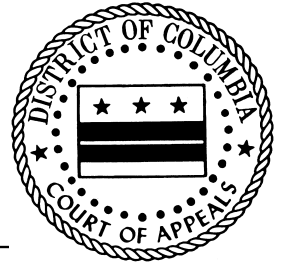


**Consolidated Appeals No. 24-CV-1163 & No. 24-CV-1173**



---

**DISTRICT OF COLUMBIA COURT OF APPEALS**

---

Clerk of the Court  
Received 06/05/2025 04:44 PM  
Filed 06/05/2025 04:44 PM

**DTLD, LLC, et al.,  
Appellants**

**v.**

**THE POWER STATION LIMITED PARTNERSHIP, et al.,  
Appellees**

---

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,  
Appellant**

**v.**

**DTLD, LLC, et al.,  
Appellees**

---

**On Appeal from the Superior Court of the District of Columbia No. 2023-  
CAB-006784, Hon. Carl E. Ross**

---

**ANSWERING BRIEF OF APPELLEES THE POWER STATION LIMITED  
PARTNERSHIP, SOUTHERN BUILDING ASSOCIATES, LLP, 15<sup>TH</sup> & H  
STREET ASSOCIATES LLP, AND SJG PROPERTIES LLC**

**REES BROOME, PC  
\*Eric S. Lammers, D.C. Bar No. 458038  
Corey Zoldan, D.C. Bar No. 1631758  
1900 Gallows Road, Suite 700  
Tysons Corner, VA 22182  
Email: [elammers@reesbroome.com](mailto:elammers@reesbroome.com)  
[czoldan@reesbroome.com](mailto:czoldan@reesbroome.com)  
Telephone: (703) 790-1911  
*Counsel for Appellees*  
\*Counsel for Oral Argument**

**Rule 28(a)(2) DESIGNATION**

Pursuant to D.C. App. R. 28(a)(2), counsel for Appellees The Power Station Limited Partnership, Southern Building Associates, LLP, 15th & H Street Associations LLP and SJG Properties LLC submit the following list of Parties, Amici Curiae and Counsel that appeared below or will appear in this appellate proceeding:

The Power Station Limited Partnership, Southern Building Associates, LLP, 15th & H Street Associations LLP, and SJG Properties LLC	Plaintiffs below and Appellees (No. 24-CV-1163)
---	--

Eric S. Lammers, Esq. Corey Zoldan, Esq. Rees Broome, PC	Counsel for The Power Station Limited Partnership, Southern Building Associates, LLP, 15th & H Street Associations LLP, and SJG Properties LLC
--	--

DTLD, LLC and Iraklion, LLC	Defendants below and Appellants (No. 24-CV-1173) and Appellees (No. 24-CV- 1163)
-----------------------------	---

James T. Bacon, Esq. Mahdavi, Bacon, Halfhill & Young PLLC	Counsel for DTLD, LLC and Iraklion, LLC
---	--

JPMorgan Chase Bank, N.A.	Intervenor below and Appellant (No. 24-CV-1163) and Appellee (No. 24-CV-1173)
---------------------------	---

Jessica Lynn Farmer, Esq. Zachary Lundgren, Esq. Christopher S. Cohen, Esq. Holland & Knight LLP	Counsel for JPMorgan Chase Bank, N.A.
---	--

## **RULE 26.1 DISCLOSURE**

Appellee The Power Station Limited Partnership is a District of Columbia general partnership (incorrectly referred to of record as a limited partnership). Its partners are Harold Zirkin and Jon Gerstenfeld. It has no parent corporation and no publicly held corporation that owns 10% or more of its stock.

Appellee 15th and H Street Associates LLP is a District of Columbia limited liability partnership. Its partners with a 10% or greater interest in the partnership are: SJG Properties Guarantor LLC; S. Jon Gerstenfeld Family Trust; 15th Street Real Estate LLC; LFZ Revocable Trust; Charlotte Gerstenfeld Revocable Trust Dated 09/18/2017; and the Jennifer Gerstenfeld Argenti 2010 Revocable Trust. It has no parent corporation and no publicly held corporation that owns 10% or more of its stock.

Appellee Southern Building Associates, LLP is a District of Columbia limited partnership. Its partners with a 10% or greater interest in the partnership are S. Jon Gerstenfeld Family Trust; LFZ Revocable Trust; and the S. Jon Gerstenfeld 2020 Family Trust. It has no parent corporation and no publicly held corporation that owns 10% or more of its stock.

Appellee SJG Properties LLC is a District of Columbia limited liability company. It has no parent corporation and no publicly held corporation that owns 10% or more of its stock.

**TABLE OF CONTENTS**

I. JURISDICTIONAL STATEMENT ..... 1

II. QUESTIONS PRESENTED ..... 1

III. STATEMENT OF THE CASE..... 1

IV. STATEMENT OF FACTS.....5

V. LEGAL STANDARD.....10

VI. SUMMARY OF ARGUMENT ..... 11

VII. ARGUMENT.....14

    A. The Superior Court Correctly Applied District of Columbia Law in  
    Enforcing the Restrictive Covenant..... 14

    B. The Superior Court Correctly Rejected Defendants’ Attempt to Invalidate the  
    Covenant through the Radical Change Doctrine.....17

    C. Defendants Provide No Convincing Reason Why This Court Should Reject  
    the Radical Change Doctrine and Adopt a Different Test .....23

    D. Plaintiffs Would Still be Entitled to Summary Judgment under the New  
    Jersey Test.....30

        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, such as antitrust laws, or public policy .....31

        2. Whether the covenant had an impact on the consideration exchanged  
        when the covenant was originally executed. This may provide a measure of the  
        value to the parties of the covenant at the time.....31

        3. Whether the covenant clearly and expressly sets forth the restrictions ...32

        4. Whether the covenant was in writing, recorded, and if so, whether the  
        subsequent grantee had actual notice of the covenant .....32

        5. Whether the covenant is reasonable concerning area, time or duration ..32

        6. Whether the covenant imposes an unreasonable restraint on trade or  
        secures a monopoly for the covenantor .....34

        7. Whether the covenant interferes with public interest .....34

        8. Whether, even if the covenant was reasonable at the time it was executed,  
        ‘changed circumstances’ now make the covenant unreasonable .....35

E. Defendants’ Transient Statistics Do Not Represent Radical Change or Fit Into the <i>Davidson Bros.</i> test .....	36
F. The ABCA Ruling is Irrelevant to the Enforceability of the Covenant .....	40
1. The ABC Board’s Order Is Not Relevant to the Covenant’s Enforceability.	41
2. The ABC Board Order is Not Binding and Has No Preclusive Effect.....	43
a. Judicial Deference Does Not Apply to The ABC Board Order .....	43
b. The ABC Board Order is Not Binding.....	44
(i) ABC Board Rulings Have No Preclusive Effect .....	44
(ii) Collateral Estoppel Does Not Apply.....	45
<b>VIII. CONCLUSION</b> .....	48

## TABLE OF AUTHORITIES

### **Cases**

<i>12 Havemeyer Place Co., LLC v. Gordon</i> , 76 Conn. App. 377 (2003) .....	28
<i>Adams v. Plaza Const. Co.</i> , 157 Md. 674 (1929).....	18
<i>Am. Weekly v. Patterson</i> , 179 Md. 109 (Md. 1940).....	18
<i>Arthur v. Bender</i> , 90 Ohio App. 187 (1951) .....	16
<i>Bueno v. Firgelski</i> , 180 Conn. App. 384 (2018) .....	40
<i>Castleman v. Avignone</i> , 56 App. D.C. 253 (1926).....	23, 26, 33
<i>Cataldi v. Werth</i> , 313 F.2d 553 (D.C. 1962) .....	16
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986) .....	11
<i>Davidson Bros., Inc. v. D. Katz &amp; Sons, Inc.</i> , 121 N.J. 196 (1990).....	passim
<i>DLY-Adams Place, LLC v. Waste Management of Maryland, Inc.</i> , 2 A.3d 163 (D.C. 2010) .....	15, 26
<i>Dumbarton Imp. Ass’n, Inc. v. Druid Ridge Cemetery Co.</i> , 434 Md. 37 (2013).....	35, 39
<i>Fife v. Bosely</i> , 100 F.3d 87 (8th Cir. 1996) .....	46
<i>Foundation for the Preservation of Historic Georgetown v. Arnold</i> , 651 A.2d 794 (D.C. 1994) .....	15, 26
<i>Franco v. District of Columbia</i> , 39 A.3d 890 (D.C. 2012).....	10, 46, 47
<i>Gallothom, Inc. v. District of Columbia Alcoholic Beverage Control Bd.</i> , 820 A.2d 530 (D.C. 2003) .....	44
<i>George Washington University v. Scott</i> , 711 A.2d 1257 (D.C. 1998).....	23
<i>Gladstone v. Gregory</i> , 95 Nev. 474 (1979).....	16
<i>GLM Partnership v. Hartford Cas. Ins. Co.</i> , 753 A.2d 995 (D.C. 2000) .....	10
<i>Grubb v. Guilford Ass’n, Inc.</i> , 228 Md. 135 (1962).....	16
<i>Hollins v. Federal Nat. Mortg. Ass’n</i> , 760 A.2d 563 (D.C. 2000) .....	10
<i>In re Melton</i> , 597 A.2d 892 (D.C. 1991).....	33
<i>Johnson v. D.C., Dep’t of Health</i> , 163 A.3d 746 (D.C. 2017) .....	43
<i>Jones v. D.C. Dep’t of Empl. Servs.</i> , 41 A.3d 1219 (D.C. 2012) .....	43

