

EXHIBIT 2

ESCROW AGREEMENT

SELLER: «ESP_Name»
«Seller_Address»

ESCROW AGENT: «Escrow Agent_Name»
«Escrow Agent_Address»

PURCHASER: «Purchaser_Name»
«Purchaser_Address»

DATE: «Agreement_Date»

This Escrow Agreement is made as of «Agreement_Date» among «ESP_Name» (“Seller”), «Purchaser_Name» (“Purchaser”), and «Escrow Agent_Name», as escrow agent (the “Escrow Agent”).

WITNESSETH:

WHEREAS, Seller and Purchaser have heretofore entered into that certain Installment Purchase Agreement, dated the date hereof (the “Agreement”), pursuant to which certain property described therein (the “Property”) is to be acquired from the vendor(s) or manufacturer(s) thereof and sold by Seller to Purchaser in consideration for the payment by Purchaser of installment payments of purchase price (the “Purchase Price”) with respect to the Property; and

WHEREAS, on the date hereof (the “Closing Date”), Seller has deposited with the Escrow Agent cash in the amount of \$_____ (the “Escrow Fund”), to be held in trust by the Escrow Agent on the express terms and conditions set forth herein and to be applied (1) to pay the vendor(s) or manufacturer(s) of the Property its invoice cost (a portion of which may, if required, be paid prior to final acceptance of the Property by Purchaser) and (2) to pay the installation costs of the Property to Seller pursuant to the terms of the Guaranteed Energy Savings Performance Contract, dated _____ (the “Energy Savings Contract”), between Seller and Purchaser; and

WHEREAS, the parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto;

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Purchaser and Seller hereby appoint the Escrow Agent as their escrow agent, and the Escrow Agent hereby accepts the foregoing appointment as escrow agent upon the terms and conditions set forth herein. There is hereby created by Seller and Purchaser and established with the Escrow Agent a special and irrevocable trust fund in the name and for the account of Purchaser and for the benefit of Seller or its assignee, to be designated the “Escrow Fund.” All interest earned with respect to the Escrow Fund shall be applied as expressly set forth herein. The Escrow Agent shall hold legal title to the Escrow Fund as agent and bailee for Seller. The Escrow Agent agrees to accept the deposit by Seller with the Escrow Agent provided for hereunder, and further agrees to hold the amounts so deposited together with all interest and other additions received with respect thereto in trust on the express terms and conditions set forth herein.

Section 2. The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as escrow agent. Securities and other negotiable instruments comprising the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the rights therein of Seller).

Section 3. The cash comprising the Escrow Fund from time to time shall be invested by the Escrow Agent in such Qualified Investments (as hereinafter defined) as shall be specified in writing by Purchaser. The Escrow Agent shall use due diligence to collect all instruments for the payment of money comprising the Escrow Fund and shall promptly notify the other parties hereto in the event of dishonor. Interest or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be deposited in and comprise a part of the Escrow Fund. Purchaser shall provide investment instructions to the Escrow Agent so that no investment shall be made that would cause the Agreement to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended. For the purpose of this Section 3, the term “Qualified Investments” means investments that are certified in writing by Purchaser as being at the time legal for investment of the funds being invested.

Section 4. The Escrow Agent shall take the following actions with respect to the Escrow Fund:

(a) Upon receipt of written authorization and instructions from Purchaser and Seller, which shall at a minimum consist of invoice(s) specifying the amount due, the Escrow Agent shall pay (1) to the professional(s) providing services in connection with the delivery of the Agreement the closing costs thereof and (2) to Seller the amounts payable to it by Purchaser pursuant to the terms of the Investment Grade Energy Audit Agreement, dated _____, between Seller and Purchaser.

(b) Upon receipt of written authorization and instructions from Purchaser and Seller, which shall at a minimum consist of (1) the payment request form - Schedule A describing the items of Property and installation costs for which payment is to be made, executed by Purchaser and approved by Seller and (2) the vendor(s), manufacturer(s), or Seller’s invoice(s) specifying the Property acquisition price of Property and installation costs described in the payment request form, the Escrow Agent shall pay (1) to the vendor(s) or manufacturer(s) of the Property payments then due and payable with respect thereto, (2) to Purchaser such amounts as may be necessary to reimburse Purchaser for any advances made by it for any such payments, as specified in the payment request form, or (3) to Seller ECM Installation Payments (as defined in the Energy Savings Contract) then due and payable pursuant to the Energy Savings Contract.

(c) In the event that Seller (or its assignee) provides to the Escrow Agent written notice of the occurrence of an Event of Default or an Event of Nonappropriation under the Agreement, the Escrow Agent shall thereupon promptly remit to Seller (or its assignee) all amounts held in the Escrow Fund.

(d) Upon receipt by the Escrow Agent of written notice from Purchaser that the Property acquisition price and installation costs have been paid in full or that the Energy Savings Contract has been terminated, the Escrow Agent shall apply the then remaining amounts held in the Escrow Fund, first, to all reasonable fees and expenses incurred by the Escrow Agent in connection herewith as evidenced by its statement forwarded to Seller and Purchaser, and, second, to prepay to Seller (or its assignee) principal components of Purchase Price under the Agreement.

