

# LEASE AGREEMENT

**LESSOR:** **First Presbyterian Church of El Cajon (PCUSA)**, a religious non-profit California corporation (and a member congregation of the Presbytery of San Diego), located at 500 & 551 Farragut Circle, El Cajon, CA 92020.

**LESSEE:** **All Kids Academy Head Start, Inc.**, (hereinafter sometimes referred to in this lease as “AKA Head Start”), a not-for-profit California corporation, located at 620 W. Madison Avenue, El Cajon, CA 92020.

The Lessor and the Lessee individually are a “Party” and collectively are the “Parties” to this Lease Agreement.

**PREMISES:** “Attachment A” depicts the real property owned by the Lessor located at 551 Farragut Circle, El Cajon, CA 92020 (“Property”) and the subset of land located on the Property to be leased to the Lessee under this Lease Agreement (the “Premises”).

**PROPERTY, FACILITY, FACILITIES:** For the purpose of this lease, these words are used to define the real property of the Lessor and its buildings in total.

## **I. GENERAL CONDITIONS:**

### **A. Coordination and relationship between parties:**

1. To facilitate the success of this agreement, the Parties have mutually agreed to create a **Liaison Committee** whereby the President of the Corporation for FPCEC and the Center Director for AKA Head Start will have the mutual responsibility for developing a collegial relationship and have pledged to meet as often as deemed necessary to consult on matters pertaining to areas of concern.

2. Nothing contained in this agreement shall be construed by the Parties or by any third party to create the relationship of principal and agent, partnership, joint venture, or any association between First Presbyterian Church of El Cajon and AKA Head Start, Inc. either expressed or implied, and neither the method of computation of rent or any other provisions contained in this Lease Agreement nor any acts of the Parties shall be deemed to create any relationship between First Presbyterian Church of El Cajon and AKA Head Start, Inc. other than the relationship of Lessor and Lessee.

### **B. Approval by the Presbytery of San Diego:**

This Lease Agreement requires prior approval of the Presbytery of San Diego. Any provision hereof disapproved by the Presbytery shall have no further force or effect. Any occupancy of the Premises prior to approval by the Presbytery shall be considered a tenancy at will and shall immediately terminate without further liability to any party if such approval is denied.

### **C. Definitions:**

The Parties to this agreement are the **Lessor: First Presbyterian Church of El Cajon PCUSA**, hereafter referred to as “FPCEC” or “Lessor” and the **Lessee: AKA Head Start, Inc.**, hereafter referred to as “AKA Head Start” or “Lessee.”

## **II. TERMS OF LEASE:**

### **A. Areas of Use:**

FPCEC agrees to lease to AKA Head Start for the purpose conducting a preschool program as contracted through the Federal Department of Health and Human Services, including comprehensive health and social services and child care services to the children in this community. The parties agree Lessee shall be permitted to use the premises for the permitted use as described in Attachments A & B.

1. Lessee shall not use the premises in any manner that will constitute nuisance or unreasonable annoyance to occupants of adjacent buildings in the neighborhood.
2. Lessee shall comply with all laws and codes in connection with its use of the premises.

### **B. Conditions of Use & Duties of the Lessee:**

#### **1. Damages to Premises or Equipment:**

Lessee shall be responsible for any damages to the leased Premises or equipment therein, during the agreed time of use by the Lessee. The cost to repair or replace item(s) shall be paid for by the Lessee. The decision to repair or replace a damaged item shall be at the discretion of the Lessor in consultation with consultants qualified to provide estimates for repair or replacement.

#### **2. Repairs and Maintenance:**

- a. Lessor, at its sole expense, shall maintain in good condition:
  - i. Structural parts of the buildings, including the foundation, sub-flooring, bearing and exterior walls and roof.
  - ii. All unexposed electrical, plumbing, and sewer systems, including without limitation, those portions of the systems lying outside the structure;
  - iii. Window frames, gutters, and downspouts.
  - iv. Shared use spaces.
- b. Lessor shall repair the Premises if they are damaged by causes over which Lessee has no control or by the acts or omissions of Lessor or its authorized representative.
- c. Lessee, at its sole expense, shall maintain the exclusively used premises (Attachments A & B) and equipment in the same condition as at the beginning of the Lease Agreement including all electrical equipment, fire alarms, video cameras, intercom system, doors, glass, toilets, faucets, outside playground surfaces and fencing around the playground surfaces with the exception of ordinary wear and tear, damage by fire, and acts of God. Lessee shall make all other repairs, except those which Lessor is specifically obligated to make under the provisions of IIB2.a, 2.b, hereof.

- d. Lessee, at its sole expense, shall hold a maintenance contract on HVAC systems in the exclusively used spaces only.
- e. Lessee shall share in the cost of damage and repairs of shared use areas (Attachments A & B).
- f. Lessee shall share in the cost of repairs and maintenance to the parking lot in the amount of 25% of the cost.
- g. Lessee shall in all events be liable to Lessor for the cost of any repairs occasioned by the misuse or negligence by Lessee, its employees, guests, or invitees.
- h. Upon the expiration or earlier termination of this Lease Agreement, Lessee shall surrender the Premises in the same condition as existing at the beginning of this Lease Agreement, with the exception of ordinary wear and tear, damage by fire, and acts of God.

**3. Kitchen Use:**

Use of the kitchen shall be limited to serving food prepared off-site from the Premises. The kitchen is not to be used for cooking, nor use of any cooking fixtures (e.g., stove, oven, etc.) is allowed. The Lessee shall be responsible for the costs associated with the repair or replacement of any damaged equipment through either its authorized or unauthorized use. The Lessee will maintain the kitchen cleanliness during hours of operation and leave it in clean and sanitary condition, free from obstruction at the end of each day.

