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JUDGMENT,
DISTRICT OF COLUMBIA
COURT OF APPEALS
(FEBRUARY 12, 2026)

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 24-CV-1163

DTLD, LLC et al.,

Appellants,

v.

POWER STATION LIMITED PARTNERSHIP, et al.,

Appellees.

No. 24-CV-1173

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION,

Appellant,

v.

DTLD, LLC, et al.,

Appellees.

Appeals from the
Superior Court of the District of Columbia
Civil Division, 2023-CAB-006784

Before: EASTERLY and SHANKER, Associate Judges, and THOMPSON, Senior Judge.

JUDGMENT

These cases came to be heard on the record, *see* D.C. App. R. 10(a), the briefs filed, and the oral arguments presented by counsel. On consideration whereof, and for the reasons set forth in the opinion filed this date, it is now hereby

ORDERED and ADJUDGED that the judgments of the Superior Court are affirmed.

FOR THE COURT:

/s/ Julio A. Castillo
Clerk of the Court

Dated: February 12, 2026.

Opinion by Senior Judge Thompson.

OPINION, D.C. COURT OF APPEALS (FEBRUARY 12, 2026)

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 24-CV-1163

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Appellants,

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No. 24-CV-1173

JPMORGAN CHASE BANK, N.A.,

Appellant,

v.

DTLD, LLC, et al.,

Appellees.

Appeals from the Superior Court
of the District of Columbia
(2023-CAB-006784)

(Hon. Carl E. Ross, Motions Judge)

Before: EASTERLY and SHANKER, Associate Judges, and THOMPSON, Senior Judge.

THOMPSON, *Senior Judge*: The underlying issue in these consolidated appeals is the enforceability of a restrictive covenant that limits the use of an alleyway parcel of real property (the Property) formerly owned by appellee Power Station Limited Partnership (Power Station) and now owned by appellant DTLD, LLC (DTLD). When Power Station sold the Property in 2008, it included in the (recorded) deed a perpetual restrictive covenant that prohibited the Property from being used as a nightclub. Nearly fifteen years later, in 2023, appellant DTLD purchased the Property at an auction and subsequently leased it to appellant Iraklion, LLC (Iraklion), which has obtained a provisional alcoholic beverage license to operate a nightclub at the Property. In November 2023, Power Station and neighboring property owners filed a complaint for injunctive and declaratory relief to enforce the covenant and, after discovery, filed a motion for summary judgment. This appeal followed after the trial court entered summary judgment in favor of the plaintiffs and denied defendants' cross-motion. Separately, JPMorgan Chase Bank, NA (JPMorgan), filed a motion to intervene in the litigation, which the trial court denied as moot. JPMorgan has appealed the denial of its intervention motion. For the foregoing reasons, we affirm the grant of summary judgment and the order dismissing the intervention motion as moot.

I

The Property is located in a mixed-use zone within the District of Columbia's Central Business District, where there is a mixture of office, retail, residential, entertainment, and other establishments, including other nightclubs. The Property address is 1412 I Street, N.W., but the Property is "located entirely within a network of public alleyways and has no frontage on any public street." Vehicular access to the property is limited to a twenty-foot-wide alley running between 14th and 15th Streets, a ten-foot-wide alley running perpendicular to the previous alley, and a private driveway owned by JPMorgan that directly abuts the Property to the west. Patrons of the Property must enter and exit through the alleyways.

Most recently, the Property has been used as an office building. However, prior to 2008, a nightclub known as the Zei Club operated at the Property. During the period of its operation, there were fights and other violence in the alley outside the nightclub, including a 1998 near-fatal beating of a patron who had exited the Zei Club, which culminated in litigation that was resolved in 2009.[1]

After the Zei Club closed, Power Station, which owned the Property at the time, was particularly concerned about the continued operation of a nightclub at the secluded, narrow-alleyway location, given the

[1] *See generally Novak v. Capital Mgmt. & Dev. Corp.*, 570 F.3d 305 (D.C. Cir. 2009); *Novak v. Capital Mgmt. & Dev. Corp.*, 452 F.3d 902, 904 (D.C. Cir. 2006).

risks of loitering, violence, and crime and the challenges the location and patron lines present for access by emergency, delivery, and service vehicles. Power Station asserts that it rejected potential lessees that wanted to open another nightclub in the Property, believing that such a use would disrupt neighboring properties and cause the value of other surrounding properties it owns to decrease in value. Power Station ultimately agreed to sell the Property when the buyer agreed to a restriction that would preclude such a use. On or about January 15, 2008, Power Station transferred ownership of the Property by a Special Warranty Deed (the "2008 Deed") containing a restrictive covenant that by its terms was "expressly made for the benefit of [g]rantor, and any successor in interest to the owners of real properties located in Square 220," was expressly made "binding upon the [g]rantee and any successor in interest thereto," and states in relevant part: "In no event shall there be conducted at the Property any nightclub or discotheque nor any other establishment which distributes or sells alcoholic beverages after midnight."

The Property was sold again in 2015 to a subsequent buyer, which used it as an office space. In 2023, appellant DTLD, the current owner, purchased the Property at an auction. Bidders at the auction were informed about the restrictive covenant, and DTLD admits it knew about it. After purchasing the Property, DTLD entered into an agreement with co-appellant Iraklion to operate a nightclub on the Property, and on July 28, 2023, the two entities submitted an application to the Alcoholic Beverage and Cannabis Board (the ABC Board or the Board) to transfer to the Property a Retailer's Class CN license, which permits nude dancing. According to appellants, the proposed nightclub "is likely to feature" nude dancing and "Vegas-style" shows and would have a total occupancy of 1,200, seating for 675 patrons, and the following hours of operation: 8:00 AM to 3:00 AM on Sunday through Thursday; and 8:00 AM to 4:00 AM on Friday and Saturday.

The CN-license transfer application was the subject of much controversy. The ABC Board's inquiry with respect to the license-transfer application was whether the transfer would have "an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment." During a protest hearing that spanned two days, opponents of the license transfer expressed fears about the disruptive nature of a nightclub, the undesirable noise levels, the potential for conflicts between vehicles and pedestrians, the risk of crime or violence, and other adverse effects on property value and the general neighborhood. JPMorgan, which owns property in Square 220, participated in the hearing, explaining that the nightclub could adversely disrupt its own (next-door to 1412 I Street) operations given its proximity to the Property and the possibility of nightclub patrons using JPMorgan's private driveway. The ABC Board declined to consider evidence or arguments relating to the restrictive covenant, noting "whether or not there is or is not a covenant, that is not our issue to rule on at this juncture, so it is not relevant to the ABC Board to elicit testimony on that specific issue." On June 5, 2024, the Board approved the transfer of a CN license to the Property, "credit[ing] Iraklion's plans to promote public safety" and "to discourage violent incidents in and around the establishment" and finding that a nightclub is "eminently appropriate" for the location.[2]

Meanwhile, on November 2, 2023, while the ABC license-transfer application was pending (and prior to the protest hearing), Power Station and neighboring property owners had filed their suit in the Superior Court, seeking to enjoin DTLD and Iraklion from opening a nightclub on the Property based on the restrictive covenant. DTLD and Iraklion counterclaimed to invalidate the restrictive covenant. On August 12, 2024, the parties filed cross-motions for summary judgment. On September 23, 2024, nearly eleven months after Power Station and neighboring property owners filed their initial complaint, after the close of discovery, and over a month after the motions for summary judgment were filed, JPMorgan moved to intervene in the lawsuit.

On November 22, 2024, the Superior Court granted Power Station's motion for summary judgment, denied DTLD's motion for summary judgment, dismissed DTLD's counterclaim with prejudice, and denied as moot JPMorgan's motion to intervene. In concluding that the restrictive covenant is valid and enforceable, the Superior Court reasoned that its language is - unambiguous; that appellants had both actual and constructive notice of the restriction; that the covenant leaves defendants with free use of the Property except for the nightclub restriction; that there has been no radical change in the neighborhood of the Property that defeats the purpose of the covenant; that the

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[2] The ABC Board considered the application under D.C. Code §§ 25-104 and 25-313(b) and 23 D.C.M.R. §§ 1607.2 and 1607.7(b).

alleyway location that necessitated the covenant is unchanged; that appellants' proposed security measures could be scaled back at will; and that enforcement of the covenant would not preclude a possibility in the future that the covenant could become unenforceable upon a change in conditions.

In challenging the Superior Court's grant of summary judgment in favor of appellees, appellants argue that the restrictive covenant is unreasonable and unenforceable because it is perpetual in duration; because, assertedly, it can be justified only "by reference to economic and other conditions that no longer pertain to the location of the covenanted property or the District as a whole"; and because, appellants contend, it is unnecessary for public safety. Appellants cite in particular what they contend is a "substantial improvement in crime rates" and "substantially increased foot traffic" in the downtown area where the Property is located since the restrictive covenant was imposed; a "challenging" commercial real estate market (including a high number of commercial office vacancies) following the COVID pandemic and a resultant "devastating" decline in tax revenue to the District; their own "robust plans to control neighborhood impacts" and to minimize traffic, fire safety, and noise issues; and the creation of jobs and resultant increase in District tax revenues that they claim the proposed nightclub would occasion. At the very least, appellants argue, a fact-sensitive inquiry into those matters was warranted, such that summary judgment for appellees was inappropriate.

II

This court reviews de novo the grant of a motion for summary judgment, applying the same standard the trial court was required to apply. *U.S. Bank Tr., N.A. v. Omid Land Grp., LLC.*, 279 A.3d 374, 377 (D.C. 2022). Like the trial court, we may consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." *Wallace v. Eckert, Seamans, Cherin & Mellott, LLC*, 57 A.3d 943, 949 (D.C. 2012) (citation modified). We will affirm a grant of summary judgment only if "the record shows there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." *Welsh v. McNeil*, 162 A.3d 135, 143 (D.C. 2017).

