

**IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

WOODLANDS OF GAINESVILLE, LLC, a  
Foreign Limited Liability Company,

Plaintiff,

v.

Case No.: **01-2012-CA-407**

ZACHARY T. ARNOLD and MICHELLE  
ARNOLD,

Defendants.

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ZACHARY T. ARNOLD and MICHELLE  
ARNOLD,

Counter-Plaintiffs,

v.

WOODLANDS OF GAINESVILLE, LLC, a  
Foreign Limited Liability Company,

Counter-Defendant.

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**SETTLEMENT AGREEMENT**

Subject to the approval of the Court and pursuant to Rule 1.220 of the Florida Rules of Civil Procedure, this Settlement Agreement is entered into between and among (a) Woodlands of Gainesville, LLC; (b) Zachary T. Arnold; and (c) Michelle Arnold.

**I. RECITALS**

WHEREAS, on July 21, 2011, Plaintiff filed a complaint against the Arnolds for breach of lease and enforcement of a guaranty;

WHEREAS, on November 2, 2011, Defendants Zachary Arnold and Michelle Arnold asserted counter-claims alleging violations of the Florida Residential Landlord Tenant Act (Chapter 86, Florida Statutes), the Florida Deceptive and Unfair Trade Practices Act, the Consumer Collection Practices Act, and other claims;

WHEREAS, the Parties vigorously litigated the action for two and one-half years prior to reaching an agreement which is memorialized here;

WHEREAS, over the course of the litigation the pleadings were amended and refined, culminating in operative pleadings which include a Second Amended Complaint filed March 9, 2012 and a Third Amended Class Action Counterclaim filed November 29, 2012;

WHEREAS, contested issues of both law and fact exist concerning the allegations and claims of both the Plaintiff and Counter-Plaintiffs in the Action;

WHEREAS, each Party denies the allegations made in the Action, and denies all assertions with respect to any and all claims, counterclaims and defenses alleged in the Action;

WHEREAS, the Parties have conducted an extensive investigation into the facts and law, exchanged documents, and engaged in settlement negotiations relating to the Action;

WHEREAS, the Parties and their counsel have fully analyzed and evaluated the merits of each Party's contentions and the terms of this Agreement and, after taking into account the foregoing along with the risks of litigation, and the likelihood that the Action, if not settled now, will be protracted and expensive, they are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that a settlement is in the best interests of the Parties and the Class; and

WHEREAS, while the Parties vigorously and expressly deny liability, they nevertheless desire to settle the Action finally on the terms and conditions set forth in this Agreement, for the purposes of avoiding the burden, expense, and uncertainty of litigation, and putting to rest the controversies engendered by the Action and the issues within the scope of the releases set forth below.

NOW THEREFORE, in consideration of the covenants and agreements set forth below, it is agreed that the Action shall be settled, subject to judicial approval, as provided and prescribed below.

## **II. DEFINITIONS**

As used in this Agreement and its exhibits, the following terms have the following meanings unless otherwise expressly provided in any paragraph of this Agreement or its exhibits:

1. "Action" means the action styled *Woodlands of Gainesville, LLC, Plaintiff/Counter-Defendant v. Zachary T. Arnold and Michelle Arnold, Defendant/Counter-Plaintiff*, Case No. 01-2012-CA-407 pending in the Circuit Court for the Eighth Judicial Circuit, in and for Alachua County, Florida.

2. "Agreement" means this Settlement Agreement and its accompanying exhibits, including any subsequent amendments to which the Parties agree.

3. "Authorized Claimant" means a Class Member: (a) who is not a Successful Opt Out; (b) whose Claim is based on a Valid Claim Form; and (c) as to whom a dispute does not remain outstanding regarding its Claim Form. An Authorized Claimant is entitled to a Settlement Benefit.

4. "Benefit Amount" means a cash total, for all Authorized Claimants, of no more than Three Hundred Thirty Four Thousand Eight Hundred Dollars (\$334,680.00). The Benefit Amount does not include any sum allocable to Class Counsel's attorneys' fees and costs.

5. "Claim" means the attempt by a Class Member to obtain payment of a Settlement Benefit.

6. "Claim Form" means the form required to submit a claim for payment of a Settlement Benefit, substantially in the form attached as Attachment 2 to Exhibit A.

7. "Class" means, those Class members who, collectively, form the Tenant Class and the Guarantor Class for purposes of the Settlement only. Excluded from the Class are Successful Opt Outs, the Judge and her family members, the attorneys in this action and their family members, officers and directors of the Plaintiff and their family members, and persons expressly excluded from membership of the Guarantor Class and the Tenant Class, as defined below.

8. "Class Counsel" means the law firm of Dogali Law Group, P.A. and its affiliated counsel.

9. "Class Mailing List" means the list of Class Member addresses, to be derived from the Tenant and Guarantor Mailing List, as supplemented by the reasonable efforts of Class Counsel.

10. "Class Member" means a member of a Class.

11. "Class Notice" means a document to be mailed to Class Members, notifying them of the proposed Settlement and Fairness Hearing, substantially in the form of Attachment 1 to Exhibit A.

12. "Counter-Plaintiffs" means Zachary T. Arnold and Michelle Arnold, in their individual capacities and as representatives of the Class.

13. "Court" means the County Court for the Eighth Judicial Circuit in and for Alachua County, Florida, the headquarters of which is located at 201 East University Avenue, Gainesville FL 32601.

14. "Defense Counsel" means the law firm of Hopping, Green and Sams, P.A.

