

## **MINUTES OF THE MARTIN BOARD OF MAYOR AND ALDERMEN**

**February 14, 2005 5:15 PM City Hall Chambers**

BE IT REMEMBERED the Regular Meeting of the Board of Mayor and Aldermen for the City of Martin, Tennessee, was held Monday, February 14, 2005, at 5:15 pm in the City Hall Chambers, when the following was held to wit:

MEMBERS PRESENT: HONORABLE RANDY BRUNDIGE, MAYOR  
HONORABLE DANNY NANNEY, ALDERMAN WARD I  
HONORABLE DAVID BELOTE, ALDERMAN WARD II  
HONORABLE JOHNNY TUCK, ALDERMAN WARD II  
HONORABLE NATALIE BOYD, ALDERMAN WARD III  
HONORABLE RANDY EDWARDS, ALDERMAN WARD III  
MEMBERS ABSENT: HONORABLE BILL HARRISON, ALDERMEN WARD I

Also present: City Recorder Chris Mathis and several department heads.

### **CALL TO ORDER AND INVOCATION**

Mayor Brundige called the February 14, 2005, City of Martin Board of Mayor and Aldermen meeting to order and gave the invocation.

### **PLEDGE OF ALLEGIANCE**

Mayor Brundige lead the group in the Pledge of Allegiance to the flag.

### **APPROVAL OF MINUTES January 10, 2005**

Alderswoman Boyd made the motion to approve the minutes of the January 10, 2005 meeting as written, seconded by Alderman Tuck.

VOTE: UNANIMOUS VOICE VOTE OF APPROVAL

### **DEPARTMENT HEAD REPORTS**

**Fire Department:** Chief Oran True stated I have three things to report. First we have completed our hiring process and have three persons selected. The three individuals will come before you all at the March meeting to be sworn in. Second, eighteen firefighters plus myself have spent the last month renovating the kitchen in fire station one. I would invite you all to come by and visit us. And third, in regard to response reports we are running 25% ahead of last year.

**SECOND AND FINAL READING AND PUBLIC HEARING OF ORDINANCE O2005-01: AN ORDINANCE TO AMEND THE MUNICIPAL ZONING ORDINANCE AND MAP FOR MARTIN, TENNESSEE, BY REZONING THE REMAINDER LARGE TRACT ON WALTERS STREET AND ELLIS STREET FROM R-1 (LOW DENSITY RESIDENTIAL) TO R-3 (HIGH DENSITY RESIDENTIAL). This is a recommendation from the Planning Commission. Published in the Weakley County Press on January 25, 2005.**

Mayor Brundige introduced and presented for consideration on the second and final reading Ordinance O2005-01: An Ordinance to amend the Municipal Zoning Ordinance and Map for Martin, Tennessee, by rezoning the remainder large tract on Walters Street and Ellis Street from R-1 (Low Density Residential) to R-3 (High Density Residential). This is a recommendation from the Planning Commission. This is the public hearing and was published in the Weakley County Press, January 25, 2005.

City Recorder Mathis read Ordinance O2005-01. A copy follows:

ORDINANCE 02005-01

AN ORDINANCE TO AMEND THE MUNICIPAL ZONING ORDINANCE AND MAP FOR MARTIN, TENNESSEE BY REZONING THE REMAINDER LARGE TRACT ON WALTERS STREET AND ELLIS STREET FROM R-1 (LOW DENSITY RESIDENTIAL) TO R-3 (HIGH DENSITY RESIDENTIAL).

WHEREAS, pursuant to Tennessee Code Annotated, Section 13-7-201 through 13-7-211, the City of Martin has adopted a Municipal Zoning Ordinance; and

WHEREAS, in accordance with Tennessee Code Annotated, Sections 13-7-203 and 13-7-204, the Martin Municipal-Regional Planning Commission has recommended the following amendment to the Municipal Zoning Ordinance and Municipal Zoning Map relative to the rezoning of territory; and

WHEREAS, the Martin Board of Mayor and Aldermen has deemed such a rezoning of this territory to be necessary for the welfare of the residents and property owners thereof this City as a whole; and

WHEREAS, the Martin Board of Mayor and Aldermen has held a public hearing pursuant to Tennessee Code Annotated, Section 13-7-203 for the purpose of receiving public comment.

