

RECORDATION NO.

18055-1  
FILED

DEC 24 '08

-9 40 AM

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.  
20036

SURFACE TRANSPORTATION BOARD

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
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December 24, 2008

Anne K. Quinlan, Esquire  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

Dear Ms. Quinlan:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Agreement to Terminate Sulcom Lease Agreements, dated as of October 29, 2008, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Lease Agreement 0063842, Schedule 801) previously filed with the Board under Recordation Number 18055-G.

The names and addresses of the parties to the enclosed document are:

|                |   |
|----------------|---|
| Lessor:        | Sulcom, Inc.<br>10001 Woodloch Forest Drive, Suite 400<br>The Woodlands, TX 77380             |
| Lessee:        | San Manuel Arizona Railroad Company<br>P.O. Box M<br>San Manuel, AZ 85631                     |
| Former Lessee: | BHP Copper Inc.<br>c/o Bryan Cave LLP<br>2 N. Central Avenue, Suite 2200<br>Phoenix, AZ 85004 |

Anne K. Quinlan, Esquire  
December 24, 2008  
Page Two

A description of the railroad equipment covered by the enclosed document is:

53 railcars within the series PVCX 13290 - PVCX 13396 as set forth on the schedule attached to this letter.

A short summary of the schedule to appear in the index follows:

Agreement to Terminate Sulcom Lease Agreements.

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alvord", with a horizontal line extending to the right.

Robert W. Alvord

RWA/sem  
Enclosures

|    |      |       |                 |              |           |
|----|------|-------|-----------------|--------------|-----------|
| 1  | PVCX | 13290 | Collinwood      | Ohio         | 6-May-08  |
| 2  | PVCX | 13291 | Hayden          | Arizona      | 1-May-08  |
| 3  | PVCX | 13292 | Haney           | Texas        | 23-May-08 |
| 4  | PVCX | 13293 | Level           | Nebraska     | 15-May-08 |
| 5  | PVCX | 13294 | Hayden          | Arizona      | 1-May-08  |
| 6  | PVCX | 13295 | Beaumont        | Texas        | 1-May-08  |
| 7  | PVCX | 13295 | Hayden Junction | Arizona      | 1-May-08  |
| 8  | PVCX | 13297 | Level           | Nebraska     | 12-May-08 |
| 9  | PVCX | 13298 | Fairbury        | Nebraska     | 21-May-08 |
| 10 | PVCX | 13298 | Hayden          | Arizona      | 1-May-08  |
| 11 | PVCX | 13302 | Magma           | Arizona      | 1-May-08  |
| 12 | PVCX | 13304 | FT Madison      | Iowa         | 1-May-08  |
| 13 | PVCX | 13308 | Dubois          | Pennsylvania | 1-May-08  |
| 14 | PVCX | 13315 | Hayden          | Arizona      | 1-May-08  |
| 15 | PVCX | 13320 | Atlanta         | Georgia      | 1-May-08  |
| 16 | PVCX | 13351 | Ft Worth        | Texas        | 1-May-08  |
| 17 | PVCX | 13352 | Sudbury         | Ontario      | 6-May-08  |
| 18 | PVCX | 13353 | Burlington      | Iowa         | 9-May-08  |
| 19 | PVCX | 13355 | Hayden Junction | Arizona      | 1-May-08  |
| 20 | PVCX | 13356 | Beaumont        | Texas        | 1-May-08  |
| 21 | PVCX | 13357 | Beaumont        | Texas        | 1-May-08  |
| 22 | PVCX | 13366 | Macyd           | Michigan     | 5-May-08  |
| 23 | PVCX | 13369 | Beaumont        | Texas        | 1-May-08  |
| 24 | PVCX | 13380 | Allentown       | Pennsylvania | 5-May-08  |
| 25 | PVCX | 13381 | Beaumont        | Texas        | 1-May-08  |
| 26 | PVCX | 13382 |                 |              | 30-May-08 |
| 27 | PVCX | 13383 | Beaumont        | Texas        | 1-May-08  |
| 28 | PVCX | 13384 |                 |              | 30-May-08 |
| 29 | PVCX | 13385 |                 |              | 30-May-08 |
| 30 | PVCX | 13366 | Beaumont        | Texas        | 1-May-08  |
| 31 | PVCX | 13387 | Portt           | Quebec       | 18-May-08 |
| 32 | PVCX | 13388 | Hayden          | Arizona      | 1-May-08  |
| 33 | PVCX | 13388 | Beaumont        | Texas        | 1-May-08  |
| 34 | PVCX | 13370 | Beaumont        | Texas        | 1-May-08  |
| 35 | PVCX | 13371 | Beaumont        | Texas        | 1-May-08  |
| 36 | PVCX | 13372 | Beaumont        | Texas        | 1-May-08  |
| 37 | PVCX | 13373 | Beaumont        | Texas        | 1-May-08  |
| 38 | PVCX | 13374 | Magma           | Arizona      | 1-May-08  |
| 39 | PVCX | 13375 | Alfalfa         | Texas        | 1-May-08  |
| 40 | PVCX | 13376 | Beaumont        | Texas        | 1-May-08  |
| 41 | PVCX | 13377 | Beaumont        | Texas        | 1-May-08  |
| 42 | PVCX | 13378 | Hereford        | Texas        | 10-May-08 |
| 43 | PVCX | 13379 | Beaumont        | Texas        | 1-May-08  |
| 44 | PVCX | 13381 | Roscoe          | Texas        | 1-May-08  |
| 45 | PVCX | 13382 | Beaumont        | Texas        | 1-May-08  |
| 46 | PVCX | 13384 | Beaumont        | Texas        | 1-May-08  |
| 47 | PVCX | 13385 | Hayden Junction | Arizona      | 1-May-08  |
| 48 | PVCX | 13386 | Beaumont        | Texas        | 1-May-08  |
| 49 | PVCX | 13387 | Plainview       | Texas        | 1-May-08  |
| 50 | PVCX | 13389 | Beaumont        | Texas        | 1-May-08  |
| 51 | PVCX | 13390 | Beaumont        | Texas        | 1-May-08  |
| 52 | PVCX | 13398 | Beaumont        | Texas        | 1-May-08  |
| 53 | PVCX | 13398 | Plainview       | Texas        | 1-May-08  |

