

**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.	§	
	§	

**DECLARATION OF RICHARD K. COLEMAN, JR., EXECUTIVE DIRECTOR OF  
CROSSROADS SYSTEMS, INC. IN SUPPORT OF (I) APPROVAL OF THE  
DISCLOSURE STATEMENT; AND (II) CONFIRMATION OF THE PREPACKAGED  
PLAN OF REORGANIZATION FOR CROSSROADS SYSTEMS, INC. UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE**

Pursuant to 28 U.S.C. § 1746, I, Richard K. Coleman, Jr., hereby submits this declaration (this “Declaration”) under penalty of perjury:

1. I am the Executive Director of Crossroads Systems, Inc., a corporation organized under the laws of Delaware and the debtor and debtor in possession (collectively, the “Debtor”). In such capacity, I am familiar with the Debtor’s day-to-day operations and financial affairs.

2. I was involved in working with counsel to negotiate and draft the *Prepackaged Plan of Reorganization for Crossroads Systems, Inc. Under Chapter 11 of the Bankruptcy Code (with First Technical Modifications)* [Docket No. 69] (collectively, with any further amendments and including any Plan Supplement, the “Prepackaged Plan”)<sup>1</sup> and the Disclosure Statement regarding the Prepackaged Plan [Docket No. 2] (including any amendments thereto, the “Disclosure Statement”). I have reviewed and am familiar with the terms and conditions of the Prepackaged Plan,

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Prepackaged Plan.

the Disclosure Statement, and the Prepackaged Plan Supplement documents filed in connection with the Prepackaged Plan.

3. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me or verified by Jennifer Crane, the Debtor's Chief Financial Officer, Mark Hood, the Debtor's Executive Vice-President or the Debtor's professional advisors, or upon my experience with the Debtor's operations. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

4. I am authorized to submit this Declaration in support of approval of the Disclosure Statement and in support of confirmation of the Prepackaged Plan. I have personally reviewed the Debtor's Exhibit and Witness List for the September 18, 2017, 10:30 a.m. hearing and the underlying exhibits themselves ("Debtor's Exhibits").

## **I. Background**

### **A. The Debtor's Business and Operations; Current Assets and Capital Structure; and Events Leading up to Bankruptcy**

5. A detailed description of the Debtor's Business and Operations, Current Assets and Capital Structure, and Events Leading up to Bankruptcy 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") [Docket No. 4], filed August 13, 2017, attached hereto as **Exhibit A** and incorporated herein by reference.

### **B. Accomplishments During Bankruptcy**

6. As evidenced by the First Day Declaration, the Debtor intended to move quickly through the chapter 11 process. Consistent with the First Day Declaration, the Debtor is seeking

approval of the Disclosure Statement and confirmation of the Debtor's Prepackaged Plan in 36 days after the Petition Date.

7. Service by best and adequate means. Despite (i) the expedited timeline in this case and (ii) the fact that, except for Class 5 Preferred Interests, the Debtor is not soliciting votes because all Creditors and holders of Interests are Unimpaired, the Debtor has taken all reasonable steps to provide the best and most adequate means of service to Creditors and Holders of Interests of (i) the filing of this bankruptcy case; (ii) the relevant deadlines for objections; (iii) notice of hearing dates; (iv) the deadlines to object to confirmation; (v) the final bar date to file a Proof of Claim; and (vi) how to obtain pleadings filed by the Debtor including the Prepackaged Plan. The Debtor served (i) the Notice of Combined Hearing to Consider (I) Approval of Disclosure Statement with Respect to Prepackaged Plan of the Debtor and (II) Confirmation of Prepackaged Plan of Debtor; (ii) the Notice of Unimpaired Non-Voting Status Under Prepackaged Plan of the Debtor; and (iii) the Notice of Commencement of Chapter 11 Case and Proof of Claim Bar Date on all Creditors and Holders of Interests. *See* Certificate of Service [Docket No. 30]. The Debtor served the Notice of Filing Redlined Prepackaged Plan (with First Technical Modifications) and Notice of Prepackaged Plan Supplement on all Creditors and Holders of Interests. *See* [Docket Nos. 70 and 71] and Exhibits 10 and 11 of Debtor's Exhibits. The Debtor also has made all of its filings available on its webpage at [www.crossroads.com](http://www.crossroads.com).