15. “Disputed Claim” means a Claim as to which:
- a. A Valid Claim Form is submitted; and
  - b. Woodlands challenges as to membership in the Class or entitlement to the Settlement Benefit, and
  - c. Class Counsel disputes Woodlands’ challenge and contends gives rise to entitlement to the Settlement Benefit.
16. “Effective Date” means the date on which all the following conditions of settlement shall have occurred:
- a. Final Approval of the Settlement by the Court, following notice to the Class and a hearing, as prescribed by Rule 1.220 of the Florida Rules of Civil Procedure; and
  - b. The Final Order to be entered by the Court becomes Final and neither the Arnolds nor Woodlands have elected to terminate the Settlement; and
  - c. If circumstances give rise to the right to terminate this Agreement, the expiration of the time for the Parties to exercise their termination rights without the termination rights being exercised.
17. “Fairness Hearing” means the hearing to be held by the Court to determine, along with other matters the Court may deem appropriate, whether to grant final approval of the Settlement, as contemplated by the Preliminary Approval Order.
18. “Final,” with respect to any Court order, including but not limited to the Final Order, means the latest to occur of the following:
- a. The date thirty (30) days after entry of the order, provided that the time to seek review, alteration or appeal of the Court’s order has expired without any review, alteration, amendment or appeal having been sought or taken; or
  - b. If an appeal, petition, motion or other application for review, alteration or amendment is timely filed, sought or taken, the date on which such appeal, petition, motion or other application shall have been finally determined in a manner which affirms the Court’s original order in its entirety, and the date on which the time, if any, for seeking further review has expired.
  - c. Any proceeding or order, or any appeal or petition for a writ of certiorari or other form of review, pertaining solely to an application for attorneys’ fees or expenses, shall not in any way delay or preclude the Final Order from becoming Final.
19. “Final Order” means the order of the Court finally approving the Settlement and dismissing the Action with prejudice, to be issued following the Fairness Hearing.

20. “Guarantor Class” means any persons who executed a guaranty for the benefit of Woodlands of the obligations of one or more members of the Tenant Class. The Guarantor Class excludes: 1) any guarantor who was previously represented by counsel in connection with a civil action in which the tenant or the guarantor was alleged to have breached the lease or guaranty and which was dismissed or fully adjudicated prior to the filing of the Action; 2) any guarantor who was previously represented by counsel and who is a party to any release of or by Woodlands; 3) any guarantor who guaranteed the obligations of a tenant who was previously represented by counsel and who is a party to any release of or by Woodlands; and 4) anyone who validly requests exclusion from the Class as provided in the Settlement Notice.

21. “Notice Date” means the deadline for mailing the Class Notice, as set by the Court in the Preliminary Approval Order.

22. “Notice and Administration Expenses” means costs incurred in giving notice to the Class and administering the Settlement, including but not limited to costs associated with preparing, printing and mailing the Class Notice and Claim Forms to Class Members; and costs associated with maintaining and staffing a Class Settlement website and a toll-free telephone number for the purpose of communicating with Class Members and receiving Objections and Notices of Exclusion. All Notice and Administration Expenses does not include Class Counsel’s attorneys’ fees and costs.

23. “Notice Response Period” shall be established by the Court in the Preliminary Approval Order and shall be disclosed in the Class Notice, and shall be the time within which a Class Member must either: 1) submit a Claim Form; 2) submit an Objection to the Settlement; or 3) submit a request for exclusion from the Settlement. Said proposed time period from the Parties shall be forty-five (45) days from the date of mailing the Class Notice and Claim Form to each Class Member as set forth in Section III.4.iii.

24. “Parties” means Plaintiff Woodlands of Gainesville, LLC, Defendant Zachary T. Arnold, and Defendant Michelle Arnold, collectively.

25. “Preliminary Approval Order” means the order of the Court preliminarily approving the Settlement, substantially in the form of Exhibit A.

26. “Released Parties” means (a) Woodlands and each of its past, present, and future parents, subsidiaries, related companies, affiliated companies, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, divisions, insurers or reinsurers, advisors, consultants, representatives, partners, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, or agents (alleged or actual); (b) anyone who is a Class Member; (c) the representatives, predecessors, successors and assigns of the Parties or any Class Member; and (d); any party released in section III.13. of this Agreement.

27. "Settled Claims" means all claims, counter-claims, demands, disputes, defenses, matters, actions and causes of action of any kind, that in any way concern, relate to, are based upon, or arise out of any lease or guaranty to which a Class Member and Woodlands are parties, including but not limited to all claims, demands, disputes, matters, actions and causes of action concerning, relating to, based upon, arising out of, or related in any way to the allegations, facts, circumstances, transactions, statements, omissions, or subject matters that were alleged or could have been alleged in the Action or in any other action, or could in the future be alleged, whether known or unknown, accrued or unaccrued, matured or unmatured, whether asserted directly, derivatively, indirectly or otherwise, and whether based on state law, federal law, foreign law, or common law.

28. "Settlement" means the settlement contemplated by this Agreement.

29. "Settlement Benefit" means the monetary relief and/or the release to be paid or issued to each Authorized Claimant who submits a Valid Claim Form.

30. "Successful Opt Out" means any Class Member who timely and validly submits a request to exclude himself or herself from the Class, pursuant to paragraphs 4.b. below.

31. "Tenant and Guarantor Mailing List" means the list to be compiled by Woodlands from its records, of the last known mailing addresses of all members of the Tenant Class and all members of the Guarantor Class.

32. "Tenant Class" means any persons who occupied a unit at the Woodlands of Gainesville for any period of time between August 8, 2008 and July 25, 2013 under a lease with Woodlands. The Tenant Class excludes: 1) any tenant who was previously represented by counsel in connection with a civil action in which the tenant was alleged to have breached the lease and which was dismissed or fully adjudicated prior to the filing of the Action; 2) any tenant who was previously represented by counsel and who is a party to any release of or by Woodlands; and 3) anyone who validly requests exclusion from the Class as provided in the Settlement Notice.

