

CAUSE NO. \_\_\_\_\_

SUMMER ENERGY LLC,

*Plaintiff,*

v.

HARTMAN SHORT TERM INCOME PROPERTIES XX, INC.; HARTMAN VREIT XXI, INC.; HARTMAN 1400 BROADFIELD LLC; HARTMAN 16420 PARK TEN LLC; HARTMAN 7915 FM 1960 LLC; HARTMAN 11211, LLC; HARTMAN SPE, LLC; HARTMAN SPECTRUM, LLC; HARTMAN TIMBERWAY II LLC; HARTMAN VILLAGE POINTE, LLC; HARTMAN PARK TEN PLACE I & II LLC; AND HARTMAN RICHARDSON TECH CENTER, LLC

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION**

Plaintiff Summer Energy LLC (“Summer”) file this Original Petition against Defendants Hartman Short Term Income Properties XX, Inc.; Hartman vREIT XXI, Inc.; Hartman 1400 Broadfield LLC; Hartman 16420 Park Ten LLC; Hartman 7915 FM 1960 LLC; Hartman 11211, LLC; Hartman SPE, LLC; Hartman Spectrum, LLC; Hartman Timberway II LLC; Hartman Village Pointe, LLC; Hartman Park Ten Place I & II LLC; and Hartman Richardson Tech Center, LLC (collectively “Defendants”). Summer would respectfully show the Court as follows:

**DISCOVERY-CONTROL PLAN**

1. Summer intends to conduct discovery under level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads this suit is not covered by the expedited actions process in Rule 169 because Summer seeks monetary relief of over \$100,000.00.

**AMOUNT IN CONTROVERSY**

2. Summer seeks monetary relief over \$1,000,000.00. TEX. R. CIV. P. 47(c).

**PARTIES**

3. Plaintiff Summer Energy LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 5847 San Felipe Street, Suite 3700, Houston, Harris County, Texas 77057.

4. Defendant Hartman Short Term Income Properties XX, Inc. is a Maryland corporation, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

5. Defendant Hartman vREIT XXI, Inc. is a Maryland corporation, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

6. Defendant Hartman 1400 Broadfield LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

7. Defendant Hartman 16420 Park Ten LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

8. Defendant Hartman 7915 FM 1960 LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

9. Defendant Hartman 11211, LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

10. Defendant Hartman SPE, LLC is a Delaware Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

11. Defendant Hartman Spectrum LLC, is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

12. Defendant Hartman Timberway II LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

13. Defendant Hartman Village Pointe, LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston,

Harris County, Texas 77057. It may be served with process by serving its registered agent, Mark T. Torok, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

14. Defendant Hartman Park Ten Place I & II LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Michael Racusin, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

15. Defendant Hartman Richardson Tech Center, LLC is a Texas Limited Liability Company, doing business in Texas, with its principal place of business at 2909 Hillcroft, Suite 420, Houston, Harris County, Texas 77057. It may be served with process by serving its registered agent, Allen R. Hartman, 2909 Hillcroft, Suite 420, Houston, Texas 77057.

#### **JURISDICTION**

16. The Court has subject-matter jurisdiction over this lawsuit because the amount in controversy exceeds the Court's minimum jurisdictional requirements. TEX. CONST. art. V, § 8; TEX. GOV'T CODE §§ 24.007–.008.

17. The Court has general personal jurisdiction over the Defendants because they are Texas companies or are foreign companies that maintain their principal places of business in Texas. They all have continuous and systematic contact with Texas. Thus, Defendants are Texas residents and are “at home” in Texas.

18. Additionally, the Court has specific jurisdiction over these Defendants because the transactions at issue involve the Defendants' liability for the cost of energy purchased and consumed in Texas, at properties located in Texas and owned or controlled by the Defendants in Texas, pursuant to contracts executed and to be performed in Texas.

## VENUE

19. Venue is proper in Harris County, Texas because Defendants maintain their principal offices in Harris County, all or a substantial part of the events or omissions giving rise to the claims herein occurred in Harris County, and the contracts governing provision of electricity to Defendants' properties provide for enforcement in Harris County. TEX. CIV. PRAC. & REM. CODE §§ 15.002, 15.035.

## FACTS

### *Hartman Management's Contracts with Summer*

20. On or about May 1, 2020, Summer and Hartman Income REIT Management Inc. ("Hartman Management") entered contracts for the provision of electricity to buildings and properties managed by Hartman Management (the "Electricity Contracts"). *See* Electricity Contracts, true and correct copies of which are attached hereto as **EXHIBIT 1**. In the Electricity Contracts, Summer agreed to provide electricity to identified properties. In exchange, Hartman Management agreed to pay Summer a price per kilowatt hour based on a pricing index, plus a fixed "adder," in addition to certain fees. Performing under the Electricity Contracts, Summer provided electricity to buildings managed by Hartman Management and Hartman Management paid Summer's invoices for such electricity for many months.

21. During Winter Storm Uri in February of 2021, Summer provided power to Hartman Management's various properties and invoiced Hartman Management for that power, pursuant to the terms of the Electricity Contracts. Summer's invoices reflected the price per kilowatt hour as set by the pricing index to which the parties had agreed by contract. Hartman Management failed to pay Summer's invoices.

***Hartman Management Acted Pursuant to Contract As Agent For Undisclosed Principal Property Owner Defendants***

22. Summer has learned that Hartman Management executed the Electricity Contracts as agent for undisclosed principals that are affiliated with Hartman Management through common ownership, control, and management. The undisclosed principals are the owners of the properties to which electricity was delivered. Those affiliated property owners, named as Defendants herein, include but may not be limited to Hartman 1400 Broadfield LLC; Hartman 16420 Park Ten LLC; Hartman 7915 FM 1960 LLC; Hartman 11211, LLC; Hartman SPE, LLC; Hartman Spectrum, LLC; Hartman Timberway II LLC; Hartman Village Pointe, LLC; Hartman Park Ten Place I & II LLC; and Hartman Richardson Tech Center, LLC (collectively “Property Owner Defendants”).

23. Hartman Management provides management services to the Property Owner Defendants pursuant to written contracts (the “Management Contracts”). The Management Contracts provide that Hartman Management (1) has the power to contract for utilities in the name of each Property Owner Defendant on terms that Hartman Management decides; and (2) in carrying out its duties, *“all action taken by [Hartman Management] pursuant to the provisions of this Agreement shall be done as agent of [Property Owner Defendant] and obligations or expenses incurred thereunder shall be for the account, on behalf and at the expense of [each Property Owner Defendant], but any such actions may be taken or made either in [Property Owner Defendant]’s name or [Hartman Management]’s name.”*

24. As contemplated in the Management Contracts, Hartman Management secured utility services for properties owned by the Property Owner Defendants. Specifically, Hartman Management entered into the Electricity Contracts with Summer pursuant to which Summer provided electricity to the Property Owner Defendants’ buildings. Although the Electricity Contracts are in Hartman Management’s name, Hartman Management signed those contracts “for

the account, on behalf and at the expense of” each Property Owner Defendant. Summer delivered electricity to buildings owned by the Property Owner Defendants and the Property Owner Defendants enjoyed the use and benefits of such electricity.

***Ownership of Property Owner Defendants by Parent Defendants***

25. Defendants Hartman Short Term Income Properties XX, Inc. and Hartman vREIT XXI, Inc. (the “Parent Company Defendants”) own Hartman Management and the Property Owner Defendants or are affiliated with or related to Hartman Management and the Property Owner Defendants through common ownership, control, and management. On information and belief, the Parent Company Defendants own additional companies or entities that own buildings to which Summer delivered electricity pursuant to contract with Hartman Management. Summer will join any such companies/entities as defendants herein when their identity is discovered.

26. In consolidated filings with the United States Securities and Exchange Commission, the Parent Company Defendants have acknowledged their or the Property Owner Defendants’ ultimate liability for the cost of electricity Summer provided to the Property Owner Defendants’ buildings but for which Summer has not been paid.

**SUMMER’S CAUSES OF ACTION**

**COUNT I: BREACH OF CONTRACT**

27. Summer incorporates the allegations within the preceding paragraphs as if fully set forth herein.

28. The Property Owner Defendants are liable to Summer for the cost of electricity provided to the Property Owner Defendants’ buildings pursuant to Hartman Management’s contracts with Summer. Hartman Management executed the Electricity Contracts in its own name with Summer but solely for the account, on behalf, and at the expense of the Property Owner Defendants and through the exercise of its power and authority under the Management Contracts

between Hartman Management and the Property Owner Defendants. Accordingly, the Property Owner Defendants are directly liable to Summer for amounts due and owing under the Electricity Contracts. Stated differently, the Electricity Contracts are valid and enforceable against both Hartman Management and its principals, the Property Owner Defendants, who received and benefitted from electricity delivered by Summer pursuant to Electricity Contracts.

29. Summer seeks judgment against the Property Owner Defendants and the Parent Defendants for unpaid amounts due and owing under the Electricity Contracts, with pre- and post-judgment interest.

30. Summer is a retail energy provider, essentially a middle-man between generators of electricity and ultimate consumers of electricity. Summer thus purchases electricity from electricity generators and delivers it to retail consumers such as the Property Owner Defendants who contract with Summer. During Winter Storm Uri, prices for natural gas and for electricity sky-rocketed in Texas. In order not to breach its contractual obligation to deliver electricity to the Property Owner Defendants under the Electricity Contracts, Summer was forced during Winter Storm Uri to borrow money to purchase electricity at the indexed prices. While the Property Owner Defendants received electricity delivered by Summer, Summer's invoices for delivered electricity remain fully unpaid. Accordingly, Summer is accruing interest on its loans that it would otherwise have been able to repay, in whole or in part, long ago. Summer is entitled to recover from the Property Owner Defendants the excess interest it pays relating to electricity Summer necessarily purchased and delivered to the Property Owner Defendants pursuant to the Electricity Contracts.

#### **COUNT II: IMPLIED CONTRACT**

31. In the alternative, an implied contract exists between the Property Owner Defendants and Summer. The Property Owner Defendants accepted electricity provided by



Summer to buildings owned by the Property Owner Defendants. By accepting such electricity, the Property Owner Defendants were able to keep the lights and heat on during Winter Storm Uri, thus avoiding disruption for their tenants. By accepting the electricity and its benefits, the Property Owner Defendants also impliedly agreed to pay Summer for same.

32. Summer is entitled under the implied contract to collect payment from the Property Owner Defendants for the electricity the Property Owner Defendants accepted, used, and from which they benefitted.

### **COUNT III: RESTITUTION/UNJUST ENRICHMENT**

33. In the alternative, Summer is entitled to restitution of its cost to deliver electricity to buildings owned by the Property Owner Defendants. The Property Owner Defendants were unjustly enriched at Summer's expense because Summer purchased electricity for delivery to the Property Owner Defendants and actually delivered that electricity to buildings owned by the Property Owner Defendants. The Property Owner Defendants knowingly accepted delivery of the electricity Summer had secured and were thereby able to protect their tenants from suffering power losses during Winter Storm Uri, a time of record-breaking and treacherously cold temperatures.

34. Having accepted and benefitted from Summer's delivery of electricity to their buildings, the Property Owner Defendants are liable in restitution to Summer for the cost of the electricity delivered. Stated differently, at Summer's expense, the Property Owner Defendants were unjustly enriched through their receipt and enjoyment of electricity during Winter Storm Uri. As a matter of equity, Summer is entitled to recover its cost of providing electricity to the Property Owner Defendants.

#### **COUNT IV: QUANTUM MERUIT**

35. In the alternative, Summer is entitled to payment from the Property Owner Defendants based on quantum meruit. Summer rendered valuable services and electricity to the Property Owner Defendants' buildings. The Property Owner Defendants accepted, used, and enjoyed the electricity delivered by Summer. By accepting the electricity under the circumstances, the Property Owner Defendants were on reasonable notice that Summer expected to be paid for delivering electricity to the Property Owner Defendants. Accordingly, the law imposes on the Property Owner Defendants a promise to pay for the benefits Summer rendered and which the Property Owner Defendants knowingly accepted.

#### **ATTORNEY'S FEES**

36. Summer incorporates the allegations within the preceding paragraphs as if fully set forth herein.

37. Summer is entitled to recover reasonable and necessary attorney's fees because its claim is for a written contract. TEX. CIV. PRAC. & REM. CODE § 38.001.

38. Summer is also entitled to recover reasonable and necessary attorney fees under Section 14 of the Electricity Contracts. Section 14 provides that Defendants are liable "for payment of any and all fees ... including without limitation attorney's fees, court costs, collections fees, and demands for payment."

#### **CONDITIONS PRECEDENT**

39. All conditions precedent to Summer's claims for relief have been performed or have occurred.

**OBJECTION TO ASSOCIATE JUDGE**

40. Summer objects to the referral of this case to an associate judge for hearing a trial on the merits or presiding at a jury trial.

**PRAYER**

41. Plaintiff Summer Energy LLC prays that Defendants, Hartman Short Term Income Properties XX, Inc.; Hartman vREIT XXI, Inc.; Hartman 1400 Broadfield LLC; Hartman 16420 Park Ten LLC; Hartman 7915 FM 1960 LLC; Hartman 11211, LLC; Hartman SPE, LLC; Hartman Spectrum, LLC; Hartman Timberway II LLC; Hartman Village Pointe, LLC; Hartman Park Ten Place I & II LLC; and Hartman Richardson Tech Center, LLC, and any additional Property Owner Defendants whose identity is not yet known, be summoned to answer and appear herein, and that the Court enter judgment in Plaintiff's favor against Defendants as follows:

- For actual damages in the amount due under the Electricity Contracts to Summer for electricity delivered to the Property Owner Defendants;
- For excess interest Summer has incurred because it has not been paid for electricity it borrowed money to purchase for delivery to the Property Owner Defendants pursuant to its obligation under the Electricity Contracts;
- For reasonable and necessary attorney's fees;
- For pre- and post-judgment interest at the maximum rates allowed by law;
- For costs of court; and
- For all other relief, whether legal or equitable, which the Court deems just and proper.

*Signature of counsel on following page.*

Dated: February 16, 2023

Respectfully submitted,

**DOBROWSKI STAFFORD L.L.P.**

By: /s/ Paul J. Dobrowski

Paul J. Dobrowski  
State Bar No. 05927100  
Sabrina L. DiMichele  
State Bar No. 12426250  
T. Kelly McKee  
State Bar No. 24114615  
4601 Washington Avenue, Suite 300  
Houston, Texas 77007  
Telephone: (713) 659-2900  
Facsimile: (713) 659-2908  
Email: [pjd@doblaw.com](mailto:pjd@doblaw.com)  
Email: [sdimichele@doblaw.com](mailto:sdimichele@doblaw.com)  
Email: [kmckee@doblaw.com](mailto:kmckee@doblaw.com)

**ATTORNEYS FOR PLAINTIFF SUMMER  
ENERGY LLC**

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lesha Garrett on behalf of Paul Dobrowski  
Bar No. 05927100  
lgarrett@doblaw.com  
Envelope ID: 72843600  
Status as of 2/16/2023 4:11 PM CST

Associated Case Party: Summer Energy LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Mary Suarez		msuarez@doblaw.com	2/16/2023 3:10:11 PM	SENT
LeGia Russell		lrussell@doblaw.com	2/16/2023 3:10:11 PM	SENT
Kelly McKee		kmckee@doblaw.com	2/16/2023 3:10:11 PM	SENT
Lesha Garrett		lgarrett@doblaw.com	2/16/2023 3:10:11 PM	SENT
Paul J.Dobrowski		pjd@doblaw.com	2/16/2023 3:10:11 PM	SENT
Sabrina L. DiMichele		sdimichele@doblaw.com	2/16/2023 3:10:11 PM	SENT

# Exhibit 1

## Summer Energy Master Electricity Sales Agreement

Version SE050313

This Agreement entered into on May 1<sup>st</sup>, 2020 and is between Summer Energy, LLC ("SUMMER", "we", and "us") located at 5847 San Felipe St Ste 3700 Houston, TX 77057 and Hartman Income REIT Management located at 2909 Hillcroft Suite 420 Houston, TX 77057. This is an agreement for SUMMER to supply electricity to meet customer's full usage requirements at the delivery points identified by the customer. By entering into this Agreement, Customer hereby: 1) appoints SUMMER to arrange for purchase and delivery of electricity (including volume balancing and billing) from any source on Customer's behalf for the period of time defined in this Agreement; 2) Customer hereby requests that all electric service associated with Customer's name and/or address(es) or electric service identifiers ("ESIDs") be transferred to SUMMER under the terms and conditions of this Agreement; and 3) Customer represents their peak demand is greater than 50 KW during the previous 12 month historical period. This agreement along with your separately executed Contract Confirmation constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. For questions about this Agreement or your Contract Documents or other electric service needs, please contact SUMMER's Customer Service department at:

<b>INTERNET ADDRESS:</b>	<a href="http://www.summerenergy.com">www.summerenergy.com</a>	<b>EMAIL ADDRESS:</b>	<a href="mailto:service@summerenergy.com">service@summerenergy.com</a>
<b>MAILING ADDRESS:</b>	PO BOX 460485 Houston, TX 77056	<b>FAX NUMBER:</b>	1-888-594-9350
<b>TELEPHONE:</b>	Toll-Free: 1-888-594-9299	<b>HOURS:</b>	Mon-Fri 8:00 am – 5:00 pm CST

24 Hour Emergency Outage Information: Please contact your Transmission and Distribution Utility ("TDU") to report electricity outage or emergency conditions at the appropriate number below:

Centerpoint Energy (Houston Area): 800-332-7143	Oncor Electric Delivery (DFW Area): 888-313-4747
AEP (WTU & CPL Area): 866-223-8508	Texas New Mexico Power Area: 888-866-7456

Customer Information: By entering into this Agreement, Customer authorizes its local Transmission and Distribution Utility ("TDU") to release to SUMMER any information that is necessary or required to become the REP for Customer, including, but not limited to: Customer's address, account numbers, and historical usage information.

