

**DIXIE ENERGY TRUST**

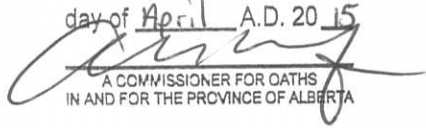
**SECOND AMENDED AND RESTATED TRUST INDENTURE**

**Made as of**

**February 28, 2013**

THIS IS EXHIBIT "A"  
referred to in the affidavit of  
CALVIN YAU

Sworn before me this 2  
day of April A.D. 20 13

  
A COMMISSIONER FOR OATHS  
IN AND FOR THE PROVINCE OF ALBERTA

**Allison G. Kuntz**  
Barrister and Solicitor

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## DIXIE ENERGY TRUST

THIS SECOND AMENDED AND RESTATED TRUST INDENTURE is made as of the 28<sup>th</sup> day of February, 2013.

AMONG:

OLYMPIA TRUST COMPANY, a trust company incorporated under the laws of Alberta, with offices in the City of Calgary, in the Province of Alberta (the “Trustee”),

OF THE FIRST PART

and

DIXIE ENERGY LTD., a corporation incorporated under the laws of Alberta, with offices in the City of Calgary, in the Province of Alberta (the “Corporation”)

OF THE SECOND PART

WHEREAS

- A. On June 29, 2012, the Trust was created and settled pursuant to the Original Indenture for the purpose of acquiring and holding certain investments, including securities of Can Holdco (as hereinafter defined);
- B. The Trustee has agreed to hold all amounts and assets received under this Trust Indenture or in respect of the investment of the assets of the Trust in accordance with the provisions of this Trust Indenture.
- C. The Trustee wishes that the beneficiaries of the Trust will be the holders of Units.
- D. It is desirable that the Trust shall, at all times, not invest in any property which constitutes “non-portfolio property” as defined in section 122.1 of the Tax Act.
- E. The Corporation has agreed to act as the administrator of the Trust pursuant to the Administrative Services Agreement.
- F. The Trustee wishes that the Trust qualify as a “mutual fund trust” pursuant to subsection 132(6) of the *Income Tax Act* (Canada) prior to March 31, 2013.
- G. The parties hereto desire to set out the agreements, terms and conditions that will govern their mutual and respective rights, powers and obligations with respect to the settlement and administration of the Trust.
- H. For greater certainty, the amendment and restatement of this Trust Indenture shall not be deemed to constitute a termination or resettlement of the Trust.

## ARTICLE 1 INTERPRETATION

### 1.01 Definitions

In this Trust Indenture and in the Unit Certificates, unless the context otherwise requires, the following words and phrases shall have the following meanings:

- (a) “**Accounting Principles**” has the meaning ascribed thereto in Section 1.05;
- (b) “**Administrative Services Agreement**” means the administrative services agreement entered into between the Administrator and the Trustee, as amended, supplemented or amended and restated from time to time;
- (c) “**Administrator**” means the person appointed as administrator of the Trust from time to time, and shall be deemed to include any successor or successors in accordance with the terms of this Trust Indenture and if applicable, the Administrative Services Agreement, initially being the Corporation;
- (d) “**Administrator Directors**” means the director or directors of the Administrator;
- (e) “**affiliate**” of a person means any other person controlling, controlled by, or under common control with, such person;
- (f) “**annuitant**” means an annuitant, subscriber, holder or beneficiary under a registered retirement savings plan, a registered retirement income fund, a registered education savings plan, a registered pension plan, a registered pension fund, a registered disability savings plan, a tax-free savings account or a deferred profit sharing plan, all as defined in the Tax Act, or an annuitant, subscriber, holder or beneficiary of any other plan, account or fund, of which a Unitholder, Beneficial Unitholder or holder of Other Trust Securities acts as trustee or carrier;
- (g) “**Applicable Laws**” means all laws, rules, regulations, codes, by-laws, statutes, ordinances, directives and orders, in effect from time to time, of all jurisdictions and Governing Authorities having jurisdiction with respect to the Trust and its affiliates;
- (h) “**associate**” means, in relation to another person:
  - (i) a person of which the other person beneficially owns or controls, directly or indirectly, voting securities entitling the other person to more than 10% of the voting rights attached to outstanding securities of the person;
  - (ii) any person who is a partner of the other person;
  - (iii) any trust or estate in which the other person has a substantial beneficial interest or in respect of which the other person serves as trustee or in a similar capacity;
  - (iv) in the case where the other person is an individual, a relative of that individual, including:
    - (A) the spouse or adult interdependent partner of that individual, if the relative has the same residence as that individual; or
    - (B) a relative of that individual’s spouse or adult interdependent partner, if the relative has the same residence as that individual;



