

P/C 8-23-22 Finance  
CA Prior 8-23-22  
1st R 8-23-22  
2nd R 9-6-22  
3rd R \_\_\_\_\_  
B/C \_\_\_\_\_

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 11276-2022

INTRODUCED BY: MAYOR ORCUTT

AN ORDINANCE  
AUTHORIZING THE MAYOR TO ENTER INTO A  
LEASE AGREEMENT WITH GREENSCAPE USA, INC., AND DECLARING AN  
EMERGENCY

WHEREAS, the City of Brook Park (the City) is the owner of PPN #342-15-020, a vacant lot next to our Service Garage, and,

WHEREAS, the City agrees to lease the aforesaid premises, further described and depicted in Exhibit "A", attached hereto and incorporated herein, to Greenscape USA, Inc.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: The Mayor is hereby authorized to enter into the lease which is attached hereto and incorporated herein as Exhibit "A".

SECTION 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of said City, and for the further reason to authorize the Mayor to enter into a Lease Agreement with Greenscape USA, Inc.; therefore provided this ordinance receives the affirmative vote of at least five (5) members elected to Council. It shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: September 6, 2022

ATTEST: Carol Johnson  
CLERK OF COUNCIL

M. P. Kenchis  
PRESIDENT OF COUNCIL

APPROVED: E. M. O'Neil  
MAYOR

9-6-22  
DATE

CERTIFICATE

Carol Johnson, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance Resolution No. 11276-2022

passed on the 6 day of September 20 22 by said council.

Carol Johnson  
Clerk of Council

I, Carol Johnson, Clerk of Council for the City of Brook Park, State of Ohio, do hereby certify that there is no newspaper of general circulation in the municipality and that publication of the foregoing ordinances/resolutions was made by posting true copies at five of the most public places in said municipality as determined by Ordinance No. 4838-1975; location City Hall 6161 Engle Road, Police Station 17401 Holland Road, #2 Fire Station 22530 Ruple Parkway, #3 Fire Station 17401 Holland Road, Brook Park Library 6165 Engle Road, for a period of fifteen days.

commencing September 7, 2022  
Carol Johnson  
CAROL JOHNSON  
Clerk of Council

	Yea	Nay
Troyer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Roberts	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Coyne	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Polindexter	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Salvatore	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

I HEREBY APPROVE THE WITHIN  
INSTRUMENT AS TO LEGAL FORM  
AND CORRECTNESS

[Signature]  
DIRECTOR OF LAW



LEASE AGREEMENT

State of Ohio  
County of Cuyahoga

THIS LEASE AGREEMENT is made and entered into this 14<sup>th</sup> day of July 2022 by and between the Lessor and Lessee hereinafter named.

The following Definitions and Basic Provisions shall be construed in conjunction with and limited by the references thereto in other provisions of this Lease:

- (a) "Lessor": City of Brook Park OH
- (b) "Lessee": Greenscape USA, Inc., an Ohio Corporation, Ohio Secretary of State entity # 1988544. 2 RE/CAO
- (c) "Premises": P.P.#341-15-020 and as further described below and incorporated herein by reference. Legal description attached.
- (d) "Lease Term": Sixty (60) calendar months commencing 8:00 a.m. on the date of the final signature endorsement herein, subject, as noted below, to approval of the accompanying Ordinance by the City of Brook Park City Council, noted as July 14, 2022 (the "Commencement Date") and ending July 13, 2032 (the "Termination Date"). Lessee retains the option to secure a subsequent five (5) year lease, at terms to be negotiated by the parties. Notice of Intent to secure this option shall be presented to Lessor, in writing, no less than six (6) months prior to the end of the initial lease period.
- (e) "Base Monthly Rent": the sum of ONE THOUSAND DOLLARS (\$1,000.00) due and payable on or before the first day of each calendar month at the Office of the Commissioner of the Building Department of the City of Brook Park OH during the Lease Term without prior demand, subject to adjustment as hereinafter provided. By mutual agreement of the parties, the tenancy shall be rent-free to allow the Lessee to expend the necessary funds for the physical alterations of the Leasehold through March 31, 2023.
- (f) "Prepaid Rental": NONE.
- (g) "Security Deposit": NONE
- (h) "Permitted Use": See below.

