

# NOT AN OFFICIAL DOCUMENT

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GINA PIMENTEL  
RECORDER  
STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2023-011537

8:50 AM 2023 Apr 28

STATE OF INDIANA

) SS:

COUNTY OF TIPPECANOE

## AFFIDAVIT OF NOTICE TO COMMENCE SUIT

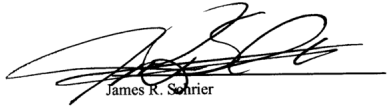
Affiant, James R. Schrier, being first duly sworn upon his oath, states as follows:

1. I am over the age of 21, competent to testify, and have personal knowledge of the facts and matters contained within this Affidavit.
2. I am the attorney for Tomish Developers, LLC. On or about January 19, 2023 St. John Paving, Inc. ("Claimant") caused to be recorded in the Office of the Lake County Recorder a Sworn Statement and Intent to Hold Mechanic's Lien, recorded as Instrument No. 2023-002950 (the "Lien Notice").
3. On March 2, 2023, on behalf of Tomish Developers, LLC, I forwarded a letter to Claimant by Certified Mail, Return Receipt Requested at the address listed by Claimant on the Lien Notice, demanding that Claimant file suit to commence foreclosure of its mechanic's lien within thirty (30) days of the date of receipt of the letter (the "Notice to Commence"). I also emailed the Notice to Commence to Claimant's representative who signed the Lien Notice on Claimant's behalf. A copy of the Notice to Commence letter is attached hereto as Exhibit A. A copy of the email is attached hereto as Exhibit B.
4. More than 30 days have passed since I mailed and emailed the Notice to Commence Suit to Claimant and, to affiant's knowledge, no foreclosure action has been commenced by Claimant to foreclose the mechanic's liens against this property, and there are no unsatisfied judgments rendered upon such liens.
5. This Affidavit is made for the purpose of having the Lake County Recorder record it in the miscellaneous record book of Lake County Indiana and, pursuant to IC 32-28-3-10(c), certifying by cross reference to the record so that the lien is released.

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1 cert 74549  
RM  
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FURTHER AFFIANT SAYETH NOT.

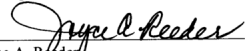
  
James R. Schrier

STATE OF INDIANA )  
 ) SS:  
TIPPECANOE COUNTY )

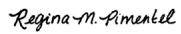
Before me, a Notary Public in and for said County and State, personally appeared James R. Schrier who acknowledged the execution of the foregoing Affidavit of Notice to Commence Suit this 18<sup>th</sup> day of April, 2023.

WITNESS my hand and Notarial Seal this 18<sup>th</sup> day of April, 2023.



  
Joyce A. Reeder

I certify that I have this 26<sup>th</sup> day of April, 2023 mailed a duplicate of this notice, first class, postage prepaid, to the within named property owner at Porter Street Development, LLC, Attn: Shane O'Malley, c/o Latitude Commercial, 123 N. Main St., Suite 001, Crown Point, IN 46307.

  
Recorder of Lake County

This instrument prepared by: James R. Schrier of the firm of REILING TEDER & SCHRIER, LLC, 250 Main Street, Suite 601, P.O. Box 280, Lafayette, IN 47902; Telephone: (765) 423-5333; Facsimile: (765) 423-4564; E-mail: [jrs@rtslawfirm.com](mailto:jrs@rtslawfirm.com)

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. James R. Schrier

Return to: James R. Schrier of the firm of REILING TEDER & SCHRIER, LLC, 250 Main Street, Suite 601, P.O. Box 280, Lafayette, IN 47902; Telephone: (765) 423-5333; Facsimile: (765) 423-4564; E-mail: [jrs@rtslawfirm.com](mailto:jrs@rtslawfirm.com)

Lake County Recorder

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# RTS

REILING  
TEDER  
& SCHRIER, LLC

Renaissance Place, Sixth Floor  
250 Main Street, Suite 601  
P.O. Box 280  
Lafayette, IN 47902-0280

