



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**  
*Planning Division*

**m e m o r a n d u m**

**TO:** Bruce Walden, Chief Administrative Officer

**FROM:** Elizabeth H. Tyler, AICP, Director

**DATE:** October 3, 2002

**SUBJECT:** Request for approval and authorization to execute an annexation agreement with Flessner Development Company for Somerset Subdivision No. 4

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### **Introduction & Background**

The Somerset Subdivisions are located along the south side of Airport Road within Urbana's one-and-one-half mile extra-territorial jurisdictional area. Somerset Subdivisions No. 1, 2, and 3 are the subject of an existing Annexation Agreement with the City adopted by Ordinance 9495-8 on July 20, 1994. The Flessner Development Company recently prepared a Preliminary Plat for the subdivision of Somerset Subdivision No. 4 as well as a General Area Plan depicting the general layout for development of the remaining Somerset properties. The Preliminary Plat and General Area Plan were approved by the Urbana Plan Commission on September 5, 2002.

In accordance with the City's annexation policies and our interjurisdictional agreement with the Urbana-Champaign Sanitary District, the developer is required to enter into a pre-annexation agreement with the City in order to obtain sanitary sewer connections. The attached annexation agreement is consistent with the model agreement that is utilized for all pre-annexations that do not involve special zoning or development approvals. The Somerset Development Company has agreed that any additional development of the Somerset properties beyond the currently proposed Preliminary Plat (as depicted on the General Area Plan) will trigger annexation of the entire contiguous Somerset holdings to the City of Urbana as these are adjacent to the City of Urbana corporate limits. Annexation of the balance of the properties at that time would be consistent with the Urbana Subdivision Ordinance and may be required as a condition of subdivision approval for Somerset Subdivision No. 5.

A public hearing to consider the proposed annexation agreement was initially scheduled for September 16, 2002 and has been rescheduled for October 7, 2002 at 7:20 p.m. to reflect a change in the legal description of the property.

The property information is as follows:

Property Location: South side of Airport Road, west of Somerset Drive  
Acreage: 12.28 acres  
County Zoning: R-2, Single Family Residence  
Urbana Zoning: R-2, Single Family Residential (upon conversion when property is annexed)  
Current Use: Vacant, proposed for Single-Family Residential  
Comp. Plan Designation: Residential (ETJA Plan)

### **Selected Applicable Comprehensive Plan Goals and Objectives**

Several goals and recommendations from the 1982 Comprehensive Plan and the 1993 Extraterritorial Jurisdictional Area Plan support approval of the annexation agreement. The following is a partial list of these goals and recommendation.

#### ***From the 1982 Comprehensive Plan:***

Goal 3.100 To organize and develop land uses and adjacent properties in a balanced and mutually compatible manner relative to the functional needs of the City.

Objective 3.110 Promote development in the City and surrounding unincorporated areas in a manner which minimizes conflicting land uses and/or adjacent development.

Policy 3.111 Review all land use changes that are controlled by the Zoning Ordinance, Subdivision Ordinance, or annexation procedures to ensure compatibility. The Special and Conditional Use permit and Planned Unit Development procedures in the Zoning Ordinance and annexation agreements are particularly useful tools for insuring the harmonious development of adjacent sites.

Goal 3.400 To create a compact community where the conversion of agricultural land, the cost of providing public services, and the use of energy are minimized.

Objective 3.410 Designate growth areas in a manner that minimizes the cost of providing public services.

Goal 5.100 To provide sound and attractive residential neighborhoods which meet the housing needs of the current and future population, are accessible to urban services and facilities, and in a manner which conserves land, energy and other resources.

Objective 5.130 Promote land use patterns which conserve energy.

Policy 5.131 Encourage new residential development to occur contiguous with existing development and within municipal boundaries or in areas which can be annexed.

***From the 1993 ETJA Plan, General Recommendations:***

1. The City should develop a comprehensive annexation policy.
  - 1.d. The policy should focus on residential areas and timing for their annexation. Some residential areas on the City's periphery may require substantial capital improvements because of either age, lack of maintenance, original substandard construction of improvements or a combination of these factors. However, these neighborhoods are urban developments that require urban services. As a result, they should be annexed, but must perhaps be annexed gradually as their needs will compete with already limited municipal funds. As the City grows it must be able to meet the service needs that new annexations generate.

