

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

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

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

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
[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 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The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and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 determined to accept the executed Consent Agreement and to place 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 Order to Hold Separate and Maintain Assets (Hold Separate Order”):

1. Respondent Pinnacle is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 8918 Spanish Ridge Avenue, Las Vegas, NV 89148.
2. Respondent Ameristar is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Nevada, with its office 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 ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Ameristar Louisiana Asset Maintenance Period” means the period commencing on the Hold Separate Order Date and ending on the commencement of the Ameristar Louisiana Hold Separate Period.
- B. “Ameristar Louisiana Hold Separate Manager” means the Person appointed pursuant to Paragraph IV of this Hold Separate Order to be the manager of the Ameristar Louisiana Assets.
- C. “Ameristar Louisiana Hold Separate Period” means the period during which the Ameristar Louisiana Assets shall be held separate from Respondents’ other businesses under this Hold Separate Order, which shall begin on the Acquisition Date and terminate on the Divestiture Date of either of the Louisiana Assets.
- D. “Ameristar Louisiana Project Development Plan” means any development plan, development schedule, or other commitments relating to the development, construction, and operation of the Ameristar Louisiana Assets approved by the LGCB, as described in the Ameristar Louisiana Construction Documents.

- E. “Ameristar Missouri Asset Maintenance Period” means the period commencing on the Hold Separate Order Date and ending on the Divestiture Date of either of the Missouri Assets.
- F. “Benchmark Date” means May 1, 2013.
- G. “Decision and Order” means:
1. the Proposed Decision and Order contained in the Consent Agreement in this matter until issuance and service of a final Decision and Order by the Commission; and
 2. the Final Decision and Order issued and served by the Commission.
- H. “Force Majeure Events” means an event or occurrence or circumstance beyond the reasonable control of, and without the fault or negligence of, Respondents, which may include acts of God, labor disputes (including strikes), floods, earthquakes, storms, fires, lightning, epidemics, civil disturbances, sabotage, explosions, curtailments, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, or any other event or cause that is beyond Respondent’s reasonable control.
- I. “Hold Separate Business” or “Hold Separate Businesses” means the Ameristar Louisiana Assets and the Lumiere Assets, individually or collectively.
- J. “Hold Separate Business Employee” means any employee or agent of one or both of the Hold Separate Businesses (other than a Support Services Employee).
- K. “Hold Separate Managers” means the Lumiere Hold Separate Manager and the Ameristar Louisiana Hold Separate Manager.
- L. “Hold Separate Monitor” means the Person appointed pursuant to Paragraph III of this Hold Separate Order.
- M. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.
- N. “Hold Separate Order Date” means the date this Hold Separate Order becomes final.
- O. “Hold Separate Period” means the period from the Acquisition Date until the latest of the termination of the Ameristar Louisiana Hold Separate Period and the Lumiere Hold Separate Period.

- P. “L’Auberge Asset Maintenance Period” means the period commencing on the Hold Separate Order Date and ending on the Divestiture Date for either of the Louisiana Assets.
- Q. “Lumiere Asset Maintenance Period” means the period commencing on the Hold Separate Order Date and ending on the commencement of the Lumiere Hold Separate Period.
- R. “Lumiere Hold Separate Period” means the period during which the Lumiere Assets shall be held separate from Respondents’ other businesses under this Hold Separate Order, which shall

X. "Unplanned Expenditures" means costs, expenses, and expenditures that were not planned or budgeted but that arose:

1. From events or circumstances that are commonly encountered in the construction process of casinos similar to the Ameristar Louisiana Casino (including, but not limited to, the L'Auberge Casino);
2. From unforeseen events and circumstances (including from Force Majeure Events); and
3. From modifications to the development or construction of any one or more of the Ameristar Louisiana Assets requested by the proposed Acquirer (if the Commission has not yet approved the Acquirer) or the Commission-

their operations and the integrity of their financial controls.

marketability, viability, and competitiveness of the those assets. Respondents' responsibilities shall include, but are not limited to, the following:

- a. Respondents shall use their best efforts in a manner consistent with past practices to preserve the existing relationships with customers, vendors, Governmental Agencies, and Persons providing goods and services in support of the operation and maintenance of the Ameristar Louisiana Assets, Lumiere Assets, L'Auberge Assets, and the Ameristar Missouri Assets;
- b. Respondents shall provide the Ameristar Louisiana Assets,

5. The Hold Separate Monitor shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities. Respondents shall provide compensation to the Hold Separate Monitor, and pay the Hold Separate Monitor's costs and expenses (including, but not limited to, those related to consultants, accountants,

Hold Separate Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Each report shall include, but not be limited to, the Hold Separate Monitor's assessment of the extent to which the Hold Separate Businesses are meeting (or exceeding) their projected goals as reflected in business planning documents (including, but not limited to, any construction or development plans or schedules relating to the Ameristar Louisiana Assets), budgets, projections, or any other regularly prepared financial statements.

