

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

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In the Matter of)
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Pinnacle Entertainment, Inc.,)
a corporation; and,) **Docket No. 9355**
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Ameristar Casinos, Inc.,)
a corporation.)
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_____)

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having heretofore issued its administrative Complaint charging Respondents Pinnacle Entertainment, Inc. (“Pinnacle”) and Ameristar Casinos, Inc. (“Ameristar”) (hereinafter referred to as “Respondents”) with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the Respondents having been served with a copy of the Complaint, together with a notice of contemplated relief; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and having thereupon issued its Order to Hold Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments in conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Pinnacle Entertainment, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 8918 Spanish Ridge Avenue, Las Vegas, Nevada 89148.
2. Respondent Ameristar Casinos, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its corporate head offices and principal place of business located at 3773 Howard Hughes Parkway, Suite 490 South, Las Vegas, Nevada 89169.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Acquirer” means each Person approved by the Commission to acquire any one or more of the Divested Assets pursuant to this Order.
- B. “Acquisition Date” means the date Pinnacle closes its acquisition of Ameristar as described and contemplated by the Agreement and Plan of Merger dated December 21, 2012, as amended, between Pinnacle, PNK Holdings, Inc., PNK Development 32, Inc., and Ameristar.
- C. “Amenity Services” means food, beverage, hotel, spa, shopping, entertainment, and other services provided by Respondents at casinos.
- D. “Ameristar Corporate Contracts” means (i) all Contracts that are used solely by or relate exclusively to assets owned by Ameristar other than the Ameristar Louisiana Assets or the Ameristar Missouri Assets and (ii) all Contracts that are used by or relate to all of the casinos owned by Ameristar, including the Ameristar Louisiana Assets and the Ameristar Missouri Assets, including but not limited to, any contracts listed in Exhibit G.
- E. “Ameristar Louisiana Acquirer” means any Person that receives the prior approval of the Commission to acquire the Ameristar Louisiana Assets.

- F. “Ameristar Louisiana Assets” means all of Respondents’ legal and equitable rights, title, and interests in all tangible and intangible property of any kind used for or relating to the ownership, construction of, and operations of the Ameristar Louisiana Casino, and the marketing, sale, and provision of Gaming Services and Amenity Services at the Ameristar Louisiana Casino, including (but not limited to) the following:
1. All of the Facility Assets used by, necessary for, or relating to, the Ameristar Louisiana Casino;
 2. All of Ameristar’s rights, title, and interest prior to the Acquisition Date in any real property or other assets related to the Festival Grounds;
 3. All of the Books and Records (including, but not limited to, all of the Ameristar Louisiana Construction Documents) used by, necessary for, or relating to, the development, construction, or operation of Ameristar Louisiana Casino;
 4. All of the Contracts used by, necessary for, or relating to, the Ameristar Louisiana Casino;
 5. All Intellectual Property used by, necessary for, or relating to, the Ameristar Louisiana Casino; and
 6. The Casino Customer Database used by, necessary for, or relating to, the Ameristar Louisiana Casino.
- Provided, however,* the Ameristar Louisiana Assets shall not include the following:
1. The rights, title, and interest in any real property or other assets related to the Festival Grounds owned by Pinnacle prior to the Acquisition Date;
 2. Intellectual Property used by Respondents’ casinos or hotels other than the Ameristar Louisiana Casino, including the brands set forth in Exhibit A or any license to use Ameristar’s trademarks;
 3. Any Retained Database Records;
 4. The Facility Assets and Excluded Contracts identified in Exhibit B; and
 5. The Ameristar Corporate Contracts.
- G. “Ameristar Louisiana Casino” means the Ameristar Lake Charles casino, hotel, restaurant, alcoholic beverage services, retail space, and other businesses and operations under construction or doing business at Lake Charles, Louisiana, on the real property described on Exhibit B to this Order.
- H. “Ameristar Louisiana Construction Documents” means any and all contracts, agreements, drawings, plans, and documents of any kind constituting or relating to the construction, marketing, development, and proposed operation of any one or more of the Ameristar Louisiana Assets, including, but not limited to, the documents listed on Exhibit B to this Order.

- I. “Ameristar Louisiana Divestiture Agreement” means all licenses, contracts, and agreements of any kind between either or both Respondents and the Ameristar Louisiana Acquirer (including, as applicable, agreements negotiated by a Divestiture Trustee appointed under this Order) that effectuate the divestiture of the Ameristar Louisiana Assets required by this Order, and that receives the prior approval of the Commission, including, but not limited to, any Transition Services Agreement.
- J. “Ameristar Louisiana Employees” means the Ameristar Louisiana Key Employees and the Ameristar Louisiana Knowledgeable Employees.
- K. “Ameristar Louisiana Key Employees” means the Persons listed on Confidential Exhibit C to this Order.
- L. “Ameristar Louisiana Knowledgeable Employees” means all Knowledgeable Employees employed or under contract at the Ameristar Louisiana Casino at any time between May 1, 2013, and the Divestiture Date for the Ameristar Louisiana Casino.
- M. “Ameristar Missouri Acquirer” means any Person that receives the prior approval of the Commission to acquire the Ameristar Missouri Assets.
- N. “Ameristar Missouri Assets” means all of Respondents’ legal and equitable rights, title, and interests in all tangible and intangible property of any kind used for or relating to the ownership of and operations of the Ameristar Missouri Casino, and the marketing, sale, and provision of Gaming Services and Amenity Services at the Ameristar Missouri Casino, including (but not limited to) the following:
 - 1. All of the Facility Assets used by, necessary for, or relating to, the Ameristar Missouri Casino; and
 - 2. All of the Books and Records used by, necessary for, or relating to, the Ameristar Missouri Casino.
 - 3. All of the Contracts used by, necessary for, or relating to, the Ameristar Missouri Casino;
 - 4. All Intellectual Property used by, necessary for, or relating to, the Ameristar Missouri Casino; and
 - 5. The Casino Customer Database used by, necessary for, or relating to, the Ameristar Missouri Casino.

