

HMG COURTLAND PROPERTIES INC  
Form 10-K  
March 22, 2013

---

**U. S. SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

S Annual Report pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934

For the fiscal year ended December 31, 2012

£ Transition Report pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934

*Commission file number: 1-7865*

**HMG/COURTLAND PROPERTIES, INC.**

(Name of Registrant in its Charter)

Delaware	59-1914299
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

1870 S. Bayshore Drive, Coconut Grove (Miami), Florida	33133
(Address of principal executive offices)	(Zip Code)

Issuer's telephone number, including area code: (305) 854-6803

Securities registered pursuant to Section 12(b) of the Act:

Title of class	Name of each exchange on which registered:
Common Stock - Par value \$1.00 per share	NYSE Amex

Securities registered pursuant to Section 12(g) of the Act: *None*

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act

Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act .

Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.05) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company filer" in Rule 12b-2 of the Exchange Act (Check One):

Large accelerated filer  Accelerated filer

Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the exchange Act).

Yes  No

The aggregate market value of the voting stock held by non-affiliates of the Registrant (excludes shares of voting stock held by directors, executive officers and beneficial owners of more than 10% of the Registrant's voting stock; however, this does not constitute an admission that any such holder is an "affiliate" for any purpose) based on the closing price of the stock as traded on the NYSE Amex Exchange on the last business day of the Registrant's most recently completed second fiscal quarter (June 30, 2012) was \$1,485,987. The number of shares outstanding of the issuer's common stock, \$1 par value as of the latest practicable date: 974,526 shares of common stock, \$1 par value, as of March 22, 2013.

---

---

**TABLE OF CONTENTS**

	PAGE
<b><u>PART I</u></b>	
<u>Item 1. Description of Business</u>	4
<u>Item 2. Description of Property</u>	6
<u>Item 3. Legal Proceedings</u>	7
<u>Item 4. Mine Safety Disclosures</u>	7
<b><u>PART II</u></b>	
<u>Item 5. Market for Registrant’s Common Equity and Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	8
<u>Item 6. Selected Financial Data</u>	10
<u>Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	10
<u>Item 7A. Quantitative and Qualitative Disclosures About Market Risk</u>	16
<u>Item 8. Financial Statements and Supplementary Data</u>	17
<u>Item 9. Changes in and Disagreements with Accountants On Accounting and Financial Disclosure</u>	46
<u>Item 9A. Controls and Procedures</u>	46
<u>Item 9B. Other Information</u>	46
<b><u>PART III</u></b>	
<u>Item 10. Directors, Executive Officers and Corporate Governance</u>	47
<u>Item 11. Executive Compensation</u>	48
<u>Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	49
<u>Item 13. Certain Relationships and Related Transactions, and Director Independence</u>	50
<u>Item 14. Principal Accounting Fees and Services</u>	52
<b><u>PART IV</u></b>	
<u>Item 15. Exhibits and Financial Statement Schedules</u>	53
<u>Signatures</u>	53
<u>Certifications</u>	

[THIS PAGE INTENTIONALLY LEFT BLANK]

Part I.

Cautionary Statement.

An investment in our common stock involves a high degree of risk. These risks should be considered carefully with the uncertainties described below, and all other information included in this Annual Report on Form 10-K, before deciding whether to purchase our common stock. Additional risks and uncertainties not currently known to management or that management currently deems immaterial may also become important factors that may harm our business, financial condition or results or operations. The occurrence of any of these risks could harm our business, financial condition and results of operations. The trading price of our common stock could decline due to any of these risks and uncertainties and you may lose part or all of your investment.

This Annual Report contains certain statements relating to future results of the Company that are considered "forward-looking statements" within the meaning of the Private Litigation Reform Act of 1995. Actual results may differ materially from those expressed or implied as a result of certain risks and uncertainties, including, but not limited to, changes in political and economic conditions; interest rate fluctuation; competitive pricing pressures within the Company's market; equity and fixed income market fluctuation; technological change; changes in law; changes in fiscal, monetary, regulatory and tax policies; monetary fluctuations as well as other risks and uncertainties detailed elsewhere in this Annual Report or from time-to-time in the filings of the Company with the Securities and Exchange Commission. Such forward-looking statements speak only as of the date on which such statements are made, and the Company undertakes no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events.

Item 1. Description of Business.

HMG/Courtland Properties, Inc. and subsidiaries ("HMG", or the "Company"), is a Delaware corporation organized in 1972. The Company's business is the ownership and management of income-producing commercial properties and will consider other investments if they offer growth or profit potential.

HMG (excluding its 95% owned subsidiary Courtland Investments, Inc. ("CII"), which files a separate tax return) qualifies for taxation as a real estate investment trust ("REIT") under the U.S. Internal Revenue Code. In order for a company to qualify as a REIT, it must comply with certain rules specified in the Internal Revenue Code. These include: investing at least 75 percent of total assets in real estate; deriving at least 75 percent of gross income as rents from real property or interest from mortgages on real property; and distributing annually at least 90 percent of taxable income to shareholders in the form of dividends.

The Company owns a 50% leasehold interest in “Monty’s”, a facility consisting of a 16,000 square foot indoor/outdoor seafood restaurant adjacent to a marina with 132 dockage slips and a 40,000 square foot office/retail mall building with approximately 24,000 net rentable square feet. The Monty’s facility is subject to a ground lease with the City of Miami, Florida which expires in 2035. The Company’s corporate office is also located in Coconut Grove in a 5,000 square foot building.

On February 25, 2013 the Company completed the sale of its interests in Grove Isle Associates LLLP, Grove Isle Yacht Club Associates, Grove Isle Investments Inc. and CII Yacht Club, Inc., which represent interests in the Grove Isle hotel, club, tennis courts and marina (collectively, the “Grove Isle Property”) to Grove Isle Yacht & Tennis, LLC, a Florida limited liability company and an unrelated entity (“the Purchaser”), pursuant to a purchase agreement entered into on the same day (the “Agreement”). The purchase price was \$24.4 million, consisting of \$23.4 million in cash and a \$1 million promissory note due from the Purchaser. Approximately \$2.7 million of the proceeds were used to pay off the existing mortgage on the Grove Isle Property.

The Company’s other investments consist primarily of nominal equity interests in various privately-held entities, including limited partnerships whose purpose is to invest venture capital funds in growth-oriented enterprises. The Company does not have significant influence over any investee and the Company’s investment represents less than 3% of the investee’s ownership. Some of these investments give rise to exposure resulting from the volatility in capital markets. The Company mitigates its risks by diversifying its investment portfolio. Information with respect to the amounts and types of other investments including the nature of the declines in value is set forth in Note 5 of the Notes to Consolidated Financial Statements.

The Company's investments in marketable securities include equity and debt securities issued primarily by large capital companies or government agencies with readily determinable fair values in varying industries. This includes real estate investment trusts and mutual funds focusing in commercial real estate activities. Substantially all of the Company's marketable securities investments are in companies listed on major national stock markets, however the overall investment portfolio and some of the Company's investment strategies could be viewed as risky and the market values of the portfolio may be subject to fluctuations. Consistent with the Company's overall investment objectives and activities, management classifies all marketable securities as being held in a trading portfolio. Accordingly, all unrealized gains and losses on the Company's investments in marketable securities are recorded in the consolidated statements of comprehensive income. Marketable securities are stated at market value as determined by the most recently traded price of each security at the balance sheet date. Information regarding the amounts and types of investments in marketable securities is set forth in Note 4 of the Notes to Consolidated Financial Statements.

The Company acquires its real estate and other investments utilizing available cash, trading securities or borrowing funds.

The Company may realize gains and losses in its overall investment portfolio from time to time to take advantage of market conditions and/or manage the portfolio's resources and the Company's tax liability. The Company may utilize margin for its marketable securities purchases through the use of standard margin agreements with national brokerage firms. The use of available leverage is guided by the business judgment of management. The Company may also use options and futures to hedge concentrated stock positions and index futures to hedge against market risk and enhance the performance of the Company's portfolio while reducing the overall portfolio's risk and volatility.

Reference is made to Item 13. Certain Relationships and Related Transactions and Director Independence for discussion of the Company's organizational structure and related party transactions.

#### Investment in Affiliate.

The Company's investment in affiliate consists of a 49% equity interest in T.G.I.F. Texas, Inc. ("TGIF"). TGIF was incorporated in Texas and operates solely from the Company's corporate office in Miami, Florida. The Company's CEO, Maurice Wiener, is also the CEO of TGIF. Its assets consist primarily of promissory notes receivable from its shareholders including CII and Mr. Wiener and other investments including marketable debt and equity securities. This investment's carrying value as of December 31, 2012 and 2011 was approximately \$2.5 and \$2.7 million, respectively. CII's note payable to TGIF which is due on demand was approximately \$2.8 million and \$3.2 million as of December 31, 2012 and 2011, respectively. Reference is made to Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

#### Insurance, Environmental Matters and Other:



In the opinion of management, all significant assets of the Company are adequately covered by insurance and the cost and effects of complying with environmental laws do not have a material impact on the Company's operations.

We are not aware of any federal, state or local environmental laws or regulations that will materially affect our earnings or competitive position or result in material capital expenditures. However, we cannot predict the effect of possible future environmental legislation or regulations on our operations.

#### Competition and the Company's Market

The Company competes for suitable opportunities for real estate investments with other real estate investment trusts, foreign investors, pension funds, insurance companies and other investors. The Company also competes with other real estate investors and borrowers for available sources of financing.

In addition, to the extent the Company leases properties it must compete for tenants with other lessors offering similar facilities. Tenants are sought by providing modern, well-maintained facilities at competitive rentals. The Company has attempted to facilitate successful leasing of its properties by investing in facilities that have been developed according to the specifications of tenants and special local needs.

The food and beverage industry is highly competitive and is often affected by changes in taste and entertainment trends among the public, by local, national and economic conditions affecting spending habits, and by population and traffic patterns. The Company's Monty's restaurant is primarily outdoors and subject to climate and seasonal conditions.

The Company has the right to certain trademarks and service marks commonly known as "Monty Trainer's", "Monty's Stone Crab", "Monty's Conch", "Monty's" and "Monty's Marina", together with certain other trademarks, trade secrets, unique features, concepts, designs, operating procedures, recipes and materials used in connection with the operation of the restaurant. The Company regards its trademarks and other proprietary rights as valuable assets which are essential to the related operations. The Company will vigorously monitor and protect its trademarks against infringement and dilution where legally feasible and appropriate.

#### Employees.

The Company's management is provided in accordance with its Advisory Agreement (the "Agreement") with the HMGA, Inc. ("the Adviser"), as described below under "Terms of the Agreement". Reference is also made to Item 13. Certain Relationships and Related Transactions, and Director Independence. There is one employee at an 80%-owned subsidiary of CII which performs financial consulting services for which the Company receives consulting fees.

As of December 31, 2012 the Company's subsidiaries that operate the Monty's facility have approximately 100 restaurant employees and two marina employees. Reference is made to discussion of Monty's facility in Item 2. Description of Property.

The restaurant operation is subject to federal and state laws governing such matters as wages, working conditions, citizenship requirements and overtime. Some states, including Florida, have set minimum wage requirements higher than the federal level. Significant numbers of hourly personnel at our restaurants are paid at rates related to the Florida minimum wage and, accordingly, increases in the minimum wage will increase labor costs. We are also subject to the Americans With Disability Act of 1990 ("ADA"), which, among other things, may require certain renovations to our restaurants to meet federally mandated requirements. The cost of any such renovations is not expected to materially affect us.

We are not aware of any statute, ordinance, rule or regulation under present consideration which would significantly limit or restrict our business as now conducted. None of our employees are represented by collective bargaining organizations. We consider our labor relations to be favorable.

