

DELIVERED
5/20/22
BY: KL PSC: 5912
ATX Process, LLC

CITATION

THE STATE OF TEXAS

To:
JIM INNES
UNIT 204
1106 W 6TH STREET
AUSTIN TX 78703

Defendant, in the hereinafter styled and numbered cause:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. **In addition to filing a written answer with the clerk you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.**

A copy of the petition accompanies this citation, in cause number C-1-CV-22-001644, styled **ROF PROPERTIES LLC, Plaintiff VS. ENCINAL CONDOMINIUM OWNER'S ASSOCIATION, INC., JIM INNES, GREG SAN MARCOS, AND SARAH ANDERSON Defendant**

Filed in **County Court at Law #1**. Heman Marion Sweatt Travis County Courthouse, 1000 Guadalupe, Austin, Texas on **May 13, 2022**.

Given under my hand and seal of Rebecca Guerrero, County Clerk **on this the 17th day of May, 2022**.

Rebecca Guerrero, County Clerk,
Travis County, Texas
1000 Guadalupe St.
Austin, Texas 78701
P.O. Box 149325
Austin, Texas 78714-9325

By Deputy: B Winters
B Winters



Attorney:
JACOB CHARLES SCHEICK
2301 S CAPITAL OF TEXAS HWY BLDG H-101
AUSTIN TX 78746-7700

-----OFFICER'S RETURN -----

Came to the hand on the _____ day of _____, 20__ at ___ o'clock ___ M. Executed at _____ within County of _____ at ___ o'clock ___ M on the _____ day of _____, 20__, by delivering to the within name _____ a true copy of this citation together with the accompanying copy of the petition having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery. To certify which witness my hand officially. _____ of _____ County, Texas Sheriff/Constable/Authorized Person
By _____
FEES PAID \$ _____

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(la consulta es gratis si se trata de daño personal, negligencia,
indemnización al trabajador, bancarrota o por incapacidad del Seguro Social)

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under Chapter 952, Occupations Code. Certificate No. 9303

CAUSE NO. C-1-CV-22-001644

ROF PROPERTIES LLC,
Plaintiff,

V.

ENCINAL CONDOMINIUM OWNER'S
ASSOCIATION, INC., JIM INNES, GREG
SAN MARCOS, and SARAH ANDERSON,
Defendants.

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IN THE COUNTY COURT

AT LAW NO. 1

TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES ROF PROPERTIES LLC, ("Plaintiff"), complaining of and about ENCINAL CONDOMINIUM OWNER'S ASSOCIATION, INC. (the "Association"), JIM INNES, GREG SAN MARCOS, and SARAH ANDERSON (collectively the "Board" and the Board and the Association are referred to herein as "Defendants"), and would respectfully show as follows:

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, ROF Properties LLC, is a limited liability company who owns the property located at Unit 104 at 1106 W. 6th Street, Austin, TX 78703.
3. Encinal Condominium Owner's Association, Inc., is a condominium owner's association who may be served by serving its registered agent at Team Group Systems, Incorporated, 2810 South First Street, Austin, TX 78704.
4. Jim Innes is an individual residing in Travis County and may be served with process at Unit 204, 1106 W. 6th Street, Austin, TX 78703, or wherever he may be found.

5. Greg San Marcos is an individual residing in Travis County and may be served with process at Unit 107, 1106 W. 6th Street, Austin, TX 78703, or wherever he may be found.

6. Sarah Anderson is an individual residing in Travis County and may be served with process at Unit 201, 1106 W. 6th Street, Austin, TX 78703, or wherever she may be found.

JURISDICTION AND VENUE

7. The subject matter in controversy is within the jurisdictional limits of this court.

8. Venue in Travis County is proper in this cause pursuant Tex. Civ. Prac. & Rem. Code Ann. §15.001(a), §15.002(a)(3) and §15.036 on the basis that the cause of actions or a part thereof accrued in Travis County.

