

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

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Penn National Gaming, Inc.,)	
)	Docket No. C-4143
a corporation.)	
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_____)	

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission), having initiated an investigation of the proposed acquisition by Respondent Penn National Gaming, Inc. (“PNG”) of Argosy Gaming Company (“Argosy”), and Respondent having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent

Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Hold Separate and Maintain Assets (“Hold Separate Order”).

1. Respondent Penn National Gaming, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 825 Berkshire Blvd., Suite 200, Wyomissing, Pennsylvania 19610.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

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

- A. "PNG" or "Respondent" means Penn National Gaming, Inc., its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; and its parents, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Penn National Gaming, Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. "Argosy" means Argosy Gaming Company a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 219 Piasa Street, Alton, Illinois 62002; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Argosy Gaming Company.
- C. “Commission” means the Federal Trade Commission.
- D. “Respondent” means Penn National Gaming, Inc.
- E. "Acquisition" means the proposed acquisition by merger of Argosy by Respondent pursuant to the “Agreement and Plan of Merger” dated November 3, 2004 (as amended), by and among Argosy, Respondent and a subsidiary of Respondent, whereby Respondent agreed to acquire Argosy.

- F. “Acquisition Date” means the date the Acquisition is consummated.
- G. “Argosy Baton Rouge Assets” means all of the outstanding shares of capital stock, limited liability company interest, and partnership interests, as the case may be, of any of the ACBR Entities, and all of the real and personal, tangible and intangible, assets of the ACBR Entities, and any other assets of Respondent or Argosy, or any of their other subsidiaries used in or related to the Argosy Casino Baton Rouge, Catfish Town, and Centroplex Centre, including, but not limited to:
1. the Argosy Casino Baton Rouge;
 2. Catfish Town;
 3. Centroplex;
 4. all owned or leased parking structures, parking garages, and parking lots used by or related to the Argosy Casino Baton Rouge, Catfish Town, or the Centroplex, including, but not limited to the Leased Properties;
 5. all personal property (including, but not limited to, deck barges), fixtures, and improvements owned, placed on, located at, used in connection with the operation of, or related to the ACBR;
 6. all studies, surveys, research, audio and video recordings, data (including, but not limited to, the Argosy Casino Baton Rouge Database), information, and documents relating to marketing, advertising, promotion of the ACBR, Catfish Town, and Centroplex;
 7. all leases, agreements, and contracts of any kind relating to the ACBR, Catfish Town, and Centroplex, including, but not limited to:
 - a. upon the consent of Sheraton, a license to use the Sheraton name in connection with the operation of the Centroplex; and,
 - b. leases related to the Levee Building/Argosy Landing, Maritime I Building, Beauregard Building, Armour Building, Corner of Europe Street and St. Phillip Street in Baton Rouge, LA, S. Front Street in Baton Rouge, LA, and the dock and walkway in the Maritime Building;
 8. all governmental approvals, consents, licenses, waivers, or other authorizations related to the Argosy Casino Baton Rouge;

9. all trademarks, trade names, or copyrights owned or used by the ACBR, Catfish Town, and Centroplex, including, but not limited to irrevocable licenses for the use of all trade names related to Catfish Town and Centroplex; and,
10. all books and records related to the ACBR, Catfish Town, and Centroplex, including but not limited to:
 - a. documents containing information about customers or patrons of the ACBR, Catfish Town, and Centroplex;
 - b. documents containing information about suppliers of any goods or services to the ACBR, Catfish Town, and Centroplex; and,
 - c. documents relating to government approvals required for the construction, maintenance, operation, or licensing (including, but not limited to, regulation by the LAGC) of all or any part of the ACBR (including, but not limited to, the Vessel), Catfish Town, and Centroplex.

Provided, however, that the Argosy Baton Rouge Assets do not include:

1. any intellectual property owned, licensed to, or used by Respondent or Argosy, or their other subsidiaries, other than any and all intellectual property owned exclusively by the ACBR Entities;
2. any contract or agreement for the service, sale, or lease of gaming machines or equipment used or located at any location other than the ACBR; or
3. any of the assets listed under the caption "Other Excluded Assets" in Section 2.5(a) of the Seller Disclosure Letter attached as Annex B to the Agreement to Execute Securities Purchase Agreement.

H. "Argosy Baton Rouge Employees" means:

1. all of those individuals compensated for at least thirty-five (35) hours a week for at least forty (40) weeks within the twelve (12) month period immediately prior to the Effective Date of Divestiture whose duties related primarily to the Argosy Casino Baton Rouge; and,

2. all of those individuals employed by Argosy (including, but not limited to, Centroplex Centre Convention Hotel, L.L.C.) within the twelve (12) month period immediately prior to the Effective Date of Divestiture in the positions of Director of Hotel Operations, Rooms Division Manager, Revenue Manager, Sales & Catering Manager, Hotel Controller, or Executive Chef.
- I. "Argosy Baton Rouge Primary Employees" means all Argosy Baton Rouge Employees:
1. Who are required to be licensed or to hold a permit from either the State of Louisiana or the United States Coast Guard as a condition of employment with one or more of the ACBR Entities; and,
 2. Compensated at a base hourly rate of \$8.00 or more immediately prior to the Effective Date of Divestiture.
- J. "Argosy Casino Baton Rouge" or "ACBR" means the Land, Vessel, and all other rights related to and required for the operation of the Land and/or Vessel.
- K. "Argosy Casino Baton Rouge Entities" or "ACBR Entities" means Argosy of Louisiana, Inc., Jazz Enterprises, Inc., Centroplex Centre Convention Hotel, L.L.C., and Catfish Queen Partnership in Commendam.
- L. "Argosy Casino Baton Rouge Database" means all customer databases, customer lists, historical records of customers, and any other customer information collected and used by Argosy for marketing, promotional, or any other purposes related to the operation of ACBR, Catfish Town, and Centroplex;
- provided, however, Argosy Casino Baton Rouge Database does not include any customer databases, customer lists, historical records of customers, or any other customer information collected and used by Argosy solely for the marketing or promotion of any assets other than the Argosy Baton Rouge Assets.*
- M. "Commission-approved Acquirer" means any Person approved by the Commission to acquire the Argosy Baton Rouge Assets pursuant to Paragraph II of the Decision and Order.
- N. "Confidential Business Information" means any information relating to the Argosy Baton Rouge Assets (before or after the divestiture required by this Order) that is not in the public domain, including, but not limited to:

1. All contracts, agreements, bids, purchase orders, or other documents or information relating to any acquisitions of goods or services related to the Argosy Baton Rouge Assets;
 2. All marketing studies, marketing plans, data (including, but not limited to, the Argosy Casino Baton Rouge Database), or other documents or information relating to marketing of any of the Argosy Baton Rouge Assets;
 3. All records, applications, data, reports, correspondence, and documents or information relating to any gaming license or other regulation by any political subdivision of the State of Louisiana of the business or operation of the Argosy Baton Rouge Assets; and,
 4. All records, data, or other information relating to visits, spending, or other activity by any patrons or customers of the Argosy Baton Rouge Assets.
- O. “Decision and Order” means:
1. until the issuance of a final Decision and Order by the Commission, the proposed Decision and Order incorporated into and made a part of the Consent Agreement; or,
 2. following the issuance of a final Decision and Order by the Commission, the Decision and Order issued by the Commission.
- P. “Divestiture Agreement” means:
1. if Respondent divests the Argosy Casino Baton Rouge Assets to Columbia Sussex, the Agreement to Execute Securities Purchase Agreement (dated as of June 20, 2005) among CP Baton Rouge Casino, L.L.C., Columbia Sussex Corporation, and Penn National Gaming, Inc., and any contract, exhibit, attachment or schedule, or agreement related thereto, including, but not limited to:
 - a. the Securities Purchase Agreement attached as Annex A to the Agreement to Execute Securities Purchase Agreement and all exhibits attached thereto;
 - b. the Seller Disclosure Letter attached as Annex B to the Agreement to Execute Securities Purchase Agreement and all exhibits or schedules attached thereto; and,
 - c. Any modifications of any such agreement, exhibit, attachment or schedule required by the Commission pursuant to Paragraph II of the Decision and Order; or

2. if Respondent (or the Divestiture Trustee) divests the Argosy Casino Baton Rouge Assets to any Commission-approved Acquirer other than Columbia Sussex, any agreement that receives the prior approval of the Commission between Respondent and a Commission-approved Acquirer (or between the Divestiture Trustee and a Commission-approved Acquirer) related to the Argosy Baton Rouge Assets required to be divested pursuant to Paragraphs II or IV of the Decision and Order and the rights or assets to be licensed or otherwise made available to the Commission-approved Acquirer pursuant to Paragraph II of the Decision and Order, including, but not limited to, any agreement between the Respondent and the Commission-approved Acquirer required or permitted by or pursuant to Paragraph II of the Decision and Order.
- Q. “Divestiture Trustee” means the divestiture trustee(s) appointed pursuant to Paragraph IV of the Decision and Order.
- R. "Effective Date of Divestiture" means the date on which Respondent (or a Divestiture Trustee) divests to a Commission-approved Acquirer the Argosy Baton Rouge Assets completely and as required by Paragraph II or IV of the Decision and Order.
- S. “Held Separate Business” means the Argosy Baton Rouge Assets.
- T. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin on the date that the Acquisition is consummated and terminated pursuant to Paragraph V hereof.
- U. “Hold Separate Trustee” means the trustee appointed pursuant to Paragraph II of this Hold Separate Order.
- V. “Land” means all real property and/or land parcels related to the operation of the Argosy Baton Rouge Assets, including, but not limited to, all buildings, hotels, parking garages, parking structures, parking lots, Catfish Town, the Sheraton Hotel, Centroplex, and any other buildings or structures located on such land.
- W. “Leased Properties” means two parking lots on South Front Street, Baton Rouge, LA, leased by Catfish through a leasing agreement dated June 27, 2002, and as extended on August 3, 2004, between Phillips Connell Witter, as landlord, and Catfish Queen Partnership In Commendam, as tenant.
- X. “Louisiana Gaming Control” (“LAGC”) 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.

- Y. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- Z. "Vessel" means the vessel known as Argosy III Riverboat, Official Number 1023758, including, but not limited to: (i) all superstructures currently constructed thereon; (ii) plans and specifications therefor; (iii) existing warranties therefor; and (iv) all parts, spares, tools, equipment, machinery, gear, implements, broached and unbroached consumable stores, provisions for furniture, fixtures, fuel, pumps, anchors, cables, chains, apparel, rigging, tackle, fittings, accessories, appurtenances, appliances, supplies therefor, inventory parts, ramps, generators and related equipment (including, but not limited to, existing walkways), and all other appurtenances and accessories related to the vessel, whether located onboard the vessel or elsewhere;

provided, however, if any plans or specifications are not owned by or in the possession of Argosy, Respondent will use best efforts to obtain the consent of the owner or possessor of those plans to transfer such plans to the Commission-approved Acquirer.

II.

IT IS FURTHER ORDERED THAT:

- A. During the Hold Separate Period, Respondent shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate Order and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; Respondent shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondent must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and with all applicable laws (including, but not limited to, compliance with the laws of the state of Louisiana and all requests by the LAGC), including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Business's compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondent shall have

the right to defend any legal claims, investigations, or enforcement actions threatened or brought against any Held Separate Business.

- B. Until the Effective Date of Divestiture, Respondent shall take such actions as are necessary to maintain the viability and marketability of the Held Separate Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- C. Until the Effective Date of Divestiture, Respondent shall take such actions as are necessary promptly to comply with any requests of the LAGC (including but not limited to any requests for reports of capital expenditures or financial information). Respondent shall provide Commission staff with copies of all correspondence with LAGC, and shall provide Commission staff with copies of all materials provided to the LAGC.
- D. The purposes of this Hold Separate Order are to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondent until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Information is exchanged between Respondent and the Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Acquisition.
- E. Respondent shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
 - 1. Frank Quigley shall serve as Hold Separate Trustee.
 - 2. Within five (5) days of the date this Hold Separate Order becomes final, Respondent shall execute an agreement with the Hold Separate Trustee (“Trustee Agreement”) that, subject to the approval of the Commission, confers at least the following rights and obligations upon the Respondent and the Hold Separate Trustee:
 - a. The Trustee Agreement shall require that, no later than one (1) day after the Acquisition Date, Respondent transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.

- b. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization and operation of the Held Separate Business; for managing the Held Separate Business; for maintaining the independence of the Held Separate Business; and for monitoring Respondent's compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.
- c. The Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents, the Argosy Casino Baton Rouge Customer Database, and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondent in the ordinary course of business that relate to the Held Separate Business. Respondent shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondent shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondent's compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.
- d. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities, *provided, however*, that such expenses shall not include any expenses incurred pursuant to Paragraph II.E.5.a. of this Hold Separate Order or in the ordinary course of business.
- e. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.
- f. Respondent may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Confidential Business Information gained as a result of his/her role as Hold Separate Trustee to anyone other than the Commission or the LAGC.

modification of the Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with the Decision and Order.

4. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. To the extent that any Argosy Baton Rouge Employees leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
5. In connection with support services or products not included within the Held Separate Business, Respondent shall continue to provide, or offer to provide, the same support services to the Held Separate Business as are being provided to such business interest by Respondent or Argosy as of the date the Consent Agreement is signed by Respondent. For any services or products that Respondent may provide to the Held Separate Business, Respondent may charge no more than the lesser of: (i) the same price they charge others (or subsidiaries, divisions, affiliates, or units of Respondent or Argosy) for the same services or products; or (ii) the price charged by Argosy to the Argosy Baton Rouge Assets in the past for the same services or products. Respondent's personnel providing such services or products must retain and maintain all Confidential Business Information of the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondent's or Argosy's businesses, other than the Held Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Held Separate Business.
 - a. Respondent shall offer to the Held Separate Business any and all services and products (not purchased or provided directly by the Held Separate Business itself in the ordinary course of business during the twelve (12) months prior to the date this Hold Separate Order becomes final) that Respondent or Argosy has provided to their other businesses directly or through third party contracts, and that Argosy has provided directly or through third party contracts to the businesses constituting the Held Separate Business, at any time during the twelve (12) months prior to the date this Hold Separate Order becomes final. The Held Separate Business may,

with the approval of the Hold Separate Trustee, obtain such services and products from Respondent. The services and products that Respondent or Argosy shall offer the Held Separate Business shall include, but shall not be limited to, the following:

- (1) Human resources and administrative support services, including, but not limited to, payroll processing and employee benefits, including health benefits administration;
- (2) Preparation of tax returns;
- (3) Environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
- (4) Financial accounting and reporting services;
- (5) Legal, licensing, and audit services;
- (6) Federal and state regulatory policy compliance;
- (7) Maintenance and oversight of information technology systems, which includes, but is not limited to, all computer, electronic mail, word processing, software data systems (including all information systems, which constructs, maintains, and supports all computer systems), and all items from Exhibit D to the Securities Purchase Agreement;
- (8) Processing of accounts payable and accounts receivable;
- (9) Procurement of supplies, goods, and services utilized in the ordinary course of business by the Held Separate Business;
- (10) Public relations and public affairs support services;
- (11) Construction and development services; and,
- (12) Procurement and renewal of insurance and related services.

b. the Held Separate Business shall have, with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondent or Argosy.

6. Respondent shall cause the Hold Separate Trustee and each Argosy Baton Rouge Casino Employee having access to Confidential Business Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Confidential Business Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondent's businesses other than the Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the Penn National Casino Rouge, located in Baton Rouge, Louisiana.
7. No later than two (2) days after the Acquisition Date, Respondent shall establish and obtain approval of the Hold Separate Trustee of written procedures covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate Order, including but not limited to: (a) the Argosy Casino Baton Rouge Customer Database; and, (b) all Confidential Business Information.
8. No later than five (5) days after the date this Hold Separate Order becomes final, Respondent shall:
 - a. circulate to all directors and managers of the Held Separate Business, and to Respondent's or Argosy's employees who have responsibilities associated with the Held Separate Business, a copy of this Hold Separate Order and the proposed Decision and Order; and,
 - b. circulate a copy of Exhibit A to this Held Separate Business to all employees of the Held Separate Business.
9. The Hold Separate Trustee shall serve, without bond or other security, at the cost and expense of Respondent, exercising the standard of care and diligence that would be expected of a person in the conduct of the Hold Separate Trustee's duties under the Trustee Agreement and the Orders, and will operate and manage the Held Separate Business in substantially the same manner as previously conducted. The Hold Separate Trustee may not make any decision, take any action, or enter any transaction that is outside the ordinary course of business without the prior approval of the Commission, and without providing prior written notice to and an opportunity for consultation with Respondent.

10. Respondent shall indemnify the Hold Separate Trustee and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate 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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee.
11. Consistent with the nature and amount of past and planned financial resources furnished and planned to be furnished by Argosy to the ACBR, subject to Paragraph 9 herein, Respondent shall provide the Held Separate Business with sufficient financial resources:
 - a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business as it is currently operated;
 - b. to perform all maintenance to, and replacements of, the assets of the Held Separate Business;
 - c. to carry on existing and planned capital projects and business plans; and
 - d. to maintain the viability, competitive vigor, and marketability of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *PROVIDED, HOWEVER*, that, consistent with the purposes of the Decision and Order, the Hold Separate Trustee may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

12. Respondent shall, during the Hold Separate Period:
 - a. not interfere, directly or indirectly, with the hiring or employing by a Commission-approved Acquirer of the Argosy Baton Rouge Employees, and shall remove any impediments or incentives within the control of Respondent and Argosy that may deter these

employees from accepting employment with a Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondent or Argosy that would affect the ability or incentive of those individuals to be employed by a Commission-approved Acquirer. In addition, Respondent shall not make any counteroffer to a Argosy Baton Rouge Employee who receives a written offer of employment from a Commission-approved Acquirer;

- b. provide all the Argosy Baton Rouge Employees with reasonable financial incentives to continue in their positions until the Effective Date of Divestiture. Such incentives shall include, but are not limited to, a continuation of all employee benefits, including regularly scheduled raises and bonuses and a vesting of all pension benefits (as permitted by law and for those Argosy Baton Rouge Employees covered by a pension plan), offered by Respondent until the Effective Date of Divestiture;
- c. not, for a period of eighteen (18) months following the Effective Date of Divestiture, directly or indirectly, employ or enter into a contract for the services of any Argosy Baton Rouge Primary Employees;

Provided, however, that this Paragraph II.H. shall not prohibit Respondent from entering into a contract for the services of, making offers of employment to, or employing or contracting with any Argosy Baton Rouge Primary Employees:

- (1) when a Commission-approved Acquirer has notified Respondent in writing that the Commission-approved Acquirer:
 - (a) does not intend to make an offer of employment to that employee; or,
 - (b) has terminated that employee without cause; or,
- (2) when that employee voluntarily has declined to contract with or continue employment with the Commission-approved Acquirer, and the Commission-approved Acquirer has:

- (a) not offered to contract with or employ that employee in a position with the same or similar duties as the position occupied by that employee immediately prior to the Effective Date of Divestiture; or,
 - (b) not offered that employee the same or increased monetary compensation and a substantially similar or better package of benefits and other compensation as the employee received immediately prior to the Effective Date of Divestiture.

- 13. If at any time during the Hold Separate Period the Securities Purchase Agreement appended to the Agreement to Execute Purchase Agreement (dated as of June 20, 2005) is terminated, Respondent shall offer a retention bonus to all Argosy Baton Rouge Primary Employees included in the Held Separate Business who continue their employment with the Held Separate Business until termination of the Hold Separate Period (which shall be in addition to any performance bonus that shall be based solely on the performance of the Held Separate Business, or any severance to which the employees would otherwise be entitled by virtue of their employment by Respondents during the hold separate period if such employee is not hired by the Acquirer); provided, however, that all Argosy Baton Rouge Primary Employees shall receive a retention bonus equal to the greater of: (i) the retention bonus to which such employees were entitled to, but did not receive pursuant to the Securities Purchase Agreement appended to the Agreement to Execute Purchase Agreement (dated as of June 20, 2005); or, (ii) the retention bonus pursuant to this Paragraph II.E.13 of the Hold Separate Order.

- 14. Except for the Argosy Baton Rouge Employees, and support services employees involved in providing services to the Held Separate Business pursuant to Paragraph II, and except to the extent provided in Paragraph II, Respondent shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.

- 15. Respondent shall assure that Argosy Baton Rouge Employees receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.

- 16. Respondent's employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to this Hold

Separate Order) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Held Separate Business not in the public domain except:

- a. as required by law;
- b. to the extent that necessary information is exchanged in the course of consummating the Acquisition;
- c. in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
- d. in complying with this Hold Separate Order or the Consent Agreement;
- e. in complying with any request of the LAGC;
- f. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the Held Separate Business's financial controls;
- g. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or
- h. in obtaining legal advice.

Nor shall the Argosy Baton Rouge Employees receive or have access to, or use or continue to use, any Confidential Business Information not in the public domain about Respondent and relating to Respondent's businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondent may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States, the state of Louisiana, and other states or countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

17. Respondent and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate Order.

III.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondent, (2) acquisition, merger or consolidation of Respondent, or (3) any other change in the Respondent that may affect compliance obligations arising out of this Hold Separate Order, including but not limited to assignment and the creation or dissolution of subsidiaries.

IV.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to their principal United States offices, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent, in the presence of counsel, and as permitted by and in accordance with the laws, rules and regulations of the LAGC, 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 Respondent relating to any matters contained in this Hold Separate Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

V.

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 Effective Date of Divestiture required by the Consent Agreement.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: July 26, 2005