CONSENT CALENDAR
April 24, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing and Community Services Department

Subject: Lease Agreement: Retroactively Execute Lease Agreement with Dorothy Day House for the Operation of the Emergency Storm Shelter at 1925 Ninth Street

RECOMMENDATION
Adopt first reading of an Ordinance authorizing the City Manager to retroactively execute a Lease agreement and any amendments thereto with Dorothy Day House to allow it to operate the Berkeley Emergency Storm Shelter (BESS) at 1925 Ninth Street.

FISCAL IMPACTS OF RECOMMENDATION
Lease agreements are needed between the City and tenants that occupy City buildings. Given the emergency basis and temporary nature of the operation, the Lease fee is being waived. City Council allocated $300,000 for an expanded Winter Shelter Program on December 5, 2017¹ of which $180,000 was allocated to Dorothy Day House at the January 23, 2018 City Council meeting². An additional amount up to $150,000 is being allocated to the Winter Shelter Program at the April 24, 2018 meeting.

CURRENT SITUATION AND ITS EFFECTS
At its December 5, 2017 meeting as part of the mid-year budget update process, City Council allocated $300,000 for an expanded Winter Shelter Program, which would operate nightly from December, 2017 to April 15, 2018. Staff recommended contracting with Dorothy Day House, which has operated the Berkeley Emergency Storm Shelter (BESS) program for over fifteen years to carry out this winter shelter expansion.

At its January 23, 2018 City Council meeting, Council allocated $120,000 to Dorothy Day House to fund a nightly shelter at this location. This funding covers the cost of expanding the shelter from 45 to 120 nights. This location increases the nightly bed capacity from 65 to 90 people.

At its April 24, 2018 City Council meeting, Council allocated an additional amount up to $150,000 to the Winter Shelter Program. This amount will extend winter shelter operations through May 31, 2018 with a possible extension through June 30, 2018.

¹ December 5, 2017, City Council: Action Calendar, Item B2
² January 23, 2018 City Council: Consent Calendar Item 9
the $150,000, up to $100,000 is allocated to Dorothy Day House to be used if the shelter operates through June 30, 2018. The remaining $50,000 is allocated for non-personnel costs to operate the shelter which are paid directly by the City. Over the past couple of years, it has been difficult for Dorothy Day House to find a suitable location to operate the BESS. Moving between multiple locations, primarily at faith based organizations, made it challenging because scheduled events resulted in shelter opening times varying between 7 p.m. and 10 p.m. In some cases, some nights were not available to the BESS at all limiting access to dry and warm shelter.

Initiating nightly shelter operations at 1925 Ninth Street has increased the number of City winter shelter beds by 38%. Dorothy Day House has maintained BESS operations at this location since December 23, 2017. The shelter is open nightly from 6 p.m. to 7 a.m., and operates on a first come, first served basis. Since January 31, 2018, the shelter capacity has been 90 people. Since December 23, 2017 and the writing of this report (3/15/18) it has served 401 unduplicated people, and since January 31, it has had an average nightly census of 87.

BACKGROUND
The City currently provides 140 year-round shelter beds that are accessible through the City’s homeless coordinated entry system, The Hub. The Hub screens and prioritizes candidates for shelter, and places them in a bed at one of four shelters that serve single women, single men, transition-age youth, and families. Shelter residents occupy those beds until other housing is located with the help of a case manager.

Dorothy Day House (DDH) has operated the Berkeley Emergency Storm Shelter (BESS) for fifteen years. Up until FY17, DDH operated BESS as an overnight shelter on a first-come, first served basis that would open if rain or temperatures at or below 40 degrees were expected overnight. The BESS shelter would be open for up to 45 nights with a maximum capacity of 65 people each night.

For the past several years, DDH has operated the BESS at different faith based and City of Berkeley owned sites. This year, the BESS provides nightly shelter for up to 90 people at a City owned facility. In addition to operating the BESS, through its contract with the City of Berkeley, DDH also operates the Monday through Saturday breakfast program at Christ Church in Berkeley.

The proposed Lease agreement is written through May 31, 2018, and provides an option for the City to extend or terminate the agreement with 30 days’ notice.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION
Dorothy Day House has operated the BESS since December 23, 2017 at this location. Lease agreements are needed between the City and tenants that occupy City buildings.
ALTERNATIVE ACTIONS CONSIDERED
None. The lease is needed to cover operations provided by Dorothy Day House.

CONTACT PERSON
Jennifer Vasquez, Community Services Specialists III, HHCS (510) 981-5431

Attachment:
1: Resolution: Dorothy Day House
   Exhibit A: Lease Agreement
ORDINANCE NO. N.S.

