

ORDINANCE NO. 2024 -067

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A DUAL-USE OPERATING AGREEMENT BETWEEN THE CITY OF KENT AND SLIGHTLY TOASTED, LLC (DBA BLISS OHIO), TO CONTINUE OPERATING AS A MEDICAL MARIJUANA DISPENSARY AND ALSO OPERATE AS AN ADULT USE CANNABIS DISPENSARY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent desires to enter into a Dual-Use Operating Agreement between the City and Slightly Toasted, LLC (dba Bliss Ohio) so that Slightly Toasted, LLC can continue to operate as a medical marijuana dispensary and also to operate as an adult use cannabis dispensary; and

WHEREAS, the enactment of Issue 2 on December 7, 2023 resulted in a new Ohio Revised Code Chapter 3780 to allow for an current medical marijuana dispensary to participate in a non-medical cannabis market and apply for a dual-use cannabis license.

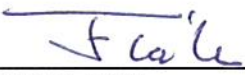
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio,

SECTION 1. That Council does hereby authorize the City Manager, or his designee, to enter into a Dual-Use Operating Agreement between the City of Kent and Slightly Toasted, LLC (dba Bliss Ohio), and is more fully described in Exhibit "A" attached hereto and incorporated herein.

SECTION 2. That 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 of Section 121.22 of the Ohio Revised Code.

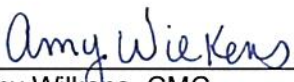
SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: _____ July 24, 2024
Date



Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: _____ July 24, 2024
Date

ATTEST: 

Amy Wilkens, CMC
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. 2024-067, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON July 24, 20 24.

(SEAL)

Amy Wilkens
AMY WILKENS, CMC
CLERK OF COUNCIL

**DUAL USE OPERATING AGREEMENT
MEDICAL MARIJUANA DISPENSARY AND ADULT USE CANNABIS DISPENSARY**

This Operating Agreement for a Dual Use Medical Marijuana Dispensary and Adult Use Cannabis Dispensary (hereinafter "Agreement"), dated _____, 2024 ("Effective Date"), is entered into by and between the City of Kent (the "City"), an Ohio municipal corporation, and Slightly Toasted LLC ("the Dispensary"). The City and the Dispensary may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Whereas the City of Kent, Ohio (the "City") is a charter city and a municipal corporation, duly organized under the constitution and laws of the State of Ohio; and
- B. Whereas the Kent City Council adopted Ordinance No. 2018-54 on April 18, 2018, amending the Kent Codified Ordinances, Part 11, Planning and Zoning Code to allow medical marijuana cultivators, dispensaries, processors, and testing laboratories as conditionally permitted uses within certain zoning districts of the City of Kent, Ohio; and
- C. Whereas Slightly Toasted LLC, doing business as Bliss Ohio, and operating at 331 East Main Street, Kent, Ohio, was issued a zoning use "Conditional Zoning Certificate and Site Plan Approval" to operate as a "Medical Marijuana Dispensary;" and
- D. Whereas Bliss Ohio received its Certificate of Occupancy on April 28, 2023 and has been continually operating as a Medical Marijuana Dispensary since that date; and
- E. Whereas on November 7, 2023 a majority of Ohio voters approved Issue 2 (the "Initiated Statute") to legalize the sale of adult use marijuana by state-licensed dispensaries, effective December 7, 2023; and
- F. Whereas the State of Ohio Division of Cannabis Control, within the Ohio Department of Commerce, currently is designated by the Initiated Statute to only issue licenses for adult use marijuana sales to existing operating Medical Marijuana Dispensaries (Dual Use); and
- G. Whereas Slightly Toasted LLC, DBA Bliss Ohio, has a license issued by the State of Ohio to operate a Medical Marijuana Dispensary at 331 East Main Street, Kent, Ohio ("Subject Property") and the license is active and in good standing with the State of Ohio Division of Cannabis Control.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and covenants set forth herein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals, and all defined terms set forth in this Agreement, are hereby incorporated into this Agreement as if set forth herein in full.
2. Intent. The purpose of this Agreement is to ensure an understanding and commitment to operating the Dispensary in a manner that is harmonious and complementary to the abutting property owners and promotes the health and safety of the community.
3. Definitions. The following terms shall have the following meanings for purposes of this Agreement, but other terms may be defined elsewhere in this Agreement.
 - a. "City Manager" means the City Manager or his or her designee.
 - b. "Commencement Date" means the date that all of the following have occurred: (1) the City has issued all necessary City Permits; (2) the Dispensary has obtained all necessary State licenses to operate; and (3) the Dispensary has maintained its certificate of occupancy.
 - c. "Dual-Use Provisional License" means the license issued by the State of Ohio Division of Cannabis Control to an existing and operating Medical Marijuana Dispensary to also operate as an Adult Use Dispensary pursuant to the requirements of ORC 3780.10 "Adult Use Cannabis Operator and Adult Use Testing Laboratory Licenses (effective date December 7, 2023)."
 - d. "Effective Date" means the date first entered above as the Effective Date and is the date that both Parties have signed this Agreement.
 - e. "Manager" means a person with responsibility and authority over the management, supervision, or oversight of the operation of the Medical Marijuana Dispensary and Adult Use Marijuana Dispensary (Dual-Use) at the Subject Property.
4. Term of Agreement. The Term of this Agreement shall commence on the Effective Date and continue for a period of three (3) years, unless earlier terminated as specified in this Agreement or the revocation by the State of Ohio of any provisional or permanent Dual Use License. Prior to the expiration of the Initial Term and any subsequent renewal period, the Parties may mutually agree to extend the Term of this Agreement every five (5) years.