DEC 24 '08 -9 40 AM

SURFACE TRANSPORTATION BOARD

**AGREEMENT TO TERMINATE SULCOM LEASE AGREEMENTS**

THIS AGREEMENT TO TERMINATE SULCOM LEASE AGREEMENTS (this "Agreement") is made and entered into and effective as of the 29th day of October, 2008 ("Effective Date"), by and between SULCOM, INC. ("Sulcom"), SAN MANUEL ARIZONA RAILROAD COMPANY ("San Manuel"), and BHP COPPER INC. ("BHP").

**RECITALS:**

1. Sulcom has purchased 217 railcars (the "Sulcom Cars") from Cypress Tankcar Leasing V, LLC ("Cypress") and Sonoma Trust II, a Delaware statutory trust ("Sonoma") (together, "Sellers"), which Sulcom Cars are the subject of three leases where a Seller was previously the lessor:

- a. Master Equipment Lease Agreement No. 0063842, dated as of December 3, 1992 between Cypress (as successor in interest as lessor to the original lessor, Pitney Bowes Credit Corporation), and San Manuel (as successor in interest by assignment to the original lessee, BHP), and Schedule No. 801 thereto, dated December 23, 1992, as amended by Lease Addendum No. 1, dated as of April 9, 1996 (as amended, collectively the "1992 Cypress Lease"), for the lease of fifty-three (53) Sulcom Cars.
- b. Master Equipment Lease Agreement No. 7745243, dated as of July 28, 1994 between Cypress (as successor in interest as lessor to the original lessor, Pitney Bowes Credit Corporation), and San Manuel (as successor in interest by assignment to the original lessee, BHP), and Schedule No. 801 thereto, dated July 28, 1994, as amended by Lease Addendum No. 1, dated as of April 9, 1996 (as amended, collectively the "1994 Cypress Lease"), for the lease of ninety-eight (98) Sulcom Cars (originally the 1994 Cypress Lease was for one hundred (100) railcars – PVCX 13428 and PVCX 13447 are no longer subject to the 1994 Cypress Lease).
- c. Master Equipment Lease Agreement No. 0063842, dated as of December 3, 1992 between Sonoma, as successor in interest to Pitney Bowes Credit Corporation, and San Manuel, as successor in interest to Magma Copper Company, and Schedule No. 802 thereto dated January 26, 1993 between Sonoma, as successor in interest to Pitney Bowes Credit Corporation and San Manuel, as successor in interest to Magma Copper Company, as amended (collectively, the "1992 Sonoma Lease") for the lease of sixty-six (66) Sulcom Cars (originally the 1992 Sonoma Lease was for sixty-seven (67) railcars – PVCX 13380 is no longer subject to the 1992 Sonoma Lease).