Termination Right. Notwithstanding anything to the contrary contained herein, Tenant shall have the right to terminate this Lease effective upon the sixtieth (60th) month after the Commencement Date, provided: (a) Tenant shall have provided Landlord with written notice of such termination at least one hundred eight (180) days prior to the date of termination. Upon such termination by Tenant, Tenant shall be released from any and all obligations and liability under the Lease occurring after such termination date. If Tenant fails to exercise its right to terminate this Lease pursuant to this Termination Right Article, Tenant shall be deemed to have waived its right to terminate this Lease pursuant to this Termination Right Article.

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Granting Clause. In consideration of the obligation of Lessee to pay rent as herein provided, and in consideration of the other terms, covenants and conditions hereof, Lessor hereby demises and leases to Lessee, and Lessee hereby takes from Lessor, the Premises to have and to hold for the Lease Term specified upon the terms, covenants, and conditions set forth in this Lease. This Lease is conditioned upon faithful performance by Lessee of the following agreements, covenants, rules and regulations, herein set out and agreed to by Lessee.

Lessee shall be solely responsible for all utility expenses incurred in the operation of the business enterprise noted herein.

Payments.

- (a) Lessee shall pay to Lessor all rents and sums required to be paid under this Lease without demand at the times and in the manner provided. The obligation of Lessee to pay rent is an independent covenant, and no act or circumstance, whether constituting breach of any covenant by Lessor or not, shall release Lessee of this obligation.
  - (b) Lessee shall pay to Lessor as rent all charges for any miscellaneous services, goods, or materials furnished by Lessor at Lessee's request which are not required to be furnished by Lessor under this Lease.
  - (c) In the event that payment of any amount required to be paid pursuant to this Lease is not made within seven (7) calendar days of when due, a service fee of two percent (2%) of the delinquent amount will be due and payable immediately to Lessor as additional rent.
  - (d) All rent payments shall be paid to the order of The City of Brook Park OH.
1. **Transfer of Lessor's Rights.** Lessor shall have the right to transfer and assign, in whole or in part, all and every feature of its interests, rights, and obligations hereunder and in the the real estate associated therewith. Such transfers or assignments, howsoever made, are to be fully respected and recognized by Lessee. Any such transfer shall operate to release Lessor from liability under this Lease from and after the effective date thereof, except as it may relate to the period prior to such effective date. This Lease shall inure to the benefit of the Lessor and its successors and assigns; and with the written consent of Lessor first had, to the benefit of the heirs, executors and/or administrators, successors and assigns of Lessee.
  2. **Possession.** By taking possession thereof, Lessee accepts the Premises as is and suitable for the purposes for which the same are leased. Lessee by said act waives any and all defects therein.

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3. Indemnity, Liability and Loss or Damage. Lessor shall not be liable to Lessee or Lessee's agents, employees, guests, invitees, or to any person claiming by, through or under Lessee for any injury to person, loss or damage to property, or for loss or damage to business, occasioned by or through the acts or omissions of Lessor or any other person, or by any other cause whatsoever except for Lessor's gross negligence or willful misconduct. To the extent Lessor is not prevented by law from contracting against such liability, Lessee shall indemnify Lessor, its principals, agents, beneficiaries, and employees and save them harmless from all suits, actions, damages, liabilities, and expenses in connection with the loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at, or from the Premises. If Lessor shall, without fault on its part, be made a party to any action commenced by or against Lessee, Lessee shall protect and hold Lessor harmless and shall pay all costs, expenses, and attorney's fees.

4(a). Legal Use. Lessee will not occupy or use, nor permit any portion of the Premises to be occupied or used for any purpose other than as specified in the respective portions of this Lease, nor for any business or purpose which is unlawful in part or in whole or deemed to be disreputable or hazardous in any manner. Lessee will conduct its business and control its agents, employees, and invitees in such a manner so as not to create any nuisance, interfere with, annoy, or disturb other Lessees or Lessor in the management of the Premises. Lessee will maintain the Premises in a clean and healthful condition and comply with all laws, ordinances, orders, rules, and regulations (state, federal, municipal, and other entities asserting jurisdiction over the Premises) with reference to the use of and the occupancy of the Premises.

4(b). Permitted Use of Premises. Lessee shall have access to the above parcel for the purpose of depositing and processing concrete, salt, asphalt, yard waste, compost materials and other materials as subsequently agreed upon, in writing, by the parties. Generally, access by Lessee shall be seven (7) days a week, twenty-four (24) hours a day.