9. Plaintiff seeks equitable relief and monetary relief over \$200,000.00.

FACTS

The Association's Paradoxical Abrogation of Responsibility

10. In 1979, the Association was formed as a condominium owner's association for benefit of the owners of the condominiums located at 1106 W 6th St, Austin, TX 78703 (the "Condominiums"). The Association adopted the Declaration of Condominium Regime for Encinal Condominiums as amended to date (the "Declaration").

11. Plaintiff purchased Unit 104 (the "Residence") in the Condominiums on or about March 2017. Prior to Plaintiff's purchase—as admitted by the Association in a demand letter dated October 25, 2021 (the "Association Demand", attached here as Exhibit A)—a previous owner installed large windows and cantilever beams to support a cantilevered expansion of the Residence. In the Association Demand, the Association admitted that these changes by a previous owner to the Residence were not approved by the Association.

12. Despite knowing the improvements made by the prior owner were not authorized,

prior to Plaintiff's purchase of the Residence, the Association provided Plaintiff a resale certificate representing:

13. The Board does does not have knowledge of alterations or improvements to the lot, unit or limited common elements of the unit in question that violate any provision of the declaration, bylaws or rules of the Association. The known violations, if any, are: *(leave blank if none)* _____

Plaintiff relied upon Defendants representation in the Resale Certificate in purchasing the property. As set forth below, paradoxically Defendants now claim that these undisclosed unauthorized improvements are the cause of damages, and that Plaintiff is somehow responsible for said damages caused by a previous owner and undisclosed by Defendants prior to purchase.

13. After purchasing the Residence, Plaintiff became aware of issues with the stucco cladding the outside of the Residence. In September 2020, the Board and the Association reviewed an engineering report regarding the stucco and indicated that the Association was requesting bids for the repairs. In January 2021, Defendants at their own expense began repair work on the Residence. In February 2021, after removing the stucco cladding and water-proof barrier, Defendants asserted (without basis) that any future repairs were the responsibility of Plaintiff. As set forth below, per the terms of the Declaration governing the Condominiums, Plaintiff had no responsibility to repair the exterior of the Residence.

14. In October 2021, the Association sent the Association Demand, contending that Plaintiff was responsible for all the repairs, demanding Plaintiff cure alleged breaches of the Declaration, and threatening that if Plaintiff did not cure the alleged breaches, the Association would pay for the repairs then place a lien on the Residence for the indebtedness.

15. On November 8, 2021, Plaintiff timely requested a hearing before the Board. On November 18, 2021, Plaintiff sent a demand letter to Defendants demonstrating that Plaintiff had no responsibility to repair the exterior of the Residence under the Declaration. As of the date of filing, neither the Board nor the Association has taken any actions since January 2021 to honor

their obligations and duties under the Declaration, resulting in increased damage to the Residence.

The Declaration Requires the Association to Repair the Exterior of the Residence

16. The Declaration requires the Association to remedy the faulty stucco on the exterior of Unit 104.

17. First, the stucco wall is on the exterior of the Residence and therefore constitutes Common Areas under the purview of the Association. The Declaration defines "Residence" as:

1.19 "Residence" shall mean an enclosed space consisting of one or more rooms occupying part of a floor or floors in a Building, which enclosed space is not owned in common with the owners of other Residences in the Project. The boundaries of a Residence shall be the interior surface of its perimeter walls, floors, and ceilings. In addition, each Owner's Residence shall include the heating and air conditioning equipment

"Common Areas" in turn, is anything that is not a Residence:

1.6 "Common Areas" shall mean the Land, Buildings, and all other improvements located on the Land, except for those portions herein defined as Residences or as Limited Common Areas. Without limiting in any way the generality of the foregoing, the Common Areas shall include those items defined as "general common areas" in the Act including foundations, bearing walls and columns, roofs, halls, lobbies, stairways, entrances, exits,

Section 7.6 of the Declaration requires the Association to maintain the Common Areas.

18. Second, Plaintiff is not responsible for any acts of previous owners, and accordingly Declaration 5.4 is not applicable to Plaintiff. Pursuant to the Declaration an "Owner" is the current owner of the unit, *i.e.* the owner of record:

1.15 "Owner" shall mean any person, firm, corporation, or other entity, including Developer, which owns, of record, title to a Residence in the Project.

