



**FOREMOST INCOME FUND**

**ANNUAL INFORMATION FORM**

**FOR THE YEAR ENDED DECEMBER 31, 2008**

March 26, 2009

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## GLOSSARY OF TERMS

Whenever used in this Annual Information Form, unless the context otherwise requires, the following words and terms will have the indicated meanings:

"**Administrator**" means Foremost Industries Ltd., or its successor;

"**AIF**" means this Annual Information Form;

"**Annual Report**" means the annual report of the Fund in respect of the 2008 financial year;

"**Audit Committee**" means the audit committee of the Trustees;

"**Business**" means the business conducted by Universal and by Foremost;

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in the City of Calgary, Alberta, for the transaction of commercial banking business;

"**Commercial Deed of Trust**" means the Deed of Trust dated November 29, 2005 pursuant to which Commercial Trust was established, as amended, supplemented or restated from time to time;

"**Commercial Trust**" means Foremost Commercial Trust, an unincorporated, open-end limited purpose trust established under the laws of the Province of Alberta, pursuant to the Commercial Deed of Trust;

"**CRA**" means the Canada Revenue Agency;

"**Declaration of Trust**" means the Amended and Restated Declaration of Trust, last amended June 8, 2005, pursuant to which Foremost Industries Income Fund was governed, prior to the Reorganization;

"**Deed of Trust**" means the Deed of Trust dated November 12, 2005 and as amended and restated June 13, 2007 pursuant to which the Fund was established, as amended, supplemented or restated from time to time;

"**Distributable Cash Flow**" means all amounts determined by the Trustees as (see Deed of Trust, Section 5.1(b) for description) available for distribution to Unitholders during any applicable period;

"**Distribution Reinvestment Plan**" means the Distribution Reinvestment Plan ("DRIP") established by the Fund on April 3, 2006, whereby for each quarterly Trust Unit Distribution, eligible Unitholders may elect to receive trust units instead of cash as payment;

"**Exempt Plans**" means trusts governed by registered retirement savings plans, registered retirement income funds, registered educational savings plans or deferred profit sharing plans which are exempt from tax under Part I of the Tax Act;

"**Foremost**" means Foremost Industries LP and its subsidiary entities;

"**Foremost Industries Inc.**" means Foremost Industries Inc., a corporation existing under the laws of the Province of Alberta;

**"Foremost Industries Income Fund"** means the Foremost Industries Income Fund, a trust established under the laws of the Province of Alberta pursuant to the Declaration of Trust, the predecessor of the Fund;

**"Foremost Industries LP"** means Foremost Industries LP, a limited partnership formed under the laws of the Province of Alberta;

**"Foremost Industries Ltd."** means Foremost Industries Ltd., a corporation existing under the laws of the Province of Alberta;

**"Foremost Universal LP"** means Foremost Universal LP, a limited partnership formed under the laws of the Province of Alberta;

**"Fund"** means Foremost Income Fund, a trust established under the laws of the Province of Alberta pursuant to the Deed of Trust and, where the context requires, refers collectively to the Fund and its subsidiary entities, all of which are noted in the table which appears under the heading "Foremost Income Fund - Intercorporate Relationships" in this AIF;

**"GAAP"** means Canadian generally accepted accounting principles;

**"Non-Resident"** means (i) a Person who is not a resident of Canada for the purposes of the Tax Act; or (ii) a partnership that is not a Canadian partnership for the purposes of the Tax Act;

**"Person"** means an individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, unincorporated association or organization, government body, regulatory authority, syndicate or other entity, whether or not having legal status;

**"Reorganization"** means the reorganization of the Foremost Industries Income Fund, and its subsidiaries, into the Fund, which took place on December 28, 2005;

**"Special Trust Unit Distribution"** means the final distribution of taxable income to Unitholders of record on December 31, payable on December 31 which may be paid by way of cash or issuance of Trust Units which are immediately reconsolidated;

**"Tax Act"** means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp), as amended, including the regulations promulgated thereunder;

**"Trustees"** means the trustees of the Fund;

**"Trust Unit Distributions"** means the quarterly trust unit distributions as determined by the Trustees which include payment in the form of cash or in the form of Trust Units or a combination thereof;

**"Trust Units"** means the trust units of the Fund;

**"Unitholder"** means the holders of Trust Units; and

**"Universal"** means Foremost Universal LP and subsidiary entities.

*All dollar references herein are stated in Canadian funds, unless otherwise indicated.*

## FORWARD-LOOKING STATEMENTS

*This AIF contains forward-looking statements as defined under applicable Canadian securities legislation, including regulatory and statutory development and their anticipated effects on our business. These forward-looking statements include comments about matters such as future product revenues, seasonality of revenues, cost control initiatives, manpower levels, future cash flows from operations and future trust unit distributions. These forward-looking statements typically contains words such as ("anticipate", "could", "expect", "seek", "may", "intend", "will", "believe" "estimate", "plan", and similar expressions.*

*Readers are cautioned that our expectations, estimates, forecasts and assumptions used in the preparation of forward-looking information, although considered reasonable at the time of preparation, may prove to be imprecise and, as such, undue reliance should not be placed on forward-looking statements. With respect to forward-looking statements contained in this AIF, we have made the following key assumptions:*

*Oil and natural drilling activity will remain at or below 2008 levels and related product revenues are not expected to exceed those for 2008.*

*Operating expenses will decrease as a result of steps taken in late 2008 and additional steps undertaken in 2009 and reflects the Fund's focus on cash preservation and balance sheet strength.*

*Forecast 2009 capital expenditures are to maintain productive capacity based on the revenue expectations for 2009 and actual expenditures in 2008.*

*Forecast 2009 cash flows from operating activities for current operations were used to determine average bank indebtedness, interest expense and external financing needs.*

*Forecast 2009 trust unit distributions were based on forecast funds flow from operations, working capital requirements, capital expenditure requirements and trust unit distributions.*

*Other forward-looking statements incorporated by reference are subject to and should be read in conjunction with the cautionary statement provided in the incorporated document.*

*The Fund's actual results, performance or achievements could differ materially from those expressed in, or implied by, these forward-looking statements. The Fund can give no assurance that any of the events anticipated will transpire or occur or, if any of them do, what benefits or costs will be derived. By their nature, forward-looking statements are subject to numerous risks and uncertainties, including but not limited to, the impact of general economic conditions, changing industry conditions, currency fluctuations, interest rates, competitor actions, labour matters, government regulations, stock-market volatility, the Fund's ability to access sufficient capital from internal and external sources and additional risk factors discussed in our MD&A and other documents filed from time to time with securities regulatory authorities. Additionally, risks and uncertainties are discussed further in this AIF.*

*The forward-looking statements contained in this AIF are expressly qualified by this cautionary statement. Our assumptions relating to the forward-looking statements referred to above are updated quarterly and, except as required by law, we do not undertake to update any other forward-looking statements.*

## NON-GAAP MEASURES

In this AIF, the Fund uses the term "Distributable Cash Flow" to refer to the amount of cash determined by the Trustees as available for distribution to Unitholders. "Distributable Cash Flow" is not a measure recognized by GAAP and does not have a standardized meaning prescribed by GAAP. Therefore, "Distributable Cash Flow" may not be comparable to similar measures presented by other issuers, and investors are cautioned that "Distributable Cash Flow" should not be construed as an alternative to net income or comprehensive income, cash flow from operating activities or other measures of financial performance calculated in accordance with GAAP. **The actual amount of cash that is distributed cannot be assured and future cash distributions may vary.**

Management believes that three measures, which are not defined under GAAP, namely: funds flow from operations, funds flow per trust unit and book value per trust unit, are useful supplemental measures. None of these terms as presented are intended to represent cash flow from operating activities or net income or comprehensive income, nor should they be viewed as an alternative to cash flow from operating activities, net income or comprehensive income or other measures of financial performance calculated in accordance with GAAP. As well, the Fund's method of calculating these supplemental measures may not be comparable to similarly titled amounts reported by other issuers.

Used throughout this AIF, their respective definitions and purpose are outlined below:

**Funds flow from operations** is defined as net income adjusted for items not involving cash and before changes in non-cash working capital. This amount is considered meaningful as it is used to identify the Fund's ability to finance from operations its working capital requirements, planned capital expenditures and cash distributions.

**Funds flow per trust unit** is determined as funds flow from operations divided by the number of Trust Units outstanding at the end of the period. The Fund uses this amount as an indicator of the changes in funds flow from operations on a per-unit basis for comparative periods and in the determination of the amount of trust unit distributions on a per-unit basis.

**Book value per trust unit** is determined as unitholders' equity divided by the number of Trust Units outstanding at the end of the period. The Fund uses this amount as an indicator of the changes in unitholders' equity on a per-unit basis for comparative periods.

## FOREMOST INCOME FUND

### *Foremost Income Fund*

Foremost Income Fund (the "Fund") is an unincorporated open end mutual fund trust established under the laws of the Province of Alberta by a Deed of Trust, made as of November 12, 2005 and amended and restated June 13, 2007, between the Trustees and Mr. Craig Bell, as settlor. The head and principal office of the Fund is located at 1225 64<sup>th</sup> Avenue NE, Calgary, Alberta T2E 8P9. The Fund now carries on all of the business and operations of the former Foremost Industries Income Fund (see the discussion under "General Development of the Business - The Reorganization").

The Fund was established for the purposes of indirectly investing in the operations of several business divisions, operating as limited partnerships and any other subsidiaries, and distributing cash and income to holders of Trust Units. The holders of Trust Units are the sole beneficiaries of the Fund.

## **Trust Units**

The Fund permits individual holders of Trust Units to participate in the cash flow from the Business to the extent such cash flow is distributed by the Fund. Each Trust Unit entitles the holder thereof to receive Trust Unit Distributions with payment in cash or Trust Units, which the Fund is now making on a quarterly basis.

As an open-end trust, the Fund is not restricted in the type of assets it holds or the type of acquisitions it undertakes in order to maintain its status under the Tax Act as a "unit trust" and as a "mutual fund trust" so long as a retraction right is attached to the Trust Units. As an open-end trust, the Business can be expanded to such business that can be reasonably expected to provide returns to holders of Trust Units. The Fund is restricted from "undue expansion" pursuant to the proposals announced by the Federal Minister of Finance on October 31, 2006. See "Risk Factors – Changes in Legislation and Administrative Practices".

The Trust Units do not represent a traditional investment and should not be viewed by investors as "shares" in Foremost Industries LP, Foremost Universal LP, or the Fund.

As at December 31, 2008 and the date of this AIF, the Trustees of the Fund were Mr. Roy H. Allen, Mr. James T. Grenon, Mr. Bruce J. MacLennan and Mr. Gordon M. Wiebe.

## **Intercorporate Relationships**

The Fund indirectly owns 99.99% of the limited partnership interests in Foremost Industries LP and in Foremost Universal LP, and is allocated (either directly or indirectly) 99.99% of the taxable income generated from these interests. The Fund does not participate in the management of Foremost Industries LP or Foremost Universal LP. As discussed below, the Administrator owns the remaining marginal interest in Foremost Industries LP. The Administrator acts as the general partner for Foremost Industries LP, and a subsidiary of the Administrator acts as the general partner of Foremost Universal LP.

The Fund owns all of the issued and outstanding trust units of Commercial Trust.

### ***Foremost Commercial Trust***

Commercial Trust is an unincorporated, open-end limited purpose trust established under the laws of the Province of Alberta pursuant to the Commercial Deed of Trust. Commercial Trust holds a direct 99.99% limited partnership interest in each of Foremost Industries LP and Foremost Universal LP and all of the issued and outstanding shares in the Administrator.

### ***Foremost Industries Ltd.***

The Administrator of the Fund is Foremost Industries Ltd., a corporation existing pursuant to the laws of the Province of Alberta. The sole shareholder of the Administrator is Commercial Trust.

Pursuant to arrangements for administration of the Fund, the Administrator has agreed to act as administrator for the Fund, or arrange for the provision of services required in the administration of the Fund. The Administrator also provides investor relations services for the Fund, including the preparation and dissemination of information to investors as well as responding to investor inquiries.

Pursuant to the terms of a management arrangement between the Administrator and the Fund, the Administrator supplies key management and operational personnel and incurs all operational

expenses for the benefit of the Business operations. The general duties of the Administrator under this management arrangement include managerial and operational activities to ensure efficiency and profitability within the Business operations, specifically including:

- (a) strategic, tactical and operational planning;
- (b) accounting and financial services, including negotiating banking and financing arrangements, preparation of financial statements and other financial reports, and assisting with tax matters;
- (c) negotiating and communicating with third parties, including customers, suppliers and government agencies with respect to contractual and other matters;
- (d) arranging external professional or non-professional services;
- (e) providing personnel including plant production, sales & marketing, finance & accounting, engineering, production management, field service and quality assurance personnel as required for the efficient and profitable continued Business operations;
- (f) participating in evaluation and negotiation of potential acquisition prospects;
- (g) managing the manufacturing facilities and activities;
- (h) purchasing, warehousing and other material inventory functions;
- (i) managing the operations of foreign subsidiaries; and
- (j) all sales and marketing activities.

The Administrator holds all of the issued and outstanding shares of Universal Industries (Foremost) Corp. and is the general partner of Foremost Industries LP.

***Universal Industries (Foremost) Corp.***

Universal Industries (Foremost) Corp. is a corporation existing pursuant to the laws of the Province of Alberta. Universal Industries (Foremost) Corp. is the general partner of Foremost Universal LP and its subsidiary entity, Stettler Universal Limited Partnership (“Stettler”).

***Foremost Industries LP***

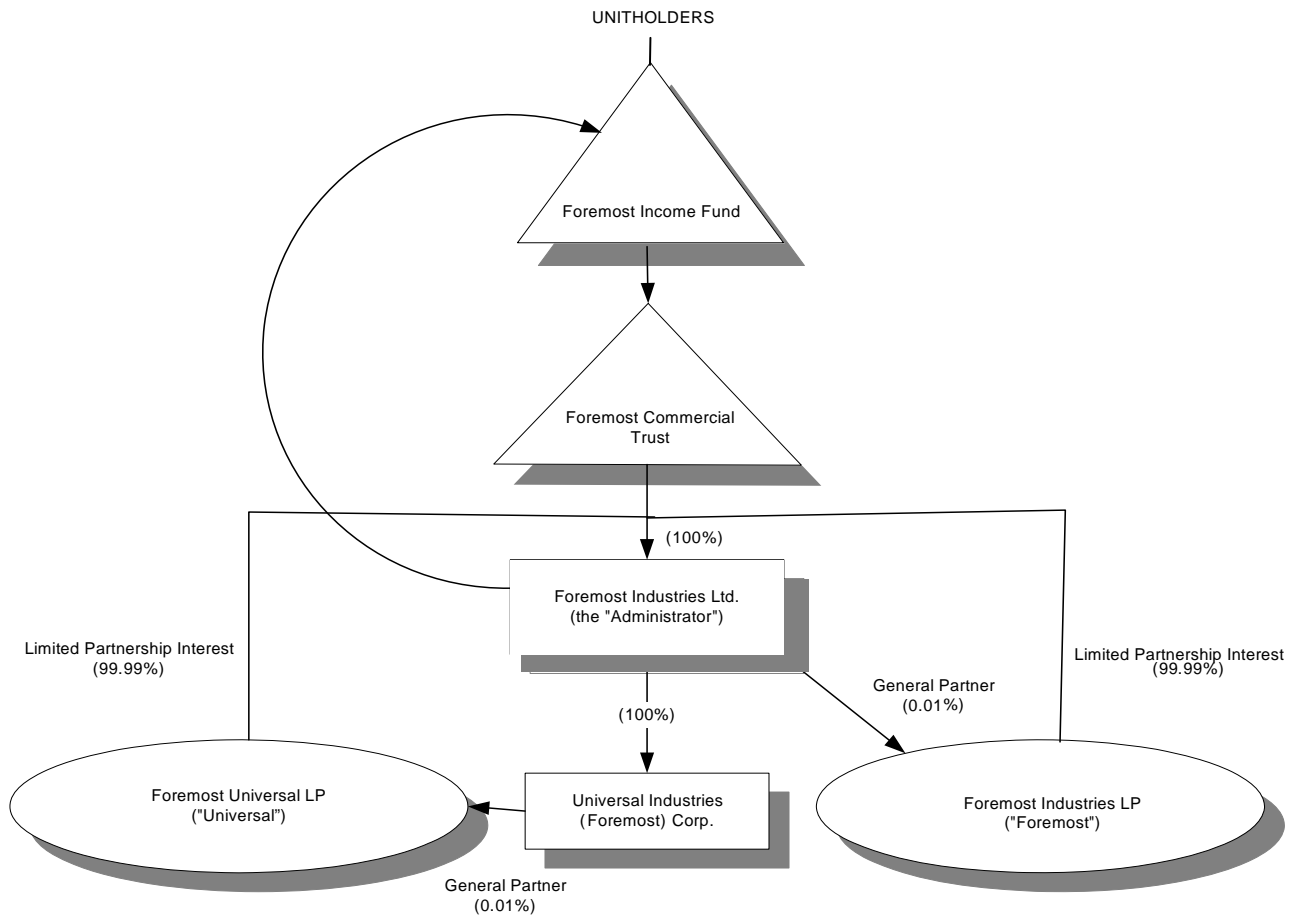
Foremost Industries LP is a limited partnership formed under the laws of the Province of Alberta. Foremost Industries LP owns all of the issued and outstanding shares of subsidiaries Foremost Holdings Inc. and 958499 Alberta Inc. The operating entities within Foremost Industries LP include the Calgary based manufacturing facility referred to as Foremost Industries, Foremost Drilling Company, Inc., formerly Mobile Drilling Company, Inc. (“Mobile”), a wholly-owned subsidiary of Foremost Holdings Inc. and Foremost (Cyprus) Limited a wholly-owned subsidiary of 958499 Alberta Inc. These entities constitute Foremost.

