

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

ERIK GOFF and
GOFF GROUP INC

CASE NO. 20-012592 CA (18)

Plaintiffs,
v.

KEY COLONY HOMEOWNERS' ASSOCIATION, INC.,
GUSTAVO TELLEZ, individually and in his capacity as a
board member of Key Colony Homeowners' Association, Inc.,
LOUISA CONWAY, individually and in her capacity as a
board member of Key Colony Homeowners' Association, Inc.,
ANTONIO CAMEJO, individually and in his capacity as a
board member of Key Colony Homeowners' Association, Inc.,
and VICTOR UNDA, individually.

Defendant.

CORRECTED* AMENDED COMPLAINT
*(*Corrected ONLY to include Copies of Exhibits A&B)*

Plaintiffs, ERIK GOFF ("GOFF") and GOFF GROUP INC ("GOFF GROUP"), by and through undersigned counsel, sue Defendants, KEY COLONY HOMEOWNERS' ASSOCIATION, INC., ("KEY COLONY HOA), GUSTAVO TELLEZ ("TELLEZ"), individually and in his official capacity as a board member of Key Colony Homeowners' Association, Inc., LOUISA CONWAY ("CONWAY"), individually and in her official capacity as a board member of Key Colony Homeowners' Association, Inc., ANTONIO CAMEJO ("CAMEJO"), individually and in his official capacity as a board member of Key Colony Homeowners' Association, Inc., and VICTOR UNDA ("UNDA"), individually, and allege as follows:

JURISDICTION AND VENUE

1. This is an action for damages in excess of \$30,000.00 by Plaintiffs against Defendants, for claims of retaliation under Florida's Private Whistleblower Act ("FWA") and the Florida Civil

Rights Act of 1992 (“FCRA”), defamation, tortious interference with a business relationship, and breach of contract.

2. Venue properly lies in this circuit because one or more of Plaintiffs’ causes of action arose in Miami-Dade County, Florida.

PARTIES AND EXHAUSTION OF REMEDIES

3. Plaintiff, GOFF, is *sui juris* and resides in Miami-Dade County, Florida.

4. Plaintiff, GOFF GROUP, is a for-profit corporation with its principal place of business in Miami-Dade County, Florida.

5. Defendant, KEY COLONY HOA, is a not-for-profit corporation with its principal place of business in Miami-Dade County, Florida.

6. Defendant, TELLEZ, was a board member of KEY COLONY HOA at all times material to this action.

7. Defendant, CONWAY, was a board member of KEY COLONY HOA at all times material to this action.

8. Defendant, CAMEJO, was a board member of KEY COLONY HOA at all times material to this action.

9. Defendant, UNDA, is an employee of KEY COLONY HOA.

10. GOFF has complied with all conditions precedent to maintaining this action.

GENERAL ALLEGATIONS

11. Defendant, KEY COLONY HOA, contracted with GOFF and his company, GOFF GROUP, to manage the property for KEY COLONY HOA beginning in June 2015.

12. GOFF and the GOFF GROUP were responsible for general operations, budgeting, and personnel management for approximately 42 employees and independent contractors.

13. Defendant, UNDA, was an employee of GOFF GROUP, and UNDA assisted GOFF in providing property management services to KEY COLONY HOA.

14. In or around July 2018, UNDA signed a Non-Compete Agreement with the GOFF GROUP (“Non-Compete Agreement”), an unsigned copy of which is attached hereto as **Exhibit A**. The Non-Compete Agreement signed by UNDA is in the possession of KEY COLONY HOA and/or UNDA.

15. The Non-Compete Agreement states, in pertinent part:

Throughout the duration of this agreement the Recipient shall not, in any manner, represent, provide services or engage in any aspects of business that would be deemed similar in nature to the business of Goff Group, Inc. without the written consent of Goff Group, Inc..

The recipient warrants and guarantees that throughout the duration of this agreement and for a period not to exceed 24 months following the culmination, completion or termination of this agreement, that s/he shall not directly or indirectly engage in any business that would be considered similar in nature to with Goff Group, Inc., its subsidiaries, and any current or former clients and/or customers within a 30 Miles mile radius of MIAMI, Florida. Nor shall the Recipient solicit any client, customer, officer, staff or employee for the benefit of himself/herself or a third party that is or may be engaged in a similar business.