**Options**

The City Council has the following options in regard to the proposed annexation agreement:

1. Council may grant approval of the Flessner Development Company Annexation Agreement for Somerset Subdivision No. 4.
2. Council may deny approval of the Flessner Development Company Annexation Agreement for Somerset Subdivision No. 4.

**Recommendation**

Based on the intent of the intergovernmental agreements and on the goals and recommendations of the 1982 Comprehensive Plan and the 1993 Extraterritorial Jurisdictional Area Plan, staff recommends final approval of the annexation agreement.

Attachments: Proposed Ordinance  
Draft annexation agreement w/ legal description and site map

Cc: Don Flessner  
Troy Flessner

ORDINANCE NO. 2002-09-112

An Ordinance Approving and Authorizing the Execution of an Annexation Agreement

(Flessner Development Company / Somerset Subdivision No. 4)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois and Flessner Development Company 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 12 acres located on the south side of Airport Road and west of Somerset Drive and said tract is legally described as follows:

A tract of land being a part of the Northeast Quarter of Section 3, Township 19 North, Range 9 East of the Third Principal Meridian, described as follows:

Beginning at the Northwest corner of Somerset Subdivision No. 1 proceed South 01° 03' 10" West, 1223.61 feet along the West line of Somerset Subdivision No. 1, Somerset Subdivision No. 2, and Somerset Subdivision No. 3 to the Southwest corner of Lot 333 of Somerset Subdivision No. 3; thence South 89° 11' 32" East, 64.68 feet along the boundary of Somerset Subdivision No. 3; thence South 00° 48' 28" West, 187.16 feet along the boundary of Somerset Subdivision No. 3 to the Southwest corner of Lot 326 of Somerset Subdivision No. 3; thence South 90° 00' 00" West, 80.00 feet along a westerly extension of the South line of Somerset Subdivision No. 3; thence North 01° 03' 10" East, 37.00 feet; thence South 88° 56' 50" West, 135.50 feet; thence North 01° 03' 10" East, 14.68 feet; thence North 88° 56' 50" West, 200.00 feet; thence North 01° 03' 10" East, 403.68 feet; thence North 27° 39' 13" West, 280.32 feet; thence North 01° 03' 10" East, 70.53 feet; thence North

26° 34' 00" East, 312.60 feet; thence North 01° 03' 10" East, 355.68 feet to the North line of said Section 3; thence South 88° 38' 43" East, 350.00 feet to the Point of Beginning, encompassing 12.28 acres, more or less, in Champaign County, Illinois.

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

WHEREAS, after due and proper publication, the Urbana City Council held a public hearing on October 7, 2002 to consider said annexation agreement; 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 that Annexation Agreement between the City of Urbana, Illinois and Flessner Development Company, 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 \_\_\_\_ day of \_\_\_\_\_, 2002.

AYES:

NAYS:

ABSTAINED:

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

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Tod Satterthwaite, Mayor

**CERTIFICATE OF PUBLICATION IN PAMPHLET FORM**

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2002, the corporate authorities of the City of Urbana passed and approved Ordinance No. \_\_\_\_\_, entitled "An Ordinance Approving and Authorizing the Execution of an Annexation Agreement (Flessner Development Company / Somerset Subdivision No. 4)" which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. \_\_\_\_\_ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 2002, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

## **Annexation Agreement**

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 **Somerset Development Company** (hereinafter referred to as the "Owner(s)"). 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, Somerset Development Company is the Owner of record of a certain 12-acre parcel of real estate located on the south side of Airport Road west of Somerset Drive, and having permanent index numbers 30-21-03-101-001 (part) and 30-21-03-151-002 (part), the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as "the tract"; and

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

WHEREAS, although the tract is not yet contiguous to the City of Urbana, said Owner finds that in order to best utilize the Owners' property, it is desirous to annex the tract to the City of Urbana when said tract becomes contiguous to the City, pursuant to, and as provided for in this annexation Agreement; and

WHEREAS, the City and the Owner find it necessary and desirable that the tract be annexed to the City with a zoning classification of R-2, 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 reflects the goals, objectives and policies set forth in the City's 1982 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, such annexation will ensure that the City of Urbana will receive real estate taxes and other revenues and will enable the City to continue to enhance its tax base; 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:

- (a) The Owner represents that the Owner is the sole record Owner of the tract described in Exhibit A and that the Owner shall, within thirty (30) days of the property becoming contiguous to the Urbana City limits cause the tract 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. Until annexation of the subject tract occur, Owner shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) 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 tract. 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 covenants and such will constitute a covenant running with the land.
- (c) Owner agrees that if owner fails to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owners as a result, the Owner shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owner agrees for himself, 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: The Owner agrees to accept the direct conversion of Champaign County zoning to City of Urbana zoning classification as provided for by the Urbana Zoning Ordinance Section IV-5 and as such exists at the time of annexation. Furthermore, the Owner agrees to abide by all applicable development regulations existing at the time of annexation.

