

***OPTION 4: FOUNDATION HAS MEMBERS AND DIRECTORS;  
MEMBER IS A SOLE ENTITY OR BODY AS OPPOSED TO INDIVIDUALS***

This option contemplates two governing bodies – Members and Directors. This two-body governance structure is just like Option 1, but Option 4 provides for an entity as the sole Member of the Foundation. We would need to evaluate whether the City of Lakewood could function as a member of a nonprofit corporation if it desired to assume this role.

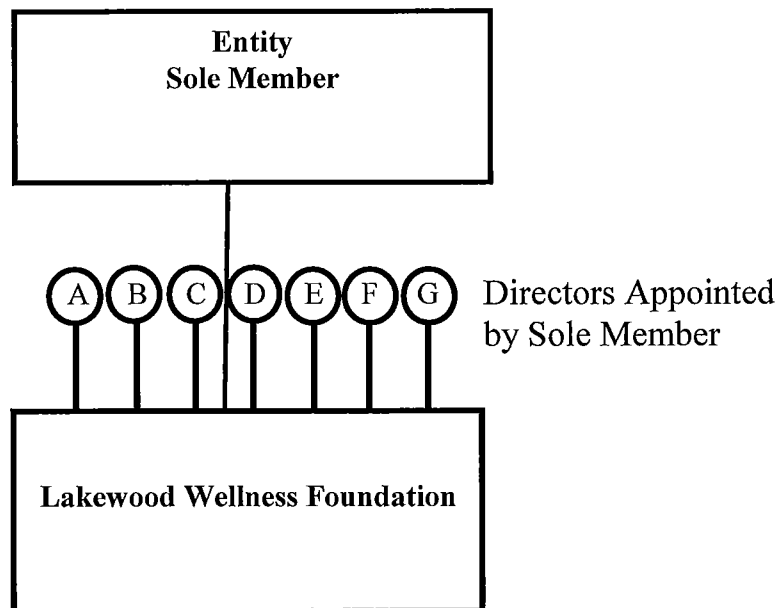
**Pros of this Structure**

- This structure can provide for an effective way to direct actions of the Foundation because the entity that functions as the sole Member controls the fundamental actions of the Foundation as well as the election of its Directors.

**Cons of this Structure**

- Authorizing the action of the corporate member can be cumbersome, *i.e.*, the body that functions as a Member of the Foundation has to have some guidance from *its* governing body about how to vote the membership interest of the Foundation.
- If the City of Lakewood cannot function as the sole Member of the Foundation, it would need to enlist another body it trusted to function in this capacity.

**ILLUSTRATION OF STRUCTURE**



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## CODE OF REGULATIONS

OF

### LAKWOOD WELLNESS FOUNDATION

#### ARTICLE I

#### MEMBERS AND AUTHORITY

**Section 1. Designation of Members; Term of Office.** The sole member of the Corporation ("Member") shall be ABC Charity, an Ohio nonprofit corporation, tax exempt as an organization described in Internal Revenue Code § 501(c)(3).

*Note: We could explore whether it is possible and/or desirable for a municipal body like the City of Lakewood to be the sole member of a nonprofit corporation.*

**Section 2. Action Without a Meeting.** For so long as the Corporation has a sole Member, all actions that may be authorized or taken at a meeting of the members under the Ohio Nonprofit Corporation Law shall be authorized or taken without a meeting with the affirmative vote and approval of, and in a writing signed by, the sole Member, which writing shall be filed with or entered upon the records of the Corporation.

#### ARTICLE II DIRECTORS

**Section 1. Authority and Duties.** Subject to the provisions of Article I, the Board of Directors shall have general supervision and charge of the operation, property, affairs, and finances of the Corporation. Without limiting the generality of the foregoing, the Board of Directors shall elect the officers of the Corporation and shall cause a full report concerning the affairs of the Corporation to be rendered to the Member.