- (i) “**Auditors**” means any firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof;
- (j) “**Beneficial Unitholder**” means the beneficial owner of a Unit;
- (k) “**Beneficiary**” has the meaning ascribed thereto in subsection 12.05(a);
- (l) “**Bid Units**” has the meaning ascribed thereto in subsection 3.27(a);
- (m) “**Book-Entry System**” means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Service of CDS in force from time to time, or any successor system which CDS may offer from time to time;
- (n) “**Business Day**” means any day other than a Saturday, Sunday or a day on which the principal chartered banks located at Calgary, Alberta are not open for business;
- (o) “**Can Holdco**” means Dixie Energy Holdings (Canada) Ltd., a corporation incorporated under the laws of the Province of Alberta;
- (p) “**Can Holdco Shares**” means the common shares in the capital of Can Holdco;
- (q) “**Cash Redemption Price**” has the meaning ascribed thereto in Section 6.03;
- (r) “**CDS**” means CDS Clearing and Depository Securities Inc.;
- (s) “**CDS Participant**” means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time, effects book-based transfers with CDS and pledges of securities deposited with CDS;
- (t) “**closing market price**” has the meaning ascribed thereto in Section 6.03;
- (u) “**Compensation Plans**” means the incentive and compensation plan or plans to be entered into between the Trust and certain of the Administrator’s and/or the Trust’s affiliates, directors, officers, employees and consultants (or directors, officers and employees of such consultants);
- (v) “**control**”, and related terms including “**controlling**” and “**controlled**”, shall mean the possession, directly or indirectly, by or on behalf of a person or group of persons acting jointly or in concert, of the following in respect of another person:
  - (i) in the case where the other person is a corporation, the power to vote more than 50% of the securities having ordinary voting power for the election of directors of such corporation;
  - (ii) in the case where the other person is a limited partnership, the power to control the general partner of the limited partnership; and
  - (iii) in the case where the other person is other than a corporation or limited partnership, any of:

- (A) the power to exercise more than 50% of the voting rights in such person;  
or
  - (B) the right to receive more than 50% of the distributions made by that person;
- (w) “**Counsel**” means a barrister and solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;
  - (x) “**Credit Facilities**” means all credit facilities and agreements to be entered into by the Trust or any of its affiliates, from time to time, which set forth the terms and conditions of any debt financing obtained by the Trust, or by any one of its affiliates (as the case may be), from any person or persons not affiliated with the Trust, and, for further certainty, shall include all agreements pertaining to issuances of debentures or other debt securities to the public;
  - (y) “**Depository**” has the meaning ascribed thereto in Section 3.09;
  - (z) “**discretion**” means the absolute and sole discretion of the party exercising same;
  - (aa) “**Distributable Cash Flow**” has the meaning ascribed thereto in Section 5.01;
  - (bb) “**Distribution Payment Date**” means such date or dates as may be determined from time to time by the Trustee or the Administrator on which Distributable Cash Flow is distributed to Unitholders (initially to be the 15th day of the calendar month which immediately follows the corresponding Distribution Record Date, or if such day is not a Business Day, the following Business Day);
  - (cc) “**Distribution Period**” means, in respect of the initial distribution, the period commencing on June 29, 2012 and ending on and including December 31, 2012, and thereafter means each calendar month in each calendar year, or such other periods as may hereafter be determined from time to time by the Trustee or the Administrator, provided that any such period shall be no longer in duration than three (3) calendar months nor any shorter in duration than one (1) calendar month except in respect of the initial distribution;
  - (dd) “**Distribution Record Date**” means, in respect of a Distribution Period, the last Business Day of the Distribution Period or such other dates as may be determined from time to time by the Trustee or the Administrator;
  - (ee) “**Environmental Liabilities**” means all liabilities, losses, costs, charges, damages, expenses, and penalties (including costs and expenses of abatement and remediation of spills or releases of contaminants and all liabilities to third parties (including governmental agencies) in respect of bodily injuries, property damage, damage to or impairment of the environment or any other injury or damage, including foreseeable and unforeseeable consequential damages) sustained, suffered or incurred in connection with or as a result of:
    - (i) the administration of the Trust; or

