

91022373

When recorded return to:
CRAVATH, SWAINE & MOORE
Worldwide Plaza
825 Eighth Avenue
New York, N.Y. 10019
Attn: Deirdre Stanley, Esq.

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (as the same may be amended and/or supplemented from time to time, this "Mortgage") is made as of May 2, 1991, by Kenron Corporation, a Delaware corporation ("Borrower"), whose address is in care of White & Case, 1155 Avenue of the Americas, New York, NY 10036, Attention: Lawrence J. Gannon, Esq., and Gary Coal Processing L.P., a Delaware limited partnership ("Partnership"), whose address is in care of ICF Resources Incorporated, 9300 Lee Highway, Fairfax, Virginia 22031-1207, Attention: Paul Weeks, II (Borrower and Partnership, collectively, the "Co-Mortgagors"), and General Electric Capital Corporation, a New York corporation, whose address is 1600 Summer Street, Stamford, Connecticut 06927 ("GE Capital").



ARTICLE I

RECITALS, SECURED OBLIGATIONS AND GRANTING CLAUSES

WHEREAS, capitalized terms which are used in this Mortgage but which are not defined herein shall have the meaning set forth in Appendix A attached hereto, which also contains rules as to usage (except that the Documentary Conventions shall not apply to this Mortgage);

WHEREAS, Co-Mortgagors have entered into various agreements for the construction and operation of the Facility and Borrower is the lessee of a certain tract of land situate in the County of Lake, State of Indiana, as more fully described in Exhibit A attached hereto and made a part hereof.

WHEREAS, GE Capital is making a series of loans to Borrower in an aggregate principal amount not to exceed at any one time \$99,400,000, the proceeds of which will be advanced to Borrower from time to time pursuant to the terms and subject to the conditions of the Construction Loan Agreement for the purposes set forth in the Construction Loan Agreement;

STATE OF INDIANA/S.S. NO.
LAKE COUNTY
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ROSEAN HUBBARD
RECORDER

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WHEREAS, upon completion of the Facility, subject to the terms and conditions set forth in the Senior Term Loan Agreement, GE Capital will make the Senior Term Loan to Partnership in an aggregate principal amount not to exceed at any one time \$83,740,000, the proceeds of which, along with certain capital contributions to Partnership made by the partners thereof, will be applied by Partnership to repay amounts due and payable under the Construction Loan Agreement and the Construction Cost Overrun Loan Facility; and

WHEREAS, Co-Mortgagors desire to secure the obligations referred to below and any renewals, assignments or extensions thereof, in whole or in part, and of the additional payments hereinafter agreed to be made, by this Mortgage of its interest in the real property, together with improvements now or hereafter erected thereon and a grant of the security interests hereinafter described.

NOW, THEREFORE, in consideration of the Loans and for the purpose of securing the payment and performance of the following obligations (the "Secured Obligations"):

- a. Payment of all indebtedness incurred pursuant to the Construction Loan Agreement, with interest thereon (as evidenced by the Construction Note), and any and all future increases, modifications, extensions and renewals thereof.
- b. Payment of all other amounts which may hereafter be loaned to Co-Mortgagors by GE Capital, with interest thereon, including the Senior Term Loan (as evidenced by the Senior Term Note) and any and all future increases, modifications, extensions and renewals thereof.
- c. Payment of all amounts advanced by GE Capital pursuant to or which may otherwise become due pursuant to this Mortgage, the Construction Loan Agreement, the Senior Term Loan Agreement or the Participation Agreement, with interest thereon at the rate then effective under the Construction Loan Agreement or the Senior Term Loan Agreement, as applicable, or the highest rate permitted by applicable law, whichever is less.
- d. Performance of all obligations of Co-Mortgagors hereunder and under the Construction Loan Agreement, the Senior Term Loan Agreement and the Participation Agreement.
- e. Payment of all other amounts and performance of all other obligations of Co-Mortgagors under any of the Operative Documents.
- f. Performance of all future obligations of Co-Mortgagors to GE Capital and payment of all future advances made by GE Capital to Co-Mortgagors pursuant to this Mortgage, the

Construction Loan Agreement, the Senior Term Loan Agreement or the Participation Agreement, provided, however, the outstanding principal amount at any one time does not exceed \$99,400,000 (it being understood that such maximum amount is exclusive of amounts advanced by GE Capital to protect the security afforded by this Mortgage and accrued interest on the secured indebtedness). The foregoing limitation on the maximum principal amount secured hereby does not apply to the security interest in the Personal Property granted by Co-Mortgagors to GE Capital, which security interest secures all the Secured Obligations without regard to the amount thereof.

Co-Mortgagors, intending to be legally bound, hereby irrevocably grant, convey, warrant, assign, alien, demise, bargain, sell, pledge, give, set over and confirm and transfer to GE Capital a continuing security interest in and mortgage to GE Capital, under and subject to the terms and conditions hereinafter set forth, all their respective right, title and interest, whether now owned or hereafter acquired, in and to or in respect of the following real and personal property, all accessions and additions thereto, all substitutions thereof and replacements and proceeds thereof, and all reversions and remainders of such property (herein collectively called the "Mortgaged Property"):

a. All right, title and interest of Co-Mortgagors under, in and to, including any amendments thereto, the Land Lease and the leasehold estate created thereby.

b. The real property located in the County of Lake, State of Indiana, described in Exhibit A attached hereto and by this reference incorporated herein (the "Property"), and all interests, estate or other claims, both in law and in equity, which the Co-Mortgagors now have or may hereafter acquire in the Property; any other real property or interest therein, together with all such interests, estate and claims; all tenements, hereditaments and appurtenances thereof and thereto, all right, title and interest of Co-Mortgagors in and to any land lying within the right of way of any street, open or proposed, adjoining the Property or any such property, any and all sidewalks, alleys and strips of land adjacent to or used in connection with the Property or any such property and all rents, issues, profits, royalties, income and other benefits derived from the Property or any such property.

c. Any and all structures and buildings and improvements, now or hereafter erected on the Property or any such property (including all Personal Property as hereinafter defined constituting fixtures, collectively the "Improvements").

d. Any and all other property, tangible and intangible, absolute and contingent, of every name and nature and wheresoever situated, including without limitation equipment, contracts and contract rights (including without limitation the Contracts), accounts, documents, inventory, general intangibles, licenses, permits, grants, privileges, insurance policies, bonds, guarantees, plans, maps, and drawings, whether or not used or to be used in connection with the Property or Improvements, whether such property is now owned or is hereafter acquired. The foregoing general description is intended to include all Personal Property of every class described above, without limitation, to the extent that such are not part of the Property or Improvements and includes but is not limited to the following:

(i) all plants and systems for the pulverizing of coal whether now owned or hereafter acquired by Co-Mortgagors or constructed on the Property or Improvements subject hereto, and any additions to or extensions of any such present or future plants and systems; together with the buildings, erections, structures, generating apparatuses, transmission lines, boilers, condensers, engines, pumps, generators, machinery, tools, conduits, manholes, insulators, dynamos, motors, lamps, cables, wires, poles, towers, switching equipment, meters, monitors, apparatus, control mechanisms, appliances, instruments, appurtenances, maps, records, ledgers, contracts, permits, certificates of use, facilities and other property or equipment used or provided for use in connection with the construction, maintenance, repair or operation of any such plants or systems, both now owned and that may hereafter be acquired or constructed, together also with all of the dams, dam sites, water and flowage rights and all other rights, privileges, rights of way, franchises, licenses, indeterminate permits, grants, liberties, immunities and ordinances of Co-Mortgagors in respect of the construction, maintenance, repair or operation of said plants and systems now owned or hereafter acquired, conferred or constructed;

(ii) all Co-Mortgagors' rights, privileges, immunities and franchises, powers, licenses, lease of property, leasehold rights, interests, including oil, gas and other mineral interests and rights, benefits, advantages, privileges, contracts and General Intangibles (as that term is used in the applicable Uniform Commercial Code), and all other agreements, appurtenances and rights, and all renewals and extensions thereof, and any and all warranties and other rights Co-Mortgagors may have against dealers, manufacturers, contractors or subcontractors, the right to compel performance of the terms of any of the foregoing and all rights to exercise any election or option or to make any decision or determination or to give any notice, consent, waiver or approval thereunder or in respect thereof or any

part thereof as well as all rights, powers and remedies of Co-Mortgagors arising thereunder or by statute or at law or in equity, or otherwise arising out of any default or breach thereof, all as though GE Capital were named therein instead of Co-Mortgagors;

(iii) all right, title and interest of Co-Mortgagors in and to all tangible personal property owned by Co-Mortgagors and now or at any time hereafter located on or at the Property or Improvements or used in connection therewith, including, but not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating, refrigerating, electronic monitoring, or processing, entertainment, recreational, window or structural cleaning rigs, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), elevators, office equipment (including computers, information storage devices, electronic or manual typewriters, printers, copy machines, telephones, teletypes, telecopiers, and switching equipment), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures, and all other maintenance equipment and other supplies;

(iv) all leases and other agreements, surface rights, consents, privileges, permits, licenses, approvals, and grants of Co-Mortgagors, now owned or hereafter acquired, dealing in any way with the use, construction, occupancy or possession of the Property or Improvements subject hereto;

(v) the Receipts Account, the escrow account for retainage subject to and to the extent permitted by the provisions of Section 4.3 of the Construction Contract, the Maintenance Reserve, subject to and to the extent permitted by the provisions of Section 6.4 of the Operating Agreement and all other accounts (as that term is used in the applicable Uniform Commercial Code) and other rights to receive the payment of money, including without limitation receivables, rights to receive the payment of money under present or future contracts or agreements (whether or not earned by performance) (collectively, "Accounts Receivable") and all Chattel Paper, Documents, Instruments (as those terms are used in such Uniform Commercial Code);

(vi) all inventory and other property produced at the Mortgaged Property or used as raw material for production in connection with the Mortgaged Property;

(vii) all right, title and interest of Co-Mortgagors under, in and to any and all contracts (including the Contracts listed on Schedule I hereto), agreements and other instruments, including any amendments thereto, for (A) construction, or engineering, or providing for the improvement of the Property or Improvements subject hereto, or the protection or benefit of Co-Mortgagors or with respect to any construction or purchase of equipment or buildings or other property, real or personal, situated or to be situated on the Property, including without limitation all policies, bonds, plans, drawings and specifications and documentation forming a part thereof, or directly or indirectly relating thereto, and (B) the purchase of goods or services in connection with the operation of the Property or Improvements or in connection with the use, improvement or operation of the facilities of or improvements situated on the Property, including specifically for the purchase and sale of pulverized coal or other output and for the transportation of natural gas, or products, produced, generated, manufactured or in any way derived from any operation or activity upon any Property or Improvements, and including also all rights of Co-Mortgagors to sell, purchase, transmit, convey, discharge, transfer, or transport from or to the Property or Improvements, any commodities, goods or services produced or used on the Property or Improvements, together with the right to receive any payment due Co-Mortgagors therefor;

(viii) all revenues, cash, proceeds of insurance and other moneys derived from the Co-Mortgagors' interest and operation of the Mortgaged Property; all moneys, investment securities and letters of credit; and the proceeds of all the foregoing;

(ix) any proceeds of and any unearned premiums on any insurance policies now or hereafter covering any part of the Mortgaged Property, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof;

(x) any awards or payments, including interest thereon, which may be made with respect to any part of the Mortgaged Property, whether in connection with the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right) or in connection with any other injury to or decrease in value of any part of the Mortgaged Property;

(xi) all other property, assets and things of value of every kind and nature, tangible or intangible, absolute or contingent, legal or equitable to, used or useful in connection with the Mortgaged Property; and

(xii) the right, in the name of the Co-Mortgagors, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Co-Mortgagors or GE Capital in the Mortgaged Property.

e. Any and all additions, improvements and betterments to or upon or in connection with any and all premises and property which, or any estate, right or title to or interest in which, shall at any time be subject to this Mortgage, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in equity as in law, of Co-Mortgagors of, in and to such premises and property and every part and parcel thereof and of, in and to the appurtenances and franchises appertaining or hereafter to appertain thereto.

f. Any and all other property of every kind and description, including, without limitation, money, shares of stock, notes, bonds, deposits, letters of credit, Chattel Paper, Documents and Instruments whether owned by the Co-Mortgagors at the date of the execution and delivery of this Mortgage or hereafter acquired by them.

g. Any and all property of every kind and description which from time to time after the date of the execution and delivery of this Mortgage by delivery or by writing of any kind shall have been mortgaged by Co-Mortgagors, or by anyone on their behalf, to GE Capital.

h. Any and all tolls, revenues, earnings, rents, issues, profits, products, proceeds and other income in respect of the foregoing.

i. Any and all rights, title and interest of Co-Mortgagors in and to the Loan Instruments (as herein defined).

Notwithstanding any of the foregoing the lien of this Mortgage shall not extend to any easements, rights of way or servitudes created for the benefit of the Property.

TO HAVE AND TO HOLD the foregoing collateral, premises, properties, real and personal, rights, franchises, estates and appurtenances, hereby mortgaged and assigned, or intended to be mortgaged or assigned, unto GE Capital, its successors and their respective assigns forever; provided, however, that if the Co-Mortgagors shall have made all payments under the Construction Note and the Senior Term Note (collectively, the "Notes"), the

Construction Loan Agreement and the Senior Term Loan Agreement, the Participation Agreement, any Operative Document, any security agreements and any guaranty thereof and any other collateral instrument given to evidence or further secure the payment and performance of any Secured Obligation in accordance with its respective terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, and any advances made by GE Capital for the protection of the Mortgaged Property and shall have complied with all of the covenants, terms and conditions contained in this Mortgage, then this mortgage shall be null and void and will be canceled of record at the request and at the cost of the Co-Mortgagors.

This Mortgage, the Notes, the Construction Loan Agreement, the Senior Term Loan Agreement, the Participation Agreement, each other Operative Document, any security agreements and any guaranty thereof and any other collateral instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereinafter be referred to as the "Loan Instruments".

This Document is the property of the Lake County Recorder!

This Mortgage secures future advances as provided for in the Construction Loan Agreement and the Senior Term Loan Agreement. It is the intention of the parties that GE Capital in its capacity as Construction Lender under the Construction Loan Agreement and in its capacity as Senior Lender under the Senior Term Loan Agreement shall be entitled to the greatest priority and protection afforded under the laws of the State of Indiana.

This is a "construction mortgage" as defined in Section 9-313(1)(c) of the Indiana Uniform Commercial Code.



COVENANTS, AGREEMENTS AND WARRANTIES OF CO-MORTGAGORS

TO PROTECT THE SECURITY OF THIS MORTGAGE, CO-MORTGAGORS HEREBY WARRANT, COVENANT AND AGREE AS FOLLOWS:

SECTION 2.01. Further Assurances. All Mortgaged Property at any time acquired by Co-Mortgagors shall, immediately upon the acquisition thereof by Co-Mortgagors and without any further act, become and be subject to the lien of this Mortgage as fully and completely as though now owned by Co-Mortgagors and specifically described in the Granting Clauses hereof; but, at any and all times, Co-Mortgagors shall make and deliver any and all such further assurances or conveyances or assignments thereof as may be necessary or as GE Capital may reasonably request, for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage; and Co-Mortgagors shall do, execute,

acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, conveyances, transfers and assurances as shall be necessary or reasonably requested by GE Capital for such purpose.

SECTION 2.02. Title. Co-Mortgagors represent, warrant, covenant and agree that either Borrower or Partnership is lawfully seized and possessed of, and has good and marketable title to, or a good and valid leasehold estate pursuant to the Land Lease in, subject only to Permitted Liens of the types listed in subparagraphs (a) and (d) of the definition thereof, the Mortgaged Property; the Mortgaged Property is free from all liens except Permitted Liens; and, except as aforesaid, Co-Mortgagors and their successors and assigns forever warrant and will defend the title to same against all claims and demands whatsoever.