8. Trading Order. The Debtor obtained this Court's approval of an Interim and a Final Order granting Debtor's Emergency Motion for Entry of Interim and Final Orders Establishing Notification and Hearing Procedures of, or Claims of Worthlessness with Respect to Certain Equity Securities and for Related Relief ("Trading Orders") [Docket Nos. 25 and 42]. The Trading

Orders protected the Tax Attributes, an important asset of the Debtor's estate as discussed in the First Day Declaration.

9. Assumption Orders. The Debtor obtained this Court's approval of an Interim and Final Order granting Debtor's Expedited Motion for an Order Authorizing the Assumption of Debtor's Restructuring Agreements with 210 and Wolverine ("Assumption Orders") [Docket Nos. 24 and 41]. The Assumption Orders allowed assumption of the restructuring agreements committing, subject to court approval, 210 to provide significant benefits to the Debtor as discussed in the First Day Declaration.

10. Resolutions with SEC, U.S. Trustee, and IRS. The SEC and U.S. Trustee had comments regarding certain provisions in the Prepackaged Plan. Acting proactively by reaching out to counsel for the SEC and the U.S. Trustee, the Debtor was able to resolve the comments of the SEC and the U.S. Trustee with technical modifications to the Prepackaged Plan and the Prepackaged Plan Supplement. The IRS has no issues with the Debtor's Prepackaged Plan.

11. Positive Shareholder Response. Since the Petition Date, the stock price for the Debtor has increased significantly, which I believe demonstrates an endorsement of the Prepackaged Plan by the shareholders.

12. No Objections. The deadline to file objections to the Prepackaged Plan was September 14, 2017. As of the date of this Declaration, no objections have been filed.

**C. The Chapter 11 Prepackaged Plan**

13. The Debtors filed their Prepackaged Plan and Disclosure Statement on the Petition Date, then filed technical modifications to the Prepackaged Plan on September 11, 2017. Except for Class 5 Preferred Interests, all the Classes of Claims or Interests in the Prepackaged Plan are Unimpaired and therefore deemed to accept the Prepackaged Plan. Solicitation of the Prepackaged Plan began before the Petition Date, and prior to the Petition Date, the Debtor had received

acceptances to the Prepackaged Plan from Holders of more than two-thirds of the Interests in the only Class Impaired by the Prepackaged Plan. Solicitation of the Prepackaged Plan was adequate and complied with the Bankruptcy Code, the Bankruptcy Rules, and applicable non-bankruptcy law. The Prepackaged Plan (i) will allow for the investment and commitments by 210 to be implemented; and (ii) will preserve assets of the Debtor including the Patents and the Tax Attributes, all of which will maximize shareholder value.

14. As discussed below, this Court should approve the Disclosure Statement and confirm the Prepackaged Plan.

## **II. Approval Disclosure Statement under 11 U.S.C. § 1125**

15. I have reviewed the Disclosure Statement, and I believe it contains adequate information as defined in 11 U.S.C. § 1125.

16. The Disclosure Statement contains a considerable amount of information and financial data concerning the Debtor, its estate and the contemplated reorganization pursuant to the transaction with 210. The Disclosure Statement includes an extensive history of the Debtor's business including a description of the Debtor's organization structure, prepetition business operations, and events leading to the Debtor's bankruptcy filing. The Disclosure Statement describes the Prepackaged Plan in detail, including the various Classes of Claims and Interests scheduled by the Debtor and the treatment of those Claims and Interests. Furthermore, whether a Claim or Interest is Impaired under the Prepackaged Plan is also fully described in the Disclosure Statement. The Disclosure Statement also describes the means for execution and implementation of the Prepackaged Plan. The Disclosure Statement provides a feasibility analysis of the Prepackaged Plan, as well as certain risk factors posed to the Creditors and Holders of Interests. The Disclosure Statement indicates that Creditors and Holders of Interests will receive significantly more value under the Prepackaged Plan than they would in a chapter 7 liquidation.

