

EXHIBIT 4-F-1

**PROPERTY AND PIPELINE CAPACITY
LEASE AGREEMENT**

BETWEEN THE

**PAJARO/SUNNY MESA
COMMUNITY SERVICES DISTRICT**

AND

**HMBY, L.P.,
A CALIFORNIA LIMITED PARTNERSHIP**

**COPY
ORIGINAL**

TABLE OF CONTENTS

	<u>Page</u>
1. SUBJECT AND PURPOSE.....	1
2. TERM	2
3. RENT.....	3
4. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.....	3
5. REPAIRS AND MAINTENANCE.....	3
6. UTILITIES.....	4
7. TAXES.....	4
8. USE OF PREMISES.....	4
9. SECURITY DEPOSIT.....	5
10. INSURANCE.....	5
11. INDEMNIFICATION OF LANDLORD.....	6
12. NEGLIGENCE.....	7
13. CAUSALITY DAMAGE; REPAIRS; ABATEMENT OF RENT.....	7
14. ASSIGNMENT, MORTGAGE OR SUBLEASE.....	8
15. SURRENDER OF POSSESSION.....	8
16. HOLDING OVER.....	8
17. SUBORDINATION AGREEMENT.....	8
18. ACCESS TO PREMISES.....	8
19. DEFAULT.....	9
20. EXPENSES OF ENFORCEMENT.....	9
21. QUIET ENJOYMENT.....	9
22. REPRESENTATIVES BY LANDLORD.....	9
23. TOTAL AGREEMENT APPLICABLE TO SUCCESSORS.....	10
24. NOTICES.....	10
25. MISCELLANEOUS.....	10

LEASE AGREEMENT

This is a Lease Agreement upon, for, and governing a portion of that real property, hereinafter referred to as the "Premises", which was formerly known as the National Refractories, Inc. site in Moss Landing, CA., and which is owned by HMBY, L.P., a California Limited Partnership, hereinafter called "Landlord". The "Premises", as herein described and made a part hereof in Exhibit 1 of this Agreement, includes the industrial parcel delineated and shown on the map in Exhibit 1 and that parcel's ancillary, appurtenant, related, servicing, and associated physical improvements, easements, roads, appurtenances, pumps, storage tanks, intake and outfall facilities, pipelines, and facilities necessary for the purposes of this Lease and located in or about Moss Landing, California and owned or controlled by HMBY, L.P., a California Limited Partnership, the "Landlord". Pajaro/Sunny Mesa Community Services District, a multiple governmental services public agency organized pursuant to provisions of the California Government Code, is herein called the "Tenant". This Agreement shall take effect on January 12, 2004 between Landlord and Tenant. Landlord and Tenant are herein known as the "Parties" and mutually agree to this lease and to all of its provisions. The map of the Property is herewith attached as Exhibit 1.

BACKGROUND

- A. Landlord owns all of the industrial parcel of the Premises and owns or controls all of its' ancillary, appurtenant, or related improvements, easements, roads, intake and outfall structures, pipes, pumps, storage tanks, and appurtenances which are part of the "Premises" described below, and desires to Lease the Premises to Tenant for the purpose of constructing, owning, and operating a publicly owned seawater desalination plant and ancillary enterprises and facilities for the purposes of producing and selling potable drinking water. Tenant is a public agency authorized to produce, sell, and deliver water to it's customers and to others, and desires to lease the Premises from Landlord for the purposes of developing, building, owning, and operating a seawater desalination plant, production and piping facilities, and ancillary district facilities. The Premises are more specifically shown in Exhibit 1.
- B. The Parties desire to enter into this Lease Agreement defining their rights, duties, obligations and liabilities relating to the premises. Both Landlord and Tenant intend that this Lease, and Premises subject thereto, shall be used by Tenant for the purpose of the entitlement, establishment, development, construction, and long-term operation of a seawater desalination plant, including all potable water production, distribution, and all ancillary or related buildings or facilities, to address both regional

water quality contamination and health concerns, environmental and endangered species concerns, seawater intrusion problems, and the unavailability of adequate pure potable water to present and future residents, water users and landowners both within and outside of Tenant's boundaries. The Parties intend that the desalination plant and all related facilities may be constructed and owned by Tenant to eventually produce at least 20,000 acre-feet of potable water annually during the 98-year course of the lease and its' extension..