III

A

We begin our analysis by addressing appellants' somewhat overstated assertion that "courts in the District have long disfavored . . . restrictions on the free use of property." This court has observed that "covenants running with the land generally are valid and enforceable." *Capitol Hill Restoration Soc'y v. Zoning Comm'n*, 380 A.2d 174, 184 (D.C. 1977), *overruled in part on other grounds*, 392 A.2d 1027, 1036 (D.C. 1978)). We have also recognized that restrictive covenants can give rise to legitimate expectations about the use of a property by owners of neighboring properties. *See Watergate E. Comm. Against Hotel Conversion to Co-Op Apartments v. D.C. Zoning Comm'n*, 953 A.2d 1036, 1048 (D.C. 2008). And while we have endorsed "the well-recognized *rule of construction* that restrictions on land use should be construed in favor of the free use of land and against the party seeking enforcement," *Found. for the Pres. of Historic Georgetown v. Arnold*, 651 A.2d 794, 797

(D.C. 1994) (emphasis added), "if [a] deed's language is plain and unambiguous, there is no room for construction." *Wilkinson v. Bd. of Cnty. Comm'rs of St. Mary's Cnty.*, 279 A.3d 1052, 1068 (Md. Ct. Spec. App. 2022); *cf. FOP/Dep't of Corr. Labor Comm. v. D.C. Pub. Emp. Rels. Bd.*, 973 A.2d 174, 178 (D.C. 2009) ("No interpretation . . . [was] necessary to discern that, by its terms and 'on its face,' the [statute] requires an offset of interim earnings."). Our case law[3] has been clear that if a deed is unambiguous, "the court's role is limited to applying the meaning of the words," *DLY-Adams Place, LLC v. Waste Mgmt. of Md., Inc.*, 2 A.3d 163, 166 (D.C. 2010) (quoting *Arnold*, 651 A.2d at 796), unless a restrictive covenant set out therein is unreasonable or is against public policy. *See Castleman v. Avignone*, 12 F.2d 326, 329 (D.C. Cir. 1926) ("Restrictions upon the free use and enjoyment of real estate are not favored by the law. But when restrictions are made, which are reasonable and not against public policy, they will ordinarily be enforced . . . . And this is the rule, although the restrictions may be permanent."); *see also McNeil v. Gary*, 40 App. D.C. 397, 400, 402 (D.C. Cir. 1913) (reasoning that unless the meaning "gleaned from the language of the instrument" governs, covenants "become a mere jumble of words, and their obvious intent is frustrated").

In the instant case, the Superior Court found, and none of the parties disputes, that the restrictive covenant's plain language "unambiguously" prohibits the type of establishment appellants plan to operate

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[3] *See M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971) ("[D]ecisions of the United States Court of Appeals rendered prior to February 1, 1971, . . . constitute the case law of the District of Columbia.").

on the property. We agree with that assessment. We also agree with appellees that the restrictive covenant here is not violative of any identified public policy. Our focus therefore is on whether, as appellants argue, the restrictive covenant at issue here is unreasonable and whether, as appellants contend, its enforcement would "implicate weighty issues of equity."

Our binding precedent establishes that "[e]quity will not, as a rule, enforce a restriction, where . . . the property, and that in the vicinage, has so changed in its character and environment and in the uses to which it may be put as to make it unfit or unprofitable for use if the restriction be enforced, or where [enforcement] would be a great hardship on the owner and of no benefit to the complainant[.]" *Jameson v. Brown*, 109 F.2d 830, 831 (D.C. Cir. 1939). *Jameson* involved the enforcement of a covenant against the sale of liquor in the Columbia Heights neighborhood, an area that was "largely open country" when the covenant was incorporated in deeds in 1899 but, by 1939, had become partly or largely commercial. *Id.* The *Jameson* court noted that there was "no contention that existing conditions make any land in the tract unfit or unprofitable for use if the restriction is enforced." *Id.* The court credited an expert's testimony that "no higher rents c[ould] be obtained from liquor stores than from other stores" and observed that the effect of the restrictive covenant on land value was irrelevant in any event. *Id.* at 832. The court also noted that owners of neighboring properties had entered into land transactions in reliance on the restrictive covenant and observed that the parties seeking to sell liquor were aware of the covenant and had anticipated efforts to enforce it before incurring expenses to set up business at the location. *Id.* Given those facts, the *Jameson* court concluded that "the trial court was clearly right in holding the covenant enforceable." *Id.* at 832.[4]

In *Castleman*, the court considered whether to enforce a covenant that restricted the erection on specified lots of any building whose front line would be closer than 7 1/2 feet to the front line of the lot. 12 F.2d at 327. The court explained that the restrictive agreement would be binding "unless the . . . reasons urged by appellants lead us, equitably, to a different conclusion." *Id.* at 330. In determining whether enforcement of the building-line restriction would be inequitable, the court considered a claim that "the character and condition of the lands" had changed in that businesses had "encroached to some extent" upon the once-exclusively-residential area. *Id.* at 331. The court reasoned that a "change in the use of the buildings on the street since the execution of the indenture d[id] not affect the . . . right" to enforce the restriction because "[t]he importance of the maintenance of a building line may be as great when buildings are used for purposes of business as when they are occupied only as dwellings." *Id.* (internal quotation marks omitted).

Jameson, *Castleman*, and other longstanding precedents in our jurisdiction[5] applied variants of the

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[4] *See also, e.g.*, *Kenealy v. Chevy Chase Land Co.*, 72 F.2d 378, 380 (D.C. Cir. 1934) (reasoning that equity would not remove a restriction "at the expense of all of those who bought their homes in reliance upon the general plan or scheme" that the restriction facilitated).

[5] *See, e.g.*, *Meckler v. Baugh*, 53 A.2d 695, 697 (D.C. 1947) ("[W]hen the character of a neighborhood has changed so greatly that enforcement of the covenant would no longer serve its original purpose, the law regards the covenant as having become

so-called "radical change doctrine," which the Superior Court found has been adopted by forty-three jurisdictions.[6] Exercising our de novo review and applying only the factors identified in those precedents to the undisputed facts here, we could readily conclude that the Superior Court did not err in granting summary judgment to appellees and enforcing the restrictive covenant. The restrictive covenant's preclusion of use of the Property as a nightclub is unambiguous; appellants were on notice of the restriction when they purchased the Property and when they pursued a license that would permit the proposed nightclub to operate there; there has been no change in the secluded-alleyway setting of the Property that fostered the public-safety and vehicle-access issues that led Power Station, as the transferor of the Property and the owner of surrounding properties, to include the restrict-

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ineffective.") (a case that we cite only for this narrow point but reject for its statements treating restrictive race covenants as "valid").

[6] That doctrine, which establishes an equitable test for determining whether to invalidate a restrictive covenant, has been summarized in secondary authority as follows: "restrictive covenants may be rendered invalid or unenforceable where there has been such a radical change in the character of the neighborhood within and surrounding the restricted area that the original purpose of the covenant has been defeated, it is no longer of substantial value to the benefited land, and its enforcement would be unduly oppressive to the burdened land." 76 A.L.R.5th 337 (2000); *see also* 3 Tiffany Real Prop. § 875 (3d ed.) (explaining that the majority rule is that a change in the character and environment of the neighborhood typically will not provide a defense against enforcement of a restrictive covenant "if the restriction continues to be of value to the property sought to be benefited or if the change in the character of the neighborhood is not so radical and permanent as to make the restriction plainly unjust").

ive covenant in the deed of conveyance (and thus it cannot be said that the covenant no longer serves its original purpose or has outlived its usefulness); no evidence was presented that any changes in the surrounding neighborhood have otherwise diminished the value or utility of the restriction; the covenant restricts only one use of the Property; and there is no claim that other uses of the Property would not be profitable or that the Property is unfit for other uses.[7]

We cannot say, however, that the foregoing cases identify exhaustively the factors that may make it appropriate for equity to refuse enforcement of a restrictive covenant on the ground that enforcement would be "[un]reasonable [or] against public policy." *Castleman*, 12 F.2d at 329. Such concerns obviously could extend beyond those related to what is asserted to be a radical change in the neighborhood; they could involve, for example, invidious discrimination that is contrary to public policy. We therefore go on to consider appellants' argument that we should consider the factors prescribed by the Supreme Court of New Jersey in *Davidson Bros. Inc., v. D. Katz & Sons, Inc.*, 579 A.2d 288 (N.J. 1990). Appellants characterize the *Davidson* "reasonableness test" as one that asks whether a restrictive covenant "continues to make sense in light of present commercial, demographic, and other realities," including the uses of property in the surrounding

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[7] Appellants urge us not to employ an analysis in which "all that matters is that the covenantor had an articulable rational purpose at the time the covenant was imposed, and subsequent events or changes in the surrounding area play little or no role in the analysis." We do not think that criticism fairly describes the tests articulated in the foregoing case law and applied by us in the text accompanying this footnote.

neighborhood. Appellants assert that consideration of the *Davidson* factors would be consistent with the approach of courts in this jurisdiction "to issues of equity and personal liberty."

Of course, this division of the court has no authority to replace our jurisdiction's radical-change doctrine with New Jersey's reworking of that test, and we also may not apply elements of the New Jersey test that would preclude restrictive covenants that our precedents allow or that would otherwise conflict with our precedents. However, subject to those constraints, we go on to consider, in the discussion that follows, whether application of the factors identified in *Davidson* would change the result to which our precedents point.