**4. Trash Disposal:**

Trash shall be placed in the dumpster located in the parking lot at the north side of the campus following each use. The Lessee shall be responsible for the removal of any trash that cannot be placed in the dumpsters regularly maintained by the Lessor for its own use. Any reasonable cost incurred by the Lessor to remove trash beyond its regularly maintained dumpsters shall be at an additional cost to be reimbursed by the Lessee.

**5. Excluded Areas:**

Lessee's use of the Property is limited to the areas listed under "Attachments A & B." The Lessee acknowledges that all other areas or rooms of the Lessor are not included in this Lease Agreement and are not to be used by the Lessee, its members, or guests.

**6. Special Use:**

Use of any spaces beyond that stated under "Attachments A & B" should be requested, in writing, at least thirty (30) days in advance of the projected need. In addition, use of any space used by the Lessor for purposes of worship may not be used without the express permission of the Presbytery [Book of Order, Section G-4.0206(b)].

**7. Substitute Accommodations:**

If there should be any conflict as to the priority of use of the above noted spaces when that use is to be made of the Premises by the Lessee, the Lessor's activities shall take precedence. The Lessor agrees that it will attempt to find substitute accommodations for the Lessee's use. If no other accommodations are available, the Lessor will endeavor to notify the Lessee in advance (with approximately four (4) weeks prior notice) as to the time involved when the Premises will not be available. The Lessee agrees to comply with any such modifications and shall have no recourse of any kind against the Lessor for any

claims, damages, or losses caused by the Premises or any room being unavailable at the reserved and scheduled time. Notwithstanding any other provision of this Lease Agreement, the Lessor reserves to itself the sole right to determine the availability and suitability for use of the Premises and will endeavor to provide four (4) weeks prior notice or a reasonable period for the availability of spaces for primary and alternative venues.

**8. Special Events:**

In the event an activity is held in the shared use spaces and sponsored by the Lessor, the Lessee shall limit its use of the shared use space during the event.

**9. Changes to Room:**

a. The Lessee shall not make any alterations, additions, improvements or install any equipment to the Premises not included in this lease.

b. The Lessee shall not make any alterations, additions, improvements or install any equipment to the Premises specified in "Attachments A & B" without Lessor's prior written consent.

c. At its sole expense, Lessee shall have the right to install fixtures and other items including playground equipment in the Premises specified in II.A.1 that Lessee deems necessary to conduct preschool operations. Lessee retains ownership in all such property placed or installed in or about the Premises, provided that Lessee is not in default hereunder, Lessee may remove said fixtures and other items, unattached to the Premises, and shall promptly repair any damage arising thereto.

d. Any fixture left on the Premises by Lessee after the termination of the Lease Agreement shall become part of the Premises with no financial remuneration to the Lessee.

**10. Personal Property:**

Loss, damage, or destruction to any property owned by the Lessee, its members or guests shall be the responsibility of the Lessee. The Lessor assumes no responsibility for any such property on the Premises during the period of use or that which is left on the Property.

**C. Term of Lease:**

The Term of the Lease Agreement shall be for ten (10) years, beginning on **July 1, 2023** and shall end on **June 30, 2033**.

**D. Termination of Lease and Lessor's Remedies:**

This Lease Agreement shall be terminated for the following reasons:

**1. Non-Renewal:**

Upon the expiration of the Term of Lease if not renewed by mutual agreement by the Parties.

**2. Destruction:**

If destruction has rendered the Premises substantially unfit for use by the Lessee for the purposes of the Lease Agreement

**3. Non-Payment of Rent:**

Non-payment of rent or 2 (two) consecutive late payments may be cause for termination of the Lease Agreement by the Lessor and at the Lessor’s discretion without recourse by the Lessee.

**4. Non-Compliance with Terms of Use:**

Failure to comply with the rules and regulations as set forth by the Lessor or non-compliance with the “Terms of Use” or “Facility Use Policy” may be grounds for immediate termination, at the option of the Lessor, prior to the expiration of the lease term, depending upon the severity of the infraction or default.

**5. Default of Obligations:**

Failure by the Lessee to perform any material duty or obligation arising under the provisions of this Lease Agreement may be cause for termination of the lease.

**6. Payment by Lessee upon Termination:**

Upon termination of this Lease Agreement for any reason, the Lessee shall pay to the Lessor all unpaid amounts that the Lessee might be obligated to pay pursuant to the provisions of this Lease Agreement.

**7. Condition of Premises at Expiration or Termination of Lease and Vacation by Lessee:**

Lessee agrees to vacate the Premises at the expiration or termination of the Lease Agreement, surrender all keys, and leave the Premises in as good repair and condition as existed at the date of execution of this lease less ordinary wear and tear.

**8. Lessor’s Remedies:**

If a default by the Lessee has occurred under this lease, the Lessor has the following remedies:

- a. The Lessor shall have all remedies available pursuant to the California Civil Code Sections 1951.2 and 1951.4.
- b. The right to give the Lessee notice of the Lessor’s termination of this lease as of the date specified in the notice;
- c. The right to re-enter and repossess the Premises and the right to remove all persons and property from the Premises;
- d. the right to collect from the Lessee by any lawful means:
  - i. any unpaid rent due;
  - ii. any other amounts which the Lessee owes the Lessor under this Lease Agreement; and
  - iii. any attorney’s fees, costs, and expenses recoverable by the Lessor.

**9. Lessee’s funding termination:**

In the event that Federal Funding to the Lessee’s Head Start program is discontinued or reduced to a level that makes continuing operations impractical, Lessee shall have the right to cancel this lease upon sixty (60) days written notice to Lessor.

**10. Lessor’s property use change:**

In the event that FPCEC decides to repurpose the Property leased to Lessee, Lessor shall have the right to cancel this Lease Agreement upon two (2) year written notice to Lessee.