AGREEMENT

The Parties therefore agree as follows:

1. SUBJECT AND PURPOSE. Landlord hereby leases to Tenant a portion of the Property consisting of approximately twenty (20) acres, which is more precisely described on Exhibit A which is attached hereto and made a part of this Lease Agreement, herein called the "Premises". In addition, Landlord hereby grants to Tenant a non-exclusive right to use all access easements, roads, appurtenant pipes and pipelines, waste discharge pond, and other appurtenances on the Property, and the exclusive use and access to all tanks on the Premises and the pipe space and flow capacity in both the sea water intake pumps and pipelines and the wastewater outfall pumps and pipelines and their related governmental permits and facilities, including the outfall pipeline located upon lands owned by the Moss Landing Harbor District Board of Commissioners, but excepting therefrom that capacity in those pumps, pipelines and facilities, if any, which is necessary to serve Landlord's development on the balance of the Property not subject to this Lease Agreement, and excepting that space and capacity in the outfall pipeline which accommodates the seawater intake and outfall for the Moss Landing Marine Laboratories until said use is terminated. Landlord agrees that the Premises will be cleared, except for the tanks, pipelines, infrastructure, and appurtenances, and will be clean and suitable for the purposes for which Tenant intends to use the leased premises. Landlord agrees that Landlord and its successors, heirs and/or assigns shall not locate or allow to be located on any of Landlord's property in Moss Landing any other desalination facility or associated facilities during the term of this Lease. Further, Landlord and Tenant agree to cooperate to cause to be prepared, completed, and recorded a lot line adjustment to create a separate legal lot of record that will encompass the Premises as soon as is reasonably possible.

During the term of this Lease, Tenant shall have the right to lease up to an additional ten (10) acres on the Property at a location that is mutually agreed upon by the parties, on the same rent terms as set forth above for the Premises, if such land is not leased by another party and is available.

2. TERM. Landlord and Tenant hereby agree, for mutual and significant consideration, that the term of this Lease Agreement shall be for 49 years, commencing on March 29, 2004 and ending on March 29, 2053, and subject to the provisions and terms found herein. This Lease shall be extended upon the same terms, rent, and conditions for an additional 49 years upon mutual agreement of the Parties, which agreement between the Parties shall not be executed later than seven (7) years prior to the date of expiration of this Lease.
- (a) Occupancy. Tenant shall have the right to occupy the subject Premises when Landlord notifies and warrants to Tenant in writing that the Premises are cleared and free of any impairment, contamination, or limitation that would impede or burden the purpose for which Tenant intends to use the Premises, namely, for the purposes of producing potable drinking water supplies for sale and consumption by the public. Landlord hereby affirms that Landlord will be fully responsible for the costs of making the Premises free of any and all hazardous materials, contaminants, or impairments which have resulted from the use of the Premises prior to Tenant's taking possession which would prevent Tenant from using the Premises for the above stated purposes. Tenant shall be fully responsible for the costs of impairments, contaminations, clean-ups, and mitigations for any contamination of the Premises resulting from any actions of Tenant, its agents, employees, officers, directors, and permittees after the date that it occupies the subject Premises of this Agreement. The Parties mutually agree that, in the event that a regulatory agency or an agency with land use control or authority should require the dedication of wetlands as mitigation for Tenant's project impacts, the Parties shall work cooperatively to provide such mitigation on Landlord's adjacent properties that may be classified as wetlands, and to provide Landlord with the maximum tax benefits that may be achieved from its dedication of such properties.
3. RENT. Rent for the subject Premises and Tenant's use of all ancillary facilities, easements, intake and outfall pipelines, tanks, pumps, and all appurtenances thereto shall be paid as follows:
- (a) The base rent for the subject Premises shall be \$.05 (five cents) per square foot per year for vacant land and \$.10 (ten cents) per square foot per year for the open water holding tanks on the twenty (20) acre "Premises" site. On the first day of the beginning of the fourth year of the lease, and on the first day of every year of the Lease, or the Lease extension, thereafter, the base rent shall be increased at a rate of 5% per year. The first ten (10) years of the base rent and such rent increases shall be pre-paid to Landlord by Tenant, or Tenants successors or assigns, on the date referred to below. Said pre-payment of the rent shall only be due, payable, and paid from the proceeds of the sale of financing bonds or Certificates of Participation by Tenant, or Tenants successors or assigns, to be sold to finance the

