

# BANKRUPTCY AUCTION!

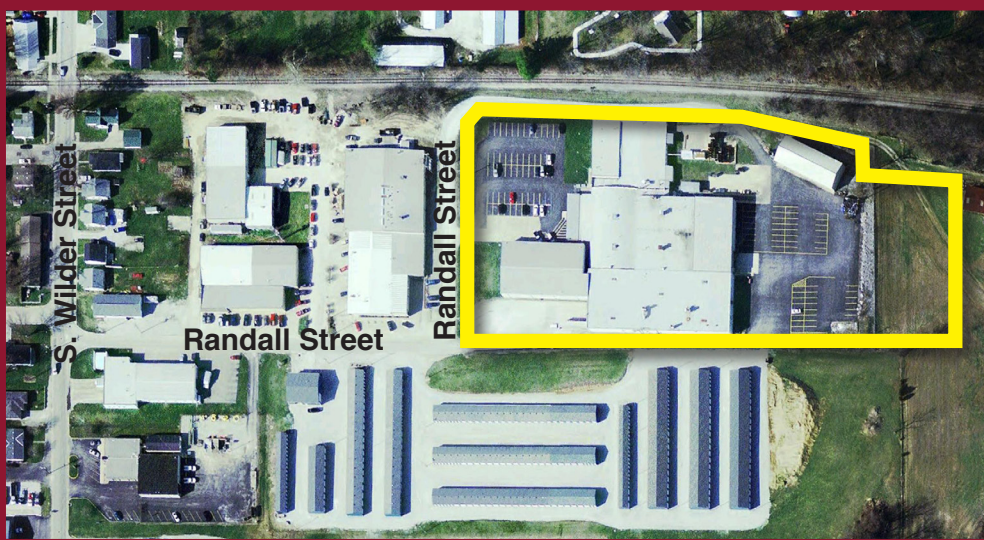
## PROPERTY INFORMATION PACKET

By order of the United States Bankruptcy Court, Southern District of Indiana, Indianapolis Division Case#10-01386-FJO-7

### 11am, Tuesday, July 24th

### Auction Held On-site:

### 900 E. Randall St., Greensburg, IN

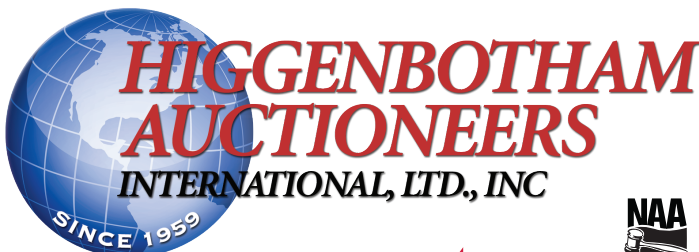


**69,900±SF**  
**INDUSTRIAL**  
**WAREHOUSE**  
on 6.87± Acres



Directions: From I-74 take exit #132 onto US 421-S. toward Greensburg. Turn left onto US 421 S/N Michigan Ave. for 2 miles. Turn right onto N. Ireland St. In .4 mile turn left onto W. Main St. In .8 mile, turn right onto

Terms of Sale: 10% Deposit Due Day of Sale, Balance due at Closing. Closing on or before 30 days or within 10 days of notification of bankruptcy court approval. 10% Buyer's Premium.



an alliance partner of **NAI Global**

In cooperation with:

**NAI Meridian**



# 800-257-4161

Higgenbotham.com  
auction@higgenbotham.com

M.E. Higgenbotham, CAI, AARE IN Lic.# AC30300056 AU01043213 • 1666 Williamsburg Square, Lakeland, FL 33803

# INDUSTRIAL PROPERTY AUCTION

11am, Tuesday, July 24<sup>th</sup>

Greensburg, Indiana

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***BY ORDER OF THE US BANKRUPTCY COURT  
Southern District of Indiana, Indianapolis Division  
CASE: 10-01386-FJO-7***

**LOCATION** 900 E. Randall St.  
Greensburg, IN 47240, Decatur County  
Washington Township

**DESCRIPTION** 69,900±sf warehouse on 6.47± acres

**PARCEL ID#** A) 16-11-12-210-065.000-016  
B) 16-11-12-120-002.000-016

**TAXES** Combined 2011-\$19,026.83 includes tax abatement

**UTILITIES** Water, sewer, electricity & gas are available at the site

**FRONTAGE** 375±' frontage on Randall St.

**ZONING** I1; Light Industrial District

**TERMS** 10% deposit day of sale. Balance due at closing on or before 30 days or within 10 days of Bankruptcy Court approval. 10% buyer's premium.

All information contained in this package was obtained from sources believed to be correct but is not guaranteed. Buyers shall rely on their own information, judgement, and inspection of the property and records. All announcements from the auction block take precedence over any printed or advertised material. All properties subject to prior sale. Higgenbotham Auctioneers reserves the right to (a) utilize reasonable means to determine that a person is eligible to bid and will follow the rules of this auction, and (b) deny bidding privileges to any person, to refuse acceptance of any bid presented at the auction, or to revoke any bid received at the auction, all is the sole discretion of Higgenbotham Auctioneers and without specifying a reason.

## **PROPERTY DESCRIPTION**

### **Warehouse Facility on 6.47± acres**

- 69,900±sf single story part masonry, part steel constructed office/warehouse building
  - Original building built in 1920 with additions over the years thru 2000.
  - 7% office build out
  - Ceiling heights from 12-18'
  - Two grade level drive in doors
  - Six raised loading docks
- 4,000±sf pole shed
- Parcel A (5.34± acres) in Flood Zone "C"
- Parcel B (1.32± acres vacant land) in Flood Zone "A-2"
- The tax abatement is transferable & has a 10 year term that began in 2007.

