

SAMPLE GREENHOUSE FACILITY LEASE



Developed by

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In response to discussions with the Michigan greenhouse industry, MSU Extension has compiled a sample greenhouse lease form and information on owner and operator considerations in leasing greenhouse space.

The sample lease format is designed to be flexible and to address issues related to leasing a facility for an entire year, for a single crop such as poinsettias, or for a season such as the spring crop cycle.

An additional document that can be used alongside the lease, if applicable, is the Subordination, Non-disturbance and Attornment Agreement. This agreement, between the operator and the owner's mortgagee, ensures that the operator will remain in possession of the leased premises throughout the term of the lease and in ownership of all of the operator's products present on the leased premises despite any foreclosure action against the greenhouse owner, as long as the operator is not in default of the lease.

It is strongly advised that you obtain legal assistance to better understand the provisions presented in the sample lease form. This form is not a substitute for obtaining legal counsel regarding the lease – it is intended to help focus discussions between landowner (owner), the lessee (operator) and qualified legal counsel.

Some Owner and Operator Considerations in Leasing Greenhouse Space

There are a number of factors to consider when considering a lease of greenhouse:

- What are the purpose and duration of the lease? Will it be for one calendar year and allow the production of more than one crop?
- What facilities and equipment is the owner providing? These should be clearly stated, as well as their condition.
- Will the operator receive any advance notice of lease expiration, or will he waive any termination notification?
- Will there be a "failure to pay" clause? For example, will the operator pay late fees and, if so, at what rate? Will the operator reimburse the owner for any legal and collection fees the owner incurs to collect late rent?

- Will the rent be paid in advance or in installments? Will security be required from the operator to secure the unpaid installments? If so, what type?
- Will the owner or the operator maintain the facilities? If the operator is required to maintain them, what types of repairs or maintenance is the operator expected to perform?
- To maintain the facilities, can the operator purchase materials, and, if so, should there be a defined dollar limit before obtaining owner approval to purchase more?
- Who is providing the insurance on the facilities? Will insurance that either party obtains name the other as an additional insured?
- Will the operator be required to obtain crop insurance?
- Is auxiliary electricity generation equipment necessary, and, if so, which party will provide it?
- Is the owner required to replace any or all portions of the facility if it is damaged by fire?
- If the operator is to provide his labor for facility maintenance, at what point can an outside professional be hired if the operator feels the repair is beyond his/her qualifications? Does the operator seek owner approval, or is approval already granted if the repair is less than a predetermined maximum cost?
- Will water be furnished by the owner? If well water is used, who will pay the costs to repair or replace pumps, electric motors, electric panels, etc.?
- How will conflicts between owner and operator be settled? Will conflict resolution be limited to mediation, arbitration or some other method?
- Will the operator be allowed to construct or add improvements? Section D, Capital Improvements, provides a method to reimburse the operator for improvements made to the facilities. It establishes in advance the timetable for reimbursement. For example, if operator and owner agree that the operator will install a new water well in year 1 at a cost of \$10,000 and the well is physically depreciated in 10 years, in year 5, the operator would be paid \$5,000.

Sample Greenhouse Facility Lease

This lease is entered into and made by and between _____ (hereinafter referred to as "owner") and _____ (hereinafter referred to as "operator").

PROPERTY DESCRIPTION

The owner hereby leases to the operator, to use for greenhouse and related purposes, the following described property:

Situated in Section _____ of _____ Township in _____, County, _____ (State),

With all improvements thereon except as follows:

The owner agrees to provide the following equipment or facilities: (for example: hi-low[s], rack[s], coder[s], dock[s], conveyor[s], potting machine[s], transplanter[s], etc.)

List: _____

The property is agreed to be of the following size and condition:

Size: _____

Condition (list defects):

II. GENERAL TERMS OF LEASE

A. Time period covered. The lease shall be in effect for _____ year (s) and/or _____ months commencing on the _____ day of _____, 20 _____. The operator does/ does not (delete one) acknowledge his knowledge of the date of termination of this lease and specifically waives any further requirement of written notice of termination. The operator requires notice of termination _____ days prior to termination. This lease may be extended only with the mutual written agreement of owner and the operator.

B. Amendments and alterations. Amendments and alterations to this lease shall be in writing and shall be signed by both the owner and the operator.

C. No partnership intended. It is particularly understood and agreed that this lease shall not be deemed to be or intended to give rise to a partnership relationship.