LEASE OF 1925 NINTH STREET TO DOROTHY DAY HOUSE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS:

WHEREAS, in June 2017 as part of the biennial budget process, City Council allocated $30,101 for fiscal year 2018 to Dorothy Day House to operate the Berkeley Emergency Storm Shelter (BESS) on cold and rainy nights only for up to 65 people for 45 nights; and

WHEREAS, at its December 5, 2017 City Council meeting Council authorized expenditures of up to $300,000 for an expanded winter shelter; and

WHEREAS, Dorothy Day House has agreed to operate Berkeley Emergency Storm Shelter (BESS), on a continuous basis through April 15, 2018 and to expand the shelter maximum capacity to 90 people; and

WHEREAS, on January 23, 2018, City Council authorized the City Manager to execute an amendment for these expanded services adding $120,000 for the purpose of providing a continuous winter shelter at 1925 Ninth Street until April 15, 2018; and

WHEREAS, on April 24, 2018, City Council authorized the City Manager to execute an amendment to extend the shelter adding $150,000 to provide a continuous winter shelter at 1925 Ninth Street until May 31, 2018, with an option to extend through June 30, 2018; and

WHEREAS, on April 24, 2018, City Council allocated $100,000 of the $150,000 to Dorothy Day House to continue to operate the winter shelter at 1925 Ninth Street until May 31, 2018, with an option to extend through June 30, 2018; and

WHEREAS, Dorothy Day House has an existing contract (Contract No. 010577A) with the City of Berkeley and has been providing these services continually since December 23, 2017; and

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 1925 Ninth Street.

The City Manager is hereby authorized to enter into a lease agreement through May 31, 2018.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.
LEASE

This lease is made on ________________, 2018 between the CITY OF BERKELEY ("Landlord"), a Charter City organized and existing under the laws of the State of California, and DOROTHY DAY HOUSE ("Tenant"), a non-profit organization, with reference to the following facts:

RECITALS

a. WHEREAS, Landlord is the owner of the real property located at 1925 Ninth Street, Berkeley, California, ("premises") as further described in Exhibit A, attached to and made a part of this lease;

b. WHEREAS, Tenant is willing to lease the premises from Landlord pursuant to the provisions stated in this lease;

c. WHEREAS, Tenant wishes to lease the premises for the purpose of operating a winter shelter program for homeless men and women; and

d. WHEREAS, Tenant has examined the premises and is fully informed of the condition thereof.

NOW THEREFORE, the parties agree as follows:

AGREEMENT

1. DESCRIPTION OF PREMISES

Landlord leases to Tenant and Tenant leases from Landlord the premises described above and in Exhibit A, attached hereto.

2. TERM

a. The term of this lease shall commence on December 23, 2017 and shall terminate on May 31, 2018.

3. RENT

Tenant shall pay to Landlord as rent, without deduction, setoff, prior notice, or demand, the sum of ONE DOLLAR ($1.00) PER YEAR to be paid in a lump sum each year in advance, commencing on the date the term commences and continuing during the term. All rent shall be paid to Landlord at the address to which notices to Landlord are given.
4. **USE OF PREMISES; OPERATION**

   a. Tenant will use the premises for the purpose of providing a nightly shelter program for up to 90 homeless individuals on a first-come, first-served basis. The shelter shall operate from 6:00 p.m. to 7:00 a.m., except that hours may be extended beyond 7:00 a.m. where necessary to coordinate homeless services by other service providers. Tenant may be on the premises at other times in preparation for nightly operations but shall be prudent in its daytime use to limit utility costs. Tenant agrees to continuously and uninterruptedly occupy and use the entire leased premises for said purpose and to maintain adequate personnel for the efficient service of clients. Tenant shall not use nor permit the use of the whole or any part of the premises for any other purpose without the Landlord's prior written consent.

   b. Tenant’s use of the premises shall include the non-exclusive right to use the parking lot owned by Landlord between the hours of 7:00 a.m. and 5:00 p.m. only to facilitate loading and unloading, for shelter operations. Tenant shall not park in the area of the parking lot reserved for other parties, and shall never use the parking lot between the hours of 5:00 p.m. and 10:00 p.m. Tenant acknowledges that it does not have exclusive use of the parking lot, and that the parking spaces are available on a first come, first serve basis. Tenant is not responsible for the operation or maintenance of the parking lot.

   c. Tenant will use its best efforts to maintain effective relations with neighbors. Occupants of the premises shall be instructed in writing to respect the privacy and property of all neighbors in the area. This instruction shall specifically state the following: to park vehicles only in legal and/or designated parking areas and only for the legal period of time; to deposit all trash in legal containers; to not deposit food or material of any kind on the adjacent properties or in the neighborhood.

   d. Business may be conducted on the leased premises at any time on any day, provided that Tenant shall have obtained all required permits. The winter shelter shall operate daily from 6:00 pm to 7:00 am and shall provide dinner and breakfast to clients.

   e. Tenant shall not contract with or otherwise permit management by a management agent for the operation of the programs on the premises without the prior written consent of Landlord.

