

Bill No. 22-07
Concerning: Potomac Horse Center -
Lease Extension
Revised: 9/7/07 Draft No. 1
Introduced: September 11, 2007
Enacted: October 16, 2007
Executive: October 26, 2007
Effective: January 25, 2008
Sunset Date: None
Ch. 14, Laws of Mont. Co. 2007

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Maryland-National Capital Park and Planning Commission

AN ACT to approve an extension to a certain ground lease between the Maryland-National Capital Park and Planning Commission and the Potomac Horse Center Inc. for certain land known as the Maryland Horse Center.

By adding to
Laws of Montgomery County 2007

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

**FIRST AMENDMENT TO LEASE
ADDITIONAL RENEWAL TERMS
POTOMAC HORSE CENTER, INC.**

This First Amendment to Lease (this "Amendment") is made this 10th day of April 2007, by and between the Maryland-National Capital Park and Planning Commission, an agency of the State of Maryland ("Commission"), and the Potomac Horse Center, Inc. ("Tenant"), a Maryland corporation, operating as Potomac Horse Center.

WHEREAS, the Commission and the Tenant entered into a Lease on September 30, 1993, for a parcel of land known as the Maryland Horse Center, which is defined in Paragraph 1 of the Lease;

WHEREAS, the initial term of the Lease was for five (5) years; an option to renew the Lease for three renewal terms of five (5) years subject to such terms and conditions as are at the time mutually agreed upon between the parties;

WHEREAS, Tenant has exercised the options to renew the term of the lease twice and has one final option to renew which, if exercised would end the Lease on September 30, 2013;

WHEREAS, the Commission and Tenant desire to apply to the Maryland Agricultural Water Quality Cost-Share Program (MACS) to fund a portion of the construction of a manure storage structure (the "Improvements") on the Leased Premises, which program requires that Tenant have rights of occupancy beyond September 30, 2013;

WHEREAS, Tenant plans to amortize their capital improvement cost for the manure storage structure; and to accomplish that have requested two (2) additional options to renew this lease for 5 year terms;

WHEREAS, Pursuant to Article 28 fo the Md. Ann. Code, §5-110, the Montgomery County Council (the "County Council") must, by legislative enactment, approve this Amendment because it will cause the Lease to exceed twenty (20) years duration.

Now, Therefore, for and in consideration of the respective covenants, promises and agreements provided herein, the Commission and Tenant agree as follows:

1. Renewal Options – Paragraph 35(c) of the Lease is amended to reflect that Tenant has two (2) additional options to renew the Lease for five (5) year terms (the "Additional Options"). for a total of five-five (5) year options.

2. These Additional Options are conditioned on: (1) the Commission and Tenant's joint application, and approval of the MACS agreement to construct and maintain a manure composting program (the "MACS Agreement"); (2) Tenant's compliance with all applicable federal, state and county laws during the construction and implementation of the manure composting program; (3) Tenant's compliance with all applicable approval and permitting processes for the design and construction of the Improvements, including issuance of the Park Permit which will be subject to:
- i. Commission approval of construction plans and schedule for construction of the Improvements;
 - ii. Commission approval of a project budget and certification that Tenant has sufficient funds to complete the Improvements;
 - iii. All construction and other permits necessary or required in connection with the start of construction of the Improvements have been validly issued and all fees, bonds and any other security required in connection therewith have been paid or posted;
 - iv. Commission has received copies of all construction contracts with performance and payment bonds for the Contractors;
 - v. If required, the County Council has approved funding for the Improvements.
 - vi. All other conditions that the Tenant must meet to begin construction of the Improvements as required in accordance with the Lease, as amended have been met.

Tenant will not commence construction of the Improvements until issuance of the Park Permit.

3. The Lessee will develop and implement a Soil and Water Conservation Plan (SWCP) and a Nutrient Management Plan (NMP) (collectively, the "Plans") for the Leased Property within six (6) months of the execution of this Amendment. These plans will include, but are not limited to, waste management measures, pastures stocking rates, sediment control measures, and the establishment of critical area buffers. The Plans must be prepared in cooperation with the Montgomery County Soil Conservation Service (SCS), and appropriate Commission staff including, but not limited to the Natural Resources Management Group, the Park Planning and Resources Analysis Unit, and the Northern Region.

4. Tenant will comply with the terms and conditions of the MACS Agreement, including any and all conditions of funding, and will faithfully and diligently meet its obligations thereunder. In the event the MACS Agreement requires any obligations of or actions by the Commission, Tenant will accept direct responsibility for such obligations and actions, with the cooperation of the Commission. Tenant will indemnify and save the Commission harmless against and from all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses which may be imposed upon or incurred or paid by or asserted against the Commission in connection with the MACS Agreement. The Commission will not be responsible for any costs for the development and construction of the Improvements.

5. Except as modified herein, all terms, covenants and conditions of the Lease remain in full force and effect and are hereby ratified and affirmed in all respects, except that in the event the County Council does not approve the terms of this Amendment, the Lease shall continue in full force and effect as if this Amendment had not been entered into by and between the parties. The Commission will immediately initiate, and diligently pursue obtaining the County Council's approval.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Commission and Tenant have set their hands and seals this _____ day of _____, 2007.

POTOMAC HORSE CENTER, INC.

By: *Paul Novograd*
(Signature)

Typed Name: Paul Novograd

Title: President

WITNESS

By: *Nancy Novograd*
(Signature)

Typed Name: Nancy Novograd

Title: Secretary

**THE MARYLAND-NATIONAL
CAPITAL
PARK AND PLANNING COMMISSION**

By: *R. Bruce Crawford*
R. Bruce Crawford
Executive Director

ATTEST

By: *Patricia Colihan-Barney*
Patricia Colihan-Barney
Secretary-Treasurer

Approved as to legal sufficiency

[Signature]
M-NCPPC Legal Department

Date 7/11/07