Terms of the Advisory Agreement. Under the terms of the Agreement, the Adviser serves as the Company's investment adviser and, under the supervision of the directors of the Company, administers the day-to-day operations of the Company. All officers of the Company who are officers of the Adviser are compensated solely by the Adviser for their services. The Agreement is renewable annually upon the approval of a majority of the directors of the Company who are not affiliated with the Adviser and a majority of the Company's shareholders. The contract may be terminated at any time on 120 days written notice by the Adviser or upon 60 days written notice by a majority of the unaffiliated directors of the Company or the holders of a majority of the Company's outstanding shares.

On September 20, 2012, the shareholders approved the renewal of the Advisory Agreement between the Company and the Adviser for a term commencing January 1, 2013, and expiring December 31, 2013.

The Adviser is majority owned by Mr. Wiener with the remaining shares owned by certain individuals, including Mr. Rothstein. The officers and directors of the Adviser are as follows: Maurice Wiener, Chairman of the Board and Chief Executive officer; Larry Rothstein, President, Treasurer, Secretary and Director; and Carlos Camarotti, Vice President - Finance and Assistant Secretary.

Advisory Fees. For the years ended December 31, 2012 and 2011, the Company and its subsidiaries incurred Adviser fees of approximately \$1,056,000 and \$1,020,000, respectively, of which \$1,020,000 represented regular compensation for 2012 and 2011. In 2012 Advisor fees include \$36,000 in incentive fee compensation. There was no incentive compensation for 2011.

## Item 2. Description of Property.

### Restaurant, marina and mall ("Monty's") (Coconut Grove, Florida).

In August 2004, the Company, through two 50%-owned entities, Bayshore Landing, LLC ("Landing") and Bayshore Rawbar, LLC ("BSRB"), (collectively, "Bayshore") purchased a restaurant, office/retail and marina property located in Coconut Grove (Miami), Florida known as Monty's. The other 50% owner of Bayshore is The Christoph Family Trust (the "Trust" or "CFT"). An affiliate of this group is an experienced marina operator.

The Monty's property consists of a two story building with approximately 40,000 rentable square feet and approximately 3.7 acres of land and submerged land with a 132-boat slip marina. It includes a 16,000 square foot indoor-outdoor raw bar restaurant known as Monty's Raw Bar and 24,000 net rentable square footage of office/retail space leased to tenants operating boating and marina related businesses. Monty's Raw Bar has operated in the same location since 1969 and is an established culinary landmark in South Florida. It is a casual restaurant and bar located next to the picturesque Monty's marina.

The Monty's property is subject to a ground lease with the City of Miami, Florida expiring in 2035. Under the lease, Landing pays percentage rent ranging from 8% to 15% of gross revenues from various components of the property.

The Monty's property is encumbered by a mortgage payable to a bank with an outstanding principal balance of \$8.5 million as of December 31, 2012. The loan balance, as amended and restated, is to be repaid in monthly installments of approximately \$82,000 including principal and interest. Interest is calculated at one-month LIBOR rate (.21% at December 31, 2012) plus 2.45%. In conjunction with the amended and restated mortgage, Bayshore has an interest rate swap agreement to manage their exposure to interest rate fluctuation through the entire term of the mortgage. The effect of the swap agreement is to provide a fixed interest rate of 7.57%. The note is due, with a balloon payment on August 19, 2020. The agreement with the bank contains certain covenants with which the Company is in compliance as of December 31, 2012.

The operations of the Monty's restaurant are managed by BSRB personnel with the exception of certain managerial and accounting related functions which are performed by RMI, an unrelated third party. Under an amended management agreement BSRB retained RMI to perform accounting related administrative functions and beginning in March 2012, provide general management of the restaurant's day to day operations. For the year ended December 31, 2012, BSRB paid RMI \$114,000 (or \$9,500 per month) for accounting and related services and an additional approximate \$117,000 for management services. The amended management agreement is renewable on an annual basis. In December 2012 the agreement with RMI was renewed and extended through the year ending December 31, 2013 under the same terms of the prior agreement.

Executive offices (Coconut Grove, Florida). The principal executive offices of the Company and the Adviser are located at 1870 South Bayshore Drive, Coconut Grove, Florida, 33133, in premises owned by the Company's subsidiary CII and leased to the Adviser pursuant to a lease agreement originally dated December 1, 1999, and as renewed in 2009. The lease provides for base rent of \$48,000 per year payable in equal monthly installments during the five year term of the lease which expires on December 1, 2014. The Adviser, as tenant, pays utilities, certain maintenance and security expenses relating to the leased premises.

The Company regularly evaluates potential real estate acquisitions for future investment or development and would utilize funds currently available or from other resources to implement its strategy.

Item 3. Legal Proceedings

The Company was a co-defendant in two lawsuits in the circuit court in Miami Dade County Florida. These cases arose from claims by a condominium association and resident seeking a declaratory judgment regarding certain provisions of the declaration of condominium relating to the Grove Isle Club and the developer. The claim by the association has been dismissed as to all counts related to the Company, however the association has filed an appeal. The Company believes that the claims are without merit and intends to vigorously defend its position. The ultimate outcome of this litigation cannot presently be determined. However, in management's opinion the likelihood of a material adverse outcome is remote. Accordingly, adjustments, if any that might result from the resolution of this matter have not been reflected in the consolidated financial statements.

In connection with the operation of the Monty's property from time to time, we are a defendant in litigation arising in the ordinary course of our business, including claims resulting from "slip and fall" accidents, claims under federal and state laws governing access to public accommodations, employment-related claims and claims from guests alleging illness, injury or other food quality, health or operational concerns. To date, none of this litigation, some of which is covered by insurance, has had a material effect on us.

Item 4. Mine Safety Disclosures

Not applicable to Company.

Part II.

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters and Issuer Purchases of Equity Securities.

The high and low per share closing sales prices of the Company's stock on the NYSE Amex Exchange (ticker symbol: HMG) for each quarter during the past two years were as follows:

	High	Low
March 31, 2012	\$ 5.00	\$3.65
June 30, 2012	\$ 5.24	\$3.90
September 30, 2012	\$ 6.62	\$4.60
December 31, 2012	\$ 5.62	\$4.58
March 31, 2011	\$ 6.31	\$4.65
June 30, 2011	\$ 5.15	\$4.37
September 30, 2011	\$ 4.37	\$3.25
December 31, 2011	\$ 4.47	\$3.14

No dividends were declared or paid during 2012 and 2011. The Company's policy has been to pay dividends as are necessary for it to qualify for taxation as a REIT under the Internal Revenue Code.

As of March 8, 2013, there were 350 shareholders of record of the Company's common stock.

The following table illustrates securities authorized for issuance under the Company's equity compensation plan, the 2011 Stock Option Plan, as previously reported:

Number of securities to be issued upon exercise of outstanding options	Weighted-average exercise price of outstanding options	Number of securities remaining available for future issuance under equity compensation
--	--	--

Edgar Filing: HMG COURTLAND PROPERTIES INC - Form 10-K

Equity compensation plan approved by shareholders	102,100	\$ 4.99	plans 17,900
Equity compensation plan not approved by shareholders	—	—	—
Total	102,100	\$ 4.99	17,900

No stock options were granted, exercised or forfeited during the year ended December 31, 2012.

The following table presents information regarding the shares of our common stock we purchased during each of the twelve calendar months ended December 31, 2012:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plan (1)	Maximum Dollar Value of Shares That May Yet Be Purchased Under the Plan (1)
Jan. 1 –31 2012 (2008 Program)	—	—	—	\$ 239,612
Feb. 1 –29 2012 (2008 Program)	—	—	—	\$ 239,612
March 1 –31 2012 (2008 Program)	—	—	—	\$ 239,612
April 1 –30 2012 (2008 Program)	—	—	—	\$ 239,612
May 1 –31 2012 (2008 Program)	—	—	—	\$ 239,612
June 1 –30 2012 (2008 Program)	—	—	—	\$ 239,612
July 1 –31 2012 (2008 Program)	—	—	—	\$ 239,612
Aug 1 –31 2012 (2008 Program)	—	—	—	\$ 239,612
Sept. 1 –30 2012 (2008 Program)	18,100	\$ 6.20	—	\$ 127,392
Oct. 1 –31 2012 (2008 Program)	—	—	—	\$ 127,392
Nov. 1 –30 2012 (2012 Program)	22,800	\$ 5.75	—	\$ 168,900
Dec. 1 –31 2012 (2012 Program)	—	—	—	\$ 168,900

We have one current program to repurchase up to \$300,000 of outstanding shares of our common stock from time to time in the open market at prevailing market prices or in privately negotiated transactions. This program, which was approved by our Board of Directors and announced in November 2012 (the “2012 Program”), replaces the 2008 Program, as previously disclosed. The repurchased shares of common stock have been retired and will not be reissued. This program expires December 31, 2015.



Item 6. Selected Financial Data:

Not applicable to the Company.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Critical Accounting Policies and Estimates.

The preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions in applying our critical accounting policies that affect the reported amounts of assets and liabilities and the disclosure (if any) of contingent assets and liabilities at the date of the consolidated financial statements and the reported amount of revenues and expenses during the reporting period. Our estimates and assumptions concern, among other things, goodwill impairment, impairment of our other investments and other long-lived assets, uncertainties for Federal and state income tax and allowance for doubtful accounts. We evaluate those estimates and assumptions on an ongoing basis based on historical experience and on various other factors which we believe are reasonable under the circumstances. Note 1 of the consolidated financial statements, included elsewhere on this Form 10-K, includes a summary of the significant accounting policies and methods used in the preparation of the Company's consolidated financial statements. The Company believes the following critical accounting policies affect the significant judgments and estimates used in the preparation of the Company's financial statements:

Goodwill.

The Company's goodwill balance as of December 31, 2012 and 2011 relates entirely to its 2004 acquisition of 50% of the Monty's restaurant, marina and office rental facility located in Miami, Florida.

Goodwill is recorded at its carrying value and is tested for impairment at least annually or whenever events or changes in circumstances indicate that the carrying amount of goodwill might not be recoverable. The Company elected an annual goodwill impairment testing date of December 31.

In 2012 our goodwill impairment analysis consisted of assessing certain qualitative factors to determine whether it is more likely than not that the fair value of the reporting entity is lower than its carrying value. Our last year's analysis supported no goodwill impairment and the financial performance of the reporting entity has improved since then and there are no negative indications that future profitability may be impaired. Therefore we have concluded that there is no goodwill impairment for the year ended December 31, 2012.

Marketable Securities. Consistent with the Company's overall investment objectives and activities, management has classified its entire marketable securities portfolio as trading. As a result, all unrealized gains and losses on the Company's investment portfolio are included in the Consolidated Statements of Comprehensive Income. Our investments in trading equity and debt marketable securities are carried at fair value and based on quoted market prices or other observable inputs. Marketable securities are subject to fluctuations in value in accordance with market conditions.

Other Investments. The Company's other investments consist primarily of nominal equity interests in various privately-held entities, including limited partnerships whose purpose is to invest venture capital funds in growth-oriented enterprises. The Company does not have significant influence over any investee and the Company's investment represents less than 3% of the investee's ownership. None of these investments meet the criteria of accounting under the equity method and are carried at cost less distributions and other than temporary unrealized losses. These investments do not have available quoted market prices, so we must rely on valuations and related reports and information provided to us by those entities. These valuations are by their nature subject to estimates which could change significantly from period to period. The Company regularly reviews the underlying assets in its other investment portfolio for events, including but not limited to bankruptcies, closures and declines in estimated fair value, that may indicate the investment has suffered an other-than-temporary decline in value. When a decline is deemed other-than-temporary, we permanently reduce the cost basis component of the investments to its estimated fair value, and the loss is recorded as a component of net income from other investments. As such, any recoveries in the value of the investments will not be recognized until the investments are sold.