In *Davidson*, the New Jersey court was asked to consider the enforceability of a restrictive covenant that provided that a property was not to be used as a supermarket (that could compete with the grantor's store). *Id.* at 289.[8] The New Jersey court adopted, and remanded for the trial court to apply, a reasonableness test, explaining that "'reasonableness' is necessarily a fact sensitive issue involving an inquiry into present business conditions and other factors specific to the covenant at issue." *Id.* at 295. The court instructed that, in addition to issues of ambiguity or non-ambiguity of the restrictive covenant language and the property purchaser's actual or constructive notice

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[8] The defendant city housing authority alleged that residents of multi-family and senior-citizen housing units near the property were forced to take public transportation and taxis to do grocery shopping because there were no other markets in the area, except for two high-priced convenience stores. *Id.* The litigation ensued after the housing authority purchased the property and invited proposals to lease the property to operate a supermarket. *Id.*

of the restriction, the factors to be considered are: (1) the intention of the parties when the covenant was executed and whether the parties had a viable purpose which did not at the time interfere with existing commercial laws or public policy; (2) whether the covenant had an impact on the consideration paid, "a measure of the value to the parties of the covenant at the time"; (3) whether the covenant is reasonable concerning area, time, or duration (with a caveat that covenants that extend for perpetuity may often be unreasonable); (4) whether the covenant imposes an unreasonable restraint on trade (such as "where there is limited space available to conduct certain business activities"); (5) whether the covenant interferes with the public interest or the public welfare; and (6) whether, even if the covenant was reasonable at the time it was executed, "changed circumstances" now make the covenant unreasonable. *Id.* The New Jersey court also advised (7) that trial judges might find useful the analogous standard the court had adopted in determining the validity of employee covenants not to compete after termination of employment: i.e., that, generally, enforcement of a covenant is reasonable if it "simply protects the legitimate interests of the employer[,] imposes no undue hardship on the employee, and is not injurious to the public." *Id.* at 296.

We are satisfied that consideration of those *Davidson* factors that we are free to apply would not alter the result we reach through application of the (non-exhaustive) factors identified in our own precedents. To consider each of the *Davidson* factors in turn: (1) There appears to be no dispute that Power Station had a viable and lawful purpose in establishing the restrictive covenant. (2) Appellants do not contest the statement of Power Station's affiant about Power Station's recognition, when it sold the Property, that "including the restrictive covenant could reduce the number of potential parties interested in the Property, and, as a result, provide a lower sales or rental price." (3) By its terms, the restrictive covenant is unlimited in duration, but, under *Castleman*, that fact alone does not render it unenforceable. *See* 12 F.2d at 329. (4) By appellants' own account, there are at least eight other nightclubs in the immediate area, and thus no issue of "limited space available to conduct certain business activities." (5) Appellants make no claim that restricting nightclub use at the Property interferes with the public interest or the public welfare (and to the extent appellants cite lowered District tax revenues and commercial real estate challenges, they have not shown any compelling reason why permitting a nightclub to operate at the property should be favored as a way to address the problem). (6) To the extent appellants have shown changed circumstances (such as a decreased crime rate in the area since the restrictive covenant was established, a claim that appellees assert is undocumented and speculative), they have not shown that such changes are permanent and would endure if nightclub operations resume at the alleyway property (and, in any event, the relevant, and unchanged, circumstances are location vis a vis public roadways, not crime *per se*). And, (7) appellants do not claim that enforcement of the covenant would impose an undue hardship on anyone or injure the public. Appellants fault the Superior Court for granting Power Station's motion for summary judgment when "triable issues of fact have been raised," but their summary judgment opposition was "the proverbial 'put up or shut up' moment," when they were required to "show what evidence [they had] that would convince a trier of fact to accept" their claims. *Center for Inquiry, Inc. v. Walmart, Inc.*, 283 A.3d 109, 123 n.17 (D.C. 2022) (internal quotation marks omitted). They did not do so.

Appellants rely on "unequivocal" findings by the expert ABC Board that the proposed nightclub could be "safely operate[d] . . . without undue impacts to the neighboring properties" and that its operations "will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances." However, the ABC regulatory scheme recognizes the impermanence of those findings. The legislature has recognized that criminal activity and/or other problems that can render an establishment not "appropriate for the . . . section . . . of the District where it is to be located," D.C. Code § 25-313(a), are subject to change and warrant reexamination of the ABC Board's findings every two years. *Gallothom, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 820 A.2d 530, 533 (D.C. 2003) (noting that "the application of res judicata in administrative decisions is not encrusted with the rigid finality that characterizes the precept in judicial proceedings" (internal quotation marks omitted)). Also, as noted above, the ABC Board declined to consider the impact of the restrictive covenant.

For all the foregoing reasons, we affirm the grant of summary judgment in favor of appellees.

B

Finally, we address JPMorgan's appeal of the denial of its motion to intervene. JPMorgan's briefing requests that, in the event we remand to the Superior Court, we also find that JP Morgan should have been permitted to intervene and participate in the litigation. Because we have determined to affirm the grant of summary judgment to appellees and not to remand, we also affirm the Superior Court's denial of JPMorgan's intervention motion as moot.

* * *

Wherefore, the judgment of the Superior Court is affirmed.

So ordered.

ORDER GRANTING PLAINTIFF LIMITED'S MOTION FOR SUMMARY JUDGMENT, D.C. SUPERIOR COURT (NOVEMBER 22, 2024)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

THE POWER STATION LIMITED PARTNERSHIP, et al.,

Plaintiffs,

v.

DTLD LLC et al.,

Defendants.

2023-CAB-006784

CASE CLOSED

Before: Carl E. ROSS, Judge.

ORDER GRANTING PLAINTIFF THE POWER STATION LIMITED'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court upon Plaintiff Power Station Limited Partnership's Motion for Summary Judgment ("Plaintiff's Motion"), filed on August 13, 2024; Defendant's Opposition to Plaintiff The Power Station Limited Partnership's Motion for Summary Judgment ("Defendant's Opposition"), filed on August 27, 2024; Plaintiff's Reply to Defendant's Opposition to Motion for Summary Judgment ("Plaintiff's Reply"), filed on September 3, 2024; Defendant DTLD LLC's Motion for Summary Judgement ("Defendant's Motion"), filed on August 14, 2024; Plaintiff's Opposition to the Defendant's Motion for Summary Judgement ("Plaintiff's Opposition"), filed on August 26, 2024; and Defendant's Reply to Plaintiff's Motion for Summary Judgement ("Defendant's Reply"), filed September 3, 2024. The Court has considered the motions, the relevant law, and the entire record. For the following reasons, the Court grants Plaintiff's Motion for Summary Judgment and denies Defendant's Motion for Summary Judgement.

FACTUAL BACKGROUND

At issue is the property located at 1412 I Street NW, Washington, D.C. ("Property") formerly owned by Plaintiff Power Station Limited Partnership ("Plaintiff"). The property is located in an alley with no egress onto the main street and is currently used as an office space. Pl. Mot. at 1. Before its conversion to an office space, the building operated as a nightclub. *Id.* When Plaintiff sold the property in 2008, it included in the deed a restrictive covenant reading:

> In no event shall there be conducted at the Property any nightclub or discotheque nor any other establishment which distributes or sells alcoholic beverages after midnight. For purposes hereof, a nightclub shall be defined in accordance with the then applicable provisions of the District of Columbia code, or if there shall be no such definition then pro-

> vided, a nightclub shall be defined as space regularly used and kept open as a place that serves food and alcoholic beverages and which provides either (x) music and facilities for dancing, or (y) comedic entertainment. A discotheque shall similarly be defined under the then applicable provisions of the District of Columbia code, or if there shall be no such definition then provided, a discotheque shall be defined as space regularly used and kept open as a place that provides music and facilities for dancing.

Id. The restrictive covenant was included out of concern for public safety stemming from incidents of violence and disorder during the nightclub's operation. *Id.* The deed and restrictive covenant were properly recorded. *Id.*

Dexis Consulting Group purchased the property in 2015 and used it as an office space. In 2022, the current owners, DTLD LLC ("Defendants") purchased the property at an auction. Bidders at the auction were informed about the restrictive covenant and Defendants admit that they knew about it. *Id* at 5. While Defendants DTLD LLC and Iraklion claimed they do not have any prior agreements, Iraklion LLC was formed to open and operate a nightclub on the property. Defendant's Statement of Facts not in Dispute ("Def. State. Facts") at 1. Defendants seek to open a nightclub, potentially with nude dancing, on the property. *Id.*

On November 2, 2023, Plaintiffs filed suit seeking to enjoin Defendants from opening a nightclub on the property. Compl. at 1. Plaintiffs argue that the restrictive covenant is valid and enforceable. Compl. at 7. In their Answer and Counterclaim, Defendants asked for a Declaratory Judgment, requesting that this Court deem the restrictive covenant unenforceable. Def. Amend. Answer and Countercl. at 8. Defendants argue that the restrictive covenant is unenforceable because it no longer serves a "legitimate public purpose" in the wake of the COVID-19 pandemic. *Id.* Plaintiffs and Defendants filed cross Motions for Summary Judgement.

LEGAL STANDARD

"Summary judgment is a remedy that entitles the moving party to judgment as a matter of law when no genuine issue of material fact is present at the time the motion is made." *Sturdivant v. Seaboard Serv. Sys., Ltd.*, 459 A.2d 1058, 1059 (D.C. 1983); *accord* Sup. Ct. R. Civ. P. 56(a)(1). A material fact is "one which, under the applicable substantive law, is relevant and may affect the outcome of the case." *Rajabi v. Potomac Elec. Power Co.*, 650 A.2d 1319, 1321 (D.C. 1994). "Any doubt as to whether or not an issue of fact has been raised is sufficient to preclude a grant of summary judgment." *McCoy v. Quadrangle Dev. Corp.*, 470 A.2d 1256, 1259 (D.C. 1983).

