

ABSOLUTE ASSIGNMENT AGREEMENT

This **ABSOLUTE ASSIGNMENT AGREEMENT** (this "Assignment") is made as of , by and between «ESP_Name» ("Assignor"), a _____ whose mailing address is , and «Assignee_Name» (the "Assignee"), a _____ whose mailing address is «Assignee_Address».

WITNESSETH:

WHEREAS, Assignor has entered into that certain Installment Purchase Agreement, dated the date hereof (the "Agreement"), with «Purchaser_Name» ("Purchaser"), pursuant to which Assignor has sold to Purchaser certain property described therein (the "Property") in consideration for the payment by Purchaser of installment payments of purchase price (the "Purchase Price") with respect to the Property; and

WHEREAS, Assignor has entered into that certain Escrow Agreement, dated the date hereof (the "Escrow Agreement"), with Purchaser and the escrow agent therein designated, pursuant to which Assignor has caused the proceeds of the sale of its right, title, and interest in the Agreement to be deposited into a fund to pay the costs of the acquisition and installation of the Property (the "Escrow Fund"), such fund to be applied for the purposes provided in the Escrow Agreement, and under the terms of the Escrow Agreement, the moneys and investments held from time to time in the Escrow Fund are to be applied to pay the Purchase Price and certain other obligations of Purchaser under the Agreement, upon the occurrence of an Event of Default or an Event of Nonappropriation under the Agreement; and

WHEREAS, Assignor is authorized pursuant to the provisions of (1) Section 12.01(a) of the Agreement to assign the Agreement, including its right to receive the Purchase Price and other payments and amounts payable by Purchaser thereunder, in whole or in part, and (2) Section 10 of the Escrow Agreement to assign the Escrow Agreement and its rights and interests in the Escrow Fund; and

WHEREAS, Assignor desires to sell, assign, and transfer to the Assignee, and the Assignee desires to purchase, all of Assignor's right, title, and interest in, to, and under the Agreement (including the right to receive the Purchase Price) and the Escrow Agreement (including its rights and interests in the Escrow Fund) upon the terms and conditions stated below;

NOW, THEREFORE, in consideration of the premises, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

Section 1. Assignment; Payment of Purchase Price. (a) Assignor hereby sells, transfers, delivers, and assigns to the Assignee and its successors and assigns, forever, all of Assignor's right, title, interest, estate, claims, and demands (but expressly excluding any obligations of Assignor) as seller (i) in, to, and under the Agreement, including any and all extensions or renewals of the term thereof, together with the Exhibits now or hereafter attached thereto and any amendments, supplements, agreements, documents, certificates, legal opinions, and other instruments relating thereto, and all rights, powers, privileges, options, and other benefits of Assignor as seller under the Agreement, including (without limitation) the immediate and continuing right to receive and collect all payments of Purchase Price and all other payments and amounts due thereunder (collectively the "Assigned Payments"), the right to make all waivers and agreements and to enter into any amendments relating to the Agreement or any provision thereof, and the right to exercise all rights and remedies as are conferred on Assignor by the Agreement and (ii) in, to, and under the Escrow Agreement, including its rights and interests in the moneys and investments held from time to time in the Escrow Fund and any proceeds therefrom, reserving, however, to Assignor its right to receive payments under Section 4(c) of the Escrow Agreement. All of the foregoing rights, titles, interest, property, estate, claims, and demands are herein collectively referred to as the "Assigned Property." This Assignment is absolute and unconditional and is not intended to be merely the grant of a security interest to the Assignee. This Assignment is made without recourse to Assignor except to the extent expressly provided in Section 5 hereof.

(b) In consideration of the sale, transfer, and assignment provided for in Section 1(a) hereof, the Assignee has paid to Assignor in immediately available funds the purchase price of \$ _____, receipt of which Assignor hereby acknowledges by the deposit into escrow pursuant to the Escrow Agreement of \$ _____ into the Escrow Fund, to be applied for the purposes therein provided.

(c) The parties hereto intend that the conveyance by Assignor of the Assigned Property shall constitute an absolute sale, conveying good title, free and clear of any liens, claims, encumbrances, or rights of others, from Assignor to the Assignee, and that the Assigned Property shall not be a part of Assignor's estate in the event of the insolvency or bankruptcy of Assignor. It is the intention of the parties hereto that the arrangements set forth herein with respect to the Assigned Property shall constitute a purchase and sale of the Assigned Property and not a loan.