**Section 2. Number, Term of Office, Election.** The authorized number of Directors shall be determined from time to time by the Member. Each Director shall hold office for a three (3) year term, or until his successor is elected and qualified, or until his earlier resignation, removal from office, failure to meet the qualifications for serving as a Director, or death. No Director shall serve for more than three (3) consecutive three (3) year terms. If a Director is initially elected for less than a three (3) year term, the period of time that the Director serves during the Director's initial election period which is less than the first three (3) year term shall not be counted in determining the number of terms that the Director may serve. After a one (1) year absence from the Board, a person may be re-elected as a Director and may serve for three (3) consecutive three (3) year terms plus any period for which such person is elected for less than a three (3) year term. Any Director, by notice in writing to the Board of Directors, may resign at any time.

**Section 3. Removal.** Any Director may at any time be removed from office for any cause deemed sufficient by the Board of Directors, by the affirmative vote of a majority of the whole authorized number of Directors.

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**Section 4. Vacancies.** Vacancies in the Board of Directors shall be filled by the Member.

**Section 5. Annual Meeting.** The annual meeting of the Board of Directors shall take place at such time and place as the Chairperson and President shall determine. The purpose of the annual meeting shall be to elect the officers of the Corporation, receive the report of officers and committees of the Board of Directors, and transact such other business as may properly come before the meeting.

**Section 6. Regular Meetings.** In addition to the annual meeting, the Board of Directors shall hold regular meetings on such dates and at such times as the Board of Directors shall determine. The Board of Directors shall provide appropriate notice regarding regular meetings specifying the times and places for such meetings, as determined by the Board of Directors. The purpose of regular meetings of the Board of Directors shall be to receive reports from officers and committees of the Corporation, if any, approve or disapprove actions by the Corporation requiring action by the Board of Directors, if any, and to consider and act upon any other matter which is necessary or appropriate for action by the Board of Directors.

**Section 7. Special Meetings.** A majority of the Directors or the Chairperson and President may call a special meeting of the Board of Directors.

**Section 8. Notice of Meetings.** At least twenty-four (24) hours prior to a special meeting and not less than seven (7) days and not more than thirty (30) days prior to an annual meeting and a regular meeting, notice stating the date, time, place, and, in the case of a special meeting, the purpose or purposes of the meeting, shall be given to the Directors by or at the direction of the Secretary of the Corporation or of the person or persons calling the same. Such notice shall be given to the Directors in writing which shall be given by personal delivery, mail, facsimile, telegram, electronic mail, or other written media addressed to the Directors at their respective addresses as they appear on the records of the Corporation.

**Section 9. Place of Meetings.** All meetings of the Board of Directors shall be held at the principal place of business of the Corporation or at any other place, within or without the State of Ohio, as the Board of Directors shall determine.

**Section 10. Quorum; Voting; Adjournment.** Except as otherwise provided in this Code of Regulations, a majority of the Directors of the Corporation shall constitute a quorum for the transaction of business. The act of a majority of the Directors present and voting at a meeting at which a quorum is present shall be the act of the Board of Directors unless otherwise expressly provided by the Articles of Incorporation or this Code of Regulations. After a quorum has been established at a meeting of the Board of Directors, the subsequent withdrawal of Directors from the meeting so as to reduce the number of Directors present at any meeting to fewer than the number required for a quorum shall not affect the validity of any action taken by the Board of Directors at the meeting or any adjournment thereof. A majority of the Directors present, whether or not a quorum exists, may adjourn any meetings of the Board of Directors to another time and place.

**Section 11. Waiver of Notice.** Notice of the time, place, and purposes of any meeting of the Board of Directors may be waived in writing either before or after the holding of

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such meeting. The attendance of any Director at any such meeting without protesting, prior to at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by such Director of notice of such meeting.

**Section 12. Action Without a Meeting.** Any action which may be authorized or taken at a meeting of the Board of Directors may be authorized or taken without a meeting with the affirmative vote and approval of, and in a writing or writings signed by, all of the Directors, which writing or writing shall be filed with or entered upon the records of the Corporation.

**Section 13. Meetings Held Through Communications Equipment.** Meetings of the Board of Directors or any committee of the Board of Directors may be held through communications equipment if all persons participating can hear each other and such participation shall constitute presence at such a meeting.