construction of the entirety of the subject desalination plant, not later than six months after such bonds or Certificates of Participation are actually sold and the project has received all regulatory and governmental approvals for construction. Should financing bonds or Certificates of Participation not be used to pay for the project, the pre-payment of rent by Tenant, or Tenant's successors or assigns, shall take place prior to the actual date construction on the final desalination plant and facilities commences, and shall only be due and payable if the project has received all regulatory and governmental approvals.

(b) In addition to the base rent, Tenant agrees to pay Landlord, as partial rent for subject Premises, including the intake and outfall pipeline and flow capacities, an amount for each acre foot of potable water produced for municipal or human use or consumption as follows:

- i. A base payment of \$100 per acre-foot for each acre-foot of potable water produced by Tenant for municipal, agricultural, or human consumption during the term of this Lease.
- ii. Beginning on the first day of Year Three (3) after the first day that potable water is produced and sold for commercial consumption by municipal, agricultural, or human uses, the base payment per acre foot shall increase at a rate of 10% per year for every year of the Lease from the beginning of Year Three until the end of Year Ten. The adjusted rate per acre-foot shall increase thereafter (beginning in Year Eleven) at a fixed rate of 5% per year for each remaining year of the lease or its extension.
- iii. Payment for the first 50,000 acre feet of water to be produced by Tenant shall be prepaid to Landlord on or before the first day that potable water is sold by Tenant for commercial consumption by municipal, agricultural, and human use. The Parties mutually acknowledge and agree that said payment shall only be due, payable, and paid from the proceeds of the sale of financing bonds or Certificates of Participation to be sold by Tenant to finance the construction of the subject desalination plant, after such bonds or Certificates of Participation are actually sold and all governmental and regulatory approvals are acquired. If such bonds or COP's are not used by Tenant, or Tenant's successors or assigns, then payment pursuant to this section shall be due prior to the date of sale of the first 100 acre feet of potable water for domestic consumption produced by the final desalination facility. Should a desalination plant not be approved by all regulatory or governmental agencies, constructed, or reasonably financed on the subject Premises within seven years of the effective date of this lease, both Parties shall be fully excused and relieved of any and all existing obligations, rent, and duties to each other.

4. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. All existing structures, tanks, pipes, alterations, additions and improvements on or a part of the Premises at the

commencement of the term of this lease, or that may be erected or installed on the Premises during the term of this Lease, shall be subject to the control, operation and management of Tenant during the entire term of the Lease. Tenant may, at Tenant's own expense, make or construct any alterations, additions, repairs, pipes, tanks, buildings, infrastructures, plants, or improvements in and to the premises as long as written approval of Landlord is obtained beforehand. Landlord will not unreasonably withhold such approval. Any such buildings, alterations, additions, improvements, or infrastructures shall be built or performed by a California licensed general contractor approved by Landlord. Tenant shall have full responsibility for any injury or damages that may arise as a result of any such improvements, and hereby agrees to defend and indemnify Landlord against any and all claims, including mechanics liens, for such work.

