LAKE OF THE WOODS ASSOCIATION, INC.
ADMINISTRATIVE RESOLUTION 2020-18
PROCEDURES RELATING TO VOTING BY TRANSMISSION OF PROXY BALLOTS
(AS DEFINED IN BYLAWS) BY ELECTRONIC MEANS (“ELECTRONIC VOTING
POLICY”)

PREAMBLE

Voting by transmission of proxy ballots (as defined in the Bylaws) by electronic means is provided by Lake of the Woods Association, Inc. (“LOWA”) for the convenience of the membership. The Board of Directors desires to see high member participation in Board elections and referendum decisions. As part of this effort, the Board amended the Bylaws to authorize the Board to adopt rules and regulations and procedures for voting by electronic means (including by computer, and more recently, by telephone).

RECITALS

WHEREAS, the Declaration of Restrictions Lake of the Woods, as amended/supplemented (the “Declaration”), the Articles of Amendment and Restatement of Articles of Incorporation of Lake of the Woods Association, Inc., as amended (the “Articles”) and the Bylaws of the Lake of the Woods Association, Inc., as amended (the “Bylaws”), collectively known as the Governing Documents, provide that the Lots are subject to the Governing Documents and the Rules and Regulations of Lake of the Woods Association, Inc. (the “Association”); and

WHEREAS, Article V, Section 1 of the Bylaws provides that the affairs of the Association shall be managed by the Board of Directors elected by the Members; and

WHEREAS, Article IV, Section 6 of the Bylaws directs the method of voting and permits the Board to adopt and amend rules, regulations, policies and procedures to authorize voting of the members by the transmission of proxy ballots by electronic means (including but not limited to by computer or by telephone); and

WHEREAS, Section 55.1-1832.A of the Virginia Property Owners’ Association Act (“POA Act”) provides that “Unless the declaration expressly provides otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using electronic means”; and

WHEREAS, Section 55.1-1832.D of the POA Act provides that “Voting on, consent to, and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic means, provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form”; and

WHEREAS, Section 55.1-1800 of the POA Act defines “electronic means” as “any form of communication, not directly involving the physical transmission of paper, that creates a record
that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section; and

WHEREAS, Section 13.1-848 of the Virginia Nonstock Corporation Act ("Nonstock Act") provides that the Board may accept a vote if the name signed on a vote, consent, waiver or proxy appointment corresponds with the name of a member; and

WHEREAS, Section 59.1-485 of the Virginia Uniform Electronic Transactions Act (the "UETA") governs electronic transactions within Virginia and provides that an electronic signature and an electronic transmission have the same legal effect as non-electronic signatures and transmissions; and

WHEREAS, the Board has determined it to be in the best interests of the Association to permit and regulate the use of electronic voting by transmission of proxy ballots (which shall be deemed throughout this Resolution as defined in the Bylaws) by electronic means.

NOW THEREFORE, it is hereby RESOLVED THAT the following procedures related to voting by transmission of proxy ballots by electronic means on matters submitted to the members are hereby adopted:

I. Definitions

A. Any term used in this resolution which is defined in section 59.1-480 of the UETA shall have the meaning set forth in the UETA. Certain definitions are reproduced here for ease of reference.

1. "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

2. "Electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

3. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

4. "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

5. "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires
the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

6. “Transaction” means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

II. Legal References Confirming Association Authority to Accept Votes by Transmission of Proxy Ballots (as defined in the Bylaws) by Electronic Means.

A. Section 55.1-1832.A. of the Virginia Property Owners’ Association Act (“POA Act”) provides that “Unless the declaration expressly provides otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using electronic means”; and

B. Section 55.1-1832.D. of the POA Act provides that “Voting on, consent to, and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic means, provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form”; and

C. Section 55.1-1800 of the POA Act defines “electronic means” as “any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section”; and

D. Section 13.1-848 of the Act provides that the Board may accept a vote if the name signed on a vote, consent, waiver or proxy appointment corresponds with the name of a member.