- 1. Term & Renewal:** This Agreement shall commence on the date of the initial meter reading by the applicable TDU and continue for the period indicated in your Authorization and/or in the EFL ("Initial Term"). Customer acknowledges that SUMMER cannot guarantee a switch of Customer's account to SUMMER by a specific date and hereby holds harmless SUMMER from any liability for, or arising out of, delays in this process. For term products (non-month to month products), a contract expiration notice will be sent at least thirty (30) days prior to the end of the Initial Term. If you fail to renew your agreement with SUMMER, your service will automatically continue on a month-to-month basis after the expiration of your Initial Term on a default renewal product, which is a variable price product whose price will be determined by current market conditions at the sole discretion of SUMMER until cancelled by either you or SUMMER.
- 2. Contract Pricing:** Current pricing for service is indicated in your Contract Confirmation. Customer understands and agrees that if it utilized a Third Party/Broker, SUMMER will be making a payment to such Third Party/Broker in connection with its efforts to facilitate customer entering into this Agreement; Customer also understands and agrees that the Price reflects the fee SUMMER is paying to the Third Party/Broker, and such Third Party/Broker is acting on Customer's behalf as Customer's representative, and is not a representative or agent of SUMMER. Customer also understands and agrees that as such, it should direct any questions regarding such fees to its Third Party/Broker.
- 3. Product Types:** SUMMER provides different types of products including but not limited to fixed rate, indexed and variable price. Your Contract Confirmation specify the product type and the term that applies to your Agreement. Please note that only those parts of this section that describe your specific product type will apply to your Agreement.  
**Fixed Rate Products:** Fixed Rate Products have a term of at least (three) 3 months. The price of a fixed rate product may only change during your Initial Term to reflect actual changes in TDSP charges, changes to the Electric Reliability Council of Texas ("ERCOT") or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advanced notice.

**Indexed Products:** Indexed products may have a contract term of three (3) months or more, or may be month-to-month. Indexed Products have a price that changes according to a pre-defined pricing formula that is based on publicly available indices or information. The price for term indexed products may also change without advance notice to reflect actual changes in TDSP charges; changes to the ERCOT or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on us that are beyond our control. There is no Early Termination Fee for this product if the contract term is less than 3 months.

**Variable Price Products:** Variable price products have a term of thirty-one (31) days or less and a price that varies according to the method disclosed on your Contract Confirmation. There is no Early Termination Fee for this product type.

4. **Material Changes by SUMMER:** SUMMER will provide Customer with at least fourteen (14) calendar days advance written notice of any Material Change in this Agreement, either in Customer's bill or in a separate mailing. The changes will become effective on the date stated in the written notice. Customer may cancel this Agreement before the effective date of the Material Change, as identified in the advance written notice provided to Customer, without any Early Termination Fee
5. **Early Terminations:** In the event that SUMMER, or its activities hereunder, becomes subject to regulations of any kind whatsoever under any law, government body action or ERCOT action that has the effect of materially changing the circumstances from those that exist on the effective date of this Agreement then SUMMER may pass through the economic effects to Customer of such change or SUMMER may unilaterally terminate this Agreement without Customer's consent upon at least thirty (30) calendar days written notice to Customer without any obligation, payment or otherwise, to Customer or an Early Termination Fee.
6. **No Early Termination Fees Charged on Real Time Full Pass Through Agreements, Early Termination Fee:** If Customer terminates this Agreement or defaults as described in Section 12 and/or 13 of this Agreement, then, unless otherwise provided herein, an Early Termination Fee shall be immediately due and paid by Customer to SUMMER. If you cancel this Agreement for any other reason before the end of the initial term you will be assessed an Early Termination Fee ("ETF") that is equal to the total amount of the loss that the non-defaulting party or non-terminating party would experience as a result of termination. The ETF would be equal to the positive difference (if any) of the current contract price as described in the Contract Confirmation minus the current market price multiplied by the estimated remaining term volume that would have been delivered if the Agreement was not terminated early, based on the actual or historical volume of the applicable account. Any sale or transfer of the property by CUSTOMER where the purchaser does not assume this Agreement with respect to the terms set forth shall constitute early termination of this Agreement. There is no termination penalty applicable if CUSTOMER terminates at any time; so long as CUSTOMER terminates while using the real-time index product.
7. **Conversion:** At any time during this Agreement the Customer can request to have a portion or the balance of their Agreement converted to a fixed price product. The Conversion will be effectuated with a signed pricing confirmation page confirming the fixed price amount and term. Once a product is converted to a fixed price, the termination penalties will apply if fixed price Agreement cancels prior to expiration.
8. **Invoicing, Payment, Interest, and Credit Requirements:** Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued. Customer can provide to SUMMER written notice, Phone Call, Fax or Email setting forth in particular detail any disputed amount, including the calculations with respect to any errors or inaccuracies claimed. If it is subsequently determined that Customer owes SUMMER any portion of the disputed amount, Customer shall remit to SUMMER within 5 (five) business days following such determination the outstanding balance. Any amounts that may have been overpaid or underpaid shall be applied to the next monthly invoice. Customer is responsible for all regulatory charges, taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts tax, PUCT Assessment, sales tax, consumption tax, use tax, value added tax, kWh, commercial activity or other privilege tax, and any other tax (whether in effect as of the effective date of this Agreement or thereafter) imposed by any governmental entity. SUMMER reserves the right to include in any subsequent invoice, adjustments related to previous invoices, previous invoicing errors, meter read errors, miscalculation of taxes or other errors or omissions. Customer authorizes SUMMER, and SUMMER reserves the right, to charge Customer's credit/debit card and/or checking account without notice for any unpaid balances that are past due.



If the account is referred to a collection company, SUMMER reserves the right to bill Customer a fee not to exceed thirty-three percent (33%) of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the Customer. Customer shall be responsible for any and all fees associated with or incurred by SUMMER in collecting any amounts owed to SUMMER, including, but not limited to, attorneys' fees, court costs and any fees charged by a collection agency.

- 9. Additional Charges & Fees:** SUMMER will charge a one-time late payment penalty of 5% for each delinquent month's charges that remain unpaid after the close of business on the bill due date. Additionally, SUMMER will charge: 1) a \$30 fee for any returned check, electronic fund transfer or credit card transaction not processed due to insufficient funds or credit availability; 2) a \$20 disconnection fee for processing an electric service disconnection transaction; 3) a \$20 reconnection fee in the event that SUMMER processes a reconnection transaction on your account, (such fees are in addition to any disconnect/reconnect fees that may be assessed by your TDU, and are assessed regardless of whether or not your electric service is actually disconnected by the TDU if the transaction orders are sent); 4) payments received via auto draft will NOT be assessed a payment processing fee; payments received via regular mail will NOT be assessed a payment processing fee; payments received via our website will be assessed a payment processing fee of \$3.99 per credit card transaction and a 1.5% fee for electronic check payments; payments received via call in to our Customer Service Center will be assessed a payment processing fee of \$6.99 per credit card transaction and a 3.0% fee for electronic check payments; and 5) any charges or fees that the TDU charges SUMMER including but not limited to fees to initiate or switch service, transport and distribute electricity to your service location, read your meter, and terminate or restore service. These charges are passed on to you by SUMMER, along with certain charges and fees assessed by ERCOT.
- 10. Load change:** If CUSTOMER has a change in usage of 25% or greater, SUMMER may pass through the resulting cost increases to the CUSTOMER. SUMMER will calculate additional costs in a commercially reasonable manner and invoice CUSTOMER accordingly. Invoice will be due and payable according to the payment terms of this Agreement.
- 11. Customer Acknowledgements:** Customer acknowledges that the TDU is solely responsible for reading Customer's meter or recorded data, as applicable, and that SUMMER cannot and does not read a Customer's meter or recorded data, but is bound by the readings and data provided by the TDU. Customer further acknowledges that SUMMER's ability to invoice Customer depends on the TDU's ability to furnish SUMMER with all necessary information including meter readings or recorded data, as applicable. In the absence of such information from the TDU, SUMMER may invoice Customer based on estimated meter reading according to the Customer's historical usage. As soon as practicable, and after receipt of actual Customer's energy consumption from the TDU, SUMMER will reconcile any difference(s) between estimated and actual usage charges.
- 12. Credit Requirements & Deposit:** SUMMER may investigate the Customer's credit history at any time. SUMMER may refuse electric service at any time to anyone who does not meet SUMMER's credit standards or if Customer cannot pay the requisite initial deposit or demonstrate satisfactory credit. SUMMER may also refuse to provide service to a Customer for one or more of the reasons specified in Section 25.477 of the PUCT rules and regulations.

**Deposits:** If Customer fails to demonstrate satisfactory credit, as determined in the sole discretion of SUMMER, then Customer may be required to pay an initial deposit prior to service being provided, if at all. Such deposit shall not exceed an amount equal to the greater of one-fifth of the Customer's estimated annual billing or; the sum of the Customer's estimated billings for the next 2 (two) months. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and account name supplied on this application. Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the PUCT. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) consecutive months of service with no late payments of any kind, SUMMER will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. Any credit balance remaining on an inactive account after the final bill will be refunded in the form of a company check and will be mailed within thirty (30) calendar days.

Summer will not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment during the last 12 months of service. You may be required to pay this initial deposit within ten days after the issuance of a written disconnection notice that requests such deposit. Summer may request an additional deposit from an existing customer if the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated billings and a disconnection notice has been issued (or the account disconnected) within the previous 12 months. Summer may require that you pay this additional deposit within 10 days of the request for such deposit.

**13. Default and Disconnection:** A Default means:

- a. Failure of Customer to pay any amounts due under this Agreement within the time strictly provided herein; or
- b. Failure of Customer to perform any material term of this Agreement; or
- c. Determination that any representation upon which this Agreement is based is false; or
- d. Immediately after Customer files for or is otherwise placed in bankruptcy; or
- e. Determination by the TDU that any tampering has occurred at the Customer's meters.
- f. Prevention by SUMMER to initiate and/or provide service to Customer's meters for any reason, including but not limited to a switch-hold or permitting issues.

Default of this Agreement, including without limitation, non-payment of Customer's bill may result in an order for the TDU to disconnect the Customer's electric service at the Customer's meters; and the termination of this Agreement at the sole discretion of SUMMER. Moreover, SUMMER may seek to have your electric service disconnected after providing you at least ten (10) calendar days' notice for any of the following reasons: (1) failure to pay a bill owed to SUMMER, or to make a deferred payment arrangement by the date of disconnection; (2) failure to comply with the terms of a deferred payment agreement made with SUMMER; (3) using service in a manner that interferes with the service of others or the operations of non-standard equipment; (4) failure to pay a deposit required by SUMMER; or (5) failure of the guarantor to pay the amount guaranteed when SUMMER has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

SUMMER may authorize your TDU to disconnect your electric service without prior notice to you if: (1) certain dangerous circumstances exist; (2) service is connected without the authority by a person who has not made application for service; (3) service is reconnected without authority after disconnection for non-payment; (4) there has been tampering with the equipment used to measure the amount of electricity used; or (5) there is evidence of theft of service. Payments may be made by phone to SUMMER during normal business hours (Monday – Friday 8:00 am to 5:00 pm) or on-line at [www.mysummerenergy.com](http://www.mysummerenergy.com). SERVICE MAY BE DISCONNECTED AGAIN WITHOUT NOTICE FOR ANY RETURNED PAYMENTS. A deposit or additional deposits may be required on accounts that have been disconnected for non-payment.

Upon satisfactory correction of the reasons for the disconnection, SUMMER will notify your TDU to reconnect your service. SUMMER will continue to serve you under this Agreement in effect prior to issuance of the disconnection notice. If your service was disconnected due to a dangerous situation, your service will be reconnected once you notify SUMMER that you have corrected and satisfactorily resolved the dangerous situation. Please allow 24 to 48 hours for completion of reconnect orders.

**Governmental Entities.** : If you are a governmental entity as defined in the Prompt Payment Act (PPA), TEX. GOV'T CODE, Chapter 2251 (<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm>), it is your responsibility to inform your REP of your status so that the PPA protections can be applied. If you are a governmental entity subject to the PPA, your payment shall become overdue as provided in the PPA and interest on an overdue payment shall be calculated by you pursuant to the terms of the PPA and remitted to your REP with the overdue payment. Billing disputes between a governmental entity, as defined in the PPA, and an aggregator or a REP about any bill for aggregator or REP service, shall be resolved as provided in the PPA.

- 14. Remedies upon Default:** If Customer defaults then, in addition to any rights and/or remedies available to SUMMER in this Agreement, in law or in equity, SUMMER may unilaterally terminate this Agreement and issue a "move out" transaction, and Customer shall be subject to and responsible for payment of any applicable Early Termination Fee. Thereafter, SUMMER may calculate all amounts due under this Agreement and Customer shall pay those amounts within five (5)

calendar days from the date of invoice. Customer shall be liable for payment of any and all fees related to and/or arising out of Customer's default, including without limitation, attorneys' fees, court costs, collection fees, and demands for payment. If Customer defaults, then Customer may be required to reapply for electric service and pay a deposit in order to again become a Customer.

- 15. Representations and Warranties:** As a material inducement to entering into this Agreement, Customer hereby represents and warrants to SUMMER as follows:
- a. This Agreement constitutes a legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending; and
  - b. Customer has knowledge, understanding and experience that enable Customer to evaluate the merits and risks of entering into this Agreement;
- 16. Forward Contract:** SUMMER and Customer acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that SUMMER is a "forward contract merchant." (<http://uscode.house.gov/download/pls/11C1.txt>).
- 17. Assignment:** Customer shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of SUMMER, which consent may not be unreasonably withheld. Notwithstanding the foregoing, SUMMER may, without the consent of Customer:
- a. Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and
  - b. Transfer or assign this Agreement to its affiliate; and
  - c. Transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets; and Customer hereby acknowledges and consents to SUMMER's pledge and contingent assignment or subrogation of all rights and obligations hereunder. In the event any other provision of this Agreement shall be deemed to prohibit or otherwise restrict SUMMER's assignment, subrogation or pledge of its rights hereunder, this provision shall control.
- 18. Binding Effect:** This Agreement shall inure to the benefit of, and be binding upon, SUMMER and Customer and their respective successors and permitted assigns.
- 19. Force Majeure:** SUMMER shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, including any order or directive of ERCOT.
- 20. Excuse:** If an event occurs which makes it impossible for SUMMER to perform this Agreement, including without limitation, any of the foregoing force majeure events, then our performance under this Agreement shall be excused for the duration of such event. This could be an event affecting Customer's TDU, such as a facility outage on their electric distribution lines.
- 21. LIMITATION OF REMEDIES, LIABILITY AND DAMAGES:** SUMMER AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNDER NO CIRCUMSTANCE SHALL SUMMER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS

INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF SUMMER AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, SUMMER AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

22. **Dispute Resolution:** SUMMER and Customer agree in good faith to attempt to resolve any disputes within twenty-one (21) calendar days of notice of the dispute from either party. Any written communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at PO BOX 460485, Houston, TX 77056.
23. **UCC:** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") of Texas shall govern this Agreement and Energy shall be deemed a "good" for purposes of the UCC (<http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.1.htm#1.101>).
24. **Warranty Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT SUMMER DOES NOT MAKE AND EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.
25. **Notices:** Notices to and from Customer shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, overnight carrier, or hand delivery. Notice to and from Customer by hand delivery shall be deemed to be received by the close of the business day on which it was hand delivered (unless hand delivered after the close of business in which case it shall be deemed received at the close of the next business day). Notice to and from Customer by overnight mail or courier shall be deemed to have been received 2 (two) business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO SUMMER, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO THE FOLLOWING ADDRESS: PO BOX 460485, Houston, TX 77056.
26. **Governing Law:** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF SUMMER AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.  
  
All citations to rules of the Public Utility Commission of Texas may be found electronically at:  
<http://www.puc.state.tx.us/agency/ruleslaws/subrules/electric/Electric.aspx>
27. **Non-Waiver:** No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.
28. **Severability:** Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over SUMMER or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.
29. **No Third Party Beneficiaries:** Subject to the provisions above under "Assignment," nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.
30. **Discrimination:** SUMMER does not discriminate, deny service, or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, religion, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.

Summer Energy Master Electricity Sales Agreement

Version SE050313

- 31. **Entirety of Agreement:** It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of electricity, and supersedes any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's ESI IDs. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement.
- 32. **Venue.** The Parties acknowledge and agree that this Agreement has been negotiated, drafted, executed and is performable in Harris County, Texas and may be enforced in Harris County, Texas.
- 33. **Counterparts.** This Agreement may be executed simultaneously in multiple originals or counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.
- 34. **No Oral Modification or Waivers.** This Agreement shall not be modified or waived orally, but only by an instrument in writing signed by the Party against which enforcement of the modification or waiver is sought.
- 35. **Own Judgment.** It is understood and agreed that the Parties hereto have carefully reviewed this this Agreement, that they fully understand its terms, that they sought and obtained, or had the opportunity to obtain, independent legal advice with respect to the negotiation and preparation of this Agreement, and that this Agreement has been negotiated and prepared by the joint efforts of the Parties.

