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Director/Secretary

Deputy

4 August
2010

Deed Poll Guarantee

Billiton Plc

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[Signature]
Director

18/01/11
2010

Deed Poll Guarantee

Witness

Witness
Name: [Name]
Address: [Address]
Occupation: [Occupation]

Tel: [Phone Number]
Fax: [Phone Number]

Witness
Name: [Name]
Address: [Address]
Occupation: [Occupation]

Tel: [Phone Number]
Fax: [Phone Number]

Witness
Name: [Name]
Address: [Address]
Occupation: [Occupation]

Tel: [Phone Number]
Fax: [Phone Number]

Witness
Name: [Name]
Address: [Address]
Occupation: [Occupation]

Tel: [Phone Number]
Fax: [Phone Number]

Deed Poll Guarantee

THIS DEED is made as a deed poll on 29 June 2001.

By	BILLITON PLC, a company incorporated in England with registered number 3196209, whose registered office is at 1-3 Strand, London WC2N 5HA, United Kingdom (<i>Billiton</i>) in favour of each Creditor.
Recital	Under the DLC Merger Implementation Agreement (as defined below), Billiton has agreed with BHP to issue this Guarantee in respect of certain contractual obligations as described in this Guarantee.

IT IS DECLARED as follows:

1. Definitions and Interpretation

1.1 Definitions

In this Guarantee:

BHP means BHP Limited (ACN 004 028 077), a company incorporated in Victoria, Australia, whose registered office is at 45th Floor, BHP Tower, Bourke Place, 600 Bourke Street, Melbourne, Victoria 3000, Australia.

BHP Guarantee means the deed poll guarantee issued by BHP on or about the date of this Guarantee pursuant to the DLC Merger Implementation Agreement.

BHP Ordinary Shares means the ordinary shares in the capital of BHP from time to time.

Creditor means any Person to whom or to which any Obligation is owed.

DLC Merger Implementation Agreement means the agreement entered into between BHP and Billiton dated 19 March 2001.

Existing Obligation means, in relation to:

- (a) any agreement or exclusion referred to in Clause 4; or
- (b) any termination of this Guarantee; or
- (c) any amendment to this Guarantee,

any Obligation incurred before, or arising out of any Obligation incurred before, the time at which the relevant agreement, exclusion, termination or amendment becomes effective, or arising out of any committed or uncommitted credit or similar facility available for use at that time.

Obligation means:

- (a) any obligation of BHP or a Principal Debtor under the agreements set out in Schedule 1;

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- (b) any contractual obligation of BHP or a Principal Debtor whether entered into prior to or after this Guarantee which may be specified from time to time to Billiton by notice given to it by BHP after the date of this Guarantee; and
- (c) any other contractual obligation (whether actual or contingent, primary or secondary, or otherwise) incurred after the date of this Guarantee by:
- (i) BHP or,
 - (ii) to the extent guaranteed by BHP, by any Principal Debtor,
- other than, in each case, any obligation:
- (i) explicitly guaranteed in writing by Billiton (otherwise than under this Guarantee);
 - (ii) where the arrangement under which the obligation was or is incurred, or the terms of issue of the obligation, explicitly provide(s) that the obligation is not to be guaranteed by Billiton, or where the Creditor has explicitly agreed or explicitly agrees that the obligation is not to be guaranteed by Billiton;
 - (iii) owed to Billiton or any of its Subsidiaries or to any Subsidiary of BHP;
 - (iv) of BHP under or in connection with the BHP Guarantee or any other guarantee by BHP of any obligation of Billiton or any Subsidiary of Billiton;
 - (v) excluded from the scope of this Guarantee as provided in Clause 4 (Exclusion of Certain Obligations) or Clause 5 (Termination) provided that obligations previously excluded under Clause 4 may be notified for re-inclusion pursuant to paragraph (b) above;
 - (vi) consisting of an obligation to pay to a Creditor an amount to compensate for any deduction or withholding for or on account of Tax from any payment to that Creditor, where no such deduction or withholding would be required as a result of payment being made by Billiton under this Guarantee rather than by the relevant Principal Debtor under the guaranteed obligation;
 - (vii) of BHP under a guarantee, to the extent that the guaranteed obligation is not a contractual obligation or is of a type referred to in any of paragraphs (i) to (vi) of this definition; or
 - (viii) owed to holders of BHP Ordinary Shares, in their capacity as holders of such shares.