16. The Non-Compete Agreement was reasonably necessary to protect GOFF’s and the GOFF GROUP’s legitimate business interests, including but not limited to: valuable confidential business or professional information; substantial relationships with existing clients; the substantial relationship with KEY COLONY HOA in particular; and, customer goodwill associated with GOFF and the GOFF GROUP.

17. During his employment with the GOFF GROUP, UNDA was privy to confidential information, pay rates, deal structures, contracts, operating procedures, and other internal procedures and policies.

18. Additionally, during his employment with the GOFF GROUP, UNDA was given access to all information regarding KEY COLONY HOA.

19. GOFF GROUP and GOFF invested significant time in building and developing the client relationship with KEY COLONY HOA.

20. GOFF and the GOFF GROUP successfully fulfilled the property management duties for KEY COLONY HOA for years without issue.

21. In late 2018, however, TELLEZ and CONWAY, both members of the KEY COLONY HOA at the time, began defaming GOFF's character.

22. TELLEZ publicly and privately accused GOFF of self-dealing and of violating Florida law in his position as Property Manager.

23. In one instance, TELLEZ made negative and false comments about GOFF at a public security committee meeting.

24. CONWAY told a condominium owner that GOFF had lost KEY COLONY HOA money.

25. The allegations TELLEZ and CONWAY made were not true.

26. In July 2018, GOFF complained to KEY COLONY HOA about the treatment he was receiving from TELLEZ and CONWAY.

27. Specifically, GOFF complained to the KEY COLONY HOA board president, Matthew Branson, that certain board members were engaged in slander and libel.

28. GOFF complained that the false statements against him rose to the level of "harassment."

29. The KEY COLONY HOA took no action to remedy actions of its board members toward GOFF.

30. In response to GOFF's complaints to the KEY COLONY HOA, TELLEZ and CONWAY began demanding that GOFF be removed from his position.

31. On April 26, 2019, CONWAY and TELLEZ got their way and GOFF was terminated from his position. KEY COLONY HOA also simultaneously ended its relationship with the GOFF GROUP.

32. Following GOFF's and the GOFF GROUP's termination, KEY COLONY HOA hired UNDA to work directly for KEY COLONY HOA as property manager.

33. UNDA's work for KEY COLONY HOA violates the Non-Compete Agreement between GOFF GROUP and UNDA.

34. KEY COLONY HOA knew of the business relationship between the GOFF GROUP and UNDA when it hired UNDA.

35. Because UNDA was privy to confidential information regarding KEY COLONY HOA as a result of his employment with the GOFF GROUP, his employment with KEY COLONY HOA deprived the GOFF GROUP of its hard-earned competitive advantage in the industry and would allow UNDA to have an informational advantage.

36. On October 8, 2019, CAMEJO sent a letter ("Camejo Letter") via email, a copy of which is attached hereto as **Exhibit B**, to all residents of Key Colony stating, among other things, that he had recommended, and the board had approved, terminating the services of GOFF and the GOFF GROUP.

37. The Camejo Letter stated that GOFF and the GOFF GROUP made unilateral management changes that were not approved by the board of KEY COLONY HOA.

38. The Camejo Letter stated that, upon reviewing management operations, CAMEJO had discovered "red flags" that supported termination of GOFF and GOFF GROUP.

39. The Camejo Letter implied that GOFF and the GOFF GROUP had improperly categorized expenses and had distorted the financial picture of KEY COLONY HOA.

40. GOFF and the GOFF GROUP did not make unilateral management changes not approved by the board of KEY COLONY HOA.

41. GOFF and the GOFF GROUP did not improperly categorize expenses or in any way distort the financial picture of KEY COLONY HOA.

42. The Camejo Letter reached members of the Key Biscayne community not associated with Key Colony.

43. All of the statements made about GOFF and the GOFF GROUP as identified above were willful and malicious or in reckless disregard for the truth.