11. Respondents shall comply with all terms of the Monitor Agreement, and any breach by Respondents of any term of the Monitor Agreement shall constitute a violation of this Hold Separate Order. Notwithstanding any paragraph, section, or other provision of the Monitor Agreement, any modification of the Monitor Agreement, without the prior approval of the Commission, shall constitute a failure to comply with the Hold Separate Order and the Decision and Order.

- C. If the Hold Separate Monitor ceases to act or fails to act diligently and consistently with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:
 1. If Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Hold Separate Monitor within five (5) business days after notice by the staff of the Commission to Respondents of the identity of the proposed substitute Hold Separate Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor.
 2. Respondents shall, no later than five (5) business days after the Commission appoints a substitute Hold Separate Monitor, enter into an agreement with the substitute Hold Separate Monitor that, subject to the prior approval of the Commission, confers on the substitute Hold Separate Monitor all the rights, powers, and authority necessary to permit the substitute Hold Separate Monitor to perform his or her duties and responsibilities on the same terms and conditions as provided in Paragraph III of this Hold Separate Order.
- D. The Hold Separate Monitor shall serve through the Hold Separate Period; ~~but~~ that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

1. The Lumiere Hold Separate Manager shall be responsible for managing the operations of the Lumiere Assets through the Lumiere Hold Separate Period, and shall report directly and exclusively to the Hold Separate Monitor and shall manage the Lumiere Assets independently of the management of Respondents and their other businesses;

~~The~~ the Lumiere Hold Separate Manager will have the option, but not the obligation, to continue, consistent with past practices, any or all joint marketing, any use or sharing of databases (including customer databases) and all other cooperative marketing programs (including player's club programs, promotions and events) relating to, or in connection with, the marketing or operations of any one or more of the Lumiere Assets

2. The Ameristar Louisiana Hold Separate Manager shall be responsible for managing the operations of the Ameristar Louisiana Assets through the Ameristar Louisiana Hold Separate Period, and shall report directly and exclusively to the Hold Separate Monitor and shall manage the Ameristar Louisiana Assets independently of the management of Respondents and their other businesses.
3. The Hold Separate Managers shall make no material changes in the ongoing operations or development of the Hold Separate Businesses, and shall continue the management and operation of the Hold Separate Business in a manner intended to ensure continued compliance with the indentures and credit agreements governing the Respondents' indebtedness (and all notes and agreements related thereto), except with the approval of the Hold Separate Monitor, in consultation with Commission staff, and after providing written notice to and an opportunity for consultation with Respondents, or as otherwise allowed by the Orders.
4. The Hold Separate Managers, with the approval of the Hold Separate Monitor, shall have the authority to employ such Persons as are reasonably necessary to assist the Hold Separate Managers in managing the Hold Separate Businesses, including, without limitation, consultants, accountants, attorneys, and other representatives, assistants, and employees.
5. Respondents shall provide the Hold Separate Managers with reasonable financial incentives to undertake these positions. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be

necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Hold Separate Businesses, and as may otherwise be necessary to secure the Hold Separate Managers' agreement to achieve the purposes of this Hold Separate Order.

6. The Hold Separate Managers shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities, and with any financial incentives that may be reasonable or necessary as described in this Paragraph IV. Respondents shall pay the Hold Separate Managers' costs and expenses (including, but not limited to, those related to consultants, accountants, attorneys, and other representatives and assistants) on a monthly or other reasonable periodic basis.
 7. Respondents shall indemnify the Hold Separate Managers and hold them harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Managers' 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 the Managers' gross negligence or willful misconduct.
 8. Nothing contained herein shall preclude the Hold Separate Managers from contacting or communicating directly with the staff of the Commission, either at the request of the staff of the Commission or the Hold Separate Monitor, or in the discretion of the Hold Separate Manager.
- C. The Hold Separate Managers shall have the authority, in consultation with the Hold Separate Monitor, to staff the Hold Separate Businesses with sufficient employees to maintain the viability and competitiveness of the Hold Separate Businesses, including:
1. Replacing any departing or departed Hold Separate Business Employee with a person who has similar experience and expertise or determine not to replace such departing or departed employee;
 2. Removing any Hold Separate Business Employee who ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, and replacing such employee with another person of similar experience or skills;

3. Ensuring that no Hold Separate Business Employee shall be involved in any way in the operations of Respondents' other businesses, unless allowed or required under the Orders;
4. Managing and directing each Support Service Employee identified in Confidential Exhibit D to provide the Support Services required by or necessary to support the operations of the Hold Separate Businesses, it being further understood that the Support Service Employee identified on Confidential Exhibit D shall make themselves available for the