33. "Valid Claim Form" means a Claim Form that is completed as instructed on such form, postmarked by the deadline set forth on such form, and which otherwise satisfies the procedural requirements of this Agreement and any Order entered by the Court.

34. "Woodlands" means Woodlands of Gainesville, LLC.

### **III. TERMS AND CONDITIONS**

1. Recitals Adopted. The Parties agree that the above Recitals are true and correct.

2. Settlement Consideration. In full settlement of the matters within the scope of the Releases provided in this Agreement, and subject to this Agreement, Woodlands agrees to:

a. Make the Benefit Amount available to the Class; and

b. Entry of an order enjoining Woodlands:

i. To no longer present for execution to any potential tenant, or enforce against a prior tenant whose term(s) has/have expired, any form of lease containing a provision prohibited by Chapter 86, Florida Statutes which duty shall be deemed satisfied so long as Woodlands has complied with paragraph 2.b.ii. below and obtained the opinion of counsel that Woodlands's lease complies with Chapter 86, Florida Statutes; and

ii. To engage counsel to review, on an annual basis for each of the next 5 years, the form of lease being used at its apartment complex, for compliance with the Florida Residential Landlord Tenant Act; and

iii. For any member of the Tenant Class or the Guarantor Class who responds to the Class Notice by indicating that he or she suffered an adverse credit rating or score as a result of any reporting, collection effort, action or litigation initiated by Woodlands, Woodlands shall take corrective action required by the Fair Credit Reporting Act; and

c. Pay such attorneys' fees and costs of Class Counsel as may be awarded by the Court, subject to paragraphs III.7 and III.14.

3. Preliminary Approval. As soon as practicable after execution of this Agreement, the Parties, through their Counsel, shall submit the fully executed Agreement together with its exhibits to the Court and shall apply for entry of the Preliminary Approval Order. All Parties shall consent to entry of the Preliminary Approval Order.

4. Settlement Procedures

a. Notice to the Class

i. Ten (10) days after entry of the Preliminary Approval Order, Defense Counsel shall assemble the Tenant and Guarantor Mailing List and provide it to Class Counsel.

ii. Upon receipt of the Tenant and Guarantor Mailing List, Class Counsel shall supplement the list with any contact information developed during its own investigation, and with any information otherwise reasonably available to Class Counsel.

iii. Twenty (20) days after expiration of the time period for Class Counsel's receipt of the Tenant and Guarantor Mailing List, Class Counsel shall mail the Class Notice and Claim Form to each Class Member, pursuant to the Class Mailing List. All Notices and Claim Forms shall be mailed on the same date.

b. Exclusion from the Class

i. Each Class Member may request exclusion from the Class (i.e., "opt out") and not to be bound by this Agreement, if, within the Notice Response Period, the Class Member mails an individual, written, signed notice of intention to exclude himself or herself from the Class, consistent with the terms set forth in the Class Notice. No later than five (5) days after the expiration of the Notice Response Period, Class Counsel shall give to Defense Counsel copies of all exclusion requests received by Class Counsel. For any communication from any Class Member which appears to request exclusion, the Parties shall initially endeavor to agree as to whether the communication constitutes a Successful Opt Out. In the event the Parties do not agree as to whether a Class Member is a Successful Opt Out, the Court will decide the dispute after notice and hearing. Any Class Member who does not qualify as a Successful Opt Out shall be bound by this Agreement, the Settlement, the Final Order, and the Releases prescribed in this Agreement.

ii. If a Class Member is a Successful Opt Out, that Class Member shall be excluded from the Class and from the Settlement, shall not receive any benefits of the Settlement, and will not be bound by the terms of this Agreement or the Final Order.

c. Objections to the Settlement

i. Any Class Member who wishes to object to the proposed Settlement must mail a written objection ("Objection") to Class Counsel and Defense Counsel, at the addresses set forth in the Class Notice, and must contemporaneously file the Objection with the Court. Each Objection must reflect a reasoned consideration of the information set forth in the Class Notice, and must be submitted by the deadline set forth in the Class Notice. Any Class Member who does not submit a timely Objection in complete accordance with the terms set forth in the Class Notice shall be treated as having not filed a valid Objection to the Settlement.

ii. Any Class Member who files and serves an Objection and wishes to appear at the Fairness Hearing, whether pro se or through counsel, must file a notice of appearance in the Action in accordance with the terms set forth in the Class Notice, and must serve the notice of appearance upon Class Counsel and Defense Counsel. Class Members who appear at the Fairness Hearing will only be permitted to argue those matters that were set forth in a written objection filed in accordance with the terms set forth in the Class Notice. No Class Member shall be permitted to raise matters at the Fairness Hearing that the Class Member could or reasonably should have raised in an Objection, but failed to do so, and all other objections to the Settlement are deemed waived if not set forth in a written objection filed in accordance with the terms set forth in the Class Notice. Any Class Member who fails to comply with the requirements set forth in the



Class Notice shall not be permitted to appear at the Fairness Hearing, *pro se* or through counsel.

iii. Any Objections and notices of appearances not filed with the Court by any deadlines set by the Court shall be barred.

d. No Simultaneous or Alternative Exclusion and Objection

Any person who gives notice of his or her intent to be excluded from the Class shall not simultaneously or thereafter be permitted to object to the Settlement. Any person who submits an Objection to the settlement shall not be permitted simultaneously or thereafter to give notice of an intent to be excluded from the Class.

e. Participation in the Settlement

i. Any Class Member who wishes to receive any Settlement Benefit must return a signed Claim Form, completed in accordance with the instructions contained in the Class Notice and the Claim Form. Each Claim Form must be mailed to Class Counsel and must be postmarked within the Notice Response Period, or shall be barred. Class Counsel agrees to keep all envelopes containing a Claim Form so that Woodlands can verify the timeliness of each Claim Form if it so desires.

ii. Except as otherwise ordered by the Court, any Class Member who fails to timely return a properly completed Claim Form consistent with this Agreement and the Class Notice shall be barred from receiving a Settlement Benefit, but shall nevertheless be bound by and subject to this Agreement, the Final Order, and all proceedings, rulings and orders in the Action, including without limitation the Release of the Settled Claims and the Dismissal of the Action.