All information contained in this package was obtained from sources believed to be correct but is not guaranteed. Buyers shall rely on their own information, judgement, and inspection of the property and records. All announcements from the auction block take precedence over any printed or advertised material. All properties subject to prior sale. Higgenbotham Auctioneers reserves the right to (a) utilize reasonable means to determine that a person is eligible to bid and will follow the rules of this auction, and (b) deny bidding privileges to any person, to refuse acceptance of any bid presented at the auction, or to revoke any bid received at the auction, all is the sole discretion of Higgenbotham Auctioneers and without specifying a reason.

# How an Auction Works

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## **THIS IS MY FIRST AUCTION AND I'M NOT SURE HOW TO BID**

**Step 1:** Register to bid by filling out a bidder card at the registration table. By registering to bid, the buyer acknowledges that they have reviewed and understood the information in the property information packet and the Contract for Purchase and Sale agreement. The bidder also acknowledges that immediately following the auction, they are prepared to execute the Contract for Purchase and Sale agreement and pay the appropriate deposit at that time in a form that has previously been deemed acceptable to the Auction Company.

**Step 2:** Determine how much you are willing to pay for a piece of property. Since your needs and desires are unique, your evaluation of the property will be different from anyone else's.

**Step 3:** As the auctioneer progresses in his call for bids, simply raise your hand when you want to bid. If you're not sure if you're in or out, raise your hand again and the auctioneer will keep you in. He will not let you bid against yourself. The auction will be conducted under the total control of the auctioneer.

**Step 4:** If you have any questions, motion for one of Higgenbotham's Auction Team members. These ringmen are here to help you understand the process completely.

## **WHAT DOES THE TERM "RESERVE" MEAN?**

Under a reserve auction the auctioneer will submit the highest and best bid to the seller. The seller has the right to accept or reject that bid. If the property is not labeled as absolute, it will be sold on a reserve basis.

## **WHAT DOES THE TERM "ABSOLUTE" MEAN?**

In an absolute auction, the property will be sold to the last and highest bidder regardless of price.

## **DO I NEED TO PRE-QUALIFY?**

No, we normally do not require any pre-qualification to bid; however if you intend to obtain bank financing, the bank will require you to qualify for their loan. The deposit you make on auction day is not contingent upon financing. Phone bidding is available to buyers who have properly registered with our company.

## **WHAT IS A BUYER'S PREMIUM?**

A buyer's premium is a percentage that is added to the bid price to determine the total purchase price. In this auction there will be a 10% buyer's premium added to the successful bid amount to create the total purchase price. The Earnest Money (pursuant to the Contract for Purchase and Sale), will be non-refundable (except as otherwise provided in the Contract for Purchase and Sale) and due on the date of auction in the form of a personal or business check, unless otherwise noted. The balance of the contract purchase price will be due at closing.

## **WHAT IF I AM A BROKER?**

We offer a Broker Participation Fee to any licensed Real Estate Broker who properly registers a client. The registration form must be completed at least 48 hours prior to the scheduled auction by calling 800-257-4161 to request a Broker Participation Form.

The most important thing to do at an auction is relax and have fun! If you have a question, ask it. We strive to insure that all our customers are fully informed and educated. And remember,

**You're only going to pay one bid more than someone else was willing to pay!**



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www.higgenbotham.com • auction@higgenbotham.com

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# TABLE OF CONTENTS

SECTION ONE	LOCATOR MAPS
SECTION TWO	ASSESSOR DRAWINGS
SECTION THREE	ZONING
SECTION FOUR	PURCHASE & SALE AGREEMENT

## Information Disclaimer

The data provided in this Property Information Package was compiled from a number of sources, including the public records, as a courtesy to the potential bidder. It is NOT intended to include all of the documentation affecting the subject property, but merely a partial collection of some of the frequently requested documentation.

A potential bidder should not rely upon the information provided as his sole source of due diligence material. It is each bidder's sole responsibility to accomplish his due diligence in whatever manner he deems advisable.

Although all information is derived from sources believed to be correct, neither the broker nor the seller make any warranty or representation as to the validity or accuracy of any information provided.



