COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

MIDDLESEX, ss.

WATKIN DENTAL ASSOCIATES, D.D.S., P.C. and ARNOLD WATKIN, Plaintiffs, v. ARTHUR P. WEIN, TRUSTEE WHALON STREET TRUST, Defendant.	CIVIL ACTION NO. 08-2217 **REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**[1]

Respectfully submitted,

ARTHUR P. WEIN, TRUSTEE,
WHALON STREET TRUST

By his attorney,

Mitchell J. Matorin (BBO#649304)
MATORIN LAW OFFICE, LLC
200 Highland Avenue
Suite 306
Needham, MA 02494
(781) 453-0100

Dated: November 13, 2008

[1] Leave to file reply granted by Order dated November 3, 2008.

This remains a simple contract case with only one issue: Was the work a "capital improvement?" Plaintiffs address this issue in Section IV.A of their brief and that is where the Court should focus its attention. As explained below, the rest of Plaintiffs' brief is a distraction.

I. The Work Was Not A Capital Improvement.

The parties agree that "capital improvements" are distinguished from "repairs" and that the term refers to "a permanent addition to or betterment of real property that enhances its capital value . . . and is designed to make the property more useful or valuable." *Finn v. McNeil*, 23 Mass. App. Ct. 367, 372 (1987). Other cases may use slightly different words, but the thrust is always the same: fixing something that already exists but is broken or deteriorating is a repair, not a capital improvement. The parties also agree on the work that was done here: (i) broken and leaking waste pipes were replaced with unbroken and non-leaking pipes; and (ii) parts of the floor that were at risk of collapse because of soil settlement were replaced.

Plaintiffs take issue with *Bonderman v. Naghieh*, 2005 WL 1663469 (Mass. Land Ct. 2005), not because it uses a different meaning of "capital improvement" (it does not), but rather because this case is not between condominium owners and trustees. (Pl. Br. at 10.) Although literally true, the distinction is meaningless because the Leases incorporate the condominium documents, which in turn incorporate the condominium statute. *Bonderman* is directly on point.

Plaintiffs suggest that their contractor affidavits raise disputed material facts because they "describe the plumbing and the new reinforced structural floors as within the definition of 'capital improvements.'"[2,3] (Pl. Br. at 10.) To the contrary, whether specific work is a "capital

[2] By "describe," Plaintiffs apparently mean that the plumber and project manager demonstrate such remarkable facility with the legal definition of a "capital improvement" that they can literally describe the work as falling within that legal definition. *See Cote Aff.* ¶ 8 ("All this piping is an improvement to the property and enhances its value and is not simply an ordinary

improvement" is at most a mixed question of fact and law and since it is undisputed *what* work was done, all that remains is a question of law. In *Chapman v. Katz*, 65 Mass. App. Ct. 826 (2005), the Appeals Court held that the trial court had erred in refusing to decide as a matter of law whether an ATM kiosk was a "trade fixture" within the meaning of a lease:

> Whether the ATM kiosk is a trade fixture or structure is a mixed question of law and fact. Since there was no factual dispute over the nature of the ATM kiosk, the issue resolves itself into a question of contract law for the judge—whether the ATM kiosk is within the definition of trade fixture as used in the lease, and therefore not a structure.

65 Mass. App. Ct. at 828-29 (internal quotation and citation omitted). Similarly here, there is no factual dispute over the nature of the work done and the mixed question is reduced to a question of contract law. *Cf. Finn*, 23 Mass. App. Ct. at 374 ("That the parties disagreed as to what constituted capital improvements is of no consequence. A mistake of law by a party to a contract is not a ground for avoiding it."). Summary judgment is entirely appropriate.

Toro v. A.A. Window Prods., 12 Mass. L. Rptr. 507, 2000 WL 33170966, does not help Plaintiffs. The court held that replacing 2,700 aging windows in a housing complex was a capital improvement for purposes of M.G.L. c. 260 § 2B. The court did not explain its reasoning and the case is of little value; and it is easily distinguished because those 2,700 windows likely were not broken but instead were likely old but functional, and the new windows likely would have brought substantial energy savings. Here, the piping was broken and the floor was in

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repair."); Campbell Aff. ¶ 10 ("These floors are an improvement that enhances the value and makes the property more useful and is not simply an ordinary repair.").

