

**Lee County Board Of County Commissioners**  
**Agenda Item Summary**

**Blue Sheet No. 20050854**

**1. ACTION REQUESTED/PURPOSE:**

Approve and execute a utility easement necessary for the Briarcrest Sewer MSBU for Sanitary Sewer Connection and WWTP Abatement; authorize the Division of County Lands to handle and accept all documentation necessary; authorize payment of recording fees.

**2. WHAT ACTION ACCOMPLISHES:**

The Board must approve conveying an easement across County-owned property which provides for the installation of sewer line.

**3. MANAGEMENT RECOMMENDATION:** Management recommends Board approve the Action Requested

**4. Departmental Category:**

*C6U*

**5. Meeting Date:** *06-28-2005*

**6. Agenda:**

- Consent
- Administrative
- Appeals
- Public
- Walk-On

**7. Requirement/Purpose: (specify)**

- Statute 125
- Ordinance
- Admin. Code
- Other

**8. Request Initiated:**

**Commissioner** \_\_\_\_\_  
**Department** Independent  
**Division** County Lands *KK*  
**By:** Karen L.W. Forsyth, Director

**9. Background:**

The Board of County Commissioners created the Briarcrest Sewer MSBU on February 23, 2005, when it adopted Resolution Number 05-02-23. The principal purpose of the project is to construct the connection of an existing collection system to the Lee County Utilities force main line in that area, and all related work to abate the current wastewater treatment plant. Resolution 05-02-24 declares the County will be reimbursed with the proceeds of tax-exempt debt to be incurred by the County.

The original documents are in the files of County Lands and will be recorded upon approval by the Board of County Commissioners. Consent from 2/3 of the Briarcrest Homeowners Association members will be attached to the Easement Agreement.

Recording fees are estimated to be \$500.

Funds are available in Account Number:80729110400.506110

Staff Recommends Board approve the Requested

Motion. ATTACHMENTS: Easement agreement, title report, affidavit, location map

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i>		<i>[Signature]</i>		<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY  
 COUNTY ADMIN  
 6-15-05  
 11:15  
 COUNTY ADMIN  
 FORWARDED TO:  
*[Signature]*  
 10:00m

Rec. by CoAtty  
 Date: 6/14/05  
 Time: 8:30  
 Forwarded to:  
 [Signature]

This Instrument Prepared by:  
COUNTY LANDS DIVISION  
P.O. Box 398  
Fort Myers, FL 33902-0398  
Parcel: #100  
Project: Briarcrest Sewer MSBU  
STRAP No.:31-45-25-02-0000B.00CE, &C.00CE, &E.00CE

THIS SPACE FOR RECORDING

**GRANT OF PERPETUAL PUBLIC UTILITY EASEMENT**

This INDENTURE, made and entered into this 10<sup>th</sup> day of JUNE, 2005 between BRIARCREST HOMEOWNER'S ASSOCIATION, INC., Owner, whose address is C/O HAYDEN & ASSOCIATES, 8359 Beacon Blvd., #213, Fort Myers, FL 33907, hereinafter "Grantor" and LEE COUNTY, a political subdivision of the State of Florida, hereinafter "Grantee":