This agreement is effective on the date signed by the Customer below and should be returned to your Account Manager or to:

Summer Energy LLC (Toll Free: 888-594-9299)  
5847 San Felipe Street Ste 3700  
Houston, TX 77057

Signature: \_\_\_\_\_

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

Summer Energy LLC

Date: \_\_\_\_\_

*Dan Jones*

Dan Jones (May 1, 2020)

Customer signature: \_\_\_\_\_

Title: **Sr Executive Vice President**

Hartman Income REIT Management

Date: **May 1, 2020**



Hartman Income REIT Management and Summer Energy, LLC entered into Master Electricity Services Agreement dated May 1<sup>st</sup>, 2020. This Contract Confirmation ("Confirmation") along with your separately executed Master Electricity Services Agreement constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. In the event of a conflict between the provisions of the Master Electricity Services Agreement and this Contract Confirmation, the Contract Confirmation shall prevail.

By signing below, I am authorizing Summer Energy to become my new Retail Electric Provider (REP) in place of my current REP, and Summer Energy to act as my agent to make this change and direct my current REP to work with Summer Energy to make this change.

**Product:** REAL TIME INDEX FULL PASS THROUGH + \$0.003660/kwh Retail Adder

**Delivery point:** Multiple See Attachment A Sheet

**Pricing:** The price for the term of the contract is composed of:

- i. The sum of the Real Time Index Price, plus Line Losses, plus Ancillary Services, plus nodal basis, plus the retail adder multiplied by the total kilowatt hours of energy. You will be assessed a monthly base charge of \$0.00; plus
- ii. All TDSP charges, non-bypassable charges, taxes and other fees.

**Requested start date:** normally scheduled meter read on or after April 30<sup>th</sup>, 2020

**Term:** Customer's service begins on the meter reading date set by the Local Distribution Utility. The term of the contract will continue 24 (months) after the start date, ending on the normally scheduled meter read occurring on or after April 30<sup>th</sup>, 2022. Either party may cancel this Agreement upon thirty (30) calendar days advance written notice.

**Payment terms:** Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued.

**Cancellation:** No Early Termination/Cancellation Penalty on Real Time Product

**Billing:** Customer requests single point billing / summary billing.

**Tax Exempt:** Customer is tax exempt (y / n). A completed tax exemption certificate must accompany this agreement if your business is tax exempt.

By my signature below (facsimile signature accepted as if it were an original), I hereby agree to be obligated by the terms and conditions set forth herein. I understand that I may be subject to credit check prior to the initiation of service.

This confirmation is effective on the date signed by the Customer below:

Signature: \_\_\_\_\_

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

Summer Energy LLC

Date: \_\_\_\_\_

Customer signature: Dan Jones  
\_\_\_\_\_

Title: Sr Executive Vice President  
\_\_\_\_\_

Hartman Income REIT Management

Date: May 1, 2020  
\_\_\_\_\_

Initial: D.J.

## Attachment A

### Contacts

#### Contract contact:

Name: SHANE CAWOOD Phone: 713-467-2222 x2657  
Email: \_\_\_\_\_ Secondary Phone: \_\_\_\_\_  
Mailing address: 2909 HILLCROFT AVE STE 420 City/State/Zip: HOUSTON, TX 77057

#### Invoices/Billing contact:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Email: \_\_\_\_\_ Secondary Phone: \_\_\_\_\_  
Mailing address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

#### Auto-draft information:

Credit Card Type: \_\_\_\_\_ Credit Card Number: \_\_\_\_\_  
Name on card: \_\_\_\_\_ Expiration Date: \_\_\_\_\_ CID: \_\_\_\_\_

### Delivery Points (if required)

	ESI ID	Service Address	City, State, Zip Code	Start Date
1	1008901001102505117100	2412 WEST ST	HOUSTON, TX 77026-6855	May-20
2	1008901001102505117200	2412 1/3 WEST ST	HOUSTON, TX 77026-6855	May-20
3	1008901004180230004100	6 UVALDE RD	HOUSTON, TX 77015-1435	May-20
4	1008901004180230066100	16 UVALDE RD	HOUSTON, TX 77015-1438	May-20
5	1008901005184625145100	5020 FM 1960 W RD A4A	HOUSTON, TX 77069-0000	May-20
6	1008901005184625148100	5020 FM 1960 W RD BSA	HOUSTON, TX 77069-0000	May-20
7	1008901005184625156100	5020 FM 1960 W RD A18	HOUSTON, TX 77069-0000	May-20
8	1008901005184625162100	5020 FM 1960 W RD B5B	HOUSTON, TX 77069-0000	May-20
9	1008901006189036250100	2909 HILLCROFT ST	HOUSTON, TX 77057-5847	May-20
10	1008901011114104230100	3942 N SHEPHERD DR	HOUSTON, TX 77018-6410	May-20
11	1008901011145470989100	3707 FM 1960 W RD	HOUSTON, TX 77068-3526	May-20
12	1008901014127227246100	7030 BISSONNET ST B	HOUSTON, TX 77074-6010	May-20

Summer Energy Master Electricity Sales Agreement

Version SE050313



13	1008901016190840080100	7211 REGENCY SQUARE BLVD	HOUSTON, TX 77036-3138	May-20
14	1008901017190206200100	14607 BEECHNUT ST	HOUSTON, TX 77083-4436	May-20
15	1008901017190206200200	14607 1/3 BEECHNUT ST	HOUSTON, TX 77083-4436	May-20
16	1008901017190206203100	14609 BEECHNUT ST	HOUSTON, TX 77083-4436	May-20
17	1008901017190206205100	14607 1/2 BEECHNUT ST	HOUSTON, TX 77083-4436	May-20
18	1008901023800383820100	3940 N SHEPHERD DR	HOUSTON, TX 77018-6410	May-20
19	1008901023802914780200	601 1/3 SAWYER ST	HOUSTON, TX 77007-7512	May-20
20	1008901023804886760100	2909 HILLCROFT ST G	HOUSTON, TX 77057-5847	May-20
21	1008901023806572240100	5020 FM 1960 W RD Z	HOUSTON, TX 77069-0000	May-20
22	1008901023810712980100	7072 1/2 BISSONNET ST	HOUSTON, TX 77074-6010	May-20
23	1008901023817285610106	6965 HARWIN DR	HOUSTON, TX 77036-2211	May-20
24	1008901048787349771100	811 S MASON RD A	KATY, TX 77450-3877	May-20
25	1008901020900942750115	16000 BARKERS POINT LN B	HOUSTON, TX 77079-0000	May-20
26	1008901023801094870200	5151 1/3 MITCHELDALE ST A11	HOUSTON, TX 77092-7207	May-20
27	1008901023801094880200	5151 1/3 MITCHELDALE ST B12	HOUSTON, TX 77092-7207	May-20
28	1008901023801094640200	5200 1/3 MITCHELDALE ST D4	HOUSTON, TX 77092-7210	May-20
29	1008901023801094720200	5200 1/3 MITCHELDALE ST E5	HOUSTON, TX 77092-7210	May-20
30	1008901023801219640200	5200 1/3 MITCHELDALE ST F6	HOUSTON, TX 77092-7210	May-20
31	1008901023801094800200	5201 1/3 MITCHELDALE ST A9	HOUSTON, TX 77092-7209	May-20
32	1008901023801094840200	5201 1/3 MITCHELDALE ST B10	HOUSTON, TX 77092-7209	May-20
33	1008901023801094630200	5400 1/3 MITCHELDALE ST C3	HOUSTON, TX 77092-7214	May-20
34	1008901023801094740200	5401 1/3 MITCHELDALE ST A7	HOUSTON, TX 77092-7213	May-20
35	1008901023801094780200	5401 1/3 MITCHELDALE ST B8	HOUSTON, TX 77092-7213	May-20
36	1008901015185837425100	5870 HIGHWAY 6 N	HOUSTON, TX 77084-1802	May-20
37	1008901015185837802100	15840 FM 529 RD B	HOUSTON, TX 77095-2504	May-20
38	1008901017190216438100	6832 HIGHWAY 6 S	HOUSTON, TX 77083-3302	May-20
39	1008901020900208340108	6800 HIGHWAY 6 S	HOUSTON, TX 77083-3302	May-20
40	1008901017190216532100	6804 HIGHWAY 6 S B5	HOUSTON, TX 77083-0000	May-20
41	1008901023801094620200	5400 1/3 MITCHELDALE ST B2	HOUSTON, TX 77092-7214	May-20
42	1008901023801094590200	5400 1/3 MITCHELDALE ST A1	HOUSTON, TX 77092-7214	May-20
43	1008901001900487480111	811 S MASON RD #210	KATY, TX 77450-0000	May-20
44	1008901004180230007100	6 UVALDE RD D	HOUSTON, TX 77015-1436	May-20
45	1008901004180230065100	14 UVALDE RD A	HOUSTON, TX 77015-1445	May-20
46	1008901005184625161100	5020 FM 1960 W RD A25	HOUSTON, TX 77069-0000	May-20
47	1008901006900355240109	3902 N SHEPHERD DR C	HOUSTON, TX 77018-6414	May-20
48	1008901006901283000117	3804 N SHEPHERD DR	HOUSTON, TX 77018-0000	May-20
49	1008901007185268346100	5401 MITCHELDALE ST A5	HOUSTON, TX 77092-7226	May-20
50	1008901007185268474100	5200 MITCHELDALE ST D4	HOUSTON, TX 77092-7223	May-20
51	1008901007185268652100	5151 MITCHELDALE ST B14	HOUSTON, TX 77092-7201	May-20
52	1008901007185268658100	5151 MITCHELDALE ST A6	HOUSTON, TX 77092-7220	May-20
53	1008901011114104232100	3936 N SHEPHERD DR	HOUSTON, TX 77018-6410	May-20
54	1008901014127227251100	7086 BISSONNET ST	HOUSTON, TX 77074-6010	May-20
55	1008901020900145880107	14639 BEECHNUT ST B	HOUSTON, TX 77083-4436	May-20
56	1008901022901037920115	5020 FM 1960 W RD A10	HOUSTON, TX 77069-0000	May-20
57	1008901022901337790117	7098 BISSONNET ST A2	HOUSTON, TX 77074-0000	May-20
58	1008901023807292460100	3902 N SHEPHERD DR B	HOUSTON, TX 77018-6410	May-20
59	1008901023809407930100	14617 BEECHNUT ST A	HOUSTON, TX 77083-5707	May-20
60	1008901023814987560104	6959 HARWIN DR	HOUSTON, TX 77036-2290	May-20
61	1008901023815455420104	6959 HARWIN DR #103	HOUSTON, TX 77036-2299	May-20
62	1008901023901028370115	811 S MASON RD #165	KATY, TX 77450-0000	May-20
63	1008901023901307300117	3804 1/2 N SHEPHERD DR	HOUSTON, TX 77018-0000	May-20
64	1008901023802958770100	811 S MASON RD #155	KATY, TX 77450-3865	May-20
65	1008901014127227261100	7064 BISSONNET ST	HOUSTON, TX 77074-6010	May-20
66	1008901011114104297100	3800 N SHEPHERD DR A	HOUSTON, TX 77018-6411	May-20



67	1008901023816311680105	829 S MASON RD #200A	KATY, TX 77450-3933	May-20
68	1008901007185268305100	5400 MITCHELLEDALE ST B3	HOUSTON, TX 77092-7225	May-20
69	1008901016900757980113	7078 BISSONNET ST	HOUSTON, TX 77074-6010	May-20
70	1008901023813176760102	3938 N SHEPHERD DR A	HOUSTON, TX 77018-6418	May-20
71	1008901004180230008100	6 UVALDE RD E	HOUSTON, TX 77015-1435	May-20
72	1008901005184625153100	5020 FM 1960 W RD A13	HOUSTON, TX 77069-0000	May-20
73	1008901023812713130102	3800 N SHEPHERD DR B	HOUSTON, TX 77018-6411	May-20
74	1008901005184625152100	5020 FM 1960 W RD A12	HOUSTON, TX 77069-0000	May-20
75	1008901004180230061100	14 UVALDE RD B	HOUSTON, TX 77015-1445	May-20
76	1008901000140950015100	3100 TIMMONS LN	HOUSTON, TX 77027	May-20
77	1008901000141290015100	14550 TORREY CHASE BLVD	HOUSTON, TX 77014	May-20
78	1008901000141340018100	16010 BARKERS POINT LN	HOUSTON, TX 77079	May-20
79	1008901000147670012100	2070 N LOOP W	HOUSTON, TX 77018	May-20
80	1008901000149830010100	601 SAWYER ST	HOUSTON, TX 77007	May-20
81	1008901000150040012100	15355 VANTAGE PKWY W	HOUSTON, TX 77032	May-20
82	1008901000152570016100	616 FM 1960 W RD	HOUSTON, TX 77090	May-20
83	1008901000152910014100	11811 NORTH FWY	HOUSTON, TX 77060	May-20
84	1008901000153470018100	15311 VANTAGE PKWY W	HOUSTON, TX 77032	May-20
85	1008901000154190011100	11200 WESTHEIMER RD	HOUSTON, TX 77042	May-20
86	1008901000162080014100	3100 WESLAYAN	HOUSTON, TX 77027	May-20

# Summer Energy Master Electricity Sales Agreement

Version SE050313

This Agreement entered into on **May 1<sup>st</sup>, 2020** and is between **Summer Energy, LLC** ("SUMMER", "we", and "us") located at **5847 San Felipe St Ste 3700 Houston, TX 77057** and **Hartman Income REIT Management** located at **2909 Hillcroft Suite 420 Houston, TX 77057**. This is an agreement for SUMMER to supply electricity to meet customer's full usage requirements at the delivery points identified by the customer. By entering into this Agreement, Customer hereby: 1) appoints SUMMER to arrange for purchase and delivery of electricity (including volume balancing and billing) from any source on Customer's behalf for the period of time defined in this Agreement; 2) Customer hereby requests that all electric service associated with Customer's name and/or address(es) or electric service identifiers ("ESIDs") be transferred to SUMMER under the terms and conditions of this Agreement; and 3) Customer represents their peak demand is greater than 50 KW during the previous 12 month historical period. This agreement along with your separately executed Contract Confirmation constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. For questions about this Agreement or your Contract Documents or other electric service needs, please contact SUMMER's Customer Service department at:

<b>INTERNET ADDRESS:</b>	<a href="http://www.summerenergy.com">www.summerenergy.com</a>	<b>EMAIL ADDRESS:</b>	<a href="mailto:service@summerenergy.com">service@summerenergy.com</a>
<b>MAILING ADDRESS:</b>	PO BOX 460485 Houston, TX 77056	<b>FAX NUMBER:</b>	1-888-594-9350
<b>TELEPHONE:</b>	Toll-Free: 1-888-594-9299	<b>HOURS:</b>	Mon-Fri 8:00 am -- 5:00 pm CST

24 Hour Emergency Outage Information: Please contact your Transmission and Distribution Utility ("TDU") to report electricity outage or emergency conditions at the appropriate number below:

<b>Centerpoint Energy (Houston Area):</b> 800-332-7143	<b>Oncor Electric Delivery (DFW Area):</b> 888-313-4747
<b>AEP (WTU &amp; CPL Area):</b> 866-223-8508	<b>Texas New Mexico Power Area:</b> 888-866-7456

Customer Information: By entering into this Agreement, Customer authorizes its local Transmission and Distribution Utility ("TDU") to release to SUMMER any information that is necessary or required to become the REP for Customer, including, but not limited to: Customer's address, account numbers, and historical usage information.

- 1. Term & Renewal:** This Agreement shall commence on the date of the initial meter reading by the applicable TDU and continue for the period indicated in your Authorization and/or in the EFL ("Initial Term"). Customer acknowledges that SUMMER cannot guarantee a switch of Customer's account to SUMMER by a specific date and hereby holds harmless SUMMER from any liability for, or arising out of, delays in this process. For term products (non-month to month products), a contract expiration notice will be sent at least thirty (30) days prior to the end of the Initial Term. If you fail to renew your agreement with SUMMER, your service will automatically continue on a month-to-month basis after the expiration of your Initial Term on a default renewal product, which is a variable price product whose price will be determined by current market conditions at the sole discretion of SUMMER until cancelled by either you or SUMMER.
- 2. Contract Pricing:** Current pricing for service is indicated in your Contract Confirmation. Customer understands and agrees that if it utilized a Third Party/Broker, SUMMER will be making a payment to such Third Party/Broker in connection with its efforts to facilitate customer entering into this Agreement; Customer also understands and agrees that the Price reflects the fee SUMMER is paying to the Third Party/Broker, and such Third Party/Broker is acting on Customer's behalf as Customer's representative, and is not a representative or agent of SUMMER. Customer also understands and agrees that as such, it should direct any questions regarding such fees to its Third Party/Broker.
- 3. Product Types:** SUMMER provides different types of products including but not limited to fixed rate, indexed and variable price. Your Contract Confirmation specify the product type and the term that applies to your Agreement. Please note that only those parts of this section that describe your specific product type will apply to your Agreement.  
**Fixed Rate Products:** Fixed Rate Products have a term of at least (three) 3 months. The price of a fixed rate product may only change during your initial Term to reflect actual changes in TDSP charges, changes to the Electric Reliability Council of Texas ("ERCOT") or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advanced notice.

**Indexed Products:** Indexed products may have a contract term of three (3) months or more, or may be month-to-month. Indexed Products have a price that changes according to a pre-defined pricing formula that is based on publicly available indices or information. The price for term indexed products may also change without advance notice to reflect actual changes in TDSP charges; changes to the ERCOT or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on us that are beyond our control. There is no Early Termination Fee for this product if the contract term is less than 3 months.

