

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re:	Chapter 11
CROSSROADS SYSTEMS, INC.	Case No. 17-51926-rbk
Debtor.	

DEBTOR’S APPLICATION FOR ORDER PURSUANT TO BANKRUPTCY CODE SECTION 327(e) AND BANKRUPTCY RULES 2014 AND 2016 AUTHORIZING EMPLOYMENT AND RETENTION OF OLSHAN FROME WOLOSKY LLP AS SPECIAL COUNSEL TO THE DEBTOR IN POSSESSION

TO THE HONORABLE RONALD B. KING, UNITED STATES BANKRUPTCY JUDGE:

Crossroads Systems, Inc. (“Debtor”) the debtor and debtor in possession in the above-captioned case hereby applies (the “Application”) to the Court for entry of an order, under section 327(e) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the employment and retention of Olshan Frome Wolosky LLP (the “Firm”) as special counsel for the Debtor effective as of August 13, 2017. In support of this Application the Debtor relies upon the *Affidavit of Adam W. Finerman in Support of the Debtor’s Application to Employ Olshan Frome Wolosky LLP as Special Counsel to the Debtor*, attached hereto as **Exhibit A** (the “Finerman Declaration”). In further support of this Application, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 327 and 328 of the Bankruptcy Code. Such relief is also warranted under Bankruptcy Rules 2014 and 2016 and Local Bankruptcy Rules 2014 and 2016.

BACKGROUND

3. On August 13, 2017 (the “Petition Date”), the Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).

4. The Debtor continues to operate its business as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no creditor’s committee has been appointed in this Chapter 11 Case by the Office of the United States Trustee for the Western District of Texas (the “United States Trustee”). No trustee or examiner has been appointed in the Debtor’s Chapter 11 Case.

RELIEF REQUESTED

5. By this Application, the Debtor seeks to employ and retain the Firm, effective as of August 13, 2017, as the Debtor’s special counsel to represent the Debtor as the Debtor’s outside corporate counsel. The Debtor respectfully requests entry of an order, pursuant to sections 327(e) of the Bankruptcy Code, authorizing the Debtor to employ and retain the Firm as special counsel, effective as of the date of this Application, to perform necessary legal services during this Chapter 11 Case.

BASIS FOR RELIEF

6. Section 327(e) of the Bankruptcy Code provides that subject to court approval, a debtor, as a debtor in possession, “may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the

best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.” 11 U.S.C. § 327(e).

7. Under section 329 of the Bankruptcy Code, attorneys representing a debtor must “file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.” 11 U.S.C. § 329(a).

8. Bankruptcy Code section 328(a), in turn, provides that, subject to court approval, the employment of professional persons under section 327 of the Bankruptcy Code may be “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis” subject to later re-evaluation by the Court. 11 U.S.C. § 328(a).

9. Bankruptcy Rule 2014 requires that an application for retention include “specific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant’s knowledge, all of the [firm’s] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.” Fed. Bankr. P. 2014.

10. The Debtor respectfully submits that it should be authorized to retain and employ the Firm in accordance with the terms and conditions set forth in the Engagement Letter attached hereto as **Exhibit B** (“Engagement Letter”). As discussed below and in the Finerman Declaration,

the Firm does not represent or hold any interest adverse to the Debtor or its estate with respect to the matters for which it is being retained.

11. The Firm has previously represented the Debtor as outside corporate counsel. The Firm's services are needed to assist Eric Terry Law, PLLC. It is necessary and appropriate for the Debtor to retain special counsel to bring needed expertise as outside corporate counsel, particularly as the Firm is already familiar with the Debtor's situation and needs.

12. As discussed herein, the Firm has extensive experience and an excellent reputation for providing high-quality legal services in corporate business matters. Accordingly, the Debtor respectfully submits that the Firm is well-qualified to provide its services to the Debtor as special counsel in a cost-effective, efficient, and timely manner. Eric Terry Law, PLLC, the Firm and the Debtor are fully aware of the scope of the services each is to perform in connection with this Bankruptcy Case and will take steps to avoid unnecessary duplication of effort.

13. In addition, as also set forth herein, the Firm's proposed fee structure is market-based, fair, and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code. The fee structure appropriately reflects the nature and scope of services to be provided by the Firm, its experience with respect to providing real estate services, and the fee and expense structures typically used by the Firm and other leading firms that bill their clients on an hourly basis.