We believe our estimates of each of these items historically have been adequate. However, due to uncertainties inherent in the estimation process, it is reasonably possible that the actual resolution of any of these items could vary significantly from the estimate and, accordingly, there can be no assurance that the estimates may not materially change in the near term.

Real Estate. Land, buildings and improvements, furniture, fixtures and equipment are recorded at cost. Tenant improvements, which are included in buildings and improvements, are also stated at cost. Expenditures for ordinary maintenance and repairs are expensed to operations as they are incurred. Renovations and/or replacements, which improve or extend the life of the asset are capitalized and depreciated over the shorter of their estimated useful lives, or the remaining lease term (if leased).

Depreciation is computed utilizing the straight-line method over the estimated useful lives of ten to forty years for buildings and improvements and five to ten years for furniture, fixtures and equipment. Tenant improvements are amortized on a straight-line basis over the shorter of the term of the related leases or the assets useful life.

The Company is required to make subjective assessments as to the useful lives of its properties for purposes of determining the amount of depreciation to reflect on an annual basis with respect to those properties. These assessments have a direct impact on the Company's net income. Should the Company lengthen the expected useful life of a particular asset, it would be depreciated over more years, and result in less depreciation expense and higher annual net income.

Assessment by the Company of certain other lease related costs must be made when the Company has a reason to believe that the tenant will not be able to execute under the term of the lease as originally expected.

The Company periodically reviews the carrying value of certain of its properties and long-lived assets in relation to historical results, current business conditions and trends to identify potential situations in which the carrying value of assets may not be recoverable. If such reviews indicate that the carrying value of such assets may not be recoverable, the Company would estimate the undiscounted sum of the expected future cash flows of such assets or analyze the fair value of the asset, to determine if such sum or fair value is less than the carrying value of such assets to ascertain if a permanent impairment exists. If a permanent impairment exists, the Company would determine the fair value by using quoted market prices, if available, for such assets, or if quoted market prices are not available, the Company would discount the expected future cash flows of such assets and would adjust the carrying value of the asset to fair value. Judgments as to impairments and assumptions used in projecting future cash flow are inherently imprecise.

#### Real estate interests held for sale.

The Company's classifies real estate interests in properties as held for sale when certain criteria are met, in accordance with GAAP. At that time we present the assets and obligations of the property held for sale separately in our consolidated balance sheet and we cease recording depreciation and amortization expense related to that property. Real estate held for sale are reported at the lower of their carrying amount or their estimated fair value, less estimated costs to sell. As of December 31, 2012, our Grove Isle property was classified as held for sale and a sale of Grove Isle was completed on February 25, 2013.

#### Results of Operations:

For the years ended December 31, 2012, reported net income attributable to the Company of approximately \$6,000 (or \$.01 per share) and for the year ended December 31, 2011, the Company reported net loss attributable to the Company of \$940,000 (or \$.93 per share).

Revenues:

Total revenues for the year ended December 31, 2012 as compared with that of 2011 increased by approximately \$408,000 (or 5%).

Real estate and related revenue:

Real estate rentals and related revenue increased by approximately \$50,000 (or 7%) for the year ended December 31, 2012 as compared with 2011. This increase was primarily from new tenant rentals at our Monty's property.

Monty's restaurant operations:

Summarized statement of income of the Monty's restaurant operations for the years ended December 31, 2012 and 2011 is presented below (Note: for comparative purposes the information below represents 100% of the restaurant operations. The Company's ownership percentage in these operations is 50%):

Summarized statements of income of Monty's restaurant	Year ended December 31, 2012	Percentage of sales		Year ended December 31, 2011	Percentage of sales	
Revenues:						
Food and Beverage Sales	\$6,179,000	100	%	\$5,857,000	100	%
Expenses:						
Cost of food and beverage sold	1,770,000	28.7	%	1,682,000	28.7	%
Labor, entertainment and related costs	1,432,000	23.2	%	1,317,000	22.4	%
Other food and beverage related costs	275,000	4.5	%	250,000	4.3	%
Other operating costs	490,000	7.9	%	478,000	8.2	%
Insurance	304,000	4.9	%	343,000	5.9	%
Management and accounting fees	141,000	2.3	%	148,000	2.5	%
Utilities	224,000	3.6	%	245,000	4.2	%
Rent (as allocated)	632,000	10.2	%	599,000	10.2	%
Total Expenses	5,268,000	85.3	%	5,062,000	86.4	%
Income before depreciation and minority interest	\$911,000	14.7	%	\$795,000	13.6	%

The Monty's restaurant is subject to seasonal fluctuations in sales. January through May sales typically account for over 50% of annual sales. Restaurant sales in 2012 as compared with 2011 increased by approximately 5% primarily due to a improved operations and good weather in 2012 season as compared with 2011.

The increase in cost of food as a percentage of sales in 2012 as compared to 2011 was primarily due to higher food costs for substantially all categories. The increase in food costs was partially offset by the decrease in labor costs due to more efficient management structure.

All other 2012 restaurant related expenses, as a percentage of sales were consistent with that of 2011.

Monty's marina operations:

The Monty's marina has approximately 4,400 total square feet available for rent to the public.



Summarized and combined statements of income from Monty's marina operations:

(The Company owns 50% of the Monty's marina)

	Year ended December	
	31,	
	2012	2011
Revenues:		
Dockage fees and related income	\$1,100,000	\$1,065,000
Total marina revenues	1,100,000	1,065,000
Expenses:		
Insurance	26,000	27,000
Management fees	34,000	32,000
Utilities (net of reimbursements)	(30,000 )	(36,000 )
Bay bottom lease	177,000	171,000
Repairs and maintenance	85,000	75,000
Other	172,000	69,000
Total Expenses	464,000	337,000
Income before interest, depreciation and noncontrolling interest	\$636,000	\$728,000

Marina revenues and expenses for the year ended December 31, 2012 as compared with 2011 remained consistent, except for a \$100,000 bad debt expense reported in 2012 related to one tenant.

Expenses:

Total expenses for the year ended December 31, 2012 as compared to that of 2011 remained consistent; decreasing approximately \$50,000 (or less than 1%).

Food and beverage costs and marina expenses are solely from the Monty's operations. Summarized income statements and discussion of significant changes in expenses for each of these operations are presented above.

Depreciation and amortization expense decreased by approximately \$147,000 (or 18%) as comparable with 2011, primarily due to decreased amortization expense relating to loan costs associated with the Monty's loan modifications completed in 2011.

Professional fees and expenses decreased by approximately \$116,000 (or 39%) for the year ended December 31, 2012 as compared to 2011. This was primarily due to decreased accruals of audit and tax return preparation fees.

Other Income:

Net realized and unrealized gain (loss) from investments in marketable securities:

Net gain (loss) from investments in marketable securities, including marketable securities distributed by partnerships in which the Company owns minority positions, for the years ended December 31, 2012 and 2011, is as follows:

<u>Description</u>	2012	2011
Net realized gain from sales of marketable securities	\$35,000	\$130,000
Net unrealized gain (loss) from marketable securities	86,000	(189,000)
Total net gain (loss) from investments in marketable securities	\$121,000	\$(59,000 )

Net realized gain from sales of marketable securities consisted of approximately \$152,000 of gains net of \$117,000 of losses for the year ended December 31, 2012. The comparable amounts in fiscal year 2011 were gross gains of approximately \$212,000 of gains net of \$82,000 of losses.

Consistent with the Company's overall current investment objectives and activities, the entire marketable securities portfolio is classified as trading (as defined by U.S generally accepted accounting principles). Unrealized gains or losses from marketable securities are recorded as other income in the consolidated statements of comprehensive income.

Investment gains and losses on marketable securities may fluctuate significantly from period to period in the future and could have a significant impact on the Company's net earnings. However, the amount of investment gains or losses on marketable securities for any given period has no predictive value and variations in amount from period to period have no practical analytical value.



Investments in marketable securities give rise to exposure resulting from the volatility of capital markets. The Company attempts to mitigate its risk by diversifying its marketable securities portfolio.

Net income from other investments is summarized below (excluding other than temporary impairment losses):

	2012	2011
Partnerships owning real estate and related investments (a)	\$223,000	\$—
Venture capital funds – diversified businesses (b)	121,000	27,000
Income from investment in 49% owned affiliate (c)	57,000	41,000
Other	—	1,000
Total net income from other investments	\$401,000	\$69,000

(a) The gain in 2012 primarily consists of one cash distribution from an investment in a partnership owning real estate investments.

(b) The gains in 2012 and 2011 consist of various cash distributions from an investments owning diversified businesses which made cash distributions from the sale or refinancing of operating companies.

(c) This gain represents income from the Company’s 49% owned affiliate, T.G.I.F. Texas, Inc. (“TGIF”). The increase in income is due to increased gains from investments in 2012 versus 2011. In 2012 and 2011 TGIF declared and paid a cash dividend of which the Company’s portion of was approximately \$196,000 and \$168,000. These dividends were recorded as reduction in the investment carrying value as required under the equity method of accounting for investments.

Other than temporary impairment (“OTTI”) losses from other investments

	2012	2011
Real estate and related	\$(28,000)	\$(84,000)
Other	—	(3,000 )
Total other than temporary impairment loss from other investments	\$(28,000)	\$(87,000)

The OTTI loss for the year ended December 31, 2012 and 2011 primarily consists of a recognized impairment loss in an investment in a partnership which operates and leases executive suites in Miami, Florida. The Company has funded \$120,000 to date in this investment and the losses incurred were primarily associated with the initial start up of the

venture in 2010.

Net income or loss from other investments may fluctuate significantly from period to period in the future and could have a significant impact on the Company's net earnings. However, the amount of investment gain or loss from other investments for any given period has no predictive value and variations in amount from period to period have no practical analytical value.

Interest, dividend and other income

Interest, dividend and other income for the year ended December 31, 2012 as compared with 2011 decreased by approximately \$58,000 (or 29%), primarily due to decreased interest and dividend income from debt and equity marketable securities of approximately \$8,000 and decreased service fee income from Courtland Houston, Inc. of \$50,000.

In conjunction with the amendment of the Bayshore bank loan in March 2011, the interest rate swap contract liability was paid down by \$198,400 (in the same proportion as the amount of the loan principal paid down). This amount represents a previously unrealized loss which upon pay down of the swap was reclassified from accumulated other comprehensive income and recorded as a realized loss on interest rate swap contract within the consolidated statements of comprehensive income for the year ended December 31, 2011.

Benefit from income taxes:

Benefit from income taxes for the years ended December 31, 2012 and 2011 was \$66,000 and \$152,000, respectively.

The Company follows the liability method of accounting for income taxes. Under this method, deferred tax liabilities and assets are recognized for the expected future tax consequences of temporary differences between the carrying amount and the tax basis of assets and liabilities at each year-end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. As a result of timing differences associated with the carrying value of other investments, unrealized gains and losses of marketable securities, depreciable assets and the future benefit of a net operating loss, as of December 31, 2012 and 2011, the Company has recorded a net deferred tax asset of \$698,000 and \$632,000, respectively. A valuation allowance against deferred tax asset has not been established as management believes it is more likely than not, based on the Company's previous history and expectation of future taxable income before expiration, that these assets will be realized.

Effect of Inflation.

Inflation affects the costs of operating and maintaining the Company's investments. In addition, rentals under certain leases are based in part on the lessee's sales and tend to increase with inflation, and certain leases provide for periodic adjustments according to changes in predetermined price indices.

Liquidity, Capital Expenditure Requirements and Capital Resources. The Company's material commitments primarily consist of maturities of debt obligations of approximately \$3.2 million in 2013 and contributions committed to other investments of approximately \$795,000 due upon demand. The funds necessary to meet these obligations are expected from the proceeds from the sales of properties or investments, refinancing of existing bank loans, distributions from investments and available cash.