[3] There is no conflict between the two Peter Reynolds affidavits. He has consistently said that the work repaired the existing piping and floor, which had deteriorated due to soil settlement. In his second affidavit, he states that the reinforced floor is a "new structural component" and that the new piping "is a better product for the use than the original cast iron piping and will last longer and never rot." (Reynolds Aff. in Opp. to SJ ¶ 5, 6.) Both statements are entirely consistent with the concept of a repair—the floor existed previously and so did the pipe—and neither bring the work within the legal definition of "capital improvement."

danger of collapse due to soil settlement, and neither the replacement piping nor the reinforced floor had any material effect on the operation or value of the building.[4] That the piping might last longer than the old piping and the floor might be sturdier than the old floor means nothing: the pipes are still pipes and the floor is still a floor. *See Bonderman*, 2005 WL 1663469 at *4 ("The Trustees need not repair or restore each element of the common area to its particular preexisting condition, out of fear that doing otherwise might cause the work to be classified as an improvement. At the end of the project, a repaired and restored facade, even with modern components like the expansion joints, will still be a masonry façade on the same buildings.").

That the work might have brought the building back into code compliance is also meaningless. The building was in compliance before the soil settled. Fixing the problems brought it back into compliance and therefore restored the building to its preexisting condition. The City of Fitchburg did not order the Trustees to install a "better" pipe or floor because City regulations had changed. By contrast, in *Teitelbaum v. Commissioner*, 294 F.2d 541 (7th Cir. 1961), a city ordinance mandated the conversion of the building's electrical system from DC to AC, and the plaintiff's architect testified that the modification added value. *Id.* at 544.[5]

II. "Associated with the Leased Properties" Is Not A Limitation.

[4] Plaintiffs cite *Salinsky v. Perma-House Corp.*, 15 Mass. App. Ct. 193 (1983) as holding that installation of aluminum siding on an existing house was a capital improvement. (Pl. Br. at 11.) That court did not so hold; it upheld the trial court's directed verdict that the suit was filed too late under M.G.L. c. 260, § 2B. There was no analysis and no facts given given and the basis for the court's apparent assumption that the siding was an improvement is not evident. Nor did *Conley v. Scott Products*, 401 Mass. 645 (1988), "comment with approval on the holding in *Salinsky*." (since there was no such holding); it concluded that there was no difference between the installation of insulation and the installation of siding for purposes of M.G.L. c. 260 § 2B.

[5] Similarly, in *Swig Inv. Co. v. U.S.*, 98 F.3d 1359 (Table), 1996 WL 580320, a building erected in 1907 did not comply with new codes enacted in 1969 and the city ordered that it be modified. In *Cerda v. U.S.*, 1984 WL 2803, the court held only that the plaintiff had not met its burden of overcoming the presumptively correct IRS conclusion that the work was a capital improvement.

Plaintiffs set out to convince the Court that it must interfere in the governance of the Wachusett Condominium Association and decide for itself which individual slices of the project should be paid directly by Dr. Langford and which should be paid by the condominium association. (Pl. Br. Section III at 5-7.) This truly remarkable suggestion has as its entire premise a bare assertion consisting of a single sentence: "Watkin cannot be responsible for these costs unless they are 'associated with the Leased Premises.'" (Pl. Br. at 5.)

Whether the Leases limit Plaintiffs' payment obligation to costs "associated with the Leased Premises" is a question of law as it turns solely on the language of the Leases. The Court need only resolve that legal question. It need not accept Plaintiffs' invitation to become a condominium trustee, deciding for itself who should pay for which pieces of the work.[6] And since that question of law disposes of the argument, the Court should ignore all of Section III of Plaintiffs' brief, including the theory that discovery is needed to determine who pays what.

Plaintiffs do not even try to analyze the contract language or to develop a legal argument for their bare assertion. It is not the Court's job to do that for them, and the Court can reject it on that basis. But even a cursory review of the Leases establishes the absurdity of Plaintiffs' position. First, section 5(d)(i) of the Leases makes clear that Plaintiffs are to pay "all charges, costs, expenses, and obligations *of every kind and nature*," including all costs that are imposed on the Leased Premises by the condominium association. Not just those costs that are "associated with the Leased Premises," but every single cost or expense of any kind that Dr.