Section 2. Power of Attorney. Assignor irrevocably constitutes and appoints the Assignee and any present or future officer or agent of the Assignee, or the successors or assigns of the Assignee, as its lawful attorney with full power of substitution and resubstitution, and in the name of Assignor or otherwise, to exercise all rights and remedies as are conferred on Assignor by the Agreement and the Escrow Agreement and to demand, receive, collect, and sue in any court for payments due under the Agreement, or any part thereof; to withdraw or settle any claims, suits, or proceedings pertaining to or arising out of the Agreement or the Escrow Agreement upon any terms, all without notice to or assent of Assignor; and, further, to take possession of and to endorse in the name of Assignor any instrument for the payment of money received on account of the payments due under the Agreement. The foregoing appointment of the Assignee as Assignor's attorney-in-fact is coupled with an interest; cannot be revoked by death, incompetence, bankruptcy, insolvency, reorganization, or otherwise; and shall not terminate until all amounts payable under the Agreement have been paid and satisfied in full.

Section 3. Authority for Payments. Assignor has authorized and directed Purchaser, in writing, to pay directly to the Assignee all payments due or to become due under the Agreement from and after the date of this Assignment by forwarding such payments to the Assignee's address shown at the beginning of this Assignment, a copy of which authorization and direction, the receipt of and agreement to which has been acknowledged by Purchaser, is attached as Exhibit "A." In the event Assignor hereafter receives any such payment from Purchaser, Assignor shall hold such payment in trust for the Assignee and shall immediately deliver such payment to the Assignee (endorsed, if necessary, by Assignor to facilitate the collection thereof).

Section 4. Representations and Warranties. Assignor hereby represents and warrants, as of the date hereof, to the Assignee that:

(a) Assignor is a _____ duly organized, validly existing, and in good standing under and by virtue of the laws of the State of _____, with the requisite power and authority to own its properties and to carry on its business as now being conducted.

(b) Assignor is duly qualified to transact business and hold property in the jurisdiction or jurisdictions in which the Property is located and wherever necessary to perform its obligations under this Assignment and the Agreement.

(c) Assignor has full power, authority, and legal right to enter into and perform its obligations under this Assignment, the Agreement, and the Escrow Agreement and with respect to the Assigned Property. The execution, delivery, and performance of this Assignment, the Agreement, and the Escrow Agreement have been duly authorized by all necessary organizational action on the part of Assignor; do not require any stockholder or member approval or the approval or consent of any trustee or holder of any indebtedness or obligation of Assignor that have not been duly obtained; and the foregoing do not contravene any law, governmental rule, regulation, order, or ordinance of any governmental entity having jurisdiction or the organic documents of Assignor and do not and will not result in any breach of or constitute a default under any indenture, mortgage, lease, security deed, contract, agreement, or instrument to which Assignor is a party or by which it or its property is bound. This Assignment, the Agreement, the Guaranteed Energy Savings Performance Contract, dated _____ (the "Energy Savings Contract"), between Assignor and Purchaser, and the Escrow Agreement are legal, valid, and binding obligations of Assignor, enforceable against Assignor in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and the application of equitable principles (whether considered by a court of law or in equity).

(d) Immediately prior to the transfer and assignment provided for by this Assignment, Assignor had good and marketable title to the Agreement and all of the other Assigned Property, free and clear of all claims, liens, security interests, and encumbrances. This Assignment vests in the Assignee full right, title, and interest and legal title in and to the Assigned Property, including all of Assignor's right, title, interest, estate, claims, and demands as seller in, to, and under the Agreement and the Escrow Agreement and Assignor's right to receive the Assigned Payments, in each instance free and clear of all claims, liens, security interests, and encumbrances of any kind or character, except the rights of Purchaser under the Agreement and the Escrow Agreement, and the same shall be and remain free of all claims, liens, security interests, and encumbrances arising through any act or omission of Assignor or any person claiming by, through, or under Assignor. Assignor has made appropriate notations in its books and records with respect to the assignment of the Assigned Property by this Assignment.

(e) The Agreement delivered to the Assignee herewith is the chattel paper original thereof; is genuine in all respects; constitutes the entire writing, obligation, and agreement between Assignor and Purchaser respecting the Property, the sale thereof, the payment therefor by Purchaser, and the title thereto; and has not been amended, terminated, or modified by either party thereto, and no advance payments have been made by Purchaser thereunder. The Escrow Agreement delivered to the Assignee herewith is the chattel paper original thereof; is genuine in all respects; constitutes the entire writing, obligation, and agreement among Assignor, Purchaser, and the named escrow agent relating to the Escrow Fund therein established; and has not been amended, terminated, or modified by any party thereto.

