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SERVICE CONCRETE COMPANY,	:	SUPERIOR COURT OF NEW JERSEY
	:	MORRIS COUNTY
	:	CHANCERY DIVISION
	:	
Plaintiff,	:	DOCKET NO.: C-77-12
	:	
v.	:	CIVIL ACTION
	:	
BUCKLER ASSOCIATES, INC., TOWN	:	SUMMONS
OF MORRISTOWN, and COLONIAL	:	
SURETY COMPANY,	:	
	:	
Defendant,	:	

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From the State of New Jersey
To the Defendant(s) Named Above: **TOWN OF MORRISTOWN**

TOWN OF MORRISTOWN
TOWN CLERK'S OFFICE

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey, and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: August 8, 2012

Jennifer M. Perez
Superior Court Clerk

Name of Defendant To Be Served:

Clerk, Township of Morristown
Clerk's Office
200 South Street
Morristown, NJ 07960

Directory of Superior Court Deputy Clerk Offices

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 845-2444
LEGAL SERVICES
(609) 848-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main Street
Hackensack, NJ 07601-0769
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Floor, Court Facility,
49 Rancocas Road
Mount Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4362
LEGAL SERVICES
(800) 496-4570

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
First Floor, Hall of Justice
101 South Fifth Street
Camden, NJ 08108
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 North Main Street, Box DN-209
Cape May Court House, NJ 08210
LAWYER REFERRAL
(809) 469-0818
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Streets, P.O. Box 10
Bridgeton, NJ 08302
LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102
LAWYER REFERRAL
(973) 622-6204
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Floor, Court House
1 North Broad Street, P.O. Box 760
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5860

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Courthouse, First Floor
588 Newark Avenue
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 796-2727
LEGAL SERVICES
(201) 792-6863

HUNTERDON COUNTY:

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822
LAWYER REFERRAL
(908) 735-2311
LEGAL SERVICES
(908) 732-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 South Broad St., P.O. Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court
Middlesex Vicinage
Second Floor - Tower
66 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
Monmouth County Courthouse
71 Monument Park, P.O. Box 1269
Freehold, NJ 07728-1269
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Washington and Courts Streets, P.O. Box 910
Morristown, NJ 07960-0910
LAWYER REFERRAL
(973) 287-5582
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08764
LAWYER REFERRAL
(732) 240-3668
LEGAL SERVICES
(732) 841-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Passaic County Court House
77 Hamilton Street
Paterson, NJ 07605
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY:

Deputy Clerk of the Superior Court
92 Market Street, P.O. Box 29
Salem, NJ 08079
LAWYER REFERRAL
(856) 678-3868
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
40 North Bridge Street
P.O. Box 3000
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 281-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 888-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
First Floor, Court House
2 Broad Street
Elizabeth, NJ 07207-6078
LAWYER REFERRAL
(908) 368-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Warren County Courthouse
418 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(908) 475-2010

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 365 W. Passaic Street, Suite 130
 Rochelle Park, New Jersey 07662
 201-947-4100
 Attorneys for Plaintiff

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 SUPERIOR COURT

2012 JUL 16 A 11:29

MORRIS COUNTY
 CIVIL DIVISION

SERVICE CONCRETE COMPANY.,

Plaintiff,

v.

**BUCKLER ASSOCIATES, INC.,
 TOWN OF MORRISTOWN, and
 COLONIAL SURETY COMPANY**

Defendants.

SUPERIOR COURT OF NEW JERSEY
 COUNTY OF MORRIS
 CHANCERY DIVISION

CIVIL ACTION

DOCKET NO. C77-12

COMPLAINT

Plaintiff, Service Concrete Company, having a principal business address of PO Box 235, Oak Ridge, New Jersey 07438 ("Plaintiff") by way of Complaint against Buckler Associates, Inc. ("Buckler"), Colonial Insurance Company ("Colonial") and the Town of Morristown ("Morristown") herein states:

FACTS COMMON TO ALL COUNTS

1. Plaintiff is a corporation engaged in the business of supplying concrete to the general public, specifically to general contractors for construction projects in the Northern New Jersey area.
2. Buckler has a business address of 1821 Wyckoff Way, East Brunswick, New Jersey, 08816 and is commonly referred to as a general contractor for construction projects.
3. Specifically, Buckler was a general contractor for a certain construction project known as the "South Street Streetscape Improvements, Phase II Project" ("Streetscape Project") located on real property owned by the Morristown during the calendar year 2011.