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[6] Indeed, the Court has no jurisdiction to overrule the decision of the trustees. Neither the trustees nor Dr. Langford, nor the other unit owners are parties to this litigation and neither Dr. Wein nor Watkin represents them. If the Court were to accept the invitation to allocate specific costs to Dr. Langford and others to the condominium association, its decision would have no legal effect on them. Instead, by relieving Plaintiffs of the obligation to pay, the Court would force Dr. Wein to pay costs that it had decided Dr. Langford should pay. Not only would this be fundamentally unjust, but it would eviscerate the unambiguous language and intent of the Leases, which could not be clearer that Dr. Wein will pay absolutely nothing.

Wein incurs or that the condominium association imposes. Second, the Leases mandate that Dr. Wein shall not "pay *any expenses of any kind*," and specify that they are to be "interpreted to accomplish this result." Not just any expenses that are "associated with the Leased Premises," but any expenses of *any kind*. Third, the Leases emphasize that if by some fluke there were any kind of expense that did not fall within that blanket language, "it is the intent that said expenses shall be assumed and paid by the Lessee."

There really is no way that the parties could possibly have more clearly expressed their intent. Yet, Plaintiffs pluck five words out of their context and twist them to pervert and override all of the language around them so that they must pay only costs they deem to be "associated with" the two leased units. This, despite the fact that the entire paragraph is devoted to emphasizing the unlimited breadth of Plaintiffs' obligation. And despite the fact that such an interpretation would virtually guarantee constant disputes and litigation, which the Leases by their unambiguity sought to avoid. And one more thing: even if Plaintiffs' view were rational, the supposed limitation *does not apply to the costs at issue*:

> ***except as otherwise provided with respect to . . .*** **capital improvements and assessments as set forth in 5.d.i. above** . . . the Lessee is responsible for all and every expense associated with Leased Premises. . . .

Plaintiffs' position that their liability is capped at $5,000 per unit is based on the limitation "set forth in 5.d.i. above." Since "5.d.i. above" is the source of both the obligation to pay and the alleged cap on that obligation, Plaintiffs' argument flops even on its own terms.

Plaintiffs' view that they must pay only costs "associated with the Leased Premises" has no basis and violates every canon of contractual interpretation. but their effort to concoct factual disputes and a need for discovery is contingent on there being such a limitation. Plaintiffs' speculation about which parts of the project cost what and should be paid by whom is immaterial

to the resolution of the only issue before the Court: whether the work was a capital improvement. The Court should ignore everything after the third line of Section III of Plaintiffs' brief.

III. Plaintiffs Have Not Satisfied Rule 56(f) and Discovery May Not Be Permitted.

One thing must be clarified at the outset. Plaintiffs' allegations that Dr. Wein has "*failed* to appear for his deposition which interferes with the orderly presentation of this case," (Pl. Br. at 2), has "attempted to frustrate the normal discovery process by refusing to appear for his deposition," (Pl. Br. at 17), and "refused to appear for depositions" (Nelson Aff. ¶ 3) are, charitably, disingenuous. Plaintiffs noticed Dr. Wein's deposition for September 9, 2008. At 10:37 a.m. on September 5, Plaintiffs' counsel canceled that deposition for no stated reason: "I am unable to proceed with Dr. Wein's deposition on Tues the 9th. I will contact you shortly about rescheduling." (*See* Exhibit 1.) Later that day, Dr. Wein's summary judgment papers were served by hand on Plaintiffs' counsel. The cover letter (written the night before) asked whether Plaintiffs would agree to cancel the deposition or whether Dr. Wein would have to move for a protective order that, under Rule 37(d), would have excused his refusal to appear.[7] Upon receipt of that letter, Plaintiffs' counsel sent an accusatory email that also stated his intention to re-notice the deposition. The undersigned acknowledged that Plaintiff's counsel had that right and and stated that he would await the new deposition notice before scheduling a meet and confer and moving for a protective order. (*See* Exhibit 2.) Plaintiff's counsel could have re-noticed the deposition but *chose not to*. Had he done so, then the Court would have determined at that point whether the deposition should go forward. That he *chose not to* does not mean that Dr. Wein frustrated the discovery process, it means that Plaintiffs' counsel *chose not to pursue* the discovery process.

