

RECORDATION NO. 19604-E
FILED

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SURFACE TRANSPORTATION BOARD

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

OF COUNSEL
JULIAN A. LESTER

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 Assignment, Assumption and Novation Regarding ARL Lease, dated as of November 6, 2008, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Assignment and Assumption Agreement previously filed with the Board under Recordation Number 19604-D.

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

- Assignor/Lessee: San Manuel Arizona Railroad Company
P.O. Box M
San Manuel, AZ 85631
- An Original Lessee: BHP Copper Inc.
c/o Bryan Cave LLP
2 N. Central Avenue, Suite 2200
Phoenix, AZ 85004
- Assignee: Sulcom, Inc.
10001 Woodloch Forest Drive, Suite 400
The Woodlands, TX 77380
- Lessor: American Railcar Leasing LLC
620 North Second Street
St. Charles, Missouri 63301

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

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

97 cars: PVCX 13510 - PVCX 13609 (excluding 13526, 13540 and 13563).

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

Assignment, Assumption and Novation Regarding ARL Lease.

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 cursive script, appearing to read "R. Alvord", written in black ink.

Robert W. Alvord

RWA/sem
Enclosures

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SURFACE TRANSPORTATION BOARD

Assignment, Assumption and Novation Regarding ARL Lease

THIS ASSIGNMENT, ASSUMPTION AND NOVATION REGARDING ARL LEASE (this "Assignment") is made this 6th day of November, 2008 (the "Effective Date") by and between SAN MANUEL ARIZONA RAILROAD COMPANY, an Arizona corporation ("Assignor"); BHP COPPER INC., a Delaware corporation ("BHP"); SULCOM, INC., a Delaware corporation ("Assignee"); INTERNATIONAL COMMODITIES EXPORT CORPORATION, a Delaware corporation ("ICEC") and AMERICAN RAILCAR LEASING LLC, a Delaware limited liability company ("Lessor").

WITNESSETH:

WHEREAS, Assignor is the current lessee and Lessor is the current lessor of the lease agreement - Equipment Lease Agreement No. 7719719, dated September 20, 1995, with Lease Schedule No. 801 and as amended by Lease Addendum No. 1, dated April 9, 1996, Agreement regarding Railcar PVCX 13563, dated October 21, 2008, ARL Agreement and Lease Amendment, dated October 24, 2008 (collectively, the "Lease") - attached hereto as Exhibit 1.

WHEREAS, with respect to the Lease, Assignor is successor in interest to Magma Copper Company ("Original Lessee") and Lessor is successor in interest to Pitney Bowes Corporation ("Original Lessor").

WHEREAS, BHP, which had merged with Original Lessee, has retained certain obligations under the Lease.

WHEREAS, the equipment subject to the Lease includes 97 railcars (the "Railcars") with identification numbers PVCX 13510 - 13525, 13527-13539, 13541-13562, and 13564-13609.

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, all of Assignor's rights and obligations under the Lease, on the terms and conditions set forth below.

WHEREAS, ICEC is an affiliate company of Assignee and desires that the assignment and assumption occur, and therefore, is willing to be a guarantor of Assignee's obligations and covenants under this Assignment.

WHEREAS, in consideration of Assignee assuming Assignor's rights and obligations under the Lease, Lessor agrees to release Assignor and BHP from all liabilities under the Lease, on the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's right, title and interest in and to the Lease.

2. Assignor hereby covenants that Assignor will, at no cost or liability to Assignor, upon written request therefor, execute and deliver to Assignee, Assignee's successors, nominees and assigns reasonable new or confirmatory instruments which Assignee, Assignee's successors, nominees and assigns may reasonably request in order to fully confirm and vest in Assignee, or Assignee's successors, nominees and assigns any and all of Assignor's interests in and to the Lease, and to protect Assignee's or Assignee's successors, nominees and assigns right, title and interest therein.

3. Assignee hereby accepts such Assignment and agrees to be bound by all of the terms and provisions of the Lease, and assumes all covenants and obligations imposed upon Assignor and BHP under the Lease from and after the Effective Date.