44. Plaintiffs have retained the undersigned attorney to represent them in this case and have agreed to pay a reasonable fee for the firm's services.

COUNT I: BREACH OF CONTRACT (INJUNCTIVE RELIEF)
(against UNDA)

45. Plaintiff, GOFF GROUP, restates the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

46. This is a count for injunctive relief against UNDA arising from his breach of the Non-Compete Agreement.

47. GOFF GROUP and UNDA entered into a valid, binding Non-Compete Agreement in July 2018.

48. UNDA breached the Non-Compete Agreement by accepting an offer of employment from and working for KEY COLONY HOA within the non-competition period.

49. Unless UNDA is enjoined from being employed by KEY COLONY HOA, GOFF GROUP will be irreparably harmed by inter alia, a) damage to GOFF GROUP's customer and client goodwill; b) continued inevitable disclosure of confidential information, which can and will be used

to unfairly compete with GOFF GROUP; and, c) loss of the benefits that GOFF GROUP bargained for and expected to receive through the execution of the Agreement.

50. UNDA's employment with KEY COLONY HOA jeopardizes GOFF GROUP's business and the company's corporate existence. It is impossible to calculate the total economic loss and loss of goodwill that will be suffered by GOFF GROUP if UNDA is allowed to continue directly competing with GOFF GROUP, in continued breach of the Non-Compete Agreement.

51. At all times relevant, UNDA was aware of the existence and validity of the Non-Compete Agreement, yet he has continued to work with KEY COLONY HOA, in continued defiance of the Non-Compete Agreement.

52. GOFF GROUP has no adequate remedy at law because GOFF GROUP's damages cannot be remedied solely by an award of monetary damages. Injunctive relief is also required in order to limit GOFF GROUP's irreparable injury, which as already occurred as a result of UNDA's breach of the Non-Compete Agreement.

53. The Non-Compete Agreement provides GOFF GROUP with a clear right to equitable relief and such relief would not be contrary to public policy.

54. Plaintiffs are entitled to attorney's fees and costs pursuant to Fla. Stat. §57.105.

WHEREFORE, Plaintiff, GOFF GROUP, INC. prays for judgment in its favor and against Defendant, VICTOR UNDA, and requests that this Court:

- i. enjoin UNDA from employment with KEY COLONY HOA for the remainder of the noncompetition period as shall be extended by the period that UNDA violated the Non-Compete Agreement;
- ii. enjoin UNDA from employment with any business similar in nature to GOFF GROUP within the territory named in the Non-Compete Agreement;

- iii. enjoin UNDA from soliciting clients, customers, officers, staff, or employees for the benefit of himself or a third party that is or may be engaged in a similar business;
- iv. enjoin UNDA from divulging GOFF GROUP's confidential information;
- v. enjoin UNDA from engaging in any practice to evade the provisions of the Non-Compete Agreement;
- vi. award GOFF GROUP its reasonable attorneys' fees, and;
- vii. all other relief that the Court deems proper.

COUNT II: BREACH OF CONTRACT (DAMAGES)
(against UNDA)

55. Plaintiff, GOFF GROUP, restates the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

56. This is a count for damages against UNDA arising from his breach of the Non-Compete Agreement.

57. GOFF GROUP and UNDA entered into a valid, binding Non-Compete Agreement in July 2018.

58. UNDA breached the Non-Compete Agreement by accepting an offer of employment from and working for KEY COLONY HOA within the non-competition period.

59. As a direct result of UNDA's breach of the Non-Compete Agreement, Plaintiff, GOFF GROUP, has been damaged.

60. Plaintiffs are entitled to attorney's fees and costs pursuant to Fla. Stat. §57.105

WHEREFORE, Plaintiff, GOFF GROUP, INC., prays for an award of damages against Defendant, VICTOR UNDA, attorneys' fees and costs, and all other relief that the Court deems proper.

