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Cook County Recorder of Deeds  
Date: 03/28/2012 12:40 PM Pg: 1 of 12

Don S. Hershman, Esq.  
Hershman Cohen LLC  
101 N. Wacker Drive, 6<sup>th</sup> Floor  
Chicago, Illinois 60606

Permanent Tax Index Number:  
04-05-304-024-0000

Property Address:  
3210 Dundee Road  
Northbrook, Illinois 60062

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, dated as of March 23, 2012 (the "**Agreement**"), is executed by and among Solomon Schechter Day Schools ("**Landlord**"), Keshet: Jewish Parents of Children with Special Needs ("**Tenant**"), and First Midwest Bank ("**Lender**").

### RECITALS:

A. Lender is the mortgagee under that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated concurrently herewith in the original principal amount of \$4,200,000 (the "**Mortgage**"), which Mortgage encumbers the Real Estate (as hereinafter defined).

B. Tenant has entered into that certain lease agreement dated August 1, 1994, with Landlord (the "**Lease Agreement**", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "**Lease**"), pursuant to which Tenant has leased certain premises (the "**Leased Premises**") having an address of 3210 Dundee Road, Northbrook, Illinois 60062 which is located within the building (the "**Building**") on the parcel of land (the "**Land**"; the Land and Building being collectively referred to herein as the "**Real Estate**") legally described on Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

### AGREEMENTS:

1. Tenant represents and warrants to Lender that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.

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2. Tenant has executed and delivered to Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "**Estoppel Certificate**"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth herein in their entirety, and Tenant acknowledges that Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

3. Tenant covenants with Lender that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to Lender's right, title and interest in and to such proceeds and awards. This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in this Section 3, securing the indebtedness to Lender.

4. Tenant acknowledges that Landlord has collaterally assigned to Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Lender for direct payment to Lender of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to the Lender. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Lender.

5. Lender agrees that so long as Tenant is not in default under the Lease beyond any applicable notice and cure periods:

(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Tenant is a necessary party under applicable law); and

(b) The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

6. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure being hereinafter referred to as a "**Landlord's Default**"), Tenant shall: (a) provide Lender with a notice of Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Lender to cure the same during the notice and

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cure periods afforded to Landlord under the Lease. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Lender fails to cure same within the time period specified above. For purposes of this Section 6, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.

7. If Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the renewal periods, if Tenant elects or has elected to exercise its options to renew), and Tenant hereby agrees to attach to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Lender exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including the Landlord) except to the extent such act or omission occurring prior to new owner's acquisition of Landlord's interest under the Lease relates to a continuing maintenance and repair obligation of Landlord and Tenant shall have provided Lender with (A) notice of Landlord's Default, and (B) the opportunity to cure the same, all in accordance with the terms of Section 6 above;

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Lender with (A) notice of Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 6 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iv) liable to refund or otherwise account to Tenant for any security or other deposits not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease hereafter made without Lender's written consent;

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(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

If to Lender: First Midwest Bank  
180 North LaSalle Street, Suite 2101  
Chicago, Illinois 60601  
Attn: Bill Tripp  
Fax: \_\_\_\_\_  
E-mail: [bill.tripp@firstmidwest.com](mailto:bill.tripp@firstmidwest.com)

With a copy to: Hershman Cohen LLC  
101 N. Wacker Drive, 6<sup>th</sup> Floor  
Chicago, Illinois 60606  
Attn: Don S. Hershman, Esq.  
Fax: 312-780-7586  
E-mail: [dhershman@hershco.com](mailto:dhershman@hershco.com)

If to Landlord: Solomon Schechter Day Schools  
3210 Dundee Road  
Northbrook, Illinois 60062  
Attn: Ms. Linda P. Foster  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

With a copy to: Meltzer, Purtill & Stelle LLC  
300 South Wacker Drive, Suite 3500  
Chicago, Illinois 60606  
Attn: Joy S. Goldman, Esq.  
Fax: 312-987-9854  
E-mail: [jgoldman@mpslaw.com](mailto:jgoldman@mpslaw.com)

If to Tenant: Keshet: Jewish Parents of Children with Special Needs  
617 Landwehr Road  
Northbrook, Illinois 60062  
Attn: Betty Sobelman  
Fax: 847-480-9120  
E-mail: [betty@keshet.org](mailto:betty@keshet.org)

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With a copy to:

Katten Muchen Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661-3693  
Attn: Milton S. Wakschlag  
Fax: 312-902-1061  
E-mail: milton.wakschlag@kattenlaw.com

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

9. Tenant acknowledges and agrees that Lender will be relying on representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Lender at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

**LANDLORD:**

**TENANT:**

SOLOMON SCHECTER DAY SCHOOLS

KESHET: JEWISH PARENTS OF CHILDREN WITH SPECIAL NEEDS

By: *Linda P. Foster*  
Name: Linda P Foster  
Its: CEO

By: *Abbie Weisberg*  
Name: Abbie Weisberg  
Its: CEO/Executive Director

**LENDER:**

FIRST MIDWEST BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Linda A Foster, the CEO of Solomon Schechter Day Schools, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21 day of March, 2012.