5. Final Approval.

a. The Parties presently contemplate, in addition to this Agreement and its exhibits, the preparation of:

i. Joint Motion for Conditional Certification of Classes, for Preliminary Approval of Class Action Settlement, and for Order Directing Notice, to be filed as soon as practicable after execution of this Agreement;

ii. Unopposed Motion for Approval and Award of Incentive Payments, and Class Counsel Attorneys' Fees and Costs, to be filed no later than thirty (30) days prior to the Fairness Hearing;

iii. Joint Motion for Certification of Classes, for Final Approval of Class Action Settlement and Dismissal with Prejudice, to be filed no later than thirty (30) days prior to the Fairness Hearing.

For each of the above documents, Class Counsel shall bear the burden of creating the initial draft for review by Woodlands and Defense Counsel, whereupon the parties shall cooperate in revising and finalizing such draft. The Parties will further cooperate in the drafting and preparation of any other ancillary documents to support approval and implementation of this Agreement.

b. The Parties will request of the Court that a final Fairness Hearing be held on the Motion for Final Approval no earlier than thirty (30) days after expiration of the Notice Response Period. No later than thirty (30) days prior to the Fairness Hearing, the Parties, through their Counsel, shall move the Court for entry of a Final Order Approving Class Action Settlement which: 1) finally approves the Settlement as fair, reasonable, and adequate; 2) formally and finally certifies the Class for settlement purposes only; 3) finds that all constitutional, statutory, and procedural requirements for this Agreement have been met and satisfied; 4) enters the Final Order as provided in the Agreement; and 5) orders dismissal on the merits and with prejudice the Action, with all parties to bear their own costs to the extent not otherwise provided for in this Agreement.

6. Class Plaintiffs Incentive and Service Awards. Zachary T. Arnold and Michelle Arnold shall make application for incentive and service awards, not to exceed \$10,000.00 for each of them, in lieu of submitting their Claim Forms. Upon Court approval, a payment not to exceed \$10,000.00 each shall be payable to Zachary T. Arnold and Michelle Arnold, respectively. If approved by the Court, this incentive and service award shall be paid in addition to the Benefit Amount. However, neither Zachary T. Arnold nor Michelle Arnold shall be entitled to an additional settlement payment under paragraph 9 of this Agreement. Entitlement to or payment of a service award shall in no way increase Woodlands' maximum liability under this Agreement.

7. Class Counsel Attorneys' Fees and Costs. Class Counsel shall make application for an award of attorneys' fees and litigation expenses in connection with the Action, encompassing all attorneys' fees and costs incurred by any attorney or law firm for the benefit of Zachary T. Arnold and Michelle Arnold and the Classes. Class Counsel agrees not to seek, and disclaims any right to collect, any amount of attorneys' fees and costs in excess of the total sum of \$380,000.00, and Woodlands' maximum liability under the Settlement for attorneys' fees and costs shall be limited to \$380,000.00. Woodlands agrees not to oppose Class Counsel's motion for attorneys' fees and costs to the extent such motion seeks \$380,000.00, and reserves the right to oppose an award of any amount in excess of this sum.

8. Post-Approval Administration. Notice and administration expenses shall be paid by Class Counsel, and shall be contained within any amount otherwise requested by or awarded to Class Counsel. Settlement administrative and implementation duties of Class Counsel shall include:

a. Printing and mailing the Class Notice and Claim Forms, handling returned mail, and forwarding returned mail to any forwarding address(es) provided by the U.S. Postal Service;

- b. Establishing a website for dissemination of information to Class Members, including the Class Notice and Claim Form;
- c. Establishing a toll-free telephone number for Class Members to use to request a Class Notice and/or Claim Form;
- d. Reporting to the Court as appropriate about the Class Notice mailing program;
- e. Receiving and handling requests for exclusion from the Class and creating the Final Opt Out List;
- f. Processing received Claim Forms, as follows:
  - i. Promptly upon receipt, analyze each Claim Form to determine whether it is a Valid Claim Form;
  - ii. Promptly provide to Defense Counsel any Claim Form that Class Counsel determines does not constitute a Valid Claim Form, along with an explanation of the basis for such determination;
  - iii. Within ten (10) days of expiration of the Notice Response Period, provide to Defense Counsel in readable format, such as in a Microsoft Excel spreadsheet, a tabulation of the submitted Claim Forms along with copies of each Claim Form and the respective envelope for each Claim Form bearing the postmark date the Claim Form was sent to Class Counsel;
- g. Receiving from Woodlands, maintaining in escrow, and accounting for, the Benefit Amount;
- h. Issuing and mailing checks to Class Members for monetary relief provided under this Agreement;
- i. Refunding the balance of the Benefit Amount to Woodlands after payment of all monetary relief provided under this Agreement; and
- j. Such other duties as Class Counsel and Defense Counsel may agree, or as may be ordered by the Court.

In the absence of a challenge to a Claim as provided in this Agreement, Class Counsel shall have no obligation to review any Claim on its merits, for truth, accuracy or entitlement to participate in the Settlement Benefit.