NOW, THEREFORE, BE IT ORDAINED BY THE MARTIN BOARD OF MAYOR AND ALDERMEN:

Section 1. That the Municipal Zoning Map and Zoning Ordinance for Martin, Tennessee be amended by rezoning the remainder of the following tract from R-1 (Low Density Residential) to R-3 (High Density Residential):

Weakley County Tax Map 72H, Group D, Parcel 01100

Section 2. BE IT FURTHER ORDAINED that this Ordinance shall become effective immediately upon its passage after second and final reading, THE PUBLIC WELFARE REQUIRING IT.

\_\_\_\_\_  
Date Passed First Reading

\_\_\_\_\_  
Date Passed Second Reading

\_\_\_\_\_  
Date of Public Hearing

ATTESTED:

SIGNED:

\_\_\_\_\_  
Chris Mathis, City Recorder

\_\_\_\_\_  
Randy Brundige, Mayor

**Public Hearing:** Mayor Brundige opened the public hearing for input concerning Ordinance O2005-01. No one spoke.

Alderman Nanney made the motion to approve on the second and final reading Ordinance O2005-01: An Ordinance to amend the Municipal Zoning Ordinance and Map for Martin, Tennessee, by rezoning the remainder large tract on Walters Street and Ellis Street from R-1 (Low Density Residential) to R-3 (High Density Residential), seconded by Alderman Belote.

VOTE:	FOR:	HONORABLE NANNEY HONORABLE BELOTE HONORABLE TUCK HONORABLE BOYD HONORABLE EDWARDS
	AGAINST:	NONE
	ABSENT:	HONORABLE HARRISON

Mayor Brundige declared Ordinance O2005-01.

**SECOND AND FINAL READING AND PUBLIC HEARING OF ORDINANCE O2005-02: AN ORDINANCE OF THE CITY OF MARTIN, TENNESSEE, ESTABLISHING A MAXIMUM AMOUNT FOR MUNICIPAL PURCHASES WITHOUT PUBLIC ADVERTISEMENT AND COMPETITIVE BIDDING. This is the public hearing. Published in the Weakley County Press on 01/25/2005.**

Mayor Brundige introduced and presented for consideration on the second and final reading Ordinance O2005-02: An ordinance of the City of Martin, Tennessee, establishing a maximum amount for municipal purchases without public advertisement and competitive bidding. The maximum amount will be \$10,000. This is the public hearing and was published in the Weakley County Press on January 25, 2005.

City Recorder Mathis read Ordinance O2005-02. A copy follows:

ORDINANCE O2005-02

AN ORDINANCE OF THE CITY OF MARTIN, TENNESSEE, ESTABLISHING  
A MAXIMUM AMOUNT FOR MUNICIPAL PURCHASES WITHOUT PUBLIC  
ADVERTISEMENT AND COMPETITIVE BIDDING

WHEREAS, the City of Martin, Tennessee, is subject to the provisions of the “Municipal Purchasing Law of 1983”; and

WHEREAS, this law has been amended by Chapter Number 270, Public Acts of 1991, permitting municipalities to increase the dollar amount of purchases requiring public advertisement and competitive bidding; and

WHEREAS, the Board of Mayor and Aldermen has determined that it is in the best interest of the City of Martin to increase said amount.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF MARTIN, TENNESSEE, AS FOLLOWS:

Section 1. Public advertisement and competitive bidding shall be required for the purchase of all goods and services exceeding an amount of ten thousand dollars (\$10,000) except for those purchases specifically exempted from advertisement and bidding by the Municipal Purchasing Act of 1983.

Section 2. Should any section, paragraph, sentence, clause, or phase of this ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or Federal law or regulation, such decision or legislation shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. All ordinances and parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 4. BE IT THEREFORE ORDAINED that this ordinance shall become effective immediately upon passage after second and final reading, THE PUBLIC WELFARE REQUIRING IT.