**D. Hold Over:**

If the Lessee, with the Lessor’s consent, remains in possession of the Premises after the expiration or termination of the Lease Agreement, such possession by the Lessee shall be deemed to be a month-to-month tenancy, terminable on thirty (30) days prior written notice given by either Party. All provisions of this Lease Agreement except those pertaining to the Term shall apply to the month-to-month tenancy. If the Lessee fails to vacate the Premises after notice has been given to do so by the Lessor, the Lessor shall take any necessary legal actions to remove the Lessee and their property without recourse by the Lessee.

**E. Rent and Payments:**

**1. Rent:**

Rent for the spaces described under the “Terms of Lease” shall be paid on the first (1<sup>st</sup>) of the month in the amount set forth in the table below. The amounts are based on a rate of \$1.78/square foot, which includes escalation of five percent (5%) for the first year (based on year ’22-’23 of previous lease) and 3.5% for the next 9 years, rounded to the nearest dollar.

From	<i>7/01/2023</i>	<i>7/01/2024</i>	<i>7/01/2025</i>	<i>7/01/2026</i>	<i>7/01/2027</i>
Through	<i>6/30/2024</i>	<i>6/30/2025</i>	<i>6/30/2026</i>	<i>6/30/2027</i>	<i>6/30/2028</i>
Monthly Amount	\$ 8,126	\$ 8,410	\$ 8,704	\$ 9,009	\$ 9,324

From	<i>7/01/2028</i>	<i>7/01/2029</i>	<i>7/01/2030</i>	<i>7/01/2031</i>	<i>7/01/2032</i>
Through	<i>6/30/2029</i>	<i>6/30/2030</i>	<i>6/30/2031</i>	<i>6/30/2032</i>	<i>6/30/2033</i>
Monthly Amount	\$ 9,651	\$9,989	\$10,338	\$10,700	\$11,075

**2. Coverage:**

Rent shall cover only the Lessee’s use of the Premises or land on the Property, except as provided herein.

**3. Utilities and Services:**

a. Trash: Lessee shall reimburse Lessor for fifty percent (50%) of Lessor's trash bills for said services to the Richardson Hall. Lessor shall invoice Lessee monthly. Trash will be disposed of two times weekly.

b. Recycling: Lessee shall reimburse Lessor for one hundred percent (100%) and have exclusive use of Lessor's recycling for said services to the Richardson Hall. Lessor shall invoice Lessee monthly. Recycling will be disposed of one time weekly.

c. Water and Sewer: Lessee shall reimburse Lessor for fifty percent (50%) of Lessor's water and sewer bills for said services to the Richardson Hall. Lessor shall invoice Lessee monthly.

d. Gas & Electricity: Lessee shall reimburse Lessor for seventy-five percent (75%) of Lessor's gas & electric bills for said services to the Richardson Hall. Lessor shall invoice Lessee monthly.

e. Telephone Service: Lessee shall provide for its own telephone service at their cost and expense.

f. Janitorial Service: Lessee shall provide janitorial service to the leased Premises specified in (Attachments A & B) and shall maintain the leased Premises in a clean and sanitary condition.

**4. Make Payable to:**

All rent, deposits, and payments for any services performed by the Lessor shall be made payable to:

**First Presbyterian Church of El Cajon**  
Attn: Administration  
500 Farragut Circle  
El Cajon, CA. 92020

**5. Payment Due Date:**

Payment shall be received at the church office on or before the first day of the month and shall become delinquent if not paid by the tenth (10<sup>th</sup>) day of the month.

**6. Late Charge:**

Payments received after tenth (10<sup>th</sup>) of the month will be considered delinquent and be subject to a ten percent (10%) late charge.

**7. Insufficient Funds:**

The Lessor may charge a fee of \$50.00 (fifty dollars) for any check delivered by the Lessee which is returned for insufficient funds.

**8. Real Property Taxes:**

It is assumed that Lessee's use of the Premises shall be tax exempt and Lessor agrees to use its best efforts to obtain such exempt status for the leased Premises throughout the Term of this Lease Agreement. In the event the County Assessor deems use a taxable event, Lessee shall pay the property tax.

**F. Sole Permitted Use:**

**1. Appropriate Usage:**

The Lessee shall use and occupy the Premises only for preschool program as contracted through the Federal Department of Health and Human Services, including comprehensive health and social services and child care services to the children in this

community. The Lessee may not use the Premises for any other purpose without the prior written consent of the Lessor.

**2. Sub-Lease:**

The Lessee may not sub-lease any portion of the Premises to any other party without written approval of Lessor.

**3. Limited Usage:**

The Lessee is not granted any rights to use other rooms or land on the Property under this Lease Agreement that have not been specifically itemized. All such permitted uses of other Premises or land on the Property shall be subject to a separate agreement between the Parties.

**4. Alterations to Premises:**

Lessee shall not make any physical changes to the Premises or use the Premises in a manner that would threaten the tax-exempt status of the Property.

**5. Acceptance of Premises:**

a. By signing this Lease Agreement, the Lessee acknowledges that they have inspected and are satisfied with the condition of the Premises.

b. Lessee's assumption of possession of the Premises shall be conclusive evidence of receipt thereof in good order and repair.

c. Lessee acknowledges that the Lessor has not made any representation as to the condition or state of repair of the Premises nor made any agreement or promises to repair or improve it either before or after execution of this lease.

**G. Compliance with the Rules and Regulations:**

**1. Supervision:**

The Lessee shall comply with and provide sufficient supervision of its staff and invitees to assure compliance with the rules and regulations established by The Lessor with respect to the use of the Premises. These regulations include, but are not limited to those regarding smoking, food consumption, sound control, offensive language and actions, and the possession of any illegal drugs, alcohol, firearms, or weapons of any kind.