5. REPAIRS AND MAINTENANCE.

(a) Landlord's Responsibilities: Landlord shall maintain at Landlord's cost and expense, and in good repair, only those common area improvements, roadways, on-site water systems and septic tank or sewer systems, and other improvements or common appurtenances or amenities which are provided by Landlord for the benefit of Tenant as one of Landlord's tenants on the entire property owned by Landlord in Moss Landing, CA. Except as provided for in the terms and provisions of this Lease Agreement, Tenant shall not call upon Landlord to make any improvements or repairs in, on, or to the lease Premises. Landlord shall take such actions as are necessary to preserve the Premises from diminishment or reduction. Landlord hereby represents and warrants that it has disclosed to Tenant in writing all known or suspected conditions, defects, deficiencies, contaminations, impairments, or any other known or suspected impediments to the use of the leased premises for the purposes for which Tenant is leasing the premises as enumerated and described in this Lease Agreement. Landlord further warrants that the Premises are clean and free to contaminants. Landlord shall indemnify Tenant and hold Tenant harmless from any and all liabilities caused by, related to, or resulting from any and all pre-existing conditions, defects, deficiencies, contaminations, impairments, or any other known or suspected impediments to the intended use of the property herein referred to.

(b) Tenant's Responsibility. Tenant will, at all times during this Lease after the desalination project is approved by all regulatory agencies, and at Tenant's own cost and expense, repair, replace and maintain, in a good, safe and substantial condition, all structures, pipes and pipelines, pumps, roads, easements, intake and outfall structures, tanks, improvements, additions, appurtenances, and alterations on the Premises, and shall use all reasonable precaution to prevent waste, damage or injury to the Premises. Tenant will repair and maintain all pipes, pumps, intakes, outfalls, and plumbing which serve the Premises, and will repair any damage caused to

the Premises resulting from any stoppage and/or damage to the piping or plumbing system. Except for those responsibilities specifically allocated to Landlord under subparagraph 5 (a) of this Lease, Tenant shall at Tenant's own cost and expense, keep and maintain all of Premises, in good order, condition and repair and in compliance with all laws and regulations applicable thereto during the entire term of this Lease. Tenant shall pay to Landlord its pro-rata of the common area maintenance costs of the Property, including, without limitation, roads, fences, landscaping, security measures and guards, management, and other like costs. At the end of each calendar year, Landlord shall furnish to Tenant a detailed list of such costs and an invoice for Tenant's share. During the first year of the lease, the parties shall meet and agree on what the pro-rata share of Tenant is, and if the parties cannot agree, the share shall be determined by submission of the issue to a retired Monterey County superior court judge in the same manner provided herein as for the determination of the pro-rata share of the taxes.

6. UTILITIES. Tenant will pay on a monthly basis for all water, garbage, gas, electric service, and all other utilities and services used on the Premises as determined by metering, monthly charges, or other appropriate methods billed by the appropriate agency.
7. TAXES. Tenant shall pay all real property taxes and assessments levied against the Premises for both land and structures and improvements existing before or after Tenant takes possession. If the Premises are not taxed as a separate parcel, Tenant shall pay its pro rata portion of the total real property taxes and assessments for the Property. Landlord and Tenant shall meet and agree on a reasonable formula to determine what is a reasonable pro rate portion prior to the December due date of the taxes. For this purpose, Landlord shall provide to Tenant copies of all relevant tax bills within ten (10) days after receipt by Landlord thereof. If the Parties are not able to so agree, the matter will be submitted to a Monterey County superior court judge on or before December 31 of the first year Tenant takes possession for determination by the judge prior to March 15 of the year following the date Tenant takes possession. Each party shall submit in writing to said judge such material as the party desires regarding said determination within thirty days after the judge is selected. Upon determination by a retired superior court judge, Tenant shall promptly reimburse Landlord for any payment of the taxes allocable to the Premises that were made by Landlord pending the determination. Tenant shall pay all personal property taxes and assessments relating to Tenant's personal property on the Premises.
8. USE OF PREMISES. Tenant shall use the Premises for the purpose of conducting a public water production and desalination facility and other district or governmental activities and functions, and no part of the Premises shall be used for any other purpose without prior written consent of Landlord. Tenant will operate the Premises on a regular basis. Tenant shall provide Landlord with a

