DOUGLAS R.CABANA, ESQ.
104 Elcock Avenue
Boonton, New Jersey 07005
(973) 335-7100
Attorney for Plaintiffs

40 PINE STREET, LLC, CHILDCARE SOLUTIONS, INC. d/b/a CRADLES TO CRAYONS CHILD CARE Plaintiff(s), vs. TOWN OF MORRISTOWN, JOHN DOES 1-10, and ABC CORPORATIONS 1-10 Defendant(s).	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MORRIS COUNTY Docket No.: Civil Action COMPLAINT

The Plaintiffs, 40 PINE STREET, LLC and CHILDCARE SOLUTIONS, INC. d/b/a CRADLES TO CRAYONS CHILD CARE, 16 Pine Street, Town of Morristown, County of Morris, State of New Jersey, by way of Complaint against the Defendant says:

PARTIES AND VENUE

1. The Plaintiff, 40 PINE STREET, LLC, is an entity with its principal place of business at 16 Pine Street, Town of Morristown, County of Morris, State of New Jersey.

2. The Plaintiff, CHILDCARE SOLUTIONS, INC. d/b/a CRADLES TO CRAYONS CHILD CARE is an entity with its principal place of business at 16 Pine Street, Town of Morristown, County of Morris, State of New Jersey.

3. The Defendant, TOWN OF MORRISTOWN, is a municipal government located within the County of Morris and State of New Jersey.

4. Venue is proper under R. 4:3-2 as the claims herein arose within Morris County and the parties maintain their principal places of business within Morris County.

FACTS

5. The Plaintiffs repeat and reallege the contents of paragraphs 1 through 4 as though set forth herein in its entirety.

6. The Plaintiff, 40 PINE STREET, LLC, purchased the subject property on September 22, 2005, and after zoning board of adjustment approval, Plaintiff, CHILDCARE SOLUTIONS, INC. d/b/a CRADLES TO CRAYONS CHILD CARE opened a day-care and pre-school operating as Cradles to Crayons. The school operates in two locations in Morristown at 16 Pine Street and 40 Pine Street, the subject property.

7. The Defendant, TOWN OF MORRISTOWN, maintains a storm water collection system in the public streets and parking areas directly adjacent to Plaintiffs' property.

8. The Plaintiffs experienced periodic flooding of its property from back-up of the storm water system. Plaintiffs engaged a civil engineer to investigate the problem and discovered that a storm water pipe of the municipal collection system is underneath its building and is obstructed. Investigation revealed that no easements were given to Defendant to operate and maintain its pipe underneath Plaintiffs' building.

9. The Plaintiffs have engaged officials of Defendant in an attempt to resolve this periodic flooding problem.

10. On or about August 1, 2009, Plaintiffs' property suffered damage from a severe flood caused by a back-up of the storm water collection system.

11. Thereafter, Plaintiffs, 40 PINE STREET, LLC and CHILDCARE SOLUTIONS, INC. d/b/a CRADLES TO CRAYONS CHILD CARE, through their attorneys, filed a Notice of Tort Claim against Defendant, TOWN OF MORRISTOWN, on October 20, 2009 and a Supplemental Notice of Tort Claim on March 23, 2010. (EXHIBIT A).

12. The Defendant's insurance claims manager, Inservco Insurance Services, Inc. denied Plaintiffs' claim on November 12, 2010. (EXHIBIT B).

13. Since the remediation, Plaintiffs have been unable to open the subject property for fear of recurring floods. Defendant has attempted remediation in the area which has not alleviated the problem so Plaintiffs are especially cautious as it does not want to subject infants and young children to such conditions.

14. Plaintiffs have suffered damages as a direct result of Defendant's negligent operation of its storm water collection system adjacent to and in the vicinity of Plaintiffs' property.

FIRST COUNT

15. The Plaintiffs repeat and reallege the contents of paragraphs 1 through 14 as though set forth herein in its entirety.

16. The Defendant owed a duty of reasonable care over the Plaintiffs' property.

17. The Defendant and/or its agents negligently engineered, contracted, designed, placed and/or installed infrastructure, including but not limited to a storm water pipe underneath Plaintiffs' property.

18. The Defendant's negligence proximately caused damage to Plaintiffs and Plaintiffs' property.

19. The Defendant is liable to the Plaintiffs for all damages flowing from the Defendant's negligence.

WHEREFORE, the Plaintiffs demand judgment against the Defendant, TOWN OF MORRISTOWN as follows:

A. Ordering Defendant to reimburse Plaintiffs for damages sustained;
B. Ordering the Defendant to evaluate and remediate the storm water collection adjacent to and in the vicinity of Plaintiffs' property;
C. Punitive damages;
D. Attorney's fees;
E. Cost of suit;
F. Such other relief as the Court may deem just.

SECOND COUNT

20. The Plaintiffs repeat and reallege the contents of paragraphs 1 through 19 as though set forth herein in its entirety.

21. The Defendant owed a duty to the Plaintiffs and the public at large to use reasonable care in the engineering, contracting, design, placement and/or installation of infrastructure, including but not limited to a storm water pipe underneath Plaintiffs' property.

22. It was foreseeable to the Defendant that by failing to use such reasonable care the Plaintiffs would be damaged.

23. The Defendant failed to use reasonable care resulting in property damage to the Plaintiffs' property.

WHEREFORE, the Plaintiffs demand judgment against the Defendant, TOWN OF MORRISTOWN as follows:

A. Ordering Defendant to reimburse Plaintiffs for damages sustained;
B. Ordering the Defendant to evaluate and remediate the storm water collection adjacent to and in the vicinity of Plaintiffs' property;
C. Punitive damages;
D. Attorney's fees;
E. Cost of suit;
F. Such other relief as the Court may deem just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Douglas R. Cabana, Esq. is hereby designated as trial counsel in this matter.

