

2. The statutory bases for the relief requested herein are sections 363(b) and 503(c) of the Bankruptcy Code.

BACKGROUND
General

3. On October 6, 2014 (the “Petition Date”), GTAT commenced voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire (the “Court”). GTAT continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

4. On October 14, 2014, the Office of the United States Trustee for the District of New Hampshire (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in these chapter 11 cases.

5. These chapter 11 cases have been consolidated for procedural purposes only and are jointly administered pursuant to Bankruptcy Rule 1015(b).

6. Information regarding GTAT’s business, capital structure, and the circumstances leading to these chapter 11 cases is set forth in the *Declaration of Daniel W. Squiller in Support of Chapter 11 Petitions and First-Day Motions* [Docket No. 14] (the “First Day Declaration”) and 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, Settlement Agreement with Apple* [Docket No. 324] (the “9019 Declaration”), which are incorporated herein by reference.

Development of New Strategic Direction

7. As the Court is aware, these chapter 11 cases were commenced in the midst of a liquidity crisis that threatened GTAT's survival. Rather than focus on incentive or retention plans at the outset, management focused 100% of its efforts towards keeping the lights on. In light of the ongoing cash burn from sapphire manufacturing operations, GTAT determined, after a careful evaluation of all alternatives, and in consultation with its advisors, that to preserve the value of its estates it must wind down its sapphire manufacturing operations and refocus its resources on its other business lines, including the sale of advanced sapphire crystallization furnaces ("ASF Furnaces"). Accordingly, on October 9, 2014, GTAT filed a motion seeking authorization to wind down its sapphire manufacturing operations at its facilities in Mesa, Arizona (the "Mesa Facility"), and Salem, Massachusetts, with reductions in associated supporting personnel at GTAT's Merrimack, New Hampshire, offices, as well as approval of a wind-down employee incentive plan in connection with the wind-down of such operations (such motion, as supplemented by the Supplement filed on October 17, 2014 [Docket No. 189], the "Wind Down Motion"). The Court granted the Wind Down Motion at the October 21, 2014 hearing and entered the corresponding order on October 24, 2014 [Docket No. 286].

8. On October 21, 2014, after intensive and hard-fought negotiations, GTAT entered into that certain Adequate Protection and Settlement Agreement (as amended and restated, the "Apple Settlement Agreement") with Apple Inc. ("Apple") and Platypus Development LLC ("Platypus," and together with Apple, the "Apple Parties"). Among other things, the Apple Settlement Agreement (a) allows for the consensual unwinding of GTAT's business relationship with Apple related to the sapphire growth and fabrication project, (b) resolves all disputes arising from the parties' agreements and their business relationship, (c) preserves GTAT's equity value

in its ASF Furnaces located at the facility in Mesa, Arizona, (d) facilitates GTAT's efforts to obtain debtor-in-possession and exit financing for all Debtors, and (e) paves the way for GTAT's emergence from chapter 11 as a re-energized company with a renewed focus on its pre-Apple business of selling ASF Furnaces, along with its industry leading solar equipment. The Bankruptcy Court approved GTAT's entry into the Apple Settlement Agreement by order dated December 17, 2014 [Docket No. 819].

9. With the wind-down of the Mesa Facility underway and issues with Apple largely resolved, GTAT has been able to turn its efforts towards maximizing value to its constituents and embracing its existing and emerging technologies as part of GTAT's reorganized business. The revamping of GTAT's business is premised on the successful implementation of a comprehensive business plan for GTAT's operations (the "Business Plan"). Among other things, the Business Plan is premised upon selling ASF Furnaces and solar equipment, reducing the cash operating expense run-rate through the remainder of these chapter 11 cases, strategic spending for research and development ("R&D") and capital expenditures ("CAPEX"), and advancement of the Merlin and Hyperion projects. As the Court is well aware based on the extensive testimony given by Mr. Neil Augustine of Rothschild Inc. at the hearing on approval of the Apple Settlement Motion on December 15, 2014, these chapter 11 cases are extremely challenging due to many factors, including limited existing revenues and the need to transition the business to the "new GTAT". GTAT believes that implementation of the Business Plan will enable GTAT to emerge as a strong and healthy enterprise. In order for these cases to be successful and to meet the aggressive goals set forth in the Business Plan, however, GTAT must have a highly-motivated team of senior executives and non-executive employees with the skills and institutional knowledge to execute that plan.

Key Employee Incentive Plan and Key Employee Retention Plan

10. As noted above, GTAT's management and employees commenced these cases by focusing all of their energy on resolving the issues with Apple and commencing the wind-down of operations in Mesa. Now, however, GTAT must ensure that its work force remains in place and motivated in order to complete a turnaround for the benefit of all its stakeholders.

11. With respect to non-executive employees, GTAT is facing challenges with respect to retaining and motivating its current workforce. Indeed, GTAT has already lost twenty-five valued employees as a result of voluntary attrition since the Petition Date, and believes that, without a thoughtful retention plan for such key non-insiders, it may continue to lose valuable talent to the detriment of GTAT's operations. With respect to its senior executives, GTAT has worked with its advisors to develop a program to incentivize these employees to encourage value maximization, including the maximization of cash flow and the advancement of key strategic projects such as the "Merlin" and "Hyperion" projects. As described in detail below, under the KEIP the senior executives only do well if stakeholders do well.

12. By this Motion, GTAT seeks authority to implement the KEIP and KERP to enable it to maximize the value of GTAT's estates during the pendency of these chapter 11 cases. As described further herein, the goals of these programs are as follows:

- to encourage participants to stay focused on GTAT's core operations to facilitate a smooth reorganization;
- to align the interests of GTAT's senior executives with those of its stakeholders;
- to reward essential employees if critical goals are satisfied; and
- to motivate and preserve essential personnel through the successful reorganization of GTAT.