**Variable Price Products:** Variable price products have a term of thirty-one (31) days or less and a price that varies according to the method disclosed on your Contract Confirmation. There is no Early Termination Fee for this product type.

4. **Material Changes by SUMMER:** SUMMER will provide Customer with at least fourteen (14) calendar days advance written notice of any Material Change in this Agreement, either in Customer's bill or in a separate mailing. The changes will become effective on the date stated in the written notice. Customer may cancel this Agreement before the effective date of the Material Change, as identified in the advance written notice provided to Customer, without any Early Termination Fee
5. **Early Terminations:** In the event that SUMMER, or its activities hereunder, becomes subject to regulations of any kind whatsoever under any law, government body action or ERCOT action that has the effect of materially changing the circumstances from those that exist on the effective date of this Agreement then SUMMER may pass through the economic effects to Customer of such change or SUMMER may unilaterally terminate this Agreement without Customer's consent upon at least thirty (30) calendar days written notice to Customer without any obligation, payment or otherwise, to Customer or an Early Termination Fee.
6. **No Early Termination Fees Charged on Real Time Full Pass Through Agreements, Early Termination Fee:** If Customer terminates this Agreement or defaults as described in Section 12 and/or 13 of this Agreement, then, unless otherwise provided herein, an Early Termination Fee shall be immediately due and paid by Customer to SUMMER. If you cancel this Agreement for any other reason before the end of the initial term you will be assessed an Early Termination Fee ("ETF") that is equal to the total amount of the loss that the non-defaulting party or non-terminating party would experience as a result of termination. The ETF would be equal to the positive difference (if any) of the current contract price as described in the Contract Confirmation minus the current market price multiplied by the estimated remaining term volume that would have been delivered if the Agreement was not terminated early, based on the actual or historical volume of the applicable account. Any sale or transfer of the property by CUSTOMER where the purchaser does not assume this Agreement with respect to the terms set forth shall constitute early termination of this Agreement. There is no termination penalty applicable if CUSTOMER terminates at any time; so long as CUSTOMER terminates while using the real-time index product.
7. **Conversion:** At any time during this Agreement the Customer can request to have a portion or the balance of their Agreement converted to a fixed price product. The Conversion will be effectuated with a signed pricing confirmation page confirming the fixed price amount and term. Once a product is converted to a fixed price, the termination penalties will apply if fixed price Agreement cancels prior to expiration.
8. **Invoicing, Payment, Interest, and Credit Requirements:** Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued. Customer can provide to SUMMER written notice, Phone Call, Fax or Email setting forth in particular detail any disputed amount, including the calculations with respect to any errors or inaccuracies claimed. If it is subsequently determined that Customer owes SUMMER any portion of the disputed amount, Customer shall remit to SUMMER within 5 (five) business days following such determination the outstanding balance. Any amounts that may have been overpaid or underpaid shall be applied to the next monthly invoice. Customer is responsible for all regulatory charges, taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts tax, PUCT Assessment, sales tax, consumption tax, use tax, value added tax, kWh, commercial activity or other privilege tax, and any other tax (whether in effect as of the effective date of this Agreement or thereafter) imposed by any governmental entity. SUMMER reserves the right to include in any subsequent invoice, adjustments related to previous invoices, previous invoicing errors, meter read errors, miscalculation of taxes or other errors or omissions. Customer authorizes SUMMER, and SUMMER reserves the right, to charge Customer's credit/debit card and/or checking account without notice for any unpaid balances that are past due.

If the account is referred to a collection company, SUMMER reserves the right to bill Customer a fee not to exceed thirty-three percent (33%) of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the Customer. Customer shall be responsible for any and all fees associated with or incurred by SUMMER in collecting any amounts owed to SUMMER, including, but not limited, to attorneys' fees, court costs and any fees charged by a collection agency.

9. **Additional Charges & Fees:** SUMMER will charge a one-time late payment penalty of 5% for each delinquent month's charges that remain unpaid after the close of business on the bill due date. Additionally, SUMMER will charge: 1) a \$30 fee for any returned check, electronic fund transfer or credit card transaction not processed due to insufficient funds or credit availability; 2) a \$20 disconnection fee for processing an electric service disconnection transaction; 3) a \$20 reconnection fee in the event that SUMMER processes a reconnection transaction on your account, (such fees are in addition to any disconnect/reconnect fees that may be assessed by your TDU, and are assessed regardless of whether or not your electric service is actually disconnected by the TDU if the transaction orders are sent); 4) payments received via auto draft will NOT be assessed a payment processing fee; payments received via regular mail will NOT be assessed a payment processing fee; payments received via our website will be assessed a payment processing fee of \$3.99 per credit card transaction and a 1.5% fee for electronic check payments; payments received via call in to our Customer Service Center will be assessed a payment processing fee of \$6.99 per credit card transaction and a 3.0% fee for electronic check payments; and 5) any charges or fees that the TDU charges SUMMER including but not limited to fees to initiate or switch service, transport and distribute electricity to your service location, read your meter, and terminate or restore service. These charges are passed on to you by SUMMER, along with certain charges and fees assessed by ERCOT.
10. **Load change:** If CUSTOMER has a change in usage of 25% or greater, SUMMER may pass through the resulting cost increases to the CUSTOMER. SUMMER will calculate additional costs in a commercially reasonable manner and invoice CUSTOMER accordingly. Invoice will be due and payable according to the payment terms of this Agreement.
11. **Customer Acknowledgements:** Customer acknowledges that the TDU is solely responsible for reading Customer's meter or recorded data, as applicable, and that SUMMER cannot and does not read a Customer's meter or recorded data, but is bound by the readings and data provided by the TDU. Customer further acknowledges that SUMMER's ability to invoice Customer depends on the TDU's ability to furnish SUMMER with all necessary information including meter readings or recorded data, as applicable. In the absence of such information from the TDU, SUMMER may invoice Customer based on estimated meter reading according to the Customer's historical usage. As soon as practicable, and after receipt of actual Customer's energy consumption from the TDU, SUMMER will reconcile any difference(s) between estimated and actual usage charges.
12. **Credit Requirements & Deposit:** SUMMER may investigate the Customer's credit history at any time. SUMMER may refuse electric service at any time to anyone who does not meet SUMMER's credit standards or if Customer cannot pay the requisite initial deposit or demonstrate satisfactory credit. SUMMER may also refuse to provide service to a Customer for one or more of the reasons specified in Section 25.477 of the PUCT rules and regulations.

**Deposits:** If Customer fails to demonstrate satisfactory credit, as determined in the sole discretion of SUMMER, then Customer may be required to pay an initial deposit prior to service being provided, if at all. Such deposit shall not exceed an amount equal to the greater of one-fifth of the Customer's estimated annual billing or; the sum of the Customer's estimated billings for the next 2 (two) months. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and account name supplied on this application. Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the PUCT. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) consecutive months of service with no late payments of any kind, SUMMER will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. Any credit balance remaining on an inactive account after the final bill will be refunded in the form of a company check and will be mailed within thirty (30) calendar days.

Summer will not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment during the last 12 months of service. You may be required to pay this initial deposit within ten days after the issuance of a written disconnection notice that requests such deposit. Summer may request an additional deposit from an existing customer if the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated billings and a disconnection notice has been issued (or the account disconnected) within the previous 12 months. Summer may require that you pay this additional deposit within 10 days of the request for such deposit.

**13. Default and Disconnection:** A Default means:

- a. Failure of Customer to pay any amounts due under this Agreement within the time strictly provided herein; or
- b. Failure of Customer to perform any material term of this Agreement; or
- c. Determination that any representation upon which this Agreement is based is false; or
- d. Immediately after Customer files for or is otherwise placed in bankruptcy; or
- e. Determination by the TDU that any tampering has occurred at the Customer's meters.
- f. Prevention by SUMMER to initiate and/or provide service to Customer's meters for any reason, including but not limited to a switch-hold or permitting issues.

Default of this Agreement, including without limitation, non-payment of Customer's bill may result in an order for the TDU to disconnect the Customer's electric service at the Customer's meters; and the termination of this Agreement at the sole discretion of SUMMER. Moreover, SUMMER may seek to have your electric service disconnected after providing you at least ten (10) calendar days' notice for any of the following reasons: (1) failure to pay a bill owed to SUMMER, or to make a deferred payment arrangement by the date of disconnection; (2) failure to comply with the terms of a deferred payment agreement made with SUMMER; (3) using service in a manner that interferes with the service of others or the operations of non-standard equipment; (4) failure to pay a deposit required by SUMMER; or (5) failure of the guarantor to pay the amount guaranteed when SUMMER has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

SUMMER may authorize your TDU to disconnect your electric service without prior notice to you if: (1) certain dangerous circumstances exist; (2) service is connected without the authority by a person who has not made application for service; (3) service is reconnected without authority after disconnection for non-payment; (4) there has been tampering with the equipment used to measure the amount of electricity used; or (5) there is evidence of theft of service. Payments may be made by phone to SUMMER during normal business hours (Monday – Friday 8:00 am to 5:00 pm) or on-line at [www.mysummerenergy.com](http://www.mysummerenergy.com). SERVICE MAY BE DISCONNECTED AGAIN WITHOUT NOTICE FOR ANY RETURNED PAYMENTS. A deposit or additional deposits may be required on accounts that have been disconnected for non-payment.

Upon satisfactory correction of the reasons for the disconnection, SUMMER will notify your TDU to reconnect your service. SUMMER will continue to serve you under this Agreement in effect prior to issuance of the disconnection notice. If your service was disconnected due to a dangerous situation, your service will be reconnected once you notify SUMMER that you have corrected and satisfactorily resolved the dangerous situation. Please allow 24 to 48 hours for completion of reconnect orders.

**Governmental Entities.** : If you are a governmental entity as defined in the Prompt Payment Act (PPA), TEX. GOV'T CODE, Chapter 2251 ([http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV\\_2251.htm](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV_2251.htm)), it is your responsibility to inform your REP of your status so that the PPA protections can be applied. If you are a governmental entity subject to the PPA, your payment shall become overdue as provided in the PPA and interest on an overdue payment shall be calculated by you pursuant to the terms of the PPA and remitted to your REP with the overdue payment. Billing disputes between a governmental entity, as defined in the PPA, and an aggregator or a REP about any bill for aggregator or REP service, shall be resolved as provided in the PPA.

- 14. Remedies upon Default:** If Customer defaults then, in addition to any rights and/or remedies available to SUMMER in this Agreement, in law or in equity, SUMMER may unilaterally terminate this Agreement and issue a "move out" transaction, and Customer shall be subject to and responsible for payment of any applicable Early Termination Fee. Thereafter, SUMMER may calculate all amounts due under this Agreement and Customer shall pay those amounts within five (5)

calendar days from the date of invoice. Customer shall be liable for payment of any and all fees related to and/or arising out of Customer's default, including without limitation, attorneys' fees, court costs, collection fees, and demands for payment. If Customer defaults, then Customer may be required to reapply for electric service and pay a deposit in order to again become a Customer.

- 15. Representations and Warranties:** As a material inducement to entering into this Agreement, Customer hereby represents and warrants to SUMMER as follows:
- This Agreement constitutes a legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending; and
  - Customer has knowledge, understanding and experience that enable Customer to evaluate the merits and risks of entering into this Agreement;
- 16. Forward Contract:** SUMMER and Customer acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that SUMMER is a "forward contract merchant." (<http://uscode.house.gov/download/pls/11C1.txt>).
- 17. Assignment:** Customer shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of SUMMER, which consent may not be unreasonably withheld. Notwithstanding the foregoing, SUMMER may, without the consent of Customer:
- Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and
  - Transfer or assign this Agreement to its affiliate; and
  - Transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets; and Customer hereby acknowledges and consents to SUMMER's pledge and contingent assignment or subrogation of all rights and obligations hereunder. In the event any other provision of this Agreement shall be deemed to prohibit or otherwise restrict SUMMER's assignment, subrogation or pledge of its rights hereunder, this provision shall control.
- 18. Binding Effect:** This Agreement shall inure to the benefit of, and be binding upon, SUMMER and Customer and their respective successors and permitted assigns.
- 19. Force Majeure:** SUMMER shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, including any order or directive of ERCOT.
- 20. Excuse:** If an event occurs which makes it impossible for SUMMER to perform this Agreement, including without limitation, any of the foregoing force majeure events, then our performance under this Agreement shall be excused for the duration of such event. This could be an event affecting Customer's TDU, such as a facility outage on their electric distribution lines.
- 21. LIMITATION OF REMEDIES, LIABILITY AND DAMAGES:** SUMMER AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNDER NO CIRCUMSTANCE SHALL SUMMER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS

INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF SUMMER AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, SUMMER AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

22. **Dispute Resolution:** SUMMER and Customer agree in good faith to attempt to resolve any disputes within twenty-one (21) calendar days of notice of the dispute from either party. Any written communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at PO BOX 460485, Houston, TX 77056.
23. **UCC:** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") of Texas shall govern this Agreement and Energy shall be deemed a "good" for purposes of the UCC (<http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.1.htm#1.101>).
24. **Warranty Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT SUMMER DOES NOT MAKE AND EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.
25. **Notices:** Notices to and from Customer shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, overnight carrier, or hand delivery. Notice to and from Customer by hand delivery shall be deemed to be received by the close of the business day on which it was hand delivered (unless hand delivered after the close of business in which case it shall be deemed received at the close of the next business day). Notice to and from Customer by overnight mail or courier shall be deemed to have been received 2 (two) business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO SUMMER, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO THE FOLLOWING ADDRESS: PO BOX 460485, Houston, TX 77056.
26. **Governing Law:** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF SUMMER AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.  
  
All citations to rules of the Public Utility Commission of Texas may be found electronically at:  
<http://www.puc.state.tx.us/agency/ruleslaws/subrules/electric/Electric.aspx>
27. **Non-Waiver:** No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.
28. **Severability:** Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over SUMMER or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.
29. **No Third Party Beneficiaries:** Subject to the provisions above under "Assignment," nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.
30. **Discrimination:** SUMMER does not discriminate, deny service, or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, religion, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.



- 31. **Entirety of Agreement:** It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of electricity, and supersedes any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's ESI IDs. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement.
- 32. **Venue.** The Parties acknowledge and agree that this Agreement has been negotiated, drafted, executed and is performable in Harris County, Texas and may be enforced in Harris County, Texas.
- 33. **Counterparts.** This Agreement may be executed simultaneously in multiple originals or counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.
- 34. **No Oral Modification or Waivers.** This Agreement shall not be modified or waived orally, but only by an instrument in writing signed by the Party against which enforcement of the modification or waiver is sought.
- 35. **Own Judgment.** It is understood and agreed that the Parties hereto have carefully reviewed this this Agreement, that they fully understand its terms, that they sought and obtained, or had the opportunity to obtain, independent legal advice with respect to the negotiation and preparation of this Agreement, and that this Agreement has been negotiated and prepared by the joint efforts of the Parties.

This agreement is effective on the date signed by the Customer below and should be returned to your Account Manager or to:

Summer Energy LLC (Toll Free: 888-594-9299)  
5847 San Felipe Street Ste 3700  
Houston, TX 77057

Signature: .....

Title: .....

Summer Energy LLC

Date: .....

*Dan Jones*  
Customer signature: .....

Title: Sr Executive Vice President

Hartman Income REIT Management

Date: May 1, 2020





Hartman Income REIT Management and Summer Energy, LLC entered into Master Electricity Services Agreement dated May 1<sup>st</sup>, 2020. This Contract Confirmation ("Confirmation") along with your separately executed Master Electricity Services Agreement constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. In the event of a conflict between the provisions of the Master Electricity Services Agreement and this Contract Confirmation, the Contract Confirmation shall prevail.

By signing below, I am authorizing Summer Energy to become my new Retail Electric Provider (REP) in place of my current REP, and Summer Energy to act as my agent to make this change and direct my current REP to work with Summer Energy to make this change.

Product: REAL TIME INDEX FULL PASS THROUGH + \$0.003660/kwh Retail Adder

Delivery point: Multiple See Attachment A Sheet

Pricing: The price for the term of the contract is composed of:

- i. The sum of the Real Time Index Price, plus Line Losses, plus Ancillary Services, plus nodal basis, plus the retail adder multiplied by the total kilowatt hours of energy. You will be assessed a monthly base charge of \$0.00; plus
- ii. All TDSP charges, non-bypassable charges, taxes and other fees.

Requested start date: 06 - 01 - 2020

Term: Customer's service begins on the meter reading date set by the Local Distribution Utility. The term of the contract will continue 24 (months) after the start date, ending on the normally scheduled meter read occurring on or after May 31<sup>st</sup>, 2022. Either party may cancel this Agreement upon thirty (30) calendar days advance written notice.

Payment terms: Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued.

Cancellation: No Early Termination/Cancellation Penalty on Real Time Product

Billing: Customer requests single point billing / summary billing.

Tax Exempt: Customer is tax exempt (y / n). A completed tax exemption certificate must accompany this agreement if your business is tax exempt.

By my signature below (facsimile signature accepted as if it were an original), I hereby agree to be obligated by the terms and conditions set forth herein. I understand that I may be subject to credit check prior to the initiation of service.