- a. Human resources and administrative support services, including, but not limited to, payroll processing and employee benefits, including health benefits and administration;
 - b. Preparation of tax returns;
 - c. Environmental health and safety services, which are used to insure compliance with federal and state regulations and corporate policies;
 - d. Financial accounting and reporting services;
 - e. Legal, licensing, and audit services;
 - f. Federal and state regulatory compliance;
 - g. Maintenance and oversight of all information technology systems and databases, including, but not limited to, all hardware, software, electronic mail, word processing, document retention, enterprise management systems, financial management systems and databases, customer databases, gaming systems, security systems, and reporting systems;
 - h. Processing of accounts payable and accounts receivable;
 - i. Procurement of supplies, goods, and services utilized in the ordinary course of business by the Hold Separate Businesses;
 - j. Public relations and public affairs support services;
 - k. Construction and development services;
 - l. Procurement and renewal of insurance and related services; and
 - m. Security and safety services.
5. Notwithstanding the above, the Hold Separate Businesses shall have, at the option of the Hold Separate Managers and with the approval of the Hold Separate Monitor following consultation with Commission staff, the right to acquire Support Services from third parties unaffiliated with Respondents.

3. Respondents will provide sufficient financial resources to allow the Hold Separate Monitor to provide the Key Employees and the Support Services Employees identified in Exhibit D with additional financial incentives (including at least the incentives set forth on Confidential Exhibit D), to continue in his or her position until the termination of the Lumiere Hold Separate Period and the Ameristar Louisiana Hold Separate Period.
4. Perform all maintenance to, and replacements or remodeling of, the assets of the Lumiere Assets and Ameristar Louisiana Assets in the ordinary course of business, in accordance with past practice, and Respondents' business, capital, and strategic plans in place prior to the Acquisition Date;
5. Carry on such capital projects, physical plant improvements, and business plans as are already under way or planned, including, but not limited to, existing or planned renovation, remodeling, and expansion projects, all in accordance with Respondents' business, capital, and strategic plans in place prior to the Acquisition Date;
6. Assure the continued development, design, construction, viability, and marketability of the Ameristar Louisiana Assets, including both Planned Expenditures and Unplanned Expenditures; and
7. Maintain the viability, competitiveness, and marketability of the Lumiere Assets and Ameristar Louisiana Assets.

Such financial resources to be provided to the Hold Separate Businesses shall include, but shall not be limited to: (i) general funds; (ii) capital; (iii) working capital; and (iv) reimbursement for any operating expenses, losses, capital losses, or other losses, ~~ph~~ that, consistent with the purposes of the Decision and Order and this Hold Separate Order, the Hold Separate Monitor may, and in consultation with Commission staff, substitute any capital or development project for another of like cost.

- E. No later than two (2) business days after the Acquisition Date, Respondents shall establish and implement written procedures, subject to the approval of the Hold Separate Monitor and in consultation with Commission staff, regarding the operational independence of the Hold Separate Businesses and the independent management by the Hold Separate Monitor and Hold Separate Managers, consistent with the provisions of this Hold Separate Order, the Decision and Order, the Hold Separate Monitor Agreement (attached as Exhibit A to this Hold Separate Order), and the Hold Separate Manager agreements (attached as Exhibits B and C to this Hold Separate Order).

- F. No later than five (5) business days after the Hold Separate Order Date, Respondents shall circulate to Hold Separate Business Employees, Support Services Employees, and to Respondents' employees who have responsibilities associated with businesses that compete with the Hold Separate Businesses, the Decision and Order, and to Persons who are employed in Respondents' businesses that compete with the Hold Separate Businesses, Respondents shall circulate a notice of this Hold Separate Order and Decision and Order, in a form approved by the Hold Separate Monitor in consultation with Commission staff. This notice shall include, but not be limited to, information and directions about the independent operation of the Ameristar Louisiana Assets and the Lumiere Assets, and the limitations on Respondents' rights to use or have access to Material Confidential Information.

VI.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondents shall:
1. Not provide, disclose, or otherwise make available any Material Confidential Information to any Person except as required or permitted by the Orders; and
 2. Not use any Material Confidential Information for any reason or purpose other than as required or permitted by the Orders.

~~It~~, that nothing in this Paragraph VI shall prevent Respondents from using any tangible or intangible property (including a copy of the Retained Database Records) that Respondents retain the right to use pursuant to the Orders, ~~it~~, 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 the Orders.