THE FIRM'S QUALIFICATIONS

14. The Debtor selected the Firm as its special counsel because of the Firm's recognized expertise in the field of corporate business matters and the Firm is already familiar with the Debtor's situation and needs. The Debtor believes that the Firm has the knowledge and experience necessary to deal effectively with the issues that will arise during this Chapter 11 Case and that the Firm's representation of the Debtor is critical to the success of the Debtor's

reorganization efforts.

SERVICES TO BE RENDERED

15. The services of Firm are necessary to enable the Debtor to execute faithfully its duties as debtor in possession and to preserve and enhance the value of the Debtor's estate. Subject to further order of this Court, the Firm will render services to the Debtor including, but not limited to, serving as outside corporate counsel to the Debtor, work with the Debtor on appropriate disclosures and other required filings, and represent the Debtor other matters which may arise during the pendency of this case. The representation may also include assisting Eric Terry Law, PLLC.

16. It is necessary and essential that the Debtor, as debtor in possession, employ attorneys to render the foregoing professional services. The Firm has indicated a willingness to act on behalf of, and render such services to, the Debtor.

THE FIRM'S DISINTERESTEDNESS

17. To the best of the Debtor's knowledge, and except as otherwise set forth herein and in the Finerman Declaration, (i) neither the Firm nor any attorney at the Firm holds or represents an interest adverse to the Debtor's estate; (ii) neither the Firm nor any attorney at the Firm is or was a creditor or an insider of the Debtor; (iii) neither the Firm nor any attorney at the Firm is or was, within two years before the Petition Date, a director, officer, or employee of the Debtor; and (iv) the Firm does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtor, or for any other reason.

18. The Firm has informed the Debtor that throughout the Chapter 11 Case, the Firm

will continue to conduct periodic conflicts analyses to determine whether it is performing or has performed services for any significant parties in interest in these cases and that the Firm will promptly update the Finerman Declaration to disclose any material developments regarding the Debtor or any other pertinent relationships that come to the Firm's attention.

PROFESSIONAL FEES AND EXPENSES

19. The Firm has provided and will be providing professional services to the Debtor under its standard rate structure. The hourly rates for the attorneys who will be primarily responsible for this matter are \$710.00 and \$350.00 per hour. Hourly rates for other attorneys, paralegals and assistants are set forth in the Engagement Letter. The Firm has advised the Debtor that the hourly rate set forth in the Engagement Letter is subject to periodic increases in the normal course of the Firm's business. The Firm will provide notice of any rate increases to the Debtor, the United States Trustee, and the Court.

20. Consistent with the Firm's policy with respect to its other clients, the Firm will charge the Debtor for all other services provided and for other charges and disbursements incurred in the rendition of services. These charges and disbursements include, among other things, costs for telephone charges, photocopying, travel, business meals, computerized research, messengers, couriers, postage, witness fees, and other fees related to trials and hearings.

21. The Firm intends to apply to this Court for allowance of compensation for professional services rendered and reimbursement of expenses incurred in the Chapter 11 Cases in accordance with Bankruptcy Code sections 330 and 331, with the applicable provisions of the Bankruptcy Rules and the Local Bankruptcy Rules, and with any other applicable procedures and orders of the Court. The Firm will seek compensation for the services of each attorney and paraprofessional acting on behalf of the Debtor in this case at the then-current standard hourly rate

charged for such services on a non-bankruptcy matter.

22. The Firm has agreed to accept as compensation such sums as may be allowed by the Court on the basis of the professional time spent, the rates charged for such services, the necessity of such services to the administration of the estate, the reasonableness of the time within which the services were performed in relation to the results achieved, and the complexity, importance and nature of the problems, issues, and tasks addressed in these cases.

23. Other than as set forth above, no arrangement is proposed between the Debtor and the Firm for compensation to be paid in this case. The Firm has not shared or agreed to share any of its compensation from the Debtor with any other entity, except as permitted under section 504(b)(1) of the Bankruptcy Code.

24. The Debtor submits that the employment and retention of the Firm, as of the date of this Application and on the terms and conditions set forth herein, is in the best interest of the Debtor, its' estate, creditors, stakeholders and other parties in interest, and therefore, should be approved.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter an order authorizing the employment and retention of Olshan Frome Wolosky LLP as special counsel, effective as of August 13, 2017, on the terms described above and granting such other and further relief as may be just and proper.

Respectfully submitted this August 24, 2017.