- D. Transfer of property.** If the owner should sell or otherwise transfer title to the property, he/she will do so subject to the provisions of this lease.
- E. Right of entry.** The owner reserves the right to inspect the property at any reasonable time to (a) consult with the operator; (b) make repairs, improvements and (c) after notice of termination of the lease is given, do any customary seasonal work, none of which is to interfere with the operator in carrying out regular greenhouse operations.
- F. No right to sublease.** The owner does not convey to the renter the right to lease or sublet any part of the property or to assign the lease to any person or persons whomsoever.
- G. Binding on heirs.** The provisions of this lease shall be binding upon the heirs, executors, administrators and successors of both owner and operator in like manner as upon the original parties, except as provided by mutual written agreement.
- H. Failure to pay.** If operator fails to pay the rent due or fails to keep the agreements of this lease, all costs and attorney fees of the owner in enforcing collection or performance shall be added to and become part of the obligations payable by the operator hereunder.
- I. Crop insurance.** Operator shall / shall not (delete one) procure and maintain crop insurance at a level equal to the unpaid rent. The insurance policies or certificates of coverage shall be deposited with the owner on or before the commencement date of this lease.
- J. Additional provisions: (e.g., grounds maintenance and upkeep)**

III. AMOUNT AND PAYMENT OF CASH RENT

- A.** The operator agrees to pay a total cash rent of \$ _____ during the time period covered by this lease (see Section II. A.). The total rent is based on _____ square feet, of which _____ square feet are usable at a rate of \$ _____ per total/usable (delete one) square foot. The cash rent will be payable as follows:

Option 1: 100% due on _____ of the lease year.

Option 2: In ____ installments of \$ _____ due _____

Option 3: _____

At the following location or address:

In the event of late payment, interest charges shall accrue at the rate of _____ percent per annum.

- B.** A damage deposit in the amount of \$ _____ is due at lease signing. At lease expiration, the operator agrees to pay the owner reasonable compensation for any damages to the property for which the operator is responsible. Any remaining deposit will be refunded. Owner and operator will inspect premises at a mutually agreed time before lease expiration to determine any damage. Any decrease in value due to ordinary wear and depreciation is excepted.

- C.** The operator agrees that the owner's statutory lien against all the products produced on the leased premises for the faithful performance of the operator's undertaking is expressly reserved. The _____ rental payment shall be secured by an irrevocable letter of credit/UCC financing statement (delete one) in a form satisfactory to the owner.

IV. OPERATION AND MAINTENANCE OF PROPERTY

A. The operator agrees:

- 1. Use:** To use the property only for the following purposes:

The rate of use or capacity shall not exceed _____ at any given time, or a total of _____ (units) per _____ (time period).

- 2. General maintenance.** To provide unskilled labor and equipment necessary in making minor repairs and improvements to maintain the property during the lease period, normal wear and depreciation excepted. Additional agreements regarding materials and labor are:

_____ .

The operator shall not purchase materials for maintenance and repairs in excess of \$ _____ within a single year without written consent of the owner.

- 3. Insurance.** To procure and maintain public liability and property damage insurance providing for coverage for personal injury to or death of any one person of not less than \$_____, for personal injury to or death of more than one person of not less than \$_____ and coverage for property damage liability of not less than \$_____. Such insurance policy or policies shall / shall not (delete one) name the owner as additional insured and provide for at least 30 days' written notice to the owner before cancellation, termination, modification or change of any policy.

- 4. Costs of operation.** To pay the following utility and operating costs, with charge or usage to be calculated as follows. (For example, if using the same utility meters, how cost will be split if one party requires a different temperature setting than the other.) _____

- 5. Addition of improvements.** Not to (a) add electrical wiring, plumbing or heating to any building without written consent of the owner; or (b) incur any expense to the owner except as follows: _____

- 6.** (Check two) ____ The owner or ____ the operator will provide electrical generation equipment. And ____ the owner or ____ the operator shall pay operating and maintenance costs of this equipment.

7. Environmental laws. To comply at all times with federal, state and local rules, regulations, statutes, ordinances and directives that may now or hereafter be applicable to the leased premises and that are related to hazardous or toxic materials pollution control and environmental matters including: (a) any laws and regulations governing water use, groundwater, wetlands and watersheds associated with the leased premises; (b) any pesticides, fertilizer or chemical record-keeping and reporting laws and regulations; (c) any pesticide, fertilizer or chemical applicator licensing laws and regulations; (d) the Worker Protection Standard for Agricultural Pesticides. The operator further agrees to be in strict compliance with all manufacturers' label instructions, use requirements and precautionary statements and warnings. The operator will use the utmost care in the handling and application of any pesticides, fertilizers and chemicals to protect all persons upon the leased premises and the environment, and will dispose of all pesticide, fertilizer and chemical containers only in a lawful manner and will not dump, bury or burn said containers on the premises.