19. Section 5.4 restricts an Owner's liability to instances where (i) the Association's insurance does not cover the damage *and* (ii) the damages were caused by the Owner's negligence or misuse:

5.4 Repairs by Owner. Each Owner shall be responsible for the reconstruction, repair, and replacement of all personal and other property in or part of his Residence that is not a Common Area or Limited Common Area. Each Owner shall be responsible for any costs not otherwise covered by insurance carried by the Association and caused by such Owner's negligence or misuse or by the negligence or misuse of his immediate family, or his agents or employees in the course of their duties, and shall, to the extent not covered

20. The Association has breached this Section 5.4 by not only failing to apply the Association's insurance to the alleged damages, but also because Plaintiff (as the record owner) negligence/misuse did not cause any of the alleged damages. Instead, as the Association admits in the Association Demand that each of the alleged causes of the stucco failure were caused by previous owners:

Upon further investigation, the Board of Directors has determined that the water intrusion at issue was caused during unapproved and negligent building construction techniques performed at the Unit, which include, but are not limited to, installation of large windows and cantilever beams to support the expansion of the Unit. The construction defects include, but are not limited to, failure to install a moisture envelope behind the stucco. Enclosed

21. It is undisputed that the "unapproved and negligent building construction techniques" that the Association admits caused the stucco failure occurred prior to Plaintiff's record ownership of the Residence. In other words, the Association admits that it was not Plaintiff's negligence, but the negligence of a previous owner/contractor that caused the stucco failure.

22. Moreover, as set forth above, the Association represented in the resale certificate provided to Plaintiff prior to purchase that the Residence did not have any unauthorized improvements. Despite that misrepresentation, Defendants now contend that Plaintiff is responsible for these very same undisclosed and unauthorized improvements.

23. As a result of the Association's failure to fulfill its duties, the Residence has sustained ongoing water infiltration, burst pipes, and other damages in addition to the cost of the stucco repairs outside the Residence.

CAUSES OF ACTION

A. Breach of Fiduciary Duty

24. The foregoing paragraphs are incorporated herein by reference. The Association, and each member of the Board have breached each of their fiduciary duties and/or duties of care, including causing damages to Plaintiff. Defendants breached their duties by failing to act with candor toward Plaintiff and by failing to take appropriate action at an earlier date, and instead delaying repairs in a vain attempt to blame a member of the Association (Plaintiff) whose interests Defendants have a duty to protect. In addition, Defendants has breached their duties by, after long periods of complacency, attempting to improperly coerce Plaintiff into paying for something for which it has no responsibility. These breaches also include failing to act with loyalty and good faith in dealings with Plaintiff, failing to act with integrity of the strictest kind, failing to engage in fair and honest dealings, and failing to provide full disclosure. This breach also includes failing to make reasonable use of the confidence that Plaintiff placed in them; failing to act in the utmost good faith or exercise the most scrupulous honesty toward Plaintiff; and each of the Board members placing their own individual interests before Plaintiff's interest, using the advantage of their position to gain a benefit for itself at the expense of Plaintiff, and placing themselves in a position where their self-interest might conflict with its obligations as a fiduciary.

25. In perpetrating their breach of fiduciary duty, the Defendants acted with gross negligence, malice, and/or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a).

B. Breach/Enforcement of the Declaration

26. The foregoing paragraphs are incorporated herein by reference. The Declaration

constitute a contract between the Association and Plaintiff. The Association breached the Declaration, by, among other things, failing to properly maintain the common areas (stucco) and repair the same; failing to maintain insurance coverage and/or invoke insurance coverage for any alleged damages. All of which breaches damaged Plaintiff. Plaintiff has been harmed by the Association's *ultra vires* act and/or Plaintiffs seek (in the alternative) specific performance of the requirements (and permanent injunctive relief) of the contracted for Declarations. Pursuant to Section 11.1 of the Declaration, Plaintiff seeks to enforce the Declaration against Defendants.