5. Ownership. The Dispensary shall maintain a current register of the names and the contact information (including the name, address, telephone number, and email) of anyone owning or holding an interest in the Dual Use Dispensary, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the Dispensary. The register required by this paragraph shall be provided to the City upon request.
6. General Terms and Conditions. The Dispensary shall comply with all of the following terms and conditions for the Term of this Agreement:
 - a. This Agreement is only valid for the Dispensary to operate at the Subject Property located at 331 East Main Street, Kent, Ohio. The rights and obligations set forth in this Agreement shall not be transferred, assigned, or assumed unless agreed to in advance and in writing by the City. The Dispensary expressly acknowledges, understands and agrees that nothing in this Agreement confers any ongoing vested property right or entitlement to conduct any other commercial cannabis activity other than operating as a Dual Use Dispensary for Medical Marijuana and Adult Use cannabis, at the Subject Property, subject to the terms contained within this Agreement.
 - b. The Dispensary must obtain and maintain at all times a valid State of Ohio dispensary license, as specified in ORC 3780.10(B), comply with all applicable State of Ohio laws, and comply with all requirements of the Codified Ordinances of the City of Kent, including the City of Kent's Zoning Ordinance. Where a conflict between the Kent Codified Ordinances and any State law occurs, the more restrictive law applies.
 - c. As soon as practicable, the Dispensary shall inform the City when it obtains its necessary State License(s) and shall provide a copy of the State License(s) to the City Manager. The City shall cooperate with the Dispensary as appropriate and as needed to facilitate the State's issuance of a State License(s) to the Dispensary. Failure of the Dispensary to procure and produce evidence of receipt of any required state licenses within twelve (12) months of the effective date of this Agreement shall be deemed a material and incurable breach of the Agreement and, this Agreement shall immediately be deemed null and void.
7. Operational Requirements. The Dispensary shall comply with the following specific operational requirements:
 - a. The hours of operation for the Dispensary shall be limited to no more than 9 a.m. to 9 p.m. as mandated by the State of Ohio Division of Cannabis Control. Hours of operation must be modified to align with any future change to operating hours if mandated by the State.
 - b. The Dispensary agrees to manage any persons on the Subject Property within the building and the building's curtilage and prohibit loitering of any kind both during and after operating hours, to a reasonable extent.

