

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUFFALO REGIONAL OFFICE

In the Matter of

Assurance No. 21-083

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

100 Forest Avenue LLC (d/b/a Monarch 716) and
XFD, LLC (d/b/a XFD Real Estate Partners).

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law §§ 63(12), 296(5)(a), Real Property Law (“RPL”) §§ 227-e, 227-f, 234, 238-a, Real Property Actions & Proceedings Law (“RPAPL”) § 702, General Obligations Law (“GOL”) § 7-108 and General Business Law (“GBL”) Articles 22-A and 25 into the residential leasing and related business practices of Respondents. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondents, whether acting through their respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

OAG's FINDINGS

Parties

1. 100 Forest Avenue LLC, doing business as Monarch 716 ("Monarch"), is a New York Limited Liability Company that owns a student housing complex located at 100 Forest Avenue, Buffalo, New York 14213.

2. Monarch is wholly owned by Acres Capital LLC.

3. XFD, LLC ("XFD"), doing business as XFD Real Estate Partners, is an Illinois Limited Liability Company.

4. XFD is a student housing real estate management company.

Background

5. On July 1, 2019, XFD entered into a contract to act as the manager of Monarch and has been solely responsible for the management, leasing and operation of Monarch since that date.

6. Monarch is marketed as student housing. Monarch is located in close proximity to the State University of New York College at Buffalo ("Buffalo State College") and primarily markets to students attending that school.

7. Monarch rents two- and four-bedroom apartments that have shared kitchens and common areas. The bedrooms are leased to tenants by the room, and Monarch offers a roommate matching service to students to fill units.

Respondents' Leasing Practices

8. Respondents require prospective tenants to complete an application and to sign a rental agreement (the "Rental Agreement").

9. The Rental Agreement provides a new tenant with a “to be determined” space in a two- or four-bedroom apartment.

10. The Rental Agreement requires a prospective tenant to provide an “approved guarantor.” If a tenant cannot obtain a guarantor that satisfies Respondents’ criteria, which are based primarily upon income, credit score, and history of past evictions, Respondents deny the tenant the ability to move into Monarch but continue to hold the tenant responsible for the full term of rent purportedly owed under the Rental Agreement.

11. In certain circumstances, Respondents permit a tenant who cannot obtain a qualified guarantor to instead pay for a third-party rental guarantee insurance offered by Leap Insurance Agency, LLC or to pay a deposit to Respondents. However, prospective tenants were not always informed about these alternative options. In several cases, prospective tenants were told that because they could not provide an approved guarantor, they could not move into an apartment at Monarch, but still owed all rent due under the Rental Agreement.

12. When asked what a prospective tenant who signed a Rental Agreement but could not provide an approved guarantor received, XFD’s CEO testified that “[t]hey’re not receiving anything. They’re not receiving access,” but Monarch would nonetheless charge them the full amount purportedly owed as “rent” for a unit they were never permitted to occupy.

13. Respondents routinely accelerated rent for all future months of the Rental Agreement after a tenant defaulted. Respondents also accelerated rent when a prospective tenant was not permitted to move in based on the tenant’s inability to provide an approved guarantor.

14. The Rental Agreement states that “[t]he Total Rent stated above is a fixed price for the entire Term and is payable in equal installments for convenience.”

15. If a prospective tenant could not provide an approved guarantor, Monarch would often refuse to allow the tenant to move in, declare them in breach of the Rental Agreement and accelerate the entire rent purportedly due under the Rental Agreement, which ranged from several months to a year.

16. Monarch often claimed that prospective tenants who had never been permitted to move in owed them thousands of dollars, in some cases over \$10,000, in rent for months in the future.

17. After the OAG commenced its investigation into Respondents, Monarch stated that it ceased its practice of accelerating rent.

18. Monarch would release a person from their obligations under a signed Rental Agreement if they provided another tenant to take over the Rental Agreement. Monarch charged a \$300 “delegation fee” for this service.

19. If a tenant could not find another person to whom they could “delegate” their lease, the tenant would be held responsible for all rent due under the lease unless Monarch was 100% leased.

20. If Monarch was 100% leased, Monarch would “backfill” units, meaning they would release tenants of their obligations and replace them with new tenants.