Included in the maturing debt obligations for 2013 is a note payable to the Company's 49% owned affiliate, T.G.I.F. Texas, Inc. ("TGIF") of approximately \$2.8 million due on demand.(see Item 13. Certain Relationships and Related Transactions and Director Independence.) The obligation due to TGIF will be paid with funds available from distributions from its investment in TGIF and from available cash.

A summary of the Company's contractual cash obligations at December 31, 2012 is as follows:

Contractual Obligations	Payments Due by Period				
	Total	Less than 1 year	1 – 3 years	4 – 5 years	After 5 years
Mortgages and notes payable	\$11,005,000	\$3,186,000	\$830,000	\$859,000	\$6,130,000
Other investments commitments	795,000	795,000	—	—	—
Total	\$11,800,000	\$3,981,000	\$830,000	\$859,000	\$6,130,000

The timing of amounts due under commitments for other investments is determined by the managing partners of the individual investments.

#### Material Changes in Operating, Investing and Financing Cash Flows.

The Company's cash flows are generated primarily from its real estate net rental and related activities, sales of marketable securities, distributions from other investments and borrowings.

For the year ended December 31, 2012, the Company's net cash provided by operating activities was approximately \$330,000. This was primarily from real estate net rental and related activities. The Company believes that there will be sufficient cash flows in the next year to meet its operating requirements.

For the year ended December 31, 2012, the net cash provided by investing activities was approximately \$315,000. This included purchases of marketable securities of \$1.2 million, purchases and improvements of fixed assets of \$353,000 and, contributions to other investments of \$244,000. These uses of cash were partially offset by sources of cash consisting of proceeds from the sales and redemptions of marketable securities of \$1.3 million, cash distributions from other investments of \$662,000 and distribution from affiliate of \$196,000.

For the year ended December 31, 2012, net cash used in financing activities was approximately \$1,074,000. This primarily consisted of loan principal repayments of \$831,000 and purchases of treasury stock of \$243,000.

#### Item 7A. Quantitative and Qualitative Disclosures About Market Risks.

Not Applicable to the Company.



Item 8. Financial Statements and Supplementary Data

<u>Report of Independent Registered Public Accounting Firm</u>	18
<u>Consolidated balance sheets as of December 31, 2012 and 2011</u>	19
<u>Consolidated statements of comprehensive income for the years ended December 31, 2012 and 2011</u>	20
<u>Consolidated statements of changes in stockholders' equity for the years ended December 31, 2012 and 2011</u>	21
<u>Consolidated statements of cash flows for the years ended December 31, 2012 and 2011</u>	22
<u>Notes to consolidated financial statements</u>	23

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of HMG/Courtland Properties, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of HMG/Courtland Properties, Inc. (a Delaware corporation) and Subsidiaries (the "Company") as of December 31, 2012 and 2011, and the related consolidated statements of comprehensive income, changes in stockholders' equity and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of HMG/Courtland Properties, Inc. and Subsidiaries at December 31, 2012 and 2011, and the consolidated results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

/s/ Cherry Bekaert LLP  
Coral Gables, Florida  
March 22, 2013



HMG/COURTLAND PROPERTIES, INC. AND SUBSIDIARIES CONSOLIDATED  
BALANCE SHEETS AS OF DECEMBER 31, 2012 AND 2011

	December 31, 2012	December 31, 2011
<b>ASSETS</b>		
Investment properties, net of accumulated depreciation:		
Restaurant, marina and retail mall	\$7,822,419	\$8,104,380
Office building and other commercial property	826,061	869,906
Total investment properties, net	8,648,480	8,974,286
Assets associated with real estate interest held for resale	3,407,115	3,623,824
Cash and cash equivalents	1,937,267	2,366,363
Investments in marketable securities	2,158,330	2,019,476
Other investments	3,603,655	3,745,327
Investment in affiliate	2,547,572	2,686,887
Loans, notes and other receivables	502,143	569,295
Notes and advances due from related parties	696,909	696,909
Deferred taxes	698,000	632,000
Goodwill	5,628,627	5,628,627
Other assets	644,282	652,836
<b>TOTAL ASSETS</b>	<b>\$30,472,380</b>	<b>\$31,595,830</b>
<b>LIABILITIES</b>		
Mortgages and notes payable	\$11,004,684	\$11,712,787
Accounts payable, accrued expenses and other liabilities	556,047	644,041
Interest rate swap contract payable	1,965,000	1,975,000
Obligations associated with real estate interest held for resale	2,719,018	2,915,623
<b>TOTAL LIABILITIES</b>	<b>16,244,749</b>	<b>17,247,451</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		
	—	—
<b>STOCKHOLDERS' EQUITY</b>		
Excess common stock, \$1 par value; 100,000 shares authorized: no shares issued	—	—
Common stock, \$1 par value; 1,200,000 shares authorized and 969,526 and 1,023,955 issued and outstanding as of December 31, 2012 and 2011, respectively	969,526	1,023,955
Additional paid-in capital	24,129,031	24,366,099
Less: Treasury stock at cost (13,529 shares as of December 31, 2011)	—	(60,388 )
Undistributed gains from sales of properties, net of losses	41,572,120	41,572,120
Undistributed losses from operations	(54,377,617)	(54,383,928)
Accumulated other comprehensive loss	(982,500 )	(987,500 )
Total stockholders' equity	11,310,560	11,530,358
Non controlling interest	2,917,071	2,818,021
<b>TOTAL EQUITY</b>	<b>14,227,631</b>	<b>14,348,379</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$30,472,380</b>	<b>\$31,595,830</b>

*See notes to the consolidated financial statements*

HMG/COURTLAND PROPERTIES, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME  
FOR THE YEARS ENDED DECEMBER 31, 2012 AND 2011

REVENUES	2012	2011
Real estate rentals and related revenue	\$726,664	\$676,810
Food & beverage sales	6,179,157	5,857,135
Marina revenues	1,100,458	1,064,505
Total revenues	8,006,279	7,598,450
EXPENSES		
Operating expenses:		
Rental and other properties	651,376	676,675
Food and beverage cost of sales	1,770,383	1,682,388
Food and beverage labor and related costs	1,432,893	1,316,283
Food and beverage other operating costs	2,064,992	2,063,408
Marina expenses	464,439	337,399
Depreciation and amortization	678,643	825,744
Adviser's base fee	1,020,000	1,020,000
General and administrative	341,798	370,827
Professional fees and expenses	179,117	295,116
Directors' fees and expenses	92,489	100,144
Total operating expenses	8,696,130	8,687,984
Interest expense	746,949	805,035
Total expenses	9,443,079	9,493,019
Loss before other income (loss) and income taxes	(1,436,800)	(1,894,569)
Net realized and unrealized gains (loss) from investments in marketable securities	120,696	(59,431 )
Net income from other investments	400,751	68,639
Other than temporary impairment losses from other investments	(27,666 )	(86,707 )
Realized loss on partial settlement of interest rate swap agreement	—	(198,400 )
Interest, dividend and other income	143,677	202,170
Total other income (loss)	637,458	(73,729 )
Loss before income taxes	(799,342 )	(1,968,298)
Benefit from income taxes	(66,000 )	(152,000 )
Loss from continuing operations	(733,342 )	(1,816,298)
Income from discontinued operations, net of tax	833,699	665,110
Net income (loss)	100,357	(1,151,188)
Noncontrolling interest in continuing operations	(147,238 )	123,733
Noncontrolling interest in discontinued operations	53,192	87,359
Net (income) loss attributable to the noncontrolling interest	(94,046 )	211,092
Net income (loss) attributable to the Company	\$6,311	\$(940,096 )

Amounts attributable to the Company		
Continuing operations	(880,580 )	(1,692,565)
Discontinued operations	886,891	752,469
Net income (loss) attributable to the Company	\$6,311	\$(940,096 )
Weighted average common shares outstanding-basic and diluted	1,001,593	1,010,426
Net income (loss) per common share:		
Continuing operations	\$(0.88 )	\$(1.68 )
Discontinued operations	\$0.89	\$0.74
Basic and diluted income (loss) per share	\$0.01	\$(0.94 )
Other comprehensive income (loss):		
Unrealized gain (loss) on interest rate swap agreement	\$5,000	\$(256,500 )
Total other comprehensive income (loss)	5,000	(256,500 )
Comprehensive income (loss)	\$11,311	\$(1,196,596)

*See notes to the consolidated financial statements*

HMG/COURTLAND PROPERTIES, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY  
FOR THE YEARS ENDED DECEMBER 31, 2012 AND 2011

	Common Stock		Additional Paid-In Capital	Undistributed Gains from Sales of Properties Net of Losses	Undistributed Losses from Operations	Accumulated Other Comprehensive Loss	Treasury Stock Shares	Stock Cost	Total Stock Equity
	Shares	Amount							
Balance as of January 1, 2011	\$1,023,955	\$1,023,955	\$24,313,341	\$41,572,120	\$(53,443,832)	\$(731,000)	13,529	\$(60,388 )	11,000,000
Net loss					(940,096 )				(940,096 )
Unrealized loss on interest rate swap contract						(256,500)			(256,500)
Non-employee stock option compensation			52,758						52,758
Balance as of December 31, 2011	1,023,955	1,023,955	24,366,099	41,572,120	(54,383,928)	(987,500)	13,529	(60,388 )	11,000,000
Net income					6,311				6,311
Unrealized gain on interest rate swap contract						5,000			5,000
Non-employee stock option compensation			12,211						12,211
Purchase of treasury stock							40,900	(243,320)	(182,420)
Treasury stock retired	(54,429 )	(54,429 )	(249,279 )				(54,429)	303,708	0

Balance as of December 31, 2012	969,526	\$969,526	\$24,129,031	\$41,572,120	\$(54,377,617)	\$(982,500)	—	\$—	\$1
---------------------------------------	---------	-----------	--------------	--------------	----------------	-------------	---	-----	-----

*See notes to the consolidated financial statements*

**HMG/COURTLAND PROPERTIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE YEARS ENDED DECEMBER 31, 2012 AND 2011**

	2012	2011
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income (loss) attributable to the Company	\$6,311	\$(940,096 )
Adjustments to reconcile net loss attributable to the Company to net cash provided by (used in) operating activities:		
Depreciation and amortization	898,985	1,147,525
Non-employee stock compensation	12,211	52,758
Net income from other investments, excluding impairment losses	(400,751 )	(68,639 )
Other than temporary impairment loss from other investments	27,666	86,707
Realized loss on interest rate swap agreement	—	198,400
Net (gain) loss from investments in marketable securities	(120,696 )	59,431
Net gain (loss) attributable to non controlling interest	94,046	(211,092 )
Deferred income tax benefit	(66,000 )	(152,000 )
Provision for bad debts	100,000	—
Changes in assets and liabilities:		
Other assets and other receivables	(27,636 )	(184,119 )
Accounts payable, accrued expenses and other liabilities	(193,784 )	(156,607 )
Total adjustments	324,041	772,364
Net cash provided by (used in) operating activities	330,352	(167,732 )
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases and improvements of properties	(353,126 )	(262,119 )
Decrease in notes and advances from related parties	—	1,432
Additions in mortgage loans and notes receivables	—	(75,000 )
Distributions from other investments	661,655	211,277
Contributions to other investments	(244,327 )	(244,187 )
Net proceeds from sales and redemptions of securities	1,271,707	1,637,551
Increased investments in marketable securities	(1,217,278)	(1,623,349)
Distribution from affiliate	196,016	168,014
Net cash provided by (used in) investing activities	314,647	(186,381 )
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Repayment of mortgages and notes payables	(830,775 )	(2,977,322)
Partial settlement of interest rate swap contract	—	(198,400 )
Withdrawals from restricted cash	—	2,379,947
(Distributions to) contributions from minority partners	—	(101,949 )
Purchase of treasury stock	(243,320 )	—
Net cash used in financing activities	(1,074,095)	(897,724 )
Net decrease in cash and cash equivalents	(429,096 )	(1,251,837)
Cash and cash equivalents at beginning of the year	2,366,363	3,618,200

Edgar Filing: HMG COURTLAND PROPERTIES INC - Form 10-K

Cash and cash equivalents at end of the year	\$1,937,267	\$2,366,363
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid during the year for interest	\$747,000	\$902,000
Cash paid during the year for income taxes	\$—	\$—

*See notes to the consolidated financial statements*



HMG/COURTLAND PROPERTIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 2012 and 2011

1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Business and Consolidation. The consolidated financial statements include the accounts of HMG/Courtland Properties, Inc. ("we" or the "Company") and entities in which the Company owns a majority voting interest or controlling financial interest. The Company was organized in 1972 and (excluding its 95% owned subsidiary Courtland Investments, Inc., which files a separate tax return) qualifies for taxation as a real estate investment trust ("REIT") under the Internal Revenue Code. The Company's business is the ownership and management of income-producing commercial properties and its management considers other investments if such investments offer growth or profit potential. The Company's recurring operating revenue comes from food and beverage operations, marina dockage operations, commercial property rental operations and spa operations.