***Foremost Universal LP***

Foremost Universal LP is a limited partnership formed under the laws of the Province of Alberta. Foremost Universal LP owns all of the operating assets of Universal, consisting of Universal

Industries, Corlac and Maloney as well as all of the issued and outstanding shares of subsidiary entities Peace Land Fabricating And Supply Ltd. ("Peace Land"), Wilco Industries Ltd. ("Wilco"), De-In Industries Ltd. ("De-In"), Maloney Industries Canada Inc. ("MICI") and the limited partnership interests in the subsidiary entity Stettler Universal Limited Partnership. These entities constitute Universal.

The following diagram shows the organizational structure of the Fund as of December 31, 2008:



The following table presents the name, the percentage of voting securities owned and the jurisdiction of incorporation, continuance or formation of the Fund's subsidiary entities as at December 31, 2008:

<b>Subsidiaries &amp; Partnerships</b>	<b>Percentage Owned<sup>(1)</sup></b>	<b>Jurisdiction of Incorporation, Continuance or Formation</b>
De-In Industries Ltd.	100	Alberta
Drill Systems Inc.	100	Nevada
Foremost (Cyprus) Limited	100	Cyprus
Foremost Commercial Trust	100	Alberta
Foremost Drilling Company, Inc.	100	Delaware
Foremost Holdings Inc.	100	Delaware
Foremost Industries LP	100	Alberta
Foremost Industries Ltd.	100	Alberta
Foremost Resources Ltd.	100	Alberta
Foremost Track Vehicles Ltd.	100	Alberta
Foremost Universal LP	100	Alberta
Maloney Industries Canada Inc.	100	Alberta
Peace Land Fabricating And Supply Ltd.	100	Alberta
Stettler Universal Limited Partnership	100	Alberta
Universal Industries (Foremost) Corp.	100	Alberta
Wilco Industries Ltd.	100	Saskatchewan
958499 Alberta Ltd.	100	Alberta

**Note:**

(1) Includes indirect ownership.

### **OVERVIEW OF THE BUSINESS**

The business conducted by Universal involves the design, manufacture, sale and service of shop tanks, vessels, field tanks, gas separators and compression equipment used within the energy industry. Products and services are sold through its direct sales force. Products and services are distributed from Universal's six locations in Alberta (Lloydminster (2), Stettler, Calgary, Debolt and Hythe) and one location in Neilburg, Saskatchewan. Products are primarily sold in Canada.

The business conducted by Foremost involves the design, manufacture, sale and servicing of heavy all-terrain vehicles and drilling equipment for use in the mineral exploration, waterwell, construction, transportation, energy, and environmental industries and any other businesses which are related, ancillary or complementary thereto. Products and services are distributed from Foremost's Calgary, Alberta location as in October 2008 Foremost sold its Indianapolis based operations. Products and services are primarily sold worldwide through direct sales forces in Canada, the United States and through representatives, agents and distributors throughout the world.

### **GENERAL DEVELOPMENT OF THE BUSINESS**

From a historical perspective, the Fund emanated from Canadian Foremost Ltd., a listed public company in 1978. At that time, this company was a manufacturer of high mobility all-terrain vehicles serving the oil and gas and mineral exploration industries. Over the years this company acquired a number of industry related businesses, to a point where its refined product line was similar to what is now produced by Foremost.

In 1994, this company changed its name to Foremost Industries Inc.

On December 11, 2001, Foremost Industries Inc. was converted into Foremost Industries Income Fund through a shareholder approved Plan of Arrangement. Participating shareholders converted their common share holdings to trust units on a one-for-one basis.

On July 1, 2003, Foremost Industries Income Fund acquired the assets and operations of Universal Industries Limited Partnership, for total consideration of cash, issuance of 1,100,000 trust units, a note payable, the assumption of liabilities and a contingent consideration based upon earnings results for a five year period.

On July 1, 2004, the Fund acquired the assets and business operations of Corlac Industries (1998) Ltd. ("Corlac") for total consideration of cash, issuance of 25,000 Trust Units of the Fund, the assumption of liabilities and a five year contingent consideration based upon a percentage of revenue of a particular product line.

On July 15, 2005, Foremost Industries Income Fund, through Foremost Universal Limited Partnership, acquired all of the issued and outstanding shares of Peace Land, a manufacturer of fluid storage tanks. Total consideration was \$1,669,000 in cash plus contingent consideration based upon earnings results for a five year period. Peace Land is now a wholly-owned subsidiary of Foremost Universal LP.

On August 3, 2005, Foremost Industries Income Fund, through Foremost Universal Limited Partnership, acquired all of the issued and outstanding shares of De-In, a manufacturer of fluid storage tanks. Total consideration consisted of cash, issuance of 186,048 Trust Units and contingent consideration based upon earnings results for a five year period. De-In is now a wholly-owned subsidiary of Foremost Universal LP.

The Fund is the successor entity to Foremost Industries Income Fund. On December 28, 2005, Foremost Industries Income Fund completed a reorganization involving Foremost Industries Income Fund, Foremost Holdings Trust, Foremost Ventures Trust, Foremost Universal Limited Partnership, Foremost Industries Limited Partnership, Foremost Income Fund, Foremost Commercial Trust, Foremost Industries LP, Foremost Universal LP and the holders of Foremost Industries Income Fund units (the "Reorganization") resulting in the creation of the Fund as the successor entity. The Reorganization was completed pursuant to the terms of the Reorganization Agreement, as described in the Information Circular of Foremost Industries Income Fund dated November 29, 2005.

At the special meeting held on December 28, 2005, the requisite majority of the holders of Foremost Industries Income Fund units approved the Reorganization. Pursuant to the Reorganization, Foremost Industries Income Fund created the Fund as a new publicly traded income fund, and the Fund indirectly acquired all of the existing assets and business operations that were being conducted by the subsidiary entities of Foremost Industries Income Fund. In addition a new trust, Commercial Trust, was established. As well, Foremost Industries LP was created to acquire and carry on the business of Foremost Industries Limited Partnership and Foremost Universal LP was created to acquire the assets and carry on the business of Universal Industries Limited Partnership. As a result, the business and operations that had been conducted by the subsidiary entities of Foremost Industries Income Fund continued to be performed by the management and employees of the Fund and its subsidiary entities. The Reorganization resulted in Unitholders receiving one Trust Unit for each common trust unit in Foremost Industries Income Fund they previously held.

Foremost Industries Income Fund made an application to cease to be a reporting issuer in each relevant securities jurisdiction, and received MRRS approval to cease to be a reporting issuer on

January 19, 2006. On January 25, 2006, Foremost Industries Income Fund was terminated in accordance with the Declaration of Trust and the *Trustee Act* (Alberta).

### **Three Year History**

#### **2006**

On April 3, 2006, the Fund established a Distribution Reinvestment Plan (“DRIP”) whereby for each quarterly Trust Unit Distribution; eligible Unitholders could elect to receive Trust Units instead of cash as payment. Eligible participating Unitholders would receive units at a 5% discount to the average market price as defined in the DRIP plan. The Fund determines for each distribution payment date if any amount of new units will be available for distribution under the DRIP plan.

On May 3, 2006, the Fund, through Foremost Universal LP, acquired the business operations and certain assets of Maloney Industries (“Maloney”) from Hanover Canada Corporation, which assets and business operations now constitute a profit center of Universal. Maloney is located in Calgary, Alberta and its business consists of designing, engineering and manufacturing oil and gas process treating equipment. The purchase price, including acquisition costs of \$0.4 million was \$11.6 million, with \$10.9 million allocated to property, plant, and equipment and \$0.7 million allocated to inventory. The transaction was funded entirely by cash.

On September 5, 2006, Foremost Industries Ltd. replaced Foremost Industries Inc. as the general partner of Foremost Industries LP and the Administrator of the Fund.

During 2006 the Fund commenced major facility expansions at its Universal Industries, Peace Land and Foremost Industries locations. These projects were all completed in the first half of 2007.

#### **2007**

On February 22, 2007 the Fund filed a Normal Course Issuer Bid (“NCIB”). Pursuant to securities regulation, commencing February 26, 2007, the Fund was entitled to purchase, for one year from that date, up to 5% of the 20,039,981 outstanding Trust Units back from current Unitholders. No purchases occurred during 2007.

On June 13, 2007, pursuant to Unitholder approval, the Deed of Trust was amended and restated with respect to the timing of the declaration and payment of Trust Unit Distributions. As a result of the amendment, Trust Unit Distributions are now declared on the 15<sup>th</sup> business day of the last month of the quarter with payment on the last business day of the respective quarter.

On June 22, 2007, Bill C-52 Budget Implementation Act, 2007 (“Bill C-52”) was substantively enacted by the Canadian government and imposes a tax on certain distributions from publicly traded specified income flow-through trusts (“SIFT”) entities and will apply to distributions made by the Fund to its Unitholders. The SIFT tax measures take effect January 1, 2011, or earlier if the Fund exceeds certain permitted growth guidelines established by the Canadian Department of Finance. The substantial enactment of Bill C-52 resulted in the Fund having to recognize, on a prospective basis, future income tax assets or liabilities based on the estimated temporary differences (differences between the accounting basis and the tax basis of the assets and liabilities) at December 31, 2010. To estimate these temporary differences at December 31, 2010, the Fund used assumptions that included no changes to the Fund’s organizational structure, no changes to existing tax deduction pool balances, use of current Trust Unit distribution amounts and estimates of operating results and substantially enacted income tax rates for the years ended 2008-2012. Initially measured at the proposed combined

federal and provincial income tax rate of 31.5%, these differences have been subsequently measured at the new substantially enacted rate of 28% (Bill C-28 - December 14, 2007).

On June 28, 2007 the Fund determined that the Nisku manufacturing facility within Universal was non-essential and therefore listed for sale. These assets, consisting of land, building and certain equipment, had a net book value of approximately \$1.5 million.

In late 2007, the Government of Alberta completed a five month study of the royalties payment program for oil and gas. This Royalty Review resulted in significant changes to the existing program. The Business may continue to be affected by customer reactions to the results of this Royalty Review. These reactions include possible cancellation, delay, revision or relocation of projects which in turn impact opportunities for Fund revenue generation.

## **2008**

In January 2008 the Fund repurchased 351,700 units at an average price of \$8.63 per unit or a total cost of approximately \$3.0 million. As a result, unitholders' capital was reduced by \$1.0 million and accumulated earnings reduced for the balance.

In March 2008, the Fund sold its Nisku manufacturing facility for net proceeds of \$3.9 million resulting in a gain of \$2.4 million.

Effective the March 31, 2008 quarterly trust unit distribution, the Fund suspended indefinitely its DRIP program. As a result, the 2008 quarterly trust unit distributions totaling \$21.3 million were paid in cash. The 2008 quarterly trust unit distribution amounted to \$0.25 per-unit. Subsequent to the end of the year, the per-unit trust distribution was reduced to \$0.10 per-unit commencing with the March 31, 2009 quarterly distribution.

In October 2008, the Fund sold the operations and certain assets and liabilities of Mobile, located in Indianapolis, Indiana, for net proceeds of approximately \$4.9 million resulting in a gain of \$1.8 million. Subsequent to closing Mobile changes its name to Foremost Drilling Company, Inc.

## **2009 OUTLOOK**

As in 2008, the Fund continues to be affected by the downward trend in oil and natural gas business activity. During the second half of 2008, the near collapse of the international banking system and resulting restricted credit availability, declining investor confidence causing significant loss in stock values and further declines in demand and prices for oil and gas further limited opportunities for growth. The Fund currently expects these uncertain business conditions to continue throughout 2009.

The Fund's response is a shift away from growth to a focus on balance sheet strength, existing operational effectiveness and cash preservation to enable the Fund to address current market challenges and capitalize on opportunities expected to arise from competitor weakness and any improvement in market conditions. The Fund will continue to aggressively search for and pursue revenue opportunities worldwide while maintaining tight control over operations and manpower. Capital expenditures will be limited to those essential to current operations and trust unit distributions will be adjusted to match quarterly business performance. These steps will enable the Fund to respond quickly should there be a rapid improvement in business conditions.

The Fund will continue to assess accretive business acquisition opportunities.

In response to these expectations, beginning with the first quarter ended March 31, 2009, the Fund has reduced its quarterly distribution to \$0.10 per-trust unit.

## **DESCRIPTION OF THE BUSINESS**

### **Segments**

The Fund carries on business in its two segments – Universal and Foremost.

The business conducted by Universal involves the design, manufacture, sale and service of shop tanks, vessels, field tanks, gas separators and compression equipment used within the energy industry. Products and services are sold through its direct sales force. Products and services are distributed from Universal's six locations in Alberta (Lloydminster (2), Stettler, Calgary, Debolt and Hythe) and one location in Neilburg, Saskatchewan. Products are primarily sold in Canada.

The business conducted by Foremost involves the design, manufacture, sale and servicing of heavy all-terrain vehicles and drilling equipment for use in the mineral exploration, waterwell, construction, transportation, energy, environmental industries and any other businesses which are related, ancillary or complementary thereto. Products and services are now distributed from Foremost's Calgary, Alberta location. The Mobile operations located in Indianapolis, Indiana were sold in October 2008. Products and services are sold worldwide through direct sales forces in Canada, the United States and through representatives, agents and distributors throughout the world.

### **Seasonality**

Historically, the Fund's financial results reflect the seasonal operations of the oil and gas markets using its products and services. Generally it means that revenues and net earnings reported in the first two quarters are lower than the third and fourth quarters. The 2008 results reflect this pattern. However, as evidenced by the 2007 results, this trend can be offset by significant shifts in economic activity in the global energy and mining industries. As such, the lower revenues realized because of the weak natural gas market offset this historical pattern in 2007.

### ***Universal***

#### **Products and Services**

Universal's revenues are generated from the following product categories: shop tanks, gas separation units, vessels, field tanks and compression equipment. Universal also offers supporting part sales and service programs and specific equipment rentals. While product sales are coordinated from a Calgary sales office, the products are manufactured at the Universal Industries, Stettler, Wilco, Corlac, Peace Land, De-In and Maloney locations. Manufacturing of sales orders is assigned to the location that best fits the product specifications, required labour skills and delivery times.

Universal's consolidated revenues amounted to \$159.3 million for 2008 (2007 - \$160.7 million) and were generated from a diverse group of products and services for the oil and gas industry. Consolidated revenues for 2008 reflect the substantial completion of certain long term field tank projects, increases in vessel and shop tank revenues, initial contributions from the sales and service of compression equipment in western Canada and continued slowing of oil and natural gas drilling activity throughout the year.