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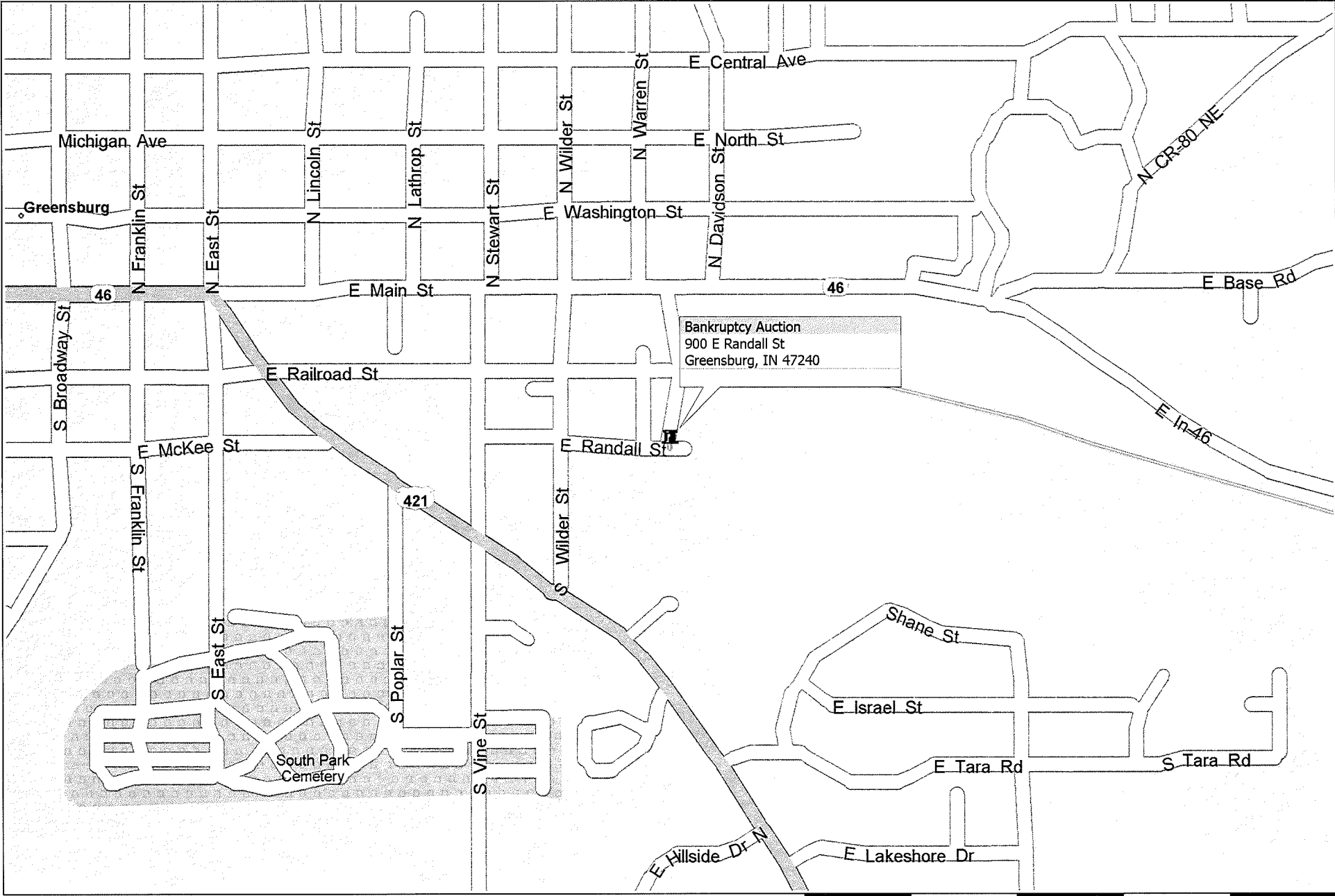
11AM – TUESDAY, JULY 24