**WITNESSETH**

1. For and in consideration of the sum of One Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor hereby grants and transfers to the Grantee, its successors and assigns, the use of a perpetual public utility easement situated in Lee County, Florida, and located and described as set forth in Exhibit "A" attached.
2. Grantee, its successors, appointees, heirs and assigns, are hereby granted the right, privilege, and authority to construct, replace, renew, extend and maintain public utility facilities, to include, but not be limited to: electrical power, telephone, water systems, sewer transmission and collection systems with all appurtenances thereto, to be located on, under, above, across, through and within the easement which is located on the property described (Exhibit "A"), with the additional right, privilege and authority to remove, replace, repair and enlarge said facilities within said easement, and to trim and remove roots, trees, shrubs, bushes and plants and remove fences or any other improvements which may affect the operation of the public utility facilities or Grantee's use of the easement.
3. The public utility easement will not be limited to any particular diameter size or type and/or number of connections to other similar facilities for providing public utility service to this and any adjacent properties. The total area of this public utility easement is to be reserved for the public utility lines, poles, mains, or other utility facilities and for any landscaping (excluding trees), walkways, roadways, drainage ways, or similar type uses. Houses, fences, buildings, carports, garages, storage sheds or any other structure will not be constructed upon or placed within this easement at any time, present or future, by Grantor, or it's heirs, successors or assigns.
4. Title to any public utility facilities constructed hereunder will remain in the Grantee, Grantee's successors, appointees and/or assigns, or the public utility providing the service.
5. Subject to any existing easement for public highways or roads, railroads, laterals, ditches, pipelines and electrical transmission or distribution lines and telephone and cable television lines covering the land herein described, Grantors covenant that they are lawfully seized and possessed of the described real property (Exhibit "A"), have good and lawful right and power to convey it, and that the property is free and clear of all liens and encumbrances, except as recorded in the Public Records, and accordingly, Grantors will forever warrant and defend the title and terms to this said easement and the quiet possession thereof against all claims and demands of all other entities.

ALL NECESSARY DOCUMENTS RETAINED IN  
COUNTY LANDS DIVISION FOR HANDLING  
AND RECORDING PURPOSES

6. Grantee will have a reasonable right of access across Grantor's property for the purposes of reaching the described easement (Exhibit "A") on either paved or unpaved surfaces. Any damage to Grantor's property or permitted improvements thereon as the result of such access to the described easement or the construction, maintenance, or repairs located within the above-described easement will be restored by the County or the particular utility providing service, to the condition in which it existed prior to the damage.

7. THIS AGREEMENT will be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, BRIARCREST HOMEOWNERS ASSOCIATION, INC., OWNER, has caused this document to be signed on the date first above written.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF TWO WITNESSES:

[Signature]  
1st Witness Signature

Kenneth W. Hayden  
Printed Name of 1st Witness

[Signature]  
2nd Witness Signature


ELEANOR J. NEAL  
Printed Name of 2nd Witness

BY: [Signature] 6/10/05  
Mike Ortiz, President (Date)