<i>Joslin v. Pine River Dev. Corp.</i> , 116 N.H. 814, 367 A.2d 599 (1976).....	29
<i>Kovach v. District of Columbia</i> , 805 A.2d 957 (D.C. 2002).....	45
<i>Lumpkin v. CSL Locksmith, LLC</i> , 911 A.2d 418 (D.C. 2006).....	11
<i>Novak v. Capital Management and Development Corp.</i> , 570 F.3d 305 (D.C. Cir. 2009).....	2, 5, 19, 22
<i>Powell v. Washburn</i> , 125 P.3d 373 (Ariz. 2006).....	28
<i>Quinto v. Legal Times of Washington, Inc.</i> , 506 F. Supp. 554 (D.D.C. 1981).....	36
<i>Riss v. Angel</i> , 131 Wash.2d 612, 934 P.2d 669 (1997).....	29
<i>SDC 214, LLC v. London Towne Property Owners Ass’n, Inc.</i> , 395 Md. 424 (2006).....	28
<i>Sears v. Catholic Archdiocese of Washington</i> , 5 A.3d 653 (D.C. 2010).....	11
<i>Smith v. Swick &amp; Shapiro, P.C.</i> , 75 A.3d 898 (D.C. 2013).....	10
<i>Steele v. Salb</i> , 93 A.3d 1277 (D.C. 2014).....	10
<i>Steuart Transportation Co. v. Ashe</i> , 269 Md. 74 (1973).....	23
<i>Turner v. Brocato</i> , 206 Md. 336, 111 A.2d 855 (1955).....	26

**Statutes**

D.C. Code § 25–104.....	45
D.C. Code § 25–313.....	41, 45, 46

**Other Authorities**

23 DCMR § 1605.....	47, 48
Wright & Miller, <i>Federal Practice &amp; Procedure</i> § 4421, at 196 (2d ed. 1994).....	46

## **I. JURISDICTIONAL STATEMENT**

The instant appeal is from the Superior Court of the District of Columbia's November 24, 2022 Order Granting The Power Station Limited Partnership's Motion for Summary Judgment, which disposed of all of all parties' claims.

## **II. QUESTIONS PRESENTED**

(1) Should the Appellate Court remand this case and instruct the trial court to apply a "reasonableness" test enunciated in a 1990 decision by the New Jersey Supreme Court (but never cited by any court in the District or Maryland) to give Appellants a second attempt to invalidate an unambiguous restrictive covenant that is not against public policy?

(2) Did the trial court properly apply the "radical change" doctrine in determining that the physical attributes of the property and surrounding area that prompted the restrictive covenant had not changed, so that the equitable defense did not apply to invalidate the restrictive covenant?

## **III. STATEMENT OF THE CASE**

Appellees and Plaintiffs below The Power Station Limited Partnership ("PSLP"), Southern Building Associates, LLP ("Southern"), 15th & H Street Association LLP ("15th & H") and SJG Properties LLC ("SJG") (collectively, "Appellees" or "Plaintiffs") hereby adopt and incorporate the Statement of the

Case from the Brief submitted by Co-Appellees JP Morgan Chase Bank N.A. (“Co-Appellee”) pursuant to D.C. App. R. 28(j).

This lawsuit involves real property located at 1421 I Street, NW, Washington, D.C. (“the Property”), which has most recently been used as an office building. The building is peculiarly situated in an alley, so that it has no direct access to a public road and can only be accessed through service alleyways. Prior to 2008, a nightclub operated in the Property. The nightclub’s operations disrupted the neighborhood and led to violence, culminating in the near-fatal beating documented in *Novak v. Capital Management and Development Corp.*, 570 F.3d 305, 309 (D.C. Cir. 2009). To prevent the recurrence of such incidents, when PSLP sold the Property, it included in the deed a restrictive covenant (the “Covenant”) prohibiting the Property from being used as a nightclub.

In 2022, the Property was sold at auction to a company based in St. Kitts and Nevis. That company, Appellant and Defendant below DTLTD, LLC (“DTLTD”), paid over \$8 million for the Property, despite, according to the testimony of its corporate representative, having no definite plans for it. Not long after, though, DTLTD joined with Appellant and Defendant below Iraklion LLC (“Iraklion”) (collectively, “Appellants” or “Defendants”) to transfer to the Property a Class CN license that Iraklion had obtained to operate a nightclub with nude dancing. Plaintiffs, PSLP and neighboring property owners, filed the instant action to

enforce the Covenant and prevent Defendants from opening, in their words, a “Vegas-style nightclub” at the Property. Defendants counterclaimed to invalidate the Covenant.

It is undisputed that the Covenant was properly recorded, was known to Defendants when DTLD purchased the Property, and unambiguously precludes the sole use Defendants intend for the Property. At the conclusion of discovery, Defendants moved for summary judgment, arguing that the Covenant should be invalidated due to drastic changes in the neighborhood. Defendants did not allege any physical changes to the Property or its accessibility. Instead, Defendants contended that the neighborhood was safe, but that COVID-19 had impacted the District’s economy. Defendants also cited to an Order by the Alcoholic Beverage and Cannabis Board (“ABC Board”) provisionally approving Iraklion’s transfer application. Plaintiffs also moved for summary judgment, requesting that the Superior Court enforce the Covenant.

On November 22, 2024, the Superior Court granted Plaintiffs’ motion for summary judgment and denied Defendants’ motion. The Court found that the Covenant was unambiguous, and that Defendants had both constructive and actual knowledge of the nightclub restriction. The Superior Court ruled that the Covenant is not an impermissible infringement of Defendants’ use of the Property, as it precludes just one narrow use of the Property from the many that remain available.

The Superior Court rejected Defendants’ argument that the Covenant should be invalidated due to changed conditions in the neighborhood. The Court found that the physical factors that had necessitated the Covenant – particularly its alleyway location and lack of direct access to public roads – were unchanged. The Court held that Defendants had failed to raise any disputed issue of material fact regarding these continuing conditions. The Court rejected Defendants’ argument that the COVID-19 pandemic and its impact on the economy had rendered the Covenant invalid, noting that Defendants failed to cite to any other jurisdiction that had recognized the pandemic as the basis for an equitable defense to enforcement of a restrictive covenant. Defendants’ citation to transient conditions such as crime rates, and their promises of future safety measures, also did not ameliorate the Property’s inaccessibility, which was the reason the Covenant was established.

On appeal, Defendants do not seriously contest the Superior Court’s ruling that they failed to establish a radical change in conditions invalidating the Covenant. Instead, they argue that this Court should ignore the District’s own precedent, reject the Maryland precedent that Defendants themselves previously acknowledged had been “adopted as D.C. common law,” and instead adopt a “reasonableness” test that they seek to import from a New Jersey decision, *Davidson Bros., Inc. v. D. Katz & Sons, Inc.*, 121 N.J. 196 (1990). This New Jersey decision has never been cited by any court in the District or Maryland. Plaintiffs maintain that the Superior Court

correctly applied D.C. law and that there is no good reason for this Court to remand the case based upon adoption of a new test for invalidating a restrictive covenant that would not, in any event, require a different result.

#### IV. STATEMENT OF FACTS

Appellees hereby adopt and incorporate by reference the Statement of the Facts from Co-Appellees' Brief pursuant to D.C. App. R. 28(j).

The Property at issue is a 14,925 square foot building located in the service alleyways between H and I Street, NW, and between 14<sup>th</sup> and 15<sup>th</sup> Streets, NW. Appendix (“App.”) 807 (Wiltshire Aff. ¶ 3). It has no direct access to public roads, and can only be reached through the narrow alleyways that the neighboring buildings use for their loading docks, trash pickups, and garage access. App. 807-08 (Wiltshire Aff. at ¶¶ 3-4). PSLP owned the Property while it operated as a nightclub, known as the Zei Club, from the 1990s to the early 2000s. During this time, the nightclub’s location led to violence and other disturbances that occurred in the alley where patrons lined up to enter and exit the nightclub. App. 809-10 (Wiltshire Aff. at ¶¶ 9, 12-13). The D.C. Circuit Court of Appeals discussed these conditions in a 2009 case that stemmed from an incident in which two Zei Club patrons were nearly beaten to death in the alley as they exited the club. App. 53; *see Novak*, 570 F.3d at 305.

In 2008, PSLP sold the Property, but included a restrictive covenant in the deed, which 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.” App. 820 (Wiltshire Aff. Ex. B). PSLP included the Covenant because of the deleterious impact that a nightclub, in this peculiar location, had had on the neighborhood. The Covenant was properly recorded to effectuate its purpose of preventing the Property from again being used for this inappropriate and disruptive use. App. 809-10 (Wiltshire Aff. ¶ 11).

The Property was used as an office space until 2022, when it was sold at auction. Bidders were informed of the Covenant. App. 811 (Wiltshire Aff. ¶ 17). Defendant DTLD purchased the Property at this auction. App. 54 (SJ Op. at 2). DTLD is a foreign limited liability company, based in St. Kitts and Nevis, that has just one officer and owner, Chanelle Sturge, who is listed on her LinkedIn page as an administrative assistant at “Despen Trust Limited.” App. 904. Ms. Sturge did not testify in this case, but DTLD’s designated corporate representative testified on behalf of the company that he did not know how DTLD became aware of the Property, and that DTLD had made no efforts to market the Property, or otherwise assess how it could be used. App. 892; 898; 900-01 (DTLD Dep. at 37:5-22, 55:10-16, 58:15-59:17).