At no expense to the Lessor and as further adequate consideration herein acknowledged by the parties, Lessee agrees to accept for permanent storage the following items as delivered by Lessor directly to the Premises: Yard Waste, Compost, Asphalt, Concrete, Salt, and other materials as subsequently agreed upon, in writing, by the parties. No deliveries are authorized or permitted by residents of Brook Park or other communities.

4(c). Ingress/Egress. The parties mutually agree that at the commencement date of the within Lease term the parcel is not accessible from the public roadway commonly known as Holland Avenue. Lessee, as their sole expense, will build, construct, and maintain an Ingress/Egress Road with a minimum width of 20 feet for the sole use of Lessee during the term of the Lease but for those times when the Lessor is delivering the items noted in (4)(b).

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- 4(d). Lessee shall install a Swing Pipe Gate along the aforementioned Holland Road entrance to the Premises for the purpose of securing the Premises from trespassers, uninvited third parties, and persons not authorized to be on the Premises. Lessee shall provide Lessor with the Code for entrance to the Premises.
- 4(e). Premises Boundaries. The parties mutually agree that the Premises is bordered by a creek on the western side, by a chain link fence of other sides, and by overgrown vegetation and trees on the remaining sides. The borders shall not be modified or otherwise changed by either party to this Agreement, subject to the installation of the access road noted above. No further border construction is anticipated by the parties herein.
- 4(f). Lessee shall, prior to their initial delivery of materials as noted above, install/create a twelve (12) inch thick concrete stone surface on all the areas subject to the delivery of concrete, salt, asphalt, yard waste, compost materials and other materials as subsequently agreed upon, in writing, by the parties.
- 4(g). Lessee shall install, at their sole expense, Lighting Fixtures which provide sufficient Light during evening hours. The utility expense therein shall remain the sole responsibility of the Lessee.
- 4(h). Lessee may place a Work/Service Trailer on the premises; no permanent structures will be constructed or otherwise placed on the premises.
5. Insurance. During the term of this Lease and any extension thereof, Lessee shall, at its own cost and expense, maintain and provide Commercial General Liability insurance coverage for the benefit and protection of Lessor and Lessee, naming both as insured's in an amount not less than \$1,000,000 Combined Single Limit per occurrence with an aggregate of \$2,000,000. Lessee shall also carry "all risk" physical loss insurance coverage for the full replacement cost of all additions, improvements, and alterations to the Premises, and all items of Lessee's personal property in, on or about the Premises. All insurance provided hereunder shall be secured from responsible companies acceptable to Lessor and qualified to do business in the state where the Premises are located. Prior to the Commencement Date of the Lease Term, Lessee shall furnish Lessor with certificates evidencing such coverage and stating that such coverage may not be changed or cancelled by the insurer or Lessee without at least thirty (30) days prior written notice to Lessor.
6. Waiver of Subrogation. The parties hereby intend that the risks of loss, damage, and injury in connection with this Lease, Lessor's ownership and operation of the Premises, and Lessee's leasing and occupancy of the Premises are to be allocated as far as possible to insurance. Therefore, Lessor and Lessee each hereby waive all claims, actions, and demands against each other, and each

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hereby releases the other from all liability, to the maximum extent permitted by law for any loss, damage or injury to business, persons or property of any kind or nature, to the extent such loss, damage, or injury is compensated by insurance. The foregoing waivers shall not apply to the extent such waivers would operate to invalidate or preclude recovery under any policies of insurance or where endorsements to such insurance policies recognizing such waivers are not available at reasonable cost.