schedule of hours the facility shall remain open, and said schedule shall become part of and a condition of this Lease. No sale at auction by Tenant or others shall be made in or from the Premises. Tenant shall at all times maintain all the leased Premises in a clean, neat, and orderly condition. Tenant shall not allow the Premises to be used, or permit any act whatsoever to be done on the Premises, in a manner that will violate or make void or inoperative any policy of insurance held by Landlord. In the conducting of Tenant's business in and about the Premises, Tenant shall observe and promptly comply with all laws, ordinances and regulations of public authorities. Tenant shall not permit the Premises or any part thereof to be used in any manner that will impair the structural strength of any building, or permit the installation of any machinery or apparatus, the weight of which may tend to injure or impair the foundation of structural strength thereof, or interfere with the operation of other businesses located on Landlord's property in Moss Landing, CA.

- (a) Notwithstanding any other provision of this Lease Agreement, both Landlord and Tenant agree and confirm that Landlord or his assigns hereby retain the right to use and produce salt for commercial purposes from the brine and residual salt produced by Tenant as a bi-product of Tenant's seawater desalination and water production business at no cost.
- (b) Both Tenant and Landlord hereby acknowledge that Landlord may desire to purchase potable water from Tenant for the purposes of developing and operating retail bottled Water Company. Tenant, as partial consideration for the agreement of Landlord to the other terms herein contained, shall sell to Landlord, at Tenant's standard retail price, charged to private companies or public agency such water as is necessary to meet the needs of Landlord's bottled water company.

9. SECURITY DEPOSIT. Landlord acknowledges, as initial consideration for this Lease, receipt of Five Thousand Dollars (\$5,000.00) which Landlord is to retain as a security deposit for Tenant's faithful performance of this Lease. Landlord is not obligated to apply deposit on rents or other charges in arrears or on damages for Tenant's failure to perform the Lease. However, Landlord may so apply the security funds at Landlord's option, and Landlord's right to possession of the Premises for nonpayment of rent or for any other reason shall not in any event be affected by reason of the fact that Landlord holds this security. The security deposit, if not applies toward payment of arrearages or damages as herein provided, is to be returned to Tenant when this Lease is terminated, after Tenant has vacated the Premises and delivered possession to Landlord. Tenant herewith waives any right to interest on Tenant's paid security deposit funds except as herein provided.
10. INSURANCE. Tenant agrees that Tenant will, at Tenant's own expense, at all times during the term of this Lease, maintain in force a policy of policies of General Liability insurance, written by on or more responsible insurance carriers, approved by Landlord, in writing, which will name Landlord as an additional insured against liability for injury to or death of persons or loss or damage to their

property occurring in or about the leased Premises. The liability under such insurance shall not be less than Five Million Dollars (\$5,000,000.00) for any one accident. After ten years, and upon the expiration of each 10-year period thereafter, the dollar amount of the aforementioned policy shall increase by 25%. Tenant agrees to maintain and keep in force all Workers' Compensation Insurance required under the laws of the State of California, and such other insurance as may be appropriate and necessary to protect Landlord against any other liability to person or property arising hereunder by operation of law, whether such law be now in force or adopted subsequent to the execution hereof. Tenant agrees to maintain in force, at all times during this terms of this Lease, on all pipes, tanks, structures, fixtures, and equipment on the lease Premises, a policy or policies of fire insurance in companies approved by Landlord, in writing, to the extent of or at least ninety percent (90%) of the insurable replacement value thereof, and adequate inventory insurance, the proceeds of which will, so long as this Lease is in effect, be used for the repair or replacement of the property so insured. These policies shall name the Landlord as an additional insured to protect Landlord's interest as such Landlord. Landlord agrees to obtain during the term of this Lease a policy or policies of fire, earthquake, and casualty insurance to the extent of at least ninety percent (90%) of the insurable value of the common improvements serving the leased premises, all costs of this insurance shall be paid by the Landlord, except as otherwise provided by Paragraph 3 and Exhibit B of this Lease.

