



A RESOLUTION BY COUNCILMEMBER DEBI STARNES

AS SUBSTITUTED BY FINANCE/EXECUTIVE COMMITTEE

**A RESOLUTION AUTHORIZING THE MAYOR TO AMEND
AN EXISTING LEASE AGREEMENT WITH SOUTHFACE
ENERGY INSTITUTE AND THE CITY OF ATLANTA.**

WHEREAS, the Southface Energy Institute (SEI) has been located at 241 Pine St. for a number of years; and

WHEREAS, SEI wants to amend an existing lease agreement with the City; and

WHEREAS, SEI want to offer educational and in-kind services City of Atlanta residents, in exchange for their existing lease; and

WHEREAS, these services would be beneficial to City of Atlanta residents,

BE IT THEREFORE RESOLVED, that the Mayor is authorized to negotiate and execute such an amended lease agreement.

BE IT FURTHER RESOLVED, that a proposed amended lease agreement is attached to this resolution.

BE IT FINALLY RESOLVED, that all Resolutions in conflict herewith are hereby repealed.

A true copy,

Rhonda Daughkin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

MAR 18, 2002
MAR 26, 2002

Linda Klein's
Kusid
base of 11-14-00

LEASE AGREEMENT

This Lease Agreement is made and entered into on the _____ day of _____ 2000, by and between the City of Atlanta, a duly chartered municipal corporation of the State of Georgia (hereinafter referred to as "City") and Southface Energy Institute, Inc. a Georgia non-profit corporation, (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, by Resolution adopted by the Council on _____ 2000 and approved by the Mayor on _____ 1995 (EXHIBIT A) City in consideration of the rents, covenants and agreements hereafter reserved, mentioned and contained on the part of the Tenant its successors and assigns, to be paid, and performed, has leased, rented, let and demised and by these presents does lease, rent, and demise unto Tenant, and Tenant does hereby take, and hire, and subject to the conditions hereinafter expressed, the premises Consist of 0.7521 acre (32,761.47 sq. ft.) located at 241 Pine Street, N. E., Atlanta, Georgia 30308, and more particularly described on EXHIBIT B attached hereto and incorporated herein and made a part hereof, and hereinafter referred to as "The Premises". The Premises are leased subject to the zoning regulations and zoning ordinances of the city, town or village in which the Premises lie;

TO HAVE AND TO HOLD, The Premises unto Tenant, its successors and assigns commencing on the 1st day of January 2001 and to expire at midnight on December 31, 2016, or until said term shall sooner cease and expire under the provisions hereof Tenant and City shall have one option to renew and renegotiate one additional 10-year term.

This Lease Agreement is made on the following covenants, agreements, terms, provisions, conditions and limitations, all of which City and Tenant covenant and agree to perform and observe:

I. LEASE PAYMENTS

Tenant covenants and agrees to compensate City for its use of the 0.7521 acre premises by:

- Providing personnel to open and operate The Premises for the public benefit at its sole expense at an approximate salary cost of \$51,600 per year; and
- Paying to City (General Fund account # 1A01 462201 B00001) by good and sufficient check or in kind, in the form of educational and technical assistance



services to the City and its residents an amount equal to 3% of its "Excess Of Support and Revenue Over Expenses", "Excess of Support and Revenue Over Expenses", as used herein, shall be the product of subtracting Tenant's "Total Expenses" from its "Total Support and Revenue" as determined through a Certified Independent Auditor's Report conducted at the conclusion of each Southface Energy Institute, Inc. Fiscal Year through the term of the Agreement.

The prorata lease payments for the current Southface Energy Institute, Inc. Fiscal Year shall become due and Payable upon execution and award of the agreement. Lease payments required for the remainder of the term shall be due and payable on the anniversary date of execution and award as first written above.

2. AUDIT REPORTS

2.1 Tenant shall, through the services of an Independent Auditor, submit to the City (specifically, the Commissioner, Department of Parks, Recreation and Cultural Affairs, a Certified Independent Auditor's Report detailing Tenant's financial support, revenue, expenses, changes in fund balance and cash flow for the preceding Southface Energy Institute, Inc. Fiscal Year no later than September 30 of each succeeding year through the term of the Lease. The Audit Report shall include a determination of Tenant's Ratio of Current Assets Over Current Liabilities for the period examined.

2.2 The Independent Auditor's Report shall be conducted in accordance with Generally Accepted Auditing Standards and in compliance with GMB Circular #A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions". The independent Auditor's Report shall include: Statements of Southface Energy Institute, Inc.'s Fiscal Year Support, Revenue, Expenses and Fund Balance, Balance Sheets for Assets, Liabilities and Fund Balance; Fiscal Year's Significant Sources of Funding; and Fiscal Year's Annual Operating Budget, Actual Visitation and Staffing Plan.

