

**FIFTH AMENDED AND RESTATED BYLAWS**  
**OF**  
**BHP FOUNDATION**  
**(Amended and Restated as of July 9, 2020)**

**FIFTH AMENDED AND RESTATED BYLAWS OF  
BHP FOUNDATION**

**ARTICLE 1  
NAME AND PURPOSE**

1.1 Name. The name of the corporation is the BHP Foundation (the “Foundation”).

1.2 Purposes. The Foundation is organized exclusively for charitable, scientific, literary, and educational purposes as set forth in the Certification of Formation of the Foundation. The Foundation shall be operated exclusively for such purposes, and the Foundation pledges all of its assets for use in performing such purposes. No part of the Foundation’s net earnings shall inure to the benefit of, or be distributable to, any director, officer or other private person, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of such purposes. No part of the activities of the Foundation shall be carrying on propaganda, or otherwise attempting, to influence legislation, and the Foundation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office. Further, all funds and money received from the operation of the Foundation shall be used solely for the furtherance of the aims and purposes of the Foundation.

1.3 Offices. The Foundation may have, in addition to its registered office, offices at such places, both within and without the State of Texas, as the Board of Directors may from time to time determine or as the activities of the Foundation may require.

**ARTICLE 2  
BOARD OF DIRECTORS**

2.1 General Powers, Number, Tenure, Resignation, Removal, and Vacancies.

(a) General Powers and Number. Except as otherwise provided by applicable law, the Restated Certificate of Formation, or these Fifth Amended and Restated Bylaws, the direction and management of the affairs of the Foundation and the control and disposition of its assets shall be vested in the Board of Directors which shall consist of not less than three (3) persons or more than twelve (12) persons.

(b) Tenure.

(i) Each Director shall serve for his or her term of office and until his or her successor shall have been duly appointed and qualified unless such director is sooner removed in the manner specified in subparagraph (b)(iv) of this paragraph 2.1 of these Fifth Amended and Restated Bylaws or until such director resigns. A director may be appointed to serve for more than one term.

(ii) Each successor to a director whose term has expired shall be appointed in the manner specified in paragraph 2.2 of these Fifth Amended and Restated Bylaws and each such successor shall hold office for a term commencing upon the date of his or her appointment and ending upon the date of the annual meeting of the Board of Directors following

the date of his or her appointment, except that, in the case of an appointment to fill a vacancy in a seat on the Board of Directors, the term of the successor shall be for the unexpired term of the former occupant thereof or until the next annual meeting of the Board of Directors, whichever is longer.

(iii) **Resignation.** Each director shall have the right to resign at any time upon written notice thereof to the Chairman or the Secretary of the Foundation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof, and the acceptance of such resignation shall not be necessary to make it effective. Further, to the extent a director is an employee of BHP Group Limited, BHP Group PLC or any affiliate thereof, such director shall be deemed to have resigned upon termination of his or her employment with BHP Group Limited, BHP Group PLC or any affiliate thereof.

(iv) **Removal.** The Board of Directors of BHP Holdings (USA) Inc., a Delaware corporation, may remove at any time, any director of the Foundation from office when such removal is determined by the Board of Directors of BHP Holdings (USA) Inc., to be in the best interest of the Foundation. Such determination shall be made by an affirmative vote of a majority of the members of the Board of Directors of BHP Holdings (USA) Inc., at any meeting of the Board of Directors.

(c) **Vacancies.** A vacancy shall be declared in any seat on the Board of Directors upon the death, resignation, or removal of the occupant thereof or upon the disability of the occupant rendering him or her permanently incapacitated as defined in paragraph 9.4 of these Fifth Amended and Restated Bylaws.