RELIEF REQUESTED

13. By this Motion, GTAT seeks entry of an order approving the KEIP and KERP and authorizing the payments thereunder.²

Facts Relevant to This Motion

A. The Eligible Employees

14. The KEIP and KERP will, respectively, provide performance incentives for nine senior executive employees (the “Senior Management Employees”) and retention incentives to twenty-eight non-executive employees (the “Non-Insider Employees” and, together with the Senior Management Employees, the “Eligible Employees”), whose institutional knowledge and skill are essential to GTAT’s restructuring efforts. Details of the KEIP and KERP plans are attached hereto as **Exhibit B**.³ The KEIP and KERP plans are summarized below.⁴

15. The Senior Management Employees perform a variety of critical executive functions with regard to legal, accounting, finance, sales, operations and strategic management. These specific skills, along with the Senior Management Employees’ familiarity and understanding of GTAT’s operations, customer and supplier relationships and competitive positioning, are vital to the day-to-day operation of GTAT’s business and the ability of GTAT to effectuate a successful reorganization and maximize value.

² On December 22, 2014, GTAT provided the details of the KEIP and KERP programs to professionals for the Committee. GTAT expects that discussions with the Committee regarding these programs will commence within the next few days.

³ To protect the privacy of the Eligible Employees, and to preserve company morale, the names of the Eligible Employees, their positions, salaries, and target bonuses will only be provided to the Court, the U.S. Trustee, and the Committee. GTAT has contemporaneously filed a motion requesting the Court’s authorization to file an unredacted copy of this Motion under seal.

⁴ The summary contained herein is qualified in all respects by reference to the KEIP and KERP plans themselves, which GTAT intends to file with the Court prior to a hearing on this Motion.

16. The Non-Insider Employees are critical to the operations of GTAT and, without their continued support, the value of GTAT would not be maximized. As noted above, since the Petition Date, twenty-five valued employees have resigned, which has negatively affected GTAT's operations. Because of the number of resignations of valuable employees, time is of the essence in approving the KEIP and KERP. Without the KERP program, GTAT likely will continue to lose valuable non-executive employee talent vital to its restructuring efforts, to the detriment of maximizing the value of GTAT.

17. The Senior Management Employees have been deeply involved in the Business Plan's development, and all of the Eligible Employees covered under the KEIP and KERP are critical to the Business Plan's implementation. Because a successful restructuring of GTAT's business will be premised on the realization of the projections in the Business Plan, without appropriate incentives for the Senior Management Employees to successfully implement the Business Plan and without critical Non-Insider Employees participating in the implementation, GTAT's ability to reorganize would be severely impacted, resulting in losses to the estates and its stakeholders.

18. To compound matters, there have been significant changes in GTAT's workforce, including the termination of approximately 800 employees at four locations, including all of the GT employees at the Mesa, Arizona facility. In addition, since October of this year, GTAT has reduced the staff at its headquarters by approximately forty-eight employees, from 168 to fewer than 120. As a result, the remaining Eligible Employees have been required to shoulder an increased workload and significant additional responsibilities to compensate for the loss of other

employees. The Eligible Employees have also been subject to increased doubt and stress due to speculation in the press about the viability of GTAT.⁵

B. Historical Compensation of Senior Management Employees

19. Historically, the Senior Management Employees generally have received three principal forms of direct compensation: (a) base salary; (b) cash bonus awards or commissions; and (c) equity incentive awards (collectively, with the value of equity incentive awards measured as of their grant date, “Total Direct Compensation”).⁶ It is standard practice among firms and experts that analyze executive compensation to use Total Direct Compensation as a means for comparing compensation across different years and between different companies. The use of Total Direct Compensation allows for the best possible apples-to-apples comparison where compensation includes varying components of base salary, cash bonus and equity-based incentive compensation.

20. In prior years, a significant portion of the Total Direct Compensation provided to the Senior Management Employees was granted in the form of equity incentive awards. In 2013, on average approximately 41% of Total Direct Compensation for Senior Management Employees was in the form of time- and performance-based restricted stock units. As a

⁵ In addition to the KEIP and KERP programs sought to be approved herein, and in accordance with its past practice, GTAT will implement a 2015 Management Incentive Plan (the “MIP”). The MIP will apply to approximately 173 employees *other than* the Eligible Employees. If performance objectives are achieved at the Target level of performance, bonus payouts will be no more than approximately \$1.95 million, and will not be paid out until the first quarter of 2016.

⁶ This does not include other forms of compensation and benefits that Senior Management Employees receive, such as, for example, health care benefits or the Debtors' 401(k) matching program. The various benefits that the Debtors' employees, including Senior Management Employees, receive is set forth in greater detail in the *Debtors' Emergency Ex Parte Motion, Pursuant to Bankruptcy Code Sections 105(a), 363(b), 503(b), 507(a)(4), and 507(a)(8), and Bankruptcy Rules 6003 and 6004, for Entry of Order, (A) Authorizing Debtors to (I) Pay Certain Employee Compensation and Benefits and (II) Maintain and Continue Such Benefits and Other Employee-Related Programs and (B) Authorizing and Directing Banks and Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations* [Docket No. 19] (the “Wage & Benefit Motion”), which motion was approved by final order of the Court on October 9, 2014 [Docket No. 95] (the “Wage & Benefit Order”).

consequence of GTAT's recent financial difficulties and precipitous decline in the value of the stock of GT, (a) past equity incentive awards that are still held by the Senior Management Employees have lost substantially all of their value and (b) the grant of equity incentive awards during these bankruptcy cases would be likely to result in no value to the Senior Management Employees. Without the cash bonus and equity incentive award components, the Total Direct Compensation of the Senior Management Employees for which comprehensive benchmarking has been performed is significantly below industry market levels – on average, 80% below the market median and 74% below the 25th percentile of the market.

