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
	§	
Debtor.	§	
	§	

DEBTOR'S EXPEDITED MOTION FOR AN ORDER AUTHORIZING THE ASSUMPTION OF DEBTOR'S RESTRUCTURING SUPPORT AGREEMENTS

Crossroads Systems, Inc., a Delaware corporation, as debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), files this *Debtor's Expedited Motion for an Order Authorizing the Assumption of Debtor's Restructuring Support Agreements* (the "Motion") and in support thereof, respectfully represents as follows:

Jurisdiction and Venue

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

Background

2. On August 13, 2017 (the "Petition Date"), the Debtor commenced the above captioned case (the "Chapter 11 Case") by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Case, and no committees have been appointed or designated.

3. A detailed description of the Debtor and its business, and the facts and circumstances supporting the Motion and the Debtor's Chapter 11 Case is set forth in greater detail in the *Statement of Background Information and Declaration of Jennifer Crane, Chief Financial Officer of Crossroads Systems, Inc., in Support of Debtor's Chapter 11 Petition and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated herein by reference.

4. Concurrently with the commencement of the Chapter 11 Case, the Debtor is filing its *Prepackaged Plan of Reorganization for Crossroads Systems, Inc. Under Chapter 11 of the United States Bankruptcy Code* (the "Prepackaged Plan")[1] and *Disclosure Statement Under 11 U.S.C. § 1125 in Support of the Prepackaged Plan of Reorganization for Crossroads Systems, Inc. Under Chapter 11 of the United States Bankruptcy Code* (the "Disclosure Statement"). Only Preferred Interests (Class 5) are impaired under the Prepackaged Plan. Therefore, only holders of Preferred Interests are entitled to vote. All other classes of claims and interests are unimpaired, and therefore, not entitled to vote and are deemed to have accepted the Prepackaged Plan. Solicitation on the Prepackaged Plan began prior to the filing of the Chapter 11 Case, and, prior to the Petition Date, the Debtor had received acceptances to the Prepackaged Plan from holders of more than two-thirds of equity interests in the only class impaired by the Prepackaged Plan.

5. Prior to the Petition Date, the Debtor executed (i) a restructuring support agreement (the "210 RSA") and a letter agreement (the "210 Letter") with 210/CRDS Investment LLC ("210") and (ii) a restructuring support agreement (the "Wolverine RSA", and together with the 210 RSA, the "RSAs") with Wolverine Flagship Fund Trading Limited

[1] Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Prepackaged Plan.

("Wolverine"). The 210 RSA is attached hereto as **Exhibit A**, the 210 Letter is attached hereto as **Exhibit B** and the Wolverine RSA is attached hereto as **Exhibit C.** The 210 Letter and the 210 RSA are deemed executed contemporaneously and both constitute the complete agreement among the parties. Therefore, reference herein to the 210 RSA includes reference also to the 210 Letter. As more fully described in the RSAs and the Prepackaged Plan and Disclosure Statement, the Debtor is seeking to implement a restructuring of its business, obtain new capital, gain access to financing and relieve itself of certain other contractual obligations.

6. Pursuant to the 210 RSA, subject to the terms and conditions of a securities purchase agreement, 210 will invest $4 million in exchange for 49.49% of the Reorganized Debtor's New Common Stock. In addition, subject to the terms and conditions of a securities purchase agreement and loan agreement, 210 will provide the Reorganized Debtor up to $10 million in unsecured loans to finance acquisitions as the Reorganized Debtor implements its Strategy. Pursuant to the 210 RSA, the Debtor was required to file bankruptcy and confirm a plan of reorganization effectuating the terms of the 210 RSA. The proposed equity investment and additional financing provide significant value to the Debtor and the Debtor's estate. In recognition that 210 has committed capital and incurred expenses, and will continue to incur expenses, associated with pursuing the proposed transactions in the 210 RSA, the Debtor has agreed to a modest breakup fee and expense reimbursement in the total amount of $500,000 under a limited set of conditions. The amount of the proposed breakup fee and expense reimbursement is consistent with 210's estimated out-of-pocket expenses to be incurred in connection with the bankruptcy filing and the consummation of the transactions contemplated in the RSA. One of the conditions to the enforceability of the RSA is that the Debtor file a motion to assume the RSA on or before August 14, 2017. If the RSA is not authorized by the

Bankruptcy Court on or before August 23, 2017, 210 will not be obligated to consummate the transactions contemplated in the RSA.