Dated passed first reading \_\_\_\_\_

Date passed second reading \_\_\_\_\_

Date of public hearing \_\_\_\_\_

ATTESTED:

SIGNED:

\_\_\_\_\_  
Chris Mathis, City Recorder

\_\_\_\_\_  
Randy Brundige, Mayor

**Public Hearing:** Mayor Brundige opened the public hearing for input concerning Ordinance O2005-02. No one spoke.

Alderman Tuck made the motion to approve on the second and final reading Ordinance O2005-02: An ordinance of the City of Martin, Tennessee, establishing a maximum amount for municipal purchases without public advertisement and competitive bidding, seconded by Alderman Nanney.

VOTE:	FOR:	HONORABLE NANNEY HONORABLE BELOTE HONORABLE TUCK HONORABLE BOYD HONORABLE EDWARDS
	AGAINST:	NONE
	ABSENT:	HONORABLE HARRISON

Mayor Brundige declared Ordinance O2005-02.

**SECOND AND FINAL READING AND PUBLIC HEARING OF ORDINANCE O2005-03: AN ORDINANCE TO AMEND THE CITY OF MARTIN STORMWATER ORDINANCE (O2004-15) REGARDING WAIVERS. This is the public hearing. Published in the Weakley County Press on 01/25/2005.**

Mayor Brundige introduced and presented for consideration on the second and final reading Ordinance O2005-03: An ordinance to amend the City of Martin Stormwater Ordinance (O2004-15) regarding waivers. This is the public hearing and was published in the Weakley County Press on January 25, 2005.

City Recorder Mathis read Ordinance O2005-03. A copy follows:

ORDINANCE O2005-03

AN ORDINANCE TO AMEND THE CITY OF MARTIN STORMWATER ORDINANCE (O2004-15) REGARDING WAIVERS.

WHEREAS, pursuant to *Tennessee Code Annotated*, Section 68-221-1105, the City of Martin has adopted a Stormwater Ordinance; and

WHEREAS, the City of Martin Mayor and Board of Aldermen has deemed this amendment to be necessary for the welfare of the residents and property owners thereof this City as a whole; and

WHEREAS, the Martin Board of Mayor and Aldermen has held a public hearing for the purpose of receiving public comment.



**NEW BUSINESS:**

**APPROVAL TO ALLOW EDWARD JONES TO BE A PROVIDER FOR THE CITY'S EMPLOYEE 457 PLAN. MR. HAROLD MELSON WOULD BE THE INVESTMENT REPRESENTATIVE RESPONSIBLE FOR THE PLAN.**

Mayor Brundige presented a request to allow Edward Jones to be a provider for the city's employee 457 plan. Mr. Harold Melson would be the investment representative responsible for the plan.

Alderman Nanney made the motion to allow Edward Jones to be a provider for the city's employee 457 plan with Mr. Harold Melson being the investment representative responsible for the plan, seconded by Alderwoman Boyd.

VOTE: UNANIMOUS VOICE VOTE OF APPROVAL

**RESIGNATION FROM COMMITTEES:**

**Industrial Development Board; Alderman Bill Harrison  
Finance Committee; Mr. Rex Pate  
Martin Beautiful Commission; Mr. Bobby Hathcock**

Mayor Brundige presented the following resignations from City of Martin Committees to be considered: Industrial Development Board; Alderman Bill Harrison, Finance Committee; Mr. Rex Pate and Martin Beautiful Commission; Mr. Bobby Hathcock

Alderman Belote made the motion to accept the following resignations from city committees: Industrial Development Board; Alderman Bill Harrison, Finance Committee; Mr. Rex Pate and Martin Beautiful Commission; Mr. Bobby Hathcock, seconded by Alderman Tuck.

VOTE: UNANIMOUS VOICE VOTE OF APPROVAL

**CITY COMMITTEE APPOINTMENTS:**

**Finance Committee; Mr. George Daniels  
Martin Beautiful Commission; Ms. Carolyn Deck**

Mayor Brundige presented the following recommendations for appointments to City of Martin Committees: Finance Committee; Mr. George Daniels and Martin Beautiful Commission; Ms. Carolyn Deck.

Alderman Belote made the motion to approve appointments to City of Martin Committees as follows: Finance Committee; Mr. George Daniels and Martin Beautiful Commission; Ms. Carolyn Deck, seconded by Alderwoman Boyd.

