

**Exhibit A**  
**Resolution No. R2020-007**

**AGRICULTURE LEASE**

This Agriculture Lease ("Lease"), made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2020 ("Effective Date"), by and between Daily Farms, Inc., an Arizona corporation ("Lessee"), and the City of Yuma, an Arizona municipal corporation ("Lessor").

WITNESSETH:

Lessor hereby leases to Lessee that certain real property consisting of approximately one hundred two (102) acres, located east of Avenue 6E and north of 40<sup>th</sup> Street and legally described in **Exhibit A** attached and incorporated herein by reference, and depicted in **Exhibit B**, attached and incorporated herein by reference (the "Property").

**1. Term.** The term of this Lease shall commence and Lessee shall be entitled to possession as of the Effective Date and the Lease shall remain in force and effect for a period of two (2) years. At the discretion of the Lessor, Lessor may terminate the Lease upon sixty (60) days written notice to the Lessee. In the event Lessor exercises such right to terminate the Lease prior to the harvest of any crops under cultivation as of the date the Lease terminates, Lessor will pay to Lessee the fair market value of the unharvested crop.

**2. Rent.** Lessee agrees to pay Lessor the sum of \$12.50 per gross acre per month for the Property for a total of \$1,275.00 per month or \$15,300.00 per annum, ("Rent") payable to the City of Yuma, Attn: Real Property Agent, One City Plaza, Yuma, Arizona 85364, no later than the 5<sup>th</sup> day of the month. Lessee agrees to pay for the costs of any water consumed and to indemnify and hold Lessor harmless for any claim related to water consumption, payment or use on, at or for the benefit of the Property.

**3. No Warranty of Suitability for Farming.** Lessee accepts the Property on an "as is" basis. Lessor does not warrant the condition, quality, fitness or adequacy of the Property (or any portion thereof), for any purpose, and makes no representation or warranty that the Property is in good repair or otherwise fit for use and occupancy. Lessor does not warrant the absence of deleterious organisms or chemicals in the soil, and Lessee expressly assumes the risk of the foregoing. Lessee warrants that it has performed an independent examination of the Property and accepts same with any defects in, or defective or uninhabitable conditions of, the Property or any portion thereof. Lessee shall indemnify Lessor against any future claims arising out of the condition of the Property, which occurred during Lessee's tenancy.

Lessor makes no warranty of the soil's suitability for growing crops, prevailing climatic conditions and/or other factors that might pertain to the ability to successfully produce crops pursuant to this Lease. Lessee possess special knowledge and skills relating to agricultural operations and has made its own independent investigation of the suitability of the growing conditions of the Property.

**4. Use of Property.** Lessee agrees to farm the described Property and care for and cultivate crops thereon in a good farmer-like manner in accordance with the best standards of farming practice in the vicinity.

Lessee covenants at all times during the term of the Lease that no poisons, herbicide, pesticide, fertilized or other chemical or substance, other than those types and quantities currently approved by the United States Department of Agriculture and by the Arizona Department of Agriculture shall be applied to the Property or crops growing thereon. Any and all such materials and substances shall be applied in strict compliance with, and only at the time or times set forth in, the instructions contained on the label or furnished by the manufacturer thereof. No experimental poisons or herbicides shall be applied to the Property or crops growing thereon, without the prior written consent of Lessor. No soil-applied sterilant or semi-sterilant which might temporarily sterilize the soil shall be applied to the cropped portions of the Property without the prior written consent of Lessor. For a period of five years after the termination of this Lease or such longer period as may be prescribed by law, Lessee agrees to keep true and correct records of the time, place, and all other information and data pertaining to the quantity, kind, use and method of application of such substances and to furnish to Lessor true and correct copies thereof upon demand. All poisons, herbicides, pesticides fertilizers or other chemicals or substances which Lessee may apply to the Property or crops growing thereon, shall be used and applied at the Lessee's sole cost, risk, and liability. Lessee shall obtain all permits and approvals required for the use of any chemicals or substances and shall bear all expense for procuring such permits. Lessee further agrees not to allow the discharge, dispersion, release or escape, whether or not sudden and accidental, of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, oil or other petroleum substance or derivative (including any oil refuse or oil mixed with waste), liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon the Property, the atmosphere or any watercourse or body of water. The covenant shall survive the termination of the Lease.

**5. Insurance.** Lessee shall carry and maintain at Lessee's own cost and expense throughout the term of this Lease, liability insurance in the amount of no less than \$1,000,000 in the aggregate and no less than \$1,000,000 per occurrence. Such insurance may be covered by a blanket insurance policy of Lessee. Proof of insurance in the form of certificate naming Lessor as additional insured will be mailed by Lessee to Lessor at the address shown for the Real Property Agent, and shall contain a no-subrogation of Lessor endorsement.

**6. Indemnification.** Lessee agrees to indemnify, defend and hold Lessor harmless for any negligence attributable in whole or in part to Lessee, Lessee's agents, principals, or servants unless such negligence is attributable to the sole act of Lessor, in which event, Lessor shall indemnify, defend and hold Lessee harmless.