STATE OF FL

COUNTY OF LEE

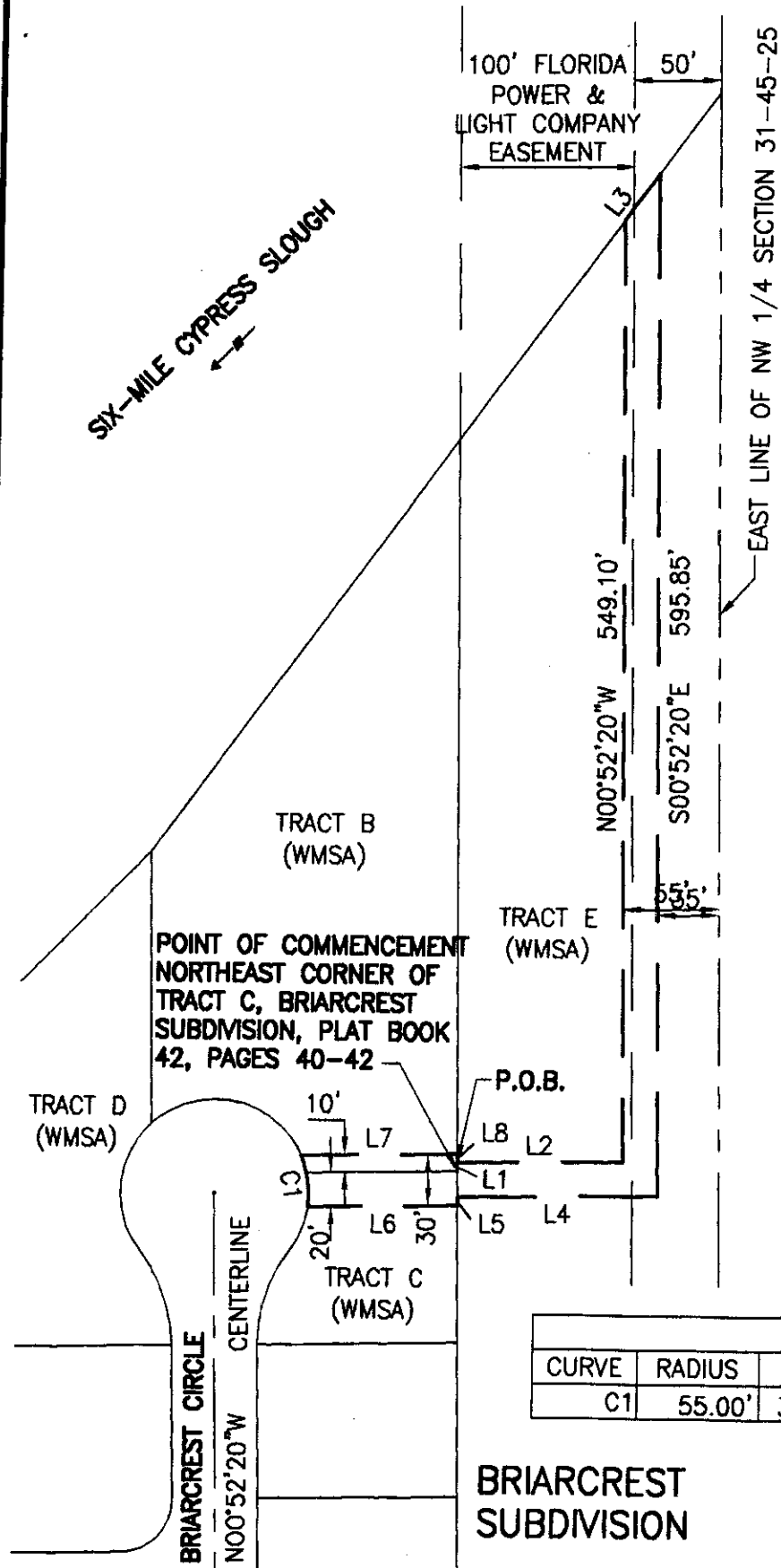
The foregoing instrument was acknowledged before me this 10 day of JUNE, 2005, by Mike Ortiz, President, of the Briarcrest Homeowner's Association, Inc. on behalf of the Briarcrest Homeowner's Association, Inc. He is personally known to me or has produced \_\_\_\_\_ as identification.

(type of identification)  
[Signature]  
Signature of Notary Public ELEANOR J. NEAL  
MY COMMISSION # DD 338319  
EXPIRES: July 15, 2008  
  
(Name typed, printed or stamped)



**Exhibit "A"**

Page   2   of   2  



- NOTES:
1. THIS IS NOT A SURVEY.
  2. THIS DOCUMENT IS NOT VALID WITHOUT THE SIGNERS EMBOSSED SEAL.
  3. BEARINGS ARE BASED ON THE CENTERLINE OF BRIARCREST CIRCLE BEING N00°52'20"W AS SHOWN ON THE SUBDIVISION PLAT RECORDED IN PLAT BOOK 42, PAGES 40-42.
  4. R/W INDICATES RIGHT OF WAY.
  5. P.O.B. INDICATES POINT OF BEGINNING.
  6. WMSA INDICATES WATER MANAGEMENT STORAGE AREA.

LINE TABLE		
LINE	LENGTH	BEARING
L1	5.00'	N00°52'20"W
L2	95.00'	N88°55'40"E
L3	33.46'	N35°49'56"E
L4	115.00'	S88°55'40"W
L5	5.00'	S00°52'20"E
L6	86.78'	S88°55'40"W
L7	90.71'	N88°55'40"E
L8	5.00'	S00°52'20"E

CURVE TABLE					
CURVE	RADIUS	DELTA	ARC	BEARING	CHORD
C1	55.00'	31°54'56"	30.64'	N08°19'46"W	30.24'

*Ronald Kerfoot* 6/10/05

RONALD KERFOOT  
PROFESSIONAL LAND SURVEYOR #2994

REVISED 6/10/05 FOR PLAT BOOK & PAGES REFERENCE.