3. ADDITIONAL PAYMENTS (TAXES, FEES, UTILITIES)

3.1 Tenant shall pay, during the term, except as hereinafter provided, within thirty (30) days after the same shall become due and payable (or if the bills are directed to the City rather than the Tenant within thirty (30) days after Tenant's receipt of such bills from City, provided the same are then due and payable) all real property and rent



taxes (including sales taxes with respect to rent), special, general, ordinary or extraordinary assessments, sewer rates and charges and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and every installment thereof, and all fees and charges of public or governmental authorities for construction, maintenance, occupation, or use during the term, of The Premises, or any passage-way or space therein, over or under any sidewalk or street on or adjacent to The Premises, or for construction, maintenance or use during the term of any part of any building, covered thereby, within the limits of any street, which shall or may during the term be charged, laid, levied, assessed, imposed, come due and payable or lien upon or to The Premises or any part thereof, on any building, appurtenances, personal property, trade fixtures or equipment thereon or therein or any part thereof, or the sidewalks or streets in front of or adjoining The Premises, and all taxes, charges, laid, levied, assessed or imposed in lieu of the foregoing together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directions, rates or regulations of the federal, state, county and city governments and of all other governmental authorities whatsoever, to the extent Tenant is subject to such taxes and charges. Tenant shall also pay within thirty (30) days after the same shall become due and payable, all charges for public or private utilities, in but not limited to, water, sewer, gas, electricity, light and power, telephone, trash removal and any other service or services furnished to The Premises or the occupants thereof during the term of this Lease. Tenant shall make all deposits required by any utility company and shall receive such services in the name of Tenant and shall pay all tap-on or related fees incidental thereto.

3.2 To the extent the same may be permitted by law, Tenant shall have the right to review by legal proceedings, instituted and conducted at Tenant's own expense and free of expense to City, any such tax, assessment, sewer or other public or private imposition, fee or charge assessed against The Premises or Tenant, and in the case such impositions shall, as a result of such proceedings or otherwise, be reduced, canceled, set aside or to any extent discharged, Tenant shall be obligated to pay the amount that shall be finally assessed or imposed against The Premises or the Tenant as the case may be, or adjudicated to be due and payable on any such dispute or contested items. In the event Tenant exercises its right to review by legal proceedings, any such tax, assessment, sewer or other public or governmental imposition, fee or charge assessed against The Premises or Tenant, Tenant shall nevertheless pay and continue to pay such imposition and it shall be a fund, payable with the due thereon. Tenant shall be entitled to receive



any such refund to the extent that the same has been paid by Tenant. The legal proceedings herein referred to shall include appropriate certiorari proceedings and appeals from orders therein and appeals from any Judgments, Decrees or Orders, but all such proceedings shall begin as soon as reasonably possible after the imposition or assessment of any contested item, and be prosecuted to final adjudication with reasonable dispatch. The City shall, upon request of Tenant, join as a party in any such proceedings and shall execute, at the request of Tenant, all such documentation necessary to successfully prosecute such proceedings, and Tenant shall reimburse City for any out-of-pocket expenses incurred in connection therewith. Tenant agrees to protect and hold City harmless against any such taxes, assessments, sewer or other public or governmental imposition or charge.

3.3 In default of any payment called for herein by Tenant for fifteen (15) days after said imposition shall have become due and payable, City may, but shall not be obligated to pay the same, plus any interest and penalties and any amount so paid, with interest at twelve (12%) percent per annum may be added to and collectible as additional rent hereunder. A bill or receipt issued by the taxing agency shall be deemed as conclusive evidence of the amount of tax and the amount paid.

4. PERSONAL PROPERTY TAXES

Tenant shall pay to the extent Tenant is subject to such taxes, promptly all personal property taxes and all other taxes levied against its trade fixtures, equipment, supplies and merchandise upon The Premises and against its businesses.

5. CONSTRUCTION OF DEMONSTRATION HOUSE

5.1 Tenant agrees to develop and construct or to cause to be developed and constructed on The Premises, the Southface Demonstration House hereinafter referred to as the "House". The House shall comprise approximately 6,000 square feet and be of sound design and constructed of good materials in a good and workmanlike manner, in accordance with the requirements of all applicable laws, ordinances and regulations of duly constituted authorities having jurisdiction thereof. Tenant shall submit plans and drawings to the Neighborhood Planning Unit (NPU), the Urban Design Commission (UDC) and the Department of Parks, Recreation and Cultural Affairs (DPRCA) for official review and written approval prior to the start of any construction.

5.2 Tenant agrees and covenants that during its construction of the Demonstration House, at no time

shall the existing Atlanta Civic Center parking lots, drive ways or walkways be obstructed in any manner so as to limit, restrict or hamper public ingress or egress.

5.3 Tenant agrees and covenants that during its construction of the Demonstration House, all on-site

building materials shall be stored only within the boundaries of The Premises.