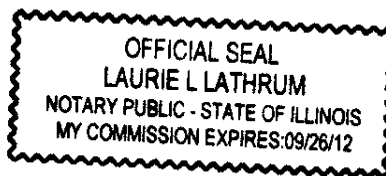
Joy S Goldman  
Notary Public  
My Commission Expires:

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Abbie C Weisberg, the CEO of Keshet: Jewish Parents of Children with Special Needs, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such person, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20 day of March, 2012.

Laurie L Lathrum  
Notary Public  
My Commission Expires:





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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

**LANDLORD:**

**TENANT:**

SOLOMON SCHECTER DAY SCHOOLS

KESHET: JEWISH PARENTS OF CHILDREN WITH SPECIAL NEEDS

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

**LENDER:**

FIRST MIDWEST BANK

By: \_\_\_\_\_



Name: Bill Tepp

Its: Vice President

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Bill Trap the Vice President of FIRST MIDWEST BANK, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of March, 2012.

*Alethea Funk*

\_\_\_\_\_  
Notary Public  
My Commission Expires: 5-2-13



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**UNOFFICIAL COPY**EXHIBIT A

## Legal Description

## PARCEL A:

THE EAST 3 1/2 ACRES OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, (EXCEPTING FROM PARCEL A THAT PART DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5 AFORESAID, SAID POINT BEING THE SOUTHEAST CORNER OF LOT 1 IN BLOCK 4 IN FIRST RESUBDIVISION OF SKY HARBOR INDUSTRIAL PARK UNIT NUMBER 1, IN THE SOUTH 1/2 OF SECTION 5 AFORESAID THENCE SOUTHEASTERLY ALONG AN ARC OF A CIRCLE CONVEX EASTERLY AND HAVING A RADIUS OF 400.00 FEET FOR A DISTANCE OF 17.12 FEET TO A POINT OF REVERSE CURVE, THENCE CONTINUING SOUTHEASTERLY ALONG ANOTHER ARC OF A CIRCLE CONVEX SOUTHWESTERLY AND HAVING A RADIUS OF 480 FEET FOR A DISTANCE OF 87.45 FEET TO ANOTHER POINT OF REVERSE CURVE; THENCE CONTINUING SOUTHEASTERLY ALONG ANOTHER ARC OF A CIRCLE CONVEX NORTHEASTERLY AND HAVING A RADIUS OF 400 FEET FOR A DISTANCE OF 75.50 FEET TO A POINT IN THE EAST LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5 AFORESAID, 172.16 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; THENCE NORTH ALONG SAID EAST LINE 172.16 FEET TO THE NORTHEAST CORNER THEREOF; THENCE WESTERLY ALONG THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5 AFORESAID, 53.84 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS), AND (EXCEPTING THE SOUTH 50 FEET THEREOF TAKEN FOR DUNDEE ROAD), AND ALSO (EXCEPTING FROM PARCEL A THAT PART DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 5 AFORESAID, 50 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE NORTH ALONG SAID EAST LINE 268.34 FEET TO A POINT; THENCE SOUTHWESTERLY ALONG AN ARC OF A CIRCLE CONVEX SOUTHEASTERLY AND HAVING A RADIUS OF 400 FEET FOR A DISTANCE OF 48.56 FEET TO A POINT OF REVERSE CURVE; THENCE CONTINUING SOUTHERLY ALONG ANOTHER ARC OF A CIRCLE CONVEX WESTERLY AND HAVING A RADIUS OF 480 FEET FOR A DISTANCE OF 161.20 FEET TO A POINT OF TANGENCY WITH A LINE 40 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 5 AFORESAID; THENCE SOUTH ALONG SAID PARALLEL LINE 63.89 FEET TO A LINE

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50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 5, AFORESAID; THENCE EAST ALONG SAID PARALLEL LINE 40 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS)

AND ALSO EXCEPTING FROM SAID PARCEL A THAT PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION BY TRUSTEE'S DEED RECORDED JULY 1, 1987 AS DOCUMENT 87360094, DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF DUNDEE ROAD AND THE WESTERLY RIGHT-OF-WAY LINE OF LANDWEHR ROAD; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS EAST, 40.00 FEET ALONG THE WESTERLY RIGHT-OF-WAY LINE OF LANDWEHR ROAD, PARALLEL WITH THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5; THENCE SOUTH 31 DEGREES 49 MINUTES 28 SECONDS WEST, 47.41 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF DUNDEE ROAD; THENCE NORTH 89 DEGREES 21 MINUTES 40 SECONDS EAST, 25.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF DUNDEE ROAD TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL B:

THAT PART OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 5 AFORESAID 172.16 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE SOUTH ALONG SAID WEST LINE 170.24 FEET TO A POINT 318.34 FEET NORTH OF THE SOUTHWEST CORNER OF THE SOUTH EAST 1/4 OF SECTION 5 AFORESAID; THENCE NORTHERLY ALONG AN ARC OF A CIRCLE CONVEX EASTERLY AND HAVING A RADIUS OF 400.00 FEET FOR A DISTANCE OF 171.55 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL C:

THE WEST 130 FEET OF THE EAST 360.65 FEET (EXCEPT THE SOUTH 50 FEET THEREOF) OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 22 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL D:

THE WEST 65 FEET OF THE EAST 425.65 FEET OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 12

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EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THE SOUTH 50 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

**Common Street Address: 3210 West Dundee Road, Northbrook Illinois Property Index Number: 04-05-304-024-0000**

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