Section 5. The reasonable fees and expenses of the Escrow Agent incurred in connection herewith shall be the responsibility of Purchaser.

Section 6. The Escrow Agent shall have no liability for acting upon any written instruction presented by Seller or Purchaser in connection with this Escrow Agreement that the Escrow Agent in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own negligence, willful misconduct, or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investment decisions made under this Escrow Agreement.

Section 7. The Escrow Agent may at any time resign by giving at least 30 days' prior written notice to Purchaser and Seller, but such resignation shall not take effect until the appointment of the successor escrow agent. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by Seller and Purchaser. In the event of any resignation or removal of the Escrow Agent, a successor escrow agent shall be appointed by an instrument in writing executed by Seller and Purchaser. Such successor escrow agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Seller, Purchaser, and the predecessor escrow agent. Thereupon such successor escrow agent shall, without any further act or deed, be fully vested with all the trusts, powers, rights, duties, and obligations of the Escrow Agent under this Escrow Agreement, and the predecessor escrow agent shall deliver all moneys and securities held by it under this Escrow Agreement to such successor escrow agent.

Section 8. This Escrow Agreement and the escrow established hereunder shall terminate upon disbursement by the Escrow Agent of all amounts contained in the Escrow Fund in accordance with this Escrow Agreement.

Section 9. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, addressed to the other parties at their respective addresses set forth in this Escrow Agreement or at such other address as any such party shall from time to time designate in writing to the other parties, and shall be effective on the date of receipt.

Section 10. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. This Escrow Agreement may be sold, assigned, or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees, or subassignees by Seller without the consent of Purchaser or the Escrow Agent. Upon any sale, disposition, assignment, or reassignment, Purchaser and the Escrow Agent shall be provided with a notice of such assignment.

Section 11. This Escrow Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification, or change of terms hereof shall bind any party unless in writing signed by all parties.

Section 12. In the event any provision of this Escrow Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13. This Escrow Agreement may be executed in several counterparts.

Section 14. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

Section 15. Nothing in this Escrow Agreement, express or implied, shall give to any person, other than the parties hereto and their successors and assigns hereunder, any benefit or any legal or equitable right, remedy, or claim under this Escrow Agreement.

Section 16. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act), all financial institutions are required to obtain, verify, record, and update information that identifies each person establishing a relationship or opening an account. The parties to this Escrow Agreement agree that they will provide to the Escrow Agent, Seller, or any assignee thereof such information as it may request, from time to time, in order for such parties to satisfy the requirements of the USA PATRIOT Act, including but not limited to, the name, address, tax identification number, and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above written.

SELLER:

«ESP_Name»

By: _____

Title: _____

PURCHASER:

«Purchaser_Name»

By: _____

Title: _____

ESCROW AGENT:

«Escrow Agent_Name»

By: _____

Title: _____

SCHEDULE A

PAYMENT REQUEST FORM NO. _____

SECTION I - PAYMENT REQUEST

«Escrow Agent_Name», as escrow agent (the “Escrow Agent”) under the Escrow Agreement, dated «Agreement_Date» (the “Escrow Agreement”), by and among the Escrow Agent, «ESP_Name» (“Seller”), and «Purchaser_Name» (“Purchaser”), is hereby requested to pay, from the Escrow Fund held under the Escrow Agreement, to the persons, firms, or corporations designated below as payee, the amount set forth opposite each such name, in payment of (1) the invoice cost of the Property designated opposite such payee’s name and amount or (2) the installation costs of such Property designated opposite such payee’s name and amount. The Property comprises all or a portion of the Property described in the Description of Property - Exhibit B of the Agreement referred to in the Escrow Agreement.

<u>Payee</u>	<u>Amount</u>	<u>Property</u>	<u>Installation Costs</u>
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The undersigned Purchaser hereby certifies that the attached manufacturer’s, dealer’s, or Seller’s invoice is a duplicate original or certified copy of the order, delivery, and acceptance of the Property and related installation costs described in this Payment Request Form.

Dated: _____

Received and Approved:

Purchaser: «Purchaser_Name»

Seller: «ESP_Name»

By: _____

By: _____

Title: _____

Title: _____

SECTION II - PARTIAL ACCEPTANCE

If the above payment is a progress payment and if the payment is for less than all of the Property described in the Description of Property - Exhibit B and is not the final payment with respect to the Property described in the Description of Property - Exhibit B, then Purchaser hereby acknowledges that the Property listed above has been delivered to, tested, inspected, and accepted by Purchaser.

Dated: _____

Received and Approved:

Purchaser: «Purchaser_Name»

Seller: «ESP_Name»

By: _____

By: _____

Title: _____

Title: _____

NOTE - Please execute both of the above signature blocks if this is a *Partial Payment* and Acceptance of a portion of the Property. If this is the *Final Payment* with respect to the Property described in the Property Description - Exhibit B — Do Not Complete Section II. Please forward an executed Acceptance Certificate (as defined in the Agreement referred to in the Escrow Agreement).