4. Pursuant to N.J.S.A. 2A:44-143, Buckler secured its contractual obligations to Plaintiff and its' other sub-contractors and material men by obtaining a performance bond from Colonial.

5. The performance bond obtained by Buckler was for the benefit of Plaintiff should Buckler default under its contractual obligations to Plaintiff.

6. Pursuant to a credit application dated July 19, 2011 ("Credit Application"), Plaintiff delivered concrete to Buckler for the Streetscape Project between July 22, 2011 and October 22, 2011.

7. Pursuant to the Credit Application, Plaintiff delivered concrete to Buckler and then invoiced Buckler for the delivery of same rather than requiring Buckler to pay for the concrete upon delivery.

8. The Credit Application also provides that Buckler shall pay an additional 33% of any principal amount due Plaintiff should it be necessary for Plaintiff to commence collection efforts to collect any amounts due from Buckler.

9. Between July 22, 2011, and October 22, 2011, Buckler accepted Plaintiff's concrete for the Streetscape Project without objection and Plaintiff invoiced Buckler for such deliveries.

10. As a result of Plaintiff's deliveries of concrete, Plaintiff is owed the principal sum of \$53,784.00 from Buckler.

11. Plaintiff has made several demands for the amount owed but Buckler has refused to pay same.

12. As the Streetscape Project was performed on real property owned by Morristown, on December 22, 2011, Plaintiff filed a Municipal Lien Claim pursuant to N.J.S.A. 2A:44-125, *et. seq.* against any amounts due from the Morristown to Buckler ("Lien").

13. Morristown, verbally and through correspondence, has recognized the Lien.

14. However, neither Buckler nor Morristown has satisfied the principal balance owed Plaintiff.

15. Therefore, Plaintiff now seeks the principal sum of \$53,784.00 plus contractually agreed upon interest and attorney's fees from Buckler and Morristown, jointly and severally.

16. Plaintiff also seeks to set the priority of the Lien and to be paid its' balance, plus interest and costs, from any payments owed to Buckler from Morristown as of the date of the filing of the Lien pursuant to N.J.S.A. 2A:44-140.

FIRST COUNT
(Declaratory Judgment of Lien)

17. Plaintiff repeats and realleges all facts set forth above as if set forth herein at length.

18. N.J.S.A. 2A:16-53, as part of the Declaratory Judgment Act, expressly provides that a person interested in a written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

19. N.J.S.A. 2A:44-137 allows the filer of a Municipal Lien Claim, and actually requires said filer, to seek to establish the validity of its lien claim by an action of equitable nature in the Superior Court.

20. Plaintiff has duly filed a valid lien claim against the Streetscape Project in the principal amount of \$53,784.00.

21. Morristown, through its counsel, has recognized the validity of Plaintiff's lien.

22. Plaintiff therefore demands that its Lien be provided priority over any other claimant to the remaining monies owed Buckler from Morristown and that Plaintiff be paid those funds, plus interest and attorney's fees, directly from Morristown pursuant to N.J.S.A. 2A:44-140.

WHEREFORE, Plaintiff requests judgment (a) Declaring the Lien is valid and constitutes an encumbrance on remaining monies due Buckler from Morristown; (b) Declaring that Buckler and Morristown, jointly and severally, are responsible to pay Plaintiff the balance due, plus interest and attorney's fees; (c) Entering the judgment of this Court against Buckler and Morristown for the amount of \$53,784.00, plus contractually agreed upon interest and attorney's fees; (d) all such other and further relief as the Court deems fair and just.

SECOND COUNT
(Book Account)

23. Plaintiff repeats and realleges all facts set forth above as if set forth herein at length.

24. To date, there is due from Buckler to Plaintiff the sum of \$53,784.00, plus contractually agreed upon interest and attorney's fees on a certain book account.

25. Plaintiff sues Buckler for the amounts Buckler agreed to pay for the deliveries of concrete for the Streetscape Project.

26. Buckler being indebted to Plaintiff in the principal sum of \$53,784.00 upon an account stated between them, did promise to pay to Plaintiff said sum.

27. The unpaid balance as of this date is \$53,784.00, plus agreed upon interest and attorney's fees and costs incurred by Plaintiff to enforce its rights under the Credit Application.

26. Payment has been demanded but not made.

27. Plaintiff reserves the right to amend the amount due to include any additional sums which may be due as of the time of trial

WHEREFORE, Plaintiff demands judgment against Buckler, in the sum to be proven at trial but which is at least \$53,784.00, together with interest, costs of suit and attorneys' fees and all such other and further relief as the Court deems fair and just.