DOUGLAS R. CABANA
Attorney for Plaintiffs

BY: _____

Dated: July 29, 2011

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to R. 4:5-1, I hereby certify to the best of my knowledge, information and belief at this time, that the matter in controversy is not the subject matter of any other action pending in any other court, and that no parties other than those listed herein should be joined in this matter.

DOUGLAS R. CABANA
Attorney for Plaintiffs

BY: _____

Dated: July 29, 2011

EXHIBIT A

CABANA & KING, L.L.C.

ATTORNEYS AT LAW
104 ELCOCK AVENUE
BOONTON, NEW JERSEY 07005

DOUGLAS R. CABANA
PETER J. KING

MATTHEW R. PETRACCA*

*ALSO ADMITTED IN NEW YORK

(973) 335-7100
FAX (973) 335-0425
CABANAKING.COM

WRITER'S E-MAIL:
mrp@cabanaking.com

March 22, 2010

Javier B. Esparra, FCLS
Inservco Insurance Services, Inc.
New Jersey Claims Service Office
PO Box 1457
Harrisburg, PA 17105-1457

RE: Notice of Tort Claim – Town of Morristown
Claim No.: 3410000903/JBE

Dear Mr. Esparra:

Enclosed please find a Supplemental and Amended Notice of Tort Claim in the form as provided by your office. Please note that Childcare Solutions, Inc. d/b/a Cradles to Crayons Child Care is also a Claimant to this matter, as it has incurred loss of revenue to date. Also enclosed please find documents substantiating losses incurred by my client. As you may know, the damages are ongoing in this matter.

I recently provided documents to you via email including reports and documentation provided by the Town of Morristown indicating that there were gross deficiencies with the storm-water management infrastructure at my client's premises.

Given the above kindly advise whether the Town of Morristown will be reimbursing my client for its losses at your earliest convenience. If you should have any questions please do not hesitate to contact me.

Very truly yours,
CABANA & KING, LLC

MATTHEW R. PETRACCA

c: Mr. & Mrs. Peter Gill, w/encl.

File # 3410000903
Clmt: _____

Supplemental and Amended

NOTICE OF CLAIM

THIS CLAIM FORM MUST BE FILED WITHIN NINETY (90) DAYS OF ACCIDENT/OCCURRENCE OR YOU MAY FORFEIT YOUR RIGHTS PURSUANT TO N.J.S.A. 59:1 ET SEQ

FORWARD TO: NEW JERSEY INTERGOVERNMENTAL INSURANCE FUND
C/O INSERVCO INSURANCE SERVICES
PO BOX 1457
HARRISBURG, PA 17105-1457

1. CLAIMANT &Childcare Solutions, Inc. d/b/a Cradles to Cra Child C

40 Pine Street, LLC | | | 973-216-5445
Last | First | Middle | (Area Code) Phone #

40 Pine Street | | Additional Address
Street Address

Morristown, NJ 07005 | | D/O/B | SS#
City, State, Zip Code

2. IF NOTICE AND CORRESPONDENCE IN CONNECTION WITH THIS CLAIM ARE TO BE SENT TO A PERSON OTHER THAN CLAIMANT, PLEASE COMPLETE ITEM #2:

Petracca, Esq. Matthew R. | | | (973) 335-7100
Last | First | Middle | (Area Code) Phone #

Cabana & King, LLC
104 Elcock Avenue | Additional Address
Street Address

Boonton, NJ 07005 | D/O/B | SS#
City, State, Zip Code

3. A) THE OCCURRENCE OR ACCIDENT WHICH GAVE RISE TO THIS CLAIM:

August 1, 2009 & August 12, 2009 | Time
Date

B) DESCRIBE THE LOCATION OR PLACE OF THE ACCIDENT OR OCCURRENCE:

Morristown | 40 Pine Street
Municipality | Exact Location

File # _____
Clmt: _____

C) DESCRIBE HOW THE ACCIDENT OR OCCURRENCE HAPPENED. IF A DIAGRAM WILL ASSIST YOUR EXPLANATION, PLEASE USE THE REVERSE SIDE OF THIS FORM:

The Town of Morristown caused rain waters to flood the claimant's premises caused by the construction of and failed maintenance of the streets and strom-water management infrastructure of the Town of Morristown while knowing of the dilapidated and dangerous condition of the infrastructure. See also Notice of Tort Claim filed in the Town of Morristown on 10/21/2009 attached hereto.

D) STATE THE NAME, ADDRESS OF THE MUNICIPALITY OR AGENCY THAT YOU CLAIM CAUSED YOUR DAMAGE:

Town of Morristown
200 South Street, CN 914
Morristown, NJ 07963-0914

E) STATE THE NAMES OF MUNICIPALITY'S EMPLOYEES WHOM YOU CLAIM WERE AT FAULT, INCLUDING ANY INFORMATION THAT WILL ASSIST IN IDENTIFYING THEM:

Unknown at this time by the claimant; however, any and all employees and agents in connection with the construction and maintenance of strom-water management infrastructure on or around 40 Pine STreet, Morristown.

F) STATE IN DETAIL EACH AND EVERY NEGLIGENT OR WRONGFUL ACT OF THE MUNICIPALITY EMPLOYEES WHICH CAUSED YOUR DAMAGE:

The Town, agents and/or employees negligently and wrongfully caused damage to the Claimant's property by failing to properly construct and maintain the streets and storm-water management infrastructure, while knowing of the dilapidated and dangerous condition of the infrastructure. See also Notice of Tort Claim filed in the Town of Morristown on 10/21/2009 attached hereto.