Provided, however, the Ameristar Missouri Assets shall not include the following:

- 1. Intellectual Property used by Respondents’ casinos or hotels other than the Ameristar Missouri Casino, including the Ameristar brands listed in Exhibit A;
- 2. The Facility Assets identified in Exhibit D;
- 3. The Ameristar Corporate Contracts; and
- 4. Any Retained Database Records.

- O. “Ameristar Missouri Casino” means the Ameristar St. Charles casino, Ameristar Resort Hotel and Spa St. Charles, restaurant, alcoholic beverage services, retail space, and other businesses and operations doing business in St. Charles, Missouri, on the real property described on Exhibit D to this Order.
- P. “Ameristar Missouri Divestiture Agreement” means all licenses, contracts, and agreements of any kind between either or both Respondents and the Ameristar Missouri Acquirer (including, as applicable, agreements negotiated by a Divestiture Trustee appointed under this Order) that effectuate the divestiture of the Ameristar Missouri Assets required by this Order, and that receive the prior approval of the Commission, including, but not limited to, any Transition Services Agreement.
- Q. “Ameristar Missouri Employees” means the Ameristar Missouri Key Employees and the Ameristar Missouri Knowledgeable Employees.
- R. “Ameristar Missouri Key Employees” means the Persons listed on Confidential Exhibit E to this Order.
- S. “Ameristar Missouri Knowledgeable Employees” means all Knowledgeable Employees employed or under contract at the Ameristar Missouri Casino at any time between May 1, 2013, and the Divestiture Date for the Ameristar Missouri Casino.
- T. “Ameristar Resort Hotel and Spa St. Charles” means the hotel and all Facility Assets relating to the hotel doing business as the Ameristar Casino Resort Hotel and Spa St. Charles in St. Louis, Missouri.
- U. “Books and Records” means any original, copies, drafts, and final versions of all books, records, files, customer files, customer lists, customer purchasing histories, vendor files, vendor lists, advertising and marketing materials, sales materials, technical information, architectural drawings and blueprints of any kind, databases, financial information, reports, regulatory materials, or documents, information, and files of any kind, regardless of whether the document, information, or files are stored or maintained in traditional paper format, by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media.
- Provided, however,* that Books and Records do not include any Retained Database Records.
- V. “Casino Customer Database Records” means a copy, in machine-readable format usable, including a .csv file, by the Acquirer, of data and information, whether stored digitally, electronically, magnetically, or in any other format, of all data and information relating to Persons that visit a Divested Casino or activities by Persons at a Divested Casino, including:
1. Each Person’s personal and demographic information, including without limitation the customer’s name, address, phone number, social security number, birth date, gender, email, and disassociated patron status;

2. Each Person's transactional history at a Divested Casino and/or each Person's patronage, purchase, and use of Casino Services during visits to a Divested Casino, including the dates, game types, average wager, times, length of visits, and hotel room reservation details (*i.e.*, room types, dates, booked rates for future reservations, payment method);
3. All data and information relating to the value spent or lost by Persons during their visits to the Divested Casino or value as a consumer of Casino Services at a Divested Casino, including information such as each customer's total actual win or loss, total theoretical win or loss value, average daily worth (ADW), average daily theoretical value (ADT or THEO), or other metrics related to customer's transaction history or purchases of Casino Services at a Divested Casino;
4. Each Person's tier status and total comp balance on the Divestiture Date based on each Person's visits to any other casino operated:
 - a. By Respondent Pinnacle in the United States if the Divested Casino is one of the Lumiere Assets; or
 - b. By Respondent Ameristar in the United States if the Divested Casino is one of the Ameristar Missouri Assets;
5. Any other data and information customarily used by Respondents at a Divested Casino to market or sell Casino Services to Persons, including, but not limited to, survey data, Twitter accounts, and Facebook accounts.

Provided, however, Casino Customer Database Records does not include: (a) copy of any Retained Database Records; or (b) competitively sensitive information relating to Respondents' pricing strategies, including data (other than that described in paragraph I.V.5. of this Order) relating to the value of any benefits, rewards, gifts, coupons, or other player reinvestment incentives provided or offered by Respondents to the customer.

- W. "Casino Employee" means all of the Key Employees and Knowledgeable Employees at each of the Divested Assets.
- X. "Casino Services" means Gaming Services and Amenity Services.
- Y. "Condition to Closing" means a condition to closing in any Divestiture Agreement other than a condition that requires the delivery of a certificate or other document, or the purchase price, at or immediately prior to the closing.
- Z. "Consent Date" means the date upon which Respondent Pinnacle executes the Agreement Containing Consent Order.
- AA. "Contracts" means all real and personal property leases, software licenses, Intellectual Property licenses, warranties, guaranties, insurance agreements, employment contracts, all contracts of any kind relating to construction, customer contracts, sales contracts, supply agreements, utility contracts, collective bargaining agreements, confidentiality agreements, non-disclosure agreements, and contracts or agreements of any kind.