COUNT III: TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP
(against KEY COLONY HOA and TELLEZ & CONWAY in their official capacities)

61. Plaintiff, GOFF GROUP, restates the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

62. This is a count for damages against KEY COLONY HOA and TELLEZ and CONWAY in their official capacities for tortious interference with GOFF GROUP's contractual and advantageous business relationship with UNDA.

63. A contractual and advantageous business relationship existed between GOFF GROUP and UNDA.

64. KEY COLONY HOA, TELLEZ and CONWAY knew or reasonably should have known of the existence and validity of the Non-Compete Agreement between GOFF GROUP and UNDA prior to extending an employment offer to UNDA and inducing him to breach the Non-Compete Agreement in place between GOFF GROUP and UNDA.

65. KEY COLONY HOA, TELLEZ and CONWAY knew the nature of GOFF GROUP's business, and that UNDA was a direct competitor.

66. By agreeing to hire and employ UNDA, KEY COLONY, TELLEZ, and CONWAY intentionally and unjustifiably interfered with the then-existing business relationship between GOFF GROUP and UNDA.

67. KEY COLONY HOA's offer of employment to UNDA has caused UNDA to breach his contractual relationship with GOFF GROUP, resulting in substantial damages to GOFF GROUP.

WHEREFORE, Plaintiff, GOFF GROUP, INC., demands judgment for damages in its favor against Defendants, KEY COLONY HOA, TELLEZ and CONWAY, and all other relief that the Court deems proper.

COUNT IV: DEFAMATION
(against TELLEZ individually)

68. Plaintiff, GOFF, restates the allegations set forth in Paragraphs 1 through 44 above as if fully set forth herein.

69. This is a count for damages by Plaintiff, GOFF, against Defendant, TELLEZ for defamation.

70. The statements made by TELLEZ that GOFF had engaged in self-dealing and violated Florida law in his position as Property Manager for KEY COLONY HOA were false.

71. TELLEZ knew the statements were false when he made them.

72. TELLEZ made the false statements willfully and maliciously and with the specific intent to damage GOFF.

73. The statements made by TELLEZ constituted defamation *per se* because they charged that GOFF had committed a crime; tended to subject GOFF to hatred, distrust, ridicule, contempt, or disgrace; and tended to injure GOFF in his trade or profession.

74. TELLEZ exceeded his scope and authority and was not acting in the best interest of KEY COLONY HOA, when he published the defamatory statements regarding GOFF. Therefore, TELLEZ is personally liable for their defamatory conduct.

75. GOFF suffered actual damages as a direct and proximate result of TELLEZ's defamatory statements.

76. Plaintiff reserves the right to seek punitive damages based upon Defendant's defamation *per se*.

WHEREFORE, Plaintiff, ERIK GOFF, prays for an award of compensatory damages against Defendants, GUSTAVO TELLEZ, pre-judgment interest, the costs of this action, and any other relief as the Court deems just and equitable.

COUNT V: DEFAMATION
(against CONWAY individually)

77. Plaintiff, GOFF, restates the allegations set forth in Paragraphs 1 through 44 above as if fully set forth herein.

78. This is a count for damages by Plaintiff, GOFF, against Defendant, CONWAY, for defamation.

79. The statements made by CONWAY that GOFF lost KEY COLONY HOA money in his position were false.

80. CONWAY knew the statement was false when she made them.

81. CONWAY made the false statement willfully and maliciously and with the specific intent to damage GOFF.

82. The statement made by CONWAY constituted defamation per se because it charged that GOFF had committed a crime; tended to subject GOFF to hatred, distrust, ridicule, contempt, or disgrace; and tended to injure GOFF in his trade or profession.

83. CONWAY exceeded her scope and authority and was not acting in the best interest of KEY COLONY HOA, when she published the defamatory statements regarding GOFF. Therefore, CONWAY is personally liable for her defamatory conduct.

84. GOFF suffered actual damages as a direct and proximate result of CONWAY's defamatory statements.

85. Plaintiff reserves the right to seek punitive damages based upon Defendants' defamation per se.

WHEREFORE, Plaintiff, ERIK GOFF, prays for an award of compensatory damages against Defendant, LOUISA CONWAY, pre-judgment interest, the costs of this action, and any other relief as the Court deems just and equitable.

