



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Grants Management Division*

### m e m o r a n d u m

**TO:** Mayor Diane Wolfe Marlin and City Council Members

**FROM:** Lorrie Pearson, AICP, Community Development Services Director  
Sheila Dodd, Manager, Grants Management Division

**DATE:** February 27, 2020

**SUBJECT: AN ORDINANCE AUTHORIZING THE PURCHASE OF CERTAIN  
REAL ESTATE (1107 N Gregory Street)**

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#### **Description**

Included on the agenda of the March 2, 2020, meeting of the Urbana City Council Committee of the Whole is an Ordinance Authorizing the Purchase of Certain Real Estate (1107 N Gregory Street). This is a single family house that was built in 2013 with HOME funding. The property was then transferred to Rosecrance to be used for transitional housing. Rosecrance would like to transfer the property back to the City as they want to focus on their core services.

#### **Issues**

The issue is whether the Urbana City Council Committee of the Whole should recommend the Urbana City Council approve the Ordinance Authorizing the Purchase of 1107 N Gregory Street at a price not to exceed \$0.

#### **Background**

Homestead Corporation constructed the property as an affordable housing unit. Since HOME funds were used to construct the house, there is a 20-year affordability period. The City placed a Regulatory and Land Use Restriction on the property to ensure the affordability to meet HUD's guidelines. This restriction makes it difficult for Rosecrance to sell so they are requesting the City take ownership. The City currently has two transitional housing units that are made available to Courage Connection or Housing Authority self-sufficiency clients. This program has been funded by the City for many years. The additional unit would be a minimal expense with CDBG funds but would ensure the property remained affordable.

The Annual Action Plan has identified transitional housing as one of the activities to be undertaken utilizing Community Development Block Grant (CDBG) funds. An objective of this program is to provide safe, decent affordable housing to low- to moderate-income families.

If approved, the City would complete the purchase and offer the property to Courage Connection and Housing Authority clients for rent. This will assist in meeting the long-term affordability requirement and offer a decent, safe, affordable rental housing unit. Acquiring the property would keep the HOME investment requirements in place. If the property is not used for rental for the 20-year time period, the City would have to repay the invested HOME funds to HUD.

A recommendation to forward the Ordinance to City Council was approved at the February 25, 2020, Community Development Commission meeting.

### **Options**

1. Approve the Ordinance Authorizing the Purchase of Certain Real Estate (1107 N Gregory Street).
2. Do not approve the Ordinance.

### **Fiscal Impacts**

There would be no major fiscal impacts on the CDBG Fund. The Annual Action Plan identified the project as one of the activities to be undertaken using the allocation of CDBG funds as part of an ongoing effort to provide affordable housing to Urbana residents.

### **Recommendations**

Staff recommends that the Urbana City Council approve the Ordinance authorizing the purchase of the property for possible future development of affordable housing.

### Attachments:

1. An Ordinance Authorizing the Purchase of Certain Real Estate
2. Regulatory and Land Use Restriction Agreement

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**ORDINANCE NO. 2020-03-009**

**AN ORDINANCE AUTHORIZING THE PURCHASE OF CERTAIN REAL ESTATE**

**(1107 N. Gregory St. / 2020)**

**WHEREAS**, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, and the passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions as granted in the Illinois Constitution, 1970; and

**WHEREAS**, Urbana City Code Section 2-118, Subsection (d), provides that the City may purchase real estate for any corporate purposes found and declared by the City Council and that the City Council may authorize the purchase thereof under any terms and any conditions by ordinance duly passed; and

**WHEREAS**, on September 6, 1994, the City Council passed Ordinance No. 9495-28, authorizing the purchase of the real estate commonly known as 1107 N. Gregory Street, Urbana, Illinois (“real estate”); and

**WHEREAS**, on May 18, 2009, the City Council passed Ordinance No. 2009-05-047, authorizing the sale of such real estate to Homestead Corporation of Champaign-Urbana (“Homestead Corporation”); and

**WHEREAS**, Homestead Corporation is a Community Housing Development Organization that purchased the real estate for construction of transitional housing through the U.S. Department of Housing and Urban Development’s HOME Investment Partnerships Program (“HOME Program”); and

**WHEREAS**, federal regulations for the HOME Program establish a 20-year affordability period for the real estate, during which time occupancy and resale restrictions remain in effect, so that the housing built on the real estate remains affordable; and