- BB. “Direct Costs” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transitional Services. “Direct Cost” to a Commission-approved Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.
- CC. “Divested Assets” means any one or more of the Ameristar Missouri Assets, L’Auberge Assets, Lumiere Assets, and Ameristar Louisiana Assets.
- DD. “Divested Casinos” means any one or more of the Ameristar Louisiana Casino, Ameristar Missouri Casino, L’Auberge Casino, and Lumiere Casino.
- EE. “Divestiture Agreement” means any one or more of the Ameristar Louisiana Divestiture Agreement, Ameristar Missouri Divestiture Agreement, L’Auberge Divestiture Agreement, and Lumiere Divestiture Agreement.
- FF. “Divestiture Date” means, with respect to each of the divestitures required by this Order, the date upon which the divestiture closes.
- GG. “Employee Information” means, for each Casino Employee, a profile prepared by Respondents summarizing the employment history of each employee. To the extent permitted by applicable law and with the consent of the employee, Employee Information shall also include the employee’s personnel file.
- HH. “Facility Assets” means, with respect to each of the Divested Assets:
1. All real property interests, including right, title, and interests in and to owned or leased real property, together with all easements, rights of way, buildings, parking lots, improvements, and appurtenances;
 2. All applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, related to or necessary for the operations of Casino Services, and the operation of any lawful business, at each of the Divested Assets to the extent held by Respondents and with respect to which the transfer is permitted by law;
 3. All fixtures, equipment (including, but not limited to, gaming equipment), machinery, tools, vehicles, personal property, or tangible property of any kind located at each of the Divested Assets (or, if not located at the Divested Casino, located at some other location and used in substantial part to provide or support the provision of Casino Services at the Divested Assets) that is owned or leased by Respondents, or that Respondents otherwise have a legal or equitable right to have custody or control of, or to use, with respect to:
 - a. Operating each Divested Casino, or with respect to Ameristar Louisiana, completing construction of and commencing operations at Ameristar Louisiana;
 - b. The research, marketing, sale, and provision of Casino Services at each Divested Casino;

- c. Compliance by Respondents with any federal, state, and local regulatory agency (including, but not limited, gaming commissions and regulatory authorities) and all statutes, regulations, rules, and other legal requirements for operating or providing any one or more Casino Services and Amenity Services at each Divested Casino.
- II. “Festival Grounds” means the real property described in the Confidential Settlement Agreement dated April 22, 2011 between the Lake Charles Harbor and Terminal District, Pinnacle, and Creative Casinos, LLC (the former name of the Ameristar Louisiana Entity) that the parties agreed to lease jointly from the Lake Charles Harbor and Terminal District.
- JJ. “Four Seasons Hotel” means the hotel and all Facility Assets relating to the hotel doing business as the Four Seasons Hotel in St. Louis, Missouri, on the real property described on Exhibit F to this Order.
- KK. “Gaming Services” means services for slot, video poker, table gaming, and any other gambling lawfully permitted at each Divested Assets, including both gambling actually offered at each Divested Casino and gambling which could be offered there.
- LL. “Governmental Agency” means any federal, state, county, municipal, special district, or other governmental subdivision, or any department, agency, board, commission, or other part thereof.
- MM. “Hold Separate Manager” means each Person approved by the Commission to serve as a Hold Separate Manager pursuant to the Hold Separate Order issued by the Commission.
- NN. “Hold Separate Monitor” means the Person approved by the Commission to serve as a Hold Separate Monitor pursuant to the Hold Separate Order issued by the Commission.
- OO. “Hold Separate Order” means any Order to Hold Separate and Maintain Assets (including any modifications thereto) issued by the Commission in this matter.
- PP. “HoteLumiere” means the hotel and all Facility Assets relating to the hotel doing business as the HoteLumiere in St. Louis, Missouri, on the real property described on Exhibit F to this Order.
- QQ. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by any Respondent in which Respondent has a proprietary interest, and all associated rights thereto, including all of the following in any jurisdiction throughout the world: (i) all Patents; (ii) all trade secrets, know-how, and confidential or proprietary information (including ideas, research and development, formulas, compositions, technical data and information, blue prints, designs, drawings, specifications, protocols, quality control information, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, and all other data, technology, and plans); (iii) all brand names, commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, trade dress, logos, slogans, service marks, internet website content, and internet domain names, together with all translations, adaptations, derivations, and combinations thereof, and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (iv)

all copyrightable works, all registered and unregistered copyrights in both published works and unpublished works, and all applications, registrations, and renewals in connection therewith; (v) all computer software (including source code, executable code, data, databases, and related documentation); (vi) all advertising and promotional materials; and (vii) all rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.

- RR. “Key Employees” means the employees listed on Confidential Exhibits C, E, I and J of this Order.
- SS. “Knowledgeable Employees” means any agent or employee of either of the Respondents, or any of Respondents’ agents or contractors, at any of the Divested Assets:
1. Whose duties primarily related to work, or the provision of goods or services (including, but not limited to, Casino Services and services related to constructing or maintaining any of the Divested Assets), at one of the Divested Assets;
 2. Which agent or employee performed work or services at one or more of the Divested Assets since May 1, 2012.
- TT. “LGCB Application” means the forms and schedules, including, but not limited to, any information, disclosure statements, or financial statements prescribed by the LGCB upon which the applicant seeks a license, permit, or renewal or any other approval by the LGCB for the operation of a casino.
- UU. “Lake Charles Hotel Resort” means hotel and all Facility Assets relating to the hotel doing business as the Lake Charles Hotel Resort in Lake Charles, Louisiana, on the real property described on Exhibit H to this Order.
- VV. “L’Auberge Acquirer” means any Person that receives the prior approval of the Commission to acquire the L’Auberge Assets.
- WW. “L’Auberge Assets” means all of Respondents’ legal and equitable rights, title, and interests in all tangible and intangible property of any kind used for or relating to the ownership of and operations of the L’Auberge Casino, and the marketing, sale, and provision of Gaming Services and Amenity Services at the L’Auberge Casino, including (but not limited to) the following:
1. All of the Facility Assets used by, necessary for, or relating to, the L’Auberge Casino;
 2. All of the Books and Records used by, necessary for, or relating to, the L’Auberge Casino;
 3. All of the Contracts used by, necessary for, or relating to, the L’Auberge Casino;
 4. All Intellectual Property used by, necessary for, or relating to, the L’Auberge Casino; and
 5. The Casino Customer Database used by, necessary for, or relating to, the L’Auberge Casino.