5.4 The House will be constructed in accordance with the preliminary plans and specifications to be approved by City and in accordance with final plans and specifications to be prepared from the preliminary plans and specifications also to be approved by the City. All plans and specifications prepared after the date of this Lease Agreement shall be prepared at the expense of the Tenant and submitted to City for its *written* approval, which approval must be obtained prior to the commencement of construction. City agrees that its approval shall not be unreasonably withheld or delayed. The contract or other arrangements for construction of the House shall provide that in the event, of default or failure thereunder (and any default shall be a default under this lease), City shall have the right to cure the same and to assume the position and rights of the Tenant thereunder. In the event of any substantial change in the plans or specifications prior to construction of the House, Tenant shall submit to City *its written* changes to the plans and specifications appropriately marking the same for City's approval at least fifteen (15) days prior to the time that the anticipated change work shall begin and no change work shall be commenced by Tenant without the written approval of City. City shall have the right to meet with Tenant, and to enter upon The Premises and to inspect the House and other improvements being constructed thereon to determine whether Tenant is meeting its obligations under this Paragraph.

5.5 Tenant agrees that City shall have design approval over the exterior architectural design of the House and such approval shall be obtained in writing prior to the commencement of construction. City agrees that its approval shall not be unreasonably withheld or delayed. Tenant shall provide all plans, drawings, dimensions, materials and other information requested by City from time to time in order for City to evaluate Tenant's final design.

5.6 Tenant agrees to begin construction of the House within _____ months of City's approval required pursuant to Paragraphs 5.2 and 5.3. Any delay by reason of war, civil commotion, acts of God, strikes, governmental restrictions, regulations or interference, fire or other casualty, or other reasons beyond the control of the Tenant, whether similar to those enumerated or not, shall automatically extend the time for commencing and/or completing said House for the period of said delay.

5.7 Tenant agrees and covenants to pay all bills for labor, materials, for insurance and bonds, for architects' and contractors' fees, and for all other expenses incident to the development and construction of the House free of all liens and claims, except hereunder. Tenant shall have the right, however, to contest the validity and amount of any such item and shall be obliged to pay the same only if and when finally determined to be due.

6. REPAIR AND MAINTENANCE OF THE PREMISES

6.1 Any and all buildings and improvements which are now or may be erected on The Premises at any time during the said term shall be kept, structurally or otherwise, outside and inside in good and substantial order and repair by Tenant, at Tenant's sole cost and expense, including sidewalks, parking areas and lots, and grounds or streets in front or appurtenant to the same (provided, however, that if such sidewalks, grounds or streets do not constitute part of The Premises, then only the responsibility for such repairs as is imposed upon the owner of The Premises by the appropriate governmental authority. Tenant shall keep The Premises in good order and condition and the building placed thereon in a good state of repair, and will be responsible for all repairs, including painting of the interior and exterior of the building maintaining the roof of the building, all windows, doors, openings, all electrical heating, plumbing, air conditioning and other systems installed in the building, paved parking areas, outside lighting, inside lighting, shrubbery, planting, and all other accessories, appurtenances, and related equipment.

6.2 Tenant shall make all necessary replacements thereof at its sole cost and expense, and Tenant shall not violate any of the laws, ordinances, orders and regulations, rules and requirements of any kind and nature, whether the same or any of them or for a period prior to the commencement date hereof or relate to any ordinary or extraordinary structural or non-structural changes and requirements for or in and about The Premises or any buildings thereon, including, sidewalks, parking areas or streets, or to changes or requirements incident to or as the result of any

use or occupation thereof, or due to the widening of or change in the street or avenue on which The Premises may abut, or otherwise, of the Municipal, County, State and Federal authorities, and each of them, their businesses and departments and shall pay any and all costs and expenses incident to such compliance.

6.3 City is not under any obligation to make any repairs, alterations, or improvements of any kind whatsoever, structural or otherwise, but Tenant shall make all such repairs, alterations, replacements and improvements at its own cost and expense. This provision shall not waive the City's obligation to remove hazardous trees from The Premises if such trees may become weakened or fail due to natural causes.

6.4 Tenant shall take good care of The Premises and shall at all times during the term of this Lease keep The Premises in good order, condition and repair at Tenant's own cost and expense. Upon the termination of this Lease, subject to the conditions that Tenant shall not then be in default hereunder, Tenant shall have the right to remove from The Premises all improvements to The Premises made by Tenant provided, however, that Tenant shall return The Premises to substantially the same condition thereafter as existed at the date of installation thereof, except for normal wear and tear.

7. INDEMNIFICATION

7.1 Tenant agrees to indemnify and hold harmless the City of Atlanta, its elected officials, officers, agents and employees from any and all losses, expenses, demands and claims against the City of Atlanta sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance of work by the Tenant or any sub-contractor employed by the Tenant, or any of their officers, agents or employees. The Tenant further agrees that this agreement to indemnify and hold harmless the City of Atlanta shall not be limited to the limits or terms of the liability insurance, if any, required under this Agreement. This provision does not apply, however, to any such liability as may be the result of the direct and proximate negligence or willful misconduct of City or City's elected officials, officers, agents and employees acting within the scope of their official duties or agency.

7.2 It is the intention of this Agreement that City shall not be liable for any personal injuries or damages to Tenant, its agents or employees, or to any other person or to any occupant of any part of The Premises, or for any injury or damages to any goods, wares, merchandise, equipment or property of Tenant or of any occupant of any part of The Premises irrespective of how the same may be caused, whether from action of the elements or acts of negligence of



the owner or occupant of the adjacent properties (except if caused as a direct result of the affirmative negligence of City, City's agents or employees).