Tel: (765) 423-5333  
Fax: (765) 423-4564  
www.rtslawfirm.com

March 2, 2023

Via: *Certified Mail Return Receipt Requested*  
*Regular U.S. Mail*  
*Email to [stjohnpaving@gmail.com](mailto:stjohnpaving@gmail.com)*

St. John Paving Inc.  
c/o Michael Wick  
P.O. Box 485  
St. John, IN 46373

Re: **Our Client: Tomish Developers**  
**Project Address: 1712 East Porter Street, Crown Point, IN**

Dear Mr. Wick:

I represent Tomish Developers in reference to the above property. On January 19, 2023, you recorded a mechanic's lien against the property on behalf of St. John Paving Inc in the sum of \$77,897.50.

Be advised that this Claim of Mechanic's Lien recorded in the Office of the Recorder of Lake County, Indiana as Instrument No. 2023-002950 is invalid and null and void pursuant to Indiana Code §32-28-3-6 because it fails to properly name the record title holder, Porter Street Development, LLC. There is no question that the lien is not valid.

The filing requirement of Ind. Code 32-8-3-3 serves two objectives. Not only is it designed to provide the record titleholder of the property with notice that a mechanic's lien has been placed upon the real estate, but it is also designed to put third parties on notice of the same fact. *Beneficial Finance Co. v. Wegmiller Bender Lumber Co.*, (1980) Ind.App., 402 N.E.2d 41, 46. The name of the owner in the Notice of Intent must be similar enough to the name of the record titleholders so that a search of the public record would put a third party on notice that the real estate in question is encumbered. Clearly, you have not substantially complied with the mechanic's lien statute since the notice to Tomish Developers neither provides notice of the mechanic's lien to the actual owner, Porter Street Development, LLC, nor to third parties. Third parties searching the record under the record titleholder's name would not find the mechanic's lien as it would be recorded under Tomish's name. Because of this potential prejudice to both the actual owner and third parties from the failure to name the record titleholder in the lien notice, you have failed to comply with Ind. Code 32-8-3-3 and therefore have failed to perfect a

Robert C. Reiling, Jr. / [rcr@rtslawfirm.com](mailto:rcr@rtslawfirm.com) · Daniel A. Teder / [dnt@rtslawfirm.com](mailto:dnt@rtslawfirm.com) · James R. Schrier / [jrs@rtslawfirm.com](mailto:jrs@rtslawfirm.com)

Kevin J. Riley / [kr@rtslawfirm.com](mailto:kr@rtslawfirm.com) / Also admitted in Tennessee · Ryan C. Munden / [rcm@rtslawfirm.com](mailto:rcm@rtslawfirm.com)

Kyle Dietrich / [kd@rtslawfirm.com](mailto:kd@rtslawfirm.com) · Bradley A. Neely / [ban@rtslawfirm.com](mailto:ban@rtslawfirm.com)

William Bousignore - Of Counsel / [wb@bousignore.attorney](mailto:wb@bousignore.attorney) / Also admitted in North Carolina



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March 2, 2023  
Page 2

valid lien. This is not a case where names used were so similar that anyone would have been given sufficient notice of mechanic's lien and no one would have been prejudiced as was the case in *Von Tobel Corp. v. Chi-Tec Const. & Remodeling, Inc.*, 994 N.E.2d 1215 (Ind. Ct. App. 2013).

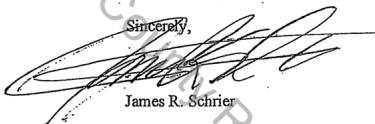
Accordingly, this letter shall serve as a demand, on behalf of Tomish Developers, that you immediately release the Lien. You may do so by fully executing and notarizing the enclosed Release of Mechanic's Lien. Once you have completely executed the Release of Mechanic's Lien, keep a copy for your records and return the original to this law firm at the above address so that we may arrange for the same to be recorded.