File # _____
Clmt: _____

G) STATE THE NAME AND ADDRESS OF ALL WITNESSES TO THE ACCIDENT OR OCCURRENCE:

Peter Gill
11 West Elro Drive
Oak Ridge, NJ 07438

Doreen Gill
11 West Elro Drive
Oak Ridge, NJ 07438

H) IF VEHICLE ACCIDENT, STATE THE NAMES, ADDRESS, AGE AND RELATIONSHIP TO INSURED OF ALL PASSENGERS IN YOUR VEHICLE:

N/A

I) STATE THE NAMES OF ALL POLICE OFFICERS AND POLICE DEPARTMENTS WHO INVESTIGATED THE ACCIDENT:

N/A

4. A)CLAIM FOR DAMAGES (CHECK APPROPRIATE BOX):

___BODILY INJURY X PROPERTY DAMAGE X OTHER (EXPLAIN)

Monetary losses related to loss of revenue, cost of utilities, repairs, mortgage payments while property was unable to be used, attorneys fees and all other damages flowing from the event. See addendum attached hereto.

File # _____
Clmt: _____

B) 1. IF YOU CLAIM INJURY, DESCRIBE YOUR INJURIES RESULTING FROM THIS ACCIDENT OR OCCURRENCE:

N/A - No personal injury incurred. See 4(c) for property damage.

2. DO YOU CLAIM PERMANENT DISABILITY RESULTING FROM THIS INJURY? _____ YES __X__ NO

IF YES, DESCRIBE THE INJURIES BELIEVED TO BE PERMANENT:

3. FOR EACH HOSPITAL, DOCTOR, OR OTHER PRACTITIONER RENDERING TREATMENT, EXAMINATION OR DIAGNOSTIC SERVICE, STATE:

NAME & ADDRESS OF HOSPITAL, DOCTOR OR OTHER FACILITY	DATES OF TREATMENT	AMOUNT OF CHARGED TO DATE	AMOUNT PAID OR PAYABLE BY OTHER INSURANCE
A) N/A			
B)			
C)			
D)			

File # _____
Clmt: _____

4. IF YOU CLAIM LOSS OF WAGES OR INCOME AS A RESULT OF THE INJURY, STATE: Loss of income incurred to Claimants 40 Pine Street, LLC and to Child Care Solutions, Inc. ~~d/b/a Cradles to Crayons.~~

Name of Employer | Address

Your Occupation | Date Employed at this Job

Rate of Pay | Dates of Absences from Work

Note: IF YOUR CLAIMED LOSS OF INCOME ARISES FROM SELF-EMPLOYMENT OR OTHER THAN WAGE, ATTACH A CALCULATION ON THE BASIS OF YOUR CALCULATION OF LOSS INCOME.

5. SET FORTH ANY AND ALL OTHER LOSSES OR DAMAGES CLAIMED BY YOU:
See addendum attached hereto.
See Notice of Claim filed in the Town of Morristown on 10/21/2009 attached hereto.
Damages are ongoing and continue to accrue.

C) IF YOU CLAIM PROPERTY DAMAGE:

1. DESCRIBE THE PROPERTY DAMAGED; IF VEHICLE, INCLUDE MAKE, MODEL, YEAR, COLOR, VEHICLE IDENTIFICATION NUMBER, LICENSE PLATE NUMBER, STATE AND PARTS OF VEHICLE DAMAGED:
See addendum attached hereto.

2. THE PRESENT LOCATION AND TIME THE PROPERTY CAN BE INSPECTED:
40 Pine Street, Morristown, New Jersey.
Contact Claimant's attorney to arrange time to inspect property.

File # _____
Clmt: _____

3. DATE PROPERTY WAS ACQUIRED:

September 22, 2005

4. COST OF PROPERTY:

$620,000.00 per Deed Book 6445, Page 121

5. VALUE OF PROPERTY AT THE TIME OF ACCIDENT:

Property is currently assessed at $416,600.00 per Morris County Tax Board.

6. DESCRIPTION OF DAMAGE:

water damage to property

7. HAS THE DAMAGE BEEN REPAIRED? _x_ YES _____ NO
IF YES, BY WHOM, AND COST OF REPAIRS:

See addendum attached hereto

8. ATTACH EACH ESTIMATE OF REPAIR COST TO THIS FORM.

9. SET FORTH IN DETAIL THE LOSS CLAIM BY YOU FOR PROPERTY DAMAGE:

See addendum attached hereto

D) SET FORTH IN DETAIL ALL OTHER ITEMS OF LOSS OR DAMAGES CLAIMED BY YOU AND THE METHOD BY WHICH YOU MADE THE CALCULATIONS:

See addendum attached hereto

5) THE AMOUNT OF THE CLAIM:

$169,436.33 with ongoing damages. See addendum attached hereto.