(f) Assignor has informed the Assignee of all agreements entered into by Assignor with Purchaser in connection with the Property and the Agreement and there are no other agreements between Assignor and Purchaser relating to the Property or the Agreement, except for the Energy Savings Contract.

(g) Assignor is not in default under the Agreement; Purchaser is not in default of its payment obligations under the Agreement; and Assignor has no knowledge of any breach by Purchaser of any of its other obligations under the Agreement or any failure by Purchaser to appropriate payments under the Agreement, except in each case as have been previously disclosed to the Assignee in writing.

(h) Assignor has complied in all material respects with all applicable federal and state laws, rules, and regulations and has made all disclosures required by law in connection with the transactions contemplated by the Agreement, prior to the consummation of the Agreement.

(i) All taxes due and payable with respect to the Property and the Agreement, if any, have been paid.

(j) Purchaser does not have any right to extend, prepay, cancel, or terminate the Agreement, except as expressly set forth in the Agreement.

(k) The original Counterpart 1 of the Agreement has been executed by Assignor and the Purchaser, and such original is the only original Counterpart 1 and has been delivered to the Assignee.

(l) There is no claim, action, or proceeding pending, or to the knowledge of Assignor, threatened against Assignor before any court, arbitrator, or governmental agency or regulatory or administrative agency or commission challenging the validity, enforceability, or legality of this Assignment or, to Assignor's knowledge, the Agreement, the Escrow Agreement, the Energy Savings Contract, or the transactions contemplated hereby or thereby.

(m) To Assignor's knowledge, no nonappropriation, abatement, setoff, counterclaim, or defense has been asserted or threatened with respect to the Agreement.

(n) No default or event of default has occurred under the Energy Savings Contract, and no Property to be installed or work to be performed thereunder has been delayed, rejected for non-conformance, or otherwise not accepted when completed and presented with an invoice for payment.

(o) All fees and amounts payable by Assignor with respect to the Agreement and the Escrow Agreement have been paid in full as of the date hereof.

(p) Assignor is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 5. Covenants. Assignor hereby covenants with the Assignee that:

(a) Assignor will be during the term of the Agreement duly qualified to transact business and hold property in the jurisdiction or jurisdictions in which the Property is located and wherever necessary to perform its obligations under this Assignment and the Agreement.

(b) Assignor shall indemnify the Assignee from and against any out-of-pocket damages, losses, or expenses that the Assignee shall suffer as a direct result of any failure on the part of Assignor or its employees, agents, or representatives to keep or perform any of its or their obligations under this Assignment with respect to the Agreement or the Property or any negligence or intentional or willful misconduct of Assignor or its employees, agents, or representatives with respect to the Agreement or the Property, which in any such case results in a claim threatened or asserted by a third party against the Assignee. Nothing contained in this Section 5(b) shall be construed to make Assignor liable for any Purchase Price payable under the Agreement or for any damages, losses, or expenses that the Assignee shall suffer as a direct result of any negligence or intentional or willful misconduct of the Assignee or its employees, agents, or representatives.

(c) Assignor shall not agree to, or commit the Assignee to, any amendment or modification of the Agreement or the Escrow Agreement, or the sale or assignment of the Agreement, or release or substitution of Purchaser, without the Assignee's prior written consent.

(d) Assignor acknowledges that it is the vendor for the Property, including installation, and hereby agrees to indemnify and save the Assignee harmless from and against any and all costs, losses, expenses (including attorneys' fees), damages, claims, counterclaims, demands, actions, causes of actions, and judgments of any nature arising out of, or resulting from, any default by Assignor or breach of warranty claims under the Energy Savings Contract, including purchase contracts related to the Property thereunder, claims of misrepresentation by Purchaser in connection with the Property, and claims related to the Property's failure to perform in accordance with the terms of any agreement between Purchaser and Assignor, including claims based on patent, trademark, and copyright laws, which in any such case results in a claim threatened or asserted by a third party against the Assignee. Nothing contained in this Section 5(d) shall be construed to make Assignor liable for any Purchase Price payable under the Agreement or for any damages, losses, or expenses that the Assignee shall suffer as a direct result of any negligence or intentional or willful misconduct of the Assignee or its employees, agents, or representatives. The indemnity set forth in this paragraph shall survive the expiration or earlier termination of this Assignment or the Agreement with respect to acts or events occurring or alleged to have occurred prior to such expiration or early termination.