Iraklion is a Virginia company which also only has one officer, owner, and employee. App. 840-41 (Iraklion Dep. 33:6-34:19). Iraklion purchased a Class CN license to operate a night club with nude dancing. App. 846 (Iraklion Dep. 45:11-

22). While the companies' respective corporate designees disavowed any connection between the companies, Iraklion applied to the District of Columbia Alcoholic Beverage and Cannabis Administration ("ABCA") to transfer Iraklion's license to the Property shortly after DTLDD bought it. App. 899 (DTLDD Dep. 56:2-9).

Knowing that it violates the Covenant, DTLDD intends to lease the Property to Iraklion to operate a "gentlemen's club" that regularly serves alcohol until 3:00 am or later. App. 862-63 (Iraklion Dep. 72:21-73:11). Defendants have stated their intention to host as many as 1,200 patrons at the new nightclub, roughly twice the capacity of the prior Zei Club. App. 813 (Wiltshire Aff. ¶ 23). Defendants have never considered any other uses for the Property. App. 854-57 (Iraklion Dep. 64:22-67:4); App. 900-01 (DTLDD Dep. 58:15-59:17).

At the ABCA hearing on Iraklion's application, the Board repeatedly refused to consider the Covenant or any argument relating thereto because it was "not an issue that this Board can determine." App. 912 (2/23/24 ABCA Tr. at 66:8-9). While Iraklion's witnesses testified at the hearing as to speculative future plans for security and sound control, Iraklion has conceded that it has no employees, no actual design or construction plans, and has not entered into any binding agreements relating to the construction, design or operation of the planned nightclub. App. 839 (Iraklion Dep. 31:15-18); App. 851-52 (Iraklion Dep. 57:1-58:11).

While Defendants have made various claims regarding changes in the neighborhood since the Covenant was put in place in 2008, those claims are largely unsupported and speculative. For example, they contend that there are other nightclubs in the vicinity of the Property, but have presented no evidence regarding whether the number or type of establishments have changed since 2008. While Defendants overstate the size and impact of the other nightclubs, most of which are of limited capacity, the most important aspect of those establishments is that none of them are located in an alleyway or otherwise lack direct access to main roads. App. 864-65 (Iraklion Dep. 88:14-89:17); *see also* Plaintiffs' Response to Defendants' Factual Statement in Support of Their Motion for Summary Judgment ("Pl. Counter-Statement") ¶¶ 12, 15.

While Defendants have made sweeping factual claims regarding other economic and other changes within the District and the neighborhood, they similarly have failed to support those assertions. The crime rate in the neighborhood and District, for example, have fluctuated over time, but Defendants have presented no evidence that crime rates are higher or lower now than in 2008. In 2023, when Defendants were attempting to transfer Iraklion's license to the Property, crime rates were actually very high, including 274 homicides in the District as compared to just 184 when the Covenant was recorded. Again, these rates have fluctuated and do

fluctuate, but it is not correct that crime rates were particularly low when this case was filed. App. 983-88 (Norris Aff. Ex. F); *see also* Pl. Counter-Statement ¶ 16.

Defendants further fail to establish that other transient conditions, such as office vacancy rates, population age and the desire of that population for “diverse entertainment options” are substantially different now than in 2008, when the deed was recorded. App. 1014-1102 (Norris Aff. Exs. O-S); *see also* Pl. Counter-Statement ¶¶ 16-21. While Defendants tout the District’s budget shortfalls as another rationale for invalidating the Covenant, they fail to show that revenues from their nightclub would be greater than from other potential uses of the Property, particularly after public safety and other expenditures from that use are taken into account.

While Defendants have failed to establish the existence of conditions supporting invalidation of the Covenant, what remains entirely undisputed is that the location of the Property and the surrounding alleyways have not changed in any significant way since 2008. The Property remains accessible only through the service alleyways. App. 812-13 (Wiltshire Aff. ¶ 22). Those alleyways have not gotten any wider or more easily accessible to ambulances, fire or police vehicles. App. 813 (Wiltshire Aff. ¶ 24). As the Superior Court correctly held, the conditions that necessitated the Covenant, and made the location of the Property inappropriate for use as a nightclub, remain entirely unchanged.

## V. LEGAL STANDARD

On appeal, this Court reviews the grant of a motion for summary judgment *de novo*, relying on the same standard that was used by the trial court. *Hollins v. Federal Nat. Mortg. Ass'n*, 760 A.2d 563, 570 (D.C. 2000). Summary judgment is proper if there is no genuine dispute as to any material fact and the record shows that the moving party is entitled to judgment as a matter of law. D.C. Sup. Ct. R. 56(a). Summary judgment is “properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the nonmoving party, (3) under the appropriate burden of proof.” *GLM Partnership v. Hartford Cas. Ins. Co.*, 753 A.2d 995, 998 (D.C. 2000) (internal quotations and citations omitted).

Although D.C. courts “examine the evidence in the light most favorable to the party opposing the motion, conclusory allegations by the nonmoving party are insufficient to establish a genuine issue of material fact or to defeat the entry of summary judgment.” *Steele v. Salb*, 93 A.3d 1277, 1281 (D.C. 2014) (quoting *Franco v. District of Columbia*, 39 A.3d 890, 894 (D.C. 2012)). “If a [movant] has made an initial showing that the record presents no genuine issue of material fact, then the burden shifts to the [non-movant] to show such an issue exists.” *Smith v. Swick & Shapiro, P.C.*, 75 A.3d 898, 901 (D.C. 2013). The nonmovant may not “stave off the entry of summary judgment through mere conclusory allegations” and

“the mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient to defeat a motion for summary judgment.” *Id.* at 902 (citations omitted). Indeed, Rule 56 “mandates the entry of summary judgment” against the nonmovant if “after adequate time for discovery and upon motion, [the nonmovant] fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) (discussing federal rule).

“The interpretation of deeds, like contracts, is a legal question that [the Appellate Court] review[s] *de novo*.” *Sears v. Catholic Archdiocese of Washington*, 5 A.3d 653, 660 (D.C. 2010). Regarding contracts, “summary judgment is appropriate where a contract is unambiguous since, absent such ambiguity, a written contract duly signed and executed speaks for itself and binds the parties without the necessity of extrinsic evidence.” *Lumpkin v. CSL Locksmith, LLC*, 911 A.2d 418, 422 (D.C. 2006) (citations omitted).

## **VI. SUMMARY OF ARGUMENT**

Appellants hereby adopt and incorporate by reference the Summary of the Argument from Co-Appellees’ Brief pursuant to D.C. App. R. 28(j).

Defendants failed to convince the Superior Court that any of the equitable defenses to enforcement of a restrictive covenant allows them to run a nightclub in an alleyway location where that precise use previously resulted in tragedy and

subsequently was prohibited by deed. In the underlying case, Defendants argued for application of the “radical change” defense, which allows the court to refuse to enforce a restrictive covenant where the surrounding neighborhood has completely changed so that the covenant no longer serves its intended purpose. The Superior Court properly rejected that defense. Aware that the lower court’s reasoning was sound, Defendants take a new tact, now arguing that this Court should abandon the radical change standard and instead apply a “reasonableness” analysis as the only touchstone of enforceability. Defendants purport to adopt this test from a New Jersey decision, but largely fail to apply the multi-factor test actually formulated in that case for reviewing a non-competition covenant.

It is difficult to imagine a less sympathetic case in which to advocate for a change of the law. Defendants have advanced no sensible reason for doing so. The Covenant at issue is reasonable. It precludes the Property from one use, not to serve any improper purpose or even to curtail competition, but because using a property accessible only through alleys to host a large nightclub is disruptive and previously resulted in violence and crime. The Covenant is not overreaching. The Property remains open to every other use, as evidenced by its productive use as office space for over a decade. The Covenant is not ambiguous, nor was it hidden from Defendants. It is recorded and was pointed out to potential buyers, including Defendant DTLTD, when the Property was sold at auction. The Covenant is not

against public policy. It does not impose any racial restrictions, nor does it unreasonably restrain trade or competition. Plaintiffs are not, after all, on a crusade to ban nightclubs, or even strip clubs, from the neighborhood, just this one peculiar location which has proven so unsuitable for that purpose.

In contrast, consider Plaintiffs' argument. From the many properties available in the District that could be used for a nightclub with nude dancing, they insist that they be given the right to use an alley-bound property DTLA purchased knowing that the Covenant precluded that very use. Defendants contend that they should be granted this right because opening a nightclub in this location is somehow necessary to combat the economic impact of COVID-19, an argument that was unconvincing in 2023 and becomes more strained with every passing year. They cite to a variety of inherently fluctuating conditions, none of which change the fact that, at bottom, they are asking this Court to strike down a covenant intended to benefit the neighborhood so that they can shoehorn a 1,200-person nightclub into a secluded alley with no direct access to main roads.

