ORDINANCE NO. 27-24

BEING AN ORDINANCE TO AMEND
THE CITY OF MUNCIE
COMPREHESIVE ZONING ORDINANCE
FROM THE R 3 RESIDENCE ZONE
TO THE BY VARIETY BUSINESS ZONE

FILED

001 17 2024

Collecta Muncon
MUNCIE CITY CLERK

# FOR PARCEL #11-01-379-007-000 AND PARCEL#11-01-379-010-000 LOCATED WITHIN THE 3700 BLK OF E CENTENNIAL AVE, MUNCIE, INDIANA

- WHEREAS, the State enabling act for planning and zoning empowers the City Council of Muncie, Indiana to adopt a Comprehensive Zoning Ordinance and also provides for amendments to the said Ordinance as the need arises; and
- WHEREAS, the Common Council of the City of Muncie, Indiana has given reasonable regard to the Comprehensive Plan; current conditions and the character of current structures and uses in each district; the most desirable use for which land in each is adapted; the conservation of property values throughout the jurisdiction; and responsible growth and development.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MUNCIE, INDIANA, as follows:

Section 1. That the City of Muncie Comprehensive Zoning Ordinance, heretofore adopted on the 5<sup>th</sup> day of November, 1973, be amended, changed and supplemented so as to include in the <u>BV Variety</u> <u>Business Zone</u> the following described real estate located in the City of Muncie, Indiana to wit:

Parcel #11-01-379-007-000 and Parcel #11-01-379-010-000 located within the 3700 BLK of E Centennial Ave, Muncie, Indiana.

- **Section 2.** That all buildings or uses permitted and placed upon described real estate shall fully conform with all the provisions of the City of Muncie Comprehensive Zoning Ordinance and shall have obtained all the proper permits.
- **Section 3.** That this Ordinance shall be in full force and effect from and after its passage by the Common Council and its approval by the Mayor of the City of Muncie, Indiana, and such publication as may be required by law.

		YEAS	NAYS	ABSTAIN	ABSENT
	Dale Basham				
	Jerry Dishman				
	Brandon Garrett				
	Jeff Green				
	Sara Gullion				
	William McIntosh Sr.				
	Harold Mason Jr.				
	Nora Powell				
	Ro Selvey				
Drec	ented by me to the Mayor for his appro	val this		ndiana	2024
Pres	ented by me to the Mayor for his appro		day of _		, 2024
Pres	ented by me to the Mayor for his appro	Bel		City Clerk	, 2024
	ented by me to the Mayor for his appro above ordinance approved (vetoed) by	Bel City	day of _ inda Munson, of Muncie, I	City Clerk idiana	
The		Bel City me this	day ofday ofday ofday ofday of	City Clerk idiana	, 2024

This ordinance is approved in form by:

### REPORT TO THE COMMON COUNCIL OF THE CITY OF MUNCIE, INDIANA

October 3, 2024

To the Honorable:

Common Council of the City of Muncie, Indiana

Dear Council Members:

The Delaware-Muncie Metropolitan Plan Commission hereby submits to you the following report on the application of: <u>Drake Properties I LLC, P.O. Box 96, Eaton, IN</u>, such applicant petitioning the Commission to rezone the real estate as described in the application, generally located at: <u>3700 Block E Centennial Ave., Muncie, Indiana.</u> from zone classification: <u>R 3</u> Residence Zone to zone classification: <u>BV Variety Business Zone.</u>

WHEREAS, the Commission has given reasonable regard to the Comprehensive Plan, current conditions and the character of current structures and uses in each district, the most desirable use for which the land in each district is adapted, the conservation of property values throughout the jurisdiction and responsible growth and development; and

NOW, THEREFORE, the Delaware-Muncie Metropolitan Plan Commission hereby UNFAVORABLY RECOMMENDS (7-0) the application for rezoning.

DELAWARE-MUNCIE METROPOLITAN PLAN COMMISSION

BY:

Allen Wiseley, President

Kylene, Swackhamer, Secretary

### MPC 11-24Z Drake Properties I LLC—Donna Drake

**Request:** The applicant is asking to be rezoned from the R 3 Residence Zone to the BV Variety Business Zone.

### Description & Location: 3700 BLK E Centennial Ave., Muncie, Indiana.

This application is for a 4.97 acre parcel that is landlocked by three parcels on the south, rail road tracks on the north, as well properties on the east and west. Also listed in this application is a 1.47 acre known as Lot 2 in the Nannie Haven Subdivision.