This confirmation is effective on the date signed by the Customer below:

Signature: \_\_\_\_\_

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

Summer Energy LLC

Date: \_\_\_\_\_

Customer signature Dan Jones  
(Signed May 1, 2020)

Title: Sr Executive Vice President

Hartman Income REIT Management

Date: May 1, 2020



## Attachment A

### Contacts

#### Contract contact:

Name: SHANE CAWOOD

Phone: 713-467-222 x2657

Email: \_\_\_\_\_

Secondary Phone: \_\_\_\_\_

Mailing address: 2909 HILLCROFT AVE STE 420

City/State/Zip: HOUSTON, TX 77057

#### Invoices/Billing contact:

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

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Secondary Phone: \_\_\_\_\_

Mailing address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

#### Auto-draft information:

Credit Card Type: \_\_\_\_\_

Credit Card Number: \_\_\_\_\_

Name on card: \_\_\_\_\_

Expiration Date: \_\_\_\_\_ CID: \_\_\_\_\_

Billing Address of CC: \_\_\_\_\_

### Delivery Points (if required)

ESI ID	Service Address	City, State Zip	Start Date
1) 1008901011184796074100	7915 FM 1960 W RD A	HOUSTON, TX 77070	June 2020
2) 1008901011184796075100	7915 FM 1960 W RD B	HOUSTON, TX 77070	June 2020
3) 1008901000145140018100	1400 BROADFIELD BLVD	HOUSTON, TX 77084	June 2020

# Summer Energy Master Electricity Sales Agreement

Version SE050313

This Agreement entered into on **May 1<sup>st</sup>, 2020** and is between **Summer Energy, LLC** ("SUMMER", "we", and "us") located at 5847 San Felipe St Ste 3700 Houston, TX 77057 and **Hartman Income REIT Management** located at **2909 Hillcroft Suite 420 Houston, TX 77057**. This is an agreement for SUMMER to supply electricity to meet customer's full usage requirements at the delivery points identified by the customer. By entering into this Agreement, Customer hereby: 1) appoints SUMMER to arrange for purchase and delivery of electricity (including volume balancing and billing) from any source on Customer's behalf for the period of time defined in this Agreement; 2) Customer hereby requests that all electric service associated with Customer's name and/or address(es) or electric service identifiers ("ESIDs") be transferred to SUMMER under the terms and conditions of this Agreement; and 3) Customer represents their peak demand is greater than 50 KW during the previous 12 month historical period. This agreement along with your separately executed Contract Confirmation constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. For questions about this Agreement or your Contract Documents or other electric service needs, please contact SUMMER's Customer Service department at:

**INTERNET ADDRESS:** [www.summerenergy.com](http://www.summerenergy.com)      **EMAIL ADDRESS:** [service@summerenergy.com](mailto:service@summerenergy.com)  
**MAILING ADDRESS:** PO BOX 460485      **FAX NUMBER:** 1-888-594-9350  
Houston, TX 77056  
**TELEPHONE:** Toll-Free: 1-888-594-9299      **HOURS:** Mon-Fri 8:00 am – 5:00 pm CST

24 Hour Emergency Outage Information: Please contact your Transmission and Distribution Utility ("TDU") to report electricity outage or emergency conditions at the appropriate number below:

**Centerpoint Energy (Houston Area):** 800-332-7143      **Oncor Electric Delivery (DFW Area):** 888-313-4747  
**AEP (WTU & CPL Area):** 866-223-8508      **Texas New Mexico Power Area:** 888-866-7456

Customer Information: By entering into this Agreement, Customer authorizes its local Transmission and Distribution Utility ("TDU") to release to SUMMER any information that is necessary or required to become the REP for Customer, including, but not limited to: Customer's address, account numbers, and historical usage information.

- 1. Term & Renewal:** This Agreement shall commence on the date of the initial meter reading by the applicable TDU and continue for the period indicated in your Authorization and/or in the EFL ("initial Term"). Customer acknowledges that SUMMER cannot guarantee a switch of Customer's account to SUMMER by a specific date and hereby holds harmless SUMMER from any liability for, or arising out of, delays in this process. For term products (non-month to month products), a contract expiration notice will be sent at least thirty (30) days prior to the end of the Initial Term. If you fail to renew your agreement with SUMMER, your service will automatically continue on a month-to-month basis after the expiration of your initial Term on a default renewal product, which is a variable price product whose price will be determined by current market conditions at the sole discretion of SUMMER until cancelled by either you or SUMMER.
- 2. Contract Pricing:** Current pricing for service is indicated in your Contract Confirmation. Customer understands and agrees that if it utilized a Third Party/Broker, SUMMER will be making a payment to such Third Party/Broker in connection with its efforts to facilitate customer entering into this Agreement; Customer also understands and agrees that the Price reflects the fee SUMMER is paying to the Third Party/Broker, and such Third Party/Broker is acting on Customer's behalf as Customer's representative, and is not a representative or agent of SUMMER. Customer also understands and agrees that as such, it should direct any questions regarding such fees to its Third Party/Broker.
- 3. Product Types:** SUMMER provides different types of products including but not limited to fixed rate, indexed and variable price. Your Contract Confirmation specify the product type and the term that applies to your Agreement. Please note that only those parts of this section that describe your specific product type will apply to your Agreement.  
**Fixed Rate Products:** Fixed Rate Products have a term of at least (three) 3 months. The price of a fixed rate product may only change during your initial Term to reflect actual changes in TDSP charges, changes to the Electric Reliability Council of Texas ("ERCOT") or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advanced notice.

**Indexed Products:** Indexed products may have a contract term of three (3) months or more, or may be month-to-month. Indexed Products have a price that changes according to a pre-defined pricing formula that is based on publicly available indices or information. The price for term indexed products may also change without advance notice to reflect actual changes in TDSP charges; changes to the ERCOT or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on us that are beyond our control. There is no Early Termination Fee for this product if the contract term is less than 3 months.

**Variable Price Products:** Variable price products have a term of thirty-one (31) days or less and a price that varies according to the method disclosed on your Contract Confirmation. There is no Early Termination Fee for this product type.

4. **Material Changes by SUMMER:** SUMMER will provide Customer with at least fourteen (14) calendar days advance written notice of any Material Change in this Agreement, either in Customer's bill or in a separate mailing. The changes will become effective on the date stated in the written notice. Customer may cancel this Agreement before the effective date of the Material Change, as identified in the advance written notice provided to Customer, without any Early Termination Fee
5. **Early Terminations:** In the event that SUMMER, or its activities hereunder, becomes subject to regulations of any kind whatsoever under any law, government body action or ERCOT action that has the effect of materially changing the circumstances from those that exist on the effective date of this Agreement then SUMMER may pass through the economic effects to Customer of such change or SUMMER may unilaterally terminate this Agreement without Customer's consent upon at least thirty (30) calendar days written notice to Customer without any obligation, payment or otherwise, to Customer or an Early Termination Fee.
6. **No Early Termination Fees Charged on Real Time Full Pass Through Agreements, Early Termination Fee:** If Customer terminates this Agreement or defaults as described in Section 12 and/or 13 of this Agreement, then, unless otherwise provided herein, an Early Termination Fee shall be immediately due and paid by Customer to SUMMER. If you cancel this Agreement for any other reason before the end of the initial term you will be assessed an Early Termination Fee ("ETF") that is equal to the total amount of the loss that the non-defaulting party or non-terminating party would experience as a result of termination. The ETF would be equal to the positive difference (if any) of the current contract price as described in the Contract Confirmation minus the current market price multiplied by the estimated remaining term volume that would have been delivered if the Agreement was not terminated early, based on the actual or historical volume of the applicable account. Any sale or transfer of the property by CUSTOMER where the purchaser does not assume this Agreement with respect to the terms set forth shall constitute early termination of this Agreement. There is no termination penalty applicable if CUSTOMER terminates at any time; so long as CUSTOMER terminates while using the real-time index product.
7. **Conversion:** At any time during this Agreement the Customer can request to have a portion or the balance of their Agreement converted to a fixed price product. The Conversion will be effectuated with a signed pricing confirmation page confirming the fixed price amount and term. Once a product is converted to a fixed price, the termination penalties will apply if fixed price Agreement cancels prior to expiration.
8. **Invoicing, Payment, Interest, and Credit Requirements:** Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued. Customer can provide to SUMMER written notice, Phone Call, Fax or Email setting forth in particular detail any disputed amount, including the calculations with respect to any errors or inaccuracies claimed. If it is subsequently determined that Customer owes SUMMER any portion of the disputed amount, Customer shall remit to SUMMER within 5 (five) business days following such determination the outstanding balance. Any amounts that may have been overpaid or underpaid shall be applied to the next monthly invoice. Customer is responsible for all regulatory charges, taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts tax, PUCT Assessment, sales tax, consumption tax, use tax, value added tax, kWh, commercial activity or other privilege tax, and any other tax (whether in effect as of the effective date of this Agreement or thereafter) imposed by any governmental entity. SUMMER reserves the right to include in any subsequent invoice, adjustments related to previous invoices, previous invoicing errors, meter read errors, miscalculation of taxes or other errors or omissions. Customer authorizes SUMMER, and SUMMER reserves the right, to charge Customer's credit/debit card and/or checking account without notice for any unpaid balances that are past due.

If the account is referred to a collection company, SUMMER reserves the right to bill Customer a fee not to exceed thirty-three percent (33%) of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the Customer. Customer shall be responsible for any and all fees associated with or incurred by SUMMER in collecting any amounts owed to SUMMER, including, but not limited to, attorneys' fees, court costs and any fees charged by a collection agency.

9. **Additional Charges & Fees:** SUMMER will charge a one-time late payment penalty of 5% for each delinquent month's charges that remain unpaid after the close of business on the bill due date. Additionally, SUMMER will charge: 1) a \$30 fee for any returned check, electronic fund transfer or credit card transaction not processed due to insufficient funds or credit availability; 2) a \$20 disconnection fee for processing an electric service disconnection transaction; 3) a \$20 reconnection fee in the event that SUMMER processes a reconnection transaction on your account, (such fees are in addition to any disconnect/reconnect fees that may be assessed by your TDU, and are assessed regardless of whether or not your electric service is actually disconnected by the TDU if the transaction orders are sent); 4) payments received via auto draft will NOT be assessed a payment processing fee; payments received via regular mail will NOT be assessed a payment processing fee; payments received via our website will be assessed a payment processing fee of \$3.99 per credit card transaction and a 1.5% fee for electronic check payments; payments received via call in to our Customer Service Center will be assessed a payment processing fee of \$6.99 per credit card transaction and a 3.0% fee for electronic check payments; and 5) any charges or fees that the TDU charges SUMMER including but not limited to fees to initiate or switch service, transport and distribute electricity to your service location, read your meter, and terminate or restore service. These charges are passed on to you by SUMMER, along with certain charges and fees assessed by ERCOT.
10. **Load change:** If CUSTOMER has a change in usage of 25% or greater, SUMMER may pass through the resulting cost increases to the CUSTOMER. SUMMER will calculate additional costs in a commercially reasonable manner and invoice CUSTOMER accordingly. Invoice will be due and payable according to the payment terms of this Agreement.
11. **Customer Acknowledgements:** Customer acknowledges that the TDU is solely responsible for reading Customer's meter or recorded data, as applicable, and that SUMMER cannot and does not read a Customer's meter or recorded data, but is bound by the readings and data provided by the TDU. Customer further acknowledges that SUMMER's ability to invoice Customer depends on the TDU's ability to furnish SUMMER with all necessary information including meter readings or recorded data, as applicable. In the absence of such information from the TDU, SUMMER may invoice Customer based on estimated meter reading according to the Customer's historical usage. As soon as practicable, and after receipt of actual Customer's energy consumption from the TDU, SUMMER will reconcile any difference(s) between estimated and actual usage charges.
12. **Credit Requirements & Deposit:** SUMMER may investigate the Customer's credit history at any time. SUMMER may refuse electric service at any time to anyone who does not meet SUMMER's credit standards or if Customer cannot pay the requisite initial deposit or demonstrate satisfactory credit. SUMMER may also refuse to provide service to a Customer for one or more of the reasons specified in Section 25.477 of the PUCT rules and regulations.

**Deposits:** If Customer fails to demonstrate satisfactory credit, as determined in the sole discretion of SUMMER, then Customer may be required to pay an initial deposit prior to service being provided, if at all. Such deposit shall not exceed an amount equal to the greater of one-fifth of the Customer's estimated annual billing or; the sum of the Customer's estimated billings for the next 2 (two) months. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and account name supplied on this application. Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the PUCT. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) consecutive months of service with no late payments of any kind, SUMMER will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. Any credit balance remaining on an inactive account after the final bill will be refunded in the form of a company check and will be mailed within thirty (30) calendar days.

Summer will not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment during the last 12 months of service. You may be required to pay this initial deposit within ten days after the issuance of a written disconnection notice that requests such deposit. Summer may request an additional deposit from an existing customer if the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated billings and a disconnection notice has been issued (or the account disconnected) within the previous 12 months. Summer may require that you pay this additional deposit within 10 days of the request for such deposit.

**13. Default and Disconnection:** A Default means:

- a. Failure of Customer to pay any amounts due under this Agreement within the time strictly provided herein; or
- b. Failure of Customer to perform any material term of this Agreement; or
- c. Determination that any representation upon which this Agreement is based is false; or
- d. Immediately after Customer files for or is otherwise placed in bankruptcy; or
- e. Determination by the TDU that any tampering has occurred at the Customer's meters.
- f. Prevention by SUMMER to initiate and/or provide service to Customer's meters for any reason, including but not limited to a switch-hold or permitting issues.

Default of this Agreement, including without limitation, non-payment of Customer's bill may result in an order for the TDU to disconnect the Customer's electric service at the Customer's meters; and the termination of this Agreement at the sole discretion of SUMMER. Moreover, SUMMER may seek to have your electric service disconnected after providing you at least ten (10) calendar days' notice for any of the following reasons: (1) failure to pay a bill owed to SUMMER, or to make a deferred payment arrangement by the date of disconnection; (2) failure to comply with the terms of a deferred payment agreement made with SUMMER; (3) using service in a manner that interferes with the service of others or the operations of non-standard equipment; (4) failure to pay a deposit required by SUMMER; or (5) failure of the guarantor to pay the amount guaranteed when SUMMER has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

SUMMER may authorize your TDU to disconnect your electric service without prior notice to you if: (1) certain dangerous circumstances exist; (2) service is connected without the authority by a person who has not made application for service; (3) service is reconnected without authority after disconnection for non-payment; (4) there has been tampering with the equipment used to measure the amount of electricity used; or (5) there is evidence of theft of service. Payments may be made by phone to SUMMER during normal business hours (Monday – Friday 8:00 am to 5:00 pm) or on-line at [www.mysummerenergy.com](http://www.mysummerenergy.com). SERVICE MAY BE DISCONNECTED AGAIN WITHOUT NOTICE FOR ANY RETURNED PAYMENTS. A deposit or additional deposits may be required on accounts that have been disconnected for non-payment.

Upon satisfactory correction of the reasons for the disconnection, SUMMER will notify your TDU to reconnect your service. SUMMER will continue to serve you under this Agreement in effect prior to issuance of the disconnection notice. If your service was disconnected due to a dangerous situation, your service will be reconnected once you notify SUMMER that you have corrected and satisfactorily resolved the dangerous situation. Please allow 24 to 48 hours for completion of reconnect orders.

**Governmental Entities.** : If you are a governmental entity as defined in the Prompt Payment Act (PPA), TEX. GOV'T CODE, Chapter 2251 (<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm>), it is your responsibility to inform your REP of your status so that the PPA protections can be applied. If you are a governmental entity subject to the PPA, your payment shall become overdue as provided in the PPA and interest on an overdue payment shall be calculated by you pursuant to the terms of the PPA and remitted to your REP with the overdue payment. Billing disputes between a governmental entity, as defined in the PPA, and an aggregator or a REP about any bill for aggregator or REP service, shall be resolved as provided in the PPA.

- 14. Remedies upon Default:** If Customer defaults then, in addition to any rights and/or remedies available to SUMMER in this Agreement, in law or in equity, SUMMER may unilaterally terminate this Agreement and issue a "move out" transaction, and Customer shall be subject to and responsible for payment of any applicable Early Termination Fee. Thereafter, SUMMER may calculate all amounts due under this Agreement and Customer shall pay those amounts within five (5)

calendar days from the date of invoice. Customer shall be liable for payment of any and all fees related to and/or arising out of Customer's default, including without limitation, attorneys' fees, court costs, collection fees, and demands for payment. If Customer defaults, then Customer may be required to reapply for electric service and pay a deposit in order to again become a Customer.

- 15. Representations and Warranties:** As a material inducement to entering into this Agreement, Customer hereby represents and warrants to SUMMER as follows:
- a. This Agreement constitutes a legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending; and
  - b. Customer has knowledge, understanding and experience that enable Customer to evaluate the merits and risks of entering into this Agreement;
- 16. Forward Contract:** SUMMER and Customer acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that SUMMER is a "forward contract merchant." (<https://uscode.house.gov/download/pls/11C1.txt>).
- 17. Assignment:** Customer shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of SUMMER, which consent may not be unreasonably withheld. Notwithstanding the foregoing, SUMMER may, without the consent of Customer:
- a. Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and
  - b. Transfer or assign this Agreement to its affiliate; and
  - c. Transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets; and Customer hereby acknowledges and consents to SUMMER's pledge and contingent assignment or subrogation of all rights and obligations hereunder. In the event any other provision of this Agreement shall be deemed to prohibit or otherwise restrict SUMMER's assignment, subrogation or pledge of its rights hereunder, this provision shall control.
- 18. Binding Effect:** This Agreement shall inure to the benefit of, and be binding upon, SUMMER and Customer and their respective successors and permitted assigns.
- 19. Force Majeure:** SUMMER shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, including any order or directive of ERCOT.
- 20. Excuse:** If an event occurs which makes it impossible for SUMMER to perform this Agreement, including without limitation, any of the foregoing force majeure events, then our performance under this Agreement shall be excused for the duration of such event. This could be an event affecting Customer's TDU, such as a facility outage on their electric distribution lines.
- 21. LIMITATION OF REMEDIES, LIABILITY AND DAMAGES:** SUMMER AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNDER NO CIRCUMSTANCE SHALL SUMMER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS

INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF SUMMER AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, SUMMER AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

22. **Dispute Resolution:** SUMMER and Customer agree in good faith to attempt to resolve any disputes within twenty-one (21) calendar days of notice of the dispute from either party. Any written communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at PO BOX 460485, Houston, TX 77056.
23. **UCC:** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") of Texas shall govern this Agreement and Energy shall be deemed a "good" for purposes of the UCC (<http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.1.htm#1.101>).
24. **Warranty Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT SUMMER DOES NOT MAKE AND EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.
25. **Notices:** Notices to and from Customer shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, overnight carrier, or hand delivery. Notice to and from Customer by hand delivery shall be deemed to be received by the close of the business day on which it was hand delivered (unless hand delivered after the close of business in which case it shall be deemed received at the close of the next business day). Notice to and from Customer by overnight mail or courier shall be deemed to have been received 2 (two) business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO SUMMER, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO THE FOLLOWING ADDRESS: PO BOX 460485, Houston, TX 77056.
26. **Governing Law:** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF SUMMER AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.  
  
