

THE DELLS OF BITTERSWEET COMMUNITY ASSOCIATION, INC. GRIEVANCE RESOLUTION POLICY

In accordance with Article 10 of the Amended and Restated Bylaws of the Dells of Bittersweet Community Association, Inc., and IC 32-25.5-1 *et seq.*, as may be amended, recodified, or replaced, the Board of Directors for the Association adopts the following Grievance Resolution Policy. This Grievance Resolution Policy is part of the Association's governing documents as defined in IC 32-25.5-2-3, as may be amended, recodified, or replaced.

ARTICLE I. DEFINITIONS

Section 1.01. "Association" shall mean and refer to The Dells of Bittersweet Community Association, Inc., an Indiana not-for-profit corporation, its successors, and assigns, formed as the unified Association for all Sections of The Dells of Bittersweet Subdivision.

Section 1.02. "Board" shall mean the Board of Directors of The Dells of Bittersweet Community Association, Inc.

Section 1.03. "Bylaws" shall mean the Bylaws initially adopted by The Dells of Bittersweet Community Association, Inc. and all amendments, restatements, and additions.

Section 1.04. "Claim" shall mean any claim arising out of or relating to the interpretation, application, or enforcement of the Covenants or Bylaws, a claim relating to the rights or duties of the Association or Board, a claim relating to the maintenance of the Subdivision, or any other claim, grievance, or dispute among the Lot Owners in the Association. A Claim, as defined in this Section 1.04, shall not include any Exempt Claims as defined in Section 1.06.

Section 1.05. "Covenants" shall mean this Amended and Restated Dedication of Easements and Protective Covenants, Restrictions, and Limitations for The Dells of Bittersweet Section I Through Section IV.

Section 1.06. "Exempt Claim" shall refer to any of the following claims or actions:

(a) A claim by the Association for assessments or dues and any action by the Association to collect assessments or dues.

(b) Any action by any party to obtain a temporary restraining order or equivalent emergency equitable relief (1) to maintain the status quo and preserve the party's ability to enforce the Covenants and/or Bylaws, or (2) when an emergency condition exists that jeopardizes the health or safety of any of the residents within the Subdivision.

(c) A suit to which an applicable statute of limitations would expire within the notice period.

(d) A dispute that is subject to mediation, arbitration, or other alternate dispute resolution under applicable law, contract, warranty agreement, or other instrument.

(e) A claim that is substantively identical to a claim (1) that was previously addressed by the parties or (2) that was resolved by a judicial determination in favor of one (1) of the parties.

Section 1.07. “Legal Proceedings” shall mean an action maintained in a court or an administrative proceeding initiated under applicable law.

Section 1.08. “Lot” shall mean any type of Lot as has been or may be platted or any tract or tracts of land as conveyed originally or by subsequent Owners as set forth on the Plat.

Section 1.09. “Owner” shall mean and refer to the record owner of fee simple title to a Lot, whether one or more persons or entities, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.10. “Party” shall mean any of the following: (1) the Association, (2) any Owner, and (3) the Board.

Section 1.11. “Plat” shall collectively mean the originally recorded plats of The Dells of Bittersweet – Section I, recorded as Documents Number 85-25850 in Book 47, Page 19, The Dells of Bittersweet – Section II, recorded as Documents Number 85-36519 in Book 47, Pages 58-62, The Dells of Bittersweet – Section III, recorded as Documents Number 86-055782 in Book 48, Pages 146-150, and The Dells of Bittersweet – Section IV, recorded as Documents Number 87-46456 in Plat Cabinet A, Page 30, all in the Office of the Recorder of Allen County, Indiana. The plats for Sections I through IV may also be referred to collectively as “Dells of Bittersweet.” The term “Plat” is synonymous with, and shall be used interchangeably with, the term “Subdivision” as used in these Covenants.

Section 1.12. “Property” shall be used interchangeably with the term “Lot” and shall mean any type of Lot as has been or may be platted or any tract or tracts of land as conveyed originally or by subsequent Owners as set forth on the Plat.

Section 1.13. “Respondent” shall mean the party against whom a Claimant has a Claim.

Section 1.14. “Restrictions” shall mean and refer to the limitations imposed on the Lots and the Owner thereof by these Covenants.

Section 1.15. “Subdivision” shall be synonymous with the term “Plat” defined above.

ARTICLE II. GRIEVANCE RESOLUTION

Section 2.1. The Association and the Board favor Owners making informal attempts to resolve a Claim before the process in this Grievance Resolution Policy is utilized. As a result, if there is a Claim or dispute, the Board encourages the Owner to talk to Owner that he or she has a claim or dispute with to see if it can be resolved. **If not, then a formal complaint is to be sent to the Management Company instead of the Board.** Along these lines, if the Association or Board has a Claim or dispute with an Owner, the first step will be to have **the Management Company** talk to the Owner to see if the Claim or dispute can be resolved.