**JRI Engineering, Inc.**  
 Planning Engineering Surveying Aerial Photography & Photogrammetry Services  
 2328 Hancock Bridge Parkway, Suite 114, Cape Coral, Florida 33900  
 Phone: 239.458.5544 Fax: 239.458.2233 www.jriengineeringinc.com  
 Surveying Business Certificate of Authorization No. 6673

**PROPOSED EASEMENT SKETCH**  
**LEE COUNTY MUNICIPAL SERVICE BENEFIT UNIT**  
**BRIARCREST SANITARY SEWER PROJECT**  
 SCALE: 1"=100' DESIGNED BY: RK DATE: 4-12-05 SHEET No. 1 OF 2

DESCRIPTION:

AN EASEMENT LYING IN THE BRIARCREST SUBDMISION AS RECORDED IN PLAT BOOK 42, PAGES 40 THROUGH 42, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, LOCATED IN SECTION 31, TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF TRACT C OF SAID BRIARCREST SUBDMISION; THENCE N00°52'20"W ALONG THE WEST LINE OF TRACT E, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING; THENCE N88°55'40"E, A DISTANCE OF 95.00 FEET; THENCE N00°52'20"W ALONG A LINE 55.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 31, A DISTANCE OF 549.10 FEET; THENCE N35°49'56"E ALONG THE NORTH LINE OF TRACT E, A DISTANCE OF 33.46 FEET; THENCE S00°52'20"E ALONG A LINE 35.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 31, A DISTANCE OF 595.85 FEET; THENCE S88°55'40"W, A DISTANCE OF 115.00 FEET; THENCE S00°52'20"E ALONG THE WEST LINE OF TRACT E, A DISTANCE OF 5.00 FEET; THENCE S88°55'40"W ALONG A LINE 20.00 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF TRACT C, A DISTANCE OF 86.78 FEET TO THE POINT ON A CURVE; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING THE FOLLOWING ELEMENTS: A RADIUS OF 55.00 FEET, A CENTRAL ANGLE OF 31°54'56", A CHORD BEARING AND DISTANCE OF N08°19'46"W AND 30.24 FEET, FOR A DISTANCE OF 30.64 FEET; THENCE N88°55'40"E ALONG A LINE 10 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF TRACT C, A DISTANCE OF 90.71 FEET; THENCE S00°52'20"E ALONG THE WEST LINE OF TRACT E, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD.

EASEMENT CONTAINING 0.37 ACRES, MORE OR LESS.

NOTES:

1. THIS IS NOT A SURVEY.
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3. BEARINGS ARE BASED ON THE CENTERLINE OF BRIARCREST CIRCLE BEING N00°52'20"W AS SHOWN ON THE SUBDIVISION PLAT RECORDED IN PLAT BOOK 42, PAGES 40-42.
4. R/W INDICATES RIGHT OF WAY.
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*Ronald Kerfoot* 6/10/05

RONALD KERFOOT  
PROFESSIONAL LAND SURVEYOR #2994

REVISED 6/10/05 FOR PLAT BOOK & PAGES REFERENCE.

**JRI Engineering, Inc.**

Planning Engineering Surveying Aerial Photography & Photogrammetry Services

2328 Hancock Bridge Parkway, Suite 114, Cape Coral, Florida 33990  
Phone: 239.458.5544 Fax: 239.458.2233 www.jriengineeringinc.com  
Surveying Business Certificate of Authorization No. 6673

PROPOSED EASEMENT DESCRIPTION

LEE COUNTY MUNICIPAL SERVICE BENEFIT UNIT  
BRIARCREST SANITARY SEWER PROJECT

SCALE: N.T.S. | DESIGNED BY: RK | DATE: 4-12-05 | SHEET No. 2 OF 2

**AFFIDAVIT**

I, Mike Ortiz, as President of Briarcrest Homeowner's Association, Inc., hereby certify that pursuant to the Declaration of Covenants, Conditions, and Restrictions for Briarcrest, Article 4.1(b), recorded in Official Record Book 2054, Page 4353, the Articles of Incorporation, Article 2 (e), recorded in Official Record Book 2054, Page 4374 and the By Laws, Article 8, Section 8 (a) recorded in Official Book 2054, Page 4382, the owners with in Briarcrest have authorized this easement transfer to LEE COUNTY, A Political Subdivision of the State of Florida. The Association is in compliance and obtained consent of at least 2/3rds members.