17. I believe the information contained in the Disclosure Statement is information and data of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtor, to enable a hypothetical investor typical of the holders of claims and interests in the Debtor's bankruptcy case to make an informed judgment about the Prepackaged Plan as described in the Disclosure Statement.

**III. Confirmation Requirements under 11 U.S.C. § 1129**

18. Based on my understanding of the Prepackaged Plan, the achievements that have occurred throughout the Chapter 11 Case, and the discussions and advice I have received from the Debtor's professionals concerning the requirements for confirming the Prepackaged Plan, I believe the Prepackaged Plan satisfies all the requirements of section 1129 of the Bankruptcy Code, and should therefore be confirmed.

**A. 11 U.S.C. § 1129(a)(1): The Prepackaged Plan complies with Title 11**

19. I have been advised and have come to understand that the Prepackaged Plan needs to classify claims and interests under section 1122 of the Bankruptcy Code.

20. To comply with section 1122, Article IV of the Prepackaged Plan designates the following 6 Classes of Claims and Interests for the Debtor:

Class 1 – Allowed Secure Non-Tax Claims

Class 2 – Allowed Secured Tax Claims

Class 3 – Allowed Priority Non-Tax Claims

Class 4 – Allowed General Unsecured Claims

Class 5 – Preferred Interests

Class 6 – Common Interests

21. The classification scheme in the Prepackaged Plan classifies Claims with common priority and rights against the applicable bankruptcy estate together. The Prepackaged Plan

classifies Interests in a separate Class. The Prepackaged Plan does not classify similar Claims or similar Interests separately.

22. I have also been advised and come to understand that there are certain requirements for a Prepackaged Plan that are spelled out in section 1123 of the Bankruptcy Code.

23. In addressing these section 1123 requirements, Article II of the Prepackaged Plan provides for treatment of unclassified Claims; Article III of the Prepackaged Plan identifies that all Claims and Interests are Unimpaired except for Class 5 Preferred Interests; Article IV of the Prepackaged Plan provides for the same treatment of each Creditor in the same Class of Claims and same treatment of each Interest Holder in the same Class of Interests. Article V of the Prepackaged Plan provides for adequate means for implementation of the Prepackaged Plan; Article V provides for retention by the Debtor of all of the property of the Estate except as stated in the Prepackaged Plan; Article V of the Prepackaged Plan makes provisions for the prohibition of issuing non-voting equity securities in the Debtor's New Organizational Documents.

24. Further, Article V of the Prepackaged Plan provides that on the Effective Date, except as otherwise specifically provided for in the Prepackaged Plan, all issued and outstanding stock in the Debtor shall be canceled as more fully described in the Prepackaged Plan and an identical number of shares in the Reorganized Debtor shall be immediately re-issued to the Holders of such Interests in accordance with the terms of the Prepackaged Plan. The transfer restrictions contained in the Charter Amendment shall be binding on all holders of New Common Stock in the Reorganized Debtor.

25. Pursuant to section 1123, I have been advised and come to understand that the Prepackaged Plan *may* include certain provisions. Consistent with section 1123, the Prepackaged

Plan in Article VI provides for the assumption of certain contracts and the rejection of certain contracts.

26. Further, pursuant to section 1123, the Prepackaged Plan in Article IX provides settlements with Holders of Claims and Interests including settlements with Richard Coleman, Jr., Mark Hood, and Jennifer Crane. In the Debtor's business judgment, all the settlements contained in the Prepackaged Plan are in the best interests of the Debtor, the Reorganized Debtor, the Estate, Claims and Interest Holders and are fair, equitable and reasonable. All the settlements fall within the reasonable range of litigation possibilities and are truly the product of arms-length bargaining and not of fraud or collusion.