11. INDEMNIFICATION OF LANDLORD. Except for Landlord's obligations under Paragraph 5, Tenant shall defend and indemnify Landlord and the Premises against all reasonable expenses, liabilities and claims of every kind, including reasonable attorney's fees, made by or on behalf of any person arising out of the following:

- (a) Injury Or Death. Any claim by any party or parties for personal injury or death who are licensees, employees, invitees, customers, guests, or similar parties of Tenant, or said parties representatives or heirs; or
- (b) Property Damage. Any claim against Landlord by any licensees, employees, invitees, customers, guests, or similar parties of Tenant, for loss of any personal or real property, trade fixtures, or similar properties; or
- (c) Tenant's Use Of Premises. Any claim against Landlord by any person or entity arising out of or in any way connected with Tenant's use of the Premises.

Tenant shall defend and indemnify Landlord and the leased Premises against all reasonable expenses, liabilities and claims of every kind, including reasonable attorney's fees, by or on behalf of any person or entity arising out of any failure by Tenant to perform any of the terms or conditions of this Lease, any failure by Tenant

to comply with any law or governmental regulation that is the responsibility of Tenant, or any mechanic's lien incurred by Tenant filed against the leased Premises or equipment, materials, or alterations of buildings or improvements thereon.

Except for Landlord's obligations under Paragraph 5, Tenant shall defend and indemnify Landlord and the leased Premises and all improvements placed thereon from all claims, liens, claims of lien, demands, charges, encumbrances or litigation arising directly or indirectly out of or by reason of any work or activity of Tenant on or about the leased Premises, and shall forthwith and within ten (10) days after the filing of any claim of lien for record fully pay, and satisfy the same, and shall reimburse Landlord for all loss, damage and expense, including a reasonable attorney's fees, which Landlord may suffer or be put to by reason of any such claim of lien, demands, charges, encumbrances or litigation.

If Tenant fails to pay and discharge any claim, claim of lien, demand charge, encumbrance or litigation, or should proceeding be initiated for the foreclosure of any such lien or encumbrance, Landlord shall have the right, at Landlord's option, at any time after the expiration of such ten-day period, to pay the same or any portion thereof, with or without cost and expenses claimed by such claimant and in making such payment Landlord shall be repaid by Tenant to Landlord on demand, together with interest thereon at the rate of seven-percent (7%) per annum from the date of payment by Landlord until repayment is fully made.

12. NEGLIGENCE. Except for Landlord's obligations under Paragraph 5, and in the absence of negligence or intent on the part of Landlord, Landlord's agents, representatives, or employees, Landlord shall not be liable to Tenant for any damage or injury done to Tenant, Tenant's property, Tenant's business, or the Premises by wind, earthquake, acts of God, or by the act, omission or negligence of any third persons, including, but not limited to, persons not under the control or direction of Landlord. All claims against Landlord for any damage or injury as provided in this Paragraph 12 are hereby expressly waived by Tenant, except those claims occasioned by the negligence or willful or intentional acts of Landlord, Landlord's agents, representatives, employees, or by Landlord's neglect or failure to make repairs for which Landlord is responsible under this Lease, after due written notice thereof by Tenant.

13. CASUALTY DAMAGE; REPAIRS; ABATEMENT OF RENT.

- (a) Partial Destructions. In the event of a partial damaging or destruction of the Premises, Tenant shall continue to utilize the Premises for the operation of its business to the extent that it may be practicable to do so from the standpoint of good business.
- (b) Termination Right. Tenant shall have the right to terminate this Lease if the leased Premises are damaged to an extent exceeding fifteen percent (50%) of the total reconstruction cost of such Premises as a whole, or the

loss of either the outfall or Landlord's right to maintain said outfall; provided that, in such an event, such termination of this Lease shall be effected by written notice to that effect to Landlord delivered within fifteen (15) days of the happening of such casualty causing the damage.

(c) **Repair Obligation.** If the Premises are, either prior to the beginning to the term hereof, or during the term thereof, damaged or destroyed by fire or by any other cause whatsoever beyond Tenant's control, Tenant, with respect to the Premises, and Landlord, with respect to the common area facilities, except as herein otherwise provided, promptly on receipt of insurance proceeds paid in connection with such casualty damage, proceed to repair or rebuild the same, on the same plan and design as existed immediately before such damage or destruction occurred, subject to such delays as may be reasonable attributable to governmental restrictions or failure to obtain materials or labor, or other causes, whether similar or dissimilar, beyond the legal or reasonable control of Landlord. When a strike, act of God, or cause beyond the affected party's power of control causes delays, the period of such delay so caused shall be added to the period limited in this Lease for the completion of such work, reconstruction or replacement.