Person includes an individual, company, corporation, firm, partnership, joint venture, association, trust or agency of a state (in each case, whether or not having a separate legal personality).

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Principal Debtor means at any time, any Person any of whose contractual obligations are at that time guaranteed by BHP.

Sharing Agreement means the DLC Structure Sharing Agreement entered into between BHP and Billiton on or about the same date as this Guarantee.

Subsidiary has the same meaning as given in the Sharing Agreement.

Tax has the same meaning as given in the Sharing Agreement.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) In this Guarantee, any reference to an *obligation* or a *guarantee* includes an obligation expressed to be assumed or, as the case may be, a guarantee expressed to be given and any reference to a *guarantee* includes an indemnity or other assurance against loss. *Obliged, guaranteed, owed, incurred, due, unpaid* or similar words shall be similarly construed.
- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
- (f) A reference to a Clause or Schedule is to a clause or schedule of this Guarantee.
- (g) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Guarantee.
- (h) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, a legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (i) A reference to *writing* includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (j) Mentioning anything after *include, includes* or *including* does not limit what else might be included.

2. Effect Of This Deed Poll

This Guarantee shall take effect as a deed poll for the benefit of each Creditor individually.

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3. Guarantee

3.1 Guarantee by Billiton

Billiton unconditionally and irrevocably, as a continuing obligation:

- (a) guarantees to the Creditor to whom it is owed the proper and punctual payment by BHP or the relevant Principal Debtor of each Obligation; and
- (b) undertakes to that Creditor that, if for any reason BHP or the relevant Principal Debtor does not make such payment on its due date, Billiton shall pay the amount due and unpaid to the Creditor upon written demand by the Creditor.

3.2 Billiton liable for obligations as sole or principal debtor

- (a) Subject to paragraph (b), Billiton is liable for the Obligations as sole or principal debtor and not merely as surety.
- (b) Demand may not be made under this Guarantee without:
 - (i) a demand first having been made on BHP or the relevant Principal Debtor (as the case may be); and/or
 - (ii) to the extent, if any, that the terms of the relevant Obligation of BHP or the relevant Principal Debtor require such recourse, recourse first being had to any other Person, any security or any other right or remedy.

3.3 Liabilities and obligations remain unaffected

Unless otherwise provided in this Guarantee, the liabilities and obligations of Billiton under this Guarantee in relation to an Obligation will not be affected or discharged by any act, omission, neglect, event or matter which would not affect or discharge the liabilities or obligations of BHP or the Principal Debtor owed to the relevant Creditor including:

- (a) any winding-up, dissolution, insolvency or analogous proceeding of, or any change in constitution or corporate identity or loss of corporate identity by, BHP, or any other Person;
- (b) a Creditor agreeing with BHP or the Principal Debtor any variation or departure (however substantial) of or from the terms of any Obligation; or
- (c) a Creditor granting any time or any indulgence whatsoever to BHP or the Principal Debtor.

3.4 Discharge or release of liabilities and obligations

Any discharge or release of any liabilities and obligations of Billiton under this Guarantee, and any composition or arrangement which Billiton may effect with any Creditor in respect of any such liabilities or obligations, shall be deemed to be made subject to the condition that it will be void to the extent that any or all of any payment or security which the Creditor may previously have received or may subsequently receive from any Person in

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respect of the relevant Obligations is set aside, reduced or otherwise diminished under any applicable law or proves to have been for any reason invalid.