All citations to rules of the Public Utility Commission of Texas may be found electronically at:  
<http://www.puc.state.tx.us/agency/ruleslaws/subrules/electric/Electric.aspx>
27. **Non-Waiver:** No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.
28. **Severability:** Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over SUMMER or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.
29. **No Third Party Beneficiaries:** Subject to the provisions above under "Assignment," nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.
30. **Discrimination:** SUMMER does not discriminate, deny service, or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, religion, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.





Summer Energy Master Electricity Sales Agreement

Version SE050313

- 31. **Entirety of Agreement:** It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of electricity, and supersedes any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's ESI IDs. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement.
- 32. **Venue.** The Parties acknowledge and agree that this Agreement has been negotiated, drafted, executed and is performable in Harris County, Texas and may be enforced in Harris County, Texas.
- 33. **Counterparts.** This Agreement may be executed simultaneously in multiple originals or counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.
- 34. **No Oral Modification or Waivers.** This Agreement shall not be modified or waived orally, but only by an instrument in writing signed by the Party against which enforcement of the modification or waiver is sought.
- 35. **Own Judgment.** It is understood and agreed that the Parties hereto have carefully reviewed this this Agreement, that they fully understand its terms, that they sought and obtained, or had the opportunity to obtain, independent legal advice with respect to the negotiation and preparation of this Agreement, and that this Agreement has been negotiated and prepared by the joint efforts of the Parties.

This agreement is effective on the date signed by the Customer below and should be returned to your Account Manager or to:

Summer Energy LLC (Toll Free: 888-594-9299)  
 5847 San Felipe Street Ste 3700  
 Houston, TX 77057

Signature: \_\_\_\_\_

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

Summer Energy LLC

Date: \_\_\_\_\_

*Dan Jones*

Customer signature: \_\_\_\_\_

Title: Sr Executive Vice President

Hartman Income REIT Management

Date: May 1, 2020



Hartman Income REIT Management and Summer Energy, LLC entered into Master Electricity Services Agreement dated May 1<sup>st</sup>, 2020. This Contract Confirmation ("Confirmation") along with your separately executed Master Electricity Services Agreement constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. In the event of a conflict between the provisions of the Master Electricity Services Agreement and this Contract Confirmation, the Contract Confirmation shall prevail.

By signing below, I am authorizing Summer Energy to become my new Retail Electric Provider (REP) in place of my current REP, and Summer Energy to act as my agent to make this change and direct my current REP to work with Summer Energy to make this change.

Product: REAL TIME INDEX FULL PASS THROUGH + \$0.003660/kwh Retail Adder

Delivery point: 1008901000146880018100      16420 PARK TEN PL      HOUSTON, TX 77084

Pricing: The price for the term of the contract is composed of:

- i. The sum of the Real Time Index Price, plus Line Losses, plus Ancillary Services, plus nodal basis, plus the retail adder multiplied by the total kilowatt hours of energy. You will be assessed a monthly base charge of \$0.00; plus
- ii. All TDSP charges, non-bypassable charges, taxes and other fees.

Requested start date: 06 - 01 - 2020

Term: Customer's service begins on the meter reading date set by the Local Distribution Utility. The term of the contract will continue 24 (months) after the start date, ending on the normally scheduled meter read occurring on or after May 31<sup>st</sup>, 2022. Either party may cancel this Agreement upon thirty (30) calendar days advance written notice.

Payment terms: Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued.

Cancellation: No Early Termination/Cancellation Penalty on Real Time Product

Billing: Customer requests single point billing / summary billing.

Tax Exempt: Customer is tax exempt (y / n). A completed tax exemption certificate must accompany this agreement if your business is tax exempt.

By my signature below (facsimile signature accepted as if it were an original), I hereby agree to be obligated by the terms and conditions set forth herein. I understand that I may be subject to credit check prior to the initiation of service.

This confirmation is effective on the date signed by the Customer below:

Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Summer Energy LLC  
 Date: \_\_\_\_\_

Customer signature: Dan Jones  
Jones (May 1, 2020)  
 Title: Sr Executive Vice President  
 Hartman Income REIT Management  
 Date: May 1, 2020



Attachment A

**Contacts**

**Contract contact:**

Name: SHANE CAWOOD

Phone: 713-467-222 x2657

Email: \_\_\_\_\_

Secondary Phone: \_\_\_\_\_

Mailing address: 2909 HILLCROFT AVE STE 420

City/State/Zip: HOUSTON, TX 77057

**Invoices/Billing contact:**

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

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Secondary Phone: \_\_\_\_\_

Mailing address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

**Auto-draft information:**

Credit Card Type: \_\_\_\_\_

Credit Card Number: \_\_\_\_\_

Name on card: \_\_\_\_\_

Expiration Date: \_\_\_\_\_ CID: \_\_\_\_\_

Billing Address of CC: \_\_\_\_\_

**Delivery Points (if required)**

ESI ID	Service Address	City, State Zip	Start Date
--------	-----------------	-----------------	------------



Summer Energy Master Electricity Sales Agreement

Version SE050313

This Agreement entered into on May 1st, 2020 and is between Summer Energy, LLC ("SUMMER", "we", and "us") located at 5847 San Felipe St Ste 3700 Houston, TX 77057 and Hartman Income REIT Management located at 2909 Hillcroft Suite 420 Houston, TX 77057. This is an agreement for SUMMER to supply electricity to meet customer's full usage requirements at the delivery points identified by the customer. By entering into this Agreement, Customer hereby: 1) appoints SUMMER to arrange for purchase and delivery of electricity (including volume balancing and billing) from any source on Customer's behalf for the period of time defined in this Agreement; 2) Customer hereby requests that all electric service associated with Customer's name and/or address(es) or electric service identifiers ("ESIDs") be transferred to SUMMER under the terms and conditions of this Agreement; and 3) Customer represents their peak demand is greater than 50 KW during the previous 12 month historical period. This agreement along with your separately executed Contract Confirmation constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. For questions about this Agreement or your Contract Documents or other electric service needs, please contact SUMMER's Customer Service department at:

INTERNET ADDRESS: www.summerenergy.com EMAIL ADDRESS: service@summerenergy.com
MAILING ADDRESS: PO BOX 460485 FAX NUMBER: 1-888-594-9350
Houston, TX 77056
TELEPHONE: Toll-Free: 1-888-594-9299 HOURS: Mon-Fri 8:00 am – 5:00 pm CST

24 Hour Emergency Outage Information: Please contact your Transmission and Distribution Utility ("TDU") to report electricity outage or emergency conditions at the appropriate number below:

Centerpoint Energy (Houston Area): 800-332-7143 Oncor Electric Delivery (DFW Area): 888-313-4747
AEP (WTU & CPL Area): 866-223-8508 Texas New Mexico Power Area: 888-866-7456

Customer Information: By entering into this Agreement, Customer authorizes its local Transmission and Distribution Utility ("TDU") to release to SUMMER any information that is necessary or required to become the REP for Customer, including, but not limited to: Customer's address, account numbers, and historical usage information.

- 1. Term & Renewal: This Agreement shall commence on the date of the initial meter reading by the applicable TDU and continue for the period indicated in your Authorization and/or in the EFL ("Initial Term"). Customer acknowledges that SUMMER cannot guarantee a switch of Customer's account to SUMMER by a specific date and hereby holds harmless SUMMER from any liability for, or arising out of, delays in this process. For term products (non-month to month products), a contract expiration notice will be sent at least thirty (30) days prior to the end of the Initial Term. If you fail to renew your agreement with SUMMER, your service will automatically continue on a month-to-month basis after the expiration of your Initial Term on a default renewal product, which is a variable price product whose price will be determined by current market conditions at the sole discretion of SUMMER until cancelled by either you or SUMMER.
2. Contract Pricing: Current pricing for service is indicated in your Contract Confirmation. Customer understands and agrees that if it utilized a Third Party/Broker, SUMMER will be making a payment to such Third Party/Broker in connection with its efforts to facilitate customer entering into this Agreement; Customer also understands and agrees that the Price reflects the fee SUMMER is paying to the Third Party/Broker, and such Third Party/Broker is acting on Customer's behalf as Customer's representative, and is not a representative or agent of SUMMER. Customer also understands and agrees that as such, it should direct any questions regarding such fees to its Third Party/Broker.
3. Product Types: SUMMER provides different types of products including but not limited to fixed rate, indexed and variable price. Your Contract Confirmation specify the product type and the term that applies to your Agreement. Please note that only those parts of this section that describe your specific product type will apply to your Agreement.
Fixed Rate Products: Fixed Rate Products have a term of at least (three) 3 months. The price of a fixed rate product may only change during your initial Term to reflect actual changes in TDSP charges, changes to the Electric Reliability Council of Texas ("ERCOT") or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advanced notice.

**Indexed Products:** Indexed products may have a contract term of three (3) months or more, or may be month-to-month. Indexed Products have a price that changes according to a pre-defined pricing formula that is based on publicly available indices or information. The price for term indexed products may also change without advance notice to reflect actual changes in TDSP charges; changes to the ERCOT or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on us that are beyond our control. There is no Early Termination Fee for this product if the contract term is less than 3 months.

**Variable Price Products:** Variable price products have a term of thirty-one (31) days or less and a price that varies according to the method disclosed on your Contract Confirmation. There is no Early Termination Fee for this product type.

4. **Material Changes by SUMMER:** SUMMER will provide Customer with at least fourteen (14) calendar days advance written notice of any Material Change in this Agreement, either in Customer's bill or in a separate mailing. The changes will become effective on the date stated in the written notice. Customer may cancel this Agreement before the effective date of the Material Change, as identified in the advance written notice provided to Customer, without any Early Termination Fee
5. **Early Terminations:** In the event that SUMMER, or its activities hereunder, becomes subject to regulations of any kind whatsoever under any law, government body action or ERCOT action that has the effect of materially changing the circumstances from those that exist on the effective date of this Agreement then SUMMER may pass through the economic effects to Customer of such change or SUMMER may unilaterally terminate this Agreement without Customer's consent upon at least thirty (30) calendar days written notice to Customer without any obligation, payment or otherwise, to Customer or an Early Termination Fee.
6. **No Early Termination Fees Charged on Real Time Full Pass Through Agreements, Early Termination Fee:** If Customer terminates this Agreement or defaults as described in Section 12 and/or 13 of this Agreement, then, unless otherwise provided herein, an Early Termination Fee shall be immediately due and paid by Customer to SUMMER. If you cancel this Agreement for any other reason before the end of the initial term you will be assessed an Early Termination Fee ("ETF") that is equal to the total amount of the loss that the non-defaulting party or non-terminating party would experience as a result of termination. The ETF would be equal to the positive difference (if any) of the current contract price as described in the Contract Confirmation minus the current market price multiplied by the estimated remaining term volume that would have been delivered if the Agreement was not terminated early, based on the actual or historical volume of the applicable account. Any sale or transfer of the property by CUSTOMER where the purchaser does not assume this Agreement with respect to the terms set forth shall constitute early termination of this Agreement. There is no termination penalty applicable if CUSTOMER terminates at any time; so long as CUSTOMER terminates while using the real-time index product.
7. **Conversion:** At any time during this Agreement the Customer can request to have a portion or the balance of their Agreement converted to a fixed price product. The Conversion will be effectuated with a signed pricing confirmation page confirming the fixed price amount and term. Once a product is converted to a fixed price, the termination penalties will apply if fixed price Agreement cancels prior to expiration.
8. **Invoicing, Payment, Interest, and Credit Requirements:** Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued. Customer can provide to SUMMER written notice, Phone Call, Fax or Email setting forth in particular detail any disputed amount, including the calculations with respect to any errors or inaccuracies claimed. If it is subsequently determined that Customer owes SUMMER any portion of the disputed amount, Customer shall remit to SUMMER within 5 (five) business days following such determination the outstanding balance. Any amounts that may have been overpaid or underpaid shall be applied to the next monthly invoice. Customer is responsible for all regulatory charges, taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts tax, PUCT Assessment, sales tax, consumption tax, use tax, value added tax, kWh, commercial activity or other privilege tax, and any other tax (whether in effect as of the effective date of this Agreement or thereafter) imposed by any governmental entity. SUMMER reserves the right to include in any subsequent invoice, adjustments related to previous invoices, previous invoicing errors, meter read errors, miscalculation of taxes or other errors or omissions. Customer authorizes SUMMER, and SUMMER reserves the right, to charge Customer's credit/debit card and/or checking account without notice for any unpaid balances that are past due.

If the account is referred to a collection company, SUMMER reserves the right to bill Customer a fee not to exceed thirty-three percent (33%) of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the Customer. Customer shall be responsible for any and all fees associated with or incurred by SUMMER in collecting any amounts owed to SUMMER, including, but not limited to, attorneys' fees, court costs and any fees charged by a collection agency.

- 9. Additional Charges & Fees:** SUMMER will charge a one-time late payment penalty of 5% for each delinquent month's charges that remain unpaid after the close of business on the bill due date. Additionally, SUMMER will charge: 1) a \$30 fee for any returned check, electronic fund transfer or credit card transaction not processed due to insufficient funds or credit availability; 2) a \$20 disconnection fee for processing an electric service disconnection transaction; 3) a \$20 reconnection fee in the event that SUMMER processes a reconnection transaction on your account, (such fees are in addition to any disconnect/reconnect fees that may be assessed by your TDU, and are assessed regardless of whether or not your electric service is actually disconnected by the TDU if the transaction orders are sent); 4) payments received via auto draft will NOT be assessed a payment processing fee; payments received via regular mail will NOT be assessed a payment processing fee; payments received via our website will be assessed a payment processing fee of \$3.99 per credit card transaction and a 1.5% fee for electronic check payments; payments received via call in to our Customer Service Center will be assessed a payment processing fee of \$6.99 per credit card transaction and a 3.0% fee for electronic check payments; and 5) any charges or fees that the TDU charges SUMMER including but not limited to fees to initiate or switch service, transport and distribute electricity to your service location, read your meter, and terminate or restore service. These charges are passed on to you by SUMMER, along with certain charges and fees assessed by ERCOT.
- 10. Load change:** If CUSTOMER has a change in usage of 25% or greater, SUMMER may pass through the resulting cost increases to the CUSTOMER. SUMMER will calculate additional costs in a commercially reasonable manner and invoice CUSTOMER accordingly. Invoice will be due and payable according to the payment terms of this Agreement.
- 11. Customer Acknowledgements:** Customer acknowledges that the TDU is solely responsible for reading Customer's meter or recorded data, as applicable, and that SUMMER cannot and does not read a Customer's meter or recorded data, but is bound by the readings and data provided by the TDU. Customer further acknowledges that SUMMER's ability to invoice Customer depends on the TDU's ability to furnish SUMMER with all necessary information including meter readings or recorded data, as applicable. In the absence of such information from the TDU, SUMMER may invoice Customer based on estimated meter reading according to the Customer's historical usage. As soon as practicable, and after receipt of actual Customer's energy consumption from the TDU, SUMMER will reconcile any difference(s) between estimated and actual usage charges.
- 12. Credit Requirements & Deposit:** SUMMER may investigate the Customer's credit history at any time. SUMMER may refuse electric service at any time to anyone who does not meet SUMMER's credit standards or if Customer cannot pay the requisite initial deposit or demonstrate satisfactory credit. SUMMER may also refuse to provide service to a Customer for one or more of the reasons specified in Section 25.477 of the PUCT rules and regulations.

**Deposits:** If Customer fails to demonstrate satisfactory credit, as determined in the sole discretion of SUMMER, then Customer may be required to pay an initial deposit prior to service being provided, if at all. Such deposit shall not exceed an amount equal to the greater of one-fifth of the Customer's estimated annual billing or; the sum of the Customer's estimated billings for the next 2 (two) months. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and account name supplied on this application. Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the PUCT. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) consecutive months of service with no late payments of any kind, SUMMER will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. Any credit balance remaining on an inactive account after the final bill will be refunded in the form of a company check and will be mailed within thirty (30) calendar days.

Summer will not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment during the last 12 months of service. You may be required to pay this initial deposit within ten days after the issuance of a written disconnection notice that requests such deposit. Summer may request an additional deposit from an existing customer if the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated billings and a disconnection notice has been issued (or the account disconnected) within the previous 12 months. Summer may require that you pay this additional deposit within 10 days of the request for such deposit.

