

**IN THE COUNTY COURT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

<b>WOODLANDS OF GAINESVILLE, LLC, a Foreign Limited Liability Company,</b>	)	<b>CASE NO: 2011-CC-2864</b>
	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	
	)	
<b>ZACHARY T. ARNOLD and MICHELLE ARNOLD</b>	)	
	)	
	)	
<b>Defendants.</b>	)	
	)	
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<b>ZACHARY T. ARNOLD and MICHELLE ARNOLD</b>	)	
	)	
	)	
<b>Counter-Plaintiffs,</b>	)	
<b>v.</b>	)	
	)	
<b>WOODLANDS OF GAINESVILLE, LLC, a Foreign Limited Liability Company,</b>	)	
	)	
	)	
<b>Counter-Defendant.</b>	)	

**WOODLANDS OF GAINESVILLE, LLC’S ANSWER TO  
THIRD AMENDED COUNTERCLAIM, AND AFFIRMATIVE DEFENSES**

Plaintiff and Counter-Defendant, Woodlands of Gainesville, LLC,  
(“Woodlands”), by and through undersigned counsel, hereby files its Answer to the  
Counter-Plaintiff and Defendants Zachary T. Arnold’s and Michelle Arnold’s Third  
Amended Class Action Counterclaim, and its Affirmative Defenses as follows:

**ANSWER**

1. Admitted for jurisdictional purposes only.
2. Denied.
3. Denied.
4. Denied.

5. Admitted as to the location of the University of Florida, without knowledge as to the remainder and therefore denied.
6. Admitted as to the location of Santa Fe College, without knowledge as to the remainder and therefore denied.
7. Admitted, generally, to the existence of other colleges in Alachua County, but without knowledge as to the specific colleges cited, and therefore denied.
8. Without knowledge, and therefore denied.
9. Admitted as to the ownership, management and location of the Woodlands. Admit the excerpt from Woodlands' marketing materials. Deny any legal significance of the remainder.
10. Admitted as to the first two sentences, the reminder is denied.
11. Admitted.
12. Admitted as to the first two sentences; the third sentence is denied.
13. Admitted.
14. Admitted.
15. Admitted that Woodlands gives tours; the remainder is denied.
16. Admitted as to the first sentence; the remainder is denied.
17. Admitted.
18. Admitted as to the first sentence; the remainder is denied.
19. Denied.
20. Denied.

21. Admitted that Arnold or Arnold's counsel contacted DBPR concerning Woodlands, and that subsequently, DBPR issued a notice to Woodlands. Otherwise denied.

22. Admitted that Woodlands submitted an application to DBPR; the remainder is denied.

23. Admitted for jurisdictional purposes only.

24. Denied.

25. Admitted for venue purposes only.

26. Admitted that Zachary T. Arnold applied for and executed a lease with Woodlands; without knowledge and therefore denied as to the remainder.

27. Admitted that Michelle Arnold is the parent of Zachary T. Arnold; without knowledge and therefore denied as to the remainder.

28. Admitted.

29. Without knowledge, and therefore denied.

30. Denied.

31. Denied.

32. Admitted for procedural purposes only.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.
40. Denied.
41. Denied.
42. Denied.
43. Admitted.
44. Admitted the application form speaks for itself; otherwise denied.
45. Denied.
46. Admitted.
47. Admitted.
48. Admitted.
49. Admitted.
50. Admitted the Lease Agreement speaks for itself; otherwise denied.
51. Admitted the Lease Agreement speaks for itself; otherwise denied.
52. Admitted the Lease Agreement speaks for itself; otherwise denied.
53. Admitted the Lease Agreement speaks for itself; otherwise denied.
54. Admitted the Lease Agreement speaks for itself; otherwise denied.
55. Admitted the Lease Agreement speaks for itself; otherwise denied.
56. Admitted the Lease Agreement speaks for itself; otherwise denied.
57. Admitted the Lease Agreement speaks for itself; otherwise denied.
58. Admitted the Lease Agreement speaks for itself; otherwise denied.
59. Admitted the Lease Agreement speaks for itself; otherwise denied.
60. Admitted.
61. Admitted.