C. Negligence/Negligent Misrepresentation

27. The foregoing paragraphs are incorporated herein by reference. Defendants did not exercise reasonable care or competence in its actions including beginning and then halting the repair and/or demanding Plaintiff pay for the repairs that were solely the responsibility of Defendants and as otherwise set forth above. In addition, in the resale certificate, the Association and one or more of the Board members misrepresented that no unauthorized improvements had been made to the Residence prior to Plaintiff's purchase and then (in another negligent act) demanded Plaintiff repair these unauthorized repairs and neglected to complete the repairs based upon the foregoing negligence/negligent misrepresentations. Plaintiff relied upon Defendants' representations and as a result of Defendants' actions and/or upon reliance upon Defendants' misrepresentations; Plaintiffs suffered damages, all in an amount to be determined at trial.

D. Attorney's Fees

28. Plaintiff has been forced to employ the undersigned attorneys and has agreed to pay them a reasonable fee for their services based upon the reasonableness of their services performed and the reasonable value thereof at the time and place incurred. Plaintiff made a demand upon Defendant, which demand Defendant refused. In addition, Plaintiff seeks to

enforce the Declaration as set forth above and accordingly seek to recover their attorney's fees and cost as the prevailing party for a suit regarding the Declaration pursuant to Tex. Prop. Code Ann. § 5.006(a). Accordingly, pursuant to Chapters 38 of the Texas Business and Commerce Code and Tex. Prop. Code Ann. § 5.006(a). Plaintiff seeks to recover its reasonable and necessary attorneys' fees, costs, and expert fees.

CONDITIONS PRECEDENT

29. All conditions precedent to Plaintiff's claims for relief have occurred.

PRAYER

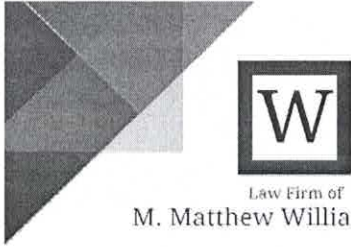
Plaintiff requests judgment against Defendants for the following relief:

- i. for judgment determining that the Association breached and/or failed to comply with the Declaration;
- ii. for actual damages;
- iii. for exemplary damages as allowed by law;
- iv. declaratory judgments set forth above;
- v. for permanent injunction;
- vi. for reasonable and necessary attorney fees, expert fees, and costs for trial and appeal of this action;
- vii. for prejudgment interest, post-judgment interest, and costs of court; and
- viii. for such other and further relief to which Plaintiff may show itself justly entitled.

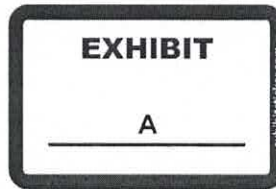
Respectfully submitted,



Jacob Scheick
State Bar No. 24060563
jscheick@abdmlaw.com
ALMANZA, BLACKBURN, DICKIE & MITCHELL, LLP
2301 S. Capital of Texas Highway, Building H-101
Austin, Texas 78746
(512) 474-9486
(512) 478-7151 FAX
ATTORNEYS FOR PLAINTIFF



M. Matthew Williams, P.L.L.C



M. Matthew Williams
matt@williamslawfirmtexas.com

October 25, 2021

*Via Certified Mail, Return Receipt Requested,
and Regular Mail*

ROF PROPERTIES, LLC
Attn: Patrick Tierney, Its Registered Agent
22222 E Ridge Trail Rd
Aurora, CO 80016

ROF PROPERTIES, LLC
3925 S Cherry St
Cherry Hills Village, CO 80113

ROF PROPERTIES, LLC
5271 S Yampa St
Centennial, CO 80015-2327

Via Email

ROF PROPERTIES, LLC
Attn: Richard Oneslager
Email: roneslager@balmargroup.com

Re: Encinal Condominium Owners' Association, Inc.'s notice of violations of restrictive covenants and demand regarding Unit 104 of the Encinal Condominiums, 1106 West 6th Street, Austin, Texas 78703.

To ROF PROPERTIES, LLC ("Owner"):

I am the lawyer for Encinal Condominium Owners' Association, Inc. (the "Association"), and I write you regarding your Unit 104 located within the Encinal Condominiums at 1106 West 6th Street, Austin, Texas 78703 (the "Unit").