There is no doubt that the Covenant is enforceable under D.C. law. By pleading for a change of law, Defendants implicitly admit as much. The Superior Court, in applying that law, got this case exactly right. Under D.C. law, restrictive covenants not against public policy are enforceable. None of the equitable defenses recognized by this Court, or any of the Maryland decisions to which this Court

gives deference, apply. Defendants have failed to adduce any substantive change to non-transient conditions sufficient to invalidate the purpose of the Covenant, which remains the same as when enacted because it is still a bad idea to squeeze a nightclub into a secluded and inaccessible location. And no radical change of the law is necessary or desirable, both because existing law is flexible and in accord with the majority of jurisdictions, and because the New Jersey test Defendants advocate would, in any event, reach the same result.

## VII. ARGUMENT

### A. **The Superior Court Correctly Applied District of Columbia Law in Enforcing the Restrictive Covenant.**

Despite the fact that the trial court never mentioned the phrase “touch and concern,” Defendants argue that “the Superior Court applied the traditional ‘touch and concern’ test, finding that the only issues that matter is whether PSLP had a rational purpose for including the covenant, and clearly articulated it in the deed.” App. Br. at 2. Defendants fail to clearly define what they believe the “touch and concern” test to be, or explain how the trial court applied (or misapplied) it. Rather, Defendants simply assert that the trial court applied a test it never mentioned, and that it was wrong for doing so.<sup>1</sup>

---

<sup>1</sup> The “touch and concern” test is discussed in the case that Defendants urge this Court to adopt, *Davidson Bros.* 121 N.J. at 196. The court noted the test as one  
(continued on next page)

What Defendants appear to take exception to is that the trial court confirmed that, (a) under well-established District law, courts construe deeds like contracts and enforce them to the extent that they are unambiguous and not against public policy, and (b) Defendants’ “constructive and actual knowledge of the restrictive covenant weigh heavily in favor of enforcing the covenant.” App. 57 (SJ Op. at 5). Neither of these statements are novel, nor are they controversial. District of Columbia courts read deeds containing restrictive covenants like contracts, and “[i]f a deed is unambiguous, the court’s role is limited to applying the meaning of the words[.]” *Foundation for the Preservation of Historic Georgetown v. Arnold*, 651 A.2d 794, 796 (D.C. 1994); *see also DLY-Adams Place, LLC v. Waste Management of Maryland, Inc.*, 2 A.3d 163, 166-67 (D.C. 2010). As to Defendants’ knowledge, courts throughout the nation, including in cases upon which Defendants purport to

---

that had operated in New Jersey to invalidate noncompetition covenants. *See id.* at 206. New Jersey evidently continues to rely on the “touch and concern” requirement for non-competition covenants, whereas most other jurisdictions “have omitted ‘touch and concern’ from their analysis.” *Id.* at 208. While Defendants take the Superior Court to task for mechanically applying the “touch and concern” test (which it did not), the test remains a factor under the analysis that they urge the Court to adopt here. *Id.* at 210 (“We do not abandon the ‘touch and concern’ test, but rather hold that the test is but one of the factors a court should consider in determining the reasonableness of the covenant.”).

rely, have held that the owner's actual or constructive knowledge of the restriction bears substantially upon its enforceability.<sup>2</sup>

The Superior Court correctly applied these well-established legal principles to find the Covenant enforceable as a matter of law. There was no issue of material fact as to whether the restrictive covenant was ambiguous; it plainly was not. App. 57 (SJ Op. at 5). There was no argument that the Covenant was against public policy, as a restriction on locating a nightclub in an alley is a public benefit, not a detriment. *Id.* The Covenant was not an undue restriction on the free use of land, given that it precluded just one entirely inappropriate use from the myriad others for which the Property may be used. *Id.* Defendants could not claim lack of knowledge regarding the Covenant's existence, as it was both recorded and announced during the auction sale at which DTLTD purchased the Property. *Id.* Under these well-established

---

<sup>2</sup> See, e.g., *Davidson Bros.*, 579 A.2d at 211 (noting that the relevant inquiry in reviewing a "noncompetition covenant" includes "[w]hether the covenant was in writing, recorded, and if so, whether the subsequent grantee had actual notice of the covenant"); see also *Cataldi v. Werth*, 313 F.2d 553, 554 (D.C. 1962) ("The restrictive covenant not only had run with the land since 1899, but appellant, herself, had taken title subject to its terms."); *Grubb v. Guilford Ass'n, Inc.*, 228 Md. 135, 140 (1962) ("We think Dr. Grubb's actual knowledge of the covenant before he bought . . . leave no room for the application of the doctrine of comparative hardship[.]"); *Gladstone v. Gregory*, 95 Nev. 474, 480 (1979) ("Where one takes land with notice of restrictions, equity and good conscience will not permit the person to act in violation thereof[.]"); *Arthur v. Bender*, 90 Ohio App. 187, 190 (1951) ("It is well settled in Ohio that a court of equity will enforce the observance of a valid restrictive covenant as to the use of property which run with land, where the grantee has notice of such covenants.").

principles of this District’s law, then, the Superior Court had no basis on which to rule that the Covenant was *not* enforceable, nor did Defendants provide one.

This was not, however, as Defendants suggest, the end of the Court’s analysis. Having found that the Covenant was enforceable, the burden then shifted to Defendants to assert and prove any equitable defenses as to whether the Covenant should continue to be enforced, such as laches, waiver, public policy, or a radical change in the surrounding area that rendered the Covenant invalid. As discussed below, Defendants attempted to rely upon the equitable defense of radical change, which the Court properly considered, and rejected.

**B. The Superior Court Correctly Rejected Defendants’ Attempt to Invalidate the Covenant through the Radical Change Doctrine.**

Defendants’ current contention that the Superior Court erred in applying the radical change doctrine is muddled given that it was *the Defendants* that first advocated for its application. In its Counterclaim, for example, Defendants averred that the Covenant should not be enforced because “[c]onditions in the neighborhood . . . have changed significantly. . . .” App. 50 (Counterclaim ¶ 18). Their first argument in their summary judgment memorandum was captioned: “The Restrictive Covenant is Invalid Because Conditions in the Neighborhood and City Have Changed *Drastically* Since It Was Imposed.” Def. SJ. Memo at 4. (emphasis supplied). In support of this argument, Defendants cited the “longstanding ‘rule of

equity ... 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....” *Id.* (quoting *Am. Weekly v. Patterson*, 179 Md. 109, 115 (Md. 1940); (emphasis in original).<sup>3</sup> Defendants acknowledged this was “adopted as D.C. common law.” *Id.* (also citing *Adams v. Plaza Const. Co.*, 157 Md. 674, 676 (1929) in support of this same proposition).

Notwithstanding their prior invocation of the radical change defense (or some version of it), Defendants have since reversed course and decided the radical change doctrine should be abandoned in favor of a new test. Nonetheless, Defendants fail to point out any disqualifying errors in the Superior Court’s application of the radical change doctrine, nor could they. The record on summary judgment was unequivocal and uncontested on all of the following key factual issues:

1. The Property is entirely located within an alleyway, and is accessible only through narrow service alleys. App. 807-08 (Wiltshire Aff. ¶ 3).

---

<sup>3</sup> The Superior Court noted that Defendants had urged adoption of a “lower standard of ‘neighborhood change’” to invalidate the covenant. App. 60 (SJ Op. at 8). While Defendants’ position evolved, Plaintiffs disagree that the *Patterson* case that Defendantss cited as “adopted as D.C. common law” supports a lower standard; there is no obvious distinction as to weight between a neighborhood “radically” or “drastically” changing and one “completely” changing. Regardless, the Superior Court determined that Maryland is one of the majority of jurisdictions (over forty) that have adopted the radical change doctrine. App. 58 (SJ Op. at 6 n.1).

2. Prior to 2008, when the Property was used as a nightclub known as the Zei Club, it was associated with neighborhood violence. This culminated in a brutal beating of two nightclub patrons as they exited the club into the dark, narrow alleyways. This event and the associated conditions were the subject of a lawsuit, *Novak v. Capital Mgmt. & Dev. Corp.*, 570 F.3d 305 (D.C. Cir. 2009), in which the court summarized: “The Zei Club was set off from any public street and surrounded by alleys. Its patrons were invited to use the alleys as approaches and exits to the club. The attack occurred within a few steps of the exit in the I Street alley, which was the chief path of egress from the club.” 570 F.3d at 310.
3. Plaintiff PSLP owned the Property in 2008, and was aware of the disruption that had been caused by locating a nightclub within this peculiarly-sited Property. When it decided to sell the Property, PLSP would only do so if the new owner and its successors agreed that the Property would not be used in this way in the future. App. 809-10 (Wiltshire Aff. ¶ 11). To effectuate this purpose, the Covenant was included in the deed when the Property was sold in 2008. App. 820 (Wiltshire Aff. Ex. B).
4. Since 2008, there has been no change in the location of the Property or in its accessibility. It remains able to be accessed only through narrow service alleyways that also remain unchanged. It continues to lack any direct ingress

or egress to the closest public roads, H, I, 14<sup>th</sup> and 15<sup>th</sup> Streets NW. App. 807-08 (Wiltshire Aff. ¶ 3).

Reviewing these undisputed facts, the Superior Court correctly ruled that there had been no change in circumstances to invalidate the Covenant or its continuing purpose: “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.” App. 59 (SJ Op. at 7). The Superior Court acknowledged that there could be future changes to the surrounding buildings and structures that could “open up additional lanes of ingress and egress to the property,” and which might support a different analysis, but found “no dispute of material fact ... as to whether such structural changes surrounding the property presently exist....” App. 61-62 (SJ Op. at 9-10).