9. Settlement Benefit. Any Authorized Claimant will be entitled to participate in the Settlement Benefit as follows:

a. Tenants and Guarantors of Fully Performed and Naturally Expired Leases

For any member of the Tenant Class who provides a Claim Form showing that he or she fully performed his or her obligation under the lease(s) upon its natural expiration and for whom no assertion of continuing duty or debt of any kind exists or is or was claimed by Woodlands, such as for unpaid rent, unpaid charges or fees, post-move-out charges, or anything else, such tenant shall be entitled to:

- i. Payment of \$120.00 from the Benefit Amount; and
- ii. Refund of any security deposit balance still held by Woodlands for the account of such tenant, unless such tenant remains an occupant of the apartment complex.

Each member of the Tenant Class which is determined to be entitled to a payment of \$120.00 from the Benefit Amount shall only be entitled to one payment of \$120.00 no matter how many leases said member of the Tenant Class executed with Woodlands. For any member of the Guarantor Class who guaranteed the obligation of a member of the Tenant Class who is compensated under this paragraph, such compensation to the member of the Tenant Class shall constitute full satisfaction of any claims which might have been asserted by a member of the Guarantor Class.

b. Tenants Against Whom Unsatisfied Claims are Asserted

For any member of the Tenant Class who provides a Claim Form showing that he or she is subject to any surviving or continuing claim by Woodlands or for any member of the Tenant Class that Woodlands shows is subject to any surviving or continuing claim by Woodlands, such as for unpaid rent, unrefunded deposits, post-move-out charges or anything else, Woodlands shall release such tenant from the amount claimed except any amounts incurred on or after July 25, 2013. The tenant shall not be entitled to monetary relief, and Woodlands shall be entitled to payment of \$120.00 from the Benefit Amount for each such member of the Tenant Class.

c. Guarantor Class

- i. For any member of the Guarantor Class who guaranteed the obligation of a member of the Tenant Class who receives monetary relief as described above, such compensation to the member of the Tenant Class shall constitute full satisfaction of any claims which are or might have been asserted by a member of the Guarantor Class.

ii. For any member of the Guarantor Class who guaranteed the obligation of a member of the Tenant Class who does not receive monetary relief as described above, and who submits a Claim Form showing that the tenant is incompetent or deceased, the member of the Guarantor Class shall be entitled to receive the same relief to which the tenant would otherwise be entitled.

d. Residual Cash Proceeds

To the extent the Benefit Amount is not consumed by distributions to Class Members as monetary relief provided in this Agreement, such undisbursed funds will be refunded to Woodlands.

10. Challenges to Claims. Within twenty (20) days of receipt of the tabulation of the submitted Claim Forms along with copies of each Claim Form and the respective envelope for each Claim Form bearing the postmark date the Claim Form was sent to Class Counsel as required under paragraph 8(f)(iii), Woodlands may challenge a Claim by written notice to Class Counsel. Absent a challenge by Woodlands within such time, a Claim shall be entitled to relief as provided in this Agreement. Woodlands may challenge any Claim on one or more of the following grounds:

- a. The claimant is not a member of the Class;
- b. Woodlands' records show that a material assertion made by a Class Member in a Claim Form is inaccurate;
- c. Class Counsel has improperly determined the Claim to have been submitted on a Valid Claim Form or in a timely manner; or
- d. The Claim is fraudulent.

Woodlands shall initially present any challenge to Class Counsel, in writing. The presentation of any challenge to Class Counsel shall include, at least, an explanation of why one or more of the above grounds applies to the Claim, along with copies of any supportive documents or records. Class Counsel shall review the challenge and make its own determination as to the Claim within ten (10) days of receipt. Class Counsel shall be authorized to communicate with the claimant about the challenge, and, so long as the claimant is a Class Member, such communications will be and shall remain privileged. Any Class Member shall be obligated to cooperate with the Parties in their investigation of any Claim or challenge to a Claim.

If Class Counsel agrees that Woodlands has established a meritorious challenge, the Claim shall be disallowed and the claimant shall not be permitted to participate in the Settlement Benefit. If Class Counsel does not agree that Woodlands has established a meritorious challenge, the Claim shall be a Disputed Claim. The Parties shall negotiate in good faith to resolve any challenge and any Disputed Claim and shall conclude such negotiations within a reasonable time. Any Disputed Claim that is not resolved through such efforts shall

be submitted to the Court. The submission of contested challenges shall occur within a reasonable time after negotiations reach an impasse.

The Court's determination as to the Disputed Claim shall be final as to the Parties and the claimant, and shall not be subject to any further challenge, review or appeal. The validity and amount of the Claim shall be adjusted or approved in accordance with the determination.

Fees incurred by Class Counsel during the challenge resolution process shall not be considered a settlement administration cost, and shall not increase Woodlands' maximum liability for attorneys' fees or costs, as provided in this Agreement.

11. Immunity for Good Faith Administrative Settlement Activities

No person or entity shall have any claim against any Party to this Agreement, or against Class Counsel or Defense Counsel, and the Parties and their Counsel shall not have any liability or obligation for errors or omissions in settlement administration, including but not limited to creation of any Mailing List, creation of the Opt Out List, creation of the Authorized Claimant List, mailing and processing of Class Notices or Claim Forms, issuance of checks, distribution, determination, Claim handling, Claim adjustment, Claim challenge, or Claim rejection, or based upon any other activity performed substantially in accordance with this Agreement or further Order of the Court.