3.5 Variation, departure, etc after termination of Guarantee

No composition, arrangement, or other limitation, variation or departure agreed by a Creditor (or any person duly acting on behalf of the relevant Creditor) with BHP after termination of this Guarantee or the exclusion of that Obligation will be binding on Billiton (or extend its liabilities and obligations under this Guarantee) except to the extent, if any, that:

- (a) Billiton explicitly agrees in writing to it at the same time as BHP; or
- (b) it reduces Billiton's obligations or liability under this Guarantee.

4. Exclusion of Certain Obligations

4.1 Excluded obligations

Subject to Clauses 4.2 and 4.3, BHP and Billiton may at any time agree to exclude obligations of a particular type, or a particular obligation incurred after a future time from the scope of this Guarantee (*Excluded Obligations*) and those Excluded Obligations will not be *Obligations* for the purpose of this Guarantee with effect from such future time.

In the case of obligations of a particular type, the future time must be at least 3 months after the date on which notice of the relevant exclusion is given, and, in the case of a particular obligation, the future time must be at least 3 business days after that date.

4.2 Existing obligations

No Existing Obligation can be an Excluded Obligation.

4.3 Supplemental deed poll and notice

- (a) An obligation or type of obligation cannot be an Excluded Obligation unless and until Billiton enters into a supplemental deed poll specifying the relevant exclusion and the time at which it is to become effective.
- (b) Notice that a type of obligation shall be an Excluded Obligation, of the time at which such exclusion is to become effective, and of the date of the related supplemental deed poll, must be given in accordance with Clause 7.2.
- (c) Notice that a particular obligation shall be an Excluded Obligation and of the time at which such exclusion is to become effective must be given to the Person who would have become a Creditor if such obligation were not an Excluded Obligation in writing addressed to such Person at the last address of such Person known to Billiton and will be effective when delivered to that address. It will not be necessary for the related supplemental deed poll to have been entered

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into before that notice is sent, nor for the notice to state the date of the related supplemental deed poll.

5. Termination

5.1 Termination after termination of Sharing Agreement

Subject to Clause 5.3, this Guarantee may be terminated by Billiton with immediate effect by giving notice in accordance with Clause 7.2 at any time after the Sharing Agreement terminates or otherwise ceases to have effect.

5.2 Termination pre-termination of Sharing Agreement

- (a) Subject to Clauses 5.2(b), 5.2(c) and 5.3, Billiton may at any time terminate this Guarantee by giving not less than 3 months notice in accordance with Clause 7.2.
- (b) Subject to Clause 5.2(c), Billiton shall not serve such notice unless BHP agrees to such termination before such notice is given.
- (c) Billiton may at any time terminate this Guarantee by notice in accordance with Clause 7.2, which termination shall not require the agreement of BHP, if:
 - (i) the BHP Guarantee has been terminated or ceased to have effect or if notice of termination has been given under the BHP Guarantee; or
 - (ii) a resolution is passed or an order is made for the liquidation or winding up of BHP or a receiver or similar person is appointed in respect of all of its property, assets or undertaking.

5.3 Existing obligation

No such termination will be effective with respect to any Existing Obligation.

6. Amendments

6.1 Future amendment

Without prejudice to Clause 4:

- (a) Subject to Clause 6.2, Billiton may at any time amend this Guarantee, with effect from the future time it determines, in any way, even if it may prejudice Creditors.
- (b) That future time must be at least 3 months after the date on which notice of such amendment is given in accordance with Clause 7.2.
- (c) Any such amendment shall require the prior agreement of BHP if BHP's agreement would then be required to a termination of this Guarantee under Clause 5.2.

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6.2 Existing Obligation

No such amendment shall be effective with respect to any Existing Obligation.

6.3 Supplemental deed poll

No such amendment shall be effective unless and until Billiton enters into a supplemental deed poll specifying the relevant amendment and the time at which it is to become effective.

6.4 Notice

Notice of any such amendment, of the time at which it is to become effective, and of the date of the related supplemental deed poll, must be given in accordance with Clause 7.2.