Section 3: The Owner agrees to cause all new development, construction, or additions on said tract to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of annexation. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agrees to pay the building permit fee just as though the construction were taking place within the Urbana City limits, with the provision that the fees associated with obtaining a zoning use permit from Champaign County shall be deducted from the cost of the City building permit fees. The Owner further agrees to correct any deficiencies identified in said plan review. In addition, the Owner agrees that all construction will be subject to the same building and construction inspection requirements as construction projects within the City limits.

Section 4: The Owner agrees that any buildings or structures, other than single-family or agricultural structures, existing at the time of annexation must be brought into conformance with the City of Urbana Existing Structures Code in a time frame agreed to by the City of Urbana and the Owner, except that any immediate health or life safety threats must be brought into compliance immediately.

Section 5: 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 both the Owner and the City. Said action includes petitioning for a county rezoning of said tract without a written amendment to this Agreement.

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

The Corporate Authorities agree to the following provisions:

Section 1: The Corporate Authorities agree to annex said tract(s) 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: The Corporate Authorities agree that the tract will be zoned R-2 per the conversion of Champaign County zoning to City of Urbana zoning classification as provided for by the Urbana Zoning Ordinance or whatever zoning classification is provided for in such conversion table at the time of annexation. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tract. Furthermore, although the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owner requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property. If the zoning district referenced herein is not in existence at the time of the annexation, the parties agree to reclassify said property to the most comparable zoning classification as is determined by the Zoning Administrator.

### **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.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owner, his 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 term of this Agreement unless specific terms are expressly made binding beyond the term of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessee, executors, assigns and successors in interest of the Owner as to all or any part of the tract, 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 neither party will take no action or omit to take action during the term of this Agreement which act 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 both the Owner and the City.

Section 4. Enforcement -- The Owner and Corporate Authorities agree and hereby stipulate that either 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(s) 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(s) 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:

Owner:

\_\_\_\_\_  
Tod Satterthwaite, Mayor

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Date

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Location Map

## Exhibit A: Legal Description

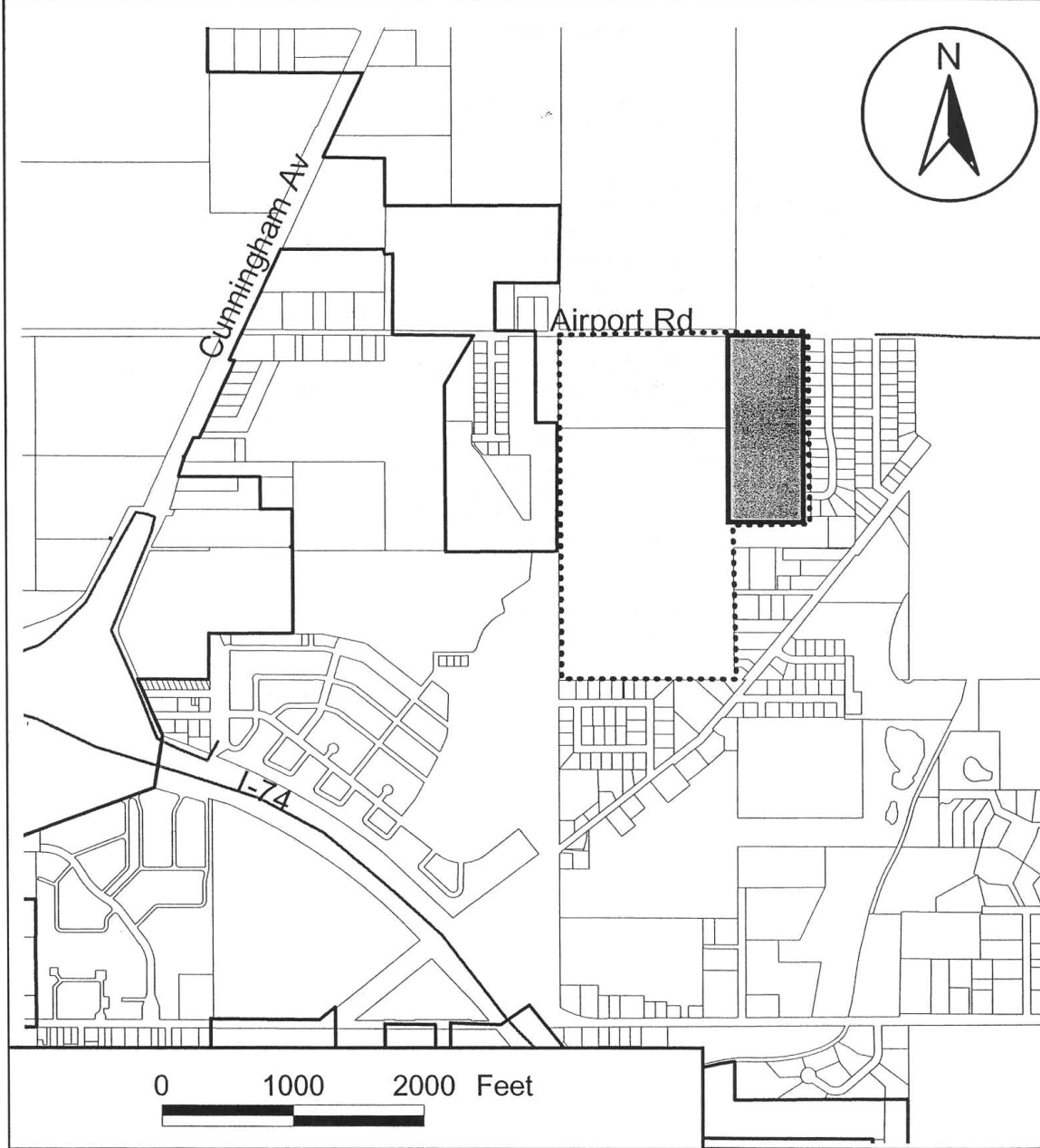
A tract of land being a part of the Northeast Quarter of Section 3, Township 19 North, Range 9 East of the Third Principal Meridian, described as follows:

Beginning at the Northwest corner of Somerset Subdivision No. 1 proceed South  $01^{\circ} 03' 10''$  West, 1223.61 feet along the West line of Somerset Subdivision No. 1, Somerset Subdivision No. 2, and Somerset Subdivision No. 3 to the Southwest corner of Lot 333 of Somerset Subdivision No. 3; thence South  $89^{\circ} 11' 32''$  East, 64.68 feet along the boundary of Somerset Subdivision No. 3; thence South  $00^{\circ} 48' 28''$  West, 187.16 feet along the boundary of Somerset Subdivision No. 3 to the Southwest corner of Lot 326 of Somerset Subdivision No. 3; thence South  $90^{\circ} 00' 00''$  West, 80.00 feet along a westerly extension of the South line of Somerset Subdivision No. 3; thence North  $01^{\circ} 03' 10''$  East, 37.00 feet; thence South  $88^{\circ} 56' 50''$  West, 135.50 feet; thence North  $01^{\circ} 03' 10''$  East, 14.68 feet; thence North  $88^{\circ} 56' 50''$  West, 200.00 feet; thence North  $01^{\circ} 03' 10''$  East, 403.68 feet; thence North  $27^{\circ} 39' 13''$  West, 280.32 feet; thence North  $01^{\circ} 03' 10''$  East, 70.53 feet; thence North  $26^{\circ} 34' 00''$  East, 312.60 feet; thence North  $01^{\circ} 03' 10''$  East, 355.68 feet to the North line of said Section 3; thence South  $88^{\circ} 38' 43''$  East, 350.00 feet to the Point of Beginning, encompassing 12.28 acres, more or less, in Champaign County, Illinois.

PERMANENT PARCEL #: 30-21-03-101-001 (part)  
30-21-03-151-002 (part)

Location: South of Airport Road and West of Somerset Drive, Urbana, IL

# Exhibit "B": Location Map



1836-S-02  
Somerset Subdivision  
General Area Plan and  
Somerset No. 4 Preliminary Plat  
Petitioner: Don Flessner

Prepared August 27, 2002 by Community Development Services - lk

- City Boundary
- Preliminary Plat
- General Area Plan