**B. 11 U.S.C. § 1129(a)(2): Prepackaged Plan Proponent's Compliance with Title 11**

27. The Debtor has operated its business under court supervision while in chapter 11. The Debtor has worked with its bankruptcy counsel to make sure the Debtor has complied with orders entered by the Bankruptcy Court and the various provisions of Title 11. Although all Creditors and Interest Holders are Unimpaired except for Class 5 Preferred Interests, the Debtor provided notice of the Combined Hearing on the Disclosure Statement and the Prepackaged Plan to Creditors and Interests Holders by adequate means as discussed.

**C. 11 U.S.C. § 1129(a)(3): Prepackaged Plan is Proposed in Good Faith**

28. The Debtor has proposed the Prepackaged Plan in good faith and with the legitimate and honest purpose of reorganizing its business to maintain its operations as a going concern and provide full payment for Creditors and maximum value for shareholders. The Prepackaged Plan has not been proposed by any means forbidden by law or for any improper purpose. The Prepackaged Plan is the result of good faith, arm's length negotiations between the Debtor and its constituents.



29. Each of the transactions contemplated by the Prepackaged Plan is necessary to achieve the reorganization contemplated by the Prepackaged Plan under the Debtor's financial circumstances.

**D. 11 U.S.C. § 1129(a)(4): Disclosure and Approval of Payments**

30. All fees and expenses incurred by professionals in this Chapter 11 Case prior to the Confirmation Date will be subject to the final approval of the Court. Pursuant to Article II of the Prepackaged Plan, requests for payment of Professional Compensation Claims must be filed with the Court on or before thirty (30) days after the Effective Date of the Prepackaged Plan. Article II of the Prepackaged Plan further provides that only the amount of the Professional Compensation Claims allowed by the Court will be paid. With respect to fees and expenses incurred after the Confirmation Date, Article II of the Prepackaged Plan provides that the Debtors shall pay reasonable legal fees and expenses related to implementation and consummation of the Prepackaged Plan incurred by the Debtors from and after the Confirmation Date in the ordinary course without any further notice or approval of the Court. Accordingly, any payment made or to be made by the Debtor for services or for costs and expenses incurred in connection with the Chapter 11 Case, or in connection with the Prepackaged Plan and incident to the Chapter 11 Case, has been approved by, or will be subject to the approval of, the Court as reasonable.

**E. 11 U.S.C. § 1129(a)(5): Disclosure of Management and Payments to Insiders**

31. Article V of the Prepackaged Plan discloses the identity of the individuals proposed to serve after confirmation of the Prepackaged Plan as directors and officers. The appointments are consistent with the interests of Creditors and Holders of Interests and public policy.

32. On September 11, 2017, the Debtor filed its Notice of Appointment of New Officers and Directors Pursuant to the Prepackaged Plan in which it identified the members of the New Board and the officers of the Reorganized Debtor, the identities of any insiders serving on the New

Board or as an officer of the Reorganized Debtor, and the compensation arrangements for such insiders.

**F. 11 U.S.C. § 1129(a)(6): Regulatory Rate Approval**

33. The Debtor's business does not involve the establishment of rates over which any governmental regulatory commission has or will have jurisdiction after confirmation of the Prepackaged Plan.

**G. 11 U.S.C. § 1129(a)(7): Best Interest of Creditors Test**

34. The Liquidation Analysis in the Disclosure Statement demonstrates that a liquidation of the Debtor under chapter 7 would result in less than full payment to Allowed Preferred Interests and Allowed General Unsecured Claims and, more likely than not, no value to Holders of Common Interests. The Debtor has prepared an Updated Liquidation Analysis attached hereto as **Exhibit B**. The Updated Liquidation Analysis demonstrates even more specifically that a liquidation of the Debtor under chapter 7 would result in a substantially lower distribution to Holders of Preferred Interests and, more likely than not, no value to Holders of Common Interests. Accordingly, the Distribution of value to Holders of Preferred Interests and Common Interest Holders under the Prepackaged Plan is greater than those Holders would receive in a chapter 7 liquidation of the Debtor.