VOTE: UNANIMOUS VOICE VOTE OF APPROVAL

**MAINTENANCE AGREEMENTS FOR SIGNAL LIGHTS AND WATER TANKS (Recommendation from the Public Works Committee)**

Alderman Nanney explained the signal light maintenance agreement would help the city to save on liability because our lights would be kept in good working order eliminating confusion at intersections. Under the contract the signal lights will be serviced twice a year and maintenance when needed. We already have our water tanks and wells on maintenance contracts and I think the signal lights will fit right in.

Mayor Brundige spoke, we have two contracts to present; Tennergy Corporation for the signal lights and Utility Service Company for the water tanks.

Alderman Nanney made the motion to approve two maintenance contracts; Tennergy Corporation for signal lights and Utility Service Company for water tanks, seconded by Tuck.

VOTE:	FOR:	HONORABLE NANNEY HONORABLE BELOTE HONORABLE TUCK HONORABLE BOYD HONORABLE EDWARDS
	AGAINST:	NONE
	ABSENT:	HONORABLE HARRISON

Mayor Brundige declared the motion approved.

**RECOMMENDATION FROM THE INDUSTRIAL DEVELOPMENT BOARD AND MARTIN ECONOMIC DEVELOPMENT CORPORATION TO PERFORM A HOTEL SURVEY FOR THE CITY OF MARTIN. MONIES TO BE TAKEN OUT OF BOARD APPROVED PROJECTS.**

Mayor Brundige presented a recommendation from the Industrial Development Board and the Martin Economic Development Corporation to perform a hotel survey for the City of Martin. Monies to be taken out of Board Approved Projects.

Ms. Hollie Vowell, Director of Martin Economic Development Board, spoke; I am here to present a request from the Industrial Development Board and the Martin Economic Development Corporation to perform a hotel survey for the City of Martin. We have been working on this exciting project for the last couple of months. A brand name hotel has approached us with interest in Martin. They think Martin is ready for a mid sized hotel. We have visited their corporate headquarters and have had several individuals to show interest in the project. We have also talked to several potential investors. The hotel and investors suggested the city compile a feasibility/market study that would show the need for a mid sized hotel in the City of Martin. We know we are ready for this but the study would show proof that the city needs more overnight



accommodations and an additional hotel in our area. This study will take into consideration the events that take place in Martin as well as the University needs. This will benefit the city but it will also benefit the investors. The cost of a feasibility study is between \$7,000 and \$10,000. We do have some private investors that have promised to help with this but I am requesting support on the high end for this study. On behalf of the Martin Economic Development Corporation and the Industrial Development Board I ask your support on this project with monies to come from Board Approved Projects so that we can move closer to obtaining a limited service hotel in Martin.

Mayor Brundige stated, I don't think it will take all of the \$7,000 to \$10,000 but we want to have enough money to do it right. If we can go cheaper than the requested funds we will do so.

Ms. Vowell responded, that is right, this is the high end.

Alderman Nanney asked would we be able to use this study in any other areas?

Ms Vowell stated, that is a good questions and I hope so. When these people come they will go to the university, different industries in the community, and the Parks and Recreation Department for information concerning planned activities that might use overnight hotel accommodations. We are hoping information quoted and noted in this study will be useful in other areas. In fact, we will request this to be considered when doing the documentation. This study will be good for at least two years maybe longer.

Alderman Belote made the motion to allow the Industrial Development Board and the Martin Economic Development Corporation to seek a firm to perform a hotel survey for the City of Martin; cost range \$7,000 to \$10,000 from Board Approved Projects, seconded Alderwoman Boyd.

VOTE:	FOR:	HONORABLE NANNEY HONORABLE BELOTE HONORABLE TUCK HONORABLE BOYD HONORABLE EDWARDS
	AGAINST:	NONE
	ABSENT:	HONORABLE HARRISON

Mayor Brundige declared the motion approved.

## **INTRODUCTION AND FIRST READING OF ORDINANCE O2005-04: AN ORDINANCE FOR THE MARTIN MUNICIPAL-REGIONAL PLANNING COMMISSION TO OPT OUT OF STATE MANDATED TRAINING**

Mayor Brundige introduced and presented for consideration on the first reading Ordinance O2005-04: An ordinance for the Martin Municipal-Regional Planning Commission to opt out of state mandated training.