**WHEREAS**, on September 5, 2013, Homestead Corporation transferred title to the real estate to Community Elements, Inc., which later became known as Rosecrance, Inc., a not-for-profit organization offering behavioral health services, inpatient and outpatient treatment, and family education throughout the country; and

**WHEREAS**, Rosecrance desires to sell, and the City desires to purchase, the real estate for the purchase price of \$0 and other valuable consideration; and

**WHEREAS**, the City's purchase of the real estate will ensure the long-term affordability period required by the HOME Program investment in such real estate; and

**WHEREAS**, the City Council expressly finds and declares that the real estate is needed for governmental purposes of the City.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Urbana, Illinois, as follows:

**Section 1.**

The purchase of the real estate commonly known as 1107 N. Gregory Street in Urbana, Illinois, and legally described below, substantially on such terms as contained in the Purchase and Sale Agreement attached hereto and incorporated herein, is hereby approved:

Lot 10 of O.A. Frailey's Second Subdivision, as per plat recorded in Plat Book "L" at Page 9, situated in Champaign County, Illinois.

Permanent Index Number 91-21-07-277-014

**Section 2.**

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to the execution of the Purchase and Sale Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

**Section 3.**

The Mayor of the City of Urbana, Illinois, or her designee, be and hereby is authorized to perform all acts necessary on behalf of the City of Urbana to effectuate the acquisition of the real estate.

**Section 4.**

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

**Section 5.**

This Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

**PASSED BY THE CITY COUNCIL** this date day of Month, Year.

AYES:

NAYS:

ABSTENTIONS:

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Charles A. Smyth, City Clerk

**APPROVED BY THE MAYOR** this date day of Month, Year.

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Diane Wolfe Marlin, Mayor

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**CITY OF URBANA HOME PROGRAM  
REGULATORY AND LAND USE RESTRICTION  
AGREEMENT**

**2013R22569**  
REC ON: 09/17/2013 12:27:00 PM  
CHAMPAIGN COUNTY  
**BARBARA A. FRASCA, RECORDER**  
REC FEE: 30.00  
PAGES 9  
PLAT ACT: OPLAT PAGE:

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (the "Agreement") is made and entered into as of this 4<sup>th</sup> day of September, 2013, by and between **Community Elements, Inc. (the "Owner")**, and the **City of Urbana, Illinois**, a unit of local government having its principal offices at 400 South Vine Street, Urbana, Illinois 61801 (the "Agency").

**RECITALS**

- A. The Agency receives funds to promote affordable housing from the U.S. Department of Housing and Urban Development ("HUD") through the HOME Investment Partnerships Program (the "HOME Program"), as authorized by Title II of the National Affordable Housing Act of 1990 (P.L. 101-165) (the "Act") and the regulations promulgated thereunder and codified at 24 CFR Part 92 (the "Regulations"), as may be amended and supplemented from time to time. All capitalized terms used herein and not otherwise defined shall have the meaning established in the Act and the Regulations.
- B. The Owner is the owner of the real property commonly known as 1107 North Gregory Street, Urbana, IL, more particularly described in Exhibit A attached hereto and made a part hereof (the "Property") and has agreed to maintain the property as an Affordable Rental Housing Unit (the "Project") as described in Title 24 of the Code of Federal Regulations at Part 92 for the full twenty-year term of affordability, commencing no later than two weeks after the date this Agreement is executed.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

- 1. **RECITALS.** The foregoing recitals are made a part of this Agreement.
- 2. **GENERAL CONDITIONS.** This Agreement shall be subject to, and Owner agrees to comply with, the terms and conditions of the Act and the Regulations, as amended and supplemented from time to time.
- 3. **OWNER COVENANTS, REPRESENTATIONS, AND WARRANTIES.** The Owner covenants, represents, and warrants to the Agency as follows.