### **ARTICLE III** **COMMITTEES**

**Section 1. Appointment.** The Board of Directors may from time to time appoint a subset of Directors or other individuals selected by the Board to act as members of committees. The Directors may delegate to such committee or committees the powers to be exercised by the committee or committees under the control and direction of the Board. Individuals who are not Directors shall serve in an advisory capacity only and shall have no vote as members of any committee authorized to act for the Board.

**Section 2. Executive Committee.** The Board shall appoint an Executive Committee comprised of the Chairperson and President, Treasurer, and such other Directors as the Board shall select. Only Directors may serve as members of the Executive Committee. During intervals between meetings of the Board of Directors, the Executive Committee shall possess and exercise all of the authority and powers of the Board of Directors in the management and direction of the activities and affairs of the Corporation.

**Section 3. Audit Committee.** The Audit Committee shall be appointed by the Board of Directors and shall consist of at least three (3) persons, two (2) of whom will not be officers of the Corporation. The Audit Committee shall be responsible for receiving the report and recommendations of the independent certified public accounting firm conducting the audit and implementing such recommendations.

### **ARTICLE IV** **OFFICERS**

**Section 1. Designation and Election of Officers.** The Board of Directors shall elect a Chairperson and President, a Secretary, a Treasurer, and such other officers and assistant officers, including but not limited to Vice Chairpersons and Vice Presidents, as the Board of Directors may determine to elect from time to time. Except for the Chairperson and President, Treasurer, and Vice Chairpersons and Vice Presidents, no other officers need be a Director. Any two or more offices may be held by the same person. Officers shall be nominated and elected at the Annual Meeting of the Board of Directors. Officers shall hold office until the date fixed in

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accordance with this Code of Regulations for the annual meeting of the Board of Directors next following the election of such officers and until their successors are elected and qualified. No officer shall execute, acknowledge, or verify any instrument in more than one capacity, if such instrument is required to be executed, acknowledged, or verified by two (2) or more officers.

**Section 2. Term of Office; Vacancies.** The officers of the Corporation shall hold office until their successors are elected, except in case of resignation, removal from office, or death. The Board of Directors may remove any officer at any time with or without cause by a majority vote of the Directors then in office. Any vacancy in any office may be filled by the Board of Directors for the balance of the term of the resigned, removed or deceased officer.

**Section 3. Authority.** All officers of the Corporation shall have such authority and perform such duties as customarily pertain to their respective offices and such additional authority and duties as may be prescribed by the Board of Directors. The enumeration of specific powers and duties set forth below shall not in any way limit the generality of the foregoing.

(a) **Chairperson and President.** The Chairperson and President shall preside at all meetings of the Board of Directors. Subject to the direction of the Board of Directors, the Chairperson and President shall have general supervision over the affairs of the Corporation and shall perform any other duties or functions that may be in the best interests of the efficient operations of the Corporation.

(b) **Secretary.** The Secretary shall keep records of the proceedings of the Member and the minutes of meetings of the Board of Directors. The Secretary shall keep such books as may be required by the Board of Directors, shall give notices of the meetings of the Board of Directors required by law, or by this Code of Regulations, or otherwise, and shall have such authority and shall perform such other duties as may be determined by the Board of Directors.

(c) **Treasurer.** The Treasurer shall cause to be kept under his supervision accurate financial accounts and hold the same open for inspection and examination by the Directors and shall have such authority and shall perform such other duties as may be determined by the Board of Directors.

**Section 4. Delegation of Authority and Duties.** The Board of Directors is authorized to delegate the authority and duties of any officer to any other officer and generally to control the actions of the officers and to require the performance of duties in addition to those mentioned herein.

## **ARTICLE V** **LIMITATION OF LIABILITY IN DAMAGES** **AND INDEMNIFICATION**

**Section 1. Limitation of Liability in Damages of a Director.** Other than in connection with an action or suit in which the only liability asserted against a Director is for voting for or assenting to a statutorily proscribed assets distribution or loan (a "Statutorily

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Proscribed Act"), a Director of the Corporation shall be liable in damages for any action he takes or fails to take as a Director only if it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission either undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation.