C. Development of KEIP and KERP

21. To ensure a successful restructuring process, GTAT enlisted the services of Alvarez and Marsal ("A&M"), a leading global consulting firm specializing in turnaround management for large companies experiencing financial difficulty. GTAT selected A&M because the consulting firm specializes in designing executive and employee incentive, retention, and severance plans for companies undergoing chapter 11 and has access to large amounts of industry compensation data. Together, GTAT and A&M reviewed GTAT's needs during these chapter 11 cases and the necessary features of incentive and retention plans. In concert with GTAT, A&M designed the KEIP and KERP, bearing in mind GTAT's goals of maximizing the value of GTAT, including the maximization of cash flow, the advancement of key strategic projects, and ensuring effective management throughout these chapter 11 cases. The final KEIP and KERP designs are a reasonable, cost-effective way to promote the appropriate incentives and to retain personnel essential to these chapter 11 cases.

22. A&M also worked closely with GTAT to ensure that the KEIP and KERP were competitive within the industry, and that the incentives set for the executives participating in the

KEIP were appropriate. GTAT and A&M based the plans' payments upon market comparisons and studies reviewed by A&M. GTAT and A&M evaluated the reasonableness of the proposed KEIP using three different approaches: (a) comparing the target total direct compensation opportunity under the proposed KEIP to prevailing market compensation data for positions for which GTAT has performed executive compensation studies; (b) comparing the target total cash compensation and total direct compensation opportunities, respectively, under the proposed KEIP to pre-petition target total cash compensation as well as historic total direct compensation for Senior Management Employees; and (c) reviewing incentive-based programs that have been approved for other comparable companies going through chapter 11 in recent years after the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Similarly, GTAT and A&M evaluated the reasonableness of the proposed KERP by comparing the proposed plan to similar plans approved by bankruptcy courts in recent years after the passage of BAPCPA.

D. Approval of KEIP and KERP; Corporate Governance

23. A&M and GTAT used this information in drafting proposals for the KEIP and KERP, which underwent several rounds of revisions before being submitted to the Restructuring Committee of GTAT's Board of Directors. The Restructuring Committee is comprised of three members, two of which (Mr. John Ray and Mr. Richard Newsted) are independent directors appointed to the GTAT board after the Petition Date. Mr. Ray and Mr. Newsted both have extensive experience as a chief restructuring officer or as a board member of numerous companies undergoing chapter 11. The Restructuring Committee assumed responsibility for the KEIP and KERP as part of that committee's mandate, and met on December 4, 2014, to review the terms of the proposed KEIP and KERP with members of GTAT's senior management and professional advisors. After the Restructuring Committee discussed the KEIP and KERP plans

with senior management, the Committee went into executive session in order to be able to ask questions directly of the professional advisors. The Restructuring Committee recommended certain changes to the structure of the proposed plans. The plans were revised to incorporate the recommended changes. Once approved by the Restructuring Committee, the plans were presented to the GTAT Board of Directors. The Board of Directors had sufficient time to review the draft plans, comment, recommend changes, and ask questions before approving the plans, subject to bankruptcy court approval, on December 12, 2014.

E. Description of KEIP

24. The KEIP provides incentive payments to the nine Senior Management Employees, based on five key performance indicators (“KPIs”) to be measured on the earlier of (a) emergence from chapter 11 bankruptcy or (b) the closing of a sale of substantially all of GTAT’s assets (such earlier date, the “Measurement Date”):

- value of ASF Furnaces shipped;
- cash operating expense run-rate (measured based on accrued expenses);
- research and development and capital expenditure costs, as measured against estimates in the Business Plan;
- cash generated from the monetization of GTAT’s assets located at the Mesa Facility, excluding ASF Furnaces; and
- advancement of the Merlin and Hyperion strategic projects.

These metrics are designed to reward the Senior Management Employees only to the extent they deliver value to the stakeholders in these cases. For example, the more ASF Furnaces that are sold in the near term, or the more the executives are able to outperform the projections in the Business Plan, the more value that arises for stakeholders and the better the executives are rewarded under the KEIP. In other words, the KEIP aligns the interests of the Senior Management Employees with those of the stakeholders.

25. GTAT realizes that its KEIP and KERP programs may draw objections from those who will argue that resolution of the Apple disputes and the wind-down of Mesa were all that were required for this reorganization, and that the Senior Management Employees are being offered a disguised retention program. As demonstrated by the KPIs described below, however, the Senior Management Employees will only be rewarded if they produce results going forward that return value to the estates through metrics that have nothing to do with the milestones already accomplished.

26. GTAT believe that the Senior Management Employees are the key drivers of the success of the Debtors' business and that linking a significant portion of their overall compensation to the performance of the business is appropriate. The Senior Management Employees decide upon, and oversee the implementation of, the key strategies that are necessary for GTAT to achieve its Business Plan, to deliver value to the creditors, and to return GTAT to profitability. The Senior Management Employees are not guaranteed any payments and must meet specific targets in order to earn their incentive bonus.

27. An overview of the KEIP structure is provided below.

Participation

GTAT has limited participation in the KEIP to nine (9) executives. GTAT believes that each Senior Management Employee has the ability to positively impact the restructuring process, is critical to such process, and is in a position that will materially affect value maximization.