Attached: Copy of MSBU Petitions attached hereto and made a part thereof.

Date: 6-10-05

Briarcrest Homeowner's Association, Inc.

[Signature]  
Witness

[Signature]  
Mike Ortiz, President

Kenneth W. Hayden  
Printed Name

[Signature]  
Witness

ELEANOR J. NEAL  
Printed Name

STATE: FL  
COUNTY: LEE

The foregoing was acknowledged before me this 10<sup>TH</sup> day of JUNE, 2005, by Mike Ortiz, President, of Briarcrest Homeowner's Association Inc., on behalf of Briarcrest Homeowner's Association, Inc. (He is personally known to me) or who has produced \_\_\_\_\_ as identification.  
(type of identification)

[Signature]  
Signature of Notary

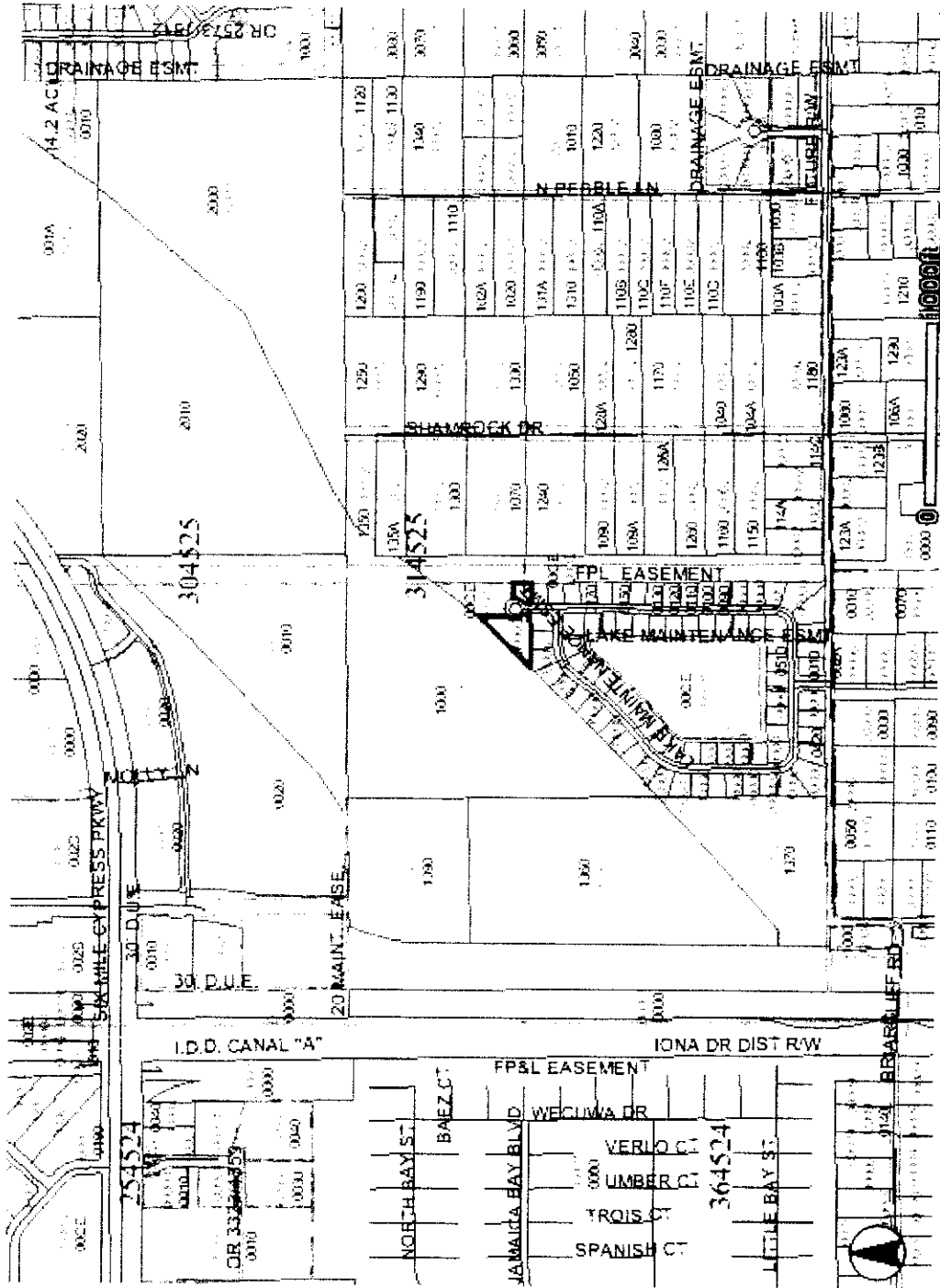
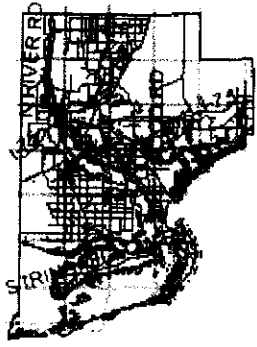
ELEANOR J. NEAL  
(Name typed, printed or stamped)  
(Title or Rank)  
(Serial Number, if any)