The Court also reviewed the evidence and arguments submitted by Defendants to prove a change in neighborhood conditions. The Superior Court properly dismissed each of Defendants’ assertions:

1. The primary “changed condition” that Defendants set forth, then and now, is the alleged impact of the COVID-19 pandemic on the District as a whole. The Superior Court rejected this argument, because the transient impact of the pandemic is not the type of neighborhood change necessary to invalidate a restrictive covenant: “Defendants cite to no other jurisdiction that has

recognized COVID-19 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.” App. 61 (SJ Op. at 9). On appeal, Defendants have still failed to find any authority extending the “radical change” doctrine to COVID-19 or any even remotely similar “conditions.”

2. The Superior Court similarly found unconvincing Defendants’ related argument that a pandemic-related increase in office vacancy rates and other fluctuating economic factors were the type of radical change required to invalidate the Covenant. App. 61 (SJ Op. at 9). Again, these conditions failed to impact the purpose of the Covenant or the physical conditions for which it was effectuated, and invalidating restrictive covenants whenever crime rates fall or office vacancy rates rise is not the type of permanent or fixed change properly considered under the radical change doctrine.
3. The Court also rejected Defendants’ argument that the Covenant should be invalidated due to improvements in “the area’s crime rate, renewal, and general livability.” App. 61 (SJ Op. at 9). Again, Defendants cite no authority anywhere supporting the invalidation of a Covenant based upon such constantly changing and amorphous considerations. The Superior Court likewise found that the “evidence fails to address the restrictive covenant’s

central purpose, which was to address safety issues related to ingress and egress to the property to an alley.” *Id.*

4. The Superior Court also saw through Defendants’ empty promises that sometime in the future they would install state of the art security systems and take other expensive measures to minimize disruption to the neighborhood. No court has held that future promises qualify as a radical change in neighborhood conditions. Moreover, the proposed security and other measures are illusory because, as the Superior Court noted, Plaintiffs would have no ability to enforce such hollow promises when future property owners “scale back security measures at will.” App. 59 (SJ Op. at 7).

The Superior Court’s analysis was well-reasoned and correct. There is no precedent for invalidating a restrictive covenant based upon fluctuating factors, commitment-free assurances, or the District’s own budgetary concerns. None of the conditions alleged by Defendants qualify as the type of radical change required to invalidate a restrictive covenant under either D.C. or Maryland law.

Unable to mount any meaningful challenge to the Superior Court’s application of the radical change doctrine, Defendants have opted to abandon that doctrine in the hope that they can convince this Court to replace that test with an entirely new standard, one that has never been cited by any court in the District or Maryland.

**C. Defendants Provide No Convincing Reason Why This Court Should Reject the Radical Change Doctrine and Adopt a Different Test.**

The Superior Court insinuated that the issue of when to invalidate a restrictive covenant on non-public policy grounds is an issue of first impression in the District of Columbia, and D.C. Courts “ordinarily turn to the common law of Maryland for guidance when there is no District of Columbia precedent on an issue.” *George Washington University v. Scott*, 711 A.2d 1257, 1260 n. 5 (D.C. 1998). Maryland’s adoption of the radical change doctrine, which is the majority rule, is entitled to substantial weight.<sup>4</sup> *See Steuart Transportation Co. v. Ashe*, 269 Md. 74, 96-97 (1973) (allowing for the potential to invalidate a restrictive covenant when there has been a “change in the character of a neighborhood” that “has been so radical as to render perpetuation of the restriction of no substantial benefit[.]”).

Defendants’ strategy to move past this roadblock is to characterize Maryland (and apparently the other majority of jurisdictions who have adopted the radical change doctrine) as states that have a “more diverse set of land use” that “run from rural agricultural land through sparsely populated outer suburbs to denser suburbs to

---

<sup>4</sup> Nevertheless, there are references in D.C. law to variations of the radical change doctrine going back nearly 100 years. *See Castleman v. Avignone*, 56 App. D.C. 253, 255 (1926) (“Equity will not, as a rule, enforce a restriction, where, by the acts of the grantor who imposed it or of those who derived title under him, 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[.]” (internal quotations and citations omitted)).

heavy industrial to highly populated urban spaces.” App. Br. at 28. In Defendants’ view, the standard adopted by over forty states is not appropriate for the “densely packed urban megalopolis that is Washington, D.C.” *Id.*

Defendants instead urge this Court to adopt what they refer to as the “reasonableness” test that the New Jersey Supreme Court first enunciated in analyzing whether a noncompetition covenant (not at issue here) should be enforced. *See Davidson Bros.*, 121 N.J. at 210-11. Given that New Jersey has just as diverse land uses as Maryland or any other state, Defendants cannot credibly contend that the New Jersey standard was developed with “densely packed urban megalopolises” in mind. Evidently, it is serendipitous that the New Jersey court happened upon the standard that is (in Defendants’ view) perfect for the District.

In reality, Defendants have simply cherry-picked the one case from throughout the entire nation that they think gives them the best chance to get the case remanded, *if* they can leap the high hurdle of convincing this Court to adopt it. The so-called “reasonableness” standard that Defendants advocate is *not* more favorable to Defendants. As addressed below, New Jersey’s standard employs many of the same factors the Superior Court already has considered and addressed, to Defendants’ detriment. It also is not the case that the reasonableness test grants more credence or weight to Defendants’ arguments. The New Jersey court’s analysis provides no framework for invalidating a restrictive covenant based upon changes

in ephemeral economic conditions or unenforceable promises to implement future security protocols. Nonetheless, unable to generate a disputed issue of material fact under the radical change doctrine, they obviously hope for a different result by advocating an analysis that, on its face, includes more factors and employs the term “reasonableness” that Defendants then interpret so broadly as to be meaningless. Defendants’ plea for the trial court to use the “road not taken” in applying the “reasonableness” test is not so much an effort to make a logical distinction between the two approaches, then, as it is an attempt to get a second bite at the apple.

Defendants provide no compelling reason why this Court should adopt the New Jersey test. In their advocacy for “flexible approaches that privilege equity,” Defendants overlook that the radical change doctrine is itself an equitable defense to enforcement of a restrictive covenant, as are other inapplicable equitable defenses such as public policy, laches and waiver. Defendants’ burden is not to convince this Court to adopt an equitable defense to enforcement of a restrictive covenant – the Superior Court recognized the same equitable defenses acknowledged by the majority of courts in the nation – but instead to compel this Court to reject one equitable standard (the radical change doctrine recognized by the majority of states) in favor of a different equitable test singularly employed in New Jersey.

Defendants’ argument is not advanced by their citation to the rule of construction that restrictions on land use should be construed in favor of the free use

of land. This rule of construction does not equate with a general hostility to the enforcement of restrictive covenants, as the cardinal rule in the District for interpreting such covenants remains rooted in enforcing clearly stated restrictions not against public policy. *See DLY-Adams Place, LLC v. Waste Management of Maryland, Inc.*, 2 A.3d 163, 166-67 (D.C. 2010) (“Basic rules of contract interpretation guide our analysis of the restrictive covenant,” and the court’s role for unambiguous language “is limited to applying the meaning of the words”). The “free use” rule of construction Defendants rely on is subordinate to this cardinal rule. *See Turner v. Brocato*, 206 Md. 336, 352, 111 A.2d 855, 864 (1955) (“This rule of construction [that doubt must be resolved in favor of the alienability of land] bows always to the more fundamental rule that wherever possible effect will be given to an ascertained intention of the parties.”).

The cases that Defendants cite make the same point. *See Foundation for Preservation of Historic Georgetown v. Arnold*, 651 A.2d 794, 796 (D.C. 1994) (“If a deed is unambiguous, the court's role is limited to applying the meaning of the words, but if it is ambiguous, the parties' intention is to be ascertained by examining the document in light of the circumstances surrounding its execution and, ***as a final resort, by applying rules of construction.***” (emphasis supplied; citation omitted)); *Castleman v. Avignone*, 56 App. D.C. 253, 256 (1926) (noting that restrictions not against public policy “will ordinarily be enforced” and rejecting argument that a

“change in the character and conditions” of property existed so as to make enforcement of boundary line agreement inequitable). As the Superior Court stated, the Covenant is not a meaningful restriction on Defendants’ use of the Property, as the only use prohibited is one that Defendants were apprised of in buying the Property and which is inappropriate for this Property. App. 57 (SJ Op. at 5).

Defendants’ primary argument for advancing the New Jersey test over the radical change doctrine is that the former allegedly gives the Court more flexibility, presumably to be used to invalidate restrictive covenants. Initially, the “reasonableness” test, properly applied, is not nearly as freeform as Defendants represent. Defendants take the word “reasonableness” from the New Jersey decision and discard the actual test. That test involves a review of eight discrete factors, which Defendants pointedly ignore because they weigh heavily against them. Those factors include many of the same considerations the Superior Court addressed, including that the Covenant was recorded, that Defendants had notice of it, and that no change of conditions exists to invalidate it. To the extent that the New Jersey test is more flexible, however, any gain in flexibility must be weighed against what would be lost in predictability.