**2. Prohibited items:**

Prohibited items shall not be brought onto the Property. Such items include, but are not limited to any illegal drugs, alcohol, firearms, or weapons of any kind. Failure to comply with these rules shall be grounds for immediate termination of the Lease Agreement.

**3. Harassment and/or Sexual misconduct:**

a. The Lessor follows the mandates under California Child Care Licensing Title 22 Regulations including Section 101212 Reporting Mandates of Child Abuse, and maintains a zero-tolerance policy regarding harassment and/or sexual misconduct in any form against any person.

b. The Lessee agrees to maintain and enforce its Anti-Harassment Policy identified in the AKA Employee Handbook. (See Attachment C)



c. The Lessee agrees to maintain personnel documentation of all employees annual mandatory attendance of *Recognizing and Reporting of Child Abuse and Neglect* per state regulation AB1207/Mandated Reporters.

d. The Lessee shall provide the Lessor any revisions to the policies noted above.

**4. Child Protection Policy:**

a. The Lessor maintains a policy for the protection of minors. The Lessee agrees that child safety is paramount and maintains Standard Operating Procedures to ensure adherence with California Child Care Licensing Title 22. The Lessee maintains a Zero Tolerance for Children’s Rights Violations and provides Active Supervision for children at all times. (See Attachment D)

b. The Lessee shall provide the Lessor any revisions to this policy.

**5. Compliance with Law:**

a. The Lessee shall conduct its business operations and use the Premises in compliance with all federal, state, and local laws, regulations, ordinances, requirements, regulations, permits and approvals in effect during the term or any part thereof regulating the use by the Lessor of the Premises.

b. The Lessee shall conduct its business operations and use the Premises in compliance with rules and regulations issued by proper public health authorities as it relates to pandemics.

c. Lessee shall not use or occupy the Premises in violation of any law or regulation or the certificate of occupancy issued for the Premises, and shall, upon five (5) days’ written notice from Lessor, discontinue any use of the Premise which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy.

d. As part of conducting its business operations in compliance with all federal, state, and local laws as described above and to the extent its employees are required to be licensed, fingerprinted, or otherwise certified for their jobs, Lessee shall ensure that its employees have and maintain current licenses or certifications in good standing during the term of the Lease agreement. The Lessee complies with Head Start regulations requiring criminal background checks for all employees prior to employment.

**6. Drug and Alcohol-Free Workplace:**

Lessee agrees to maintain a drug and alcohol-free environment. Lessee shall not allow the manufacture, distribution, dispensation, possession or use of any alcoholic beverage, drug, or controlled substance on the Premises. These prohibitions apply before, during and after school hours.

**H. Inspection & Removal of Items:**

The Lessee hereby grants to the Lessor, or its agents, the right to inspect the Premises at any time and without notice to the Lessee, and to remove any items of the Lessee that pose a risk to the health and safety of the users of the Premises, or its visitors.

**I. Parking:**

1. The Lessee may use any available parking spaces in the parking lot on the property, on a first come, first served basis.
2. The Lessee shall open the gates upon arrival, if not already open.
3. The Lessee assumes responsibility for locking the parking lot gates upon departure.
4. Vehicles shall not be parked overnight in the parking lot.
5. Any vehicle parked improperly shall be subject to being towed at the expense of the owner or driver. The Lessee shall indemnify and hold harmless the Lessor of any liability from the towing of any such vehicle.

**J. Storage:**

No accommodation for additional storage beyond those areas specified in Attachments A & B of the Lessee's property is included in this Lease Agreement.

**K. Signage:**

1. Lessee may affix three signs of reasonable size; one on the Farragut Circle side, one on the Camden Street side and one on the parking lot side.
2. Any signage shall be in compliance with local signage ordinances, approved by the Lessor, and maintained in good condition.
3. No signs shall obstruct any signs installed by the Lessor.

**L. Security and Key Assignment:**

1. Lessee may maintain its own system of locks and keys for the leased Premises stated in Attachments A & B, provided that Lessee provides Lessor a set of all keys labeled as to location and informs Lessor whenever there is a change.
2. The Lessee is aware that the Premises is under video surveillance and shall make all associated personnel aware of this. Acceptance of this Lease Agreement is construed to indicate consent to this surveillance upon entering the Property.

**M. Privacy**

Individuals using the Premises shall have a reasonable expectation of privacy. No photographs, publication of names, or digital uploading or posting of any images are permitted on the Property without the express written permission of the individual (if an adult) or parent or legal guardian (if a minor). This rule also applies to children, and no names or images of minors shall be made public by any means without the express written permission of the parent or legal guardian.

**N. Reporting of Injuries and Damage:**

1. The Lessee shall immediately notify the Lessor of any of the following:
  - a. injuries requiring medical attention
  - b. any damage to or malfunction of any equipment located on the Premises and/or
  - c. any other condition that may affect the safe and orderly operation of the Premises.

**O. Notification(s):**

All notifications shall be in writing and delivered to the other party in person or by overnight mail.

**III. INSURANCE:**

**A. General Insurance Requirements:**

1. Commencing within ten (10) days after the execution of this Lease Agreement and continuing throughout the entire term of this Lease Agreement and any extension term or terms thereof, the Lessee shall at their sole cost and expense, procure and maintain in full force and effect an insurance policy or policies protecting the Lessee and the Lessor and its respective directors, officers, employees, visitors, etc. against any loss, liability, or expense whatsoever from personal injury, theft, death, property damage, or otherwise, arising out of or occurring by reason of the Lessee and /or their authorized personnel's use of the Premises. The insurance required by this paragraph shall expressly cover claims based on property damage, and personal injury.