Determination of Incentive Bonuses / Cost of KEIP

Under the proposed KEIP, each Senior Management Employee has the opportunity to earn an Incentive Bonus if certain pre-established KPIs are achieved in five (5) critical areas, as follows:

KPI	Weighting	Threshold	Target	Stretch
Value of ASF Furnaces Shipped ⁷	40%	\$144,000,000	\$180,000,000	\$216,000,000
Cash Operating Expense Run-Rate ⁸	20%	\$67,500,000	\$65,000,000	\$62,500,000
R&D/CAPEX Cost ⁹	20%	\$46,200,000	\$42,000,000	\$37,800,000
Cash from Monetization of Mesa Assets, excluding ASF Furnaces ¹⁰	10%	50%	75%	100%
Advancement of Merlin & Hyperion Strategic Progress	10%	As determined in the reasonable discretion of the independent members of the Restructuring Committee		

Each Senior Management Employee has been assigned a Target Incentive Bonus that will be payable if GTAT achieves Target Performance with respect to the KPIs. The proposed KEIP mirrors GTAT's pre-petition executive incentive plan in that the payout at Threshold performance is equal to 50% of Target, while payout at Stretch performance is equal to 200% of Target. The Target Incentive Bonuses range from 19% to 100% of a Senior Management Employee's base salary. Assuming that all KPIs are met at the Target level, the expected cost of the program would be \$2.275 million.

Payment of the Incentive Bonuses is contingent on GTAT satisfying goals with respect to the five KPIs. In the event that Threshold performance is not achieved with respect to a KPI, no incentive bonus will be earned with respect to that particular KPI. In the event actual performance falls between Threshold and

⁷ "Value of ASF Furnaces Shipped" includes booked revenue plus revenue considered deferred for accounting purposes until acceptance criteria at the customer site is met, including shipping and installation charges.

⁸ "Cash Operating Expense" is defined as operating expenses on the same basis as reflected in GTAT's most recent public securities filings, excluding (a) charges for depreciation and amortization; (b) write-offs or write-downs of goodwill, intangible assets, fixed assets, long lived assets, accounts receivable, and inventory, (c) gains or losses on sales of assets, (d) contingent consideration income or expense, (e) non-recurring and restructuring charges, including, but not limited to, professional fees related to the restructuring, costs associated with the closure or consolidation of facilities, severance, and other separation costs, retention and incentive compensation costs, contract termination costs, and (f) any other non-cash expenditures for such period.

⁹ "R&D/CAPEX Cost" is calculated as the annual estimate of R&D/CAPEX cost for 2015.

¹⁰ For any payment to be earned under this KPI, gross proceeds of \$7.5 million must be generated from the Mesa non-ASF assets. Threshold, Target and Stretch goals represent gross proceeds as a percentage of the Hilco appraisal for such sold assets.

Target or between Target and stretch, the Incentive Bonus with respect to that KPI will be determined using linear interpolation.

The extent to which the operational KPIs have been achieved will be based on actual cumulative performance through the end of the month prior to the month in which the Measurement Date occurs. The goals for certain of the KPIs (*i.e.*, value of ASF Furnaces shipped, cash operating expense run-rate, R&D/CAPEX costs) are expressed as annual amounts based on current projections. For these KPIs, the goals at each level of performance (*i.e.*, Threshold, Target, and Stretch) will be adjusted to account for the timing of the Measurement Date.

Payout Timing

Senior Management Employees are entitled to payment of the Incentive Bonuses, to the extent earned, if still employed with GTAT on the Measurement Date. Payment will occur within thirty (30) days of the Measurement Date.

Termination Provisions

Upon voluntary termination (including retirement) or termination for cause before the Measurement Date, a Senior Management Employee's Incentive Bonus will be forfeited. Such forfeited Incentive Bonus will be available to be allocated to key employees that are promoted or commence employment subsequent to the date Court approval is obtained with respect to the KEIP.

For any other terminations (*e.g.*, death, disability, termination by GTAT without cause), the Incentive Bonus will not be forfeited. Rather, Senior Management Employees (or in the event the Senior Management Employee dies, his or her estate) will remain eligible to receive a pro rata portion of the Incentive Bonus at the same time as it otherwise would have been payable had employment continued.

Other

Senior Management Employees will not be eligible to receive incentive compensation under any other incentive program of GTAT, including the Management Incentive Plan ("MIP") or the Incentive Plan ("IIP").¹¹

¹¹ Certain of the Senior Management Employees are currently party to a pre-petition commission plan tied to specific performance goals. To the extent these agreements are executory contracts, GTAT has not yet

28. Achieving the performance levels for the five KPIs will be a challenge, and achieving the Stretch levels will require significant efforts by the Senior Management Employees. Following approval of the Wind Down Motion, the Senior Management Employees have begun to conduct an extensive marketing effort to sell ASF Furnaces. In addition, the Senior Management Employees will have to manage cash operating, R&D, and CAPEX costs carefully and make every effort to achieve an efficient and timely emergence from chapter 11 or consummation of a sale of substantially all of GTAT's assets to achieve Target levels of other KPIs. Moreover, they will do this under the already-extraordinary pressures of running GTAT's global operations and dealing with the day-to-day demands of these chapter 11 cases. The established KPIs are very demanding, requiring the Senior Management Employees to put forth their best efforts to achieve the goals set forth in the KEIP.

