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**2012R05975**

REC ON: 03/08/2012 3:07:00 PM  
CHAMPAIGN COUNTY  
**BARBARA A. FRASCA, RECORDER**  
REC FEE: 31.00  
PAGES 10  
PLAT ACT: 0 PLAT PAGE:

# RECORDING COVER SHEET


ORDINANCE NO. 2012-02-017

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT  
(3106 North Cunningham Avenue / Mervis Industries, Inc.)

Prepared by recording by:

Phyllis D. Clark, City Clerk  
400 S. Vine Street, Urbana, IL 61801

Return to:

 Phyllis D. Clark, City Clerk  
City of Urbana  
400 S. Vine Street  
Urbana, IL 61801

Passed: February 20, 2012  
Signed: March 2, 2012

ORDINANCE NO. 2012-02-017

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ANNEXATION  
AGREEMENT**

(3106 N Cunningham Avenue / Mervis Industries, Inc.)

**WHEREAS**, an Annexation Agreement between the City of Urbana, Illinois and Mervis Industries, Inc. has been submitted for the Urbana City Council's consideration, a copy of which is attached; and,

**WHEREAS**, said agreement governs a tract totaling approximately 8.14 acres located at 3106 North Cunningham Avenue and said tract is legally described as follows:

Part of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, described as follows:

Beginning at a point which is 819.64 feet West and 1137.41 feet South of the Northeast Corner of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian for a true point of beginning; thence 833 feet West to the East line of the right-of-way of Federal Highway Route 45; thence Southwesterly along said right-of-way line 206.78 feet; thence East 463.6 feet; thence South 357.6 feet; thence East 506.33 feet; thence North 544.19 feet to the true point of beginning, in Champaign County, Illinois.

Permanent Index No.: 25-15-33-476-001

**WHEREAS**, the City Clerk of Urbana, Illinois, duly published notice on the 5<sup>th</sup> day of February, 2012 in the News-Gazette, a newspaper of general circulation in the City of Urbana, that a public

hearing would be held before the Urbana City Council on the matter of the proposed Annexation Agreement on the 20<sup>th</sup> day of February, 2012; and

**WHEREAS**, the City of Urbana, Illinois also mailed notice of the public hearing to the Chief and each of the Trustees of the Carroll Fire Protection District on the 30<sup>th</sup> day of January, 2012; and

**WHEREAS**, on the 9<sup>th</sup> day of February, 2012, the Urbana Plan Commission held a public hearing on the proposed rezoning in the Annexation Agreement and voted 6 ayes and 0 nays to forward a recommendation of approval to the Urbana City Council; and

**WHEREAS**, on the 20<sup>th</sup> day of February, 2012, the Urbana City Council held a public hearing on the proposed Annexation Agreement; and

**WHEREAS**, the Urbana City Council has determined that the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; and,

**WHEREAS**, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens;

**NOW, THEREFORE, BE IT ORDAINED** BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The Annexation Agreement between the City of Urbana, Illinois and Mervis Industries, Inc., a copy of which is attached and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver, and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Annexation Agreement, for and on behalf of the City of Urbana, Illinois.

Section 3. The City Clerk is directed to record a certified copy of this Ordinance and the Annexation Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.


This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of two-thirds of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.

PASSED by the City Council this 20th day of February, 2012.

AYES: Jakobsson, Lewis, Marlin, Smyth, Stevenson, Prussing

NAYS: Bowersox

ABSTAINS:



*Phyllis D. Clark*  
 \_\_\_\_\_  
 Phyllis D. Clark, City Clerk

*Laurel Lunt Prussing*  
 \_\_\_\_\_  
 Laurel Lunt Prussing, Mayor

APPROVED by the Mayor this 2nd day of March, 2012.

# **Annexation Agreement**

(Mervis Industries, Inc.)

THIS Agreement is made and entered into by and between the **City of Urbana**, Illinois, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and Mervis Industries, Inc. (hereinafter referred to as the "Owner"). The effective date of this Agreement shall be as provided in Article III, Section 6.

## **WITNESSETH:**

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1); and

WHEREAS, Mervis Industries, Inc. is the Owner of record of a certain parcel of real estate located at 3106 N. Cunningham Ave., Champaign County, Illinois, the legal description of which real estate is set forth in Exhibit B attached hereto and referenced herein as "the tract"; and

WHEREAS, the attached map, labeled Exhibit A, is a true and accurate representation of the tract to be annexed to the City of Urbana under the provisions of this agreement; and

WHEREAS, the tract is contiguous to the City of Urbana and may be immediately annexed; and

WHEREAS, the tract is currently zoned Champaign County B-4, General Business Zoning District in Champaign County and the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of IN, Industrial District, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein as IN, Industrial, generally reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time, and which Plan designates the future land use as "Regional Business"; and

WHEREAS, the Owner desires to have the aforementioned real estate annexed to the City of Urbana upon certain terms and conditions hereinafter set forth in this Agreement.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:**

## ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER

The Owner agrees to the following provisions:

**Section 1. Ownership and Annexation.** The Owner represents that the Owner is the sole record Owner of the property described in Exhibit A and that the Owner shall, within thirty (30) days of a request by the City cause the tracts to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes.