File # _____
Clmt: _____

6) HAVE YOU MADE A CLAIM AGAINST ANYONE ELSE FOR ANY OF THE LOSSES OR EXPENSES CLAIMED IN THIS NOTICE?
_____ YES x NO

IF YES, SET FORTH THE NAMES AND ADDRESSES OF ALL PERSONS AND THE INSURANCE COMPANIES AGAINST WHO YOU HAVE MADE SUCH CLAIMS:

7) ARE ANY OF THE LOSSES OR EXPENSES CLAIMED HEREIN COVERED BY ANY POLICY OF INSURANCE? X YES _____ NO

FOR EACH SUCH POLICY, STATE THE NAME AND ADDRESS OF THE INSURANCE COMPANY, POLICY NUMBER AND BENEFITS PAID OR PAYABLE:
Philadelphia Indemnity Insurance Company
PHPK443548
$30,000.00

8) HAVE YOU RECEIVED OR AGREE TO RECEIVE ANY MONEY FROM ANYONE FOR DAMAGES CLAIMED HEREIN? _____ YES X NO

IF YES, SET FORTH THE DETAILS OF SUCH AGREEMENT:
No, other than amounts outlined in request No. 7

File # _____
Clmt: _____

9) **THE FOLLOWING ITEMS MUST BE SUBMITTED WITH THIS NOTICE:**

1. COPIES OF ITEMIZED BILLS FOR EACH MEDICAL EXPENSE AND OTHER LOSSES AND EXPENSES CLAIMED.
2. FULL COPIES OF ALL APPRAISALS AND ESTIMATES OF PROPERTY DAMAGE CLAIMED BY YOU.
3. COPIES OF ALL WRITTEN REPORTS OF ALL EXPERT WITNESSES AND READING PHYSICIANS.
4. A LETTER FROM YOUR EMPLOYER VERIFYING YOUR LOST WAGES. IF SELF-EMPLOYED, A STATEMENT SHOWING CALCULATIONS OF YOUR LOST INCOME.

I HEREBY CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. THAT THE ATTACHED STATEMENTS, BILLS, REPORTS AND DOCUMENTS ARE THE ONLY ONE KNOWN TO ME TO BE IN EXISTENCE AT THIS TIME. I AM AWARE THAT IF ANY STATEMENT MADE HEREIN IS WILLFULLY FALSE OR FRAUDULENT, I AM SUBJECT TO PUNISHMENT AS PROVIDED BY LAW.

3/23/10
DATED

CLAIMANT OR PERSON FILING ON BEHALF OF CLAIMANT

Cabana & King, LLC
Matthew R. Petracca, Esq.
PRINT NAME AS SIGNED ABOVE

File # _____
Clmt: _____

HIPAA COMPLIANT AUTHORIZATION TO DISCLOSE HEALTH INFORMATION

PLEASE PROVIDE AN AUTHORIZATION FOR EACH MEDICAL PROVIDER

PATIENT NAME: _____

ADDRESS: _____

_____

SS#: _____

DOB: _____

I hereby authorize the below listed physician/medical provider/hospital to release ANY AND ALL RECORDS IN THEIR POSSESSION PERTAINING TO ME, included but not limited to: medical office, and/or treatment records; office notes, treatment examination and/or consultation reports, diagnostic test results, x-ray, MRI and CT films and reports from: THE PAST (5) YEARS.

Provider Name and Address: _____
_____
_____
_____

This information may be disclosed to:
The New Jersey Intergovernmental Insurance Fund Claims Department and/or its Representatives
C/O Inservco Insurance Services
PO Box 1457
Harrisburg, PA 17105-1457

For the purpose of: I AM A CLAIMANT IN A PERSONAL INJURY MATTER.
I understand that I have the right to revoke this authorization at any time. I understand that my revocation must be in writing and addressed to the privacy office of the above named facility authorized to make this disclosure. I understand that the revocation does not apply to information that has already been released in response to this authorization. Unless otherwise revoked, this authorization will expire on the following date: 6 months.

I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law. I understand that I need to sign this authorization to assure treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer at the facility listed above that is authorized to disclose this information.

I understand that my health records may include information pertaining to treatment of drug and alcohol abuse, mental illness, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, tuberculosis or genetics. **If you do not wish this information to be released, please initial: DO NOT RELEASE _____.**

_____ _____
Signature of Patient or Authorized Representative Date

_____ _____
Description of Representative's Authority Signature of Witness
(Witness signature required)

File # _____
Clmt: _____

AUTHORIZATION FOR INFORMATION ON EMPLOYMENT

TO WHOM IT MAY CONCERN:

YOU ARE HEREBY AUTHORIZED TO DISCLOSE, MAKE AVAILABLE AND FURNISH TO THE NEW JERSEY INTERGOVERNMENTAL INSURANCE FUND CLAIMS DEPARTMENT OF ITS REPRESENTATIVES ANY AND ALL MEDICAL INFORMATION CONCERNING MY EMPLOYMENT, PAST OR PRESENT, INCLUDING RATE OF PAY, DUTIES TO BE PERFORMED, DATES OF ABSENCES AND REASONS THEREFORE.

A PHOTOCOPY OF THIS DOCUMENT WILL BE ACCEPTABLE AS AN ORIGINAL.

_____ _____

DATE SIGNATURE

_____

PRINT NAME AS SIGNED ABOVE

Addendum to Supplemental and Amended Notice of Claim

C)

9. Set forth in detail the loss claim by you for property damage:

The damages to property, caused by the Town of Morristown, are ongoing and to date include:

Water & carpet removal, drying and removal of walls	$10,279.32
Repair to bottom of walls	$ 2,000.00
Carpeting/cove molding	$21,200.00
Repair play area, install devices on door, install steel around playground area	$ 4,288.56
Devices purchased to protect against high waters	$ 1,700.00
Mortgage payments while building unoccupied	$29,679.24
SBA (Colson Services – $4,006.00 per/mo)	$24,036.00
Lost Enrollment	$ 25,877.71
Terminated Enrollment	$18,781.11
Electric $250.00 per month	$ 1,500.00
PSE&G $240.00 per month	$ 1,440.00
Telephone $170.00 per month	$ 1,040.00
Insurance $12,000.00 yearly	$ 3,000.00
Sewer $126.75 every three months	$ 253.52
Water approximately $120.29 every three months	$ 360.87
	$169,436.33

Proofs concerning most of the above damages, which are available at this time, are attached hereto. The above are updated and amended damages following the initial filing of tort claim as damages are ongoing. Further proofs will be provided upon receipt from the claimants.