- (a) Title. The Owner holds fee simple title to the Property.
- (b) Rental Property. The Property is and during the term of this Agreement shall remain a rental housing unit owned by the Owner.
- (c) Affordability Requirements. The Owner shall comply with the occupancy and rental restrictions set forth in Section 6.
4. **ACTS REQUIRING AGENCY APPROVAL**. Owner shall not without the prior written approval of Agency, which may be given or withheld in Agency's sole discretion:
- (a) Transfer of Project. Convey, transfer, or encumber the Project or any part thereof, or permit the conveyance, transfer, or encumbrance of the Project or any part thereof;
- (b) Transfer of Rents. Convey, assign, or transfer any right to manage or receive the rents and profits from the Project;
- (c) Rental Periods. Rent any unit for less than one (1) year, unless otherwise mutually agreed in writing by the Owner and the tenant in accordance with the Rules and Regulations;
- (d) Security Deposits. Require, as a condition of the occupancy or leasing of any unit in the Project, any consideration or deposit other than the pre-payment of the first month's rent plus a security deposit in an amount not to exceed one (1) month's rent to guarantee the performance by the Tenant of the covenants of such lease. Any funds collected by Owner as security deposits shall be kept separate and apart from all other funds of the Project; or
5. **PROGRAM & PROJECT REQUIREMENTS**. Owner further covenants, represents, and warrants to the Agency as follows.
- (a) Governmental Approvals. The Owner shall obtain all Federal, State, and local governmental approvals required by law for the Project.
- (b) Compliance With Laws. The Owner shall cause the Project to comply with all local codes, ordinances, zoning ordinances, and HUD Section 8 Housing Quality Standards, as set forth in Section 370.601 of the Rules.
- (c) Flood Insurance. The Owner shall procure flood insurance satisfactory to the Agency if the Property is located within a 100-year flood plain.
- (d) Inspections. The Agency shall have the right to inspect the Property during the course of the Project and during the Affordability Period (as defined in Section 6) to insure the Project's compliance with the project requirements described in Section 5(b).

6. **OCCUPANCY AND RENTAL RESTRICTIONS.** The Owner further covenants as follows.

- (a) **Occupancy Restrictions.** The transitional housing unit shall be occupied by persons or households with incomes at or below 60 percent of the Median Family Income as published annually by the Department of Housing and Urban Development for the period described in Paragraph 6(c) below (the "Affordability Period").
- (b) **Rental Restrictions.** During the Affordability Period the rent for the units in the Project shall comply with the Regulations, including, without limitation, 24 CFR Part 92.252. The initial rent for the unit in the Project is set forth in **Exhibit B**. On an annual basis, the Agency shall review and approve rent proposed by the Owner for the Project unit, and if applicable, the monthly allowances proposed by the Owner for utilities and services to be paid by the tenant. The Agency shall recalculate the maximum monthly rent annually and may change such maximum rent as changes in the applicable gross rent amount, the income adjustments, or the monthly allowances for utilities and services warrant. Any increase in rent for the Project units are subject to the provisions of outstanding leases, and in any event, the Owner must provide tenants of the units not less than thirty (30) days prior written notice before implementing any increase in rent and only at the time of resigning the lease.
- (c) **Certification of Income.** On forms provided by the Agency, the Owner shall obtain from each Low-Income Family applying for a Project unit, prior to their admission to the Project, a Certification of Income (the "Certification") annually during the Affordability Period, a recertification of such income (the "Recertification") from each such Family. The Owner shall submit such Certifications and Recertifications, and such other certifications as the Agency may require, to the Agency in the manner prescribed by the Agency.
- (d) **Occupancy and Rental Restrictions.** Subject to termination in the event of foreclosure or transfer in lieu of foreclosure as provided in Section 92.252(a)(5) of the Regulations, the occupancy and rental restriction provisions of this Section 6 shall remain in effect for a period of **twenty (20) years** from the date of "project completion" (as such term is defined in the Regulations). The Owner acknowledges and agrees that such Affordability Period shall apply notwithstanding any contrary affordability period set forth in the Rules and Regulations. In the event of foreclosure or deed in lieu of foreclosure relating to any other loan encumbering the Project, the Agency shall have the right, but not the obligation, to acquire the Project prior to such foreclosure or deed in lieu of foreclosure to preserve the foregoing affordability provisions in Section 92.252 of the Regulations.