7.3 Tenant shall and will indemnify and save harmless City of and from any and all liability, loss, damage or expense, cause of action, suit, claims, and judgments, including, reasonable legal expenses in connection with the defending of any such action, suit or claim arising from injury to personal property of any and every nature and for any matter or thing growing out of the occupation of The Premises, or any part thereof, arising or growing out of the use, occupation, management or possession of The Premises, or any building thereon, or any part thereof, or the vaults or sidewalks adjacent thereto, occasioned by Tenant, its agents, employees, or occupants of any part of The Premises, or by their agents or employees, respectively, or which may be occasioned by any person or thing whatsoever, or which may be caused by the operation of the city or town having jurisdiction thereof, or any of its departments, bureaus, etceteras, in construction of any public works or of any other matter, at any time during the term hereof (except if caused as a direct result of the affirmative negligence of City its agents or employees).

8. INSURANCE

8.1 Tenant agrees and covenants to obtain and maintain during the term of this lease agreement any and all Insurance and Bonds required by the Agreement, including any extensions thereto, as contained in EXHIBIT C.

8.2 In addition to the foregoing, Tenant shall, at Tenant's own and sole cost and expense, provide and keep in force for the benefit of Tenant, flood insurance, provided The Premises are located within the "federal flood plain area" of the United States, as well as insurance against loss or damage or injury or destruction of any building or buildings now hereinafter erected on The Premises resulting from water damage.

9. DESTRUCTION AND DAMAGES

9.1 If, during the term of this Lease, the buildings, improvements or the equipment on, in or appurtenant to The Premises at the commencement of such term and thereafter erected thereon or therein shall be destroyed or damaged in whole or in part by natural or other cause, Tenant shall give to City immediate notice thereof, and Tenant shall, at its sole cost and expense, promptly repair, replace and rebuild the same with a structure having a value not less than and being of substantially the same character and condition as existed immediately prior to such occurrence or return the Premises to City in substantially the same condition as existed at the commencement of this Lease Agreement.



and City shall, in no event, be called upon to repair, replace or rebuild any such buildings, improvements or equipment, nor to pay any of the costs or expenses thereof beyond or in excess of the insurance proceeds as herein provided.

10. REPAYMENT TO CITY

10.1 In case City, shall pay or be compelled to pay any sum of money or to do any act which shall require the expenditure or payment of any sum by reason of the failure of Tenant to perform any one or more of the covenants herein contained, Tenant shall immediately repay the same to City upon demand, with interest thereon at seven percent (7%) per annum and, in default thereof, the sum or sums so paid by City, together with an interest, cost and damage shall or may be added as additional rent to the next installment of the net rent becoming due on the next rent day, or in any subsequent rent day, as City may, at City's option, elect and shall be payable as such.

10.2 It is expressly covenanted and agreed hereby that payment by City of any such sums of money or the doing of any such acts shall not be deemed to waive or release the default in the payment or doing thereof by Tenant or the right of City to recover possession, at City's election, of The Premises by reason of Tenant's default with respect of any such payment or act.

11. LIEN

11.1 If any mechanic's or other lien or order for the payment of money shall be filed against The Premises or any building or improvements thereof or against City as owner thereof, Tenant shall, within thirty (30) days after notice to Tenant of the filing thereof, cause the same to be canceled and discharged of record by bond or court order at the election of Tenant, but in a manner to the reasonable satisfaction of City, and shall also defend for City, at Tenant's sole cost and expense, any action, suit or proceeding which may be brought thereon, for the enforcement of the same, and will pay any damages and satisfy and discharge any judgment entered therein, and save harmless City from any liability, claim or damage resulting herefrom.

11.2 Notwithstanding the provisions of Article 11.1, Tenant shall have the right to contest or review by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant shall conduct promptly at its own expense and free of any expense to City and, if in Tenant's opinion necessary, in the name of City) any such lien filed against The Premises upon condition that before instituting such proceeding, if the contested item shall not have been paid, Tenant shall furnish to City a surety company bond, cash deposit or other security satisfactory to City,

sufficient to cover the amount of such contested item, interest and penalties for the period which such proceedings may reasonably be expected to take, securing payment of such contested item, but rest and penalty and all costs in connection therewith and upon the furnishing of such bond, cash deposit or other security satisfactory to City, Tenant shall not be deemed to be in default in the payment of such contested item. Notwithstanding the provisions of the foregoing sentence or the furnishing of any such bond, deposit or security, Tenant shall promptly pay all such items at any time. The Premises or any part thereof shall be in danger of being forfeited or lost by reason of such nonpayment, and upon such payment any such deposit or security shall be forthwith returned to Tenant and any such bond canceled and discharged. The legal proceeding herein referred to shall include appropriate appeals from any judgments, decrees or orders, but all such proceedings shall be begun as soon as is reasonably possible after imposition or assessment of any contested item and shall be prosecuted to final adjudication with reasonable dispatch. In the event of any reduction, cancellation or discharge of any such contested item, Tenant shall pay the amount finally levied against The Premises or adjudicated to be due and payable on any such contested item and, upon such payments, any such deposit or security shall be forthwith returned to Tenant and any such bond canceled and discharged, and if there shall be any refund with respect thereto, Tenant shall be entitled to the same.