In their campaign against restrictive covenants, Defendants also overlook that such covenants, including the Covenant at issue, serve useful purposes. If the New Jersey standard truly makes it easier for courts to invalidate restrictions on property,

as Defendants assert, then it also curtails individuals' freedom to contract. The District is one of many jurisdictions that have recognized and upheld this right in repeatedly affirming the viability of clearly stated restrictions that are not against public policy.<sup>5</sup> This principle is in accord with the Restatement (Third) of Property (Servitudes) § 4.1(1), providing that a "servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created." This rule is "based in the recognition that servitudes are widely used in modern land development and ordinarily play a valuable role in utilization of land resources." Restatement § 4.1 cmt. A; *see also Powell v. Washburn*, 125 P.3d 373, 377 (Ariz. 2006) (adopting Restatement approach as "consistent with long-standing Arizona case law holding that enforcing the intent of the parties is the 'cardinal principle' in interpreting restrictive covenants" and "mirrors the contemporary judicial trend of recognizing the benefits of restrictive

---

<sup>5</sup> *SDC 214, LLC v. London Towne Property Owners Ass'n, Inc.*, 395 Md. 424, 434 (2006) (stating that courts give effect to unambiguous restrictive covenants "unless prevented from doing so by public policy or some established principle of law.") (internal citations omitted); *12 Havemeyer Place Co., LLC v. Gordon*, 76 Conn. App. 377, 388 (2003) ("Unlike a zoning regulation, for which there is a procedure for a variance from the regulation, the covenant, if not against public policy, remains in effect, indefinitely, in accordance with its terms.").

covenants”).<sup>6</sup> Where restrictive covenants are against the public interest, however, the existing equitable doctrines of public policy, waiver and changed conditions are sufficiently flexible to enable courts to address those restrictions.

Defendants’ invocation of principles of “equity, unequal bargaining power, and ordered liberty” likewise provide no reason for this Court to exchange the longstanding radical change doctrine for the New Jersey test. The Court should not lose track of what is really at issue in this case. Defendants are not fighting against racial restrictions, as there clearly is no such component in the Covenant at issue, and there is no reasonable argument that the restriction violates public policy. It is difficult to conceive of an endeavor less in the public interest than cramming a “Vegas-style gentlemen’s club” into an alley blocks from the White House. Economic freedom is not at issue as, again, a myriad of uses for the Property remain available to Defendants and, in any event, no one forced Defendants to purchase the Property. They do not claim to be innocent parties unaware of the Covenant, nor

---

<sup>6</sup> To similar effect, *see Joslin v. Pine River Dev. Corp.*, 116 N.H. 814, 367 A.2d 599, 601 (1976) (“The former prejudice against restrictive covenants which led courts to strictly construe them is yielding to a gradual recognition that they are valuable land use planning devices.”) (citation omitted); *Riss v. Angel*, 131 Wash.2d 612, 934 P.2d 669, 676 (1997) (“While restrictive covenants were once disfavored by the courts, upholding the common law right of free use of privately owned land, modern courts have recognized the necessity of enforcing such restrictions to protect the public and private property owners from the increased pressures of urbanization.”) (internal citations omitted).

could they given that it was recorded and announced at auction. App. 57 (SJ Op. at 5). Similarly, there is no indication of unequal bargaining power or oppression here. The fact of the matter is that two companies, of which little is known, joined together so that one could purchase the Property, with the Covenant, and then another could attempt to force the installation of a nightclub with nude dancing violating the Covenant against the demonstrated interests of the neighboring property owners. Defendants can invoke high principles all they like, but there is no reasonable argument that equity is in their favor.

**D. Plaintiffs Would Still be Entitled to Summary Judgment under the New Jersey Test.**

While Defendants pay lip service to *Davidson Bros.*, they never actually apply the test the New Jersey court enunciated. Defendants' strategy is to simply invoke "reasonableness" and then use that as the trojan horse through which their collection of disparate and unconvincing arguments somehow become relevant enough to generate a factual issue. To accomplish this, Defendants suggest that restrictive covenants should be invalidated if "unreasonable," with no guardrails or guidelines on what that term means or how it is to be assessed. That, however, is not what the *Davidson Bros.* court prescribed. Rather, the *Davidson Bros.* court required consideration of eight specific factors, which Defendants do not address. Having invoked the *Davidson Bros.* test, Defendants completely fail to apply it.

This is likely because Defendants' claim fails all eight of the factors enunciated by the New Jersey court:

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, such as antitrust laws, or public policy.

The Superior Court determined that the Covenant was put in place in light of the violence and disruption that erupted when the Property was used as a nightclub. App. 54 (SJ Op. at 2); *see also* App. 809-811 (Wiltshire Aff. ¶¶ 9-14) (testimony regarding conditions associated with the nightclub); *Novak v. Capital Management and Development Corp.*, 570 F.3d 305, 309 (D.C. Cir. 2009) (further addressing conditions associated with the nightclub). The Superior Court likewise found the Covenant was not violative of public policy. App. 57 (SJ Op. at 5). Defendants offer no evidence to the contrary. This factor weighs decisively against Defendants.

2. Whether the covenant had an impact on the consideration exchanged when the covenant was originally executed. This may provide a measure of the value to the parties of the covenant at the time.

Defendants also offer no evidence bearing on this factor. Nonetheless, PSLP insisted on inclusion of the Covenant despite the impact on the number of prospective buyers and, hence, the sale price. App. 809-10 (Wiltshire Aff. ¶ 11). Moreover, it is uncontested that the Covenant was properly recorded and its impact on the Property was noted to all prospective buyers, including DTLTD, at auction.

App. 57 (SJ Op. at 5). Any price paid would have reflected this fact. Again, this factor weighs against Defendants.

3. Whether the covenant clearly and expressly sets forth the restrictions.

There is no dispute that the Covenant unambiguously precludes Defendants' intended use of the Property as a nightclub. App. 57 (SJ Op. at 5). The factor also weighs against Defendants.

4. Whether the covenant was in writing, recorded, and if so, whether the subsequent grantee had actual notice of the covenant.

As the Superior Court noted, Defendants' knowledge of the Covenant is undisputed and should bear heavily on its enforcement against them. App. 57 (SJ Op. at 5). The New Jersey test agrees in holding grantees' knowledge against them. Again, there is no disputed issue of fact, and this factor weighs against Defendants.

5. Whether the covenant is reasonable concerning area, time or duration.

Presumably, Defendants would like this Court to remand this case back down so the trial court can consider the fifth factor: whether the Covenant is reasonable considering the "area, time or duration." While the Superior Court may not have addressed this in the context of the *Davidson Bros.* factors, it still substantively addressed this issue and correctly ruled against Defendants as a matter of law.

Initially, the Superior Court found that the Covenant is not unreasonably broad, given that it precludes only one use – and one manifestly unsuited to the location – from the many that remain available to Defendants. App. 57 (SJ Op. at 5).

With respect to the duration of the Covenant, the Superior Court soundly reasoned that the Covenant remained enforceable because “there is no evidence that the property’s location, including its access being limited to alleyways, has changed.” App. 59 (SJ Op. at 7). Nonetheless, the Superior Court explicitly left the door open for the Covenant to be invalidated in the future if changes in the Property or the surrounding buildings “open[ed] up additional lanes of ingress and egress to the property.” App. 61 (SJ Op. at 9). As the Superior Court correctly noted, all of the factors that led to the Covenant’s creation remain in full effect now, but should that change, the equitable powers available to the courts would allow for the Covenant to be further reviewed. But nothing within this District’s law requires that a restrictive covenant be invalidated simply because it does not include an express duration limit in the covenant itself. *See Castleman*, 56 App. D.C., 256 (noting that restrictions that are “reasonable and not against public policy” are ordinarily enforced “although the restrictions may be permanent.”).

The Superior Court has already considered the duration and extent of the Covenant and found it appropriate and enforceable under present conditions. Were this Court to remand the case, the trial court’s assessment within the context of this *Davidson Bros.* factor would not be any different. *See In re Melton*, 597 A.2d 892, 908 (D.C. 1991) (declining to remand a case where a judge failed to make an explicit

finding because there was “no appreciable possibility” that the judge would make a finding contrary to the prior finding which the record clearly pointed to).

6. Whether the covenant imposes an unreasonable restraint on trade or secures a monopoly for the covenantor.

As the Superior Court found, the Covenant precludes just one inappropriate use of the Property and is not an unreasonable restraint of trade. App. 57 (SJ Op. at 5). *Davidson Bros.* dealt with an anti-competition restriction, where a particular use was prohibited to favor competing uses in the neighborhood. Thus, the court stated that this factor may be relevant “in areas where there is limited space available to conduct certain business activated and a covenant not to compete burdens all or most available locales to prevent them from competing in such an activity.” 121 N.J. at 211. No such considerations apply here. There has been no contention that there are no other locations available to Defendants for a nightclub; indeed, if their contention is to be credited, there are other nightclubs operating in the nearby area. Defendants have offered no evidence to support any anti-competitive purpose or unreasonable restraint on trade. This factor also weighs against Defendants.

7. Whether the covenant interferes with public interest.

It strains credulity that locating a “Vegas-style gentlemen’s club” in an alley, with no direct access to main roads, serves the public interest. Nonetheless, Defendants argue that they are advancing the public interest by

“create[ing] jobs in the hospitality industry and increase[ing] the tax revenues.” App. Br. at 33. Defendants fail to state how this is different from any of the many other potential uses for the Property. Defendants presented no evidence, for example, that the proposed use would generate the highest tax revenues. Even if they had, the “highest and best use” analysis is irrelevant as to whether a restrictive covenant should be invalidated. *Dumbarton Imp. Ass’n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 67 (2013) (“Ensuring the best fiscal outcome is not the test for the ongoing validity of a covenant.”). This factor accordingly weighs against Defendants.

