

Exhibit E
PDR/Maker Use

1. THE PROJECT IS NOT INCONSISTENT WITH THE COMPREHENSIVE PLAN

A. Striped Areas of the FLUM are not Prescriptive

While the FLUM’s mixed-use residential, commercial, and PDR striping encourages a mix of all three uses for the Project site, the FLUM does not mandate or require all three designated uses on the site for the Project to be not inconsistent with the Comprehensive Plan. With respect to designated mixed uses on the FLUM, the Framework Element of the Comprehensive Plan states: “The [FLUM] indicates areas where the mixing of two or more land uses is encouraged. The particular combination of uses desired in a given area is depicted in striped patterns...” 10-A DCMR 225.18. As long as the Project on the site encourages the land uses on the site’s FLUM designation, the Project will not be inconsistent FLUM. In fact, the FLUM does not require PDR use as long as it is “encouraged” or “desired.” By definition, PDR zones are consistent with a PDR designation on the FLUM. Retail is a matter-of-right use in PDR zones, so the provision of retail use in this Project renders it not inconsistent with the Comprehensive Plan, especially when the Project advances many other policies of the Comprehensive Plan. Given that the primary goal of the Small Area Plan and the Comprehensive Plan for Union Market is street activation through retail and densification through mixed-use development, the notion that the Project is inconsistent with the Comprehensive Plan without a perpetual PDR use commitment is incorrect.

B. PDR Use is not Required on this Site

Further, parcel-specific PDR uses are not strictly mandated by the FLUM. Under the Comprehensive Plan guidelines for using the FLUM, “[t]he [FLUM] is not a zoning map[,] [a]s zoning maps are parcel specific By definition, the [FLUM] is to be interpreted broadly.” 10-A DCMR 226.1(a). The mixed-use FLUM designation that includes PDR striping for the Project site encompasses a much larger area of the Union Market District. Accordingly, a lack of a commitment for Maker use does not render the Project inconsistent with the FLUM, especially when the broader area with the same FLUM designation includes many PDR uses in addition to Maker space. The Court of Appeals made this point clear in the case of the Cathedral Commons PUD on Wisconsin Avenue NW. In that case, part of the project site had a low density commercial designation on the FLUM, but the project for that portion of the site was a five-story apartment building with ground floor retail. The Commission found – and the Court agreed – that development on the site was not required to be solely commercial use in order for the project to be consistent with the FLUM, especially since residential use is permitted in commercial zones. *Wisconsin-Newark Neighborhood Coalition v. D.C. Zoning Comm’n*, 33 A.3d 382, 395-96 (D.C. 2011). In arriving at this conclusion, the Court noted that “the [Comprehensive] Plan does not require that each block ‘strictly correspond with the general description’ [of the FLUM].” *Id.* Accordingly, PDR use is not strictly required on this specific parcel for this Project to be not inconsistent with the FLUM. Maker use is a subcategory of PDR use, and PDR will be provided by this Project for a significant portion of the ground floor and for a substantial term. Further, PDR use will be provided in the broader Union Market area with the same FLUM designation.

C. Retail is a PDR use, and the FLUM does not require commitments to specific subcategories of uses

Finally, the Applicant has agreed to proffer a five-year commitment to a subcategory of PDR called Maker use, which not only satisfies the Comprehensive Plan, but goes above and beyond by setting aside a specific PDR use within the “encouraged” and “desired” PDR FLUM stripe.

2. EDENS' HISTORY OF MAKER USES AT UNION MARKET

Over the past 11 years, EDENS has been finding, incubating, and launching PDR/Maker users without any regulatory requirements, and EDENS' stated goal from the outset has been to protect, encourage, and cultivate the uniqueness of the Union Market District. To date, EDENS has delivered 102,000 SF of PDR/Maker space in the Union Market District and has continued to help incubate and launch almost 100 local businesses. Through the process, Edens has discovered that these new businesses need a tremendous amount of support. This includes helping them write business plans; setting Makers up for success by allowing them to engage a wider audience; providing showcase space for them to collaborate, display, and sell their goods; and providing space and building canvasses for art and artists. Union Market, Dock 5, LAB 1270, Maurice Office, 550 Penn, Cotton & Reed, and 4th x Neal are just some examples of the PDR/Maker ecosystem that EDENS has helped establish and will continue to build on and support at Union Market.

In addition to EDENS' 102,000 SF of PDR/Maker space, recently approved PUDs in the area include 55,700 SF of maker space, bringing the total existing PDR/Maker in the Union Market area to 157,700 SF. Additionally, EDENS has agreed to set aside 5% (approximately 7000 SF) of space for Maker uses in EDENS' future PUDs (including this PUD), which would bring the total to over 165,000 SF of maker space in the immediate area, which for reference is more than all the retail at Cathedral Commons.

Since EDENS is primarily a retail developer, they spend a lot of time and effort understanding the market so they can develop great places and find the best local tenants. Retail in general is always in transition, and with the pressures being placed on the retail world by e-commerce, it is difficult to get any type of retail tenant, let alone a maker tenant, in the current environment. EDENS is concerned that mandating more PDR/Maker will create an unhealthy ecosystem for retail. This will hurt both existing PDR/Maker uses and traditional retailers since there will not be an adequate mix, which will negatively impact the long-term viability of the Market. Given all of the recent closures and fluctuations in the retail marketplace, there should be equal support of traditional retail by creating a dynamic mix that will keep people coming back and protect the vitality of the place.

3. EDENS' BROAD COMMITMENT TO MAKER USES AT UNION MARKET

To that end, the Applicant is unable increase the committed PDR/Maker use term beyond the 5 years that has already been proffered. However, EDENS' goals are in alignment with the Office of Planning and in order to both preserve flexibility to respond the dynamically changing retail market while creating a platform to encourage PDR/Maker uses, the Applicant has proffered that 50% of the ground floor retail space will be built to a PDR/Maker Specification that is uniquely suited to PDR/Maker uses, as detailed in the Updated List of Applicant's Proffered Benefits and Amenities included at Exhibit 11A in the record. The PDR/Maker Specification is a set of key design specifications that will ensure flexibility of the ground floor space to accommodate PDR/Maker use in this Project both now and in the future if there is demand, and EDENS will market this space to PDR/Maker users. The value of this proffer over typical retail in DC is approximately \$1.2M. Furthermore, EDENS has agreed with OP that they can build 50% of the retail gross floor area of all their remaining PUDs at Union Market to this PDR/Maker Specification. EDENS will build in this flexibility at an immense up-front cost, which is a significant benefit to the long-term planning goals for encouraging PDR/Maker uses in the Union Market District.