

**BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD**

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<b>In Re:</b>	:	
<b>MOUNT AIRY #1, LLC</b>	:	<b>GID 1311-3</b>
<b>d/b/a MOUNT AIRY CASINO RESORT</b>	:	
	:	<b>OHA Docket #:</b>
<b>BCC CASE # MA-E-0558509-18</b>	:	_____
<b>BIE INVESTIGATION 1311-E3785-18</b>	:	

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**CONSENT AGREEMENT AND STIPULATION OF SETTLEMENT**

**THIS CONSENT AGREEMENT AND STIPULATION OF SETTLEMENT** is made and entered into by and between the Office of Enforcement Counsel (“OEC”) and Mount Airy #1, LLC d/b/a Mount Airy Casino Resort (“Mt. Airy”). Mt. Airy and OEC collectively are referred to as the “Parties;” and

**WHEREAS**, Mt. Airy is the holder of a Category 2 license as approved by the Pennsylvania Gaming Control Board (“Board”) and awarded on December 20, 2006 and renewed periodically thereafter and has its principal place of business at 312 Woodland Road, Mount Pocono, PA 18344;

**WHEREAS**, OEC is the prosecutorial body established by 4 Pa.C.S. § 1517(a.2) and has the power and duty to initiate proceedings for non-criminal violations of the Pennsylvania Race Horse Development and Gaming Act (“Act”) by filing a complaint or other pleading with the Board pursuant to 4 Pa.C.S. § 1517(a.2)(1)(iii);

**WHEREAS**, pursuant to 4 Pa.C.S. § 1102(1), “the primary objective of this [Act] to which all other objectives and purposes are secondary is to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful;”

**WHEREAS**, pursuant to 4 Pa.C.S. § 1102(8) “strictly monitored and enforced control over all limited gaming authorized by this part shall be provided through regulation, licensing and appropriate enforcement actions of specified locations, persons, associations, practices, activities, licensees and permittees;”

**WHEREAS**, pursuant to 58 Pa. Code § 423a.6(b)(5), “Failure to fully comply with any provision contained in an executed Statement of Conditions constitutes a violation and may result

in Board-imposed administrative sanctions, up to and including revocation, against the individual or entity to whom the license, permit, certification, registration or authorization was issued;”

**WHEREAS**, pursuant to 58 Pa. Code § 501a.2(11), A compulsive and problem gambling plan must include “procedures to prevent intoxicated patrons from gambling;”

**WHEREAS**, pursuant to 58 Pa. § Code 501a.3(a)(6),” The employee training program required under § 501a.2(d)(5) (relating to compulsive and problem gaming plan) must include instruction in...procedures designed to prevent serving alcohol to visibly intoxicated gaming patrons.”

**WHEREAS**, pursuant to 58 Pa. Code 501a.3(a)(7), “The employee training program required under § 501a.2(d)(5) (relating to compulsive and problem gaming plan) must include instruction in... procedures designed to prevent persons from gaming after having been determined to be visibly intoxicated;”

**WHEREAS**, pursuant to 4 Pa.C.S. § 1207(1), “the Board shall have the power and its duties shall be to deny, deny the renewal, revoke, condition or suspend any license or permit provided for in this part if the board finds in its sole discretion that a licensee or permittee under this part, or its officers, employees or agents, have furnished false or misleading information to the board or failed to comply with the provisions of this part or the rules and regulations of the board and that it would be in the public interest to deny, deny the renewal, revoke, condition or suspend the license or permit;”

**WHEREAS**, pursuant to 58 Pa. Code § 423a.6(b)(2), “If the Board approves an entity’s application for or renewal of a license the executive officer of the entity, or other competent individual designated by the entity in accordance with paragraph (1), shall execute a Statement of Conditions in the manner and form required by the Board. Execution of the Statement of Conditions constitutes the acceptance of each provision contained in the Statement of Conditions by both the entity and the executive officer. The executive officer shall ensure that the entity fully complies with each provision contained in the statement of conditions;”

**WHEREAS**, then Executive Vice President and General Manager of Mt. Airy, John Culetsu, signed a Statement of Conditions on behalf of Mt. Airy on October 4, 2016 (“the Statement of Conditions”);