7. **RECORDS.** At the request of the Agency, the Owner shall furnish such records and information as required by the Agency in connection with the maintenance, occupancy, and physical condition of the Property.
8. **VIOLATION OF AGREEMENT BY OWNER.** Upon violation of any of the provisions of this Agreement or upon a default (as defined therein) under any of the other Loan Documents by Owner, Agency shall give written notice thereof to the Owner, as provided in Section 13 hereof. If such violation is not corrected to the satisfaction of Agency within thirty (30) days after the date such notice is mailed, or within such further time as the Agency in its sole discretion permits (but if such violation is of a nature that it cannot be cured within such thirty (30) day period, then so long as the Owner commences to cure within such thirty (30) day period and diligently pursues such cure to completion within a reasonable period not to exceed one hundred twenty (120) days from the date of such notice, it shall not be considered a violation), Agency may declare a default under this Agreement, effective on the date of such declaration of default and notice thereof to the Owner, and upon such default Agency may:
- (a) **Collection of Rents.** Collect all rents and charges in connection with the operation of the Project to induce Owner to maintain compliance with the requirements of the Project, and such other obligations of the Owner in connection with the Project and the necessary expenses of preserving and operating the Project;
  - (b) **Possession.** Take possession of the Project, bring any action necessary to enforce any rights of the Owner growing out of the operation of the Project, and operate the Project in accordance with the terms of this Agreement until such time as the Agency, in its sole discretion, determines that the Owner is again in a position to operate the Project in accordance with the terms of this Agreement and in compliance with the requirements of the Project;
  - (c) **Judicial Relief.** Apply to any court, State or Federal, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, or for such other relief as may be appropriate. Because the injury to the Agency arising from a default under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, the Owner acknowledges and agrees that in the event of a violation of this Agreement, the Agency's remedies at law would be inadequate to assure the Agency's public purpose under the Act;
  - (d) **Other Available Remedies.** Exercise such other rights or remedies as may be available to the Agency hereunder, at law or in equity.

The Agency's remedies are cumulative, and the exercise of one remedy shall not be deemed an election of remedies nor foreclose the exercise of any other remedy by the Agency. No waiver of any breach of this Agreement by the Agency shall be deemed to be a waiver of any other breach or a subsequent breach. If the

Agency fails to exercise, or delays in exercising, any right under this Agreement, such failure or delay shall not be deemed a waiver of such right or any other right.

9. **TERMINATION OF LIABILITIES.**

- (a) **Permitted Assignment.** In the event the Agency, in its sole discretion, consents to a sale or other transfer of the Project, all of the duties, obligations, undertakings, and liabilities of the transferor under the terms of this Agreement shall thereafter cease and terminate as to such transferor, except as to any acts or omissions or obligations to be paid or performed by such transferor that occurred or arose prior to such sale or transfer; provided, however, as a condition precedent to the termination of the liability of the transferor hereunder, the transferee of the Project (a "New Owner") shall assume in writing, on the same terms and conditions as apply hereunder to the transferor, all of the duties and obligations of such transferor arising under this Agreement from and after such sale or transfer. Such assumption shall be in form and substance acceptable to Agency.
- (b) **Assumption By New Owner.** Any New Owner shall be bound by the terms of this Agreement to the same extent and on the same terms as the present Owner is bound hereunder and shall execute an assumption of such obligations in form and substance acceptable to Agency as a condition precedent to such party's admission as a New Owner; provided, however, that any such New Owner shall not be obligated with respect to matters or events which occur or arise prior to such party's admission as a New Owner.

10. **TERMS OF AGREEMENT; COVENANTS RUN WITH PROPERTY.** The covenants, conditions, restrictions, and agreements set forth in this Agreement (collectively, the "Obligations") shall be deemed to run with, bind, and burden the Property and shall be deemed to bind any New Owner and any other future owners of the Property and the holder of any legal, equitable, or beneficial interest therein for the Affordability Period. The Owner shall, if so requested by the Agency, execute a written memorandum prepared by the Agency, which memorandum shall memorialize said date of project completion and the foregoing Affordability Period. Any waiver by the Agency of its right to prepare or record any such memorandum and any failure by the Owner to execute and deliver the same shall not affect the validity or enforceability of the Obligations. In the event of a foreclosure or deed in lieu of foreclosure relating to any other loan encumbering the Property, the Agency shall have the right, but not the obligation, to acquire the Property prior to such foreclosure or deed in lieu of foreclosure to preserve the foregoing affordability provisions as provided in Section 92.252 of the Regulations.

It is hereby expressly acknowledged by Owner that the undertaking of the Obligations by Owner is given to induce Agency to make the Loan and that, notwithstanding that the Loan may be repaid prior to the expiration of the Affordability Period, the Owner's undertaking to perform the Obligations for the full Affordability Period set forth in the

previous paragraph is a condition precedent to the willingness of Agency to make the Loan.