The moving party carries the burden of demonstrating "the absence of any factual issue." *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979). After the moving party meets this initial burden, "the burden shifts to the non-moving party to show the existence of an issue of material fact." *Landow v. Georgetown-Inland West Corp.*, 454 A.2d 310, 313. To meet this requirement, the non-moving party must proffer "some significant probative evidence" tending to support their contentions "so that a reasonable fact-finder would return a verdict for the non-moving party." *Brown v.*

1301 K St. Ltd. P'ship, 31 A.3d 902, 908 (D.C. 2011) (internal quotation omitted). The non-moving party must do more than rely on conclusory allegations or denials in his or her pleadings and must establish more than a "metaphysical doubt" or a "scintilla of evidence." *Gilbert v. Miodovnik*, 990 A.2d 983, 988 (D.C. 2010) (quoting *LaPrade v. Rosinsky*, 882 A.2d 192, 196 (D.C. 2005); *accord Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 502 (D.C. 2002). "There is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Barrett v. Covington & Burling LLP*, 979 A.2d 1239, 1245 (D.C. 2009) (internal citation omitted).

Summary judgment is appropriate only when there are no material facts at issue and it is clear that the moving party is entitled to judgment as a matter of law. *Landow*, 410 A.2d at 14. In considering the merits of the moving party's request, the Court reviews the record in the light most favorable to the non-moving party, "drawing all reasonable inference from the evidence in the non-moving party's favor." *See Medhin v. Hailu*, 26 A.3d 307, 310 (D.C. 2011). The Court may not "resolve issues of fact or weigh evidence at the summary judgment stage." *Barrett*, 979 A.2d at 1244 (internal citation omitted). In ruling upon a motion for summary judgment, the Court reviews "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to determine whether there is a genuine issue as to any material fact." *District of Columbia v. Gray*, 452 A.2d 962, 964 (D.C. 1982) (internal citations omitted).

ANALYSIS

I. The Restrictive Covenant is Enforceable

As a general rule, "[d]eeds, like contracts, are construed in accordance with the intention of the parties insofar as it can be discerned from the text of the instrument. If a deed is unambiguous, the court's role is limited to applying the meaning of the words." *Found. for Pres. of Historic Georgetown v. Arnold*, 651 A.2d 794, 796 (D.C. 1994) (internal quotations and citations omitted). Other jurisdictions have long held that a deed with a restrictive covenant that runs with the land is enforceable upon a subsequent owner of the land if the owner has actual or constructive notice of the provisions of the restrictive covenant. *Clem v. Valentine*, 141 A. 710, 712 (Md. 1928); *Thodos v. Shirk*, 248 Iowa 172, 177, 79 N.W.2d 733, 736 (1956); *Sun Oil Co. v. Trent Auto Wash, Inc.*, 379 Mich. 182, 187, 150 N.W.2d 818, 820 (1967).

Here, the restrictive covenant's plain language unambiguously prohibits the operation of the kind of establishment Defendants plan to operate on the property. Plaintiffs, in their initial 2008 sale of the property, inserted into the deed a restrictive covenant prohibiting the operation of any "nightclub, discotheque, nor any other establishment which distributes or sells alcoholic beverages after midnight." Pl. Mot. at 1. The restrictive covenant runs with the land and is binding on subsequent owners of the property. The covenant was properly recorded and is not repugnant to public policy.

In the instant case, Defendants had both constructive and actual notice of the covenant: the restrictive covenant was both recorded and announced during the auction sale. Pl. Mot. at 5. Defendants' constructive and actual knowledge of the restrictive covenant weigh heavily in favor of enforcing the covenant. *See e.g. Namleb Corp. v. Garrett*, 149 Md. App. 163, 175 (Md. Ct. Spec. App. 2002); *Friends of Lubavitch, Inc. v. Zoll*, No. 372, 2018 WL 5279363, at *19 (Md. Ct. Spec. App. Oct. 23, 2018). Defendants correctly note that "restrictions on land use should be construed in favor of the free use of land and against the party seeking enforcement." *Arnold*, 651 A.2d at 797. Defendants still have free use of the property save for the nightclub restriction in the deed. The restrictive covenant is enforceable.

II. Conditions Have Not Radically Changed to Render the Restrictive Covenant Invalid

While it does not appear that the D.C. Court of Appeals has ruled on the issue, it is generally accepted across the vast majority of jurisdictions that,

> [R]estrictive covenants may be rendered invalid or unenforceable where there has been such a radical change in the character of the neighborhood within and surrounding the restricted area that the original purpose of the covenant has been defeated, it is no longer of substantial value to the benefited land, and its enforcement would be unduly oppressive to the burdened land.

76 A.L.R.5th 337 (Originally published in 2000). Indeed, forty-three jurisdictions have adopted what is

often referred to as the radical change doctrine in determining the enforceability of restrictive covenants.[1]

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[1] *See generally Southwestern Const. Co., Inc. v. Liberto*, 385 So. 2d 633 (Ala. 1980); *Condos v. Home Dev. Co.*, 77 Ariz. 129, 267 P.2d 1069 (1954); *Royal Oaks Vista, L.L.C. v. Maddox*, 372 Ark. 119, 271 S.W.3d 479 (2008); *see Wolff v. Fallon*, 44 Cal. 2d 695, 284 P.2d 802 (1955); *see West Alameda Heights Homeowners Ass'n v. Bd. of County Com'rs of Jefferson County*, 169 Colo. 491, 458 P.2d 253 (1969); *see Fidelity Title & Trust Co. v. Lomas & Nettleton Co.*, 125 Conn. 373, 5 A.2d 700 (1939); *see El Di, Inc. v. Town of Bethany Beach*, 477 A.2d 1066 (Del. 1984); *see Wahrendorff v. Moore*, 93 So. 2d 720 (Fla. 1957); *see Antill v. Sigman*, 240 Ga. 511, 241 S.E.2d 254 (1978); *see Sandstrom v. Larsen*, 59 Haw. 491, 583 P.2d 971, 1 A.L.R.4th 1009 (1978); *see Punzak v. De Lano*, 11 Ill. 2d 117, 142 N.E.2d 64 (1957); *see Hrisomalos v. Smith*, 600 N.E.2d 1363 (Ind. Ct. App. 1992); *see Thodos v. Shirk*, 248 Iowa 172, 79 N.W.2d 733 (1956); *see South Shore Homes Ass'n, Inc. v. Holland Holiday's*, 219 Kan. 744, 549 P.2d 1035 (1976); *see Hensley v. Gadd*, 560 S.W.3d 516 (Ky. 2018); *see Alfortish v. Wagner*, 200 La. 198, 7 So. 2d 708 (1942); *Shader v. Hampton Imp. Ass'n, Inc.*, 217 Md. App. 581, 94 A.3d 224 (Md. App. 2014), *aff'd*, 443 Md. 148, 115 A.3d 185 (2015); *135 Wells Ave., LLC v. Hous. Appeals Comm.*, 478 Mass. 346, 84 N.E.3d 1257 (2017); *Gomah v. Hally*, 366 Mich. 31, 113 N.W.2d 896 (1962); *Eastling v. BP Prod. N. Am., Inc.*, 578 F.3d 831 (8th Cir. 2009); *Cowherd Dev. Co. v. Littick*, 361 Mo. 1001, 238 S.W.2d 346 (1951); *Roadrunner Dev., Inc. v. Sims*, 213 Neb. 649, 330 N.W.2d 915 (1983); *Gladstone v. Gregory*, 95 Nev. 474, 596 P.2d 491 (1979); *Duhamel v. Prescott*, 101 N.H. 108, 134 A.2d 703 (1957); *Weinstein v. Swartz*, 3 N.J. 80, 68 A.2d 865 (1949); *Whorton v. Mr. C's*, 1984-NMSC-080, 101 N.M. 651, 687 P.2d 86 (1984); *Cody v. Anthony Fabiano & Sons Inc.*, 246 A.D.2d 726, 667 N.Y.S.2d 446 (1998); *Hawthorne v. Realty Syndicate, Inc.*, 300 N.C. 660, 268 S.E.2d 494 (1980); *DeRosa v. Parker*, 197 Ohio App. 3d 332, 2011-Ohio-6024, 967 N.E.2d 767 (Ct. App. 7th Dist. Mahoning County 2011); *Mayfair Bldg. Co. v. S & L Enters., Inc.*, 1971 OK 42, 483 P.2d 1137 (1971); *Blair v. Allen C. Edwards Realty Co.*, 241 Or. 257, 405 P.2d 538 (1965); *Vernon Tp. Volunteer Fire Dept., Inc. v. Connor*, 579 Pa. 364, 855 A.2d 873 (2004); *Duffy v. Mollo*, 121 R.I. 480, 400 A.2d 263 (1979); *Inabinet v. Booe*, 262

While no rigid rule exists to determine whether a change is radical enough to render a restrictive covenant unenforceable, some states have adopted a fact-specific inquiry approach, while others take a purpose-based approach. *See, e.g. Chesterfield Meadows Shopping Ctr. Assocs., L.P.*, 264 Va. at 352-57; *Winney*, 2021 WY at 257-72; *Roadrunner Dev., Inc.*, 213 Neb. at 650-56. The Court finds the fact-specific inquiry approach more prudent.