5. **TAXES AND ASSESSMENTS**

   a. Tenant recognizes and understands that this lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.
b. Tenant shall pay all taxes on its personal property, fixtures and on its leasehold or possessory interest in the leased premises and any other assessment that may be lawfully levied.

6. UTILITIES

Landlord agrees to pay any and all charges for electricity, gas, heat, cooling, telephone, sewer use, water, refuse collection and other utilities used in the premises, with the exception of wi-fi and telecommunications services.

7. MAINTENANCE AND REPAIR

a. Tenant is aware of the condition of the premises and accepts the premises in its “as-is” condition. Tenant acknowledges that Landlord makes no representation or warranty concerning the physical condition of the premises or the presence of any Hazardous Substance on the premises. Tenant is responsible for ensuring that the condition of the premises complies with all applicable federal, state and local laws. Landlord shall be responsible for remediating any environmental conditions on, about or under the premises arising out of Landlord’s ownership that are in violation of any federal, state or local laws.

b. Tenant shall keep and maintain in good order and condition (except for reasonable wear and tear) all portions of the premises. Tenant shall keep the premises reasonably free and clean of all debris, trash and rubble.

c. In the event of damage to the inside or outside of the premises, Tenant shall notify Landlord within twenty-four (24) hours of its occurrence.

8. IMPROVEMENTS

a. Tenant shall not undertake any construction on or improvements to the premises without first obtaining Landlord’s written consent. Should the Landlord grant consent for any construction on the premises, Tenant shall require all contractors performing work valued in excess of $100,000 to provide a labor and materials bond for the full amount of the contract. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the leased premises and which may be secured by any mechanic's, materialmen's or other lien against the premises or Landlord's interest therein.

b. All alterations, improvements or additions that are now or in the future attached permanently to the premises shall be the property of Landlord and remain with the premises at the termination of this lease, except that Landlord can elect within thirty (30) days of the termination of the lease to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the premises.
9. **INDEMNIFICATION**

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in or on the premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990. Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

10. **INSURANCE**

a. Tenant shall maintain public liability and property damage insurance with a single combined liability limit of $2,000,000 and property damage limits of not less than $200,000 insuring against all liability of Tenant and its authorized representatives arising from and in connection with Tenant's use or occupancy of the premises. Such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

b. If the insurance referred to above is written on a Claims Made Form, then following termination of this lease, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

c. Tenant at its cost shall maintain on all its personal property, tenant's improvements, and alterations, in, on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and Tenant shall use the proceeds from any such policy for the replacement of personal property or the restoration of Tenant's improvements or alterations.

d. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days' prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager.

e. Tenant shall forward original insurance certificates and all extensions to the
   Jennifer Vasquez,
   Health, Housing and Community Services Department,
11. COMPLIANCE WITH LAW AND SAFETY

a. Tenant shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations.

b. If a death, serious personal injury, or substantial property damage occurs in or on the premises, or about the premises and related to the Tenant's activities under this agreement, Tenant shall immediately notify the Landlord's Risk Management Office by telephone. If any accident occurs on the premises, Tenant shall promptly submit a written report to Landlord, in such form as Landlord may require. This report shall include the following information: 1) name and address of any injured or deceased person(s); 2) name and address of Tenant's contractor, if any; (3) name and address of Tenant's liability insurance carrier; and (4) a detailed description of the accident.

c. If a release of hazardous materials or hazardous waste that cannot be controlled occurs on the premises, Tenant shall immediately notify the City of Berkeley Police Department and the City's Toxics Management Office. Tenant shall not store hazardous materials or hazardous waste on the premises without a proper permit from the City.

12. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

a. If Tenant provides any aid, service or benefit to others on the City's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.
b. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

13. **CITY NON-DISCRIMINATION ORDINANCE**

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

a. The Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. The Tenant shall permit the Landlord access to records of employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the Landlord, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the Landlord to monitor these non-discrimination provisions.

14. **NUCLEAR FREE BERKELEY**

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

15. **OPPRESSIVE STATES**

a. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

1. The governing regime in any Oppressive State.

2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.

3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in
business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this lease, the Tibet Autonomous Region and the provinces of Ado, Kham, and U-Tsang shall be deemed oppressive states.

c. Tenant's failure to comply with this section shall constitute a default of this lease and Landlord may terminate this lease pursuant to Section 23. In the event that the City terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

16. BERKELEY LIVING WAGE ORDINANCE

a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend employees, and generates $350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in sections 22 and 23 herein.

c. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased property.

d. If Tenant fails to comply with the requirements of the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 23. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of $50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the
nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

17. **BERKELEY EQUAL BENEFITS ORDINANCE**

   a. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

   b. If Tenant is currently or becomes subject to the Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Sections 22 and 23 of this lease.

   c. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

   d. Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 23. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of $50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

18. **PESTICIDES**

   All use of pesticides on the premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

19. **SIGNS**

   Tenant shall not install or letter any signs on the premises without the prior written consent of Landlord. All signs on the premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04.
20. **DAMAGE OR DESTRUCTION**

If the premises are totally or partially destroyed from any cause, rendering the premises totally or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the premises and the rent shall be abated, from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease. Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the premises.