City Recorder Mathis read O2005-04. A copy follows:

ORDINANCE O2005-04

AN ORDINANCE FOR THE MARTIN MUNICIPAL-REGIONAL PLANNING COMMISSION TO OPT OUT OF STATE MANDATED TRAINING.

WHEREAS, Sections 13-3-101, 13-4-101 and 13-7-205, *Tennessee Code Annotated*, were amended by Public Chapter 862 dated 2002; and

WHEREAS, Public Chapter 862 mandates that Planning Commission and Boards of Zoning Appeals receive four (4) hours of training and continuing education annually on planning and zoning related topics; and

WHEREAS, Public Chapter 862 also states that the legislative body of a municipality may, at any time, opt out of the required training and continuing education requirements by passage of an ordinance; and

WHEREAS, the Martin Municipal-Regional Planning Commission has recommended that the City of Martin opt out of the required training but pursue specialized training on an as needed basis.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MARTIN BOARD OF MAYOR AND ALDERMEN that the City of Martin opt out of the required four (4) hours training and continuing education in accordance with Tennessee Code Annotated, Sections 13-3-101, 13-4-101 and 13-7-205.

BE IT FURTHER ORDAINED that this Ordinance shall become effective upon its passage, after second and final reading, THE PUBLIC WELFARE REQUIRING IT.

Date Passed First Reading: \_\_\_\_\_

Date Passed Second Reading \_\_\_\_\_

Date of Public Hearing: \_\_\_\_\_

ATTESTED:

APPROVED:

\_\_\_\_\_  
Chris Mathis, City Recorder

\_\_\_\_\_  
Randy Brundige, Mayor

Alderman Edwards made the motion to approve on the first reading Ordinance O2005-04: An ordinance for the Martin Municipal-Regional Planning Commission to opt out of state mandated training, seconded by Alderman Tuck.

VOTE:	FOR:	HONORABLE NANNEY HONORABLE BELOTE HONORABLE TUCK HONORABLE BOYD HONORABLE EDWARDS
	AGAINST:	NONE
	ABSENT:	HONORABLE HARRISON

Mayor Brundige declared Ordinance O2005-04 approved on the first reading and set the second and final reading and public hearing for March 14, 2005 at 5:15 pm.

**A REQUEST FROM C. E. WELDON PUBLIC LIBRARY TO SEEK BIDS FOR THE REPAIR OF LEAKS IN THE BASEMENT WALLS OF THE LIBRARY BUILDING**

Mayor Brundige presented a request from the C. E. Weldon Public Library to seek bids for the repair of leaks in the basement walls of the library building. Water has seeped into the basement and we would like to fix the problem before mold and mildew begin to form. The library would like to put this out for bids to see what the costs would be with hopes of repairing the problem. The bids will be brought back to the board for approval.

Alderman Belote made the motion to approve a request from the C. E. Weldon Public Library to seek bids for the repair of leaks in the basement walls of the library building, seconded by Alderwoman Boyd.

VOTE:	FOR:	HONORABLE NANNEY HONORABLE BELOTE HONORABLE TUCK HONORABLE BOYD HONORABLE EDWARDS
	AGAINST:	NONE
	ABSENT:	HONORABLE HARRISON

Mayor Brundige declared the motion approved.

**INTRODUCTION AND READING OF RESOLUTION R2005-06: A RESOLUTION BY THE CITY OF MARTIN RATIFYING THE AMENDED WEAKLEY COUNTY GROWTH PLAN DATE OCTOBER 19, 2004.**

Mayor Brundige introduced and presented for consideration Resolution R2005-06: A resolution by the City of Martin ratifying the amended Weakley County Growth Plan date October 19, 2004.

City Recorder Mathis read Resolution R2005-06. A copy follows:

RESOLUTION R2005-06

A RESOLUTION BY THE CITY OF MARTIN RATIFYING THE AMENDED WEAKLEY COUNTY GROWTH PLAN DATE OCTOBER 19, 2004.