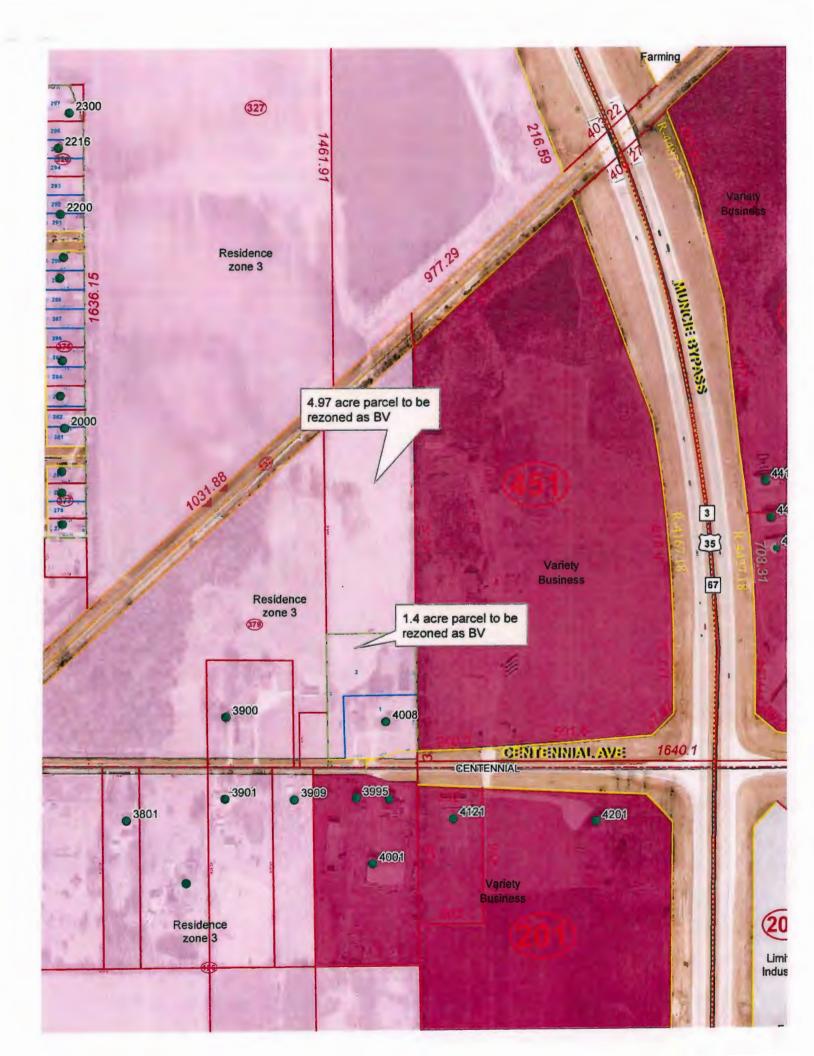
<u>Streets</u>: Centennial Ave. is classified as a Secondary Arterial with an 80' proposed ROW according to the Thoroughfare Plan Map.

Land Use: The land use in this area is a mixture of R 3 single family residences, and BV Variety Business Zone.

**Zoning:** The parcels north, south and west of these parcels are classified as R 3 Residence Zone. The parcel to the east is classified as BV Variety Business.

### **Additional Information:**

The applicant intends to sell the 4.97 acre parcel to the owner's of the property to the east. This parcel will remain landlocked unless the purchaser's combine both parcels into one new parcel. It is worth noting that the applicant recently platted the two lots to the south as Nannie Haven Subdivision. Lot 1 (one) in Nannie Haven has been sold and will remain classified as R 3 Residence Zone.. Lot 2 (two) remains in the applicant's name. The applicant has stated in this rezoning application that lot 2 of Nannie Haven will become a business.



### MaryAnn Pope

Regarding MPC 11-242

From: Anthony Rieger <arieger4233@gmail.com> RECEIVED

Sent: Tuesday, October 1, 2024 9:07 AM

To: MaryAnn Pope

Subject: Rezoning opposition OCT 1 2024

DELAWARE-MUNCIE METROPOLITAN PLAN COMMISSION

**CAUTION:** This email originated from outside of Delaware County Government. Please <u>do not</u> <u>click links or open attachments</u> from an <u>unknown</u> or <u>suspicious</u> sender.