F. Description of the KERP

29. The KERP provides retention bonus payments to the twenty-eight Non-Insider Employees, which range from 10% to 53% of the annual base salary of each Non-Insider Employee. An additional discretionary pool, not to exceed \$300,000 in the aggregate or \$50,000 individually, will be made available for GTAT's Chief Executive Officer to award retention bonuses on an as-needed basis for employees that are not insiders.

30. It is essential to GTAT that the Non-Insider Employees remain employed until the Measurement Date, as they are critical to the operations of GTAT and, without their continued support, the value of GTAT will not be maximized. The Non-Insider Employees include employees from various functions, including, but not limited to accounting, business

decided whether to assume or reject such agreements. If assumed in the exercise of GTAT's business judgment, however, those Senior Management Employees could receive payments unrelated to the KEIP. The details of these pre-petition contracts will be provided to the U.S. Trustee, and the Committee.

development, engineering, finance/tax, human resources, legal, and supply chain. Without payments under the proposed KERP, the Non-Insider Employees are likely to seek alternative employment, harming the value of the estates to the detriment of GTAT's goal of maximizing value.

31. While several Non-Insider Employees have titles that include words such as "vice president" suggesting officer status, none of the Non-Insider Employees are in reality insiders. Although the Non-Insider Employees are important to GTAT's business and are particularly vital during these chapter 11 cases, their titles do not reflect that such employee has access to inside information. In particular, several of the KERP Participants with a title of "vice president" have such title for marketing purposes. None of the Non-Insider Employees were appointed by GTAT's Board of Directors. The Non-Insider Employees' duties are limited to engineering, research and development, or other corporate functions. In each case, the Non-Insider Employees report to intermediate managers and the scope of their authority is quite limited. None of the Non-Insider Employees report directly to the Chief Executive Officer or the Board of Directors. In all cases, the Non-Insider Employees are, at most, officers in name only.

32. Tellingly, GTAT did not include every employee with an official-sounding title to participate in the KERP. GTAT has a total of twenty-one vice presidents, but only seven of these employees were selected as Non-Insider Employees. This discretion further confirms that merely holding a title of vice president conveys no special privileges or duties within GTAT.

33. An overview of the KERP is as follows.

Participation

The proposed KERP is designed to motivate twenty-eight (28) employees who GTAT believes are not insiders to remain with GTAT until the Measurement Date. GTAT believes that the Non-Insider Employees are critical to the operations of GTAT and,

without their continued support, the value of GTAT would not be maximized.

The Non-Insider Employees represent a cross-section of functions that are critical to the operations of GTAT, including: accounting, business development, engineering, finance/tax, human resources, legal, and supply chain.

Non-Insider Employees will not be eligible to receive incentive compensation under any other incentive program of GTAT, including the MIP or the IIP.

Determination of Retention Bonuses/Cost of KERP

The proposed KERP will provide Retention Bonuses ranging from 10% to 53% of base salary to each Non-Insider Employee, with employees who are most critical in their role at or near the upper end of such range. The Retention Bonuses range from \$10,990 to \$125,000. The total cost of the KERP, excluding the discretionary pool, assuming all Retention Bonuses are earned, will not exceed \$1.413 million.

Payout Timing

The Retention Bonuses will be paid within thirty days of the Measurement Date.

Termination Provisions

Upon voluntary termination (including retirement) or termination for cause before the Measurement Date, a Non-Insider Employee's Retention Bonus will be forfeited. Such forfeited Retention Bonus will be available to be designated as a Retention Bonus for current or future non-insider employees of GTAT, including current Non-Insider Employees if they are promoted or take on additional responsibilities.

For any other terminations (*e.g.*, death, disability, termination by GTAT without cause) before the Measurement Date, the Retention Bonus will not be forfeited. Rather, Non-Insider Employees (or in the event the Non-Insider Employee dies, his or her estate) will be paid the Retention Bonus in full within thirty days of the Measurement Date.

Discretionary Pool

In addition, a discretionary KERP pool not to exceed \$300,000 in the aggregate or \$50,000 individually will be available for the CEO to award retention bonuses in his discretion on an as-needed basis for employees that are not insiders.

BASIS FOR RELIEF REQUESTED

34. A company's decision to file for chapter 11 necessarily creates difficulties for its employees and can lead to retention problems, low morale, and low productivity. Unfortunately, these negative consequences affect the company's ability to continue its normal business operations, and impair the company's ability to maximize its value, and achieve the highest possible recovery for its stakeholders. For this reason, bankruptcy courts and stakeholders have long authorized thoughtful incentive and retention plans designed to reduce disruption to employees while improving morale and incentivizing job performance. Courts have routinely approved payments under these plans pursuant to Bankruptcy Code section 363(b) as an exercise of the debtor's business judgment. BAPCPA did not eliminate the use of these plans, and continues to permit payments and added protections that are offered to employees.

35. GTAT seeks approval of the KEIP and KERP in order to maintain its business operations, preserve its financial condition, continue to make sales of core products, sell ASF Furnaces and non-core assets located at the Mesa Facility, develop emerging product lines, and meet its debtor-in-possession duties during the chapter 11 cases. These needs cannot be met without the support of the Eligible Employees. Every one of the Eligible Employees faces an uncertain future inherent in continuing to work for a company undergoing a chapter 11 reorganization; therefore, it is crucial that GTAT maintain the loyalty of these key employees and incentivize its executives to deliver their best performance to maximize GTAT's value. Indeed, the loss of any of the Eligible Employees will reduce the value of GTAT's estates and

will impair GTAT's financial condition. The Eligible Employees are highly skilled, and these skills and institutional knowledge are critical to GTAT's restructuring efforts. Without the implementation of the KEIP and KERP, the Eligible Employees are likely to pursue other employment during the restructuring process. Since the Petition Date, GTAT has lost twenty-five valued employees as a result of voluntary attrition. Three of these employees would have been included in the KERP. For this reason, GTAT must be afforded the chance to implement the KEIP and KERP plans to offer incentives for their key executives and protections that will prevent their key non-executive employees' departure for new employment.

