Articles of Incorporation and Bylaws of the Community Foundation, as amended from time to time, and that the Fund shall at all times be subject to such terms and conditions, including, but not by way of limitation, provisions for:

a. Presumption of Donor’s intent;

b. Variance from Donor’s direction; and

c. Amendments.

 **7. CONTINUITY AND TERMINATION OF THE FUND.** The Fund shall continue so long as assets are available in the Fund and the purposes of the Fund can be served by its continuation, or until a date twenty (20) years after the effective date of this agreement, whichever is later. If the Fund is terminated, the Community Foundation shall use any remaining assets in the Fund exclusively for charitable or other exempt purposes that:

a. are within the scope of the charitable and other exempt purposes of the Community Foundation; and

b. most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

 **8. NOT A SEPARATE TRUST.** The Fund shall be a component part of the Community Foundation. All money and property in the Fund shall be held as general assets of the Community Foundation and not segregated as trust property of a separate trust.

 **9**. **ACCOUNTING.** The receipts and disbursements of the Fund shall be accounted for separately and apart from those of other gifts to the Community Foundation.

 **10. INVESTMENT OF FUND ASSETS.** The Community Foundation shall have all powers necessary, or in its judgment desirable, to carry out the purposes of the Fund including, but not limited to, the power to retain, invest, and reinvest the assets of the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or the Community Foundation’s general assets. **Funds may be invested in uninsured securities and are subject to investment risks that may result in loss of value.**

 **11**. **COSTS OF THE FUND.** It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs and expenses of the Community Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then current fee schedule identified by the Community Foundation as applicable to funds of this type, as such schedule may be amended by the Community Foundation from time to time. Any costs and expenses incurred by the Community Foundation in accepting, transferring, or managing property donated to the Community Foundation for the Fund, including without limitation the Community Foundation’s costs and expenses (including reasonable attorneys fees) of any claim or proceeding with respect to the Fund in which the Community Foundation is prevailing party, also shall be paid from the Fund.

 **IN WITNESS WHEREOF**, Donor and the Community Foundation, by their duly authorized officers, have executed this Agreement as of the day and year first above written.

WABASH VALLEY RESOURCES, LLC:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WABASH VALLEY COMMUNITY FOUNDATION, INC.:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**Use of the Initial Distribution:**

The Initial Distribution shall be donated to volunteer fire departments serving Clinton Township, for use in (a) obtaining training in emergency response techniques in the event of environmental incidents, and (b) for equipment useful for responding to environmental incidents.

**Use of Subsequent Distributions:**

At least forty percent (40%) of any distribution shall be made to support charitable activities in or serving the Town of Universal and surrounding areas, because of their status as rural areas impacted by the environmental effects of coal mining and continuing socio-economic vulnerabilities.

The remainder of any distribution shall be made to support efforts to combat climate change, to facilitate clean energy and energy efficiency, to develop clean transit, to develop affordable and sustainable housing, to perform training and workforce development, to remediate and reduce legacy pollution, and to develop clean water and wastewater infrastructure.