WHEREAS, the Martin Municipal-Regional Planning Commission has determined that their existing Urban Growth Boundary is reasonably compact but large enough to accommodate growth during the next twenty years; and

WHEREAS, that the Martin Municipal-Regional Planning Commission has determined that the City of Martin is better able than other areas to efficiently provide urban services to the area within their existing Urban Growth Boundary; and

WHEREAS, the Martin Municipal-Regional Planning Commission has determined that their existing Urban Growth Boundary is contiguous to its existing municipal boundaries; and

WHEREAS, the Martin Municipal-Regional Planning Commission has identified territory that nay reasonable and prudent person would project as the likely growth areas over the next twenty years; and

WHEREAS, the Martin Municipal-Regional Planning Commission forwarded a recommendation not to amend the existing Urban Growth Boundary; and

WHEREAS, planning and control of development beyond the corporate limits is of vital interest to the City of Martin, and in accordance with *Tennessee Code Annotated* 6-58-101 through 6-58-115; and

WHEREAS, the Weakley County Coordinating Committee has approved the amended Weakley County Growth Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the City of Martin that this body ratifies the Amended Weakley County Growth Plan dated October 19, 2004.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its passage, THE PUBLIC WELFARE REQUIRING IT.

Date of Passage \_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
Chris Mathis, City Recorder

\_\_\_\_\_  
Randy Brundige, Mayor

Mayor Brundige stated this resolution should have been considered in 2004 but was not.

Alderwoman Boyd made the motion to approve Resolution R2005-06: A resolution by the City of Martin ratifying the amended Weakley County Growth Plan date October 19, 2004, seconded by Alderman Tuck.



RESOLUTION R2005-07

A RESOLUTION REGARDING EASEMENT FOR AN OVERHEAD ACCESS BRIDGE TO BE CONSTRUCTED OVER INDUSTRIAL PARK DRIVE (COX-McCARVER/MTD PROJECT).

WHEREAS, the Industrial Development Board of the City of Martin is contemplating entering into a lease of certain industrial land to Cox-McCarver Partnership (“Cox”) and Cox is contemplating entering into a sublease of the property to MTD Consumer Group, Inc. (“MTD”) for the purpose of constructing and equipping a 310,000 square foot manufacturing-distribution facility for the use and benefit of MTD; and

WHEREAS, the construction designs of the project require that an overhead access bridge be constructed from the new plant facility to grant access to the existing MTD facilities as same would be separated by the right-of-way of Industrial Park Drive; and

WHEREAS, the access bridge is proposed to be constructed over a city street known as Industrial Park Drive, and Cox and MTD have requested that the City grant an easement and right for Cox and MTD to construct and maintain the access bridge over Industrial Park Drive, and have submitted to the City Council a draft of proposed “Encroachment/Easement Agreement” in form presented to the meeting; and

WHEREAS, the City of Martin Board of Mayor and Aldermen desires to approve the grant of the easement and the general form of the Encroachment/Easement Agreement as attached.

NOW, THEREFORE, BE IT RESOLVED that:

1. The City of Martin hereby approves the grant of the easement to Cox and MTD pursuant to the general terms and provision of the Encroachment/Easement Agreement presented to the meeting.
2. The final draft of the Encroachment/Easement Agreement may be modified or amended to add or subtract such terms as shall be approved by the Mayor of the City of Martin subject to review and approval by the City Attorney, all of which is hereby ratified and approved.
3. The Mayor of the City of Martin shall have continuing authority to monitor and provide for the enforcement of the Encroachment/Easement Agreement and to give and received such notices and approvals as may be permitted or required thereunder.

THEREFORE, BE IT FURTHER RESOLVED that this resolution shall take effect upon its passage, THE PUBLIC WELFARE REQUIRING IT.

Motion made by Alderman Edwards that the foregoing resolution be approved. Seconded by Alderman Nanney. Upon being put to a roll call vote, the motion passed on the 14th day of February 2005.

ATTEST:

SIGNED:

\_\_\_\_\_  
Chris Mathis, City Recorder

\_\_\_\_\_  
Randy Brundige, Mayor

ENCROACHMENT/EASEMENT AGREEMENT

THIS ENCROACHMENT/EASEMENT AGREEMENT (“Agreement”), made and entered into by and between COX-McCARVER PARTNERSHIP, a Tennessee General Partnership (“Sublessor”), MTD CONSUMER GROUP, INC., an Ohio Corporation (“Sublessee”) and the CITY OF MARTIN, TENNESSEE (“City”).