**KEIP AND KERP SHOULD BE APPROVED AS REASONABLE
EXERCISE OF GTAT'S BUSINESS JUDGMENT**

36. The KEIP and KERP have been designed by GTAT and A&M to incentivize performance and ensure continued employment within the parameters of Bankruptcy Code sections 363(b) and 503(c).¹² The prohibitions and restrictions in section 503(c)(1) and (2) do

¹² Section 503(c) of the Bankruptcy Code provides:

(c) Notwithstanding subsection (b), there shall neither be allowed, nor paid –

(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that-

(A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;

(B) the services provided by the person are essential to the survival of the business; and

(C) either-

(i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

(ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such management employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;

(2) a severance payment to an insider of the debtor, unless-

(A) the payment is part of a program that is generally applicable to all full-time employees; and

not apply here, as those provisions restrict the ability of “insiders” to receive payments as part of retention or severance plans. As described below, the KEIP is an incentive plan rather than a retention or severance plan, and the KERP applies solely to non-insiders.

A.
**KEIP Is an Incentive Plan Justified by the
Facts and Circumstances of These Chapter 11 Cases**

37. The KEIP is an incentive plan with relevant and important performance targets that will be challenging to meet and, if met, will maximize the value of GTAT and creditor recoveries. Therefore, the KEIP is not a retention plan, meant to ensure continued employment for insiders, which is prohibited by section 503(c)(1) of the Bankruptcy Code, nor a severance plan prohibited by section 503(c)(2). To the contrary, the KEIP is a thoughtfully designed plan for insiders that incentivizes them to achieve a successful restructuring and, therefore, is amply justified by the facts and circumstances of these chapter 11 cases. *See, e.g., In re Velo Holdings, Inc.*, 472 B.R. 201 (Bankr. S.D.N.Y. 2012) (approving key employee incentive plan tied to performance goals under section 3636 and 503(c)(3), and overruling objection of U.S. Trustee). Here, as in *Velo Holdings*, the KEIP is not prohibited under section 503(c)(1) or (2), but is permitted under section 503(c)(3).

38. Although a byproduct of the KEIP may be that the Senior Management Employees are encouraged to remain with GTAT, that effect does not convert the KEIP into a retention-driven plan. *See In re Global Home Prods.*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (finding that proposed incentive plans were “primarily incentivizing and only coincidentally

(B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or
(3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

retentive” and noting, “[t]he fact . . . that all compensation has a retention element” did “not reduce the Court’s conviction that [the debtors’] primary goal” in approving the incentive plans was “to create value by motivating performance”). A plan that indirectly causes its participants to remain employed does not detract from the KEIP’s primary purpose, which is to motivate the Senior Management Employees to maximize value to GTAT’s estates and, in turn, motivate the workforce at large to ensure recoveries are maximized.

39. The ruling in *Global Home Products* is particularly instructive. That decision provides detailed analysis on whether a debtor’s requested employee incentive plan meets the business judgment standard. The court there balanced different factors to determine whether the incentive plan was permitted under section 503(c), including:

- (a) whether the plan is calculated to achieve the desired performance;
- (b) whether the costs of the plan are reasonable within the context of the debtor’s assets;
- (c) whether the scope of the plan is fair and reasonable;
- (d) whether the plan is consistent with industry standards;
- (e) whether the debtor engaged in due diligence related to the need for the plan, the employees that needed to be incentivized, and what type of plans are generally available in a particular industry; and
- (f) whether the debtor received independent counsel in performing due diligence and creating and authorizing incentive compensation.

See, e.g., In re Global Home Prods., 369 B.R. at 786 (citing *In re Dana Corp.*, 358 B.R.

567,576-77 (Bankr. S.D.N.Y. 2006)). The incentive plan requested here is a reasonable exercise of GTAT’s sound business judgment because it was carefully designed with expert assistance from A&M and seeks to incentivize key employee performance to continue GTAT’s day-to-day operations and ensure the maximization of GTAT’s value, which are GTAT’s highest priorities during these chapter 11 cases.

40. First, the KEIP is calculated to achieve desired performance. Performance levels and incentive payments are directly linked to the value of ASF Furnaces shipped and cash generated from the monetization of non-ASF Furnace assets from the Mesa Facility, as well as control of cash operating expense run rates and R&D and CAPEX costs. In addition, the KPIs include advancement of GTAT's Merlin and Hyperion strategic projects. All KPIs were designed to promote the maximization of GTAT's value, and to align the interests of the Senior Management Employees with those of the stakeholders in these chapter 11 cases.

41. Second, the incentive payments contemplated in the KEIP are reasonable and fair because the total KEIP payments at Target levels and base salary are actually lower than the amount of compensation that Senior Management Employees would have been expected to earn in the absence of the chapter 11 cases, based upon historical compensation levels. The shortfall is even more pronounced when the long-term equity incentives that were used pre-petition as compensation are factored in. The Threshold level of performance must be met for the participants to receive anything at all. The payments are reasonable because they are directly tied to KPIs representing metrics to measure the maximization of GTAT's value and are a direct result of the Senior Management Employees' performance.