COUNT VI: DEFAMATION
(against CAMEJO individually)

86. Plaintiff, GOFF, restates the allegations set forth in Paragraphs 1 through 44 above as if fully set forth herein.

87. This is a count for damages by Plaintiff, GOFF, against Defendant, CAMEJO, for defamation.

88. The statements made by CAMEJO in the Camejo Letter regarding GOFF were false.

89. CAMEJO knew the statements were false when he made them.

90. CAMEJO made the false statements willfully and maliciously and with the specific intent to damage GOFF.

91. The statements made by CAMEJO constituted defamation *per se* because they charged that GOFF had committed a crime; tended to subject GOFF to hatred, distrust, ridicule, contempt, or disgrace; and tended to injure GOFF in his trade or profession.

92. CAMEJO exceeded his scope and authority and was not acting in the best interest of KEY COLONY HOA, when he published the defamatory statements regarding GOFF. Therefore, CAMEJO is personally liable for his defamatory conduct.

93. GOFF suffered actual damages as a direct and proximate result of CAMEJO's defamatory statements.

94. Plaintiff reserves the right to seek punitive damages based upon Defendant's defamation *per se*.

WHEREFORE, Plaintiff, ERIK GOFF, prays for an award of compensatory damages against Defendants, ANTONIO CAMEJO, pre-judgment interest, the costs of this action, and any other relief as the Court deems just and equitable.

COUNT VII: RETALIATION IN VIOLATION OF THE FCRA
(against KEY COLONY HOA)

95. Plaintiff, GOFF, reasserts the general allegations as set forth above in paragraphs 1-44 and incorporates them herein by reference.

96. GOFF was an employee of KEY COLONY HOA as defined in the FCRA.

97. During his employment with KEY COLONY HOA, GOFF was subject to severe, pervasive, and unwelcome harassment from TELLEZ and CONWAY.

98. In July 2018, GOFF complained to KEY COLONY HOA about the harassment he was receiving from TELLEZ and CONWAY.

99. A week after reporting their conduct, TELLEZ and CONWAY began demanding that GOFF be removed from his position.

100. On April 26, 2019, GOFF was terminated from his position.

101. KEY COLONY HOA did nothing to stop the harassment or to protect GOFF after he complained of the harassment.

102. The reason given for GOFF's termination is false and pretextual.

103. GOFF was terminated for complaining about and reporting the harassment he was experiencing in the workplace.

104. As a direct and proximate result of KEY COLONY HOA's unlawful and retaliatory conduct in violation of the FCRA, GOFF has suffered and continues to suffer severe mental anguish and emotional distress, for which he is entitled to an award of monetary damages and other relief.

105. KEY COLONY HOA's unlawful conduct and retaliation in violation of the FCRA was outrageous and malicious, was intended to injure the GOFF, and was done in conscious disregard of GOFF's protections granted by the FCRA, entitled GOFF to an award of punitive damages.

106. GOFF is entitled to recover attorney's fees pursuant to Plaintiffs are entitled to attorney's fees and costs pursuant to Fla. Stat. §760.11.

WHEREFORE, Plaintiff, ERIK GOFF, prays this Court will:

- a. Order Defendant, KEY COLONG HOA, to remedy the unlawful retaliation of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Paying prejudgment and post-judgment interest;
 - iii. Paying front pay in lieu of reinstatement;
 - iv. Paying for lost benefits including medical insurance, pension and retirement plan
 - v. Providing any other relief that is appropriate
- b. Enter an order against KEY COLONY HOA for compensatory damages
- c. Enter an order against KEY COLONY HOA for punitive damages
- d. Grant GOFF's costs and retaliation attorney's fees pursuant to the FCRA.

COUNT VIII: VIOLATION OF FLORIDA'S PRIVATE WHISTLEBLOWER'S ACT

107. Plaintiff reasserts the general allegations as set forth above in paragraphs 1-44 and incorporates these allegations herein.

