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ASSET PURCHASE OPTION AGREEMENT

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GARY COAL PROCESSING L.P.,  
a Delaware limited partnership,

Gary PCI Ltd. L.P.,  
a Delaware limited partnership,

and

KENRON CORPORATION,  
a Delaware corporation

**STOP**



STATE OF INDIANA/S.S. NO.  
LAKE COUNTY  
FILED IN RECORDS  
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ROBERT W. BERTHRELAND  
RECORDER

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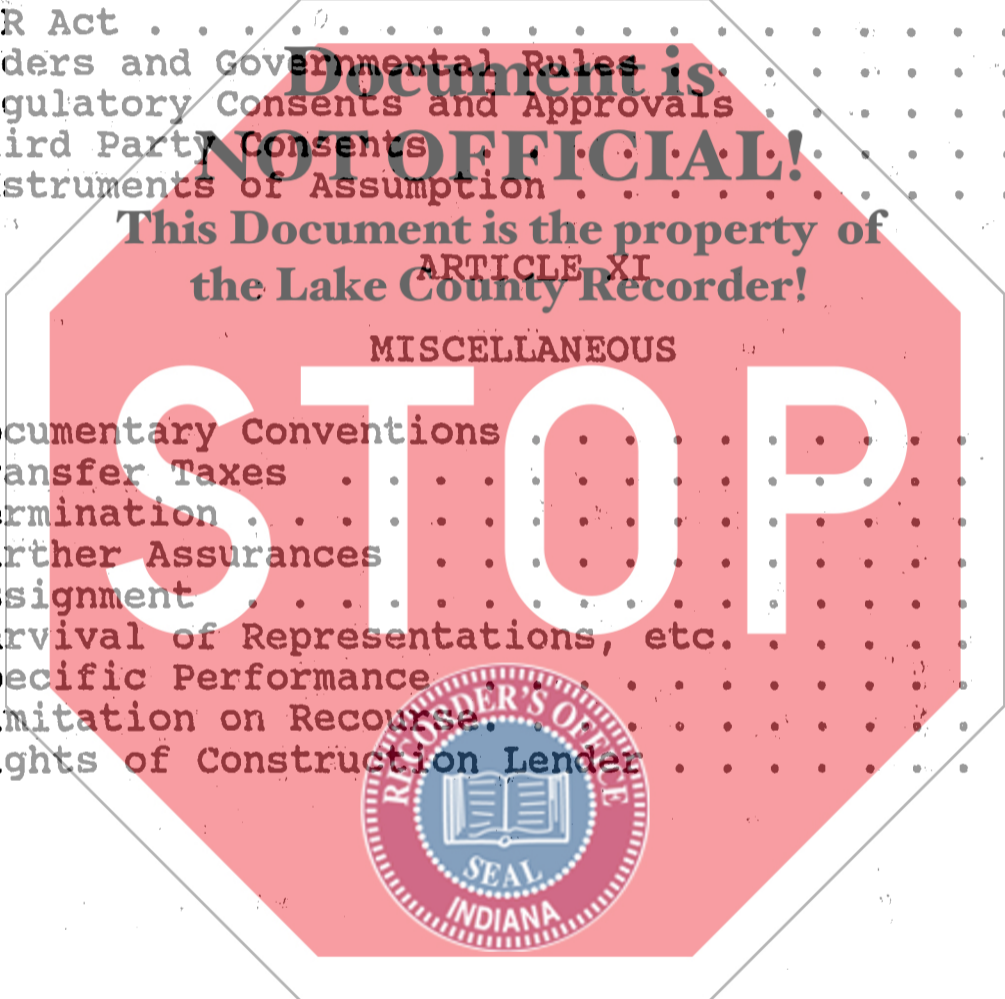
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**Exhibit D**      **Certificate of Responsible Officer**  
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This ASSET PURCHASE OPTION AGREEMENT, dated as of May 2, 1991, is made and entered into by and among Gary Coal Processing L.P., a Delaware limited partnership (the "Partnership"), Gary PCI Ltd. L.P., a Delaware limited partnership and the general partner of the Partnership ("Gary-PCI"), and Kenron Corporation, a Delaware corporation ("Kenron").

### Recitals

1. Capitalized terms used herein have the meanings set forth in Section 1.01 or, if not defined therein, in Appendix A to the Participation Agreement, dated as of May 2, 1991, among the Partnership, Gary-PCI, Kenron, General Electric Credit and Leasing Corporation, a Delaware corporation, and GE Capital, which also contains rules as to usage.

2. Gary-PCI and USX have entered into the Tolling Agreement, pursuant to which Gary-PCI has agreed to provide Pulverized Coal to USX, and the Land Lease, pursuant to which USX has agreed to lease the Premises (as described on Exhibit E) to Gary-PCI.

3. Gary-PCI and Kenron have entered into the Gary-PCI Assignment Agreement, pursuant to which Gary-PCI has assigned and Kenron has assumed all of Gary-PCI's right, title and interest in, to and under the Tolling Agreement and the Land Lease.

4. Kenron and Contractor have entered into the Construction Contract, pursuant to which Contractor has agreed to design, manage, engineer, procure, construct, install, equip, start-up, performance test, commission and complete the Plant.

5. Simultaneously herewith, Kenron and Construction Lender are entering into the Construction Loan Agreement, pursuant to which Construction Lender will provide a portion of the construction financing for the Facility.

6. Simultaneously herewith, Kenron and Gary-PCI are entering into the Construction Cost Overrun Loan Facility, pursuant to which Gary-PCI will make certain defined and limited extensions of credit available to Kenron in connection with Construction Cost Overruns, if any, of the Plant, and payment of the Construction Services Fee, as adjusted by the Construction Services Fee Adjustment.

7. Simultaneously herewith, Gary-PCI, the Partnership, GE Capital and the stockholders of Kenron are entering into the Borrower Stock Pledge Agreement, pursuant to which such stockholders will grant a first priority security interest in the Borrower's Shares to Construction Lender to secure the Senior Obligations, as defined in the Borrower Stock Pledge Agreement, and a second priority security interest in

Borrower's Shares to Gary-PCI and the Partnership to secure Kenron's obligations hereunder.

8. The Partnership and Gary-PCI each desire an option to purchase certain assets of Kenron, and Kenron desires to grant such options, and in connection therewith, the Partnership and Gary-PCI each have agreed to assume certain liabilities of Kenron, all on the terms set forth herein.

### Agreement

In consideration of the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

#### ARTICLE I

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#### DEFINITIONS

1.01 Definitions. (a) As used in this Agreement, the following terms shall have the meanings indicated.

"Agreement" means this Asset Purchase Option Agreement, as the same shall be amended from time to time.

"Assets and Properties" means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise, and wherever situated) operated, owned or leased by a specified Person, including cash, cash equivalents, Investment Assets, accounts and notes receivable, chattel paper, documents, instruments, general intangibles, real estate, equipment, inventory, goods and Intellectual Property.

"Assignment and Assumption Agreement" means the Assignment and Assumption Agreement, to be dated the Option Closing Date, between Kenron and the Purchaser, substantially in the form of Exhibit A.

"Assumed Liabilities" has the meaning set forth in Section 3.02.

"Bill of Sale" has the meaning set forth in Section 3.04.

"Books and Records" means all data, books, records, correspondence, files, papers, employment records and related materials used or held for use in the conduct of the Business or relating to the Kenron Assets and other matters contemplated by this Agreement, including financial statements, Tax Returns and related work papers and letters from accountants, budgets, pricing guidelines, ledgers, journals, deeds, and title policies,

other than the minute books, stock transfer books and seal of Kenron.

"Business" means all activities engaged in by Kenron, either directly or indirectly through intermediaries, in connection with the ownership, design, management, engineering, procurement, construction, installation, equipping, start-up, performance testing, commissioning, completion, maintenance or operation of the Facility.

"Contract" means any agreement, lease, evidence of Debt, mortgage, indenture, security agreement or other contract, whether written or oral.

"Disclosure Schedule" means the disclosure schedule attached hereto which Kenron caused to be delivered to Gary-PCI and the Partnership herewith and dated as of the date hereof, containing all lists, descriptions, exceptions and other information and material required to be included under this Agreement.

"Exercise Date" means the date on which the Exercise Notice is delivered.

"Exercise Notice" has the meaning set forth in Section 2.02.