All material transactions and balances with consolidated and unconsolidated entities have been eliminated in consolidation or as required under the equity method.

The Company's consolidated subsidiaries are described below:

Courtland Investments, Inc. ("CII"). A 95% owned corporation in which the Company holds a 95% non-voting interest and Masscap Investments Company, Inc. ("Masscap") which holds a 5% voting interest in CII. The Company and Masscap have had a continuing arrangement with regard to the ongoing operations of CII, which provides the Company with complete authority over all decision making relating to the business, operations and financing of CII consistent with the Company's status as a real estate investment trust. Masscap is a wholly-owned subsidiary of Transco Realty Trust which is a 47% shareholder of the Company. CII files a separate tax return and its operations are not part of the REIT tax return.

Courtland Bayshore Rawbar, LLC ("CBSRB"). This limited liability company is wholly owned by CII. CBSRB owns a 50% interest in Bayshore Rawbar, LLC ("BSRB") which operates the Monty's restaurant in Coconut Grove, Florida. The other 50% owner of BSRB is The Christoph Family Trust ("CFT"), an unrelated entity.

HMG Bayshore, LLC ("HMGBS"). This limited liability company owns a 50% interest in the real property and marina operations of Bayshore Landing, LLC ("BSL"). HMGBS and the CFT formed BSL for the purposes of acquiring and

operating the Monty's property in Coconut Grove, Florida.

260 River Corp ("260"). This wholly owned corporation of the Company owns an approximate 70% interest in a vacant commercially zoned building located on 5.4 acres in Montpelier, Vermont. Development of this property is being considered.

Courtland Houston, Inc. ("CHI"). This corporation is 80% owned by CII and 20% owned by its sole employee. CHI engages in consulting services and commercial leasing activities in Texas.

South Bayshore Associates ("SBA"). This is a 75% company owned joint venture with its sole asset being a receivable from the Company's 47% shareholder, Transco Realty Trust.

Baleen Associates, Inc. ("Baleen"). This corporation is wholly owned by CII and its sole asset is a 50% interest in a partnership which operates an executive suite rental business in Coconut Grove, Florida.

Preparation of Financial Statements. The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Income Taxes. The Company's 95%-owned subsidiary, CII, files a separate income tax return and its operations are not included in the REIT's income tax return. The Company accounts for income taxes in accordance with ASC Topic 740, "Accounting for Income Taxes" ("ASC Topic 740"). This requires a Company to use the asset and liability method of accounting for income taxes. Under this method, deferred income taxes are recognized for the tax consequences of "temporary differences" by applying enacted statutory tax rates applicable to future years to differences between the financial statement carrying amounts and the tax bases of existing assets and liabilities. The effect on deferred income taxes of a change in tax rates is recognized in income in the period that includes the enactment date. Deferred taxes only pertain to CII. The Company (excluding CII) qualifies as a real estate investment trust and distributes its taxable ordinary income to stockholders in conformity with requirements of the Internal Revenue Code and is not required to report deferred items due to its ability to distribute all taxable income. In addition, net operating losses can be carried forward to reduce future taxable income but cannot be carried back. Distributed capital gains on sales of real estate as they relate to REIT activities are not subject to taxes; however, undistributed capital gains are taxed as capital gains. State income taxes are not significant.

The Company follows the provisions of ASC Topic 740-10, "Accounting for Uncertainty in Income Taxes" which clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with ASC Topic 740, and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. This topic also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition.

Based on our evaluation, we have concluded that there are no significant uncertain tax positions requiring recognition in our consolidated financial statements. Our evaluation was performed for the tax years ended December 31, 2012 and 2011. The Company's federal income tax returns since 2009 are subject to examination by the Internal Revenue Service, generally for a period of three years after the returns were filed.

We may from time to time be assessed interest or penalties by major tax jurisdictions, although any such assessments historically have been minimal and immaterial to our financial results. In the event we have received an assessment for interest and/or penalties, it has been classified in the consolidated financial statements as selling, general and administrative expense.

Depreciation and Amortization. Depreciation of properties held for investment is computed using the straight-line method over the estimated useful lives of the properties, which range up to 39.5 years. Deferred mortgage and leasing costs are amortized over the shorter of the respective term of the related indebtedness or life of the asset. Depreciation and amortization expense for the years ended December 31, 2012 and 2011 was approximately \$679,000 and \$826,000, respectively. The Monty's marina is being depreciated on a straight-line basis over its estimated useful life of 15 years.

Fair Value of Financial Instruments. The Company records its financial assets and liabilities at fair value, which is defined under the applicable accounting standards as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measure date. The Company uses valuation techniques to measure fair value, maximizing the use of observable outputs and minimizing the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

- Level 1 – Quoted prices in active markets for identical assets or liabilities.
- Level 2 – Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 – Inputs include management’s best estimate of what market participants would use in pricing the asset or liability at the measurement date. The inputs are unobservable in the market and significant to the instrument’s valuation.

An investment’s categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

The carrying value of financial instruments including other receivables, notes and advances due from related parties, accounts payable and accrued expenses and mortgages and notes payable approximate their fair values at December 31, 2012 and 2011, due to their relatively short terms or variable interest rates.

Cash equivalents are classified within Level 1 or Level 2 of the fair value hierarchy because they are valued using quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of transparency. Other investments which are measured by investees at net asset value per share or its equivalent are also classified within Level 2. The fair value of the interest rate swap contract payable is based on the value provided by the issuing bank on a monthly basis (Level 2).

The valuation of other investments not included above requires significant judgment by the Company's management due to the absence of quoted market values, inherent lack of liquidity and long-term nature of such assets and have been classified within Level 3. Such investments are valued initially based upon transaction price. Valuations are reviewed periodically utilizing available market data and additional factors to determine if the carrying value of these investments should be adjusted. In determining valuation adjustments, emphasis is placed on market participants' assumptions and market-based information over entity-specific information.

Marketable Securities. The entire marketable securities portfolio is classified as trading consistent with the Company's overall investment objectives and activities. Accordingly, all unrealized gains and losses on the Company's marketable securities investment portfolio are included in the consolidated statements of comprehensive income.

Gross gains and losses on the sale of marketable securities are based on the first-in first-out method of determining cost.

Marketable securities from time to time are pledged as collateral pursuant to broker margin requirements. At December 31, 2012 and 2011 there were no margin balances outstanding.

Notes and other receivables. Management periodically performs a review of amounts due on its notes and other receivable balances to determine if they are impaired based on factors affecting the collectability of those balances. Management's estimates of collectability of these receivables requires management to exercise significant judgment about the timing, frequency and severity of collection losses, if any, and the underlying value of collateral, which may affect recoverability of such receivables. As of December 31, 2012 and 2011 the Company had an allowance for bad debt of \$250,000 and \$150,000, respectively. This is related to one tenant at the Monty's property.

Equity investments. Investments in which the Company does not have a majority voting or financial controlling interest but has the ability to exercise influence are accounted for under the equity method of accounting, even though the Company may have a majority interest in profits and losses. The Company follows ASC Topic 323-30 in accounting for its investments in limited partnerships. This guidance requires the use of the equity method for limited partnership investments of more than 3 to 5 percent.

The Company has no voting or financial controlling interests in its other investments which include entities that invest venture capital funds in growth oriented enterprises. These other investments are carried at cost less adjustments for other than temporary declines in value.

Comprehensive Income (Loss). The Company reports comprehensive income (loss) in its consolidated statements of comprehensive income. Comprehensive income (loss) is the change in equity from transactions and other events from nonowner sources. Comprehensive income (loss) includes net income (loss) and other comprehensive income (loss). For the years ended December 31, 2012 and 2011 comprehensive gain (loss) consisted of unrealized gain (loss) from interest rate swap contract of \$5,000 and (\$257,000), respectively.

Income (loss) per common share. Net income (loss) per common share (basic and diluted) is based on the net loss divided by the weighted average number of common shares outstanding during each year. Diluted net loss per share includes the dilutive effect of options to acquire common stock. Common shares outstanding include issued shares less shares held in treasury. There were 102,100 stock options outstanding in 2012 and 2011, which were not included in the diluted earnings per share computation as their effect would have been anti-dilutive.

Gain on sales of properties. Gain on sales of properties is recognized when the minimum investment requirements have been met by the purchaser and title passes to the purchaser. There were no sales of property in 2012 and 2011.

Cash and cash Equivalents. For purposes of the consolidated statements of cash flows, the Company considers all highly liquid investments with an original maturity of three months or less to be cash and cash equivalents.

Concentration of Credit Risk. Financial instruments that potentially subject the Company to concentration of credit risk are cash and cash equivalent deposits in excess of federally insured limits, marketable securities, other receivables and notes and mortgages receivable. From time to time the Company may have bank deposits in excess of federally insured limits. The Company evaluates these excess deposits and transfers amounts to brokerage accounts and other banks to mitigate this exposure.

The Company maintains cash and equivalents in bank accounts which at times, may exceed federally-insured limits. The Company has not experienced any losses in such accounts and believes that it is not exposed to any significant credit risk on cash. The federally insured limit for time deposits is presently \$250,000, and unlimited for certain qualifying and participating non-interest bearing transaction accounts through December 31, 2012, however, effective January 1, 2013, the Federal Deposit Insurance Company discontinued the additional unlimited coverage.

Interest rate swap contract.

The Company may or may not use interest rate swap contracts to reduce interest rate risk.

Interest rate swap contracts designated and qualifying as cash flow hedges are reported at fair value. The gain or loss on the effective portion of the hedge initially is included as a component of other comprehensive income and is subsequently reclassified into earnings when interest on the related debt is paid, or upon partial or full settlement of the contract.

Inventories. Inventories consist primarily of food and beverage and are stated at the lower of cost or market. Cost is determined on a first-in, first-out basis.

Goodwill.

The Company's goodwill balance as of December 31, 2012 and 2011 relates entirely to its 2004 acquisition of 50% of the Monty's restaurant, marina and office rental facility located in Miami, Florida.

Goodwill is recorded at its carrying value and is tested for impairment at least annually or whenever events or changes in circumstances indicate that the carrying amount of goodwill might not be recoverable. The Company elected an annual goodwill impairment testing date of December 31.

As allowed by GAAP, in 2012 our goodwill impairment analysis consisted of assessing certain qualitative factors to determine whether it is more likely than not that the fair value of the reporting entity is lower than its carrying value. Our last year's analysis supported no goodwill impairment and the financial performance of the reporting entity has improved since then and there are no negative indications that future profitability may be impaired. Therefore we have concluded that there is no goodwill impairment for the year ended December 31, 2012.

Other intangible assets:

Deferred loan costs are amortized on a straight line basis over the life of the loan. This method approximates the effective interest rate method.