THIRD COUNT
(Unjust Enrichment)

28. Plaintiff repeats and realleges the facts set forth above as if set forth herein at length.

29. The concrete provided by Plaintiff to Buckler has conferred a substantial benefit upon Buckler at the expense of Plaintiff.

30. It is unfair, inequitable and unjust to permit Buckler to retain the value of the benefit conferred by Plaintiff, and to thereby be unjustly enriched without full payment to Plaintiff all amounts due.

WHEREFORE, Plaintiff demands judgment against Buckler, in the sum to be proven at trial but which is at least \$53,784.00, together with interest, costs of suit and attorneys' fees and all such other and further relief as the Court deems fair and just.

FOURTH COUNT
(Breach of Contract)

31. Plaintiff repeats and realleges the facts set forth above as if set forth herein at length.

32. The agreement between Plaintiff and Buckler for the delivery of concrete was a legally binding contract between Plaintiff and Buckler.

33. Plaintiff delivered the concrete to Buckler without objection.

34. By failing to pay Plaintiff in full for the deliveries of concrete, Buckler has breached the agreement between the parties.

35. To date, Buckler owes Plaintiff the amount of \$53,784.00 representing the outstanding principal sum due Plaintiff, plus the attorney's fees and costs incurred by Plaintiff to enforce its rights under the Credit Application.

WHEREFORE, Plaintiff demands judgment against Buckler, in the sum to be proven at trial but which is at least \$53,784.00, together with interest, costs of suit and attorneys' fees and all such other and further relief as the Court deems fair and just.

FIFTH COUNT

(Declaratory Judgment Against Colonial Surety Company)

36. Plaintiff repeats and realleges the facts set forth above as if set forth herein at length.

37. Plaintiff is a beneficiary of the performance bond obtained by Buckler from Colonial to secure Buckler's contractual obligations to Buckler's sub-contractors and material man.

38. Plaintiff delivered concrete to Buckler for the Streetscape Project pursuant to the Credit Application.

39. Buckler has failed to pay Plaintiff the amount of \$53,784.00, plus interest and attorney's fees per the terms of the Credit Application.

40. Plaintiff provided a statement to Colonial of the amount due Plaintiff from Buckler on or about December 14, 2011.

41. Plaintiff once again forwarded notice to Colonial of the amount due Plaintiff from Buckler on or about January 25, 2012.

42. Neither Buckler nor Colonial has satisfied the amounts due Plaintiff under the Credit Application.

43. N.J.S.A. 2A:16-53, as part of the Declaratory Judgment Act, expressly provides that a person interested in a written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

44. N.J.S.A. 2A:44-145 allows Plaintiff to bring suit against Colonial for the amounts it is due under the Credit Application

45. Plaintiff therefore demands judgment against Colonial for the amount of \$53,784.00, plus contractually agreed upon interest and attorney's fees, under the performance bond obtained by Buckler from Colonial.

WHEREFORE, Plaintiff requests judgment (a) Declaring that Plaintiff is a beneficiary of the performance obtained by Buckler from Colonial; (b) Declaring that Colonial is responsible to pay the sum of \$53,784.00 to Plaintiff under the performance bond; (c) Entering the judgment of this Court against Colonial and in favor of Plaintiff for the amount of \$53,784.00, plus contractually agreed upon interest and attorney's fees; (d) all such other and further relief as the Court deems fair and just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Jason S. Nunnermacker, Esq., is hereby designated as trial counsel for the Plaintiff in the above matter.

R. 4:5-1 CERTIFICATION

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SUPERIOR COURT

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NORRIS COUNTY

JUL 16 2012

The undersigned hereby certifies, pursuant to R. 4:5-1, that to the best of his knowledge or belief the matter in controversy is not the subject of any other action pending in any other Court or of a pending arbitration proceeding. Also, to the best of his knowledge or belief, no other action or arbitration proceeding is contemplated. Further, to the best of his knowledge or belief, other than the parties set forth in this pleading, no other parties should be joined in the above action at the present time. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

R. 1:38-7(b)(2) CERTIFICATION

I further certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b)(2).

ARTURI, D'ARGENIO,
GUAGLARDI & MELITI, LLP
Attorneys for Plaintiff

Jason S. Nünnermacker, Esq.

July 11, 2012