62. Admitted Woodlands offers incentives for lease renewals. Otherwise denied.
63. Admitted Zachary Arnold accepted a \$300 incentive to execute a lease renewal. Otherwise denied.
64. Admitted.
65. Admitted.
66. Admitted.
67. Admitted.
68. Admitted the Lease Agreement speaks for itself; otherwise denied.
69. Admitted the Lease Agreement speaks for itself; otherwise denied.
70. Admitted the Lease Agreement speaks for itself; otherwise denied.
71. Admitted the Lease Agreement speaks for itself; otherwise denied.
72. Admitted the Lease Agreement speaks for itself; otherwise denied.
73. Admitted the Lease Agreement speaks for itself; otherwise denied.
74. Admitted the Lease Agreement speaks for itself; otherwise denied.
75. Admitted the Lease Agreement speaks for itself; otherwise denied.
76. Admitted the Lease Agreement speaks for itself; otherwise denied.
77. Admitted the Lease Agreement speaks for itself; otherwise denied.
78. Admitted the Lease Agreement speaks for itself; otherwise denied.
79. Admitted the Lease Agreement speaks for itself; otherwise denied.
80. Admitted in part; denied in part.
81. Admitted as Ms. Arnold had waived the right to such notice.
82. Without knowledge, and therefore denied.

83. Without knowledge, and therefore denied.
84. Admitted.
85. Without knowledge, and therefore denied.
86. Admitted as Ms. Arnold had waived the right to such notice.
87. Admitted as Ms. Arnold had waived the right to such notice.
88. Admitted.
89. Admitted in part; without knowledge in part, and therefore denied.
90. Admitted.
91. Denied.
92. Admitted.
93. Denied.
94. Admitted that Woodlands filed a Complaint; otherwise denied.
95. Denied.
96. Denied.

### **COUNT I**

97. Admit for jurisdictional purposes only.
98. Woodlands re-states and incorporates its responses herein to paragraphs 1 through 96 above.
99. Denied; the statute speaks for itself.
100. Denied; the statute speaks for itself.
101. Denied; the statute speaks for itself.
102. Denied; the statute speaks for itself.
103. Denied; the statute speaks for itself.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

## **COUNT II**

111. Woodlands re-states and incorporates its responses herein to paragraphs 1 through 96 above.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

**COUNT III**

124. Woodlands re-states and incorporates its responses herein to paragraphs 1 through 96 above.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

**COUNT IV**

135. Denied.

136. Woodlands re-states and incorporates its responses herein to paragraphs 1 through 96 above.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.



143. Denied.

144. Denied.

**AFFIRMATIVE DEFENSES  
OF COUNTER-DEFENDANT WOODLANDS OF GAINESVILLE**

1. **Failure to State a Cause of Action.** As to Count I, Counter-Plaintiffs, Zachary T. Arnold and Michelle Arnold, have not incurred actual damages, a showing that is required under Florida's Landlord Tenant Act in order to recover damages under any theory of a defect in a lease agreement. As to Counts II and III, the Arnolds have not incurred actual damages nor have they been aggrieved, a predicate to recovery of damages or injunctive relief under Florida's Deceptive and Unfair Trade Practices Act; nor is the alleged conduct by Woodlands unfair or deceptive. As to Count IV, the Arnolds have not stated a viable cause of action as no such cause of action exist under Florida law. In addition, a violation of Chapter 509, Fla. Stat., does not provide for any private cause of action or render any contract void, voidable, illegal or unenforceable.

2. **Standing.** Counter-Plaintiffs, Zachary T. Arnold and Michelle Arnold, do not have standing to pursue the instant cause of action either as individuals or as class representatives.

3. **Waiver/Estoppel.** Counter-Plaintiffs, Zachary T. Arnold and Michelle Arnold, waived any claim against Woodlands by failing to provide notice to Woodlands of alleged breach of the lease agreement, including but not limited to the condition or state of repair of the apartment, and Woodlands' status under Chapter 509, Florida Statutes. The Arnolds are now estopped from bringing this litigation.