In the instant case, there are no disputed issues of material fact regarding whether a radical change has occurred that would render the restrictive covenant invalid. While Defendants vigorously contest Plaintiff's allegations regarding the deleterious effects of nightclubs generally, it is the location of this particular property, with its entrance and exit in an alleyway, that necessitated the addition of the covenant in the deed and there is no evidence that the location of the property has changed. Indeed, the inherit danger associated with the property's location in an alley was discussed in a decision by the U.S. Court of Appeals for the District of Columbia Circuit. In *Novak*, the D.C. Circuit affirmed a judgment in favor of a patron who was brutally beaten and suffered permanent brain damage in 1998 after leaving a nightclub operated at

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S.C. 81, 202 S.E.2d 643 (1974); *Hackett v. Steele*, 201 Tenn. 120, 297 S.W.2d 63 (1956); *Cowling v. Colligan*, 158 Tex. 458, 312 S.W.2d 943 (1958); *Blanche S. Marsh Inter Vivos Trust v. McGillvray*, 193 Vt. 320, 2013 VT 6, 67 A.3d 943 (2013); *Chesterfield Meadows Shopping Ctr. Assocs., L.P. v. Smith*, 264 Va. 350, 568 S.E.2d 676 (2002); *Tindolph v. Schoenfeld Bros.*, 157 Wash. 605, 289 P. 530 (1930); *Allemong v. Frendzel*, 178 W. Va. 601, 363 S.E.2d 487 (1987); *Vorpahl v. Gossman*, 24 Wis. 2d 232, 128 N.W.2d 430 (1964); *Winney v. Hoback Ranches Prop. Owners Improvement & Serv. Dist.*, 2021 WY 128, 499 P.3d 254 (2021).

the property in question. *See generally Novak v. Capital Mgmt. & Dev. Corp.*, 570 F.3d 305 (D.C. Cir. 2009). The court noted that the property "was situated next to — and was only accessible through — two alleys that formed an upside-down T shape," that there was "evidence of frequent fights in the alley," that "[o]ne employee testified that he saw fights in the alley by the exit twice a month; another said he saw maybe 1 or 2 fights each month in the alley by the exit," that the venue was "set off from any public street," and the court ultimately concluded that "the club cannot now seriously contend that an assault at its exit was not legally foreseeable." *Id.* at 309-12. While Defendants proffer evidence regarding the surrounding neighborhood, there is no evidence that the property's location, including its access being limited to alleyways, has changed.

Defendants argue that the proposed nightclub will feature enhanced security measures to increase patron safety. Def. Opp. at 11. The enhanced security measures, however, do not change the inherit danger of traveling through the alleyways to enter and exit the venue, even with increased outdoor lighting. Moreover, the proposed security measures will not be part of the deed, allowing Defendants and future owners of the property to scale back security measures at will. Furthermore, increased security measures do not represent "a radical change in the character of the neighborhood within and surrounding the restricted area" that would justify removing the restrictive covenant. Accordingly, Plaintiffs are entitled to summary judgment.

Even if this Court were to adopt the purpose-based analysis for radical change, for the same reasoning described above, Defendants would still fail. The Court cannot conclude that the original purpose behind the covenant's restrictions no longer provides a substantial benefit to those entering and exiting the property, where the conditions that plagued the previous nightclub are still present. Accordingly, Plaintiffs are still entitled to summary judgment under a purpose-based analysis of whether a radical change has occurred sufficient to render the restrictive covenant invalid or unenforceable.

Defendants urge the Court to adopt a lower standard of "neighborhood change" to invalidate the covenant. In support of their "neighborhood change" argument, Defendants cite to a Maryland case from 1940 that states the "rule of equity [is] that where the reason for the enforcement of a restrictive covenant on land has ceased, as where the neighborhood has completely changed, equity will no longer enforce the covenant, as to do so would be to encumber the economic use of land." *Am. Weekly v. Patterson*, 179 Md. 109, 115 (Md. 1940). It is worth noting, however, that Maryland is one of the forty-three jurisdictions that has adopted the "radical change" doctrine when analyzing restrictive covenants. *See Chevy Chase Village v. Daggers*, 261 Md. 309, 316, 275 A.2d 167, 171, (Md. Ct. Apps 1971) ("Most jurisdictions now recognize a change in the character of a neighborhood as a ground for affirmative relief against restrictive covenants by way of cancellation or modification where the change has been so radical as to render perpetuation of the restriction of no substantial benefit to the dominant estate, and to defeat the object or purpose of the restriction. The inquiry, therefore, is whether there has been a complete or radical change in the neighborhood causing the restrictions to outlive their usefulness.") (internal citations and quotations omitted). Accordingly, the Court sees no basis to analyze the restrictive covenant under a lower standard. Furthermore, while information regarding the "neighborhood change" may be relevant when analyzing the majority of restrictive covenants, focusing exclusively on the changes in the neighborhood in the instant case would ignore the purpose for which the restrictive covenant was adopted.

Defendants argue that the area's crime rate, renewal, and general livability have improved, no longer necessitating the restrictive covenant. Def. Mot. at 5. While Defendants point to the increased number of nightclubs and alcohol-serving establishments in the area, Defendants' proffered evidence fails to address the restrictive covenant's central purpose, which was to address safety issues related to ingress and egress to the property through an alley. While the neighborhood may have improved overall, the alley still represents a potential flash point for violent crime. This is especially so if Defendant's proposed gentleman's club opened, which would presumably attract a significant number of patrons carrying cash.

Defendants further argue that the COVID-19 pandemic and its residual effects on the District's employment and real estate have changed conditions so as to render the restrictive covenant invalid. Def. Mot at 6. Defendants' arguments regarding COVID-19 are without merit. Defendants cite to no other jurisdiction that has recognized COVID-19 as a changed condition sufficient to remove a restrictive covenant, and the Court declines to find that the pandemic alone presents sufficient grounds to invalidate the restrictive covenant in this case.

While the Court will enforce the restrictive covenant, it is not to say that conditions could not change in the future in a manner that would render the covenant unenforceable. Changes to the surrounding buildings and structures could, in theory, open up additional lanes of ingress and egress to the property. There is no dispute of material fact, however, as to whether such structural changes surrounding the property presently exist and the Court, accordingly, grants Plaintiff's Motion for Summary Judgment.

For the reasons stated above, it is the 22nd day of November 2024, hereby

ORDERED that Plaintiff's Motion for Summary Judgement is GRANTED; and it is further

ORDERED that Defendants DTLD, LLC and Iraklion, LLC's Motion for Summary Judgement is DENIED; and it is further

ORDERED that Defendants DTLD, LLC and Iraklion, LLC's Counterclaim is DISMISSED WITH PREJUDICE; and it is further

ORDERED that JP Morgan's Motion to Intervene is DENIED as moot; and it is further

ORDERED that all future hearings are hereby VACATED, and this matter is CLOSED.

SO ORDERED.

/s/ Carl E. Ross
Judge

Copies to all counsel.

ORDER DENYING PETITION FOR REHEARING, D.C. COURT OF APPEALS (MARCH 18, 2026)

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 24-CV-1163

DTLD, LLC et al.,

Appellants,

v.

POWER STATION LIMITED PARTNERSHIP, et al.,

Appellees.

No. 24-CV-1173

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION,

Appellant,

v.

DTLD, LLC, et al.,

Appellees.

Appeal from the
Superior Court of the District of Columbia
Civil Division, 2023-CAB-006784

Before: BLACKBURNE-RIGSBY, Chief Judge, BECKWITH, EASTERLY, MCLEESE, DEAHL, HOWARD, and SHANKER, Associate Judges, and THOMPSON, Senior Judge.

ORDER

On consideration of appellee's DTLD, LLC and Iraklion, LLC petition for rehearing or rehearing en bane, and it appearing that no judge of this court has called for a vote on the petition for rehearing en bane, it is

ORDERED by the merits division* that appellee's DTLD, LLC and Iraklion, LLC petition for rehearing is denied. It is

FURTHER ORDERED that appellee's DTLD, LLC and Iraklion, LLC petition for rehearing en bane is denied.

PER CURIAM

Nos. 24-CV-1163 & 24-CV-1173 Copies emailed to:

Honorable Carl E. Ross
Director, Civil Division

Copies e-served to:

Jessica Lynn Farmer, Esquire
Stevan Lieberman, Esquire
Eric Scott Lammers, Esquire
Zachary Porter Lundgren, Esquire

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ORDER DISMISSING TRANSFER APPLICATION TO A NEW LOCATION, D.C. ALCOHOLIC BEVERAGE CONTROL BOARD (AUGUST 19, 2020)

THE DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of: Iraklion, LLC t/a Iraklion Application to Transfer a Retailer's Class CN License at premises 1412I Street, N.W. Washington, D.C. 20005

Case No.: 20-CMP-00092

License No.: ABRA-116082

Order No.: 2020-267

Before: Donovan ANDERSON, Chairperson James SHORT, Member Bobby CATO, Member Rema WAHABZADAH, Member Rafi ALIYA CROCKETT, Member Jeni HANSEN, Member Edward S. GRANDIS, Member.

ORDER DISMISSING TRANSFER APPLICATION TO A NEW LOCATION

Iraklion, LLC, t/a Iraklion, (hereinafter "Iraklion" or "Applicant") filed an Application to Transfer a Retailer's Class CN License (Application) to a new location at 1412 I Street, N.W. The specific Retailer's

Class CN License being transferred by Iraklion permits nude dancing. Nevertheless, the Alcoholic Beverage Control Board (Board) has received correspondence from SJG Properties (SJG), located at 733 15th Street, N.W., questioning the legality of the transfer of a license with a nude endorsement to an alleged prohibited location. Upon the Board's review of SJG's complaint, Supervisory Investigator (SI) Mark Brashears was assigned to assess the allegations.

Section 25-374(a) prohibits the issuance or transfer of a license that permits nude dancing if the location sought by the applicant is located within 600 feet of a building assigned a Certificate of Occupancy authorizing "residential use." D.C. Code § 25-374(a), (a)(2). In reviewing the complaint, SI Brashears noted that SJG provided a Certificate of Occupancy (COO) showing that it possesses a residential apartment building located at 733 15th Street, N.W. The report further indicates that the initial map produced by the Geographic Information System (GIS), which the agency relied upon in placarding the establishment, failed to identify SJG's property.

SI Brashears visited the location sought by the Applicant on Monday, August 10, 2020. He then measured the distance between the Applicant's identified location and SJG's residential apartment building using a measuring wheel. Based on his measurement, he determined that the location sought by the Applicant was located approximately 260 feet from SJG's residential apartment building. As a result, the Application cannot be granted as a matter of law pursuant to D.C. Official Code § 25-374(a), as it is located within 600 feet of a residential building.

ORDER

Therefore, the Board, on this 19th day of August 2020, hereby DISMISSES the Transfer Application to a New Location for failing to comply with § 25-374(a). Furthermore, ABRA Licensing Division is instructed to RESCIND the previously published Notice of Public Hearing. The ABRA shall deliver copies of this Order to Applicant.