12. Payment of the Benefit Amount

a. Within five (5) days of the Effective Date, Woodlands shall deliver to Class Counsel cash in amount equal to the sum of: 1) the Benefit Amount; 2) the amount approved by the Court for incentive awards to the named Plaintiffs; and 3) the amount approved by the Court for attorneys' fees and costs of Class Counsel. Woodlands shall not be required to make any payment under this Settlement until after the Effective Date.

b. Class Counsel shall hold the Benefit Amount in escrow in a separate and specific account designated solely for the Benefit Amount, for disbursement of monetary relief as provided in this Agreement. Additional amounts tendered by Woodlands in satisfaction of incentive payments or attorneys' fees and costs awarded by the Court may be disbursed by Class Counsel upon receipt.

c. No later than twenty (20) days after delivery of funds to Class Counsel, Class Counsel shall prepare a final list of all Authorized Claimants and shall provide such list to Woodlands. The Authorized Claimant list will identify:

i. All Class Members to whom payment of monetary relief is due as provided in this Agreement; and

ii. All Class Members who are entitled to a release of surviving or continuing claims in lieu of monetary payment as provided in this Agreement; and

iii. All persons who have submitted a Disputed Claim which remains unresolved.

d. Woodlands shall, no later than ten (10) days from receipt of the Authorized Claimant List, advise Class Counsel of any concerns regarding the Authorized Claimant List. Such concerns shall be limited to matters of administration or accounting. The Parties shall reconcile such administrative or accounting concerns within ten (10) days of Class Counsel's receipt of Woodlands' list of concerns.

e. Promptly upon the Parties' reconciliation of the Authorized Claimant List, Class Counsel shall commence to issue disbursements of the Benefit Amount, as follows:

i. For any Disputed Claim which remains unresolved, the sum of \$120.00 shall remain in escrow and shall not be disbursed until the Disputed Claim is resolved.

ii. Each Authorized Claimant identified as a proper recipient of monetary relief shall be distributed the amount of such relief in the form of a check payable to the Authorized Claimant. Said checks shall all bear the same issuance date and shall be mailed on the same date as the issuance date of the check.

f. Simultaneous with Class Counsel's commencement of disbursements of monetary relief to Authorized Claimants identified as due such relief, the release of surviving or continuing claims which shall be due to identified Authorized Claimants in lieu of monetary relief shall become immediately effective.

g. Any portion of the Benefit Amount remaining after disbursements to Authorized Claimants shall be released from escrow and returned to Woodlands.

h. Any checks issued in connection with the Settlement shall be good for ninety (90) days. Checks issued that are not negotiated within ninety (90) days will be void and will not be re-issued. All money associated with checks issued pursuant to this paragraph that are unclaimed by Class Members, including returned checks and checks not negotiated, shall be retained by Woodlands. Within ten (10) days after expiration of the ninety (90) day period during which the checks can be negotiated, Class Counsel shall (1) wire to Woodlands, per Woodlands's wiring instructions, all funds remaining from the Benefit Amount (any fee for said wire may be deducted from the remaining funds to be wired); (2) close the escrow account into which the Benefit Amount was held; and (3) provide bank statements to Woodlands for the escrow account showing the account's activity from the date the Benefit Amount was deposited into the escrow account through the date of closing the account.

i. The Parties acknowledge and agree that Woodlands would not have entered into this Agreement, and would not have provided the Settlement Benefit to the Class, if (among other terms) it were not entitled to retain the portion of the Benefit Amount that remains unclaimed or unpaid because a Class Member does not file a Claim Form or for any other reason. In order to give effect to the Parties' intention, no person, entity, or governmental body shall have any right to or in the Benefit Amount or any portion of the Benefit Amount, whether claimed or unclaimed, or in any amounts of un-negotiated checks, or in any sums which might have been paid to Class Members had more Class Members submitted Valid Claim Forms.

13. Releases

a. Woodlands' Release of Individual Defendants

Upon the Effective Date, and in consideration of the promises and covenants set forth in this Agreement, Woodlands, on its own behalf and on behalf of its past, present, and future parents, subsidiaries, successors, related companies, affiliates, owners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, divisions, insurers or reinsurers, advisors, consultants, representatives, partners, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, or agents (alleged or actual), and the representatives, predecessors, successors and assigns of any of them (collectively, the "Releasing Parties"), shall be deemed to have, and by operation of the Final Order shall have, finally, fully, and forever released, settled and discharged all matters which were raised or could have been raised in the Action, and any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, including any and all claims for attorney's fees and costs, that the Releasing Parties may have, or may ever have had, against Zachary T. Arnold and/or Michelle Arnold, individually and/or collectively, by reason of any matter, cause, happening, or thing occurring up to the date of this Agreement, whether known or unknown. The Parties stipulate and agree that Dovetail Management, LLC, Dovetail Resources, LLC, Dovetail Development, LLC, and Dovetail Builders, Inc. are affiliates of Woodlands for purposes of this Release, and are parties to, and beneficiaries of, this Release. This Release shall be included within the Final Order, and all claims of the Parties by and against one another shall be barred by the principles of res judicata, collateral estoppel, and issue preclusion.

b. Individual Defendants' Release of Woodlands

Upon the Effective Date, and in consideration of the promises and covenants set forth in this Agreement, Zachary T. Arnold, Individually, and Michelle Arnold, Individually, each on their own behalf and each on behalf of their past, present, and future successors, affiliates, joint venturers, independent contractors, insurers or reinsurers, advisors, consultants, representatives, partners, vendors, employees, attorneys, or agents (alleged or actual), and the representatives, predecessors, successors and assigns of any of them (collectively, the "Releasing Parties"), shall be deemed to have, and by operation of the Final Order shall have, finally, fully, and forever released, settled and discharged all matters which were raised or could have been raised in the Action, and any and all claims,



demands, damages, actions, causes of action or suits of any kind or nature whatsoever, including any and all claims for attorneys' fees and costs, that the Releasing Parties may have, or may ever have had, against Woodlands, individually and/or collectively, by reason of any matter, cause, happening, or thing occurring up to the date of this Agreement, whether known or unknown. The Parties stipulate and agree that Dovetail Management, LLC, Dovetail Resources, LLC, Dovetail Development, LLC, and Dovetail Builders, Inc. are affiliates of Woodlands for purposes of this Release, and are parties to, and beneficiaries of, this Release. This Release shall be included within the Final Order, and all claims of the Parties by and against one another shall be barred by the principles of res judicata, collateral estoppel, and issue preclusion.