The following railcars were not purchased by Sulcom and are not "Sulcom Cars" as the term is used in this Agreement: PVCX 13380, 13428 and 13447.

2. The 1992 Cypress Lease, the 1994 Cypress Lease and the 1992 Sonoma Lease are collectively referred to as the "Leases." The 1992 Cypress Lease and the 1994 Cypress Lease are collectively referred to as the "Cypress Leases."
3. BHP was the former Lessee under the Leases until BHP assigned the rights, and San Manuel assumed the obligations under the Leases pursuant to three (3) assignment and assumption agreements dated June 3, 1994, July 29, 1994 and September 20, 1995. Notwithstanding the assignment and assumption agreements, BHP retained certain obligations under the Leases.
4. Pursuant to a Purchase and Sale Agreement between Cypress, as seller and Sulcom, as buyer (the "Purchase Agreement"), Seller has assigned to Sulcom all of Seller's right, title and interest in and to the Cypress Leases as to each Sulcom Car subject to a Cypress Lease as of the date such Sulcom Car was accepted under the Purchase Agreement (an "Acceptance"), including amounts payable by the lessee under the Cypress Leases from and after the Acceptance of such Sulcom Car, but reserving to Seller all monies (including rent payments pursuant to a Cypress Lease) accrued in the ordinary course with respect to such Sulcom Car for the period prior to the closing date) applicable to such Sulcom Car. Sulcom has assumed all of the duties of Seller as Lessor under the Cypress Leases for each Sulcom Car accruing from and after the date of Acceptance of such Sulcom Car by Sulcom. Each Sulcom Car so accepted is an "Accepted Railcar." On or before May 30, 2008 all 151 Sulcom Cars under the Cypress Leases became Accepted Railcars.
5. Pursuant to a Purchase and Sale Agreement between Sonoma, as seller, and Sulcom, as buyer (the "Sonoma Purchase Agreement"), for each Sulcom Car thereunder acquired by Sulcom, as of May 30, 2008, Sonoma has assigned to Sulcom, and Sulcom has assumed all of seller's right, title and interest in and to the 1992 Sonoma Lease, including all amounts payable by the lessee under the 1992 Sonoma Lease from and after April 30. Sulcom has assumed all of the duties of Sonoma, as Lessor under the 1992 Sonoma Lease, occurring from and after May 30, 2008.
6. San Manuel has entered into agreements with Nitron Chemical Company ("Nitron"), ASARCO LLC ("ASARCO"), and Martin Product Sales LLC ("Martin") with respect to certain Sulcom Cars as described in the Master Agreement regarding Leases, dated October 29, 2008 between the Parties ("Master Agreement") and attached to the Master Agreement as Exhibit B ("Use Agreements"). None of the Sulcom Cars is subject to any other Use Agreement or Sublease. The Parties understand that the Sulcom Cars subject to the Use Agreements with Nitron, ASARCO and Martin are being used by Nitron, ASARCO and Martin, respectively.
7. San Manuel wishes to terminate its obligations under the Leases and minimize the use of resources, effort and time relating to the return of the Sulcom Cars as may

be required under the Leases, including potential unknown costs related to transportation, storage, cleaning and repair of the Sulcom Cars. Sulcom is willing to accept these known and unknown obligations and costs and to accept all the Sulcom Cars, as is and where is, subject to the Use Agreements and subject to the provisions hereof.