- (ii) the exercise or performance by the Trustee or the Administrator of any rights or obligations hereunder or under any other contracts, and which, in either case, result from or relate, directly or indirectly, to:
  - (A) the presence or release or threatened presence or release of any contaminants, by any means or for any reason, on or in respect of any properties of the Trust, whether or not such presence or release or threatened presence or release of the contaminants was under the control, care or management of the Trust or the Administrator or of a previous owner or operator of such property;
  - (B) any contaminant present on or released from any property adjacent to or in the proximate area of any properties of the Trust;
  - (C) the breach or alleged breach of any federal, provincial or municipal environmental law, regulation, by-law, order, rule or permit by the Trust or the Administrator, or an owner or operator of a property; or
  - (D) any misrepresentation or omission of a known fact or condition made by the Administrator relating to any property;
- (ff) “**Experts**” has the meaning ascribed thereto in subsection 12.02(a);
- (gg) “**foreign private issuer**” has the meaning ascribed thereto in the *United States Securities Act of 1933*, as amended from time to time;
- (hh) “**Global Unit Certificate**” means the certificate(s) representing Units and registered in the name of CDS or its nominee, as custodian thereof, to permit the use of the Book-Entry System;
- (ii) “**Governing Authority**” means any stock exchange or any court or governmental department, regulatory agency or body, commission, board, bureau, agency, or instrumentality of Canada, or of any state, province, territory, county, municipality, city, town or other political jurisdiction whether domestic or foreign and whether now or in the future constituted or existing;
- (jj) “**Income of the Trust**” has the meaning ascribed thereto in subsection 5.02(a);
- (kk) “**Indemnified Party**” has the meaning ascribed thereto in subsection 12.06(a);
- (ll) “**Indenture Conferred Duties**” means all authorities, rights, powers, responsibilities and duties conferred upon, granted to or delegated to the Administrator pursuant to the terms of this Trust Indenture;
- (mm) “**in Specie Redemption Price**” has the meaning ascribed thereto in subsection 6.06(a);
- (nn) “**Internal Reorganization**” means the sale, lease, exchange or other transfer of Trust Property (whether or not involving all or substantially all of the Trust Property) as a result of which the Trust has substantially the same interest, whether direct or indirect, in the Trust Property that it had prior to the reorganization and includes an amalgamation,

arrangement, merger or combination of the Fund and one or more of its affiliates with any entities;

- (oo) “**market price**” has the meaning ascribed thereto in Section 6.03;
- (pp) “**meeting of Unitholders**” shall mean and include, as the circumstances require, both an annual meeting of Unitholders and any other meeting of Unitholders;
- (qq) “**mutual fund trust**” means a mutual fund trust as defined in section 132 of the Tax Act;
- (rr) “**Net Realized Capital Gains**” has the meaning ascribed thereto in subsection 5.02(b);
- (ss) “**Non-certifying Unitholder**” means a Unitholder or Beneficial Unitholder who, after 30 days from receipt of a request of the Trustee or Administrator under subsection 3.08(a), fails to comply with the request to furnish a Taxation Certification, or fails to use reasonable efforts to obtain a Taxation Certification from each Beneficial Unitholder beneficially owning Units registered or held in such Unitholder’s name;
- (tt) “**non-portfolio property**” means non-portfolio property as defined in section 122.1 of the Tax Act;
- (uu) “**Non-resident**” means a Unitholder who at the relevant time, for the purposes of the Tax Act and any applicable tax convention entered into by the Government of Canada, is not resident in Canada and is not deemed to be resident in Canada, or is a partnership that is not a Canadian partnership within the meaning of the Tax Act;
- (vv) “**Non-resident Restriction**” has the meaning ascribed thereto in subsection 3.07(a);
- (ww) “**non-tendering offeree**” means, in the case of a take-over bid made for Bid Units, a holder of Bid Units who does not accept the take-over bid, and includes a subsequent holder of such Bid Units who acquires them from the first mentioned holder;
- (xx) “**offeree**” means a person to whom a take-over bid is made;
- (yy) “**Offering**” means any issuance or offering of Units or Other Trust Securities;
- (zz) “**offeror**” means a person, other than an agent, who makes a take-over bid, and includes two or more persons who, directly or indirectly, make a take-over bid jointly or in concert;
- (aaa) “**Ordinary Resolution**” means:
  - (i) a resolution passed by more than 50% of the votes cast by those Unitholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution, or
  - (ii) a resolution approved in writing, in one or more counterparts, by holders of more than 50% of the votes represented by those Units entitled to be voted on such resolution;