42. Third, the KEIP is reasonable in scope because it only applies to nine executives and officers. These Senior Management Employees are the key drivers of the success of the Debtors' business because they decide upon, and oversee the implementation of, the key strategies that are necessary for GTAT to meet the Business Plan and to deliver value to the creditors. GTAT must rely on the efforts of those nine Senior Management Employees, and their performance will have the greatest impact on achieving the KPIs.

43. Fourth, GTAT hired A&M to provide expert advice in designing the KEIP. A&M made its recommendations based upon a thoughtful and thorough review of market and bankruptcy comparables. GTAT discussed its options with A&M and arrived at the current structure of the KEIP only after several rounds of review and revisions. Therefore, GTAT's consultation with A&M and the ensuing approval by the Restructuring Committee and the Board of Directors demonstrate a reasonable exercise of sound business judgment.

44. Fifth, GTAT and A&M reviewed multiple incentive plans implemented by similar companies in chapter 11 and discussed in detail which employees would have the greatest impact on the restructuring process and should be incentivized.

45. Sixth, GTAT has worked with A&M and Rothschild, Inc. in analyzing which KPIs should be used for the KEIP. These efforts, combined with GTAT's review of A&M's comparables and expert advice, constitute sufficient due diligence to meet the business judgment standard.

46. For all these reasons, GTAT submits that the KEIP is justified by the facts and circumstances of these chapter 11 cases.

B.
KERP Applies Only to Non-Insiders, and is Not Prohibited by Bankruptcy Code Section 503(c)(1) or (2)

47. In addition, the KERP is not subject to section 503(c)(1) or (2) of the Bankruptcy Code. Section 503(c)(1) and (2) of the Bankruptcy Code apply only to insiders. Section 101(31)(B) of the Bankruptcy Code defines an insider as any director, officer, person in control of the debtor, partnership where the debtor is a general partner, general partner of the debtor, or relative of a general partner, director, officer, or person in control of the debtor. *See* 11 U.S.C. § 101(31)(B). None of the Non-Insider Employees meet this definition of "insider."

48. The United States Bankruptcy Court for the District of Delaware has held that any person holding an officer's title is presumptively an officer and thus an insider. *In re Foothills Texas, Inc.*, 408 B.R. 573 (Bankr. D. Del. 2009). The court held in the *Foothills Texas* case that "A party seeking to rebut that presumption must present evidence sufficient to establish that the person holds the title of an officer in name only and, in fact, does not meet the substantive definition of the same, *i.e.*, he or she is not taking part in the management of the debtor." *Id.* at 574-75; *cf. Tomsic v. Sales Consultants of Boston, Inc. (In re Salienc Assoc.)*, 371 B.R. 578, 585-87 (Bankr. D. Mass. 2007) (denying summary judgment as to whether president was in control of debtor and therefore an insider).

49. As demonstrated above, the Non-Insider Employees do not report to the CEO or to GTAT's Board of Directors; rather, they report to intermediate managers. *See In re Global Aviation Holdings Inc.*, 478 B.R. 142, 148 (Bankr. E.D.N.Y. 2012) (finding that director-level employees were not "officers" because none of them were members of board, participated in corporate governance, attended board meetings or reported to board). The Non-Insider Employees' duties are limited to engineering, research and development, or other operational functions that are limited in scope, such as tax and finance. Courts have declined to find insider status where the scope of authority is quite limited. *See In re Borders Group, Inc.*, 453 B.R. 459, 469 (Bankr. S.D.N.Y. 2011) (employees in KERP plan were not insiders because none of them had authority to implement company policy, did not report to board of directors, and were subordinate to actual officers). The titles that some of these Non-Insider Employees have been given reflect the employees' individual functions and roles. *See In re NMI Systems, Inc.*, 179 B.R. 357, 370 (Bankr. D.D.C. 1995) (finding that vice president was not insider because he was

conferred title “for purposes of marketing” only and was not “in the inner circle making the company’s critical financial decisions.”).

50. Accordingly, GTAT submits that the Non-Insider Employees are, at most, officers in name only, do not take part in the management of GTAT, and therefore are not “insiders”.¹³

C.
KEIP and KERP Should be Approved Pursuant to
Bankruptcy Code Sections 363(b) and 503(c)(3)

51. Because the KEIP and KERP are not prohibited by section 503(c)(1) or (2) of the Bankruptcy Code, the Court should authorize GTAT to execute the plans under section 363(b)(1) and 503(c)(3) of the Bankruptcy Code.

52. The standard for approving payments under section 503(c)(3) is essentially the same “business judgment” standard for approving similar transactions under section 363(b)(1) of the Bankruptcy Code. *See, e.g., In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 804 (Bankr. D. Del. 2007) (holding that, because bonus plan’s primary motivation was not retentive, section 503(c)(1) did not apply and business judgment standard was to be used to assess plan); *In re Global Home Products, LLC*, 369 B.R. 778, 787 (Bankr. D. Del. 2007) (same).

53. Section 363(b)(1) of the Bankruptcy Code allows a debtor in possession to use property of the estate “other than in the ordinary course of business” after notice and a hearing, in the exercise of GTAT’s business judgment. 11 U.S.C. § 363(b)(1); *see also, e.g., In re SW Boston Hotel Venture, LLC*, 2010 Bankr. LEXIS 2924 (Bankr. D. Mass. 2010) (granting debtors’ motion to pursue leasing strategy under section 363(b) as based on reasonable business judgment); *In re Martin*, 91 F.3d 389, 395 (3d. Cir. 1996) (stating that under normal

¹³ The Debtors are prepared to submit at the hearing on this Motion additional evidence necessary to rebut any presumption of insider status conferred by the Non-Insider Employees’ titles. Should the Court find that any presumption of insider status has not been overcome, the Debtors reserve the right to move any such Non-Insider Employee from the KERP to the KEIP.

circumstances, courts will defer to debtor's judgment in using property under section 363(b) if there is legitimate business justification). Therefore, the estate's property may be used other than in the ordinary course of business if the debtor can show a "sound business purpose" for such use. See *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) ("[t]he rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him [supports a] good business reason to grant the application.").