**13. Default and Disconnection:** A Default means:

- a. Failure of Customer to pay any amounts due under this Agreement within the time strictly provided herein; or
- b. Failure of Customer to perform any material term of this Agreement; or
- c. Determination that any representation upon which this Agreement is based is false; or
- d. Immediately after Customer files for or is otherwise placed in bankruptcy; or
- e. Determination by the TDU that any tampering has occurred at the Customer's meters.
- f. Prevention by SUMMER to initiate and/or provide service to Customer's meters for any reason, including but not limited to a switch-hold or permitting issues.

Default of this Agreement, including without limitation, non-payment of Customer's bill may result in an order for the TDU to disconnect the Customer's electric service at the Customer's meters; and the termination of this Agreement at the sole discretion of SUMMER. Moreover, SUMMER may seek to have your electric service disconnected after providing you at least ten (10) calendar days' notice for any of the following reasons: (1) failure to pay a bill owed to SUMMER, or to make a deferred payment arrangement by the date of disconnection; (2) failure to comply with the terms of a deferred payment agreement made with SUMMER; (3) using service in a manner that interferes with the service of others or the operations of non-standard equipment; (4) failure to pay a deposit required by SUMMER; or (5) failure of the guarantor to pay the amount guaranteed when SUMMER has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

SUMMER may authorize your TDU to disconnect your electric service without prior notice to you if: (1) certain dangerous circumstances exist; (2) service is connected without the authority by a person who has not made application for service; (3) service is reconnected without authority after disconnection for non-payment; (4) there has been tampering with the equipment used to measure the amount of electricity used; or (5) there is evidence of theft of service. Payments may be made by phone to SUMMER during normal business hours (Monday – Friday 8:00 am to 5:00 pm) or on-line at [www.mysummerenergy.com](http://www.mysummerenergy.com). SERVICE MAY BE DISCONNECTED AGAIN WITHOUT NOTICE FOR ANY RETURNED PAYMENTS. A deposit or additional deposits may be required on accounts that have been disconnected for non-payment.

Upon satisfactory correction of the reasons for the disconnection, SUMMER will notify your TDU to reconnect your service. SUMMER will continue to serve you under this Agreement in effect prior to issuance of the disconnection notice. If your service was disconnected due to a dangerous situation, your service will be reconnected once you notify SUMMER that you have corrected and satisfactorily resolved the dangerous situation. Please allow 24 to 48 hours for completion of reconnect orders.

**Governmental Entities.** : If you are a governmental entity as defined in the Prompt Payment Act (PPA), TEX. GOV'T CODE, Chapter 2251 (<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm>), it is your responsibility to inform your REP of your status so that the PPA protections can be applied. If you are a governmental entity subject to the PPA, your payment shall become overdue as provided in the PPA and interest on an overdue payment shall be calculated by you pursuant to the terms of the PPA and remitted to your REP with the overdue payment. Billing disputes between a governmental entity, as defined in the PPA, and an aggregator or a REP about any bill for aggregator or REP service, shall be resolved as provided in the PPA.

**14. Remedies upon Default:** If Customer defaults then, in addition to any rights and/or remedies available to SUMMER in this Agreement, in law or in equity, SUMMER may unilaterally terminate this Agreement and issue a "move out" transaction, and Customer shall be subject to and responsible for payment of any applicable Early Termination Fee. Thereafter, SUMMER may calculate all amounts due under this Agreement and Customer shall pay those amounts within five (5)

calendar days from the date of invoice. Customer shall be liable for payment of any and all fees related to and/or arising out of Customer's default, including without limitation, attorneys' fees, court costs, collection fees, and demands for payment. If Customer defaults, then Customer may be required to reapply for electric service and pay a deposit in order to again become a Customer.

- 15. Representations and Warranties:** As a material inducement to entering into this Agreement, Customer hereby represents and warrants to SUMMER as follows:
- a. This Agreement constitutes a legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending; and
  - b. Customer has knowledge, understanding and experience that enable Customer to evaluate the merits and risks of entering into this Agreement;
- 16. Forward Contract:** SUMMER and Customer acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that SUMMER is a "forward contract merchant." (<http://uscode.house.gov/download/pls/11C1.txt>).
- 17. Assignment:** Customer shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of SUMMER, which consent may not be unreasonably withheld. Notwithstanding the foregoing, SUMMER may, without the consent of Customer:
- a. Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and
  - b. Transfer or assign this Agreement to its affiliate; and
  - c. Transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets; and Customer hereby acknowledges and consents to SUMMER's pledge and contingent assignment or subrogation of all rights and obligations hereunder. In the event any other provision of this Agreement shall be deemed to prohibit or otherwise restrict SUMMER's assignment, subrogation or pledge of its rights hereunder, this provision shall control.
- 18. Binding Effect:** This Agreement shall inure to the benefit of, and be binding upon, SUMMER and Customer and their respective successors and permitted assigns.
- 19. Force Majeure:** SUMMER shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, including any order or directive of ERCOT.
- 20. Excuse:** If an event occurs which makes it impossible for SUMMER to perform this Agreement, including without limitation, any of the foregoing force majeure events, then our performance under this Agreement shall be excused for the duration of such event. This could be an event affecting Customer's TDU, such as a facility outage on their electric distribution lines.
- 21. LIMITATION OF REMEDIES, LIABILITY AND DAMAGES:** SUMMER AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNDER NO CIRCUMSTANCE SHALL SUMMER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS



INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF SUMMER AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, SUMMER AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 22. **Dispute Resolution:** SUMMER and Customer agree in good faith to attempt to resolve any disputes within twenty-one (21) calendar days of notice of the dispute from either party. Any written communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at PO BOX 460485, Houston, TX 77056.
- 23. **UCC:** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") of Texas shall govern this Agreement and Energy shall be deemed a "good" for purposes of the UCC (<http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.1.htm#1.101>).
- 24. **Warranty Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT SUMMER DOES NOT MAKE AND EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.
- 25. **Notices:** Notices to and from Customer shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, overnight carrier, or hand delivery. Notice to and from Customer by hand delivery shall be deemed to be received by the close of the business day on which it was hand delivered (unless hand delivered after the close of business in which case it shall be deemed received at the close of the next business day). Notice to and from Customer by overnight mail or courier shall be deemed to have been received 2 (two) business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO SUMMER, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO THE FOLLOWING ADDRESS: PO BOX 460485, Houston, TX 77056.
- 26. **Governing Law:** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF SUMMER AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.  
  
All citations to rules of the Public Utility Commission of Texas may be found electronically at:  
<http://www.puc.state.tx.us/agency/ruleslaws/subrules/electric/Electric.aspx>
- 27. **Non-Waiver:** No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.
- 28. **Severability:** Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over SUMMER or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.
- 29. **No Third Party Beneficiaries:** Subject to the provisions above under "Assignment," nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.
- 30. **Discrimination:** SUMMER does not discriminate, deny service, or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, religion, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.



- 31. **Entirety of Agreement:** It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of electricity, and supersedes any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's ESI IDs. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement.
- 32. **Venue.** The Parties acknowledge and agree that this Agreement has been negotiated, drafted, executed and is performable in Harris County, Texas and may be enforced in Harris County, Texas.
- 33. **Counterparts.** This Agreement may be executed simultaneously in multiple originals or counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.
- 34. **No Oral Modification or Waivers.** This Agreement shall not be modified or waived orally, but only by an instrument in writing signed by the Party against which enforcement of the modification or waiver is sought.
- 35. **Own Judgment.** It is understood and agreed that the Parties hereto have carefully reviewed this this Agreement, that they fully understand its terms, that they sought and obtained, or had the opportunity to obtain, independent legal advice with respect to the negotiation and preparation of this Agreement, and that this Agreement has been negotiated and prepared by the joint efforts of the Parties.

This agreement is effective on the date signed by the Customer below and should be returned to your Account Manager or to:

Summer Energy LLC (Toll Free: 888-594-9299)  
5847 San Felipe Street Ste 3700  
Houston, TX 77057

Signature: \_\_\_\_\_

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

Summer Energy LLC

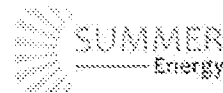
Date: \_\_\_\_\_

Customer signature: Dan Jones  
\_\_\_\_\_

Title: Sr Executive Vice President  
\_\_\_\_\_

Hartman Income REIT Management

Date: May 1, 2020  
\_\_\_\_\_



Summer Energy Master Electricity Sales Agreement

Version SE050313

Hartman Income REIT Management and Summer Energy, LLC entered into Master Electricity Services Agreement dated May 1<sup>st</sup>, 2020. This Contract Confirmation ("Confirmation") along with your separately executed Master Electricity Services Agreement constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. In the event of a conflict between the provisions of the Master Electricity Services Agreement and this Contract Confirmation, the Contract Confirmation shall prevail.

By signing below, I am authorizing Summer Energy to become my new Retail Electric Provider (REP) in place of my current REP, and Summer Energy to act as my agent to make this change and direct my current REP to work with Summer Energy to make this change.

Product: REAL TIME INDEX FULL PASS THROUGH + \$0.003660/kwh Retail Adder

Delivery point: 10443720003557602 12221 MERIT DR DALLAS, TX 75251

Pricing: The price for the term of the contract is composed of:

- i. The sum of the Real Time Index Price, plus Line Losses, plus Ancillary Services, plus nodal basis, plus the retail adder multiplied by the total kilowatt hours of energy. You will be assessed a monthly base charge of \$0.00; plus
- ii. All TDSP charges, non-bypassable charges, taxes and other fees.

Requested start date: normally scheduled meter read on or after May 31<sup>st</sup>, 2020

Term: Customer's service begins on the meter reading date set by the Local Distribution Utility. The term of the contract will continue 24 (months) after the start date, ending on the normally scheduled meter read occurring on or after May 31<sup>st</sup>, 2022. Either party may cancel this Agreement upon thirty (30) calendar days advance written notice.

Payment terms: Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued.

Cancellation: No Early Termination/Cancellation Penalty on Real Time Product

Billing: Customer requests single point billing / summary billing.

Tax Exempt: Customer is tax exempt (y / n). A completed tax exemption certificate must accompany this agreement if your business is tax exempt.

By my signature below (facsimile signature accepted as if it were an original), I hereby agree to be obligated by the terms and conditions set forth herein. I understand that I may be subject to credit check prior to the initiation of service.

This confirmation is effective on the date signed by the Customer below:

Signature: \_\_\_\_\_

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

Summer Energy LLC

Date: \_\_\_\_\_

Customer signature: Dan Jones (May 1, 2020)

Title: Sr Executive Vice President

Hartman Income REIT Management

Date: May 1, 2020

---

## Attachment A

### Contacts

---

#### Contract contact:

Name: SHANE CAWOOD

Phone: 713-467-222 x2657

Email: \_\_\_\_\_

Secondary Phone: \_\_\_\_\_

Mailing address: 2909 HILLCROFT AVE STE 420

City/State/Zip: HOUSTON, TX 77057

#### Invoices/Billing contact:

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

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Secondary Phone: \_\_\_\_\_

Mailing address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

#### Auto-draft information:

Credit Card Type: \_\_\_\_\_

Credit Card Number: \_\_\_\_\_

Name on card: \_\_\_\_\_

Expiration Date: \_\_\_\_\_ CID: \_\_\_\_\_

Billing Address of CC: \_\_\_\_\_

### Delivery Points (if required)

---

ESI ID

Service Address

City, State Zip

Start Date



## Summer Energy Master Electricity Sales Agreement

Version SE050313

This Agreement entered into on **May 1<sup>st</sup>, 2020** and is between **Summer Energy, LLC** ("SUMMER", "we", and "us") located at 5847 San Felipe St Ste 3700 Houston, TX 77057 and **Hartman Income REIT Management** located at **2909 Hillcroft Suite 420 Houston, TX 77057**. This is an agreement for SUMMER to supply electricity to meet customer's full usage requirements at the delivery points identified by the customer. By entering into this Agreement, Customer hereby: 1) appoints SUMMER to arrange for purchase and delivery of electricity (including volume balancing and billing) from any source on Customer's behalf for the period of time defined in this Agreement; 2) Customer hereby requests that all electric service associated with Customer's name and/or address(es) or electric service identifiers ("ESIDs") be transferred to SUMMER under the terms and conditions of this Agreement; and 3) Customer represents their peak demand is greater than 50 KW during the previous 12 month historical period. This agreement along with your separately executed Contract Confirmation constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. For questions about this Agreement or your Contract Documents or other electric service needs, please contact SUMMER's Customer Service department at:

<b>INTERNET ADDRESS:</b>	<a href="http://www.summerenergy.com">www.summerenergy.com</a>	<b>EMAIL ADDRESS:</b>	<a href="mailto:service@summerenergy.com">service@summerenergy.com</a>
<b>MAILING ADDRESS:</b>	PO BOX 460485 Houston, TX 77056	<b>FAX NUMBER:</b>	1-888-594-9350
<b>TELEPHONE:</b>	Toll-Free: 1-888-594-9299	<b>HOURS:</b>	Mon-Fri 8:00 am – 5:00 pm CST

24 Hour Emergency Outage Information: Please contact your Transmission and Distribution Utility ("TDU") to report electricity outage or emergency conditions at the appropriate number below:

**Centerpoint Energy (Houston Area):** 800-332-7143  
**AEP (WTU & CPL Area):** 866-223-8508

**Oncor Electric Delivery (DFW Area):** 888-313-4747  
**Texas New Mexico Power Area:** 888-866-7456

Customer Information: By entering into this Agreement, Customer authorizes its local Transmission and Distribution Utility ("TDU") to release to SUMMER any information that is necessary or required to become the REP for Customer, including, but not limited to: Customer's address, account numbers, and historical usage information.

- 1. Term & Renewal:** This Agreement shall commence on the date of the initial meter reading by the applicable TDU and continue for the period indicated in your Authorization and/or in the EFL ("Initial Term"). Customer acknowledges that SUMMER cannot guarantee a switch of Customer's account to SUMMER by a specific date and hereby holds harmless SUMMER from any liability for, or arising out of, delays in this process. For term products (non-month to month products), a contract expiration notice will be sent at least thirty (30) days prior to the end of the Initial Term. If you fail to renew your agreement with SUMMER, your service will automatically continue on a month-to-month basis after the expiration of your Initial Term on a default renewal product, which is a variable price product whose price will be determined by current market conditions at the sole discretion of SUMMER until cancelled by either you or SUMMER.
- 2. Contract Pricing:** Current pricing for service is indicated in your Contract Confirmation. Customer understands and agrees that if it utilized a Third Party/Broker, SUMMER will be making a payment to such Third Party/Broker in connection with its efforts to facilitate customer entering into this Agreement; Customer also understands and agrees that the Price reflects the fee SUMMER is paying to the Third Party/Broker, and such Third Party/Broker is acting on Customer's behalf as Customer's representative, and is not a representative or agent of SUMMER. Customer also understands and agrees that as such, it should direct any questions regarding such fees to its Third Party/Broker.
- 3. Product Types:** SUMMER provides different types of products including but not limited to fixed rate, indexed and variable price. Your Contract Confirmation specify the product type and the term that applies to your Agreement. Please note that only those parts of this section that describe your specific product type will apply to your Agreement.  
**Fixed Rate Products:** Fixed Rate Products have a term of at least (three) 3 months. The price of a fixed rate product may only change during your initial Term to reflect actual changes in TDSP charges, changes to the Electric Reliability Council of Texas ("ERCOT") or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advanced notice.

**Indexed Products:** Indexed products may have a contract term of three (3) months or more, or may be month-to-month. Indexed Products have a price that changes according to a pre-defined pricing formula that is based on publicly available indices or information. The price for term indexed products may also change without advance notice to reflect actual changes in TDSP charges; changes to the ERCOT or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on us that are beyond our control. There is no Early Termination Fee for this product if the contract term is less than 3 months.

**Variable Price Products:** Variable price products have a term of thirty-one (31) days or less and a price that varies according to the method disclosed on your Contract Confirmation. There is no Early Termination Fee for this product type.