- (bbb) “**Original Indenture**” means the trust indenture, dated as of June 29, 2012, between the Corporation and, Messrs. John Mackay, David Anderson and Barclay Laughland, as trustees, pursuant to which the Trust was settled;
- (ccc) “**Other Trust Securities**” means any type of securities of the Trust, other than Units, including notes (including Redemption Notes), options, rights, warrants or other securities convertible into or exercisable for Units or other securities of the Trust (including convertible debt securities, subscription receipts and instalment receipts);
- (ddd) “**person**” includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, estates, banks, trust companies, pension funds, business trusts and other organizations, (whether or not legal entities) and governments and agencies and political subdivisions thereof;
- (eee) “**Redemption Date**” has the meaning ascribed thereto in Section 6.02;
- (fff) “**Redemption Gain**” has the meaning ascribed thereto in subsection 5.02(c);
- (ggg) “**Redemption Income**” has the meaning ascribed thereto in subsection 5.02(c);
- (hhh) “**Redemption Notes**” means promissory notes issued in series, or otherwise, by the Trust pursuant to a note indenture, or otherwise, and having the following terms and conditions:
  - (i) unsecured and bearing interest from and including the issue date of each such note at a market rate determined at the time of issuance, based on the advice of an independent financial advisor, and payable monthly in arrears (with interest after as well as before maturity, default and judgment, and interest on overdue interest at such rate);
  - (ii) subordinated and postponed to all Senior Indebtedness and which may be subject to specific subordination and postponement agreements entered into by the Trustee with holders of Senior Indebtedness;
  - (iii) subject to earlier prepayment, being due and payable on the 5th anniversary of the date of issuance or such other date as is determined at the date of issuance; and
  - (iv) such other terms and conditions as the Administrator may determine necessary or desirable;
- (iii) “**Registers**” has the meaning ascribed thereto in Section 3.17;
- (jjj) “**Securities Act**” means the *Securities Act*, R.S.A. 2000, c. S-4, as amended, including the rules, regulations and instruments promulgated thereunder;
- (kkk) “**security**”, as applicable in the particular context, has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time, and “**securities**” has a corresponding meaning;
- (lll) “**Senior Indebtedness**” shall mean, at any time, all indebtedness, liabilities and obligations of the Trust which, by the terms of the instrument creating or evidencing the

same, is not expressed to rank in right of payment in subordination to or *pari passu* with the indebtedness evidenced by the Redemption Notes or any of them;

- (mmm) “**SIFT Rules**” means the provisions of the Tax Act that apply to a SIFT trust as defined in section 122.1 of the Tax Act;
- (nnn) “**SIFT trust**” means a SIFT trust as defined in section 122.1 of the Tax Act;
- (ooo) “**Special Resolution**” means:
  - (i) a resolution passed by more than 66⅔% of the votes cast by those Unitholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution; or
  - (ii) a resolution approved in writing, in one or more counterparts, by holders of more than 66⅔% of the votes represented by those Units entitled to be voted on such resolution;
- (ppp) “**spouse**” means the husband or wife of a married person;
- (qqq) “**Standard of Care**” means in respect of any person or company performing duties on behalf of the Trust, the obligation to:
  - (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Trust and the Unitholders; and
  - (ii) exercise the degree of care, diligence and skill that a reasonably prudent trustee or administrator, as applicable, would exercise in the circumstances;
- (rrr) “**subsidiary**” has the meaning ascribed thereto in the *Business Corporations Act* (Alberta);
- (sss) “**Subsidiary Securities**” has the meaning ascribed thereto in subsection 8.02(bb);
- (ttt) “**take-over bid**” has the meaning ascribed to such term in Multilateral Instrument 62-104 – *Take-Over Bids and Issuer Bids*, but without reference to the jurisdiction of residence of the person to whom an offer to acquire securities is made;
- (uuu) “**Tax Act**” means the *Income Tax Act*, R.S.C. 1985 (5th Supp.), C-1 and the Income Tax Regulations thereunder as amended from time to time;
- (vvv) “**Taxation Certification**” means: (i) a properly completed and duly executed United States Internal Revenue Service Form W-8BEN or W-9 (as applicable), or such successor form to such forms as the Internal Revenue Service shall adopt; and (ii) if the Unitholder or Beneficial Unitholder is a resident of a jurisdiction (other than the United States or Canada) that is determined by the Trustee or the Administrator not to have a tax treaty with the United States that fully exempts a United States payor from withholding obligations on interest payments made to residents in such jurisdiction, a properly completed and duly executed certification that such person does not beneficially own directly or indirectly 10% or more of the total issued and outstanding Units;