District of Columbia
Alcoholic Beverage Control Board

/s/ Donovan Anderson
Chairperson

/s/ James Short
Member

/s/ Bobby Cato
Member

/s/ Rema Wahabzadah
Member

/s/ Rafi Crockett
Member

/s/ Jeni Hansen
Member

/s/ Edward S. Grandis
Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, NW., Suite 400S, Washington, DC 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF FILED IN THE D.C. SUPERIOR COURT (NOVEMBER 2, 2023)

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

THE POWER STATION LIMITED PARTNERSHIP
c/o SJG Properties LLC
805 15th Street, NW, Suite 625
Washington, DC 20005,

and

SOUTHERN BUILDING ASSOCIATES, LLP
805 15th Street, NW, Suite 625
Washington, DC 20005,

and

15TH AND H STREET ASSOCIATES LLP
805 15th Street, NW, Suite 625
Washington, DC 20005,

and

SJG PROPERTIES LLC
805 15th Street, NW, Suite 625
Washington, DC 20005,

Plaintiffs.

v.

DTLD L.L.C.
1775 I Street, NW Suite 1150
Washington, DC 20006,

SERVE:

Registered Agent
Stevan Lieberman
1775 I St. NW Suite 1150
Washington, DC 20006,

and

IRAKLION LLC
1775 I St. NW Suite 1150
Washington, DC 20006,

SERVE:
Registered Agent
Stevan Lieberman
1775 I St. NW Suite 1150
Washington, DC 20006,

Defendants.

Case No.: 2023-CAB-006784

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs The Power Station Limited Partnership, Southern Building Associates, LLP, 15th and H Street Associates LLP, and SJG Properties LLC (collectively, "Plaintiffs"), as and for their Complaint against Defendants DTLD L.L.C. and Iraklion LLC (collectively, "Defendants"), hereby alleges as follows:

NATURE OF ACTION

1. Plaintiffs bring this action to enjoin Defendants from opening a nightclub with nude dancing at 1412 I Street, NW, Washington, DC. As set forth herein, this use is expressly prohibited by a restrictive covenant.

PARTIES

2. The Power Station Limited Partnership ("PSLP") is a District of Columbia general partnership (incorrectly referred to of record as a limited partnership) with its principal place of business at 805 15th Street, N.W., Suite 625, Washington, D.C., 20005. PSLP is the former owner of certain real property located at 1412 I Street, NW, Washington, DC, 20005. further described as Part of Lot 53 in Square 220 in the Subdivision made by Allan D. McDermott, as per plat recorded in Liber No. 31 at folio 166 of the Records of the Office of the Surveyor of the District of Columbia (the "Property"). A true and accurate copy of the deed is attached hereto as Exhibit 1.

3. 15th and H Street Associates LLP ("15th and H") is a District of Columbia limited liability partnership with its principal place of business at 733 15th Street NW, Washington, D.C., 20005. 15th and H is the owner of certain real property located at 733 15th Street NW, Washington, D.C., 20005, which real property is located in the immediate vicinity of the Property.

4. Southern Building Associates, LLP ("Southern") is a District of Columbia limited partnership with its principal place of business at 805 15th Street, Suite 625, NW, Washington, D.C. 20005. Southern is the owner of certain real property located at 805 15th - Street, NW, Washington, D.C., 20005, which real property is located in the immediate vicinity of the Property.

5. SJG Properties LLC ("SJG") is a District of Columbia limited liability company with an address of 805 15th Street, N.W., Suite 625, Washington, D.C. 20005. SJG serves as the representative of PSLP, 15th and H, and Southern.

6. PSLP, Southern, 15th and H, and SJG have ownership in common and/or are otherwise related companies due to their common relationship with SJG.

7. DTLD L.L.C. ("DTLD") is a foreign limited liability company with its business address located at 1775 I Street N.W., Suite 1150, Washington, D.C., 20006. DTLD is the current owner of the Property.

8. Iraklion LLC ("Iraklion") is a Virginia limited liability company with its business address located at 1775 I Street N.W., Suite 1150, Washington, D.C., 20006. Iraklion is the licensee of a Class "C" Nightclub license with a Nude Dancing endorsement (the "License"). Iraklion has previously attempted, and currently again has applied, to transfer the License to the Property. Upon information and belief, Iraklion and DTLD share common ownership or otherwise are related companies.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to D.C. Code Ann., § 11-921, because this is a civil action concerning real property located within the District of Columbia.

10. This Court has personal jurisdiction over the Defendants pursuant to D.C. Code Ann. § 13-423(a)(5) as they have an interest in, are using, and/or or possessing real property in the District of Columbia.

11. Venue in this Court is proper because the actions complained of occurred in the District of Columbia and the real property subject to the action is situated in the District of Columbia.

FACTS COMMON TO ALL COUNTS

The Restrictive Covenant Precluding Nightclubs

12. As of January 15, 2008, PSLP was the owner of the Property.

13. On or about January 15, 2008, PSLP transferred ownership of the Property to Alley Investors L.L.C., a District of Columbia limited liability company, by Special Warranty Deed recorded at Instrument Number 2008005377 in D.C. land records (the "2008 Deed"). A true and accurate copy of the 2008 Deed is attached as <u>Exhibit 2</u>.

14. The 2008 Deed included the following restriction, which was expressly made binding upon the Grantee and any successor-in-interest thereto:

> In no event shall there be conducted at the Property any nightclub or discotheque nor any other establishment which distributes or

> sells alcoholic beverages after midnight. For purposes hereof, a nightclub shall be defined in accordance with the then applicable provisions of the District of Columbia code, or if there shall be no such definition then provided, a nightclub shall be defined as space regularly used and kept open as a place that serves food and alcoholic beverages and which provides either (x) music and facilities for dancing, or (y) comedic entertainment. A discotheque shall similarly be defined under the then applicable provisions of the District of Columbia code, or if there shall be no such definition then provided, a discotheque shall be defined as space regularly used and kept open as a place that provides music and facilities for dancing.

Ex. 2, at 1. As stated in the Deed, the foregoing covenant runs with the land and is binding upon all subsequent owners of the Property.

15. On or about August 13, 2015, Alley Investors L.L.C. transferred ownership to Alleyway Properties L.L.C., a District of Columbia limited liability company with an address of c/o Dexis Interactive Incorporated, 1301 Pennsylvania Avenue, N.W., Washington, D.C. 20004 via a Special Warranty Deed recorded at Instrument Number 2015083481 (the "2015 Deed") in D.C. land records. A copy of the 2015 Deed is attached as <u>Exhibit 3</u>.

16. On or about July 11, 2022, Alleyway Properties, L.L.C. transferred ownership to DTLD via Special Warranty Deed recorded at Instrument Number 2022074030 in D.C. land records (the "2022 Deed"). A copy of the 2022 Deed is attached as <u>Exhibit 4</u>.

17. Accordingly, the current owner of the Property is DTLD, which owns the Property subject to the deed restriction which precludes the Property from being the location of, among other things, a nightclub.

Attempts to Transfer License

18. Iraklion is the licensee of a Retailer's Class CN License, which permits nude dancing.

19. Previously, in 2020, Iraklion filed an Application to Transfer a Retailer's Class CN License to the Property ("First Application") with The Alcoholic Beverage Control Board (the "Board").

20. On August 19, 2020, the Board issued an Order Dismissing Transfer Application to a New Location (the "Order") pursuant to D.C. Code § 25-374(a), which prohibits the issuance or transfer of a license for a nightclub that permits nude dancing if the location sought by the applicant is located within 600 feet of a building assigned a Certificate of Occupancy authorizing "residential use," as the Property "was located approximately 260 feet from [a] residential apartment building."

21. The Board concluded that because the Property was located within 600 feet of a residential building, the First Application could not be granted as a matter of law. A true and accurate copy of the Order is attached as Exhibit 5.

22. Notwithstanding the foregoing, Iraklion recently has filed another application to transfer its Class CN License to the Property.

23. Based upon the foregoing, it is apparent that Iraklion intends to open, and DTLD intends to permit

or facilitate, the use of the Property as a nightclub that permits nude dancing.

24. Pursuant to the restrictive covenant in the 2008 Deed, the Property is precluded from being used as the location for a nightclub that permits nude dancing, as the restrictive covenant explicitly prohibits any use of the Property as, among other things, a nightclub.

COUNT I
(Request for Injunction)

25. The allegations of the foregoing paragraphs 1 through 24 are incorporated herein by reference.

26. Pursuant to the 2008 Deed, 2015 Deed, and 2022 Deed, the Property is subject to the restrictive covenant and restriction prohibiting any nightclub, among other things, from being established at the Property.

27. PSLP is entitled to enforce the restriction as the Grantor of the 2008 Deed, and as having a continuing interest in the enforcement of that restriction through its representative, SJG, and its related entities.

28. Further, the restriction at issue was intended to benefit the owners of adjacent and neighboring properties, including the properties that are owned by the other Plaintiffs in this case, and Southern, 15th and H, and SJG, as the representative of such parties, likewise are entitled to enforcement of the restriction.

29. Defendants are subject to and obligated to abide by the restriction prohibiting use of the Property as a nightclub.

30. Defendants violated the restriction, or are in the process of doing so, in trying to transfer Iraklion's license rights and establish a nightclub on the Property that permits nude dancing, which would not be in compliance with said restriction.

31. There is no adequate remedy at law.

32. The inconvenience to Defendants as a result of granting injunctive relief as herein prayed is outweighed by the rights of the Plaintiffs to protect the value and desirability of the restrictive covenant and to preserve the benefits of same to their adjacent properties.

33. Plaintiffs will suffer continuing and irreparable injury by Defendants' continued violation of the provisions of the restriction against use of the Property as a nightclub, which cannot be reasonably or adequately compensated by an award of monetary damages.