- B. Notwithstanding Paragraph VI.A. of this Hold Separate Order and subject to the Decision and Order, Respondent is permitted to retain a copy of any Books and Records used by, necessary for, or relating to Respondents' casinos other than a Divested Casino and may use Material Confidential Information:
1. For the purpose of performing Respondents' obligations under this Hold Separate Order, the Decision and Order, or the Divestiture Agreements;

2. To ensure compliance with legal and regulatory requirements, as reasonably determined by the Respondents, including 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; and
 6. As otherwise provided by the Orders.
- C. If access to or disclosure of Material Confidential Information of the Hold Separate Businesses to Respondents' employees and agents is necessary and permitted under Paragraph VI.B. of this Hold Separate Order, Respondents shall:
1. Implement and maintain processes and procedures, as approved by the Hold Separate Monitor and in consultation with Commission staff, pursuant to which Material Confidential Information of the Hold Separate Businesses may be disclosed or used by Respondents' employees and agents;
 2. Limit disclosure or use by its employees or agent omit discloses or agent a.ccnt0(t)-6(i)-60(a) employees and ad in c;

5. Enforce the terms of this Paragraph VI. as to any of Respondents' employees and take such action as is necessary to cause each such employee to comply with the terms of this Paragraph VI., including:
 - a. Training of Respondents' employees and agents in permitted access to and use of Material Confidential Information;
 - b. Appropriate discipline of Respondents' employees and agents who fail to comply with processes and procedures established by Respondent pursuant to this Paragraph VI. or any confidentiality agreement; and
 - c. All other actions that Respondents would take to protect their own trade secrets, proprietary, and other non-public information.
- D. Respondents shall implement and maintain in operation a system, approved by the Hold Separate Monitor and in consultation with Commission staff, of written procedures covering access and data controls to prevent unauthorized access to, or dissemination or use of, Material Confidential Information of the Hold Separate Businesses, including, but not limited to, the opportunity by the Hold Separate Monitor to audit Respondents' networks and systems to verify compliance with Respondents' system and the Orders.
- E. Neither the Hold Separate Managers nor any Hold Separate Business Employees shall receive or have access to, or use or continue to use, any confidential business information relating to Respondents' businesses (not subject to the Hold Separate Order), except such information as is necessary to maintain and operate the Hold Separate Businesses.

~~It~~ *r*, the Hold Separate Managers and Hold Separate Business Employees may have access to any Retained Database Records pursuant to any agreement between Respondents and the Lumiere Hold Separate Manager permitted by this Hold Separate Order.

VII.

IT IS FURTHER ORDERED that:

- A. Respondents shall reasonably cooperate to assist any proposed Acquirer of each of the Hold Separate Assets to evaluate independently and retain any of the Hold Separate Business Employees, such cooperation to include at least the following:

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, or Support Services Employees identified in Confidential Exhibit D, 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; ~~it~~ , a violation of this provision will not occur if:
1. The employment of the Knowledgeable Employee or Support Services Employee 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 or Support Services Employee who has applied for employment with Respondents, provided that such application was not solicited or induced in violation of this Order
- D. During the Hold S

VIII.

A. **IT IS FURTHER ORDERED** that, within thirty (30) calendar days after this Hold Separate Order becomes final, and every thirty (30) calendar days thereafter until this Hold Separate Order terminates, Respondents shall submit to the Commission, with a copy to the Hold Separate Monitor, a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Hold Separate Order. Respondents shall include in their reports, among other things that are required from time to time:

1. A description in reasonable detail of any claim (whether Respondents agree or disagree with the claim) by any Person (including, but not limited to, any of Respondents' employees or agents) that Respondents have failed to comply fully with this Hold Separate Order or the Decision and Order, and the name, address, phone number, and email address of such Person;
2. A description in reasonable detail of any information in Respondents' possession, custody, or control (including, but not limited to, information obtained from Respondents' monitoring of the compliance of its employees and agents with processes, procedures, and agreements intended to secure Respondents' compliance with their obligations under the Hold Separate Order and the Decision and Order) relevant to any failure by Respondent, their employees, or their agents to comply fully with Respondents' obligations under the Hold Separate Order and the Decision and Order; and
3. A description in reasonable detail of any information in Respondents' possession, custody, or control about any claim relating to the Louisiana Assets and the Missouri Assets (whether Respondents agree or disagree with the cl(he2(i)de)4(s)-14(pa)4(r)tBnt]TJ -1.39(s)-1(s)-1(e)4(t)ponde81he f.24 (infor(a)Lisag7(v)-12.84(us)-1(Gh)-4C-2(i)B o apa4(c)4(i)-2(s)-1-12.84a A-1(s)GponCg t

IX.

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

A.

XI.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the Closing Date.

By the Commission.

Richard C. Donohue
Acting Secretary

SEAL:
ISSUED: August 8, 2013

Exhibit A

HOLD SEPARATE MONITOR AGREEMENT

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

Exhibit B

HOLD SEPARATE MANAGER AGREEMENT - LUMIERE

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

Exhibit C

HOLD SEPARATE MANAGER AGREEMENT – AMERISTAR LOUISIANA

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

Confidential Exhibit D
EMPLOYEE INCENTIVES

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