2. First Presbyterian Church of El Cajon and the Presbytery of San Diego shall each be named as an additional insured in such policy or policies of insurance and the Lessee shall execute a waiver of subrogation in favor of First Presbyterian Church of El Cajon and the Presbytery of San Diego for the liability insurance policies required by this Lease Agreement.

3. Such policy or policies of insurance shall be written by an insurance company acceptable to the Lessor and shall include Commercial General Liability Insurance coverage and any other such insurance as may be required by law in the State of California.

4. The insurance afforded by the policy or policies of insurance described above shall not be limited in any way by reason of any insurance that may be maintained by the Lessor.

5. All such insurance shall ensure the performance by the Lessee of the indemnity provisions of this Lease Agreement.

6. Lessee shall provide Lessor with a certificate of insurance within ten (10) days after the execution of this Lease Agreement.

7. The Lessee shall agree that its insurance policies will provide to the Lessor, written notice of cancellation of insurance or changes in the policies no later than thirty (30) days before the effective date of such event.

8. Lessee agrees if it does not keep such insurance in full force and effect, the Lessor may obtain the necessary insurance and pay the premium, and reimbursement shall be deemed to be Additional Rent. The Lessee shall also maintain insurance, at its own cost, for any of its personal property located or in use on the Premises.

**B. Mandatory and Optional Policy Requirements:**

The Lessee shall, at its sole expense, purchase and keep in force during the term of this Lease Agreement the following:

1. Commercial General Liability Insurance (mandatory)

Note: This insurance shall include the following areas of coverage:

a. Bodily Injury

The Lessee shall obtain and keep in force during the term of this Lease Agreement, a policy of Commercial General Liability insurance covering Bodily Injury insuring the Lessor, Lessee, and the Presbytery of San Diego against any liability arising out of the use, occupancy, or maintenance of the Premises by the Lessee, its officers, employees, agents, visitors or program participants. Such insurance shall be in amounts of not less than:

- i. \$1,000,000.00 (one million dollars) for bodily injury to or death of one or more persons in any one accident or occurrence.
- ii. \$2,000,000.00 (two million dollars) aggregate.

b. Property Damage (including fire and legal liability)

Lessee agrees to procure and maintain throughout the term of this Lease Agreement, a policy of Commercial General Liability insurance covering the Premises for property damage insuring the Lessor against any liability arising out of the use or occupancy of the Premises under the terms of this Lease Agreement. Such insurance shall also protect the Lessor from any actions of or to any third party associated in any way with the Lessee. Such insurance shall be in amounts of not less than:

- i. \$1,000,000.00 (one million dollars) for property damage in any one occurrence.
- ii. \$2,000,000.00 (two million dollars) aggregate.

c. Medical Expense

Lessee agrees to procure and maintain throughout the term of this Lease Agreement, a policy of Commercial General Liability insurance which includes Medical Expense coverage insuring the Lessor against any liability arising out of the use or occupancy of the Premises under the terms of this Lease Agreement. Such insurance shall also protect the Lessor from any actions of or to any third party associated in any way to the Lessee. Such insurance shall be in amounts of not less than:

- i. \$20,000.00 (twenty thousand dollars) for medical expenses for any one person in any one occurrence/aggregate.

2. Sexual Acts / Sexual Misconduct Liability Insurance (mandatory)

The Lessee shall, at its sole expense, purchase and keep in force during the Term of the Lease a Sexual Acts / Sexual Misconduct Liability policy insuring the Lessor against any liability arising out of the use or occupancy of the Premises under the terms of this Lease Agreement. This policy shall protect the Lessor and Lessee against any and all claims of sexual misconduct, sexual harassment, or failure to provide supervision of minors or of a registered sex offender, including any actions of or to any third party associated in any way to the Lessee. Such insurance shall be in the amount of not less than:

- a. \$1,000,000.00 (one million dollars) for sexual misconduct or harassment against any one person in any one occurrence.
- b. \$2,000,000.00 (two million dollars) aggregate.

3. Workers' Compensation Insurance and/or Employment Practices Liability Insurance (if applicable and optional):

The Lessee shall provide Worker's Compensation insurance in an amount that complies with statutory limits in the State of California for all personnel using the Premises for or on behalf of the Lessee who are employees of the Lessee, and the Lessee shall pay, and be solely responsible for the payment of all Social Security, Federal, and State unemployment taxes, and any similar payroll taxes relating to such employees, if applicable. Similarly, employment practices and/or professional liability insurance may be obtained by the Lessee at their option if such insurance is applicable.

4. It is understood that Lessee carries a \$5,000,000 Umbrella Policy.

### **C. Evidence of Insurance:**

The Lessee shall furnish to the Lessor evidence showing compliance with the provisions of the insurance requirement, specifically a Certificate of Insurance, listing First Presbyterian Church of El Cajon and the Presbytery of San Diego as additional insureds. Evidence of insurance shall include a statement that the policy or policies may not be cancelled or altered without at least thirty (30) days' prior written notice to the Lessor. The Lessee shall, throughout the term of this Lease Agreement and any extension term thereof, provide the Lessor with such information regarding the insurance required by the provisions of this Lease Agreement, as the Lessor might request from time to time.

### **D. Limitation on Liability:**

The Lessor is not liable for any indirect, incidental, special, or consequential damages of any nature whatsoever, whether in an action in contract or tort or based on a warranty, even if the Lessor has been advised of the possibility of such damages arising. The Lessor's liability for damages under the provisions of this Lease Agreement shall not exceed the amounts of one month of fees actually paid by the Lessee for use of the Premises and/or otherwise pursuant to the provisions of this Lease Agreement. The Lessor makes no representations or warranties, whether expressed or implied, with respect to the services rendered and the Premises provided for the Lessee's use under the provisions of this Lease Agreement, including without limitation any warranties of the fitness of the Premises for a particular purpose.