The Unit is protected and governed by the provisions of the Declaration of Condominium Regime for Encinal Condominiums record at Volume 8, Page 130 of the Condominium Records of Travis County, Texas, as amended on March 19, 1994 by the Amendment recorded on July 22, 1994 (collectively the "Declaration"), which amended Article 7, Section 7.6 as follows:

The Association shall not be responsible for the replacement of the roof of any individual residence nor shall the association be responsible for the repair of damages to the interior or structure

Main 512.600.4324
Fax 512.685.4120
248 Addie Roy Road, Suite B204
Austin, Texas 78746
www.williamslawfirmtexas.com



of any individual residence if such damages resulted from the entry of wind, water, debris or any other matter, cause or thing through the roof of any individual residence, such repair being the sole responsibility of the owner of the residence with the roof requiring repairs or replacement. Regarding the repair or replacement of roofs that are common to more than one residence, the individual owners shall share equally in the cost of search repair or replacement. Should the individual owners of common roofs fail to agree on repair vs replacement, the association to the Board of Directors shall on review of professional estimates make the sole determination as to repair vs replace and shall enforce its decision as provided in the article seven, paragraph 7.5 "maintenance of residence. " Declaration, § 7.6.

Article 7, Section 7.5 of the Declaration provides in pertinent part as follows: "Each Owner shall maintain such Owner's residence . . . in good order and repair at all times. *Id.* at § 7.5.

Article 5, Section 5.4 of the Declaration provides in pertinent part as follows:

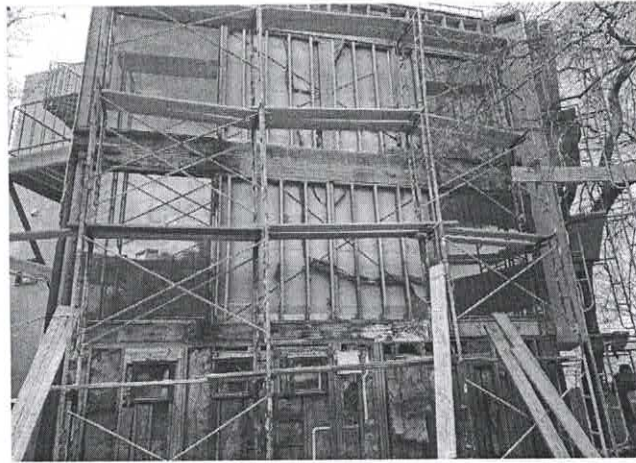
Each Owner shall be responsible for the reconstruction, repair, and replacement of all . . . property in or part of his Residence that is not a Common Area or Limited Common Area. Each Owner shall be responsible for any costs . . . caused by such Owner's negligence or misuse or by the negligence or misuse of his immediate family or his agents or employees in the course of their duties, and shall . . . indemnify the Association and all other Owners against any such costs. Declaration, § 5.4.

The Declaration establishes a uniform plan for the occupancy and use of all units within the Encinal Condominiums. The Declaration is for the benefit of all of the property owners within the condominium regime and is binding upon your Unit as well as all other units in the Encinal Condominiums. My law firm has been retained by the Association to contact you regarding the violations of your repair responsibilities under the Declaration.

On or about January 2021, the Association gave notice to Owner that a portion of the east wall was listing. Although the Association had been engaged in crack seal for several months, the Board felt the gap forming in the stucco at the beam line between the first floor and second floor was wide enough that crack seal was no longer going to be adequate and that there was potential for wall failure. The Board felt that known previous modifications to Unit 104, namely the cantilever pop outs on the north wall and west wall as well as the forage conversion to a conditioned space were contributing factors to the now failing east wall stucco. The Association notified the Owner, requiring Owner to complete the repairs in a timely manner. At that time the Owner referenced its own engineering report stating that the issue was not due to the west wall addition/cantilever. The Association felt obligated to act to determine what was causing the issue, especially since the Owner also indicated the risk of failure was a health hazard. The Association solicited bids, selected and contracted a general contractor to make improvements to the wall. The contract, the scope of which was clearly and repeatedly

communicated to Owner, included a time period, after initial demolition, for structural engineers to inspect for structural deficiencies and review the exterior building wall system to see if it could be determined if the wall was original construction or a newer addition. When demolition progressed for adequate review, the Association solicited the services of a structural engineer and inspected the materials and methods used to construct the wall.