108. Florida's Private Whistleblower Act ("FPWA"), Florida Statute §448.102 (3), prohibits an employer from taking a retaliatory personnel action against an employee because the employee has "[o]bjected to, or refused to participate in, any activity, policy or practice of the employer, which is in violation of any law, rule or regulation."

109. GOFF objected to unlawful harassment in the workplace and reported the harassment to KEY COLONY HOA.

110. KEY COLONY HOA took no action to correct the unlawful harassment GOFF objected to and reported.

111. Following his report of harassment to KEY COLONY HOA, and without a change in his performance, GOFF was terminated from his position.

112. GOFF's objection to and reporting of the harassment was protected conduct under the FPWA.

113. KEY COLONY HOA's termination of GOFF constitutes adverse employment action and "retaliatory personnel action" under the FPWA.

114. GOFF's protected conduct under the FPWA was casually connected to KEY COLONY HOA's decision to terminate him because he was terminated close in time to his protected conduct, because his performance had not changed such that termination would be warranted, and because the individuals GOFF reported played a key role in KEY COLONY HOA's decision to terminate him.

115. As a result of KEY COLONY HOA's violation of the FPWA, GOFF has been damaged.

116. Plaintiff is entitled to recover his attorney's fees pursuant to Section 448.104, Florida Statutes.

WHEREFORE, Plaintiff, ERIK GOFF, prays this Court will:

- a. Order Defendant, KEY COLONG HOA, to remedy the unlawful retaliation of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Paying prejudgment and post-judgment interest;
 - iii. Paying front pay in lieu of reinstatement;
 - iv. Paying for lost benefits including medical insurance, pension and retirement plan
 - v. Providing any other relief that is appropriate
- b. Enter an order against KEY COLONY HOA for compensatory damages

- c. Enter an order against KEY COLONY HOA for punitive damages
- d. Grant GOFF's costs and retaliation attorney's fees pursuant to the FPWA.

DEMAND FOR JURY TRIAL

Plaintiffs, ERIK GOFF and GOFF GROUP, INC., hereby demand trial by jury on all claims triable by right of jury under state law.

Dated this 17th day of June 2020.

Respectfully submitted,

GALLUP AUERBACH

Counsel for Plaintiff

4000 Hollywood Boulevard
Presidential Circle-Suite 265 South
Hollywood, Florida 33021
Telephone: (954) 894-3035
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By: /s/ Dana M. Gallup

DANA M. GALLUP

Florida Bar No.: 0949329

Exhibit “A”

NON-COMPETE AGREEMENT

This Agreement, when signed and witnessed below, shall constitute an agreement regarding defined non-compete, confidential and proprietary information and trade secrets, hereinafter referred to as "Confidential Information," relating to the business of Goff Group, Inc. located at 1540 SW 12th Ave, Miami in the State of Florida in the zip code 33129 and Victor Unda located at 121 Crandon Blvd Apt 143, Key Biscayne in the State of Florida in the zip code 33149, hereinafter referred to as the "Parties," as of the date executed, thus known as the "Effective Date." For purposes of this agreement Goff Group, Inc. shall be referred to as the "Company" or the "Disclosing Party," and Victor Unda shall hereinafter be referred to as the "Recipient."

It shall be incumbent upon the Recipient to strictly maintain the confidentiality of the Proprietary Information. Proprietary information may be shared amongst the Parties for use in scoping, estimating and completing any and all work or projects for the Company and its clients.

NON-COMPETE

Throughout the duration of this agreement the Recipient shall not, in any manner, represent, provide services or engage in any aspects of business that would be deemed similar in nature to the business of Goff Group, Inc. without the written consent of Goff Group, Inc..

The recipient warrants and guarantees that throughout the duration of this agreement and for a period not to exceed 24 months following the culmination, completion or termination of this agreement, that s/he shall not directly or indirectly engage in any business that would be considered similar in nature to with Goff Group, Inc., its subsidiaries, and any current or former clients and/or customers within a 30 Miles mile radius of MIAMI, Florida. Nor shall the Recipient solicit any client, customer, officer, staff or employee for the benefit of himself/herself or a third party that is or may be engaged in a similar business.