## AGREEMENT

In consideration of the recitals and mutual covenants, warranties and agreements contained in this Agreement, the sufficiency of which are hereby acknowledged, the parties, intending to be bound, agree as follows.

1. Termination of Leases. Effective as of November 6, 2008 (the "Termination Date"), the Leases shall be terminated as if such date were the last day of the Lease Term.
2. Satisfaction and Release of San Manuel's and BHP's Obligations. As of the Termination Date, all obligations of San Manuel, BHP and their shareholders, officers, employees, agents and representatives pursuant to the Leases shall be deemed satisfied and San Manuel, BHP, and their shareholders, officers, employees, agents and representatives are forever released and discharged from all liabilities and obligations relating to such Leases, including, but not limited to, any responsibility relating to the condition of any Sulcom Car and any indemnification or hold harmless obligations under the Leases. Notwithstanding the foregoing, such release shall not affect any of the obligations under this Agreement.
3. Payment of Rent. On or prior to the Termination Date, San Manuel and BHP shall pay or cause to be paid all past due and current rental under all the Leases, subject to such rent being prorated as of the Termination Date.
4. Sulcom Car Records. To the extent that San Manuel has not already provided in whole or in part, within seven days after the Termination Date, San Manuel will deliver or cause to be delivered to Sulcom with respect to each Sulcom Car subject to a Lease assigned to Sulcom the following (or copies of the following), to the extent that San Manuel has such records in its possession or such records are reasonably available to San Manuel, subject to any copyright restrictions, except with respect to subsection 4(d):
  - (a) current maintenance/inspection records in a Microsoft Excel spreadsheet format;
  - (b) all mileage records for each Sulcom Car since the inception of use thereof;
  - (c) all Sulcom Car files (hard copies) of maintenance performed on each Sulcom Car;
  - (d) inspection documents (SS3/R1/R2/QA 7.1, if applicable/ HM201 Qualification Reports/ coating Qualification Reports);

- (e) copies of compliance reports for each Sulcom Car, evidencing required reflectorization of each Sulcom Car;
- (f) Sulcom Car outage records;
- (g) Current HM 201 Qualification Procedures;
- (h) records of construction and drawings;
- (i) R1 and R2 forms for each Sulcom Car, as applicable; and
- (j) The original certificate of Construction, AAR Form 2, for each Sulcom Car, as well as those documents that Sulcom may reasonably request and as are reasonably necessary for the maintenance, refurbishing, and administration of the Sulcom Cars, including, without limitation, mechanical records, maintenance records and car construction drawings and records showing when each Sulcom Car was in storage or otherwise not in service.

5. San Manuel's Indemnification for Pre-Termination Date Events. Effective as of the Termination Date, San Manuel hereby agrees to indemnify, protect and hold harmless Sulcom, its agents, employees, officers, directors, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising out of acts, omissions, events, conditions or occurrences occurring prior to the Termination Date concerning (a) the use, condition, operation, ownership, selection, or delivery of any Sulcom Car, regardless of where, how and by whom operated; (b) any investigation, litigation or proceeding involving or connected with any Sulcom Car or the use thereof which is related to any environmental cleanup, audit, compliance or other matter relating to the protection of the environment or the release by San Manuel or any user of any Sulcom Car of any Hazardous Material; or (c) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from, any Sulcom Car owned or operated by San Manuel or any user thereof of any Hazardous Material (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law) regardless of whether caused by or within the control of San Manuel or any user of any Sulcom Car; provided that San Manuel shall not be obligated to indemnify Sulcom for any such liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees which result from Sulcom's conduct or negligence. "Environmental Laws" shall mean all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations and guidelines having the force of law (including consent decrees and administrative orders) relating to public health and safety and protection of the environment. "Hazardous Material" shall mean (a) any hazardous substances, as defined by CERCLA; (b) any "hazardous waste," as defined by the Resource Conservation and Recovery Act, as amended; (c) any petroleum product; (d) any pollutant or contaminant of a hazardous, dangerous or toxic chemical material or substance within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance

or material, all as amended or hereafter amended. "Release" shall mean a "release" as such term is defined in CERCLA. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. Notwithstanding any other provision, San Manuel and BHP shall have no indemnification obligation, protection obligation or hold harmless obligation with respect to liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising out of acts, omissions, events, conditions or occurrences (1) occurring from and after the Termination Date or (2) related to any Sulcom Car during the time frame that such Sulcom Car was subject to a Use Agreement with Nitron regardless of whether before or after the Termination Date.