11. **INDEMNIFICATION.**

- (a) The Owner shall indemnify the Agency and the Agency's officers, agents, employees, or servants against, and hold them harmless from, liabilities, claims, damages, losses, and expenses, including, but not limited to, legal defense costs, attorneys' fees, settlements, or judgements, whether by direct suit or from third parties, arising out of the Owner's performance under this Agreement or the work performed by a contractor in connection with the Project, in any claim or suit brought by a person or third party against the Agency or the Agency's officers, agents, employees, or servants.
- (b) If a claim or suit is brought against the Agency or the Agency's officers, agents, employees, or servants, for which the Owner is responsible pursuant to Subsection (a) above, the Owner shall defend, at the Owner's cost and expense, any suit or claim, and shall pay any resulting claims, judgements, damages, losses, costs, expenses, or settlements against the Agency or the Agency's officers, agents, employees, or servants.

12. **AMENDMENT.** This Agreement shall not be altered or amended except in writing signed by the parties hereto.

13. **NOTICES.** Any notice, demand, request, or other communication that any party may desire or may be required to give to any other party hereunder shall be given in writing, at the addresses set forth in Exhibit A, by any of the following means: (a) personal service; (b) electronic communication, whether by telegram or telecopier, together with confirmation of transmission; (c) overnight courier; or (d) registered or certified United States mail, postage prepaid, return receipt requested.

**The OWNER:**

*(Return to)*

Community Elements, Inc.  
Attn: Chief Executive Officer  
1801 Fox Drive  
Champaign, IL 61820

**The AGENCY:**

*(Prepared By)*

City of Urbana  
Manager, Grants Management Division  
400 South Vine Street  
Urbana, IL 61801  
Fax: 217-384-2367

Such addresses may be changed by notice to the other party given in the same manner as herein provided. Any notice, demand, request, or other communication sent pursuant to either Subsection (a) or (b) hereof shall be served and effective upon such personal

service or upon confirmation of transmission by such electronic means. Any notice, demand, request, or other communication sent pursuant to Subsection (c) shall be served and effective upon deposit with the overnight courier. Any notice, demand, request, or other communication sent pursuant to Subsection (d) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

14. **SUCCESSORS.** This Agreement shall bind, and the benefits shall inure to, the parties hereto, their legal representatives, successors in office or interest and assigns, provided that the Owner may not assign this Agreement, or any of its obligations hereunder without the prior written approval of the Agency.
15. **SURVIVAL OF OBLIGATIONS.** The Owner's obligations, as set forth in this Agreement, shall survive the sale of the property or foreclosure therein, and the Owner shall continue to cooperate with the Agency and furnish any documents, exhibits, or showings required.
16. **CONSTRUCTION OF AGREEMENT.**
  - (a) **Partial Invalidity.** If any term, covenant, condition, or provision of this Agreement, or the application thereof to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application thereof to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, condition, and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
  - (b) **Gender.** The use of the plural in this Agreement shall include the singular, the singular shall include the plural, and the use of any gender shall be deemed to include all genders.
  - (c) **Captions.** The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the intent of any provision of the Agreement.
  - (d) **Construction.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois.
17. **COUNTERPARTS.** This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same agreement.
18. **WAIVER OF JURY TRIAL. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR CONTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER**

**WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROJECT OR THIS AGREEMENT.**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the date first above written.

**CITY OF URBANA**

BY:

*Laurel Prussing*  
Laurel Prussing, Mayor

**BORROWER**

BY:

*Sheila Ferguson*  
Sheila Ferguson, CEO

ATTEST

*Phyllis Clark*  
Phyllis Clark, City Clerk

STATE OF ILLINOIS )

) SS

COUNTY OF CHAMPAIGN )

I, the undersigned Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Sheila Ferguson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed and delivered the said instrument as her free and voluntary act in her capacity as Chief Executive Officer of Community Elements, Inc., and as the free and voluntary act of said organization for the purposes therein set forth.

Given under my hand and official seal, this 4<sup>th</sup> day of SEPTEMBER, 2013.



*Patrick T Fitzgerald*  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION**

**Legal Description:** Lot 10 of O.A. Frailey's Second Subdivision, as per plat recorded in Plat Book "L" at page 9, situated in Champaign County, Illinois.

**Common address:** 1107 North Gregory Street, Urbana, Illinois 61801

**PIN:** 91-21-07-277-014

**EXHIBIT B**

**NUMBER AND TYPE OF HOME UNIT**

| <b>NUMBER OF UNITS</b> | <b>BEDROOM SIZE</b> | <b>TYPE OF HOUSEHOLD</b>        | <b>INITIAL HIGH HOME RENT LIMIT (2013)</b>     |
|------------------------|---------------------|---------------------------------|--|
| 1                      | 3 Bedroom           | Low Income (60% of Area Median) | \$1012, less utility allowances paid by renter |