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[7] *See E.A. Miller, Inc. v. South Shore Bank*, 405 Mass. 95, 100 (1989) (protective order appropriate to protect party who is entitled to summary judgment).

Putting that blatant distortion aside, Plaintiffs do not even come close to satisfying the Rule 56(f) requirements for obtaining discovery in the face of a summary judgment motion. There are five criteria: authoritativeness, timeliness, good cause, utility, and materiality:

> the request for relief under rule 56(f), after meeting the preliminary requirements that the request be timely and that it be accompanied by an authoritative affidavit based on firsthand knowledge, "should show good cause for the failure to have discovered the facts sooner; it should set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist; and it should indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion."

Alphas Co. v. Kilduff, 72 Mass. App. Ct. 104, 110 (2008) (quoting *RTC v. North Bridge Assocs., Inc.*, 222 F3d. 1198, 1203 (1st Cir. 1994)). Plaintiffs have satisfied none of these five criteria:

1) The Rule 56(f) suggestion[8] is not timely, coming more than five weeks after service of the summary judgment motion.
2) The affidavit does not show good cause for the failure to have discovered the facts earlier. To the extent it suggests that Dr. Wein frustrated discovery, that is untrue as noted above. If it is meant to suggest that Plaintiffs have been unable to depose others, that is also untrue. Plaintiffs' counsel asserts that he served four Keeper of the Records subpoenas (he actually served five) and a document request. (Lovins Aff. ¶ 4.) What he does not disclose is that each of those subpoenas specifically stated that documents could be produced in lieu of deposition, and each of the recipients produced the documents, causing Plaintiffs' counsel to *cancel* the depositions. (*See* Exhibits 3 and 4.) He also does not disclose that Dr. Wein produced all documents responsive to Plaintiffs' requests.
3) The affidavit does not identify a single "specified fact" that Plaintiff's counsel believes exists and that would be learned through discovery.
4) The affidavit does not explain how the unidentified "specified facts" would influence the summary judgment motion.

Failure to file a sufficient affidavit and to request a continuance to take discovery is "fatal to [an] argument" under Rule 56(f). *First Nat'l Bank of Boston v. Slade*, 379 Mass. 243, 244-245 (1979). *See also C.B. Trucking, Inc. v. Waste Management, Inc.*, 137 F.3d 41, 44-45 (1st Cir.

[8] Plaintiffs have not actually moved for relief under Rule 56(f), they have just observed in an off-hand way that the Court has the authority granted by that Rule: (Pl. Br. at 17.)

1998). In any event, Plaintiffs responded to the summary judgment motion and supplied a series of detailed affidavits. That the response is insufficient does not justify permitting more discovery.

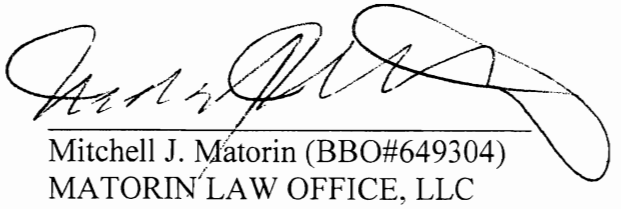
CONCLUSION

For the foregoing reasons, as well as those set forth in his opening brief, Dr. Wein respectfully requests that the Court enter summary judgment in his favor on Count I of the Complaint (Declaratory Judgment) and on Count I of the Counterclaims (Breach of Contract).