ELEANOR J. NEAL  
MY COMMISSION # DD 338319  
EXPIRES: July 15, 2008  
Bonded Thru Budget Notary Services

COPIES OF DOCUMENTS REMAINED IN  
NOTARY AND NOT LEGAL FOR HANDLING  
BY ANY OTHER AGENCY.

Briarcrest Sewer MSBU



## Division of County Lands

## Ownership and Easement Search

Search No. 31-45-25-02-0000B.00CE

Date: March 22, 2005

Parcel:

Project: Briarcrest Circle Sewer MSBU

To: Kathryn Keene  
Property Acquisition Agent

From: Kenneth Pitt   
Real Estate Title Examiner

STRAP: 31-45-25-02-0000B.00CE

Effective Date: <sup>May 23, 2005</sup>~~February 15, 2005~~, at 5:00 p.m. KK

**Subject Property:** Tract B (Sewage Treatment Plant) on the plat of Briarcrest, recorded in Plat Book 42 Pages 40-42, Public Records of Lee County, Florida. .

Title to the subject property is vested in the following:

**Briarcrest Homeowners Association, Inc., (a Florida not for profit corporation)**

By that certain instrument dated November 8, 2002, recorded November 13, 2002, in Official Record Book 3773 Page 2317, Public Records of Lee County, Florida.

**Easements:**

1): Subject to a Declaration of Covenants, Conditions and Restrictions for Briarcrest, recorded in Official Record Book 2054 Page 4353, which was amended by Official Record Book 2056 Page 953 and Official Record Book 3773 Page 2324, and whose rights were assigned by an Assignment of Declarant's Rights and Interest Under Declaration, recorded in Official Record Book 3704 Page 1105 and a Limited Assignment of Declarant's Rights, recorded in Official Record Book 3773 Page 2327, Public Records of Lee County, Florida.

2): All Rights of Way, Drainage and Utility Easements were dedicated to the perpetual use of the public on the plat of Briarcrest, recorded in Plat Book 42 Pages 40-42, Public Records of Lee County, Florida.

Note 1): Subject property is not encumbered by a mortgage.

Note 2): Oil, Gas and Mineral Rights are not addressed by this search.

Note 3): Subject to a Notice of Development Order Approval, recorded in Official Record Book 1910 Page 1766, Public Records of Lee County, Florida.

Note 4): Subject to a Judgment in the sum of \$10,219.35 vs. F.A.R. Development, Inc., recorded in Official Record Book 2250 Page 1329, Public Records of Lee County, Florida.



## Division of County Lands

### Ownership and Easement Search

Search No. 31-45-25-02-0000B.00CE

Date: March 22, 2005

Parcel:

Project: Briarcrest Circle Sewer MSBU

**Tax Status: Zero Tax.**

*(The end user of this report is responsible for verifying tax and/or assessment information.)*

**The Division of County Lands has made a diligent search of the Public Record. However, this report contains no guarantees nor warranty as to its accuracy.**