The following section reviews revenue by product category.

***Shop tanks – Revenue \$56.0 million***

(\$52.3 million in 2007)

Shop tank orders are manufactured at Universal Industries, Corlac, Wilco, Peace Land and De-In. This product line is comprised of three distinct tank sizes, which are used in the drilling and completion industry (400-bbl tanks), at heavy oil well sites (750- and 1,000-bbl tanks) and at water storage or treatment facilities (1,500- to 3,000-bbl tanks). The revenue increase was a result of increased sales of 400-bbl tanks. Future revenue growth remains dependent on significant improvement in natural gas drilling activity.

***Gas separation equipment – Revenue \$34.7 million***

(\$37.4 million in 2007)

This product line is assembled at Stettler's facility using components produced at other Universal facilities and purchased from third-party suppliers. It is used at natural gas well sites for the measurement of natural gas and the separation and storage of water. This product consists of a separator, a 100- or 200-bbl double-wall tank and metering equipment. While these products continue to be offered to a broad base of customers, the revenue decline was due to reductions in natural gas drilling activity. Should activity levels increase, Universal is well positioned to meet the needs of its customers in a timely manner.

***Vessels – Revenue \$41.7 million***

(\$35.1 million in 2007)

Vessels are manufactured at Universal Industries and Corlac facilities located in Lloydminster and Maloney in Calgary. These products are typically used in de-oiling, de-watering and steam generation processes necessary for the production of oil from the oilsands.

The revenue increase for 2008 arose from the continuation of oilsands projects which commenced in 2007. The 2007 Alberta Royalty Review caused delays in the issuance and acceptance of new project bids in early 2008. Current levels of requests for project bids coupled with the establishment of a more dedicated presence in Russia in late 2007 supports expectations of steady long term revenue growth.

***Field tanks – Revenue \$20.7 million***

(\$29.2 million in 2007)

This product line consists of large tanks (10,000- to 120,000-bbl) that cannot be readily transported to a customer's facility, which are primarily oilsands locations. Major components are produced at the Universal Industries facility with certain components also supplied by Maloney. These components are then shipped to the customer's site for assembly by Universal Industries personnel. Projects within this category can take up to three years to complete. Revenues in 2008 declined by \$8.5 million as many of the projects carried over from 2007 were substantially completed in 2008 and no significant new projects were started until late 2008. Assuming no unforeseen delays in current 2009 projects, revenues are expected to be similar to those for 2007. Significant growth in future revenues is dependent on the resumption of currently delayed oilsands projects which are in turn dependent on higher oil prices.

Universal believes its proven experience to date, the ability to offer tank capacity up to 250,000-bbl and the long term need to develop the oilsands should support revenue growth over the next ten years.

***Compression – Revenue \$1.1 million***

(\$2.0 million in 2007)

Serving the natural gas industry, this product line offers units up to 100-horsepower. Anticipated revenue growth did not materialize in 2008. In response, a field office to sell and service compression equipment was established during the year to focus on expanding these revenues. Under current market conditions, expectations call for steady improvement in revenues over the next few years.

***Parts, service and rentals – Revenue \$5.1 million***

(\$4.7 million in 2007)

These miscellaneous revenues are generated by all the business operations of Universal and can include various forms of servicing to customers' well sites, over-the-counter part sales and specific equipment rentals. The revenue increase is due to increased rental revenues from portable steam generators.

**Sales and Marketing**

Universal handles sales and marketing from all of its six manufacturing sites in Alberta, (Lloydminster (2), Stettler, Hythe, Debolt and Calgary and its one manufacturing location in Saskatchewan (Neilburg). In addition, it also has one sales office located in Calgary, Alberta which is not located at a manufacturing site. The traditional heavy oil product line of tanks and treating equipment is well known within the industry simply due to Universal's physical location in the heart of western Canada's heavy oil area and a history of meeting customer's needs. Attendance at trade shows and the use of its website have served to increase exposure to other producing areas in the world. Acquisitions have provided a strategic presence in the high activity oil and gas areas of NW Alberta, NE British Columbia and the Northwest Territories. The Maloney acquisition may result in additional revenues from Russia, as a result of its historical presence there. To achieve this, an office was established in Moscow, Russia.

**Manufacturing**

Fabrication work is conducted at all seven locations. Certain locations are devoted to gas separation equipment, whereas others are dedicated as small tank or vessel fabrication shops. All other products are built at the Lloydminster facilities, with the exception of large field storage tanks. These tanks are assembled at customer sites throughout western Canada. Management, administration, purchasing, safety, engineering, production allocation and quality control services are located in Lloydminster where resources are allocated to the other sites as required. Universal Industries and Maloney both maintain American Society of Mechanical Engineers (ASME) certifications at their facilities. This program is reviewed every second year to ensure that manufacturers adhere to ASME's strict fabrication codes.

**Strategy**

Universal's strategy is to offer its customers a full line of quality products at competitive prices. Universal's objective is to become the provider of choice for key customers, in order that they are able to purchase all of their tank and vessel requirements from one supplier. Through acquisitions and new product development, product lines have been expanded to meet these needs. Current products offered include shop tanks ranging from 400- bbl to 3,000-bbl various sizes, field tanks with capacities up to 250,000-bbl, gas separators, double wall tanks, secondary containment systems, steam generators and most recently compression equipment. The expanded facilities at the Universal Industries and Peace Land facilities enable Universal to accommodate these products as well facilitate

the reorganization of manufacturing activities to maintain competitiveness. These efforts led to the sale of the inefficient Nisku facility and temporary closure of the De-In facility. In pursuit of international markets, a Russian office was opened in 2008 to promote the Maloney and other Universal products.

### **Intellectual Property**

Universal owns certain patents, trademarks, trade names, service marks and copyrights as reasonably required for the proper carrying on of its business. Where appropriate, all registrations and filings as considered necessary to preserve its rights have been made and are in good standing.

### **Competition**

Universal's markets are highly competitive, especially the less technical products such as small tanks, where the barriers to market entry are minimal. Universal's ASME certification sets it apart from most of its tank manufacturing competitors and assures customers of a higher standard of quality. In-house design, process and structural engineers combined with the practical expertise developed from residing in the field are what set Universal apart from competitors in the vessel business. Universal's success is dependent upon maintaining price, quality, product diversification and service. Universal's belief is that the continuation of improvement on its initiatives in these areas will allow further growth of market share.

### **Employees**

As at December 31, 2008, Universal and its subsidiaries had a total of 428 employees: 218 in Lloydminster, 95 in Calgary, 57 in Stettler, 19 in Neilburg, and 39 in Hythe.

### **Segmented Information**

For additional information on the business segments for the year ended December 31, 2008, refer to Note 12 of the notes to Consolidated Financial Statements contained in the Fund's 2008 Annual Report.

### **Changes in the Business since 2008**

Other than as discussed in "Outlook" above, there have been no changes in the Universal segment since 2008.

### ***Foremost***

#### **Products and Services**

Foremost revenues are provided from five distinct categories. These products are used in the oil, mineral and waterwell drilling industries. Foremost provides ongoing support with parts sales, service and rental programs. Each category is subject to significant fluctuations in activity and thus revenue. These fluctuations often require significant reallocation of manufacturing resources, a skilled labour force and multi-functional facilities. Historically, at least two of these categories are active at any time and thus the diverse product offering creates a base for reasonably stable revenues.

Foremost generated revenues of \$58.0 million from continuing operations in fiscal 2008 as compared with \$63.0 million in 2007. The \$5.0 million decrease reflects the impact of continued low levels of

western Canadian drilling activity on oilfield drilling rig and related ancillary equipment revenue streams.

Consistent with the Fund's intention to focus on core activities, the operations of the U.S. based geotechnical drill manufacturing operations, Mobile, were sold in October 2008. As a result, the 2008 year to date revenues of \$5.3 million (2007 - \$8.7 million) were excluded in this analysis but were included in the determination of income from discontinued operations. As part of the transaction, the land and buildings located in Indianapolis, Indiana were leased for five years by the purchaser of the Mobile operations.

***Oilfield – Revenue \$11.6 million***

(\$20.8 million in 2007)

Oilfield products consist of Coiled Tubing ("CT") rigs, Explorer III rigs and custom designed equipment for use in the oilfield. CT rigs offer a more efficient and safe way to drill for oil and natural gas. Explorer III rigs are designed for shallow oilsands and coalbed methane drilling programs. A custom designed oilfield service unit comprised of innovative rod handling and transport equipment has been developed for a major continuous-rod company. All of these products are produced at the Foremost Industries manufacturing facility.

Revenues generated from CT rigs and conventional Explorer III rigs decreased \$9.1 million in 2008 to \$11.6 million. Revenues recognized were attributable to production of prior year customer orders, plus orders for two new CT rigs during 2008. There were no new orders for Explorer III rigs in 2008. While our customers continue to explore the advantages and capabilities of CT rigs, with no significant upturn in drilling activity resulting in new customer sales orders, revenues from this product category are expected to decrease again in 2009.

The development of the new oilfield service equipment was completed in 2007 and no revenues were generated from this custom developed product line during 2008. Future revenues are dependent on improved oil and gas market conditions.

***Drills – Revenue \$18.7 million***

(\$16.4 million in 2007)

Historically, this category includes revenue derived from the Dual Rotary ("DR"), geotechnical drilling rigs manufactured at Mobile and mineral exploration drilling rigs. Foremost has sold its geotechnical line of products and therefore this category is now comprised of DR and mineral exploration rigs. DR sales for the year were \$14.0 million (15 units), similar with the \$13.7 million (17 units) reported in 2007.

Mineral exploration rig sales for 2008 consisted of six units generating \$4.7 million in revenue as compared with two units and \$2.6 million last year. The mineral exploration drills are produced in the Foremost Industries facility in Calgary.

Significant year-over-year revenue variances are typical for this product category, which are influenced by mining and construction activity and drought conditions. The majority of sales are in U.S. dollars and revenues are affected by the relative strength of the Canadian dollar. Current expectations are for this category to generate similar revenues to 2008.

***Tooling and pipe – Revenue \$13.6 million***

(\$13.1 million in 2007)

Tooling, pipe and ancillary drilling equipment revenue consists of the following products designed and manufactured by Foremost: reverse circulation drill pipe, mining tools, cushion connectors, deck

bushings, pipe handlers, oilfield top drives and injectors. Revenue totaled \$13.6 million in 2008 as compared with \$13.1 million in 2007. The increase in revenues reflects higher sales of mining tools.

***Vehicles – Revenue \$3.7 million***

(\$2.2 million in 2007)

Revenues for 2008 reflect the delivery of two new vehicles to Russian oil and gas customers. Currently, five vehicles are in production for Russian customers. Delivery of these units is scheduled during the first half of 2009, generating approximately \$9.0 million in revenues. Vehicle revenue remains highly unpredictable due to the nature and use of these products.

***Parts, service and rentals – Revenue \$10.4 million***

(\$10.5 million in 2007)

Parts, service and rental revenue is generated from the sale of proprietary Foremost vehicle, CT and DR components. Rental income of \$1.8 million (2007 - \$1.4 million) was generated from a fleet of all-terrain vehicles used by an oilsands customer. Parts and service revenue will increase as the number of units in service increases.

**Sales and Marketing**

Foremost handles sales and marketing from two locations: its main office in Calgary and its office in Moscow. It employs a direct sales staff (including managers), many of which have strong engineering and manufacturing backgrounds. In addition, regional agents and distributors are engaged periodically to cover specific territories, regions or countries.

The diversity and inherent differences between Foremost's many products necessitate a sales and marketing approach for each business sector that is tailored to that sector's particular characteristics and requirements. Foremost uses demonstration events and industry trade show attendance, with advertising and direct sales activities, to market its products and services. Foremost's success in the Russian market is attributed to its investment in designing vehicles specifically for Russian conditions and to its permanent office in Moscow, which is staffed by Russian nationals. Some market segments, typically niche markets for very specialized equipment, receive little sales and marketing resources. Foremost relies on its reputation as a specialty manufacturer of this equipment and limited competition to generate sales in these specialty niches.

**Manufacturing**

Engineering, fabrication, machining and testing of Foremost's products are all done at its Calgary manufacturing facility. An Enterprise Resource Planning (ERP) system controls the flow of work through the manufacturing process, facilitating material requirement planning, production management and financial reporting. The engineering department utilizes state-of-the-art 3D solid modeling design software. Foremost employs a rigorous Quality Assurance (QA) program to drive its continuous improvement in quality. Foremost offers a standard warranty which can be customized to address specific concerns for its various products and supports its products with a field service team.

**Strategy**

Foremost's strategy is to develop and expand a portfolio of product lines where growth and profitability are based upon its areas of strength and, taken as a whole, the product line portfolio is diversified, not relying upon any one industry, customer or geographic area. Within the product portfolio, Foremost also manages its mix between "generally reliable" product lines (strong predictable revenue and contribution margins), "somewhat uncertain" product lines (greater volatility

but generally dependable annual sales) and "highly unpredictable" product lines (high uncertainty but potential for large sales).

To support this strategy, Foremost has developed administrative, technical and production management systems that can readily manage rapidly changing production requirements. Foremost's employees are also critical to the organizational flexibility demanded by its strategy. Foremost has been successful in maintaining low turnover in key positions, retaining the talent and experience of employees with a broad range product knowledge, including its low volume specialized niche products.

### **Intellectual Property**

Foremost owns certain patents, trademarks, trade names, service marks and copyrights, both domestic and foreign, in or as reasonably required for the proper carrying on of its business. Where appropriate, all registrations and filings as considered necessary to preserve its rights have been made and are in good standing. Foremost will undertake necessary actions to protect its interests in its intellectual property.

### **Competition**

Foremost faces competition from several manufacturers of drill rigs and products used in the waterwell, energy, mineral exploration, construction and environmental industries. The features of Foremost's products provide, to various degrees, advantages in the marketplace. In certain cases, such as the DR, these features are so significant that Foremost's products enjoy a dominant position in distinct sub-markets.

A significant existing base of Foremost's vehicles and drill rigs created over the last 30 years requires ongoing parts and service support. Foremost manufactures some proprietary parts, while other parts are manufactured by third parties and sold by Foremost.

While Foremost is often the preferred supplier of parts, competition exists. Calgary based competitors offer parts for all-terrain vehicles used in seismic exploration. A number of competitive sources exist for parts for vehicles sold to the Russian market. Few competitive sources exist for drilling accessories. One such accessory being the Cushion Connector product line manufactured by Foremost is patent protected in several countries. Within the drilling parts market, competitive supply sources are most common for consumable items such as down-hole cutting heads, and casing shoes.

Competitive sources of parts may be cheaper, or provide better selection, availability, or convenience.

The degree of competition in the vehicle product line varies by the size of the vehicle. Little competition exists for Foremost's large tracked and rubber tired vehicles. Several Russian plants produce tracked vehicles, but typically of lower quality in design and production. Two American manufacturers have products that compete directly with Foremost's mid-sized rubber-tired vehicles. Two Canadian manufacturers have products that compete with Foremost's smaller (less than fifteen tons) tracked vehicles. Other Canadian companies produce desert/big bed wheeled trucks that compete with Foremost's products in some oilfield applications. These competitive products are often comparably priced or less expensive, but Foremost's products are generally recognized as being more robust and superior in extreme all-terrain applications.

A number of Foremost's standard products are low volume niche products that require custom engineering to support the customer's needs. Foremost also manufactures "engineered-to-order"

special purpose drills on a proprietary basis for individual customers, particularly in the oil and gas sector.

### **Employees**

As at December 31, 2008, Foremost and its subsidiary entities had a total of 182 employees, 177 in Calgary and 5 at the Cyprus and Moscow locations.

### **Facilities**

Foremost owns a manufacturing facility in Calgary, Alberta. The facility located in Indianapolis, Indiana has been leased for five years to the purchasers of Mobile.

### **Segmented Information**

For additional information on the business segments for the year ended December 31, 2008, refer to Note 12 of the notes to Consolidated Financial Statements contained in the Fund's 2008 Annual Report.