## **Auction On-Site!**

900 E. Randall St.  
Greensburg, IN

**Section 1:**  
Locator Maps

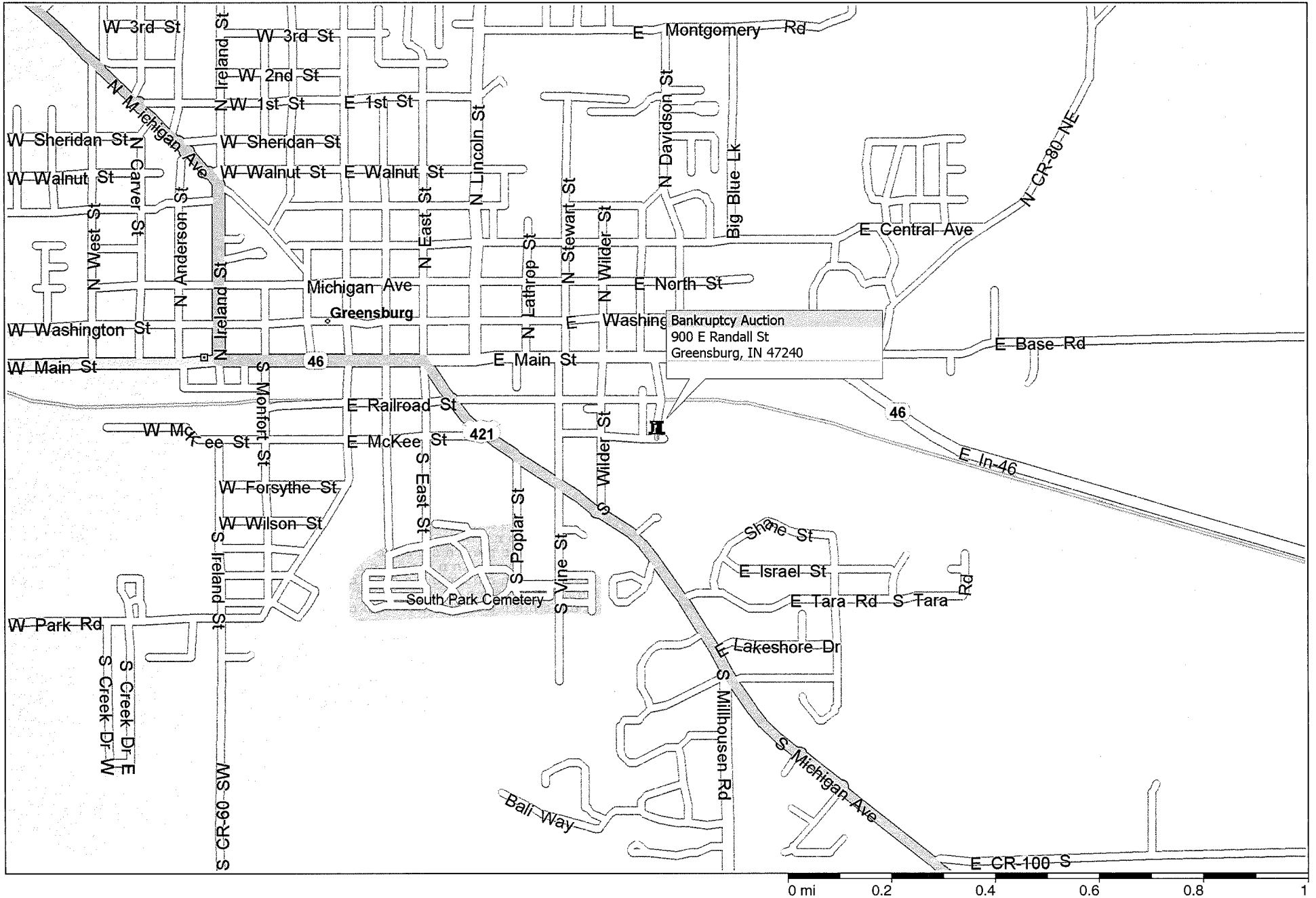
# Greensburg, Indiana



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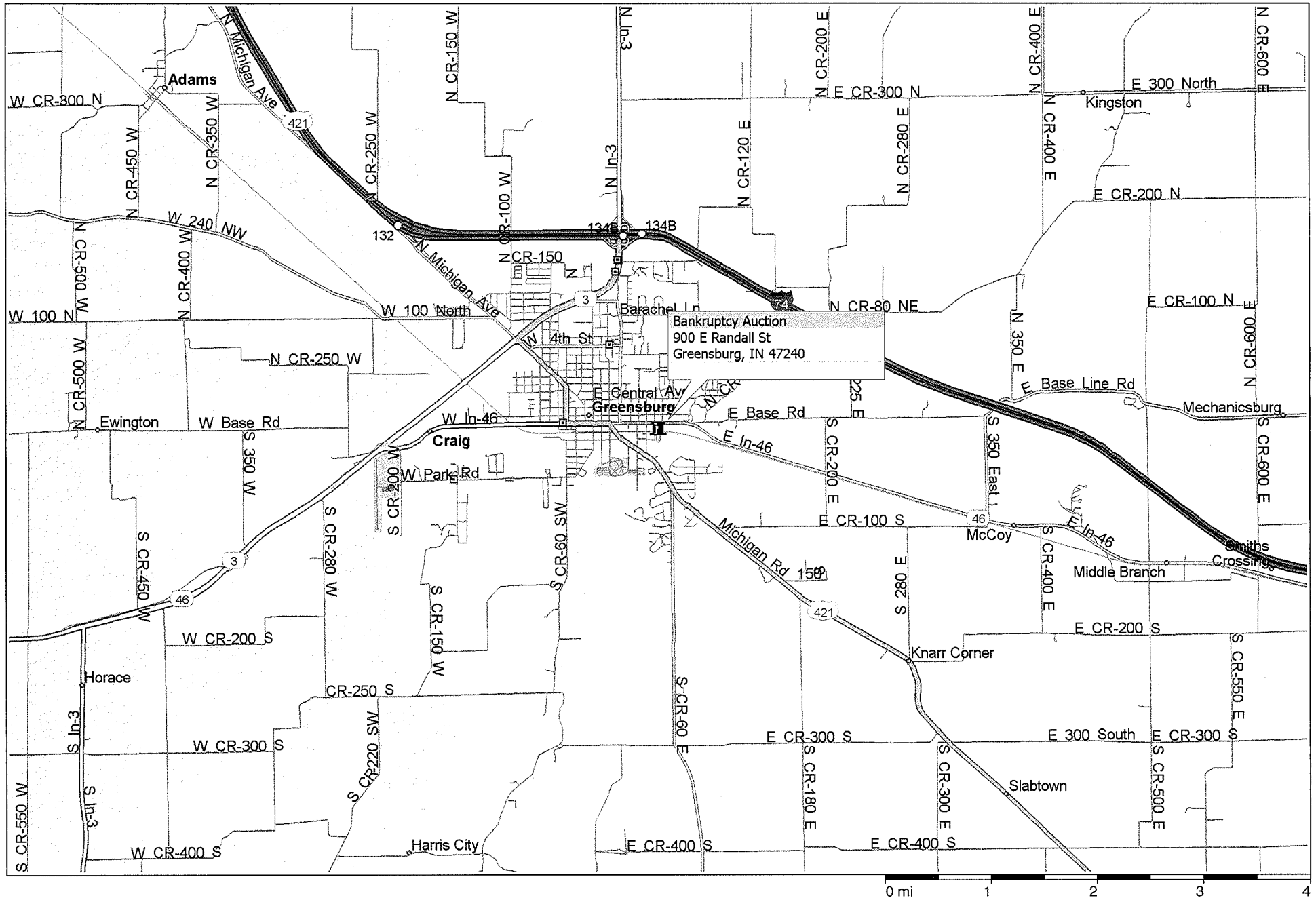