While investigating visible damage to the stucco veneer on the eastern stucco wall and a portion of the northern stucco wall of your Unit, water damage was discovered to structural elements of the building, including around the large windows installed without authorization.



Upon further investigation, the Board of Directors has determined that the water intrusion at issue was caused during unapproved and negligent building construction techniques performed at the Unit, which include, but are not limited to, installation of large windows and cantilever beams to support the expansion of the Unit. The construction defects include, but are not limited to, failure to install a moisture envelope behind the stucco. Enclosed with this demand letter, incorporated herein by reference, please find the engineering report from Parker Engineering, LLC, which identifies the Unit's modifications as the source of the damage to the building.

Because the Association is not responsible for damage caused to the building by the Unit owner's unapproved and negligent building construction techniques, the Board of Directors hereby demands that you pay for the required repairs to the building, as set forth in the enclosed engineering report. If you fail to comply with this demand, the Board of Directors will act under Section 7.5 of the Declaration and charge the cost as a debt of the Owner, secured by a vendor's lien against your Unit. Because continued moisture intrusion can result in property damage and health and possible safety issues to the other owners and residents, the Board must act to protect the Association's property and its members.

The Association finds that its action is necessary to protect the health and safety the Association members and the appearance and value of the other units. The Association would like to make it clear that the Board of Directors is not assessing damages at this time. However, if you do not begin taking the necessary actions to repair the Unit, as provided in the enclosing engineering letter, **within 30 days from the date you receive this letter**, which is a reasonable amount of time, pursuant to Section 11.11 of the Declaration, the Association will begin performing such repairs of your Unit and levy the cost against you.

In the event that this occurs, the Board would like to inform you that a payment plan may be set up through property manager, Team Group, to be paid on a monthly basis, including interest, along with your regular assessment.

This letter constitutes NOTICE of the Association's formal demand to cure the above violation. You have thirty (30) days from the date you receive this letter to cure the defects referenced above. Because the Board of Directors believes that you have had substantial notice of the nature of your violation prior to its involvement, it concludes that a reasonable period of time to cure the violation in order to avoid the imposition of any fine or other penalty is thirty (30) days from the date you receive this letter.

The Board of Directors will permit you to have a full hearing via zoom to discuss and verify facts and resolve the matter in issue. You must request the hearing within thirty (30) days of your receipt of this notice, and such a hearing will not affect the deadlines or timetables set forth above. Only curing the defects will remove your deadline for compliance. You may request the hearing by mailing or hand-delivering a written request to the Board of Directors at the following address:

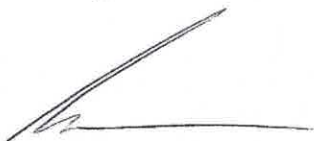
Encinal Condominium Owners' Association, Inc.
c/o TEAM Group Systems Inc.
2800 S IH 35 Frontage Rd #110
Austin, TX 78704

If you fail to cure the defects within the timeframes described above, the Board of Directors reserves all rights available to enforce the Declaration, including, but not limited to, seeking civil damages, attorney's fees and costs relating to such enforcement of the Declaration.

We hope this situation can be resolved amicably without the need for further legal action. If you have any questions, please contact me at (512) 600-4324.

Please direct all further correspondence regarding this matter to me. Thank you.

Sincerely,



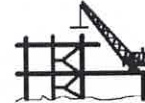
M. Matthew Williams

Enclosure.

Cc: Encinal Condominium Owners' Association, Inc.,
c/o Judi Smith, Team Group Systems, Inc.