2.2 **Appointment of Directors.** Directors constituting the Board of Directors shall be named in the Restated Certificate of Formation of the Foundation. Thereafter, the Board of Directors of BHP Holdings (USA) Inc., may appoint a successor to a director, whose term shall have expired or will expire before the next annual meeting of the Board of Directors or at a special meeting called for that purpose. Any vacancy occurring in the Board of Directors shall be filled by appointment by the Board of Directors of BHP Holdings (USA) Inc. In the event that the number of Directors constituting the Board of Directors is increased, any seat on the Board of Directors to be filled by reason of said increase shall be filled exclusively by the action of the Board of Directors of BHP Holdings (USA) Inc.

2.3 **Annual Meeting.** The annual meeting of the Board of Directors shall be held at such time and place as the Board of Directors shall from time to time determine, for the election of officers, and the transaction of such other business as may lawfully come before the meeting. It shall be the duty of the Secretary of the Foundation to give ten (10) days' notice of the time, place and date of the annual meeting to each director.

2.4 **Regular Meetings.** Regular meetings of the Board of Directors shall be held on such dates and at such times and places as the Board of Directors shall from time to time determine, for the transaction of such business as may lawfully come before each meeting. It shall be the duty of the Secretary of the Foundation to give five (5) days' notice of the time, place and date of each regular meeting to each director.

2.5 Special Meetings. Special meetings of the Board of Directors shall be held whenever called by or upon the request of the Chairman or upon request of any two (2) Directors. It shall be the duty of the Secretary to give sufficient notice of the date, time and place of each special meeting to each director to enable each director to attend the special meeting.

2.6 Quorum for Meetings. The presence of a majority of the number of Directors fixed by these Amended and Restated Bylaws as constituting the Board of Directors shall be a quorum for the transaction of business at all meetings convened according to these Amended and Restated Bylaws.

2.7 Voting. The affirmative vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except as may be otherwise specifically provided by law or these Fifth Amended and Restated Bylaws.

2.8 Proxies. A director may vote at a meeting of the Board of Directors by proxy executed in writing by the director and delivered to the Secretary of the Foundation at or prior to such meeting; however, a director present by proxy at any meeting of the Board of Directors may not be counted to determine whether a quorum is present at such meeting. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

2.9 Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all members of the Board of Directors or of such committee, and such consent shall have the same force and effect as a unanimous vote at a meeting. A telegram, telex, cablegram, electronic mail or similar transmission by a director or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by a director shall be treated as an execution in writing for purposes of this paragraph 2.9.

2.10 Alternative Forms of Meetings. Members of the Board of Directors may participate in and hold a meeting of the Board of Directors by means of conference telephone or similar communications equipment or another suitable electronic communications system, by means of which all persons participating in the meeting can hear each other, and participation in such meeting pursuant to Tex. Bus. Orgs. § 6.002 shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

2.11 Election of Chairman; Conduct of Meetings. The Board of Directors may elect a Chairman. The Chairman, and in his or her absence the Vice President, shall call meetings of the Board of Directors to order, and preside at all meetings of the Board of Directors, and the Secretary of the Foundation shall act as secretary of all such meetings, but in the absence of the Secretary the Chairman may appoint any person present to act as secretary of the meetings.

2.12 Compensation.

(a) Subject to paragraph 2.12(b), Directors, as such, shall not be entitled to any stated salary for their services but by resolution of the Board of Directors, expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board of Directors of any meeting of a committee of Directors.

(b) The Chairman of the Board of Directors shall be entitled to reasonable compensation for services performed as set by resolution of the Board of Directors from time to time.

**ARTICLE 3  
NOTICES**

3.1 Form of Notice. Whenever under the provisions of these Fifth Amended and Restated Bylaws, notice is required to be given to any director or committee member, and no provision is made as to how such notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given or sent by mail, facsimile or electronic message to each Director at his or her address as appears on the books of the Foundation. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail so addressed with postage thereon prepaid. If notice is given by facsimile or electronic message, such notice is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice.

3.2 Waiver. Whenever any notice is required to be given to any director or committee member under the provisions of these Fifth Amended and Restated Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

**ARTICLE 4  
GENERAL OFFICERS**

4.1 Election and Term.

(a) The officers of the Foundation shall be an Executive Officer, a President, a Vice President, a Secretary, and such other officers as may be determined and selected by the vote of the Board of Directors.

