

# Exhibit H

## Excerpts of Deposition of Stuart Venner

Depo. Tr. -- Venner, Stuart 2006-12-15.txt

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION  
4 - - - - - x  
5 216 JAMAICA AVENUE, LLC,  
6 Plaintiff,  
7 - against -  
8 S & R PLAYHOUSE REALTY CO.,  
9 Defendant.  
10 - - - - - x

December 15, 2006  
9:30 a.m.

Volume II

CONTINUED DEPOSITION of STUART VENNER, taken by the attorney for the Defendant, pursuant to Notice, held at 335 Madison Avenue, New York, New York, before Michael Catania, a Notary Public of the State of New York.

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0131

1 A P P E A R A N C E S  
2  
3 COOPER & KIRK, PLLC  
4 555 Eleventh Street NW  
5 Suite 750  
6 WASHINGTON, DC 20004  
7 Attorneys for Plaintiff  
8  
9 BY: DAVID M. LEHN, ESQ.

11 THOMPSON HINE, LLP  
12 3900 Key Center  
13 127 Public Square  
14 Cleveland, Ohio 44114-1291  
15 Attorneys for Defendant

18 BY: GARY L. WALTERS, ESQ. (0071572)

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1 S. Venner  
2 S T U A R T V E N N E R, residing at 237  
3 Carlton Avenue, Brooklyn, New York,  
4 11215, called as a witness, having been  
5 previously sworn, was examined and  
6 testified as follows:

7 CONTINUED EXAMINATION  
8 BY GARY WALTERS, ESQ.:

9 Q. Good morning, Mr. Venner.  
10 A. Good morning.

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24 conditions for the windfalls, you are talking  
25 about potential for windfalls; are you not?

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1 S. Venner

2 A. I don't know the difference. I do  
3 not see the difference.

4 Q. When Congress passed the law,  
5 regardless of the actual effects of the law,  
6 whether parties to the contracts or leases which  
7 are affected any change of the law are leasing  
8 authorities, and if they are losing their shares  
9 makes no difference.

10 A. I think that was the intention.

11 Q. So that you can lose your shirt and  
12 you can receive a windfall?

13 A. Yes.

14 Q. That makes no sense to me whatsoever.

15 MR. LEHN: Objection.

16 MR. WALTERS: Let's take a short  
17 break.

18 (Recess taken at this time.)

19 Q. We have just returned from the break.

20 Was the purpose of the break to  
21 discuss this morning's testimony with counsel?

22 MR. LEHN: I am instructing him not  
23 to answer that. That is privileged  
24 communication.

25 Q. Did you have a discussion with your

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1 S. Venner

2 counsel during the break?

3 A. I spoke to him, yes.

4 Q. Did you do anything else during the  
5 break?

6 A. Took a walk.

7 Q. Did you take a walk with counsel?

8 A. Yes.

9 Q. Did you do anything else?

10 A. No.

11 Q. Do you want to change any of your  
12 testimony based upon your break?

13 THE WITNESS: Can you go back and  
14 read the last question and answer? And I can  
15 continue from there.

16 A. It may not make sense to you, but  
17 basically if they are losing \$10 now or whatever  
18 they are losing, they would be losing  
19 significantly more if they were paying the  
20 proper rent.

21 So that the tenant of the building is  
22 actually receiving a windfall because they are  
23 not paying what they are supposed to be paying.

24 Q. In other words, to you a windfall  
25 would be, and they should have been losing a lot

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1 S. Venner

2 of money instead of a little money; is that  
3 correct?

4 A. I -- I think they should just be  
5 performing the terms of the lease just like  
6 everyone else.

7 Q. Is S & R Realty receiving a windfall  
8 on this property?

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9 A. I think I have answered that.  
10 Q. Can you answer it again?  
11 A. Yes.  
12 Q. Let me ask you this: I am going to  
13 put back in front of you Defendant Exhibit B,  
14 which is the 1031 Exchange Opportunity sheet you  
15 received from Kimco.  
16 Remind me what the cap rate is listed  
17 at the bottom of the page.  
18 A. 3.911.  
19 Q. Give or take a bit, is that cap rate  
20 more or less right?  
21 A. Right in --  
22 Q. Is it correct?  
23 A. Mathematically correct?  
24 Q. Yes.  
25 A. We are not talking about is this the

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1 S. Venner  
2 correct rent. We are saying is this the correct  
3 mathematical computation.  
4 Q. That's a great question. I will back  
5 up a bit.  
6 The cap rate would be based on one,  
7 the purchase price. And we were not able to  
8 agree, and that's fine. It is either 895 or  
9 \$845,000?  
10 A. Right.  
11 Q. And upon annual rent of \$35,000 per  
12 year?  
13 A. Yes.  
14 Q. Based upon those givens, is that the  
15 correct cap rate?  
16 A. Yes, give or take.  
17 Q. Okay. I think we agreed that cap  
18 rate would increase considerably if the rent  
19 were a million dollars?  
20 A. Yes.  
21 Q. The value of the building, though, is  
22 based upon a rent of \$35,000; is that correct?  
23 A. The value of the building under  
24 what --  
25 Q. The value of 895 or \$845,000 is based

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1 S. Venner  
2 on the annual rent under lease of \$35,000 a  
3 year?  
4 A. We are talking within the framework  
5 of this piece of paper?  
6 Q. Yes.  
7 A. Yes.  
8 Q. I am talking about this sheet of  
9 paper. If the rent is a million dollars a year,  
10 the value of the building would go up  
11 considerably; is that correct?  
12 A. Yes.  
13 Q. And the cap rate would be much  
14 higher?  
15 A. Yes.  
16 Q. If you were to receive -- Jamaica  
17 were to receive a million dollars in rent per  
18 year, you would be receiving a windfall; is that  
19 correct?