**Section 2. Third Party Action Indemnification.** The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, including all appeals (other than an action, suit, or proceeding by or in the right of the Corporation), by reason of the fact that he is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, trustee, or officer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, employee benefit plan, trust, or other enterprise, against expenses (including attorneys' fees), judgments, decrees, fines, penalties, and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit, or proceeding, unless it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation and that, with respect to any criminal action or proceeding, he had reasonable cause to believe his conduct was unlawful; the termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, constitute such proof.

**Section 3. Derivative Action Indemnification.** Other than in connection with an action or suit in which the liability of a Director for voting or assenting to a Statutorily Proscribed Act is the only liability asserted, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit, including all appeals, by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, trustee, or officer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, employee benefit plan, trust, or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of the action or suit unless it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation, except that the Corporation shall indemnify him to the extent the court in which the action or suit was brought determines upon application that, despite the proof but in view of all the circumstances of the case, he is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

**Section 4. Determinations of Indemnification Rights.** Any indemnification under Section 2 or Section 3 of this Article V (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, trustee, or officer is proper in the circumstances. The determination shall be made (a) by a majority vote of those Directors who in number constitute a quorum of the Directors and

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who also were not and are not parties to or threatened with any such action, suit, or proceeding or (b), if such a quorum is not obtainable (or even if obtainable) and a majority of disinterested Directors so directs, in a written opinion by independent legal counsel compensated by the Corporation, or (c) by the court in which the action, suit, or proceeding was brought.

**Section 5. Advances of Expenses.** Unless the action, suit, or proceeding is one in which the liability of a Director for voting for or assenting to a Statutorily Proscribed Act is the only liability asserted, expenses (including attorneys' fees) incurred by the Director or officer of the Corporation in defending any action, suit, or proceeding referred to in Section 2 or 3 of this Article V shall be paid by the Corporation, as they are incurred, in advance of the final disposition of the action, suit, or proceeding, upon receipt of an undertaking by or on behalf of the Director or officer in which he agrees both (a) to repay the amount if it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation and (b) to cooperate with the Corporation concerning the action, suit, or proceeding.

**Section 6. Purchase of Insurance.** The Corporation may purchase and maintain insurance or furnish similar protection, including, but not limited to, trust funds, letters of credit, and self-insurance, for or on behalf of any person who is or was a Director, officer, employee, agent, or volunteer of the Corporation, or is or was serving at the request of the Corporation as a director, trustee, officer, employee, agent, or volunteer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, employee benefit plan, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against liability under the provisions of this Article V or of the Ohio Nonprofit Corporation Law. Insurance may be purchased from or maintained with a person in which the Corporation has a financial interest.

**Section 7. Heirs; Non-Exclusivity.** The limitation of liability in damages and the indemnification provided by this Article V shall continue as to a person who has ceased to be a director, trustee, or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person and shall not be deemed exclusive of, and shall be in addition to, any other rights granted to a person seeking indemnification as a matter of law or under the Articles of Incorporation, this Code of Regulations, any agreement, or any insurance purchased by the Corporation, or pursuant to any vote of the disinterested Directors, or by reason of any action by the Board of Directors to take into account amendments to the Ohio Nonprofit Corporation Law that expand the authority of the Corporation to indemnify a director, trustee, or officer of the Corporation, or otherwise, both as to action in his official capacity and as to action in another capacity while holding an office or position.

**Section 8. No Mandatory Indemnification of Volunteers.** Section 1702.12(E)(5) of the Ohio Nonprofit Corporation Law shall not apply to the Corporation to the extent that it requires the indemnification of volunteers (as that term is defined in Section 1702.01 of the Ohio Nonprofit Corporation Law) other than Directors or officers of the Corporation or directors, trustees, or officers of another domestic or foreign nonprofit

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corporation or corporation for profit, or partnership, joint venture, employee benefit plan, trust, or other enterprise serving at the request of the Corporation.

**ARTICLE VI**  
**FISCAL YEAR**

The fiscal year of the Corporation shall end on the last day of December of each year or such other date as may be fixed from time to time by the Board of Directors.

**ARTICLE VII**  
**AMENDMENTS**

This Code of Regulations of the Corporation may be amended, or a new Code of Regulations may be adopted, by the sole Member.

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