# Greensburg, Indiana





# Greensburg, Indiana





# BANKRUPTCY AUCTION!

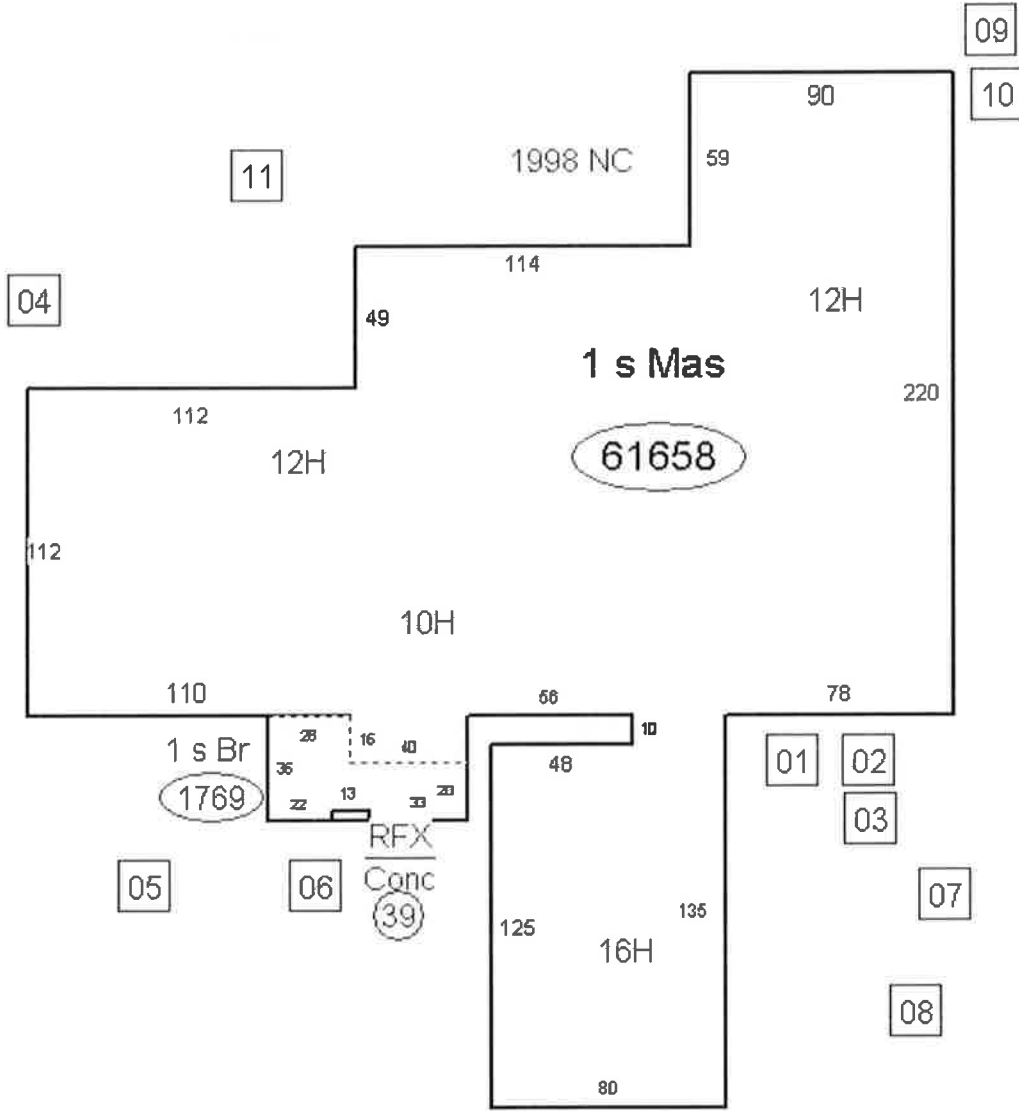
11AM – TUESDAY, JULY 24

## **Auction On-Site!**

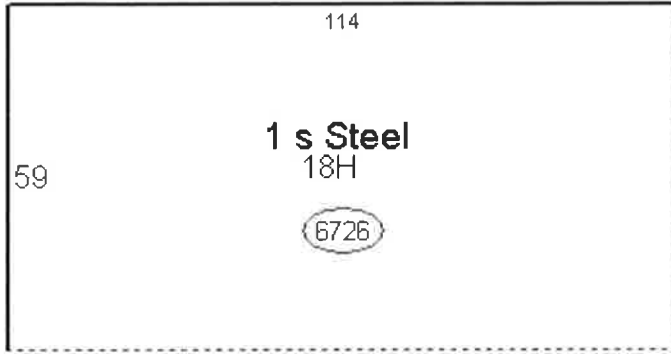
900 E. Randall St.  
Greensburg, IN

**Section 2:**  
Assessor Drawings





1998 ADDITION





# BANKRUPTCY AUCTION!

11AM – TUESDAY, JULY 24

## **Auction On-Site!**

900 E. Randall St.  
Greensburg, IN

**Section 3:**  
Zoning

Print

Greensburg, IN Code of Ordinances

**INDUSTRIAL DISTRICTS**

**§ 155.045 I-1 LIGHT INDUSTRIAL DISTRICT.**

(A) Permitted Principal Uses. The intent of Light Industrial Districts is to provide space for certain commercial and a wide range of industrial uses and structures that are able to meet certain performance standards to protect nearby non-commercial and non-industrial uses from undesirable environmental conditions. Residential and other similar uses are prohibited from this district in order to limit environmental effects associated with certain commercial and industrial uses, irrespective of their meeting performance standards.

(1) The following uses are permitted in an I-1 District. When located less than 100 feet from any R district, any such operations must be enclosed by a fence not less than six feet in height, and an earth embankment or two rows of alternate planted evergreen trees or similar vegetation. Provided that each meets the performance standards for this district set forth below, and provided it is not specifically prohibited.