12. ASSIGNMENT AND SUBLETTING

12.1 Tenant may not at any time assign this Lease or sublease, on a permanent basis, the Premises without the prior written consent of City which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, Tenant may not assign, sublet or underlet any of the Premises without City's express written authorization and unless at the time of said assignment, sublet or underlet, this Lease shall be in full force and effect without any uncured, continuing default hereunder on the part of Tenant in its performance of any of the terms, covenant, and conditions of this Lease. Any assignee or sublessee shall assume, by written, recordable instrument, in a form reasonably satisfactory to City, the due performance of all of Tenant's obligations under this Lease, including payment of any such sums of money as may be necessary to cure any then existing default. A copy of any proposed assignment or sublease and assumption agreement, all in form and content reasonably satisfactory to City, shall first be authorized by the Mayor and City Council and shall then be fully



executed and acknowledged by the assignee or sublessee and shall be sent to City within ten (10) days of the effective date of such assignment.

12.2 Each assignment or sublease shall contain provisions to the effect that said assignment or sublease is subject and subordinate to all terms, covenants and conditions of this Lease and to all of the rights of City hereunder and in the event this Lease shall terminate before the expiration of such sublease, the sub-tenant will, at City's option, waive any rights the sub-tenant may have to terminate the sublease or to surrender possession thereunder as the result of the termination of this Lease.

12.3 It is expressly understood between the parties that no assignment, subletting or underletting of The Premises shall, in any way, relieve the herein named Tenant of any of Tenant's obligations or the terms and provisions of this Lease.

13. SHORT TERM RENTALS

Tenant shall have the right to enter into short-term rental agreements for any portion of the Building to be constructed on The Premises with other groups for in minimum periods not to exceed four (4) weeks without obtaining the written approval of City.

14. ALTERATIONS, IMPROVEMENTS AND ADDITIONS

14.1 Interior Surfaces and Spaces. Subject to the compliance with and observance of all of the terms, covenants, conditions and agreements provided for in this Lease, Tenant shall have the right, to be exercised at Tenants option at any time during the term of this Lease to make interior alterations, improvements and additions in and to The Premises; provided, however, that such proposed alterations, improvements or additions will not impair or reduce the then fair market value of The Premises and further provided that Tenant notify City of its intention to make any such alterations, improvements or additions in writing prior to the commencement of any such work and to guarantee to City that Tenant shall and will: (i) make, erect and complete the proposed improvements in accordance with such plans and specifications therefore, and in compliance with the building code and all laws, ordinances, rules, regulations and orders of any governmental bureau, body or officer having competent authority to make same and which may be applicable to the erection or construction of said improvements; (ii) complete said improvements within the time to be therein specified or as the same may be reasonably extended, and fully pay for the same at the times and in the manner as



affixed by contract therefore; and (ii) perform any and all duties which are now or may be legally imposed on City as owner of The Premises in connection with the construction, obtain any necessary certificates of occupancy therefore.

14.2 Exterior Surfaces and Spaces. Subject to the compliance with and observance of all of the terms, covenants, conditions and agreements provided for in this Lease, Tenant shall submit written requests to The City seeking the authorization to make exterior alterations, improvements and additions in and to The Premises; provided, however, that such proposed alterations, improvements or additions (i) are officially reviewed and approved by the Neighborhood Planning Unit (NPU) and the Atlanta Urban Design Commission (UDC) and (ii) will not impair or reduce the then fair market value of The Premises and further provided that Tenant shall obtain City's (specifically, the Commissioner, Department of Parks, Recreation and Cultural Affairs) written authorization for any such alterations, improvements or additions prior to the commencement of any such work and to guarantee to City that Tenant shall and will (i) make, erect and complete the proposed improvements in accordance with such plans and specifications therefore, and in compliance with the building code and all laws, ordinances, rules, regulations and orders of any governmental bureau, body or officer having competent authority to make same and which may be applicable to the erection or construction of said improvements; (ii) complete said improvements within the time to be therein specified or as the same may be reasonably extended, and fully pay for the same at the times and in the manner, as affixed by contract therefore; and (iii) perform any and all duties which are now or may, be legally imposed on the City as owner of The Premises in connection with the construction, obtain any necessary certificates of occupancy therefore.

14.3 Tenant further agrees that at all times during construction Tenant will indemnify and keep indemnified City against loss on account of injuries to person or property and against loss by way of penalties or otherwise on account of the failure of Tenant to perform or fulfill any duty imposed upon City in, or arising out of, or in any way connected with the intended construction, either by appropriate endorsement on the policy or policies of general liability insurance referenced in this Lease, or by obtaining policies of insurance with the same limitations, of coverage to cover City and Tenant during said construction.