Non controlling Interest. Non controlling interest represents the noncontrolling or minority partners' proportionate share of the equity of the Company's majority owned subsidiaries. A summary for the years ended December 31, 2012 and 2011 is as follows:

	2012	2011
Non controlling interest balance at beginning of year	\$2,818,000	\$3,387,000
Non controlling partners' interest in operating gains (losses) of consolidated subsidiaries	94,000	(211,000 )
Net (distributions to) contributions from non controlling partners	—	(102,000 )
Unrealized loss on interest rate swap agreement	5,000	(256,000 )
Non controlling interest balance at end of year	\$2,917,000	\$2,818,000



Revenue recognition. The Company is the lessor of various real estate properties. All of the lease agreements are classified as operating leases and accordingly all rental revenue is recognized as earned based upon total fixed cash flow over the initial term of the lease, using the straight line method. Percentage rents, if applicable, are based upon tenant sales levels for a specified period and are recognized on the accrual basis, based on the lessee's sales. Reimbursed expenses for real estate taxes, common area maintenance, utilities and insurance are recognized in the period in which the expenses are incurred, based upon the provisions of the tenant's lease. In addition to base rent, the Company may receive participation rent consisting of a portion of the tenant's operating surplus, as defined in the lease agreement. Participation rent is due at the end of each lease year and recognized if and when earned.

Revenues earned from restaurant and spa operations are realized in cash or cash equivalents with an insignificant amount of customer receivables. We record revenues from recurring food and beverage sales upon sale. Marina revenues are earned in accordance with dockage rental agreements. We report our sales net of sales tax and service charges.

Impairment of long-lived assets. The Company periodically reviews the carrying value of its properties and long-lived assets in relation to historical results, current business conditions and trends to identify potential situations in which the carrying value of assets may not be recoverable. If such reviews indicate that the carrying value of such assets may not be recoverable, the Company would estimate the undiscounted sum of the expected future cash flows of such assets or analyze the fair value of the asset, to determine if such sum or fair value is less than the carrying value of such assets to ascertain if a permanent impairment exists. If a permanent impairment exists, the Company would determine the fair value by using quoted market prices, if available, for such assets, or if quoted market prices are not available, the Company would discount the expected future cash flows of such assets and would adjust the carrying value of the asset to fair value. There were no impairment of long-lived assets in 2012 and 2011.

Share-based compensation.

The Company accounts for share-based compensation in accordance with ASC Topic 718 “Share-Based Payments”. The Company has used the Black-Scholes option pricing model to estimate the fair value of stock options on the dates of grant.

Recent accounting pronouncements.

In July 2012, the FASB issued ASU 2012-02 – *Testing Indefinite-Lived Intangible Assets for Impairment* (“ASU 2012-02”) in order to reduce the cost and complexity of performing an impairment test for indefinite-lived intangible assets by simplifying how an entity tests those assets for impairment and to improve consistency in impairment testing guidance. The new guidance allows an entity the option to make a qualitative assessment about the likelihood that an indefinite-lived intangible asset is impaired to determine whether it should perform a quantitative impairment test. ASU 2012-02 is effective for the Company beginning January 1, 2013, and earlier adoption is permitted. The Company does not expect the adoption of the guidance to have a material impact on its consolidated financial statements.

## 2. INVESTMENT PROPERTIES

The components of the Company’s investment properties and the related accumulated depreciation information follow:

	December 31, 2012		
	Cost	Accumulated Depreciation	Net
Restaurant, marina & retail mall:			
Monty’s restaurant and retail mall (Coconut Grove, FL) - building & improvements (1)	\$7,336,068	\$ 1,748,967	\$5,587,101
Monty’s restaurant and retail mall (Coconut Grove, FL) - furniture, fixtures and equipment (1)	2,058,316	1,556,302	502,014
Monty’s marina - 132 slips and improvements (1)	3,578,940	1,845,636	1,733,304
	12,973,324	5,150,905	7,822,419
<u>Office building and other commercial property:</u>			
Corporate Office - (Coconut Grove, FL) – Building	652,198	262,826	398,372
Corporate Office – (Coconut Grove, FL) – Land	325,000	—	325,000
Other (Montpelier, Vermont) – Buildings	52,000	52,000	—
Other (Montpelier, Vermont) - Land and improvements (5.4 acres)	111,689	—	111,689
	1,140,887	314,826	826,061
Totals	\$ 14,114,211	\$ 5,465,731	\$ 8,648,480

(1) The Monty's property is subject to a ground lease with the City of Miami, Florida expiring in 2035. Lease payments due under the lease consist of percentage rent ranging from 8% to 15% of gross revenues from various components of the property.

	December 31, 2011		
	Cost	Accumulated Depreciation	Net
Restaurant, marina & retail mall:			
Monty's restaurant and retail mall (Coconut Grove, FL) - building & improvements	\$7,052,051	\$ 1,476,559	\$5,575,492
Monty's restaurant and retail mall (Coconut Grove, FL) - furniture, fixtures and equipment	1,991,381	1,427,889	563,492
Monty's retail mall – construction in progress	75,804	—	75,804
Monty's marina - 132 slips and improvements	3,500,962	1,611,370	1,889,592
	12,620,198	4,515,818	8,104,380
<u>Office building and other commercial property:</u>			
Corporate Office - (Coconut Grove, FL) – Building	652,197	246,669	405,528
Corporate Office – (Coconut Grove, FL) – Land	325,000	—	325,000
Other (Montpelier, Vermont) – Buildings	52,000	52,000	—
Other (Montpelier, Vermont) - Land and improvements (5.4 acres)	111,689	—	111,689
Hopkinton, Rhode Island	27,689	—	27,689
	1,168,575	298,669	869,906
Totals	\$13,788,773	\$ 4,814,487	\$8,974,286

### 3. MONTY'S RESTAURANT, MARINA AND OFFICE/RETAIL PROPERTY, COCONUT GROVE, FLORIDA

The Company owns a 50% equity interest in two entities, Bayshore Landing, LLC (“Landing”) and Bayshore Rawbar, LLC (“Rawbar”), (collectively, “Bayshore”) which own and operate a restaurant, office/retail and marina property located in Coconut Grove (Miami), Florida known as Monty's (“Monty's”). The other 50% owner of Bayshore is The Christoph Family Trust (“CFT”). Members of CFT are experienced real estate and marina operators. The Monty's property is subject to a ground lease with the City of Miami, Florida which expires on May 31, 2035. Under the lease, Bayshore pays percentage rents ranging from 8% to 15% of gross revenues from various components of the project. Total rent paid, including sales tax, for the years ended December 31, 2012 and 2011 was approximately \$901,000 and \$886,000, respectively.

The Monty's property consists of a two story building with approximately 40,000 rentable square feet and approximately 3.7 acres of submerged land with a 132-boat slip marina. It includes a 16,000 square foot indoor-outdoor raw bar restaurant and 24,000 square feet of office/retail space of which approximately 15,000 square feet were leased to tenants operating boating and marina related businesses as of December 31, 2012.

The excess of capitalized cost assigned to specific assets over the 2004 purchase price of Monty's was recorded as goodwill. Since goodwill is an indefinite-lived intangible asset it is reviewed for impairment at each reporting period or whenever an event occurs or circumstances change that would more likely than not reduce fair value below carrying amount. Goodwill is carried at historical cost if its estimated fair value is greater than its carrying amounts. However, if its estimated fair value is less than the carrying amount, goodwill is reduced to its estimated fair value through an impairment charge to the consolidated statements of comprehensive income. For the years ended December 31, 2012 and 2011 the Company did not recognize a loss from goodwill impairment.

Since the acquisition in August 2004, improvements totaling approximately \$6.8 million have been made to the Monty's property, net of disposals. These improvements primarily consisted of the expansion of the restaurant to provide an indoor area, improvements to the office/retail space which includes approximately 24,000 square feet leased or available for lease as of December 31, 2012 and parking lot and landscaping improvement to the property.

The Monty's property is encumbered by a mortgage loan which is collateralized by substantially all of the property and equipment of Bayshore including the lease with the City of Miami. The loan is guaranteed by the members of Bayshore as well as a personal guarantee from the trustee of one of the members. As of December 31, 2012 and 2011 the outstanding balance of the loan was \$8.2 million and \$8.5 million, respectively. In March 2011 the terms of this loan were amended and restated and the principal balance was paid down by approximately \$1.6 million to \$8.8 million. The modified loan calls for equal monthly installments of approximately \$82,000 including principal and interest. Interest is calculated at the one month LIBOR Rate (.27% at December 31, 2012) plus 2.45%. The note is due, with a balloon payment, on August 19, 2020. The note includes certain covenants regarding income. As of December 31, 2012, Bayshore is in compliance with the covenants. Bayshore paid a fixed fee of \$198,400 per the terms of the amended swap agreement to pay down the balance to that of the amended note.

Summarized combined statements of income for Landing and Rawbar for the years ended December 31, 2012 and 2011 are presented below (Note: the Company's ownership percentage in these operations is 50%):

Summarized combined statements of income Bayshore Landing, LLC and Bayshore Rawbar, LLC	For the year ended December 31, 2012	For the year ended December 31, 2011
Revenues:		
Food and Beverage Sales	\$6,179,000	\$5,857,000
Marina dockage and related	1,100,000	1,064,000
Retail/mall rental and related	663,000	630,000
Total Revenues	7,942,000	7,551,000
Expenses:		
Cost of food and beverage sold	1,770,000	1,682,000

Edgar Filing: HMG COURTLAND PROPERTIES INC - Form 10-K

Labor and related costs	1,232,000	1,123,000
Entertainers	200,000	194,000
Other food and beverage related costs	535,000	553,000
Other operating costs (including bad debts)	562,000	498,000
Repairs and maintenance	411,000	340,000
Insurance	497,000	561,000
Utilities	238,000	260,000
Rent	901,000	886,000
Interest expense, net of interest income	645,000	691,000
Depreciation	663,000	810,000
Realized loss on interest rate swap	—	198,000
Total Expenses	7,654,000	7,796,000
Net income (loss)	\$288,000	\$(245,000 )

(a) Reference is made to Note 1. Description of Business and Summary of Significant Accounting Policies

#### 4. INVESTMENTS IN MARKETABLE SECURITIES

Investments in marketable securities consist primarily of large capital corporate equity and debt securities in varying industries or issued by government agencies with readily determinable fair values (see table below). These securities are stated at market value, as determined by the most recently traded price of each security at the balance sheet date. Consistent with the Company's overall current investment objectives and activities its entire marketable securities portfolio is classified as trading. Accordingly all unrealized gains and losses on this portfolio are recorded in income. For the years ended December 31, 2012 and 2011 net unrealized gain (loss) on trading securities was approximately \$86,000 and (\$189,000), respectively.

December 31, 2012	December 31, 2011
-------------------	-------------------

Cost	Fair	Unrealized	Cost	ZE="2">	which is primarily engaged in ownership and development of real estate, construction of buildings, or related activities, or a combination of the foregoing (Section 101).
------	------	------------	------	---------	--

When we say debt, we mean notes, bonds, debentures or other similar evidences of indebtedness for money borrowed (Section 1008).

When we say liens, we mean pledges, mortgages, liens, encumbrances and other security interests (Section 1008).

When we say principal property, we mean any manufacturing plant or warehouse, together with the land upon which it is erected and fixtures constituting a part of the manufacturing plant or warehouse, owned by UTC or any wholly-owned domestic manufacturing subsidiary and located in the United States, the gross book value (without deduction of any reserve for depreciation) of which on the date as of which the determination is being made is an amount which exceeds 1% of consolidated net tangible assets, other than any manufacturing plant or warehouse or any portion of the manufacturing plant or warehouse or any fixture:

which is financed by industrial development bonds; or

which, in the opinion of the board of directors of UTC, is not of material importance to the total business conducted by UTC and its subsidiaries, taken as a whole (Section 101).