4. Lessor hereby consents to such assignment and assumption.

5. Assignee warrants to Lessor and its successors and assigns that (a) it is a corporation duly formed, validly existing and in good standing under the laws of the State of Arizona; (b) the execution, delivery and performance of this Assignment (and by assumption, the Lease and any current or future schedules thereto) by Assignee have been duly authorized by all necessary corporate action; (c) the individual executing such documents is duly authorized to do so; (d) this Assignment, the Lease and any related documents constitute legal, valid and binding agreements of Assignee enforceable in accordance with their respective terms; and (e) Assignee need not obtain the consent or approval of any party, other than Lessor if required, in order to enter into or perform its obligations under this Assignment and the underlying Lease.

6. Lessor hereby releases and forever discharges Assignor and BHP, as well as their shareholders, officers, employees, agents and representatives from all obligations, liabilities, demands, and claims arising from the Lease, including, but not limited to, any responsibility relating to the condition of any Railcar and any indemnification or hold harmless obligations, except that such release and discharge shall not apply to claims that accrued prior to the Effective Date.

7. Effective as of the Effective Date, Assignor hereby agrees to indemnify, protect and hold harmless Assignee, 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 Effective Date concerning (a) the use, condition, operation, ownership, selection, or delivery of any Railcar, regardless of where, how and by whom operated; (b) any investigation, litigation or proceeding involving or connected with any Railcar 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 Assignor or any user of any Railcar of any Hazardous Material; (c) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from, any Railcar owned or operated by Assignor 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 Assignor or any user of any Railcar; or (d) a breach of, or cause of action under, the Lease prior

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to the Effective Date; provided that Assignor shall not be obligated to indemnify, protect, or hold harmless Assignee for any such liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees which result from Assignee's, or its employees', representatives', or contractors' 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, Assignor 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 Effective Date or (2) related to any Railcar during the time frame that such Railcar was subject to a Use Agreement with Nitron regardless of whether before or after the Effective Date.

8. Effective as of the Effective Date, and subject to the terms of any agreement making Railcars available for use by Assignor (if any), Assignee hereby agrees to indemnify, protect and hold harmless Assignor, 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 Effective Date concerning (a) the use, condition, operation, ownership, selection, or delivery of any Railcar, regardless of where, how and by whom operated; (b) any investigation, litigation or proceeding involving or connected with any Railcar 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 Assignee or any user of any Railcar of any Hazardous Material; (c) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from, any Railcar owned or operated by Assignee 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 Assignee or any user of any Railcar; or (d) a breach of, or cause of action under, the Lease on or after the Effective Date; provided that Assignee shall not be obligated to indemnify, protect or hold harmless Assignor 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 Assignor's, BHP's or their employees', representatives', or contractors' conduct or negligence.

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9. Obligations of Assignor that accrued prior to the Effective Date (subject to the proration of monthly charges) remain with Assignor and are not transferred to Assignee).

10. ICEC agrees that it shall be a guarantor with respect to all obligations and covenants of Assignee under this Assignment.

11. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorney's fees.

12. This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

13. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Arizona.

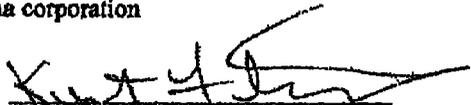
14. This Assignment may be executed in several counterparts and such counterparts may be delivered by facsimile or other electronic means, and each agreement so executed shall constitute one agreement, binding on all the Parties thereto, even though all Parties are not signatory to the original or the same counterpart. Any counterpart of this Assignment 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 otherwise electronically copied signatures and that it accepts the telecopied or otherwise electronically copied signatures of any other Party.

[Signature page follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:

San Manuel Arizona Railroad Company, an Arizona corporation

By: 
Name: Kent Fletcher
Its: Vice President

BHP:

BHP Copper Inc., a Delaware corporation

By: _____
Name: _____
Its: _____

ASSIGNEE:

Sulcom, Inc., a Delaware corporation

By: _____
Name: _____
Its: _____

ICEC:

International Commodities Export Corporation, a Delaware corporation

By: _____
Name: _____
Its: _____

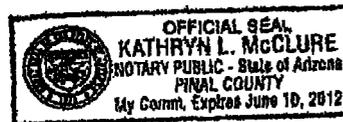
STATE OF Az)
) SS:
COUNTY OF Pinal)

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 San Manuel Arizona Railroad Company, an Arizona corporation, that the foregoing Assignment, Assumption and Novation of Lease was signed on behalf of said corporation by authority of its Board of Directors. Further she/he acknowledged that the execution of the foregoing Assignment, Assumption and Novation of Lease 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, Assignor and Assignee have executed this Assignment as of the day and year first above written.