"Expiration Date" has the meaning set forth in Section 2.03.

"Gary-PCI" has the meaning set forth in the introductory paragraph.

"Gary-PCI Option" has the meaning set forth in Section 2.04.

"HSR Act" means Section 7A of the Clayton Act (Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended) and the rules and regulations promulgated thereunder.

"Investment Assets" of any Person means all debentures, notes and other evidences of Debt, stocks, securities (including rights to purchase and securities convertible into or exchangeable for other securities), interests in joint ventures and general limited partnerships, mortgage loans and other investment or portfolio assets owned of record or beneficially by such Person.

"Kenron" has the meaning set forth in the introductory paragraph.

"Kenron Assets" has the meaning ascribed to it in Section 3.01.



"Liabilities" means, with respect to any Person, all Debt, obligations and other liabilities of that Person, whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due.

"Option Closing" has the meaning set forth in Section 3.04.

"Option Closing Date" means the date on which the Option Closing actually takes place.

"Partnership" has the meaning set forth in the introductory paragraph.

"Partnership Option" has the meaning set forth in Section 2.01.

"Purchase Option" means the Partnership Option if the Partnership exercises the Partnership Option and the Gary-PCI Option if Gary-PCI exercises the Gary-PCI Option.

"Purchaser" means the Partnership if the Partnership exercises the Partnership Option and Gary-PCI if Gary-PCI exercises the Gary-PCI Option.

"Senior Lender Satisfaction Date" means the day on which each condition to the obligations of Senior Lender to make the Senior Term Loan set forth in Section 3.01 of the Senior Term Loan Agreement shall have been satisfied in form and substance reasonably satisfactory to Senior Lender.

"Tax Return" means a report, return or other information required to be supplied to a governmental entity with respect to Taxes including, where permitted or required, combined or consolidated returns for any group of entities that includes Kenron.

"Transfer Taxes" means all sales, use, transfer, real property transfer, reporting, gains, stock transfer and other similar taxes and fees arising out of or in connection with the transactions effected pursuant to this Agreement, other than those that are the responsibility of the Contractor pursuant to the Construction Contract.

## ARTICLE II

### GRANT OF OPTIONS

2.01 Grant of the Partnership Option. Kenron hereby grants to the Partnership an option (the "Partnership Option") to purchase all, but not less than all, of Kenron's right, title and

interest in and to the Kenron Assets on the terms and conditions set forth in this Agreement.

2.02 Exercise of the Partnership Option. The Partnership may exercise the Partnership Option at any time prior to the Expiration Date. The Partnership shall exercise the Partnership Option by delivering a notice in the form of Exhibit B (the "Exercise Notice") to Kenron.

2.03 Expiration of the Partnership Option. The Partnership Option and all of the Partnership's right, title and interest in, to and under this Agreement shall expire on the earliest of (a) 30 days after the Senior Lender Satisfaction Date, (b) the date on which the Partnership notifies the other parties hereto that the Partnership will not exercise the Partnership Option and (c) the date on which the Partnership Option is extinguished pursuant to Section 11.09 (the "Expiration Date"). If the Partnership Option cannot be exercised before 30 days after the Senior Lender Satisfaction Date because of any applicable Action or Proceeding, and the Partnership has not delivered the notice referred to in clause (b) above, the Expiration Date shall occur five Business Days after such impediment to exercise shall have been removed.

2.04 Grant of Gary-PCI Option. Kenron hereby grants to Gary-PCI an option (the "Gary-PCI Option"), subject to the rights of the Partnership with respect to the Partnership Option, to purchase all, but not less than all, of Kenron's right, title and interest in and to the Kenron Assets on the terms and conditions set forth in this Agreement.

2.05 Exercise of the Gary-PCI Option. Gary-PCI may exercise the Gary-PCI Option by delivering the Exercise Notice to Kenron at any time after the Expiration Date and before the earlier of (a) March 15, 2030 and (b) the date on which the PCI Option is extinguished pursuant to Section 11.09.

## ARTICLE III

### PURCHASE AND SALE OF ASSETS; OPTION CLOSING

3.01 Assets. Upon exercise of the Purchase Option, the Purchaser agrees to purchase and pay for, and Kenron agrees to sell, transfer, convey, assign and deliver to the Purchaser on the date indicated in the Exercise Notice, as rescheduled pursuant to the terms of this Agreement, all of Kenron's right, title and interest in and to all Assets and Properties owned by Kenron and used in the conduct of the Business (except Kenron's right to make drawings under Section 3.5 of the Construction Cost Overrun Loan Facility and under the Change Order Loan Facility to fund the Construction Services Fee, as adjusted by the Construction Service Fee Adjustment), as the same shall exist as of the Option Closing Date (the "Kenron Assets").

3.02 Assumed Liabilities. Upon exercise of the Purchase Option, the Purchaser agrees to assume and to pay, perform and discharge when due the obligations of Kenron under the Operative Documents to which Kenron is a party, including Kenron's obligation to repay any amounts drawn by Kenron under Section 3.5 of the Construction Cost Overrun Loan Facility or under the Change Order Loan Facility, but excluding Kenron's obligation to pay the Construction Services Fee, as adjusted by the Construction Services Fee Adjustment, under the Construction Services Agreement (the "Assumed Liabilities"), and no other obligations whatsoever.

3.03 Purchase Price.

(a) Purchase Price for Assets. In consideration of the sale, transfer, conveyance, assignment and delivery of the Kenron Assets by Kenron to the Purchaser, and in reliance upon the representations and warranties made herein by Kenron, the Purchaser will assume the Assumed Liabilities.

(b) Allocation. Prior to the Option Closing Date, Kenron and the Purchaser shall agree on the allocation of the purchase price for the Kenron Assets among the Kenron Assets.

3.04 Option Closing. The closing of the sale and purchase of the Kenron Assets (the "Option Closing") will take place on the day and time, and at the place, designated by the Purchaser in the Exercise Notice. The date shall be not less than two Business Days nor more than 10 Business Days after delivery of the Exercise Notice, unless any waiting periods under the HSR Act applicable to the exercise of the Purchase Option have not expired or been terminated. If any applicable waiting periods under the HSR Act have not expired or been terminated, the Option Closing shall take place five Business Days following the expiration or termination thereof. Simultaneously, Kenron



will assign and transfer to the Purchaser good and marketable title, (or, in the case of the Premises, a valid leasehold interest), free and clear of all Liens, other than Permitted Liens, in and to the Kenron Assets by delivery of (a) the Assignment and Assumption Agreement, (b) a Bill of Sale, duly executed by Kenron, substantially in the form of Exhibit C (the "Bill of Sale"), and (c) such other good and sufficient instruments of conveyance, assignment and transfer, in form and substance reasonably acceptable to (i) counsel to the Purchaser, (ii) if any amounts remain outstanding under the Construction Loan Agreement, counsel to the Construction Lender and (iii) if the Option Closing Date occurs on or after the Permanent Financing Closing Date, counsel to the Senior Lender, as shall be effective to vest in the Purchaser good title to the Kenron Assets. At the Option Closing, there also shall be delivered to Kenron and the Purchaser the opinions, certificates and other contracts, documents and instruments required to be delivered under Article X.

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If any party is entitled not to close on the scheduled date because a condition set forth in Article IX or X has not been satisfied or waived, that party may postpone the Option Closing from time to time, by giving at least five days' prior notice to the other party, until the condition has been satisfied. All parties shall use their best efforts to cause all conditions to Option Closing to be satisfied as soon as possible.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF KENRON

Kenron hereby represents and warrants to the Purchaser as follows:

4.01 Organization of Kenron. Kenron is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Kenron has full corporate power and authority to conduct the Business as now being conducted, and to own, lease or otherwise hold its properties, to enter into the Operative Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Kenron is duly qualified, licensed or admitted to do business and is in good standing in all jurisdictions in which the ownership, use or leasing of the Kenron Assets, or the conduct or nature of the Business, makes such qualification, licensing or admission necessary, and in which the failure to be so qualified, licensed or admitted and in good standing reasonably could be expected to have a Material Adverse Effect.