CONFIDENTIAL INFORMATION

By definition herein, "Confidential Information" shall mean any and all technical and non-technical information provided by Goff Group, Inc., including but not limited to, any data, files, reports, accounts, or any proprietary information in any way related to products, services, processes, database, plans, methods, research, development, programs, software, authorship, customer lists, vendor lists, suppliers, marketing or advertising plans, methods, reports, analysis, financial or statistical information, and any other material related or pertaining to any business of Goff Group, Inc., its subsidiaries, respective clients, consultants or vendors that may be disclosed to the Recipient herein contained within the terms of this Agreement.

The Recipient shall not in any manner or form, at any time disclose, reveal, unveil, divulge or release, either directly or indirectly, any aforementioned proprietary or confidential information for personal use or for the benefit of any third party and shall at all times endeavor to protect all Confidential Information belonging to the Company.

INJUNCTIVE RELIEF

The Recipient herein acknowledges (i) the unique nature of the protections and provisions established and contained within this Agreement, (ii) that the Company shall suffer irreparable harm if the Recipient should breach any of said protections or provisions, and (iii) that monetary damages would be inadequate to compensate the Company for said breach. Therefore, should the Recipient cause a breach of any of the provisions contained within this Agreement, and then the Company shall be entitled to injunctive relief, in addition to any other remedies at law or equity, to enforce said provisions.

ENTIRE AGREEMENT

This Agreement shall be considered a separate and an independent document of which it shall supersede any and all other Agreements, and there are no other assurances or conditions in any other instrument, either oral or written, between the parties hereto. This Agreement may be modified only by a subsequent written agreement signed by both parties.

SEVERABILITY

In the event any term, condition, or provision of this Agreement is deemed or held to be invalid or unenforceable for any reason, those remaining terms, conditions and provisions shall remain valid and enforceable. Should a court of law determine that any term, condition or provision of this Agreement is invalid or unenforceable, but that by limiting such term, condition or provision it would become valid and enforceable, then such term, condition and/or provision shall be deemed to be written, construed and enforced as so limited.

WAIVER

If either party fails to enforce any provision contained within this Agreement, it shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

GOVERNING LAW

This Agreement is to be construed pursuant to the current laws of the State of Florida. Jurisdiction and venue for any claim arising out of this Agreement shall be made in the State of Florida, in the County of Miami- Dade County.

IN WITNESS WHEREOF, the parties hereto have caused this Non-Compete Agreement to be executed by a duly authorized representative of such party and of such party as of the effective date executed by the signature of both parties.

**Goff Group, Inc.
1540 SW 12th Ave
Miami, Florida 33129**

**Victor Unda
121 Crandon Blvd Apt 143
Key Biscayne, Florida 33149**

(Signature)

Erik Goff
President

07/09/2018

(Date Executed)

(Signature)

(Date Executed)

Exhibit “B”

From: Key Colony HOA <info@keycolonyhoa.org>
Sent: Tuesday, October 8, 2019 11:23 AM
To: egoff@goffgroupinc.com
Subject: Key Colony Residents

[View this email in your browser](#)



**By Antonio Camejo,
Vice President KCHOA**

Dear Neighbor:

At last month's HOA Board meeting, I asked the board's approval to make a change in the day-to-day leadership of the Board from myself as **President**, to **Oceansound** representative, **Tom Koch**, our then **Vice President**. Due to both personal and business obligations, I am no longer able to devote the amount of time necessary to provide the supervision and leadership required of the HOA President. Tom and I have been working closely together since the beginning of the year and graciously agreed to assume the Presidency, and the Board

unanimously approved the change leaving me as Vice President. I will continue to be available to assist Tom if he needs me.

Background to our Current Financial Status

In December of 2015, the board made the difficult decision, under the recommendation of **Tidemark** representative **Joe Abood, HOA Treasurer**, and our interim Manager, **Michele Estevez** to increase reserves to address a number of important infrastructure projects resulting from years of deferred maintenance before 2015. These issues had been previously uncovered through a management consultant study and by Joe and Michele's thorough review of the property. The Board approved a **\$2.8 million assessment** to fund **reserves for 2016** to cover repair of the **lap pool deck**, rebuild the structurally condemned **Gazebo (now the Sandbar)**, and other maintenance requirements as stipulated in our **Reserve Study of 2015**. That provided us with adequately funded cash reserves of approximately \$3.4 million as of January 1, 2016.