21. **EMINENT DOMAIN**

If the whole or any portion of the premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the premises are totally taken by condemnation, this lease shall terminate on the date of taking. If any portion of the premises is taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the premises taken bears to the square footage of the premises immediately before the taking. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease.

22. **DEFAULT BY TENANT**

a. The occurrence of any of the following shall constitute a default by Tenant:

1. Abandonment and vacation of the premises (failure to occupy and operate the premises for 14 consecutive days shall be deemed an abandonment and vacation).

2. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant’s assets, where possession is not restored to Tenant within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of Tenant’s assets, where such seizure is not discharged within thirty (30)
days.

3. Failure to perform any other provision of this lease if the failure to perform is not cured after notice has been given to Tenant. If the default cannot reasonably be cured within the period specified in the notice, Tenant shall not be in default of this lease if Tenant commences to cure the default within the period and diligently and in good faith continues to cure the default.

4. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice.

23. **LANDLORD'S REMEDIES**

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. **Tenant's Right to Possession Not Terminated**: Landlord can continue this lease in full force and effect, and the lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due.

b. **Termination of Tenant's Right to Possession**: Landlord can terminate Tenant's right to possession of the premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this lease. Acts of maintenance, efforts to relet the premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this lease shall not constitute a termination of Tenant's right to possession.

c. **Landlord's Right to Cure**: Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

24. **ASSIGNMENT, SUBLETTING AND SALE**

Tenant shall not voluntarily assign or encumber its interest in this lease or in the premises, or sublease all or any part of the premises, or allow any other person or entity
(except Tenant's authorized representative) to occupy or use all or any part of the premises, or sell or otherwise transfer its interest in any improvements on the premises, without first obtaining Landlord's consent. Any assignments, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

25. **ENTRY**

Landlord and its authorized representatives shall have the right to enter the premises at all reasonable times for any of the following purposes: to determine whether the premises are in good condition and whether Tenant is complying with its obligations under the lease; to do any acts that may be necessary to protect Landlord's interest in the premises; or to perform Landlord's duties under this lease. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the premises as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

26. **NOTICES AND ADMINISTRATION OF LEASE**

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this lease and deposits it with the U.S. Postal Service, registered mail, postage prepaid. For purposes of this lease, notices shall be addressed as follows, as appropriate:

To the Landlord: Director, Health, Housing & Community Services
Department
City of Berkeley, 2180 Milvia Street, 2nd Floor
Berkeley, CA 94704

To the Tenant: David Stegman, Executive Director
Dorothy Day House
P.O. Box 12701
Berkeley, CA 94712

27. **WAIVER**

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the premises, shall constitute an acceptance of the surrender of the premises by
Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the premises and accomplish a termination of the lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

28. EXCUSABLE DELAYS

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for thirty (30) days.

29. HOLDING OVER

If Tenant remains in possession of the premises with Landlord's consent after the expiration of the term of this lease, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

30. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY

At the termination of this lease, Tenant shall: 1) give up and surrender the premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the premises and which is owned and was installed by Tenant during the term of this lease.

31. TERMS BINDING ON SUCCESSORS

All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

32. TIME OF ESSENCE

Time shall be of the essence of each provision of this lease.

33. COVENANTS AND CONDITIONS

Each term and each provision of this lease performable by Tenant shall be construed to be both a covenant and condition.
34. **GOVERNING LAW**

The laws of the State of California shall govern this lease.

35. **ENTIRE AGREEMENT, AMENDMENTS**

This lease and all exhibits attached and any documents expressly incorporated by reference contain the entire agreement between the parties regarding the lease of the premises described herein and shall supersede any and all prior agreements, oral or written, between the parties regarding the lease of these premises. This lease cannot be altered or otherwise modified except by a written amendment.

36. **CONSENT OF PARTIES**

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

37. **BUSINESS LICENSE**

Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease as of the date written on the first paragraph of this lease.

LANDLORD, CITY OF BERKELEY

By: _____________________________

Dee Williams Ridley, City Manager

REGISTERED BY: APPROVED AS TO FORM:

_____________________________ _____________________________

Ann-Marie Hogan, City Auditor Farimah Brown, City Attorney
ATTEST:

______________________________
Mark Numainville, City Clerk

TENANT, DOROTHY DAY HOUSE

______________________________
 signature

______________________________
Printed Name and Title
Berkeley Business License #_________