7. Notices

7.1 Address for notices

Any notice, demand, consent or other communication given in connection with this Guarantee:

- (a) must be in writing in English and addressed to the intended recipient at the address shown below:

in the case of Billiton:

1-3 Strand
London WC2N 5HA
United Kingdom

Tel: +44 20 7747 3800

Fax: +44 20 7747 3911

Attention: Group Legal Counsel

in the case of BHP:

The Chifley Tower
2 Chifley Square
Sydney NSW 2000
Australia

Tel: +61 2 9230 4000

Fax: +61 2 9230 5333

Attention: BHP Vice President
and Chief Legal Counsel

c/o Chairman of Partners
Allen Allen & Hemsley

or the address last notified by the intended recipient to the sender;

- (b) must be signed by a person duly authorised by the sender; and
(c) will be taken to have been given when delivered, received or left at the above address. If delivery or receipt occurs on a day when

Deed Poll Guarantee

business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

7.2 Notices to be advertised

- (a) Billiton must give any notice under Clause 4.3(b), 5.1, 5.2(a) and (c), 6.1(b) or 6.4 once by advertisements in the *Financial Times* and in the *Australian Financial Review* (but, if at any time Billiton determines that advertisement in either such newspaper is not practicable, the relevant advertisement may instead be published in such other newspapers circulating generally in England and the mainland of Australia as Billiton shall determine).
- (b) Any such notice shall be deemed given on the later of the date of publication in such newspapers in England and in Australia.

7.3 Keeping of deed poll

Billiton shall keep one original of this Guarantee and of any related supplemental deed poll at the principal office for the time being in London of Billiton. A counterpart of such documents shall be kept at the registered office for the time being in Sydney of BHP. Such documents shall be available for inspection at such locations on reasonable notice during the normal business hours of that office.

8. General

8.1 Prohibition and enforceability

Any provision of, or the application of any provision of, this Guarantee which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

8.2 Further assurances

Billiton shall take all steps, execute all documents and do everything reasonably required to give effect to its liabilities and obligations contemplated by this deed poll.

8.3 No novation

Billiton may not novate any of its liabilities or obligations under this Guarantee, in whole or part.

8.4 Governing law and jurisdiction

- (a) This Guarantee is governed by and construed in accordance with the laws of New South Wales.

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- (b) Billiton irrevocably agrees that the courts of the State of New South Wales, Australia are to have non-exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee.
- (c) Billiton irrevocably submits to the jurisdiction of such courts and waives any objection to proceedings in any such court on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum.

8.5 Attorney

Each attorney executing this Deed states that he or she has not received notice of the revocation or suspension of his or her power of attorney.

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Schedule 1

Existing Debt Obligations of BHP

- A. US\$300 million 6.69% notes, US\$300 million 7.25% debentures, US\$400 million 6.42% debentures, US\$200 million 6.75% debentures, US\$250 million 7.875% notes, US\$ 250 million 8.5% debentures**

Indenture dated 18 November 1992 as amended by the First Supplemental Indenture dated 30 September 1995 between Morgan Guaranty Trust Company of New York as trustee, BHP Finance (USA) Limited as issuer, BHP Limited as guarantor, Bank One International as successor in interest to Morgan Guaranty Trust Company of New York.

- B. US\$ 1 200 million Global Revolving Credit Facility**

Global Revolving Credit Facility Agreement dated 27 March 2000 between BHP Finance Limited, BHP Finance (International) Inc, BHP Petroleum Great Britain PLC, BHP Diamonds Inc, BHP New Zealand Steel Ltd, Citisecurities Ltd., ABN AMRO Aust. Ltd. and ABN AMRO Bank N.V., ANZ Banking Group Ltd., Bank One N.A., Banque Nationale de Paris and BNP Pacific (Aust.), Barclays Bank PLC, Bank of Tokyo-Mitsubishi (Aust) Ltd, The Chase Manhattan Bank, Citibank N.A., Commonwealth Bank of Australia, Credit Suisse First Boston, Deutsche Bank AG & Deutsche Aust. Ltd., HSBC Bank PLC, IBJ Aust. Bank Ltd., Morgan Guaranty Trust Company of New York, National Australia Bank Ltd., Royal Bank of Canada, UBS Australia Ltd., Westpac Banking Corporation, and BHP Limited as guarantor.