6. Sulcom's Indemnification for Events On and After Termination Date. Effective as of the Termination Date, and subject to the terms of any agreement making Sulcom Cars available for use by San Manuel (if any), Sulcom hereby agrees to indemnify, protect and hold harmless San Manuel, BHP, and their agents, employees, officers, directors, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising out of acts, omissions, events, conditions or occurrences occurring on or after the Termination Date concerning (a) the use, condition, operation, ownership, selection, or delivery of any Sulcom Car, regardless of where, how and by whom operated; (b) any investigation, litigation or proceeding involving or connected with any Sulcom Car or the use thereof which is related to any environmental cleanup, audit, compliance or other matter relating to the protection of the environment or the release by Sulcom or any user of any Sulcom Car of any Hazardous Material; or (c) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from, any Sulcom Car owned or operated by Sulcom or any user thereof of any Hazardous Material (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law) regardless of whether caused by or within the control of Sulcom or any user of any Sulcom Car; provided that Sulcom shall not be obligated to indemnify San Manuel and BHP for any such liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees which result from San Manuel's and BHP's conduct or negligence.

7. Availability of Railcars for San Manuel. Effective on the Termination Date and for the period prior to August 1, 2011, Sulcom shall use best efforts to make up to 100 railcars for sulfuric acid service available for San Manuel's use upon San Manuel's written request, upon terms similar (or more favorable to San Manuel) to those generally offered by Sulcom to other customers for similar railcars. Such use may be reasonably conditioned upon San Manuel agreeing to indemnify and hold harmless Sulcom from potential liabilities arising from San Manuel's future use of such railcars; such terms to be set forth in any future use or lease agreement between San Manuel and Sulcom.

8. Warranties.

8.1. San Manuel's Representations and Warranties. San Manuel hereby represents, warrants and declares to and in favor of Sulcom that:

- (a) San Manuel holds all right, title and interest as lessee under each of the Leases, free and clear of all indentures, deeds of trust, mortgages, security interests, liens, claims, demands, encumbrances, privileges, pledges or other charges of every nature and kind whatsoever caused to be encumbered by San Manuel or BHP (collectively the "Encumbrances").
- (b) San Manuel is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has all requisite authority to enter into this Agreement.
- (c) This Agreement has been properly authorized by all necessary corporate action.
- (d) Neither the execution and delivery of this Agreement nor the fulfillment of the terms, conditions, and provisions hereof (i) constitutes or will constitute a breach of any existing and outstanding contractual or other obligation of San Manuel; (ii) will violate any provision of law or the charter or by-laws of San Manuel; or (iii) requires the approval or the giving of prior notice to any government, government agency, ministry, bureau or commission, whether domestic or foreign.

8.2. Sulcom's Representations and Warranties. Sulcom hereby represents, warrants and declares to and in favor of San Manuel that:

- (a) This Agreement (i) has been properly authorized by all necessary corporate action; and (ii) does not require the approval of any holder of shares, stocks, bonds, debentures or other securities outstanding under any agreement, indenture or other instrument to which Sulcom is a party or by which Sulcom or its property or any part thereof may be charged or affected.