SECTION 2.03. Payment of Secured Obligations. Co-Mortgagors shall pay when due, without relief from valuation and appraisal laws, the principal of and premium and interest on the indebtedness evidenced by the Loan Instruments, and all charges, fees and other sums and advances made by GE Capital to protect the Mortgaged Property, the repayment of which is secured by this Mortgage.

SECTION 2.04. Maintenance, Repair, Alterations. Co-Mortgagors shall, to the extent required by the Loan Instruments: keep the Mortgaged Property in good condition and repair and shall not remove, demolish or substantially alter (except such alterations as may be required by Governmental Rule or otherwise permitted by the Loan Instruments) any of the Improvements or Personal Property; Co-Mortgagors shall complete promptly and in good and workmanlike manner any building or other Improvement which may be constructed on the Mortgaged Property and promptly restore in like manner any of the Improvements which may be damaged or destroyed thereon, and Co-Mortgagors shall pay or cause to be paid when due all claims for labor performed and materials furnished therefor (subject to Co-Mortgagors' right to bond any such claims), and shall comply with all Governmental Rules, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof or requiring any alterations or improvements except where contested in good faith by appropriate proceedings; Co-Mortgagors shall not commit or permit any waste of the Mortgaged Property; Co-Mortgagors shall keep and maintain the grounds, sidewalks, roads, parking and landscape areas on or within the Mortgaged Property in good and neat order and repair; Co-Mortgagors shall make all needful repairs, renewals and replacements, alterations, additions, betterments and improvements; and Co-Mortgagors shall diligently preserve all the rights and franchises to them granted and upon them conferred.

SECTION 2.05. Required Insurance. At all times prior to the Permanent Financing Closing Date, Co-Mortgagors shall

provide, maintain and keep in force, or shall cause to be provided, maintained and kept in force, the insurance provided for in the Construction Loan Agreement and, at all times thereafter, Co-Mortgagors shall provide, maintain and keep in force, or shall cause to be provided, maintained and kept in force, the insurance provided for in the Senior Term Loan Agreement. All adjustment of losses by Co-Mortgagors and all evidence of insurance and insurance reports required of Co-Mortgagors will be performed by Co-Mortgagors in accordance with the terms of the Construction Loan Agreement and the Senior Term Loan Agreement. The application of insurance proceeds and awards shall be controlled, at all times prior to the Permanent Financing Closing Date, by the provisions of the Construction Loan Agreement and, at all times thereafter, by the Senior Term Loan Agreement. If an Event of Loss shall occur or if any of the Mortgaged Property or any part thereof shall be damaged, Co-Mortgagors shall notify GE Capital thereof in accordance with the provisions of the Construction Loan Agreement or the Senior Term Loan Agreement, as applicable.

SECTION 2.06. **Taxes and Impositions.** The terms and provisions of the Construction Loan Agreement and the Senior Term Loan Agreement with respect to Taxes and Impositions are incorporated herein by reference as if herein fully set out and Co-Mortgagors shall be bound by, and comply with, the provisions of such Sections.

SECTION 2.07. **Actions Affecting Mortgaged Property.** Co-Mortgagors shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of GE Capital and Co-Mortgagors shall pay all costs and expenses, including, without limitation, cost of evidence of title, perfection and priority of all security interests and reasonable attorneys' fees, in any such action or proceeding in which GE Capital is a party.

SECTION 2.08. **Actions by GE Capital to Preserve Mortgaged Property.** If an Event of Default shall have occurred and be continuing, GE Capital, in its own discretion, without obligation so to do and without notice to or demand upon Co-Mortgagors and without releasing Co-Mortgagors from any obligation, may make or do the same in such manner and to such extent as provided for by the Loan Instruments as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), GE Capital shall have and is hereby given the right, but not the obligation (i) to enter upon and take possession of the Mortgaged Property; (ii) to make additions, alterations, repairs and improvements to the Mortgaged Property which it may consider necessary or proper to keep the Mortgaged Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of GE Capital; (iv) to pay, purchase, contest or compromise any Lien or debt which in

its judgment may affect the security of this Mortgage or be prior or superior hereto or on a parity herewith; and (v) in exercising such powers, to pay necessary expenses, including reasonable fees and expenses of counsel. Co-Mortgagors shall, immediately upon demand therefor by GE Capital, pay all costs and expenses incurred by GE Capital in connection with the exercise by GE Capital of the foregoing rights, including without limitation costs of evidence of title perfection and priority of all security interests, court costs, appraisals, surveys and reasonable attorneys' fees and disbursements.

SECTION 2.09. **Recording of Mortgage.** Co-Mortgagors, at their own cost and expense, shall cause this Mortgage, and shall execute and cause all mortgages, amendments and instruments supplemental hereto and all financing statements and other documents, to be recorded and filed at Co-Mortgagors' expense and to be kept, recorded and filed at such places as may be required by law or necessary or as reasonably requested by GE Capital, in order fully to establish, preserve, protect and perfect the lien of this Mortgage (subject only to Permitted Liens), the security of the noteholders and the rights of GE Capital and all other Persons entitled to the benefit of the Secured Obligations. Co-Mortgagors shall maintain and preserve their existence, rights and privileges under the laws of the state of their formation and become and remain duly qualified and in good standing in the State of Indiana and in each other jurisdiction in which the character of the properties owned or leased by them or in which the transaction of their business requires such qualification and where the failure to so qualify would have a Material Adverse Effect and will comply with all applicable Governmental Rules except as permitted by Section 5.07 of the Construction Loan Agreement or Section 5.08 of the Senior Term Loan Agreement, as applicable.

SECTION 2.10. **Access by GE Capital.** Upon the terms set forth in the Participation Agreement, Co-Mortgagors shall (i) permit access by GE Capital to its books and records, offices, insurance policies and other papers for examination and making of copies and extracts, (ii) from time to time prepare such reports and schedules as GE Capital may reasonably request and (iii) permit GE Capital and its agents to enter on and inspect the Mortgaged Property.

SECTION 2.11. **Survival of Warranties.** Co-Mortgagors shall fully and faithfully satisfy and perform the obligations of Co-Mortgagors contained in the Loan Instruments. All representations, warranties and covenants of Co-Mortgagors contained therein or incorporated by reference shall survive the closing and any funding of the loans evidenced by the Notes and shall remain continuing obligations, warranties and representations of Co-Mortgagors during any time when any portion of the Secured

Obligations remains outstanding regardless of whether there has been a foreclosure or conveyance in lieu of foreclosure.

SECTION 2.12. Eminent Domain. Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Co-Mortgagors obtain knowledge of or receive any notice or other information regarding such proceeding, Co-Mortgagors shall give prompt written notice thereof to GE Capital. During the Construction Period, the provisions of the Construction Loan Agreement and at all other times the provisions of the Senior Term Loan Agreement shall govern the application and payment of all awards and payments made in connection with or other injury to or decrease in the value of any part or portion of the Mortgaged Property.

SECTION 2.13. Additional Security. In the event GE Capital at any time holds additional security for any of the Secured Obligations, it may enforce its rights with respect thereto or otherwise realize upon same, at its option, either before or concurrently or after the enforcement of its rights hereunder.

SECTION 2.14. GE Capital's Powers. At any time, or from time to time, without liability therefor and without notice, upon presentation of this Mortgage and the Notes secured hereby for endorsement, and without affecting the personal liability of any Person for payment of the indebtedness secured hereby or the effect of this Mortgage upon the remainder of the Mortgaged Property, GE Capital may (i) release to Co-Mortgagors or Co-Mortgagors' successors or assigns any part of the Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join Co-Mortgagors in granting any easement therein or (iv) join in any extension agreement. In addition, upon the occurrence and during the continuance of any Event of Default, Co-Mortgagors irrevocably appoint (such appointment being coupled with an interest) GE Capital as their lawful attorney-in-fact, with full power of substitution, at the cost and expense of Co-Mortgagors, and in the name of Co-Mortgagors, or otherwise, to ask for, collect, demand, receive, and to prosecute and use for, in any court of law or equity, or to give acquittances for, all or any part of the consideration due or to become due to the Co-Mortgagors under any contract subject hereto; and to withdraw, compromise or settle any claims, suits or proceedings pertaining to or arising out of any such contract or out of this appointment or assignment, upon any terms and conditions, all without notice to or assent by Co-Mortgagors, and further, to take possession of and endorse in the name of Co-Mortgagors any check, warrant, or other instrument for the payment of money received on account of any monies due or to become due to Mortgagor under any contract described above. Co-Mortgagors agree that any payment or instrument for the payment of money due Co-Mortgagors received by

Co-Mortgagors on account of any Mortgaged Property shall be held in trust by Co-Mortgagors for the benefit of GE Capital, but, unless an Event of Default shall have occurred and be continuing, may be applied by Co-Mortgagors in the ordinary course of their business and in accordance with the provision of the Operative Documents. Without affecting the liability of any other Person liable for the payment of any obligation herein mentioned, and without affecting the lien of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, GE Capital may, from time to time and without notice (i) release any Person so liable, (ii) subject to Section 6.01, extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release, or cause to be released, any portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

NOT OFFICIAL!
 SECTION 2.15. **Tradenames.** At the request of GE Capital, Co-Mortgagors shall execute a certificate in form satisfactory to GE Capital listing the tradenames, if any, under which Co-Mortgagors intend to operate the Mortgaged Property and representing and warranting that Co-Mortgagors do business under no other tradenames with respect to the Mortgaged Property. Co-Mortgagors shall immediately notify GE Capital in writing of any change in any such tradename and will, upon request of GE Capital, execute any additional financing statements and other certificates revised to reflect the change in tradename.

SECTION 2.16. **Liens.** Co-Mortgagors shall not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to the Mortgaged Property, title thereto or any interest therein, except Permitted Liens. Except as permitted by the Participation Agreement, Co-Mortgagors shall not sell, transfer (with or without consideration) or lease any of the Mortgaged Property without GE Capital's written consent. Co-Mortgagors shall promptly, at their own expense, take such action as may be necessary duly to discharge or eliminate or bond in a manner satisfactory to GE Capital any Lien not approved by GE Capital if the same shall arise at any time. To the extent required under the Participation Agreement, Co-Mortgagors further agree to pay or cause to be paid on or before the time or times prescribed by law any Taxes imposed on Co-Mortgagors (or any affiliated or related group of which Co-Mortgagors are a member) and any utility charges that under the laws of any jurisdiction might result in any Lien prohibited herein if unpaid. Co-Mortgagors, at GE Capital's request, shall conduct a Lien search both within the State of Indiana and any other state reasonably requested by GE Capital and shall promptly turn the results of such Lien search over to GE Capital.

SECTION 2.17. Waiver of Stay or Extension Laws. To the extent that they lawfully may, Co-Mortgagors shall not, at any time (i) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, (ii) claim, take or insist upon any benefit or advantage of any law, now or at any time hereafter in force, providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision contained herein or pursuant to the decree, judgment or order of any court of competent jurisdiction or (iii) after any such sale or sales, claim or exercise any right, under any Government Rule or otherwise, to redeem the Mortgaged Property and rights sold pursuant to such sale or sales or any part thereof. Co-Mortgagors hereby expressly waive all benefits and advantages of such laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to GE Capital, but shall suffer and permit the execution of every power as though no such laws had been made or enacted. Co-Mortgagors, for themselves and all who may claim under them, waive, to the extent that they lawfully may do so, (x) all right to have the Mortgaged Property marshalled upon any foreclosure hereof and (y) the giving of any bond or surety by any receiver appointed pursuant to the terms of this Mortgage.

SECTION 2.18. Legal Requirements. Subject to Section 5.07 of the Construction Loan Agreement and Section 5.08 of the Senior Term Loan Agreement, Co-Mortgagors shall promptly comply with and conform to or cause to be complied with and conformed to all present and future Government Rules, even if unforeseen or extraordinary, and all covenants, restrictions and conditions which may be applicable to Co-Mortgagors or to any of the Mortgaged Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Mortgaged Property, even if such compliance necessitates structural changes or improvements or results in interference with the use or enjoyment of any of the Mortgaged Property.

SECTION 2.19. Warranty of Claims. Co-Mortgagors warrant that there are no claims against Co-Mortgagors which can in any way serve to reduce or be an offset to the indebtedness of Co-Mortgagors arising out of obligations hereby secured. Co-Mortgagors covenant to maintain, at their own cost and expense, satisfactory and complete records of all contracts assigned pursuant hereto including the Contracts and including, but not limited to, records of all payments received, or credits granted with respect thereto.

SECTION 2.20. Filing and Recordings. Co-Mortgagors shall promptly cause this Mortgage and any supplements, amendments or

modifications thereto and financing statements and continuation statements under the Uniform Commercial Code and other instruments with respect thereto to be filed, registered and recorded (and when and if required by applicable Governmental Rules to be refiled, re-registered or re-recorded) at Co-Mortgagors' expense in such place or places as may be required by any law in order to create perfect or protect the lien of and security interest created by this Mortgage and to protect the validity thereof and to protect and maintain the estate, right, interest, claim and demand of GE Capital in, to and under the Mortgaged Property, the rents and leases described herein.

SECTION 2.21. Environmental Matters.

a. **Warranty.** Except as disclosed in the Environmental Audit, neither Co-Mortgagors nor, to Co-Mortgagors' knowledge, any previous owner of the Mortgaged Property nor any third party has used, generated, manufactured, stored or disposed of any Hazardous Materials on, under or about the Mortgaged Property. Except as disclosed in the Environmental Audit, during the time in which Co-Mortgagors or an Affiliate thereof has owned, rented, leased or occupied the Site, (i) there has been no disposal, release, or threatened release of Hazardous Materials, on, from, or under the Site, and (ii) there have been no administrative actions, notices of violation, civil or criminal claims, actions, suits, investigations or proceedings brought or, to the knowledge of either Co-Mortgagor, threatened to be brought, nor have any settlements been reached by or with any party or parties, public or private, alleging the presence, disposal, release, or threatened release of any Hazardous Materials on, from, or under any of the Site. Except as disclosed in the Environmental Audit, Co-Mortgagors have no knowledge of any presence, disposal, release, or threatened release of any Hazardous Materials on, from, or under the Site that may have occurred prior to the acquisition of the Site by Co-Mortgagors. The terms "disposal", "release" and "threatened release", shall mean and include any disposal, discharge, release or threatened release, as defined in (or for purposes of) the Federal Comprehensive Environmental Response, Compensation, and Liability Act, or any other Governmental Rule relating to, or imposing liability or standards of conduct concerning any Hazardous Material, as now or at any time hereafter in effect.

b. **Covenants.** Subject to Section 2.18, Co-Mortgagor shall not cause or permit the storage, production, treatment, transportation, incorporation, discharge, emission, release, deposit or disposal of any Hazardous Material in, upon, under, over or from any part of the Mortgaged Property, except in compliance in all material respects with all Environmental Laws applicable to the Mortgaged Property. Upon Tolling Commencement and, from time to time following a material change in an applicable Environmental Law or a discharge, emission or release of a Hazardous Material

in, upon, over or from the Mortgaged Property, and in any such case upon the request of GE Capital, Co-Mortgagor shall have an environmental audit and assessment prepared relating to the Mortgaged Property by an engineer or scientist that is not an Affiliate of ICF and that is reasonably acceptable to GE Capital, all at the cost of Co-Mortgagor. The scope of any such environmental audit and assessment would be limited to a "Phase I" audit and assessment, including the physical inspection of the Facility and review for compliance with all applicable Governmental Laws and required Governmental Actions, except if in Agent's reasonable judgment there is reasonable cause to proceed further or extend the scope of such audit and assessment. The environmental audit and assessment prepared upon Tolling Commencement shall include the sampling of pond sediments and water to establish a baseline for any future audits and assessments. Co-Mortgagors shall cause Operator to sample periodically any water discharged into the run-off pond to determine the nature of constituents. Co-Mortgagors acknowledge and agree that GE Capital shall have no liability or responsibility for either (i) damage, loss or injury to human health, the environment or natural resources caused by the presence of Hazardous Materials on any part of the Mortgaged Property or (ii) for abatement and/or clean up of any Hazardous Materials located on the Mortgaged Property, whether by virtue of the interest of GE Capital in the Mortgaged Property created by the Mortgage or as the result of the enforcement by GE Capital of any of its rights or remedies hereunder with respect to the Mortgaged Property (including but not limited to becoming the owner thereof by foreclosure or conveyance in lieu of foreclosure). Upon any Responsible Officer of Co-Mortgagors becoming aware of any (i) administrative action, notices of violation, civil or criminal claims, actions, suits, investigations or proceedings brought or threatened to be brought or (ii) settlement reached by or with any Person or Persons, Governmental Authority alleging the presence, disposal, release or threatened release of any Hazardous Materials on, from or under the Mortgaged Property, Co-Mortgagors shall promptly deliver to GE Capital an Officer's Certificate of Co-Mortgagors specifying the nature and period of existence of such event and the action, if any, Co-Mortgagors have taken, is taking or proposes to take with respect thereto. The foregoing covenants of this Section 2.22 shall be deemed continuing covenants for the benefit of GE Capital, and its successors and assigns including but not limited to the holder of any certificate of purchase, any transferee of the title of GE Capital or any subsequent owner of the Mortgaged Property. The covenants of Co-Mortgagors set forth in this Section 2.22 shall survive the satisfaction or release of the lien of the Mortgage, any foreclosure of this Mortgage and any acquisition of title to the Mortgaged Property or any part thereof by deed in lieu of foreclosure or otherwise.

c. **Indemnity.** Co-Mortgagors shall indemnify and hold GE Capital harmless from and against all Expenses, directly or

indirectly arising out of the use, generation, storage or disposal of Hazardous Materials, including, without limitation, the cost of any required or necessary repair, clean-up or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following transfer of title to the Mortgaged Property. The foregoing indemnification shall survive repayment of the Notes and the termination of this Mortgage.

SECTION 2.22. The Land Lease. (a) Co-Mortgagors will not modify, extend or in any way alter the terms of the Land Lease or cancel, release, terminate or surrender the Land Lease, or waive, excuse, condone or in any way release or discharge the lessor thereunder or from the obligations, covenants, conditions and agreements by said lessor to be done and performed.

(b) Co-Mortgagors shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Land Lease by the lessee therein to be kept and performed and shall in all respects conform to and comply with the terms and conditions of the Land Lease and Co-Mortgagors further covenant that they will not do anything and will not refrain from doing anything that will impair the security of this Mortgage or that will result in declaring a default under the Land Lease.

(c) No release or forbearance of any of Co-Mortgagors' obligations under the Land Lease, pursuant to the Land Lease, or otherwise, shall release Co-Mortgagors from any of their obligations under this Mortgage, including their obligation with respect to the payment of rent as provided for in the Land Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Land Lease, to be kept, performed and complied with by the lessee therein.

(d) Co-Mortgagors covenant and agree that they will promptly give any notice of the execution and delivery of this Mortgage to the lessor and any other parties entitled to notice under the Land Lease, including notice of the name and address of GE Capital, and shall request that the lessor under the Land Lease send copies to GE Capital of all notices that are required to be sent to GE Capital pursuant to the Land Lease. Co-Mortgagors shall give GE Capital immediate notice in writing of any default under the Land Lease or of the receipt by Co-Mortgagors of any notice of default from the lessor thereunder by providing to GE Capital a photostatic copy of any such notice received by Co-Mortgagors from such lessor and this shall be done without regard to the fact that GE Capital may be entitled to such notice directly from the lessor. Co-Mortgagors shall promptly notify GE Capital of any default under the Land Lease by lessor or giving of any notice by the lessor to Co-Mortgagors of such lessor's intention to end the term thereof. To the extent

required under the Participation Agreement, Co-Mortgagors shall furnish to GE Capital immediately upon GE Capital's request any and all information concerning the performance by Co-Mortgagors of the covenants of the Land Lease and, to the extent required under the Participation Agreement, shall permit GE Capital or its representative at all times to make an investigation or examination concerning the performance by Co-Mortgagors of the covenants of the Land Lease. Co-Mortgagors shall promptly deposit with GE Capital an original executed copy of the Land Lease and any and all documentary evidence received by Co-Mortgagors showing compliance by it with the provisions of the Land Lease and, to the extent required under the Participation Agreement, shall deposit with GE Capital an exact copy of any notice, communication, plan, specification or other instrument or document received or given by Co-Mortgagors in any way relating to or affecting the Land Lease which may concern or affect the estate of the lessor or the lessee in or under the Land Lease or the property leased thereby.

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(e) Notwithstanding any other provision of this Mortgage or the Land Lease (but subject to Section 16 of the Land Lease), if Co-Mortgagors shall fail so to do, GE Capital may (but shall not be obligated to) take any such action GE Capital deems necessary or may reasonably request to prevent or cure, in whole or in part, any material failure of compliance by Co-Mortgagors under the Land Lease; and upon the receipt by GE Capital from Co-Mortgagors or the lessor under the Land Lease of any written notice of default by Co-Mortgagors as the lessee thereunder, GE Capital may rely thereon, and such notice shall constitute full authority and protection to GE Capital for any action taken or omitted to be taken in good faith reliance thereon. All sums, including reasonable fees and expenses of counsel, so expended by GE Capital to cure or prevent any such default, or expended to sustain the lien of this Mortgage or its priority, shall be deemed secured by this Mortgage and shall be paid by Co-Mortgagors upon demand, with interest at the maximum rate permitted by law. Nothing in this Section shall limit Co-Mortgagors's rights under the Land Lease to contest requirements of law or other similar matters to the fullest extent permitted by the Land Lease.

(f) Except as otherwise provided in this Section or the Participation Agreement, Co-Mortgagors shall not make any election or give any consent or approval for which a right to do so is conferred upon Co-Mortgagors as lessee under the Land Lease without GE Capital's prior written consent, which consent shall not be unreasonably withheld.

(g) Co-Mortgagors will give GE Capital prompt written notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of the Land Lease to the extent the same relates to the determination of rent under

Section 2 of the Land Lease during the Extension Term (as defined therein). GE Capital shall have the right, but not the obligation, to intervene and participate in any such proceeding and Co-Mortgagors shall confer with GE Capital to the extent which GE Capital deems necessary for the protection of GE Capital. Co-Mortgagors may compromise any dispute or approval which is the subject of any such arbitration or appraisal proceeding only with the prior written consent of GE Capital, which consent shall not be unreasonably withheld. Upon the written request of GE Capital, Co-Mortgagors will exercise all rights of arbitration or appraisal conferred upon it by the Land Lease to the extent the same relates to the determination of rent under Section 2 of the Land Lease during the Extension Term (as defined therein), unless Co-Mortgagors can demonstrate to GE Capital's reasonable satisfaction prior to the earlier of (i) 10 days after GE Capital's written notice, and (ii) the date on which Co-Mortgagors's ability to exercise such right of arbitration or appraisal shall lapse, that such an arbitration or appraisal proceeding would be unduly burdensome and cost ineffective, and that the failure to arbitrate or have an appraisal performed for the matter under consideration is not likely to materially and adversely impair GE Capital's security hereunder. Co-Mortgagors shall select an arbitrator or appraiser, as the case may be, who is approved in writing by GE Capital (which approval shall not be unreasonably withheld), provided, however, that if at the time any such proceeding shall be commenced, an Event of Default shall have occurred and be continuing GE Capital shall have, and is hereby granted, the sole and exclusive right to designate and appoint on behalf of Co-Mortgagors the arbitrator or arbitrators, or appraiser, in such proceeding.

(h) So long as this Mortgage is in effect, there shall be no merger of the Land Lease or any interest therein, or of the leasehold estate created thereby, with the fee estate in the Property or any portion thereof by reason of the fact that the Land Lease or such interest therein or such leasehold estate may be held directly or indirectly by or for the account of any person who shall hold the fee estate in the Property or any portion thereof or any interest of the lessor under the Land Lease. In case Co-Mortgagors acquire the fee title to the Property, this Mortgage shall attach to and cover and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, mortgage or conveyance, become and be subject to the lien covered by this Mortgage. Co-Mortgagors shall notify GE Capital of any such acquisition and, on written request by GE Capital, shall cause to be executed and recorded all such other and further assurances or other instruments in writing as may in the opinion of GE Capital be necessary or appropriate to effect the intent and meaning hereof and shall deliver to GE Capital an endorsement to GE Capital's loan title insurance policy insuring that such fee title or other estate is subject to the lien of this Mortgage.

(i) In the event that Co-Mortgagors intend to acquire fee title to the leasehold estate as described in paragraph (h) above Co-Mortgagors shall provide GE Capital with written notice of their intent to so acquire not less than 30 days prior to such acquisition or the exercise of such right or option.

ARTICLE III

RENTS AND LEASES

As additional security for the payment of the Secured Obligations, Co-Mortgagors hereby presently and unconditionally assign, transfer and set over to GE Capital, all rents, issues, royalties, profits, avails, revenues and income now or hereafter derived from or constituting a part of the Mortgaged Property, including but not limited to all prepaid rent and security deposits (collectively, the "Rents") and all right, title and interest of Co-Mortgagors, now owned or hereafter acquired, in and to any lease of any part of the Mortgaged Property, any modifications or renewals of any such leases and all guaranties of any tenant's obligation under any such leases, together with all other documents evidencing the Rents, bank accounts and any and all deposits held as security under any such leases. GE Capital hereby grants to Co-Mortgagors a license to collect all Rents so long as an Event of Default shall not have occurred and be continuing, but thereafter GE Capital may demand, collect, receive and receipt for the Rents, take possession of the Mortgaged Property without having a receiver appointed, rent and manage the Mortgaged Property from time to time, and apply the net proceeds of the Rents to the Secured Obligations until the Secured Obligations are paid in full or until Co-Mortgagors' title to the Mortgaged Property is divested through foreclosure, deed or conveyance in lieu of foreclosure or otherwise. Co-Mortgagors irrevocably appoint (such appointment being coupled with an interest) GE Capital its true and lawful attorney-in-fact, at the option of GE Capital at any time and from time to time, to give releases, receipts and satisfactions and to sue, in the name of GE Capital or Co-Mortgagors for any of the Mortgaged Property. Co-Mortgagors hereby irrevocably authorize and direct the tenants under all leases, upon receipt of notice that an Event of Default has occurred, to pay all Rents directly to GE Capital. Upon the occurrence and continuance of an Event of Default, GE Capital may enforce its rights to the Rents by any appropriate civil suit or proceeding. GE Capital shall be entitled as a matter of right to a receiver for the Mortgaged Property without regard to the solvency or insolvency of Co-Mortgagors or of the then owner of the Mortgaged Property or of the Mortgaged Property's value. Such receiver shall apply the Rents according to law and the orders and directions of a court of competent jurisdiction. Neither the foregoing assignment of Rents to GE Capital nor the exercise by GE Capital of any of GE Capital's rights or remedies

hereunder shall be deemed to make GE Capital a "mortgagee in possession", an "owner or operator" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any part of the Mortgaged Property, unless and until GE Capital, in person or by agent, shall obtain title to the Mortgaged Property.

ARTICLE IV

SECURITY AGREEMENT

SECTION 4.01. Creation of Security Interest. Co-Mortgagors hereby grant to GE Capital a security interest in such of the Mortgaged Property as shall constitute rights of action or personal property ("Personal Property") subject to the provisions of the Uniform Commercial Code, whether now owned or hereafter acquired, for the purpose of securing the Secured Obligations. Notwithstanding the filing of a financing statement covering any of the Mortgaged Property in the records normally pertaining to personal property, at GE Capital's option all the Mortgaged Property, for all purposes and in all proceedings, legal or equitable, shall be regarded (to the extent permitted by law) as part of the Property, whether or not any such item is physically attached to the Property or Improvements. The mention in any such financing statement of any of the Mortgaged Property shall not be construed as in any way altering any of the rights of GE Capital or adversely affecting the priority of the lien granted hereby or any other Loan Instrument, but such mention in any such financing statement is hereby declared to be for the protection of GE Capital in the event any court shall at any time hold that notice of GE Capital's priority of interest, to be effective against any third party, must be filed in the records maintained under the Uniform Commercial Code.

SECTION 4.02. Additional Security. Co-Mortgagors agrees that GE Capital shall have a special property interest in all books and records of Co-Mortgagors pertaining to Contracts hereby hypothecated and that GE Capital shall have access to such books and records as provided in the Participation Agreement.

SECTION 4.03. Warranties, Representations and Covenants of Co-Mortgagors Respecting the Personal Property. Co-Mortgagors hereby warrant, represent and covenant as follows:

a. Except for the security interest granted hereby, Co-Mortgagors are, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner or lessee of the Personal Property, free from any adverse Lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever except Permitted Liens. Co-Mortgagors will notify GE Capital of, and will defend the Personal Property

against, all claims and demands of all Persons at any time claiming the same or any interest therein.

b. Co-Mortgagors shall not lease, sell, convey or in any manner transfer the Personal Property or assign or grant any security interest in any of the Personal Property except as and to the extent permitted by of the Participation Agreement.

c. The Personal Property is not bought or to be used for personal, family or household purposes.

d. The Personal Property shall be kept on or at the Property and Improvements and Co-Mortgagors shall not remove the Personal Property from the Property and Improvements except as and to the extent permitted under the Loan Instruments.

e. Co-Mortgagors maintain their principal place of business at the addresses set forth at the beginning of this Mortgage and Co-Mortgagors shall notify GE Capital in writing not less than 30 days in advance of any change in their principal place of business as set forth at the beginning of this Mortgage.

f. At the request of GE Capital, Co-Mortgagors shall execute one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to GE Capital and shall pay the cost of filing the same in all public offices wherever filing is necessary or reasonably requested by GE Capital.

g. Co-Mortgagors requested by shall execute and deliver to GE Capital, upon demand, such additional assurances, writings or other instruments as may be necessary or reasonably requested by GE Capital to effect the purpose hereof or to perfect or protect the interest of GE Capital in any security hereby given.

h. Co-Mortgagors hereby appoint (such appointment being coupled with an interest) GE Capital as attorney-in-fact to execute in the name of Co-Mortgagors any financing statement or other document deemed by GE Capital to be necessary or reasonably requested by GE Capital to perfect or protect the security interest hereby granted.

i. This Mortgage also constitutes a Security Agreement as that term is used in the Uniform Commercial Code.

j. This Mortgage is also intended to be a financing statement within the purview of Section 9-402(6) of the Indiana Uniform Commercial Code (the "Indiana Code") and filed as a fixture filing pursuant to Section 9-313 of the Indiana Code with respect to the Improvements and the goods described therein, which goods are or are to become fixtures relating to the real estate constituting a part of the Mortgaged Property. The

address of Co-Mortgagor (Debtor) and GE Capital (Secured Party) are set forth at the beginning of this Mortgage. This Mortgage is to be filed for record with the Recorder of the County where the Property is located. Co-Mortgagors are the record owner of a leasehold estate in the Property.

SECTION 4.04. Collections. So long as no Event of Default shall have occurred and be continuing, Co-Mortgagors shall have the right to collect all Accounts Receivable in the ordinary course of their businesses; provided, however, that Co-Mortgagors agree, if GE Capital shall so request, (a) to arrange for payments on any Accounts Receivable designated by GE Capital to be made by the account debtors directly to Account Number 6301217059502 at Manufacturers Hanover Bank (Delaware) (the "Receipts Account") or (b) promptly to deposit all payments received by them on account of Accounts Receivable, whether in the form of cash, checks, notes, drafts, bills of exchange, money orders or otherwise, in the Receipts Account in precisely the form received (but with any endorsements of Co-Mortgagors necessary for deposit or collection) in each case, to the right of the Co-Mortgagors, so long as no Event of Default shall have occurred and be continuing, to withdraw funds for use in the ordinary course of their businesses, including any payments contemplated pursuant to the Operative Documents, which funds GE Capital agrees to release promptly so long as no Event of Default shall have occurred and be continuing. Any payments which GE Capital shall have requested a Co-Mortgagor to deposit pursuant to clause (b) of the preceding sentence shall, until they are deposited, be held in trust by such Co-Mortgagor as property of GE Capital and shall not be commingled with other funds of such Co-Mortgagor.



REMEDIES UPON DEFAULT

SECTION 5.01. Events of Default. Any of the following events shall be deemed an Event of Default hereunder:

- (a) the occurrence of any Construction Loan Event of Default; or
- (b) the occurrence of any Permanent Financing Event of Default; or
- (c) Co-Mortgagors shall (including by operation of law), without the prior written consent of GE Capital, transfer or convey (including by way of mortgage or deed of trust) or lease the Mortgaged Property or any portion thereof or interest therein except as and to the extent permitted hereby and by the Operative Documents.

SECTION 5.02. Acceleration upon Default; Additional Remedies. If an Event of Default shall have occurred and be continuing, GE Capital may do any, some or all of the following:

a. **Acceleration Under Loan Instruments.** By notice to Co-Mortgagors, at any time and from time to time, do any one or more of the actions prescribed in the Construction Loan Agreement or the Senior Term Loan Agreement.

b. **Entry.** Irrespective of whether GE Capital exercises the power of sale contained in this Mortgage, GE Capital in person or by agent or by court-appointed receiver may enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof and do all things necessary or appropriate in GE Capital's sole discretion in connection therewith, including making and enforcing, and if the same be subject to modification or cancellation, modifying or cancelling leases upon such terms or conditions as GE Capital deems proper, obtaining and evicting tenants and fixing or modifying Rents, contracting for and making repairs and alterations and doing any and all other acts which GE Capital deems proper to protect the security hereof or preserve the value, marketability or rentability of the Mortgaged Property; and either with or without so taking possession, in GE Capital's own name or in the name of Co-Mortgagors, sue for or otherwise collect and receive the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any Secured Obligations and in such order as GE Capital may determine. Upon request of GE Capital, Co-Mortgagors shall assemble and make available to GE Capital at the site of the Property any of the Mortgaged Property which has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, or any part thereof, and the collection of any Rents and the application thereof as provided above shall not cure or waive any default theretofore or thereafter occurring or affect any notice or default hereunder or invalidate any act done pursuant to any such default or notice. Notwithstanding continuance in possession of the Mortgaged Property or any part thereof by GE Capital, Co-Mortgagors or a receiver, and notwithstanding the collection, receipt and application of the Rents, GE Capital shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of an Event of Default. Any of the actions referred to in this Section may be taken by GE Capital irrespective of whether any notice of default has been given hereunder and without regard to the adequacy of the security for the Secured Obligations.

c. **Foreclosure.** GE Capital is authorized and empowered, without further notice, to commence an action to foreclose this Mortgage, appoint a receiver or specifically enforce any of the covenants hereof by power of sale. In case any sale under this Mortgage occurs by virtue of judicial proceedings, the Mortgaged

Property may be sold as an entity, or in such parcels, manner or order as GE Capital in its sole discretion may elect. Co-Mortgagors hereby waive all rights to the marshalling of Co-Mortgagors' assets encumbered by this Mortgage, including the Mortgaged Property, and all rights to require the Mortgaged Property to be sold in several parcels. All moneys received from a foreclosure action, after the costs and expenses of such action, shall be first used to pay GE Capital the then outstanding amounts of the Secured Obligations with interest at the rate or rates set forth in the Notes or Operative Documents, and then to Co-Mortgagors. GE Capital may purchase all or any part of the Mortgaged Property in the event of a foreclosure. Nothing herein dealing with foreclosure procedures which specifies any particular actions to be taken by GE Capital or Trustee shall be deemed to contradict the requirements and procedures (now or hereafter existing) of Indiana law, and any such contradiction shall be resolved in favor of Indiana law applicable at the time of foreclosure.

d. **Judicial Action.** GE Capital may bring an action in any court of competent jurisdiction to foreclose this Mortgage, to enforce any of the covenants and agreements hereof or to foreclose or enforce any of the Loan Instruments.

e. **Uniform Commercial Code Remedies.** GE Capital may exercise any or all of the remedies available to a secured party under the Uniform Commercial Code, including:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Co-Mortgagors and all others claiming under Co-Mortgagors, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Co-Mortgagors in respect to the Personal Property or any part thereof; in the event GE Capital demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Instruments, Co-Mortgagors promise and agree to promptly turn over and deliver complete possession thereof to GE Capital;

(2) without notice to or demand upon Co-Mortgagors, make such payments and do such acts as GE Capital may deem necessary to protect its security interest in the Personal Property, including without limitation paying, purchasing, contesting or compromising any Lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority pay all expenses incurred in connection therewith;

(3) require Co-Mortgagors to assemble the Personal Property or any portion thereof at a place designated by GE Capital and promptly to deliver such Personal Property to

GE Capital, or an agent or representative designated by it; GE Capital and its agents and representatives shall have the right to enter upon any or all of Co-Mortgagors' premises and property to exercise GE Capital's rights hereunder;

(4) sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as GE Capital may determine; GE Capital may be a purchaser at any such sale;

(5) unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, GE Capital shall give Co-Mortgagors prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof; such notice may be mailed to Co-Mortgagors at the addresses set forth at the beginning of this Mortgage; or

(6) exercise any and all rights and receive all benefits of Co-Mortgagors under any of the contracts, agreements and rights secured hereby and assign or transfer any of same or any rights or benefits thereunder.

f. Receiver. GE Capital shall have the right, with the irrevocable consent of Co-Mortgagors hereby given and evidenced by the execution of this Mortgage, to obtain appointment of a receiver by any court of competent jurisdiction without further notice to Co-Mortgagors, which receiver shall be authorized and empowered to enter upon and take possession of the Mortgaged Property, including the Personal Property and all bank accounts containing funds associated with the Mortgaged Property, to let the Mortgaged Property, to receive all the Rents due or to become due and to apply the Rents after payment of all necessary charges and expenses to reduction of the Secured Obligations. At the option of GE Capital, the receiver shall accomplish such entry and taking possession of the Mortgaged Property by actual entry and possession or by notice to Co-Mortgagors. The receiver so appointed by a court of competent jurisdiction shall be empowered to issue receiver's certificates for funds advanced by GE Capital for the purposes of protecting the value of the Mortgaged Property as security for the Secured Obligations or making the Mortgaged Property ready for leasing. The amounts evidenced by receiver's certificates shall bear interest at the rate or rates established by the court and shall be repaid as directed by the court, or if not so established, established as set forth in the Notes or Operative documents and may be added to the cost of redemption if the owners of the Mortgaged Property, Co-Mortgagors or any other Person with a right of redemption shall redeem the Mortgaged Property.

Section 5.03. Attorneys' Fees in the Event of Foreclosure. If this Mortgage shall be foreclosed through court proceedings, reasonable attorneys' fees in an amount determined by the court shall be taxed by the court as a part of the cost of such foreclosure proceedings.

SECTION 5.04. Remedies Not Exclusive. GE Capital shall be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers under this Mortgage or under any Loan Instrument or any laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect GE Capital's right to realize upon or enforce any other security now or hereafter held by GE Capital, it being agreed that GE Capital shall be entitled to enforce this Mortgage and any other security now or hereafter held by GE Capital in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to GE Capital is intended to be exclusive of any other remedy herein or by law provided or preclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to GE Capital or to which it may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by GE Capital and GE Capital may pursue inconsistent remedies.



SECTION 6.01. Governing Law; Severability; Amendments; Successors. This Mortgage shall be governed by the laws of the State of Indiana. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments are declared to be severable. This instrument cannot be amended, waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any amendment, waiver, charge, discharge or termination is sought. This Mortgage applies to, inures to the benefit of and binds the parties hereto, their successors and permitted assigns.

SECTION 6.02. Co-Mortgagors Waiver of Rights. Co-Mortgagors waive the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property or (ii) in any way extending the time for the enforcement of the collection of the Notes or the debt evidenced thereby or any other Secured Obligation or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent Co-Mortgagors may do so, Co-Mortgagors agree that they will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Co-Mortgagors, for themselves and their successors and assigns and for any and all Persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waive and release all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations and marshalling in the event of foreclosure of the lien hereby created. If any law referred to in this Section and now in force, of which Co-Mortgagors, their successors and assigns or other Persons, might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Co-Mortgagors expressly waive and relinquish any and all rights and remedies which Co-Mortgagors may have or be able to assert by reason of the laws of the State of Indiana pertaining to the rights and remedies of sureties.

SECTION 6.03. Limitation of Interest. It is the intent of GE Capital in the execution of this Mortgage and the Loan Instruments and the Notes and all other instruments securing the Notes to contract in strict compliance with the usury laws of the States of New York and Indiana governing the loans evidenced by the Notes. In furtherance thereof, GE Capital and Co-Mortgagors stipulate and agree that none of the terms and provisions contained in the Loan Instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the States of New York and Indiana governing the loans evidenced by the Notes. Co-Mortgagors or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Notes shall never be liable for unearned interest on the Notes and shall never be required to pay interest on the Notes at a rate in excess of the maximum interest rate that may be lawfully charged under the laws of either such State, and the provisions of this Section shall control over all other provisions of the Notes and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Notes shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on the Notes to a rate in excess of that permitted to be charged by

the laws of either such State, all such sums deemed to constitute interest in excess of the legal rate shall be immediately returned to Co-Mortgagors upon such determination.

SECTION 6.04. Notices. Except as otherwise provided hereby, whenever GE Capital or Co-Mortgagors shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing (including telex, telecopy or similar writing) and shall be conclusively deemed to have been received by the party hereto and to be effective on the day on which delivered to such party at the address set forth in the heading hereto or, if sent by mail, on the fifth business day after the day on which properly mailed, addressed to such party at such address. Notwithstanding the foregoing, notice delivered by telecopy shall not be deemed received unless and until receipt thereof has been acknowledged verbally or in writing by the addressee thereof. Either party may at any time change its address for such notices by delivering or mailing to the other party, as aforesaid. This document is the property of the Lake County Recorder!

SECTION 6.05. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

SECTION 6.06. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage. In the event of any conflict between the terms of this Mortgage and the terms of any Loan Instrument, the terms of the latter shall prevail.

SECTION 6.07. Subrogation. To the extent that proceeds of the Notes are used to pay any outstanding Lien against the Mortgaged Property, GE Capital shall be subrogated to any and all rights and Liens owned by any owner or holder of such outstanding Liens, irrespective of whether said Liens are released.

SECTION 6.08. Obligations Absolute. All sums payable by Co-Mortgagors on the Notes, hereunder or under the Construction Loan Agreement or the Senior Term Loan Agreement shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Co-Mortgagors on the Notes, hereunder and under the Construction Loan Agreement and the Senior Term Loan Agreement shall in no way be

released, discharged or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction or condemnation or similar taking of the Mortgaged Property or any part thereof, (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof, (iii) any Lien on or eviction from the Mortgaged Property or any part thereof by title paramount or otherwise, (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to any Person or any action taken with respect to the Loan Instruments by any trustee or receiver of any Person, or by any court, in any such proceeding, (v) any claim that Co-Mortgagors may have against GE Capital, (vi) any default or failure on the part of GE Capital to perform or comply with any of the terms hereof or of any other agreement with GE Capital or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Co-Mortgagors shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Co-Mortgagors waive all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Co-Mortgagors; provided however, that nothing in this Section 6.08 shall preclude Co-Mortgagors (i) from asserting any compulsory counterclaim or (ii) after all Secured Obligations have been finally paid in full, from asserting the foregoing claims and demanding restitution to the extent such claims are proven.

SECTION 6.09. Future Impositions. If at any time any Governmental Authority shall require internal revenue stamps on any of the Notes secured hereby, upon demand Co-Mortgagors shall pay the same (subject to rights of contest pursuant to Section 5.11 of the Construction Loan Agreement and Section 5.14 of the Senior Term Loan Agreement); and on default of such payment within 30 days after demand for same, GE Capital or Senior Lender may pay for such stamps and add the amount so paid to the principal of the applicable Note and secured by this Mortgage, and said additional principal shall bear interest at the rate set forth in such Note. If any Governmental Rule imposes a tax on Co-Mortgagors with respect to the Mortgaged Property, the value of Co-Mortgagors' equity therein, the amount of the Secured Obligations, the Notes or this Mortgage, GE Capital shall have the right at its election from time to time to give Co-Mortgagors 60 days' written notice to pay such Secured Obligations, whereupon such Secured Obligations shall become due, payable and collectible at the expiration of such period of 60 days, unless prior thereto, lawfully and without violation of usury or other laws, Co-Mortgagors have paid any such tax in full as the same became due and payable, in which event such notice shall be deemed to have been rescinded with respect to any right of GE Capital or Senior Lender hereunder arising by reason of the Tax so paid.

SECTION 6.10. No Credit for Taxes. Co-Mortgagors shall not claim or demand or be entitled to receive any credit or credits on the Secured Obligations for so much of the Taxes assessed against the Mortgaged Property as is equal to the tax rate applied to the Secured Obligations due on this Mortgage or any part thereof, and no deduction shall be claimed from the taxable value of the Mortgaged Property by reason of this Mortgage.

SECTION 6.11. Estoppel Affidavits. Co-Mortgagors within ten days after written request from GE Capital shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on each of the Notes and whether or not any offsets or defenses exist against such principal and interest. GE Capital, within ten days after request by Co-Mortgagors, will furnish Co-Mortgagors or any designee of Co-Mortgagors with a statement, duly acknowledged and certified, setting forth the payments made by Co-Mortgagors under each of the Construction Loan Agreement and the Senior Term Loan Agreement.

SECTION 6.12. No Waiver. Failure by GE Capital to insist upon the strict performance of any covenant, agreement, term or condition of this Mortgage or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of such covenant, agreement, term, or condition (or the strict performance thereof). No covenant, agreement, term, or condition in this Mortgage and no breach thereof may be waived, altered or modified except by a written instrument executed by GE Capital. The waiver of any breach shall not affect or alter this Mortgage, but each and every covenant, agreement, term and condition of this Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

SECTION 6.13. GE Capital not a Partner of Co-Mortgagors. The exercise by any of GE Capital of any of its rights, privileges or remedies conferred under this Mortgage, the Notes or any other Loan Instrument or under applicable law, shall not be deemed to render GE Capital a partner or a coventurer with Co-Mortgagors or with any other Person. Any and all of such actions will be exercised by each of GE Capital solely in furtherance of its role as a secured lender advancing funds for use by Co-Mortgagors as provided in this Mortgage and in the Loan Instruments.

SECTION 6.14. Assignability. GE Capital shall have the right to assign any or all its rights, powers and benefits which are contained in this Mortgage to the same extent it is permitted to assign its rights, powers and benefits under the Construction Loan Agreement, the Senior Term Loan Agreement and the Notes and, thereafter, the term GE Capital as used herein shall be deemed to include any person to whom GE Capital shall have so assigned its rights, powers and benefits hereunder; provided that with respect

to any provision herein requiring notice to or the consent, approval or satisfaction of GE Capital, such provision shall be deemed to require notice to or consent, approval or satisfaction of Agent under the Construction Loan Agreement or the Senior Term Loan Agreement, as the case may be.

SECTION 6.15. Limitations on Recourse. Notwithstanding anything to the contrary contained in any Operative Document or in any instrument executed by Partnership or Gary-PCI pursuant to the Construction Loan Agreement or the Senior Term Loan Agreement or any other Operative Document, no Partner in Partnership nor any of its or Borrower's stockholders or Affiliates or any officer or director of any thereof ("Non-Recourse Persons") shall have any liability to GE Capital for the payment of any sums now or hereafter owing, directly, indirectly or contingently, by Co-Mortgagors hereunder or thereunder or for the performance of any of the obligations of Co-Mortgagors contained herein or therein or shall otherwise be liable or responsible with respect thereto. If any Event of Default shall occur or if any claim of GE Capital against Co-Mortgagors or alleged liability to GE Capital of Co-Mortgagors shall be asserted with respect to the Loans or any obligations of Co-Mortgagors in connection with the Operative Documents, (i) GE Capital's rights in respect of such claim or liabilities asserted against Co-Mortgagors shall be limited to satisfaction out of, and enforcement against, the assets of Co-Mortgagors, as applicable, and (ii) GE Capital shall not have the right to proceed directly or indirectly against any Non-Recourse Person or against its assets (other than the assets of Co-Mortgagor, the shares of Borrower and the Interest of Gary-PCI in Partnership) for the satisfaction of any Loans or any obligations of Borrower or Partnership in connection with the Operative Documents or any such claim or liability; provided, however, that nothing contained in this Section 6.15 shall (i) constitute or be deemed to constitute a release of the Loans or any obligations secured thereby, or impair the enforceability of, the security interests and other rights created by or arising from, the Construction Loan Agreement, the Senior Term Loan Agreement, any other Operative Document or such instruments or restrict the remedies available to GE Capital to realize upon the assets of Co-Mortgagors or such shares of Borrower or Interest of any Partner in Partnership or (ii) affect or diminish any obligation, covenant or agreement of any shareholder of Borrower or of any Partner in Partnership which constitutes an asset of Borrower or Partnership or GE Capital or (iii) affect or diminish any rights of any Person against any other Person arising from misappropriation or misapplication of any funds. This Section 6.15 shall survive the termination of the Operative Documents and shall be enforceable by any Non-Recourse Person.

Co-Mortgagors have executed this Mortgage as of the date first set forth above.

KENRON CORPORATION

by Kenneth A. Schwiers

Name: Kenneth A. Schwiers
Title: President of ICF Resources, Incorporated an Attorney in Fact.

[Seal]

GARY COAL PROCESSING L.P.

by GARY-PCI LTD., L.P. a general partner,

Document is NOT OFFICIAL!

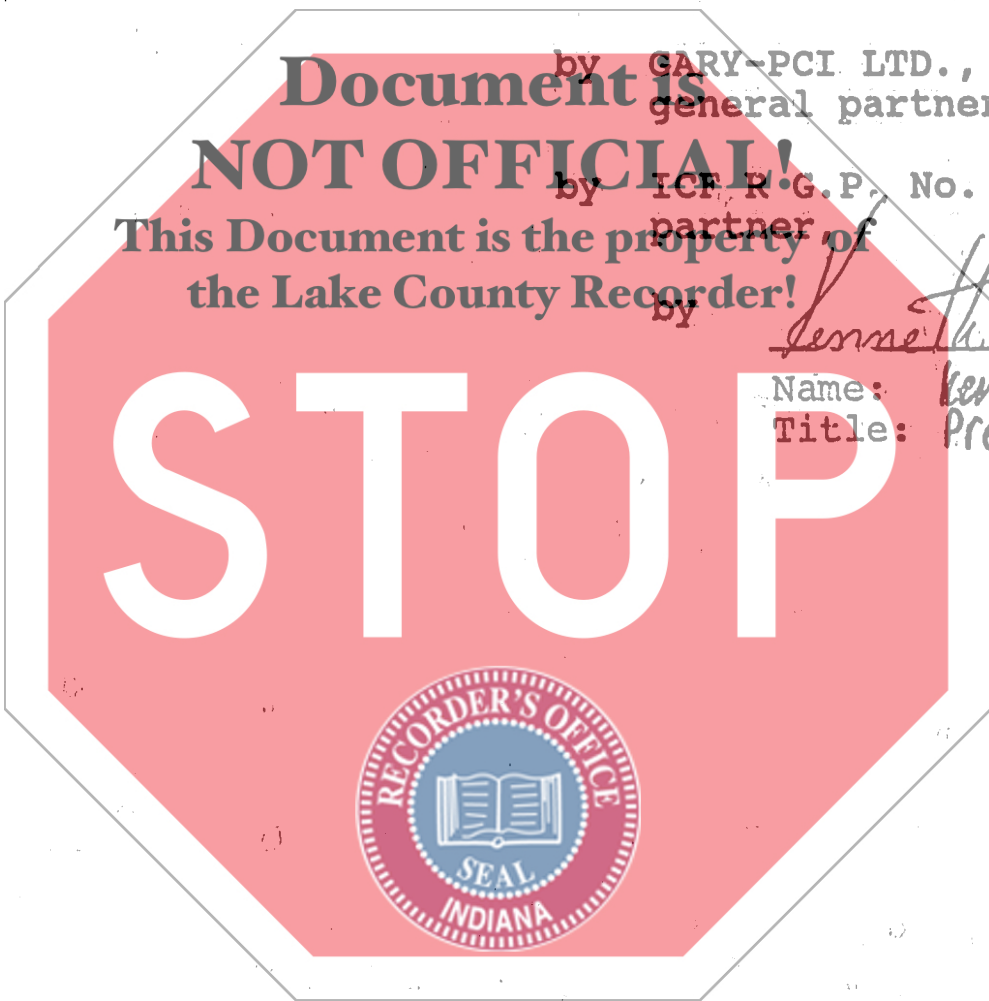
by ICF R.G.P. No. 1, a general partner,

This Document is the property of the Lake County Recorder!

by Kenneth A. Schwiers

Name: Kenneth A. Schwiers
Title: President

[Seal]



ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

Before me, a Notary Public in and for said County and State, personally appeared Kenneth A. Schweers, the President of ICF Resources Incorporated, a Delaware corporation and attorney in fact for Kenron Corporation, a Delaware corporation, who acknowledged execution of the foregoing instrument for and on behalf of said corporation and stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 8th day of May, 1991.

Document is NOT OFFICIAL!

This Document is the property of the Lake County Recorder!

Katherine J. Haje
Notary Public Residing in NEW YORK County

KATHERINE J. HAJE
(printed name)

My Commission Expires

10/30/91

This instrument prepared by

Deirdre Stanley, Esq.
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, N.Y. 10019



KATHERINE J. HAJE
No. 4958100
Qualified in New York County
Certificate Filed in New York
Commission Expires 10/30/91

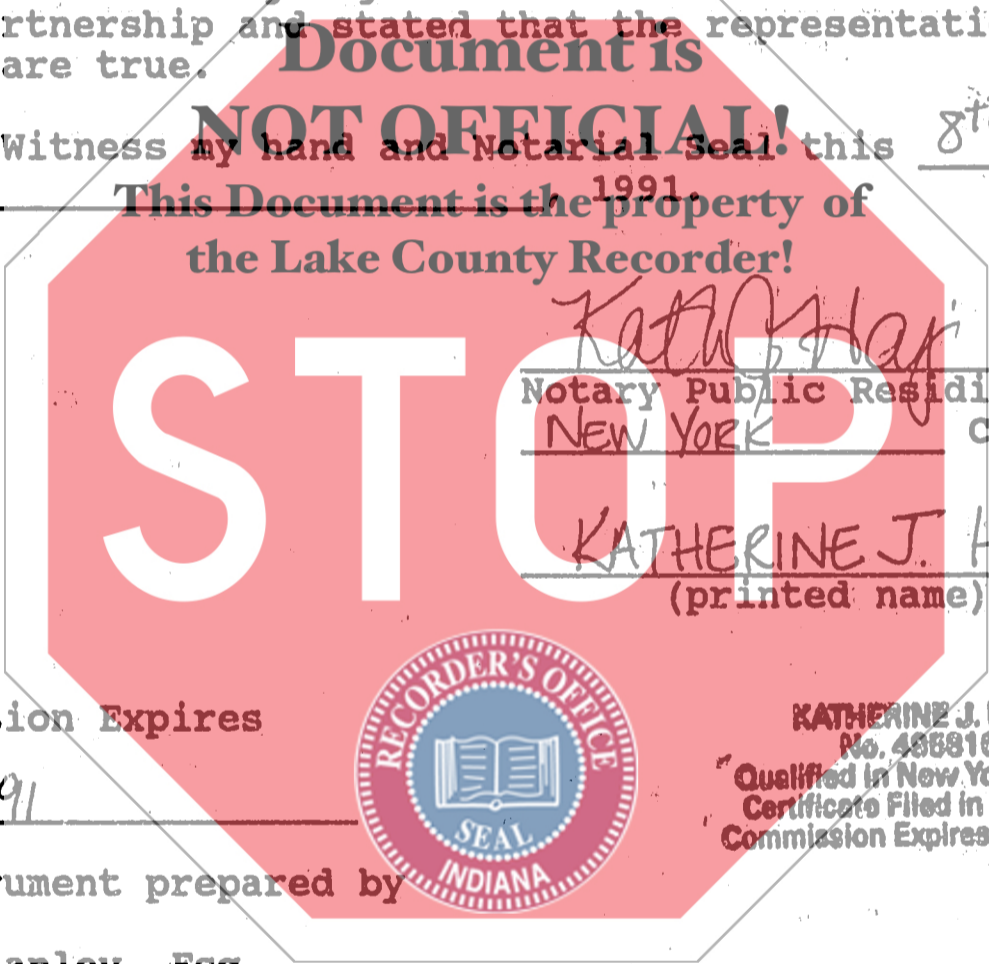
ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

Before me, a Notary Public in and for said County and State, personally appeared Kenneth A. Schweers, the President of ICF R G.P. No. 1, a Delaware corporation, a general partner of Gary PCI Ltd., L.P., a Delaware limited partnership, the sole general partner of Gary Coal Processing L.P., a Delaware limited partnership, who acknowledged execution of the foregoing instrument for and on behalf of said limited partnership and stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 8th day of May 1991.

This Document is the property of the Lake County Recorder!



Katherine J. Haje
Notary Public Residing in
NEW YORK County
KATHERINE J. HAJE
(printed name)

My Commission Expires
10/30/91

KATHERINE J. HAJE
No. 4888180
Qualified in New York County
Certificate Filed in New York
Commission Expires 10/30/91

This instrument prepared by

Deirdre Stanley, Esq.
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, N.Y. 10019

EXHIBIT A

DESCRIPTION OF PREMISES

PARCEL 1: A PARCEL OF LAND PARTLY IN THE EAST HALF (E 1/2) OF SECTION THIRTY-FOUR (34), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE EIGHT (8) WEST OF THE SECOND PRINCIPAL MERIDIAN, AND PARTLY IN THE WEST (W 1/2) OF SECTION THIRTY-FIVE (35), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE EIGHT (8) WEST OF THE SECOND PRINCIPAL MERIDIAN, IN THE CITY OF GARY, LAKE COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION THIRTY-FOUR (34); THENCE NORTH EIGHTY-NINE DEGREES, FIFTY-FIVE MINUTES, SEVEN SECONDS WEST ALONG THE SOUTH LINE OF SAID SECTION THIRTY-FOUR (34) (BASIS OF BEARINGS), SIX HUNDRED FOUR AND SIXTY-FIVE HUNDREDTHS FEET (604.65'); THENCE NORTH ZERO DEGREES, ZERO MINUTES, ZERO SECONDS EAST, TWO THOUSAND THREE HUNDRED EIGHTY-FIVE AND NINETY-EIGHT HUNDREDTHS FEET (2,385.98') TO THE POINT OF BEGINNING; THENCE NORTH ZERO DEGREES, TWO MINUTES SIXTEEN AND THREE TENTHS SECONDS WEST, ONE THOUSAND THREE HUNDRED SEVENTY AND FOUR HUNDREDTHS FEET (1,370.04'); THENCE NORTH NINETY DEGREES, ZERO MINUTES, ZERO SECONDS EAST, SEVEN HUNDRED AND ZERO HUNDREDTHS FEET (700.00'); THENCE SOUTH ZERO DEGREES, ZERO MINUTES, ZERO SECONDS EAST, EIGHT HUNDRED FIFTY-FOUR AND SIXTY-ONE HUNDREDTHS FEET (854.61'); THENCE SOUTH FORTY-SIX DEGREES, FIFTY-FIVE MINUTES, THIRTY SECONDS WEST, TWO HUNDRED AND ZERO HUNDREDTHS FEET (200.00'); THENCE SOUTH FIFTY DEGREES, TEN MINUTES, THIRTY SECONDS WEST, ONE HUNDRED EIGHTY-SEVEN AND SEVENTY-THREE HUNDREDTHS FEET (187.73'); THENCE SOUTH FIFTY-FIVE DEGREES, ZERO MINUTES, ZERO SECONDS WEST, EIGHTY-THREE AND EIGHTY-SEVEN HUNDREDTHS FEET (83.87'); THENCE SOUTH FIFTY-EIGHT DEGREES, FOURTEEN MINUTES, FORTY-SEVEN AND FIVE TENTHS SECONDS WEST, FOUR HUNDRED AND ZERO HUNDREDTHS FEET (400.00') TO THE POINT OF BEGINNING.

PARCEL 2: A PARCEL OF LAND IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION THIRTY-FOUR (34), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE EIGHT (8) WEST OF THE SECOND PRINCIPAL MERIDIAN, IN THE CITY OF GARY, LAKE COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION THIRTY-FOUR (34); THENCE NORTH EIGHTY-NINE DEGREES, FIFTY-FIVE MINUTES, SEVEN SECONDS WEST ALONG THE SOUTH LINE OF SAID SECTION THIRTY-FOUR (34) (BASIS OF BEARINGS), ONE THOUSAND THREE HUNDRED FOURTEEN AND SEVENTY-EIGHT HUNDREDTHS FEET (1,314.78'); THENCE NORTH ZERO DEGREES, ZERO MINUTES, ZERO SECONDS EAST, ONE THOUSAND EIGHT HUNDRED NINETEEN AND TWENTY HUNDREDTHS FEET (1,819.20') TO THE POINT OF BEGINNING; THENCE NORTH FORTY-NINE DEGREES, THIRTY-NINE MINUTES, THIRTY-TWO AND FIVE TENTHS SECONDS WEST, TWO HUNDRED TWENTY-EIGHT AND FIFTY-TWO HUNDREDTHS FEET (228.52'); THENCE SOUTH NINETY DEGREES, ZERO MINUTES, ZERO SECONDS WEST, THREE HUNDRED ONE AND FIFTY-SIX HUNDREDTHS FEET (301.56'); THENCE NORTH ZERO DEGREES, ZERO MINUTES, ZERO SECONDS EAST, TWO HUNDRED THIRTY-FIVE AND ZERO HUNDREDTHS FEET (235.00'); THENCE SOUTH NINETY DEGREES, ZERO MINUTES, ZERO SECONDS EAST, THREE HUNDRED TWO AND FOURTEEN HUNDREDTHS FEET (302.14'); THENCE SOUTH FIFTY-EIGHT DEGREES, ZERO MINUTES, ZERO SECONDS EAST, THREE HUNDRED SIXTY-EIGHT

EXHIBIT A CONTINUED

AND SEVEN HUNDREDTHS FEET (368.07'); THENCE SOUTH THIRTY-SIX DEGREES, TWENTY-FOUR MINUTES, SEVENTEEN AND FIVE TENTHS SECONDS WEST, TWO HUNDRED THIRTY-THREE AND FORTY-FOUR HUNDREDTHS FEET (233.44') TO THE POINT OF BEGINNING.

PARCEL 3: A PARCEL OF LAND IN THE NORTHWEST QUARTER (NW 1/4) OF SECTION THIRTY-FOUR (34), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE EIGHT (8) WEST OF THE SECOND PRINCIPAL MERIDIAN, IN THE CITY OF GARY, LAKE COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION THIRTY-FOUR (34); THENCE NORTH EIGHTY-NINE DEGREES, FIFTY-FIVE MINUTES, SEVEN SECONDS WEST ALONG THE SOUTH LINE OF SAID SECTION THIRTY-FOUR (34) (BASIS OF BEARINGS), TWO THOUSAND SEVEN HUNDRED FIFTY AND ZERO HUNDREDTHS FEET (2,750.00'); THENCE NORTH ZERO DEGREES, ZERO MINUTES, ZERO SECONDS EAST, THREE THOUSAND FIVE HUNDRED FORTY-ONE AND EIGHTY-NINE HUNDREDTHS FEET (3,541.89') TO THE POINT OF BEGINNING; THENCE SOUTH EIGHTY-NINE DEGREES, FIFTY-SIX MINUTES, THIRTY-TWO SECONDS WEST, ONE HUNDRED FIFTY AND ZERO HUNDREDTHS FEET (150.00'); THENCE NORTH ZERO DEGREES, THREE MINUTES, TWENTY-EIGHT SECONDS WEST, TWO HUNDRED AND ZERO HUNDREDTHS FEET (200.00'); THENCE NORTH EIGHTY-NINE DEGREES, FIFTY-SIX MINUTES, THIRTY-TWO SECONDS EAST, ONE HUNDRED FIFTY AND ZERO HUNDREDTHS FEET (150.00'); THENCE SOUTH ZERO DEGREES, THREE MINUTES, TWENTY-EIGHT SECONDS EAST, TWO HUNDRED AND ZERO HUNDREDTHS FEET (200.00') TO THE POINT OF BEGINNING.



SCHEDULE I TO MORTGAGE

CONTRACTS

1. Asset Purchase Option Agreement dated as of May 2, 1991, among Kenron Corporation, Gary PCI Ltd. L.P. and Gary Coal Processing L.P.
2. Operating Services and Tolling Agreement dated as of May 2, 1991, between USX Corporation and Gary PCI Ltd. L.P., as assigned by Gary PCI Ltd. L.P. to Kenron Corporation pursuant to the Assignment and Assumption Agreement dated as of May 2, 1991, between Gary PCI Ltd. L.P. and Kenron Corporation
3. Land Lease dated as of May 2, 1991, between USX Corporation and Gary PCI Ltd. L.P., as assigned by Gary PCI Ltd. L.P. to Kenron Corporation pursuant to the Assignment and Assumption Agreement dated as of May 2, 1991, between Gary PCI Ltd. L.P. and Kenron Corporation
4. Turnkey Construction Contract dated as of May 2, 1991, between Kenron Corporation and ICF Kaiser Engineers, Inc.
5. Technical Construction Contract dated as of May 2, 1991, between Kenron Corporation and ICF Kaiser Engineers, Inc.
6. ICF Construction Contract Guaranty dated as of May 2, 1991, by ICF International, Inc., in favor of Kenron Corporation
7. Construction Services Agreement dated as of February 15, 1991, as amended by Amendment No. 1 thereto dated as of May 2, 1991, between ICF Resources Incorporated and Kenron Corporation
8. Sublicense Agreement dated as of May 2, 1991, between Kenron Corporation and ICF Kaiser Engineers, Inc.
9. Operating Agreement dated as of May 2, 1991, between ICF Kaiser Engineers Operating Co., Inc., and Kenron Corporation
10. ICF Operating Agreement Guarantee dated as of May 2, 1991, by ICF International, Inc., in favor of Kenron Corporation

- 11. Management Services Agreement dated as of May 2, 1991, among Gary PCI Ltd. L.P., Gary Coal Processing L.P. and ICF Resources Incorporated



DEFINITIONS AND USAGE

Usage

The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. "Writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form. Any instrument or Governmental Rule defined or referred to below or in any instrument that is governed by this Appendix A means such instrument or Governmental Rule as from time to time amended, modified or supplemented, including (in the case of instruments) by waiver or consent and (in the case of Governmental Rules) by succession of comparable successor Governmental Rules and includes (in the case of instruments) references to all attachments thereto and instruments incorporated therein. References to a Person are, unless the context otherwise requires, also to its successors and assigns. Any term defined below by reference to any instrument or Governmental Rule has such meaning whether or not such instrument or Governmental Rule is in effect. "Hereof", "herein", "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References to any gender include, unless the context otherwise requires, references to all genders, and references to the singular include, unless the context otherwise requires, references to the plural and vice versa. "Shall" and "will" have equal force and effect. References in an instrument to "Article", "Section" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section or subdivision of or an attachment to such instrument.

Definitions

"Acceptable Bank" means any U.S. or domestic bank whose long-term debt securities or whose holding company's long-term debt securities are rated AA- or better by Standard & Poor's Corporation or Aa-3 or better by Moody's Investors Service Inc.

"Acceptable Transferee" means any Person that (i) has a minimum net worth of at least \$50,000,000, (ii) is not a direct competitor of USX or ICF, and (iii) is not in a business that could provide or apply pulverized coal technology or engineering of the type involved in the construction and operation of the Facility.

"Accountants" is defined in Section 10.3 of the Partnership Agreement.

"Act" is defined in Article I of the Partnership Agreement.

"Actions or Proceedings" means any lawsuit, proceeding, arbitration or other alternative dispute resolution process (other than dispute resolution process pursuant to any Operative Document (it being understood that such dispute resolution process shall include only the provisions of any such Operative Document related to meetings between the parties and not other remedies afforded by law)) or Governmental Authority investigation or audit.

"Additional Contract" means any contract (except any contract of an immaterial nature that is entered into in the ordinary course of business) entered into by Borrower or Partnership after the As of Date providing for (i) the purchase or transportation of materials or products used to operate the Facility, (ii) the pulverization of coal or (iii) the construction, operation or maintenance of the Facility (other than employment contracts).

"Adjusted Capital Account" is defined in Article I of the Partnership Agreement.

"Adverse Proceeding" means any Action or Proceeding that is reasonably likely to be adversely determined and, if adversely determined, could have a Material Adverse Effect.

"Affiliate" of any Person means any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or common control with such Person.

"Agent" means (a) in the case of the Construction Loan Agreement, GE Capital and (b) in the case of the Senior Term Loan Agreement, (i) if GE Capital is the only Senior Lender, GE Capital, (ii) if GE Capital is not the only Senior Lender and the transfer of GE Capital's interest in

the Senior Term Loan Agreement and the Senior Term Note was effected at the election of GE Capital, GE Capital and (iii) if GE Capital is not the only Senior Lender and the transfer of GE Capital's interest in the Senior Term Loan Agreement and the Senior Term Note was effected at the request of ICF, the holders of Replacement Senior Term Notes in an aggregate principal amount equal to a majority of the aggregate outstanding principal amount of all Replacement Senior Notes.

"Alterations" means alterations, modifications, additions and improvements to the Plant.

"Annual Management Fee" is defined in Section 2.4 of the Management Services Contract.

"Approved Budget" is defined in Article III(u) of the Participation Agreement.

"Approved USX Change Order" means any Change Order approved by USX the full cost of which will be borne by USX either directly at the time such cost is incurred or through an increase in Tolling Fees pursuant to the Tolling Agreement.

"ASC" means Armco Steel Company, L.P., a Delaware limited partnership.

"As of Date" means May 2, 1991.

"Assignments and Consents" is defined in Section III(y) of the Participation Agreement.

"Average Commercial Paper Rate" means, with respect to any Interest Period or Construction Cost Overrun Interest Period, the average of the Commercial Paper Rates published during such Interest Period or Construction Cost Overrun Interest Period, as applicable.

"B&W" means Babcock and Wilcox Company, a Delaware corporation.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended, as the same may be further amended, and any other applicable law with respect to bankruptcy, insolvency or reorganization that is successor thereto.

"Base Rate" is defined in Section 2.05 of the Construction Loan Agreement.

"Borrower" means Kenron.

"Borrower's Shares" is defined in the Borrower Stock Pledge Agreement.

"Borrower Stock Pledge Agreement" means the Stock Pledge Agreement dated as of the As of Date, among Jonathan Bram, Donald Kendall and David McIlhenny, as pledgors, and GE Capital, Partnership and Gary-PCI, as secured parties.

"Borrower Sublicense Agreement" means the License Agreement dated as of the As of Date between Contractor and Borrower.

"Borrowing Certificate" means an Officer's Certificate of Borrower in substantially the form of Exhibit B to the Construction Loan Agreement.

"Business Day" is defined in the Tolling Agreement.

"Business Hours" means 9:00 a.m. through 5:00 p.m. local time on Business Days.

"Capital Account" is defined in Section 3.3 of the Partnership Agreement.

"Capital Contribution" is defined in Article I of the Partnership Agreement.

"Change in Tax Law" is defined in Article I of the Partnership Agreement.

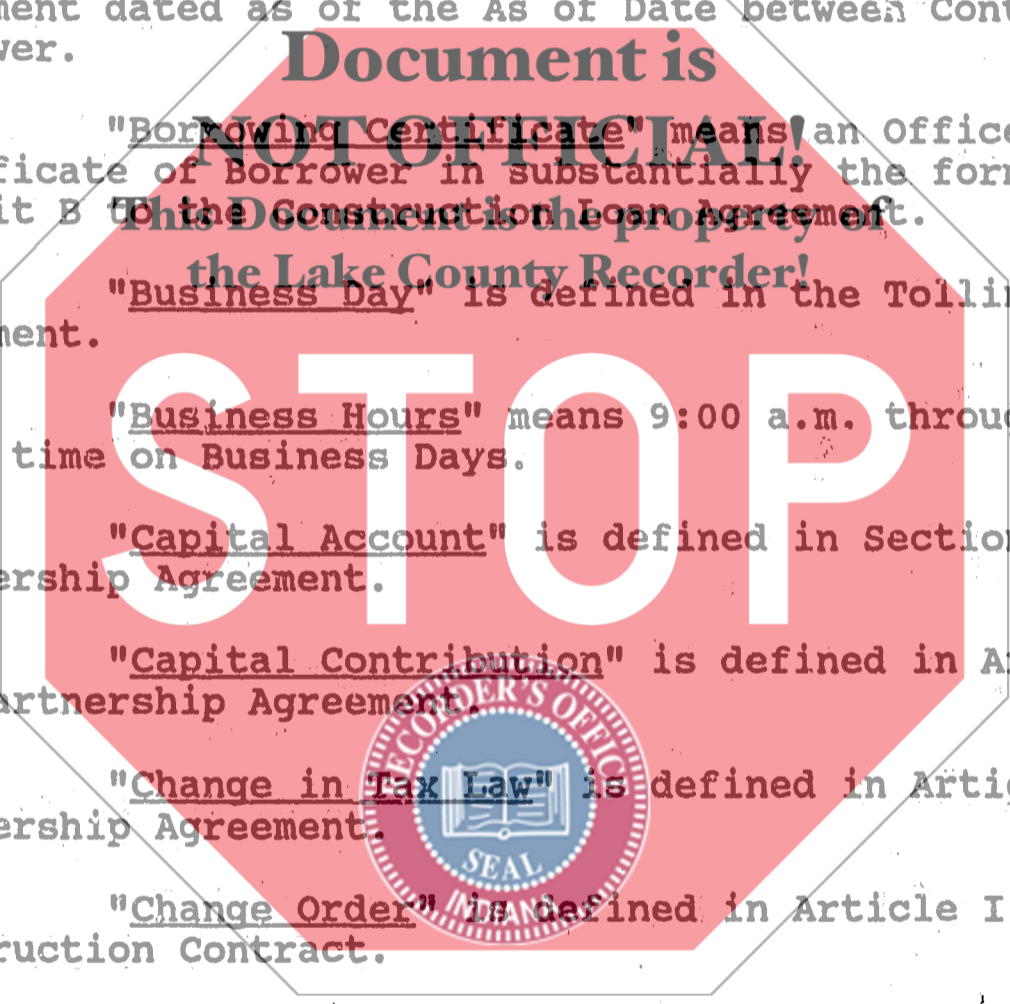
"Change Order" is defined in Article I of the Construction Contract.

"Change Order Loan Facility" means the Change Order Loan Facility Agreement dated as of the As of Date between Borrower and Gary-PCI.

"Change Order Loan" is defined in Section 1.1 of the Change Order Loan Facility.

"Change Order Note" is defined in Section 1.1 of the Change Order Loan Facility.

"Closing" means the funding of the initial Construction Loan.



"Closing Date" means May 9, 1991, or such other date as shall be agreed among the parties to the Participation Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commencement Date" is defined in Section 1.1 of the Tolling Agreement.

"Commercial Paper Rate" means, as of any date, the weekly average annual yield on 30-day commercial paper for AA-rated industrial corporations placed by dealers, as quoted in The Federal Reserve Board Statistical Release H.15 or, if for any reason the Federal Reserve Board shall fail to publish such quotes, in such other financial publication as Agent may from time to time reasonably select with the consent of Borrower (which consent shall not be unreasonably withheld).

"Construct" and correlative words with respect to the Facility also mean refurbish and correlative words, except where the context otherwise requires.

"Construction Contract" means the Turnkey Construction Contract dated as of the As of Date, between Borrower and Contractor and assigned as collateral security by Borrower to GE Capital with the consent of Contractor.

"Construction Cost Overrun Interest Period" is defined in Section 1.1 of the Construction Cost Overrun Loan Facility.

"Construction Cost Overrun Loan Facility" means the Construction Cost Overrun Loan Facility dated as of the As of Date between Borrower and Gary-PCI.

"Construction Cost Overrun Loans" is defined in Section 3.1 of the Construction Cost Overrun Loan Facility.

"Construction Cost Overruns" is defined in Section 1.1 of the Construction Cost Overrun Loan Facility.

"Construction Cost Overrun Note" is defined in Section 1.1 of the Construction Cost Overrun Loan Facility.

"Construction Lender" means GE Capital and any other holder of a Replacement Construction Note.

"Construction Loans" means the loans to Borrower made pursuant to Section 2.02 of the Construction Loan Agreement.

"Construction Loan Agreement" means the Construction Loan Agreement dated as of the As of Date, between Borrower and Construction Lender.

"Construction Loan Closing Fee" is defined in Section 7.01 of the Participation Agreement.

"Construction Loan Default" means a Construction Loan Event of Default or an event or a condition that with the giving of notice or the lapse of time or both would become a Construction Loan Event of Default.

"Construction Loan Event of Default" is defined in Section 4.01 of the Construction Loan Agreement; provided, however, that any requirement for the giving of notice, the lapse of time or both, or any other condition specified therein, shall have then been satisfied.

"Construction Note" means the note referred to in Section 2.04 of, and substantially in the form of Exhibit A to, the Construction Loan Agreement.

"Construction Period" means the period beginning on the Closing Date and ending on the Maturity Date.

"Construction Period Letter of Credit" is defined in Section 5.02(n) of the Participation Agreement.

"Construction Services Agent" means Resources or any successor thereto under the Construction Services Agreement.

"Construction Services Agreement" means the Construction Services Agreement dated as of February 15, 1991, between the Construction Services Agent and Borrower, as amended by Amendment No. 1 thereto dated as of the As of Date between the Construction Services Agent and Borrower.

"Construction Services Fee" is defined in Section 1.1 of the Construction Services Agreement.

"Construction Services Fee Adjustment" is defined in Section 1.1 of the Construction Services Agreement.

"Contractor" means ICF Kaiser Engineers, Inc., an Ohio corporation.

"Contractor's Letter of Credit" means any of the Performance Letter of Credit and any Retainage Letter of Credit.

"Contracts" means the Construction Contract, the Technical Construction Agreement, the Construction Services Agreement, the License Agreement, the Borrower Sublicense Agreement, the USX Sublicense Agreement, the Services Agreement, the Operating Agreement, the Management Services Agreement, the Land Lease, the Tolling Agreement and any Additional Contract.

"Counterparty" to a Contract means any party thereto other than Partnership or General Partner.

"Debt" of any Person means at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except Project Expenses and trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person as lessee under capital leases, (v) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, and (vi) all Debt of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee; provided, however, that Debt shall not include endorsements for the purpose of collection in the ordinary course of business.

"Default Letter of Credit" is defined in Section 5.02(o) of the Participation Agreement.

"Default Letter of Credit Reimbursement Note" is defined in the LOC Reimbursement Loan Facility.

"Default LOC Amount" is defined in Section 5.02(o) of the Participation Agreement.

"Delayed Funding Hedge Payment" is defined in Section 2.07(b) of the Construction Loan Agreement.

"Distributable Net Cash Flow" is defined in Article I of the Partnership Agreement.

"Documentary Conventions" means, with respect to an instrument that states in substance that it is governed thereby, that, except as expressly provided therein:

(a) **Liabilities.** No party to such instrument shall have any obligation or duty to any other party thereto or any other Person with respect to the transactions contemplated thereby except those obligations or duties expressly set forth in the Operative Documents.

(b) **Notices.** Subject to paragraph (k) below, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms of such instrument to be given to any Person shall be in writing, and any such communication shall become effective five Business Days after being deposited in the United States mails, certified or registered, with appropriate postage prepaid for first class mail or, if delivered by hand or courier service or in the form of a telex, telecopy or telegram, when received, and shall be directed to the address or telex or telecopy number of such Person set forth in Schedule I to the Participation Agreement. Notwithstanding the foregoing, notice delivered by telecopy shall be deemed received only by answerback or upon verbal or written acknowledgement of receipt thereof by the addressee. From time to time any party to such instrument may designate a new address or telex or telecopy number for purposes of notice thereunder by notice to each of the other parties thereto in accordance with the provisions of this paragraph (c).

(c) **Severability.** Any provision of such instrument that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties to such instrument waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

(d) **Entire Agreement; Amendment and Waiver.** Such instrument, together with the other applicable Operative Documents, constitutes the entire agreement of the

parties thereto with respect to the subject matter thereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither such instrument nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. No failure or delay by any party thereto in exercising any power or right under such instrument shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

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(e) Table of Contents; Headings. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of such instrument are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of such instrument.

(f) Parties in Interest; Limitation on Rights of Others. The terms of such instrument shall be binding upon, and inure to the benefit of, the parties thereto and their successors and assigns. Nothing in such instrument, whether express or implied, shall be construed to give any Person (other than the parties thereto and their successors and assigns and as expressly provided therein) any legal or equitable right, remedy or claim under or in respect of such instrument or any covenants, conditions or provisions contained therein.

(g) Method of Payment. All amounts required to be paid by any party to such instrument to any other party, either thereunder or under any Operative Document, shall be paid in such freely transferable coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, by wire transfer of immediately available funds to the account set forth in Schedule I to the Participation Agreement or to such other account located in the United States as such party may specify by notice to the other parties.

(h) Counterparts. Such instrument may be executed by the parties thereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.

(i) Governing Law. Such instrument shall in all respects be governed by, and construed in accordance with, the laws (excluding principles of conflict of laws) of the State of New York or such other jurisdiction as is specified therein applicable to agreements made and to be performed entirely within such State or other jurisdiction, including all matters of construction, validity and performance, except, as to matters relating to real property, as the laws of Indiana are mandatorily applicable thereto.

(j) Jurisdiction, Court Proceedings. Any suit, action or proceeding against any party to such instrument arising out of or relating to any Operative Document, any transaction contemplated thereby or any judgment entered by any court in respect of any thereof may be brought in any Federal or State court located in the Borough of Manhattan, New York, New York, and each such party thereby submits to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. To the extent that service of process by mail is permitted by applicable law, each such party irrevocably consents to the service of process in any such suit, action or proceeding in such courts by the mailing of such process by registered or certified mail, postage prepaid, at its address for notices provided for above. Each such party irrevocably agrees not to assert any objection which it may ever have to the laying of venue of any such suit, action or proceeding in any Federal or State court located in the Borough of Manhattan, New York, New York, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each such party waives any right to a trial by jury, to the extent lawful.

(k) Payment on Business Days. If any payment under such instrument is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day, but interest shall accrue during the period of such extension.

"Dollars" or "\$" means United States dollars.

"Engineer" means (i) for purposes of Article III(o) of the Participation Agreement, ESBI Energy Company, and (ii) for all other purposes, a registered professional engineer licensed to practice in Indiana, independent of Borrower, Partnership and their respective Affiliates, appointed by Borrower (in the case of any such appointment prior to the Permanent Financing Date) or Partnership (in the case of any such appointment on or after the Permanent Financing Date), in each case with the consent of Contractor (in the case of any such appointment prior to the Permanent Financing Date), Operator (in the case of any such appointment on or after the Permanent Financing Date), GE Capital (such consent not to be unreasonably withheld) (except that for purposes of Section 3.01(n) of the Senior Term Loan Agreement the appointment shall be by Senior Lender with the consent of Operator and Partnership (such consent not to be unreasonably withheld), familiar with engineering matters relating to the Facility or facilities similar thereto.

"Environmental Audit" is defined in Article III(aa) of the Participation Agreement.

"Environmental Laws" is defined in the Tolling Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any comparable successor Federal Statute.

"Event of Loss" with respect to the Plant shall mean any of the following events: (i) loss of the Plant or the Premises (in its entirety or a substantial portion thereof such that the then remaining portion of the Plant cannot practically be utilized for the purposes intended) or the use thereof due to destruction, damage beyond repair or rendition of the Plant permanently unfit for normal use by Partnership for any reason whatsoever; (ii) any damage to the Plant which results in an insurance settlement with respect to the Plant on the basis of a total loss; (iii) a Material Taking (as such term is defined in Section 12.4 of the Tolling Agreement) shall occur and the Tolling Agreement shall terminate; or (iv) the prohibition of the use of such property, as a result of any Governmental Rule, for a period of 180 consecutive days.

"Expansion Letter of Credit" is defined in Section 5.02(p) of the Participation Agreement.

"Expansion Letter of Credit Reimbursement Note" is defined in the LOC Reimbursement Loan Facility.

"Expansion Letter of Credit Release Tests" means (i) the Tolling Agreement shall have been amended either (a) to limit the types of coal that can be processed at the Facility during the failure of any three pulverizers for more than two months to higher quality coals such that two pulverizers would allow Partnership to deliver coal at a rate equal to at least 85% of the Required Rate (as defined in the Tolling Agreement); or (b) to reduce the Pulverized Coal Delivery Rate that would trigger an event of default pursuant to Section 10.1 of the Tolling Agreement from 85% to 65% in the event that the Required Rate exceeds 2,945 tons per day and any of the three pulverizers fails, and to limit the amount of liquidated damages to be paid pursuant to Section 6.7 of the Tolling Agreement to an amount not in excess of \$350,000 per month for any month in which the Pulverized Coal Delivery Rate is less than 85%; and (ii) GE Capital shall no longer require the installation of a fourth pulverizer because during two successive performance tests, carried out at Operator's option, as outlined in Exhibit 5.01(p) to the Participation Agreement over a 24-month period (but no more frequently than annually), the sustainable capacity of each of the individual pulverizers is determined by GE Capital and Operator to be at a level such that with any two pulverizers operating at the Pulverized Coal Delivery Rate as a percentage of the Required Rate for the preceding year, assuming the processing of lowest-quality coals permitted under the Tolling Agreement, would result in an output of pulverizers of at least 3,003 tons per day.

"Expenses" means any and all liabilities (including liabilities arising out of the doctrine of strict liability), obligations, losses, damages, penalties, claims, actions, suits, judgments, costs, expenses and disbursements, including legal fees and disbursements and expenses and costs of investigation, whether or not the underlying claim for any of the foregoing be founded or unfounded, of whatsoever kind and nature (other than Taxes).

"Extended Maturity Date" is defined in Section 2.07(b) of the Construction Loan Agreement.

"Facility" means the Plant and the Premises.

"Final Acceptance" is defined in Article I of the Construction Contract.

"Final Acceptance Date" is defined in Article I of the Construction Contract.

"Final Acceptance Punchlist" is defined in the Construction Contract.

"Fiscal Year" is defined in Section 8.7 of the Partnership Agreement.

"GAAP" means generally accepted accounting principles as from time to time in effect and, with respect to a determination, as in effect as of the date as of which the determination is to be made.

"Gary-PCI" means Gary PCI Ltd. L.P., a Delaware limited partnership.

"Gary-PCI Assignment Agreement" means the Assignment and Assumption Agreement, dated as of the As of Date, pursuant to which Gary-PCI assigned and Kenron assumed all Gary-PCI's right, title and interest in, to and under the Tolling Agreement and the Land Lease.

"Gary-PCI Interest" is defined in the Partnership Pledge Agreement.

"Gary-PCI Letter of Credit" means any of the Construction Period Letter of Credit, the Default Letter of Credit and the Expansion Letter of Credit.

"GE Capital" means General Electric Capital Corporation, a New York corporation.

"GE Credit and Leasing" means General Electric Credit and Leasing Corporation, a New York corporation.

"GECLC" is defined in Article I to the Partnership Agreement.

"General Partner" is defined in Article I of the Partnership Agreement.

"Governmental Actions" means all authorizations, consents, approvals, waivers, exceptions, variances, franchises, permissions, permits and licenses of, and filings and declarations with, Governmental Authorities.

"Governmental Authority" is defined in the Tolling Agreement.

"Governmental Rule" is defined in the Tolling Agreement.

"Hazardous Materials" is defined in Section 1.1 of the Tolling Agreement.

"Hedge Cost Guarantee Agreement" means the Hedge Cost Guarantee Agreement dated as of the As of Date by ICF and Resources in favor of GE Capital.

"Hedge Cost Reimbursement Fee" is defined in Section 7.04 of the Participation Agreement.

"ICF" means ICF International, Inc., a Delaware corporation (which prior to March 1, 1991, was known as American Capital and Research Corporation).

"ICF and Resources Agreement" means the agreement dated as of the As of Date among ICF, Resources and GE Capital.

"ICF Construction Contract Guarantee" means the ICF Construction Contract Guaranty dated as of the As of Date by ICF in favor of Kenron.

"ICF Operating Agreement Guarantee" means the ICF Operating Agreement Guaranty dated as of the As of Date by ICF in favor of Kenron.

"Impositions" is defined in Section 5.11 of the Construction Loan Agreement and Section 5.14 of the Senior Term Loan Agreement.

"Income" or "Loss" is defined in Article I of the Partnership Agreement.

"Indemnitee" means GE Capital, Construction Lender, Senior Lender, GECLC and the successors, assigns, servants, directors, officers, employees and agents of any thereof.

"Initial Period" is defined in Article I of the Partnership Agreement.

"In-Service Date" means the date the plant is placed in service for Federal income tax purposes.

"Instrument" or **"instrument"** means any agreement, indenture, contract, mortgage, deed of trust, note, bond, stock, debenture, security, certificate, opinion, permit, license, financial statement, instrument or other paper or document.

"Intellectual Property" means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, processes, formulae, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, plans methodologies, research records, computer programs (including all source codes) and related documentation, technical information, manufacturing, engineering, technical drawings, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights.

"Interest" is defined in Article I of the Partnership Agreement.

"Interest Loans" is defined in Section 2.03 of the Construction Loan Agreement.

"Interest Payment Date" means the twenty-fifth day of each calendar month (or, if earlier, the Loan Date during such month), commencing with the first calendar month following the calendar month in which the Closing Date shall occur.

"Interest Period" means (a) in the case of the first Interest Period, the period from and including the Closing Date to but excluding the first Interest Payment Date and (b) thereafter, each period from and including an Interest Payment Date to but excluding the next following Interest Payment Date (or, in the case of the last Interest Period, the Maturity Date).

"Kenron" means Kenron Corporation, a Delaware corporation.

"Land Lease" means the Land Lease dated as of the As of Date, between USX and Gary-PCI, assigned by Gary-PCI to Borrower and assigned as collateral security by Borrower to GE Capital, in each case with the consent of USX.

"Lender's Engineer" is defined in Article I of the Construction Contract.

"License Agreement" means the License Agreement dated the As of Date among Contractor, ASC and B & W.

"Lien" means any lien, mortgage, encumbrance, pledge, charge, lease, easement, servitude, right of others or security interest of any kind, including any thereof arising under conditional sales or other title retention agreements.

"Limited Partner" is defined in Article I of the Partnership Agreement.

"Loans" means Construction Loans, Interest Loans and the Senior Term Loan.

"Loan Date" is defined in Section 2.02(b) of the Construction Loan Agreement.

"LOC Reimbursement Loan Facility" means the Reimbursement Loan Facility Agreement dated as of the As of Date between Partnership and Gary-PCI.

"LOC Reimbursement Note" is defined in Section 1.1 of the LOC Reimbursement Loan Facility.

"Maintenance Reserve" is defined in Section 6.4 of the Operating Agreement.

"Make-Whole Amount" means, with respect to any portion of the Senior Term Loan being prepaid, a premium equal to the present value, discounted over the remaining number of years from the date of prepayment to scheduled maturity, at a rate per annum equal to the yield on actively traded United States Treasury securities selected by Senior Lender with a final maturity closest to the Senior Term Loan Maturity Date ("Treasury Bill Yield"), of the product obtained by multiplying (x) the positive difference, if any, between (A) the rate per annum at which interest accrues on the Senior Term Note pursuant to Section 2.03 of the Senior Term Loan Agreement and (B) Treasury Bill Yield, times (y) the portion of Senior Term Loan being prepaid.

"Management Services Agreement" means the Management Services Agreement dated as of the As of Date among Gary-PCI, Partnership and Resources.

"Managing General Partner" is defined in Article I of the Partnership Agreement.

"Material Adverse Effect" means a material adverse effect on (a) the assets, liabilities, financial condition, business or operations of Partnership, General Partner, Borrower or any other party to any Operative Document that is an Affiliate of Partnership, General Partner or Borrower or any such Person's ability to carry on its business, (b) any such Person's ability to perform its obligations under any Operative Document to which it is or is to be a party, (c) the Mortgaged Property or (d) the security granted under the Security Documents.

"Maturity Date" means the earliest of (i) November 2, 1993, (ii) the Permanent Financing Closing Date, (iii) 60 days after the date on which GECLC shall have notified Gary-PCI in writing that it will not fund its required capital contribution pursuant to Section 3.2(a) of the Partnership Agreement because the condition to such funding set forth in the first sentence of Section 3.2(c)(i) of the Partnership Agreement shall not have been satisfied or because GECLC has no obligation to fund such capital contribution pursuant to the provisions of Section 3.2(c)(ii) or 3.2(c)(iii) of the Partnership Agreement and (iv) the exercise by Gary-PCI of the Gary-PCI Option under the Option Agreement; provided, however, that if the Maturity Date is extended pursuant to Section 2.07(b) of the Construction Loan Agreement, Maturity Date shall mean the Extended Maturity Date.

"Maximum Capacity" of the Plant shall mean from time to time the designed capacity to perform, in commercial operation, in compliance with all Governmental Rules then in effect, on a continuing basis, the functions for which the Plant was specifically designed in accordance with the Plans and Specifications and the Construction Contract, subject to ordinary wear and tear.

"Mechanical Completion" is defined in the Construction Contract.

"Milestone Payment" means each payment to be made pursuant to Section 4.2 of the Construction Contract.

"Milestone Payment Schedule" is defined in Article I of the Construction Contract.

"Mortgage" means the Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of the As of Date from Borrower and Partnership to GE Capital.

"Mortgaged Property" is defined in the granting clause of the Mortgage.

"Net Cash Flow" is defined in Article I of the Partnership Agreement.

"Net Income" or "Net Losses" is defined in Article I of the Partnership Agreement.

"Officer's Certificate" means, as to any Person, a certificate of a Responsible Officer of such Person.

"Operating and Capital Expenditure Budget" is defined in Section 1.2 of the Senior Term Loan Agreement.

"Operating Agreement" means the Operating Agreement dated as of the As of Date between Operator and Borrower and assigned as collateral security by Borrower to GE Capital, in each case with the consent of Operator.

"Operating Cash Flow" is defined in Article I of the Partnership Agreement.

"Operating Expenses" is defined in Article I of the Partnership Agreement.

"Operating Fees" is defined in Section 1.2 of the Operating Agreement.

"Operative Documents" means the Participation Agreement, the Partnership Agreement, the Option Agreement, the Construction Loan Agreement, the Construction Note, the Security Documents, the ICF Construction Contract Guarantee, the Hedge Cost Guarantee Agreement, the ICF Operating Agreement Guarantee, the ICF and Resources Agreement, the Gary-PCI Letters of Credit, the Contractor's Letters of Credit, the Construction Cost Overrun Loan Facility, the Construction Cost Overrun Note, the Change Order Loan Facility, the Change Order Note, the LOC Reimbursement Loan Facility, the Default Letter of Credit Reimbursement Note, the Expansion Letter of Credit Reimbursement Note, the Senior Term Loan Agreement, the Senior Term Note, the Contracts and the Assignments and Consents.

"Operator" or "operator" means ICF Kaiser Engineers Operating Co., Inc., a Delaware corporation.

"Option Agreement" means the Asset Purchase Option Agreement dated as of the As of Date, among Borrower, Gary-PCI and Partnership and assigned by Partnership to GE Capital as collateral security.

"Option Closing Date" is defined in Section 1.01 of the Option Agreement.

"Order" is defined in the Tolling Agreement.

"Participation Agreement" means the Participation Agreement dated as of the As of Date among Partnership, Gary-PCI, Borrower, Limited Partner and GE Capital.

"Partner" is defined in Article I of the Partnership Agreement.

"Partnership" means Gary Coal Processing L.P., a Delaware limited partnership.

"Partnership Agreement" means the Agreement of Limited Partnership dated as of the As of Date, between General Partner and Limited Partner.

"Partnership Certificate" means the certificate of limited partnership relating to Partnership.

"Partnership Option" is defined in Section 2.01 of the Option Agreement.

"Partnership Pledge Agreement" means the Partnership Pledge Agreement dated as of the As of Date between Gary-PCI, as pledgor, and GE Capital, as secured party.

"Parts" means appliances, parts, instruments, appurtenances, accessories, furnishings, equipment and other property of whatever nature which may be incorporated in or attached or affixed to the Plant or the Premises.

"PCI Option" is defined in Section 2.04 of the Option Agreement.

"Performance Letter of Credit" has the meaning ascribed thereto in Section 11.6 of the Construction Contract.

"Permanent Financing Closing Date" has the meaning ascribed thereto in Section 3.01 of the Senior Term Loan Agreement.

"Permanent Financing Default" means a Permanent Financing Event of Default or an event or a condition that with the giving of notice or the lapse of time or both would become a Permanent Financing Event of Default.

"Permanent Financing Event of Default" is defined in Section 4.01 of the Senior Term Loan Agreement; provided, however, that any requirement for the giving of notice, the lapse of time or both, or any other condition specified therein, shall have then been satisfied.

"Permitted Debt" means (a) in the case of Borrower, Debt of Borrower pursuant to the Construction Cost Overrun Loan Facility (including obligations arising thereunder as a result of drawings under the Construction Period Letter of Credit) and the Change Order Loan Facility and Debt incurred as contemplated by Section 4.01(q) of the Construction Loan Agreement so long as such Debt shall have been approved by Construction Lender, (b) in the case of Partnership, Debt of Partnership under the LOC Reimbursement Loan Facility, Debt of Partnership arising on or after the Permanent Financing Closing Date for the payment of deferred purchase price of property or services or as lessee under capitalized leases so long as the aggregate obligations of Partnership with respect to such Debt do not exceed \$350,000 in any Fiscal Year, Permitted Letter of Credit Reimbursement Obligations, Permitted Debt of Borrower assumed by Partnership pursuant to the Option Agreement and (c) in the case of Gary-PCI, reimbursement obligations for drawings under Gary-PCI Letters of Credit to the extent such drawings represent Permitted Letter of Credit Reimbursement Obligations.

"Permitted Investments" means (a) obligations of, or guaranteed as to interest and principal by, the United States of America, (b) open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof and not an Affiliate of General Partner which paper is rated "P-1" or its equivalent by Moody's Investors Service Inc. or "A-1" or its equivalent by Standard & Poor's Corporation, (c) certificates of deposit issued by Acceptable Banks, (d) obligations of any state of the United States of America or any municipality or political subdivision of such state if at the time of their purchase such obligations are rated in either of the two highest rating categories by Moody's Investors Service Inc.,

Standard & Poor's Corporation or any other nationally recognized statistical rating organization, (e) repurchase agreements if entered into with a bank, the long-term unsecured debt obligations of which are rated Aa-3 or better by Moody's Investors Service Inc. or "AA-" or better by Standard & Poor's Corporation and the deposits which are insured by the Federal Deposit Insurance Corporation, or a broker or dealer (as defined in the Securities Exchange Act of 1934) that is a member of the Securities Investors Protection Corporation, the long-term unsecured debt obligations of which are rated by Moody's Investors Service Inc. or Standard & Poor's Corporation in either of their two highest whole letter rating categories and, if in any case a prior perfected security interest in the obligations that are the subject of such repurchase agreement has been granted to Agent for the benefit of Construction Lender or Senior Lender, as the case may be, and such obligations are held in custody by the secured party or any agent therefor and are free and clear of any adverse claims, and (f) other investments that are consented to in writing by Agent. Payments under such Permitted Investments may not be linked to any variable other than the principal amount thereof and the fixed or floating interest rate thereon and such Permitted Investments shall not mature more than 180 days from the date of acquisition thereof.

"Permitted Letter of Credit Reimbursement Obligations" is defined in Article I of the Partnership Agreement.

"Permitted Liens" means (a) the rights and interests of any party as provided in the Operative Documents, (b) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings, so long as such proceedings shall not involve any material danger of the sale, forfeiture or loss of any part of the Facility, title thereto or any interest therein and shall not interfere with the use of or disposition of the Facility or the payment of any amount payable to GE Capital under any Operative Document, (c) Liens related to Permitted Debt, (d) the Liens specifically listed in the mortgagee's title policy with respect to the Facility referred to in Article III(cc) of the Participation Agreement, (e) any mechanic's, worker's, repairer's, materialmen's, supplier's, vendor's or like Liens securing obligations arising in the ordinary course of business that are not overdue, or that are being contested in good faith, for which a bond satisfactory to Agent has been posted and that do not materially impair the value of the security granted to GE Capital for the benefit of Construction Lender or Senior Lender, as the case may be,

pursuant to the Security Documents, (f) Liens or equitable encumbrances arising out of litigation, attachments, judgments or awards with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and by appropriate proceedings and for which a bond satisfactory to Agent has been posted, so long as such proceedings shall not involve any material danger of the sale, forfeiture or loss of any part of the Facility, title thereto or any interest therein and shall not interfere with the use of or disposition of the Facility or the payment of any amount payable to GE Capital, Construction Lender or Senior Lender under any Operative Document, and (g) all utility, access and other similar easements, rights of way and restrictions granted in the ordinary course of construction that do not impair the value of the security granted to GE Capital pursuant to the Security Documents.

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 "Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, nonincorporated organization or Governmental Authority.

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 "Plans and Specifications" means the plans and specifications devised for purposes of the Construction Contract and in compliance with all applicable Governmental Rules for the construction, operation and maintenance of the Plant, including any document describing the scope of the work to be performed by Contractor or any other contractor or subcontractor for the construction of the Plant, all engineering and construction schedules, project monitoring systems, specification status lists, material and procurement ledgers, drawings and drawing lists, manpower allocation documents, management and project procedures documents, project design criteria and any other instrument referred to in the Construction Contract or any of the instruments referred to in this definition, as the same may be revised from time to time with notice to GE Capital.

"Plant" means those components comprising a pulverized coal injection facility located on the Premises, as such facility is more specifically described in Part 2-A of the Technical Construction Agreement, which may from time to time be incorporated or installed therein or attached thereto.

"Pledgors" means Jonathan Bram, Donald Kendall and David McIlhenny.

"Premises" means the real property described in Exhibit A to the Land Lease upon which the Plant will be located.

"Prime Rate" means on any date the rate per annum as of the close of business which Morgan Guaranty Trust Company shall publicly announce at its principal office as its "prime rate or base rate" or similar rate in effect on such date, whether or not any such rate is in fact charged to any of its customers.

"Private Actions" means all material consents, permits and licenses of (i) Persons other than Governmental Authorities and (ii) Governmental Authorities acting in private capacities.

"Project Development Fee" is defined in Section 1.1 of the Construction Services Agreement.

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"Project Expenses" means any and all costs and expenses of Borrower and/or Partnership in any way relating to or arising out of the Facility, including any and all costs and expenses relating to or arising out of (i) the Plant, the Premises or any part thereof; (ii) any Operative Document or any equity participation of GE Capital or GECLC, any payment made pursuant to any Operative Document or any transaction contemplated by any Operative Document (including payment of the Construction Services Fee (as adjusted by the Construction Services Fee Adjustment), the Project Development Fee and the Construction Loan Closing Fee); (iii) the construction, ownership, financing or refinancing or operation of the Facility or the entering into of any Operative Document or any transaction contemplated hereby or thereby; (iv) the regulation of the construction, ownership, leasing or operation of the Facility or the entering into of any Operative Document or any transaction contemplated hereby or thereby; (v) the manufacture, financing, construction, purchase, acceptance, rejection, ownership, acquisition, delivery, nondelivery, lease, sublease, preparation, installation, storage, maintenance, repair, transportation, transfer of title, abandonment, possession, rental, use, operation, condition, sale, return or other application or disposition of all or any part of any interest in the Facility; (vi) the indemnities contained in Section 8.01 of the Participation Agreement; and (vii) Expenses of Gary-PCI, GE Capital, Construction Lender or Senior Lender or GECLC pursuant to Section 7.02 of the Participation Agreement.

"Project Schedule" is defined in Article III(u) of the Participation Agreement.

"Pulverized Coal" is defined in Section 1.1 of the Tolling Agreement.

"Regulation" is defined in Article I of the Partnership Agreement.

"Repayment Date" is defined in Section 2.03(a) of the Senior Term Loan Agreement.

"Replacement Construction Notes" is defined in Section 8.02 of the Construction Loan Agreement.

"Replacement Senior Term Notes" is defined in Section 7.02 of the Senior Term Loan Agreement.

"Resources" means ICF Resources Incorporated, a Delaware corporation.

"Responsible Officer" means, with respect to the subject matter of any covenant, agreement or obligation of any Person contained in the Operative Documents, a Vice President or higher corporate officer of such Person (or of Managing General Partner (or, if none, any general partner in Partnership) in the case of Partnership) who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto; provided that "Responsible Officer" shall further include duly authorized officers of (a) with respect to Borrower, the Construction Services Agent pursuant to the Construction Services Agreement and (b) with respect to Partnership if the Management Services Contract shall then be in effect, Resources pursuant to the Management Services Contract.

"Retainage Amount" means, with respect to any Milestone Payment, 5% of any such Milestone Payment.

"Retainage Letter of Credit" is defined in Section 4.3 of the Construction Contract.

"Scheduled Engineering Milestone Date" is defined in the Construction Contract.

"Scheduled Final Acceptance Date" is defined in the Construction Contract.

"Scheduled Mechanical Completion Date" is defined in the Construction Contract.

"Scheduled Tolling Commencement Date" shall have the meaning given in Section 3.5 of the Construction Contract.

"Secured Obligations" is defined in Article I of the Mortgage.

"Security Documents" means the Mortgage, the Borrower Stock Pledge Agreement and the Partnership Pledge Agreement.

"Senior Lender" means GE Capital and any other holder of a Replacement Senior Term Note.

"Senior Loan Deferred Amount" is defined in Section 2.7 of the Senior Term Loan Agreement.

"Senior Term Loan" means the loan to the Partnership made pursuant to Section 2.01 of the Senior Term Loan Agreement.

"Senior Term Loan Agreement" means the Senior Term Loan Agreement dated as of the As of Date between Senior Lender and Partnership.

"Senior Term Loan Commitment" is defined in Section 2.01 of the Senior Term Loan Agreement.

"Senior Term Loan Maturity Date" shall mean the fifteenth anniversary of the date that is one month and fifteen days after Tolling Commencement.

"Senior Term Note" means a note substantially in the form of Exhibit A to the Senior Term Loan Agreement.

"Services Agreement" means the Services Agreement dated as of the As of Date between ASC and Contractor.

"Stipulated Rate" means a rate per annum equal to 2% plus the Base Rate.

"Taxes" means any and all governmental or quasi-governmental fees (including license, filing and registration fees), taxes (including income, gross receipts, franchise, sales, use, property, real or personal, tangible or intangible taxes), interest equalization and stamp taxes,

assessments, levies, imposts, duties, charges or withholdings of any kind or nature whatsoever, together with any and all penalties, fines or interests thereon.

"Technical Construction Agreement" means the Technical Construction Agreement dated as of the As of Date between Kenron and Contractor.

"Title Insurance Company" means First American Title Insurance Company and Chicago Title Insurance Company.

"Tolling Agreement" means the Operating Services and Tolling Agreement dated as of the As of Date, between USX and Gary-PCI, assigned by Gary-PCI to Borrower and assigned as collateral security by Borrower to GE Capital, in each case with the consent of USX.

"Tolling Commencement" is defined in the Construction Contract. **This Document is the property of the Lake County Recorder!**

"Tolling Fees" is defined in Article I of the Tolling Agreement.

"Total Capitalized Cost" means an amount equal to Total Installed Cost paid.

"Total Installed Cost" means the total cost of the Plant as reflected on the books of Partnership as of the In-Service Date plus the amount of any additional capital expenditures for the Plant paid or accrued by Partnership on or prior to the Permanent Financing Closing Date and other expenditures properly includible in the basis of the Plant for Federal income tax purposes on the Permanent Financing Closing Date.

"USX" means USX Corporation, a Delaware corporation.

"USX Sublicense Agreement" means the Sublicense Agreement dated as of the As of Date between Contractor and USX.

"Withdrawal" is defined in Article I of the Partnership Agreement.

"Work" is defined in Article I of the Construction Contract.