NOTICE OF TORT CLAIM AS TO THE TOWN OF MORRISTOWN

TO: The Town of Morristown
200 South Street, CN 914
Morristown, NJ 07963-0914

Notice is provided that the Claimant, 40 Pine Street, LLC, claims an amount of $39,539.15 in property damage, plus an additional amount in damages for loss in revenue and attorneys' fees, an amount which is currently unknown, from the Town of Morristown. In support, the Claimant states:

1. The Claimant currently resides at, with its principal place of business located at the following address:

   40 Pine Street, LLC
   40 Pine Street
   Morristown, NJ 07963

2. All notices, correspondence and other communications with the claimant concerning this claim should be sent to:

   Matthew R. Petracca, Esq.
   Cabana & King, LLC
   104 Elcock Avenue
   Boonton, NJ 07005
   (973) 335-7100

3. The damages set forth below occurred and were sustained during the dates of August 1, 2009 and August 2, 2009 where the Town of Morristown caused rain waters to flood the Claimant's premises causing damages to the Claimant. Damages continue to accrue in the form of loss of revenue to the Claimant.

4. The damage occurred at 40 Pine Street, Morristown, New Jersey 07963, which is owned by the Claimant. Damages also continue to accrue in the form of loss of revenue to the Claimant.

5. The damage was caused by the negligence of the Town of Morristown and the agents and employees of the Town of Morristown in connection with the construction and maintenance of Pine Street, and the surrounding streets, and the construction and maintenance of storm-water management infrastructure upon and under said streets and the surrounding grounds, in the Town of Morristown, including but not limited to storm-water pipes under and upon the Claimant's property without the Town of Morristown holding an easement for same. The construction of, and failed maintenance of, the streets and storm-water management infrastructure caused rain waters to flood the Claimant's premises causing damages to the Claimant. The Town of Morristown knew of the

dilapidated and dangerous condition of the infrastructure, which later caused damage to the Claimant, with the Claimant having previously given information of the condition of the infrastructure to the Town of Morristown, and the Town of Morristown having prior knowledge of the condition.

6. By reason of this negligence and carelessness, Plaintiff suffered damages to the premises as follows:

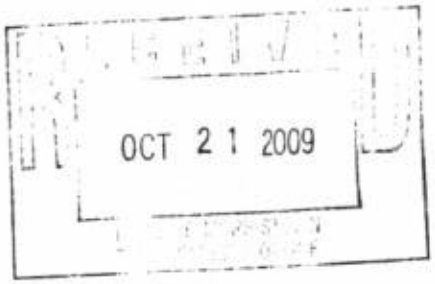
Water and Carpet Removal, Drying, and Removal of Walls	$10,279.32
Carpet replacement and garbage removal	$21,200.00
Wall painting and replacement	$ 2,000.00
Repair playground flooring and installation of water protection on doors (estimated)	$ 3,800.00
Water protection devices	$ 2,034.83
Cleaning of site	$ 225.00
Loss of revenue	Currently unknown at this time
Attorneys' fees	Currently unknown at this time

7. This claim is made and presented pursuant to N.J.S.A. 59:1-1 et seq. Claimant makes this claim against the Town of Morristown for an amount of $39,539.15 plus amounts of loss in revenue and attorneys' fees.

CABANA & KING, LLC
Attorneys for Plaintiffs/Claimants

BY: _____
MATTHEW R. PETRACCA

Dated: 10/20/09



CHECKS PAID *(continued)*

CHECK NO.	DESCRIPTION	DATE PAID	AMOUNT
[redacted]		[redacted]	[redacted]

Total Checks Paid

If you see a description in the Checks Paid section, it means that we received only electronic information about the check, not the original or an image of the check. As a result, we're not able to return the check to you or show you an image.

* All of your recent checks may not be on this statement, either because they haven't cleared yet or they were listed on one of your previous statements.

^ An image of this check may be available for you to view on Chase.com.

ATM & DEBIT CARD WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
[redacted]		

Total ATM & Debit Card Withdrawals

OTHER WITHDRAWALS, FEES & CHARGES

DATE	DESCRIPTION	AMOUNT
01/04	Colson Services To 06762 PPD ID: 2134157730	$4,009.23
[redacted]		

Monthly Payment Statemen

Bill For: 02/01/2010
Payment Amount: $4,148.00
Statement Date: 01/15/2010
Loan Number: **504-20071012**

Interest Rate: 7.125
Payment Due Date: 02/01/2010

Unpaid Late Charges: $0.00
Other Charges: $0.00
OverPayments: $0.00
Escrow: $798.54
Total Due: $4,946.54

Child Care Solutions, Inc.dba Cradle to Crayons
16 Pine Street
Morristown, NJ. 07960

Include an additional $207.40 late fee if not paid before the 11th

Payment Activity

Customer Service : 908-561-7122

Date	Description	Principal	Interest	Escrow	Late Charge	Fees/Other	Total
01/01/2010	Payment	704.70	3,443.30	798.54	0.00	0.00	4,946.54
12/01/2009	Payment	921.57	3,226.43	798.54	0.00	0.00	4,946.54

Do Not Pay

Advice Copy Only

Principal Balance on 01/15/2010 560,510.94

Confidential

- [Detach] -

Payment Coupon

Valley National Bank-SBA Dept.
1334 Route 22 East
North Plainfield, NJ 07060

Child Care Solutions, Inc

Bill For: 02/01/2010
Payment Amount: $4,148.00
Statement Date: 01/15/2010
Loan Number: **504-20071012**

Interest Rate: 7.125
Payment Due Date: 02/01/2010

Unpaid Late Charges: $0.00
Other Charges: $0.00
OverPayments: $0.00
Escrow: $798.54
Total Due: $4,946.54

Include an additional $207.40 late fee if not paid before the 11th

Amount Enclosed: _____

Please write loan number on check and include this coupon with remittance.