**WHEREAS**, pursuant to Paragraph 32 of the Statement of Conditions, Mt. Airy agreed “to at all times comply with: the Compulsive and Problem Gambling Plan (“Plan”) submitted to and approved by the Board; [pursuant to] 58 Pa. Code §§501a, 503a, 511a and 513a...;”

**WHEREAS**, pursuant to Policy 33.3 of Mt. Airy’s approved Compulsive and Problem Gambling Plan, the “Food and Beverage [Department] is responsible for preventing the serving of alcohol to visibly intoxicated gaming patrons and underage individuals and for notifying security to prevent persons from gambling after having been determined to be visibly intoxicated. Procedures for Food and Beverage are set forth in this plan;”

**WHEREAS**, pursuant to Policy 33.12 of Mt. Airy’s approved Compulsive and Problem Gambling Plan, “Mount Airy Casino Resort has trained its Security and Food and Beverage employees in the RAMP program (see Policy 33.2) which includes procedures designed to prevent serving alcohol to visibly intoxicated patrons. Mount Airy Casino Resort has also established procedures designed to prevent persons from gambling when they are visibly intoxicated. Visibly intoxicated patrons are denied entry to the gaming floor and areas off the gaming floor where contests, promotions or tournaments are conducted. Security Officers stationed at the two (2) casino entrances will prevent the intoxicated patron(s) from engaging in gaming activities and from entry to Mount Airy Casino Resort. .... Although Security Officers are asking anyone that appears to be 30 years old or under for identification, [Food and Beverage Department] staff has the right to challenge any guest attempting to purchase alcohol. In addition, [Food and Beverage Department] staff will notify a Food or Beverage Shift manager if a patron appears to be visibly intoxicated for alcohol service suspension/refusal of service once they have determined a patron is showing signs of intoxication and has been “cut off.” The Shift Manager will notify Security Dispatch who will send one or more Security Officers to attend the “cut off” with a Beverage Shift Manager. They will inform the guest of Pennsylvania’s liquor laws and Security will follow that department’s procedures as detailed above. The Beverage Shift Manager will document the observation and notification efforts on an incident report;”

**WHEREAS**, pursuant to 4 Pa.C.S. § 1518(a)(1), “the provisions of 18 Pa.C.S. § 4902 (relating to perjury), 4903 (relating to false swearing), or 4904 (relating to unsworn falsification to authorize) shall apply to any person providing information or making any statement, whether written or oral, to the board, the bureau, ... as required by this part;”

**WHEREAS**, pursuant to 4 Pa.C.S. § 1310(a)(1), “Every application for a slot machine license shall include such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant’s suitability, including good character, honesty, and integrity;”

**WHEREAS**, pursuant to 4 Pa.C.S. § 1203(b)(23), “The board shall not approve and application for or issue or renew a license...unless it is satisfied that the applicant has demonstrated by clear and convincing evidence that the applicant is a person of good character, honesty, and integrity...;”

**WHEREAS**, pursuant to Paragraph 1 of the Statement of Conditions, Mt. Airy agreed “to at all times comply with any and all provisions of the Act, as amended, and any rules, regulations, technical standards, orders, Statement of Conditions and, if required by the Board, and amended Statement of Conditions to reflect any amendments to the [Act] or the passage of any gaming-related legislation, commitments made to the Board in writing and/or under oath and to immediately inform the Board of any actions which they know or suspect constitute a violation of the Act or any rules, regulations, technical standards or orders in effect as of this date or later amended or promulgated by the Board;”

**WHEREAS**, the Parties do not dispute the jurisdiction of the Board;

**WHEREAS**, the Parties enter into this Consent Agreement as a resolution of any disputed claims and in consideration of the Parties waiving, releasing, and forbearing any regulatory dispute with the Board; and

**WHEREAS**, pursuant to 58 Pa. Code § 493a.13(a), parties may propose consent agreements at any time prior to the entry of a final order, the Parties and their authorized representatives whose signatures are affixed hereto, having discussed the matters presented and expressed their desire to enter into a Consent Agreement.

**THEREFORE**, the Parties stipulate and agree, and present to the Board for its consideration, the following:

#### **STIPULATED FACTS**

On March 1, 2018, Mt. Airy’s Surveillance Department, at the request of the Pennsylvania State Police conducted a drink review regarding beverage service provided by Mt. Airy on February 27-28, 2018 to a patron with the initials MG.

