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Attorneys for Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
<u>In re</u>	: Chapter 11 Case No.
	:
BEARINGPOINT, INC., <u>et al.</u>,	: 09 - 10691 (REG)
	:
Debtors.	: (Jointly Administered)
	:
-----X	

**NOTICE OF PRESENTMENT OF DEBTORS' MOTION
PURSUANT TO SECTION 363(b) OF THE BANKRUPTCY CODE FOR
AUTHORITY TO CANCEL CERTAIN INTERCOMPANY INDEBTEDNESS**

PLEASE TAKE NOTICE THAT:

On **October 22, 2009 at 11:00 a.m. (Eastern Time)**, BearingPoint, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), will present the annexed motion (the "**Motion**"), pursuant to section 363(b) of title 11 of the United States Code, to cancel certain intercompany indebtedness, all as more fully described in the Motion, to the Honorable Robert E. Gerber, United States Bankruptcy Judge, for signature, at Room 621 of the United States Bankruptcy Court for the

Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004.

The deadline to file any objections and responses to the Motion is **October 20, 2009 at 11:00 a.m. (Eastern Time)** (the “*Objection Deadline*”).

Objections and responses, if any, to the Motion, must: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), the Local Rules of the Bankruptcy Court for the Southern District of New York, and any case management orders in these chapter 11 cases; (c) set forth the name of the objecting party, the nature and amount of claims or interests held or asserted by the objecting party against the Debtors’ estates or property; and (c) set forth the basis for the objection and the specific grounds therefor.

Registered users of the Bankruptcy Court’s case filing system must electronically file their objections and responses. All other parties in interest must file their objections and responses on a 3.5 inch floppy disk or flash drive, preferably in Portable Document Format (PDF), Microsoft Word or any other Windows-based word processing format (with a hard copy delivered directly to the chambers of the Hon. Robert E. Gerber), in accordance with General Order M-182 – Electronic Means for Filing, Signing, and Verification of Documents, dated June 26, 1997.

If a written objection is timely served and filed, the Bankruptcy Court will schedule a hearing to consider the Motion before the Honorable Robert E. Gerber, United States Bankruptcy Judge, at Room 621 of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004.

Objecting parties are required to attend the hearing, and failure to appear may result in relief being granted or denied upon default.

Any objections or responses must also be served upon the following parties so as to be received no later than the Objection Deadline:

<p><i>Debtors</i> BearingPoint, Inc. Legal Department 8200 Greensboro Drive Suite 400 McLean, Virginia 22102 Attn: John DeGroote, Esq.</p>	<p><i>Office of the U.S. Trustee</i> Office of the U.S. Trustee for the S.D.N.Y. 33 Whitehall St., 21st Floor New York, New York 10004 Attn: Serene Nakano, Esq.</p>
<p><i>Counsel to the Debtors</i> Weil, Gotshal & Manges LLP, 767 Fifth Avenue New York, New York 10153 Attn: Marcia L. Goldstein, Esq. Attn: Joseph H. Smolinsky, Esq. Weil, Gotshal & Manges LLP 700 Louisiana Street, Suite 1600 Houston, Texas 77002 Attn: Alfredo R. Pérez, Esq.</p>	<p><i>Counsel to the Administrative Agent for the Debtors' Prepetition Secured Lenders</i> Paul, Hastings, Janofsky & Walker LLP Park Avenue Tower 75 East 55th Street, First Floor New York, New York 10022 Attn: Luc Despins, Esq. Attn: Leslie A. Plaskon, Esq.</p>
<p><i>Successor Trustee Under Indentures Governing the Series A and Series B Debentures</i> Law Debenture Trust Company of New York 400 Madison Avenue, Suite 4D New York, New York 10017 Attn: Robert Bice, II</p>	<p><i>Trustee Under Indentures Governing the Series C Debentures</i> The Bank of New York 101 Barclay Street, 8W New York, New York 10286 Attn: David Kerr, Vice President</p>