7. OTA, LLC ("OTA"), ACT Capital Management, LLP ("ACT"), and certain related ACT parties (collectively, the "Consenting Preferred Shareholders") all executed joinder agreements (collectively, the "Joinder Agreements") to the 210 RSA binding all Consenting Preferred Shareholders to the terms of the 210 RSA.

8. Pursuant to the Wolverine RSA, among other things, Wolverine agreed to vote in favor of the Prepackaged Plan so long as it contained the terms and conditions set forth in the 210 RSA. Further, pursuant to the Wolverine RSA, the Debtor agreed to pay for reasonable legal fees and expenses incurred by Wolverine with respect to the negotiation and execution of the Wolverine RSA.

Relief Requested

9. The Debtor seeks the entry of an order under Bankruptcy Code §§ 105(a), 365(a), and Bankruptcy Rule 6006 authorizing the Debtor's assumption of the RSAs.

Basis for Relief Requested

10. Bankruptcy Code § 365(a) provides that a debtor, subject to court approval, may assume or reject an executory contract. 11 U.S.C. § 365(a). A decision to assume or reject an executory contact pursuant to Bankruptcy Code § 365 must be based on the debtor's business judgment. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Taylor*, 913 F.2d 102 (3d Cir. 1990); *Sharon Steel Corp. v. Nat'l Fuel Gas Distribution Corp.*, 872 F.2d 36 (3d Cir. 1989); *In re Gardinier, Inc.*, 831 F.2d 974, 975 n.2 (11th Cir. 1987). The business judgment test is not a strict standard and merely requires a showing that either assumption or rejection of the contract at issue will benefit the debtor's

estate. *See In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd sub nom*, *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984).

11. Upon a finding that a debtor has exercised its sound business judgment in determining that assumption of an agreement is in the best interests of its estate, the court should approve the assumption under Bankruptcy Code § 365(a). *See, e.g.*, *In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); *In re TS Indus., Inc.*, 117 B.R. 682, 685 (Bankr. D. Utah 1990); *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

12. The Debtor's decision to assume the 210 RSA is a sound exercise of its business judgment. Through the 210 RSA, the Debtor will obtain much needed equity capital and access to a future financing source that will allow the Debtor to continue executing on its current patent monetization strategy and to continue to pursue other opportunities to the benefit of the Debtor, its creditors, and shareholders. The new capital and access to financing under the 210 RSA will benefit the Debtor and its entire estate.

13. The Debtor's decision to assume the Wolverine RSA is a sound exercise of business judgment. Through the Wolverine RSA and the Joinder Agreements, more than two thirds in amount of the Class 5 Preferred Interests agreed to vote for the Prepackaged Plan. The reorganization contemplated by the Plan, which eliminates the Preferred Interests in exchange for cash and shares of common stock, will also allow the Debtor to continue executing on its strategy.

14. The amount of the proposed breakup fee and expense reimbursement, as incorporated in the 210 RSA, is appropriate under the circumstances. 210 has committed significant capital and incurred expenses associated with pursuing the proposed transactions.

Moreover, the breakup fee and expense reimbursement is consistent with 210's estimated out-of-pocket expenses to be incurred in connection with the bankruptcy filing and the consummation of the transactions contemplated in the RSA. Given the relatively modest amount of the breakup fee and expense reimbursement and the significant value 210 has agreed to provide to the Debtor, the Debtor believes that the fee is appropriate in all respects.

15. Furthermore, absent an assumption of the 210 RSA, 210 will not be obligated to provide the requested financing and the benefits that the Debtor and its estate will obtain through the Debtor's proposed re-structuring. One of the conditions to the enforceability of the 210 RSA is that the Debtor file a motion to assume the 210 RSA and obtain approval from the Bankruptcy Court on or before August 23, 2017. If the RSA is not authorized by the Bankruptcy Court on or before August 23, 2017, 210 will not be obligated to consummate the transactions contemplated in the RSA. Therefore, the Bankruptcy Court should approve the Debtor's assumption of the RSA.

Debtor's Reservation of Rights

16. Nothing contained herein is intended or should be construed as an admission as to the validity or priority of any claim against the Debtor or a waiver of the Debtor's rights to dispute any claim. The Debtor expressly reserves its rights to contest any claim and to withdraw this Motion at any time prior to approval by the Bankruptcy Court in the event that the parties are unable to reach an agreement on any objections to the Motion.

WHEREFORE, the Debtor respectfully request that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 13th day of August, 2017

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