### **E. Mutual Indemnification:**

1. Except for the willful or grossly negligent acts or omissions of the Lessor or its agents or employees, the Lessee shall, to the fullest extent provided by law, defend, indemnify, and hold harmless the Lessor from and against any and all claims, losses, actions, damages, liabilities, and expenses (including reasonable attorney's fees) that:

- a. Arise from or are in connection with the Lessee's use, maintenance, or control of the Premises, or any portion of the Premises;
- b. Arise from or are in connection with any willful or negligent act or omission of the Lessee, the associated personnel, or any of the respective agents, employees, guests, service providers, creditors, or invitees;
- c. Result from any default, breach, violation, or nonperformance of the Lessee arising under the provisions of the Lease Agreement; and/or

d. Arise from any injury or death to persons or damage to property sustained on or about the Leased Premises.

2. The Lessee's obligations under this section specifically extend to any actions, orders, penalties, or enforcement procedures brought by, or on behalf of any governmental agency or unit connected with the personal property of the Lessee, including equipment and materials stored or otherwise present on the Premises. The Lessee's obligations to indemnify the Lessor under the provisions of the paragraph shall survive the termination of the Lease Agreement.

3. The Lessee on behalf of the Lessee and their associated personnel, guests, et.al. now and forever releases and discharges the Lessor and its attorneys, insurers, brokers, principals, officers, directors, partners, agents, employees and contractors, and whoever else may be liable, from any and all claims, liabilities, damages, and causes of action of any nature, including but not limited to those for personal injury, death, and/or property damage, that in any manner arise from or are related to the Lessee's use of the Premises pursuant to the provisions of this Lease Agreement.

4. The release provided by the Lessee under the provisions of this the paragraph extends to and includes any and all claims, liabilities, injuries, damages, and causes of action that the Parties do not presently anticipate, know, or suspect to exist, but which may develop, accrue, or be discovered in the future.

**The Lessee expressly waives all rights under California civil code section 1542, which provides:**

**General release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

5. The Lessee represents and warrants that the Lessee has considered the possibility that claims, liabilities, injuries, damages, and causes of action that the Lessee does not presently know or suspect to exist in its favor may develop, accrue, or be discovered in the future and voluntarily assumes that risk as part of the consideration for the Lease Agreement.

6. The Lessee shall use reasonable means to safe-guard the well-being and security of their employees and associate personnel while on the Premises.

7. Except for the willful or grossly negligent acts or omissions of the Lessee or its agents or employees, the Lessor shall, to the fullest extent provided by law, defend, indemnify, and hold harmless the Lessee from and against any and all claims, losses, actions, damages, liabilities, and expenses (including reasonable attorney's fees) that:

- a. Arise from or are in connection with the Lessor's use, maintenance, or control of the Premises, or any portion of the Premises;
- b. Arise from or are in connection with any willful or negligent act or omission of the Lessor, the associated personnel, or any of the respective agents, employees, guests, service providers creditors, or invitees;
- c. Result from any default, breach, violation, or nonperformance of the Lessor arising under the provisions of the Lease Agreement; and/or

d. Arise from any injury or death to persons or damage to property sustained on or about the Leased Premises.

#### **IV. DISPUTE RESOLUTION:**

##### **A. Mediation**

1. As a first means of resolving any disputes which may occur during the term of this Lease Agreement, the Parties agree to pursue alternate means of dispute resolution in an effort to avoid litigation and court proceedings.

2. Mediation shall be the first method used to resolve any disputes arising out of this Lease Agreement. **Mediation** is a process whereby a neutral third person encourages and facilitates the resolution of a dispute between the Parties in an informal proceeding

3. Except for any claim relating to the Lessee's default in the payment of rent, the Lessor and Lessee agree to submit any and all other claims, controversies and disputes between the Lessor and Lessee arising out of or relating to the Premises, this Lease Agreement or the Parties' performances due hereunder to **Mediation** pursuant to the mediation rules contained in applicable California Statutes and California Rules of Civil Procedure prior to demanding arbitration. The Lessor and Lessee agree to maintain all communications made at such mediation in the strictest confidence between themselves and their counsel, unless otherwise required to disclose same pursuant to applicable law. The mediator for any such mediation shall be a California certified circuit-civil mediator and also Board Certified by The California Bar in Business Litigation or Real Estate Law. The mediation shall be conducted within thirty (30) days from the date any such claim, controversy or dispute that is declared in writing to exist by any Party to the opposing Party.

##### **B. Arbitration**

1. If mediation is unsuccessful and does not result in a resolution, the parties may then proceed to binding **Arbitration** to expedite the determination of the dispute with a panel of arbitrators with specialized knowledge in the subject matter of the contract or the type of property under the Lease Agreement.

2. Arbitration proceeding shall be conducted by a panel of three (3) neutral and impartial arbitrators. Said panel shall be comprised of arbitrators with the following minimum qualifications:

- a. One arbitrator, who shall be the chairperson of the panel, shall be Board Certified by The California Bar in Business Litigation;
- b. One arbitrator shall be Board Certified by The California Bar in Real Estate Law; and
- c. One arbitrator shall be a non-lawyer commercial real estate broker with at least fifteen (15) consecutive years of licensure in California as a real estate broker.

3. All defenses and claims which would otherwise be available to the Parties in any court proceeding, except for class actions, shall be available in arbitration.

4. The arbitration proceeding shall be conducted in the county in which the Premises are located no sooner than sixty (60) days and no later than one-hundred twenty (120) days after any written demand for arbitration is served upon the respondent for the proceeding.

**C. Litigation:**

1. Parties to this Lease Agreement agree that all other means of dispute resolution shall be undertaken before instituting litigation. Litigation shall be the last means of resolving any disputes arising out of this Lease Agreement and is to be avoided if possible.