- c. The Dispensary agrees to comply with all City of Kent Zoning Code requirements for the Conditional Zoning Certificate and Site Plan issued August 16, 2022 for a Medical Marijuana Dispensary.
 - d. The Dispensary must immediately notify the Kent Police Department of any criminal activity, or suspected criminal activity, occurring at the Subject Property. In the event of any internal security system breach, including a faulty alarm system, broken or damaged surveillance cameras or other video recording equipment, or broken or damaged locks, doors, or lighting which may increase risk of criminal activity at the Subject Property, the Manager of the Dispensary shall notify the Kent Police Department as soon as practicable after becoming aware of the security system breach. The Dispensary shall diligently attempt to fix or resolve any such security breach immediately; if circumstances require additional time and delay to remedy, the Dispensary shall so notify the City Police Department and provide an estimated timeline the security breach will be cured.
 - e. If the Dispensary receives any criminal threats, or otherwise suspects any criminal targeting related to movement of product, cash, or cash equivalents from or to the Subject Property, the Dispensary must immediately notify the Kent Police Department.
 - f. The Dispensary must maintain all required security and surveillance measures as specified by the licensing requirements of the Division of Cannabis Control, including but not limited to camera monitoring and alarm systems.
 - g. The Dispensary must exhibit a good faith effort to resolve concerns that may arise with area businesses and residents resulting from the operation of the dispensary.
 - h. The Dispensary agrees to maintain the building and the site, including but not limited to the parking area, landscaping, etc. in good condition and in compliance with the City's Exterior Property maintenance Code.
8. Default and Termination for Cause. Without prejudice to or limiting the City's other remedies at law or in equity, the City may terminate this Agreement for cause with thirty (30) days' written notice to the Dispensary. Cause as used in this section is defined as:
- a. Failure to comply with any of the terms of this Agreement; OR
 - b. If the Dispensary's Dual Use Provisional License or any subsequent State operating license is revoked by the State of Ohio.
9. Cure Period. The Dispensary shall cure the default resulting from the cause for termination within thirty (30) days of the date of the notice of termination or the date of the revocation of the Dispensary's Dual Use Provisional License or any subsequent State operating license, whichever is earlier. If the Dispensary fails to cure the default within the Cure Period, this Agreement is terminated.
10. Effect of Termination of Agreement. The Dispensary understands and acknowledges that the right to operate is expressly contingent on full compliance with all applicable State

of Ohio laws and Kent Codified Ordinances. As such, termination of this Agreement shall result in the immediate termination of the Dispensary operations, unless and until a new Operating Agreement is executed by the Parties.

11. The Dispensary's Termination Rights. The Dispensary may, at any time and in its sole discretion, terminate this Agreement effective thirty (30) days after the Dispensary provides written notice of termination to the City.

12. Indemnification. The Dispensary shall defend (with legal counsel reasonably approved by the City), indemnify, and hold harmless the City and its Council, boards and commissions, officers, officials, employees, and agents from and against any and all actual and alleged liabilities, demands, claims, losses, damages, injuries, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and attorney's fees), which arise out of, or which are in any way related to:

- a. the dual use provisional license and any land use entitlement related thereto;
- b. the proceedings undertaken in connection with the approval, denial, or appeal of the dual-use provisional license and any land use entitlement related thereto;
- c. the City's drafting, adoption and passage of an ordinance, and related resolutions, policies, rules and regulations associated with dual use cannabis businesses;
- d. the City's drafting, adoption and passage of any ordinances or related resolutions, if necessary, in the future regarding any zoning law amendment(s) related to dual use cannabis businesses;
- e. City's compliance or failure to comply with applicable laws and regulations; or
- f. the alleged violation of any federal, state or local laws by the Dispensary or any of its officers, employees or agents, except where such liability is caused by the sole negligence or willful misconduct of the City.