To the extent you fail to release your mechanic's lien immediately, this letter shall also constitute formal notice, pursuant to Ind. Code §32-28-3-10, that you are hereby directed to commence suit upon your mechanic's lien within thirty (30) days of your receipt of this letter. If you fail to commence suit within thirty (30) days, the mechanic's lien, even if somehow determined to be valid, shall be null and void pursuant to statute and NO LONGER ENFORCEABLE against the property.

However, in the event you elect to commence suit on your invalid mechanic's lien, such suit will be considered an act of slander of title for which Porter Street Development, LLC may potentially recover from you potential damages and attorneys' fees incurred in clearing the title to its property. Our client will also pursue all available remedies against you regarding your intentional interference with his contract relationship with the owner, including, as appropriate, claims for exemplary / punitive damages.

Should you wish to discuss this matter, you may contact me at the number listed above.

Sincerely,



James R. Schrier

JRS/jar  
Enclosure  
xc: Shane O'Malley

585 953 733 0001 0950 0921

U.S. Postal Service	
<b>CERTIFIED MAIL RECEIPT</b>	
<i>Domestic Mail Only</i>	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Certified Mail Fee \$ _____	
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____
Postage \$ _____	
Total Post \$ _____	
Sent To <b>St. John Paving, Inc.</b>	
Street and <b>c/o Michael Wick</b>	
<b>P.O. Box 485</b>	
City, State <b>St. John, IN 46373</b>	
PS Form 3800	4/09

Postmark Here

Property of Lake County Recorder

# NOT AN OFFICIAL DOCUMENT

Parcel Number 45-16-04-452-015.000-042

## RELEASE OF MECHANIC'S LIEN

For valuable consideration, the receipt whereof is hereby acknowledged, a certain Mechanic's Lien existing in favor of St. John Paving Inc. and against Tomish Developers on the following real estate, to wit:

109TH STREET BUSINESS CENTER (AN INDUSTRIAL ADD) LOT 6 & 7

a written notice of an intention to hold a lien was filed in the office of the Recorder of Lake County, State of Indiana, and recorded on January 19, 2023 at Instrument No. 2023-002950 in said County, is hereby declared satisfied and released this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Michael Wick, as  
Title: \_\_\_\_\_  
of St. John Paving Inc.

Before me, a Notary Public in and for said County and State, personally appeared Michael Wick, as \_\_\_\_\_ of St. John Paving Inc., who, for and on behalf of St. John Paving Inc., acknowledged the execution of the foregoing Release of Mechanic's Lien.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(written)  
\_\_\_\_\_  
(printed)

My Commission Expires:

\_\_\_\_\_

NOTARY PUBLIC  
Resident of \_\_\_\_\_ County, IN

This instrument prepared by: James R. Schrier of the firm of REILING TEDER & SCHRIER, LLC, 415 Columbia Street, Suite 3000, P. O. Box 280, Lafayette, IN 47902-0280; Telephone: (765) 423-5333; Facsimile: (765) 423-4564; E-mail: jrs@rtslawfirm.com

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document unless required by law. James R. Schrier

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**Jim Schrier**

---

**From:** Jim Schrier  
**Sent:** Thursday, March 2, 2023 2:59 PM  
**To:** stjohnpaving@gmail.com  
**Cc:** 'shane@chaunceyhill.com'  
**Subject:** FW: St. John Paving  
**Attachments:** StJohnPaving.Ltr.pdf

Mr. Wick,  
A letter is attached.  
Jim Schrier  
030223

**RTS** | REILING  
TEDER  
& SCHRIER, LLC

**James R. Schrier**  
Renaissance Place, Sixth Floor  
250 Main Street, Suite 601  
P.O. Box 280  
Lafayette, IN 47902-0280  
Tel: (765) 423-5333  
Fax: (765) 423-4564  
Email: [jrs@rtslawfirm.com](mailto:jrs@rtslawfirm.com)  
Website: [www.rtslawfirm.com](http://www.rtslawfirm.com)

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**CYBER AWARENESS:** Before wiring any funds, call the intended recipient at a number you know is valid to confirm the instructions. Be cautious of any request to change wire instructions you have already received.

