

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final judgment or order with respect to this Application if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

2. Venue of these chapter 11 cases and this Application is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 327(a), 328(a), and 1107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rules 2014-1 and 2016-1.

BACKGROUND

4. On December 13, 2015 (the “**Petition Date**”), each of the Debtors with the exception of Tag Forest, LLC (“**Tag**”) commenced a voluntary case under chapter 11 of the Bankruptcy Code. On December 14, 2015, Tag commenced its voluntary case under chapter 11 of the Bankruptcy Code. To date, no official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner. These chapter 11 cases are being jointly administered, for procedural purposes only, pursuant to Rule 1015(b) of the Bankruptcy Rules.

5. Additional information regarding the Debtors' businesses, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the *Declaration of Marc Beilinson in Support of Chapter 11 Petitions* (the "**First Day Declaration**") [Docket No. 5].

RELIEF REQUESTED

6. By this Application, the Debtors seek authority to employ and retain Dechert, effective as of the Petition Date, as the Debtors' bankruptcy and restructuring counsel in accordance with the terms and conditions set forth in that certain engagement letter between the Debtors and Dechert effective as of December 11, 2015 (the "**Engagement Letter**"), a copy of which is attached to the Greer Declaration as **Exhibit 3**. By separate applications, the Debtors are also asking the Court to approve the retention of: (a) Young Conaway Stargatt & Taylor, LLP as co-counsel and conflicts counsel for the Debtors; (b) Anchin, Block & Anchin LLP as forensic accountants to the Debtors; and (c) Beilinson Advisory Group as restructuring advisors to the Debtors, as well as certain other firms that will continue to provide legal and other professional services to the Debtors in the ordinary course of their business. Dechert has discussed the division of responsibilities with the Debtors and the other professionals the Debtors seek to retain, and will make every effort to avoid duplication of efforts in connection with these chapter 11 cases. Accordingly, the Debtors respectfully request the entry of an order, pursuant to section 327(a) of the Bankruptcy Code, authorizing the Debtors to employ and retain Dechert as their attorneys to perform the legal services that will be necessary during these chapter 11 cases.

BASIS FOR RELIEF REQUESTED

7. The Debtors seek retention of Dechert as their attorneys pursuant to section 327(a) of the Bankruptcy Code, which provides that a debtor, subject to Court approval:

[M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]'s duties under this title.

11 U.S.C. § 327(a); see also In re BH&P, Inc., 949 F.2d 1300, 1314 (3d Cir. 1991) (citing In re Star Broad., Inc., 81 B.R. 835, 838 (Bankr. D.N.J. 1988)) (for counsel to be retained, “counsel must ‘not hold or represent an interest adverse to the estate and must be a ‘disinterested person.’”).

8. Bankruptcy Rule 2014(a) requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

9. The Debtors submit that for all the reasons stated herein and in the Greer Declaration, the retention of Dechert as counsel to the Debtors is warranted. Further, as stated in the Greer Declaration, Dechert is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates and has no connection to the Debtors, their creditors or their related parties except as may be disclosed in the Greer Declaration.

DECHERT'S QUALIFICATIONS

10. In order to facilitate the completion of these cases, the Debtors require the services of attorneys with knowledge and experience in numerous areas of the law. The Debtors seek to retain Dechert because of Dechert's recognized expertise and extensive experience and

knowledge in the fields of debtors' protections, creditors' rights, and business reorganizations under chapter 11 of the Bankruptcy Code, as well as corporate investigations, litigation, real estate, corporate finance and general corporate matters. Moreover, the Debtors are charged with certain duties pursuant to section 1107 of the Bankruptcy Code. Because of the complexity of the Debtors' business and the transactions likely to arise in these proceedings, the services of Dechert will be necessary for the Debtors to successfully discharge such duties.

11. Dechert has been actively involved in major chapter 11 cases and has represented debtors in many cases, including, among others: In re Legend Parent, Inc., Case No. 14-10701 (JLG), [Docket No. 185] (Bankr. S.D.N.Y. May 8, 2014); In re Capsule International Holdings LLC (f/k/a Constar), Case No. 13-13281 (CSS), [Docket No. 274] (Bankr. D. Del. Jan. 30, 2014); In re Velo Holdings Inc., Case No. 12-11384 (MG), [Docket No. 205] (Bankr. S.D.N.Y. May 29, 2012); In re Arclin US Holdings Inc., Case No. 09-12628 (KJC), [Docket No. 144] (Bankr. Del. Sept. 9, 2009); In re AGT Acquisition Wind-Down LLC, Case No. 09-12889 (REG), [Docket No. 400] (Bankr. S.D.N.Y. June 17, 2009); In re Jancor Co., Case No. 08-12556 (MFW), [Docket No. 108] (Nov. 24, 2008); In re ProRhythm, Inc., Case No. 07-11861 (KJC) (Dec. 11, 2007); In re Inland Fiber Grp., LLC, Case No. 06-10884 (KJC), [Docket No. 106] (Sept. 28, 2006); In re Bayou Grp., LLC, Case No. 06-22306 (RDD), [Docket No. 32] (Bankr. S.D.N.Y. June 21, 2006).

12. In preparing for its representation of the Debtors in these chapter 11 cases, Dechert has become familiar with the Debtors' capital structure, the terms of the Debtors' debt, the operation of the Debtors' businesses, and many of the potential legal issues that might arise in the context of these cases. Moreover, Dechert was able to obtain such familiarity through an in-depth forensic review of the Debtors' books and records. The Debtors believe that Dechert

has assembled a highly qualified team of professionals and paraprofessionals to provide services to the Debtors during these cases. The Debtors further believe that Dechert is both well-qualified and uniquely able to represent the Debtors in these chapter 11 cases in an efficient and timely manner.

SERVICES TO BE PROVIDED

13. Subject to further order of the Court and the Engagement Letter, the Debtors request the retention and employment of Dechert to render the following legal services:

- i. advising the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their businesses and properties;
- ii. advising and consulting on the conduct of these chapter 11 cases, including all of the legal and administrative requirements of operating in chapter 11;
- iii. attending meetings and negotiating with representatives of creditors and other parties in interest;
- iv. taking all necessary actions to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors, and representing the Debtors in negotiations concerning litigation in which the Debtors are involved, including objections to claims filed against the Debtors' estates;
- v. preparing pleadings in connection with these chapter 11 cases, including motions, applications, answers, orders, reports, and papers necessary or otherwise beneficial to the administration of the Debtors' estates;
- vi. representing the Debtors in connection with obtaining authority to continue using cash collateral and postpetition financing;
- vii. advising the Debtors in connection with any potential sale of assets;
- viii. appearing before the Court and any appellate courts to represent the interests of the Debtors' estates;
- ix. advising the Debtors regarding tax matters;

- x. taking any necessary action on behalf of the Debtors to negotiate, prepare, and obtain approval of a disclosure statement and confirmation of a chapter 11 plan and all documents related thereto; and
- xi. performing all other necessary legal services for the Debtors in connection with the prosecution of these chapter 11 cases, including: (a) analyzing the Debtors' leases and contracts and the assumption and assignment or rejection thereof; (b) analyzing the validity of liens against the Debtors; and (c) advising the Debtors on corporate and litigation matters.

14. Dechert also has been retained to represent the Debtors' non-debtor affiliates in connection with the restructuring of those entities. Dechert intends to seek this Court's approval of all fees and expenses incurred on behalf of the Debtors' non-debtor affiliates as such affiliates represent the substantial asset value of the Debtors.

PROFESSIONAL COMPENSATION

15. Dechert intends to apply for compensation for professional services rendered on an hourly basis and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable orders of the Court.

16. The hourly rates and corresponding rate structure Dechert will use in these chapter 11 cases are equivalent to the hourly rates and corresponding rate structure that Dechert predominantly uses for other restructuring matters, as well as similar complex corporate, securities, real estate and litigation matters whether in court or otherwise, regardless of whether a fee application is required. These rates and the rate structure reflect that such restructuring and other complex matters typically are national in scope and involve great complexity, high stakes, and severe time pressures.

17. Dechert operates in a national marketplace for legal services in which rates are driven by multiple factors relating to the individual lawyer, his or her area of specialization, the firm's expertise, performance, and reputation, the nature of the work involved, and other factors. Dechert's hourly rates are set at a level designed to compensate Dechert fairly for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions and are consistent with the rates charged elsewhere.²

18. In particular, Dechert's current hourly rates for matters related to these chapter 11 cases range as follows:³

Partners	\$755-\$1,260
Associates	\$440-\$850
Paraprofessionals	\$140-\$365

19. The following professionals are presently expected to have primary responsibility for providing services to the Debtors: Brian E. Greer (current billing rate: \$865); Neil A. Steiner (current billing rate: \$995); Janet Bollinger Doherty (current billing rate: \$755); Andrew C. Harmeyer (current billing rate: \$570); Jenny G. Liu (current billing rate: \$570); Michael P. Maloney (current billing rate: \$570); and Thomas Ferte (current billing rate: \$440).⁴

² For example, like many of its peer law firms, Dechert increases the hourly billing rate of attorneys and paraprofessionals twice a year in the form of: (i) step increases historically awarded in the ordinary course on the basis of advancing seniority and promotion and (ii) periodic increases within each attorney's and paraprofessional's current level of seniority. Rate adjustments will be highlighted in any applicable fee applications. The step increases do not constitute "rate increases" (as the term is used in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases*, effective November 1, 2013). Rate adjustments will be highlighted in any applicable fee applications. Dechert's rates increased on January 1, 2016.

³ Dechert's rates for December 2015 ranged as follows: Partners - \$715-\$1,260; Associates - \$435-\$820; and Paraprofessionals - \$135-\$355.

⁴ Dechert's rates for the individuals having primary responsibility in these chapter 11 cases in December 2015 were as follows: Brian E. Greer (billing rate: \$825); Neil A. Steiner (billing rate: \$965); Janet

In addition, as necessary, other Dechert professionals and paraprofessionals will provide services to the Debtors.

20. Dechert represented the Debtors⁵ during the one-month period before the Petition Date, using the hourly rates listed above. Moreover, these hourly rates are consistent with the rates that Dechert charges other comparable chapter 11 clients, regardless of the location of the chapter 11 case.

21. It is Dechert's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is also Dechert's policy to charge its clients only the amount actually incurred by Dechert in connection with such items. Examples of such expenses include postage, overnight mail, courier delivery, transportation, overtime expenses, computer-assisted legal research, photocopying, outgoing facsimile transmissions, airfare, meals, and lodging.

22. To ensure compliance with all applicable deadlines in these chapter 11 cases, from time to time Dechert utilizes the services of overtime secretaries. Dechert charges its clients for the cost of these services. In addition, Dechert professionals also may charge their overtime meals and overtime transportation to the Debtors consistent with prepetition practices, subject to the Local Rules.

23. In addition, as part of the compensation payable to Dechert, the Debtors have agreed in the Engagement Letter that Dechert shall be indemnified and be entitled to

Bollinger Doherty (billing rate: \$710); Andrew C. Harmeyer (billing rate: \$550); Jenny G. Liu (billing rate: \$550); Michael P. Maloney (billing rate: \$550); and Thomas Ferte (billing rate: \$435).

⁵ As discussed in further detail in the Greer Declaration, Dechert was originally retained to represent Messrs. Kelly and Merritt. Upon determining that a restructuring was necessary, on December 10, 2015, Dechert ceased representing Messrs. Kelly and Merritt, and from December 11, 2015 forward, only represents the Debtors.

payment from the Debtors' estates, subject to approval by the Court pursuant to sections 330 and 331 of the Bankruptcy Code, for any fees, costs or expenses, arising out of the successful defense of any fee application by Dechert in these bankruptcy cases in response to any objection to its fees or expenses in these chapter 11 cases.

24. Dechert is not a creditor of the Debtors. During the 12 month period prior to the commencement of these cases, Dechert received an aggregate of \$618,582.26 (including advance retainers) for professional services performed and reimbursement of expenses incurred in connection with Dechert's representation of the Debtors.⁶ Within the 90 days prior to the Petition Date, Dechert received approximately \$618,582.26 from the Debtors. As of the Petition Date, Dechert held approximately \$198,582.26 of an advance retainer (the "**Retainer**"), subject to continuing reconciliation.⁷ A description of the Retainer and payments made by the Debtors within 90 days prior to the commencement of the Debtors' cases is set forth in the Greer Declaration.

25. Dechert intends to retain the balance on account of services rendered and expenses incurred subsequent to the Petition Date, for application upon entry of any final fee application granted in these cases.

26. Pursuant to Bankruptcy Rule 2016(b), Dechert has not shared nor agreed to share (i) any compensation it has received or may receive with another party or person, other than with the partners, associates, and contract attorneys associated with Dechert, or (ii) any compensation another person or party has received or may receive.

⁶ From Messrs. Kelly and Merritt in connection with the firm's representation of them, which concluded on December 10, 2015, Dechert also received a \$10,000 retainer on November 18, 2015, and a \$200,000 retainer on December 1, 2015.

⁷ Dechert has not yet completed its final reconciliation of prepetition fees and expenses applied against its Retainer. Details regarding such reconciliation will be included in Dechert's first application for interim compensation.

DECHERT'S DISINTERESTEDNESS

27. To the best of the Debtors' knowledge and except as disclosed herein and in the Greer Declaration, (i) Dechert is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates, and (ii) Dechert has no connection to the Debtors, their creditors, or their related parties except as may be disclosed in the Greer Declaration.

28. Dechert will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Dechert will use reasonable efforts to identify such further developments and will file promptly a supplemental declaration, as required by Bankruptcy Rule 2014(a).

29. The Debtors submit that the engagement and retention of Dechert on the terms and conditions set forth herein and in the Greer Declaration is necessary and in the best interests of the Debtors, their estates, their creditors, their stakeholders and other parties in interest, and should be approved.

NOTICE

30. The Debtors will provide notice of this Application to: (a) the Office of the United States Trustee for Region 3, serving the District of Delaware; (b) the mezzanine lenders and their counsel to the extent known; (c) the United States Attorney's Office for the District of Delaware; (d) the United States Attorney General; (e) the Internal Revenue Service; (f) the parties included on the Debtors' list of largest unsecured creditors; and (h) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further

notice need be given.

[Remainder of page intentionally left blank]

CONCLUSION

WHEREFORE, for the reasons set forth herein and in the Greer Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting the Debtors such other and further relief as may be just and proper.

Dated: January 7, 2016
Wilmington, Delaware

Newbury Common Associates, LLC, (for itself and on behalf of its affiliated debtors and debtors in possession)



Name: Marc Beilinson
Title: Chief Restructuring Officer