In January of 2016 a new board was elected, and **Botanica** representative **Matt Bramson** became **President**, serving in that capacity for the years **2016, 2017, and 2018**. I remained on the board until mid-2017 when I resigned due to other commitments. In June of 2016, the board hired a new Manager, **Erik Goff**, taking over from interim Manager Michele Estevez. Later Mr. Goff changed the service relationship to come under his management company, **Goff Group**, in a month-to-month arrangement. Mr. Goff also made management changes to our supervisory accounting functions, taking over the categorization of expenses from our bookkeeper of many years, **Francine Gonzalez**. Such changes should have been first approved by the board because they negatively impacted internal accounting controls. The categorization of expenses is critical because it determines whether an expense will be assigned to the Operating or Reserve budget which can significantly distort our financial picture. Based on management's recommendation, the Board approved that HOA Reserve contributions be **reduced to \$804,000 for 2017, to \$476,000 for 2018, and again reduced to \$450,000 for 2019**. In **2018** there was a **Special Assessment** for **Hurricane Irma damage of \$465,000** which the board approved based on Management's recommendation.

When I again became President at the end of January of this year, I reviewed management operations. A considerable amount of time had to be dedicated to tackling previous legal problems that might have been resolved at less cost if

they had been addressed in a more timely manner. My review revealed enough red flags to recommend terminating the services of Mr. Goff's Management company, as well as, replacing our legal counsel. The board approved the management change as of **April 24, 2019**, which included rehiring Michele Estevez as interim manager, and **Rosa de la Camara** of **Becker Poliakov** as legal counsel.

In May, I authorized current Director Joe Abood, because of his understanding of our HOA reserves, to carry out a reserve review with Michele Estevez and Francine Gonzalez. Their review of the years 2016 through 2019 revealed that our reserves did not have adequate funding to complete required maintenance and Board approved projects. The report was recently presented at a **Special Board Meeting**. The findings were as follows:

1. **Reserve categories after 2015 were either not funded, or not sufficiently funded. Some categories were eliminated by management without board or unit owner approval.**

2. **A number of operating expenses were improperly charged to reserve accounts as 'performed repairs and maintenance,' rather than replacements. We asked that our auditor review and restate the audit for 2018. This has been done and is available upon request at the HOA office. The review of expenses for 'proper classification' was conducted only for 2018, leaving the years 2016 and 2017 pending further review.**

3. **HOA Reserves were not maintained in accordance with property needs.**

As a result, cash reserves are estimated to be approximately \$900,000 at January 1, 2020, which will mean that our reserves will be underfunded by approximately \$3 million over the next three to five years based on required maintenance and Board approved projects.

The **Finance Committee** recently had its first **2020 Budget Meeting** and will be reviewing options for the funding of required projects over the coming years. Options include **special assessments and/or bank project financing at low interest rates** over a number of years to not unduly burden unit-

owners in any one year. Urgent deferred maintenance projects are being addressed during the remainder of this year from available funding, while major projects such as the HOA bathrooms have been pushed back until funding is arranged.

I want to personally thank **Joe Abood** and **Michele Estevez** for their many hours of dedicated work reviewing reserves. The Board further approved that Mr. Abood, together with Management, review reserves in even greater detail in preparation for a new outside reserve study for 2020. One of the Board's and management's most important responsibilities is the proper maintenance of our property and grounds. The longer maintenance is deferred, the more damage is done and the higher the eventual cost of repairs.

Going forward, financial controls will be put in place to make sure that the kind of underfunding we experienced, or changes to financial oversight without board approval, does not happen again. I hope this review has been helpful. Please come to HOA Board Meetings to stay informed about the financial and physical condition of our property, a priority for upcoming Board discussions.



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