7. Alterations, Additions, Improvements. Lessee may make alterations in or additions or improvements to the Premises with Lessor's prior written consent. All such work shall: (a) be at Lessee's expense; (b) comply with all insurance requirements and with all applicable ordinances, regulations, and statutes of the jurisdictions in which the Premises are located; (c) in Lessor and Lessee's mutual judgment, be performed using new materials in a good and workmanlike manner, in accordance with sound building practices; and (d) not interfere with Lessors use of their adjacent property.
8. Liens by Lessee. Lessee shall keep the Premises and the real estate of which the Premises forms free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee.
9. Repairs and Re-Entry. Lessee will, at Lessee's own cost and expense, keep the Premises in sound condition and good repair, and shall repair or replace any damage or injury done to the Premises or any part thereof by Lessee or Lessee's employees, servants, agents, or visitors. Lessee will not commit or allow any waste or damage to be committed on any portion of the Premises.
10. Signage. Lessee will not place, suffer to be placed, or maintain any sign, without first obtaining Lessor's written approval. If such approval is granted by Lessor, Lessee shall maintain such item(s) in good condition at all times.
11. Attorney's Fees. In case Lessee defaults in the performance of any of the terms, covenants, agreements, or conditions contained in this Lease, and Lessor places the enforcement of this Lease, or any part thereof, in the hands of an attorney or files suit upon the same, Lessee agrees to pay any and all of Lessor's attorney's fees, costs, and expenses associated therewith.
12. Entry for Repairs and Inspection. Lessee will permit Lessor, its respective officers, agents and representatives to enter into and upon all parts of the Premises, at all reasonable hours to inspect, clean, repair, make alterations and additions as Lessor may deem necessary, and for any other valid business reason. Lessee shall not be entitled to any abatement or reduction of rent by reason thereof.
13. Lien for Rent. In consideration of the mutual benefits arising by virtue of this Lease, Lessee does hereby grant to Lessor an express contract lien on and a

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security interest in all property of Lessee now or hereinafter placed in or upon the Premises (except such property or merchandise as may be exchanged, replaced, or sold from time to time in the ordinary course of Lessee's operations or trade) and also upon all proceeds of any insurance which may accrue to Lessee by reason of damage or destruction of any such property. Said property is hereby subjected to a lien in favor of Lessor and shall be and remain subject to such a lien for the payment of all rents and other sums agreed to be paid by Lessee herein. Said lien shall be in addition to and cumulative of the Lessor's lien provided by law.

14. Severability. If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws effective during the Lease Term, it is the intention of both parties that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties that in lieu of each clause or provision that is illegal, invalid, or unenforceable there be added as a part of this Lease a clause or provision similar in terms which shall make such clause or provision legal, valid, and enforceable. The caption of each paragraph is added as a matter of convenience only and shall be considered to be of no effect in the construction of any provision or provisions of this Lease.
15. Entire Agreement. It is expressly agreed by Lessee, as a material consideration for the execution of this Lease, that there are and were no verbal representations, understandings, stipulations, agreements, or promises pertaining thereto not incorporated in writing herein. This Lease shall not be altered, waived, amended, extended, or otherwise except in a writing signed by both Lessor and Lessee. Any such addenda shall become a part of this Lease to the full extent as is incorporated herein.
16. Execution; Exculpation. The submission of this Lease by Lessor, its agent or representative, for examination or execution by Lessee does not constitute an option or offer to lease the Premises upon the terms and conditions contained herein or a reservation of the Premises in favor of Lessee. It is intended that this Lease shall only become effective upon execution by Lessor and delivery of a fully-executed counterpart to Lessee.

It is expressly understood and agreed by and between both parties, that each and all of the representations, warranties, covenants, undertakings, and agreements made on the part of Lessor have not been made with the intention of binding Lessor personally, but rather for the purpose only of subjecting Lessor's interest in the Building and the Premises to the terms of this Lease and for no other purpose. Such exculpation of liability shall be absolute and without exceptions whatsoever.

17. Notices. Any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when personally delivered or addressed and mailed to the respective party to whom notice is intended to be given at the following address of such party. Notice pertaining to Lease Term, options,

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cancellations, renewals, etc., must be delivered via certified or registered mail (return receipt requested).

If to Lessee  
Greenscape USA, INC  
5301 Hauserman Road  
Parma, Ohio 44130

If to Lessor:  
City of Brook Park OH  
Attn. Mayor's Office  
Brook Park OH.