- (b) Neither the execution and delivery of this Agreement nor the fulfillment of the terms, conditions and provisions hereof (i) constitutes or will constitute a breach of any existing and outstanding contractual or other obligation of Sulcom; (ii) will violate any provision of law or the charter of by-laws of Sulcom; (iii) requires the approval or the giving of prior notice to any government, government agency, ministry, bureau or commission, whether domestic or foreign; or (iv) will breach or result in the breach of, constitute a default under, contravene any provision of or result in the creation of any lien, charge, encumbrance or security interest upon any property or assets of Sulcom pursuant to any of Sulcom's stocks, bonds, notes, debentures or other securities outstanding under any agreement, indenture or other instrument to which Sulcom is a party or by which Sulcom or its property may be charged or affected.
- (c) This Agreement constitutes legal, valid and binding obligations of Sulcom, enforceable in accordance with the provisions hereof.
- (d) Sulcom is duly organized and validly existing in the state of its incorporation and is in good standing in such state..

9. Condition of Sulcom Cars. Notwithstanding anything to the contrary in this Agreement, and notwithstanding any certificates furnished by San Manuel pursuant to AAR Rules (such as, but not limited to, certificates issued pursuant to Rule 88 of such Rules), EXCEPT AS PROVIDED IN SECTION 4 OF THE MASTER AGREEMENT (RELATING TO CASUALTY CARS), EACH SULCOM CAR SHALL BE RECEIVED AND ACCEPTED BY SULCOM ON AN "AS-IS, WHERE IS" BASIS, WITH ALL FAULTS, WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE SULCOM CARS, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SAN MANUEL SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER. SULCOM SHALL INDEMNIFY, PROTECT AND HOLD HARMLESS SAN MANUEL AND BHP AGAINST ANY CLAIM, COSTS, OR LIABILITY CAUSED BY OR ARISING FROM THE CONDITION OF ANY SULCOM CAR ON OR AFTER THE TERMINATION DATE, AND WHICH IS CAUSED BY OR ARISES FROM EVENTS OR OCCURRENCES ON OR AFTER THE TERMINATION DATE. SULCOM SHALL HAVE NO OBLIGATIONS UNDER THIS SECTION FOR CLAIMS, COSTS OR LIABILITY FOR EVENTS OR OCCURRENCES PRIOR TO THE TERMINATION DATE.

10. Release. San Manuel releases Sulcom from any claims as lessor for breach of the Leases that result from any act or omission of any Seller which occurred prior to the transfer of such Lease to Sulcom.

11. Brokers. Each party warrants that no broker has been employed by such party or its agents or affiliates, and there are no claims against such party for brokerage commissions or finders' fees in connection with the transactions contemplated hereby resulting from any action taken by such party or its agents or affiliates.

12. Expenses. All legal, accounting, appraisal, inspection, financial, advisory and other costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs.

13. Successors and Assigns. This Agreement is binding upon, inures to the benefit of, and is enforceable by the parties hereto and their respective successors and assigns.

14. Governing Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Arizona.

15. Notices. All notices required or permitted to be given by any of the parties hereto shall be in writing and shall be deemed to have been given when personally served, transmitted by facsimile, received by delivery by overnight courier, or three days after the date of registration if sent by registered or certified mail (postage prepaid) addressed as follows unless otherwise directed, in writing, by a party for whom notice is to be given:

If to San Manuel:

San Manuel Arizona Railroad Company  
Attention: Kent Fletcher  
P.O. Box M  
San Manuel, Arizona 85631  
Telephone: 520-385-3456  
Facsimile: 520-385-3810

If to BHP:

BHP Copper Inc.  
c/o Bryan Cave LLP  
Attention: Lucas Narducci  
2 N. Central Avenue, Suite 2200  
Phoenix, Arizona 85004  
Telephone: 602-364-7357  
Facsimile: 602-364-7070

If to Sulcom:

Sulcom, Inc.  
Attention: Mark Whittemore  
10001 Woodloch Forest Drive, Suite 400  
The Woodlands, Texas 77380  
Telephone: 832-764-5014  
Facsimile: 832-764-5050

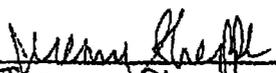
16. Incorporation of Recitals. The recitals set forth above are incorporated by reference and made part of this Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior understandings, representations or agreements, oral or written.