13. Waiver, Release and Hold Harmless. The Dispensary hereby waives, releases, and holds harmless the City of Kent and its Council, boards and commissions, officers, officials, employees, and agents from any and all actual and alleged claims, losses, damages, injuries, liabilities, costs (including attorney's fees), suits or other expenses which arise out of, or which are in any way relate to this operating agreement. The Dispensary hereby waives, releases and holds harmless the City and its Council, boards and commissions, officers, officials, employees, and agents from any and all actual and alleged claims, losses, damages, injuries, liabilities, costs (including attorney's fees), suits or other expenses which arise out of, or which are in any way relate to: 1) any repeal or amendment of any provision of the ORC Chapter 3780 or the Kent Codified Ordinances relating to adult use cannabis activity; or (2) any investigation, arrest or prosecution of the Dispensary or owners, operators, employees, clients or customers, for a violation of state or federal laws, rules or regulations relating to cannabis activities.

14. Notice. Any notice or other communication provided pursuant to this Agreement must be in writing and shall be considered properly given and effective only when emailed, mailed or delivered in the manner provided by this Section to the persons identified below. A mailed notice or other communication shall be considered given and effective on the third day after it is deposited in the United States Mail (certified mail and return receipt requested). A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A Party may change its address for these purposes by giving written notice of the change to the other Party in the manner provided in this Section .

For the City:

Dave Ruller
City Manager, City of Kent
301 S. Depeyster Street
Kent, Ohio 44240

For the Dispensary:

James Dulick
Managing Member, Slightly Toasted LLC
11 High Grove
New Albany, Ohio 43054

15. Force Majeure. "Force Majeure Event" means a cause of delay that is not the fault of the Party who is required to perform under this Agreement and is beyond that Party's reasonable control, including the elements (such as floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, pandemics, the actions or inactions of any governmental entity (excluding the City) or that entity's agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages. Except as otherwise expressly provided in this Agreement, if the performance of any act required by this Agreement to be performed by either the City or the Dispensary is prevented or delayed because of a Force Majeure Event, then the time for performance shall be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.
16. Waiver. A Party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other Party's breach of this Agreement shall not constitute a waiver of any performance, right, or remedy. A Party's waiver of the other Party's breach of any provision in this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving Party.

17. Relationship of Parties. This Agreement does not create any employment relationship, ownership interest, or other association between the City and the Dispensary. Nothing herein shall be construed to create the relationship of principal and agent, partnership or other joint venture between the City and the Dispensary.
18. Attorneys' Fees. The Party prevailing in any litigation concerning this Agreement, the Subject Property, or the Dispensary operations, shall be entitled to an award by the court of reasonable attorneys' fees and litigation costs. If the City is the prevailing party, then this Section shall apply whether the City is represented in the litigation by the designated City Attorney or by outside counsel.
19. Jurisdiction and Venue. This Agreement has been executed and delivered in the State of Ohio and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of Ohio.
20. Severability. If a court with competent jurisdiction finds any provision of this Agreement to be invalid, void, or unenforceable, then the remaining provisions shall remain in full force and effect, and to this end this Agreement shall be severable.
21. Counterparts. The Parties may execute this Agreement in counterparts, each of which shall constitute an original, but all of which shall collectively constitute this same Agreement.
22. Disclaimer. Despite the State of Ohio's commercial cannabis laws and the terms and conditions of this Agreement or any dual use provisional operating license pertaining to the Dispensary or the hereinabove specified Subject Property, State of Ohio commercial cannabis cultivators, processors, dispensaries, testing facility/laboratory businesses or possessors may still be subject to arrest by federal officers and prosecuted under federal law. The Federal Controlled Substances Act, 21 USC § 801 et seq., prohibits the manufacture, manufacturing, and possession of cannabis without any exemptions for medical or non-medicinal use.
23. Integration and Modification. This Agreement sets forth the Parties' entire understanding and agreement regarding the matters addressed herein. This Agreement supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by written agreement signed by both Parties.

IN WITNESS WHEREOF, the parties enter into this Agreement as of the Effective Date.

City of Kent, Ohio

Dave Ruller, City Manager

Date

Dispensary, Slightly Toasted LLC
(DBA Bliss Ohio)

James Dulick, Managing Member

Date

Approved as to Form:

Hope Jones, Law Director

Date