(e) This Assignment (and the assignment of rights made hereby) shall not relieve Assignor of any of its obligations under the Agreement or other agreements related to the Property purchased thereunder, and Assignor covenants to continue to perform all such obligations under the Agreement, including the other agreements related to the Property purchased thereunder, in accordance with the terms thereof. The Assignee shall not be obligated to assume, and by its execution of this Assignment shall not be deemed to have assumed, any of Assignor's obligations under the Agreement, including the other agreements related to the Property purchased thereunder.

Section 6. Further Assurances. Assignor from time to time, at the request of the Assignee, shall execute and deliver such further acknowledgments, agreements, and instruments of assignment, transfer, and assurance, including financing statements under the applicable Uniform Commercial Code, and do all such further acts and things as may be necessary or appropriate in the opinion of the Assignee to give effect to the provisions hereof and to more perfectly confirm the rights, titles, and interests hereby sold, assigned, and transferred to the Assignee.

Section 7. Notices. Any notice required or permitted to be given by Assignor or the Assignee to the other shall be deemed to have been given upon the actual receipt thereof or on the third day after it is deposited in the United States mail, certified mail, return receipt requested, with proper postage prepaid, whichever is the earlier, and addressed to the party at such address as shown at the beginning of this Assignment or at such other address as one party shall hereafter furnish to the other in writing.

Section 8. Entirety; Amendments. This Assignment contains the entire agreement between Assignor and the Assignee with respect to the subject matter hereof and supersedes all prior agreements and understandings relating thereto. No other agreements will be effective to change, modify, or terminate this Assignment in whole or in part unless such agreement is in writing and duly executed by Assignor and the Assignee. No representations, inducements, promises, or agreements, oral or otherwise, that are not embodied herein (or in any other written instrument or document delivered pursuant hereto or in connection herewith) will be of any force or effect.

Section 9. Parties Bound. This Assignment shall be binding on Assignor and its successors and assigns, and shall inure to the benefit of the Assignee and its successors and assigns.

Section 10. Severability. Any provision of this Assignment that is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11. Governing Law. This Assignment shall be governed by and construed in accordance with the internal laws of the State of Georgia without regard to the conflict of laws principles of such state.

Section 12. Counterparts. This Assignment may be executed in any number of counterparts and by the parties hereto on separate counterparts, but all of such counterparts shall constitute a single instrument.

Section 13. Not an Extension of Credit. This Assignment constitutes a sale of 100% ownership interest in the Agreement and shall in no way be construed as an extension of credit by the Assignee to Assignor. Assignor waives and releases any right, title, or interest that it may have (whether pursuant to a “cross-collateralization” provision or otherwise) in the Agreement or the Assigned Property.

Section 14. Headings. The headings of Sections contained in this Assignment are provided for convenience only. They form no part of this Assignment and shall not affect its construction or interpretation. All references to Sections refer to the corresponding Sections of this Assignment unless otherwise specified.

IN WITNESS WHEREOF, Assignor and the Assignee have duly executed this Assignment by their duly authorized officers, as of the date first above written.

ASSIGNOR:

«ESP_Name»

By: _____

Title: _____

ASSIGNEE:

«ASSIGNEE_NAME»

By: _____

Title: _____

EXHIBIT A

NOTICE AND CONSENT TO ASSIGNMENT

DATE: «Agreement_Date»

TO: «Purchaser_Name»

«Escrow Agent_Name»

RE: (1) Installment Purchase Agreement, dated «Agreement_Date» (the “Agreement”), between «ESP_Name» (“Assignor”) and «Purchaser_Name» (“Purchaser”)

(2) Escrow Agreement, dated «Agreement_Date», among Assignor, Purchaser, and «Escrow Agent_Name», as escrow agent

Please be advised that Assignor has, pursuant to the terms of an Absolute Assignment Agreement, dated «Agreement_Date», between Assignor and «Assignee_Name» (the “Assignee”), assigned all its rights in and benefits of the above-referenced contracts (the “Contracts”), together with all amounts payable from and after the date hereof under or pursuant to the Contracts and the right to exercise all rights and remedies as are conferred on Assignor by the Contracts, to the Assignee.

All payments due under the Contracts should be made to the Assignee at the following address:

«Assignee_Name»
«Assignee_Address»

Please acknowledge your acceptance of the assignment, your recordation of the assignment pursuant to the Agreement, and your agreement to make the payments specified in the Contracts to the Assignee by executing the enclosed counterpart of this Notice and Consent to Assignment and returning it to us.

ASSIGNOR:

«ESP_NAME»

By: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

«PURCHASER_NAME»

By: _____

Title: _____

«ESCROW AGENT_NAME», as Escrow Agent

By: _____

Title: _____