JPTII
Contractors
P.O. Box 864
LAKE HOPATCONG, NJ 07849

PHONE (973) 305-8817
FAX (973) 305-8871

JOB INVOICE

3385

PHONE	DATE OF ORDER
	11-24-09
ORDER TAKEN BY	CUSTOMER'S ORDER NUMBER

☐ DAY WORK ☐ CONTRACT ☐ EXTRA

JOB NAME/NUMBER

JOB LOCATION

JOB PHONE	STARTING DATE

TO

Childcare Solutions
40 Pine St.
Morristown, N.J.

TERMS:

QTY.	MATERIAL	PRICE	AMOUNT
>			
>			

DESCRIPTION OF WORK

Furnish labor and material to install flood barrier shields at front, rear, ar side entrance doors. Pickup existing rubber play flooring, clean subsurface a reinstall with adhesive in interior & ex terior play areas. Fabricate and instal stainless steel flashing on top of curb against fencing.

OTHER CHARGES

TOTAL OTHER

LABOR	HRS.	RATE	AMOUNT

DATE COMPLETED

TOTAL MATERIALS

TOTAL LABOR	2,595.0(
TOTAL MATERIALS	1,413.0(
TOTAL OTHER	
TOTAL	4,008.0(
TAX	280.5(
TOTAL	4,288.5(

Thank You

Work ordered by _____

Signature _____

I hereby acknowledge the satisfactory completion of the above described work.

JPT INC.
CONTRACTORS
PO Box 864
Lake Hopatcong, NJ 07849

one: 973-305-8817
ax: 973-305-8871

INVOICE#: 3368
DATE: 8/6/09

TO: **Childcare Solutions**
40 Pine Street
Morristown, NJ

JOB TITLE: Flooring
JOB LOCATION: Morristown, NJ
PO#: N/A
TERMS: Due On Receipt

QTY	MATERIAL	PRICE	AMOUNT
MATERIAL TOTAL:			$0.00

DESCRIPTION OF WORK

Furnish labor and material to install new PatchCraft
Scholastic 2 - 28 oz carpeting approximately 500 sc
Yds and install 6" vinyl cove base Johnsonite CB-84
Blue Jeans, approx. 1,000 sq ft. Prep floor as need

$20,700

Furnish trucking to remove debris in cart

$500

OTHER CHARGES		
OTHER CHARGES TOTAL:		$0.00

LABOR	HRS.	RATE	AMOUNT
TOTAL LABOR:			$0.00

TOTAL LABOR:	$0.00
TOTAL MATERIALS:	$0.00
TOTAL OTHER:	$0.00
TAX:	$0.00
TOTAL DUE:	**$21,200.00**

GAP PAINTING

176 THOMPSON AVE
DOVER, NJ 07801
862-7038763

Invoice

Date	Invoice #
8/17/2009	21

Bill To
CRADLES TO CRAYONS Doreen Gill 16 Pine Street Morristown N.J. 07960

P.O. No.	Terms	Project

Item	Description	Est Amt	Prior %	Qty	Rate	Curr %	Amount
32 Installati...	Install bottom piece of wood around entire building. Estimated lineal feet area 1000 feed. Remove remaining screws and sheetrock throughout the building. All garbage will be removed.	2,000.00			2,000.00	100.00%	2,000.00T

Subtotal	$2,000.00
Sales Tax (0.0%)	$0.00
Total	$2,000.00
Payments/Credits	$0.00
Balance Due	$2,000.00

MAXONS®
RESTORATIONS

ADVANCE WORK AUTHORIZATION & AGREEMENT

DISASTER RECOVERY EXPERTS

fire + smoke damage restoration

emergency cleaning + deodorization

water removal + structural drying

mold remediation specialists

expert loss consulting

complete building + contents restoration

NAME: _____ **PROJECT LOCATION:** _____

DATE OF LOSS: _____ **CITY, STATE & ZIP:** _____

I (We) ("Customer") hereby authorize MAXONS RESTORATIONS INC. and/or its subsidiaries and affiliates ("MAXONS") to proceed with the emergency cleaning, restoration and/or repair of the above noted premises and/or contents therein ("The Work") as a result of a loss caused by _____.

MAXONS will attempt to restore damaged property to their condition prior to the damage and cannot be held responsible for any items that cannot be restored due to the nature and extent of the damage thereto.

Customer represents that he/she is the record owner or the authorized agent of the record owner of the above described property and has full authority to enter into this agreement.

Customer warrants and represents that there is an insurance policy in full force and effect on the date of loss; that the coverage provided by said policy is sufficient to cover the value of the property and cost of repair of the loss sustained; and that neither the policy nor the proceeds due as a result of the subject loss have been assigned.

Customer agrees to notify MAXONS within twenty-four (24) hours of my learning of such insurance coverage, if I have not already done so, and will provide the name of the insurance carrier, the policy number, claim number, adjuster's contact information and any other applicable information to help expedite payment for work performed under this agreement. Customer authorizes MAXONS to have contact with Customer's insurance company on their behalf in order to expedite the settlement of the claim and payment for said services performed by MAXONS.