Provided, however, the L’Auberge Assets shall not include the following:

1. Intellectual Property used by Respondents’ casinos or hotels other than the L’Auberge Casino, including the brands identified in Exhibit A;
 2. The Pinnacle Corporate Contracts; and
 3. Any Retained Database Records.
- XX. “L’Auberge Casino” means the L’Auberge Resort Lake Charles casino, the Lake Charles Hotel Resort, restaurant, alcoholic beverage services, retail space, and other businesses and operations doing business at Lake Charles, Louisiana, on the real property described on Exhibit H to this Order.
- YY. “L’Auberge Divestiture Agreement” means all licenses, contracts, and agreements of any kind between either or both Respondents and the L’Auberge Acquirer (including, as applicable, agreements negotiated by a Divestiture Trustee appointed under this Order) that effectuate the divestiture of the L’Auberge Assets as may be required by this Order, and approved by the Commission, including, but not limited to, any Transition Services Agreement.
- ZZ. “L’Auberge Employees” means the L’Auberge Key Employees and the L’Auberge Knowledgeable Employees.
- AAA. “L’Auberge Key Employees” means the Persons listed on Confidential Exhibit I to this Order.
- BBB. “L’Auberge Knowledgeable Employees” means all Knowledgeable Employees employed or under contract at the L’Auberge Casino at any time between May 1, 2013, and the Divestiture Date for the L’Auberge Casino.
- CCC. “Louisiana Assets” means the Ameristar Louisiana Assets and the L’Auberge Assets.
- DDD. “Louisiana Gaming Control Board” (“LGCB”) means the Louisiana Gaming Control Board, Louisiana Department of Public Safety - Office of State Police – Gaming Enforcement Section, Louisiana Attorney General’s Office - Gaming Division, Louisiana Riverboat Gaming Commission, or any other judicial or regulatory authority responsible for granting approval(s), qualification(s), license(s), or permit(s) for any aspect of gaming in the state of Louisiana.
- EEE. “Lumiere Acquirer” means any Person that receives the prior approval of the Commission to acquire the Lumiere Assets.
- FFF. “Lumiere Assets” means all of Respondents’ legal and equitable rights, title, and interests in all tangible and intangible property of any kind used for or relating to the ownership of and operations of the Lumiere Casino, and the marketing, sale, and provision of Gaming Services and Amenity Services at the Lumiere Casino, including (but not limited to) the following:

1. All of the Facility Assets used by, necessary for, or relating to, the Lumiere Casino;
2. All of the Books and Records used by, necessary for, or relating to, the Lumiere Casino;
3. All of the Contracts used by, necessary for, or relating to, the Lumiere Casino;
4. All Intellectual Property used by, necessary for, or relating to, the Lumiere Casino; and,
5. The Casino Customer Database used by, necessary for, or relating to, the Lumiere Casino.

Provided, however, the Lumiere Assets shall not include the following:

1. Intellectual Property used by Respondents' casinos other than the Lumiere Casino, including without limitation the brands set forth in Exhibit A;
2. The Pinnacle Corporate Contracts; and
3. Any Retained Database Records.

GGG. "Lumiere Casino" means the Lumiere Place casino, the HotelLumiere, the Four Seasons Hotel, restaurant, alcoholic beverage services, retail space, and other businesses and operations under construction or doing business in St. Louis, Missouri, on the real property described on Exhibit F to this Order.

HHH. "Lumiere Divestiture Agreement" means all licenses, contracts, and agreements of any kind between either or both Respondents and the Lumiere Acquirer (including, as applicable, agreements negotiated by a Divestiture Trustee appointed under this Order) that effectuate the divestiture of the Lumiere Assets required by this Order, and approved by the Commission, including, but not limited to, any Transition Services Agreement.

III. "Lumiere Employees" means the Lumiere Key Employees and the Lumiere Knowledgeable Employees.

JJJ. "Lumiere Key Employees" means the Persons listed on Confidential Exhibit J to this Order.

KKK. "Lumiere Knowledgeable Employees" means all Knowledgeable Employees employed or under contract at the Lumiere Casino at any time between May 1, 2013, and the Divestiture Date for the Lumiere Casino.

LLL. "Material Confidential Information" means any material non-public information relating to the Divested Assets either prior to or after the Divestiture Date, including, but not limited to, all customer lists, Casino Customer Database Records, customer loss data, customer spending data, price lists, marketing methods, patents, technologies, processes, or other trade secrets, relating to the Divested Assets and:

1. Obtained by Respondents prior to the Divestiture Date; or,
2. Obtained by Respondent after the Divestiture Date, in the course of performing Respondents' obligations under any Divestiture Agreement or the Hold Separate Order;

Provided, however, that Material Confidential Information shall not include:

1. Information that is in the public domain when received by Respondents;
2. Information that is not in the public domain when received by Respondents and thereafter becomes public through no act or failure to act by Respondents;
3. Information that Respondents develop or obtain independently, without violating any applicable law or this Order, and without breaching any confidentiality obligation with respect to the information; and,
4. Information that becomes known to Respondents from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.

MMM. "MGC Application" means the forms and schedules, including, but not limited to, any information, disclosure statements, or financial statements prescribed by the MGC upon which the applicant seeks a license, permit, renewal, or any other approval by the MGC for the operation of a casino.