The Owner further agrees that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject property. If the subject tract is to be platted for subdivision, the Owner agrees that the substance of this provision regarding annexation shall be included in the subdivision covenant and such will constitute a covenant running with the land. The Owner agrees for itself, successor and assigns, and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. The Parties agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.

**Section 2. Authority to Annex.** The Owner agrees and hereby stipulates that the City, by its approval, execution or delivery of this Agreement does not in any way relinquish or waive any authority it may have to annex the tract in the absence of this Agreement.

**Section 3. Zoning.** The Owner acknowledges that upon annexation, the tract will be rezoned from Champaign County B-4, General Business Zoning District to City IN, Industrial Zoning District. The Owner agrees that, unless changed upon the initiative of the Owner, the said City zoning classifications for said tract shall remain in effect for the term of this Agreement, subject to the right of the Corporate Authorities to amend the Zoning Ordinance text even if such amendment affects the tract. The Owner agrees to use the tract only in compliance with the Urbana Zoning Ordinance and this agreement as such may be amended from time to time.

**Section 4. Land Uses.** The Owner agrees that the uses of the tract shall be limited to those allowed by the Urbana Zoning Ordinance within the IN, Industrial Zoning District either by right, by Special Use Permit, or by Conditional Use Permit, as the case may be.

**Section 5. Building Code Compliance.** The Owner agrees to cause all new development, construction, remodeling or building additions on said tracts to be in conformance with all applicable City of Urbana codes and regulations including building, zoning and subdivision codes.

**Section 6. Amendments Required.** The Owner shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tract, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly

executed by the Owner and the City. Said action includes petitioning for a county rezoning of said tracts without written amendment to this Agreement.

## **ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES**

The Corporate Authorities agree to the following provisions:

**Section 1. Annexation.** The Corporate Authorities agree to annex said tract subject to the terms and conditions outlined in this Agreement, when properly and effectively requested to do so, by submission of a legally sufficient petition from the Owner, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

**Section 2. Zoning.** The Corporate Authorities agree to annex the tract with a zoning classification of IN, Industrial.

**Section 3. Amendments.** The City shall take no action nor omit to take action during the term of this Agreement which act or omission, as applied to the tract, would be a breach hereof, without first procuring a written amendment to this Agreement duly executed by the Owner, or the Owner's successors or assigns, of the portion of the tract which is directly the subject of the amendment.

## **ARTICLE III: GENERAL PROVISIONS**

**Section 1. Term of this Agreement.** This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tract under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term. By mutual agreement, the term of this Agreement may be extended.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owner or the Owner's successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

**Section 2. Covenant running with the land.** The terms of this Agreement constitute a covenant running with the land for the life of this Agreement unless specific terms are expressly made binding beyond the life of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessees, executors, assigns and successors in

interest of the Owner as to all or any part of the tracts, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

**Section 3. Binding Agreement upon parties.** The Corporate Authorities and Owner agree that no party will take action or omit to take action during the term of this Agreement which act or omission as applied to the tracts would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by the Owner and the City.

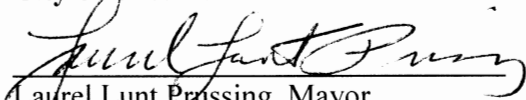
**Section 4. Enforcement.** The Owner and Corporate Authorities agree and hereby stipulate that any party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or the party not in default may declare this Agreement null and void in addition to other remedies available. Upon breach by the Owner, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

**Section 5. Severability.** If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

**Section 6. Effective Date.** The Corporate Authorities and Owner intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the agreement on behalf of the City.

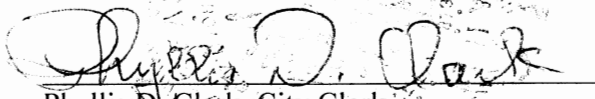
**IN WITNESS WHEREOF**, the Corporate Authorities and Owner have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

**Corporate Authorities**  
**City of Urbana:**

  
Laurel Lunt Prussing, Mayor

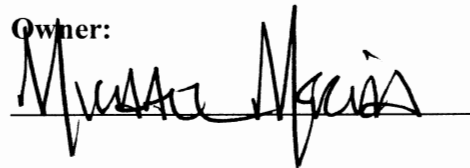
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Date

**ATTEST:**

  
Phyllis D. Clark, City Clerk

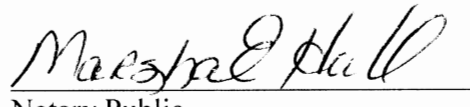
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Date