21. If Monarch was not 100% leased, they would not backfill and a tenant would not be released from their financial obligations under the Rental Agreement unless the tenant “delegated” their lease to another.

22. Monarch would sometimes permit tenants to prepay rent in advance if they believed the tenant did not meet certain of their qualification criteria. Monarch also required

international students to prepay rent, sometimes several months or the entire term of the Rental Agreement.

23. Monarch's Rental Agreement charged tenants a late fee of \$50 for each month a tenant is late in paying rent, and which "will be further increased to cover Landlord's actual, additional costs of administration and collection until paid in full."

24. The Rental Agreement also provided that "any other charges then lawfully due," including late fees, would be added to the rent owed.

25. The Rental Agreement includes a clause requiring tenants to pay Monarch's attorney's fees to enforce the rental agreement but does not include a reciprocal clause in favor of the tenant in the case of breach by Monarch.

26. In addition to the Rental Agreement, prospective tenants were required to sign an application that was used to conduct a background screening. If the applicant was attempting to qualify for the apartment based on their income, a credit check would be run. If an applicant provided a guarantor, a credit check would be run on the guarantor.

27. Monarch would automatically disqualify any tenant that indicated on their application that they had been evicted previously or left an apartment owing a landlord money. Monarch would also automatically disqualify any tenant for whom an eviction was found during a background screening or credit check. Monarch would also decline to approve as a guarantor any person who had a previous eviction.

28. Monarch did not provide statutorily required disclosures to tenants who were denied an apartment based on their credit report.

29. In the past, Monarch offered payment plans to students receiving financial aid, such that such student's rent payment dates coincided with the dates financial aid checks were

issued, with large lump sums due shortly after students were scheduled to receive financial aid. Monarch no longer offers these payment plans.

30. Respondents are not aware of any tenant that has qualified to live at Monarch based on income from a financial aid award.

Advertising

31. Monarch conducts regular advertising including giving away free t-shirts and other merchandise on the Buffalo State College campus in an effort to induce students to rent Monarch's apartments.

32. On January 24, 2021, a Monarch employee made a post on Monarch's Facebook page stating, "In honor of National Compliment Day, we are giving everyone a chance to win a \$5 Chick-fil-A gift card. Leave us a review on Google and send us a screenshot of your review via email to receive your gift card!" This was followed by the hashtag "#leaveusareviewongoogle." Monarch's Google reviews do not disclose that any compensation was paid for such reviews.

Collections Efforts

33. Respondents engaged in aggressive collection tactics. For current tenants, Respondents would routinely post red notices on their doors when they were late in paying rent. Monarch was aware that tenants knew that a red notice on the door meant delinquent rent.

34. One Monarch staff member falsely claimed that "fair housing" laws required her to post red delinquency notices on tenants' doors.

35. For any prospective tenant that was not permitted to move into Monarch, or any tenant who was evicted or otherwise left their apartment, Monarch would send their delinquent accounts to a third-party debt collection agency.

36. The third-party debt collection agency retained by Monarch engaged in aggressive and sometimes harassing collection techniques. The collection agency also furnished debts purportedly due Monarch to credit reporting agencies.

37. XFD's CEO admitted that certain debts placed for collection were sometimes inaccurate and inflated based on mistakes made by Monarch's staff.

Applicable Law and Violations

38. RPL § 238-a(1)(a) provides that “no landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge for the processing, review or acceptance of an application, or demand any other payment, fee or charge before or at the beginning of the tenancy, except background checks and credit checks.” Respondents charged a \$300 lease delegation fee in violation of RPL § 238-a(1)(a).

39. RPL § 238-a(2) limits late fees on residential rent to the lesser of \$50 or 5% of one month's rent. Respondents charged tenants a late fee of \$50 even when 5% of their rent would have been a lower amount, in violation of RPL § 238-a.

40. RPAPL § 702 provides that the term “rent” in a summary proceeding relating to a residential dwelling is limited to the amount charged for use and occupancy, and cannot include any additional fees, charges or penalties such as late fees. Respondents purported to add late fees to rent in violation of RPAPL § 702.