### **Changes in the Business since 2008**

Other than as discussed in "Outlook" above, there have been no changes in the Foremost segment since 2008.

## **RISK FACTORS**

**The following is a summary of certain risk factors relating to the activities of the Fund and its subsidiaries and the ownership of Trust Units.**

### **Risks Related to the Business**

#### ***General***

Certain activities of the Fund are affected by factors that are beyond its control or influence. The business and activities of the Fund are directly affected by fluctuations in the levels of oil and natural gas exploration, development and production carried on by its customers which, in turn, is influenced by numerous factors, including world commodity prices and government policies. Any addition to or elimination or curtailment of government incentives or other material changes to government regulation of the energy industry in Canada could have a significant impact on the oilfield manufacturing industry in Canada.

#### ***Industry Conditions***

The Fund is highly reliant on the levels of capital expenditures made by oil and gas producers and explorers. Exploration and production companies base their capital expenditures on various factors, including but not limited to world commodity prices, exploration and development prospects in various jurisdictions, production levels of their reserves and access to capital. Oil and gas producers and explorers tend to examine long-term fundamentals affecting the foregoing factors before they adjust their capital expenditure plans. Risk factors associated with the Fund's operations include business factors and changes in government regulation. Should one or more of these risks materialize, actual results may vary materially from those currently anticipated. In recent years,

commodity prices, and therefore, the levels of drilling, production and exploration activity have been volatile. Any substantial reduction or increase in commodity prices will likely affect the activity levels of the exploration and production companies and therefore the demand for the Fund's products and services. A significant prolonged decline in commodity prices could have a material adverse effect on the Fund's business, results of operations and financial condition, including the Fund's ability to maintain its current level of distribution to Unitholders.

### ***Credit Risk***

The Fund's principal financial assets subject to credit risk are cash and accounts receivable. Therefore, their respective carrying amounts are considered the Fund's maximum credit exposure. The Fund's credit risk associated with accounts receivable arises from balances due to the Fund from customers in the oil and gas industry. The Fund uses a variety of steps to manage this risk. Initial cash deposits and confirmed letters of credit are principal methods of payment for material international projects. Initial cash deposits and subsequent progress payments are usually required on capital equipment sales contracts. For parts, service or other open credit sales, the Fund utilizes export insurance and routinely reviews customer credit limits, collections patterns and allowances for doubtful accounts. The Fund does not have significant exposure to any individual customer or counter-party. Although collection of these receivables can be influenced by economic factors affecting this industry, management considers the risk of significant loss individually or in aggregate to be low at this time.

### ***Foreign Exchange Exposure***

A portion of the Fund is conducted in foreign markets with the U.S. dollar as the negotiating currency. These transactions include sales of products and the purchase of parts and components required to manufacture products. This dependence on U.S. currency for both sales and purchases exposes the Fund to risks of currency fluctuations. Exchange rate fluctuations are beyond the Fund's control and there can be no assurance that such fluctuations will not have a material adverse effect on reported results.

### ***Competitive Environment***

There can be no assurance that the Fund will be able to compete successfully against their current or future competitors, or that such competition will not have a material adverse effect on the financial condition and results of operations of the Fund. For additional information regarding the competitive environment in which Universal and Foremost operate, refer to "Description of the Business – Universal – Competition" above and "Description of the Business – Foremost – Competition".

### ***Source of Supply of Raw Material and Third Party Components***

Significantly, all raw material and third party components required for the manufacturing of products by the Fund or their subsidiary entities can be procured from multiple sources at competitive prices. Certain third party components are not readily available "off-the-shelf" and are subject to significant lead-times from suppliers. These lead-times may cause delays in the production of products that may result in cost overruns and/or trigger penalty payments to customers. The Fund endeavors to confirm price and delivery for all critical components prior to entering into contracts with customers.

### ***Development of New Products***

From time to time, the Fund develops new products of a specialized nature that have inherent risks. The major risks include:

- (a) technical risk that either the product does not perform as desired or unacceptable reliability issues render the new product un-merchantable; and
- (b) supplier risk that required modules, components and engines procured from third party vendors, do not perform in an acceptable manner, thereby having an adverse impact on marketability of such new products and related product liability.

### ***Reliance on Key Personnel***

The Fund is dependent on the abilities, experience and efforts of its senior management. If any of these persons become unable or unwilling to continue, that may have a material adverse effect on the Fund's financial condition, results of operations and business prospects.

### ***Shortage of Qualified Personnel and Parts and Raw Materials***

Western Canada has had and continues to have a shortage of skilled labour and other qualified personnel. In addition, due to the current levels of activity, certain raw materials and parts can be in short supply or have long lead times. New oil and gas projects will only make it more difficult for the Fund to find and hire all the employees it may require to work and to obtain parts and materials on a timely basis. The Fund is continuously seeking ways to hire the personnel it needs, including project managers, trades people and other employees with the required skills. The Fund is continuously seeking ways to obtain the required parts and raw materials required. Dedicated suppliers, commitments to purchase quantity and increasing inventories are some of the ways the Fund is attempting to ensure parts and raw materials are available when required. The Fund believes the labour, parts and raw material shortages will continue to be a challenge for everyone in the oil and gas industry in western Canada for the foreseeable future. The inability to retain or recruit skilled personnel or obtain key parts and raw materials could have a material adverse effect on the Fund's business, financial condition, results of operations and cash flows.

### ***Environmental, Health and Safety Regulation***

The Fund is subject to federal, provincial, state, municipal and local statutes, regulations and by-laws and other requirements with respect to workers' health and safety and environmental matters in both Canada and the United States.

Environmental legislation, orders, permits, approvals, common law and other requirements impose obligations relating to, among other things: the release of substances into the natural environment; the production, processing, preparation, handling, storage, transportation, disposal, and management of substances; and the prevention and remediation of environmental impacts such as the contamination of soil and water. As a result of these requirements, the operations and ownership of the Business carry a risk of environmental liability (including potential civil actions, compliance or remediation orders, fines and other penalties).

Workers' health and safety legislation and other requirements impose a number of obligations on the Business.

### ***International Scope of Operations***

From time to time, a portion of revenue is earned from foreign customers susceptible to political and economic forces. Associated risks are mitigated for larger contracts with contractual credit terms that require a considerable cash deposit and/or letter of credit to guarantee payment of contract amounts. The Business has the ability to utilize the Export Development Corporation ("EDC") to insure foreign contracts and receivables. However, if a situation requires reliance on EDC coverage, realization can be significantly postponed and may be less than total contract amounts.

### **Product Liability**

The Fund is subject to potential product liabilities connected with its operations, including liabilities and expenses associated with product defects. The Fund has product liability and other insurance coverage that management of the Fund believes is generally in accordance with the market practice in its industry, but there can be no assurance that the Fund will always be adequately insured against all such potential liabilities.

### ***Fixed Price Contracts***

The Fund enters into fixed price manufacturing contracts based upon estimates of technical risks and total production costs. These estimates, if materially inaccurate, can result in potentially large losses related to fulfilling the contractual obligations of the Fund. The Fund utilizes cost escalation clauses for material and labour in the majority of its contracts that have a term of one year or greater.

### ***Uninsured and Underinsured Losses***

The Fund obtains and maintains at all times, insurance coverage in respect of potential liabilities of the Fund and the accidental loss of value of the assets from risks, in such amounts, with such insurers, and on such terms, as management considers appropriate, taking into account all relevant factors including the practices of owners of similar assets and operations. Management believes that the Fund has maintained insurance coverage in amounts sufficient to repair or replace any assets physically damaged or destroyed, including coverage for resultant business interruption losses, or extra expenses sustained, and to cover claims for bodily injury or property damage arising out of assets or operations. However, not all risk factors are covered by insurance, and no assurance can be given that insurance will be consistently available on an economically feasible basis or that the amounts of insurance will at all times be sufficient to cover each and every loss or claim that may occur involving the assets or business of the Fund.

### ***Access to Additional Financing***

The Fund may find it necessary in the future to obtain additional debt or equity to support ongoing operations, to undertake capital expenditures or to undertake acquisitions or other business combination transactions. There can be no assurance that additional financing will be available to the Fund when needed or on terms acceptable to the Fund. The Fund's inability to raise financing to support ongoing operations or to fund capital expenditures or acquisitions could limit the Fund's growth and may have a material adverse effect upon the Fund.

### ***Government of Alberta Royalty Review ("Royalty Review")***

In late 2007, the Government of Alberta completed a five month study of the royalties payment program for oil and gas. This Royalty Review resulted in significant changes to the existing program.

The Royalty Review impacted 2008 financial results and the Business may continue to be affected by customer reactions to the results of this Royalty Review. These reactions include possible cancellation, delay, revision or relocation of projects which in turn impact opportunities for Fund revenue generation.

### ***Kyoto Protocol***

Canada is a signatory to the United Nations Framework Convention on Climate Change and has ratified the Kyoto Protocol established thereunder. Canada, as an Annex B party to the Kyoto Protocol, is required to set legally binding targets to reduce nation-wide emissions of carbon dioxide, methane, nitrous oxide and other so-called "greenhouse gasses".

The direct or indirect costs of complying with emissions regulations may adversely affect the oil and gas business in Canada, which in turn may adversely affect the oil and gas services industry in which the Fund participates.

### **Risks Related to Structure of the Fund**

#### ***Nature of Trust Units***

The Trust Units do not represent a traditional investment and should not be viewed by investors as shares in the Fund. The Trust Units represent a fractional interest in the Fund. As holders of Trust Units, Unitholders have many of the same protections, rights and remedies as a shareholder would have under the *Canada Business Corporations Act* except that a Unitholder will not have the statutory rights normally associated with ownership of shares of a corporation including, for example, the right to bring "oppression" or "derivative" actions. A Unitholder is also not entitled to "dissent rights".

The Fund's sole assets are its direct holding of the units in Commercial Trust. The price per Trust Unit is a function of anticipated Distributable Cash, the underlying assets of the Fund and management's ability to effect long-term growth in the value of the Fund. The market price of the Trust Units will be sensitive to a variety of market conditions including, but not limited to, interest rates and the ability of the Fund to maintain or grow its business. Changes in market conditions may adversely affect the trading price of the Trust Units.

**The Trust Units are not "deposits" within the meaning of the *Canada Deposit Insurance Corporation Act (Canada)* and are not insured under the provisions of that Act or any other legislation. Furthermore, the Fund is not a trust company and, accordingly, is not registered under any trust and loan company legislation as it does not carry on or intend to carry on the business of a trust company.**

#### ***Return of Capital***

Cash distributions do not represent a "yield" in the traditional sense, as they may represent both a return of capital and a return on investment.

#### ***Debt Service***

The Fund may finance a significant portion of its operations through debt. Amounts paid in respect of interest and principal on debt incurred may impair the Fund's ability to satisfy its obligations under any credit agreements. Variations in interest rates and scheduled principal repayments could result in significant changes in the amount required to be applied to debt service before payment by the Fund

of its obligations under any credit agreements. Ultimately, this may result in lower levels of Distributable Cash for the Fund.

Lenders have been and will be provided with security over all of the assets of the Fund. If the Fund becomes unable to pay its debt service charges or otherwise commits an event of default such as bankruptcy, a lender may foreclose on or sell the assets of the Fund.

### ***Redemption Right***

Unitholders have a limited right to require the Fund to repurchase their Trust Units, which is referred to as a redemption right. It is anticipated that the redemption right will not be the primary mechanism for Unitholders to liquidate their investments. Cash redemptions are subject to limitations.

### ***Trust Unit Distributions***

The Fund declares Trust Unit Distributions to Unitholders on a quarterly basis. The amount of the Trust Unit Distributions is generally determined by taking cash flow from operating activities and adjusting for the costs of property, plant and equipment upgrades and expansion, business acquisitions and the effect of changes in general business conditions on working capital. Payment of these Trust Unit Distributions can be in the form of cash or additional Trust Units for those eligible Unitholders who choose to participate in the DRIP plan. The DRIP plan has been indefinitely suspended effective the March 31, 2008 Trust Unit Distribution. The actual amount distributed, if any, is at the discretion of the Trustees. **Distributions by the Fund to Unitholders are not guaranteed.**

The Fund, in accordance with the terms of its Deed of Trust is also obligated to allocate all Canadian taxable income and realized capital gains to its Unitholders. Therefore, when there is taxable income in excess of total Trust Unit Distributions to date, the Fund will issue a Special Distribution in the amount necessary to allocate all remaining taxable income and realized capital gains to Unitholders of record for the fourth quarter distribution in December. Distribution of this taxable income can be in the form of cash or through the issuance of additional Trust Units. Under the terms of the Deed of Trust, if taxable income is distributed in the form of additional Trust Units, there will be an immediate reconsolidation of the number of Trust Units outstanding. After the consolidation, each Unitholder will hold the same number of Trust Units as held before the distribution of additional Trust Units.

The cash component of the Trust Unit Distributions as calculated above are included under the definition of Distributable Cash Flow section 5.1(b) of the Deed of Trust.

### ***Investment Eligibility and Mutual Fund Trust Status***

It is intended that the Fund qualify at all times as a mutual fund trust for the purposes of the Tax Act. The Fund may not, however, always be able to satisfy future requirements for the maintenance of mutual fund trust status. Should the status of the Fund as a mutual fund trust be lost or successfully challenged by a relevant tax authority, certain adverse consequences may arise for the Fund and Unitholders. Some of the significant consequences of losing mutual fund trust status are as follows:

- the Trust Units would cease to be a qualified investment for trusts governed by Exempt Plans. Where, at the end of a month, a trust governed by an RRSP, a DPSP, an RESP or an RRIF holds Trust Units that ceased to be a qualified investment, the Exempt Plan, must, in respect of that month, pay a tax under Part XI.1 of the Tax Act equal to 1% of the fair market value

of the Trust Units at the time such Trust Units were acquired by the Exempt Plan. In addition, trusts governed by a registered retirement savings plan or a registered retirement income fund which hold Trust Units that are not qualified investments will be subject to tax on the income attributable to the Trust Units while they are non-qualified investments, including the full capital gains, if any, realized on the disposition of such Trust Units. Where a trust governed by a registered retirement savings plan or a registered retirement income fund acquires Trust Units that are not qualified investments, the fair market value of the investment will be included in the income of the annuitant for the year of the acquisition. Where a trust governed by a DPSP acquires Trust Units that are not qualified investments, the trust will be liable to a tax on the fair market value of the investment. Trusts governed by registered education savings plans which hold Trust Units that are not qualified investments can have their registration revoked by the CRA;

- the Fund would be required to pay a tax under Part XII.2 of the Tax Act. The payment of Part XII.2 tax by the Fund may have adverse income tax consequences for certain Unitholders, including Non-Residents and residents of Canada who are exempt from Part I tax;
- the Fund would cease to be eligible for the capital gains refund mechanism available under Canadian tax laws; and
- Trust Units would become taxable Canadian property. As a result, Non-Resident Unitholders would be subject to Canadian income tax on any gains realized on a disposition of Trust Units held by them.

In addition, the Fund may take certain measures in the future to the extent the Fund believes such measures are necessary to maintain the Fund's status as a mutual fund trust. These measures could be adverse to certain Unitholders.

#### ***Non-Resident Ownership of Trust Units***

Currently, in order for the Fund to maintain its status as a mutual fund trust under the Tax Act, the Fund must not, subject to some exceptions, be established or maintained primarily for the benefit of Non-Residents. The Deed of Trust provides that if at any time the Trustees or the Fund becomes aware that the beneficial owners of 45% or more of the Trust Units then outstanding are or may be Non-Residents or that such a situation is imminent, the Trustee, by or through the Fund on the Trustees' behalf, shall take such action as may be necessary to carry out the foregoing intention.

These measures could be adverse to certain Unitholders and may not be effective to avoid the Fund losing its status as a mutual fund trust for the purposes of the Tax Act.

#### ***Dependence on the Business***

The Fund will initially be entirely dependent on the operations and assets of the Business through its direct or indirect ownership of Universal and Foremost. Accordingly, the cash and other distributions to the Unitholders will be dependent on the ability of the operational businesses to make cash distributions or other distributions to the Fund.

