

WEAN & MALCHOW, P.A.

ATTORNEYS AT LAW

PAUL LEONARD WEAN, JD *

HELENA GUTIERREZ MALCHOW, JD

JAMES E. OLSEN, JD
ERYN M. MCCONNELL, JD
ERIN A. ZEBELL, JD
CHRISTINE A. OWEIS, JD

646 EAST COLONIAL DRIVE
ORLANDO, FLORIDA 32803

(407) 999-7780
(800) 895-WEAN
FAX (407) 999-LAW 1
<http://www.wmlo.com>

SABRINA S. MILLER †
STACY F. ARCAND †
(† PARALEGAL)
(* ALSO MEMBER OF MA BAR)

October 7, 2009

SENT VIA EMAIL TO babdurrash@hotmail.com AND rick.ferrell@cae.com

Pickett Downs Units II & III
Homeowners Association, Inc.
Attn: Bilal Abdurrashid, President
1809 East Broadway Suite 337
Oviedo, FL 32765

RE: Road Swale Repair Project

Dear Bilal:

Per my conversation of today with Rick Ferrell, Chair of your Architectural Control Committee ("ACC"), please accept this letter as an explanation of the rights and responsibilities of the Association and the lot owners as relates to the upcoming project to repair the road drainage. I understand that you intend to distribute this letter to your members for their information, so accordingly no claim of attorney-client privilege is intended to attach to this letter. However, I also will refrain from discussing tactical and strategic matters in this letter and reserve same for other communications.

The recorded deed restrictions for your community are found in a document entitled, "Pickett Downs, Units II and III Covenants and Restrictions, Seminole County, Florida." Articles 10 and 11 of that document provide:

10. EASEMENTS. **Seventy (70) foot private ingress and egress easements and public utility easements, if any, shall be maintained equally between property owners of all property subject to these restrictions.** The roadways as shown on the plat are common private ingress and egress easements, the property owner of the respective lot adjoining said ingress and egress easement, owning to the center-line of the roadway. **The ingress and egress easements, as well as other easements shown on the plat, are for the private use of all property owners and the public utility serving the said lots and property.** Said easements may also be used by emergency vehicles such as fire, police and rescue units. **A ten (10) foot strip along the side and rear lot lines**

of all respective lots is hereby reserved the purpose of providing a respective lot or lots with utility service and/or drainage purposes. Upon request by the appropriate utility authority, the respective property owner or owners shall grant to said utility authority, the right to utilize said ten (10) foot strip for the sole purpose of providing utility service for lots situated in Pickett Downs, Units II and III. In addition, there exists a fifteen (15) foot bridle trail easement along the road frontage off of Ft. Christmas Road for the entire length of Units II and III. **Said bridle easement shall be maintained by each respective lot owner abutting said bridle trail.** Additionally, there exists drainage easements and drainage retention areas as designated on the plats of Units II and III. Property owners of Lot 86 through 89, 153 through 157, 169 and 170 through 178 shall be required at the time of home construction to place a one (1) foot deep swale along the rear boundary of the lot or at the limit of the improved area of the Lot. **Said drainage easements shall be maintained by the respective lot owner and will be subject to maintenance and assessment for the same by the Architectural Control Committee in the event said easements are not maintained properly.**

The owners of the property of Pickett Downs, Units II and III are granted an easement to Lake Pickett, said easement is a hundred (100) foot wide, running south from Ft. Christmas Road to the north shore of Lake Pickett. Said easement is for the ingress and egress to the lake and respective lot owners of Pickett Downs, Units II and III have no further rights conferred upon them other than to utilize the easement for ingress and egress, **The maintenance of the easement shall be the responsibility of the Pickett Downs Homeowner's Association** and any subsidiary or designee thereof. All assessments and the maintenance of said easements shall be made by the Homeowner's Association in accordance with the then, existing Homeowner's Association by-laws. All control, policy and procedure affecting said easement to Lake Pickett shall be at the discretion of Architectural Control Committee as set forth in paragraph 11 herein.

11. MAINTENANCE OF EASEMENTS. **It shall be the responsibility of the respective property owners to share in the maintenance, construction, upkeep, and reconstruction of all private easements on a pro-rata basis. In particular the respective property owner is responsible for the road easements, drainage easements, bridle trail easements, and other private easements set forth herein and on the plat of Pickett Downs, Units II and III. The need for such**