41. RPL § 227-f provides that “[n]o landlord of a residential premises shall refuse to rent . . . to a potential tenant on the basis that the potential tenant was involved in a past or pending landlord-tenant action or summary proceeding . . .” Respondents automatically denied applications from prospective tenants whose application or background screening showed an

entry for “evictions, filings and public records,” meaning any tenant involvement in a landlord tenant action or summary proceeding, in direct violation of RPL § 227-f.

42. RPL § 227-e provides that a residential landlord has a duty to mitigate damages if a tenant breaches their lease and if the premises are re-rented at “fair market value or at the rate agreed to during the term of the tenancy, the new tenant’s lease shall, once in effect, terminate the previous tenant’s lease and mitigate damages otherwise recoverable . . .” If a tenant at Monarch breached their lease by vacating before the end of their lease term, Monarch would not mitigate damages owed by such tenant even if the tenant’s unit was re-rented. Monarch would only release tenants from their financial liability if all units at Monarch were 100% leased. This practice is in violation of RPL § 227-e.

43. RPL § 234 provides that in the event a residential lease includes a unilateral attorneys’ fees clause in favor of the landlord, “there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys’ fees and/or expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease,” and “[a]ny waiver of this section shall be void as against public policy.” Monarch’s lease included a unilateral attorneys’ fees clause in favor of Monarch.

44. GOL § 7-108 provides that for “all dwelling units in residential premises . . . [n]o deposit or advance shall exceed the amount of one month's rent under such contract.” Respondents routinely charged tenants multiple months of rent in advance in violation of GOL § 7-108.

45. Monarch’s Rental Agreement claims that a tenant owes the full term of rent immediately upon signing, and that monthly payments are offered only as a “convenience.” This practice is in violation of GOL § 7-108.

46. Executive Law § 296(5)(a) (“Human Rights Law”) prohibits discrimination in the leasing of housing based on lawful source of income. Monarch has failed to consider lawful sources of income other than earned income, such as student financial aid, when determining a prospective tenant’s ability to qualify to reside at Monarch.

47. GBL Article 25 contains New York’s Fair Credit Reporting Act. The law requires that:

whenever a residential rental or lease is denied . . . either wholly or partly because of information contained in a consumer report, the user of the report shall: (1) advise the consumer against whom such adverse action has been taken of such action, (2) supply the name and address of the consumer reporting agency making the report, and (3) inform the consumer of his right to inspect and receive a copy of such report by contacting the consumer reporting agency.

GBL § 380-i. Monarch routinely used consumer reports to screen prospective tenants and their guarantors. Monarch failed to make required disclosures to prospective tenants who were denied a residential rental based on use of information contained in a consumer report in violation of GBL Article 25.

48. GBL § 350 provides that “False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.” Paid reviews or testimonials that do not disclose that such reviews are compensated are a form of false advertising prohibited by GBL § 350. Monarch solicited paid reviews on Google reviews without disclosing that such reviews were compensated, in violation of GBL § 350.

49. Respondents attempted to collect on inaccurate debts and placed such debts for collection. Attempting to collect on inaccurate debts and placing such debts for collection is a fraudulent practice prohibited by Executive Law § 63(12). Respondents also placed such

inaccurate debts with a third-party debt collector who in turn reported such inaccurate information to consumer reporting agencies, in violation of GBL Article 25.

50. Respondents' practice of holding a prospective tenant responsible for all rent due under a Rental Agreement, while denying them the ability to move into an apartment, constituted a fraudulent and deceptive business practice in violation of GBL § 349 and Executive Law § 63(12).

51. OAG finds that Respondents are in violation of Executive Law §§ 63(12), 296(5)(a), RPL §§ 227-e, 227-f, 234, 238-a, RPAPL § 702, GOL § 7-108 and GBL Articles 22-A and 25.

52. Respondents do not contest the OAG's assertion that their actions violated the statutory provisions cited above and the OAG's Findings, paragraphs 1-51 above.

53. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law §§ 63(12), 296(5)(a), RPL §§ 227-e, 227-f, 234, 238-a, RPAPL § 702, GOL § 7-108 and GBL Articles 22-A and 25 based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

54. General Injunction: Respondents shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to Executive Law §§ 63(12), 296(5)(a), RPL §§ 227-e, 227-f, 234, 238-a, RPAPL § 702, GOL § 7-108 and GBL Articles 22-A and 25, and expressly agree and acknowledge that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding

contemplated in paragraph 53, *supra*, in addition to any other appropriate investigation, action, or proceeding.

55. Specific Injunctions: Respondents shall not:

- a. Pursuant to RPL § 238-a(1)(a) demand any payment, fee, or charge for the processing, review or acceptance of an application, or demand any other payment, fee or charge before or at the beginning of the tenancy, except permissible background checks and credit checks.
- b. Pursuant to RPL § 238-a(2) charge a late fee in excess of the lesser of \$50 or 5% of one month's rent.
- c. Pursuant to RPL § 234 include in a lease a unilateral attorneys' fees clause in favor of Respondents, or if such an attorneys' fees clause is included in a lease, Respondent shall include a reciprocal clause in favor of the tenant(s).
- d. Pursuant to RPAPL § 702 include in a summary proceeding any additional fees, charges or penalties such as late fees in rent.
- e. Pursuant to GOL § 7-108 charge any deposit or advance that exceeds one month's rent.
- f. Pursuant to RPL § 227-f refuse to rent to a potential tenant on the basis that the potential tenant was involved in a past or pending landlord-tenant action or summary proceeding.
- g. Pursuant to RPL § 227-e fail to mitigate damages and release a tenant from their lease obligations once their unit is re-rented at fair market value or at the rate agreed to during the term of the tenancy.
- h. Pursuant to RPL § 227-e accelerate rent.

- i. Pursuant to Executive Law § 296(5)(a) discriminate based on lawful source of income.
 - j. Pursuant to GBL § 380-i fail to provide required notice and disclosure to prospective tenants and guarantors who fail to meet Respondents' criteria following a credit check or other use of a consumer report.
 - k. Pursuant to GLB § 380-o provide false or inaccurate information, directly or indirectly, to a consumer reporting agency.
 - l. Pursuant to GBL § 350 engage in false advertising, including paying for reviews while failing to disclose in such reviews that they were compensated.
 - m. Pursuant to GBL § 349 and Executive Law § 63(12) charge a prospective tenant rent while refusing to permit a prospective tenant to move into a unit at Monarch.
56. Programmatic Relief:
- a. Respondents shall revise their Rental Agreement, application and other leasing documents to conform to the requirements of this Assurance.
 - b. Respondents shall, with the assistance of counsel, carefully review the Housing Stability and Tenant Protection Act of 2019 and ensure that Respondents are in compliance with said law and all other New York state laws applicable to residential landlords.
 - c. Respondents shall reform their leasing process such that Respondents do not require or permit prospective tenants to sign a binding lease or Rental Agreement until such prospective tenant has been determined by Respondents to meet Respondents' criteria to qualify as a tenant at Monarch. For the avoidance of doubt, in no event shall Respondents attempt to charge rent to a person while

denying such person the ability to move in based on the tenant, or their guarantor, having failed to meet Monarch's credit and income thresholds or other screening criteria. However, Respondents may request a prospective tenant whose application has been approved to sign a binding lease or Rental Agreement which would require the prospective tenant to pay a security deposit of no more than one month's rent.

- d. Respondents shall not take any efforts to collect rent or other amounts owed that are intended to or result in the disclosure of the existence of such purported debt to anyone other than the tenant and, if applicable, their guarantor.
- e. Respondents shall take steps to ensure that each debt referred to an outside party for collection is valid and accurate. This process shall require review of each such debt by a senior manager of Respondent XFD before such debt is placed with an outside party for collection.
- f. Acceptance of this Assurance by the OAG is not an approval or endorsement by OAG of any of Respondents' policies practices or procedures, and the Respondents shall make no representation to the contrary.
- g. Pursuant to GBL § 350-d, Respondents shall pay to the State of New York a statutory penalty of \$5,000 for each and every default in the performance of any obligation under this Assurance occurring after the effective date of the Assurance.