### ***Distribution of Assets on Redemption or Termination of the Fund***

Upon the redemption of Trust Units or termination of the Fund, the Trustees may distribute assets *in specie*, including but not limited to, partnership units in Universal and/or Foremost directly to the holders of Trust Units, subject to obtaining all required regulatory approvals. There is currently no market for such partnership units. Partnership units so distributed may not be qualified investments for Exempt Plans, depending upon the circumstances at the time.

### ***Restrictions on Potential Growth***

The payout by the Fund of significant cash in any year will make additional capital and operating expenditures dependent on increased cash flow or additional financing in the future. Lack of such funds could limit the Fund's future growth, and cash flow.

### ***Taxation of the Fund***

The Fund is subject to taxation in each taxation year on its income for the year. The Fund may deduct, in computing its income for tax purposes, the full amount available for deduction in each year associated with the undepreciated capital cost ("UCC") of its property plus UCC created by capital expenditures of the Fund. If there is not sufficient UCC to shelter the income of the Fund, then cash taxes would be payable by the Fund. On October 31, 2003, the Department of Finance released, for public comment, proposed amendments to the Tax Act that relate to the deductibility of interest and other expenses for income tax purposes for taxation years commencing after 2004. In general, the proposed amendments may deny the realization of losses in respect of a business if there is no reasonable expectation that the business will produce a cumulative profit over the period that the business can reasonably be expected to be carried on. The Fund does not believe that the proposed amendments will have a material effect on its tax position. As part of the 2005 Federal Budget, the Minister of Finance (Canada) (the "Minister") announced that an alternative proposal to replace the proposed amendment would be released at an early opportunity.

The Deed of Trust provides that an amount equal to the taxable income of the Trust will be distributed each year as a Special Distribution to Unitholders in order to reduce the Fund's taxable income to zero. The Deed of Trust provides that any additional amount necessary to be distributed to Unitholders may be distributed in the form of Trust Units rather than in cash. Unitholders will be required to include an amount equal to the fair market value of those Trust Units in their taxable income even though they may not receive a cash distribution.

### ***Changes in Legislation and Administrative Practices***

There can be no assurance that income tax laws and government incentive programs relating to mutual fund trusts and to the oil and gas industry will not be changed in a manner, which materially adversely affects the Fund and the Unitholders. There can be no assurance that the CRA will agree with how the Fund calculates its income for tax purposes or that the CRA will not change its administrative practices to the detriment of the Fund or the Unitholders.

The March 23, 2004 Canadian federal budget (the "Budget") proposed to introduce changes to pensions and their investment in trust entities. The proposed changes, if enacted, would restrict pension funds in their ownership of "business income trusts", such as the Fund, after 2004 to 1% of the book value of the pension fund's assets and to no more than 5% of the units of any business income trust. On May 18, 2004, the Minister announced that the proposals in the Budget would be suspended to allow consultation with representatives of the pension fund industry, the investment

industry, provincial governments and other interested parties. Following such consultations, the Minister has indicated the Government will issue legislative proposals.

On October 31, 2006, the federal Minister of Finance (the “Minister”) announced new proposals (the “2006 Proposals”) that, if enacted, would change the manner in which certain flow-through entities, referred to as “specified investment flow-through” entities or “SIFTs”, and the distribution from such entities are taxed. In their current form, the 2006 Proposals will generally not apply to SIFTs that were publicly traded on October 31, 2006 (“Grandfathered SIFTs”) until January 1, 2011. However, the 2006 Proposals indicate that any “undue expansion” of a Grandfathered SIFT between October 31, 2006 and January 1, 2011 (the “Interim Period”), would be viewed as abusive tax avoidance and may cause the deferred application of the 2006 Proposals to be rescinded.

Following the October 31, 2006 announcement, the Department of Finance (“Finance”) issued a press release on December 15, 2006 wherein it provided guidelines (the “Normal Growth Guidelines”) as to what would be considered “normal growth” as opposed to “undue expansion.”

On December 21, 2006 Finance released draft legislation to implement the 2006 Proposals (the “Draft Legislation”) invited commentary on the technical aspects of the Draft Legislation prior to January 31, 2007. The Minister has indicated that, following this consultation period, legislation will be introduced to implement the 2006 Proposals.

Provided that the Fund is not considered to have undergone an “undue expansion” during the Interim Period, the Draft Legislation, if enacted in its current form, will change the manner in which the Fund and its distributions are taxed beginning January 1, 2011. More specifically, the Fund will be subject to entity level taxation, which will reduce the amount of cash available for distribution to the Unitholders. Based on the proposed rate of entity level taxation, the tax on income (other than taxable dividends) distributed by the Fund to its Unitholders would approximate the tax rate applicable to income earned by Canadian public corporations. Based on information released by Finance in conjunction with the 2006 Proposals, the applicable rate in 2011 would be 31.5% but this is subject to change between now and 2011. On December 14, 2007, Bill C-28 was introduced having the effect of reducing the previously announced combined effective federal and provincial income tax rate of 31.5% to a new substantially enacted rate of 28%. In June 2007, the substantially enacted rates were further reduced to 25%.

Distributions received by Unitholders beginning January 1, 2011 would be characterized as eligible dividends received from a Canadian public corporation. Generally, individual Unitholders resident in Canada would be subject to tax based on the enhanced gross-up and dividend tax credit applicable to eligible dividends. Unitholders subject to the highest marginal rate of tax would receive an after-tax return from their now reduced distribution of income approximately equal to the after-tax return if the pre-tax income of the SIFT has been distributed directly to and taxed in the hands of the Unitholders. However, reduced distributions will be an absolute cost to other types of Unitholders including pension funds, Registered Retirement Savings Plans and non-residents who would not benefit from characterization of the distribution as dividends.

If the Fund is considered to have undergone an “undue expansion” during the Interim Period, the 2006 Proposals may become applicable to the Fund prior to January 1, 2011. No assurance can be given that the Fund will be able to maintain its status as a Grandfathered SIFT until January 1, 2011. Loss of this status may result in material adverse tax consequences for the Fund and its Unitholders.

No assurance can be given as to the provisions of any final legislation that may be enacted to implement the 2006 Proposals, the Normal Growth Guidelines or the Draft Legislation. The

provisions of such legislation, if enacted, may be materially different than the provisions of the Draft Legislation and/or the Normal Growth Guidelines.

No assurance may be given that further review of the tax treatment of flow-through entities will not be undertaken or that Canadian federal income tax law and/or provincial income tax law respecting flow-through entities will not be changed in a manner, which adversely affects the Fund and the Unitholders.

### **MARKET FOR SECURITIES**

The outstanding common Trust Units of the Fund are listed and posted for trading on the Toronto Stock Exchange (TSX) under the symbol "FMO.UN". The following table provides the volume and reported high and low trading prices of Trust Units of the Fund by month during 2008:

<b>Month</b>	<b>High</b>	<b>Low</b>	<b>Volume</b>
December 2008	5.50	4.85	297,000
November 2008	6.20	4.40	456,000
October 2008	9.00	6.10	528,000
September 2008	9.60	8.33	621,000
August 2008	9.75	8.38	698,000
July 2008	13.00	8.32	366,000
June 2008	12.87	10.73	157,000
May 2008	12.59	9.92	170,000
April 2008	12.14	9.60	104,000
March 2008	12.54	9.35	168,000
February 2008	11.69	9.22	219,000
January 2008	11.41	7.99	655,000

### **RECORD OF TRUST DISTRIBUTIONS**

#### **General**

Up to the March 31, 2007 Trust Unit Distribution, quarterly Trust Unit Distributions were to be paid to Unitholders of record on the 15th day of the month following each calendar quarter, or the next business day thereafter. Pursuant to amendments approved at the June 13, 2007 Unitholders meeting, Trust Unit Distributions are now paid to Unitholders of record on the last business day of each calendar quarter.

#### **Distributions Paid By the Trust**

On May 14, 2002 the predecessor Foremost Industries Income Fund announced a policy of paying Trust Unit distributions. The Trust Unit distribution for March 2004 was set at \$0.125 per unit. In June 2005, the Trust Unit distribution was set at \$0.15 per unit and remained the same for September and December 2005 Trust Unit distributions. In March 2006, the Trust Unit distribution for the Fund was set at \$0.25 per unit and in June 2006, it was set at \$0.40 per unit and remained unchanged through 2007. Total Trust Unit distributions for 2007 amounted to \$1.60 per unit. Total Trust Unit distributions were reduced to \$0.25 per unit for all of the 2008 quarterly distribution dates. Subsequent to December 31, 2008, the Trust Unit distribution for the March 31, 2009 quarterly distribution was reduced to \$0.10 per unit.

### Three Year History

<i>Payable Date</i>	<i>Record Date</i>	<i>Ex-distribution Date</i>	<i>Distribution Amount</i>
December 31, 2008	December 17, 2008	December 15, 2008	\$0.25 / unit
September 30, 2008	September 17, 2008	September 15, 2008	\$0.25 / unit
June 30, 2008	June 13, 2008	June 11, 2008	\$0.25 / unit
March 31, 2008	March 14, 2008	March 12, 2008	\$0.25 / unit
December 31, 2007	December 14, 2007	December 12, 2007	\$0.40 / unit
September 28, 2007	September 14, 2007	September 12, 2007	\$0.40 / unit
June 29, 2007	June 20, 2007	June 18, 2007	\$0.40 / unit
April 16, 2007	March 31, 2007	March 28, 2007	\$0.40 / unit
January 15, 2007	December 31, 2006	December 27, 2006	\$0.40 / unit
October 16, 2006	September 30, 2006	September 27, 2006	\$0.40 / unit
July 17, 2006	June 30, 2006	June 28, 2006	\$0.40 / unit
April 17, 2006	March 30, 2006	March 29, 2006	\$0.25 / unit

### Restrictions on Trust Unit Distributions

The ability of the Fund to make Trust Unit Distributions to holders of Trust Units may be directly or indirectly affected in certain events or as a result of certain restrictions. Trust Unit distributions are not guaranteed and will fluctuate with the performance of the Fund, which is dependent upon commodity prices, key personnel and workforce availability, among other risk factors. See "Risk Factors" for a discussion of the risks that could cause actual results to vary.

The Credit Agreement restricts the ability of the Fund to make Trust Unit Distributions to holders of Trust Units in certain circumstances. See "Credit Facilities".

### CREDIT FACILITIES

Foremost Industries LP, as borrower, entered into a credit agreement (the "**Credit Agreement**") dated December 30, 2005, to establish credit facilities ("**Credit Facilities**") with the Toronto Dominion Bank, as administrative agent for a syndicate of lenders. The Credit Facilities include a revolving operating facility ("**Operating Facility**") for a maximum amount of \$25 million, and a revolving term facility ("**Term Facility**") for a maximum amount of \$25 million. The Fund is a party to the Credit Agreement as a covenantor.

During 2006, the Fund established a separate letter of credit facility of \$4.0 million for the provision of specific customer contract performance guarantees. At December 31, 2008 the Fund had outstanding letters of guarantee in the amount of \$1,557,000 (2007 - \$1,913,000) related to the performance of specific contracts.

The term of the Operating Facility expired July 6, 2008, and was renewed for a 364-day term, with the consent of the lenders. The facility may, with the consent of the lenders be extended for two further 364- day terms. The term of the Term Facility is the third anniversary from the term date. The interest rate applicable to the Operating Facility and the Term Facility is the administrative agent's prime rate, established from time to time, in the case of the Operating Facility and prime plus one-half percent in the case of the Term Facility.

As security for the Credit Facilities, equity securities in certain subsidiaries have been pledged to the lenders. Further, security over all of the assets of certain of the operating subsidiaries has been granted to the lenders in priority to the security of the Fund in the operating subsidiaries. As well,

cross guarantees by the Fund's subsidiaries, Foremost Industries Ltd., Universal Industries (Foremost) Corp., Foremost Universal LP, Wilco, Peace Land and De-In have been provided to the lenders. The ability of the Fund to make cash distributions is subject to certain financial and other covenants and limitations under the Credit Facilities and under security given in support of the Credit Facilities.

The Credit Agreement restricts the payment of Trust Unit Distributions if certain covenants are not met.

## **INFORMATION CONCERNING THE FUND**

### **General**

The Fund is an unincorporated, open-end mutual fund trust established under the laws of the Province of Alberta pursuant to the Deed of Trust. The following is a summary only of the material attributes and characteristics of the Trust Units and certain provisions of the Deed of Trust and is qualified entirely by reference to the Deed of Trust. Reference is made to the Deed of Trust for a complete description of the Trust Units and the full text of its provisions. Defined terms used in this section "Information Concerning the Fund" not otherwise defined in this section shall have the same meanings attributed to such terms in the Deed of Trust. A copy of the Deed of Trust is available at [www.sedar.com](http://www.sedar.com).

### **Activities of the Fund**

The Deed of Trust provides that the activities of the Fund are limited to:

- (a) participating in the Reorganization;
- (b) acquiring, investing in, holding, transferring, disposing of and otherwise dealing with, directly or indirectly, in any of the securities issued by Commercial Trust or its subsidiary entities, and borrowing funds for that purpose;
- (c) investing in any other securities and in any other business or investments as the Trustees may determine, and borrowing funds for that purpose;
- (d) temporarily holding cash in interest-bearing accounts and short-term investments for the purposes of making investments, paying the expenses and the liabilities of the Fund, paying amounts payable by the Fund in connection with the redemption of any Trust Units or securities of the Fund, and making distributions to Unitholders;
- (e) issuing Trust Units, convertible securities or securities exchangeable for Units for the purpose of obtaining funds to conduct any of the activities of the Fund, completing any acquisition of securities or any other assets for the benefit of the Fund, implementing Unitholder rights plans, distribution reinvestment plans, unit purchase plans, incentive option plans or other incentive or compensation plans, if any, established by the Trustees for the benefit of Fund, and making non-cash distributions to Unitholders as contemplated by the Deed of Trust including pursuant to distribution reinvestment plans or distribution reinvestment and unit purchase plans, if any, established by the Fund;
- (f) issuing debt securities, provided recourse shall be limited to the assets of the Fund (including debt securities convertible into, or exchangeable for, Trust Units or other

securities of the Fund) or otherwise borrowing and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering any of the assets of the Fund as security;

- (g) as part of its undertaking of investing in funds, guaranteeing (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of any Person, and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering all or any part of the assets of the Fund including securities issued by Commercial Trust or any subsidiary entity, as security for that guarantee;
- (h) disposing of all or any part of the assets of the Fund;
- (i) issuing or redeeming rights and Trust Units pursuant to any Unitholder rights plan adopted by Fund;
- (j) repurchasing, redeeming or otherwise acquiring securities of the Fund, including pursuant to any issuer bid made by the Fund;
- (k) satisfying the obligations, liabilities or indebtedness of the Fund;
- (l) performing all acts necessary, incidental, ancillary or related to any of the foregoing subsections (a) to (k); and
- (m) undertaking such other activities or taking such other actions to conduct the business of the Fund as shall be approved by the Trustees from time to time,

provided, however, that the Fund shall not undertake any activity, take any action, or make or retain any investment which would result (or fail to take any action where that failure would result) in: (i) the Fund not being considered a "unit trust" or a "mutual fund trust" for purposes of the Tax Act or (ii) the Trust Units constituting "foreign property" for purposes of Part XI of the Tax Act if the Tax Act contains restrictions on the cost amount of foreign property which may be held by Persons subject to tax under Part XI of the Tax Act.

### **Trust Units**

An unlimited number of Trust Units may be issued pursuant to the Deed of Trust.

Each Trust Unit is transferable and represents an equal undivided beneficial interest in any distribution from the Fund and in any of the net assets of the Fund in the event of termination or winding-up of the Fund. All Trust Units are of the same class with equal rights and privileges. Each Trust Unit entitles the holder thereof to one vote at all meetings of Unitholders or in respect of any written resolution of Unitholders. The issued and outstanding Trust Units may be subdivided or consolidated from time to time by the Trustees without notice to or approval from the Unitholders.