**D. Attorney's Fees:**

1. In the event of any legal action, cause of action, or other proceeding, including arbitration, and any appeal therefrom, is brought by either Party against the other under this Lease Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees along with all costs (including expert witness fees), fees and expenses incurred therein.

**V. GENERAL TERMS**

**A. Entire Lease Agreement, Amendment, or Modification:**

1. This Lease Agreement (Pages 1-23) constitutes the entire agreement of the Parties with respect to the subject matter of this Lease Agreement, and shall not be modified or amended in any respect except by a written instrument executed by the Lessee and Lessor. The Lease Agreement replaces and supersedes all prior written or oral agreements by and between the Parties to this Lease Agreement.

**B. Jurisdiction:**

1. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of California and subject matter, personal jurisdiction, and venue shall be in San Diego County, California.

2. If any term or provision of this Lease Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Lease Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**C. Severability:**

1. If any provision of the Lease Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable, that provision shall be deemed to be severed from this Lease Agreement and the remaining provisions of this Lease Agreement shall remain in full force and effect.



**D. Successors and Assigns:**

1. This Lease Agreement shall be binding on and inure to the benefit of the Parties and their heirs, personal representatives, and permitted successors and assigns. The Lessee shall not assign any obligation under this Lease Agreement to any third party without written consent of the Lessor. The Lessee shall not allow any third party not associated with the Lessee or the Lessor to have access to or to use the Premises.

**E. Additional Acts:**

1. The Parties to this Lease Agreement shall promptly execute and deliver any additional documents, instruments, notices, and other assurances, and shall do any other acts and things, reasonably necessary in connection the performance of their respective obligations under the provisions of the Lease Agreement and to carry out the intent of the Parties.

**F. Authority:**

1. Each Party to this Lease Agreement warrants to the other Party that the warranting Party has the capacity and authority to enter into this Lease Agreement.

**G. Titles and Headings:**

1. The paragraph titles and headings contained in this Lease Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of the Lease Agreement or any of its provisions.

**H. Benefit of Parties:**

1. This Lease Agreement is made solely for the benefit of the Parties to this Lease Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any rights by virtue of this Lease Agreement.

**I. Notices:**

1. Any notice required under this Lease Agreement must be in writing and shall be deemed to have been sufficiently communicated when (a) personally delivered; or (b) on the second (2<sup>nd</sup>) business day after mailing by overnight delivery, postage prepaid:

To **Lessor** addressed:

First Presbyterian Church of El Cajon  
Attn: Administration  
500 Farragut Circle  
El Cajon, CA. 92020

With a copy to:  
Presbytery of San Diego  
Budget, Property & Finance Committee  
3707 Udall St.  
San Diego, CA 92107

To **Lessee** addressed:  
AKA Head Start, Inc.  
Yolanda Perez, Executive Director  
620 W. Madison Avenue  
El Cajon, CA 92020

**J. Modification:**

1. This Lease Agreement may not be modified except in a written form signed by each of the Parties.

**K. Review by Counsel:**

1. Each Party to this Lease Agreement warrants that they have had the opportunity to consult with an attorney of that Party's own choosing regarding the provisions of this Lease Agreement.

**VI. SIGNATURES**

The parties agree to the Terms and Conditions of this Lease Agreement on this date \_\_\_\_\_ and represent that they have full authority in which to be bound by the same terms and conditions.

This Lease Agreement shall become effective on the date the last signature is affixed below.

**FIRST PRESBYTERIAN CHURCH OF EL CAJON**

A California Nonprofit Corporation

By \_\_\_\_\_ Date: \_\_\_\_\_  
Cynthia Graham, President First Presbyterian Church of El Cajon

**AKA HEAD START, INC.**

A California Nonprofit Corporation

By \_\_\_\_\_ Date: \_\_\_\_\_  
Yolanda Perez, Executive Director AKA Head Start, Inc.

## **Glossary of Attachments**

- Attachment A:** Map of Property located at 551 Farragut Circle, El Cajon, CA 92020
- Attachment B:** Map of Premises (known as Richardson Hall), labeled appropriately as Exclusive Used Spaces, Shared Use Spaces and Excluded Spaces
- Attachment C:** Anti-Harassment Policy identified in the AKA Employee Handbook
- Attachment D:** Children’s Rights Violations - Zero Tolerance identified in the AKA Employee Handbook

**Attachment A:**  
551 Farragut Circle, El Cajon, CA 92020

1. Lessee shall have exclusively used space, described as such:
  - a. The east playground
  - b. The south playground
  
2. Lessee shall have shared used space, described as such:
  - a. Parking lot and gates

**Attachment B:**  
Richardson Hall

1. Lessee shall have exclusively used space, described as such:
  - a. Three preschool classrooms with restrooms
  - b. One staff office
  - c. One director's office
  - d. Two storage spaces
  - e. One hallway
  - f. One meeting room (known as the Resource Room)
  - g. One scullery, except for an ice maker, the shelf above the ice maker and two built-in cabinets in the scullery, totaling approximately 4,565 square feet.

Lessor may use one classroom and restroom and have playground access during the month of July. Supplies and materials owned by Lessee must be stored and locked during this time.