(a) Manufacturing, processing or assemblies of products, materials, or articles that meet the performance standards for this district, provided that it not specifically prohibit.

(b) Wholesale, storage, and warehouse uses.

(c) Agricultural businesses and supplies;

(d) Livestock exchanges (excluding confinement and feeding facilities)

(2) The following are the Performance Standards for open and enclosed industrial uses.

(a) Physical appearance. All operations shall be carried on within an enclosed building; however, new materials or equipment in operable condition may be stored in the open. Normal daily wastes of an inorganic nature may be stored in containers outside a building provided the containers are screened and not readily visible for the street.

(b) Noise. No operating shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour with other city laws.

1. Noise shall be measured at the property line; when the level of noise cannot be determined by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges.

2. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency, or shrillness.

(c) Sewage and liquid wastes - All sewage waste must be in compliance with Federal and State Regulations and with the local Sewer Use Ordinance 1995-3 and all its amendments.



(d) Air contaminants - Shall meet all federal and State Air Emission Regulations.

1. Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever quantities of air contaminants or other material in such a quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public in general; to endanger the comfort, repose, health, or safety of any considerable number of persons or to the public in general; or to cause or have a natural tendency to cause injury or damage to business, vegetation, or property.

(e) Odor. The emissions of odors that are generally agreed to be obnoxious to any considerable number of persons, shall be prohibited.

1. Observations of odor shall be made at the property line of the establishment causing the odor.

2. As a guide to classification of odor, it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that odors associated with baking shall not normally be considered obnoxious within the meaning of this chapter.

(f) Gasses. The gasses sulfur dioxide and hydrogen sulfide shall not exceed five parts per million. All nitrous fumes shall not exceed one part per million. Measurements shall be taken at the property line of the particular establishment involved.

(g) Glare and Heat. All glares, such as welding arcs and open furnaces, shall be shielded so that they shall not be visible from the property line. No heat from furnaces or processing equipment shall be sensed at the property line to the extent of raising the temperature of air or materials more than 5 degrees F.

(h) Vibration. All machines, including punch presses and stamping machines, shall be mounted so as to minimize vibration; in no case shall vibration exceed a displacement of 3/1000 of an inch measured at the property line.

(B) Permitted Exceptions. After the provisions of this chapter relating to special exceptions have been fulfilled, the Board of Zoning Appeals or Plan Commission may permit, as special exceptions in Light Industrial Districts, any use that is consistent with the intent of this district and which is not prohibited.

(1) Junk, salvage, auto wrecking, and similar operations shall be shielded from the view from streets and from adjacent properties in another district by means of a sturdy, sight-obscuring, eight-foot high fence in good repair and two rows of alternate planted evergreen trees or like vegetation;

(2) Fuel storage and agricultural chemicals;

(3) Concrete mixing, processing or storage;

(4) Signage (See §§ 155.065 through 155.072 for guidelines)

(C) Prohibited Uses.

(1) All residential dwellings and mobile homes used as a residence.

(2) Schools, hospitals, clinics, libraries, churches, chapels, public parks, public recreational areas, and cemeteries.

(3) Confinement feeding operations used for the growing of animals but this section does not prohibit facilities of animals for resale, auction, processing, or transportation such as stockyards.

(4) Sanitary landfill operations.

(D) Permitted Accessory Uses. The following accessory uses and structures shall be permitted in Light Industrial Districts.

(1) Caretaker and watchman quarters.

(E) Size and Distance Regulations. All distances in this section shall be measured from the edge of the public right of way. Height limitation applies to all structures in this section from the ground to the structure's highest point. The height of all structures shall not exceed 60 feet. The following are the minimum requirements for buildings or structures within industrial districts;

<i>Zoning Classification</i>	<i>Minimum Lot Area (sq. ft.)</i>	<i>Minimum Lot Width</i>	<i>Front Yard Depth</i>	<i>Side Yard Depth</i>	<i>Rear Yard Depth</i>
I-1	40,000	150'	50'	25'*	25'

\*Buildings 30 feet or over in height - side yard must have a side yard equal to height of building.

(Ord. 1999-15, passed 12-6-99)

**§ 155.046 I-2 HEAVY INDUSTRIAL DISTRICT.**

The purpose of the Heavy Industrial District (I-2) to provide land for the widest range of industrial operations permitted in the planning jurisdiction area, for those industrial uses which are unable to meet the performance standards designated for Light Industrial Districts (I-2) so as to be nuisance-free in operation or construction.

(A) Permitted Principal Uses. The following principal uses and structures shall be permitted in Heavy Industrial Districts (I-2).

(1) Any use permitted in the light Industrial District (I-1).

(2) Any industrial use that can meet the performance standards for this district set forth below, except as herein modified, but which is not prohibited.

(3) Junk, salvage, auto wrecking, and similar operations shall be shielded from the view from streets and from adjacent properties in another district by means of a sturdy, sight-obscuring, eight-foot high fence in good repair and two rows of alternate planted evergreen trees or like vegetation.

(4) Meat and poultry packing, slaughtering, eviscerating and skinning; and the rendering of by-products of slaughtering and killing of animals or poultry.

(5) Commercial livestock feed lots, stockyard sales, transfer, and temporary holding of livestock.

(B) Permitted Accessory Uses. The following accessory uses and structures shall be permitted in Heavy Industrial Districts (I-2): Accessory uses and structures normally appropriate to the permitted uses and

structures, when established within the space limits of this district.