(d) **Equitable Reduction In Rental.** In the event Tenant continues to conduct business during the making of repairs, the fixed minimum monthly rental will be equitably reduced in the proportion that the unusable part of the Premises bears to the whole thereof. No rental shall be payable while the leased Premises are wholly unoccupied pending the repair of casualty damage.

14. **ASSIGNMENT, MORTGAGE OR SUBLEASE.** Tenant or Tenant's successors or assignees may assign, transfer, sublet, pledge, or encumber this Lease to another public, not-for-profit agency without the prior consent, in writing, of Landlord. If this Lease is assigned or transferred, or if all or any part of the leased Premises is sublet or occupied by an entity other than Tenant, Landlord may collect rent from the assignee, transferee, subtenant, or occupancy, and apply the net amount collected to the rent reserved herein, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any agreement of condition hereof, or the acceptance of assignee, transferee, subtenant or occupant of Tenant, without Landlord's approval in writing. Tenant will continue to be liable hereunder in accordance with the terms and conditions of this Lease and may not be released from the performance of the terms and conditions hereof. The consent by Landlord to an assignment, mortgage, pledge or transfer shall not be construed to relieve Tenant from obtaining the express written consent of Landlord to any future transfer of interest. Landlord's consent shall not be unreasonably withheld. Tenant shall provide loss of rent insurance for Landlord.

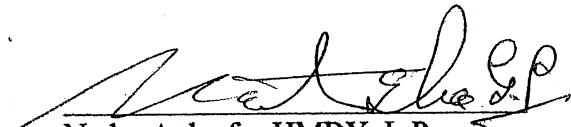
15. SURRENDER OF POSSESSION. Tenant shall, on the last day of the term, or on earlier termination and forfeiture of the Lease, peaceably and quietly surrender and deliver the leased Premises to Landlord free of sub tenancies.
16. HOLDING OVER. No holding over and continuation of any business by Tenant after the expiration of the term hereof shall be considered to be a renewal or extension of this Lease unless written approval of such holding over and a definite agreement to such effect is signed by Landlord defining the length of such additional term. Tenant shall have the first right of refusal to purchase the leased Premises from Landlord during the entire term of the lease.
17. SUBORDINATION AGREEMENT. Tenant covenants and agrees to execute any instrument or subsequent financing or refinancing to be placed on Landlord's property, or any part thereof, as security for any indebtedness, except that neither Landlord nor any such instrument of financing or refinancing in any way, manner, or form shall diminish, reduce, burden, or legally impair or encumber, directly or indirectly, the Premises, the desalination plant, Tenants constructed improvements or the leasehold interests of Tenant. Further, neither Landlord nor any such instrument shall propose to, or be construed to, cause, effect, implement, or enforce any impediment, limitations, illegal constraints or restraints, or prohibited burdens or financial obligations, of any kind, upon the powers, rights, or authorities of Tenant as a public agency under the laws of California and as the tenant under this lease.
18. ACCESS TO PREMISES. Tenant shall permit Landlord or Landlord's agents to enter Premises at all normal business hours, or during Tenant's business hours, to inspect the Premises or make repairs.
19. DEFAULT.
- (a) Notice Period. If the Tenant defaults in the performance of any covenant, condition or agreement in this Lease, then Landlord shall give Tenant ten (10) days written notice to Tenant to cure such default. If such Default is not cured within ten (10) days after such written notice, Landlord may take all legal action available to Landlord under this Lease. Parties agree that under any and all circumstances, the desalination plant shall remain the personal property of Tenant.
 - (b) Remedies Cumulative. Each and all of the remedies given to Landlord in this Lease are cumulative, and the exercise of one right or remedy by Landlord shall not impair Landlord's right to exercise any other right or remedy.
20. EXPENSES OF ENFORCEMENT. Should either party incur any expense in enforcing any covenants of this Lease, the party in default shall pay to the other all expenses so incurred, including reasonable attorneys' fees, whether or not litigation is instituted in connection with such enforcement.