Regarding Drake Properties application for rezoning 3700 Blk E Centennial Ave, Muncie, IN

In the following I will be referring to Lot 2 of Nannie Haven Sub owned by Drake Properties, which is under review to be rezoned by this commission. My wife and I own the lot directly adjacent to Lot 2 on the south side. We purchased our lot from Drake Properties in March 2024.

The proposed zoning changes application dated September 9, 2024, was submitted with a signed and notarized affidavit attesting to the accuracy of the application. The application states Drake Properties reached out personally to land owners within 300 feet of the lot to be rezoned. My wife and I are the owners of 4008 E Centennial Ave, the plot that shares the southern property line of Lot 2, and we have had no contact from Drake Properties regarding the proposed rezoning. The first notice we received on the matter was the Notice of Public Hearing sent via mail from this commission.

Part 8 of the application on record asks the applicant to state how the proposed change will not adversely affect the surrounding area but the answer provided makes no mention of our lot. Please take note there is only mention of the north 5 acres to be sold and the lot to be rezoned. No consideration is given to how it might affect our lot, which abuts Lot 2 on the south side.

To be clear, my wife and I are not in favor of this rezoning for multiple reasons, some of which have already affected us.

Firstly, we have had several vehicles trespass onto our property because of the work being done on Lot 2. We had a truck drive through our yard and around our home because they were attempting to access the lot that Drake Properties is attempting to have rezoned. Secondly, while I was at work, my 9 month pregnant wife, with our 2 year old in tow, had to confront the power company who simply strolled onto our property and into our back yard, without knocking on our door or notifying her of their presence, because they were planning how and where to install power lines and a transformer for the lot that is being considered for rezoning. The only reason my wife knew he was on our property is because of a security system we recently upgraded. Please be aware that we only upgraded it due to these many occurrences and will now have the monthly expense of paying for monitoring for our safety and peace of mind. We did not have this expense prior to the work commencing on Lot 2 in anticipation of their proposed rezoning. Regardless of the outcome of the rezoning, we politely suggest at a minimum, that Drake Properties place a sign indicating the correct drive for Lot 2 and that vendors be given proper direction by Drake Properties to ensure they do not trespass and are using the appropriate entrance to get to Lot 2.

The transformer, mentioned previously, is one of the most problematic aspects of the rezoning and planned use of the property for us. Drake Properties has chosen to place the transformer directly adjacent to, practically less than a foot away from, our shared property line. It is also very close, probably around a distance of 20 feet, to our child's wooden swing set that was present well prior to any work being started on Lot 2 and also prior to the transformer's location

being decided. One problem with the transformer's location is that no matter what fence we erect or trees we plant, we will still have a utility pole and transformer essentially in our yard to look at for years and years to come. My understanding, after speaking with the utility company, is that this transformer could have been placed in multiple different areas on Lot 2, but instead it is being placed where it has the greatest adverse affect on us. I am sure Drake Properties did not do so specifically to cause us harm or hardship, but nevertheless, if rezoning is approved, it will cause us unplanned financial hardship in the form of privacy fencing and buying trees to plant for our privacy and more importantly, security, and it will be an eyesore that will likely negatively impact our property value as compared to having a residential lot behind us.

We bought our home from Drake Properties knowing, and being reassured by the fact, that the lot behind us, Lot 2, was another residential lot and that absolutely factored into our decision to buy our home. Had we known of their plan to rezone Lot 2 for business, we likely would not have bought here out of our concerns for safety, security, and privacy.

All that being said, we would have appreciated some consideration from Drake Properties on the placement of the transformer, and for them to have actually contacted us personally, as they attested to in their signed and notarized affidavit included in their application. The location of the planned utility pole and transformer will, at a minimum, be an eyesore for 10 or more years until trees can grow up enough to block it from view. The current planned placement will also cause us to have to move our child's wooden swing set as we do not feel the proximity to the transformer is safe. We are not in favor of the rezoning as we do not want the traffic, noise, lack of privacy, and reduction in safety for our child, that comes with a business being directly behind our home. We also strongly object based on the number of workers who have already, mistakenly or otherwise, walked on our property, trespassed in our driveway, and even driven through our yard, around our house.

This potential rezoning and the issues arising from it has already caused us some unexpected financial expense in the form of upgraded security monitoring and is forcing us to consider the financial hardship that will be put upon us, to fence in our yard and gate our property and driveway out of safety for our child and growing family, if the rezoning is approved.

And again, they signed an affidavit attesting to speaking to us personally about the matter and I sincerely hope the commission specifically addresses this with Drake Properties.