57. Oversight/Monitoring:

- a. *Periodic Compliance Reports:* Respondents shall provide the OAG with a report detailing their compliance with the requirements set forth in this Assurance,

paragraph 56 (Programmatic Relief), to be submitted to the OAG by March 1, 2022. This report shall be in writing and shall set forth in detail the manner and form of compliance with this Assurance. This report shall include as exhibits exemplars of each revised rental agreement, application and leasing document Respondents intend to use. This report shall be signed by Samuel Mtunga on behalf of Respondents, or, in his absence, the person(s) holding the title of Manager for each Respondent. Thereafter, a report of compliance shall be submitted to the OAG on an annual basis for the following five (5) years. In any case where the circumstances warrant, the OAG may require Respondents to file an interim report of compliance upon thirty (30) days notice.

- b. Respondents expressly agree and acknowledge that a default in the performance of any obligation set forth herein is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 53, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute *prima facie* proof of the statutory violations described in paragraph 53, pursuant to Executive Law § 63(15).

58. Monetary Relief

- a. *Monetary Relief Amount:* Respondents shall pay to the State of New York \$50,000 in damages, civil penalties and costs (the “Monetary Relief Amount”).
- b. *Timing of Payments:* Payment of the Monetary Relief Amount shall be made in twelve installments of \$4,166.67 each. The first payment shall be made at the

time this Assurance is executed by Respondents. The remaining eleven payments shall be made by the first day of each month beginning with February 2022.

- c. *Method of Payments*: Payment of the Monetary Relief Amount shall be made by attorney check, corporate or certified check, or bank draft, which shall be made payable to the “State of New York”, and shall reference Assurance No. 21-083; payments shall be addressed to the attention of AAG Christopher L. Boyd, State of New York, Office of the Attorney General, Buffalo Regional Office, 350 Main Street, Suite 300A, Buffalo, New York 14202.

59. Restitution

- a. *Restitution Categories*: Respondents shall, as and for restitution, refund amounts collected by Respondents, or by a third-party debt collector acting on behalf of Respondents, from:
 - i. *Tenants Denied Access*: each prospective tenant who was held liable for rent under their Rental Agreement but was denied the ability to move into Monarch due to failure to provide an approved guarantor; and
 - ii. *Excess Late Fees*: each tenant who was charged a late fee of greater than the lesser of \$50 or 5% of their rent; and
 - iii. *Sublease Fees*: each tenant who paid a \$300 lease delegation fee.
- b. *Restitution Payment*: Respondents shall pay such restitution to the persons and in the amounts provided for in Appendix A hereto. Respondents shall provide each person receiving restitution with a copy of the notice attached hereto as Appendix C.

- c. *Cancellation of Debts*: Respondents shall cancel, annul and forgive all debts owed or purportedly owed by prospective tenants who (i) signed a Rental Agreement but were not permitted to move into a unit at Monarch, (ii) were charged a late fee in excess of the lesser of \$50 or 5% of one month's rent or (iii) were charged a \$300 lease designation fee. Respondents shall take all steps necessary to recall such accounts and debts from any third-party debt collector with which such accounts have been placed. The persons currently owing such debts and the amounts of such debts are listed in Appendix B hereto. Respondents shall provide each person who is having a debt canceled with a copy of the notice attached hereto as Appendix D.
- d. Respondents, by executing this Assurance attest to the truthfulness, completeness and accuracy of the amounts of restitution owed as provided for in Appendix A, and the debts subject to cancelation as provided for in Appendix B. Respondents attest that they have prepared and carefully reviewed Appendices A and B with counsel. In the event that Respondents omitted any restitution or debts that should have been included in such Appendices, such restitution amount or debt shall be added upon the written request of the OAG.
- e. Respondents shall make all restitution payments and cancel all indebtedness as required by this paragraph within sixty (60) days of the effective date of this Assurance.

MISCELLANEOUS

Subsequent Proceedings.

60. Respondents expressly agree and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 66, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by Respondents prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute *prima facie* proof of a violation of the applicable law pursuant to Executive Law § 63(15).