- (www) **“this Trust Indenture”**, **“this Indenture”**, **“hereto”**, **“herein”**, **“hereof”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Amended and Restated Trust Indenture, as the same may be amended, restated or modified from time to time, and includes every instrument supplemental or ancillary to or in implementation of this Trust Indenture and, except where the context otherwise requires, does not refer to any particular Article, Section or other portion hereof or thereof;
- (xxx) **“Transfer Agent”** means such person as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Units, together with any sub-transfer agent appointed by such Transfer Agent; provided that where the Trust has not appointed a person to act as registrar and transfer agent of the Units, then the Trustee shall act as registrar and transfer agent of the Units;
- (yyy) **“Trust”** means the Dixie Energy Trust, as constituted by this Trust Indenture, and includes reference to the Trustee acting in its capacity as Trustee for the Trust;
- (zzz) **“Trust Liabilities”** has the meaning ascribed thereto in subsection 12.05(a);
- (aaaa) **“Trust Property”**, at any time, means all of the money, properties and other assets of any nature or kind whatsoever as are, at such time, held by the Trust or by the Trustee on behalf of the Trust, and any reference to **“property”** or **“property of the Trust”** or **“assets”** or **“assets of the Trust”** includes, in each case, the Trust Property;
- (bbbb) **“Trustee”** or **“Trustees”** means at any time, a person who is, or persons who are, in accordance with the provisions hereof, the trustee or trustees of the Trust at that time;
- (cccc) **“Trustee’s Regulations”** has the meaning ascribed thereto in Section 8.03;
- (dddd) **“Unitholder”** means, at any time, a holder at that time of one or more Units, as shown on any of the Registers;
- (eeee) **“Unit Certificate”** means a certificate, in the form approved by the Administrator from time to time, evidencing one or more Units, issued and certified in accordance with the provisions hereof and includes a Global Unit Certificate (if any);
- (ffff) **“Units”** means the units of the Trust created and designated as **“Units”** pursuant to subsection 3.01(a) hereof, having the rights, privileges, restrictions and conditions as provided for in this Indenture; and **“Unit”** means any Unit;
- (gggg) **“U.S. Opco”** means Dixie Energy Holdings (US) Ltd., a corporation formed pursuant to the laws of Delaware and a wholly-owned subsidiary of Can Holdco;
- (hhhh) **“U.S. Opco Notes”** means any subordinated unsecured promissory notes issued by U.S. Opco and held by the Trust or any subsidiary of the Trust;
- (iiii) **“U.S. Residency Restriction”** has the meaning ascribed thereto in subsection 3.07(a)(ii);
- (jjjj) **“U.S. Resident”** means a Beneficial Unitholder who at the relevant time, for purposes of the United States securities laws, is resident in the United States, as such residency may be determined for the purpose of establishing the Trust as a **“foreign private issuer”** under United States securities laws or in providing for an exemption for the Trust and its

subsidiaries from reporting under the United States Securities Exchange Act of 1934, as amended; and

- (kkkk) **“Voting Agreement”** means the agreement entered into between the Trustee, the Administrator and the shareholder of the Administrator to provide the Trustee with control over the election of the Administrator Directors, as the same may be amended, supplemented or amended and restated from time to time.

## **1.02 References to Acts Performed by the Trust**

For greater certainty, where any reference is made in this Trust Indenture to:

- (a) an act to be performed or not to be performed by the Trust or to rights of the Trust, such reference shall be construed and applied for all purposes to refer to (i) an act to be performed or not to be performed by the Trustee on behalf of the Trust or by some other person duly authorized to do so by the Trustee or pursuant to the provisions hereof or the Administrative Services Agreement, or to (ii) rights of the Trustee, in its capacity as Trustee of the Trust, as the case may be; and
- (b) actions, rights or obligations of the Trustee, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustee in its capacity as Trustee of the Trust, and not in its other capacities unless the context clearly requires otherwise, and where any actions or obligations of the Trustee are delegated to the Administrator or some other person, then the Administrator or such other person shall also be entitled to the rights of the Trustee associated with such actions and obligations.

## **1.03 Extended Meanings**

In this Trust Indenture, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice-versa and words importing a gender shall include the feminine, masculine and neuter genders. Where the word **“including”** or **“includes”** is used in this Trust Indenture it means **“including without limitation”** or **“includes without limitation”**, respectively. Any reference to any document shall include a reference to any schedule, amendment or supplement thereto or any agreement in replacement thereof, all as permitted under such document.

## **1.04 Statutory References**

A reference herein to any statute includes every regulation (and other similar ancillary instrument having the force of law) made pursuant thereto, all amendments to the statute or to any such regulation (or other similar ancillary instrument) in force from time to time, and any statute or regulation (or other similar ancillary instrument) which supplements or supersedes such statute or regulation (or other similar ancillary instrument); and a reference to any section or provision of a statute includes all amendments to such section or provision, as made from time to time, and all sections or provisions which supplement or supersede such section or provision referred to herein.