MG arrived at Mt. Airy's parking lot at approximately 11:00 p.m. on February 27, 2018. MG entered the casino through the Hotel Lobby Entrance at approximately 11:06 p.m. At approximately 11:09 p.m., MG exchanged money for chips at the Poker Room Cage and at approximately 11:11 p.m. began playing poker at Table PK-407. Between 12:22 a.m. and 1:51 a.m. on February 28, 2018, a one (1) hour and (29) twenty-nine minute period, MG was served eight (8) drinks containing alcohol by Mt. Airy Cocktail Server Victoria Lee; five (5) beers and three (3) shots. MG was playing at Table PK-407 each time he was served a drink containing alcohol. At no time was a Food and Beverage Department Supervisor present when MG was served a drink containing alcohol. At approximately 2:25 a.m. on February 28, 2018, MG finished his final drink when Security Officer James Campanaro made contact with him during the Security Department Alcohol Sweep. MG remained playing poker at various tables in the Poker room until approximately 5:26 a.m., except for three (3) brief trips to the restroom. At approximately 5:28 a.m., MG began playing craps at Table CR-301 and at approximately 6:08 a.m. he switched to playing blackjack at Table BJ-307. MG stopped playing at approximately 7:17 a.m. and cashed out at the Main Cage at approximately 7:28 a.m. MG was not served an alcoholic beverage after last service at 1:51 a.m. MG exited Mt. Airy through the Hotel Lobby Entrance at approximately 7:25 a.m. and retrieved his vehicle from the valet attendant at the porte cochere at approximately 7:26 a.m. MG drove away from Mt. Airy, exiting onto Woodland Road at approximately 7:28 a.m. At approximately 7:40 a.m., MG was involved in a fatal motor vehicle collision in Paradise Township, Pennsylvania; a pedestrian was struck and killed by the vehicle operated by MG. MG was subsequently charged with Homicide by Vehicle and Driving Under the Influence.

According to Mt. Airy, its Director of Security, who is RAMP certified, performed an exhaustive investigation regarding this incident. The investigation included a review of surveillance coverage of MG during his entire presence at Mount Airy and interviews with Mt. Airy employees, who had contact with MG during his time at Mt. Airy. During the course of his visit to Mount Airy, MG made four visits to the bathroom, changed seats at the poker table on several occasions, carried a chip rack from the 3rd floor poker area to the main casino floor, stood playing craps for approximately 40 minutes, walked to a blackjack table and played for almost 70 minutes, walked to the cage and cashed out his chips, walked from the cage, down an escalator, to the hotel lobby, swiped his valet ticket at a valet kiosk, walked to the bathroom, then walked to

the newsstand, purchased a cigar, unwrapped and cut the cigar, then exited the lobby doors and handed his valet ticket to a valet runner and got in his car and drove out of the facility.

According to Mt. Airy's investigation, at no time did MG stagger, sway, trip or show any signs of intoxication. According to Mt. Airy, during an interview with the valet runner, who is a recovering alcoholic, by Mt. Airy's Director of Security, the valet runner stated that based on his experience, MG displayed absolutely no signs of intoxication and had there been any signs, there was absolutely no way he would have given MG his vehicle.

On February 1, 2017, Mt. Airy, by and through its attorney Michael Sklar, Esquire, and then Executive Director of Food and Beverage Boris Kostikov, appeared before the Board at a public meeting in regards to an intoxicated patron incident. Prior to testifying at the Board meeting Mr. Kostikov was placed under oath. Mr. Kostikov testified, "We have also changed our house responsibility guidelines where if a guest consumes three drinks within a one hour period, the beverage server is to contact a Beverage Supervisor to assess the situation" ("Alcohol Service Policy"). Previously, the Office of Enforcement Counsel held a Compliance Conference with Mt. Airy regarding intoxicated patrons on November 17, 2016. At this compliance conference, representatives from Mt. Airy, including Mr. Kostikov and then General Manager John Culetsu informed the Office of Enforcement Counsel and the Bureau of Casino Compliance that they had already instituted the aforementioned Alcohol Service Policy.