maintenance of said private easements shall be the responsibility of the architectural Control Committee, and upon notice by said Committee that there exists a need for maintenance, construction, upkeep, and/or reconstruction, each respective lot owner will be responsible for the payment of said maintenance, construction, upkeep, and/or reconstruction. It is understood that no government entity is responsible for the construction, reconstruction, or maintenance of any of the said private easements referred to in this paragraph or shown on the plat of Pickett Downs, Units II and III. **The respective property owners will be sent a statement for their pro-rata share of the maintenance cost on a regular basis after such maintenance or reconstruction has taken place. The Architectural Control Committee shall have the responsibility and authority to collect costs for said maintenance or reconstruction and the failure of a property owner to pay the assessment by the Architectural Control Committee shall subject the property owners property to a lien for the pro-rata share of the maintenance, together with any fees and costs incurred in the enforcing of said lien and collecting the maintenance costs.** In the event, through an act of condemnation, or upon approval of fifty-one percent (51%) of the property owners of Pickett Downs, Units II and III, said ingress and egress easements are taken over by a government entity or deemed to be the responsibility of a government entity for maintenance purposes, the respective lot owners herein agree to an assessment of up to one hundred percent (100%) of the total cost of any right of way acquisition, engineering and construction, maintenance, etc. on a pro-rata basis as set by the government entity. In the event there is a paving or maintenance by a government entity each respective lot owner herein agrees to an assessment for the cost of said construction on an equal basis. There shall be no governmental condemnation of ingress and egress easements in Pickett Downs Units II and III until such condemnation is approved by at least seventy- five percent (75%) of the [sic] the then existing property owners of Pickett Downs, Units II and III.

It is the intent of the Developer to form a Homeowner's Association responsible for the upkeep and maintenance of the entire project known as Pickett Downs. A Homeowner's Association may be formed for each unit of Pickett Downs at the discretion of the Developer or fifty-one percent (51%) of the lot owners in a respective unit, a separate Homeowners Association may be formed to govern that particular unit. In any case it is specifically understood that the policy regarding the upkeep and maintenance of the easement to Lake Pickett shall be in the sole discretion of the Architectural Control Committee and said committee shall

have the right and authority to dictate the dues and/or assessments to each unit of Pickett Downs or the respective homeowner's association governing the respective unit. The committee shall have the authority to make assessments for the maintenance of said easement or improvements in accordance with the recorded articles of incorporation of the Pickett Downs Homeowner's Association, Inc. found in the Official Records Book 1508, page 1034, Seminole County, Florida.

It is the intent of these covenants and restrictions that the upkeep and maintenance be shared equally by the respective units with the policy for the same being made by a designee of the Architectural Control Committee. All assessments and fees accordingly shall be set by the Architectural Control Committee. (Emphasis supplied)

The foregoing language can be a bit confusing to digest and the various provisions could certainly have been re-ordered so as to make the entire document clearer. In addition, it is very helpful to examine the recorded plat of the community to get a better understanding of the drainage easements depicted on that document.

After completing this process, reviewing the plat and engaging in a full, complete and accurate reading of the foregoing language, I applied so-called "rules of construction," to Articles 10 and 11. These are rules found in the law that assist in determining the intent of written documents. My work yielded the following specific points to be drawn from these provisions:

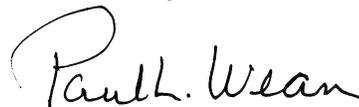
1. The individual lot owners are primarily responsible for the daily maintenance of the miscellaneous drainage easements shown on the community plat, and
2. The individual owners of lots 86 through 89, 153 through 157, 169 and 170 through 178 are primarily responsible for installing and maintaining a one foot drainage swale along the rear of their lots, and
3. The individual lot owners are primarily responsible for daily maintenance and upkeep of the road easements, drainage easements and bridle trail easements, and
4. The Association has the duty to maintain the easement to Lake Picket and
5. The Association's ACC has the duty to determine when and if more systemic repairs are needed to any of the easement areas. The difference in scope of such work is illustrated by the use of the phrase "maintenance, construction, upkeep, and reconstruction" as opposed to just "maintenance." When a

determination is made that such additional work is needed, the ACC is to assess the lot owners on a pro rata basis for this work; the assessment is to be paid by the lot owners; and the ACC is to arrange to have the work performed.

It is my understanding that some lot owners recently have indicated their intention to perform roadway work on their own. Respectfully, once the ACC determines that more substantial repair work is needed such statements are misplaced and result from a misunderstanding of the foregoing language. The determination of the need for more comprehensive repairs is left to the sound discretion of the Association's representatives, not to the individual lot owners. To conclude otherwise would be to allow any lot owner to effectively veto the Association's decisions. Since the Association is made responsible for the upkeep and maintenance of the entire project, and since is acting only after consulting with appropriate experts, its actions are based on sound reasoning and good engineering principals, and are not merely arbitrary, seat-of-the pants decisions.

I hope and trust that this letter clarifies the rights and responsibilities of the lot owners and the Association under your governing documents. If your members have any further questions, they should put them in writing and direct them to the members of board of directors, who can then enlist our further involvement as needed.

Sincerely,

A handwritten signature in black ink that reads "Paul L. Wean". The signature is written in a cursive style with a large, looping initial "P".

PAUL L. WEAN,
For the Firm

PLW/fms