## DELAWARE-MUNCIE METROPOLITAN PLAN COMMISSION PROPOSED ZONING CHANGE APPLICATION

Juris	ediction: (Check One)	Submitted: Sept. 9, 2024
í	Delaware County	Case No.: MPC 11-247
[	✓ City of Muncie	
(1)	Applicant: Drake Properties   LLC- Donna Drake	
	Address: P.O Box 96 Eaton, IN 47338	Phone: 744-6072
(2)	Record of Applicant's Ownership:	
		757
	B. By Recorded Contract:  Misc. Book No. & Page No.:  Date of Contract:	
	Name of Contract Seller:	ler's Name:
(3)	Legal Description of Property for which rezon	ing is requested: (From the Deed or Abstract).
	See attached	
(4)	Common Address of Property Involved: 3700 BLK E Centennial Ave, Muncie, IN	
(5)	Proposed zoning change: (Give exact zone of From the R-3 Residence Zone To the By Variety Business Zone	lassification.) Zone Zone

(6)	Intent and Purpose of Proposed Change: (Specify use contemplated on property.)				
	Lot 2 of Nannie Haven Sub proposed to be used as a model center for a renovation business and the north 5 acres is to be sold to the east adjoining property, which is currently zoned as BV Variety Business.				
(7)	Will the Owner develop the property for the use specified in Item 6 or does owner intend to sell property for the purpose specified.				
	The owner intends to sell the north 5 acres to the East adjoiner and will retain lot 2 of Nannie Haven Sub.				
(8)	State how the proposed change will not adversely affect the surrounding area.				
	The change will not adversely affect the surrounding area because the east adjoining property is zoned BV Variety Business. The North 5 acres is intended to be sold to them and lot 2 of Nannie Haven Sub will become a business.				
(9)	Will certain variances be requested if the proposed zoning change is granted? (If yes, list the variances)				
	No				
(10)	Has the applicant provided stamped, addressed envelopes to send notices of this rezoning to all the property owners within 300 feet? Yes  Has the applicant discussed this rezoning with those owners personally? Yes  (If answer is yes, give their attitudes toward the rezoning.)				
	The east adjoining property is in favor of this zoning change.				
(11)	Are there any restrictions, easements, and/or covenants governing the property prohibiting its use for the purpose specified in this application? (If answer is yes, attach copy of it and/or explain.)				
	No				

### **AFFIDAVIT**

(I or We) Drake properties 1LLC	- Donna Drake being duly
sworn, depose and say that I/We am/are the owner(s	s)/contract owner(s) and contract seller(s) of
property involved in this application and that the forego	ping signatures, statements, and answers herein
contained and the information herewith submitted are	in all respects true and correct to the best of
my/our knowledge and belief.	
SIGNATURES: Dane 7 Del	e Sole Owner
Subscribed and sworn to before me this 30th day	of August, 2024
	Notary Public
Katherine M. Vannice Notary Public - State of Indiana County of Residence: Henry Commission Number: NP0754487	2/11/203 Z My Commission Expires
My Commission Expires: 02-11-2032	Resident of Henry County
	State of
DO NOT WRITE IN T	THIS SPACE
The foregoing application has been inspected	by me and was submitted to the Delaware-
Muncie Metropolitan Plan Commission Office in acco	
properly advertised by the applicant, this application wi	Il be heard by the Plan Commission in Public
hearing on the 3rd day of October, 20	
Si	gned UNau Pape  ate 9-9-24
D	ate 9.9.74

Young's Title

Duly Entered for Transfer Fees \$\_\_\_ Duly Entered for Taxation MAR 0 5 2019 ZR

Stire g. Congresion Delaware County Auditor

2019R02757 **MELANIE MARSHALL DELAWARE COUNTY RECORDER RECORDED ON** 03/05/2019 10:53 AM **REC FEE 25.00** PAGES: 4

### Special Warranty Deed

This indenture witnesseth that The Bank of New York Mellon FKA The Bank of New York, as Trustee for certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-5, by NewRez LLC f/k/a New Penn Financial, LLC dba Shellpoint Mortgage Servicing, as Attorney-in-Fact under Limited Power of Attorney dated December 8 20/6 and recorded January 17 2018 as Document Number 2.018 R 00 634 1 ("Grantor"),

CONVEYS AND WARRANTS TO Drake Properties I, LLC, an Indiana limited liability company of Delaware County, Indiana ("Grantee"),

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described real estate located in Delaware County, Indiana:

#### TRACT ONE:

A part of the Southwest Quarter of Section One (1), Township Twenty (20) North, Range Ten (10) East, more particularly described as follows, to-wit: Beginning at the Southeast corner of said Southwest Quarter and running thence West on the South line of said Quarter 369 feet; thence North parallel with the East line of said Quarter 171 feet; thence East parallel with the South line of said tract 369 feet to the East line of said Quarter; thence South on said East line of said Quarter 171 feet to the point of beginning, said in previous deed to contain 1.448 acres, more or less.