B. The owner agrees:

- 1. Loss replacement.** To replace or repair as promptly as possible any building or equipment leased by operator from the owner that may be destroyed or damaged by fire, flood or other cause beyond the control of the operator or to make rental adjustments in lieu of replacements.
- 2. Insurance.** To fully insure the property against casualty, theft or other loss, and against personal liability up to the following amounts: _____

- 3. Materials for repairs.** To pay for materials purchased by the operator for purposes of repair and maintenance on the property being leased in an amount not to exceed \$ _____ in any one year, except as otherwise agreed upon. Reimbursement shall be made within _____ days after the operator submits an itemized bill to furnish all materials needed for normal maintenance and repairs, except for:

- 4. Skilled labor.** To furnish any skilled labor that the operator is unable to perform satisfactorily to maintain the property being leased. Additional agreements regarding materials and labor are: _____

- 5. Removable improvements.** To let the operator make minor improvements of a temporary or removable nature that do not mar the condition or appearance of the property at the operator's expense. The owner further agrees to let the operator remove such improvements, even though they are legally fixtures, at any time this lease is in effect or within _____ days thereafter, provided the operator leaves in good condition that property from which such improvements are removed. The operator shall have no right to compensation for improvements that are not removed except as mutually agreed in writing before their installation.

6. Water. To furnish an adequate supply of clean water. Repairs to wells, pumps, injectors and water systems shall be paid for as follows:

C. Both agree:

- 1.** Not to obligate the other party. Neither party shall pledge the credit of the other party for any purpose whatsoever without the written consent of the other party. Neither party shall be responsible for debts or liabilities incurred or for damages caused by the other party.
- 2.** The operator has inspected the premises and accepts such in as-is condition and agrees to assume all risks and liability for accidents to himself, his family, his employees, his guests and agents in pursuance of the operations.

D. Capital improvements. The operator shall be reimbursed for the costs of any new permanent structures and improvements as follows (check option that applies):

_____ (1) The operator will be reimbursed by the owner when the improvement is completed.

_____ (2) The operator will be compensated by the share of the depreciated cost of the operator's contribution when the lease is terminated on the basis of the value of the operator's contribution and the depreciation rate shown in the following table.

Rates of labor, power and machinery contributed by the operator for the construction of permanent improvements shall be agreed upon before repairs are made or construction is started.

If during the term of this lease, improvements are made or expenses incurred by and with the written consent of the owner for which it is agreed that the operator may claim credit upon the final accounting upon termination of the lease, such credit shall be allowable only with respect to the items included hereon. (See schedule following.) The rate or amount of the allowance shall not exceed the rate so endorsed, and no credit shall be allowable if the lease is terminated by the owner because of default by the operator.

Date of expenditure	Item	Share	Operator's amount	Rate of exhaustion (years)									
				1	2	3	4	5	6	7	8	9	10
_____	_____	_____ %	\$ _____										
_____	_____	_____ %	\$ _____										
_____	_____	_____ %	\$ _____										

V. Settlement of Differences

Any difference between the parties over their rights or obligations under this lease that are not settled by mutual agreement after thorough discussion shall / shall not (delete one) be submitted for arbitration to a committee of three disinterested persons, one selected by each party and the third by the two thus selected. The committee's decision shall / shall not (delete one) be accepted by both parties.

VI. Signatures

Executed in duplicate on the date first above written:

_____	_____	_____	_____
Operator	Date	Owner	Date

_____	_____	_____	_____
Operator	Date	Owner	Date

County of _____ State of _____

On this _____ day of _____ A.D. 20 _____, before me, the undersigned, a Notary Public in said State, personally appeared _____, _____, and _____, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Notary Public

Sample Subordination, Non-disturbance and Attornment Agreement

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("**Agreement**") is made and entered into on _____, 20____, by and between _____ (financial institution name), of _____, Michigan _____ ("**Mortgagee**"), and _____, of _____ Street, _____, MI _____ ("**Tenant**").

BACKGROUND

_____ ("**Landlord**") and Tenant have entered into a certain lease agreement dated _____, 20____. Tenant occupies a portion of the Property located at _____ in _____, Michigan. Mortgagee holds a mortgage (the "**Mortgage**") against the leasehold interest of Landlord in the Property to secure the indebtedness described therein. Mortgagee and Tenant desire to enter into certain agreements set forth herein respecting Tenant's estate, rights and privileges under the Lease and Mortgagee's estate, rights and privileges under the Mortgage.