## **1.05 Accounting Principles**

Wherever in this Trust Indenture reference is made to International Financial Reporting Standards, generally accepted accounting principles or other similar terms (**“Accounting Principles”**), such reference shall be deemed to be to such Accounting Principles from time to time approved by the



Canadian Institute of Chartered Accountants, or any successor institute, applicable to the Trust as at the date on which such calculation is made or required to be made in accordance with Accounting Principles. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Trust Indenture or any document, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with the applicable Accounting Principles applied on a consistent basis.

#### **1.06 Headings for Reference Only**

The division of this Trust Indenture into Articles and Sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Trust Indenture. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and subsections are to Articles, Sections and subsections of this Trust Indenture.

#### **1.07 Day Not a Business Day**

Except as otherwise set out herein, in the event that any day on which any amount is to be determined or any other determination is to be made or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined, or such other determination shall be made, or such action shall be required to be taken, at or before the requisite time on the next succeeding day that is a Business Day. This Section is not applicable to the determination of Distribution Periods.

#### **1.08 Time of the Essence**

Time shall be of the essence in this Trust Indenture.

#### **1.09 Governing Law**

This Trust Indenture and the Unit Certificates shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Alberta.

#### **1.10 Currency**

Unless otherwise specified, all references herein to currency shall be references to currency of Canada.

## ARTICLE 2 DECLARATION OF TRUST

#### **2.01 Settlement**

The Corporation, as settlor of the Trust, has deposited, with the Trustee, a silver coin for the purpose of creating and settling the Trust. Receipt of such coin has been acknowledged by the Trustee and such coin shall never revert to the settlor of the Trust except upon wind-up of the Trust.

#### **2.02 Declaration of Trust**

The Trustee hereby declares that it will act as trustee on behalf of, and to hold legal title to, use and administer the Trust Property in trust for the benefit of, the Unitholders and their permitted assigns and

personal representatives upon the trusts and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

### **2.03 Name of the Trust**

The Trust shall be known and designated as “**Dixie Energy Trust**” and, whenever lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name. The Trust may use such other designation or may adopt such other name as the Trustee (with the consent of the Administrator), or the Administrator alone, deems appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name. The Trustee (with the consent of the Administrator) may approve and use a version of any name or designation used by the Trust in any language other than English.

### **2.04 Situs and Head Office**

The situs, mind and management of the Trust shall be in the Province of Alberta and the head office of the Trust shall be located at Calgary, Alberta, or such other place or places in Canada as the Administrator may from time to time designate and will initially be located at 400 - 620 12<sup>th</sup> Avenue SW, Calgary, Alberta, T2R 0H5.

### **2.05 Nature of the Trust**

The Trust is an unincorporated open-ended limited purpose trust established for the purposes specified in Section 4.01. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company; further, neither the Trustee, nor the Administrator, nor the Unitholders, nor any of them, shall be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. Except as expressly specified herein, neither the Trustee nor the Administrator shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustee shall be solely that of beneficiaries of the Trust, and their rights shall be limited to those expressly conferred upon them by this Trust Indenture and Applicable Laws.

### **2.06 Mutual Fund Trust Election**

In respect of the Trust’s first taxation year, the Trust shall elect pursuant to subsection 132(6.1) of the Tax Act that the Trust be deemed to be a “mutual fund trust” for purposes of the Tax Act for the entire year.

### **2.07 Rights of Unitholders and Ownership of Assets of the Trust**

- (a) Except as otherwise expressly provided for herein, no Unitholder shall be entitled to interfere with, or give any direction to, the Trustee or the Administrator with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustee or the Administrator under or by virtue of this Trust Indenture or the Administrative Services Agreement.
- (b) The legal ownership of the Trust Property is vested exclusively in the Trustee and the right to conduct the affairs of the Trust is, subject to the terms hereof, vested exclusively in the Trustee, or such other persons as the Trustee may determine or as are permitted in accordance with the terms hereof. The Unitholders shall have no interest or right of ownership in any of the Trust Property other than the interest specifically set forth in this Trust Indenture and they shall have no right to compel or call for any redemption of Units

or any partition, division, dividend or distribution of the Trust Property, except as specifically provided herein.

- (c) Units shall be personal property and shall confer upon the holders thereof only the interest and rights as specifically set forth in this Trust Indenture.