<p><i>Counsel to the Successor Trustee Under Indentures Governing the Series A and Series B Debentures</i></p> <p>Ropes & Gray LLP 1211 Avenue of the Americas, New York, New York 10036-8704 Attn: Mark R. Somerstein, Esq. Attn: David S. Elkind, Esq.</p>	<p><i>Counsel to Trustee Under Indentures Governing the Series C Debentures</i></p> <p>Bryan Cave LLP 1290 Avenue of the Americas New York, New York 10104 Attn: Lawrence P. Gottesman, Esq.</p>
<p><i>Representative of the Purchasers under the BearingPoint, Inc. 0.50% Convertible Senior Subordinated Debentures Due July 2010</i></p> <p>Friedman Fleischer & Lowe LLC One Maritime Plaza, Suite 1000 San Francisco, California 94111 Attn: Spencer C. Fleischer, Esq.</p>	<p><i>Counsel to the Informal Committee of Holders of Series C Debentures</i></p> <p>Bracewell & Giuliani LLP 1177 Avenue of the Americas, 19th Floor New York, New York 10036-2714 Attn: Mark B. Joachim, Esq. Attn: Robert T. Carey, Esq.</p>
<p><i>Counsel to the Statutory Committee of Unsecured Creditors</i></p> <p>Bingham McCutchen LLP 399 Park Avenue New York, New York 10022 Attn: Jeffrey S. Sabin, Esq. Attn: Neil W. Townsend, Esq. Attn: Sabin Willett, Esq.</p>	

Dated: October 12, 2009
New York, New York

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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<u>In re</u>	: Chapter 11 Case No.
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BEARINGPOINT, INC., <u>et al.</u>,	: 09 - 10691 (REG)
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Debtors.	: (Jointly Administered)
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**DEBTORS’ MOTION PURSUANT TO SECTION 363(b)
OF THE BANKRUPTCY CODE FOR AUTHORITY TO
CANCEL CERTAIN INTERCOMPANY INDEBTEDNESS**

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

BearingPoint, Inc. (“**BE**”) and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**,” and together with their non-debtor affiliates, “**BearingPoint**”),¹ submit this motion (the “**Motion**”), and respectfully represent:

¹ More information regarding the Debtors’ business and the background of these chapter 11 cases can be found in the Declaration of John DeGroot Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for

Relief Requested

1. By this Motion, the Debtors request that, pursuant to section 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), (a) to the extent that the cancellation or contribution of intercompany debt among the Debtors and their non-debtor affiliates may trigger cancellation of debt income for tax purposes to the Debtors, the Debtors and non-debtor affiliates are authorized to cancel or contribute such debt pursuant to the provisions of this Motion and (b) the Debtors are authorized to cancel or contribute as a capital contribution any intercompany obligations owed by other Debtors or non-debtor affiliates in connection with the wind down of the Debtors’ estates.

2. The Debtors have conferred with the Official Committee of Unsecured Creditors (the “**Committee**”) and the Committee supports the relief requested herein.

3. A proposed order is attached hereto as Annex “A.”

Cancellation of Intercompany Debt

4. On October 5, 2009, the Debtors filed a proposed chapter 11 plan of liquidation (the “**Plan**”).² In order to effectuate certain transactions in connection with the Plan, it will be necessary to undertake a worldwide entity rationalization of BearingPoint, including both Debtors and non-debtor affiliates. This process will require the reconciliation and resolution of (a) intercompany claims held by the Debtors against non-debtor affiliates, (b) intercompany claims held by non-debtor affiliates against the Debtors, and (c) intercompany claims held among non-debtor affiliates. Without an order of the Court permitting the

the Southern District of New York in Support of First-Day Motions and Applications, filed on February 18, 2009, the date the Debtors filed their chapter 11 petitions (the “**Commencement Date**”).

² Debtors’ Second Amended Joint Plan under Chapter 11 of the Bankruptcy Code, dated October 5, 2009 [Docket No. 1326].

cancellation of such intercompany claims, the process of reconciling and resolving BearingPoint's various intercompany positions may have adverse U.S. federal and/or state and local income tax consequences to the Debtors and their estates.