34. The public interest would be well served by enjoining Defendants from present and future violations of the provisions of the valid and binding restrictive covenant.

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

A. Enter an Order enjoining Defendants DTLD L.L.C. and Iraklion LLC from establishing a nightclub, including a nightclub with nude dancing, at the Property;

B. Enter an Order enjoining Defendants DTLD L.L.C. and Iraklion LLC to cease and desist from continuing to violate or attempting to violate the restriction against operating a nightclub at or on the Property; and

C. Grant such other and further relief in favor of Plaintiff The Power Station Limited Partnership as the Court deems appropriate.

COUNT II
(Declaratory Judgment)

35. The foregoing paragraphs 1 through 34 are incorporated herein by reference.

36. Pursuant to D.C. Superior Court Rule of Civil Procedure 57, this Court has jurisdiction to declare the rights of the parties.

37. An actual controversy exists between Plaintiffs and Defendants regarding the right of Defendants to establish a nightclub that permits nude dancing at the Property.

38. The Plaintiffs contend the Defendants do not have the right to establish a nightclub at the Property pursuant to the restriction prohibiting such use.

39. By filing the application to transfer Iraklion's Class CN license to the Property, Defendants have taken the position that they have the right to establish a nightclub that permits nude dancing at the Property.

40. Antagonistic claims are present between the parties regarding whether a nightclub that permits nude dancing can be established at the Property and these claims indicate imminent and inevitable litigation.

41. A declaratory judgment by this Court regarding whether a nightclub that permits nude dancing can be established at the Property will terminate the controversy between the parties.

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

A. Declare that Defendants DTLD L.L.C. and Iraklion LLC are prohibited by the restrictive covenant from establishing a nightclub at the Property; and

B. Declare that Defendants DTLD L.L.C. and Iraklion LLC are prohibited by the restrictive covenant from transferring to the Property a license for a nightclub that permits nude dancing; and

C. Grant any further relief as the Court deems just and proper.

THE POWER STATION LIMITED PARTNERSHIP, SOUTHERN BUILDING ASSOCIATES, LLP, 15TH AND H STREET ASSOCIATION LLP AND SJG PROPERTIES LLC

By Counsel

/s/ Eric S. Lammers
(D.C. Bar No. 458038)
1900 Gallows Road, Suite 700
Tysons Corner, VA 22182
Phone: (703) 790-1911
Fax: (703) 847-0643
elammers@reesbroome.com
Counsel for Plaintiff's

Dated: November 2, 2023

PROPERTY DEED (JULY 23, 1976)

THIS DEED

Made this 23rd day of July, 1976, by and between POTOMAC ELECTRIC POWER COMPANY, a District of Columbia and Virginia Corporation, and THE RIGGS NATIONAL. BANK OF WASHINGTON, D.C., a national banking association organized and existing under the laws of the United States of America, as Trustee under the Mortgage and Deed of Trust dated July 1, 1936, made by said Potomac Electric Power Company, as amended and supplemented (which original Mortgage and Deed of Trust is recorded among the Land Records of the District of Columbia, in Liber 7008, folio 131), parties of the first part; and THE POWER STATION LIMITED PARTNERSHIP, (HAROLD ZIRKIN, JR., General Partner), party of the second part,

WITNESSETH THAT

For and in consideration of the sum of Ten Dollars ($10) and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties of the first part do hereby grant and convey unto the party of the second part, in fee simple, forever, the following described parcel of land with improvements thereon situate, lying and being in the District of Columbia:

Part of Lot 53 in Square 220 in the subdivision made by Allan D. McDermott as per plat recorded in Liber No. 31 at folio 166 of the Records of the Office of the Surveyor of the District of Columbia, described as follows: BEGINNING for the same at a point in the East line of said lot distant 5 feet South from the Northeast corner of said lot, said point being at the intersection of the West line of a public alley, 10 feet wide, with the South line of a public alley, 10 feet wide, as dedicated and shown on plat recorded in - Liber No. 47 at folio 199 of said Surveyor's Office Records and running thence South along said West line of said alley, 35 feet; thence still with said line of said alley, Southwesterly, 14.14 feet to the North line of anomer public alley, 20 feet wide; thence West along said North line, 76.08 feet to intersect the East line of another alley, as dedicated and shown on plat recorded in Liber No. 100 at folio 52 of said Surveyor's Office Records; thence North along said East line, 39.33 feet; thence West 5 feet; thence North 5.67 feet to said South line of said alley, 10 feet wide; thence East along said South line, 91.08 feet to the place of beginning.

NOTE: at the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for taxation purposes as Lot 806 in Square 220.

TOGETHER WITH building and improvements thereon and all and singular the ways, easements, rights, privileges and appurtenances to the same - belonging or in anywise appertaining, and all the estate, right, title, interest and claim, either in law, or in equity, or otherwise however, of the said parties of the first 'part, on, in, to or out of the above-described property.

TO HAVE AND TO HOLD the above-described property unto and to the use of the said party of the second part in fee simple, forever, free and clear of the lien of the above-mentioned Mortgage and Deed of Trust dated July 1, 1936, as amended and supplemented.

SUBJECT HOWEVER, to easements, rights-of-way, restrictions, conditions and covenants of record.

AND said Potomac Electric Power Company hereby covenants to warrant specially the property hereby conveyed and to execute or cause to be executed such further assurances thereof as may be requisite.

THE representations, covenants and warranties, if any, made herein are made solely by said Potomac Electric Power Company and not be said The Riggs National Bank of Washington, D. C., Trustee, and said The Riggs National Bank of Washington, D.C., Trustee, joins in the execution and delivery hereof solely in order to effect the release of the property hereby conveyed from the lien of said Mortgage and Deed of Trust dated July 1, 1936, as amended and supplemented.

IN WITNESS WHEREOF on the day and the year first above written, said Potomac Electric Power Company and said The Riggs National Bank of Washington, D.C., Trustee, have caused these presents to be signed in their respective corporate names by their proper officers thereunto duly authorized and their respective corporate seals to be hereunto affixed, and d each hereby constitute and appoint T. E. O'Dea their true and lawful attorney-in-fact, for them and in their respective names to acknowledge and deliver these presents as their respective acts and deeds.

POTOMAC ELECTRIC POWER COMPANY

By

/s/ E. F. Mitchell
Senior Vice President-System Engineering and Operations

THE RIGGS NATIONAL BANK OF WASHINGTON, D.C., as Trustee
By /s/ M.J. Aquiliino

Vice President and Trust Officer

[Corporate Seal of Riggs National Bank]

/s/ G.A. Casweld
Corporate Trust Officer

CERTIFICATE

I hereby certify that the foregoing and annexed deed was executed and delivered pursuant to, and in strict conformity with, the provisions of a resolution of the Board of Directors of Potomac Electric Power Company, a corporation, passed at a regularly called meeting of said Board of Directors, and that a quorum was present at said meeting.

/s/ T. E. O'Dea
Secretary

I, INDIANA C. SHEPP, a Notary Public in and for the District of Columbia, do hereby certify that T. E. O'Dea who is personally well known to me to be the person named as attorney-in-fact of Potomac Electric Power Company and The Riggs National Bank of Washington, D.C., Trustee, in the foregoing and annexed Deed bearing date on the 23rd day of July, 1976, personally appeared before me in said District of Columbia and as attorney-in-fact as aforesaid, and by virtue of the authority vested in him by said deed, acknowledged the same to be the respective acts and deeds of said Potomac Electric Power Company and said The Riggs National Bank of Washington, D.C., Trustee, and that he delivered the same as such.

GIVEN under my hand and official seal this 23rd day of July, 1976.

[Notarial Seal]

Indiana C. Shepp
Notary Public

SPECIAL WARRANTY DEED (JANUARY 15, 2008)

After Recording, Return to:
Tri-State Commercial Closings, Inc.
1150 18th Street, N.W. Suite 575
Washington, DC 20036

SPECIAL WARRANTY DEED

This Deed, made this 15th day of January, 2008, by and between The Power Station Limited Partnership, a District of Columbia general partnership, incorrectly referred to of record as a limited partnership, whose only partners are the undersigned general partners, ("Grantor"), whose address is at do SJG Properties, 805 15th Street, N.W., Washington, D.C. 20005, party of the first part and Alley Investors L.L.C., a District of Columbia limited liability company, ("Grantee") whose address is at c/o OTJ Architects, Inc., 1232 31st Street, N.W., Washington, D.C. 20007, party of the second part.

WITNESSETH:

That for and in consideration of Ten Dollars ($10.00), cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell and convey unto Grantee, in fee simple, all that certain lot or parcel of land, together with the improvements, rights, privileges and appurtenances thereunto belonging, (collectively the "Property"), situate and being in the District of Columbia, and more particularly described as follows:

"SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF"

The foregoing grant is hereby expressly made subject to the following covenants, which shall run with the land and be binding upon the Grantee and any successor-in-interest thereto, which covenants are hereby expressly made for the benefit of Grantor, and any successor-in-interest to the owners of real properties located in Square 220 of the District of Columbia.

In no event shall there be conducted at the Property any nightclub or discotheque nor any other establishment which distributes or sells alcoholic beverages after midnight. For purposes hereof, a nightclub shall be defined in accordance with the then applicable provisions of the District of Columbia code, or if there shall be no such definition then provided, a nightclub shall be defined as space regularly used and kept open as a place that serves food and alcoholic beverages and which provides either (x) music and facilities for dancing, or (y) comedic entertainment. A discotheque shall similarly be defined under the then applicable provisions of the District of Columbia code, or if there shall be no such definition then provided, a discotheque shall be defined as space regularly used and kept open as a place that provides music and facilities for dancing.

AND the Grantor covenants that it will warrant specially the property hereby conveyed; and that it will execute such further assurances of said land as may be requisite.

WITNESS, my/our hand(s) and seal(s) the day and year first hereinbefore written.