15. USE OF PROPERTY

15.1 Tenant shall occupy and use The Premises EXHIBIT C to construct and operate an environmentally friendly demonstration house. Further, Tenant will not do or suffer any waste or damage, disfigurement or injury to The Premises or any part thereof, nor shall Tenant use or allow The Premises or any part thereof, to be used or occupied for any unlawful purpose, nor use or occupy The Premises in any way which may make void or voidable any insurance then in force with respect to The Premises.

15.2 Tenant shall operate The Premises and the Demonstration House in a manner which is open to the public, Monday through Friday from 9:00 a.m. until 5:00 p.m. to allow free access to the Energy Library and provision of free seminars on the use, application and benefits of innovative energy and environmental technologies. Tenant's Educational Component shall be generally structured around three components: (i) hands-on learning experiences, (ii) formalized classroom instruction on energy and environmental technologies and (iii) educational outreach.

15.3 Tenant may have reasonable administrative office space on The Premises for those operations which are appropriate and pertinent to the provision of services required herein.

15.4 Tenant shall provide the following services:

• Educational Programs

Visitors view exhibit, use library resources and electronic database.

Regularly scheduled guided tours for public schools.

Trained staff available to answer questions.

Classroom used for seminars and workshops on housing, sustainable design and environmental technologies.

• Community Outreach

Educational programs on issues affecting Atlanta neighborhoods.

Technical assistance on sustainable community design for Empowerment Zone.

Facility available for meetings of community groups and government agencies.

• Olympic Games

Facility open to visitors.



Media program promoting environmental technologies, the "Solar City" initiative and the sustainable design aspects of the Atlanta-Fulton County Stadium

15.5 Tenant shall have the option to extend its days and hours of operation to accommodate public demand and to coincide its availability with the occurrence of major regional, national and international events in Atlanta but at no time shall Tenant operate fewer days and hours as set forth in Article 15.2 except, at Tenant's option, for the observance of national holidays.

15.6 Tenant's clients, patrons, customers and visitors shall have the option to park in the existing Atlanta Civic Center "pay" parking lots on a "space available" basis. Tenant shall have no right to, or claim for any revenue generated in the "pay" parking lots as result of use by its clients, patrons, customers and visitors. Tenant agrees that the "pay" parking lots are also used by the clients, patrons, customers and visitors of the Atlanta Civic Center and the Science and Technology Museum and that from time-to-time parking space availability may be limited. Tenant further agrees that City is neither required nor obligated to provide supplemental parking for its use during periods of limited parking space available. Tenant agrees that no "reserved parking" spaces shall be designated for Tenant's use within the existing Atlanta Civic Center "pay" parking lots and that the parking "fee" structure is a function of the City and its parking lot management contractor.

16. QUIET ENJOYMENT

16.1 City covenants that Tenant upon the payment of the rent and sums herein reserved, and upon the due performance of all of the terms, covenants, conditions and agreements, herein contained, on Tenant's part to be kept and performed shall and may at all times during the term hereby granted peacefully and quietly enjoy The Premises subject however, to the Terms of this Lease. Upon transfer of title of The Premises, this Lease shall terminate as to the City herein except as to any defaults arising during said City's ownership and shall be binding upon the new owner and each subsequent owner during the period of their ownership of The Premises.

16.2 Any failure by City to comply with the foregoing covenants shall not give Tenant any right to cancel or terminate this Lease or to abate or offset any rent or other sums due and payable hereunder, or fail to observe or perform any covenant herein.

17. CONDEMNATION



17.1 If, during the term of this lease; The Premises, or any part thereof, are condemned or taken under the power of eminent domain, the court in any such condemnation proceedings shall, if not prohibited by law, be requested to make separate awards to Tenant and City, and Tenant and City agree to request such action by the court.

17.2 The value of any separate which may be made under provisions of the Article shall be based on independently made appraisals of value, conducted by a Master Appraiser Institute (MAI) graduate acceptable to the court. In the event that the court is prohibited by law from making separate awards, or declines to do so, then Tenant and City agree to separate the award between them based upon an independently made appraisal of value conducted by an MAI appraiser.

18. DEFAULT

18.1 Each of the following shall be an event of default:

(a) Failure of Tenant to pay any installment or rent or any part thereof, including but not limited to, failure to make any deposit required thereon for (or any other payments of money, costs or expenses herein agreed to be paid by Tenant after the same shall become due and payable and the continuance of such failure for a period of thirty (30) days after written notice thereof,, provided; however, that City shall not be required to give such prerequisite notice of, and Tenant shall not have such time to cure, such default more than one (1) times in any fiscal year,

(b) Failure of Tenant to observe or perform one (1) or more of the other terms, conditions, covenants or agreements of this Lease and the continuance of such failure for a period of thirty (30) days after written notice by City specifying such failure (unless such failure requires work to be performed, acts to be done or conditions to be removed, which cannot, by their nature, reasonably be performed, done or removed, as the case may be within such thirty (30) day period, in which case no Event of Default shall be deemed to exist so long Tenant shall have commenced curing the same within such thirty (30) day period, and shall diligently and continuously prosecute the same to completion;