Respectfully submitted,

ARTHUR P. WEIN, TRUSTEE,
WHALON STREET TRUST

By his attorney,



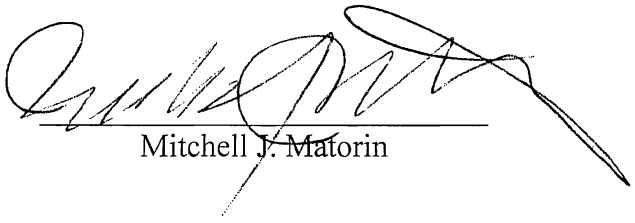
Mitchell J. Matorin (BBO#649304)
MATORIN LAW OFFICE, LLC
200 Highland Avenue
Suite 306
Needham, MA 02494
(781) 453-0100

Dated: November 13, 2008

CERTIFICATE OF SERVICE

I certify that, on November 13, 2008, I served the foregoing document upon counsel for Plaintiffs via U.S. Mail, postage pre-paid, with a copy via email to:

Nelson P. Lovins
Lovins & Metcalf
Ten Cedar Street
Woburn, MA 01801
nlovins@lovinslaw.com



Mitchell J. Matorin

Mitchell J. Matorin

From: Lovins & Metcalf [nlovins@lovinslaw.com]
Sent: Friday, September 05, 2008 10:37 AM
To: mjm@matorinlaw.com
Subject: Tues Depo

OutlookEntryID: 0000000090DD94C4E036E14D9DA28EE3010300AF64534600
TimeMattersID: ME3399B2A9F42435
TM Contact: Lovins Nelson
TM Matter No: 1038-001
TM Matter Reference: Watkin Dental Associates v. Wein

I am unable to proceed with Dr. Wein's deposition on Tues the 9th. I will contact you shortly about rescheduling.

Nelson Lovins

Mitchell J. Matorin

From: Mitchell J. Matorin [mmatorin@matorinlaw.com]
Sent: Saturday, September 06, 2008 1:59 AM
To: 'Lovins & Metcalf'
Subject: RE: your SJ package

OutlookEntryID: 0000000090DD94C4E036E14D9DA28EE3010300AF447A4600
TimeMattersID: MDF079B2A9417480
TM Contact: Wein Arthur
TM Contact No: 1038
TM Matter No: 1038-001
TM Matter Reference: Watkin Dental Associates v. Wein

Nelson – I'm not sure what's curious about it. I finalized the package very late Thursday night (more accurately, very early Friday morning) and scheduled Breakaway to pick it up at 9 a.m. on Friday, with an electronic version scheduled to be automatically emailed to you at 2pm. I left for the Naval Air Station in Brunswick, ME at 8:30 this morning to take my kids to see the Blue Angels (highly recommended), and am just getting your emails now at 1:30 a.m. on Saturday. As for the deposition, the intent was to work up a summary judgment motion and ask you to consent to postpone it, as I did. Although I'm not aware of any requirement that an SJ motion be served a certain number of days before a deposition, rest assured that it was not my preference that completing it would be delayed by my father's recent lymphoma diagnosis and subsequent and continuing hospitalization and ICU care.

One could similarly accuse you of having waited until the last minute to advise me of your cancellation of the deposition, but that is not my style. I believe in treating opposing counsel with professionalism and courtesy and the presumption of good faith. In that spirit, I consent to your request for a two week extension of the deadline to respond to the SJ motion and I would have done so without any "reminder" that you granted me an extension to answer the complaint – in fact, I would have done so even in the absence of that extension (and even had you refused my request, if only because the court would have granted it and looked askance at my refusal to assent).

In response to your statement that you plan to renotice the deposition, that is your right, although the deposition will not occur without a court order because I will move for a protective order. Since the September 9 deposition is off, I will await a new deposition notice before I place the required Rule 9C call to you prior to serving the protective order motion.

Mitch

MATORIN LAW OFFICE, LLC
Litigation and Appeals

Mitchell J. Matorin
Matorin Law Office, LLC
200 Highland Avenue
Suite 306
Needham, MA 02494
P: (781) 453-0100
F: (888) 628-6746
mjm@matorinlaw.com

From: Lovins & Metcalf [mailto:nlovins@lovinslaw.com]
Sent: Friday, September 05, 2008 11:58 AM
To: mjm@matorinlaw.com
Subject: your SJ package

Dear Mitchell,

I just received by hand your summary judgment package with your cover letter stating you you were refsuing to produce Dr. Wein for deposition. Curious that your letter should arrive an hour after my e-mail. In any event. In any event, it is clear that you and your client never intended to appear and waited for the last moment to advsie me of such. I do intend to renotice Dr. Wein.