8. Whether, even if the covenant was reasonable at the time it was executed, ‘changed circumstances’ now make the covenant unreasonable.

This factor was properly and correctly resolved by the Superior Court in the context of the radical change doctrine. Again, the reason for the Covenant is that it is inappropriate and even dangerous to situate a nightclub in a property located on a narrow service alleyway, without direct access to any main roads. As the Superior Court found, this “circumstance” remains unchanged from when the Covenant was enacted. App. 61 (SJ Op. at 9). As discussed above, the Superior Court properly rejected Defendants’ arguments regarding the conditions that purportedly had changed. Defendants lost this argument at the trial level, and this factor accordingly also weighs against them.

Reasonableness on summary judgment may be a “question of law where only one inference is possible from the evidence.” *Quinto v. Legal Times of Washington, Inc.*, 506 F. Supp. 554, 564 (D.D.C. 1981). Here, even utilizing all eight of the *Davidson Bros.* factors, it is clear that there is only one possible inference that can be made: the Covenant is reasonable, valid, and enforceable.

**E. Defendants’ Transient Statistics Do Not Represent Radical Change or Fit Into the *Davidson Bros.* test.**

In arguing that there had been a radical change in the neighborhood, Defendants broadly asserted that, on one hand, the neighborhood surrounding the Property has transformed into a vibrant and safe mecca for young people seeking “diverse” entertainment, but that COVID-19 simultaneously had turned the District into a hellscape of vacant buildings with presumably those same masses now unable to find work in the hospitality industry. Defendants provide little or no credible evidence in support of their broad caricatures of the District and its residents. More important, however, these allegations are entirely irrelevant to the Court’s analysis of the Covenant, regardless of which standard this Court adopts.

First, Defendants assert that the Property is zoned for “high-density” and “mixed-use” development. Defendants fail to state how this is different from when the Covenant was put into place, so this “fact” has no relevance to the radical change doctrine. It also fails to fit into any of the *Davidson Bros.* factors. It does not follow

from an area being zoned for “high-density” that every use whatsoever must be permitted for every property within that zone.

Next, Defendants assert there are dozens of establishments serving alcohol, and eight nightclubs, within the “surrounding neighborhood” (which is not defined). Defendants’ characterization is overblown, *see* App. 927-53 (Norris Aff. Ex. A) (detailing limited capacity of the establishments), but the most important point about all of these “establishments” for purpose of the Court’s analysis is that precisely *none* is located in an alley with no direct access to public roads.

Then, Defendants boldly claim that the area has experienced substantial improvement in crime rates and general livability since “the 1990s and early 2000s.” Again, Defendants provide little or no evidence in support of this broad statement, and, as Plaintiffs have pointed out, crime rates actually were very high in 2023. App. 983. As to Defendants’ assertion that there was only one stolen vehicle crime relating to the Property in 2023, that is hardly surprising given that, at the time, the Property was vacant and not, for example, being used as a busy nightclub open late at nights with hundreds of patrons lining up, entering and exiting through the narrow, dark alleyways. In any event, Plaintiffs do not deny that crime rates go up and down over time, but it is partly because of the changing nature of such conditions that Defendants have been unable to cite a single case, under any standard, where a restrictive covenant was struck down due to fluctuating crime rates. This condition

simply is irrelevant, regardless of whether the Court employs the radical change or the reasonableness test.

Defendants also contend that the neighborhood has “attracted a younger population of residents interested in diverse entertainment options.” App. Br. at 6. Again, Defendants make the assertion but fail to support it. It is not at all certain that the population is younger than when the Covenant was put in place, *see* App. 1014-22 (Norris. Aff. Exs. O-P), Ps’ Counter-Statement ¶ 16, but it is perfectly clear that, whatever “entertainment options” residents desire, the neighborhood definitely is not clamoring for an alleyway gentlemen’s club. In any event, none of this matters because this “condition” is again irrelevant to both the radical change and *Davidson Bros.* analyses.

Although the neighborhood is allegedly full of fun-seeking youth, Defendants assert that it is also a hollowed-out husk after COVID-19 led federal and other employees to work from home and caused a “historic downturn” in the commercial real estate market and hospitality industry. Again, the problem with this type of argument is that these conditions are constantly changing, so that the hospitality industry certainly has rebounded since COVID-19 while office vacancy rates continue to fluctuate. In any event, it is certainly a reach to extrapolate, as Defendants do, that the cure for these conditions is opening a nightclub in an

alleyway. The important point here is that, again, these are not the types of conditions relevant to either the radical change or *Davison Bros.* tests.

Defendants' unsupported suggestion that a nightclub is the best or most profitable use for the Property is similarly misplaced. Even if Defendants had provided the evidence to the trial court to back this up (which they did not), "[e]nsuring the best fiscal outcome is not the test for the ongoing validity of a covenant." *Dumbarton Imp. Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 67 (2013). Defendants have provided no assessment as to how any other of the myriad of potential uses of the Property would compare to that of a nightclub, the apparent only usage they have ever considered. Again, this argument is irrelevant, regardless of the standard applied.

In the final section of their brief, Defendants take Plaintiffs to task for not being as willing to speculate wildly about the above conditions and how they have changed since the Covenant was introduced in 2008. It is true that Plaintiffs have not hired a demographer to chart changing population patterns, or a historian to chart the number of nightclubs in the District over the past 10 or 20 years. Of course, neither did Defendants, and they are the ones with the burden of making the argument. While Plaintiffs did more than Defendants in, for example, providing the Superior Court with actual crime statistics instead of just self-serving assertions, the fact is that Plaintiffs are not required to contest every single one of Defendants' overbroad,

speculative statements regarding current “conditions” because those “conditions” are entirely irrelevant to any issue before this Court. They are not part of the radical change test, nor do they fall within any of the factors cited in the *Davidson Bros.* test. The conditions that are relevant are precisely those that were established, beyond dispute, by Plaintiffs – the Covenant’s purpose and that the conditions relevant to that purpose have not changed at all.

Defendants have not cited to any case, from New Jersey or any other jurisdiction, that stands for the proposition that a court will invalidate a restrictive covenant based upon factors that ebb and flow over time. To the contrary, there *is* case law stating that the type of circumstances that may lead a court to invalidate a restrictive covenant “may not be transient, and they must be drastic and permanent.” *Bueno v. Firgelski*, 180 Conn. App. 384, 396 (2018). It makes no more sense now to site a “Vegas-style gentlemen’s club” in an alleyway than it did in 2008. COVID-19 did not change this fact, and Defendants’ argument to the contrary only becomes less convincing as COVID-19 recedes farther in the rearview mirror.

**F. The ABCA Ruling is Irrelevant to the Enforceability of the Covenant.**

Appellees hereby join the arguments made by Co-Appellees pursuant to D.C. App. R. 28(j), with respect to the irrelevance and inapplicability of the ABCA proceedings and Order.

**1. The ABC Board's Order Is Not Relevant to the Covenant's Enforceability.**

The ABC Board's Order has no bearing on the issues in this appeal. The ABCA did not consider, much less decide, whether there had been a radical change in the neighborhood invalidating the Covenant or even whether it is reasonable to enforce the Covenant in light of *any* of the eight factors set forth in *Davidson Bros.* To the contrary, the ABCA expressly and repeatedly refused to consider the Covenant or any argument relating thereto because it was “not an issue that this Board can determine.” App. 911-12 (2/23/24 ABCA Tr. at 65:21-66:10). The ABC Board's Order cannot save Defendants from their inability to establish any equitable defense to enforcement of the Covenant because the decision is irrelevant to that defense.

The Superior Court recognized this irrelevance. The ABC Board considered only whether the use proposed by Defendants was appropriate in the specific context of a Class CN license transfer. The ABC Board reviewed the factors set forth in D.C. Code § 25–313 to assess whether the “appropriateness” of the use had been demonstrated “to the satisfaction of the Board.” That standard, and the factors considered, are not the same as those at issue in this proceeding. The viability of a restrictive covenant is measured through principles of real estate and contract law, with the Court enforcing restrictions as written unless equity demands otherwise

because the grantor's intent can no longer be effectuated or is against public policy. The ABC Board's determination of whether to permit transfer of a liquor license involves no such considerations; rather the Board assesses whether the use will impact parking, cause excessive noise or litter, or reduce property values. The two proceedings are entirely dissimilar, both in process and substance.

In the ABCA proceeding, the ABC Board may consider, and even find persuasive, the applicant's plans to provide security, reduce noise pollution, and dispose of trash. Such future plans, however, have no place in the analysis of whether to invalidate a restrictive covenant. Whereas the ABCA will continue to have regulatory authority over the licensee, and can refuse to renew or even revoke the license if those plans do not come to fruition, the beneficiaries of a restrictive covenant have no such security in the event that the restrictive covenant is invalidated. The Superior Court acknowledged this in addressing Defendants' future security plans: "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." App. 59 (SJ Op. at 7).

Future promises and plans have no relevance to the radical change doctrine, nor to any of the eight *Davidson Bros.* factors. Whatever future plans Defendants may have, they have taken no concrete steps toward implementing them. App. 839 (Iraklion Dep. 31:15-18); App. 851-52 (Iraklion Dep. 57:1-58:11). Toothless

promises of *future* plans have no bearing upon the equitable nullification of a restrictive covenant *now*.