**H. 11 U.S.C. § 1129(a)(8): Acceptance of Prepackaged Plan by All Classes**

35. Article III of the Prepackaged Plan indicates that all Creditors and Interest Holders, except for Class 5 Preferred Interests, are Unimpaired under the Prepackaged Plan, and therefore, deemed to accept the Prepackaged Plan. Solicitation of the Prepackaged Plan began before the Petition Date, and prior to the Petition Date, the Debtor had received acceptances to the Prepackaged Plan from Holders of more than two-thirds of the Interests in the only Class Impaired

by the Prepackaged Plan. Solicitation of the Prepackaged Plan was adequate and complied with the Bankruptcy Code, the Bankruptcy Rules, and applicable non-bankruptcy law.

**I. 11 U.S.C. § 1129(a)(9): Treatment of Priority Claims**

36. I have been advised that the Bankruptcy Code requires certain treatments of priority claims. Under Article II of the Prepackaged Plan, Holders of Allowed Administrative Claims shall be paid an amount of Cash equal to the amount of their Allowed Administrative Claims, except as otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtor or Reorganized Debtor, as applicable, with the consent of 210. Under Article II of the Prepackaged Plan, Holders of Other Priority Unsecured Claims will be paid in full in Cash or such other treatment as is consistent with the requirements of section 1129(a)(9) of the Bankruptcy Code, except to the extent that a Holder of an Allowed Other Priority Unsecured Claim agrees to a less favorable treatment.

37. Article II of the Prepackaged Plan provides that Allowed Priority Unsecured Tax Claims shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, except to the extent that a Holder of an Allowed Priority Unsecured Tax Claim agrees to less favorable treatment.

38. In addition, Article II of the Prepackaged Plan provides for the satisfaction of Allowed Secured Tax Claims by (a) payment in full in Cash of the Allowed Secured Tax Claim; (b) transferring the collateral securing the Allowed Secured Tax Claim, or (c) such other treatment consistent with the requirements of section 1129(a)(9) of the Bankruptcy Code.

**J. 11 U.S.C. § 1129(a)(10): Acceptance of Prepackaged Plan by Impaired Classes**

39. Pursuant to Article III of the Prepackaged Plan, except for Class 5 Preferred Interests, all the Classes of Claims or Interests in the Prepackaged Plan are Unimpaired and therefore deemed to accept the Prepackaged Plan. Solicitation of the Prepackaged Plan began

before the Petition Date, and prior to the Petition Date, the Debtor had received acceptances to the Prepackaged Plan from Holders of more than two-thirds of the Interests in Class 5 Interests. Accordingly, all Classes of Claims and Interests are either deemed to have accepted the Prepackaged Plan or have accepted the Prepackaged Plan.

**K. 11 U.S.C. § 1129(a)(11): Feasibility of the Prepackaged Plan**

40. I believe the Prepackaged Plan is feasible and not likely to be followed by a liquidation or need for further reorganization of the Debtor.

41. The Debtor has sufficient Cash on hand to pay the Claims of Creditors in full. Regardless, as the Prepackaged Plan provides, all Cash necessary for the Reorganized Debtor to make Distributions under the Prepackaged Plan shall be obtained from existing Cash balances or the SPA Purchase Consideration.

42. The settlements in the Prepackaged Plan will virtually eliminate the initial liabilities of the Reorganized Debtors. The Debtor has sufficient Cash on hand to pay the amounts contemplated by the settlements.

43. The SPA Purchase Consideration and other benefits of the SPA Closing will allow the Reorganized Debtor to maximize shareholder value through the monetization of the Patents and the acquisition of assets.