Parker Engineering, LLC

Consulting Engineers



1601 Woodrock Dr.
Round Rock, Texas 78681
(512) 255-2589 Tel.
(512) 255-9844 Fax.
RepairXprt@aol.com

October 15, 2021

*Post-Tension Institute
(PTI)*

Fellow

*Member DC-10 Slab-On-
Ground Committee*

*Member/Chair TG-10A
Structural Slab-on-
ground*

*Member TG-10B
Geotechnical Slab-on-
Ground*

*Registered to perform
Engineering Services in
the following States:*

*Alabama
Arkansas
Colorado
Florida
Louisiana
New Mexico
Texas*

Other Registrations:

Asbestos Abatement (EPA).

*Licensed plumbing inspector
(Retired)*

Surveyor - Texas (Retired)

To: Matthew Williams
Law Firm of M. Matthew W Williams, PLLC
248 Addie Roy Road, Suite B204
Austin, Texas

Ref: Unit 104 – Executive Summary of Exterior Observation and
Opinions regarding
Encinal's Unit 104
Austin, Texas

Dear Matthew:

There was visible damage to the stucco veneer on the eastern stucco wall and a portion of the northern stucco wall to Unit 104. The HOA authorized a contract with an architect for the development of repair details and this eventually resulted in a contract for the repair of the damaged stucco veneer to Unit 104. The first step of a stucco repair, naturally, was the removal of the damaged stucco veneer in the damaged areas.

During the removal of the stucco, the contractor had made observations that sections of the OSB (noticeably lighter in coloration where not water damaged) behind the damaged stucco areas were missing a moisture envelope, were damaged to various degrees, and that in all areas where the moisture barrier was missing, the stucco was affixed directly to the OSB. They also noted water damage to some of the structural elements, which led to Parker Engineering being called to the job site. Members of the HOA board present at the first January site visit collaborated the early observations by the contractor as well as showing collaborative photographs.

Site Visit #1: Parker Engineering during the late January made a site visit and observed that several of the OSB sheets still affixed to the

building had varying degrees of damage (from water stained, to swelling, and in some areas decay/loss of integrity). It was the obvious to the parties present that the areas lacking the moisture envelope were related to the damage areas. The contractor exposed OSB sheets behind the stucco system which appeared darker in coloration and appeared to be much older. These older looking boards have been assumed to be original construction, for reasons to follow.

Site Visit #2: Parker Engineer returned a few days later to make assessment to the now exposed framing, as shown in Figure 1. It was noted (see Figure 1) water damage was prominent around the corners of the large windows. The prognosis by Parker Engineering then and now was that the visible damaged wood elements could be removed and replaced with equal sized and grade members with the exception of the beam in the north wall which, it was recommended that it would make sense to install an LVL to relieve what appeared to be distortion of the large window frame.

Parker Engineering was informed by members of the HOA board that the windows in the east wall and some of the framing used to resist the cantilever loading were installed by a prior owner and is not part of the original construction or work done by the HOA.

The following opinions where formulated:

1. The lighter color OSB sheets, which in my opinion are newer in origin, were found lacking a moisture envelope had sustained varying degrees of damage.
2. The older OSB sheets and framing lumber were visibly darker on the face perpendicular to the edge in coloration. Not to be confusing, in my opinion, I am distinguishing between boards/sheets with no water damage and the ones that are darkened by water stains. As it was observed, there were “newer” boards that had water stains on the ends that made them also appear darker in color, however the inside face were lighter in color which differentiated them from the again in my opinion, the older boards.
3. The lack of moisture envelope behind the stucco and the lack of detailing for the windows are the primary causation for the distress and damages in those areas. Further, this opinion is also based on the HOA indicating the window configuration was not the same as on the original plans.

4. As may be observed in Figure 1, there are numerous water leaks around the large glass windows, and it is my opinion this is related to the modifications moisture envelope details, or lack of.
5. The stud packs in the second level is notable by not matching width of stud pack on either the 1st or the 3rd levels.