54. The business judgment rule shields a debtor's management from judicial second guessing, "absent a showing of bad faith, self-interest, or gross negligence." *In re Integrated Resources*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citing *Smith v. Van Gorkom*, 488 A.2d 858, 872-73 (Del. 1985)). As courts in this Circuit have noted, "A debtor's business decision should be approved by the court unless it is shown to be so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice." *White v. Official Comm. of Unsecured Creditors (In re Cadkey Corp.)*, 317 B.R. 19, 22-23 (D. Mass. 2004). See also *In re New Bedford Capacitor, Inc.*, 2003 Bankr. LEXIS 2328, 13-14 (Bankr. D. Mass. June 27, 2003) (noting that debtor's business decision should be approved by bankruptcy court "unless it is shown to be so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice.") (internal citation omitted).

55. Applying the business judgment rule in chapter 11 cases, courts have regularly permitted employee payments that are outside the normal course of business. See, e.g., *In re Aerovox, Inc.*, 269 B.R. 74, 80-81 (Bankr. D. Mass. 2001) ("Bankruptcy courts will approve key employees retention programs if the Debtor has used proper business judgment in formulating the program and the court finds the program to be "fair and reasonable."); *Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R.

147, 153-55 (D. Del. 1999) (affirming bankruptcy court's authorization of key employee compensation program, holding "[i]n determining whether to authorize the use, sale, or lease of property of the estate under [section 363(b)], courts require the debtors to show that a sound business purpose justifies such actions"); *In re Global Home Prods.*, 369 B.R. at 784 ("The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor's business judgment."); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)).

56. The KEIP and KERP each represent a sound business purpose and satisfy the business judgment rule. The KEIP and KERP facilitate the maximization of GTAT's value by incentivizing, retaining, and protecting crucial employees to ensure that the Business Plan is being implemented and the highest value of assets is realized. Payments under the KEIP directly incentivize key executives to maximize GTAT's value through sales of ASF Furnaces, monetization of non-ASF Furnace assets at the Mesa Facility, advancing strategic projects, and controlling cash operating expense run rates, and R&D and CAPEX expenditures. Even if the executives are fully incentivized, however, these goals cannot be met if skilled key employees depart prematurely. The KERP provides non-insider employees with security and a reward for remaining loyal to GTAT during this critical period.

57. Accordingly, for the foregoing reasons, GTAT requests the approval of the KEIP and KERP since such approval is in the best interest of GTAT's estates, their creditors, and all parties in interest.

NOTICE

58. Notice of this Motion has been provided by email, facsimile, or overnight courier to: (a) the Office of the United States Trustee for Region 1, 1000 Elm Street, Suite 605

Manchester, NH 03101, Attn: Geraldine L. Karonis; (b) Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178, Attn: James S. Carr, Esq., counsel to the Creditors' Committee; (c) the Internal Revenue Service, 1000 Elm St., 9th Floor Manchester, NH 03101, Attn: District and Regional Directors; (d) U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549; (e) Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153-0119, Attn: Gary T. Holtzer, Esq. and Michael F. Walsh, Esq., counsel to Apple Inc.; and (f) those parties who have formally filed requests for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002.

WAIVER OF MEMORANDUM OF LAW

59. GTAT requests that the Court waive and dispense with the requirement set forth in Rule 7102(b)(2) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of New Hampshire (the “LBR”) that any motion filed shall have an accompanying memorandum of law. The legal authorities upon which GTAT relies are set forth in the Motion. Accordingly, GTAT submits that a waiver of the LBR 7102(b)(2) requirement is appropriate under these circumstances.

WHEREFORE, GTAT respectfully request that the Court enter an order, substantially in the form attached hereto, granting the relief requested herein and granting GTAT such other and further relief as is just and proper.

Dated: December 29, 2014
Manchester, NH

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Co-Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT NEW HAMPSHIRE**

-----X
: **Chapter 11**
: **Case No. 14-11916-HJB**
: **Jointly Administered**
: **RE: Docket No. __**
-----X

**ORDER APPROVING KEY EMPLOYEE INCENTIVE PLAN
AND KEY EMPLOYEE RETENTION PLAN**

Upon the motion (the “Motion”)² of GT Advanced Technologies Inc. (“GT”) and its affiliated debtors as debtors in possession (collectively, “GTAT” or the “Debtors”) for entry of an order, pursuant to sections 363 and 503 of the Bankruptcy Code, approving the KEIP and the KERP, all as set forth more fully in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157; and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; after due deliberation and sufficient cause appearing therefor, it is hereby

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 Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The KEIP and the KERP are each approved on the terms described in the Motion.
3. GTAT is authorized to take all actions necessary to implement the KEIP, and the KERP, and to make all payments provided under each of such plans.
4. All amounts earned and payable under the KEIP and the KERP shall have administrative expense priority under sections 503(a) and 507(a)(2) of the Bankruptcy Code for all purposes in these chapter 11 cases and in any other cases under the Bankruptcy Code to which these cases may be converted.
5. GTAT is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
6. The requirement set forth in LBR 7102(b)(2) that any motion filed shall have an accompanying memorandum of law is waived.
7. The Court retains justification with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2015
Manchester, NH

HONORABLE HENRY J. BOROFF
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

[FILED UNDER SEAL]