Section 2.2. If the parties cannot reach an informal resolution to a Claim or dispute, the following process shall apply:

Section 2.2.1. A Claimant shall provide notice of the Claim to the Respondent and to the Board if the Board is not the Respondent, stating plainly and concisely the following:

- (a) The nature of the Claim, including the date, time, location, persons involved, and the Respondent’s role in the Claim.
- (b) The basis of the Claim, including the provisions in the Covenants and/or Bylaws or other authority out of which the Claim arises.
- (c) A description of what the Claimant wants the Respondent to do or not to do to resolve the Claim.
- (d) A statement that the Respondent has the right to meet with the Claimant if the Respondent makes a written request for a meeting within ten (10) days of the date of the notice.
- (e) The name and address of the person from whom the Respondent must request a meeting.

The Claimant may, but is not required to, use the form that is attached to this Grievance Resolution Policy.

Section 2.2.2. If the Respondent requests a meeting within ten (10) days of the date of the notice:

(a) The Claimant and the Respondent shall meet in person to resolve the Claim through good faith negotiations at a time and place agreed to by the Claimant and the Respondent. If the Claim is between Owners, either party may ask that one (1) or more Board Directors be present to help facilitate the negotiations.

(b) During the meeting, the parties shall have full access to the Property that is the subject of the Claim. If the Respondent agrees to take corrective action, the Respondent and the Respondent's agent must have full access to the Property to take and complete corrective action.

Section 2.2.3. Either party may, not later than ten (10) days after an impasse is reached, request in writing to the other party that the other party submit the Claim to mediation or binding arbitration. The parties are considered to be at an impasse if:

- (a) The Respondent does not request a meeting within ten (10) days of receiving the notice under Section 2.2.1 or
- (b) The parties are unable to settle the Claim at a meeting held under Section 2.2.2.

The party making the request for mediation or arbitration shall be responsible for the costs associated with the mediator or arbitration.

Section 2.2.4. If an impasse is reached and neither party requests mediation or arbitration or mediation or arbitration does not result in a settlement of the Claim, the Claimant may begin legal proceedings.

ARTICLE III. LEGAL PROCEEDINGS

Section 3.1. Except for Exempt Claims, a Claimant may not initiate a legal proceeding seeking redress or resolution of a Claim until the Claimant has complied with the grievance procedures set out in Article II.

Section 3.2. Except as provided in Article IV and IC 32-25.5-5-14(d), as may be amended, recodified, or replaced, each party shall bear its own costs, including attorney's fees, relating to litigation over a Claim.

ARTICLE IV. SETTLEMENT OF CLAIMS

Section 4.1. The settlement of a Claim through negotiation, mediation, or arbitration must be documented in writing and signed by each party. If the Board is not one of the parties, a copy of the settlement agreement shall also be provided to the Board.

Section 4.2. If a party fails to abide by the settlement agreement under Section 4.1:

4.2.1. The other party may begin legal proceedings without having to go through the process in Article II again and

4.2.2. If the party who begins the legal proceedings under Section 3.2.1 prevails in the legal proceedings, the party is entitled to recover from the other party (1) court costs, (2) attorney's fees, and (3) all other reasonable costs incurred in enforcing the settlement agreement.

Section 4.3. A release or discharge of a Respondent from liability to the Claimant with respect to the Claim does not release or discharge the Respondent with respect to any other person who is not a party to the Claim.

IN WITNESS WHEREOF, the Secretary has executed the Dells of Bittersweet Community Association Grievance Resolution Policy as of this ____ day of _____, 2017.

THE DELLS OF BITTERSWEET COMMUNITY
ASSOCIATION, INC.

By: _____, Secretary

This instrument was prepared by: Brian C. Heck, Attorney at Law, Beckman, Lawson, LLP.

**Dells of Bittersweet
Claim Resolution Form**

(Date)

To:

(Name of Lot Owner or Owners)

(Address)

(City, State, and Zip Code)

Statement Regarding the Nature of the Claim or Dispute (including the date, time, location, and person's involved): _____

_____.

Grounds for the Claim (including reference to the relevant provisions in the Covenants or Bylaws): _____

_____.

Requested Resolution: _____

_____.

You have the right to meet with the person or person(s) bringing this Claim, provided that you request such a meeting in writing within ten (10) days from the date written above. If you would like a request a meeting, your written request should be delivered to the person or person(s) making the Claim or to one of the Secretaries for the Dells of Bittersweet Community Association, Inc. at:

Cathie Cicchiello
cathiecicchiello@msn.com
1119 Bitter Dells Court
Fort Wayne, Indiana 46814

Lara Schreck
lschreck@comcast.net
11026 Bittersweet Dells Lane
Fort Wayne, Indiana 46814

From:

(Signature)

(Name of Lot Owner or Owners)

(Address)

(City, State, and Zip Code)

CC: Board of Directors, Dells of Bittersweet Community Association, Inc.