WITNESSETH:

WHEREAS, the City is the owner of a public street and thoroughfare known as Industrial Park Drive, located in Martin, Weakley County, Tennessee (“the Street”); and

WHEREAS, the Sublessor contemplates becoming a party to an Industrial Lease Agreement with the Industrial Board of the City of Martin dated \_\_\_\_ day of \_\_\_\_\_, 2005 (the “IDB Ground Lease”) as to a certain real property as more particularly described in **Exhibit A** affixed hereto (the “Property”); and

WHEREAS, Sublessor proposes to sublease the Property to Sublessee (the “Sublease”) and Sublessor proposes to construct a new manufacturing /distribution facility (the “New Facility”) for the use and benefit of Sublessee and same is to include construction of an access bridge structure (the “Access Bridge”) above and over the Street to connect the new facility to Sublessee’s other manufacturing facility located across the Street from the Property all as reflected and depicted on the attached **Exhibit B** and made a part of this Agreement; and

WHEREAS, the City, having been made aware of the proposed right-of-way encroachment of the Access Bridge, desires to provide for the permissive use thereof and related easements.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, the City does hereby grant and lease unto the Sublessor and Sublessee air rights over the Street and grants an easement to that portion of the Street and right-of-way thereof (herein the “Easement Rights”) for the purposes of constructing and maintaining the Access Bridge over the said Street as shown on the attached engineering drawing marked **Exhibit B** and which is made a part hereto, the parties do mutually agree and covenant as follows:

1. The aforesaid Easement Rights are granted to the Sublessor and Sublessee for a period of twenty-five (25) years, commencing on the effective date of the Ground Lease. The Easement Rights shall thereafter automatically renew under terms hereof for an additional fifteen (15) year period unless and until either Sublessor or Sublessee shall give the City ninety (90) days advance written notice of its intention to terminate this Agreement.
2. The aforesaid rights and privileges are granted to the Sublessor and Sublessee and to their respective successors, assignees and transferees.

3. The Sublessor, for itself, its successors and assigns agrees to pay the City, as an annual rent for the rights herein granted, the sum of One Dollar (\$1.00) per year, payable yearly in advance during the term of this Agreement. The first such payment shall be due on the first day of the month following completion of said overhead Structure and continuing annually thereafter during the term of this Agreement. Sublessor may elect to prepay the rents for the entire term of this Agreement.

4. Sublessor and Sublessee will submit all construction plans for the Access Bridge to the City for review and approval to ensure conformance to the City's requirements, such approvals not to be unreasonably withheld or delayed.

5. Sublessor will construct the Access Bridge so as to meet the requirements of the City Building Code, and approval of the City, which approval shall not be unreasonably withheld.

6. Sublessor and Sublessee, at their expense, agree to comply with the directions of the City with respect to the removal, replacement, or installation of any utility facilities or public improvements required by the construction and maintenance of the Access Bridge.

7. Sublessor and Sublessee shall, at its expense, at all times during the term of this Agreement make all repairs to the Access Bridge and maintain it in proper condition to the reasonable satisfaction of the City to assure the public safety at all times.

8. In the event of default by either Sublessor or Sublessee in the performance of any agreement or covenant undertaken by it in accordance with the provisions hereof, or failure to pay rents when due hereunder, and the continuation of such default for a period of three (3) months after written demand for performance (or for such longer period as may be necessary to cure the default if not capable of being cured within said three (3) month period) the City shall have the option and right to declare this Agreement terminated and cause the removal of the Access Bridge at the expense of Sublessor and Sublessee.