- C. A\$ 3 000 million Medium Term Note Programme**

Note Deed Poll dated 11 October 1999 and Dealer Agreement of same date between BHP Finance Ltd as issuer, BHP Limited as guarantor, Westpac Banking Corporation, ABN AMRO Bank N.V., ANZ Banking Group Ltd, Commonwealth Bank of Australia, Deutsche Bank AG, Merrill Lynch International (Aust) Ltd, National Australia Bank Ltd, Warburg Dillon Read Australia Ltd

- D. US\$ 150 million Auction Market Preferred Stock**

Series I-J Subscription Agreement between BHP Limited and Delaware Standby Co. Inc. dated 30 April 1996 relating to series A preferred stock of Delaware Standby Co. Inc. as amended. Series N Subscription Agreement between BHP Limited and Delaware Standby Co. Inc. dated 30 April 1996 relating to series A preferred stock of Delaware Standby Co. Inc. as amended. Support Agreement dated 20 May 1993 between BHP Limited, Delaware Standby Co. Inc., and IBJ Schroeder Bank & Trust Company (as drawing agent), Amended and Restated Support Agreement dated 30 April 1996.

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E. AS\$990 million Beswick Redeemable Preference Shares and Share Sale Amendment Deeds

- ◆ Share Sale Amendment Deed dated 29 August 1996 between Beswick Pty Ltd, BHP Limited, Commonwealth Bank of Australia and Commonwealth Custodial Services in relation to 290,000 ARPS.
- ◆ Share Sale Amendment Deed dated 29 August 1996 between Beswick Pty Ltd, BHP Limited, Commonwealth Bank of Australia and Commonwealth Custodial Services Pty Ltd in relation to 300,000 ARPS.
- ◆ Share Sale Amendment Deed dated 29 August 1996 between Beswick Pty Ltd, BHP Limited, Westpac Banking Corporation and Enfield Downs Pty Ltd in relation to 400,000 ARPS.

F. US\$200 million Magma Copper senior subordinated notes

Indenture dated 15 May 1995 between BHP Copper Inc. and State Street Bank and Trust Co, as amended by the First Supplemental Agreement dated 15 May 1996. BHP Limited guarantee dated 22 April 1996.

G. US\$49.7 million BHP Copper IDA Municipal Bonds

- ◆ 1984 series Reimbursement Agreement dated 1 December 1999 between BHP Copper Inc as issuer and ABN AMRO as letter of credit bank and supported by a guarantee from BHP Limited dated 20 November 1996.
- ◆ 1984A series Reimbursement Agreement dated 1 December 1999 between BHP Copper Inc as issuer and ABN AMRO as letter of credit bank and supported by a guarantee from BHP Limited dated 20 November 1996.
- ◆ 1992 series Reimbursement Agreement dated 1 December 1992 between BHP Copper Inc as issuer, Banque Nationale de Paris and supported by a guarantee from BHP Limited dated 1 September 1996.

H. US\$500 million Euro Commercial Paper Programme

Euro Commercial Paper Programme Information Memorandum dated 24 April 1994 between BHP Finance Ltd and BHP Petroleum Great Britain Ltd as issuers, BHP Limited as guarantor, NatWest Capital Markets as arranger, Barclays de Zoete Wedd Limited, NatWest Capital Markets Limited, UBS Limited, The First National Bank of Chicago as issuing and paying agent. Issuing and Paying Agency Agreement dated 25 April 1994 between BHP Finance Ltd and BHP Petroleum Great Britain Ltd and The First National Bank of Chicago.

I. US\$500 million US Commercial Paper Programme

Commercial Papers dated 2 January 1986 between BHP Finance Ltd, BHP Limited as Guarantor, Chase Manhattan Bank as Agent, Morgan Stanley & Co. and Credit Suisse First Boston as Dealers.