Nelson

COMMONWEALTH OF MASSACHUSETTS

MIDDLEXSEX.SS SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, D.D.S., P.C.
Plaintiff,
AND
ARNOLD WATKIN
Plaintiff,

v.

ARTHUR P. WEIN, TRUSTEE WHALON STREET TRUST
Defendant

NOTICE OF TAKING DEPOSITION OF KEEPER OF RECORDS OF MCKENZIE ENGINEERING COMPANY, INC.

TO: Mitchell J. Matorin
200 Highland Avenue
Suite 306
Needham MA 02494

PLEASE TAKE NOTICE that at **10:00 a.m.** on **AUGUST 14, 2008**, at the office of **Lovins & Metcalf, 10 Cedar Street, Woburn, MA 01810**, the Plaintiffs, by their attorney, will take the deposition upon oral examination of the Keeper of the Records of the McKenzie Engineering Company, Inc., pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a notary public, in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oath.

The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

Plaintiffs,
By their attorney.

Nelson P. Lovins, BBO #306020
Lovins & Metcalf
Ten Cedar Street
Woburn, MA 01801
(781) 938-8800

Dated: August 1, 2008

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, D.D.S., P.C.
Plaintiff,
AND
ARNOLD WATKIN
Plaintiff,

v.

ARTHUR P. WEIN, TRUSTEE WHALON STREET TRUST
Defendant

DEPOSITION SUBPOENA AD TESTIFICANDUM AND DUCES TECUM

TO: Keeper of the Records
McKenzie Engineering Company, Inc.
305 Whitney Street
Leominster, MA

GREETINGS:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 45 of the Massachusetts Rules of Civil Procedure to appear and testify on behalf of Watkin Dental Association, DDS, P.C. and Arnold Watkin, plaintiffs in the above-entitled action, before a Notary Public of the Commonwealth, at the office of **Lovins & Metcalf, Ten Cedar Street, Woburn, MA 01801,** on **August 14, 2008, at 10:00 o'clock a.m.** and to testify to your knowledge, at the taking of the deposition in the above-entitled action.

And you are further required to bring with you to said deposition the documents identified on Schedule A to this subpoena. Documents may be produced over the attached Affidavit in lieu of your appearance.

Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Contact:
Nelson P. Lovins
Lovins & Metcalf
Ten Cedar Street
Woburn MA 01801
(781)938-8800

Dated:

_____
Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLEXSEX.SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, DDS.,P.C.

PLAINTIFF,

AND

ARNOLD WATKIN

PLAINTIFF,

vs.

ARTHUR P. WEIN, TRUSTEE
WHALON STREET TRUST

DEFENDANT

NOTICE OF TAKING DEPOSITION OF KEEPER OF RECORDS OF FITCHBURG BUILDING DEPARTMENT

TO: Mitchell J. Matorin
200 Highland Avenue
Suite 306
Needham MA 02494

PLEASE TAKE NOTICE that at **10:00 a.m. on August 14, 2008** at the offices of **Lovins & Metcalf, 10 Cedar Street, Woburn, MA 01810**, the Plaintiffs, by their attorney, will take the deposition upon oral examination of the Keeper of the Records of the Fitchburg Building Department, pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a notary public, in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oath.

The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

Plaintiffs,
By their attorney,

Nelson P. Lovins, BBO #306020
Lovins & Metcalf
10 Cedar Street
Woburn, MA 01801
(781) 938-8800

Dated: August 1, 2008

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, D.D.S., P.C.
Plaintiff,
AND
ARNOLD WATKIN
Plaintiff,

v.

ARTHUR P. WEIN, TRUSTEE WHALON STREET TRUST
Defendant

DEPOSITION SUBPOENA AD TESTIFICANDUM AND DUCES TECUM

TO: Keeper of the Records
Fitchburg Building Department
Fitchburg City Hall
Fitchburg, MA

GREETINGS:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 45 of the Massachusetts Rules of Civil Procedure to appear and testify on behalf of Watkin Dental Association, DDS, P.C. and Arnold Watkin, plaintiffs in the above-entitled action, before a Notary Public of the Commonwealth, at the office of **Lovins & Metcalf, Ten Cedar Street, Woburn, MA 01801,** on **August 14, 2008, at 10:00 o'clock a.m.** and to testify to your knowledge, at the taking of the deposition in the above-entitled action.