(c) The filing or execution or occurrence of (i) a petition in bankruptcy by or against Tenant; (ii) a petition or answer by or against Tenant seeking a reorganization, arrangement, composition, readjustment liquidation, dissolution or other relief of the same or different kind under any provision of the bankruptcy act; (iii) adjudication of Tenant as a bankrupt or insolvent or insolvency in the bankruptcy or equity sense; (iv) an assignment by Tenant for the benefit of creditors, whether by trust, mortgage or otherwise; (v) a petition or other proceeding by or against Tenant for,

or the appointment of, a trustee, receiver, guardian, conservator or liquidator of Tenant with respect to all or substantially all of its property; (vi) a petition or other proceeding by or against Tenant for its dissolution or judicial liquidation or the taking of possession of the property of Tenant by a governmental authority in connection with dissolution or liquidation; provided, however, that in the case of a petition filed under (i), (ii), (v) or (vi) above, an Event of Default shall be deemed to have occurred only if the petition shall not have been dismissed within sixty (60) days after filing thereof, it being understood that the term "Tenant" as used in this sub-paragraph shall include successors of Tenant by way of the merger, consolidation or sale of substantially all of the assets of Tenant;

(d) The entry of an order, judgment or decree by any court of competent jurisdiction granting any prayer or demand contained in any petition under Sub-paragraphs (i), (ii), (v) or (vi) above

18.2 City, at any time after an Event of Default of which is not cured by Tenant, may, at its option, give written notice to Tenant stating, that this Lease and the term hereby demised shall expire and terminate on the date specified and such notice (which shall be no earlier than thirty (30) days after the receipt of said notice), and upon the date specified in such notice, this Lease and the term hereby demised, and all rights of Tenant hereunder, shall expire and terminate as if that date were the date herein definitely fixed for the termination of the term of this Lease.

18.3 Each right and remedy of City provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by City of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by City of any or all other rights or remedies.

18.4 If either party to this Lease shall be made a party to any action or proceeding by reason of the act or omission of the other, the party whose act or omission shall have been the basis of such action or proceeding shall pay all costs and expenses, including, but not limited to, reasonable attorneys fees, incurred by the other party. In the event either party incurs any cost or expenses in enforcing any of the covenants and provisions of this Lease, all such costs and expenses, including, but not limited to, reasonable attorneys fees, shall be paid by the defaulting party. In the event of any action or proceeding brought by either party to this Lease against the other, all costs, expenses and attorneys fees incurred in connection therewith by the party prevailing in such action or proceeding shall be payable by the party not



prevailing and may be included in and form a part of any judgment entered in any such action or proceeding. All such amounts due under this Article 17.4 shall be paid within (30) days of the rendition of a bill or statement therefore.

18.5 No failure by City to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by City. No waiver of any breach shall affect or alter this Lease but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

18.6 Notwithstanding anything to the contrary contained herein, upon a foreclosure sale of The Premises by the holder of any mortgage, all the rights, obligations or liabilities of City hereunder, and successors and assigns shall terminate and expire at the option of the foreclosing party as of the date of such foreclosure sale as if such date were the day herein fixed for the termination of the term of this Lease, and City shall have no further rights, obligations or liabilities hereunder, actual or contingent, except with respect to such rights, obligations or liabilities which have arisen on or prior to the date of such foreclosure sale.

19. SURRENDER

19.1 Tenant shall and will on the last day of the term hereof or upon any earlier termination of this Lease, or upon any re-entry by City upon The Premises pursuant to the provisions of this Lease, will and truly surrender and deliver up into the possession and use of City, without delay, The Premises, except that Tenant shall have the right, within a reasonable period of time, to remove all improvements to include all buildings, building equipment, site improvements, plumbing, electric wires, boilers, air conditioning units and steam heating plants. Tenant shall return The Premises to City in substantially the same condition as at the commencement of the Lease Agreement, except for (i) ordinary wear and tear, and (ii) damage which, pursuant to any other express provisions hereof Tenant is not obligated to repair, caused by fire or other cause or as a result of condemnation. Future trade fixtures and personal property (not constituting part of The Premises) may also be removed by Tenant at or prior to the termination of this



Lease, and all of Tenant's signs shall, if requested by City, be removed by Tenant prior to the termination hereof. Any injury or damage to the Premises caused or resulted by such removal shall be repaired by Tenant. Any personal property of Tenant which shall remain on The Premises for a period of sixty (60) days after the termination of this Lease or the removal of Tenant from The Premises may, at the option of City, be deemed to have been abandoned by Tenant and either may be retained by City, as the property of City, or be disposed of, without accountability, in such manner as City sees fit.

20. SUPPLY OF SERVICES

20.1 City shall not be required to furnish any services or facilities or to make any repairs or alterations in or to The Premises. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement maintenance and management of The Premises and accepts same "as is" in its present condition.

21. ADJUSTMENTS ON TERMINATION

21.1 Notwithstanding any of the provisions of this Lease contained, should there be any payments required to be made by Tenant during the term of this Lease such as rent which apply to a period beyond the termination date of this Lease, Tenant shall be obligated only to pay the pro-rata share thereof applicable during the term of this Lease.