9. Sublessor shall not commence work under this Agreement until it has obtained and caused its general and/or subcontractors to procure and keep in force all insurance at their own cost and expense required under this section and after such insurance has been approved by the City. Before commencing any work, the Sublessor shall furnish the City with certificates of insurance issued by a duly authorized representative of the insurance carrier(s) evidencing that the insurance required hereunder is in force and effect. The name of the project shall also be specified on the certificate of insurance. Each certificate or policy shall require and state in writing that "thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City by registered mail, return receipt requested", for all the following stated policies. Certificates shall name the City as additional insured and the certificates will be mailed to:

City of Martin  
Attn: City Recorder  
P.O. Box 290  
Martin, Tennessee 38237



a. **Liability.** The Sublessor and Sublessee shall be responsible from the effective date of the Ground Lease for all injury to persons or property resulting from the work or any occurrence of injury or damage caused by the construction, use and/or maintenance of the Access Bridge to the extent same shall arise from the negligence of Sublessor or Sublessee as the case may be.

b. **Insurance Coverages.** The following coverages are to be included under this Agreement:

(1) **Workers Compensation.** Sublessor, Sublessee, their contractors and subcontractors shall carry workers compensation insurance as required by law.

(2) **General Liability.** Sublessor and Sublessee shall maintain general liability insurance coverage in such amount as required under the sublease.

(3) **Property Insurance/Builders Risk.** Sublessor and Sublessee shall be responsible for maintaining multiperil property and casualty insurance, including Builders Risk, on the Access Bridge as required under the Sublease.

10. Execution of this instrument shall in no way be interpreted as relinquishment of the City's right-of-way, and the City specifically retains all its lawful rights and powers.

11. Sublessor and Sublessee hereby agree that this Agreement shall be binding upon and shall inure to the benefit of their transferees, sub-tenants, successors and assigns. It is acknowledged and agreed that Sublessor and Sublessee have the right to delegate its respective obligations to one another pursuant to the provision of the Sublease.

12. Prior to commencing construction of the Access Bridge, Sublessor shall submit a traffic control plan to the City for approval and shall, at its expense, provide all barricades, cones, signs, markings, flashing lights and other traffic control devices required by the "Manual on Uniform Traffic Control Devices" and the City during construction of the Access Bridge. Two-way traffic shall be maintained at all times unless otherwise authorized by the City.

13. Notwithstanding any other provision hereof, Sublessor and Sublessee shall have the right to terminate this Agreement by giving the City at least ninety (90) days prior written notice, with the stipulation that upon termination Sublessor and/or Sublessee will remove the overhead Access Bridge, at the cost of the Sublessor and Sublessee, or leave the Access Bridge in a condition acceptable to the City.

14. City shall have the right at the end of the term of this Agreement, if either Sublessor or Sublessee have failed to remove or demolish the overhead Access Bridge using good engineering practice, then the City may do so and shall be entitled to reimbursement from Sublessor and Sublessee of all costs and expenses reasonably incurred by the City.

15. This Agreement is subject to the approval by the Board of Mayor and Aldermen of the City of Martin with said approval to be indicated by copy of resolution or minutes of the governing body authorizing the City to enter into this Agreement with such modifications and amendments acceptable to the parties.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF MARTIN:

By: \_\_\_\_\_  
Randy Brundige, Mayor

Approved as to content: \_\_\_\_\_  
Susan Collins, City Attorney

COX-McCARVER PARTNERSHIP:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

MTD CONSUMER GROUP, INC.:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Alderman Edwards made the motion to approve Resolution R2005-07: A resolution regarding easement for an overhead access bridge to be constructed over Industrial Park Drive (Cox-McCarver/MTD Project, seconded by Alderman Nanney.

Mayor Brundige explained if we pass the agreement tonight the actual agreement would not be signed until they have all of the plans in order. The project is very close.

VOTE:	FOR:	HONORABLE NANNEY HONORABLE BELOTE HONORABLE TUCK HONORABLE BOYD HONORABLE EDWARDS
	AGAINST:	NONE
	ABSENT:	HONORABLE HARRISON

Mayor Brundige declared Resolution R2005-07 approved.

**ADJOURN**

Alderman Nanney made the motion to adjourn, seconded by Edwards.

VOTE: UNANIMOUS VOICE VOTE OF APPROVAL

\_\_\_\_\_  
Chris Mathis, City Recorder

\_\_\_\_\_  
Randy Brundige, Mayor

*Minutes: City of Martin Board of Mayor and Aldermen, February 14, 2005*

Saved "February 2005", February 14, 2005 (1 tape) #254