5. Specifically, the discharge or cancellation of intercompany claims held by the non-debtor affiliates may give rise to "cancellation of indebtedness" ("**COD**") income under section 61(a)(12) of the Internal Revenue Code of 1986, as amended (the "**Tax Code**"), and under corresponding provisions of state and local tax law.

6. For U.S. federal income tax purposes, BE is the common parent of an affiliated group of corporations, which includes certain non-debtor domestic and foreign subsidiaries (collectively, the "**BE U.S. Tax Group**"). As the Tax Code treats such non-debtor affiliates as branches of the BE U.S. Tax Group, income and losses of such non-debtor affiliates constitutes income and losses of the greater BE U.S. Tax Group. Accordingly, if a non-debtor foreign affiliate that is not a member of the BE U.S. Tax Group cancels an intercompany claim held against a member of the BE U.S. Tax Group, the BE U.S. Tax Group may realize COD income.

7. Under section 108(a)(1)(A) of the Tax Code, however, gross income does not include any amount that (but for section 108(a)(1)(A)) would be includible in the taxpayer's gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if the discharge occurs in a "title 11 case." A "title 11 case" means "a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case *and the discharge of indebtedness is granted by the court* or is pursuant to a plan approved by the court." See Tax Code § 108(d)(2) (emphasis added). Because the Plan

has not yet been confirmed by the Court, any discharge of the intercompany claims may not be considered “pursuant to a plan approved by the court.”

8. Accordingly, the Debtors request entry of an order that, to the extent any of the proposed intercompany cancellations or contributions give rise to COD income to the BE U.S. Tax Group, such cancellation or contribution is authorized and “granted by the court” and, accordingly, the COD income is eligible for exclusion under sections 108(a)(1)(A) and 108(d)(2) of the Tax Code and under corresponding provisions of state and local tax law.

9. The Debtors also request blanket authority to discharge or contribute as a capital contribution any intercompany claims held by the Debtors against Debtors or non-debtor affiliates. As a safeguard, the Debtors propose that, before the Debtors cancel or contribute any intercompany claim, the Debtors shall provide counsel to the Committee 48-hours notice to review the proposed cancellation or contribution. If the Committee does not object (formally or informally) to the proposed cancellation or contribution, the cancellation or contribution will be automatically effective 48 hours after the Debtors provide notice to counsel to the Committee.

**Prudent Tax Planning Provides a
Sufficient and Reasonable Business Justification**

10. Prudent tax planning provides a sufficient and reasonable business justification to approve the proposed transactions. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Although Bankruptcy Code section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale, disposition or other use of a debtor’s assets, courts in the Second Circuit and others, in applying this section, have required that it be based upon the sound business judgment of the debtor. *In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992) (holding that a judge

determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *Committee of Equity Sec. Holders v. Lionel Corp.* (*In re Lionel Corp.*), 482 F.2d 1063, 1071 (2d Cir. 1983) (same); *Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) (holding that “bankruptcy court can authorize a sale of all of a chapter 11 debtor’s assets under section 363(b)(1) when a sound business purpose dictates such action”); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reason exists for completing the sale and that the transaction is in good faith).

11. The Debtors have determined, in the sound exercise of business judgment and as part of the worldwide BearingPoint entity rationalization and sale process already underway, that it may be necessary to discharge intercompany claims between the BE affiliates.

**Order Allowing Cancellation of Certain Intercompany
Indebtedness to the Extent Requested Effective Immediately**

12. Bankruptcy Rule 6004(a) provides that “[n]otice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (j).” Bankruptcy Rule 2002(a) provides that at least 20 days’ notice by mail shall be given to all creditors and indenture trustees of “a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice.” Fed. R. Bankr. P. 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.”