44. The transactions contemplated in the Prepackaged Plan ensure that the Prepackaged Plan is feasible under section 1129(a)(11) of the Bankruptcy Code. I, therefore, believe the settlements and transactions contemplated in the Prepackaged Plan are in the best interest of the Debtor and its estate. The Debtor, therefore, in its business judgment and consistent with its fiduciary duty, believes that the transaction with 210, pursuant to the 210 RSA and provided for in the Prepackaged Plan, provides the best possible avenue for the Debtor to obtain the significant

liquidity necessary to emerge from the Chapter 11 Case. Accordingly, the Debtor has requested that the Court approve the terms and conditions of the SPA.

45. The settlements and transactions will allow the Debtor to pay its Creditors in full and maximize shareholder value going forward and provide reasonable assurance that confirmation of the Debtor's Prepackaged Plan is not likely to be followed by liquidation or the need for further financial reorganization.

**L. 11 U.S.C. § 1129(a)(12): Payment of All Bankruptcy Fees**

46. Article II of the Prepackaged Plan provides that, until the Chapter 11 Case is closed, all fees incurred under 28 U.S.C. § 1930(a)(6) will be paid by the Reorganized Debtor.

**M. 11 U.S.C. § 1129(a)(13): Continuation of Retiree Benefits**

47. The Debtor does not maintain a retirement Prepackaged Plan as defined by section 1114 of the Bankruptcy Code, and therefore the Prepackaged Plan does not require the payment of retiree benefits.

**N. 11 U.S.C. § 1129(a)(14): Domestic Support Obligations**

48. The Debtor is not required to pay a domestic support obligation, either under a judicial or administrative order or by statute.

**O. 11 U.S.C. § 1129(a)(15): Objection to Prepackaged Plan Confirmation by a Holder of an Unsecured Claim**

49. The Debtor is not an individual.

**P. 11 U.S.C. § 1129(a)(16): Restrictions on Transfers of Property by Nonprofit Entities**

50. The Debtor is not a non-profit entity.

**Q. 11 U.S.C. § 1129(b) – Common Interests**

51. All Classes of Claims and Interests, except for Class 5 Preferred Interests, are Unimpaired under the Prepackaged Plan. Regardless, the Debtor has agreed to make an

evidentiary showing that the Prepackaged Plan does not discriminate unfairly and is fair and equitable with respect to Class 6 Common Interests. The Prepackaged Plan does not discriminate unfairly against Holders of Class 6 Interests because there is not another similarly situated Class of Interests. The Prepackaged Plan is fair and equitable with respect to the Holders of Class 6 Interests because there are no Classes of Interests junior to Class 6 that are receiving a Distribution or retaining any property under the Prepackaged Plan.

**R. 11 U.S.C. § 1129(c)**

52. The Prepackaged Plan is the only Prepackaged Plan filed in this Chapter 11 Case.

**S. 11 U.S.C. § 1129(d)**

53. The primary purpose of the Prepackaged Plan is not avoidance of taxes or avoidance of the requirements of securities laws. There has been no objection filed by any governmental unit asserting such purpose.

**T. 11 U.S.C. § 1129(e)**

54. The Chapter 11 Case is technically a “small business case” within the meaning of the Bankruptcy Code. The Debtor has complied with the requirements of a small business case.

**U. 11 U.S.C. § 1127(c)**

55. The Debtor filed certain technical modifications to the Prepackaged Plan on September 11, 2017. Generally, the modifications were the following: (i) clarification regarding the exemption being used for the issuance of stock under the Plan; and (ii) clarification of the timing of rejecting certain executory contracts.

**IV. Assumption and Rejection of Executory Contracts and Leases**

56. With regard to the Executory Contracts and Unexpired Leases set forth in the Debtor’s schedules, the Debtor has made decisions as evidenced by the Plan Supplement.

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I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Dated: September 15, 2017

Crossroads Systems, Inc.

*/s/ Richard K. Coleman, Jr.*

Name: Richard K. Coleman, Jr.

Title: Executive Director