2. Lessee shall have shared use space, described as such:
  - a. One kitchen
  - b. Two restrooms
  - c. One janitor's closet
  - d. One hallway

## ATTACHMENT C

Excerpted from AKA EMPLOYEE HANDBOOK  
For Internal Use Only Confidential and Proprietary

**ANTI-HARASSMENT POLICY** This policy reaffirms AKA HEAD START's commitment to a non-offensive working environment free of harassment and/or intimidation. AKA HEAD START prohibits harassment, of any type, in the workplace. This includes sexual harassment (which includes harassment based on sex, sexual orientation, gender, gender identity, gender expression, pregnancy, childbirth, or related medical conditions), as well as harassment based on such factors as race, creed, color, religious creed and/or belief (including religious dress and grooming practices), marital status, age, national origin, ancestry, military or veteran status, physical or mental disability (including HIV and AIDS), medical condition, genetic information, family care or medical leave status, sick leave status, or any other consideration made unlawful by federal, state, or local laws. AKA HEAD START will not tolerate harassment of its employees, whether by co-workers, managers, directors, supervisors, contractors, or non-employees with whom AKA HEADSTART has a business, service, or other professional relationship. The term harassment includes sexual harassment and other prohibited conduct described below. No employee, applicant, contractor, vendor, and/or anyone else doing business with AKA HEAD START is to be subjected to harassment or conduct that creates an intimidating or offensive work environment. Conduct prohibited by this Policy includes, but is not limited to, unwelcome verbal, physical, written, or visual behavior related to:

- Unwelcome or derogatory comments regarding a person's race, color, ancestry, ethnic heritage, mental or physical disability, age, appearance, or other classifications protected by law;
- Sexist or religious comments, jokes, or slurs;
- Threats of violence, bodily harm, hitting, pushing or other aggressive physical contact, or physical intimidation using inappropriate gestures;
- Unwelcome sexual advances, requests for sexual favors, inappropriate physical conduct, and other verbal or physical conduct of a sexual nature;
- Distribution, including e-mail or other electronic media, or display in any works area, of written or graphic material having such effects as to create an intimidating or offensive work environment;
- Submission to or rejection of the conduct is used as the basis for an employment decision affecting an employee; or
- The contact has the purpose or effect of reasonably interfering with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

Any person who violates this Policy will be subject to disciplinary action, up to and including termination of employment, or of the work relationship, and/or any other appropriate remedial action. Any person who believes that he or she has been unlawfully harassed, must immediately report the harassment or unwelcomed conduct to his or her supervisor/Director or to AKA HEAD START's Director of Human Resources. Supervisors/Directors must immediately report any incidents or suspected incidents of harassment to the Human Resources Department. Every reported complaint of harassment will be investigated thoroughly, in a timely manner and, to the extent possible, handled in a confidential manner.

## ATTACHMENT D

Excerpted from AKA EMPLOYEE HANDBOOK  
For Internal Use Only Confidential and Proprietary

### CHILDREN'S RIGHTS VIOLATIONS - ZERO TOLERANCE

Federal and state rules and regulations applicable to AKA HEAD START mandate that children's personal rights be respected and that AKA HEAD START respond to suspected or known child abuse or sexual abuse, whether it occurs inside or outside of its programs. AKA HEAD START employees must ensure positive methods of child guidance are employed at all times. Accordingly, it is the policy of AKA HEAD START that the following types of conduct are not acceptable and will not be tolerated:

- Imposing corporal punishment, emotional or physical abuse, or humiliation.
- Isolating children as punishment.
- Binding or tying a child to restrict movement or taping a child's mouth.
- Withholding or using food as punishment or reward.
- Using toilet learning/training methods that punish, demean, or humiliate a child.
- Using any form of emotional abuse, including public or private humiliation, rejecting, terrorizing, extended ignoring, or corrupting a child.
- Physically abusing a child.
- Use of any form of verbal abuse, including profane, sarcastic language.
- Threats or derogatory remarks about the child or child's family.
- Using physical activity or outdoor time as a punishment or reward.
- Leaving children alone or unsupervised.



- Denying children one or more of their basic needs as punishment.

Furthermore, all AKA HEAD START employees must immediately advise the Director of Human Resources of (i) all pending and prior criminal arrests and charges related to child sexual abuse and their disposition, (ii) all convictions related to such matters, and (iii) all convictions of violent felonies. An infraction of this rule will be deemed "cause" for immediate termination.

This is a "zero tolerance" policy, meaning that an employee's violation of this policy may subject the employee to immediate termination without resort to any type of progressive discipline.

Personnel procedures, including progressive discipline procedures outlined in this Employee Handbook, are intended as a guide in dealing with problems in the workplace, and AKA HEAD START is not obligated to use the progressive discipline procedures.

The following disciplinary action steps are to be used as a guide to support consistency in disciplinary action. However, all disciplinary actions will be evaluated on a case-by-case basis considering the severity and prior behavior history of an individual employee/volunteer.

*In the event a violation of the Zero Tolerance policy of an enrolled child is suspected:*

- Center Director will immediately contact the appropriate department director of the incident.
- The Department Director will immediately notify the Executive Director.
- Staff interviews will be conducted as soon as possible regarding the incident.
- Employee(s) in question may be placed on immediate leave or suspension.
- Following investigation, disciplinary action may be taken, up to and including termination.

#### **Action – Written Warning for First Occurrence of Failure:**

Includes but is not limited to:

- Failure to provide knowledge of the number of children current in class room.
- Failure to write out the counts of children and or transition adults in the classroom.
- Failure to notify coworkers when transition in or out of inside or outside class sessions.
- Failure to utilize adult child / teacher child ratio.
- Failure to count and record children present daily and/or through-out the day.

#### **Action – Five (5) Day Suspension**

Includes but is not limited to:

- Any failure of designated staff to appropriately supervise a child during class time.
- Any failure to report an incident of unsupervised child during class time.
- Any second occurrence of an offense that leads to a related written warning.

#### **Action- Immediate Recommended Termination**

Includes but is not limited to:

- Any child allowed to exit a Center/facility unsupervised by an employee or parent.
- Any child left without supervision by an employee or parent during a field trip.
- Any child released to an unauthorized person.
- Second offense after a related five (5) day suspension within two (2) years.

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