18. Brokers. Lessee represents and warrants to Lessor that neither it, its officers, agents, nor anyone on its behalf has dealt with any real estate broker acting as Lessee's agent in the negotiation or making of this Lease. Lessee agrees to indemnify and hold Lessor harmless from the claim or claims of any broker or brokers claiming to have interested Lessee in the Building or Premises or claiming to have caused Lessee to enter into this Lease.
19. Abandonment. If the Premises are abandoned or vacated by Lessee, Lessor shall have the right, but not the obligation, to: (a) provide for the storage of personal property remaining in the Premises without liability of any kind or nature for the cost of storage or the return of the personal property to Lessee, and/or (b) take title to the abandoned personal property, which title shall pass to Lessor under this Lease as a Bill of Sale, without additional payments or credit from Lessor or Lessee.
20. Holding Over. In case Lessee retains possession of the Premises after expiration or early termination of this Lease, Lessee will pay as liquidated damages two (2) times the greater of all existing rents being paid by Lessee or market rent for the Premises for the entire holdover period. No holding over by Lessee after the termination of the Lease Term, either with or without consent and acquiescence of Lessor, shall operate to extend this Lease for a longer period than one (1) day. Any holding over with Lessor's prior written consent shall constitute a lease from day to day.
21. Defaults. In the event: (a) Lessee fails to comply with any term provision, condition, or covenant of this Lease or any of the rules and regulations now or hereafter established for the government of the Building; or (b) Lessee deserts or vacates the Premises; or (c) any petition is filed by or against Lessee under any section or chapter of the national Bankruptcy Act, as amended, or under any similar law or statute of the United States or of any state thereof; or (d) Lessee becomes insolvent or makes a transfer in fraud of creditors; or (e) Lessee makes an assignment for benefit of creditors; or (f) a receiver is appointed for Lessee or any of the assets of Lessee, Lessor shall have the option to do any one or more of the following without notice in addition to and not in limitation of any other remedy permitted by law or by this Lease:
- (A) Terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor. If Lessee shall fail to do so, Lessor may, without notice

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or prejudice to any other remedy Lessor may have for possession and/or for arrearages in rent, enter upon and take possession of the Premises and expel or remove Lessee and its effects, by force if necessary, without being liable for prosecution or any claim for damages. Lessee agrees to indemnify Lessor for all loss, damage, and expense including any attorney's fees which Lessor may suffer by reason of such termination.

- (B) Enter upon and take possession of the Premises, by force if necessary, without being liable for prosecution or any claim for damages. Lessor may relet the Premises as the agent of the Lessee and receive the rent therefore. The failure or refusal of Lessor to relet the Premises shall not release or affect Lessee's liability for all rents or for any and all such damages involved.

22. Remedies. No act or thing done by Lessor or its agents during the term hereof shall be deemed an acceptance of a surrender of the Premises. The acceptance of rent by Lessor with knowledge of the breach of any covenant contained in this Lease and/or the failure of Lessor to enforce any of the attached rules and regulations (or ones hereafter adopted) against Lessee (or any other lessee) shall not be deemed a waiver. Any agreement to accept a surrender of the Premises or accept a waiver of said rules and regulations by Lessor shall not be valid unless made in writing and signed by Lessor. The mention in this Lease or the pursuit of any particular remedy shall not preclude Lessor from any other remedy Lessor might have, either in law or in equity.
23. The parties mutually acknowledge that the Lessor, a municipality in the State of Ohio, must present the fully endorsed Agreement to Brook Park City Council for approval by ordinance via operation of law. The terms and conditions noted herein shall be null and void if Brook Park City Council declines to approve this Lease Agreement. The Commencement dated noted above shall be the date upon which the city council approves the within Lease Agreement.

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

LESSEE: Greenscape USA, Inc.

LESSOR: City of Brook Park OH

By: R. H. T. E. L.

By: \_\_\_\_\_

Title: President

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

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ACKNOWLEDGEMENTS

AS TO LESSOR:

STATE OF OHIO )  
COUNTY OF CUYAHOGA ) ) SS

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, do hereby certify Edward Orcutt personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me on behalf of the City of Brook Park OH as it's Mayor, this day and acknowledged that he signed and delivered said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of July 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires:

AS TO LESSEE:

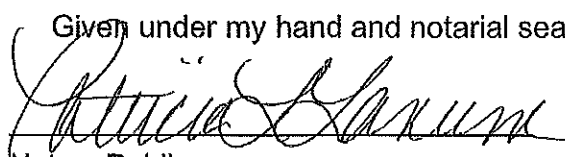
STATE OF OHIO )  
COUNTY OF CUYAHOGA ) ) SS

I, Patricia Lhamum, a Notary Public in and for said County in the State aforesaid, do hereby certify that Robert Everle, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me on behalf of Greenscape USA, Inc., a For Profit Corporation in the State of

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OHIO as it's President, this day and acknowledged that he signed and delivered said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14<sup>th</sup> day of July 2022.  
  
Notary Public

My Commission Expires:



PATRICIA L. LANUM  
Notary Public, State of Ohio  
Commission No. 2021-RE-835083  
My Commission Expires  
July 28, 2026

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