4.02 Authority. The execution and delivery by Kenron of the Operative Documents to which it is a party, and the



performance by Kenron of its obligations thereunder, have been duly and validly authorized by the board of directors and the Stockholders, no other corporate action on the part of Kenron or its stockholders being necessary. This Agreement has been duly and validly executed and delivered by Kenron and constitutes a legal, valid and binding obligation of Kenron, and upon the execution and delivery of the Operative Documents by Kenron, the Operative Documents will constitute legal, valid and binding obligations, of Kenron, enforceable in each case against Kenron in accordance with their terms, except as enforcement may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws presently or hereafter in effect affecting the enforcement of creditors' rights generally and subject to general principles of equity.

4.03 No Conflicts. The execution and delivery by Kenron of the Operative Documents to which it is a party do not, and the performance by Kenron of its obligations thereunder and the consummation of the transactions contemplated thereby will not:

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- (a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of incorporation or by-laws of Kenron;
- (b) conflict with or result in a violation or breach of any term or provision of any Governmental Rule applicable to Kenron or the Kenron Assets; or
- (c) except as disclosed in Section 4.03 of the Disclosure Schedule, (i) conflict with or result in a violation or breach of any Contract, Governmental Action or Private Action to which Kenron is a party or by which the Kenron Assets are bound, (ii) constitute (with or without notice or lapse of time or both) a default under any Contract, Governmental Action or Private Action to which Kenron is a party or by which the Kenron Assets are bound, (iii) require Kenron to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of any Contract, Governmental Action or Private Action to which Kenron is a party or by which the Kenron Assets are bound, (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification, including the triggering of a "due on sale" clause or similar restriction or provision, in or with respect to any Contract, Governmental Action or Private Action to which Kenron is a party or by which the Kenron Assets are bound, (v) result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments under any Contract, Governmental Action or Private Action to which Kenron is a party or by which the Kenron Assets are bound, or (vi) result in the creation or imposition of any

Lien upon Kenron, the Kenron Assets, or upon any Contract, Governmental Action or Private Action to which Kenron is a party or by which the Kenron Assets are bound.

4.04 Governmental Approvals and Filings. Except as disclosed in Section 4.04 of the Disclosure Schedule, no Governmental Action or Private Action is required in connection with the execution, delivery and performance of the Operative Documents to which Kenron is a party.

4.05 Legal Proceedings. Except as disclosed in Section 4.05 of the Disclosure Schedule, with paragraph references corresponding to those set forth below:

(a) there are no Actions or Proceedings pending or, to the knowledge of Kenron, threatened against, relating to, or affecting Kenron, the Kenron Assets or the Business;

(b) there are no facts or circumstances known to Kenron that could reasonably be expected to give rise to any Action or Proceeding that would be required to be disclosed pursuant to this Section 4.05; and

(c) there are no Orders outstanding against Kenron.

4.06 Compliance With Governmental Rules. Except as disclosed in Section 4.06 of the Disclosure Schedule, Kenron is not and has not been at any time, and has not received any notice that it is or has at any time been, in violation of or in default under, any Governmental Rule applicable to Kenron, the Kenron Assets or Kenron's conduct of the Business.

4.07 Intellectual Property Rights. Kenron does not have interests in or use any Intellectual Property in connection with the conduct of the Business, except as disclosed in Section 4.07 of the Disclosure Schedule, each of which Kenron either has all right, title and interest in or a valid and binding license to use. No other Intellectual Property is used or necessary in the conduct of the Business.

4.08 No Contracts. Except as disclosed in Section 4.08 of the Disclosure Schedule, Kenron is not a party to or bound by any Contract.

4.09 No Powers of Attorney. Except as disclosed in Section 4.09 of the Disclosure Schedule, Kenron has no powers of attorney or comparable delegations of authority outstanding.

4.10 Title to Kenron Assets. Except as set forth in Section 4.10 of the Disclosure Schedule, Kenron has good and marketable title (or, in the case of the Premises, a valid leasehold interest) in and to the Kenron Assets, free and clear of all Liens, other than Permitted Liens.



4.11 Assets Constitute the Business, etc. The Disclosure Schedule discloses all of the Assets and Properties owned and employed by Kenron in, and Liabilities of Kenron arising out of, the Business, subject to additions thereto and deletions therefrom in the ordinary course of the conduct of the Business from the date hereof, or, in the case of the Disclosure Schedule, from the dates indicated therein. The Kenron Assets (i) comprise all of the assets, property, rights and business owned by and employed by Kenron in the conduct of the Business and (ii) will enable the Purchaser to operate the Business in substantially the same manner after the Option Closing as it is being conducted immediately before the Option Closing. All of the physical assets are serviceable for the purposes for which they are being used on the date hereof.

4.12 Disclosure. All material facts relating to the Business have been disclosed to Gary-PCI and the Partnership in or in connection with this Agreement. No representation or warranty contained in this Agreement, and no statement contained in the Disclosure Schedule or in any certificate, list or other writing furnished to Gary-PCI and the Partnership pursuant to any provision of this Agreement, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements herein or therein, in the light of the circumstances under which they were made, not misleading.

4.13 Bankruptcy. (a) Kenron has not commenced any case, proceeding or other action (i) under the law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts, or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of its Assets and Properties, or made a general assignment for the benefit of its creditors.

(b) There has not been commenced against Kenron any case, proceeding or other action of a nature referred to in Section 4.13(a) which has not been vacated, discharged or dismissed.

(c) There has not been commenced against Kenron, any proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its Assets and Properties which could result in the entry of an order for any such relief which has not been vacated, discharged, or stayed.

(d) Kenron has not taken action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in Section 4.13(a), (b), or (c).

(e) Kenron has not been unable to, and has not admitted in writing its inability to, pay any of its Debt as it becomes due.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE PARTNERSHIP

The Partnership hereby represents and warrants to Kenron as follows:

5.01 Organization. The Partnership is a partnership duly organized, validly existing and in good standing under the laws of the State of Delaware. The Partnership has full partnership power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The Partnership is duly qualified, licensed or admitted to do business and is in good standing in all jurisdictions in which the ownership, use or leasing of its Assets and Properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, and in which the failure to be so qualified, licensed or admitted and in good standing reasonably could be expected to have an adverse effect on the validity or enforceability of this Agreement or on the ability of the Partnership to perform its obligations hereunder.

5.02 Authority. The execution and delivery by the Partnership of this Agreement, and the performance by the Partnership of its obligations hereunder, have been duly and validly authorized by the general partner of the Partnership, no other action on the part of the Partnership or its partners being necessary. This Agreement has been duly and validly executed and delivered by the Partnership and, except as enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws presently or hereafter in effect affecting the enforcement of creditors' rights generally and subject to general principles of equity constitutes a legal, valid and binding obligation of the Partnership, enforceable against the Partnership, in accordance with its terms.

5.03 No Conflicts. The execution and delivery by the Partnership of this Agreement do not, and the performance by the Partnership of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of limited partnership or partnership agreement of the Partnership;



(b) conflict with or result in a violation or breach of any term or provision of any Governmental Rule applicable to the Partnership or any of its Assets and Properties; or

(c) except as disclosed in Schedule 5.03, (i) conflict with or result in a violation or breach of any Contract, Governmental Action or Private Action to which the Partnership is a party or by which any of its Assets and Properties are bound, (ii) constitute (with or without notice or lapse of time or both) a default under any Contract, Governmental Action or Private Action to which the Partnership is a party or by which any of its Assets and Properties are bound, (iii) require the Partnership to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of any Contract, Governmental Action or Private Action to which the Partnership is a party or by which any of its Assets and Properties are bound, or (iv) result in the creation or imposition of any Lien upon the Partnership or any of its Assets or Properties under any Contract, Governmental Action or Private Action to which the Partnership is a party or by which any of its Assets and Properties is bound.

5.04 Governmental Approvals and Filings. Except as disclosed in Schedule 5.04, no consent, approval or action of, filing with or notice to any Governmental Authority is required in connection with the execution, delivery and performance of this Agreement.

5.05 Legal Proceedings. There are no Actions or Proceedings pending or, to the knowledge of the Partnership, threatened against, relating to, or affecting the Partnership or any of its Assets and Properties which reasonably could be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF GARY-PCI

Gary-PCI hereby represents and warrants to Kenron as follows:

6.01 Organization. Gary-PCI is a partnership duly organized, validly existing and in good standing under the laws of the State of Delaware. Gary-PCI has full partnership power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. Gary-PCI is duly qualified, licensed or admitted to do business and is in good standing in all jurisdictions in which the ownership, use or leasing of its

Assets and Properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, or in which the failure to be so qualified, licensed or admitted and in good standing reasonably could be expected to have an adverse effect on the validity or enforceability of this Agreement or on the ability of Gary-PCI to perform its obligations hereunder.