E. Section 59.1-485 of the UETA provides that an electronic signature and an electronic transmission have the same legal effect as non-electronic signatures and transmissions.

F. Article IV, Section 6 of the Bylaws permits voting on matters in which proxy ballots may be submitted or transmitted, and the form of such proxy ballots shall be determined by the Board. All electronic transmissions of proxy ballots in accordance with this Resolution shall also comply with Article IV, Section 6.A of the Bylaws.

G. The act of transmitting a proxy ballot is a business transaction between the Association and its members.

H. Section 59.1-483 of the UETA applies to electronic transactions where each party agrees to conduct such transactions by electronic means. This resolution forms such an agreement between Association members and the Board. As such, all electronic transmissions of proxy ballots must comply with both the POA Act, the Nonstock Act and the UETA.
III. Procedure for Voting by Transmission of Proxy Ballots (as defined in the Bylaws) by Electronic Means

A. Hiring of E-Voting Firm. The Board shall have the authority to select and contract with an electronic voting company which employs an electronic agent and information processing system to administer any matter to be voted on electronically in accordance herewith. In the event an electronic voting company is selected by the Board, the Association members utilizing such system shall do so in accordance with the procedures established by the selected electronic voting company, if any, as well as those set forth below.

B. In-House E-Voting. If the Board decides not to utilize the services of an electronic voting company on matters submitted to the members for a vote, the Board may accept member proxy ballots sent by electronic transmission when such transmission contains the requisite information that will allow an objective determination that the member in fact authorized the transmission. Such transmission may be by facsimile or electronic mail. It may also be made by sending information electronically (including but not limited to by computer or telephone) to an electronic agent or secure, reliable information processing system specifically authorized by the Board to accept such information.

C. Information to be Provided. Before a member may send their proxy ballot by electronic transmission, the member shall provide the Board or its designated electronic agent with the following information, as determined by the Board, in coordination with its designated electronic agent:

1. The type of electronic transmission or information processing system to be used (i.e., facsimile, electronic mail, web site, telephone, mobile phone, etc.).

2. For each medium specified, the member shall include:

   a. The electronic signature and date that they will apply to the proxy ballot.

   b. The designated proxy holder for the proxy ballot.

   c. The security procedure to be included in the electronic transmission.

3. Upon receipt of an electronic transmission, the Board or its designated electronic agent shall consider whether the electronic signature, date and proxy appointment/designation is:

   a. Unique to the signer,

   b. Capable of verification,

   c. Under the signer's sole control,
d. Linked to the record in such a manner that it can be determined if any data contained in the record was changed subsequent to the electronic signature being affixed to the record, and,

e. Created by a method appropriately reliable for the purpose for which the electronic signature was used and/or acceptable based on the standards of the industry.

f. The Board may consider any other relevant and probative evidence affecting the authenticity and/or validity of the electronic signature.

Collectively, these features form the basis upon which the Board may determine whether the member authorized the transmission. The Board may reject the electronic transmission if the above features are unclear, provided that the Board shall specify the information upon which it relied in determining the vote invalid.

D. Non-Electronic Voting. The Association shall provide a non-technological means of voting or submitting proxy ballots by Association members.

G. Records. The Association shall create and maintain a record of all electronic transmissions, to be retained, retrieved, and reviewed by the Association, pertaining to any vote of the Association in the same manner as such records are routinely kept for non-electronic transmissions of Association votes.

Effective: June 24, 2020

LAKE OF THE WOODS ASSOCIATION, INC.

By: Clifton D. Wilks, President

ATTEST:

I, as Secretary for Lake of the Woods Association, Inc., hereby attest that the foregoing Policy Resolution 2020-17 was adopted by the Board of Directors at a duly-held and noticed Board of Directors meeting held on the 24th day of June 2020.

Phillip Davis Brown, Secretary