**Owner:**

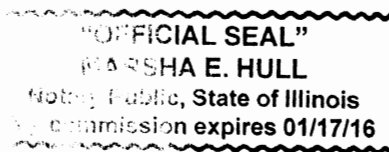


2.23.12  
Date

**ATTEST:**

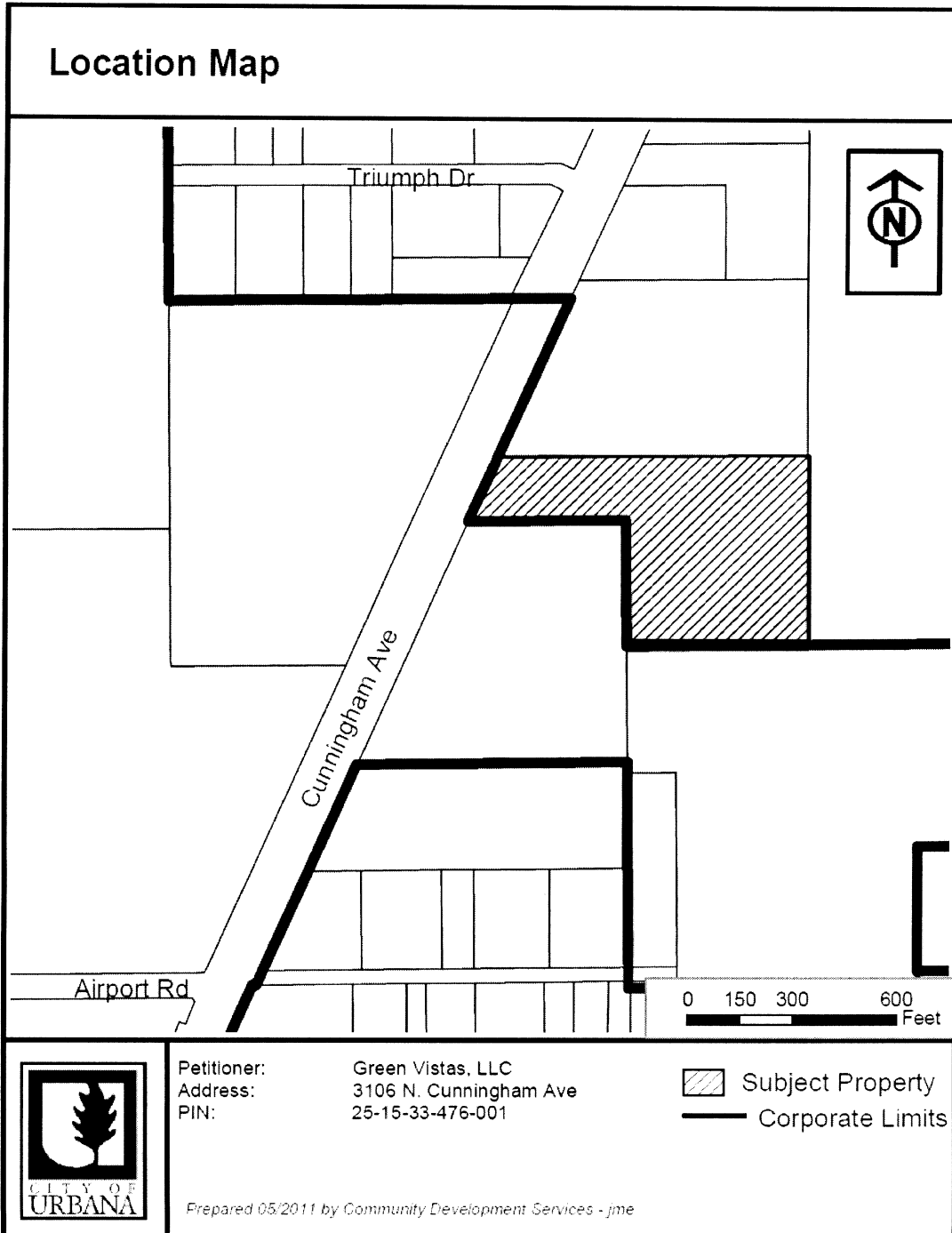
  
Notary Public

February 23, 2012  
Date





**Exhibit A**  
**Map of Tract**



## **Exhibit B**

### **Legal Description**

Part of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, described as follows:

Beginning at a point which is 819.64 feet West and 1137.41 feet South of the Northeast Corner of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian for a true point of beginning; thence 833 feet West to the East line of the right-of-way of Federal Highway Route 45; thence Southwesterly along said right-of-way line 206.78 feet; thence East 463.6 feet; thence South 357.6 feet; thence East 506.33 feet; thence North 544.19 feet to the true point of beginning, in Champaign County, Illinois. Containing 8.14 acres, more or less.

Permanent Index No. 25-15-33-476-001

Commonly known as 3106 N. Cunningham Avenue, Urbana, Illinois.