4. **Material Changes by SUMMER:** SUMMER will provide Customer with at least fourteen (14) calendar days advance written notice of any Material Change in this Agreement, either in Customer's bill or in a separate mailing. The changes will become effective on the date stated in the written notice. Customer may cancel this Agreement before the effective date of the Material Change, as identified in the advance written notice provided to Customer, without any Early Termination Fee
5. **Early Terminations:** In the event that SUMMER, or its activities hereunder, becomes subject to regulations of any kind whatsoever under any law, government body action or ERCOT action that has the effect of materially changing the circumstances from those that exist on the effective date of this Agreement then SUMMER may pass through the economic effects to Customer of such change or SUMMER may unilaterally terminate this Agreement without Customer's consent upon at least thirty (30) calendar days written notice to Customer without any obligation, payment or otherwise, to Customer or an Early Termination Fee.
6. **No Early Termination Fees Charged on Real Time Full Pass Through Agreements, Early Termination Fee:** If Customer terminates this Agreement or defaults as described in Section 12 and/or 13 of this Agreement, then, unless otherwise provided herein, an Early Termination Fee shall be immediately due and paid by Customer to SUMMER. If you cancel this Agreement for any other reason before the end of the initial term you will be assessed an Early Termination Fee ("ETF") that is equal to the total amount of the loss that the non-defaulting party or non-terminating party would experience as a result of termination. The ETF would be equal to the positive difference (if any) of the current contract price as described in the Contract Confirmation minus the current market price multiplied by the estimated remaining term volume that would have been delivered if the Agreement was not terminated early, based on the actual or historical volume of the applicable account. Any sale or transfer of the property by CUSTOMER where the purchaser does not assume this Agreement with respect to the terms set forth shall constitute early termination of this Agreement. There is no termination penalty applicable if CUSTOMER terminates at any time; so long as CUSTOMER terminates while using the real-time index product.
7. **Conversion:** At any time during this Agreement the Customer can request to have a portion or the balance of their Agreement converted to a fixed price product. The Conversion will be effectuated with a signed pricing confirmation page confirming the fixed price amount and term. Once a product is converted to a fixed price, the termination penalties will apply if fixed price Agreement cancels prior to expiration.
8. **Invoicing, Payment, Interest, and Credit Requirements:** Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued. Customer can provide to SUMMER written notice, Phone Call, Fax or Email setting forth in particular detail any disputed amount, including the calculations with respect to any errors or inaccuracies claimed. If it is subsequently determined that Customer owes SUMMER any portion of the disputed amount, Customer shall remit to SUMMER within 5 (five) business days following such determination the outstanding balance. Any amounts that may have been overpaid or underpaid shall be applied to the next monthly invoice. Customer is responsible for all regulatory charges, taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts tax, PUCT Assessment, sales tax, consumption tax, use tax, value added tax, kWh, commercial activity or other privilege tax, and any other tax (whether in effect as of the effective date of this Agreement or thereafter) imposed by any governmental entity. SUMMER reserves the right to include in any subsequent invoice, adjustments related to previous invoices, previous invoicing errors, meter read errors, miscalculation of taxes or other errors or omissions. Customer authorizes SUMMER, and SUMMER reserves the right, to charge Customer's credit/debit card and/or checking account without notice for any unpaid balances that are past due.

If the account is referred to a collection company, SUMMER reserves the right to bill Customer a fee not to exceed thirty-three percent (33%) of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the Customer. Customer shall be responsible for any and all fees associated with or incurred by SUMMER in collecting any amounts owed to SUMMER, including, but not limited, to attorneys' fees, court costs and any fees charged by a collection agency.

9. **Additional Charges & Fees:** SUMMER will charge a one-time late payment penalty of 5% for each delinquent month's charges that remain unpaid after the close of business on the bill due date. Additionally, SUMMER will charge: 1) a \$30 fee for any returned check, electronic fund transfer or credit card transaction not processed due to insufficient funds or credit availability; 2) a \$20 disconnection fee for processing an electric service disconnection transaction; 3) a \$20 reconnection fee in the event that SUMMER processes a reconnection transaction on your account, (such fees are in addition to any disconnect/reconnect fees that may be assessed by your TDU, and are assessed regardless of whether or not your electric service is actually disconnected by the TDU if the transaction orders are sent); 4) payments received via auto draft will NOT be assessed a payment processing fee; payments received via regular mail will NOT be assessed a payment processing fee; payments received via our website will be assessed a payment processing fee of \$3.99 per credit card transaction and a 1.5% fee for electronic check payments; payments received via call in to our Customer Service Center will be assessed a payment processing fee of \$6.99 per credit card transaction and a 3.0% fee for electronic check payments; and 5) any charges or fees that the TDU charges SUMMER including but not limited to fees to initiate or switch service, transport and distribute electricity to your service location, read your meter, and terminate or restore service. These charges are passed on to you by SUMMER, along with certain charges and fees assessed by ERCOT.
10. **Load change:** If CUSTOMER has a change in usage of 25% or greater, SUMMER may pass through the resulting cost increases to the CUSTOMER. SUMMER will calculate additional costs in a commercially reasonable manner and invoice CUSTOMER accordingly. Invoice will be due and payable according to the payment terms of this Agreement.
11. **Customer Acknowledgements:** Customer acknowledges that the TDU is solely responsible for reading Customer's meter or recorded data, as applicable, and that SUMMER cannot and does not read a Customer's meter or recorded data, but is bound by the readings and data provided by the TDU. Customer further acknowledges that SUMMER's ability to invoice Customer depends on the TDU's ability to furnish SUMMER with all necessary information including meter readings or recorded data, as applicable. In the absence of such information from the TDU, SUMMER may invoice Customer based on estimated meter reading according to the Customer's historical usage. As soon as practicable, and after receipt of actual Customer's energy consumption from the TDU, SUMMER will reconcile any difference(s) between estimated and actual usage charges.
12. **Credit Requirements & Deposit:** SUMMER may investigate the Customer's credit history at any time. SUMMER may refuse electric service at any time to anyone who does not meet SUMMER's credit standards or if Customer cannot pay the requisite initial deposit or demonstrate satisfactory credit. SUMMER may also refuse to provide service to a Customer for one or more of the reasons specified in Section 25.477 of the PUCT rules and regulations.

**Deposits:** If Customer fails to demonstrate satisfactory credit, as determined in the sole discretion of SUMMER, then Customer may be required to pay an initial deposit prior to service being provided, if at all. Such deposit shall not exceed an amount equal to the greater of one-fifth of the Customer's estimated annual billing or; the sum of the Customer's estimated billings for the next 2 (two) months. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and account name supplied on this application. Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the PUCT. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) consecutive months of service with no late payments of any kind, SUMMER will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. Any credit balance remaining on an inactive account after the final bill will be refunded in the form of a company check and will be mailed within thirty (30) calendar days.

Summer will not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment during the last 12 months of service. You may be required to pay this initial deposit within ten days after the issuance of a written disconnection notice that requests such deposit. Summer may request an additional deposit from an existing customer if the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated billings and a disconnection notice has been issued (or the account disconnected) within the previous 12 months. Summer may require that you pay this additional deposit within 10 days of the request for such deposit.

**13. Default and Disconnection:** A Default means:

- a. Failure of Customer to pay any amounts due under this Agreement within the time strictly provided herein; or
- b. Failure of Customer to perform any material term of this Agreement; or
- c. Determination that any representation upon which this Agreement is based is false; or
- d. Immediately after Customer files for or is otherwise placed in bankruptcy; or
- e. Determination by the TDU that any tampering has occurred at the Customer's meters.
- f. Prevention by SUMMER to initiate and/or provide service to Customer's meters for any reason, including but not limited to a switch-hold or permitting issues.

Default of this Agreement, including without limitation, non-payment of Customer's bill may result in an order for the TDU to disconnect the Customer's electric service at the Customer's meters; and the termination of this Agreement at the sole discretion of SUMMER. Moreover, SUMMER may seek to have your electric service disconnected after providing you at least ten (10) calendar days' notice for any of the following reasons: (1) failure to pay a bill owed to SUMMER, or to make a deferred payment arrangement by the date of disconnection; (2) failure to comply with the terms of a deferred payment agreement made with SUMMER; (3) using service in a manner that interferes with the service of others or the operations of non-standard equipment; (4) failure to pay a deposit required by SUMMER; or (5) failure of the guarantor to pay the amount guaranteed when SUMMER has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

SUMMER may authorize your TDU to disconnect your electric service without prior notice to you if: (1) certain dangerous circumstances exist; (2) service is connected without the authority by a person who has not made application for service; (3) service is reconnected without authority after disconnection for non-payment; (4) there has been tampering with the equipment used to measure the amount of electricity used; or (5) there is evidence of theft of service. Payments may be made by phone to SUMMER during normal business hours (Monday – Friday 8:00 am to 5:00 pm) or on-line at [www.mysummerenergy.com](http://www.mysummerenergy.com). SERVICE MAY BE DISCONNECTED AGAIN WITHOUT NOTICE FOR ANY RETURNED PAYMENTS. A deposit or additional deposits may be required on accounts that have been disconnected for non-payment.

Upon satisfactory correction of the reasons for the disconnection, SUMMER will notify your TDU to reconnect your service. SUMMER will continue to serve you under this Agreement in effect prior to issuance of the disconnection notice. If your service was disconnected due to a dangerous situation, your service will be reconnected once you notify SUMMER that you have corrected and satisfactorily resolved the dangerous situation. Please allow 24 to 48 hours for completion of reconnect orders.

**Governmental Entities.** : If you are a governmental entity as defined in the Prompt Payment Act (PPA), TEX. GOV'T CODE, Chapter 2251 (<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm>), it is your responsibility to inform your REP of your status so that the PPA protections can be applied. If you are a governmental entity subject to the PPA, your payment shall become overdue as provided in the PPA and interest on an overdue payment shall be calculated by you pursuant to the terms of the PPA and remitted to your REP with the overdue payment. Billing disputes between a governmental entity, as defined in the PPA, and an aggregator or a REP about any bill for aggregator or REP service, shall be resolved as provided in the PPA.

- 14. Remedies upon Default:** If Customer defaults then, in addition to any rights and/or remedies available to SUMMER in this Agreement, in law or in equity, SUMMER may unilaterally terminate this Agreement and issue a "move out" transaction, and Customer shall be subject to and responsible for payment of any applicable Early Termination Fee. Thereafter, SUMMER may calculate all amounts due under this Agreement and Customer shall pay those amounts within five (5)



calendar days from the date of invoice. Customer shall be liable for payment of any and all fees related to and/or arising out of Customer's default, including without limitation, attorneys' fees, court costs, collection fees, and demands for payment. If Customer defaults, then Customer may be required to reapply for electric service and pay a deposit in order to again become a Customer.

- 15. Representations and Warranties:** As a material inducement to entering into this Agreement, Customer hereby represents and warrants to SUMMER as follows:
- a. This Agreement constitutes a legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending; and
  - b. Customer has knowledge, understanding and experience that enable Customer to evaluate the merits and risks of entering into this Agreement;
- 16. Forward Contract:** SUMMER and Customer acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that SUMMER is a "forward contract merchant." (<http://uscode.house.gov/download/pls/11C1.txt>).
- 17. Assignment:** Customer shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of SUMMER, which consent may not be unreasonably withheld. Notwithstanding the foregoing, SUMMER may, without the consent of Customer:
- a. Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and
  - b. Transfer or assign this Agreement to its affiliate; and
  - c. Transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets; and Customer hereby acknowledges and consents to SUMMER's pledge and contingent assignment or subrogation of all rights and obligations hereunder. In the event any other provision of this Agreement shall be deemed to prohibit or otherwise restrict SUMMER's assignment, subrogation or pledge of its rights hereunder, this provision shall control.
- 18. Binding Effect:** This Agreement shall inure to the benefit of, and be binding upon, SUMMER and Customer and their respective successors and permitted assigns.
- 19. Force Majeure:** SUMMER shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, including any order or directive of ERCOT.
- 20. Excuse:** If an event occurs which makes it impossible for SUMMER to perform this Agreement, including without limitation, any of the foregoing force majeure events, then our performance under this Agreement shall be excused for the duration of such event. This could be an event affecting Customer's TDU, such as a facility outage on their electric distribution lines.
- 21. LIMITATION OF REMEDIES, LIABILITY AND DAMAGES:** SUMMER AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNDER NO CIRCUMSTANCE SHALL SUMMER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS

INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF SUMMER AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, SUMMER AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

22. **Dispute Resolution:** SUMMER and Customer agree in good faith to attempt to resolve any disputes within twenty-one (21) calendar days of notice of the dispute from either party. Any written communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at PO BOX 460485, Houston, TX 77056.
23. **UCC:** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") of Texas shall govern this Agreement and Energy shall be deemed a "good" for purposes of the UCC (<http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.1.htm#1.101>).
24. **Warranty Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT SUMMER DOES NOT MAKE AND EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.
25. **Notices:** Notices to and from Customer shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, overnight carrier, or hand delivery. Notice to and from Customer by hand delivery shall be deemed to be received by the close of the business day on which it was hand delivered (unless hand delivered after the close of business in which case it shall be deemed received at the close of the next business day). Notice to and from Customer by overnight mail or courier shall be deemed to have been received 2 (two) business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO SUMMER, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO THE FOLLOWING ADDRESS: PO BOX 460485, Houston, TX 77056.
26. **Governing Law:** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF SUMMER AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.  
  
All citations to rules of the Public Utility Commission of Texas may be found electronically at:  
<http://www.puc.state.tx.us/agency/rules/laws/subrules/electric/Electric.aspx>
27. **Non-Waiver:** No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.
28. **Severability:** Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over SUMMER or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.
29. **No Third Party Beneficiaries:** Subject to the provisions above under "Assignment," nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.
30. **Discrimination:** SUMMER does not discriminate, deny service, or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, religion, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.



- 31. **Entirety of Agreement:** It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of electricity, and supersedes any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's ESI IDs. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement.
- 32. **Venue.** The Parties acknowledge and agree that this Agreement has been negotiated, drafted, executed and is performable in Harris County, Texas and may be enforced in Harris County, Texas.
- 33. **Counterparts.** This Agreement may be executed simultaneously in multiple originals or counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.
- 34. **No Oral Modification or Waivers.** This Agreement shall not be modified or waived orally, but only by an instrument in writing signed by the Party against which enforcement of the modification or waiver is sought.
- 35. **Own Judgment.** It is understood and agreed that the Parties hereto have carefully reviewed this this Agreement, that they fully understand its terms, that they sought and obtained, or had the opportunity to obtain, independent legal advice with respect to the negotiation and preparation of this Agreement, and that this Agreement has been negotiated and prepared by the joint efforts of the Parties.

This agreement is effective on the date signed by the Customer below and should be returned to your Account Manager or to:

Summer Energy LLC (Toll Free: 888-594-9299)  
5847 San Felipe Street Ste 3700  
Houston, TX 77057

Signature: \_\_\_\_\_

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

Summer Energy LLC

Date: \_\_\_\_\_

Customer signature: Dan Jones  
Dan Jones, Sr Executive Vice President

Title: Sr Executive Vice President

Hartman Income REIT Management

Date: May 1, 2020



Summer Energy Master Electricity Sales Agreement

Version SE050313

Hartman Income REIT Management and Summer Energy, LLC entered into Master Electricity Services Agreement dated May 1<sup>st</sup>, 2020. This Contract Confirmation ("Confirmation") along with your separately executed Master Electricity Services Agreement constitutes your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request. In the event of a conflict between the provisions of the Master Electricity Services Agreement and this Contract Confirmation, the Contract Confirmation shall prevail.

By signing below, I am authorizing Summer Energy to become my new Retail Electric Provider (REP) in place of my current REP, and Summer Energy to act as my agent to make this change and direct my current REP to work with Summer Energy to make this change.

Product: REAL TIME INDEX FULL PASS THROUGH + \$0.003660/kwh Retail Adder

Delivery point: Multiple See Attachment A Sheet

Pricing: The price for the term of the contract is composed of:

- i. The sum of the Real Time Index Price, plus Line Losses, plus Ancillary Services, plus nodal basis, plus the retail adder multiplied by the total kilowatt hours of energy. You will be assessed a monthly base charge of \$0.00; plus
- ii. All TDSP charges, non-bypassable charges, taxes and other fees.

Requested start date: May 4<sup>th</sup>, 2020

Term: Customer's service begins on the meter reading date set by the Local Distribution Utility. The term of the contract will continue 24 (months) after the start date, ending on the normally scheduled meter read occurring on or after April 30<sup>th</sup>, 2022. Either party may cancel this Agreement upon thirty (30) calendar days advance written notice.

Payment terms: Customer will receive a monthly invoice from SUMMER. All invoices are due and payable twenty (20) calendar days from the date the invoice was issued.

Cancellation: No Early Termination/Cancellation Penalty on Real Time Product

Billing: Customer requests single point billing / summary billing.

Tax Exempt: Customer is tax exempt (y / n). A completed tax exemption certificate must accompany this agreement if your business is tax exempt.

By my signature below (facsimile signature accepted as if it were an original), I hereby agree to be obligated by the terms and conditions set forth herein. I understand that I may be subject to credit check prior to the initiation of service.

This confirmation is effective on the date signed by the Customer below:

Signature: \_\_\_\_\_

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

Summer Energy LLC

Date: \_\_\_\_\_

Customer signature: *Dan Jones* \_\_\_\_\_

Title: Sr Executive Vice President

Hartman Income REIT Management

Date: May 1, 2020



Attachment A

**Contacts**

**Contract contact:**

Name: SHANE CAWOOD Phone: 713-467-222 x2657  
Email: scawood@hi-reit.com Secondary Phone: \_\_\_\_\_  
Mailing address: 2909 HILLCROFT AVE STE 420 City/State/Zip: HOUSTON, TX 77057

**Invoices/Billing contact:**

Name: Patty Baird Phone: 800-880-2212  
Email: pbaird@hi-reit.com Secondary Phone: \_\_\_\_\_  
Mailing address: 2909 Hillcroft, Ste 420 City/State/Zip: Houston, TX 77057

**Auto-draft information:**

Credit Card Type: \_\_\_\_\_ Credit Card Number: \_\_\_\_\_  
Name on card: \_\_\_\_\_ Expiration Dates: \_\_\_\_\_ CID: \_\_\_\_\_  
Billing Address of CC: \_\_\_\_\_

**Delivery Points (if required)**

ESI ID	Service Address	City, State Zip	Start Date
1) 1008901000141090019100	MAY 2020	11211 KATY FWY	HOUSTON, TX 77079
2) 10443720008186515	MAY 2020	1707 MARKET PL	IRVING, TX 75063

Transaction	Trade Date	Flow Date	Description	Quantity	Quantity Unit	Price	Price Unit	Amount			
296515		2/1/2021 ~ 2/28/2021	PWR-ANSVC-PHYS	1.000	MW		USD/MW	20,771,046.16	\$	20,771,046.16	
											URS - Regulation Up
											RRS - Responsive Reserve
											DRS - Regulation Down
											LAAR - RRS
											NSRS-Non Spin
											AS RRSJR