On July 12, 2017, Mt. Airy, by and through its attorney Michael Sklar, Esquire, and Mr. Culetsu, appeared before the Board at a public meeting in regards to an incident where there was a violation of the Alcohol Service Policy. At the public meeting on July 12, 2017, Mt. Airy advised that they had purchased the Bally's Beverage Ordering Service System ("BOSS"). Prior to testifying, Mr. Culetsu was placed under oath. Mr. Culetsu testified that the BOSS would allow Mt. Airy to track the number of drinks a patron is served as well as limit the drinks served to a patron during a set time period, as well as the ability to discontinue alcohol service to a patron either for a specific length of time or permanently. Mr. Culetsu testified that Mt. Airy was "...going to being [*Sic*] the actual implementation of the [BOSS] the third week of this month roughly around July 24<sup>th</sup> [2017]. Bally's personnel will be on the property training the Mount Airy personnel on the – on the system over the course in the next week or two from the 24<sup>th</sup> onward." Further, timely installation of the BOSS was a term of the Consent Agreement between Mt. Airy

and OEC which was approved by the Board on July 12, 2017. As of the date of this incident, the BOSS had not yet been implemented at Mt. Airy.

Mr. Kostikov and one of Mount Airy's Beverage shift managers have been terminated. In addition, Mount Airy has separated with its former General Manager, John Culetsu. The entire food and beverage department have undergone retraining to enforce the alcohol service policy at Mount Airy.

#### **PRIOR ENFORCEMENT HISTORY**

If approved, this will be the third civil penalty assessed against Mt. Airy pertaining to alcohol service since their license was last renewed by the Board. In the previous incidents, Mt. Airy ordered to pay civil penalties of \$25,000 (related to an intoxicated patron incident) and \$15,000 (related to a alcohol service policy violation) respectively. A compliance conference was also held with Mt. Airy regarding alcohol service to patrons since their license was last renewed by the Board.

#### **TERMS OF AGREEMENT**

In consideration of the foregoing stipulated facts, and in full and final settlement of any and all claims, causes or actions which could or might be brought under the Act or the regulations promulgated thereunder, whether against Mt. Airy, or any of its owners, employees or agents, arising out of the matters identified in the above stipulated facts, the Parties do hereby further stipulate and agree that:

1. This Consent Agreement shall become final and effective only upon its approval by the Board;
2. Mt. Airy shall pay a civil penalty in the amount of two hundred and fifty thousand dollars (\$250,000) to the Board within five (5) days of the Board's Order approving this Consent Agreement;
3. Mt. Airy shall pay to the Board two thousand, five hundred dollars (\$2,500.00) for the costs incurred by OEC, BIE and other related staff in connection with this matter within five (5) days of the Board's Order approving this Consent Agreement;
4. Mt. Airy shall immediately institute policies and procedures to prevent similar incidents from occurring in the future;

5. If approved, the Board may make information public with respect to the terms and conditions of this Consent Agreement;

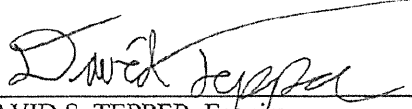
6. This Consent Agreement may be set aside by the Board if any term herein is violated by Mt. Airy; and

7. Mt. Airy, through its authorized representative whose signature appears below, has read and fully understands the terms of this Consent Agreement.

This Consent Agreement is offered and, if approved by the Board, entered for settlement purposes only. If the Board determines not to approve this Consent Agreement, then this Consent Agreement and the representations and obligations contained herein shall be null and void, and neither party nor any other person shall be entitled to use or rely on any portion hereof for any purpose whatsoever or to admit any portion hereof into evidence in the captioned matter or any subsequent proceeding. This Consent Agreement shall not preclude the Board, the Bureau of Investigations and Enforcement, or OEC from reviewing and considering any facts in any future proceeding relating to any application for licensure or qualification of a licensee. Mt. Airy expressly acknowledges and agrees that the Board reserves the right to take any actions that the Board, in its sole discretion, believes is necessary to protect the integrity of gaming in Pennsylvania, in accordance with the Act and the regulations promulgated thereunder.


The undersigned consent to the form and entry of the above:

**Office of Enforcement Counsel**

  
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DAVID S. TEPPER, Esquire  
Assistant Enforcement Counsel

DATED: 1/30/19

**Mount Airy #1 LLC**

  
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MICHAEL D. SKLAR, Esquire  
Counsel for Mount Airy # 1, LLC

DATED: 1/30/19