(C) Permitted Exceptions.

(1) After the provisions of this chapter relating to special exceptions have been fulfilled, the Board of Zoning Appeals or Plan Commission may permit, as special exceptions in Heavy Industrial Districts, any use that is consistent with the intent of this district and which is not prohibited.

(a) Above ground storage of liquid petroleum products or chemicals of flammable or noxious nature when more than 150,000 gallons are stored on one lot of less than one acre in size, or when more than 25,000 gallons are stored in one tank.

(b) The storage of flammable or noxious gasses above or below ground in excess of 5,000,000 cubic feet on any one lot of less than one acre, or 2,000,000 cubic feet in any one tank.

(c) The excavation and sale of sand, gravel, clay, shale, or other natural mineral deposit except topsoil, or the quarrying of any kind of rock formation.

(2) To be a permitted industrial use in I-2 Heavy Industrial District whether as a permitted use or as a special exception, uses must meet the following performance standards.

(a) Noise. No operating shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour with other city laws.

1. Noise shall be measured at the property line; when the level of noise cannot be determined by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges.

2. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency, or shrillness.

(b) Sewage and liquid wastes. All sewage waste must be in compliance with Federal and State Regulations and with the local Sewer Use Ordinance 1995-3 and all its amendments.

(c) Air contaminants. Shall meet all federal and State Air Emission Regulations.

1. Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever quantities of air contaminants or other material in such a quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public in general; to endanger the comfort, repose, health, or safety of any considerable number of persons or to the public in general; or to cause or have a natural tendency to cause injury or damage to business, vegetation, or property.

(d) Odor. The emissions of odors that are generally agreed to be obnoxious to any considerable number of persons, shall be prohibited.

1. Observations of odor shall be made at the property line of the establishment causing the odor.

2. As a guide to classification of odor, it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that odors associated with baking shall not normally be considered obnoxious within the meaning of this chapter.

(e) Gasses. The gasses sulfur dioxide and hydrogen sulfide shall not exceed five parts per million. All nitrous fumes shall not exceed one part per million. Measurements shall be taken at the property line of the particular establishment involved.

(f) Vibration. All machines, including punch presses and stamping machines, shall be mounted so as to minimize vibration. Vibration shall not be so excessive that it interferes with industrial operations on nearby lots.

(D) Prohibited Uses.

(1) All residential dwellings and mobile homes used as a residence.

(2) Schools, hospitals, clinics, libraries, churches, chapels, public parks, public recreational areas, and cemeteries.

(3) Sanitary landfill operations.

(Ord. 1999-15, passed 12-6-99)

**§ 155.047 SIZE AND DISTANCE REGULATIONS.**

All distances in this section shall be measured from the edge of the public right of way. Height limitation applies to all structures in this section from the ground to the structure's highest point. The height of all structures shall not exceed 60 feet. The following are

<i>Zoning Classification</i>	<i>Minimum Lot Area (sq. ft.)</i>	<i>Minimum Lot Width</i>	<i>Front Yard Depth</i>	<i>Side Yard Depth</i>	<i>Rear Yard Depth</i>
I-2	50,000	200'	50'	25'*	25'

\*Buildings 30 feet or over in height - side yard must have a side yard equal to height of building.

(Ord. 1999-15, passed 12-6-99)

Disclaimer:

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# BANKRUPTCY AUCTION!

11AM – TUESDAY, JULY 24

## **Auction On-Site!**

900 E. Randall St.  
Greensburg, IN

**Section 4:**  
Purchase & Sale Agreement



**Contract For Sale and Purchase**

1666 Williamsburg Square  
Lakeland, Florida 33803-4278  
(863) 644-6681

DECATUR COUNTY, INDIANA STATE, JULY MONTH/DATE, 20 11 YEAR

Buyer: Address: City: State: Zip: Phone: (H) (B)	Seller: Address: City: State: Zip: Phone: (H) (B)
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Buyer hereby offers to purchase the following described property based upon the following terms:

SEE ATTACHED EXHIBIT "A"

TOTAL PURCHASE PRICE of said property is	\$ _____	Balance payable as follows: (B) _____
Shall be paid as follows, to-wit:		
Earnest Money Deposit (10%)	\$ _____	CASH AT CLOSING _____
Held by:		
ALAN KOLB ESCROW & TITLE SERVICES		
50 SOUTH MERIDIAN SUITE 600		
INDIANAPOLIS IN 46204		
317-681-6090		
Balance Due at Closing but subject to proration and adjustments. See Next Column (B)	\$ _____	_____