### **Nature of Trust Units**

The Trust Units are not "deposits" within the meaning of the *Canada Deposit Insurance Corporation Act* (Canada) and are not insured under the provisions of that act or any other legislation. Furthermore, the Fund is not a trust company and, accordingly, is not registered under any trust and loan company legislation as it does not carry on or intend to carry on the business of a trust company.

### **Issuance of Trust Units**

Trust Units may be issued at the times, to the Persons, for the consideration and on the terms and conditions that the Trustees determine. At the option of the Trustees, Trust Units may be issued in satisfaction of any distribution of the Fund to Unitholders on a *pro rata* basis. Immediately after any *pro rata* distribution of additional Units to all Unitholders, the number of the outstanding Trust Units will automatically be consolidated such that each Unitholder will hold after the consolidation the same number of Trust Units as the Unitholder held before the distribution of additional Trust Units. In such circumstances, each Trust Unit certificate representing a number of Trust Units prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the distribution of additional Trust Units and the consolidation.

### **Distributions**

The Fund will make regular Trust Unit Distributions which may be in the form of all cash, all Trust Units or a combination thereof. Until June 30, 2007, these Trust Unit Distributions were paid on a quarterly basis on or about the 15<sup>th</sup> day of the month immediately following the distribution record date. Pursuant to Unitholder approval on June 13, 2007 of the amended and restated Deed of Trust, distributions are now paid on the last business day of each quarter.

The Distributable Cash Flow of the Fund will equal all cash amounts received by the Fund for, and in respect of, the Distribution Period (as defined in the Deed of Trust) (including, without limitation, distributions received from Commercial Trust, interest, dividends, other distributions, proceeds from the disposition of securities, returns of capital and repayments of indebtedness, and all amounts received by the Fund in any prior Distribution Period to the extent those amounts were not included in the calculation of Distributable Cash Flow in that prior Distribution Period and were not previously distributed) less (i) all costs, expenses, liabilities, obligations or amounts of the Fund which, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing by the Fund in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued or deducted in determining the Distributable Cash Flow in that prior period, including, without limitation, any interest payable by the Fund on any indebtedness of the Fund and any tax liabilities of the Fund; (ii) all amounts which relate to the redemption or purchase of Trust Units or other securities of the Fund by the Fund and which have been paid or became payable in cash by the Fund in such Distribution Period; (iii) the net proceeds of any issuance of Trust Units or securities of the Fund or borrowings by the Fund after deducting any associated expenses or commissions shall not be included in the calculation; and (iv) less any amount which the Trustees may reasonably consider to be necessary to: provide for the payment of any costs, expenses, liabilities, obligations or amounts which are reasonably expected to be incurred by the Fund, be retained by the Fund to comply with such limits or restrictions as may be agreed to between the Fund Trustees and any lender(s) of the Fund or contained in any loan agreement(s) entered into by the Fund, Commercial Trust or any other subsidiary or affiliate of the Fund, retain for a reserve to stabilize distributions, make allowances for contingencies or for working capital, investments or acquisitions, and provide for the payment of any income tax liability of the Fund.

In addition to distributions of Distributable Cash Flow, the Trustees may declare to be payable and make distributions to Unitholders, from time to time, out of income for the year determined pursuant to the provisions of the Tax Act, net realized capital gains of the Fund, the capital of the Fund or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine, to Unitholders at the record date for the distribution.

Having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders by way of a Special Distribution all of the income of the Fund, net realized capital gains of and any other applicable amounts so that Fund will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts shall, unless otherwise determined by the Trustees, without any further actions on the part of the Trustees, be due and payable to Unitholders on December 31 in each such year: (i) an amount equal to the amount, if any, by which the income of the Fund for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Fund which have been determined by the Trustees to have been payable by the Fund out of the income of the Fund for such year; and (ii) an amount equal to the amount, if any, by which the net realized capital gains of the Fund for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Fund which have been determined by the Trustees to have been payable by the Fund out of net realized capital gains for such year.

If the Trustees determine that the Fund does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to the Deed of Trust on the due date for such payment, or if any cash distribution should be contrary to any agreement to which the Fund is a party, the payment may, at the option of the Trustees and subject to any Applicable Laws and the receipt of necessary approvals, include: (i) the *pro rata* issuance of additional Trust Units, (ii) the *pro rata* distribution of assets of the Fund, and/or (iii) the *pro rata* issuance of demand unsecured promissory notes, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution. The value of each Trust Unit issued shall be the Cash Redemption Price (as defined below) on the applicable distribution record date.

The Trustees may deduct or withhold from distributions payable to any Unitholder all amounts required by applicable law to be withheld from such distributions, whether those distributions are in the form of cash, additional Trust Units or otherwise.

### **Redemption of Trust Units**

Trust Units are redeemable in whole or in part at any time on demand by the holders thereof. Upon receipt of a duly completed and properly executed redemption notice along with the Trust Unit certificate(s) representing the Trust Units to be redeemed, the Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Fund of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Fund has, to the satisfaction of the Trustees, received the notice, Trust Unit certificates and other required documents or evidence as aforesaid.

Upon receipt by the Fund of the notice to redeem Trust Units given in accordance with the foregoing requirements, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (the "Cash Redemption Price") equal to the lesser of:

- (a) 95% of the market price of the Trust Units on the principal stock exchange or market on which the Trust Units are quoted for trading during the 10 consecutive trading days ending on the trading day immediately prior to the date the Trust Units were tendered for redemption; and

- (b) 100% of the closing market price of the Trust Units on the principal stock exchange or market on which the Trust Units are quoted for trading, on the date that the Trust Units were so tendered for redemption.

The market price shall be an amount equal to the simple average of the closing price of the Trust Units for each of the trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price but only provides the highest and lowest prices of the Trust Units traded on a particular day, the market price shall be an amount equal to the simple average of the highest and lowest prices of the Trust Units for each of the trading days on which there was a trade; and provided further that if there was trading on the applicable stock exchange or market for fewer than five of the 10 trading days, the market price shall be the simple average of the following prices established for each of the 10 trading days: the average of the last bid and last ask prices of the Trust Units for each day on which there was no trading; the closing price of the Trust Units for each day that there was trading if the stock exchange or market provides a closing price; and the average of the highest and lowest prices of the Trust Units for each day that there was trading, if the exchange or market provides only the highest and lowest prices of Trust Units traded on a particular day; and provided further that if, in the opinion of the Trustees, the trading activity of the Trust Units for the relevant period does not result in a trading price that represents the fair market value of the Trust Units, the market price shall be an amount determined by the Trustees in good faith in their sole discretion and provided further that any such determination shall be conclusive and binding. The closing market price shall be: an amount equal to the closing price of the Trust Units if there was a trade on the date; an amount equal to the simple average of the highest and lowest prices of Trust Units on the principal stock exchange or market on which the Trust Units are quoted for trading if there was trading and the exchange or other market provides only the highest and lowest trading prices of Trust Units traded on a particular day; or the simple average of the last bid and last ask prices if there was no trading on the date.

The Cash Redemption Price payable in respect of the Trust Units surrendered for redemption during any calendar month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption no later than the last day of the calendar month following the month in which the day the Trust Units were tendered for redemption falls. Payments made by the Fund of the Cash Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Fund shall be discharged from all liability to the former Unitholder in respect of the Trust Units so redeemed, except with respect to any outstanding payments in respect of the Trust Units tendered for redemption pertaining to distributions declared payable thereon to such former Unitholders of record on a date which was prior to the Redemption Date.

Unitholders will not be entitled to the Cash Redemption Price if: (i) the total amount payable by the Fund in respect of such Trust Units and all other Trust Units tendered for redemption prior thereto in the same calendar month exceeds \$100,000; provided that the Trustees may, in their sole discretion, waive such limitation in respect of any calendar month; (ii) at the time the Trust Units are tendered for redemption, the outstanding Trust Units of the Fund are not listed for trading or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Trust Units; or (iii) the normal trading of the outstanding Trust Units is suspended or halted on any stock exchange on which the Trust Units are listed for trading or, if not so listed, on any market on which the Trust Units are quoted for trading, on the date that such Trust Units were tendered for redemption or for more than five trading days during the 10 consecutive

trading days ending on the trading day immediately prior to the date on which the Trust Units were tendered for redemption.

In the event a holder of Trust Units is not entitled to payment of a Cash Redemption Price in respect of Trust Units tendered for redemption, such Unitholder shall instead be entitled to receive a price per Trust Unit (the "In Specie Redemption Price") equal to the fair market value thereof as determined by the Trustees in good faith. The In Specie Redemption Price shall, subject to all necessary regulatory approvals, be paid and satisfied by the issuance of an unsecured promissory note representing an indebtedness equal to the In Specie Redemption Price or by a distribution *in specie* of the securities held by the Fund on the basis, per Trust Unit tendered for redemption, of the number of Securities of each class owned by the Fund on the date such Trust Units were tendered for redemption divided by the number of Trust Units outstanding on such date. No fractional securities shall be distributed, and if the number of securities to be received upon redemption by a Unitholder would otherwise include a fraction, that number shall be rounded to the next lowest whole number. The In Specie Redemption Price payable in respect of Trust Units tendered for redemption during any month shall be paid by the issuance or transfer, to or to the order of the Unitholder who exercised the right of redemption, on the last day (the "Transfer Date") of the calendar month following the month in which the Trust Units were tendered for redemption, of an unsecured promissory note or of the number of each class of securities determined as aforesaid. The Fund shall be entitled to all interest paid or accrued and unpaid to and including the Transfer Date, all distributions declared and paid or declared payable on or before the Transfer Date and all other income, profits, earnings and royalties paid or accrued and unpaid on any securities being transferred to and including the Transfer Date. Payments by the Fund of the In Specie Redemption Price shall conclusively be deemed to have been made upon the mailing of the unsecured promissory note or the certificates representing the securities by registered mail in a postage prepaid envelope addressed to the former Unitholder. Upon such payment, the Fund shall be discharged from all liability to the former Unitholder in respect of the Trust Units so redeemed, except for any indebtedness represented by the unsecured promissory note.

### **Meetings of Unitholders**

The Deed of Trust provides that meetings of Unitholders must be held, annually on or before June 30 for the presentation of the audited consolidated financial statements of the Fund for the immediately preceding fiscal year, the appointment of the Trustees, the appointment of the auditors of the Fund, and the transaction of other business as the Unitholders may be entitled to vote upon pursuant to the Deed of Trust.

A special meeting of Unitholders may be convened at any time and for any purpose by the Trustees and must be convened if requisitioned by the holders of not less than 15% of all votes entitled to be voted at any meeting of Unitholders. A requisition must specify in reasonable detail the purpose(s) for which such meeting is to be called.

Unitholders may attend and vote at all meetings of Unitholders either in person or by proxy and a proxyholder need not be a Unitholder. Two persons present in person and either holding personally or representing as proxies not less than 5% of all votes entitled to be voted at the meeting shall constitute a quorum for the transaction of business at all such meetings.

A resolution in writing executed by Unitholders holding a proportion of Trust Units equal to or greater than the proportion of Trust Units required to vote in favour thereof at a meeting of Unitholders at any time shall be as valid and binding for all purposes as if such resolution had been passed at a meeting of Unitholders.

The Deed of Trust contains provisions as to the notice required and other procedures with respect to the calling and holding of meetings of Unitholders.

### **Limitations on Non-Resident Ownership**

In order for the Fund to maintain its status as a mutual fund trust under the Tax Act, the Fund must not be established or maintained primarily for the benefit of Non-Residents of Canada within the meaning of the Tax Act and, pursuant to certain proposed amendments to the Tax Act, not more than 50% of the aggregate fair market value of the Trust Units may be held by non-residents of Canada and/or partnerships (other than Canadian partnerships as defined in the Tax Act). Accordingly, the Deed of Trust provides that at no time may Non-Residents be the beneficial owners of more than 45% of the Units (on both a non-diluted and fully diluted basis).

The Trustees may require declarations as to the jurisdictions in which beneficial owners of the Trust Units are resident. If the Trustees become aware, as a result of acquiring such declarations or otherwise, that the beneficial owners of 45% or more of the Trust Units (or rights to acquire Trust Units) then outstanding are, or may be, Non-Residents or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for Trust Units from, or issue or register a transfer of Trust Units to, a person unless such person provides a declaration in form and content satisfactory to the Trustees that such person and, if applicable, the proposed beneficial owner of such Trust Units, is not a Non-Resident. If, notwithstanding the foregoing, the Trustees determine that more than 45% of the Trust Units are held by Non-Residents, the Trustees may send a notice to the registered holders of the Trust Units beneficially owned by Non-Residents, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Trust Units or a specified portion thereof to a resident or residents within a specified period of not more than 60 days. If the Unitholders receiving such notice have not, within such period, sold the specified number of Units to a resident or residents or provided the Trustees with satisfactory evidence that the beneficial owners of such Units are not Non-Residents, the Trustees may, as agents and attorneys acting on behalf of such Unitholders and/or such beneficial owners, sell such Trust Units and, in the interim, the Trustees shall suspend the voting and distribution rights attached to such Trust Units. Upon such sale, the affected Unitholders shall cease to be holders of the relevant Trust Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the Unit Certificates representing such Units. The Fund may direct the Transfer Agent to do any of the foregoing.

If the Tax Act is (or is proposed to be) amended in a manner which places new restrictions on Non-Residents beneficially owning Trust Units, the Trustees may take any action they consider necessary to ensure, to the extent possible, that the Fund maintains its status as a "mutual fund trust" for the purposes of the Tax Act.

On September 16, 2004, the Minister of Finance (Canada) released proposed amendments to the Tax Act relating to the circumstances under which the ownership of units of a trust by Non-Resident persons and partnerships other than Canadian partnerships would cause the trust to lose its status as a mutual fund trust. Under the draft amendments, a trust would lose its status as a mutual fund trust if the aggregate fair market value of all units issued by the trust held by one or more Non-Resident persons or partnerships that are not Canadian partnerships is more than 50% of the aggregate fair market value of all the units issued by the trust. The draft amendments do not currently provide any means of rectifying a loss of mutual fund trust status such that if, at any time, the Fund were to lose its mutual fund trust status as a result of the application of the draft amendments, the Fund would permanently cease to be a mutual fund trust. On December 6, 2004, the Minister of Finance (Canada) tabled a Notice of Ways and Means Motion which did not include these proposed amendments, and it

was announced on such date and in the 2005 Federal Budget that further discussions will take place with the private sector before a decision is made concerning whether the proposed amendments will be enacted. Depending on the final form of the draft amendments as enacted, it may be necessary to amend the Deed of Trust to take into account these new restrictions. This amendment may be made without Unitholder approval.

On November 23, 2005, the Minister of Finance responded to concerns regarding income trusts and other flow-through entities by announcing a reduction in personal income taxes on dividends, which will help level the playing field between corporations and income trusts. These proposals are not, however, yet in force and it is unclear whether they will survive the next election. Earlier proposals had included the levying of a refundable tax on mutual fund trusts and, while the Minister of Finance has stated it does not intend to implement such a tax at this time, it is possible that such a tax may be implemented in the future.

### **Information and Reports**

The Fund will furnish to Unitholders, in accordance with applicable laws, all financial statements of the Fund (including quarterly and annual financial statements) and other reports as are from time to time required by applicable law, including prescribed forms needed for the completion of Unitholders' tax returns under the Tax Act and equivalent provincial legislation.

Prior to each meeting of Unitholders, the Trustees will provide the Unitholders with a form of proxy (along with notice of such meeting) and all other information required by applicable laws and the Deed of Trust.

### **Take-over Bids**

The Deed of Trust contains provisions to the effect that if a take-over bid is made for the Trust Units and not less than 90% of the Trust Units (other than Trust Units held at the date of the take-over bid by or on behalf of the offeror or associates or affiliates of the offeror) are taken up and paid for by the offeror, the offeror will be entitled to acquire the Trust Units held by Unitholders who did not accept the take-over bid on the terms offered by the offeror.