NNN. "Missouri Gaming Commission" ("MGC") means the Missouri Gaming Commission or any other judicial or regulatory authority responsible for granting approval(s), qualification(s), license(s), or permit(s) for any aspect of gaming in the state of Missouri.

OOO. "Missouri Assets" means the Ameristar Missouri Assets and the Lumiere Assets.

PPP. "Order Date" means the date on which this Order becomes final as provided by the Commission's Rules of Practice.

QQQ. "Patent(s)" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Effective Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, restorations, extensions, and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto.

RRR. "Pinnacle Corporate Contracts" means (i) all Contracts that are used solely by or relate exclusively to assets owned by Pinnacle other than the Lumiere Assets or the L'Auberge Assets and (ii) all Contracts that are used by or relate to all of the casinos owned by Pinnacle, including the Lumiere Assets and the L'Auberge Assets, including but not limited to, any contracts listed in Exhibit K.

SSS. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Governmental Agency, and any subsidiaries, divisions, groups, or affiliates thereof.

- TTT. “Retained Database Records” means the data and information, whether stored digitally, electronically, magnetically, or in any other format, relating to Persons that visit Respondents’ casinos or hotels other than a Divested Casino or activities by Persons at such casino or hotels and includes without limitation:
1. Each Person’s personal and demographic information, including without limitation the customer’s name, address, phone number, social security number, birth date, gender, email, and disassociated patron status;
 2. Each Person’s transactional history at Respondents’ casinos or hotels other than a Divested Casino and/or each Person’s patronage, purchase, and use of Casino Services during visits to Respondents’ casinos or hotels other than a Divested Casino, including the dates, game types, average wager, times, length of visits, and hotel room reservation details (*i.e.*, room types, dates, booked rates for future reservations, payment method);
 3. All data and information relating to the value spent or lost by Persons during their visits to Respondents’ casinos or hotels other than a Divested Casino or value as a consumer of Casino Services at Respondents’ casinos or hotels other than a Divested Casino, including information such as each customer’s total actual win or loss, total theoretical win or loss value, average daily worth (ADW), average daily theoretical value (ADT or THEO), or other metrics related to customer’s transaction history or purchases of Casino Services at Respondents’ casinos or hotels other than a Divested Casino;
 4. Each Person’s tier status and total comp balance on the Divestiture Date based on each Person’s visits to any other casino operated:
 - a. By Respondent Pinnacle in the United States if the Divested Casino is one of the Lumiere Assets; or
 - b. By Respondent Ameristar in the United States if the Divested Casino is one of the Ameristar Missouri Assets;
 5. Any other data and information customarily used by Respondents at a casino or hotels other than a Divested Casino to market or sell Casino Services to Persons, including survey data, Twitter accounts, and Facebook accounts provided that such information relates to the Person’s visits to a casino or hotel other than a Divested Casino.
- UUU. “Transition Services Agreement” means an agreement that receives the prior approval of the Commission between one or both Respondents and any Acquirer of any of the assets divested under this Order to provide, at the option of each Acquirer and at no more than the Direct Costs of the Respondents, all services (or training for an acquirer to provide services for itself) reasonably necessary to transfer administrative support services to the acquirers of each of the assets divested under this Order. The services that may be the subject of a Transition Services Agreement include, but are not limited to, payroll, employee benefits, accounts receivable, accounts payable, Casino Customer Database services, Shared Database services, room reservation systems, utility services, food

services, heating and air conditioning services and systems, and other logistical and administrative support.

II.

IT IS FURTHER ORDERED that:

- A. No later than the earlier of (i) six (6) months from the Order Date or (ii) six (6) months from the Acquisition Date, Respondents shall divest the Ameristar Louisiana Assets, absolutely and in good faith and at no minimum price, to the Ameristar Louisiana Acquirer pursuant to and in accordance with a Ameristar Louisiana Divestiture Agreement. The Ameristar Louisiana Acquirer may, but need not be, the same Person as the Acquirer of any other assets under this Order.

Provided, however, that, if the LGCB has failed to issue a decision on the Acquirer's LGCB Application within six (6) months from the earlier of the Order Date and the Acquisition Date, and:

1. The Commission has approved the Acquirer and the Divestiture Agreements;
2. Respondents have not violated this Order or the Hold Separate Order;
3. Respondents have not breached the Ameristar Louisiana Divestiture Agreement;
4. Respondents have provided in a timely fashion all information and documents requested by the LGCB; and,
5. The sole remaining Condition to Closing for the Divestiture Agreement (determined as if the closing were to occur six (6) months from the earlier of the Order Date and the Acquisition Date) is the failure to obtain one or more approvals, licenses, permits, rulings or decisions by the LGCB or the Lake Charles Harbor and Terminal District, then

Respondents shall have until eight (8) months from the earlier of the Order Date and the Acquisition Date to divest the Ameristar Louisiana Assets to an Acquirer in a manner that receives the prior approval of the Commission.

- B. Respondents shall divest any names, service marks, trademarks, trade names, domain names, and other Intellectual Property owned by Respondents that are associated with the brand "Mojito Pointe," provided that Respondents shall only be required to assign the Intellectual Property Rights to the "Mojito Pointe" brand to an entity established by and jointly owned by Respondents and the Acquirer of the Ameristar Louisiana Assets for the purposes of managing and operating the Festival Grounds or any expanded shared space area to be agreed upon by Pinnacle and the Acquirer or in such other fashion as Pinnacle and the Acquirer may agree.