13. As described above, the Tax Code permits a debtor taxpayer to exclude from gross income COD income where the discharge is “granted by the court” or “pursuant to a

plan approved by the court.” It is neither prudent nor possible for the Debtors to await the confirmation of a plan of liquidation or reorganization before commencing worldwide entity rationalization and the related intercompany claim reconciliation process. In addition, certain transactions being negotiated by non-Debtor foreign affiliates of BE may require the cancellation or contribution of intercompany claims in the immediate future. In order to ensure any COD income arising therefrom is excludible under section 108(a)(1)(A) of the Tax Code, and to otherwise permit the Debtors to begin immediately the process of reconciling and resolving BearingPoint intercompany claims, the Debtors respectfully request, as permitted by Bankruptcy Rule 6004(h) of the Bankruptcy Rules, that the Court’s order approving this be effective and enforceable immediately upon entry and the notice requirements under Bankruptcy Rules 2002(a) and 6004(a) be waived.

Jurisdiction and Venue

14. Pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 of the United States District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.), the Court has jurisdiction to consider and grant the relief requested herein. A proceeding to consider and grant such relief is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Notice

15. The Debtors shall serve notice of this Motion to parties in interest in accordance with the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures, dated March 5, 2009 [Docket No. 117]. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: October 12, 2009
New York, New York

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ANNEX A:
PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 11 Case No.**
: **09 - 10691 (REG)**
: **(Jointly Administered)**
: **Debtors.**
: **(Jointly Administered)**
-----X

**ORDER PURSUANT TO SECTION 363(b)
OF THE BANKRUPTCY CODE AUTHORIZING THE
CANCELLATION OF CERTAIN INTERCOMPANY INDEBTEDNESS**

Upon the motion (the “*Motion*”), dated October 12, 2009, of BearingPoint, Inc. (“*BE*”) and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”), pursuant to section 363(b) of title 11 of the United States Code, for authority to cancel, cause the cancellation of, contribute, or cause the contribution of certain claims against any and all Debtors and non-Debtor affiliates, all as more fully described in the Motion, and all of the proceedings before the Court, the Court finds and determines the following:

- A. Consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b).
- B. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
- C. The Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 of the United States District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.).

D. The Debtors have provided due and proper notice of the Motion and Hearing to parties in interest (the “*Notice Parties*”) in accordance with the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures, dated March 5, 2009 [Docket No. 117], and no further notice is necessary.

E. The cancellation or contribution of any intercompany claims in accordance with this Order is the discharge of indebtedness granted by the Court as contemplated by section 108 of the Internal Revenue Code of 1986, as amended (the “*Tax Code*”), and corresponding provisions of state and local tax law.

F. The legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein.

Therefore, it is hereby **ORDERED** that:

1. To the extent the cancellation or contribution of an intercompany claim may give rise to “cancellation of indebtedness” (“*COD*”) income to any member of the affiliated group of corporations of which BE is the common parent for U.S. federal income tax purposes, the Debtors and their non-debtor affiliates are authorized to cancel or contribute such claim.

2. The Debtors are authorized, but not required, to cancel, cause the cancellation of, contribute, or cause the contribution of, intercompany claims against any and all Debtors and non-Debtor affiliates described in the Motion; *provided, however*, such cancellation or contribution shall not be effective until (a) the Debtors provide 48-hours notice of such cancellation or contribution to counsel to the Official Committee of Unsecured Creditors (the “*Committee*”) and (b) the Committee does not object (informally or formally) within the 48 hours after counsel to the Committee receives such notice (or such time as may be extended by consent of the Debtors and the Committee).

3. The Debtors are authorized to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to cancel, cause the cancellation, contribute, or cause the contribution of intercompany claims against Debtors and non-Debtor affiliates as set forth herein.

4. To the extent that any cancellation or contribution of intercompany claims gives rise to COD income under section 61(a)(12) of the Tax Code, the COD income will be excluded from the Debtors' gross income under section 108(a)(1)(A) of the Tax Code.

5. Pursuant to Bankruptcy Rule 6004(h), this Order shall be effective immediately upon entry, and the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

6. The requirements set forth in Bankruptcy Rules 2002(a) and 6004(a) are hereby waived.

7. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: New York, New York
_____, 2009

UNITED STATES BANKRUPTCY JUDGE