## **2.08 Unitholders Bound**

This Trust Indenture shall be binding upon all persons who have become or will become Unitholders from time to time. By acceptance of a Unit Certificate representing any Units or, during use of the Book-Entry System for any of the Units, upon completion of a purchase of any such Units (which may be evidenced by a confirmation of purchase), the Unitholder thereof shall be deemed to agree to be bound, and shall be so bound, by this Trust Indenture. Furthermore, where applicable, this Trust Indenture shall be binding upon all persons who from time to time hold Other Trust Securities, and acceptance of a certificate or confirmation of purchase of such Other Trust Securities in whatever manner shall result in such holder of Other Trust Securities being deemed to agree to be bound, and shall be so bound, by the applicable provisions of this Trust Indenture.

## ARTICLE 3 CREATION, ISSUE AND SALE OF UNITS

### **3.01 Nature of Units**

- (a) The beneficial ownership of, and interests in, the Trust Property shall be represented and constituted by one class of trust units described and designated as “Units”. Each holder of a Unit shall be entitled to the rights and be subject to the limitations, restrictions and conditions pertaining to the Units as set out in this Trust Indenture, including those set forth in this Section 3.01.
- (b) Subject to the conditions and restrictions set out herein, each Unit represents an equal, undivided beneficial interest in the Trust Property and all Units shall rank among themselves equally and rateably without discrimination, preference or priority.
- (c) In addition to the rights, privileges and restrictions set forth elsewhere herein, the Units shall have the following rights, privileges and restrictions:
  - (i) each Unit shall entitle the holder thereof to one vote at all meetings of Unitholders or in respect of written resolutions of the Unitholders;
  - (ii) each Unit shall entitle the holder thereof to participate equally with respect to any and all distributions made by the Trust respecting the Units including distributions of Income of the Trust, Net Realized Capital Gains or other amounts pursuant to Article 5;
  - (iii) on liquidation or wind-up of the Trust, each Unit shall entitle the holder thereof to participate equally with respect to the distribution of the remaining assets of the Trust after payment of the Trust’s debts, liabilities and liquidation or termination expenses;
  - (iv) there shall be no pre-emptive rights attaching to Units;

- (v) there shall be no liability for future calls or assessments attaching to Units; and
  - (vi) each Unit shall entitle the holder thereof to require the Trust to redeem the Unit as provided for in Article 6.
- (d) The Trustee may, in its discretion at any time and from time to time without the approval of or prior notification to Unitholders but at all times subject to the provisions of this Trust Indenture:
- (i) subdivide the Units outstanding at any time so that the number of outstanding Units may be increased, or
  - (ii) consolidate the Units outstanding at any time so that the number of outstanding Units may be decreased.

### **3.02 Authorized Number of Trust Securities**

The aggregate number of Units which are authorized and may be issued hereunder by the Trustee is unlimited. The aggregate number of Other Trust Securities which are authorized and may be issued hereunder by the Trustee is unlimited.

### **3.03 Issue of Securities**

The Trust Units shall be issued pursuant to and in accordance with this Trust Indenture. In addition, any Units or Other Trust Securities may be created, issued, sold and/or delivered at the times, to the persons (subject to Section 3.07), in the jurisdictions, for the consideration and on the terms and conditions that the Trustee determines, including pursuant to Unitholder rights plans, distribution reinvestment plans or Compensation Plans, and without limiting the generality of the foregoing, the Trustee may pay from the Trust Property a reasonable commission to any person in consideration of such person purchasing, or agreeing to purchase, Units or Other Trust Securities from the Trust or from any other person, or procuring or agreeing to procure purchasers for Units or Other Trust Securities or may allow for discounts to persons as consideration for such persons subscribing, or agreeing to subscribe, whether absolutely or conditionally, for Units or Other Trust Securities or as consideration for such persons agreeing to procure subscriptions for Units or Other Trust Securities, whether absolute or conditional.

### **3.04 Trust Securities Fully Paid and Non-Assessable**

- (a) Unless otherwise indicated in this Section 3.04, Units shall be issued by the Trustee when fully paid in money, property or past services, provided however that:
  - (i) Units may be issued for consideration payable in instalments if the Trust takes security over any such Units as security for unpaid instalments; and
  - (ii) the consideration for any Unit issued by the Trust shall be paid in money or in property or in past services that are not less in value, as determined by the Trust, than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money, provided that property shall not include a promissory note or promise to pay given by the allottee. In determining whether property or past services are the fair equivalent of monetary consideration, the Trustee or the Administrator may take into account reasonable charges and expenses of organization and reorganization and payments for property and past

services reasonably expected to benefit the Trust, and the resolution of the Administrator allotting and issuing those Units shall express the fair equivalent in money of the non-cash consideration received.