6.02 Authority. The execution and delivery by Gary-PCI of this Agreement, and the performance by Gary-PCI of its obligations hereunder, have been duly and validly authorized by the general partner of Gary-PCI, no other action on the part of Gary-PCI or its partners being necessary. This Agreement has been duly and validly executed and delivered by Gary-PCI and, except as enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws presently or hereafter in effect affecting the enforcement of creditors' rights generally and subject to general principles of equity constitutes a legal, valid and binding obligation of Gary-PCI, enforceable against Gary-PCI, in accordance with its terms.

6.03 No Conflicts. The execution and delivery by Gary-PCI of this Agreement do not, and the performance by Gary-PCI of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of limited partnership or partnership agreement of Gary-PCI;

(b) conflict with or result in a violation or breach of any term or provision of any Governmental Rule applicable to Gary-PCI or any of its Assets and Properties; or

(c) except as disclosed in Schedule 6.03, (i) conflict with or result in a violation or breach of any Contract, Governmental Action or Private Action to which Gary-PCI is a party or by which any of its Assets and Properties are bound, (ii) constitute (with or without notice or lapse of time or both) a default under any Contract, Governmental Action or Private Action to which Gary-PCI is a party or by which any of its Assets and Properties are bound, (iii) require Gary-PCI to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of any Contract, Governmental Action or Private Action to which Gary-PCI is a party or by which any of its Assets and Properties are bound, or (iv) result in the creation or imposition of any Lien upon Gary-PCI or any of its Assets or Properties under, any Contract, Governmental Action or Private Action to which Gary-PCI is a party or by which any of its Assets and Properties is bound.

6.04 Governmental Approvals and Filings. Except as disclosed in Schedule 6.04, no consent, approval or action of, filing with or notice to any Governmental Authority on the part



of Gary-PCI is required in connection with the execution, delivery and performance of this Agreement.

6.05 Legal Proceedings. There are no Actions or Proceedings pending or, to the knowledge of Gary-PCI, threatened against, relating to, or affecting Gary-PCI or any of its Assets and Properties which reasonably could be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

## ARTICLE VII

### COVENANTS OF KENRON

Kenron covenants and agrees with the Partnership and Gary-PCI that, at all times from and after the date hereof until the Option Closing, Kenron will comply with all covenants and provisions of this Article VII.

7.01 Regulatory and Other Approvals. Kenron will proceed diligently and in good faith and use best efforts to obtain as promptly as practicable all consents, approvals or actions of, to make all filings with and to give all notices to Governmental Authorities or any other Person required of Kenron to consummate the transactions contemplated by the Operative Documents to which it is a party, including those described in Sections 4.03 and 4.04 of the Disclosure Schedule, (b) provide such other information and communications to Governmental Authorities or other Persons as the Purchaser or the Governmental Authorities or other Persons reasonably may request and (c) cooperate with the Purchaser, as promptly as practicable, in obtaining all Governmental Actions and Private Actions required of the Purchaser to consummate the transactions contemplated by the Operative Documents. Kenron will provide prompt notification to the Purchaser when any such consent, approval, action, filing or notice referred to in Section 7.01(a) is obtained, taken, made or given, as applicable, and will advise the Purchaser of any communications (and, unless precluded by Governmental Rule, provide copies of any communications that are in writing) with any Governmental Authority or other Person regarding any of the transactions contemplated by any of the Operative Documents to which Kenron is a party.

7.02 HSR Filings. In addition to and not in limitation of Kenron's covenants contained in Section 7.01, Kenron will (a) take promptly all actions necessary to make the filings required of Kenron or its Affiliates under the HSR Act, (b) comply at the earliest practicable date with any request for additional information received by Kenron or its Affiliates from the Federal Trade Commission or the Antitrust Division of the Department of Justice pursuant to the HSR Act and (c) cooperate

with the Purchaser in connection with the Purchaser's filing under the HSR Act and in connection with resolving any investigation or other regulatory inquiry concerning the transactions contemplated by this Agreement commenced by the Federal Trade Commission or the Antitrust Division of the Department of Justice or state attorneys general.

7.03 Conduct of Business. Kenron will conduct business only in the ordinary course. Without limiting the generality of the foregoing, Kenron will comply fully with the terms and provisions of the Operative Documents to which it is a party.

7.04 Books and Records. On the Option Closing Date, Kenron will deliver or make available to the Purchaser at the offices of Kenron all of the Books and Records, and if at any time after the Option Closing Kenron discovers in its possession or under its control any other Books and Records, it will deliver or make available such Books and Records forthwith to the Purchaser.

7.05 Notice and Cure. Kenron will notify the Partnership and Gary-PCI promptly in writing of, and contemporaneously will provide the Partnership and Gary-PCI with, true and complete copies of any and all information or documents relating to, and will use best efforts to cure before the Option Closing, any event, transaction or circumstance occurring after the date of this Agreement that causes or will cause any covenant or agreement of Kenron under this Agreement to be breached or that renders or will render untrue any representation or warranty of Kenron contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. Kenron also will notify the Partnership and Gary-PCI promptly in writing of, and will use best efforts to cure before the Option Closing, any violation or breach of any representation, warranty, covenant or agreement made by Kenron in this Agreement, whether occurring or arising before, on or after the date of this Agreement. No notice given pursuant to this Section 7.05 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein.

7.06 Fulfillment of Conditions. Kenron will (a) execute and deliver at the Option Closing each agreement that Kenron is required hereby to execute and deliver as a condition to the Option Closing, (b) proceed diligently and in good faith and use best efforts to satisfy each other condition to the obligations of the Purchaser contained in this Agreement and (c) not take or fail to take any action that reasonably could be expected to result in the nonfulfillment of any such condition.



## ARTICLE VIII

### COVENANTS OF THE PURCHASER

The Purchaser covenants and agrees with Kenron that, at all times from and after the date hereof until the Option Closing, the Purchaser will comply with all covenants and provisions of this Article VIII.

8.01 Regulatory and Other Approvals. The Purchaser will (a) proceed diligently and in good faith and use best efforts to obtain, as promptly as practicable, all consents, approvals or actions of, to make all filings with and to give all notices to Governmental Authorities or any other Person required of the Purchaser to consummate the transactions contemplated hereby including without limitation those described in Schedules 5.03 and 5.04, in the case of the Partnership, and Schedules 6.03 and 6.04, in the case of Gary RCI, (b) provide such other information and communications to such Governmental Authorities or other Persons as Kenron or the Governmental Authorities or other Persons reasonably may request and (c) cooperate with Kenron in obtaining, as promptly as practicable, all consents, approvals or actions of, making all filings with and giving all notices to Governmental Authorities or other Persons required of Kenron to consummate the transactions contemplated hereby. The Purchaser will provide prompt notification to Kenron when any such consent, approval, action, filing or notice referred to in Section 8.01(a) is obtained, taken, made or given, as applicable, and will advise Kenron of any communications (and, unless precluded by Governmental Rule, provide copies of any such communications that are in writing) with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement.

8.02 HSR Filings. In addition to and without limiting the Purchaser's covenants contained in Section 8.01, the Purchaser will (a) take promptly all actions necessary to make the filings required of the Purchaser or its Affiliates under the HSR Act, (b) comply at the earliest practicable date with any request for additional information received by the Purchaser or its Affiliates from the Federal Trade Commission or the Antitrust Division of the Department of Justice pursuant to the HSR Act and (c) cooperate with Kenron in connection with Kenron's filing under the HSR Act and in connection with resolving any investigation or other regulatory inquiry concerning the transactions contemplated by this Agreement commenced by the Federal Trade Commission, the Antitrust Division of the Department of Justice or any state attorneys general.

8.03 Notice and Cure. The Purchaser will notify Kenron promptly in writing of, and contemporaneously will provide Kenron with true and complete copies of any and all information or documents relating to, and will use best efforts to cure

before the Option Closing, any event, transaction or circumstance occurring after the date of this Agreement that causes or will cause any covenant or agreement of the Purchaser under this Agreement to be breached or that renders or will render untrue any representation or warranty of the Purchaser contained in this Agreement as if the same were made on or as of the date of such event, transaction or circumstance. The Purchaser also will notify Kenron promptly in writing of, and will use best efforts to cure, before the Option Closing, any violation or breach of any representation, warranty, covenant or agreement made by the Purchaser in this Agreement, whether occurring or arising before, on or after the date of this Agreement. No notice given pursuant to this Section 8.03 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of any condition contained herein.