c. Woodlands' Release of Class Members

Upon the Effective Date, and in consideration of the promises and covenants set forth in this Agreement, Woodlands, on its own behalf and on behalf of its past, present, and future parents, subsidiaries, successors, related companies, affiliates, owners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, divisions, insurers or reinsurers, advisors, consultants, representatives, partners, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, or agents (alleged or actual), and the representatives, predecessors, successors and assigns of any of them (collectively, the "Releasing Parties"), shall be deemed to have, and by operation of the Final Order shall have, finally, fully, and forever released, settled and discharged all matters which were raised or could have been raised in the Action, and any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, including any and all claims for attorneys' fees and costs, that the Releasing Parties may have, or may ever have had, against any and each and every Class Member, individually and/or collectively, by reason of any matter, cause, happening, or thing occurring up to the date of this Agreement, whether known or unknown. The Parties stipulate and agree that Dovetail Management, LLC, Dovetail Resources, LLC, Dovetail Development, LLC, and Dovetail Builders, Inc. are affiliates of Woodlands for purposes of this Release, and are parties to, and beneficiaries of, this Release. Excepted from this Release is (1) Woodlands' entitlement to a credit equal to \$120.00 for each release of a surviving or continuing claim as provided in this Agreement pursuant to paragraph 9(b); and (2) any claim for amounts owed to Woodlands under a lease beginning July 25, 2013 or later. The Parties further stipulate and agree that this Release shall be included within the Final Order, and all claims of the Parties by and against one another shall be barred by the principles of res judicata, collateral estoppel, and issue preclusion.

d. Classes' and Class Members' Release of Woodlands

Upon the Effective Date, and in consideration of the promises and covenants set forth in this Agreement, Zachary T. Arnold, as Representative of the members of the Tenant Class, and Michelle Arnold, as Representative of the members of the Guarantor Class, and each on behalf of each Class Member's past, present, and future successors, affiliates, joint venturers, independent contractors, insurers or reinsurers, advisors, consultants, representatives, partners, vendors, employees, attorneys, or agents (alleged or actual), and the

representatives, predecessors, successors and assigns of any of them (collectively, the "Releasing Parties"), shall be deemed to have, and by operation of the Final Order shall have, finally, fully, and forever released, settled and discharged all matters which were raised or could have been raised in the Action, and any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, including any and all claims for attorneys' fees and costs, that the Releasing Parties may have, or may ever have had, against Woodlands, individually and/or collectively, by reason of any matter, cause, happening, or thing occurring up to the date of this Agreement, whether known or unknown. The parties stipulate and agree that Dovetail Management, LLC, Dovetail Resources, LLC, Dovetail Development, LLC, and Dovetail Builders, Inc. are affiliates of Woodlands for purposes of this Release, and are parties to, and beneficiaries of, this Release. This Release shall be included within the Final Order, and all claims of the Parties by and against one another shall be barred by the principles of res judicata, collateral estoppel, and issue preclusion.

#### 14. Termination and Avoidance

a. Woodlands on the one hand, and Counter-Plaintiffs on the other, shall each have the right to terminate the Settlement, and thereby this Agreement, by providing written notice of their election to do so to the other Parties within thirty (30) days of:

i. The Court declining to enter the Preliminary Approval Order or the Final Order in any material respect which the terminating party in good faith believes operates adversely to its interest;

ii. The Court declining to approve the Settlement as set forth in this Agreement in any material respect which the terminating party in good faith believes operates adversely to its interest;

iii. The date upon which the Final Order is modified, reversed or superseded by the Court or any other Court in any material respect which the terminating party in good faith believes operates adversely to its interest.

Notwithstanding anything to the contrary in this provision, neither party shall have the right to terminate the Settlement and this Agreement once funds have started to be distributed from the Benefit Amount.

b. For purposes of this paragraph, the Parties agree that each of the following would constitute a material change to the Settlement or Final Order:

i. Any requirement that Woodlands pay settlement benefits to Class Members in excess of \$334,800.00;

ii. Any requirement that Woodlands pay attorneys' fees and costs in excess of the total amount of \$380,000.00;

iii. Any narrowing or limitation of any Party's Release of any other Party;

iv. Any nullification or relaxation of the requirement that a Class Member may participate in the Settlement Benefit only if the Class Member submits a Valid Claim Form;

v. Any finding that Woodlands is not entitled to retain the remainder of the Benefit Amount not paid to Class Members;

vi. Any complete denial, or reduction by 50% or more, of the \$10,000.00 Incentive Award to be requested for each named Counter-Plaintiff;

vii. Any complete denial, or reduction by 50% or more, of the \$380,000.00 in attorneys' fees and costs to be sought by Class Counsel.

c. Except as provided above, the Agreement may not be terminated after entry of the Final Order.

d. The Agreement shall also be terminable, at the sole option of Woodlands, in the event that the number of Class Members who timely and validly request exclusion from the Class exceeds the Termination Threshold established in paragraph 18 of the confidential and privileged Agreement between the parties dated December 11, 2012 (the "Supplemental Agreement"). The Supplemental Agreement shall not be filed with the Court unless and until a dispute among the Parties to the Supplemental Agreement concerning its interpretation or application arises, or the Court so requires, in which case those Parties shall use their best efforts to submit the Supplement Agreement purely for *in camera* review by the Court or to file it with the Court under seal. Woodlands shall exercise its right to terminate the Agreement under this paragraph consistent with the terms set forth in the Supplemental Agreement.