(b) At the organizational meeting, and thereafter at each annual meeting, the Board of Directors shall elect the officers. Each officer so elected shall take office on the date of his or her election and shall hold such office until the earlier of the date of the next annual meeting of the Board of Directors following the date of his or her election, and thereafter, until his or her successor shall have been duly elected and qualified, or the date such officer resigns or is removed. Any officer whose term of office shall have expired may be elected to succeed himself or herself. Any two or more offices may be held by the same person, except that the offices of President and Secretary may not be held by the same person.

(c) Any officer may resign at any time by giving written notice thereof to the Chairman or the Secretary of the Foundation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof, and the acceptance of the resignation shall not be necessary to make it effective.

(d) Any officer elected by the Board of Directors may be removed at any time by the Board of Directors with or without cause; provided that removal without cause shall not prejudice the contract rights, if any, of such officer.

4.2 Duties. The principal duties of the several officers are as follows:

(a) Executive Officer. The Executive Officer shall be the chief executive officer of the Foundation, and subject to the control of the Board of Directors, shall have general charge and supervision of the administration of the activities and affairs of the Foundation. The Executive Officer shall see that all orders and resolutions of the Board of Directors are carried into effect. The Executive Officer shall sign and execute all legal documents and instruments in the name of the Foundation when authorized to do so by the Board of Directors, shall prepare an annual budget showing expected receipts and expenditures for consideration by the Board of Directors, and shall perform such other duties as may be prescribed from time to time by the Board of Directors. The Executive Officer shall also have the power to appoint and remove subordinate employees. The Executive Officer shall submit to the Board of Directors plans and suggestions for the activities of the Foundation, shall direct its general correspondence and shall present recommendations in each case to the Board of Directors for decision. The Executive Officer shall also submit a report of the activities and affairs of the Foundation at each annual meeting of the Board of Directors and at other times when called upon so to do by the Board of Directors. The Executive Officer need not be a member of the Board of Directors.

(b) President. The President shall assume such powers and duties as may be delegated to him or her from time to time by the Board of Directors.

(c) Vice President. The Vice President shall assume the duties and powers of the President during the President's absence or disability. The Vice President shall assume such powers and duties as may be delegated to him or her from time to time by the Board of Directors or the Executive Officer. If both the President and Vice President are absent, disabled, or if their officers are vacant, the Board of Directors shall elect another Director to serve as President.

(d) Secretary. The Secretary shall have charge of the records and correspondence of the Foundation under the direction of the Chairman, and shall be the custodian of the seal of the Foundation, if any. The Secretary shall give notice of and attend all meetings of the Board of Directors. The Secretary shall take and keep true minutes of all meetings of the Board of Directors of which, ex officio, without vote (unless he or she is also a director), the Secretary shall be the secretary. The Secretary shall discharge such other duties as shall be prescribed from time to time by the Chairman or the Board of Directors. In case of the absence or disability of the Secretary, the Board of Directors may appoint an assistant secretary to perform the duties of the Secretary during such absence or disability.

(e) Treasurer. The Treasurer shall perform all the duties of the treasurer of a Texas nonprofit corporation. The Treasurer shall keep account of all moneys, credits and property of the Foundation which shall come into the Treasurer's hands and keep an accurate account of all moneys received and discharged. Except as otherwise ordered by the Board of Directors, the Treasurer shall have the custody of all the funds and securities of the Foundation and shall deposit the same in such banks and depositories as the Board of Directors shall designate. The Treasurer shall keep proper books of account and other books showing at all times the amount of the funds and other property belonging to the Foundation, all of which books shall be open at all times to the inspection of the Board of Directors. The Treasurer shall also submit a report of the accounts and financial condition of the Foundation at each annual meeting of the Board of Directors which report, if necessary, shall be maintained and available for inspection. The Treasurer shall also make such transfers and alterations in the securities of the Foundation as may be ordered by the Board of Directors. In general, the Treasurer shall perform all the duties which are incident to the office of Treasurer, subject to the Board of Directors, and shall perform such additional duties as may be prescribed from time to time by the Board of Directors. The Treasurer shall give bond only if required by the Board of Directors. In case of absence or disability of the Treasurer, and if no assistant treasurer has been elected, the Board of Directors may appoint an assistant treasurer to perform the duties of the Treasurer during such absence or disability.