- C. Respondents shall not, on its own or permit another on Respondents' behalf, join, file, prosecute, or maintain any suit, in law or equity, against any Acquirer alleging that the use on or after the Divestiture Date of any of the trademarks or trade names on the List of Designated Trademarks and Trade Names in Exhibit A infringes any Intellectual Property owned or licensed by Respondents as of the Divestiture Date.
- D. At the option of the Ameristar Louisiana Acquirer, and subject to the prior approval of the Commission, Respondents shall enter into a Transition Services Agreement relating to the Ameristar Louisiana Assets. Furthermore, any Transition Services Agreement shall provide for the continuation of any goods and services provided to the Respondents (if capable of being provided by Respondents) under any excluded contract listed in any exhibit to this Order prior to the Divestiture Date if the Acquirer, despite commercially reasonable efforts, has been unable to contract with another Person for those same goods and services upon commercially reasonable terms. The term of any Transition Services Agreement shall extend for up to one year from the Divestiture Date of the related divested assets. However, each Transition Services Agreement shall include a provision that permits an Acquirer, at its option, to extend the term of each agreement for an additional six (6) months.
- E. Prior to the Divestiture Date:
1. Respondents shall secure at their sole expense consents from all Persons that relate to or are necessary to divest to the Ameristar Louisiana Acquirer and for the Ameristar Louisiana Acquirer to operate any tangible or intangible assets of the Ameristar Louisiana Assets in a manner that will achieve the purposes of this Order;

provided, however, Respondents shall not be required to secure the consent of any Governmental Agency relating to any permit, license, or right that Respondents have no legal right to divest or transfer to the Ameristar Louisiana Acquirer; and,

provided further, however, except as set forth in Paragraph II.A. of this Order, the failure of Respondents or any Acquirer to obtain any consents that relate to or are necessary to divest the Ameristar Louisiana Assets shall not extend the date by which Respondents must divest the Ameristar Louisiana Assets
 2. Respondents shall use best efforts to assist the Ameristar Louisiana Acquirer to obtain the transfer from Respondents or issuance to the Ameristar Louisiana Acquirer of any permit, license, asset, or right that Respondents have no legal right to divest or transfer to the Ameristar Louisiana Acquirer.
- F. Respondents shall comply with all terms of the Ameristar Louisiana Divestiture Agreement (or the L'Auberge Divestiture Agreement), and any breach by Respondents of any term of the Ameristar Louisiana Divestiture Agreement (or the L'Auberge Divestiture Agreement) shall constitute a violation of this Order. If any term of the Ameristar Louisiana Divestiture Agreement or L'Auberge Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot

fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order. Any modification of the Ameristar Louisiana Divestiture Agreement or L'Auberge Divestiture Agreement between the date the Commission approves the Ameristar Louisiana Divestiture Agreement or L'Auberge Divestiture Agreement and the Divestiture Date, without the prior approval of the Commission, or any failure by Respondents to meet any material condition precedent to closing (whether waived or not), shall constitute a failure to comply with this Order. Notwithstanding any paragraph, section, or other provision of the Ameristar Louisiana Divestiture Agreement or L'Auberge Divestiture Agreement, any modification of the Ameristar Louisiana Divestiture Agreement or L'Auberge Divestiture Agreement, without the approval of the Commission, shall constitute a failure to comply with this Order, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

- G. The purpose of the divestiture of the Ameristar Louisiana Assets (or the L'Auberge Assets if a Divestiture Trustee divests the L'Auberge Assets to a L'Auberge Acquirer) to an Acquirer is to create an independent, viable, and effective competitor in the relevant market in which Ameristar was engaged at the time of the announcement of the Acquisition, or would have been engaged in absent the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. No later than the earlier of (i) six (6) months from the Order Date or (ii) six (6) months from the Acquisition Date, Respondents shall divest the Lumiere Assets, absolutely and in good faith and at no minimum price, to the Lumiere Acquirer pursuant to and in accordance with a Lumiere Divestiture Agreement. The Lumiere Acquirer may, but need not be, the same Person as the Acquirer of any other assets under this Order.

Provided, however, that, if the MGC has failed to issue a decision on the Acquirer's MGC Application within six (6) months from the earlier of the Order Date and the Acquisition Date, and:

1. The Commission has approved the Acquirer and the Divestiture Agreements;
2. Respondents have not violated this Order or the Hold Separate Order;
3. Respondents have not breached the Lumiere Divestiture Agreement;
4. Respondents have provided in a timely fashion all information and documents requested by the MGC; and,

5. The sole remaining Condition to Closing for the Divestiture Agreement (determined as if the closing were to occur six (6) months from the earlier of the Order Date and the Acquisition Date) is the failure to obtain one or more approvals, licenses, permits, rulings, or decisions by the MGC, then

Respondents shall have until eight (8) months from the earlier of the Order Date and the Acquisition Date to divest the Lumiere Assets to an Acquirer in a manner that receives the prior approval of the Commission.

- B. At the option of the Lumiere Acquirer, and subject to the prior approval of the Commission, Respondents shall enter into a Transition Services Agreement relating to the Lumiere Assets. Furthermore, any Transition Services Agreement shall provide for the continuation of any goods and services provided to the Respondents (if capable of being provided by Respondents) under any excluded contract listed in any exhibit to this Order prior to the Divestiture Date if the Acquirer, despite commercially reasonable efforts, has been unable to contract with another Person for those same goods and services upon commercially reasonable terms. The term of any Transition Services Agreement shall extend for up to one year from the Divestiture Date of the related divested assets. However, each Transition Services Agreement shall include a provision that permits an Acquirer, at its option, to extend the term of each agreement for an additional six (6) months.
- C. Prior to the Divestiture Date:
 1. Respondents shall secure at their sole expense consents from all Persons that relate to or are necessary to divest to the Lumiere Acquirer and for the Lumiere Acquirer to operate any tangible or intangible assets of the Lumiere Assets in a manner that will achieve the purposes of this Order;

Provided, however, Respondents shall not be required to secure the consent of any Governmental Agency relating to any permit, license, or right that Respondents have no legal right to divest or transfer to the Lumiere Acquirer; and,