17. Waiver of Jury Trial. EACH OF THE PARTIES HEREBY WAIVES THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. EACH OF THE PARTIES ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH OF THE PARTIES HAS RELIED ON THE WAIVER IN ENTERING INTO THE PURCHASE DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN ITS RELATED FUTURE DEALINGS. EACH OF THE PARTIES WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

18. Counterparts. This Agreement may be executed in several counterparts and such counterparts may be delivered by facsimile or other electronic means, and each agreement so executed shall constitute one agreement, binding on all the parties thereto, even though all parties are not signatory to the original or the same counterpart. Any counterpart of this Agreement that has attached to it separate signature pages, which altogether contain the signatures of all of the parties hereto, shall for all purposes be deemed a fully executed instrument. Each party agrees that it will be bound by its own telecopied or electronically copied signatures and that it accepts the telecopied or electronically copied signatures of the other parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers, duly authorized.

SULCOM, INC.

By:   
Name: Jeremy Sheppe  
Title: Vice President  
Date: October 30, 2008

SAN MANUEL ARIZONA RAILROAD  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

BHP COPPER INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF TEXAS )

) SS:

COUNTY OF Montgomery)

On this 30<sup>th</sup> day of October, 2008, before me personally appeared Jeremy Sheppe to me personally known, who being by me duly sworn, says that she/he is Vice President of Sulcom, Inc., a Delaware corporation, that the foregoing Agreement to Terminate Sulcom Lease Agreements was signed on behalf of said corporation by authority of its board of directors. Further she/he acknowledged that the execution of the foregoing Agreement to Terminate Sulcom Lease Agreements was the free act and deed of said corporation.

*Diana Morales*  
Notary Public

[Notarial Seal]

My commission expires: 05-16-2009



E:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers, duly authorized.

SULCOM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SAN MANUEL ARIZONA RAILROAD  
COMPANY

By:   
Name: Kent Fletcher  
Title: Vice President  
Date: 10/30/08

BHP COPPER INC.

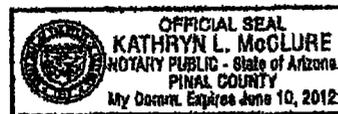
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF Az )  
 ) SS:  
COUNTY OF Pinal )

On this 30 day of October, 2008, before me personally appeared Kent Fletcher, to me personally known, who being by me duly sworn, says that she/he is Vice President of Sulcom, Inc., a Delaware corporation, that the foregoing Agreement to Terminate Sulcom Lease Agreements was signed on behalf of said corporation by authority of its board of directors. Further she/he acknowledged that the execution of the foregoing Agreement to Terminate Sulcom Lease Agreements was the free act and deed of said corporation.

Kathryn L. McClure  
Notary Public

[Notarial Seal]



My commission expires: 6-10-12

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers, duly authorized.

SULCOM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SAN MANUEL ARIZONA RAILROAD  
COMPANY

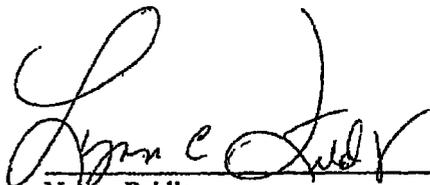
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

BHP COPPER INC.

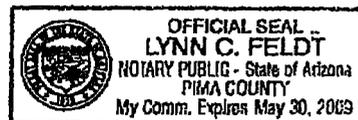
By:   
Name: FRANCIS MCALLISTER  
Title: VP  
Date: 3 NOV 2008

STATE OF ARIZONA )  
 ) SS:  
COUNTY OF PINAL )

On this 3<sup>RD</sup> day of NOVEMBER, 2008, before me personally appeared FRANCIS MCALLISTEL to me personally known, who being by me, duly sworn, says that she/he is FINANCE MGR, NA. of BHP Copper Inc., a Delaware corporation, that the foregoing Agreement to Terminate Sulcom Lease Agreements was signed on behalf of said corporation by authority of its board of directors. Further she/he acknowledged that the execution of the foregoing Agreement to Terminate Sulcom Lease Agreements was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]



My commission expires: MAY 30, 2009

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: 12/29/08



\_\_\_\_\_  
Robert W. Alvord