- Title Insurance:** At the closing of this transaction, the Seller shall have issued by ALAN KOLB ESCROW & TITLE SERVICES, a commitment for title insurance agreeing to insure title to said property and upon closing, the Seller shall purchase and have delivered to the Buyer, a title insurance policy on the real property covered hereunder in the amount of the full purchase price, after all necessary instruments are filed of record.
- Closing Date:** In the event the title shall be proven to be uninsurable, the Seller shall have a period of ninety (90) days within which to cure defects in title, and this sale shall be closed within ten (10) days after notice of such curing to the Buyer or his attorney. Upon Seller's failure to correct uninsurability within the time limit, the earnest money deposit shall be returned to the Buyer upon demand, and all rights and liabilities arising hereunder shall terminate. Subject to the aforesaid curative period, this sale shall be closed on or before: AUGUST 23, 2012 OR WITHIN 10 DAYS OF BANKRUPTCY COURT APPROVAL. If any necessary closing documentation is not available on the closing date, then Seller may, at his sole option, extend the closing date up to thirty (30) days.
- Conveyance:** Seller agrees to convey title to the aforesaid property to the Buyer by TRUSTEE Deed, free and clear of all encumbrances or liens except easements, restrictions, reservations of record and any applicable Governmental Rules, laws or regulations.
- Recording Costs:** The deed will be recorded by the SELLER. The Buyer shall properly execute any required notes and mortgages and place the required stamps thereon and pay intangible tax, recording costs, document preparation and any other costs commonly associated with a mortgage. Unless otherwise specified herein, the form of the mortgage will be in a form typically used by lenders in the area for this type of property.
- Acceptance:** This instrument shall become effective as a contract when signed by the Agent, Buyer, and Seller. If not signed by all parties on or before \_\_\_\_\_ any monies deposited shall be refunded and this instrument shall be void. However, this offer shall remain binding upon the Buyer through the date stated in this paragraph 5. A legible facsimile copy or scanned email of this contract and any signatures hereon shall be considered for all purposes as an original.
- Binding Contract:** This contract is intended as a legally binding contract and the parties shall be bound by all terms stated herein and on the reverse side hereof and addendum (attached hereto ) (none attached ). If not understood, seek competent advice prior to signing.
- Special Agreement(s):** \_\_\_\_\_

By affixing your signatures below, the parties agree to each of the forgoing provisions and that Higgenbotham Auctioneers International, Ltd., is acting as agent for the Seller.

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Buyer(s) \_\_\_\_\_ Seller(s) \_\_\_\_\_

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Higgenbotham Auctioneers International (Referring Broker)  
NAI Meridian (Agent for the Seller) BY: \_\_\_\_\_

- 8) **Proration; Credits:** Taxes, assessments, rent, interest, insurance and other expenses and revenue of Property shall be prorated through day before closing. Cash at closing shall be increased or decreased as may be required by prorations. Advance rent and security deposits will be credited to Buyer and escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of year of closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser (aka Tax Assessor) for an informal assessment taking into consideration available exemptions. Any tax proration based on an estimate shall, at request of either Buyer or Seller, be subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is in the closing statement.
- 9) **Full Agreement:** No agreements unless incorporated in this contract shall be binding upon the Agent, Buyer, or Seller.
- 10) **Inspection:** Upon the signing of this contract, the Buyer states they have personally inspected this property, or it has been inspected by their personal representative with Power of Attorney to act in their behalf. The Buyer specifically warrants that they have performed all necessary due diligence in the inspection of this subject property including, if desired, wood destroying organisms, environmental assessments, governmental regulation inquiry and/or the condition of any improvements as this shall be deemed the sole responsibility of the Buyer. Buyer affirms that they have not relied upon any statement or representation by broker or Seller as any inducement to purchase the subject property.
- 11) **Assignment:** This contract may be assigned, however, the original contracting party shall remain liable for any and all obligations herein through the closing of this transaction.
- 12) **Default:** If Buyer fails to perform this Contract within the time specified, including payment of all deposit(s), the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract, or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.
- 13) **Commission:** The Seller agrees to pay said Agent the amounts stated in seller/broker employment agreement at the time of closing this transaction, unless amended herein. If the Buyer fails to perform this contract within the time herein specified, time being of the essence of this agreement, the deposit made by the Buyer shall be forfeited, and the amount of such deposit shall be divided equally between the Agent and the Seller provided, however, that the amount received or retained by the Agent shall not exceed the full amount of said commission, any excess to be paid the Seller. If the transaction shall not be closed because of refusal of the Seller to perform, then the Seller shall pay the commission to the Agent on demand. Failure or refusal of wife or husband of Seller or Buyer to execute deed or mortgage required hereunder shall be deemed default on the part of such Seller or Buyer.
- 14) **Plain Meaning:** The Words "Agent", "Buyer", and "Seller", herein employed shall include their heirs, administrators, executors and successors, and said words, and any pronouns relative thereto, shall include the masculine, feminine and neuter gender, and the singular and plural number, wherever the context so admits or requires.
- 15) **Risk of Loss:** If the improvements are damaged by fire or other casualty before the closing hereunder and can be restored to substantially the same condition as now within a period of ninety (90) days thereafter, the Seller shall so restore the improvements and the closing date hereinabove set shall be extended accordingly, but if such restoration cannot be completed within that time, this contract shall be declared canceled.
- 16) **Litigation:** In any litigation brought to enforce any of the terms of this Agreement, the successful party shall be entitled to recover, in addition to other damages, his attorney's fees and court costs incurred in said litigation.
- 17) **Auctioneer Remarks:** The parties hereto acknowledge that this purchase is being made at public auction and the parties are thereby bound by all terms and conditions stated in the auctioneer's opening remarks.
- 18) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- 19) **"AS IS" Clause:** The undersigned Buyer does hereby acknowledge that the subject property is purchased at public auction, and that a prerequisite to bidding is that all property, whether real or personal, is purchased absolutely "AS IS" with no warranty whatsoever as to the condition of the same.
- 20) **IRC§1031 Exchange:** The parties hereto agree to fully cooperate with the other to facilitate a like-kind exchange pursuant to the provisions of Section 1031 of the Internal Revenue Code.
- 21) **No Financing Contingency:** The Buyer understands and acknowledges that this contract IS NOT contingent upon the Buyer obtaining financing.