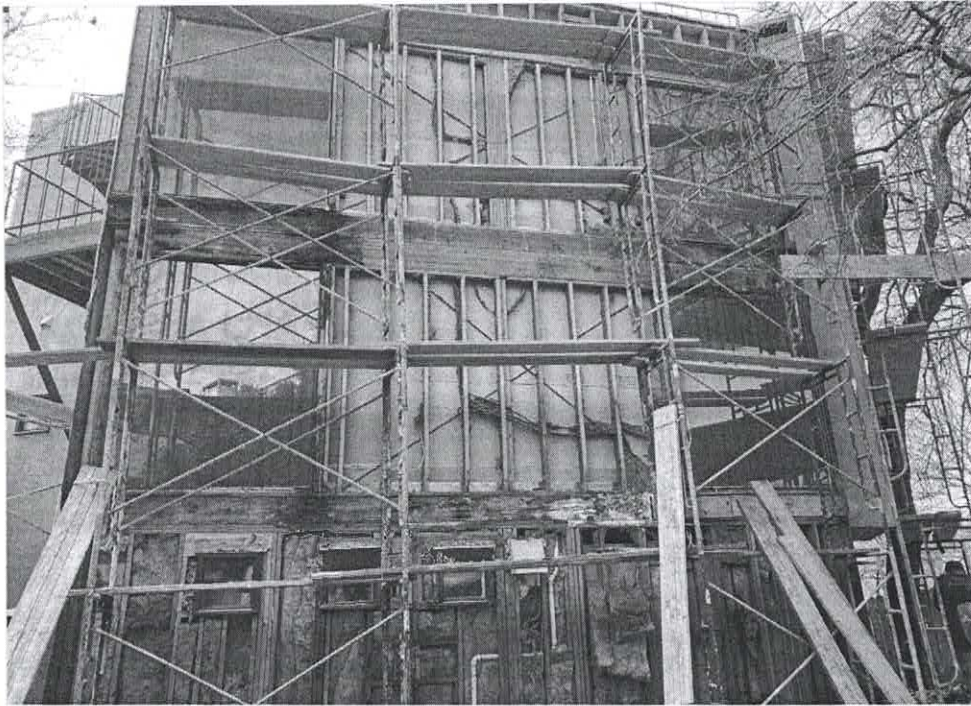


Figure 1 Exposed east wall showing moisture damage by the new window installations. (Parker Engineering Photo, Jan 28, 2021 post OSB removal)

6. It was brought to our attention by representatives of the HOA board that the Unit 104 owner had an engineer check the performance of the floor framing within the Unit. To date I have not read the report; however, I do want to clarify that we have not expressed any opinions regarding the performance of the structural elements supplying the cantilever support in the building, other than to report observation of water damage at the eastern exterior wall. The two items are different in context and, in my opinion, talking about different items. The opinions contained herein are related to water damage to the wall elements (studs, OSB, rim boards) related to a compromised moisture envelope, which I have opined was related to the modifications failure to restore the moisture envelope of the building. Parker Engineering and others have observed conditions where the uplift loads had caused a

visible deformation to the faming located below the 2nd level window framing and to the window by the uplift force from the shortest spanned cantilever beam; however, this issue is not a primary cause / sources for the water intrusion related to the stucco veneer and is contained here because of discussions related to this observation.

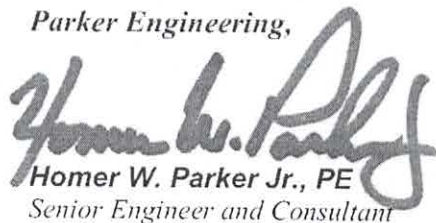
7. It is my opinion that the repairing contractor should utilize the moisture envelope design and specifications as contained in the architect's repair specifications and drawings as a means to protect the structural framing from experiencing similar water penetration issues.

In conclusion, the water damage by the "new" windows and those areas where the moisture envelope was not installed after the modifications is directly related to the modification work. It is my opinion that the current water damage can be repaired and that the OSB sheeting should be re-installed to help the building to resist wind loading. Further, to be clear, we have not opined on the suitability of the cantilever beams used for the modification, we have only opined on the repair of water damaged framing exposed in the east wall and portion of the north wall as being related to the lack of restoration of the moisture envelope post modification.

If you have any questions regarding my opinions that are contained within this report, please contact me so I can address your questions.

Respectfully submitted by

Parker Engineering,



Homer W. Parker Jr., PE
Senior Engineer and Consultant

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