22. NET LEASE

22.1 This is a net Lease, and except as otherwise specifically provided, this Lease shall not terminate nor shall Tenant be entitled to any abatement, deduction, defalcation, suspension or reduction of, or setoff, defense or counterclaim against any rentals, charges or other sums payable by Tenant under this Lease, it being the intention that the obligations of City and Tenant hereunder shall be separate and independent covenants and agreements and that the annual rent additional rent and all other charges and sums payable by tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease.

23. MODIFICATION

23.1 None of the covenants, terms, agreements and conditions of this Lease shall in any manner be altered, waived, charged or abandoned, nor shall the term hereof or any part thereof be rendered except by a written

instrument duly executed and delivered by the parties hereto. This Lease contains the entire Agreement between the parties and any executors agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

24. NOTICES

24.1 Any notices required or permitted to be given under this Lease, either by City to Tenant or by Tenant to City, shall be in writing, enclosed in an envelope with the proper postage prepaid thereon, and personally delivered or certified or registered at a Post office or in any branch post office of the United States, addressed to the respective party as set forth herein, or to such other addresses as either party shall hereafter furnish to the other, by certified or registered mail for that purpose, and the same shall be given and shall be deemed to have been served and given in the case of City when Tenant shall have received such notice, and in the case of Tenant when City shall have received such notice.

25. INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

26. NO WAIVER

No failure by City or Tenant to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant agreement, term or condition. No covenant agreement, term or condition of this Lease to be performed or complied with by Tenant or City as the case may be, and no breach thereof shall be waived, altered or modified, except by written instrument duly executed by City or Tenant, as the case may be. No waiver of any

breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other than existing or subsequent breach thereof.

27. GOVERNING LAW

Time is of the essence of this Lease Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

28. SIGNAGE

Tenant shall have the right to erect and display reasonable advertising materials on The Premises and at the southeast corner of the intersection of Piedmont and Pine streets subject to the adopted Sign Ordinance and upon written approval of City.

29. MISCELLANEOUS

This Lease shall be binding upon, and inure to the benefit of, the parties hereto, their successors and assigns.

30. PROGRAM AND PERFORMANCE REPORTS

The Tenant shall produce and submit to the Commissioner, Department of Parks, Recreation and Cultural Affairs an annual PROGRAM AND PERFORMANCE REPORT which shall include statistics and related data on the prior year's significant milestones, staffing and visitation. The annual PROGRAM AND PERFORMANCE REPORT shall also include projections of the new year's significant projects, staffing, and visitation.

31. NOTICE ADDRESSES

All notices, demands, requests or replies provided for or permitted by this Agreement shall be in writing, and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; (3) by prepaid telegram; or (4) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by telegram or overnight express delivery service shall be deemed effective one (1) business day after transmission to the telegraph company or after deposit with the express delivery service. Notice by personal



delivery shall be deemed effective at the time of personal delivery. In the event of an emergency, a copy of the

Notice shall also be delivered to Tenant at Tenant's office in Atlanta, Georgia. For purposes of notice, demand,

request, reply or payment, the address of City shall be:

CITY: Commissioner
City Of Atlanta, Department of Parks, Recreation and Cultural Affairs
City Hall East 8th floor
675 Ponce de Leon Ave., Atlanta, GA 30308

The address of Tenant shall be:

TENANT: Executive Director
Southface Energy Institute, Inc.
241 Pine Street
Atlanta, GA 30308



IN WITNESS THEREOF, the City of Atlanta and Southface Energy Institute, Inc. have executed this Agreement as of the date first written above.

A TTEST:

CITY OF ATLANTA

Clerk of Council

Mayor

A TTEST:

SOUTHFACE ENERGY INSTITUTE

Secretary (Corporate Seal)

Executive Director

APPROVED:

APPROVED:

Commissioner, DPRCA

Chief Operating Officer

APPROVED AS TO FORM:

RECOMMENDED:

City Attorney

Director, Bureau of Cultural Affairs

APPROVED:

Director, Bureau of Purchasing and Real Estate

02-R-0165

(Do Not Write Above This Line)

A Resolution by Councilmember Debi Starnes:

Authorizing the Mayor to execute a lease agreement with Southface Energy Institute and the City of Atlanta.

ADOPTED BY

MAR 18 2002

COUNCIL

SUBSTITUTE

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 1/22/02

Referred To: Finance/Executive

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
 Date _____
 Chair _____
 Referred to _____

Committee FIN/EXEC

Date 1-30-02

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee FIN/EXEC

Date 3-13-02

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee FINANCE/EXECUTIVE

Date 2/13/02

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd Readings
- Consent
- V Vote
- RC Vote

CERTIFIED

CERTIFIED

MAR 18 2002

ATLANTA CITY COUNCIL PRESIDENT

Catherine W. Woodward

CERTIFIED

MAR 18 2002

Frank Douglas Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

MAR 26 2002

Shirley Franklin