21. QUIET ENJOYMENT. Landlord warrants that Tenant shall be granted peaceable and quiet enjoyment of the Premises, free from any interference by Landlord if Tenant pays the rent and other charges provided herein, and otherwise fully punctually performs the terms and conditions imposed by this Lease on Tenant.
22. REPRESENTATIONS BY LANDLORD. At the commencement of the term, Tenant shall accept the Premises, and Tenant agrees that no representations, statements or warranties, express or implied have been made by or on behalf of Landlord in respect thereto, except as contained or provided for in the provisions of this Lease. Landlord shall take all actions necessary to preserve and protect the entire leasehold of the subject Premises during the term of this Agreement.
23. INTEGRATED AGREEMENT; APPLICABLE TO SUCCESSORS. This Lease contains the entire agreement between the Parties, supersedes all prior agreements and discussions, whether oral or written, and cannot be changed or terminated except by a written instrument subsequently executed by the Parties hereto. This Lease, and the terms and conditions hereof, apply to and are binding upon the heirs, legal representatives, successors and assigns of both parties.
24. NOTICES. All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, and return receipt requested, to the party to be notified at the address set forth below the signature of the parties to this Lease, or at such other address as either party may from time to time designate in writing. Every notice shall be deemed to have been given at the time received in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.
25. DUE DILIGENCE BY TENANT. Tenant shall use due diligence and take all reasonable actions to promptly obtain the necessary approvals and permits from all governmental bodies, local, federal and state, to enable Tenant to construct and operate a seawater desalination facility as referred to above in this lease. In the event Tenant has not obtained said permits and approvals within (5) five years after the execution of this lease, or if Tenant has not completed its facility and commenced operation thereof within (7) seven years after the execution of this lease, Landlord or Tenant may terminate this lease upon (60) sixty days written notice to the other Party.
26. MISCELLANEOUS.
- (a) Assessments. In the event that there is an assessment or charge levied by any governmental agency or organization that pertains to conduct of business at the Premises, Tenant shall be obligated to pay its pro-rata share of such cost.
 - (b) Limited Living Quarters. At all times during the term of this Lease, Tenant will limit using any portion of the demised Premises for use as living quarters except for guards or watchmen of Tenants.


- (c) Invalidity of Lease Agreement. Should any provision of this Lease be determined invalid for any reason, the remaining provision shall continue in full force and effect
- (d) Binding Arbitration Any and all disputes between the Parties arising from or pursuant to any of the terms or provisions of this Agreement, or the interpretation thereof, shall be subject, under all circumstances, to binding arbitration. The Parties hereby waive their rights to judicial determination, resolution, and decision of any and all such disputes. The Parties agree to mutually select a single Arbiter for purposes of such dispute resolution within 20 days of the request for arbitration by either Party. Should the Parties not agree upon a single Arbiter within 20 days of the request of either Party for arbitration, the Parties shall request and accept the nomination and appointment of an Arbiter by the Presiding Judge of the Superior Court of Monterey County.
- (e) Time of Essence Time is of the essence of this lease and every provision thereof.

This agreement shall be effective upon execution by both parties with authorized representatives.

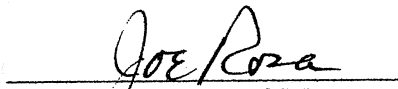
Signed and Approved on this day of 3 of March 2004:


 Nader Agha for HMBY, L.P.

449 Alvarado St. Madera, CA 93940
 Address


 LINDA SANDOVAL, Chair
 PSMCSD

15 1/2 Gonda ST Watsonville
 Address MONTEREY 95076


 JOE ROSA, General Manager
 PSMCSD

PSMCSD
136 San Juan Rd Watsonville Ca
 Address 95076

EXHIBIT A

.62