Provided further, however, except as set forth in Paragraph III.A. above, the failure of Respondents or any Acquirer to obtain any consents that relate to or are necessary to divest the Lumiere Assets shall not extend the date by which Respondents must divest the Lumiere Assets.
 2. Respondents shall use best efforts to assist the Lumiere Acquirer to obtain the transfer from Respondents or issuance to the Lumiere Acquirer of any permit, license, asset, or right that Respondents have no legal right to divest or transfer to the Lumiere Acquirer.
- D. Respondents shall comply with all terms of the Lumiere Divestiture Agreement (or the Ameristar Missouri Divestiture Agreement if a Divestiture Trustee divests the Ameristar Missouri Assets to an Ameristar Missouri Acquirer), and any breach by Respondents of any term of the Lumiere Divestiture Agreement or Ameristar Missouri Divestiture

Agreement shall constitute a violation of this Order. If any term of the Lumiere Divestiture Agreement or Ameristar Missouri Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order. Any modification of the Lumiere Divestiture Agreement or Ameristar Missouri Divestiture Agreement between the date the Commission approves the Lumiere Divestiture Agreement or Ameristar Missouri Divestiture Agreement and the Divestiture Date, without the prior approval of the Commission, or any failure by Respondents to meet any material condition precedent to closing (whether waived or not), shall constitute a failure to comply with this Order. Notwithstanding any paragraph, section, or other provision of the Lumiere Divestiture Agreement or Ameristar Missouri Divestiture Agreement, any modification of the Lumiere Divestiture Agreement, without the approval of the Commission, shall constitute a failure to comply with this Order, except as otherwise provided in Rule 2.41(f)(5) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

- E. In the event the Divestiture Trustee divests the Ameristar Missouri Assets, Respondents shall not, on its own or permit another on Respondents’ behalf, join, file, prosecute or maintain any suit, in law or equity, against any Acquirer alleging that the use on or after the Divestiture Date of any of the trademarks or trade names on the List of Designated Trademarks and Trade Names in Exhibit A infringes any Intellectual Property owned or licensed by Respondents as of the Divestiture Date.
- F. The purpose of the divestiture of the Lumiere Assets (or the Ameristar Missouri Assets if a Divestiture Trustee divests the Ameristar Missouri Assets to an Ameristar Missouri Acquirer) to an Acquirer is to create an independent, viable, and effective competitor in the relevant market, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission’s Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall cooperate with and assist any proposed Acquirer of each of the Divested Assets to evaluate independently and retain the Key Employees and Knowledgeable Employees for each of the Divested Assets, such cooperation to include at least the following:
 - 1. Not later than forty five (45) days before the Divestiture Date, Respondents shall, to the extent permitted by applicable law: (i) provide to the proposed Acquirer a list of all Key Employees and Knowledgeable Employees, and Employee Information for each Person on the list; and (ii) allow the proposed Acquirer a reasonable opportunity to interview any Key Employees and Knowledgeable Employees;

2. Not later than thirty (30) days before the Divestiture Date, Respondents shall provide an opportunity for the proposed Acquirer: (i) to meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any of the Key Employees and Knowledgeable Employees; and (ii) to make offers of employment to any of the Key Employees and Knowledgeable Employees;
 3. Respondents shall: (i) not directly or indirectly interfere with the proposed Acquirer's offer of employment to any one or more of the Key Employees and Knowledgeable Employees, directly or indirectly attempt to persuade any one or more of the Key Employees and Knowledgeable Employees to decline any offer of employment from the proposed Acquirer, or offer any incentive to any Key Employees and Knowledgeable Employees to decline employment with the proposed Acquirer; (ii) irrevocably waive any legal or equitable right to deter any Key Employees and Knowledgeable Employees from accepting employment with the proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that directly or indirectly relate to the Divested Casino; and (iii) continue to extend to any Key Employees and Knowledgeable Employees, during their employment by the Divested Casino prior to the Divestiture Date, all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits;
 4. Respondents shall cooperate with the proposed Acquirer to provide reasonable financial incentives as set forth in the Hold Separate Order to encourage Key Employees to continue in his or her position with the Divested Assets until the Divestiture Date.
- B. For a period of two (2) years from the Divestiture Date, Respondents shall not, directly or indirectly, solicit, negotiate, hire, or enter into any arrangement for the services of any Key Employee who has accepted an offer of employment with, or who is employed by, an Acquirer.
- Provided, however,* a violation of this provision will not occur if:
1. The Key Employee's employment has been terminated by the Acquirer;
 2. Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
 3. Respondents hire a Key Employee who has applied for employment with Respondents, provided that such application was not solicited or induced in violation of this Order.
- C. For a period of one (1) year from the Divestiture Date, Respondents shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any Knowledgeable Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer; *provided, however,* a violation of this provision will not occur if:

1. The Knowledgeable Employee's employment has been terminated by the Acquirer;
2. Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or,
3. Respondents hire a Knowledgeable Employee who has applied for employment with Respondents, provided that such application was not solicited or induced in violation of this Order.

V.