Customer hereby agrees to direct the insurance company to remit payment of insurance benefits to MAXONS directly to apply to the balance due MAXONS for their work hereunder. Customer does hereby irrevocably assign to MAXONS any and all sum or sums of money due or to become due to them for value received from the Insurance Company covering this loss for the work performed.

Customer understands and agrees that he/she is solely responsible for complete payment to MAXONS for this work including non-reimbursed costs including, but not limited to, applicable deductibles, co-payments and/or depreciation.

Customer hereby acknowledges that he/she has read this agreement in its entirety, including the reverse page thereof which contains the provision for the arbitration of any controversies, claims, demands or disputes relating to The Work and is in full agreement with all of the terms and conditions as stated thereon.

Signature: _____ **Date:** _____

Print Name: _____

Address: _____

NYC Corporate Headquarters
280 Madison Avenue
New York, NY 10016
tel: 212.447.6767
fax: 212.447.6251

MAXONS RESTORATIONS
DISASTER RECOVERY EXPERTS

Andrew Diamond
Director of Client Services
tel: 212 447 6767
fax: 212 447 6251
adiamond@maxons.com
www.maxons.com

280 Madison Avenue
New York, NY 10016

PHILADELPHIA INDEMNITY INSURANCE COMPANY
CLAIMS ACCOUNT
ONE BALA PLAZA
SUITE 100
BALA CYNWYD, PA 19004

WACHOVIA BANK, N.A.
PHILADELPHIA, PA
3-50
310

DATE	CHECK NUMBER
09/03/2009	1110718825

POLICY HOLDER	CHILDCARE SOLUTIONS,INC. DBA		
CLAIM #	PHDY09080411470	DOL	08/02/2009
POLICY NUMBER	PHPK330176	PAYMENT TYPE	PARTIAL LOSS

AMOUNT
$10,279.32

PAY Ten thousand two hundred seventy nine and 32/100 Dollars

PAY TO THE ORDER OF
CHILDCARE SOLUTIONS, INC. DBA
CRADLES TO CRAYONS & MAXON'S RESTORATION

TWO SIGNATURES REQUIRED IF OVER $10,000

THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK ON BACK

⑈1110718825⑈ ⑆031000503⑆ 2100003191937⑈

YOUR INVOICE NUMBER
(if applicable)
16359

COMMENTS

Emergency Services - Project M-24638NJ

RECEIVED
SEP 8 2009

MAIL TO

MAXONS RESTORATION
415 HAMBURG TPKE
WAYNE, NJ 07470

IF THERE ARE ANY QUESTIONS CONCERNING THIS PAYMENT CONTACT OUR CLAIMS DEPARTMENT AT 1-800-765-9749. PLEASE REFERENCE THE CLAIM NUMBER WHEN CALLING.

Philadelphia Indemnity Insurance Company

One Bala Plaza, Suite 100, Bala Cynwyd, Pennsylvania 19004

COMMON POLICY DECLARATIONS

Policy Number: PHPK443548

Named Insured and Mailing Address:
CHILDCARE SOLUTIONS,INC. DBA
CRADLES TO CRAYONS CHILD CARE
16 Pine St
Morristown, NJ 07960-4184

Producer: 599
HENRY O. BAKER, INC
7 SOUTH WARREN STREET
DOVER, NJ 07801

Policy Period From: 08/15/2009 **To:** 08/15/2010 at 12:01 A.M. Standard Time at your mailing address shown above.

Business Description: Day Care

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

	PREMIUM
Commercial Property Coverage Part	3,654.00
Commercial General Liability Coverage Part	7,954.00
Commercial Crime Coverage Part	101.00
Commercial Inland Marine Coverage Part	
Commercial Auto Coverage Part	323.00
Businessowners	
Workers Compensation	
Employee Benefits	303.00
Professional Liability	777.00
Sexual/Physical Abuse	INCLUDED
Total	**$ 13,112.00**
Total Includes Fees and Surcharges (See Schedule Attached)	118.00
Total Includes Federal Terrorism Risk Insurance Act Coverage	475.00

FORM (S) AND ENDORSEMENT (S) MADE A PART OF THIS POLICY AT THE TIME OF ISSUE
Refer To Forms Schedule

*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations

CPD- PIIC (01/07)

Countersignature Date

Authorized Representative

EXHIBIT B

New Jersey Claims Service Office
Post Office Box 1457
Harrisburg, PA 17105-1457
609 883 0044 Phone
800 334 1348 Phone
866 334 1348 Fax

www.inservco.net

INSERVCO
INSURANCE SERVICES, INC.

November 12th 2010

Cabana & King, LLC
104 Elcock Ave.
Boontoon, NJ 07005

Attn: Matthew R. Petracca, Esq.

Re:	Insured:	Town of Morristown / NJIIF
	Claimant:	40 Pine St. dba Cradle to Crayon Child Care
	Inservco File:	3410000903
	D/L:	August 1st & 12th 2009

Dear Mr. Petracca:

Please be advised that Inservco Insurance Services is the authorized third party claims administrators for the Town of Morristown's self insured program with regards to the above claim.

I am in receipt of your Notice of Claim dated October 20th 2009, wherein you have advised of your representation of the owners of Cradle to Crayon Child Care, for property damage they have sustained, as a result of an incident that occurred on August 1st & August 12th 2010. Kindly accept this letter as an acknowledgement of same.