EXCEPTING THEREFROM: A part of the Southwest Quarter of Section 1, Township 20 North, Range 10 East, Delaware County, Indiana, described as follows: Beginning on the Northern boundary of Centennial Road North 00°51'00" West 20.01 feet (along the East line of said Quarter Section) from the Southeast corner of said Quarter Section; thence North 89°34'00" West 160.35 feet along said Northern boundary; thence North 73°44'03" East 104.40 feet; thence North 88°31'27" East 60.00 feet to the East line of said Quarter Section; thence South 00°51'00" East 32.00 feet along said East line to the point of beginning.

### TRACT TWO:

A part of the Southwest Quarter of Section One (1), Township Twenty (20) North, Range Ten (10) East, in Center Township, Delaware County, Indiana, described as follows: Commencing at the Southeast corner of the Southwest Quarter of Section 1, Township 20 North, Range 10 East; thence North 00°56'30" West (assumed bearing) 421.00 feet along the East line of said Southwest Quarter Section to the Point of Beginning; thence North 00°56'30" West 901.42 feet



to the Southerly right-of-way line of the Norfolk and Western Railroad (formerly Lake Erie and Western Railroad Company); thence South 47°08'30" West 376.20 feet along said Southerly right-of-way line; thence South 00°56'30" East 645.50 feet; thence South 90°00'00" East parallel with the South line of said Southwest Quarter Section 280.00 feet to the point of beginning, said in previous deed to contain 4.97 acres, more or less.

### TRACT THREE:

A part of the Southwest Quarter of Section One (1), Township Twenty (20) North, Range Ten (10) East, more particularly described as follows, to-wit: Beginning at a point in the East line of said Southwest Quarter 171 feet North of the Southeast corner thereof; thence North on and along said East line 250 feet; thence West parallel with the South line of said Southwest Quarter 280 feet; thence South parallel with the East line of said Southwest Quarter 250 feet; thence East parallel with the South line of said Southwest Quarter 280 feet to the point of beginning, said in previous deed to contain 1.6 acres, more or less.

Commonly known as: 4008 East Centennial Avenue, Muncie, IN 47303

Tax parcel number: 18-11-01-379-006:000-003 and 18-11-01-379-007.000-003

Grantor covenants that it is seized and possessed of the said land and has a right to convey it, and warrants the title against the lawful claims of all persons claiming by, through and under it, but not further otherwise.

Grantor certifies that the land described herein is the same land as that conveyed in the deed to the grantor herein, recorded as Instrument No. 2018R14199 and also, to Jacqueline Allen by Warranty Deed recorded February 27, 2007 as Instrument No. 2007R07187. The legal description herein is corrected to except from Tract One an earlier conveyance of a part of said tract to the State of Indiana by Instrument recorded in Book 484, pages 61-62 and in accordance with the historical legal of Tract Three as described in Warranty Deed recorded January 13, 1971 in Deed Book 1971, page 158.

The following reservations from and exceptions to this conveyance and the warranty of title made herein shall apply:

- 1. All easements, rights-of-way and prescriptive rights, whether of record or not, pertaining to any portion(s) of the herein-described property (hereinafter the "Property");
- 2. All valid oil, gas and mineral rights, interest or leases, royalty reservations, mineral interest and transfers of interest of any character, in the oil, gas or minerals of record in any county in which any portion of the Property is located;
- All restrictive covenants, terms, conditions, contracts, provisions, zoning ordinances, and other items of record in any county in which any portion of the Property is located, pertaining to any portion(s) of the Property, but only to the extent that same are still in effect;