**7. Attorney's Fees and Costs.** If any legal action is necessary to enforce any provision of this Lease, the prevailing party shall be entitled to reasonable fees and costs, including attorney's fees, in addition to any other relief which the Court determines the prevailing party is entitled.

**8. Default.** If Lessee fails or defaults in the faithful keeping of performance or any of the terms, conditions, or covenants to be kept and performed by Lessee during the lease term, or if Lessee does not promptly pay the rental amount, or any other charges accruing due to Lessee's use of the Property, then Lessor, after (10) ten days written notice to Lessee, may re-enter the Property and remove all persons and all property therefrom and Lessee hereby expressly waives all claims for damages that may be caused by Lessor as a result of such re-entry. In such event, Lessor may, but is under no obligation to, take all actions necessary to complete the cultivation, harvest and sale of crops being grown by Lessee. All proceeds from the sale of such crops shall be applied first to pay all sums, including Rent owed to Lessor by Lessee under this Lease, with any excess to be paid to Lessee.

**9. Notice.** Any notice by either party to the other shall be personally delivered to the party or sent by certified mail; return receipt requested, to the address set forth below or to such addresses as either party may from time to time notify the other.

To: City of Yuma  
Real Property Agent  
One City Plaza  
Yuma, Arizona 85364

To: Daily Farms, Inc.  
8126 North Highway 95  
Yuma, AZ 85365

**10. Amendment in Writing.** This agreement may be amended only in writing by mutual consent of both parties.

**11. Waiver.** The waiver by Lessor of any breach by Lessee of any provision of this Lease shall not be deemed a waiver of such provision, or a waiver of any other prior or subsequent breach thereof, or a waiver of any breach of any other provision of this Lease. Any waiver must be in writing, signed by the waiving party.

**12. Assignment.** This agreement is binding upon and shall insure to the benefit of the parties hereto, their respective successors, assigns, personal representatives and estates. Lessee shall not assign this Lease without written permission of the Lessor, which permission may be withheld in the sole discretion of the Lessor.

**13. No Partnership.** Lessor shall in no event be construed or held to be a partner, joint venturer or associate of Lessee in the conduct of Lessee's business on the Property, nor shall Lessor be liable for any debts incurred by Lessee in the conduct of Lessee's business nor for any loss from operations or otherwise. The relationship between Lessor and Lessee is and at all times shall remain that of landlord and tenant.

**14. Enforceability.** If any provision of this Lease, or its application to any circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, all other provisions of this Lease will continue in full force and effect and a suitable and equitable provision will be substituted for the invalid or unenforceable provision in order to carry out, so far as may be practical and permitted under applicable law, the purpose of this Lease.

**15. Integration.** It is understood that there are no oral or written agreements or representations between the parties hereto affecting the Lease, and this Lease supersedes

and cancels any and all previous negotiations, arrangements, representations, brochures, agreements, and understandings, if any, between Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this lease agreement the day and year first above written in Yuma, Arizona.

**LESSOR:**

City of Yuma, an Arizona  
Municipal Corporation

By \_\_\_\_\_  
Philip Rodriguez  
City Administrator

**LESSEE:**

Daily Farms, Inc.

By \_\_\_\_\_  
Patrick A. Daily  
President

**ATTEST**

By \_\_\_\_\_  
Lynda L. Bushong  
City Clerk

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Richard W. Files  
City Attorney

## **EXHIBIT "A"**

### **(Legal Description of Property)**

#### **Parcel No 1:**

A Portion of the Northwest quarter (NW1/4) Section 9, Township 9 South, Range 22 West, Gila & Salt River Base & Meridian, Yuma County, State of Arizona, more particularly described as follows:

The South half of the West half of the Northwest quarter (S1/2W1/2NW1/4) Section 9, Township 9 South, Range 22 West, Gila & Salt River Base & Meridian, Yuma County, State of Arizona, more particularly described as follows;

EXCEPT the North 640 feet of the West 636 feet of said South half of the West half of the Northwest quarter (S1/2W1/2NW1/4) Section 9.

#### **Parcel No 2:**

The North Half of the Southwest quarter (SW1/4) of Section 9 South, Range 22 West of the Gila and Salt River Base and Meridian, Yuma County, State of Arizona;

EXCEPT the following described parcel:

Beginning at the West quarter corner of said Section 9; thence South 00°16'55" East along the West line of Section 9 for a distance of 188.00 feet to the True Point of Beginning; thence continuing South 00°16'55" East for a distance of 170.00 feet; thence North 89°43'05" East for a distance of 162.00 feet; thence North 00°16'55" West for a distance of 170.00 feet; thence South 89°43'05" West for a distance of 162.00 feet to the True Point of Beginning:

EXCEPT the West 49.00 feet thereof

AND

EXCEPT Five Acres for the Solar farm:

AND

EXCEPT that portion conveyed to the State of Arizona in instrument recorded in Fee No. 2006-12423, records of Yuma County Recorder, Yuma County, State of Arizona.

Above Parcels containing 102.00 acres more or less

# EXHIBIT "B"

(Location Map of Property)