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J. AS1,000 million Australian Commercial Paper Programme

Dealer Agreement dated 19 November 1997 between BHP Finance Ltd., BHP Limited, ANZ Banking Group, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation. Information Memorandum dated 19 November 1997 from BHP Finance Limited as issuer, Deed Poll dated 19 November 1997 from BHP Finance Ltd. Guarantee dated 19 November 1997 from BHP Limited.

K. European Investment Bank Loans

- ◆ £100 million Bruce/Ravenspur North Unit Projects Finance Contract dated 20 December 1991 between European Investment Bank as lender, BHP Petroleum Great Britain Ltd., as borrower, BHP Limited and BHP Holdings (USA) Inc. Guarantee dated 20 December 1991 from BHP Limited and BHP Holdings (USA) Inc as Guarantors to European Investment Bank.
- ◆ £200 million Liverpool Bay Oil and Gas Complex Project Finance Contract dated 23 September 1994 (London), 27 September 1994 (Luxembourg) between European Investment Bank as lender, BHP Petroleum Great Britain Ltd., as borrower, BHP Limited as financial guarantor, BHP Holdings (USA) Inc as performance guarantor. Financial Guarantee Agreement dated 23 September 1994 (London), 27 September 1994 (Luxembourg) between European Investment Bank and BHP Limited.

L. ¥ 25.0789 billion and US\$175 million JBIC Loan agreements

- ◆ Loan Agreement dated 17 December 1986 between BHP Finance Limited as borrower, Japan Bank for International Cooperation (formerly Export-Import Bank of Japan) as lender and BHP Limited as guarantor. Supplemental Agreement dated 17 December 1986 between BHP Finance Ltd., Japan Bank for International Cooperation (formerly Export-Import Bank of Japan) and BHP Limited.
- ◆ Loan Agreement dated 15 March 1989 between BHP Finance Limited as borrower, Japan Bank for International Cooperation (formerly Export-Import Bank of Japan) as lender and BHP Limited as guarantor. Supplemental Agreement dated 15 March 1989 between BHP Finance Limited, Japan Bank for International Cooperation (formerly Export-Import Bank of Japan), BHP Limited.

M. ¥ 5 billion Nippon Life Loan Agreement

Loan Agreement dated 25 September 1992 between BHP Finance Limited as Borrower Nippon Life Insurance Co as Lender, The Sanwa Bank Limited as Agent and BHP Limited as Guarantor. Guarantee dated 25 September 1992.

N. C\$ 100 million CIBC Loan Agreement

Loan Agreement dated 20 December 1996 between BHP Diamonds Inc as Borrower, CIBC as Lender, BHP Limited as Guarantor. Guarantee dated 20 December 1996.

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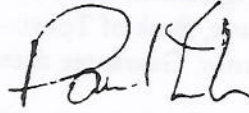
- O. **US\$4.742 million Bank of Tokyo-Mitsubishi Loan Agreement**
Loan Agreement dated 6 February 1997 between BHP Japan Pty Ltd as Borrower, Bank of Tokyo – Mitsubishi Ltd as Lender, BHP Limited as Guarantor. Guarantee dated 6 February 1997.
- P. **AS\$850 million Revolving AUD/NZD Backed Loan Agreement**
Draft Amendment and Restatement Agreement with ANZ Banking Group Limited dated 21 June 2001 BHP Finance Limited as Borrower, ANZ Banking Group as Lender, BHP Limited as Guarantor. Guarantee dated 11 April 2001.
- Q. **BHP Operations Inc. Cumulative Preference Stock Series A**
Support Agreement dated 27 November 2000 between BHP Limited and BHP Operations Inc.

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EXECUTED and delivered as a deed in

SIGNED on behalf of
BILLITON PLC
by its attorney in the presence of:

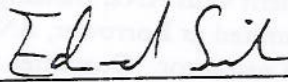
)
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Signature

PAUL LUSH

Print name



Witness

EDWARD SMITH

Print name