However, any of the actions described in the first two bullet points under Liens above may be taken if

the unsubordinated debt securities are equally and ratably secured; or

the aggregate principal amount of the secured debt then outstanding plus the attributable debt of UTC and its wholly-owned domestic manufacturing subsidiaries in respect of sale and leaseback transactions described below involving principal properties entered into after the date when UTC first issues securities pursuant to the unsubordinated indenture, other than transactions that are permitted as described in the second bullet point under Sales and Leasebacks, would not exceed 10% of consolidated net tangible assets.

When we say attributable debt, we mean, as to any particular lease under which any person is at the time liable for a term of more than 12 months, at any date as of which the amount of attributable debt is to be determined, the total net amount of rent required to be paid by the person under the lease during the remaining term of the lease (excluding any subsequent renewal or other extension options held by the lessee and excluding amounts on account of maintenance and repairs, services, taxes and similar charges, and contingent rents), discounted from the respective due dates of the payments under the lease to the date of determination at the rate of 15% per annum, compounded monthly (Section 101).





## **Table of Contents**

When we say consolidated net tangible assets, we mean the total amount of assets (less applicable reserves and other properly deductible items) after deducting:

all current liabilities, excluding any current liabilities which are by their terms extendible or renewable at the option of the obligor on the liabilities to a time more than 12 months after the time as of which the amount of current liabilities is being computed; and

all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, all as set forth on the most recent balance sheet of UTC and its subsidiaries and computed in accordance with accounting principles generally accepted in the United States of America (Section 101).

This restriction on liens will not apply to debt secured by permitted liens. Therefore, for purposes of this restriction, debt secured by permitted liens will be excluded in computing secured debt. Permitted liens include:

liens existing as of the date when UTC first issued securities pursuant to the applicable indenture;

liens existing on any property of or shares of stock or debt of any corporation at the time it became or becomes a wholly-owned domestic manufacturing subsidiary, or arising after that time (a) otherwise than in connection with the borrowing of money arranged after the corporation became a wholly-owned domestic manufacturing subsidiary and (b) pursuant to contractual commitments entered into before the corporation became a wholly-owned domestic manufacturing subsidiary;

liens on property (including shares of stock or debt of a wholly-owned domestic manufacturing subsidiary) existing at the time of acquisition and certain purchase money or similar liens;

liens to secure specified exploration, drilling, development, operation, construction, alteration, repair or improvement costs;

liens securing debt owing by a subsidiary to UTC or to a wholly-owned domestic manufacturing subsidiary;

liens in connection with government contracts, including the assignment of moneys due or to become due on government contracts;

materialmen's, carriers', mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and which are not overdue or which are being contested in good faith in appropriate proceedings;

liens arising from any judgment, decree or order of any court or in connection with legal proceedings or actions at law or in equity; and

certain extensions, substitutions, replacements or renewals of the foregoing.

In addition, production payments and other financial arrangements with regard to oil, gas and mineral properties are not deemed to involve liens securing debt (Section 1008).

## **Sales and Leasebacks**

## Edgar Filing: HMG COURTLAND PROPERTIES INC - Form 10-K

So long as any unsubordinated debt securities are outstanding under the unsubordinated indenture, UTC will not, and will not permit any wholly-owned domestic manufacturing subsidiary to, enter into any sale and leaseback transaction after the date when UTC first issued securities pursuant to the unsubordinated indenture, covering any principal property, which was or is owned or leased by UTC or a wholly-owned domestic manufacturing subsidiary and which has been or is to be sold or transferred more than 120 days after the completion of construction and commencement of full operation of that principal property.

-17-

## **Table of Contents**

However, a sale and leaseback transaction of this kind will not be prohibited if:

attributable debt of UTC and its wholly-owned domestic manufacturing subsidiaries in respect of the sale and leaseback transaction and all other sale and leaseback transactions entered into after the date when UTC first issued securities pursuant to the unsubordinated indenture (other than sale and leaseback transactions that are permitted as described in the next bullet point), plus the aggregate principal amount of debt secured by liens on principal properties then outstanding (not otherwise permitted or excepted) without equally and ratably securing the unsubordinated debt securities, would not exceed 10% of the consolidated net tangible assets;

an amount equal to the greater of the net proceeds of the sale or transfer or the fair market value of the principal property sold or transferred (as determined by UTC) is applied within 120 days to the voluntary retirement of the unsubordinated debt securities or other indebtedness of UTC (other than indebtedness subordinated to the unsubordinated debt securities) or indebtedness of a wholly-owned domestic manufacturing subsidiary, for money borrowed, maturing more than 12 months after the voluntary retirement;

the lease is for a temporary period not exceeding three years; or

the lease is with UTC or another wholly owned domestic manufacturing subsidiary (Section 1009).

### **Provisions Applicable Solely to Junior Subordinated Debt Securities**

## **General**

Our junior subordinated debt securities will be issued under the junior subordinated indenture. Holders of junior subordinated debt securities should recognize that contractual provisions in the junior subordinated indenture may prohibit us from making payments on these securities, as further described below. The junior subordinated debt securities will rank on an equal basis with certain of our other junior subordinated debt that may be outstanding from time to time and will rank junior to all of our senior indebtedness, as defined below, including any unsubordinated debt securities that may be outstanding from time to time.

If we issue junior subordinated debt securities, the aggregate principal amount of senior indebtedness, as defined below, outstanding as of a recent date will be set forth in the applicable prospectus supplement. Neither the unsubordinated nor the junior subordinated indenture restricts the amount of unsubordinated indebtedness that we may incur.

## **Subordination**

The payment of the principal of, and premium, if any, and interest on the junior subordinated debt securities is expressly subordinated, to the extent and in the manner set forth in the subordinated indenture, in right of payment to the prior payment in full of all of our senior indebtedness, as defined below.

Subject to the qualifications described below, the term **senior indebtedness** is defined in the junior subordinated indenture to include principal, premium, interest, penalties, fees and any other payment in respect of any of the following, whether presently existing or from time to time thereafter incurred, created, assumed or existing:

all indebtedness of UTC for borrowed money (other than indebtedness issued pursuant to the junior subordinated indenture), including, without limitation, such obligations as are evidenced by credit agreements, notes, debentures, bonds and similar instruments;

all obligations of UTC under synthetic leases, financing leases and capitalized leases;

**Table of Contents**

all of UTC's reimbursement obligations under letters of credit, bankers' acceptances, security purchase facilities or similar facilities issued for the account of the UTC;

any obligations of UTC with respect to derivative contracts, including but not limited to commodity contracts, interest rate, commodity and currency swap agreements, forward contracts and other similar agreements or arrangements designed to protect against fluctuations in commodity prices, currency exchange or interest rates;

all obligations of the types referred to in the preceding bullet points of others, the payment of which UTC has assumed, guaranteed or otherwise becomes liable for, under any agreement;

all obligations of the types referred to in the preceding bullet points (other than the immediately preceding bullet point) of others which is secured by any lien on any property or assets of UTC (whether or not that obligation has been assumed by UTC); and

amendments, modifications, renewals, extensions, deferrals and refundings of any of the above types of indebtedness (Section 101 of the junior subordinated indenture).

The junior subordinated debt securities will rank senior to all of our equity securities, including any preferred stock we may issue in the future.

The senior indebtedness will continue to be senior indebtedness and entitled to the benefits of the subordination provisions irrespective of any amendment, modification or waiver of any term of the senior indebtedness or extension or renewal of the senior indebtedness. Notwithstanding anything to the contrary in the foregoing, senior indebtedness will not include (1) trade obligations incurred in the ordinary course of business and (2) any indebtedness or obligation which by its terms expressly provides that such indebtedness or obligation is not superior in right of payment to or is made equal in rank and payment with the junior subordinated debt securities of any series (Section 101 of the junior subordinated indenture).

The junior subordinated indenture provides that, unless all amounts due to the holders of senior indebtedness have been paid in full, or provision has been made to make these payments in full, the holders of the junior subordinated indebtedness shall not be entitled to payment or other distributions in the following circumstances (subject to certain exceptions set forth in the junior subordinated indenture):

any insolvency or bankruptcy proceedings or any receivership, liquidation, reorganization or other similar proceedings in respect of UTC or a substantial part of its property, or of any proceedings for liquidation, dissolution or other winding up of UTC, whether or not involving insolvency or bankruptcy;

a default in the payment of principal, interest or other monetary amounts with respect to any senior indebtedness, beyond the period of grace, if any, in respect thereof, and such default shall not have been cured or waived or shall not have ceased to exist; or

the maturity of any senior indebtedness shall have been accelerated because of an event of default (other than a default described in the immediately preceding bullet point) in respect of any senior indebtedness (Section 1702 of the junior subordinated indenture).

A consolidation of UTC with, or the merger of UTC into, another corporation or the liquidation or dissolution of UTC following the conveyance and transfer of its property as an entirety, or substantially as an entirety, to another corporation on the terms and conditions provided in the junior subordinated indenture and above under **Restriction on Merger and Sale of Assets** will not be deemed a liquidation, dissolution, reorganization or winding-up for the purposes of these subordination provisions if such other corporation, as part of such consolidation, conveyance, merger or transfer, complies with the conditions set forth in the junior subordinated indenture (Section 1702 of the junior subordinated indenture).

---

## **Table of Contents**

For purposes of the subordination provisions contained in the junior subordinated indenture, the words "cash, property or securities" will not be deemed to include shares of stock of UTC as reorganized or readjusted, or securities of UTC or any other corporation provided for by a plan of reorganization or readjustment which are subordinate in right of payment to all senior indebtedness of UTC which may at the time be outstanding to the same extent as, or to a greater extent than, the junior subordinated securities are so subordinated as provided in the junior subordinated indenture (Section 1702 of the junior subordinated indenture).

Notwithstanding the foregoing subordination provisions, we may make payments or distributions on the junior subordinated debt securities of any series so long as:

the payments or distributions consist of shares of stock of UTC as reorganized or readjusted or securities issued by UTC or another company in connection with a plan of reorganization or readjustment; and

payment on those securities is subordinate to all senior indebtedness that may be outstanding at the time to the same extent as, or to a greater extent than, provided in the subordination provisions of such junior subordinated debt securities.

If the holders of junior subordinated debt securities receive any payment or distribution of our assets not permitted by the subordination provisions, the holders of junior subordinated debt securities will have to repay that amount to the holders of the senior indebtedness or to their representative or to the trustee under any indenture for any such senior indebtedness (Section 1702 of the junior subordinated indenture).

## **Subrogation**

After the payment in full of all senior indebtedness or the provision for such payment in accordance with the terms of the senior indebtedness, the holders of the junior subordinated debt securities will be subrogated to the rights of the holders of senior indebtedness to receive payments or distributions of our assets or securities applicable to the senior indebtedness until the junior subordinated debt securities are paid in full. These provisions of the junior subordinated indenture are intended solely for the purpose of defining the relative rights of the holders of the junior subordinated debt securities and the holders of the senior indebtedness. Nothing contained in the junior subordinated indenture is intended to impair our absolute obligation to pay the principal of and interest on the junior subordinated debt securities in accordance with their terms or to affect the relative rights of the holders of the junior subordinated debt securities and our creditors other than the holders of senior indebtedness. These subrogation provisions of the junior subordinated indenture will not prevent the holder of any junior subordinated debt security from exercising all remedies otherwise permitted by applicable law upon default of that security, subject to the rights of subordination described above (Sections 1704 and 1705 of the junior subordinated indenture).

## **DESCRIPTION OF DEBT WARRANTS**

UTC may issue warrants for the purchase of debt securities. Debt warrants may be issued separately or together with debt securities, currency warrants (which are described under "Description of Currency Warrants") or stock-index warrants (which are described under "Description of Stock-Index Warrants").