IT IS FURTHER ORDERED that:

- A. After the Divestiture Date, Respondents shall not:
1. Provide, disclose, or otherwise make available any Material Confidential Information to any Person except as required or permitted by this Order; or
 2. Use any Material Confidential Information for any reason or purpose other than as required or permitted by this Order.
- Provided, however,* that nothing in this Paragraph V shall prevent Respondents from using any tangible or intangible property (including Retained Database Records) that Respondents retain the right to use pursuant to this Order, provided further that to the extent that the use of such property involves disclosure of Material Confidential Information to another Person, Respondents shall require such Person to maintain the confidentiality of such Material Confidential Information under terms no less restrictive than Respondents' obligations under this Order.
- Provided further,* that nothing in this Paragraph V shall prevent Respondents from using data and information properly included in both Casino Customer Database Records and Retained Database Records to market Casino Services to Respondents' customers.
- Provided further,* that nothing in this Paragraph V shall prevent Respondents from retaining and using a copy of any Books and Records used by or necessary for Respondents' casinos or hotels other than a Divested Casino.
- B. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Material Confidential Information that is not permitted by this Order. These measures shall include, but not be limited to, restrictions placed on access by Persons to information available or stored on any of Respondents' computers or computer networks.
- C. Respondents no less than annually shall provide written or electronic instructions to any and all of its officers, directors, employees, or agents who have custody or control of any Material Confidential Information concerning the limitations placed by this Order on the distribution and use of Material Confidential Information. Respondents shall require

such officers to acknowledge in writing or electronically their receipt and understanding of these written or electronic instructions. Respondents shall maintain custody of these written or electronic instructions and acknowledgments for inspection upon request by the Commission.

- D. Notwithstanding Paragraph V.A. of this Order and subject to the Hold Separate Order, Respondent may use Material Confidential Information:
1. For the purpose of performing Respondents' obligations under this Order, the Hold Separate Order, or the Divestiture Agreements;
 2. To ensure compliance with legal and regulatory requirements including, but not limited to:
 - a. Retaining a copy of any Casino Customer Database Records for the sole purpose of complying with any applicable law, regulations, and other legal obligations (including, but not limited to, fulfilling Respondents' obligations to loyalty club members to provide earned benefits and rewards); and,
 - b. Requirements of the rules and regulations of the Securities and Exchange Commission and of any stock exchange or other Self Regulatory Organization, the performance of necessary audits and the maintenance of effective internal controls and procedures for required disclosures of financial information;
 3. To provide accounting, information technology, and credit-underwriting services;
 4. To provide legal services associated with actual or potential litigation and transactions;
 5. To monitor and ensure compliance with financial, tax reporting, governmental environmental, health, and safety requirements; or
 6. As otherwise provided by this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations of Paragraphs II. or III. of this Order, whether or not all Government Agency consents have been obtained, the Commission may appoint one or more Divestiture Trustees to divest one or more of the Divested Assets, enter Transition Services Agreements, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. If Respondents have not fully complied with the obligations imposed by Paragraph II. of this Order, the Divestiture Trustee shall divest, at the option of the Divestiture Trustee, either the Ameristar Louisiana Assets or the L'Auberge Assets to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the

Commission. If Respondents have not fully complied with the obligations imposed by Paragraph III. of this Order, the Divestiture Trustee shall divest, at the option of the Divestiture Trustee, either the Lumiere Assets or the Ameristar Missouri Assets to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VI.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including one or more court-appointed Divestiture Trustees, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

- B. The Commission may select one or more Divestiture Trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Commission may appoint one Divestiture Trustee or separate Divestiture Trustees to divest one or more of the Divested Assets and perform Respondents' other obligations in a manner that satisfies the requirements of Paragraphs II. and III. of this Order. Any Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
1. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreements for any divestitures required by Paragraphs II. or III. of this Order that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by, Paragraphs II. and III. of this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
 2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
 - b. The Divestiture Trustee shall have one (1) year after the date the Commission approves each trust agreement described herein to accomplish the divestitures required by Paragraphs II. and III. of this

Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to satisfy the obligations of Paragraphs II. or III. of this Order, or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however,* that the Commission may extend the period only two (2) times.

- c. Subject to any demonstrated legally recognized privilege, any Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as any Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede any Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph VI. for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
- d. Any Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission as required by this Order; *provided, however,* if any Divestiture Trustee receives bona fide offers for any asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however,* that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.
- e. Any Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. Any Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. Any Divestiture Trustee shall account for all monies

derived from the divestitures and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of any Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

- f. Respondents shall indemnify any Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
 - g. Any Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 - h. Each Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
 - i. Respondents may require each Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- C. If the Commission determines that any Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.
 - D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.
 - E. The Divestiture Trustee appointed pursuant to this Paragraph VI. may be the same person appointed as Hold Separate Monitor pursuant to the relevant provisions of the Hold Separate Order.

VII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order is issued, and every thirty (30) days thereafter until the Divestiture Dates of each of the divestitures required by Paragraphs II. and III. of this Order, Respondents shall submit to the Commission (and a complete copy to the Hold Separate Monitor) a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. For the period covered by this report, the report shall include, but not be limited to, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity and contact information of all parties contacted. Respondents shall include in the reports copies of all material written communications to and from such parties, all internal memoranda, a copy of the written instructions and acknowledgments concerning Material Confidential Information required by Paragraph V of this Order, and all reports and recommendations concerning completing the obligations.
- B. On the first anniversary of the Order Date, and thereafter on each subsequent anniversary until Respondents have satisfied in full all of their obligations under all of the Divestiture Agreements (including any Transition Services Agreements), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. For the period covered by each such report, Respondents shall state the name and contact information for each Person that maintains or claims (regardless of whether Respondents agree or disagree with such Person, and regardless whether a judicial or arbitration action has been threatened or commenced) that one or more Respondents have failed to comply fully with the Order (including any Divestiture Agreement made a part thereof), briefly describe the Person's claim, and provide copies of any written communications between Respondents and the Person concerning the claim.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondents;
- B. any proposed acquisition, merger, or consolidation of Respondents; or
- C. any other change in the Respondents, including, but not limited to, assignment and the

creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

IX.

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondents made to either Respondent's principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years after the Order Date.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

CONFIDENTIAL EXHIBITS A – K

[Redacted From the Public Record Version, but Incorporated By Reference]