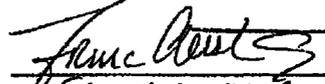
ASSIGNOR:

San Manuel Arizona Railroad Company, an Arizona corporation

By: _____
Name: _____
Its: _____

BHP:

BHP Copper Inc., a Delaware corporation

By: 
Name: FRANCIS McALLISTER
Its: VP

ASSIGNEE:

Sulcom, Inc., a Delaware corporation

By: _____
Name: _____
Its: _____

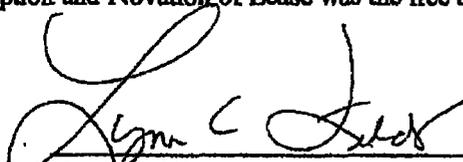
ICEC:

International Commodities Export Corporation, a Delaware corporation

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) SS:
COUNTY OF PINAL)

On this 3rd day of NOVEMBER, 2008, before me personally appeared FRANCIS McALLISTER to me personally known, who being by me duly sworn, says that she/he is VP of BHP Copper Inc., a Delaware corporation, that the foregoing Assignment, Assumption and Novation of Lease was signed on behalf of said corporation by authority of its Board of Directors. Further she/he acknowledged that the execution of the foregoing Assignment, Assumption and Novation of Lease was the free act and deed of said corporation.



Notary Public

[Notarial Seal]

My commission expires: MAY 30, 2009



IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:

San Manuel Arizona Railroad Company, an Arizona corporation

By: _____
Name: _____
Its: _____

BHP:

BHP Copper Inc., a Delaware corporation

By: _____
Name: _____
Its: _____

ASSIGNEE:

Sulcom, Inc., a Delaware corporation

By: Jeremy Sheppe
Name: Jeremy Sheppe
Its: Vice President

ICEC:

International Commodities Export Corporation, a Delaware corporation

By: Jeremy Sheppe
Name: Jeremy Sheppe
Its: Senior Vice President

LESSOR:

American Railcar Leasing LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

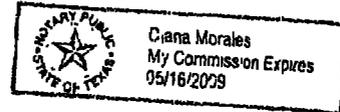
STATE OF TEXAS)
)SS:
COUNTY OF Montgomery

On this 28th 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 Assignment, Assumption and Novation of Lease was signed on behalf of said corporation by authority of its Board of Directors. Further she/he acknowledged that the execution of the foregoing Assignment, Assumption and Novation of Lease was the free act and deed of said corporation.

Diana Morales
Notary Public

[Notarial Seal]

My commission expires: 05-16-2009



STATE OF TEXAS)
) SS:
COUNTY OF Montgomery

On this 28th 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 Senior Vice President of International Commodities Export Corporation, a Delaware corporation, that the foregoing Assignment, Assumption and Novation of Lease was signed on behalf of said corporation by authority of its Board of Directors. Further she/he acknowledged that the execution of the foregoing Assignment, Assumption and Novation of Lease was the free act and deed of said corporation.

Diana Morales
Notary Public

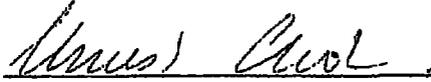
[Notarial Seal]



My commission expires: 05-16-2009

LESSOR:

American Railcar Leasing LLC, a Delaware
limited liability company

By: 
Name: Umesh Choksi
Its: SVP, CFO & Treasurer

STATE OF MISSOURI)
) SS:
COUNTY OF ST. CHARLES)

On this 30th day of October, 2008, before me personally appeared Umesh Choksi, to me personally known, who being by me duly sworn, says that she/he is SVP, CFO & Treasurer of American Railcar Leasing LLC, a Delaware limited liability company, that the foregoing Assignment, Assumption and Novation of Lease was signed on behalf of said limited liability company by authority of its governing body. Further she/he acknowledged that the execution of the foregoing Assignment, Assumption and Novation of Lease was the free act and deed of said limited liability company

Nancy Collins

Notary Public

[Notarial Seal]

NANCY COLLINS Notary Public - Notary Seal State of Missouri Commissioned for St. Charles County My Commission Expires: August 02, 2012 Commission Number: 08499131

My commission expires: _____

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: 12/24/08



Robert W. Alvord