4.3 Vacancies. Whenever a vacancy shall occur in any general office of the Foundation, such vacancy shall be filled by the Board of Directors by the election of a new officer who shall take office on the date of his or her election and shall hold such office until the earlier of the date of the next annual meeting of the Board of Directors following the date of his or her election, and thereafter, until his or her successor shall have been duly elected and qualified, or the date such officer resigns or is removed.

## **ARTICLE 5 APPOINTIVE OFFICERS AND AGENTS**

5.1 Appointive Officers and Agents. The Board of Directors may appoint such other officers and agents (such as, an Executive Director) in addition to those provided for in Article 4 of these Fifth Amended and Restated Bylaws, as the Board of Directors may deem necessary. Such persons shall have such authority and perform such duties as shall from time to time be prescribed by the Board of Directors. All appointive officers and agents shall hold their respective offices or positions at the pleasure of the Board of Directors, and may be removed from office or discharged at any time with or without cause, provided that removal without cause shall not prejudice the contract rights, if any, of such officers and agents.

## **ARTICLE 6 STANDING AND SPECIAL COMMITTEES**

6.1 Standing Committees. The Board of Directors may designate one or more standing committees as are necessary and which are not in conflict with other provisions of these Fifth Amended and Restated Bylaws, and the duties of any such standing committees shall be prescribed by the Board of Directors upon their designation. Each such standing committee shall consist of two or more persons, who may, but need not be, limited to the directors of the Foundation.

Appointments of persons to such standing committees shall be for terms prescribed by the Board of Directors upon their appointment by such Board.

6.2 Special Committees. The Board of Directors may designate one or more special committees as are necessary and which are not in conflict with other provisions of these Fifth Amended and Restated Bylaws, and the duties of any such special committees shall be prescribed by the Board of Directors upon their designation. Each such special committee shall consist of two or more persons, who may, but need not be, limited to directors of the Foundation. A special committee shall limit its activities to the accomplishment of the tasks for which it is designated and shall have no power to act except as specifically conferred by action of the Board of Directors. Upon the completion of the task for which designated, such special committee shall stand dissolved.

6.3 Quorum and Voting. A majority of the members of a committee shall constitute a quorum for the transaction of business at any meeting of such committee and the act of a majority of the committee members present at a meeting at which a quorum is present shall be the act of the committee.

6.4 Meetings and Notices. Meetings of a committee may be called by the Chairman or the chairman of the committee. Each committee shall meet as often as is necessary to perform its duties. Notice may be given at any time and in any manner reasonably designated to inform the members of the time and place of the meeting. Each committee shall keep minutes of its proceedings.

6.5 Resignations and Removals. Any member of a committee may resign at any time by giving notice to the chairman of the committee or the Secretary of the Foundation. Unless otherwise specified in the notice, such resignation shall take effect upon receipt thereof, and the acceptance of such resignation shall not be necessary to make it effective. The Board of Directors may remove at any time with or without cause any member of any committee who was originally appointed thereto by the Board of Directors as provided in these Fifth Amended and Restated Bylaws.

6.6 Vacancies. A vacancy on a committee shall be filled for the unexpired portion of the term of the former occupant in the same manner in which an original appointment to such committee is made.