The Power Station Limited Partnership, a District of Columbia general partnership

By:

/s/ S. Jon Gerstenfeld
General Partner

By:

/s/ Harold Zirkin
General Partner

District of Columbia, to-wit:

I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that S. Jon Gerstenfeld as General Partner of The Power Station Limited Partnership, a District of Columbia general partnership, who is personally well known to me as Grantor and who executed this Deed hearing date on the 14th day of January, 2008, personally appeared before me in aforesaid state and county and acknowledged the same to be the act and deed of the above named Grantor.

WITNESS my hand and official seal this 14th day of January, 2008.

/s/ Illegible
Notary Public

My Commission Expires:

State of Maryland County of Montgomery

I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that Harold Zirkin as General Partner of The Power Station Limited Partnership, a District of Columbia general partnership, who is personally well known to me as Grantor and who executed this Deed hearing date on the 10th day of January, 2008, personally appeared before me in aforesaid state and county and acknowledged the same to be the act and deed of the above named Grantor.

WITNESS my hand and official seal this 10th day of January, 2008.

/s/ Maria C. Kyle
Notary Public

My Commission Expires: 4/1/2010

EXHIBIT A

All that certain lot or parcel of land situate and lying in the District of Columbia, and more particularly described as follows:

Part of Lot 53 in Square 220 in the subdivision made by Allan D. McDermott, as per plat recorded in Liber No. 31 at folio 166 of the Records of the Office of the Surveyor of the District of Columbia, described as follows: BEGINNING for the same at a point In the East line of said lot distant 5 feet South from the northeast corner of said lot, said point being at the intersection of the West line of a public alley, 10 feet wide, with the South line of a public alley, 10 feet wide, as dedicated and shown on plat recorded in Liber No. 47 at folio 199 of said Surveyor's Office Records and running thence South along said West line of said alley, 35 feet; thence still with said line of said alley, southwesterly, 14.14 feet to the North line of another public alley, 20 feet wide; thence West along said North line, 76.08 feet to intersect the East line of another alley, as dedicated and shown on plat recorded in Liber No. 100 at folio 52 of said Surveyor's Office Records; thence North along said East line, 39.33 feet; thence West 5 feet; thence North 5.67 feet to said South line of said alley, 10 feet wide; thence East along said South line, 91.08 feet to the place of beginning.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 806 in Square 220.

TOGETHER WITH those non-exclusive easements set forth in Access Easement dated March 11, 2003 and recorded May 5, 2003 as instrument No. 2003053686.

AND BEING the same property conveyed to The Power Station Limited Partnership, by Deed dated July 23, 1976 and recorded August 4, 1976 as instrument No. 7600020597 among the Land Records of the District of Columbia, from Potomac Electric Power Company, a District of Columbia and Virginia corporation, and The Riggs National Bank of Washington, D.C., a national banking association organized and existing under the laws of the United States of America, as Trustee under the Mortgage and Deed of

Trust dated July 1, 1936, made by said Potomac Electric Power Company, as amended and supplemented (which original Mortgage and Deed of Trust is recorded among the Land Records of the District of Columbia, in Liber 7008, folio 131).

SPECIAL WARRANTY DEED
(AUGUST 13, 2015)

RECORD AND RETURN TO:

____

____

SPECIALWARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed"), made this 13th day of August, 2015, by and between ALLEY INVESTORS L.L.C., a District of Columbia limited liability company ("Grantor"), with an address of do 1412 Eye Street NW, Washington, DC 20005 and ALLEYWAY PROPERTIES L.L.C., a District of Columbia limited liability company ("Grantee"), with an address of do Dexis Interactive Incorporated, 1301 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

WITNESSETH, that for and in consideration of the sum of Ten Dollars ($10), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell and convey, with Special Warranty, unto said Grantee, that certain property located in the District of Columbia, described as follows:

See Exhibit A, attached hereto.

TO HAVE AND TO HOLD the Property, together with each and every title, right, privilege, appurtenance and advantage thereunto belonging, or in anywise appertaining, unto and for the use, benefit and behoof of Grantee, its successors and assigns, in fee simple forever, and Grantor shall execute such further assurances of said Property as may be appropriate.

The Grantor covenants that it will warrant specially the Property hereby conveyed, subject to matters of record, and that it will execute such further assurances of said Property as may be requisite.

GRANTOR:

ALLEY INVESTORS L.L.C.,
a District of Columbia limited liability company

By:

/s/ Lawrance Jaccard
Authorized Managing Member
State of District of County of Columbia

I, Stacy Fruscella, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Lawrance Jaccard, the authorized Managing Member of ALLEY INVESTORS L.L.C., the named grantor in the foregoing and attached instrument, dated as of Aug 3rd, 2015, personally appeared before me, and, being personally well known to me or satisfactorily proven, acknowledged that he, being authorized so to do, executed the foregoing Instrument for the purposes therein contained and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ Stacy Fruscella
Notary Public

My Commission Expires: 11/14/15

[Notarial Seal]

SUBMITTED FOR ELECTRONIC RECORDING BY:
Commonwealth Land Title Insurance Company
Fidelity National Title Insurance Company
1015 15th Street, NW Suite 300
Washington, DC 20005
File No. 15-001508

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL PROPERTY

All that certain lot or parcel of land situate and lying in the District of Columbia, and more particularly described as follows:

Part of Lot 53 in Square 220 in the subdivision made by Allan D. McDermott, as per plat recorded in Liber No. 31 at folio 166 of the Records of the Office of the Surveyor of the District of Columbia, described as follows: BEGINNING for the same at a point in the East line of said lot distant 5 feet South from the northeast corner of said lot, said point being at the intersection of the West line of a public alley, 10 feet wide, with the South line of a public alley, 10 feet wide, as dedicated and shown on plat recorded in

Liber No. 47 at folio 199 of said Surveyor's Office Records and running thence South along said West line of said alley, 35 feet; thence still with said line of said alley, southwesterly, 14.14 feet to the North line of another public alley, 20 feet wide; thence West along said North line, 76.08 feet to intersect the East line of another alley, as dedicated and shown on plat recorded in Liber No. 100 at folio 52 of said Surveyor's Office Records; thence North along said East line, 39.33 feet; thence West 5 feet; thence North 5.67 feet to said South line of said alley, 10 feet wide; thence East along said South line, 91.08 feet to the place of beginning.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for taxation purposes as Lot 806 in Square 220.

TOGETHER WITH those easements rights set forth in Access Easement dated March 11, 2003 and recorded May 5, 2003 as Instrument No. 2003053686.

SPECIAL WARRANTY DEED
(JULY 11, 2022)

SUBMITTED FOR ELECTRONIC RECORDING BY:
Commonwealth Land Title Insurance Company
Fidelity National Title Insurance Company
1620 L Street, NW, 4th Floor
Washington, DC20036
File No. DC2200299

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed"), made this 11th day of July 2022, by and between Alleyway Properties, L.L.C., a District of Columbia limited liability company ("Grantor") with an address of do 1412 Eye Street NW, Washington, DC 20005 and DTLD, L.L.C., a District of Columbia limited liability company ("Grantee"), with an address at 1775 I Street, NW, Suite 1150 Washington, D.C. 20006.

WITNESSETH, that for and in consideration of the sum of Ten Dollars ($10), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, see and convey, with Special Warranty, unto said Grantee, that certain property located in the District of Columbia, described as follows:

See exhibit A, attached hereto.

TO HAVE AND TO HOLD the property, together with each and every title, right, privilege, appurtenance and advantage thereunto belonging, or in anywise appertaining, unto and for the use, benefit and behoof of Grantee, its successors and assigns, in fee simple forever, and Grantor shall execute such further assurances of said Property as may be appropriate.

The Grantor covenants that it will warrant specially the Property hereby conveyed, subject to matters of record, and that it will execute such further assurances of said Property as may be requisite.

GRANTOR:

Alleyway Properties, L.L.C.

A District of Columbia limited liability company

By:

/s/ Mihir Desai

Manager and Sole Member

State of District

County of Columbia

I Kathleen T. McHugh, the undersigned notary public in and for the jurisdiction aforesaid, do certify that Mihir Desai, the sole member of Alleyway Properties, L.L.C., the named grantor in the foregoing and attached instrument, dated as of July 11, 2022, personally appeared before me, and being personally well known to me or satisfactorily proven, acknowledged that he, being authorized so to do, executed the foregoing Instrument for the purposes therein contained and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

/s/ Kathleen T. McHugh
Notary Public

My Commission Expires: 10/31/2024

[Notarial Seal]

Exhibit "A"

Legal Description

All that certain lot or parcel of land together with all improvements thereon located and being in the City of Washington in the District of Columbia and - being more particularly described as follows:

Part of Lot 53 in Square 220 in the Subdivision made by Allan D. McDermott, as per plat recorded in Liber No. 31 at folio 166 of the Records of the Office of the Surveyor of the District of Columbia, described as follows:

Beginning for the same at a point in the East line of said lot distant 5 feet South from the northeast corner of said lot, said point being at the intersection of the West line of a public alley, 10 feet wide, with the South line of a public alley, 10 feet wide, as dedicated and shown on a plat recorded in Liber No. 47 at folio 199 of said Surveyor's Office Records and running thence South along said West line of said alley, 35 feet; thence still with said line of said alley, southwesterly, 14.14 feet to the North line of another public alley, 20 feet wide; thence West along said North line, 76.08

feet to intersect the East line of another alley, as dedicated and shown on plat recorded in Liber No. 100 at folio 52 of said Surveyor's Office Records; thence North along said East line, 39.33 feet; thence West 5 feet; thence North 5.67 feet to said South line of said alley, 10 feet wide; thence East along said South line, 91.08 feet to the place of beginning.

Note: As of the date hereof, the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 806 in Square 220.

Together with the easements granted by virtue of the Access Easement dated March 11, 2008 and recorded on May 5, 2003 as Instrument No. 2003053686.