8.04 Fulfillment of Conditions. Each of the Partnership and Gary-PCI will use best efforts and proceed diligently and in good faith to satisfy each condition to the obligations of Kenron contained in this Agreement and will not take or fail to take any action that could reasonably be expected to result in the nonfulfillment of any such condition.

#### ARTICLE IX

#### CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER

The obligations of the Purchaser hereunder are subject to the fulfillment, on and as of the Option Closing Date, of each of the following conditions:

9.01 Representations and Warranties. Each representation and warranty made by Kenron in this Agreement that is qualified as to materiality shall be true and correct, and each other representation and warranty made by Kenron in this Agreement shall be true and correct in all material respects, on and as of the Exercise Date and the Option Closing Date as though such representation or warranty was made on and as of the Exercise Date and the Option Closing Date, as the case may be.

9.02 Performance. Kenron shall have performed and complied in all material respects with each agreement, covenant and obligation required by this Agreement to be so performed or complied with by Kenron at or before the Option Closing.

9.03 Officers' Certificates. Kenron shall have delivered to the Purchaser a certificate, dated the Option Closing Date and executed by a Responsible Officer of Kenron, substantially in the form and to the effect of Exhibit D.



9.04 HSR Act. All waiting periods applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall have expired or been terminated.

9.05 Orders and Governmental Rules. There shall not be in effect on the Option Closing Date any Governmental Rule restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by any of the Operative Documents or which reasonably could be expected to otherwise result in a material diminution of the benefits to the Purchaser of the transactions contemplated by any of the Operative Documents to the Purchaser, and there shall not be pending or threatened on the Option Closing Date any Action or Proceeding or any other action in, before or by any Governmental Authority which reasonably could be expected to result in the issuance of any Order so restraining, enjoining or otherwise prohibiting or making illegal, or the enactment, promulgation or deemed applicability to the Purchaser or the transactions contemplated by any of the Operative Documents of any such Governmental Rule.

9.06 Compliance with Regulatory Consents and Approvals. The Purchaser shall have complied with the requirements of all Governmental Actions necessary to permit the Purchaser and Kenron to perform their obligations under the Operative Documents and to consummate the transactions contemplated thereby and all such Governmental Actions (a) shall have been duly obtained, made or given, (b) shall be in form and substance reasonably satisfactory to the Purchaser, (c) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (d) shall be in full force and effect.

9.07 Third Party Consents. The Purchaser shall have complied with the requirements of all Private Actions necessary to permit the Purchaser and Kenron to perform their obligations under the Operative Documents and to consummate the transactions contemplated thereby, and all such Private Actions (a) shall have been obtained, (b) shall be in form and substance reasonably satisfactory to the Purchaser, (c) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (d) shall be in full force and effect.

9.08 Good Standing Certificates. Kenron shall have delivered to the Purchaser (a) copies of the certificate of incorporation, including all amendments, of Kenron, certified by the Secretary of State of Delaware, (b) certificates from the Secretary of State of Delaware to the effect that Kenron is in good standing, listing all charter documents of Kenron on file and attesting to its payment of all franchise and other Taxes, and (c) a certificate from the Secretary of State or other appropriate official in each jurisdiction in which Kenron is qualified or admitted to do business to the effect that Kenron is



duly qualified or admitted and in good standing in that jurisdiction.

9.09 Proceedings. All proceedings to be taken on the part of Kenron in connection with the transactions contemplated by this Agreement and all documents incident thereto shall be reasonably satisfactory in form and substance to the Purchaser, and the Purchaser shall have received copies of all such documents and other evidences as the Purchaser reasonably may request in order to establish the consummation of such transactions and the taking of all proceedings in connection therewith.

9.10 Instruments of Transfer. Kenron shall have delivered to the Purchaser on the Option Closing Date such bills of sale, endorsements, assignments, deeds and other good and sufficient instruments of conveyance and transfer as are provided for herein, and any other instruments in form and substance reasonably satisfactory to the Purchaser and to counsel for the Purchaser as shall be effective to vest in the Purchaser Kenron's title and rights with respect to the Kenron Assets, free and clear of all Liens, other than Permitted Liens, including, without limitation, the Assignment and Assumption Agreement and the Bill of Sale.

9.11 Tolling Commencement; Required Insurance. If the Purchaser is the Partnership, (a) Tolling Commencement shall have occurred and (b) the conditions set forth in Section 3.01(o) of the Senior Term Loan Agreement shall have been met.

#### ARTICLE X

#### CONDITIONS TO OBLIGATIONS OF KENRON

The obligations of Kenron hereunder are subject to the fulfillment, at or before the Option Closing, of each of the following conditions:

10.01 Representations and Warranties. Each representation and warranty made by the Purchaser in this Agreement that is qualified as to materiality shall be true and correct, and each other representation and warranty shall be true and correct in all material respects, on and as of the Option Closing Date as though such representation or warranty was made on and as of the Option Closing Date.

10.02 Performance. The Purchaser shall have performed and complied in all material respects with each agreement, covenant and obligation required by this Agreement to be so performed or complied with by the Purchaser at or before the Option Closing.

10.03 HSR Act. All waiting periods applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall have expired or been terminated.

10.04 Orders and Governmental Rules. There shall not be in effect on the Option Closing Date any Governmental Rule that became effective after the date of this Agreement restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

10.05 Regulatory Consents and Approvals. All consents, approvals and actions of, filings with and notices to any Governmental Authority necessary to permit Kenron and the Purchaser to perform their obligations under the Operative Documents and to consummate the transactions contemplated thereby (a) shall have been duly obtained, made or given, (b) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (c) shall be in full force and effect.

10.06 Third Party Consents. All consents to the performance by Kenron of its obligations hereunder and to the consummation of the transactions contemplated hereby as are required under the Contracts listed in Section 4.08 of the Disclosure Schedule (a) shall have been obtained, (b) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (c) shall be in full force and effect.

10.07 Instruments of Assumption. The Purchaser shall have executed and delivered the Assignment and Assumption Agreement to Kenron on the Option Closing Date.

11.01 Documentary Conventions. This Agreement shall be governed by all the Documentary Conventions.

11.02 Transfer Taxes. Kenron and the Purchaser shall each file all Tax Return which each is solely responsible. The Purchaser shall file all Tax Returns for which either or both of the Purchaser and Kenron may be held responsible.

11.03 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned at any time before the earlier of (i) the Option Closing or (ii) the Expiration Date, by mutual written agreement of Kenron, the Partnership and Gary-PCI. After the Expiration Date, this Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time before the Option Closing by mutual written agreement of Kenron and Gary-PCI. If this Agreement is so terminated, it forthwith will become null and void, and there will be no liability or obligation on the part of Kenron, the Partnership or Gary-PCI (or any of their respective officers, directors, employees, agents or other representatives or Affiliates), except that the provisions with respect to expenses in Section 11.04 will continue to apply following any such termination.

11.04 Further Assurances. At any time or from time to time after the Option Closing, Kenron shall execute and deliver to the Purchaser such other documents and instruments, provide such materials and information and take such other actions as the Partnership or Gary-PCI reasonably may request more effectively to vest title to the Kenron Assets in the Purchaser and, to the full extent permitted by Governmental Rules, to put the Purchaser in actual possession and operating control of the Business and Books and Records, and otherwise to cause Kenron to fulfill its obligations under this Agreement.

11.05 Assignment. (a) The Partnership may assign this Agreement and any right, interest or obligation hereunder without the consent of the other parties hereto; provided, however, that the Partnership may not make any such assignment without the prior written consent of the GE Capital. Neither Kenron nor Gary-PCI may assign this Agreement or any right, interest or obligation hereunder without the prior written consent of the other parties hereto and GE Capital, and any attempt to do so will be void; provided, however, that Gary-PCI may assign this Agreement or any right, interest or obligation hereunder without the consent of the other parties hereto (i) at any time to any Affiliate of ICF to whom Gary-PCI shall have transferred its Interest in accordance with the provisions of Section 5.4 of the Partnership Agreement and (ii) without restriction after the Expiration Date; and provided, further, that Kenron (and its successors and permitted assignees) may assign all of its right, title and interest hereunder to (w) any Person, corporation, bank, trust company, association or other business entity as security in connection with obtaining or arranging financing or refinancing for the Facility, (x) any Person, corporation, bank, trust company or other business entity upon enforcement of any security assignment described in the immediately preceding clause (a) above,; (y) any successor entity (whether by merger, by consolidation or by sale of substantially all the assets of such party); and (z) any Financing Party.