The Town of Morristown is a public entity and, as such, claims filed against it are governed by the **N.J. Tort Claims Act, N.J.S.A. 59**. The Town of Morristown, hereby reserves any and all rights and immunities afforded them pursuant to the New Jersey Tort Claims Act, Title 59, as well as any other law applicable, specifically, the following immunities apply:

59:2-1 Immunity of public entity generally. a. Except as otherwise provided by this act, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.

b. Any liability of a public entity established by this act is subject to any immunity of the public entity and is subject to any defenses that would be available to the public entity if it were a private person.

59:2-3 Discretionary activities a. A public entity is not liable for an injury resulting from the exercise of judgment or discretion vested in the entity.

New Jersey Claims Service Office
Post Office Box 1457
Harrisburg, PA 17105-1457
609.883.0044 Phone
800.334.1348 Phone
866.334.1348 Fax

www.inservco.net

INSERVCO
INSURANCE SERVICES, INC.

59:4-1 Definitions
As used in this chapter:

a. "Dangerous condition" means a condition of property that creates a substantial risk of injury when such property is **used with due care** in a manner in which it is reasonably foreseeable that it will be used.

b. Protect against" includes repairing, remedying or correcting a dangerous condition, providing safeguards against a dangerous condition, or warning of a dangerous condition.

c. "Public property" means real or personal property **owned or controlled** by the public entity, but does not include easements, encroachments and other properties

d. that are located on the property of the public entity but are not owned or controlled by the public entity.

59:4-2 Liability Generally A public entity is liable for injury caused by a condition of its property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

a. a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
b. a public entity had **actual or constructive notice** of the dangerous condition under section 59:4-3 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

In accordance with **NJSA 59:4-2:4 & 5**, a public entity is liable for injuries caused by the condition of its property **if** the claimant can establish: (4) that either (a) a public employee created the dangerous condition, or (b) that a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have protected against the condition and (5) the action or inaction of a public entity in respect of its effort to protect against the condition was "**palpably**" unreasonable. The term palpably unreasonable has been defined to mean "action or inaction that is plainly and obviously without reason or reasonable basis, capricious, arbitrary or outrageous"'; "behavior that is patently unacceptable under any given circumstances."

New Jersey Claims Service Office
Post Office Box 1457
Harrisburg, PA 17105-1457
609.883.0044 Phone
800.334.1348 Phone
866.334.1348 Fax

www.inservco.net

INSERVCO
INSURANCE SERVICES, INC.

59:4-7 Weather conditions; effect on use of streets and highways--immunity neither a public entity nor a public employee is liable for an injury caused solely by the effect on the use of streets and highways...

In review, your Notice of Claim indicated this incident occurred on 2 separate occasions in the month of August 2009. Through our investigation it was revealed that Morristown, had subcontracted out the repair / service of the sewer lines at 40 Pine St in Morristown, NJ. In 2007 the sewer pipes were both cleaned and TV (insert TV camera in pipe line to discover any problems). This was done prior to your incident.

Subsequent to the receipt of your claim, in the early part of 2010, Morristown had another independent contractor repair / serviced the sewer pipes. Again, the sewer lines were cleaned and TV. Thus, Morristown did not have any prior notice of the condition of the sewer pipe / line prior to your incident. In the absence of liability, we must respectfully deny any and all claims arising from the incident that occurred on August 1st & 12th 2010.

Nothing in this section shall be construed to impose liability upon a public entity for a dangerous condition of its public property if the action the entity took to protect against the condition or the failure to take such action was not palpably unreasonable.

Please understand that our obligation to the Town of Morristown is not to pay **all** claims presented against same but to pay only those claims for which the Town of Morristown is **legally liable**. As I can not find any liability on the behalf of the Town of Morristown, I must deny any and all payments surrounding this claim.

Please be advised that the Town of Morristown hereby reserves any and all rights and immunities afforded them pursuant to the New Jersey Tort Claims Act, Title 59 as well as any other law applicable.

Very truly yours,

Aaron D. Gibson
Senior Claim Representative

cc: Town of Morristown

Appendix XII-B1

CIVIL CASE INFORMATION STATEMENT
(CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under *Rule* 4:5-1
Pleading will be rejected for filing, under *Rule* 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: ☐ CK ☐ CG ☐ CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

ATTORNEY / PRO SE NAME	TELEPHONE NUMBER	COUNTY OF VENUE
DOUGLAS R. CABANA, ESQ	973-335-7100	Morris
FIRM NAME (if applicable)		DOCKET NUMBER (when available)
OFFICE ADDRESS 104 CLOCK AVE BOONTON NJ 07005		DOCUMENT TYPE COMPLAINT
		JURY DEMAND ☐ YES ☒ NO

NAME OF PARTY (e.g., John Doe, Plaintiff)	CAPTION
40 PING ST LLC, Plaintiff CHILDCARE SOLUTIONS INC, Plaintiff	40 PING STREET, LLC, ET AL V TOWN OF MORRISTOWN, ET AL.
CASE TYPE NUMBER (See reverse side for listing) 505	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO IF YOU HAVE CHECKED "YES," SEE *N.J.S.A.* 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.
RELATED CASES PENDING? ☐ YES ☒ NO	IF YES, LIST DOCKET NUMBERS
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☒ NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☒ UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP?	IF YES, IS THAT RELATIONSHIP:
☐ YES ☒ NO	☐ EMPLOYER/EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☐ BUSINESS

DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☐ YES ☒ NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION
☐ YES ☒ NO	
WILL AN INTERPRETER BE NEEDED?	IF YES, FOR WHAT LANGUAGE?
☐ YES ☒ NO	

I 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 *Rule* 1:38-7(b).

ATTORNEY SIGNATURE: