UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:	:	Chapter 11
GT ADVANCED TECHNOLOGIES INC., *et al.*,	:	Case No.: 14-11916-HJB
	:	Jointly Administered
Debtors.[1]	:	

STATEMENT BY APPLE IN SUPPORT OF SEALING (A) THE SQUILLER DECLARATION, (B) PORTIONS OF APPLE'S RESPONSE TO THE DEBTORS' MOTION TO REJECT CONTRACTS WITH APPLE, AND (C) CERTAIN CONFIDENTIAL INFORMATION IN THOSE CONTRACTS

Apple Inc., on behalf of itself and its wholly-owned subsidiary, Platypus Development LLC ("Platypus" and, together with Apple Inc., "Apple"), each being a party to certain contracts with GTAT Corp. ("GTAT") and its affiliated debtors (the "Debtors"), by and through Apple's undersigned counsel, hereby file this statement with the permission of the Court[2] to provide detail in support of the continued sealing of (a) the Supplemental Declaration of Daniel W. Squiller in Support of Chapter 11 Petitions and First-Day Motions (the "Supplemental Squiller Declaration"), or at least portions thereof, (b) specific and limited portions of the agreements between Apple and the Debtors (the "Agreements"), and (c) four paragraphs from the *Objection by Apple to Debtors' Emergency Motion, Pursuant to Bankruptcy Code Section 105(a) and 365(a), for entry of Order Authorizing Debtors to Reject Certain Executory Contracts and*

[1] The Debtors, along with the last four digits of each debtor's tax identification number, as applicable, are: GT Advanced Technologies Inc. (6749), GTAT Corporation (1760), GT Advanced Equipment Holding LLC (8329), GT Equipment Holdings, Inc. (0040), Lindbergh Acquisition Corp. (5073), GT Sapphire Systems Holding LLC (4417), GT Advanced Cz LLC (9815), GT Sapphire Systems Group LLC (5126), and GT Advanced Technologies Limited (1721). The Debtors' corporate headquarters are located at 243 Daniel Webster Highway, Merrimack, NH 03054.

[2] As permitted by the Court at the hearing held on October 15, 2014, Apple is filing this Statement. The Court originally requested that Apple file this Statement by October 19, 2014, but granted Debtors' motions to extend the filing deadline until October 20, 2014. Apple ultimately did not file this Statement due to the joint motion to seal and strike filed by the Debtors, Apple, and the Committee of Unsecured Creditors, ECF No. 245

Unexpired Leases Nunc Pro Tunc to Petition Date (the "Apple Objection") pursuant to Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018. In support thereof, Apple states as follows:

Preliminary Statement

1. The Debtors originally filed the Supplemental Squiller Declaration purportedly in support of their first day motions, including their motion to reject certain agreements with Apple. The declaration contained numerous statements about Apple that Apple believes to be untrue, irrelevant and defamatory. Much of the Supplemental Squiller Declaration goes far beyond what was reasonably necessary to describe the Debtors' current financial situation and instead includes gratuitous characterizations of Apple's motives, negotiating tactics and business practices.

2. Subsequently, the Debtors and Apple have reached an agreement to settle all claims between them. As a pre-condition of that settlement, the Debtors, along with the Creditors Committee and Apple, filed a joint motion to withdraw the Supplemental Squiller Declaration and to strike it from the record.[3] Now, in connection with a motion to approve that settlement, the Debtors have filed a new declaration, the *Declaration of Daniel W. Squiller In Support of Debtors' Motion Pursuant to Bankruptcy Code Sections 105, 361, 363(b), 364, and 365 and Bankruptcy Rule 9019, for Entry of Order Approving Terms of, and Authorizing Debtors to Enter Into, Adequate Protection and Settlement Agreement with Apple*, ECF No. 324 (the "9019 Declaration"), along with the Agreements, thereby completely undermining any arguments by parties in interest that the Supplemental Squiller Declaration must be unsealed in order to provide

[3] *Emergency Joint Motion of Debtors, Apple and Official Committee of Unsecured Creditors, pursuant to Bankruptcy Code Sections 105(a) and 107 and Bankruptcy Rule 9018, for (A) Entry of Order Maintaining Supplemental Squiller Declaration Under Seal Pending Approval Hearing on Debtors' Settlement with Apple and (b) Upon Approval of Settlement, Entry of Order Allowing Withdrawal of Supplemental Squiller Declaration and Directing Removal from Docket and Destruction of Declaration in Satisfaction of Settlement Condition*, ECF No. 245 (the "Joint Motion to Seal and Strike").

information to creditors, the public and the press about the Debtors and the Debtors' view of the events leading to their chapter 11 cases. The 9019 Declaration includes the substance and the vast majority of the material facts included in the Supplemental Squiller Declaration, without the colorful rhetoric and unjustified defamatory and scandalous statements about Apple. The terms and structure of the relationship between the Debtors and Apple have been fully disclosed in the Agreements (except for a few pages of pricing and production volume information) for parties to review. Such disclosures have rendered the entire Supplemental Squiller Declaration irrelevant, redundant and impertinent and for the reasons set forth herein it should remain under seal.

3. Many of the statements included in the Supplemental Squiller Declaration were purportedly included by the Debtors in anticipation of potential litigation with Apple. Apple and the Debtors executed the Adequate Protection and Settlement Agreement on October 21, 2014, and have jointly moved the Court to maintain the Supplemental Squiller Declaration under seal and strike the declaration upon approval of the settlement agreement. The settlement further makes the Supplemental Squiller Declaration moot and irrelevant.

4. In the event the Court is inclined nevertheless to unseal the Supplemental Squiller Declaration, Apple requests that certain statements remain redacted pursuant to sections 107(b)(1) and (2) of the Bankruptcy Code.[4] Section 107(b) provides that, "[o]n request of any party in interest, the Bankruptcy Court shall . . . (1) protect an entity with respect to a trade secret, confidential research, development, or commercial information; or (2) protect a person with

[4] Apple opposes Dow Jones's request to unseal the Supplemental Squiller Declaration for the same reasons stated herein. Although Dow Jones argues that the right of public access compels disclosure, it is well-established—and indeed Dow Jones concedes—that section 107 of the Bankruptcy Code modifies the common law right of public access. *See* ECF No. 119-1 at ¶ 14 (citing *In Gitto Global Corp.*, 422 F.3d 1, 8 (1st Cir. 2005)); *see also In re Phar-Mor, Inc.*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995) (rejecting an intervening publisher's arguments to unseal an adversary docket and noting that "[b]ecause Congress enacted an express statutory scheme, issues concerning public disclosure of documents in bankruptcy cases should be resolved under § 107" rather than common law). Moreover, Dow Jones response does not even consider section 107(b)(2). Accordingly, and as stated more completely herein, Dow Jones's unsealing request should be denied. Apple reserves its right to file a formal opposition to any Dow Jones unsealing motion.

respect to scandalous or defamatory matter contained in a paper filed in a case under this title." The First Circuit has interpreted section 107(b)(2) and held in *In re Gitto Global Corp.*, 422 F.3d 1, 8 (1st Cir. 2005) that "material that is potentially untrue that would cause a reasonable person to alter his opinion of an interested party triggers protections of §107(b)(2) if it is also irrelevant to the case in which it was filed or if it is included within a filing for improper ends."

5. In the interest of transparency in these chapter 11 cases, Apple consented to the public disclosure of the Agreements, which were filed on the docket by the Debtors on October 22 in the *Supplemental Disclosure by the Debtors of Apple Agreements*, ECF No. 250. Out of the 15 Agreements and approximately 250 pages, Apple requests that only 8 pages representing sensitive development and commercial information be redacted. The requested redactions would seal information regarding Apple's pricing for sapphire, Apple's intended use of sapphire and Apple's internal projections of product sales, all of which would be harmful in the hands of competitors. Information concerning the requested redactions is set forth below

6. Finally, Apple was forced to respond in the Apple Objection to certain statements in the Supplemental Squiller Declaration. As long as the defamatory statements in the Supplemental Squiller Declaration remain sealed, the portions of the Apple Objection that respond to the false allegations in the Supplemental Squiller Declaration should also remain sealed.

Relevant Legal Standards

The Court May Seal or Require Redacted Filings

7. As the First Circuit has held, "Because section 107 speaks directly to the question of public access . . . it supplants the common law for purposes of determining public access to papers filed in a bankruptcy." *Gitto*, 422 F.3d at 8. Section 107(b)(1) protects against the

disclosure of, among other things, "commercial information," and section 107(b)(2) shields "defamatory or scandalous matter." *See* 11 U.S.C. § 107(b)(1), (2). Rule 9018 of the Federal Rules of Bankruptcy Procedure defines the procedure by which a party may move for relief under section 107(b):

> [o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information [or] (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code....

Fed. R. Bankr. P. 9018. Rule 9037 further empowers a court to order that a filing be made under seal or to "later unseal the filing or order the entity that made the filing to file a redacted version for the public record." Fed. R. Bankr. P. 9037. Moreover, if "a paper filed in bankruptcy court fits within § 107(b), [p]rotection is mandatory." *Gitto*, 422 F.3d at 8 (internal citations omitted). As the remainder of this statement evidences, each of the documents that Apple seeks to redact or maintain under seal contains either commercial or defamatory information.

8. Pursuant to section 107(b)(1), an interested party must show only that the information it seeks to seal is "confidential" and "commercial" in nature in order to protect such information from public view. *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). Commercial information need not rise to the level of confidentiality of a trade secret in order to be protected, and unlike Rule 26(c)(7) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require a showing of "good cause" as a condition for sealing confidential commercial information. *Id.* at 28. Moreover, commercial information extends beyond the requirement that such information will give an entity's competitors an unfair advantage. *In re Borders Group, Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011). Indeed, one court noted that, for retailers such as Apple, commercial information "might include, without

limitation, pricing formulae, short and long term marketing strategies and the terms of agreements with suppliers." *In re Barney's, Inc.*, 201 B.R. 703, 709 (Bankr. S.D.N.Y. 1996). Moreover, other courts have held that Apple's confidential business information should be filed under seal. *See generally Apple Inc. v. Samsung Elec. Co., Ltd.*, 727 F.3d 1214 (even under a more stringent "compelling reasons" standard, Apple's confidential information should be sealed).

9. Section 107(b)(2) of the Bankruptcy Code empowers courts to guard the dissemination of "defamatory or scandalous" material filed in papers on the court's docket. As the First Circuit has articulated, material which "would cause a reasonable person to alter his opinion of an interested party" has no place on a public docket, and a party must be protected against its dissemination if "either (1) the material is untrue, or (2) the material is potentially untrue and irrelevant or included within a bankruptcy filing for an improper end." *Gitto*, 422 F.3d at 14. Crucially, a seal movant need not prove the untruthfulness of the statement it seeks to protect, given that any such fact-finding would cause delay and expense to the court and to the estate:

> [A]lthough a bankruptcy court may grant protection under § 107(b)(2) based on a showing of untruthfulness, protection on this basis is available only in the rare case where the untruthfulness is readily apparent. Bankruptcy courts are under no obligation to resolve questions of truthfulness presented by a § 107(b)(2) motion where doing so would require discovery or additional hearings, or would be otherwise burdensome. . . . A party may seek protection under § 107(b)(2) based on potentially untrue information that would alter his reputation in the eyes of a reasonable person. To obtain protection, however, an additional showing must be made. . . . to implicate § 107(b)(2) in the context of potentially untrue material, the information would also have to be irrelevant [or] included for improper ends.

Gitto, 422 F.3d at 11–14.

10. Courts recognize that where an injurious pleading is filed with an improper motive, section 107(b)(2) protects its dissemination. For instance, in *In re Phar-Mor, Inc.*, 191 B.R. 675,

677 (Bankr. N.D. Ohio 1995), the debtor filed a lawsuit against its former limited partners, partially for purposes of preserving its ability to sue its bankrupt former general partner before the statute of limitations expired. The bankruptcy court, approving a motion to seal the adversary proceeding over objections from both the debtors and a publishing company, found that "a reasonable person could alter their opinion of Defendants based on the statements therein, taking those statements in the context in which they appear . . . . The complaint was filed for several strategic reasons which would not be apparent, on its face, to a reasonable lay person." 191 B.R. at 679.

The Court May Also Strike Improper Material

11. In addition to having authority to seal "defamatory or scandalous" material under 11 U.S.C. § 107(b), Courts have inherent power over their own dockets, including striking improper material from their dockets. *See In re Hilera*, No. BAP PR 96-010, 1997 WL 34842743, at *2 (B.A.P. 1st Cir. July 21, 1997) (a trial court has "inherent power to control its docket and to facilitate the timely and orderly disposition of cases"); *Zepeda v. PayPal, Inc.*, No. C 10-2500 SBA, 2013 WL 2147410, at *3 (N.D. Cal. May 15, 2013) (noting that "district courts have the inherent power to control their docket and in the exercise of that power, they may properly strike improper documents"). Additionally, pursuant to Federal Rule of Civil Procedure 12(f), "[a] court has considerable discretion in striking any 'redundant, immaterial, impertinent or scandalous matter.'" *Alvarado-Morales v. Digital Equipment Corp.*, 843 F.2d 613, 618 (1st Cir. 1988) (citation omitted); *see* Fed. R. Civ. P. 12(f); Fed. R. Bankr. P. 7012(b). Although Rule 12(f) "refers only to pleadings, courts may use the rule to strike portions of affidavits and other submissions." *See Gauthier v. United States*, No. 4:10-40116-FDS, 2011 WL 3902770, at *11 (D. Mass. Sept. 2, 2011) (citing *Pigford v. Veneman,* 225 F.R.D. 54, 58 n.8 (D.D.C.2005)).

Materials in submissions that "are superfluous descriptions and not substantive elements of a cause of action . . . have no place in pleadings before the court." *Gauthier*, 2011 WL 3902770, at *11; *see also MacDonald v. Town of Windham*, No. 06-cv-245-JD, 2007 WL 3353424, at *2 (D.N.H. Nov. 9, 2007) (striking portions of reply papers that were immaterial to motion for summary judgment). As such, courts can direct the striking and removing from the docket of statements that are impertinent and/or scandalous, which includes statements that "'improperly cast[] a derogatory light on someone.'" *See In re Graham*, 363 B.R. 32, 40 (Bankr. D.N.H. 2007) (striking and removing from the docket answer that had nothing to with statements alleged in the complaint, but instead discussed alleged wrongdoing that had nothing to do with relief sought).

Limited Portions of Attachments to the Agreements Contain Commercially Sensitive Information That Should Remain Sealed

12. The 15 Agreements were filed on the docket by the Debtors for all parties to review on October 22, 2014. The Agreements are all subject to confidentiality agreements between Apple and the Debtors. However, in the interest of full disclosure and transparency in these chapter 11 cases, Apple consented to their disclosure. Apple reviewed the Agreements and determined that only certain Attachments to the Statement of Work # 1 to the Master Development and Supply Agreement ("SOW") contain sensitive development and commercial information that should remain sealed.

13. The three attachments to the SOW that contain development and commercial information are attached hereto as Exhibit B-1. A summary of these Attachments and the justification for sealing such Attachments under section 107(a)(1) of the Bankruptcy is set forth below:

a. **Attachment 2 (Supply Commitment and Maximum Supply Obligation).** The tables in Attachment 2 include highly sensitive information about the amount of sapphire GTAT is required to produce for Apple and the size of the sapphire products that will ultimately be delivered to Apple. The

dimensions of the sapphire products produced by GTAT is confidential development and commercial information. This information could be used by third parties to identify Apple's intended use of sapphire in its products. Public disclosure of such information would inform Apple's competitors of Apple's development of its products in advance of their launch.

The tables in Attachment 2 also include the minimum and maximum amount of sapphire products that GTAT is obligated to produce for each month of 2014 and 2015. The amount of sapphire that GTAT is obligated to produce for Apple is indicative of the number of Apple products that Apple anticipates selling in 2014 and 2015. Apple's internal projections of the number of products it will manufacture and sell is sensitive development and commercial information. Such information could further be used to make inferences regarding Apple's projected earnings.

b. Attachment 3 (NTE Pricing). The SOW provides that the price that Apple will pay for the sapphire produced by GTAT would be the lowest of four amounts. The first such amount is an amount agreed between Apple and GTAT. Two of the amounts are objective amounts tied to GTAT's or other sources prices for identical sapphire products. The final amount is determined pursuant to Attachment 3 and known as the NTE Price (the "NTE Price"). NTE stands for "not to exceed" price. The NTE price is intended to be the maximum price that Apple would pay for the sapphire products. The amount that Apple is willing to pay for sapphire products is sensitive commercial information. Disclosure of this amount could be harmful to Apple's business position in any future negotiation for the purchase of sapphire or other products.

c. Attachment 4 (Savings from Sapphire Growth or Manufacturing Process Improvements). Attachment 4 provides that upon successful implementation of one or more specified improvements in the sapphire growth and manufacturing process, the NTE Price will be reduced in specified amounts and times. This information is sensitive commercial information as it identifies improvements in the sapphire production process that Apple would find valuable and is seeking to achieve. The information further discusses sensitive pricing information related to Apple's purchase price for sapphire

14. The redacted portions of the Agreements are clearly commercial information protected by section 107(b)(1) because they are highly-sensitive pricing and supply specifications, the publication of which would be detrimental to Apple's business. Recognizing that the interested parties in these cases may have a *bona fide* interest in viewing the Agreements, Apple consented to the unsealing of the vast majority of the pages of the Agreements so long as the pages identified on Exhibit B-1 remain under seal. Apple has taken care to ensure that such

redactions in no way prevent a party from understanding the nature and thrust of the documents and has limited redactions to those absolutely necessary to prevent injury to Apple. As such, Apple requests that the pages of the Agreements identified in Exhibit B-1 remain under seal in the manner set forth in Exhibit B-2.

The Supplemental Squiller Declaration Should Remain Sealed or Be Stricken

15. The Supplemental Squiller Declaration, which was purportedly filed to provide information about the Debtors' business and the Debtors' view of events leading to their chapter 11 cases and to provide support for the Debtors' first day motions, contains extensive unnecessary scandalous and defamatory statements about Apple's alleged intent, motives and business tactics. While discussion of the relationship between the Debtors and Apple and the Debtors' failure to produce sapphire in the quantities and up to the standards to which they originally agreed was relevant to their chapter 11 cases and relief they sought in the Debtors' first day motions, many of the statements about Apple are gratuitous, false, and wholly irrelevant. Further, the subsequent filing of the 9019 Declaration with the Debtors' recitation of the events that led to the Debtors' chapter 11 cases and their relationship with Apple makes disclosure of the Supplemental Squiller Affidavit redundant and unnecessary. For this reason, the Debtors have agreed, and it is a condition precedent to the settlement, that the Supplemental Squiller Declaration be withdrawn and stricken from the record.

16. If the Court decides that the entire Supplemental Squiller declaration should not remain under seal, Apple requests that certain specific statements identified on Exhibit A-1 hereto remain sealed. These identified statements do not provide any relevant information to creditors or the public about the Debtors, but rather have the sole purpose of disparaging Apple. The

statements are scandalous and defamatory for the reasons set forth herein. Examples of such statements include:

a. "With a classic bait-and-switch strategy, Apple presented GTAT with an onerous and massively one-side deal" (Paragraph 10).

b. "What ensued was anything but an arm's-length negotiation. Apple simply dictated the terms and conditions of the deal to GTAT. Apple advised that (a) GTAT's management should 'not waste their time' trying to negotiate as would normally occur in commercial transactions because Apple does not negotiate with its suppliers and (b) GTAT had to agree to all of Apple's material terms and the draft agreements prepared by Apple's attorneys, or the deal was off." (Paragraph 16).

c. "The various agreements Apple presented to GTAT as a condition for a business collaboration with Apple are best described as "adhesion contracts." (Paragraph 18).

d. "In many ways, Apple, through its unrelenting control of material aspects of sapphire growth and fabrication has converted GTAT from a supplier/seller of furnaces into an experimental research and development venture for Apple funded substantially by GTAT's other stakeholders (Paragraph 34).

17. These statements should be redacted for several reasons. First, statements made during negotiations are not relevant to the failure of the Debtors' business in any respect, and are taken out of context from a long-term negotiation. Second, these statements are intended to vilify Apple and portray Apple as a coercive bully. In addition to being untrue and harmful to Apple, these statements are not necessary to understand the Debtors' current financial condition or their motions before the Court. Apple's image and reputation will be harmed if the defamatory statements alleging that Apple sought to dominate and control, strong-arm, or take advantage of its suppliers are disclosed. These allegations are untrue and defamatory under section 107(b)(2) of the Bankruptcy Code, as set forth in Apple's responses to such statements included in Exhibit A-1. Part of Apple's brand is its ability to manufacture high quality, cutting edge products. To manufacture its high qualify, cutting edge products, Apple maintains a complex supply chain,

including relationships with a large number of suppliers and counterparties. Defamatory statements about the manner in which Apple treats its suppliers would make it more difficult for Apple to deal with suppliers in the future.

18. As indicated by the proposed redacted version of the Supplemental Squiller Declaration attached hereto as Exhibit A-2, redaction of the 11 statements requested by Apple does not detract from the information and intended purpose of in the Supplemental Squiller Declaration. It is clear from the Supplemental Squiller Declaration, as redacted, that the failure of the transaction with Apple was purportedly one of the leading causes of the Debtors' alleged liquidity issues. The Supplemental Squiller Declaration, as redacted, describes the facts allegedly leading to the Debtors' failure and on which the Debtors sought to rely in support of their motions to wind down the facility and reject the Agreements: the terms surrounding the Apple transaction, the production issues at the Mesa facility, and the related losses that the Debtors allege.

19. Like the incendiary complaint in *Phar-Mor*, the attacks on Apple that appear throughout the Supplemental Squiller Declaration are both untrue and irrelevant to any relief sought by the Debtors to date in these cases. As detailed in Exhibit A-1, the Supplemental Squiller Declaration blatantly mischaracterizes the tenor of Apple's negotiations and business relationship with the Debtors. Moreover, not a single one of Mr. Squiller's inflammatory remarks is relevant to the outcome on the motions it purports to buttress. As redacted by Apple, the Supplemental Squiller Declaration tells the Debtors' story of the events that led the Debtors to seek bankruptcy protection and details the business reasons why the Debtors seek to reject the Agreements and wind up their facility. Nothing is lost in translation except falsities and spite. As explained above, the 9019 Declaration includes all the material information about the Debtors'

view of events leading to these chapter 11 cases, as well as the settlement with Apple. As such, Apple, the Debtors, and the Committee ask that the Supplemental Squiller Declaration remain sealed and, if the Court approves the settlement, be expunged from the record. Notwithstanding, if the Court determines that the Squiller Declaration must be unsealed, Apple requests that the unsealed version be redacted in the manner provided in Exhibit A-2.

20. Alternatively, in lieu of sealing, the Court should strike the Supplemental Squiller Declaration. As already explained, the Supplemental Squiller Declaration is replete with statements about Apple that are not only inflammatory and untrue, but that are irrelevant to the relief Debtors seek under their first day motions and are certainly irrelevant now that Apple and the Debtors have settled any claims between them.

Limited Portions of the Apple Objection Should Similarly Remain Sealed

21. The Apple Objection includes certain background facts about the relationship between Apple and the Debtors to provide the Court context for the overall transaction. Apple filed its objection under seal because Apple is subject to the same confidentiality concerns as the Debtors in relation to disclosure of the terms of the Agreements. Further, since the Supplemental Squiller Declaration was under seal and certain portions of the Apple Objection responded to certain aspects of the Supplemental Squiller Declaration, Apple sought to file the Apple Objection under seal.

22. Paragraphs 1, 5, 7, and 8 of the Apple Objection contain statements responding to the Supplemental Squiller Declaration. These paragraphs are excerpted on Exhibit C attached hereto. Other than such paragraphs, Apple does not believe any other parts of the Apple Objection need to be sealed. Further, if the Supplemental Squiller Declaration is fully unsealed,

or if the Debtors do not object, the Court should rule that the entire Apple Objection should also be unsealed.

23. For the reasons stated, herein, Apple requests the Court keep the entire Supplemental Squiller Declaration and only the identified and limited portions of the Agreements and Apple Objection under seal.

Respectfully submitted,

APPLE INC. & PLATYPUS DEVELOPMENT LLC

By their Attorneys:

Date: October 28, 2014

/s/ John M. Sullivan

John M. Sullivan (BNH # 01456)
PRETI FLAHERTY BELIVEAU & PACHIOS LLP
57 North Main Street
Concord, NH 03301
(603) 410-1500 (Phone)
(603) 410-1501 (Fax)
jsullivan@preti.com

- and-

WEIL, GOTSHAL & MANGES LLP
Gary T. Holtzer
Michael F. Walsh
Robert J. Lemons
Bruce M. Meyer
767 Fifth Avenue
New York, New York 10036
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Counsel for Apple Inc. and Platypus Development LLC

Exhibit A-1

Statements in Supplemental Squiller Declaration	Apple Response
Defamatory Statements- Allegations of Undue Control	
"Knowing that GTAT had no practical choice at that stage other than to concede to Apple's terms, Apple forced a set of agreements on GTAT that in combination with Apple's economic leverage, put Apple in de facto control of GTAT" (Paragraph 15)	As discussed in detail in paragraphs 15 through 17 of the Apple Statement, this statement is irrelevant. GTAT could have walked away from negotiations with Apple and refused to enter into the Agreements. GTAT did not do so because it saw the opportunity to become a supplier for Apple as a transformative for its business. GTAT is a sophisticated publicly-traded corporation (through its parent) with sophisticated counsel and no agreements were forced on GT.
"When GTAT initially entered into negotiations to sell sapphire furnaces to Apple, it had no sense that this relationship would become a 'heads I win, tails you lose' proposition for Apple. But, having borrowed hundreds of millions of dollars to pay for the components of more than 2,036 furnaces, GTAT was essentially powerless to stop Apple's control, regardless of whether Apple had a contractual right to exercise it or not." (Paragraph 32)	As discussed in detail in paragraphs 15 through 17 of the Apple Statement, this statement is irrelevant. Apple and GTAT negotiated the Agreements at arm's length. GTAT's remorse for entering into the deal does not provide a basis for GTAT to defame Apple. Apple denies that it exercised any control over GTAT but instead simply exercised rights permitted by the Agreements.
"In many ways, Apple, through its unrelenting control of material aspects of sapphire growth and fabrication has converted GTAT from a supplier/seller of furnaces into an experimental research and development venture for Apple funded substantially by GTAT's other stakeholders (Paragraph 34)	As discussed in detail in paragraphs 15 through 17 of the Apple Statement, this statement is irrelevant. The Agreements provide for specific rights and obligations of each party in relation to the production of sapphire. In connection with such agreements, the parties worked closely on various production matters seeking to make the transaction successful for both parties. Apple's contractually-permitted input into the production process does not amount to Apple using

Statements in Supplemental Squiller Declaration	Apple Response
	GTAT for research and development. Apple advanced $439 million to GTAT to assist GTAT in the production of its furnaces for the Mesa facility, and spent hundreds of millions more dollars complying with other contractual obligations to GTAT under the transaction. Apple is the single largest creditor of GT.
Scandalous Statements	
"Background of Relationship with Apple and Apple's "Bait-and-Switch" (Heading, Paragraph 10) "With a classic bait-and-switch strategy, Apple presented GTAT with an onerous and massively one-side deal" (Paragraph 10).	As discussed in detail in paragraphs 15 through 17 of the Apple Statement, this statement is irrelevant. GTAT was not tricked into entering into agreements. Apple and GTAT were both sophisticated parties that negotiated a complex set of agreements over an extended period of time. Both Apple and GTAT were represented by sophisticated counsel. The various rights and obligations of the parties are set forth in detail in the Agreements. The allegation that the deal was "massively one-sided" is misleading because among things, the transaction did not work out well for either party. Apple spent a significant amount to build the factory, and advanced $439 million to GTAT, and does not have the sapphire for use in its products.
"Apple Tells GTAT That It Doesn't Negotiate Contracts" "What ensued was anything but an arm's-length negotiation. Apple simply dictated the terms and conditions of the deal to GTAT. Apple advised that (a) GTAT's management should 'not waste their time' trying to negotiate as would normally occur in commercial transactions because Apple does not negotiate with its suppliers and	As discussed in detail in paragraphs 15 through 17 of the Apple Statement, this statement is irrelevant. These statements are gratuitous to the purpose of the Supplemental Squiller Declaration and are only included to disparage Apple and harm its relationships with its suppliers. Apple and GT negotiated the Agreements, along with

Statements in Supplemental Squiller Declaration	Apple Response
(b) GTAT had to agree to all of Apple's material terms and the draft agreements prepared by Apple's attorneys, or the deal was off. Remarkably, Apple's chief legal negotiation on certain key aspects of the transaction was Apple's Senior (Bankruptcy) Restructuring Counsel. It goes without saying that this speaks volumes about Apple's perspective on the transaction it was about to enter into less than one year ago." (Heading, Paragraph 16)	sophisticated counsel, over an extended period of time. The statement about the involvement of Apple's internal restructuring lawyer attempts to imply, without any basis in fact, that Apple had mischievous motives. Restructuring counsel was involved because the structure provided certain security for Apple which required certain legal expertise.
"The various agreements Apple presented to GTAT as a condition for a business collaboration with Apple are best described as "adhesion contracts." (Paragraph 18)	As discussed in detail in paragraphs 15 through 17 of the Apple Statement, this statement is irrelevant. The Agreements are not "adhesion contracts." The Agreements reflect a complex business transaction negotiated between two public companies represented by sophisticated counsel.
"When GTAT's management expressed their obvious concerns to Apple regarding the deal terms during the contract negotiations, Apple responded that similar terms are required for other Apple suppliers and that GTAT should: "Put on your big boy pants and accept the agreement'"" (Paragraph 19)	As discussed in detail in paragraphs 15 through 17 of the Apple Statement, this statement is irrelevant. These statements are gratuitous to the purpose of the Supplemental Squiller Declaration and are only included to disparage Apple and harm its relationships with its suppliers. Apple and GT negotiated the Agreements, along with sophisticated counsel, over an extended period of time.
Finally, GTAT's public shareholders have borne the brunt of Apple's 'bait and switch strategy' and have seen their investment in what appeared to be a promising technology venture thwarted by Apple." (Paragraph 33)	As discussed in detail in paragraphs 15 through 17 of the Apple Statement, this statement is irrelevant. Apple did not trick GTAT into entering into the Agreements. The agreements were negotiated by the two companies and their sophisticated counsel. The unfortunate loss of value to the public shareholders was not caused by Apple, but rather GTAT's inability to perform under the Agreements.

Exhibit A-2

Redacted Version of Supplemental Squiller Declaration

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:	:	**Chapter 11**
GT ADVANCED TECHNOLOGIES INC., *et al.*,	:	**Case No. 14-11916-HJB**
Debtors.[1]	:	**Jointly Administered**

SUPPLEMENTAL DECLARATION OF DANIEL W. SQUILLER IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST-DAY MOTIONS

I, Daniel W. Squiller, hereby declare under penalty of perjury:

1. I am the Chief Operating Officer of GT Advanced Technologies Inc. ("GT"), a corporation organized under the laws of the State of Delaware with its headquarters located in Merrimack, New Hampshire. GT is the direct and indirect parent of the debtors and debtors in possession in the above-captioned cases (collectively, "GTAT" or the "Debtors") and certain non-debtor affiliates which have not sought chapter 11 relief (together with GTAT, the "GTAT Group"). In that capacity, I am particularly familiar with GTAT's business relationship with Apple, Inc. ("Apple") and GTAT's operations at a facility in Mesa, Arizona (the "Mesa Facility") that is owned by an affiliate of Apple.

2. I have served as Chief Operating Officer since January 14, 2013. Before joining GT, I served as the chief executive officer at PowerGenix, an innovator in high-power battery technology. At PowerGenix, I led the growth of the company to a successful, global high

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: GT Advanced Technologies Inc. (6749), GTAT Corporation (1760), GT Advanced Equipment Holding LLC (8329), GT Equipment Holdings, Inc. (0040), Lindbergh Acquisition Corp. (5073), GT Sapphire Systems Holding LLC (4417), GT Advanced Cz LLC (9815), GT Sapphire Systems Group LLC (5126), and GT Advanced Technologies Limited (1721). The Debtors' corporate headquarters are located at 243 Daniel Webster Highway, Merrimack, NH 03054.

volume manufacturer with its operations in China. Prior to PowerGenix, I was president of the Power Components Division of Invensys, where I managed that Division's global operations. I earned a Bachelor of Science degree in electrical engineering and a Master's degree from Ohio University.

3. On October 6, 2014, I submitted a declaration ("Declaration") in support of GTAT's chapter 11 petitions and certain first day motions. I submit this supplemental declaration ("Supplemental Declaration") to provide further assistance to the Court and other parties in interest in understanding the circumstances that compelled the commencement of these chapter 11 cases and in support of certain additional relief, in the form of motions and applications, that GTAT has requested of the Court (collectively, the "Additional First Day Pleadings").

4. Except as otherwise indicated, all facts set forth in this Supplemental Declaration are based upon my personal knowledge, my discussions with other members of GTAT's senior management and advisors, my review of relevant documents, or my opinion based upon experience, knowledge, and information concerning GTAT's operations and financial affairs. If called upon to testify, I would testify competently to the facts set forth in this Supplemental Declaration. I am authorized to submit this Supplemental Declaration on behalf of GTAT.

SUMMARY OF EVENTS LEADING UP TO CHAPTER 11

5. The GTAT Group has been a diversified technology company producing advanced materials and equipment for the global consumer electronics, power electronics, solar and light-emitting diode ("LED") industries for many years. Among other things, the GTAT Group has more than 40 years of experience developing technological innovations in connection with the manufacturing of furnaces to grow sapphire for industrial use. After diamonds, sapphire is the second hardest substance on Earth. Sapphire is scratch-resistant and has other properties

that make it an ideal material for display applications where those properties provide significant advantages over strengthened glass or other materials used in the consumer electronics field. Sapphire can be fabricated into a variety of shapes and sizes for use in consumer electronics, as well as the military, LED industries, and other industries. In the consumer electronics field, sapphire is currently used in watch crystals, camera lenses, and smartphone displays.

6. As discussed more fully below, this restructuring was necessitated because GTAT's business relationship with Apple has become unsustainable without Apple taking responsibility for cost overruns and additional expenses caused by Apple as described in this Supplemental Declaration. While operating under the October 31, 2013 manufacturing, supply, loan, and related agreements with Apple (collectively, the "Apple Agreements"), GTAT incurred losses—resulting in the current liquidity crisis—due to Apple's inordinate control over GTAT's liquidity, operations (including control over product specifications), and decision making. Although Apple is, ostensibly, a customer of GTAT, Apple strategically structured the transactions with GTAT so that its role would be more akin to that of a lender than a customer. Thus, unlike most customer-supplier relationships, Apple treats the payments it makes for GTAT's products as a "loan" and has taken liens on assets in GTAT's business to secure repayment of those loans. But, beyond this "lender" relationship, Apple embedded itself in the operations of GTAT at the Mesa Facility in a manner that has forced GTAT to divert an inordinate amount of its cash and corporate resources to its operations at the Mesa Facility, and affected GTAT's continued viability as a whole. Apple also embedded itself in GTAT's facility in Salem, Massachusetts (the "Salem Facility") that took on the function of an experimental research and development center for the Apple project. Consequently, GTAT has been unable to use that facility for other revenue streams.

7. GTAT's fabrication costs of the sapphire material grown in the Mesa Facility and Salem Facility furnaces are higher than envisioned, largely because the majority of the fabrication equipment (in contrast to "growth equipment," *i.e.,* the furnaces) selected by Apple for sapphire material could not economically produce a product that Apple would accept. Moreover, GTAT was required to obtain Apple's consent before it could make changes to equipment or processes, and Apple, at least initially, was not willing to permit fabrication equipment changes that would economically produce acceptable product. GTAT was unable to negotiate changes to the pricing regime established by Apple in the transaction documents, and, therefore, GTAT was forced to sell every unit of sapphire material at a substantial loss. GTAT's losses would have increased substantially in 2015 when the price for finished sapphire material is scheduled to decrease under the agreements with Apple. To date, GTAT has incurred approximately $900 million in costs in connection with the Apple project, and, at Apple's dictated pricing, GTAT would never realize a profit.

8. In light of the aggregate effect of all of Apple's actions, as well as Apple's recent pre-petition actions making clear that it was unwilling to negotiate changes to the Apple Agreements necessitated by its own actions and necessary for GTAT to operate profitably, GTAT reluctantly commenced these chapter 11 cases to preserve the value of its business by extracting itself from Apple's control. Among other things, GTAT intends to use the remedies available to it under chapter 11 to reject certain agreements with Apple and expeditiously wind down its Apple-related operations in the Mesa Facility and the Salem Facility. Unfortunately, the winding down of these operations will result in the loss of over 1,300 jobs (including temporary workers). Nevertheless, this step is critical to GTAT's survival as a going concern. Once GTAT has extracted itself from Apple's control, GTAT believes that the completion of its

restructuring efforts will allow it to focus its resources on the operation of its core business of selling sapphire furnaces and other products. Reorganized with an appropriate capital structure, GTAT would emerge from chapter 11 in a stronger position and with a sustainable business model that will allow it to compete effectively in the marketplace.

9. As a result of onerous non-competition provisions in the Apple Agreements, GTAT has been shut out of the global market for its highly valuable sapphire material and equipment. By using the tools available in chapter 11, GTAT believes that it will be able to tap into substantial pent-up demand for sapphire material and equipment in the consumer smartphone and smartwatch markets, segments in which GTAT is currently prohibited from participating.

Background of Relationship with Apple and [redacted]

10. [redacted] At the outset of negotiations, Apple had offered GTAT what would have been the company's largest sale ever: an order for 2,600 sapphire growing furnaces. In that scenario, GTAT would operate the furnaces on Apple's behalf, but Apple would own the furnaces. Apple's size and prominence make it the ultimate technology client to land. The deal with Apple was viewed as a potential game-changer for GTAT.

11. In hindsight, it is unclear whether Apple ever intended to purchase any sapphire furnaces from GTAT. Indeed, after months of extensive negotiations over price and related terms, Apple demanded a fundamentally different deal: Apple no longer wanted to buy furnaces from GTAT; instead, Apple offered an arrangement that required GTAT to borrow money from Apple to purchase furnace components and assemble furnaces that would be used to grow

sapphire for Apple. The new structure, as a contract matter, shifted all economic risk to GTAT, because Apple would act as a lender and would have no obligation to purchase any sapphire furnaces, nor did it have any obligation to purchase any sapphire material produced by GTAT. At the same time, Apple constrained GTAT from doing business with any other manufacturer in or supplier to the consumer electronics market, subject to extreme penalties—styled as "liquidated damages"—GTAT failed to meet any of Apple's requirements.

12. Under Apple's new proposal, GTAT was required to acquire 2,036 sapphire furnaces using a prepayment—or "loan"—from Apple of up to $578 million (however, to date Apple has withheld the last $139 million of that "loan"). This structure would enable Apple to purchase sapphire material from GTAT at below market value. This is due to the fact that Apple's "prepayment" was calculated based on ***the cost to GTAT of the furnaces and related equipment*** used to produce sapphire material. GTAT would then manufacture sapphire according to Apple's specifications—which have continually changed and remain in flux to this day—and "repay" the Apple loan using either cash or completed sapphire material as the currency for the repayment.

13. Even if this business transaction worked exactly as contemplated in the original agreements,[2] GTAT would not earn any income at all unless Apple opted to "buy" sapphire material in excess of loan "repayment" obligations. By failing to compensate GTAT for losses associated with the development of the technology due to Apple's constant interference over which GTAT had little or no control, including losses caused by Apple's changes in product specifications, GTAT was forced into the role of a "captive" supplier to Apple, bearing all of the risk and all of the cost, including the costs of more than 1,300 temporary and permanent

[2] This assumes that Apple would not have used the fact that it has ***no*** obligation to buy ***any*** sapphire as leverage to impose even more onerous and inequitable terms on GTAT.

personnel, utilities, insurance, repairs, and raw materials. Indeed, the total cost incurred by GTAT pursuant to the project with Apple has so far amounted to approximately **$900 million**. Meanwhile, by the time the Apple project would have been completed seven years later, Apple would have obtained a groundbreaking product from GTAT at below-market cost and GTAT would own 2,036 well-used furnaces with limited resale value.

14. Moreover, if Apple ever decided that it did not want sapphire material, GTAT would be required to repay the full amount of the "loan" in cash. If that eventuality transpired, GTAT would not have hundreds of millions of dollars in cash needed to repay the loan, and Apple could immediately "foreclose" on the 2,036 furnaces and related equipment. Apple sought to secure these obligations through an artificial structure it believed was "bankruptcy remote" and that existed solely to shield Apple from risk. With the very limited exception for pre-existing orders, Apple also prevented GTAT from marketing its furnaces—and thus finding alternative value-maximizing uses for them—through sales to third party purchasers and suppliers to competitors of Apple. Simply put, Apple constructed a risk-free option to acquire millions of highly-engineered units of sapphire material.

15. In October 2013, however, GTAT was out of options because it had invested months negotiating a sale contract with Apple while being effectively locked out of pursuing other opportunities with Apple's competitors. While GTAT had initially marketed its sapphire furnaces to other manufacturers of consumer electronics, those alternative avenues were not further pursued by GTAT given Apple's offer of the most significant contract in the company's history. In any event, the extensive and all-consuming nature of negotiations with Apple would have allowed little time to pursue alternatives. [redacted]

[redacted]

16. [redacted]

17. The following terms are illustrative of Apple's approach to the transaction:

- Apple required GTAT to commit to supply millions of units of sapphire material, but Apple has ***no obligation to buy*** any of that sapphire material.

- Apple required GTAT to form a wholly-owned subsidiary, Debtor GT Advanced Equipment Holding LLC ("GT Equipment"), in October 2013 to implement a convoluted and artificial structure that serves no economic purpose—other than protecting Apple—such that GTAT Corp. would be obligated to buy and assemble furnaces for Apple, but the cash and furnaces would then be "round-tripped" through GT Equipment, a so-called "bankruptcy remote entity" using an illusory sale and leaseback between GTAT Corp. and GT Equipment.

- Apple took a security interest in the entity referred to in the documents as the "bankruptcy remote entity," which Apple designed to hold the furnaces.

- GTAT was prohibited, for years to come, from conducting any sapphire business with any conceivable Apple competitor or any direct and indirect supplier to an Apple competitor.

18. [redacted] A "best of" collection of the contractual terms is provided below to explain what Apple, foisted on GTAT:

- If GTAT discloses any aspect of the agreements with Apple, it is liable for breach of confidentiality to Apple for ***$50 million per occurrence*** as liquidated damages; Apple, on the other hand, is not liable for any liquidated damages if it violates confidentiality.

- GTAT must accept and fulfill any purchase order placed by Apple on the date selected by Apple. If there is any delay, GTAT must either use expedited shipping (***at its own cost***) or purchase substitute goods (***at its own cost***). If GTAT's delivery is late, GTAT must pay **$320,000 per boule of sapphire** (and $77 per millimeter of sapphire material) as liquidated damages to Apple. To put this figure in perspective, a boule has a cost of less than $20,000. Apple, however, has the right, ***without compensating GTAT***, to cancel a purchase order in whole or in part at any time and reschedule a delivery date at any time.

- GTAT must pay **$640,000 per boule** that it sells to a third party in violation of the exclusivity restrictions in the contract. Apple has no obligation to buy boules exclusively from GTAT.

- GTAT must pay **$650,000 per month** for any sapphire furnace that is used in violation of GTAT's exclusivity obligations to Apple. To put this figure in perspective, furnaces provided as part of the transactions with Apple were provided at a one-time total cost of approximately $200,000 per furnace. Apple has no exclusivity obligations to GTAT.

- GTAT is prohibited from modifying any equipment, specifications, manufacturing process or materials without Apple's prior consent. Apple, on the other hand, can modify any of these terms at any time and GTAT must immediately implement Apple's modifications.

- If Apple exercises a Termination Event, and becomes a "lessee" of the furnaces and related equipment in the Mesa Facility, the rental amount Apple would pay to GT Equipment is **$50 per month**, as compared with the $9.9 million monthly rent payment that GTAT Corp. is "deemed" to pay to GT Equipment under its "lease" with GT Equipment.

- Apple enjoys an "exclusive right of negotiation," which is basically a provision that forces GTAT to negotiate exclusively with Apple for thirty days if it seeks to sell substantially all assets ***or*** its sapphire business ***or*** it receives an expression of interest from a third party. If GTAT violates this provision it must pay Apple **$1 billion**. Of course, Apple has no such corresponding obligation to GTAT.

- Apple cannot be liable to GTAT for any design defects or consequential damages from product flaws occurring at the Mesa Facility, which Apple owns, unless GTAT proves that the causes of those defects or flaws were ***solely*** Apple's fault.

- Apple drafted and structured 14 separate agreements purporting to reflect separate transactions among GTAT Corp., and its subsidiary, GT Equipment. But all of these agreements have cross-termination provisions that clearly show how Apple exercised control over the operations and assets related to this transaction.

- GTAT sends the sapphire material it produces to two of Apple's "captive" vendors in Asia. Those vendors further process the sapphire material into an end product. If there is a question about whether the sapphire product GTAT ships to Asia is defective, a "committee" of three parties, comprised of GTAT, Apple and one of the two "captive" vendor in Asia, answer that question, with each party getting one vote on whether GTAT was at fault or not. It is not difficult to see what the outcome of this vote would be.

- If Apple terminates the SOW (as defined herein) for cause, then GT Equipment must immediately repay the intercompany loan from GTAT Corp. By contrast, if GTAT Corp. terminates the SOW for cause, there is no acceleration of the loan obligations.

19. [redacted] At the same time, however, Apple expressed its commitment to sapphire technology and its intention to work collaboratively with GTAT to bring the technology to fruition in a manner that would have allowed GTAT to produce sapphire materials consistent with the terms and conditions of the agreements in an economically viable manner.

20. At the closing of the Apple transaction, GTAT also took on substantial new debt. Specifically, on or about October 30, 2013—the day before the agreements with Apple were signed—GTAT terminated its revolving credit agreement with Bank of America and paid off all outstanding debt owed to Bank of America at that time. This was necessary to permit Apple to take a lien on all of the assets of both GTAT Corp. and GT Equipment—yet another deal term that Apple demanded.

21. As permitted by the Apple agreements, GTAT borrowed an additional $214 million by issuing additional convertible notes in 2013 and raised $71 million through a concurrent common stock sale.

Once Apple Agreements are Signed, Apple Dictates Sapphire Growth and Fabrication Processes

22. From day one, Apple was intimately involved in (and, in many instances, controlled) key aspects of the sapphire growth and fabrication processes.

23. A specialized facility is required to house over 2,000 sapphire furnaces and the related fabrication equipment. In addition, due to the nature of sapphire growth, a stable and uninterrupted power infrastructure and supply of process cooling and emergency water is required because interruptions in power or cooling water can render the sapphire-growth material unusable, causing millions of dollars in losses.

24. Apple selected the Mesa Facility and negotiated all power and construction contracts to design and build out the facility with third parties. In fact, GTAT was prohibited from having direct communications with the Apple subcontractors that were building out the Mesa Facility. Ultimately, the first phase of the Mesa Facility was not operational until December 2013—which was only 6 months before GTAT was expected to be operating at full capacity in order to meet its "Minimum Supply Commitments" (as defined in the SOW).

25. Additional unplanned delays continued to surface, because the Mesa Facility required a significant amount of reconstruction, including reconstruction of floors roughly the size of multiple football fields. The build-out of the Mesa Facility, delays in available power, and power interruptions, further delayed the ramp-up of sapphire growth and fabrication by approximately three months. This was critical lost time during which GTAT could not begin

manufacturing sapphire for sale to Apple and recoup its massive investment in furnaces for Apple.

26. Further complicating GTAT's build-out of sapphire-growth furnace and fabrication areas, there were over 1,200 construction workers engaged in the build-out of the Mesa Facility—an impossible situation given the need to be producing at full capacity by Summer 2014. This ongoing construction project also meant that GTAT was operating in a highly contaminated environment that adversely affected the quality of sapphire material.

27. The quality and reliability of the power infrastructure, as noted earlier, is critical to the sapphire growth process. Prior to entering into the Apple Agreements, GTAT advised Apple that the implementation of uninterruptable power systems and generators was essential, particularly in an operation with 2,036 furnaces. GTAT advised Apple that even a brief interruption of power could result in a loss of potentially more than $30 million to GTAT. After much discussion, Apple determined that implementing power back-up for the furnaces was too expensive and, therefore, "non-essential." After the Mesa Facility was finally operational, GTAT's concerns about the reliability of the power supply were realized. On at least three occasions, power interruptions occurred, leading to significant delays and losses of whole production runs of sapphire boules. GTAT's losses to date resulting from power outages at the Mesa Facility exceed $10 million. These power interruptions also adversely affected GTAT's ability to develop and optimize the process for growing sapphire material to Apple's changing specifications because GTAT lost important data every time a boule was damaged by a furnace run affected by interruptions of power or water.

28. In addition, Apple sent a significant number of employees to the Mesa Facility and the Salem Facility, including supply chain, manufacturing, and quality engineers—most of

them having no prior experience in sapphire growth or fabrication. These Apple employees were involved on a full-time basis in GTAT's sapphire growth and fabrication processes, taking up as much as 30% of GTAT's R&D and manufacturing team's time. These employees also assumed a level of authority in the Mesa Facility and Salem Facility that was disruptive and prevented GTAT from managing its operations as it saw fit. On multiple occasions, GTAT had to remind the onsite Apple team that they were not to give directions to GTAT employees.

29. Many of the processes associated with cutting, polishing, and shaping sapphire (this is the "fabrication process", in contrast to the "growth process" that takes place in the furnaces) were new, given the unprecedented volume of sapphire being grown at the Mesa Facility. It was Apple, however, that dictated to GTAT what tools to use and what fabrication processes to implement at the Mesa Facility. Apple also worked directly with suppliers of cutting and polishing equipment to specify and in some cases develop such tools, but, prior to contract signing, explicitly prohibited GTAT from having direct contact with these suppliers.

30. The fabrication methods specified by Apple prevented GTAT from achieving its planned fabrication cost and production targets because many of the tools did not meet their performance and reliability specifications by a wide margin. For example, the diamond wire tool intended to cut sapphire boules was specified to perform this task in 3.6 hours; however, the tool selected by Apple had significant operating issues resulting in a process that took more than 20 hours. Ultimately, that tool was unsuitable for the task and had to be replaced by a different tool. In fact, a majority of the fabrication tools dictated by Apple had to be replaced with alternative tools, resulting in additional capital investment and operating costs to GTAT and months of lost time in production. The fabrication cost is approximately 30% higher than planned, requiring nearly 350 additional employees and significantly higher consumption of diamond wire and

other wear items than originally planned. A few weeks before the Petition Date, Apple made clear that it refused to accept any financial responsibility for these issues, making it clear that it expected GTAT to absorb these additional costs in spite of the fact that Apple dictated the selection of all of the tools that created the problems.

31. Next, Apple withheld the final prepayment of **$139 million**. In August 2014, Apple acknowledged that it would make the final prepayment if GTAT were to grow sapphire boules in accordance with certain revised specifications. Shortly after that acknowledgement, however, Apple reversed course, requiring that GTAT satisfy the original specifications—which Apple knew GTAT could not meet under the circumstances.

32. [redacted]

33. Unfortunately, these chapter 11 cases are not just a dispute between two parties—otherwise GTAT might have been able to redress this matter through litigation with Apple. At bottom, all of GTAT's stakeholders are the victims of Apple's inequitable conduct. GTAT has numerous creditors at various levels of its corporate structure. Notably, GT (GTAT's parent company) is obligor under more than $430 million in convertible notes, a significant portion of which Apple required to be used to finance GTAT's consummation of the Apple transactions. Moreover, trade creditors hold approximately $145 million in claims against certain GTAT entities. [redacted]

[redacted]

34. [redacted]

35. In light of the interests of these creditors and other stakeholders, and given the severity of the losses incurred as a result of the transactions with Apple, GTAT had little choice but to commence these chapter 11 cases.

36. Despite Apple's very recent protestations to the contrary, Apple was aware, at all relevant times, of the financial condition of GTAT and of the fact that GTAT was losing substantial amounts on each sale of sapphire product to Apple. Moreover, as recently as a few weeks ago, GTAT senior management made a detailed presentation to Apple senior management in charge of the sapphire growth project and advised them very clearly that GTAT was losing substantial amounts and that it was projected to run out of cash in a few weeks.

Sapphire Segment

37. In 2010, the GTAT Group acquired Crystal Systems Inc., which enabled the GTAT Group to enter the sapphire material and equipment business, with a focus on providing sapphire furnaces for the global LED and certain other industrial markets. GTAT's sapphire business was traditionally based on designing and selling advanced sapphire crystallization furnaces ("ASF"®), which are used to produce sapphire boules. These sapphire boules are used, following certain cutting and polishing processes, to make sapphire wafers, a substrate for manufacturing light emitting diodes, as well as sapphire material for a wide range of other

industrial and consumer applications including, medical devices, dental, oil and gas, watch crystals, and specialty optical applications such as low absorption optical sapphire for advanced optics and titanium-doped sapphire material for high power lasers.

38. Sapphire is one of the hardest substances on Earth. It is scratch-resistant, and can be produced in highly transparent form. Given its strength and make-up, sapphire is an ideal material to replace the glass screens currently used in today's most popular consumer electronic products, such as smartphones, which are prone to cracking and scratching. Virtually every consumer has, at some time, experienced the frustration of a scratched or cracked smartphone screen. The market has been intensely interested in sapphire as a remedy for these common problems. Sapphire is also believed to use less power than common glass screens, making it an even more ideal replacement for glass screens used in portable consumer electronic products like smartphones.[3]

Business Relationship with Apple[4]

39. On October 31, 2013, GTAT entered into the Apple Agreements with Apple. The Apple Agreements shifted the GTAT Group's sapphire business model from being primarily an equipment manufacturer to also being a sapphire materials manufacturer.

---

[3] For an illustration of how sapphire is manufactured, see https://www.youtube.com/watch?v=vsCER0uwiWI

[4] As a result of the transactions entered into between GTAT and Apple, GTAT Corp. is subject to numerous confidentiality obligations under agreements with Apple (collectively, the "Confidentiality Obligations"). The Confidentiality Obligations broadly preclude GTAT Corp. from disclosing information concerning the nature of GTAT Corp.'s business relationship with Apple and other nonpublic information related thereto. These agreements further provide that each breach of the Confidentiality Obligations will require GTAT Corp. to pay liquidated damages to Apple in an amount of **$50 million per occurrence**. However, these agreements permit GTAT Corp. to disclose confidential information "to the extent required by law," provided GTAT Corp. makes reasonable efforts to give Apple notice of such requirement prior to any such disclosure and take reasonable steps to obtain protective treatment of the confidential information. Concurrently, herewith GTAT has filed a motion seeking either (a) entry of an order authorizing GTAT to file an unredacted version of the Supplemental First Day Declaration under seal or (b) entry of an order directing GTAT to file an unredacted Supplemental First Day Declaration on the Court's docket.

40. Under the Apple Agreements, Apple agreed to advance approximately $578 million, essentially as a loan to GTAT Corporation ("GTAT Corp.") to enable GTAT Corp. to build 2,036 ASF furnaces in the Mesa Facility. Apple structured the deal to ensure that GTAT could only supply sapphire to Apple—and none of Apple's competitors. Apple, acting like a lender rather than a customer, also required GTAT Corp. (a) to form a special purpose subsidiary which was to hold title to the ASF furnaces and related equipment and (b) to pledge its interest in that subsidiary as collateral to secure repayment of the $578 million advance. The most relevant Apple Agreements are summarized below.

41. MDSA and Statement of Work. On October 31, 2013, GTAT Corp. and Apple entered into a Master Development and Supply Agreement and related Statement of Work ("SOW"), pursuant to which the GTAT Group agreed to supply sapphire material to Apple. While the MDSA specifies the GTAT Group's minimum and maximum supply commitments, Apple has no purchase requirements under the terms of the MDSA, despite the fact that GTAT had to acquire and install 2,036 furnaces worth millions of dollars at the Mesa Facility.

42. Prepayment Agreement. Also on October 31, 2013, GTAT Corp. entered into a Prepayment Agreement with Apple pursuant to which the GTAT Corp. was eligible to receive $578 million in four separate installments, as a loan to pay for the purchase of sapphire furnaces and other equipment required under the MDSA and related SOW. GTAT Corp. is required to repay this amount ratably over a five year period commencing in 2015 and ending in January 2020, either as a credit against amounts due from Apple purchases of sapphire material under the MDSA or as a direct cash payment. No interest accrues on the loan from Apple under the Prepayment Agreement. The installment payments received by GTAT Corp. were to be used exclusively by GTAT Corp. to fund the purchase of components necessary to manufacture 2,036

ASF furnaces and related processing and manufacturing equipment at the Mesa Facility, which is owned by an affiliate of Apple and leased to GTAT Corp.

43. The first three installments under the Prepayment Agreement of $225 million, $111 million, and $103 million were received on November 15, 2013, January 23, 2014, and April 4, 2014, respectively. As of the Petition Date, the fourth and final installment payment, in the amount of $139 million, has not been received by GTAT Corp., even though GTAT had completed installation of 2,036 furnaces at the Mesa Facility.

44. Formation and Pledge of Special Purpose Entity. As part of the Prepayment Agreement, GTAT Corp. was also required to form a Delaware limited liability company as a wholly-owned subsidiary, which Apple attempted to design to be "bankruptcy remote." Accordingly, GTAT Corp. formed GT Equipment in October 2013. As collateral for its obligations under the Prepayment Agreement, the MDSA and the SOW, GTAT Corp. entered into a Membership Interest Pledge Agreement, dated October 31, 2013 (the "Pledge Agreement"), under which it pledged its membership interest in GT Equipment to Apple. GT Equipment is one of the Debtors in these chapter 11 cases.

45. Intercompany Loan Agreement. To the extent GTAT Corp. received funds under the Prepayment Agreement, GTAT Corp. was obligated to make an intercompany loan to GT Equipment in the amount of the payment from Apple pursuant to that certain Loan Agreement, dated October 31, 2013 between GTAT Corp. and GT Equipment (the "Intercompany Loan Agreement"). The Intercompany Loan, like the loans under the Prepayment Agreement, has a 0% interest rate. GT Equipment is required to repay the loan over five years in 58 equal monthly installments of $9,965,517.24. In addition, GT Equipment's obligations under the Intercompany Loan Agreement are not contractually subordinated to GT Equipment's obligations to Apple.

46. GT Equipment was supposed to use the funds loaned by GTAT Corp. to purchase component parts to construct the 2,036 furnaces at the Mesa Facility, related equipment, supplies or other operational expenditures related to Apple (the "Mesa Equipment"). In practice, however, GT Equipment did nothing. GTAT Corp. ordered all furnace parts and paid all third party and related suppliers of the furnace components, and GT Corp. installed all 2,036 furnaces at the Mesa Facility. Moreover, the transfers between GTAT Corp. and GT Equipment were completely circuitous because every dollar transferred by GTAT Corp. to GT Equipment was round-tripped back to GTAT Corp. Therefore, when the dust settled, Apple loaned funds to GTAT Corp., GTAT Corp. loaned funds to GT Equipment, and GT Equipment returned the money right back to GTAT Corp.

47. Apple and GTAT Corp. also entered into a Conditional Assignment, dated October 31, 2013 (the "Conditional Assignment"), under which GTAT Corp. assigned to Apple all its right, title and interest (but not its obligations) in the Intercompany Loan Agreement. However, and importantly, this assignment is not effective until the occurrence of (i) a Trigger Event (as defined below) under the Prepayment Agreement, (ii) GTAT Corp.'s receipt of a notice of default under the SOW or the MDSA, or (iii) an event of default under the Intercompany Loan Agreement. None of these Trigger Events occurred prior to the Petition Date.

48. Equipment Lease Agreements. As purported owner of the Mesa Equipment, GT Equipment entered into a Lease Agreement with GTAT Corp., dated October 31, 2013 (the "GT Equipment Lease"), under which GT Equipment leased the Mesa Equipment to GTAT Corp.[5]

[5] The GTAT Equipment Lease would terminate upon, among other things, a termination of the SOW by Apple for cause or the occurrence of so-called "Trigger Events" under the Prepayment Agreement which allow Apple to, among other things, accelerate repayment of amounts advanced to GTAT Corp. under the Prepayment Agreement. No Trigger Event occurred prior to the Petition Date.

The rent under GT Equipment Lease is equal to the amount of the Intercompany Loan Repayment that GT Equipment owed to GTAT Corp. under the Intercompany Loan Agreement. Consequently, GTAT Corp. offsets its rental obligations against GT Equipment's obligations under the Intercompany Loan Agreement and no cash is exchanged. The practical effect of this aspect of the agreement is that GT Equipment "repays" the loan to GTAT Corp., at no cost, by offsetting rent payments under the GT Equipment Lease.

49. GT Equipment and Apple also entered into a "contingent" lease agreement, dated October 31, 2013 (the "Contingent Lease Agreement") for the Mesa Equipment. The Contingent Lease Agreement purports to be effective from the date GT Equipment purchases the Mesa Equipment until the earlier of (a) termination of the Contingent Lease Agreement, (b) the Mesa Equipment is no longer property of GT Equipment, (c) expiration or termination of either the MDSA or the SOW. However, Apple is not entitled to take possession of the Mesa Equipment unless and until the GT Equipment Lease is terminated. If Apple took possession of the Mesa Equipment, the rental amount would be **$50 per month**, as compared with the **$9.9 million** deemed monthly rent payment that GTAT Corp. pays to GT Equipment. The GT Equipment Lease had not terminated as of the Petition Date.

50. GT Equipment Secured Guaranty. On October 31, 2013, GT Equipment issued a secured guaranty in favor of Apple guaranteeing all of GTAT Corp.'s obligations under the Prepayment Agreement, the MDSA, or the SOW (the "Secured Guaranty"). GT Equipment granted Apple a first-priority security interest in all of its assets. GT Equipment's obligations under the Secured Guaranty become due when either (i) Apple terminates the SOW for cause or (ii) a Trigger Event occurs under the Prepayment Agreement.

51. Security Agreement. Apple and GTAT Corp. also entered into a Security Agreement, dated October 31, 2013 (the "Security Agreement") pursuant to which GTAT Corp. granted Apple a security interest and lien on certain of GTAT Corp.'s assets. However, Apple's lien and security interest were extinguished pursuant to the Security Agreement when GT issued the convertible notes described below and contributed proceeds of the note issuance to GT Equipment. Therefore, as of the Petition Date, the only asset of GTAT Corp. which constitutes collateral of Apple is the LLC membership interest in GT Equipment. This means that Apple does not have a so-called "back-up" security interest against the assets of GTAT Corp.,[6] which lenders to special purpose entities generally insist on in the event the special-purpose-entity structure is disregarded, or if the assets supposedly owned by the special purpose entity are found to be the property of its parent.[7]

52. Mesa Facility Lease. GTAT Corp., not GT Equipment, entered into a lease for the Mesa Facility on October 31, 2013. The landlord at the Mesa Facility is Platypus Development LLC, an affiliate of Apple ("Platypus"). GTAT Corp. pays $100 per year as rent to Platypus for use of the Mesa Facility. Consequently, when furnaces were delivered to, and assembled at, the Mesa Facility, they were delivered to GTAT Corp., not GT Equipment.

SUPPORT FOR RELIEF REQUESTED IN ADDITIONAL FIRST DAY PLEADINGS

53. Concurrently with the filing of Supplemental Declaration, or as soon as practicable thereafter, GTAT has filed (or will file) a number of Additional First Day Pleadings

[6] This could become relevant because, despite the numerous agreements which attempt to document the relationship between Apple and GTAT, Apple never insisted on, and it does not appear that there are any, purchase agreements or bills of sales executed between GT Corp. and GT Equipment to reflect the "purchase" by GT Equipment from GT Corp. of the furnaces. GT Corp., and not GT Equipment, ordered the furnace parts from the third party vendors and paid such third party vendors for all the parts for the furnaces GT Corp. installed in the Mesa Facility, and the furnaces were installed in a location where GT Corp., not GT Equipment, was the tenant. In the interest of full disclosure, GT, the ultimate parent of both GT Corp. and GT Equipment, reflected the furnaces located at the Mesa Facility as assets of GT Equipment in its public filings.

seeking relief that GTAT believes is necessary to enable it to operate with minimal disruption and loss of productivity. The facts set forth in the Additional First Day Pleadings are incorporated by reference in their entirety. GTAT requests that the relief requested in each of the Additional First Day Pleadings be granted as critical elements in ensuring a smooth transition into chapter 11.

54. I have reviewed each of the Additional First Day Pleadings, and the facts stated therein are true and correct to the best of my belief with appropriate reliance on corporate officers and advisors. The relief sought in each of the Additional First Day Pleadings is necessary to enable GTAT to continue operations with minimal disruption and constitutes a critical element in the successful implementation of GTAT's effort to maximize the recovery of its creditors. To this end, GTAT has filed the following Additional First Day Pleadings:

a. **Debtors' Emergency Motion for (A) Entry of Order, Pursuant to Bankruptcy Code Section 107(b) and Bankruptcy Rule 9018, Authorizing Filing Under Seal of Unredacted Versions of Supplemental First Day Declaration and Motion to Reject, or (B) Alternatively, Entry of Order, Pursuant to Bankruptcy Code Sections 105(a) and 107(a) Directing Debtors to File Unredacted Versions Thereof;**

b. **Debtors' Emergency Motion for Entry of Order, Pursuant to Bankruptcy Code Section 107(b) and Bankruptcy Rule 9018, Authorizing Filing of Motion to Seal Under Seal;**

c. **Debtors' Emergency Motion Pursuant to Bankruptcy Code Sections 105(a) and 365(a) for Entry of Order Authorizing Debtors to Reject Certain Executory Contracts and Unexpired Leases *Nunc Pro Tunc* to the Petition Date;**

d. **Debtors' Emergency Motion, Pursuant to Bankruptcy Code Sections 105(a) and 363(b), for Entry of Order (I) Authorizing Debtors to Wind Down Operations at Sapphire Manufacturing Facilities and (II) Approving Wind Down Employee Incentive Plan in Connection with Wind Down of Such Operations; and**

e. **Debtors' Emergency Motion for Expedited Hearing on Debtors' (I) Motion to Wind Down Operations, (II) Reject Certain Executory**

Contracts and Unexpired Leases in Connection with Such Wind Down, (III) Motion to Seal Foregoing Motions and Supplemental First Day Declaration, and (IV) Motion to Seal the Sealing Motion.

CONCLUSION

55. I believe approval of the relief requested in the Additional First Day Pleadings is in the best interests of all stakeholders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: October 8, 2014

On behalf of GTAT

By: Daniel W Squiller
Name: Daniel W. Squiller
Title: Chief Operating Officer

Exhibit B-1

Attachments 2, 3 and 4 of SOW

Exhibit B-1
UNDER SEAL pursuant to Court Order dated November 4, 2014.

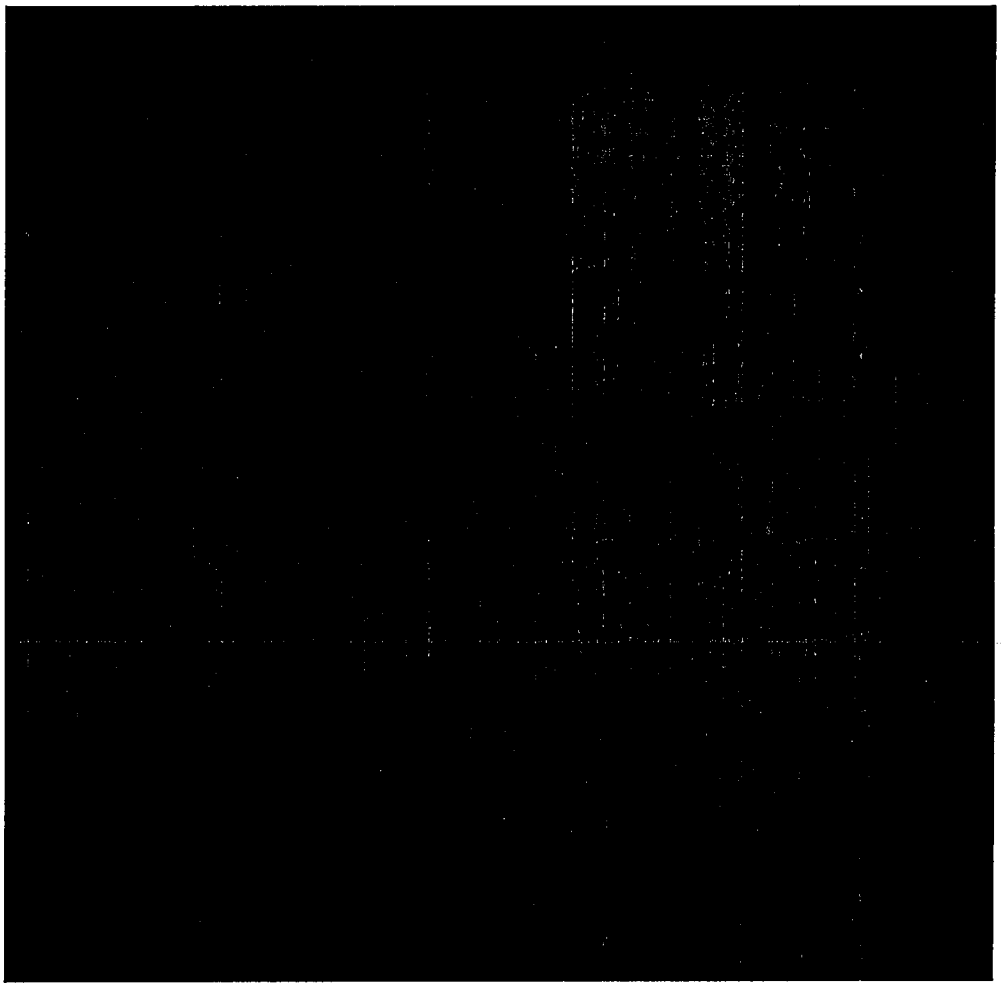
Exhibit B-2

Redacted Attachments 2, 3 and 4 of SOW

ATTACHMENT 2

Supply Commitment and Maximum Supply Obligation

Supply Commitment (expressed in Type 1 length)

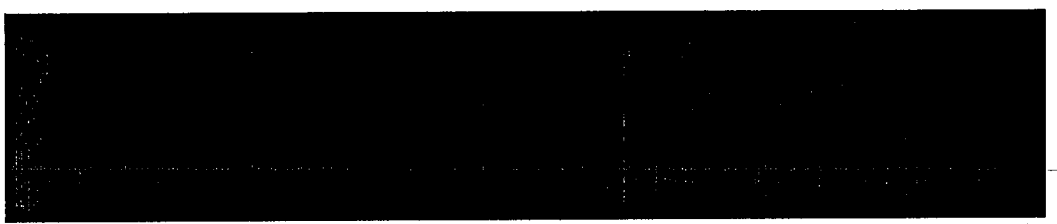


Supply Commitment Conversion Ratio

Apple may purchase any combination of Goods at any time. Initially, GTAT will be supplying boules, Type 1 Brick Goods, Type 2 Brick Goods and Type 3 Brick Goods. Whenever Apple specifies one or more New Goods, Apple may purchase any combination of the above existing Goods and such New Goods. The Supply Commitment for such New Goods will be based on a Supply Commitment Conversion Ratio, to be determined by Apple, that will adapt Type 1 length to a length of New Good material (the "***Supply Commitment Conversion Ratio***"). Apple will notify GTAT of the Supply Commitment Conversion Ratio for each New Good, and the Supply Commitment will be deemed applicable to such New Goods upon receipt of such notice. If based solely on (1) the geometry of the cross-section of the New Good, (2) the surface area of the cross-section of the New Good, (3) the estimated number of New Goods that can be cut from a single boule or (4) the necessity for any new or modified Equipment to produce the New Good, GTAT disagrees with the new Supply Commitment Conversion Ratio, then the parties will discuss GTAT's concerns in good faith. If Apple elects not to modify the Supply Commitment Conversion Ratio, GTAT may resort to the dispute resolution procedures in the MDSA.

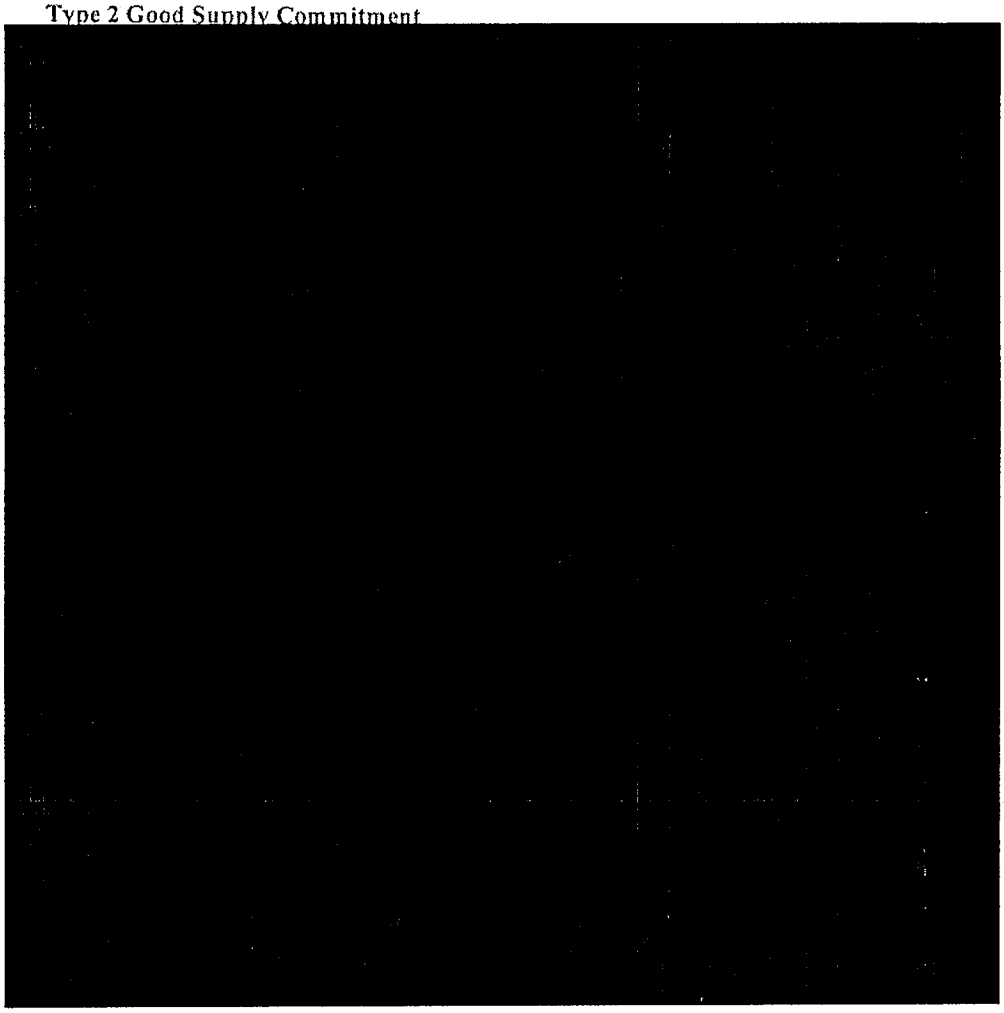
For purposes of Type 2 Brick Goods and Type 3 Brick Goods, the Supply Commitment Conversion Ratio is as follows:

Supply Commitment Conversion Ratios

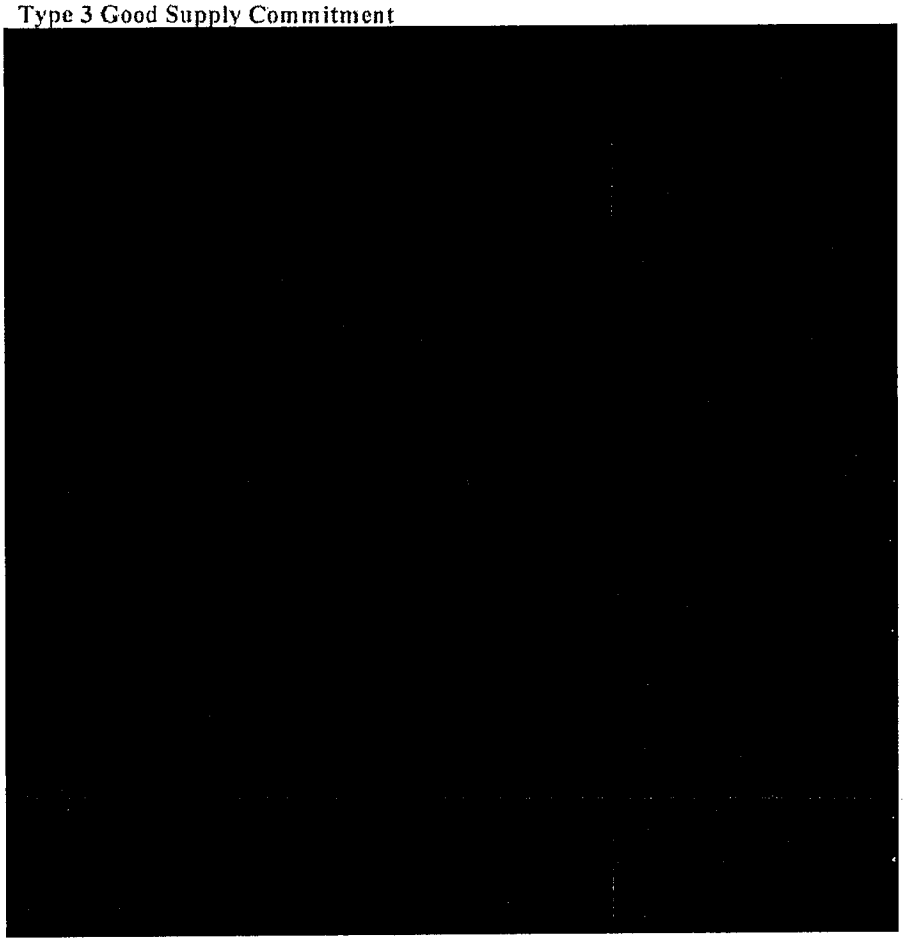


To illustrate the conversion to the Type 2 Good and Type 3 Good Supply Commitment, find below the respective Supply Commitments assuming that only one type of Brick Goods is being purchased.

Type 2 Good Supply Commitment

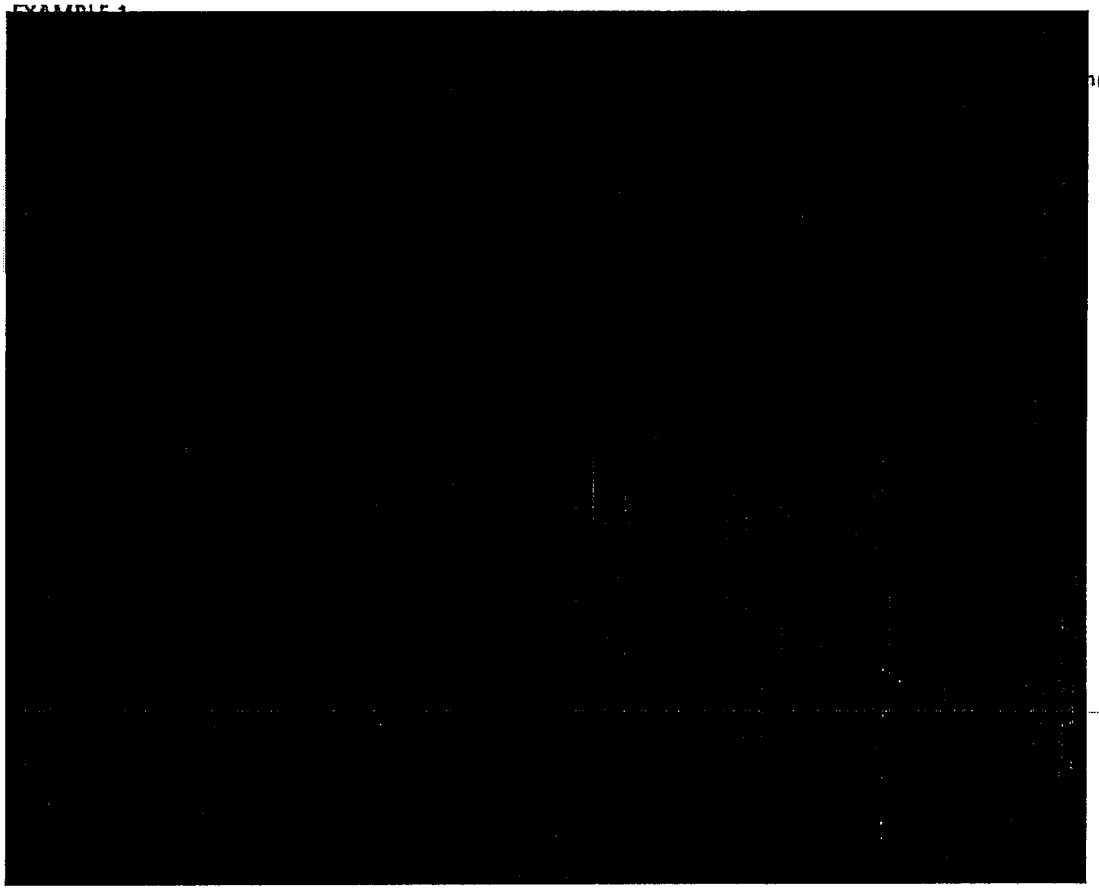


Type 3 Good Supply Commitment



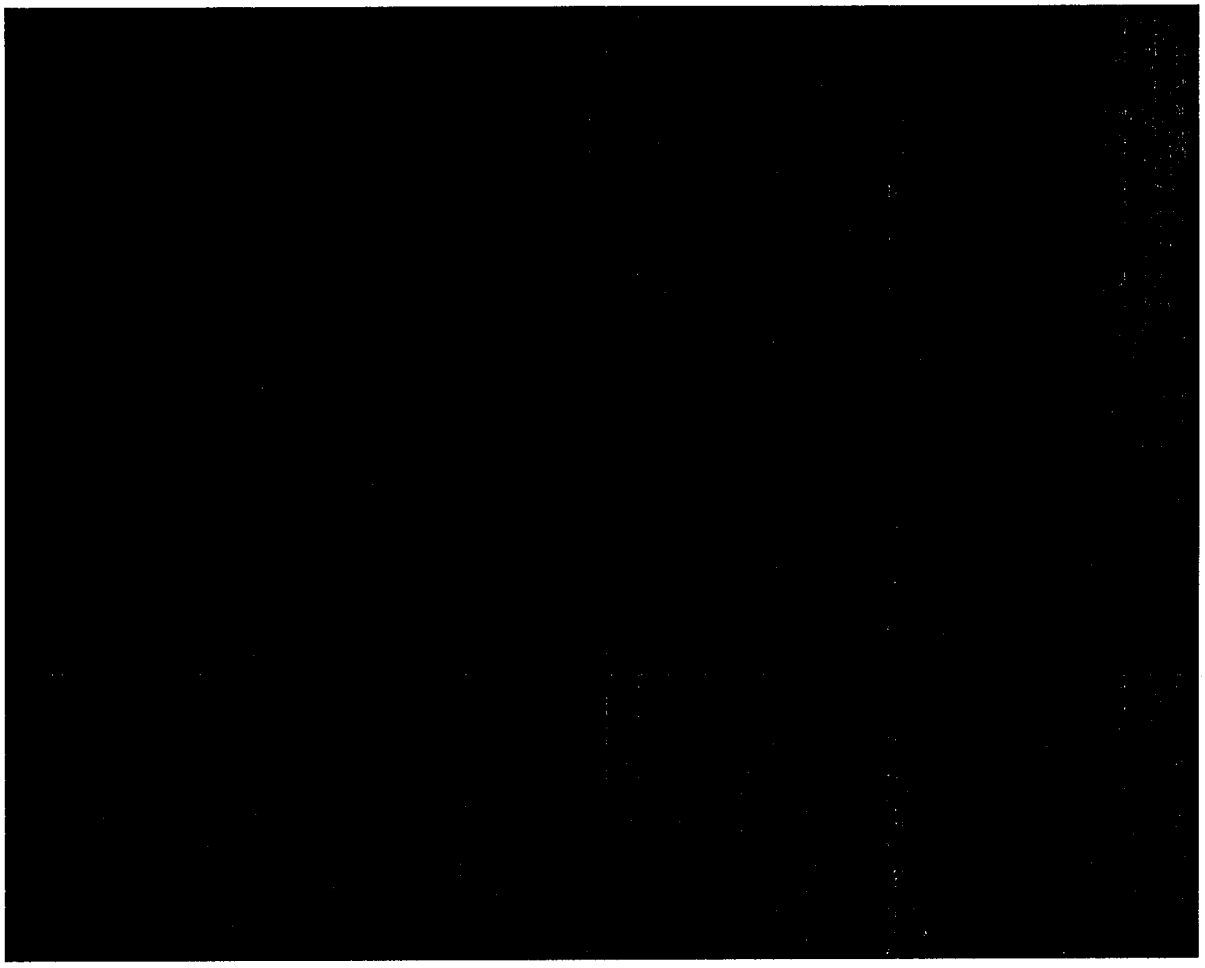
For purposes of illustration only, if Apple purchases a combination of Type 1 Brick Goods, Type 2 Brick Goods and Type 3 Brick Goods, the following two examples show the adjustments to the Supply Commitment by type of Brick Goods.

EXAMPLE 1



ATTACHMENT 3

NTE Price



For Type 3 Brick Goods only, the parties will adjust the NTE Price Per Millimeter based on any actual, verifiable increases in the Fabrication Costs for Type 3 Brick Goods relative to the Fabrication Costs for Type 1 Brick Goods and Type 2 Brick Goods.

The NTE Price for Goods is based on the following assumptions regarding the costs to GTAT of the materials and other resources identified below (each, a "***Critical Resource***").

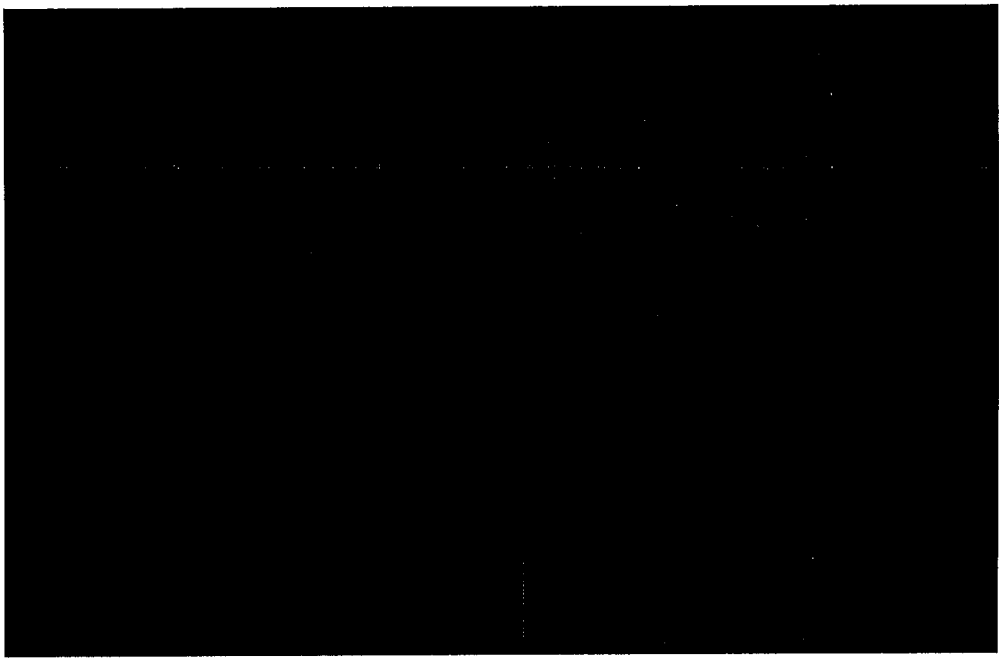
Critical Resource	Assumed Cost
Melt stock	
Crucible	

Power*	[redacted]
Diamond wire	[redacted]
Water*	[redacted]

* Applicable to Mesa Facility only

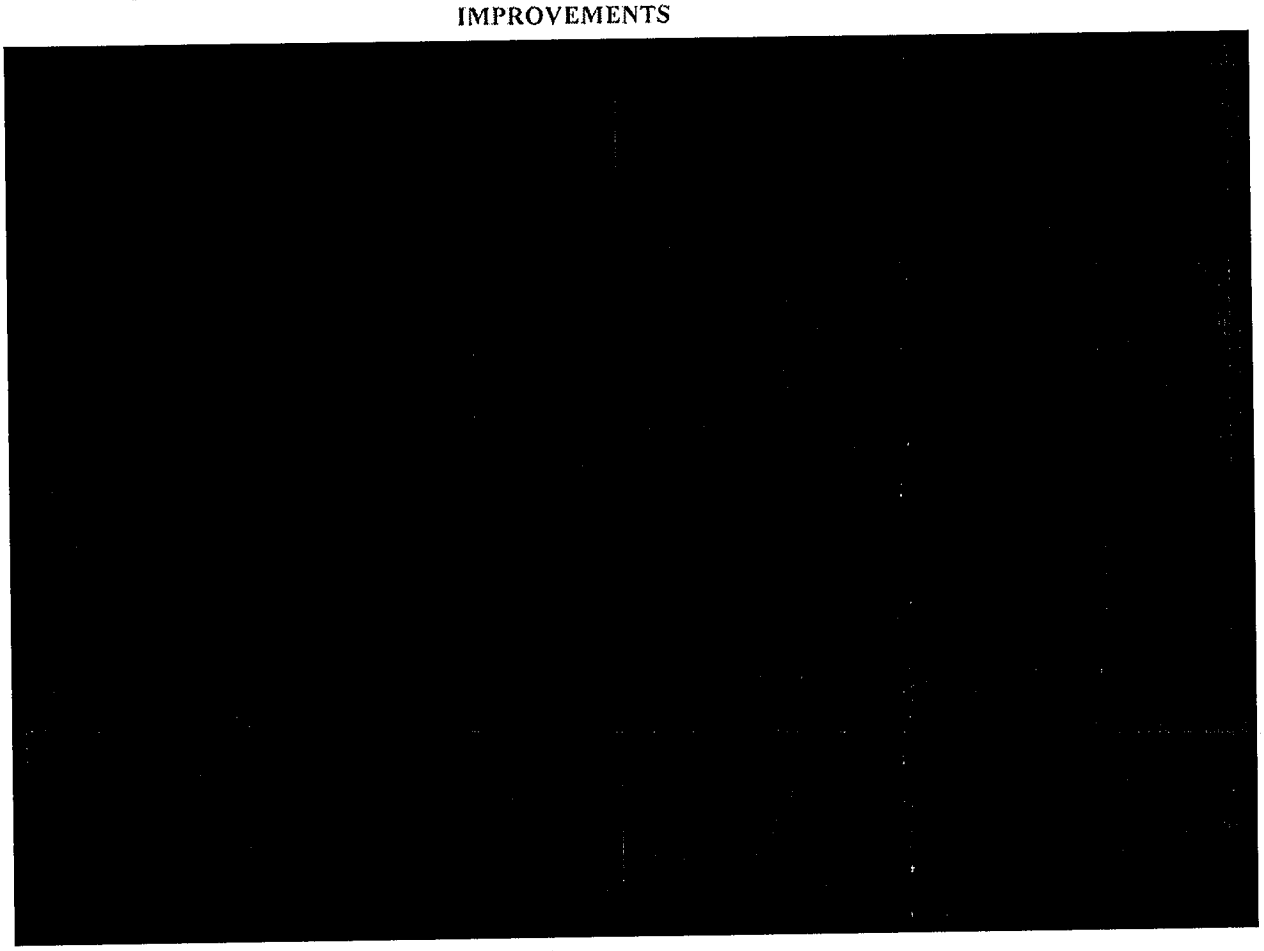
If Apple identifies a willing supplier of a comparable Critical Resource at a lower cost, then Apple will notify GTAT in writing of the lower cost option, and GTAT will qualify such option. GTAT may either procure the Critical Resources at the lower cost or procure the Critical Resources from GTAT's existing vendor, but in either event, on the earlier of the date (i) that is 30 days following Apple's notice to GTAT of the lower cost option or (ii) on which GTAT begins to purchase the Critical Resource at the lower cost, the lower cost will be deemed the applicable Critical Resource cost for purposes of adjusting the NTE Price.

At the beginning of each calendar quarter, GTAT will provide Apple with a report of the pricing then available to GTAT for each of the Critical Resources during a particular period of time. To the extent such available pricing for any Critical Resource is greater or less than the assumed cost set forth above, the per-unit NTE Price of the Goods will be equitably adjusted for the applicable period of time to account for the corresponding increase or decrease in GTAT's cost to manufacture the Goods. Such adjustments will be made according to the following model created and sent by Mark Bentham with the Microsoft Excel file name of "*NTE Price Model (with levers) Oct 31 rev 1.xlsx*":



ATTACHMENT 4

SAVINGS FROM SAPPHIRE GROWTH OR MANUFACTURING PROCESS IMPROVEMENTS



The table above shows total cost savings for the applicable improvement.

If an improvement is implemented during the first 12 months after the Effective Date, the applicable NTE Price will be immediately reduced by 50% of the applicable total costs savings set forth in the chart above and such NTE Price reduction will remain in effect for 18 months from the date of improvement implementation. Thereafter the applicable NTE Price will further be reduced by the remaining 50% of cost savings (i.e. after 18 months, the NTE Price in place prior to the improvement will be reduced by 100% of the cost savings).

If an improvement is implemented after the first 12 months after the Effective Date, the applicable NTE Price will be immediately reduced by 50% of the applicable total costs savings set forth in the chart above and such NTE Price reduction will remain in effect for 12 months from the date of improvement implementation. Thereafter the applicable NTE Price will further be reduced by the remaining 50% of cost savings (i.e. after 12 months, the NTE Price in place prior to the improvement will be reduced by 100% of the cost savings).

Exhibit C

Excerpts from Apple Objection

1. Apple's sole goal, and the entire basis for the contractual relationship, was for the Debtors to produce sapphire for Apple to use in its products. Whatever other allegations the Debtors have made, the fact is that we are here today because the Debtors did not and could not live up to their contractual obligations.[1]

5. Contrary to statements in the *Supplemental Declaration of Daniel J. Squiller in Support of Chapter 11 Petitions and First-Day Motions*, ECF No. 14 (the "Supplemental Declaration"), the Debtors were not "forced" into the transaction by Apple and the Apple agreements are not contracts of adhesion entered into under duress. The Debtors were represented by sophisticated outside counsel and the transaction was heavily negotiated with numerous concessions by all parties. Prior to signing their contracts with Apple, the Debtors could have walked away from the deal and continued their pre-existing business. But the Debtors were eager to enter into a deal with Apple. Even the Supplemental Declaration concedes that the Debtors viewed the deal with Apple to be good for the company. The impact that such a deal was expected to have on the Debtors' business is reflected in the increase in their stock price. The price of a share of common stock of GT Advanced Technologies Inc., the parent Debtor, rose more than 20% upon the announcement by the Debtors that they had entered into an agreement with Apple to supply sapphire. *See* www.bloomberg.com/quote/GTAT:US.

[1] The economics of the deal were dependent on the Debtors' production of usable sapphire in the size of 262KG boules. The fact is that the Debtors failed to produce any meaningful quantity of usable sapphire in that size.

The price of a share would ultimately peak at more than double the price on the day before the announcement of the deal with Apple. *Id.*

7. Contrary to the picture painted by the Debtors in the Supplemental Declaration, Apple has bent over backwards to work with the Debtors, including making payments to the company notwithstanding the company's failure to meet performance milestones, in the hope of obtaining usable, economically viable sapphire from the Debtors. Apple continued to fund the Debtors' operations at the Mesa facility by making payments under the Prepayment Agreement even though the Debtors failed to satisfy the original payment milestones. Apple was open to considering alternative paths to the Debtors' ability to achieve their original commitments, including accepting sapphire materials created from boules smaller than the 262 kg boules that the Debtors originally agreed to produce. Up to the eve of the Debtors' bankruptcy filing, Apple was offering the Debtors significant concessions, including accelerating the disbursement of a large portion of the remaining $139 million balance under the Prepayment Agreement, permitting the Debtors to sell additional sapphire furnaces to third parties, and deferring the initial repayment date of the prepayment. To date, Apple has paid the Debtors $439 million and additionally spent in excess of $700 million in connection with the transaction despite receiving from the Debtors sapphire that was only a small fraction of the Debtors' original commitment. Far from the villain in these chapter 11 cases, Apple is the largest victim of the Debtors' failure to perform under the agreements it negotiated at arms' length and with advice of counsel.

8. In an effort to bring more sapphire to Apple's customers and save jobs in the Mesa facility, Apple is still willing to work with the Debtors to negotiate a mutually-beneficial

arrangement. In connection with the Debtors' professed desire to exit the sapphire materials business, Apple is willing to consider facilitating a transfer of the operations of the Mesa facility to a party other than the Debtors. However, prior to undertaking assumption of complete operations, Apple has requested a 90-day period during which it will validate the viability of the Mesa facility to produce sapphire for Apple products. This 90-day period would be economically neutral to the Debtors because Apple would (i) agree that the Debtors can implement the Wind-Down Procedures, modified to accommodate the limited testing required by Apple, (ii) pay the Debtors' incremental expenses resulting from operating a limited number of furnaces to be used in the testing and (iii) agree that to the extent the Debtors' contracts with Apple eventually are rejected, any such rejection will be *nunc pro tunc* to the Petition Date, thus allowing the Debtors to avoid any administrative expenses that would otherwise arise from their failure to reject contracts with Apple now. But the Debtors rejected Apple's offer to do this and have instead hastily sought to reject a subset of their Apple contracts even though such rejection will violate the terms of the Lease and prevent the Debtors from implementing the Wind-Down Procedures.