(b) Upon the request of Kenron, Gary-PCI and the Partnership shall execute and deliver a consent with respect to any permitted assignment described in Section 11.05(a) in form and substance reasonably acceptable to Kenron, Gary-PCI and the Partnership or to any Financing Party.

(c) No assignment shall relieve the assigning party from any of its obligations under this Agreement.

11.06 Survival of Representations, etc. The representations, warranties, covenants and agreements contained herein shall survive the Option Closing.

11.07 Specific Performance. The parties acknowledge and agree that any remedy at law for any breach of the provisions of this Agreement would be inadequate, and each of Kenron, the Partnership and Gary-PCI hereby consents to the granting by any court competent under applicable law to hear and make a determination in any proceeding of an injunction or other equitable relief without the necessity of actual monetary loss being proved, in order that the breach or threatened breach of this Agreement may be effectively restrained.

11.08 Limitation on Recourse. This Agreement shall be subject to Section 9.02 of the Participation Agreement.

11.09 Rights of Construction Lender. This Agreement and the options granted hereunder are expressly subordinate, junior and subject in all respects to the rights of Construction Lender under the Construction Loan Agreement, the Construction Note, the Security Documents and all other Operative Documents. In the event of a foreclosure of the Construction Lender's interest in any of the Assets and Properties of Kenron or the Borrower's Shares, and a sale of any thereof under the terms of the Construction Loan Agreement or any Security Document (a) the Partnership Option, the Gary-PCI Option and this Agreement shall be terminated and (b) any proceeds of such foreclosure in excess of amounts payable to Construction Lender under the Construction Loan Agreement, the Construction Note, and the Security Documents and any other Operative Document shall be paid to the Partnership for distribution to the Partners in accordance with the terms of the Partnership Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by each of Kenron, the Partnership and Gary-PCI as of the date first above written.

KENRON CORPORATION

By: Kenneth A. Schweers  
Name: Kenneth A. Schweers  
Title: President of ICF Resources Incorporated  
as Attorney in Fact

GARY COAL PROCESSING L.P.,

By Gary PCI LTD L.P.,  
as general partner

**Document is  
NOT OFFICIAL**

By ICF R G.P. No. 1, Inc.,  
as general partner

This Document is the property of  
the Lake County Recorder!

By: Kenneth A. Schweers  
Name: Kenneth A. Schweers  
Title: President

**STOP**

Gary-PCI LTD. L.P.

By: ICF R G.P. No. 1, Inc., as  
general partner



By: Kenneth A. Schweers  
Name: Kenneth A. Schweers  
Title: President

ASSET PURCHASE OPTION AGREEMENT







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, Inc., 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 the execution of the foregoing instrument for and on behalf of said limited partnership and stated that the representations set forth therein are true and correct.

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)

**STOP**

My commission expires:

10/30/91



KATHERINE J. HAJE  
No. 492816J  
Qualified in New York County  
Certificate Filed in New York  
Commission Expires 10/30/91

This instrument prepared by:

Eileen Breslin, Esq.  
Milbank, Tweed, Hadley & McCloy  
1 Chase Manhattan Plaza  
New York, New York 10005

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1991, between Kenron Corporation, a Delaware corporation ("Assignor"), and [the Partnership/Gary-PCI], a Delaware limited partnership ("Assignee").

Recitals

1. Assignee, Assignor and [the Partnership/Gary-PCI] have entered into an Asset Purchase Option Agreement, dated as of \_\_\_\_\_, 1991 (the "Option Agreement"), pursuant to which Assignor agreed to sell to Assignee and Assignee agreed to buy from Assignor certain of the assets used by Assignor in conducting its business on the terms and conditions set forth in the Option Agreement.

2. Assignor desires to transfer and assign to Assignee the assets described below pursuant to the Option Agreement, and Assignee desires to accept the transfer and assignment thereof and to assume all obligations of Assignor thereunder.

3. Terms used in this Agreement and not defined have the meaning set forth in the Option Agreement.

In consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby transfers and assigns to Assignee all Assignor's right, title and interest in, to and under the Contracts comprising part of the Kenron Assets (individually, an "Agreement" and collectively, the "Agreements"), to have and to hold the same unto Assignee, its successors and assigns from and after the date hereof subject to the covenants, conditions and provisions therein provided.

2. Assignee hereby accepts the transfer and assignment of the Agreements and assumes and agrees to keep, perform and fulfill all the terms, covenants, conditions and obligations of the Agreements (including the making of any and all payments due and payable under the Agreements) from and after the date hereof, all with full force and effect as if Assignee had signed the Agreements originally.



3. If any Agreement contains provisions requiring the consent of a party thereto, other than Assignor, to its transfer and assignment, and if such consent has not been obtained on or before the date hereof and if the transfer and assignment of such Agreement without the consent of such party would constitute an event of default or other breach under such Agreement giving such party the right to terminate or otherwise materially affect the rights of Assignor thereunder, then the transfer and assignment shall not be deemed effective with respect to such Agreement until such time as the consent of such party to the transfer and assignment of such Agreement to Assignee shall have been obtained. With respect to any such Agreement, Assignor hereby agrees to take such actions in accordance with the terms of the Option Agreement as shall be requested reasonably by Assignee to provide that benefits of such Agreement to Assignee prior to the effectiveness of its transfer and assignment to Assignee in accordance herewith.

4. Notwithstanding anything to the contrary contained herein, no Partner in the Assignee, nor any of its or Assignor's stockholders or Affiliates or any officer or director of any thereof ("Non-Recourse Persons") shall have any liability to any party hereto for the payment of any sums now or hereafter owing, directly, indirectly or contingently, by Assignor or Assignee hereunder, or for the performance of any of the obligations of either party hereto contained herein or shall otherwise be liable or responsible with respect thereto. This Paragraph 4 shall survive the termination of the Operative Documents and shall be enforceable by any Non-Recourse Person.

5. This Agreement may be executed with counterpart signature pages or in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall be deemed, collectively, as one agreement.

6. This Agreement shall be governed by and construed in accordance with the law of the State of Indiana, without regard to the principles of conflicts of laws thereunder, except if it is necessary in any other jurisdiction to have the law of such other jurisdiction govern this Agreement to be effective with respect to a particular agreement, in which case the laws of such other jurisdiction shall govern this Agreement with respect to such agreement.

IN WITNESS WHEREOF, the undersigned have caused their Responsible Officers to execute this Agreement on the day and year first above written.

KENRON CORPORATION,

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

Name:

Title:

**Document is**  
[PARTNERSHIP/GARY-PCI]  
**NOT OFFICIAL!**

**This Document is the property of**  
Name: \_\_\_\_\_  
**the Lake County Recorder!**  
Title: \_\_\_\_\_

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_

**STOP**

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



[Form of notarization to be conformed to Indiana law. Additional forms of notarization to be added if necessary.]

EXHIBIT B

EXERCISE NOTICE

Date \_\_\_\_\_

To Be Delivered to:

Kenron Corporation

Ladies and Gentlemen:

We refer to the Asset Purchase Option Agreement, dated \_\_\_\_\_, 1991, between Kenron Corporation and the undersigned (the "Option Agreement"). Terms used herein have the meanings set forth in the Option Agreement.

**Document is NOT OFFICIAL!**  
**This Document is the property of the Lake County Recorder!**  
Pursuant to [Section 2.02/2.05] of the Option Agreement, we hereby exercise the Purchase Option. The Option Closing shall be held at \_\_\_\_\_ [a.m./p.m.], \_\_\_\_\_, 199\_\_ at the offices of \_\_\_\_\_ located at \_\_\_\_\_.

Please notify the undersigned immediately if you will not be prepared to meet each of your obligations under the Option Agreement in connection with the Option Closing.