### **The Trustees**

The Deed of Trust provides that, subject to the specific limitations contained therein, the Trustees shall have, without further or other action or consent, and free from any power or control on the part of the Unitholders full, absolute and exclusive power, control and authority over the assets of the Fund and over the affairs of the Fund to the same extent as if the Trustees were the sole and absolute beneficial owners of the assets of the Fund in their own right, to do all acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the trust created under the Deed of Trust. Subject to such terms and conditions, the Trustees are responsible, among other things:

- to supervise the activities and manage the investments and affairs of the Fund;
- to manage the assets of the Fund;
- to maintain records and provide reports to Unitholders; and
- to effect payment of distributions to the Unitholders.

The Trustees shall be paid such reasonable remuneration for their services as the Trustees may from time to time determine. The Trustees shall be entitled to be reimbursed for reasonable traveling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees.

### **Liability of the Trustees**

The Trustees and officers of the Fund shall not be liable to any Unitholder for any action taken or not taken in good faith in reliance on any documents that are, prima facie, properly executed, for any depreciation of, or loss to, the Fund incurred by reason of the sale of any asset, for the loss or disposition of monies or securities, or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustees to redress any breach of trust or any failure by any Person to perform the duties delegated to it under the Deed of Trust or any failure by Commercial Trust or any subsidiary entities to pay monies owed to the Fund, except for a breach of the standard of care, diligence and skill as set out in the Deed of Trust. If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under the Deed of Trust, the Trustees may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of the Deed of Trust, including, without limitation, the standard of care, diligence and skill referred to above, the Trustees shall not be liable for any action or refusal to act based on the advice of any such expert, advisor or legal counsel.

Each Trustee, each former Trustee, each officer of the Fund and each former officer of the Fund shall be entitled to be and shall be indemnified and reimbursed out of the assets of the Fund in respect of any and all taxes (other than taxes on compensation), penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustees, former Trustees, officer and or former officer of the Fund in consequence of his or her performance of his or her duties under the Deed of Trust and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer of the Fund is made a party or against whom any such claim, action or proceeding is commenced or proposed by reason of being or having been a Trustee or officer of the Fund or, at the request of the Fund, a director or officer of any direct or indirect subsidiary of the Fund; provided that a Trustee, former Trustee, officer or former officer of the Fund shall not be indemnified out of the assets of the Fund in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise principally and directly out of his or her gross negligence, willful default or fraud or in breach of the standard of care set forth in the Deed of Trust. A Trustee, former Trustee, officer or former officer of the Fund shall not be entitled to satisfy any right of indemnity or reimbursement granted under the Deed of Trust, or otherwise existing under applicable law, except out of the assets of the Fund, and no Unitholder or other Trustee or officer of the Fund shall be personally liable to any Person with respect to any claim for such indemnity or reimbursement as aforesaid.

### **Amendments to the Deed of Trust**

The Deed of Trust contains provisions that allow it to be amended or altered from time to time by the Trustees with the consent of the Unitholders by a Special Resolution.

The Trustees may, without the consent of the Unitholders or any other person, amend the Deed of Trust for the purpose of: (i) making amendments which, in the opinion of the Trustees, are necessary in order for the Fund to qualify or continue to qualify as a "mutual fund trust" for purposes of the Tax Act; ensuring continuing compliance with applicable laws (including the Tax Act), regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the

Fund; (ii) making amendments which, in the opinion of the Trustees, provide additional protection or added benefits for the Unitholders; (iii) removing any conflicts or inconsistencies in the Deed of Trust or making minor changes or corrections including the correction or rectification of any ambiguities, defective provisions, errors, mistakes or omissions, which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders; (iv) making amendments which, in the opinion of the Trustees, are necessary or desirable and in the interests of the Unitholders as a result of changes in taxation laws or policies of any governmental authority having jurisdiction over the Trustees or Fund; (v) for any purpose (except one in respect of which a vote by Unitholders is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Unitholders and is necessary or desirable; or (vi) to provide for the electronic delivery by the Fund to the Unitholders of documents relating to the Fund (including annual and quarterly reports and financial statements and proxy-related materials) in accordance with applicable laws from time to time. Notwithstanding the foregoing, no such amendment shall be adopted without the consent of the Unitholders given which causes: (i) the Fund to fail to qualify as a "mutual fund trust" under the Tax Act, and (ii) the Trust Units will not be "foreign property within the meaning of Part XI of the Tax Act if the Tax Act contains restrictions on the cost amount of foreign property which may be held by Persons subject to tax under Part XI of the Tax Act. In addition, no such amendment shall modify the right to one vote per Unit or reduce the fractional undivided interest in the Fund Assets represented by any Trust Unit without the consent of the holder of such Unit and no amendment shall reduce the percentage of votes required to be cast at a meeting of the Unitholders or alter the acquisition provisions set forth in the Deed of Trust without the unanimous consent of the Unitholders.

#### **Limitations on the Powers of the Trustees**

The Deed of Trust provides that the Trustees shall not under any circumstances whatsoever authorize, without the approval of 66 2/3% of the votes cast at a meeting of the Unitholders:

- any amalgamation, arrangement or other merger of a subsidiary of the Fund with any other Person, except with one or more direct or indirect wholly-owned subsidiaries or affiliates of the Fund or in conjunction with an internal reorganization with an affiliate or subsidiary of Commercial Trust;
- the winding-up or dissolution of Commercial Trust or its subsidiaries prior to the end of the term of the Fund, except in conjunction with an internal reorganization with an affiliate or subsidiary of the Fund, Commercial Trust or its subsidiaries;
- any sale, lease or exchange of all or substantially all of the assets of the Fund other than pursuant to a redemption of Units in accordance with the terms of the Deed of Trust or pursuant to any security granted by the Fund or pursuant to any internal reorganization of the direct or indirect assets of the Fund as a result of which the Fund has the same interest, whether direct or indirect, in the assets as the interest, whether direct or indirect, that it had prior to the reorganization, and other than any such sale, lease or exchange is effected between or among the Fund and any one or more of: (i) any corporation, partnership, firm or other form of entity or organization that is, directly or indirectly, wholly-owned by the Fund; (ii) any trust or trusts, the sole beneficiaries of which are the Fund and/or any of the Persons referred to above; and (iii) any partnership, the only partners of which are Persons referred to in (i) and (ii) above;
- any sale, lease or exchange of all or substantially all of the assets of a subsidiary of the Fund except pursuant to any security granted by the subsidiary of the Fund other than pursuant to

any internal reorganization with an affiliate or subsidiary of the Fund, and other than any such sale, lease or exchange is effected between or among any one or more of: (i) the Fund; (ii) any corporation, partnership, firm or other form of entity or organization that is directly or indirectly wholly-owned by the Fund; (iii) any trust or trusts, the sole beneficiaries of which are the Fund and/or any of the Persons referred to in (i) and (ii) above; and (iv) any partnership, the only partners of which are Persons referred to in (i), (ii) and (iii) above; or

- any material amendment to the Commercial Deed of Trust, the declarations of limited partnerships and/or the limited partnership agreements in regards to Foremost Industries LP and Foremost Universal LP, respectively, in any case, in a manner which may be prejudicial to the Fund or the Unitholders, respectively.

### **Liability of Unitholder**

The Deed of Trust provides that no Unitholder, in its capacity as such, shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Fund or the obligations or the affairs of the Fund or with respect to any act performed by or omission of the Trustees or any other person pursuant to the Deed of Trust, nor shall any Unitholder be liable to indemnify the Trustees or any other person with respect to any such liability or liabilities and all such persons shall look solely to the assets of the Fund for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Fund only shall be subject to levy or execution.

### **Term**

The Fund shall exist for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on November 12, 2005 unless terminated prior to such time in accordance with the terms of the Deed of Trust.

### **Financial Year End**

The financial year end of the Fund is December 31.

## TRUSTEES OF THE FUND AND OFFICERS

### *Trustees of the Fund*

The following table sets forth information with respect to the Trustees. The Trustees hold office until the next annual meeting of Unitholders or until their successors are duly elected or appointed.

<i>Name and Municipality of Residence</i>	<i>Position</i>	<i>Principal Occupation During Past 5 Years</i>	<i>Trustee Since</i>
Roy H. Allen Cochrane, Alberta	Trustee	Retired	December, 2005  (Trustee of Foremost Industries Income Fund since 2001)
James T. Grenon Calgary, Alberta	Trustee	Managing Director, TOM Capital Associates Inc.	December, 2005  (Trustee of Foremost Industries Income Fund since 2001)
Bruce J. Maclellan Calgary, Alberta	Trustee	President, Century Services Inc.	December, 2005  (Trustee of Foremost Industries Income Fund since 2001)
Gordon M. Wiebe Winnipeg, Manitoba	Trustee	President, Corpfin Services Inc.	December, 2005

The Fund has a separate Audit Committee. Messrs. Allen, Maclellan and Wiebe are members of the Audit Committee. The Trustees attend to executive matters.

As at December 31, 2008, the Trustees beneficially owned, directly or indirectly 11,767,700 Trust Units, comprising 55.0% of the issued and outstanding Trust Units on that date. The information as to Trust Units beneficially owned, not being within the knowledge of the Fund or the Administrator, has been furnished by the respective Trustees individually.

## *Officers*

The following table sets forth information with respect to the principal officers of material subsidiaries of the Fund (the "Principal Officers").

<i>Name and Municipality of Residence</i>	<i>Position</i>	<i>Principal Occupation During Past 5 Years</i>	<i>Officer Since</i>
Pat W. Breen Calgary, Alberta	President and Chief Executive Officer of the Administrator	Officer of a subsidiary of the Fund or its predecessor for the past five years	Officer of a subsidiary of Foremost Industries Income Fund or its predecessor since November 2000
Warren T. Barker Calgary, Alberta	Chief Financial Officer of the Administrator	President of Mediation Technology Corporation from May 2001 to October 2005.	Officer of a subsidiary of Foremost Industries Income Fund or its predecessor since October 2005
Bruce Binsfeld Lloydminster, Alberta	Vice-President of Universal Industries (Foremost) Corp.	Officer of a subsidiary of the Fund or its predecessor for the past five years	Officer of a subsidiary of Foremost Industries Income Fund or its predecessor since July 2001
Jim Spenrath Lloydminster, Alberta	Vice-President, Finance of Universal Industries (Foremost) Corp.	Officer of a subsidiary of the Fund or its predecessor since June 2005  Sole proprietor of the chartered accounting firm, Spenrath & Company, prior to June 2005	Officer of a subsidiary of Foremost Industries Income Fund or its predecessor since June 2005

As at December 31, 2008, the Principal Officers beneficially owned, directly or indirectly, or exercised control or direction over 161,200 Trust Units or approximately 0.8% of the issued and outstanding Trust Units at that date. The information as to Trust Units beneficially owned, not being within the knowledge of the Fund or the Administrator, has been furnished by the Principal Officers individually.

## **Cease Trade Orders, Bankruptcies, Penalties or Sanctions**

In the 10 years preceding the date of this AIF, none of the Trustees or insiders of the Fund, Principal Officers or shareholder holding a sufficient number of securities to materially affect control of the Fund are or have been a director or officer of any other issuer that, while acting in such capacity: (a) was the subject of a cease trade or similar order or an order that denied the issuer access to any statutory exemptions for a period of more than 30 consecutive days; or (b) was within a year of that person ceasing to act in that capacity declared bankrupt or made a voluntary assignment in

bankruptcy, made a proposal under any legislation relating to bankruptcy and insolvency or been subject to or instituted any proceedings, arrangement, or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold assets of that person.

None of the Trustees or insiders of the Fund, Principal Officers or Unitholder holding a sufficient number of securities to materially affect control of the Fund, are subject to any penalties or sanctions under securities legislation.

None of the Trustees of the Fund, Principal Officers or Unitholder holding a sufficient number of securities to materially affect control of the Fund have in the 10 years preceding the date of this AIF become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or been subject to or instituted any proceedings, arrangements or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold their assets.

### **CONFLICTS OF INTEREST**

There may be situations in which the interests of one of the Trustees will conflict with those of holders of the Trust Units. The Trustees will not carry on their full-time activities on behalf of the Fund and, when acting on behalf of others, may at times act in contradiction to or in competition with the interests of holders of the Trust Units. In resolving any conflicts, decisions will be made on a basis consistent with the objectives and funds of each group of interested parties and the time limitations on investment of such funds, all consistent with the duty of the Trustees to deal fairly and in good faith with each such group of persons. In the event that the interests of the Trustees are in conflict with those of holders of the Trust Units, the Trustees are obliged to make decisions acting in good faith, having regard to the best interests of holders of the Trust Units and in a manner that would not contravene their fiduciary obligations to holders of the Trust Units.

Circumstances may arise where the Trustees serve as directors or officers of corporations that are in competition to the interests of the Fund. No assurances can be given that opportunities identified by the Trustees will be provided to the Fund.

### **INTEREST OF MANAGEMENT AND OTHERS IN MATERIAL TRANSACTIONS**

To the knowledge of the Fund no Trustee, Principal Officer or Person that is the direct or indirect beneficial owner of, or who exercises control or direction over, more than ten percent of the outstanding Trust Units or any associate or affiliate of any of such Persons has had any material interest, direct or indirect, in any transaction within the three most recently completed financial years or during the current financial year that has materially affected or will materially affect the Fund.

### **AUDIT COMMITTEE INFORMATION**

#### **Audit Committee Charter**

The Fund's Audit Committee charter sets out the committee's purpose, organization, reporting duties and responsibilities. A copy of the charter is attached hereto as Appendix "A".

#### **Composition of Audit Committee**

The Fund's Audit Committee is comprised of Gordon M. Wiebe (Chair), Roy H. Allen and Bruce J. Maclellan, all of whom are financially literate and independent, as such terms are defined in Multilateral Instrument 52-110 – *Audit Committees* ("MI 52-110").

### Relevant Education and Experience

**Roy H. Allen** – retired businessman who previously held the position of Chairman of the Board and Director of Western Rock Bit Co. Ltd., a privately held Canadian company providing drill bits to the oil and gas industry.

**Bruce J. Macleannan** – President of Century Services Inc., a firm specializing in auction, liquidation, valuation and financing services. Founded in 1983, this company is headquartered in Calgary, Alberta and has offices in several locations across Canada.

**Gordon M. Wiebe** – a Chartered Accountant by training, President of Corpfin Services Inc. and a person who is experienced in most areas of commercial real estate investments in both the U.S. and Canada. Previously, a director and CFO of a TSE publicly listed real estate company and was the owner/manager of one of the largest property leasing and management companies in western Canada.

### Pre-Approval Policies and Procedures

The Fund's Audit Committee charter requires the Audit Committee to pre-approve all non-audit services to be provided to the Fund or any of its subsidiary entities by the Fund's external auditor or the external auditor of the Fund's subsidiary entities, provided that the Audit Committee may satisfy the pre-approval requirement by either delegating to one or more members of the Audit Committee the authority to pre-approve non-audit services or adopting specific policies and procedures for the engagement of non-audit services.

### External Audit Fees by Category

In December 2008, Grant Thornton LLP resigned as the auditor of the Fund. The following table lists the fees paid or payable with respect to each fiscal year end to Grant Thornton LLP, by category, for the last two fiscal years:

	<b>Year Ended</b>	
	<b>December 31, 2008</b>	<b>December 31, 2007</b>
Audit Fees	\$214,547	\$637,000
Audit-related Fees	-	-
Tax-related Fees	-	43,144
All other Fees	-	-
<b>Total Fees</b>	<b>\$214,547</b>	<b>\$680,144</b>

*In December 2008, KPMG LLP was appointed auditor's of the Fund after the resignation of Grant Thornton LLP. The fees paid or payable up to the date of the AIF with respect to each fiscal year end to KPMG LLP, by category for the past two fiscal years:*

	Year Ended	
	December 31, 2008	December 31, 2007
Audit Fees	\$ 165,000	\$ -
Audit-related Fees	-	-
Tax-related Fees	-	-
All other Fees	-	-
Total Fees	<u>\$165,000</u>	<u>\$ -</u>

### ***Audit Fees***

For professional services rendered by the Fund's auditors for the audit and review of the Fund's financial statements or services that are normally provided by the auditors in connection with statutory and regulatory filings or engagements.

### ***Audit-related Fees***

Audit-related fees consist of fees for assurance and related services that are related to the performance of the audit or review of the Fund's financial statements and are not reported as Audit Fees.