# APPROVED AND FILED DIEGO MORALES INDIANA SECRETARY OF STATE 01/10/2024 03:42 PM

BUSINESS ENTITY/REPORT

NAME AND PRINCIPAL ORFIGE ADDRESS

**BUSINESS ID** 

201801181234779

**BUSINESS TYPE** 

Domestic Limited Liability Company DRAKE PROPERTIES I. LLC

**BUSINESS NAME** 

01/18/2018

JURISDICTION OF FORMATION

ENTITY CREATION DATE

Indiana

PRINCIPAL OFFICE ADDRESS

503 E. Race, 96, Eaton, IN, 47338, USA

MEARSPIED 3

YEARS

2024/2025

EFFECTIVE DATE

**EFFECTIVE DATE** 

01/10/2024

EFFECTIVE TIME

10:21 AM

RECISTERED OFFICE AND ADDRESS &

REGISTERED AGENT TYPE

Individual

NAME

Donna Drake

ADDRESS

503 E. RACE, 96, Eaton, IN, 47338, USA

SERVICE OF PROCESS EMAIL

dfdrake1@comcast.net

I acknowledge that the Service of Process email provided above is the email address at which electronic service of process may be accepted.

GOVERNING PERSON INFORMATION

TITLE

Member

NAME

DONNA DRAKE

ADDRESS

503 E. RACE, 96, Eaton, IN. 47338, USA

APPROVED AND FILED
DIEGO MORALES
INDIANA SECRETARY OF STATE
01/10/2024 03:42 PM

#### SIGNATURE

THE SIGNATOR(S) REPRESENTS THAT THE REGISTERED AGENT NAMED IN THE APPLICATION HAS CONSENTED TO THE APPOINTMENT OF REGISTERED AGENT.

IN WITNESS WHEREOF, THE UNDERSIGNED HEREBY VERIFIES, SUBJECT TO THE PENALTIES OF PERJURY, THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE, THIS DAY January 10, 2024.

THE UNDERSIGNED ACKNOWLEDGES THAT A PERSON COMMITS A CLASS A MISDEMEANOR BY SIGNING A DOCUMENT THAT THE PERSON KNOWS IS FALSE IN A MATERIAL RESPECT WITH THE INTENT THAT THE DOCUMENT BE DELIVERED TO THE SECRETARY OF STATE FOR FILING.

SIGNATURE

Donna F. Drake

TITLE

Member

Business ID: 201801181234779

Filing No.: 10174809

A description of land to have a change of zoning to Variety Business Zoning:

Lot 2 in Nannie Haven, a subdivision in Center Township, Delaware County, Indiana recorded in instrument number 2024R04211 records of Delaware County, Indiana.

Also A part of the Southwest Quarter of Section 1, Township 20 North, Range 10 East in the City of Muncie, Delaware County, Indiana, described as follows:

Beginning at a point on the East line of the Southwest Quarter of Section 1, Township 20 North, Range 10 East, said point being North 00 degrees 54 minutes 04 seconds West 421.00 feet (assumed bearing) from a nail marking the Southeast corner of said Southwest Quarter; thence North 89 degrees 35 minutes 46 seconds West 280.00 feet; thence North 00 degrees 54 minutes 04 seconds West 1060.60 feet parallel with the East line of said Southwest Quarter to the Southeasterly right—of—way line of the Norfolk and Southern Railroad; thence North 47 degrees 32 minutes 34 seconds East 374.08 feet along said Southeasterly right—of—way line to a point on the East line of said Southwest Quarter; thence South 00 degrees 54 minutes 04 seconds East 1263.12 feet along soid East line to the point of beginning, containing 4.93 acres, more or less.

Dated: August 30, 2024

PRO FORMA SURVEY

This drawing is not intended to be represented as a retracement or original boundary survey, o route survey, or a Surveyor Location Report

arlow Registered Land Surveyor LS80040149 Haldon L. Ashton

Flood Zone:

SURVEY 3. The within tract does not lie within that Special Flood Hozard Zone A as soid tract plots by scale on Community Panel #18035C0254D of the Flood Insurance Rate Maps for Delaware County, Indiona (Maps Dated:7/4/2011).

4. The minimum flood risk was verified by the INDNR Flood Plain Information Portal—dated:

Ownership shown herein is per County Records or as indicated in title work provided by others.

This Instrument Prepared by: Haldon L. Ashton Accuracy or completedness of subsurface features is not certified

Date Reason:

Drawn: END Date: 08/21/2024 Job: 2024598 Client: Donna Drake Owner: Drake Properties I, LLC Crew: EHA Electronic Field Book Field Date:11/09/2023

4008 E. CENTENNIAL AVE. MUNICE, IN

I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER DOCUMENT, UNLESS REQUIRED BY LAW (HALDON L. ASHTON),



Sheet 1 OF 1

DON LEE REGISTE,

STATE OF

NOIANA