61. If a court of competent jurisdiction determines that a Respondent has violated the Assurance, such Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

62. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondents. Respondents shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee

or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

63. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

64. Any failure by the OAG to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondents.

Communications:

65. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-083, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondents, to: Samuel Mtunga, or in his absence, to the person holding the title of managing member of 100 Forest Avenue LLC.

If to the OAG, to: Christopher L. Boyd, or in his absence, to the person holding the title of Assistant Attorney General in Charge, Buffalo Regional Office.

Representations and Warranties:

66. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Respondents and their counsel and the OAG's own

factual investigation as set forth in Findings, paragraphs 1-51 above. Respondents represent and warrant that neither they nor their counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

67. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance.

68. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that Samuel Mtunga, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the directors, manager or members of 100 Forest Avenue LLC and XFD, LLC.

General Principles:

69. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

70. Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

71. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Respondents violate the Assurance after its effective date.

72. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

73. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

74. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

75. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

76. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

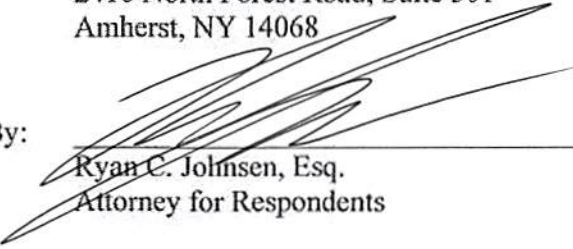
77. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

78. The effective date of this Assurance shall be December 27, 2021.

LETITIA JAMES
Attorney General of the State of New York
350 Main Street, Suite 300 A
Buffalo, NY 14202

By: Christopher L Boyd
Christopher L. Boyd, Esq.
Deputy Assistant Attorney General in Charge
Buffalo Regional Office

Ryan C. Johnsen, Esq.
HoganWillig
2410 North Forest Road, Suite 301
Amherst, NY 14068

By: 
Ryan C. Johnsen, Esq.
Attorney for Respondents

Samuel Mtunga
As Managing Member of XFD LLC

STATE OF ILLINOIS)
)
COUNTY OF Champaign) ss.:

On this 27 day of December, 2021, Samuel Mtunga, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and did depose and say that he resides in Champaign; that he is the Managing Member of XFD LLC, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his names thereto by like authority.

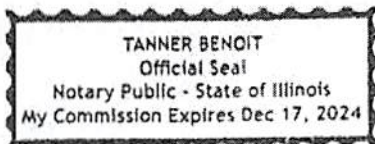
Sworn to before me this
27th day of December, 2021

NOTARY PUBLIC
Samuel Mtunga
As Manager of 100 Forest Avenue LLC

STATE OF ILLINOIS)
)
COUNTY OF Champaign) ss.:

On this 27th day of December, 2021, Samuel Mtunga, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and did depose and say that he resides in Champaign; that he is the Manager of 100 Forest Avenue LLC, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his names thereto by like authority.

Sworn to before me this
27th day of December, 2021

NOTARY PUBLIC

Appendix A

Appendix B

Appendix C

Notice to Tenant Receiving Restitution Pursuant to Assurance

Dear [Tenant Name]:

You are receiving this notice because you are or were a prospective, current or former tenant at Monarch 716. Monarch 716 has recently reached a settlement agreement with the Office of the Attorney General of the State of New York. Pursuant to that settlement agreement, known as an Assurance of Discontinuance, you are entitled to a refund of certain money you paid to Monarch 716. Enclosed herewith is a check for [Amount of Refund]. You may obtain a copy of the Assurance of Discontinuance by going to [Website link to be provided by OAG after AOD is executed].

Appendix D

Notice to Tenant Receiving Cancellation of Debt Pursuant to Assurance

Dear [Tenant Name]:

You are receiving this notice because you are or were a prospective, current or former tenant at Monarch 716. Monarch 716 has recently reached a settlement agreement with the Office of the Attorney General of the State of New York. Pursuant to that settlement agreement, known as an Assurance of Discontinuance, Monarch 716 has agreed to cancel certain indebtedness purportedly owed by you to Monarch 716. Your balance of [Amount of Debt to be canceled] with Monarch 716 has been canceled. You may obtain a copy of the Assurance of Discontinuance by going to [Website link to be provided by OAG after AOD is executed].