Very truly yours,

[PARTNERSHIP/GARY-PCI]



Name: \_\_\_\_\_

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



EXHIBIT C

FORM OF BILL OF SALE

This Bill of Sale entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and before Kenron Corporation, a Delaware corporation ("Kenron"), and [the Partnership/Gary-PCI], a Delaware limited partnership (the "Purchaser");

WITNESSETH

WHEREAS, Kenron, the Purchaser and [the Partnership/Gary-PCI] have entered into an Asset Purchase Option Agreement, dated as of May 2, 1991 (the "Option Agreement"; capitalized terms not defined herein shall have the meanings ascribed to them in the Option Agreement), pursuant to which Kenron agreed to sell to the Purchaser and the Purchaser agreed to buy from Kenron certain of the assets used by Kenron in conducting its business on the terms and conditions set forth in the Option Agreement; and

WHEREAS, Kenron desires to transfer to the Purchaser the assets described below pursuant to the Option Agreement, and the Purchaser desires to accept the transfer thereof;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for good and valuable consideration, the existence, sufficiency and receipt of which is acknowledged hereby, Kenron, for itself, its successors and assigns, hereby irrevocably grants, sells, transfer, assigns, conveys and delivers to the Purchaser, its successors and assigns, forever, all of Kenron's right, title and interest in and to all the Kenron Assets other than the Kenron Assets transferred and conveyed by Kenron to the Purchaser pursuant to that certain Assignment and Assumption Agreement of even date herewith between Kenron and the Purchaser (the "Transferred Assets"), and the Purchaser hereby accepts the sale, transfer, conveyance and delivery of the Transferred Assets.

Kenron represents, warrants, covenants and agrees that it (a) has good and marketable title to the Transferred Assets, free and clear of all Liens, other than Permitted Liens and (b) will warrant and defend the sale of the Transferred Assets against all and every Person or Persons whomsoever claiming against any or all of the same, subject to the terms and provisions of the Option Agreement.

At any time or from time to time after the date hereof, at the Purchaser's request and without further consideration, Kenron shall execute and deliver to the Purchaser such other instruments of sale, transfer, conveyance, and confirmation, provide such materials and information and take such other actions as the Purchaser reasonably may deem necessary or desirable in order more effectively to transfer, convey and assign to the Purchaser, and to confirm the Purchaser's title to, all of the Transferred Assets, and, to the full extent permitted by law, to

put the Purchaser in actual possession and operating control of the Transferred Assets and to assist the Purchaser in exercising all rights with respect thereto.

Kenron hereby constitutes and appoints the Purchaser the true and lawful attorney of Kenron, with full power of substitution, in the name of Kenron or the Purchaser, but on behalf of and for the benefit of the Purchaser: (a) to demand and receive from time to time any and all of the Transferred Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (b) to institute, prosecute, compromise and settle any and all Actions or Proceedings that the Purchaser may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Transferred Assets, (iii) to defend or compromise any or all Actions or Proceedings in respect of any of the Transferred Assets; and (iv) to do all such acts and things in relation to the matters set forth in the preceding clauses (i) through (iii) as the Purchaser shall deem desirable. Kenron hereby acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason. The Purchaser shall indemnify and hold harmless Kenron and its officers, directors, employees, agents and Affiliates from any and all loss, cost or expense caused by or arising out of any breach of Governmental Rule by the Purchaser in its exercise of the aforesaid powers.

Notwithstanding anything to the contrary contained herein, no Partner in the Purchaser nor any of its or Assignor's stockholders or Affiliates or any officer or director of any thereof ("Non-Recourse Persons") shall have any liability to any party hereto for the payment of any sums now or hereafter owing hereunder, directly, indirectly or contingently, by either party hereto, or for the performance of any of the obligations of either party hereto contained herein, or shall otherwise be liable or responsible with respect thereto. This paragraph shall survive the termination of the Operative Documents and shall be enforceable by any Non-Recourse Person.

This Bill of Sale may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

This Bill of Sale shall be governed by and construed in accordance with the law of the State of Indiana, without regard to the principles of conflicts of laws thereof, except that if necessary in any other jurisdiction to have the law of such other jurisdiction govern this Bill of Sale in order for this Bill of Sale to be effective in any respect, then the laws of such other jurisdiction shall govern to such extent.

IN WITNESS WHEREOF, each of the undersigned have caused  
this Bill of Sale to be executed by its Responsible Officer this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

KENRON CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

[THE PURCHASER]





EXHIBIT D

Certificate of Responsible Officer

I, \_\_\_\_\_, on behalf of Kenron Corporation, a Delaware corporation ("Kenron"), pursuant to Section 9.03 of the Asset Purchase Option Agreement dated as of May 2, 1991 (capitalized terms not defined herein shall have the meanings ascribed to them in the Option Agreement) among Gary Coal Processing L.P., a Delaware limited partnership, Gary-PCI Ltd. L.P., a Delaware limited partnership, and Kenron, DO HEREBY CERTIFY on behalf of Kenron that:

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1. Each of the representations and warranties made by Kenron in the Option Agreement (other than those made as of a specified date) was true on the Exercise Date, and is true on and as of the date hereof, in all material respects, as though made on and as of the date thereof or hereof, as the case may be, and each of the representations and warranties made by Kenron as of a specified date was true as of such date.

2. Each of the agreements, covenants and obligations required by the Option Agreement to be performed or complied with by Kenron at or before the Option Closing has been duly performed or complied with in all material respects.

3. Attached as Exhibit A is a true, complete and correct copy of the Certificate of Incorporation of Kenron and all amendments thereto (as so amended, the "Certificate of Incorporation"), and no amendment to the Certificate of Incorporation has been authorized or become effective since the date of the last of such amendments, no amendment or other document relating to or affecting the Certificate of Incorporation has been filed in the office of the Secretary of State of the State of Delaware since such date and no action has been taken by Kenron, its shareholders, directors or officers in contemplation of the filing of any such amendment or other document or in contemplation of the liquidation or dissolution of Kenron.

4. Attached as Exhibit B is a true, complete and correct copy of the By-Laws of Kenron as in full force and effect on the date hereof and at all times since [date of last amendment].

5. Attached as Exhibit C is a true, complete and correct copy of resolutions adopted by the Board of Directors of Kenron with respect to the Operative Documents and the transactions contemplated thereby, which resolutions were duly and validly adopted by unanimous written consent of the Board of Directors of Kenron on \_\_\_\_\_, \_\_\_\_\_, and by unanimous written consent of the shareholders of Kenron on \_\_\_\_\_, \_\_\_\_\_. All such resolutions are in full force and effect on the date hereof in the form in which adopted and no other resolutions have been adopted by the Board of Directors or shareholders of Kenron relating to the Operative Documents and the transactions contemplated thereby.

IN WITNESS WHEREOF, Kenron has caused this Certificate to be executed on its behalf by the undersigned on and as of the \_\_\_\_\_ day of \_\_\_\_\_

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**STOP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EXHIBIT E