ERIC TERRY LAW PLLC

By: /s/ Eric Terry

Eric Terry
Texas Bar No. 00794729
3511 Broadway
San Antonio, TX 78209
Telephone: (210) 468-8274
Facsimile: (210)-319-5447

PROPOSED COUNSEL FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this documents has been served on this 24th day of August, 2017 via Court's ECF System and/or via U.S. First Class Mail to the twenty largest unsecured creditors, counsel for 210, the United States Trustee, and the holders of Preferred Interests (and by email/fax if known). A copy of this document can also be downloaded on the Debtor's website at <https://www.crossroads.com>.

By: /s/ Eric Terry

Eric Terry

SERVICE LIST FOR 17-51926

Office of The United States Trustee
615 E. Houston Street, Suite 533
San Antonio, TX 78205

ACT Capital Management, LLLP
Attn: Amir L. Ecker
100 W. Lancaster Avenue
Suite 110
Wayne, PA 19087

American Stock Transfer
PO Box 12893
Philadelphia, PA 19176-0893

Amir L. Ecker
800 Newtown Road
Villanova, PA 19085

Andree Christian
200 Summit Lake Dr.
Valhalla, NY 10595

Anson Investment Master Fund LP
111 Peter St., Ste. 904
Toronto, Ontario M5V 2H1
CANADA

Anyck Turgeon
10005 Macy Dr.
Austin, TX 78726

Brad Johns
6090 Northbelt Pkwy., Ste. A
Norcross, GA 30071

Bruce Evans & Katherine Evans
TBE
4351 Gulf Shore Blvd. North
Naples, FL 34103

Carolyn Wittenbraker
3315 Southwestern
Dallas, TX 75225

Castle Union LLC
676 N. Michigan Ave., Ste. 3605
Chicago, IL 60611

Charles H. Miller
PO Box 120
Glenelg, MD 21737

Dane Capital Fund LP
747 3rd Ave, 4th Floor
New York, NY 10017

Daniel Dranginis
9526 Hemswell Pl.
Potomac, MD 20854

Daniel Greenberg
71 Grove St., #2
Stamford, CT 06901

Dave Houghton
37940 Greenwood Farm Lane
Purcellville, VA 20132

David Cerf
5100 El Dorado Pkwy., #594
McKinney, TX 75070

David Trumbo
3780 E. 15th St., Ste. 202
Loveland, CO 80538

Dennis L. Adams
120 Kynlyn Rd.
Radnor, PA 19087

Joseph D. Bound
209 St. James Drive
Langhorne, PA 19047

FBO Elliott Brackett SEP IRA
c/o Hilltop Securities Inc.
Attn: Marti Flores
8201 Preston Road, Suite 600
Dallas, TX 75225

OTA, LLC
Attn: Vinny DiGesio
One Manhattanville Road
Purchase, NY 10577

Jennifer Crane
3944 Sapphire Loop
Round Rock, TX 78681

Equity Trust Co. TTEE of the Maria T.
Ecker IRA
800 Newtown Road
Villanova, PA 19085

Equity Trust Co. TTEE of the Amir L. Ecker
IRA
800 Newtown Road
Villanova, PA 19085

Maria T. Ecker
800 Newtown Road
Villanova, PA 19085

The Ecker Family Partnership
800 Newtown Road
Villanova, PA 19085

EDJ Limited
c/o Jeff Porter,
Porter Partners
300 Drakes Landing Rd, Ste 175
Greenbrae, CA 94904

Peter Faulhaber
133 River Street
Sleeping Hollow, NY 10591

Phyllis D. Kalista
12 Kinterra Road
Wayne, PA 19087

Laurence D. Keller
54 West Ferry Street
New Hope, PA 18938

Pergament Advisors, LLP
Attn: Steve Brown
237 Park Avenue, 9th Floor
New York, NY 10017

Porter Partners, LP
300 Drakes Landing Road
Suite 175
Greenbrae, CA 94904

Robert Sims
8609 Sea Ash Circle
Round Rock, TX 78681

Mark Stubits
1021 Edgemill Way
West Chester, PA 19832

Wolverine Asset Mgmt LLC
Attn: Andrew Sujdak, Managing Director
175 West Jackson Street
Chicago, IL 60604

John M. Tilney
PO Box 4593
Henley-on-Thames
Berkshire RG9 4UT
UNITED KINGDOM

Gibson, Dunn & Crutcher, LLP
2100 McKinney Avenue
Suite 1100
Dallas, Texas 75201