**2. The ABC Board Order is Not Binding and Has No Preclusive Effect.**

If the ABC Board Order is not relevant (because the evidence does not go to any element of the radical change or *Davidson Bros.* tests), then the findings of the ABC Board likewise cannot have any preclusive effect in this case. Nonetheless, Defendants assert that the Superior Court, and this Court, are bound by the Board's factual findings. Defendants never clearly explain or support this position. Nonetheless, it is clear that the ABC Board decision is not entitled to judicial deference, nor does it have any preclusive effect, in this lawsuit.

**a. Judicial Deference Does Not Apply to The ABC Board Order.**

In support of the proposition that this Court is bound by the ABC Board's factual findings, Defendants rely solely upon two cases: *Johnson v. D.C., Dep't of Health*, 163 A.3d 746, 753 (D.C. 2017) and *Jones v. D.C. Dep't of Empl. Servs.*, 41 A.3d 1219, 1224 (D.C. 2012). Both *Johnson* and *Jones*, however, were direct appeals from the agencies to the courts, affording the agencies a degree of deference on review. In both of those cases, this Court addressed the standard for directly reviewing challenged agency action in an appeal of the agency's rulings. Neither case involved the treatment of collateral agency determinations in an

entirely separate civil lawsuit. This case is plainly not an appeal from an agency determination, and the agency's findings correspondingly are not entitled to judicial deference.<sup>7</sup> The question presented here, whether the Covenant should be invalidated, was not, and could not have been, decided by the ABCA.

**b. The ABC Board Order is Not Binding.**

Beyond citing to the two inapposite decisions in *Johnson* and *Jones*, Defendants fail to support their assertion that the ABC Board Order is binding. It clearly is not, regardless of the legal theory employed.

**(i) ABC Board Rulings Have No Preclusive Effect.**

Even if the ABC Board Order was on point, which it is not, it would not have any preclusive effect. In *Gallothom, Inc. v. District of Columbia Alcoholic Beverage Control Bd.*, 820 A.2d 530 (D.C. 2003), this Court held that a decision by the ABC Board would not have preclusive effect even in a subsequent ABCA proceeding. This Court aptly summarized the requirements for an administrative agency ruling to be given preclusive effect:

This court has held that the doctrines of res judicata and collateral estoppel apply in administrative cases only when the agency is acting in a judicial capacity, resolving disputed issues of fact properly before it which the parties have an adequate opportunity to litigate. Thus, the threshold inquiry is whether the earlier proceeding, is the essential equivalent of a judicial proceeding. However, the application of res

---

<sup>7</sup> A separate appeal exists in this Court for that very issue. *See* Appeal No. 24-AA-0748.

judicata in administrative decisions is not encrusted with the rigid finality that characterizes the precept in judicial proceedings, and there may be practical reasons to refuse to apply the doctrines. Furthermore, an administrative agency decision, issued pursuant to a statute, cannot have preclusive effect when the legislature, either expressly or impliedly, indicates that it intended otherwise.

820 A.2d at 532-33 (quotations and citations omitted). This Court held that the legislature had stated this intention by making a liquor license subject to renewal and requiring new findings in the renewal proceeding:

The Board has the statutory authority to issue a liquor license for a two-year period, after which the license can be renewed. D.C. Code § 25–104(b) (2001). Before renewing the license, however, the statute requires the Board to make new findings, separate and apart from any prior findings, that the establishment “is appropriate for the locality, section, or portion of the District where it is to be located.” D.C. Code § 25–313(a) (2001). The statute on its face explicitly provides for a new finding and it is clear that prior adjudications are subject to modification and reexamination.

*Id.* Thus, the Board’s rulings have no preclusive effect in subsequent ABCA proceedings. It follows that the ABC Board Order has no such effect here.

**(ii) Collateral Estoppel Does Not Apply.**

Defendants’ attempt to import the ABC Board rulings into this case also fails to meet the requirements for collateral estoppel.<sup>8</sup> Collateral estoppel applies only

---

<sup>8</sup> Res judicata also clearly would not apply, as the doctrine only precludes re-litigation in a subsequent proceeding of issues arising out of the same cause of action between the same parties or their privities. *See Kovach v. District of Columbia*, 805 A.2d 957, 960 (D.C. 2002). The claim before the ABC Board was an application to transfer a Class CN license to the Property. This lawsuit involves

(continued on next page)

when (1) the issue was actually litigated, (2) determined by a valid, final judgment on the merits, (3) after a full and fair opportunity by the parties or their privies, and (4) under circumstances where the determination was essential to the judgment at issue and not only dictum. *Franco v. District of Columbia*, 3 A.3d 300, 304 (D.C. 2010). Defendants have failed to establish each of those elements, and collateral estoppel accordingly cannot apply.

The issue before the ABCA was limited to deciding the “appropriateness of the establishment” for purposes of “transfer of a license to a new location,” which is not an issue in this case. *See* D.C. Code § 25–313. While the ABCA was to “consider evidence relating to peace, order and quiet in the context of ruling on such appropriateness,” it was not charged with conclusively determining that there was no impact on the neighborhood, nor would such subsidiary findings be binding on this Court. *See* Wright & Miller, *Federal Practice & Procedure* § 4421, at 196 (2d ed. 1994) (collateral estoppel applies only to “issues that were somehow ‘ultimate’ in the first litigation”); *see also Fife v. Bosely*, 100 F.3d 87, 89 (8th Cir. 1996) (collateral estoppel applicable to ultimate issues that are the same in both

---

a request to enforce the Covenant, and a request to nullify it. The claims in the two proceedings are clearly not the same, and *res judicata* accordingly cannot apply.

cases and not to subsidiary factual findings). Whether or not the ABCA views the Property as appropriate for a nightclub is not an issue in this lawsuit.<sup>9</sup>

In addition to the above, collateral estoppel also does not apply because the parties in the ABCA proceeding and this case are different. In particular, Plaintiff PSLP was not involved, and could not be involved, in the ABCA hearing, and thus did not have the opportunity to address the purpose of the Covenant and other matters. *See* 23 DCMR§ 1605.<sup>10</sup> Plaintiffs Southern Building and 15<sup>th</sup> & H were not individually “parties” in the ABCA proceeding but were instead only granted standing as part of a “Group of 5” pursuant to 23 DCMR §1605.<sup>11</sup> Further, the ABC Board Order is not final but is, in fact, on appeal to this Court.

---

<sup>9</sup> This different standard of review also makes collateral estoppel inapplicable. What is “appropriate” to the ABCA has no bearing upon this Court’s determination of the factual and legal issues to be decided here. Further, the ABCA proceeding was not tried before an administrative or other judge, and the rules of evidence did not apply. The Board expressly stated that hearsay evidence was both admissible and relied upon, and the Order was premised, in part, upon evidence that would be inadmissible in this lawsuit. App. 916 (3/6/24 ABCA Tr. at 124:5-11).

<sup>10</sup> As the former owner of the Property effectuating the Covenant, PSLP is not identically situated with the other protestants, and thus not in privity with them. *See, e.g., Franco*, 3 A.3d at 304 (privity relationship “denotes a mutual or successive relationship to the same” property rights); *Vantage Commodities Financial Servs., I, LLC v. Willis Limited*, 531 F.Supp.3d 153, 169 (D.D.C. 2021) (noting privity requires parties so identified in interest, they represent precisely the same legal right in respect to the subject matter of the case).

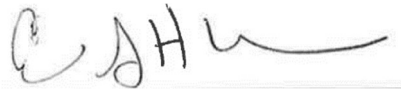
<sup>11</sup> The ABCA also did not consider the appropriateness of the proposed nightclub for the same locality as that addressed in the Covenant (“Square 220”). The ABCA considers appropriateness of the establishment for the “locality, section,  
(continued on next page)

## VIII. CONCLUSION

The Superior Court reached the correct decision. For all of the foregoing reasons, this Court should affirm the Supreme Court's Order granting summary judgment to Plaintiffs and against Defendants.

Dated: June 5, 2025

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



---


Eric S. Lammers (D.C. Bar No. 458038)  
Corey D. Zoldan, D.C. Bar No. 1631758  
Rees Broome, PC  
1900 Gallows Road, Suite 700  
Tysons Corner, VA 22182  
Phone: (703) 790-1911  
Fax: (703) 847-0643  
elammers@reesbroome.com  
czoldan@reesbroome.com  
*Counsel for Appellees*

---

or portion of the District where it is to be located,” but that locality is based upon applicant's choice from among several options. *See* 23 DCMR § 1605. Here, 1200 feet of the proposed establishment was the locality at issue, which was not coterminous with Square 220.

**CERTIFICATE OF SERVICE**

I hereby certify on June 5, 2025, a copy of the foregoing was filed and served upon counsel for all parties via the Court's electronic filing system.



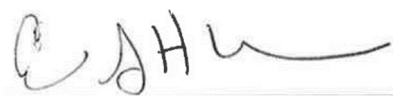
By: \_\_\_\_\_

Eric S. Lammers

Counsel for Appellees  
The Power Station Limited  
Partnership, Southern Building  
Associates, LLP, 15th & H Street  
Associations LLP, and SJG Properties  
LLC

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the typeface and length requirements of Rule 32(a)(5), (6) because it is prepared in 14-point Times New Roman font and does not exceed 50 pages in length, excluding those portions exempted from the page length set forth in Rule 32(a)(6).

By:   
Eric S. Lammers

Counsel for Appellees  
The Power Station Limited  
Partnership, Southern Building  
Associates, LLP, 15th & H Street  
Associations LLP, and SJG Properties  
LLC