And you are further required to bring with you to said deposition the documents identified on Schedule A to this subpoena. Documents may be produced over the attached Affidavit in lieu of your appearance.

Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Contact:
Nelson P. Lovins
Lovins & Metcalf
Ten Cedar Street
Woburn MA 01801
(781)938-8800

Dated:

_____
Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLEXSEX,SS SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, DDS.,P.C.)
)
PLAINTIFF,)
AND)
ARNOLD WATKIN)
PLAINTIFF,)
)
vs.)
)
ARTHUR P. WEIN, TRUSTEE)
WHALON STREET TRUST)
)
DEFENDANT)
)

NOTICE OF TAKING DEPOSITION OF KEEPER OF RECORDS OF CLEGHORN PLUMBING AND HEATING, INC.

TO: Mitchell J. Matorin
200 Highland Avenue
Suite 306
Needham MA 02494

PLEASE TAKE NOTICE that at **10:00 a.m. on August 14, 2008** at the offices of **Lovins & Metcalf, 10 Cedar Street, Woburn, MA 01810**, the Plaintiffs, by their attorney, will take the deposition upon oral examination of the Keeper of the Records of the Cleghorn Plumbing and Heating, Inc., pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a notary public, in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oath.

The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

Plaintiffs,
By their attorney,

Nelson P. Lovins, BBO#306020
Lovins & Metcalf
10 Cedar Street
Woburn, MA 01801
(781) 938-8800

Dated: August 1, 2008

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, D.D.S., P.C.
Plaintiff,
AND
ARNOLD WATKIN
Plaintiff,

v.

ARTHUR P. WEIN, TRUSTEE WHALON STREET TRUST
Defendant

DEPOSITION SUBPOENA AD TESTIFICANDUM AND DUCES TECUM

TO: Keeper of the Records
Cleghorn Plumbing and Heating, Inc.
142 Clarendon Street
Fitchburg, MA

GREETINGS:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 45 of the Massachusetts Rules of Civil Procedure to appear and testify on behalf of Watkin Dental Association, DDS, P.C. and Arnold Watkin, plaintiffs in the above-entitled action, before a Notary Public of the Commonwealth, at the office of **Lovins & Metcalf, Ten Cedar Street, Woburn, MA 01801,** on **August 14, 2008, at 10:00 o'clock a.m.** and to testify to your knowledge, at the taking of the deposition in the above-entitled action.

And you are further required to bring with you to said deposition the documents identified on Schedule A to this subpoena. Documents may be produced over the attached Affidavit in lieu of your appearance.

Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Contact:
Nelson P. Lovins
Lovins & Metcalf
Ten Cedar Street
Woburn MA 01801
(781)938-8800

Dated:

_____
Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLEXSEX,SS SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, DDS.,P.C.)
)
PLAINTIFF,)
AND)
ARNOLD WATKIN)
PLAINTIFF,)
)
vs.)
)
ARTHUR P. WEIN, TRUSTEE)
WHALON STREET TRUST)
)
DEFENDANT)
)

NOTICE OF TAKING DEPOSITION OF KEEPER OF RECORDS OF WACHUSETTS CONDOMINIUM ASSOCIATION

TO: Mitchell J. Matorin
200 Highland Avenue
Suite 306
Needham MA 02494

PLEASE TAKE NOTICE that at **10:00 a.m.** on **July 24, 2008**, at the office of **Lovins & Metcalf, 10 Cedar Street, Woburn, MA 01810**, the Plaintiffs, by their attorney, will take the deposition upon oral examination of the Keeper of the Records of the Wachusetts Condominium Association, pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a notary public, in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oath.