- (b) Other Trust Securities may be issued for such consideration as the Trust may determine from time to time. An Other Trust Security will not be a Unit and the holder thereof will not be a Unitholder.

### **3.05 No Conversion, Retraction, Redemption or Pre-Emptive Rights**

No person shall be entitled, as a matter of right, to subscribe for or purchase any Unit, and except as otherwise set forth herein, there are no conversion, retraction, redemption or pre-emptive rights attaching to the Units.

### **3.06 Consolidation of Units**

Immediately after any distribution of additional Units to Unitholders pursuant to subsection 5.08(a), the number of the outstanding Units will be consolidated without further act or approval of the Trustee or Unitholders such that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the distribution of such additional Units. In this case, each Unit Certificate representing a number of Units prior to the distribution of additional Units is deemed to represent the same number of Units after the distribution of such additional Units and the consolidation. Notwithstanding the foregoing, where the Trust is required to withhold tax in respect of a Unitholder's share of the distribution it shall comply with Section 5.09 hereof and:

- (a) the consolidation of the Units held by such Unitholder will result in such Unitholder holding the number of Units that but for the operation of this Section 3.06 would have been held by such Unitholder minus the number of Units sold because of withholding taxes payable by the Unitholder in respect of the distribution; and
- (b) in the event of a sale of Units on behalf of a Unitholder, such Unitholder will be required to surrender the Unit Certificates, if any, representing such Unitholder's original Units, in exchange for a Unit Certificate representing such Unitholder's post-consolidation Units.

### 3.07 Non-Resident Ownership Constraint

- (a) The following provisions, as they relate to: (i) U.S. Residents who hold of record, directly or indirectly, Units or Other Trust Securities that are “voting securities” within the meaning of U.S. securities laws shall apply at all times prior to the Trust filing a registration statement in accordance with the United States Securities Act of 1933, as amended, or registering a class of securities under the United States Securities Exchange Act of 1934, as amended, other than, in either case, in compliance with the Multijurisdictional Disclosure System between Canada and the United States; and (ii) in the event that notwithstanding the terms hereof, the Trustee or the Administrator determines that the Trust may not satisfy the terms of paragraph 132(7)(a) of the Tax Act or similar provisions, as same may be amended from time to time, the following provisions, as they relate to Nonresidents, shall apply, and in the event that the conditions in both (i) and (ii) above apply at any particular time, the following provisions shall be read and applied in the most restrictive manner as to meet the requirements of both (i) and (ii):
- (i) At no time may Non-residents be the beneficial owners of more than 49% of the outstanding Units, on either: (A) a non-diluted basis or fully-diluted basis (which includes, for greater certainty, Units which are issuable pursuant to outstanding Other Trust Securities), or (B) on a fair market value basis, and it shall be the responsibility solely of the Administrator to monitor compliance by the Trust with this Non-resident restriction (the “**Non-resident Restriction**”) in accordance with the published policies of the relevant taxation authority, and to take all such actions as may reasonably be undertaken on behalf of the Trust to cause the Trust to retain its mutual fund trust status in this regard.
  - (ii) At no time may more than 50% of the outstanding voting securities of the Trust be directly or indirectly owned of record by U.S. Residents, and it shall be the responsibility solely of the Administrator to monitor compliance by the Trust with this U.S. residency restriction (the “**U.S. Residency Restriction**”), and to take all such actions as may reasonably be undertaken on behalf of the Trust to cause the Trust to maintain its status as a foreign private issuer under United States securities laws.
  - (iii) Notwithstanding anything herein contained, the Administrator (or any delegate thereof) may (at the expense of the Trust), at any time and from time to time, take all such actions as it determines in its discretion are reasonable and practicable in the circumstances in order to ensure compliance by the Trust with the Non-resident Restriction and the U.S. Residency Restriction, including: (1) obtaining declarations from Unitholders, Beneficial Unitholders and holders of Other Trust Securities as to whether such securities held thereby are held by or for the benefit of Non-residents or U.S. Residents, as applicable, or declarations from Unitholders, Beneficial Unitholders or holders of Other Trust Securities as to the jurisdictions in which beneficial owners of such securities of the Trust are resident for Canadian income tax purposes; (2) performing residency searches of securityholder and beneficial holder mailing address lists to determine or estimate, to the extent practicable, the residence for U.S. securities law purposes or for Canadian income tax purposes of Beneficial Unitholders and holders of Other Trust Securities; and (3) placing such other limits on ownership of