AGREEMENTS

Mortgagee and Tenant therefore agree as follows:

1. Subject to and in accordance with the terms and conditions hereinafter contained, Tenant agrees that its leasehold estate, rights and privileges under or deriving from the Lease and/or any renewals, extensions or modifications of the Lease shall be and are hereby made subject and subordinate to the lien and estate granted by the Mortgage and/or any renewals, extensions or modifications thereof, and the rights and privileges of Mortgagee thereunder; PROVIDED, HOWEVER, that if and for so long as Tenant is not in default under the terms and conditions of the Lease, then, notwithstanding such subordination, Tenant shall have the possession and quiet enjoyment of the Leased Property throughout the term and pursuant to the terms and conditions of the Lease and/or any renewals and extensions thereof, and shall not be affected or disturbed herein by the Mortgagee in the exercise or enforcement of its rights, privileges and remedies under the Mortgage.
2. If the Mortgagee or any other party acquires Landlord's interest in or title to the Property pursuant to the exercise of any remedy provided for in the Mortgage and/or by deed in lieu of foreclosure, the Lease shall not be terminated or affected by said foreclosure, sale, deed or any such proceeding, and the Mortgagee hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Mortgage or otherwise shall be made subject to the Lease and the rights of the Tenant hereunder. The Tenant covenants and agrees to attorn to the Mortgagee or such other party as its new landlord, and the Lease shall continue in full force and effect as a direct lease between Tenant and Mortgagee or such other party upon all the terms, covenants, conditions and agreements set forth in the Lease. In no event, however, shall the Mortgagee or such other party be:

- A. bound by any payment of rent or additional rent made by Tenant to Landlord for more than one (1) month in advance; or
 - B. bound by any amendment or modification of the Lease after the date hereof adversely affecting the interest of the Mortgagee made without the written consent of the Mortgagee; or
 - C. liable for any act or omission of any prior landlord (including Landlord); or
 - D. liable for any offsets, credits or other claims against rentals for any prior periods and/or against any other party or landlord (including Landlord), except for security deposits.
3. Notwithstanding anything to the contrary hereinabove contained, any interest of Tenant in an option to purchase all or any part of the Property contained in the Lease or any other document is specifically subordinated to the rights of the Mortgagee under the terms of the Mortgage, and such option shall not be binding upon the Mortgagee, its successors or assigns or purchaser at a foreclosure sale of the Property.
4. Notwithstanding anything contained to the contrary hereinabove contained, to the extent the provisions of the Mortgage dealing with application of casualty, fire insurance proceeds and condemnation proceeds may be inconsistent with corresponding provisions of the Lease, the provisions of the Mortgage shall be controlling.
5. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of either party hereto. However, Tenant agrees to execute and deliver to the Mortgagee or to any other person to whom Tenant herein agrees to attorn such other instrument as either shall reasonably request in order to effectuate said provisions.
6. Tenant hereby warrants and certifies to Mortgagee that:
- A. It has accepted and now holds possession of the Leased Property pursuant to the terms of the Lease. A true and correct copy of the Lease, including all modifications and amendments through the date of this Agreement, has been provided to the Mortgagee.
 - B. To the best of Tenant's knowledge, and subject to the exceptions noted on Exhibit A, the Landlord has fulfilled all of its duties of an inducement nature and is not in default in any manner in the performance of any of the terms, covenants or provisions of the Lease.
 - C. The Lease has not been modified, altered or amended.
 - D. There are no offsets or credits against rentals, nor have rentals been prepaid, except as provided by the lease terms, and the Tenant will not make any advance payments of rent other than any single period's rent due at time of payment.
 - E. Tenant has no notice of any security assignment, hypothecation or pledge of rents or the lease, except to Mortgagee.
 - F. Tenant shall promptly notify Mortgagee in writing in the event of any default under the Lease which remains uncured after proper notice to Landlord.
7. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all of the parties, notwithstanding that all of the parties have not signed the original or the same counterpart. A facsimile or other reproduction of a signature of a part to this Agreement shall bind such party to the same extent as the manual signature of such party.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement on or effective as of the date and year first appearing above.

MORTGAGEE:

_____BANK,
a Michigan banking corporation

By: _____
Relationship Manager

TENANT:

_____Greenhouses,
a Michigan (corporation, LLC, etc.)_____

[Signature Page 1 of 2 to Subordination, Non-disturbance and Attornment Agreement]

STATE OF MICHIGAN _____)

_____)ss

COUNTY OF _____)

On _____, 20____, before me, a Notary Public in and for said State and County, personally appeared _____, the Relationship Manager of _____BANK, a Michigan banking corporation, who acknowledged that he/she did sign the foregoing instrument on behalf of said corporation and that the same is the free act and deed of said corporation.

Notary Public, _____ County, Michigan

My commission expires: _____

Acting in _____ County, Michigan

STATE OF _____)

_____)ss

COUNTY OF _____)

On _____, 20____, before me, a Notary Public in and for said State and County, personally appeared _____, the _____ of _____ Greenhouses, who acknowledged that he/she did sign the foregoing instrument on behalf of said corporation and that the same is the free act and deed of said corporation.

Notary Public, _____ County, _____

My commission expires: _____

Acting in _____ County, _____

Schedule A to Subordination, Attornment and Non-disturbance Agreement

Description of crops and location of property

(Example) 125,000 geraniums in greenhouse section A of said property

Commonly known as: (example) 1111 East Street, My City, Michigan

For more information, contact:

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