The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

Plaintiffs,
By their attorney,

Nelson P. Lovins, BBO #306020
Lovins & Metcalf
10 Cedar Street
Woburn, MA 01801
(781) 938-8800

Dated: July 1, 2008

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, D.D.S., P.C. Plaintiff, AND ARNOLD WATKIN Plaintiff, v. ARTHUR P. WEIN, TRUSTEE WHALON STREET TRUST Defendant	**DEPOSITION SUBPOENA AD TESTIFICANDUM AND DUCES TECUM**

TO: Keeper of the Records
Wachusetts Condominium Association
C/O Dr. Joseph Langford
104 Whalon Street
Fitchburg MA 01420

GREETINGS:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 45 of the Massachusetts Rules of Civil Procedure to appear and testify on behalf of Watkin Dental Association, DDS, P.C. and Arnold Watkin, plaintiffs in the above-entitled action, before a Notary Public of the Commonwealth, at the office of **Lovins & Metcalf, Ten Cedar Street, Woburn, MA 01801,** on **July 24, 2008, at 10:00 o'clock a.m.** and to testify to your knowledge, at the taking of the deposition in the above-entitled action.

And you are further required to bring with you to said deposition the documents identified on Schedule A to this subpoena. Documents may be produced over the attached Affidavit in lieu of your appearance.

Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Contact:
Nelson P. Lovins
Lovins & Metcalf
Ten Cedar Street
Woburn MA 01801
(781)938-8800

Dated:

_____
Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLEXSEX.SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, DDS.,P.C.
)
PLAINTIFF,
)
AND
)
ARNOLD WATKIN
)
PLAINTIFF,
)
)
vs.
)
)
ARTHUR P. WEIN, TRUSTEE
)
WHALON STREET TRUST
)
)
DEFENDANT
)
)

NOTICE OF TAKING DEPOSITION OF KEEPER OF RECORDS OF WACHUSETT DEVELOPMENT AND CONSTRUCTION, INC.

TO: Mitchell J. Matorin
200 Highland Avenue
Suite 306
Needham MA 02494

PLEASE TAKE NOTICE that at **10:00 a.m. on August 14, 2008** at the offices of **Lovins & Metcalf, 10 Cedar Street, Woburn, MA 01810**, the Plaintiffs, by their attorney, will take the deposition upon oral examination of the Keeper of the Records of the Wachusett Development and Construction, Inc., pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a notary public, in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oath.

The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

Plaintiffs,
By their attorney,

Nelson P. Lovins, BBO #306020
Lovins & Metcalf
10 Cedar Street
Woburn, MA 01801
(781) 938-8800

Dated: August 1, 2008

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 08-2217

WATKIN DENTAL ASSOCIATES, D.D.S., P.C.
Plaintiff,
AND
ARNOLD WATKIN
Plaintiff,

v.

ARTHUR P. WEIN, TRUSTEE WHALON STREET TRUST
Defendant

DEPOSITION SUBPOENA AD TESTIFICANDUM AND DUCES TECUM

TO: Keeper of the Records
Wachusett Development and Construction, Inc.
162 Hamilton Street
Leominster, MA

GREETINGS:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 45 of the Massachusetts Rules of Civil Procedure to appear and testify on behalf of Watkin Dental Association, DDS, P.C. and Arnold Watkin, plaintiffs in the above-entitled action, before a Notary Public of the Commonwealth, at the office of **Lovins & Metcalf, Ten Cedar Street, Woburn, MA 01801,** on **August 14, 2008, at 10:00 o'clock a.m.** and to testify to your knowledge, at the taking of the deposition in the above-entitled action.

And you are further required to bring with you to said deposition the documents identified on Schedule A to this subpoena. Documents may be produced over the attached Affidavit in lieu of your appearance.

Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Contact:
Nelson P. Lovins
Lovins & Metcalf
Ten Cedar Street
Woburn MA 01801
(781)938-8800

Dated:

_____
Notary Public
My commission expires:

LOVINS & METCALF
Attorneys At Law
Chestnut Green · Ten Cedar Street · Woburn · Massachusetts · 01801 · and Boston

(781) 938-8800
(888) 656-8467
FAX (781) 938-4753
E-MAIL nlovins@lovinslaw.com
WEB SITE www.lovinslaw.com

August 13, 2008

BY FAX AND REGULAR MAIL

Mitchell J. Matorin, Esquire
200 Highland Avenue
Suite 306
Needham MA 02494

Re: *Watkin v. Wein*

Dear Mr. Matorin:

There are no depositions scheduled for tomorrow, August 14, 2008. Next week, after I return from vacation, I will arrange to get you copies of whatever documents I have received by way of Subpoena.

Very truly yours,

Nelson P. Lovins

NPL/tal