e. If this Agreement is terminated pursuant to its terms:

i. The Settlement shall be without force and effect;

ii. The Parties shall revert to their respective positions as of December 11, 2013 and no claims, rights or defenses of any of the Parties that existed prior to executing this Agreement shall be diminished or prejudiced in any way;

iii. Class Counsel shall return to Woodlands the Benefit Amount;

iv. Class Counsel shall return to Woodlands any amounts received from Woodlands for attorneys' fees and costs; and

v. Counter-Plaintiffs shall return to Woodlands any amounts received from Woodlands for incentive awards. In the event Counter-Plaintiffs attempt to

terminate this Agreement and are unable to immediately return all amounts received from Woodlands for incentive awards, said attempted termination shall be null and void.

vi. Class Counsel shall return to Woodlands any and all information received from Woodlands pursuant to this Agreement, including, but not limited to, all copies (electronic or otherwise) of the Tenant and Guarantor Mailing List. Furthermore, Class Counsel shall delete and not retain copies of any such information received from Woodlands, and Class Counsel shall delete any and all documents created by Class Counsel with the information provided by Woodlands such as, but not limited to, Class Notices and Claim Forms, addresses, contact information, tenant and guarantor names, address lists, etc.

#### 15. Representations and Warranties

a. Counter-Plaintiffs and Class Counsel represent and warrant that the term Class Counsel as defined and used in this Agreement includes all persons or entities having any interest in any award of attorneys' fees, expenses, or costs in connection with the Action. Plaintiffs and Class Counsel warrant, and agree, that any motions and/or applications that they file requesting an award of attorneys' fees, expenses and costs shall include within their scope all attorneys, law firms, and other persons or entities with a financial interest in such award, or otherwise Class Counsel shall pay such persons or entities the amounts, if any, determined to be owing to them.

b. The Parties, Class Counsel and Defense Counsel each represent and warrant that they are fully authorized to enter into this Agreement and to carry out the obligations provided for in this Agreement. Each person executing this Agreement on behalf of a Party covenants, warrants and represents that he, she, or it is and has been fully authorized to do so by such Party. Each Party further represents and warrants that he, she or it intends to be bound fully by the terms of this Agreement.

c. Plaintiffs represent and warrant that they have not assigned, conveyed, transferred, pledged, sold or otherwise granted or given any Settled Claims, or any interest in any Settled Claims, to any other person or entity.

d. The Parties acknowledge and represent each to the other that they have been represented and advised by independent legal counsel throughout the negotiations that have culminated in this Agreement, and that they have voluntarily executed the Agreement with and on the advice of counsel. The Parties further acknowledge and represent each to the other that they have negotiated and reviewed fully the terms of this Agreement and its exhibits.

#### 16. Miscellaneous Provisions

a. No Admissions of Liability. This Agreement is for settlement purposes only. Neither the fact of, any provision contained in, nor any action taken under this

Agreement shall be construed as an admission of the validity of any Claim or any factual allegation that was or could have been made in the Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party. This Agreement shall not be offered or be admissible in evidence against any Party or cited or referred to in any other action or proceeding, except:

i. An action brought by or against one or more Parties to enforce or otherwise implement the terms of this Agreement or the Final Order;

ii. An action involving any Party or Class Member to support a defense of res judicata, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense;

iii. An action involving an attempt to enforce any order of the Court or otherwise to stay or limit other litigation inconsistent with the terms set forth in this Agreement or the Final Order.

b. **Governing Law; Forum Selection.** This Agreement is intended to and shall be governed as a contract executed under the laws of the state of Florida. Any dispute relating to this Agreement or Claims submitted pursuant to this Agreement shall be brought exclusively in a court of the Eighth Judicial Circuit, in and for Alachua County, Florida. Each of the Parties and each Class Member submits to the jurisdiction of that Court for purposes of this Settlement, agrees that venue is appropriate in that Court, agrees not to contest subject matter jurisdiction, personal jurisdiction or venue, or agrees not to assert that such forum is inconvenient.

c. **Complete Agreement; No Parol.** The terms and conditions set forth in this Agreement, its exhibits, and in the Supplemental Agreement constitute the complete and exclusive agreement between the Parties, and may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement.

d. **Modification.** Any modification of the Agreement must be in writing and signed by counsel for all Parties. If the Agreement or any part of it has already been considered and ruled upon by the Court, Court approval of any modification shall also be required.

e. **Construction and Interpretation.** This Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against its drafter shall not apply to this Agreement. Except where expressly indicated to the contrary, the plural of any defined term includes the singular of the term and vice-versa. All references to days shall be interpreted to mean calendar days. When a deadline or date falls on a weekend or on a legal holiday as defined in the Court's rules, such deadline or date shall be the next day that is not a weekend or legal holiday. A term defined in this Agreement shall

have the same meaning where the term appears in any exhibit to this Agreement, unless defined otherwise in such exhibit.

f. No implicit waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

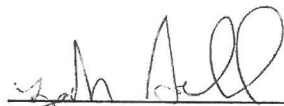
g. Execution in counterparts. This Agreement may be executed in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. Signature by electronic means (facsimile or in .pdf format) shall be deemed an original signature for purposes of this Agreement.

h. Retention of Jurisdiction. The Court shall retain jurisdiction with respect to interpretation, effectuation, enforcement, administration, and implementation of this Agreement.

i. Mediation of Disputes. Except as otherwise provided for in this Agreement, if disputes arise regarding the finalization of the Settlement that the Parties are unable to resolve themselves, the Parties agree to submit to mediation of such dispute, with expenses of the mediator to be divided equally between Counter-Plaintiffs and Woodlands.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on this 30 day of May, 2014.

*AD*



Zachary T. Arnold, Individually and  
as Class Representative



Michelle Arnold, Individually and  
as Class Representative

 05/13/14  
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Woodlands of Gainesville, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
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Woodlands of Gathesville, LLC

By:  \_\_\_\_\_

Its: MEMBER \_\_\_\_\_

  
\_\_\_\_\_  
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