### ***Tax-related Fees***

Tax-related fees consist of fees for tax compliance services, tax advice and tax planning for the Fund and its subsidiaries.

### ***All other Fees***

In 2008 and 2007, there were no other fees paid to the auditors, other than audit fees, audit-related fees and tax fees.

## **MATERIAL CONTRACTS**

### **General**

There are no contracts entered into outside the ordinary course of business that are material to the Fund and its subsidiaries and that were entered into during the most recently completed financial year (or prior to the most recently completed financial year but subsequent to December 31, 2008 if such material contract is still in effect) other than the following:

- (a) the Deed of Trust described under "Information Concerning the Fund";
- (b) the Credit Facility described under "Credit Facilities"; and

- (c) the Reorganization Agreement described under "Reorganization".

### **LEGAL PROCEEDINGS**

The operating entities of the Fund are from time to time involved in various claims and litigation arising in the normal course of business. There are no legal proceedings currently in progress which are of a nature or amount which require to be disclosed.

### **TRANSFER AGENT AND REGISTRAR**

Computershare Trust Company of Canada is the transfer agent and registrar for the Trust Units at its principal offices in Calgary, Alberta and Toronto, Ontario.

### **INTERESTS OF EXPERTS**

In December 2008, Grant Thornton LLP resigned as auditors of the Fund and KPMG LLP subsequently accepted the appointment as the Fund's auditor.

KPMG LLP, Chartered Accountants, are the Fund's auditors and such firm has prepared an opinion with respect to the Fund's consolidated financial statements as at and for the fiscal year ended December 31, 2008. KPMG LLP is independent in accordance with the Rules of Professional Conduct as outlined by the Institute of Chartered Accountants of Alberta.

Grant Thornton LLP, Chartered Accountants, were the Fund's auditors and such firm has prepared an opinion with respect to the Fund's consolidated financial statements as at and for the fiscal year ended December 31, 2007. Grant Thornton LLP is independent in accordance with the Rules of Professional Conduct as outlined by the Institute of Chartered Accountants of Alberta.

### **ADDITIONAL INFORMATION**

Additional information, including information as to the remuneration of Trustees, and directors and officers of the Administrator and information concerning principal holders of the Fund's securities are contained in the Management Proxy Circular of the Trust dated May 12, 2008. Additional financial information is provided in the Fund's financial statements and MD&A for the year ended December 31, 2008, which, together with other information concerning the Fund, may be found on SEDAR at [www.sedar.com](http://www.sedar.com).

**APPENDIX "A"**  
**AUDIT COMMITTEE CHARTER**

**Establishment of Audit Committee**

The board of trustees (the "Board") of Foremost Income Fund (the "Fund"), hereby establishes a committee to be called the Audit Committee.

***Composition of Audit Committee***

The membership of the Audit Committee shall be as follows:

- (a) The Audit Committee shall be composed of not less than three members or such greater number as the Board may from time to time determine.
- (b) All members of the Audit Committee shall be independent within the meaning set forth under Multilateral Instrument 52-110 Audit Committees as amended from time to time ("MI 52-110"). Currently, a member of the Audit Committee is independent if the member has no direct or indirect material relationship with the Fund. A "material relationship" means a relationship, which could, in the view of the Board, reasonably interfere with the exercise of a member's independent judgment.
- (c) Each member of the Audit Committee shall be financially literate within the meaning set forth under MI 52-110. Currently, "financially literate" means the ability to read and understand a set of financial statements that present the breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can be reasonably be expected to be raised by the Fund's financial statements. An Audit Committee member who is not financially literate may be appointed to the Audit Committee provided that the member becomes financially literate within a reasonable period of time following his or her appointment.
- (d) Members shall be appointed annually by the Board. The Chair of the Audit Committee shall be appointed by the Board. A member of the Audit Committee shall ipso facto cease to be a member of the Audit Committee upon ceasing to be a Trustee.

**Relationship with External Auditors**

The Audit Committee shall advise the external auditors of their accountability to the Audit Committee and the Board as representatives of the unitholders of the Fund to whom the external auditors are ultimately accountable. The external auditors of the Fund shall report directly to the Audit Committee.

**Duties and Responsibilities of Audit Committee**

Subject to the powers and duties of the Board and in addition to any other duties and responsibilities assigned to the Audit Committee from time to time by the Board, the Audit Committee shall have the following duties and responsibilities:

***Financial Statements and Other Financial Information***

- (a) The primary responsibility of the Audit Committee shall be to assist the Board in the proper discharge of its duties and responsibilities to the Fund relating to the review of:

- (i) the Fund's financial statements;
- (ii) any other financial information relating to the Fund to be provided to Unitholders; and
- (iii) all audit processes.

The Audit Committee shall also be responsible for ensuring its compliance with all of the applicable requirements of MI 52-110 and for reporting any non-compliance with such requirements to the Board, including the reasons for such non-compliance.

- (b) The Audit Committee shall be responsible for reviewing the Fund's financial statements, management's discussion and analysis and annual and interim earnings press releases before the Fund publicly discloses this information. The Audit Committee shall recommend for approval to the Board the Fund's audited annual financial statements, related management's discussion and analysis and annual earnings press releases. The Audit Committee shall recommend for approval to the Board the Fund's interim financial statements and related management's discussion and analysis and interim earnings press releases.
- (c) The Audit Committee shall be responsible for ensuring that adequate procedures are in place for the review of the Fund's public disclosure of financial information extracted or derived from the Fund's financial statements, other than the public disclosure referred to in paragraph (b) above and must periodically assess the adequacy of those procedures.
- (d) The Audit Committee shall be responsible for establishing procedures for:
  - (i) the receipt, retention and treatment of complaints received by the Fund regarding accounting, internal accounting controls or auditing matters; and
  - (ii) the confidential, anonymous submission by employees of the Administrator or other subsidiaries of the Fund of concerns regarding questionable accounting or auditing matters.
- (e) The Audit Committee shall review with the external auditors of the Fund:
  - (i) the scope of the audit;
  - (ii) significant changes to the Fund's accounting principles, practices or policies;
  - (iii) new or pending developments in accounting principles, reporting matters or industry practices which may materially affect the Fund; and
  - (iv) the quality of the Fund's accounting principles, practices or policies as applied in the Fund's financial statements in terms of disclosure quality and evaluation methods, including the degree of conservatism or aggressiveness of such accounting principles, practices or policies and the underlying estimates and other significant decisions made by management of the Fund in preparing the Fund's financial statements.

- (f) The Audit Committee shall review with the external auditors of the Fund and/or management of the Administrator the results of the annual audit, and make appropriate recommendations to the Board having regard to, among other things:
  - (i) the financial statements;
  - (ii) management's discussion and analysis and related financial disclosure contained in continuous disclosure documents;
  - (iii) significant changes, if any, to the initial audit plan;
  - (iv) accounting and reporting decisions relating to significant current year events and transactions;
  - (v) the management letter, if any, outlining the external auditors' findings and recommendations, together with management's response, with respect to internal controls and accounting procedures; and
  - (vi) any other matters relating to the conduct of the audit, including such other matters which should be communicated to the Audit Committee under generally accepted auditing standards.
- (g) The Audit Committee shall review with management of the Administrator and, if requested by the Audit Committee, the external auditors of the Fund, the interim financial statements and any other matters relating thereto.

***External Auditors***

- (a) The Audit Committee must recommend to the Board:
  - (i) the external auditors to be nominated for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the Fund; and
  - (ii) the compensation of the external auditors.
- (b) The Audit Committee shall be directly responsible for overseeing the work of the external auditors engaged for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the Fund, including the resolution of disagreements between management of the Administrator and the external auditors regarding financial reporting.

***Pre-Approval of Non-Audit Services***

- (a) The Audit Committee shall be responsible for pre-approving all non-audit services to be provided to the Fund or its subsidiaries by the Fund's external auditors. The Audit Committee shall adopt specific policies and procedures for the engagement of non-audit services and any pre-approval policies and procedures shall be detailed as to the particular service and require that the Audit Committee be informed of each non-audit service. Such policies and procedures shall not include delegation of the Audit Committee's responsibilities to management of the Administrator. The Audit Committee

may delegate to one or more independent members the authority to pre-approve non-audit services. The pre-approval of non-audit services by any member of the Audit Committee to whom authority has been delegated must be presented to the Audit Committee at its first scheduled meeting following such pre-approval.

### ***Reporting Obligations***

- (a) The Audit Committee shall be responsible for reviewing the disclosure contained in the Fund's annual information form as required by Form 52-110F1 Audit Committee Information Required in an AIF attached to MI 52-110. If management of the Administrator solicits proxies from Unitholders of the Fund for the purpose of recommending persons to be elected as directors of the Administrator, the Audit Committee shall be responsible for ensuring that the Fund's information circular includes a cross-reference to the sections in the Fund's annual information form that contain the information required by Form 52- 110F1.

### ***Auditor Oversight and Independence***

- (a) The Audit Committee shall be responsible for:
  - (i) ensuring compliance by the Fund's external auditors with the requirements set forth in National Instrument 52-108 Auditor Oversight;
  - (ii) ensuring that the Fund's external auditors are participants in good standing with the Canadian Public Accountability Board ("CPAB") and participate in the oversight programs established by the CPAB from time to time and that the external auditors have complied with any restrictions or sanctions imposed by the CPAB as of the date of the applicable auditor's report relating to the Fund's annual audited financial statements; and
  - (iii) obtaining from the external auditors of the Fund a formal written statement describing in detail all of the relationships between the external auditors and the Fund, determining whether the non-audit services performed by the external auditors during the year have impacted their independence, ensuring that no relationship between the external auditors and the Fund exists which may affect the independence of the external auditors and taking appropriate action to ensure the independence of the external auditors.

### ***Authority of the Audit Committee***

- (a) The Audit Committee shall have the authority:
  - (i) to engage independent counsel and other advisors as it determines necessary to carry out its duties;
  - (ii) to set and pay the compensation for any advisors employed by the Audit Committee; and
  - (iii) to communicate directly with the internal (if any) and external auditors of the Fund.

***Internal Controls, Information Systems and Risk Management***

- (a) The Audit Committee shall review with the external auditors of the Fund the adequacy of internal control procedures and management information systems and make inquiries to management of the Administrator and the external auditors of the Fund about significant risks and exposures to the Fund that may have a material adverse impact on the Fund's financial statements and about the efforts of the management of the Administrator to mitigate such risks and exposures.

***Supervision of Certification of Annual Filings and Interim Filings***

- (a) The Audit Committee shall be responsible for supervising the preparation and filing of each annual certificate in Form 52-109F1 and each interim certificate in Form 52-109F2 to be signed by each of the Chief Executive Officer and Chief Financial Officer of the Administrator in accordance with the requirements set forth under National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings as amended from time to time ("NI 52-109"). These certificates require each of the Chief Executive Officer and the Chief Financial Officer of the Administrator to certify, among other things, that, based on their knowledge:
- (i) the annual filings and interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made with respect to the period covered by the annual filings or interim filings; and
  - (ii) the annual financial statements and the interim financial statements of the Fund, together with the other financial information included in the annual filings or interim filings, fairly present in all material respects the financial condition, results of operations and cash flows of the Fund as of the date and for the periods presented in the annual filings or interim filings.
- (b) The Audit Committee is responsible for ensuring that management of the Administrator establishes and maintains disclosure controls and procedures for the Fund that are designed to provide reasonable assurance that material information relating to the Fund, including its consolidated subsidiaries, is made known to management of the Administrator by others within those entities, particularly during the period in which the annual filings or interim filings are being prepared and that management of the Administrator establishes and maintains internal control over financial reporting for the Fund that has been designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the Fund's generally accepted accounting principles. In respect of annual filings only, the Audit Committee is also responsible for ensuring that management of the Administrator evaluates the effectiveness of the Fund's disclosure controls and procedures as of the end of the period covered by the annual filings and has caused the Fund to disclose in the annual management's discussion and analysis its conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by the annual filings based on such evaluation. The terms "annual filings," "interim filings," "disclosure controls and procedures" and "internal control over financial reporting" shall have the meanings set forth under NI 52-109.

- (c) The Audit Committee is also responsible for monitoring any changes in the Fund's internal control over financial reporting and for ensuring that any change that occurred during the Fund's most recent interim period that has materially affected, or is reasonably likely to materially affect, the Fund's internal control over financial reporting is disclosed in the Fund's annual management's discussion and analysis.

***Other***

- (a) The Audit Committee must review and approve the Fund's hiring policies regarding partners, employees and former partners and employees of the present and former external auditors of the Fund.
- (b) The Audit Committee shall monitor policies and procedures relating to directors' and officers' expenses and the reimbursement thereof and relating to any prerequisites paid to directors and officers.

**Administrative Matters**

The following general provisions shall have application to the Audit Committee:

- (a) A quorum of the Audit Committee shall be the attendance of a majority of members thereof present in person or by telephone. No business may be transacted by the Audit Committee except at a meeting of its members at which a quorum of the Audit Committee is present or by a resolution in writing signed by all the members of the Audit Committee. Meetings of the Audit Committee shall be held at least quarterly and more often as the Chair of the Audit Committee may determine or upon the request of the Board, a member of the Audit Committee, an officer of the Administrator or the external auditors of the Fund.
- (b) Any member of the Audit Committee may be removed or replaced at any time by resolution of the Board. The Board may fill vacancies on the Audit Committee by appointment from among the members of the Board. If and whenever a vacancy shall exist on the Audit Committee, the remaining members may exercise all its powers so long as a quorum remains. Subject to the foregoing, each member of the Audit Committee shall hold such office until the close of the annual meeting of Unitholders of the Fund next following the date of appointment as a member of the Audit Committee or until a successor is duly appointed. Any member of the Board who has served as a member of the Audit Committee may be re-appointed as a member of the Audit Committee following the expiration of his or her term.
- (c) The Audit Committee may invite such officers, directors and employees of the Administrator and its subsidiaries as it may see fit from time to time to attend at meetings of the Audit Committee and to assist thereat in the discussion of matters being considered by the Audit Committee. The external auditors of the Fund shall appear before the Audit Committee when requested to do so by the Audit Committee. The Audit Committee shall meet with the external auditors of the Fund independent of management of the Administrator at least annually and at such other times as the Chair of the Audit Committee may determine or upon the request of a member of the Audit Committee or the external auditors of the Fund.

- (d) The time at which and the place where the meetings of the Audit Committee shall be held, the calling of meetings and the procedure at such meetings shall be determined by the Audit Committee, having regard to the by-laws of the Administrator. Notice of each meeting of the Audit Committee shall be given to each member of the Audit Committee and to the external auditors of the Fund who shall be entitled to attend and to be heard at each meeting of the Audit Committee. A meeting of the Audit Committee may be held at any time without notice if all of the members are present or, if any members are absent, those absent have waived notice or otherwise signified their consent in writing to the meeting being held in their absence.
- (e) The Chair shall preside at all meetings of the Audit Committee. In the absence of the Chair, the other members of the Audit Committee shall appoint one of their members to act as Chair for the particular meeting.
- (f) The Audit Committee shall report to the Board on such matters and questions relating to the financial position of the Fund and its subsidiaries as the Board may from time to time refer to the Audit Committee.
- (g) The members of the Audit Committee shall, for the purpose of performing their duties, have the right to inspect all the books and records of the Fund and its subsidiaries and to discuss such books and records that are in any way related to the financial position of the Fund and its subsidiaries with the officers, directors and employees of the Administrator and its subsidiaries and with the external auditor of the Fund.
- (h) The Chair of each meeting of the Audit Committee shall appoint a person to act as recording secretary to keep the minutes of the meeting. The recording secretary need not be a member of the Audit Committee.
- (i) Minutes of the Audit Committee will be recorded and maintained and signed by the Chair and the secretary of the meeting. The Chair of the Audit Committee will report to the Board on the activities of the Audit Committee and/or the minutes will promptly be circulated to the members of the Board who are not members of the Audit Committee or otherwise made available at the next meeting of the Board.

Unless the Audit Committee as been provided with express instructions from the Board, the Audit Committee shall function primarily to make assessments and determinations with respect to the purposes mandated herein and its decisions shall serve as recommendations for consideration by the Board.