## **ARTICLE 7 AMENDMENT**

7.1 Amendment. These Fifth Amended and Restated Bylaws may be amended by the Board of Directors at any meeting of the Board of Directors at which a quorum is present by the affirmative vote of a majority of the directors present at such meeting; provided, that notice of the proposed amendment shall have been given to each director in writing at least five (5) days prior to such meeting. Notwithstanding the immediately preceding sentence, any amendment to these Fifth Amended and Restated Bylaws which would remove, or have the effect of removing the right of the Board of Directors of BHP Holdings (USA) Inc., to appoint or remove any or all the directors of the Foundation shall require approval of the Board of Directors of BHP Holdings (USA) Inc.



**ARTICLE 8**  
**INDEMNIFICATION OF DIRECTORS AND OFFICERS**

8.1 **Indemnification.** Chapter 8 of the Texas Business Organizations Code permits the Foundation to indemnify any person who is or was a director, officer, employee or agent of the Foundation, any person who while a director of the Foundation, is or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, director, employee, agent, or similar functionary of another foreign or domestic corporation partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, and any other person who is not or was not a director, officer, employee, or agent of the Foundation but who is or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, director, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, to the extent and under the circumstances set forth therein. The Foundation hereby elects to and does hereby indemnify all such persons to the fullest extent permitted or required by such Chapter promptly upon request of any such person making a request for indemnity hereunder, unless (i) there are restrictions to the contrary in the Certificate of Formation or (ii) any such indemnification would be considered self-dealing or an excess benefit transaction (but only to the extent it would be so considered) under section 4941 or 4958 of the Internal Revenue Code of 1986, as amended, or the regulations thereunder. Such obligation to so indemnify and to so make all necessary determinations may be specifically enforced by resort to any court of competent jurisdiction. Further, the Foundation shall pay or reimburse the reasonable expenses of such persons covered hereby in advance of the final disposition of any proceeding to the fullest extent permitted by such Article and subject to the conditions thereof.

8.2 **Insurance.** Title 1, Chapter 8, Subchapter D, Section 8.151 of the Texas Business Organizations Code permits the Foundation to purchase and maintain insurance on behalf of any person who is or was a director, director, officer, employee, or agent of the Foundation or who is or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, director, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his status as such a person, whether or not the Foundation would have the power to indemnify him or her against that liability under Chapter 8 of the Texas Business Organizations Code. The Foundation is hereby authorized to purchase and maintain such insurance, as determined by the Board of Directors; provided, however, that the portion of insurance premium cost which is allocable to the insurance coverage for items not eligible for indemnification under section 4941 or 4958 of the Code or the regulations thereunder be treated as compensation to the officers, Directors, employees, and agents of the Foundation so covered.

**ARTICLE 9  
GENERAL PROVISIONS**

9.1 Fiscal Year. The fiscal year of the Foundation shall begin on the 1st day of July (or with respect to its year of incorporation, the date of incorporation if different) and end on the 30th day of June each year.

9.2 Books and Records. The Foundation shall keep correct and complete books and records of account on the accrual basis method of accounting and shall also keep minutes of the proceedings of the meetings of the Board of Directors, and committees, standing or special.

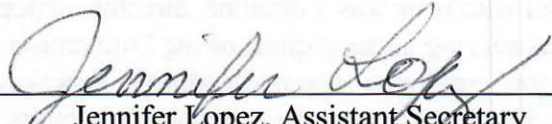
9.3 Seal. The Board of Directors may adopt a corporate seal to be in such form and to be used in such manner as the Board of Directors shall direct.

9.4 Permanent Incapacity. Any member of the Board of Directors who shall be incapable of participating in the management and affairs of the Foundation for a continuous period of six months shall be deemed to be "permanently incapacitated" within the meaning of that term as used in these Fifth Amended and Restated Bylaws.

**CERTIFICATE**

I, the undersigned, Assistant Secretary of the BHP Foundation, a Texas nonprofit corporation, do hereby certify that the foregoing Fifth Amended and Restated Bylaws were duly adopted as the Bylaws of the corporation on July 9, 2020 via unanimous consent or at a meeting of the directors of the corporation, duly noticed and held.

Dated: July 9, 2020

  
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Jennifer Lopez, Assistant Secretary