4. **Unclean Hands.** Counter-Plaintiff, Zachary T. Arnold, accepted a \$300.00 incentive payment to enter into a lease with Counter-Defendant Woodlands of Gainesville, and did not attempt to or in fact return the \$300.00 to Woodlands. Accordingly, no equitable relief is available to the Counter-Plaintiff.

5. **Abuse of Process.** Counter-Plaintiffs or their counsel, or both, contacted the Florida Department of Business and Professional Regulation after commencement of the instant litigation, regarding the business licensure status of Counter-Defendant, Woodlands of Gainesville under Chapter 509, Florida Statutes. Counter-Plaintiffs then amended their Class Action Counterclaim to include claims based on this licensing issue, which was manufactured for purposes of the instant litigation.

6. **Set-off.** Counter-Defendant Woodlands of Gainesville is entitled to a set-off against any recovery by the Arnolds for the unpaid rent and damages plus attorney's fees and costs that the Arnolds owe Woodlands.

7. **Third-Party Liability.** The City of Gainesville is required to assist the Division of Hotels, Department of Business and Professional Regulation, in the enforcement of Chapter 509, Florida Statutes. The City of Gainesville issued a Certificate of Occupancy to Counter-Defendant Woodlands of Gainesville, despite Section 509.271, Florida Statutes, which prohibits the City from issuing such Certificate of Occupancy until a regulated public lodging establishment obtains its business license under Chapter 509, Florida Statutes.

8. **Exemption from regulation under Chapter 509, Florida Statutes.** Pursuant to Section 509.13, Florida Statutes, Counter-Defendant Woodlands of Gainesville is exempt from licensing under Chapter 509, Florida Statutes.

9. **Res Judicata.** The Court dismissed certain claims with prejudice from the Third Amended Class Action Counterclaim that pertain to allegations of: disguising of unlawful fees as deposits; collecting late fees; elimination of Woodlands' duty to re-let the apartment; waiver of lawful remedies by the lease's default provisions; breach of a landlord's duty of good faith and collection of monies as these claims relate to FDUTPA. To the extent any remaining allegations relate to these dismissed claims, they are barred by the law of the case.

10. **Waiver by Conduct.** Execution of a second lease agreement by Counter-Plaintiff Zachary T. Arnold operated as a waiver of all claims by the Arnolds under the first lease agreement with Counter-Defendant Woodlands of Gainesville.

11. **Guarantor's Waiver.** Guarantor, Michelle Arnold, waived all right to notice pursuant to the terms of the guaranty agreement that she executed.

12. **No Waiver by Landlord.** The Lease Agreement provides that no failure by Landlord to timely bill Tenant for any payments due under the Lease, or to insist upon the strict and timely performance of any lease term, or to accept partial payment, shall operate to be a waiver of such term or covenant of the Lease.

Respectfully submitted this 3rd day of April, 2013.

/s/ D. Kent Safriet  
D. Kent Safriet, Esq. (FBN 174939)  
HOPPING GREEN & SAMS, P.A.  
119 South Monroe Street, Suite 300  
Tallahassee, Florida 32301  
Ph: (850) 222-7500  
Fax: (850) 224-8551

and

Patrice Boyes, Esq. (FBN 892520)  
PATRICE BOYES, P.A.  
414 SW 140<sup>th</sup> Terrace, Suite 100  
Newberry, Florida 32669  
Ph: (352) 372-2684  
Fax: (352) 379-0385

COUNSEL FOR WOODLANDS OF  
GAINESVILLE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following via electronic mail this 3rd day of April, 2013:

Andy Dogali, Esq. (adogali@forizs-dogali.com)  
Barbara Uberoi, Esq. (BUberoi@Forizs-Dogali.com)  
Lee Atkinson, Esq. (latkinson@forizs-dogali.com)  
Forizs & Dogali, P.A.  
4301 Anchor Plaza Parkway, Suite 300  
Tampa, Florida 33634  
CFranklin@Forizs-Dogali.com  
KCavanaugh@Forizs-Dogali.com

Daniel W. Anderson, Esq.  
The Anderson Law Group, P.A.  
13577 Feather Sound Drive, Ste 670  
Clearwater, Florida 33762  
danderson@floridalawpartners.com  
eserve@floridalawpartners.com

/s/ D. Kent Safriet  
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Attorney