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

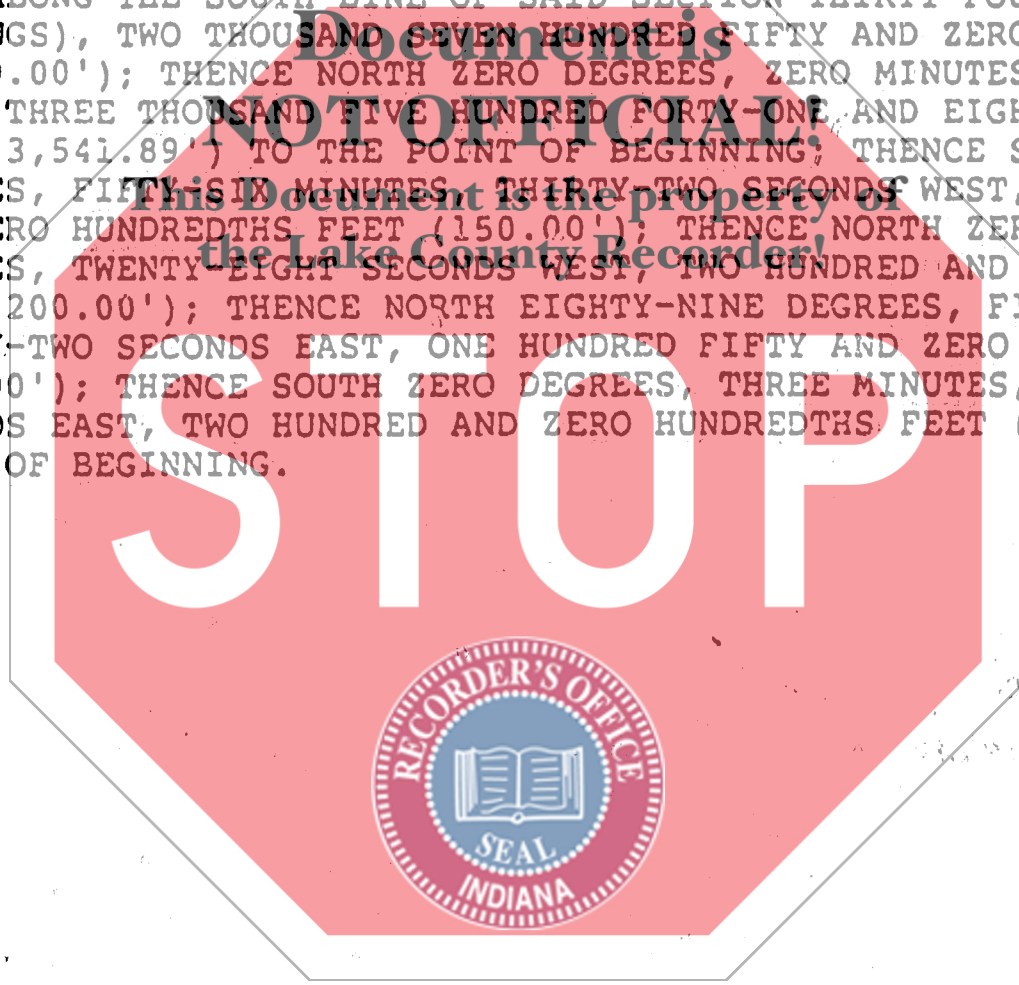


EXHIBIT E (con'd.)

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.



DISCLOSURE SCHEDULE

Section 4.03 Kenron Conflicts.

None

Section 4.04 Governmental Approvals and Filings.

State of Indiana

Air Permit -- Indiana Department of Environmental Management Issued 10/26/90

[No. CP (45) 1895]

Water Permit -- Indiana Department of Environmental Management Issued 10/1/90

[No. 1941]

Sediment Control -- Indiana Department of Environmental Management Issued 3/1/90

(Operational)

[No. INU 000083]

Construction -- Indiana Department of Fire and Building Services: Plan Review Division

Operating -- Indiana Department of Environmental Management

Local Governmental

Construction -- Gary Municipal Authority

Occupancy -- Gary Municipal Authority

Federal Government

Hart, Scott, Rodino -- Federal Trade Commission

United Mine Workers

Contracting Out -- Arbitration Hearing Issued 4/26/91

And other Governmental Actions which are routine in nature and cannot be obtained or are not normally applied for before they are required and which Kenron has no reason to believe Kenron will have any difficulty in obtaining.

Section 4.05 Legal Proceedings.

None

Section 4.06 Compliance with Governmental Rules.

None

Section 4.07 Intellectual Property Rights.

1. Borrower Sublicense Agreement

Section 4.08 Contracts.

1. Borrower Stock Pledge Agreement

2. Consent and Agreement dated as of May 2, 1991, among ICF, Contractor, Kenron and GE Capital with respect to the Construction Contract, Technical Construction Agreement and Construction Contract Guaranty

3. Consent and Agreement dated as of May 2, 1991, among Kenron, Contractor and GE Capital with respect to the Sublicense Agreement

4. Consent and Agreement dated as of May 2, 1991, among Operator, Kenron and GE Capital with respect to the Operating Agreement and Operating Agreement Guaranty

5. Consent and Agreement dated as of May 2, 1991, among Partnership, Kenron, Gary-PCI and GE Capital with respect to the Option Agreement

6. Consent and Agreement dated as of May 2, 1991, among Resources, Kenron and GE Capital with respect to the Construction Services Agreement

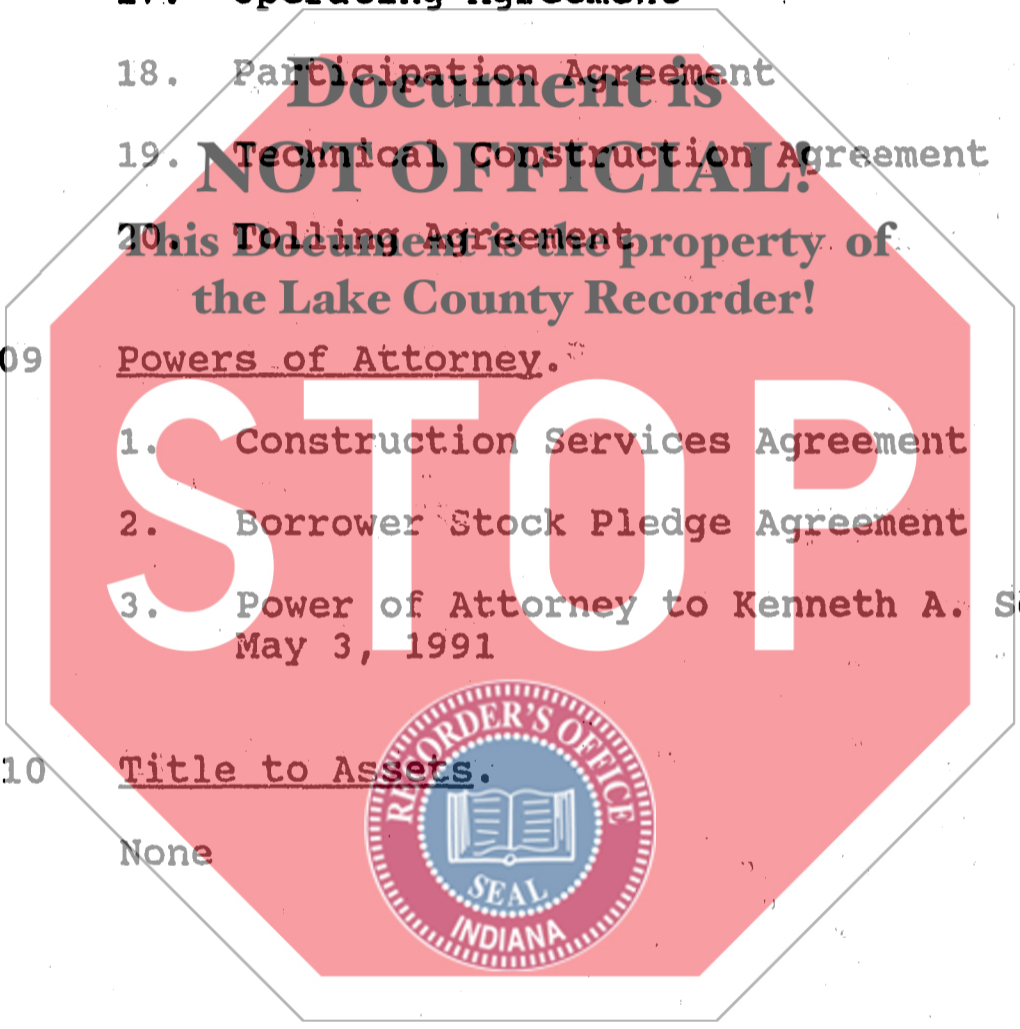
7. Consent and Agreement dated as of May 2, 1991, among USX, Kenron, Gary-PCI and GE Capital with respect to the Land Lease

8. Consent and Agreement dated as of May 2, 1991, between USX, Kenron and GE Capital with respect to the Tolling Agreement

9. Construction Contract



10. Construction Cost Overrun Loan Facility
11. Change Order Loan Facility
12. Construction Loan Agreement
13. Construction Services Agreement
14. Gary-PCI Assignment Agreement
15. Land Lease
16. Mortgage
17. Operating Agreement
18. Participation Agreement
19. Technical Construction Agreement
20. Tolling Agreement



Section 4.09

Powers of Attorney.

1. Construction Services Agreement
2. Borrower Stock Pledge Agreement
3. Power of Attorney to Kenneth A. Schweers, dated May 3, 1991

Section 4.10

Title to Assets.

None

Schedule 5.03 Partnership Conflicts

None

Schedule 5.04 Partnership Governmental Approvals and Filings

None

Schedule 6.03 Gary-PCI Conflicts

None

Schedule 6.04 Gary-PCI Governmental Approvals and Filings

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