We will issue any series of debt warrants under a separate debt warrant agreement to be entered into between UTC and one or more banks or trust companies, as debt warrant agent, all as will be set forth in the prospectus supplement relating to that series. A form of debt warrant agreement, including a form of debt warrant certificate representing the debt warrants, is incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part. See "Where You Can Find More Information" for information on how to obtain a copy of the form of debt warrant agreement.

The following description of the debt warrant agreements and the debt warrant certificates and summaries of some provisions of the debt warrant agreements and the debt warrant certificates do not describe every aspect of the debt warrants and are subject to, and are qualified in their entirety by reference to, all the provisions of the applicable debt warrant agreements and the debt warrant certificates, including definitions of terms used in the debt

## **Table of Contents**

warrant agreements and not otherwise defined in this prospectus. For example, in this section we use some terms that have been given special meaning in the debt warrant agreements. We also include references in parentheses to some sections of the debt warrant agreements. Whenever we refer to particular sections or defined terms of the debt warrant agreements in this prospectus or in any applicable prospectus supplement, those sections or defined terms are incorporated by reference in this prospectus or in the applicable prospectus supplement.

### **Terms of the Debt Warrants To Be Described in the Prospectus Supplement**

The particular terms of each issue of debt warrants, the debt warrant agreement relating to the debt warrants and the debt warrant certificates representing debt warrants will be described in the applicable prospectus supplement. This description will include:

the initial offering price;

the currency or currency unit in which the price for the debt warrants is payable;

the title, aggregate principal amount and terms of the debt securities purchasable upon exercise of the debt warrants;

the title and terms of any related debt securities with which the debt warrants are issued and the number of the debt warrants issued with each debt security;

the date, if any, on and after which the debt warrants and the related debt securities will be separately transferable;

the principal amount of debt securities purchasable upon exercise of each debt warrant and the price at which that principal amount of debt securities may be purchased upon exercise of each debt warrant;

the date on which the right to exercise the debt warrants will commence and the date on which this right will expire;

if applicable, a discussion of United States federal income tax, accounting or other considerations applicable to the debt warrants;

whether the debt warrants represented by the debt warrant certificates will be issued in registered or bearer form, and, if registered, where they may be transferred and registered; and

any other terms of the debt warrants.

Debt warrant certificates will be exchangeable for new debt warrant certificates of different denominations and, if in registered form, may be presented for registration of transfer and debt warrants may be exercised at the corporate trust office of the debt warrant agent or any other office indicated in the applicable prospectus supplement (Section 3.01). Before the exercise of debt warrants, holders of debt warrants will not be entitled to payments of principal, premium, if any, or interest, if any, on the debt securities purchasable upon exercise of the debt warrants, or to enforce any of the covenants in the applicable indenture (Section 4.01).

### **Exercise of Debt Warrants**

Unless otherwise provided in the applicable prospectus supplement, each debt warrant will entitle the holder of debt warrants to purchase for cash the principal amount of debt securities at the exercise price that will in each case be set forth in, or be determinable as set forth in, the

## Edgar Filing: HMG COURTLAND PROPERTIES INC - Form 10-K

applicable prospectus supplement (Sections 2.01 and 2.03). Debt warrants may be exercised at any time up to the close of business on the expiration date specified in the prospectus supplement relating to the debt warrants. After the close of business on the expiration date or any later date to which the expiration date may be extended by UTC, unexercised debt warrants will become void (Section 2.02).



---

## **Table of Contents**

Debt warrants may be exercised as set forth in the prospectus supplement relating to the debt warrants. Upon receipt of payment and the debt warrant certificate properly completed and duly executed at the corporate trust office of the debt warrant agent or any other office indicated in the applicable prospectus supplement, UTC will, as soon as practicable, forward the debt securities purchasable upon exercise of the debt warrants to the person entitled to them. If fewer than all of the debt warrants represented by the debt warrant certificate are exercised, a new debt warrant certificate will be issued for the remaining amount of debt warrants (Section 2.03).

If you hold your interest in a debt warrant indirectly, you should check with the institution through which you hold your interest in the debt warrant to determine how these provisions will apply to you. See **Legal Ownership** for a general description of the procedures and rights applicable to indirect owners of debt warrants.

### **Modifications**

The debt warrant agreement may be amended by UTC and the debt warrant agent, without the consent of the holder of any debt warrant certificate, for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in the debt warrant agreement, or making any provisions in regard to matters or questions arising under the debt warrant agreement that UTC may deem necessary or desirable; provided that the amendment may not adversely affect the interest of the holders of debt warrant certificates in any material respect (Section 6.03). UTC and the debt warrant agent also may modify or amend the debt warrant agreement and the terms of the debt warrants, with the consent of the owners of not less than a majority in number of the then outstanding unexercised debt warrants affected. However, any modification or amendment that increases the exercise price, shortens the period of time during which the debt warrants may be exercised or otherwise materially and adversely affects the exercise rights of the owners of the debt warrants or reduces the number of debt warrants the consent of whose owners is required for modification or amendment of the debt warrant agreement or the terms of the debt warrants may be made only with the consent of the owners affected by the modification or amendment.

### **Merger, Consolidation, Sale or Other Dispositions**

Under the debt warrant agreement, UTC may, to the extent permitted in the applicable indenture, consolidate with, or sell or convey all or substantially all of its assets to, or merge with or into, any other corporation. If at any time there is a merger, consolidation, sale, transfer, conveyance or other disposition of substantially all of the assets of UTC, the successor or assuming corporation will succeed to and be substituted for UTC, with the same effect as if it had been named in the debt warrant agreement and in the debt warrants as UTC. UTC will then be relieved of any further obligation under the debt warrant agreement or under the debt warrants (Sections 6.01 and 6.02).

### **Enforceability of Rights; Governing Law**

The debt warrant agent will act solely as an agent of UTC in connection with the issuance and exercise of debt warrants and will not assume any obligation or relationship of agency or trust for or with any holder of a debt warrant certificate or any owner of a beneficial interest in debt warrants (Section 5.02). The holders of debt warrant certificates, without the consent of the debt warrant agent, the trustee, the holder of any debt securities issued upon exercise of debt warrants or the holder of any other debt warrant certificates, may, on their own behalf and for their own benefit, enforce, and may institute and maintain any suit, action or proceeding against UTC suitable to enforce, or otherwise in respect of, their rights to exercise debt warrants evidenced by their debt warrant certificates (Section 4.02). Except as may otherwise be provided in the applicable prospectus supplement, each issue of debt warrants and the applicable debt warrant agreement will be governed by and construed in accordance with the law of the State of New York (Section 6.07).

### **DESCRIPTION OF CURRENCY WARRANTS**

UTC may issue warrants to receive from UTC the cash value in U.S. dollars of the right to purchase or to sell the foreign currencies or units of two or more foreign currencies that will be designated by UTC at the time of offering. Currency warrants may be issued:

in the form of currency put warrants, entitling their owners to receive from UTC the currency warrant cash settlement value (as defined under **Terms of the Currency Warrants to Be Described in the Prospectus Supplement** below) in U.S. dollars of the right to sell a specified foreign base currency or currency unit or units for a specified amount of U.S. dollars;

## **Table of Contents**

in the form of currency call warrants, entitling their owners to receive from UTC the currency warrant cash settlement value in U.S. dollars of the right to purchase a specified amount of a base currency for a specified amount of U.S. dollars; or

in any other form that is specified in the applicable prospectus supplement.

Currency warrants may be issued separately or together with debt securities, debt warrants or stock-index warrants.

A currency warrant will be settled only in U.S. dollars and accordingly will not require or entitle an owner to sell, deliver, purchase or take delivery of any other currency or currency unit.

We will issue any series of currency warrants under a separate currency warrant agreement to be entered into between UTC and one or more banks or trust companies, as currency warrant agents, all as will be described in the prospectus supplement relating to that series. A form of currency warrant agreement, including a form of currency warrant certificate representing the currency warrants, is incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part. See [Where You Can Find More Information](#) for information on how to obtain a copy of the form of currency warrant agreement.

The following description of the currency warrant agreements and the currency warrant certificates and summaries of some provisions of the currency warrant agreements and the currency warrant certificates do not describe every aspect of the currency warrants and are subject to, and are qualified in their entirety by reference to, all the provisions of the applicable currency warrant agreements and the currency warrant certificates, including definitions of terms used in the currency warrant agreements and not otherwise defined in this prospectus. For example, in this section we use some terms that have been given special meaning in the currency warrant agreements. We also include references in parentheses to some sections of the currency warrant agreements. Whenever we refer to particular sections or defined terms of the currency warrant agreements in this prospectus or in any applicable prospectus supplement, those sections or defined terms are incorporated by reference in this prospectus or in the applicable prospectus supplement.

### **Terms of the Currency Warrants To Be Described in the Prospectus Supplement**

The particular terms of each issue of currency warrants, the currency warrant agreement relating to the currency warrants and the currency warrant certificates representing the currency warrants will be described in the applicable prospectus supplement. This description will include:

the aggregate amount of the currency warrants;

the initial offering price;

whether the currency warrants shall be currency put warrants, currency call warrants, or otherwise;

the formula for determining the currency warrant cash settlement value, if applicable, of each currency warrant;

the procedures and conditions relating to the exercise of the currency warrants;

the circumstances which will cause the currency warrants to be deemed to be automatically exercised;

any minimum number of currency warrants which must be exercised at any one time, other than upon automatic exercise;



---

**Table of Contents**

the date on which the right to exercise the currency warrants will commence and the date on which the right will expire;

the identity of the currency warrant agent;

if applicable, a discussion of United States federal income tax, accounting or other considerations applicable to the currency warrants; and

any other terms of the currency warrants.

If the currency warrants are to be offered either in the form of currency put warrants or currency call warrants, an owner will receive a cash payment upon exercise only if the currency warrants have a cash settlement value in excess of zero at that time. The spot exchange rate of the applicable base currency, as compared to the U.S. dollar upon exercise, will determine, together with the strike price, whether the currency warrants have a cash settlement value on any given day prior to their expiration. The strike price for a currency warrant will be the amount of the base currency that the holder has the right to sell, in the case of a currency put warrant, or purchase, in the case of a currency call warrant, in exchange for one U.S. dollar. The currency warrants are expected to be out-of-the-money (i.e., the cash settlement value will be zero) when initially sold and will be in-the-money (i.e., their cash settlement value will exceed zero) if, in the case of currency put warrants, the base currency depreciates against the U.S. dollar to the extent that one U.S. dollar is worth more than the strike price or, in the case of currency call warrants, the base currency appreciates against the U.S. dollar to the extent that one U.S. dollar is worth less than the strike price.

The exercise date of the currency warrants will be defined in the applicable prospectus supplement. Cash settlement value on an exercise date of currency put warrants is an amount which is the greater of:

zero; and

an amount calculated as follows:

constant  $(\text{constant} \times \text{strike price})$

spot rate.

The cash settlement value on an exercise date of currency call warrants is an amount which is the greater of:

zero; and

an amount calculated as follows:

$(\text{constant} \times \text{strike price})$  constant.

spot rate.

The constant will be a specified fixed amount, for example, 50. The spot rate means the spot exchange rate of the base currency for U.S. dollars on the exercise date.

**Exercise of Currency Warrants**

Unless otherwise provided in the applicable prospectus supplement, each currency warrant will entitle the beneficial owner to the cash settlement value of the currency warrant on the applicable exercise date, in each case as these terms will further be defined in the applicable

## Edgar Filing: HMG COURTLAND PROPERTIES INC - Form 10-K

prospectus supplement (Section 2.02). If not exercised prior to 3:00 p.m., New York City time, on the fifth business day preceding the expiration date, currency warrants will be deemed automatically exercised on the expiration date (Section 2.03). Currency warrants may also be deemed to be automatically exercised if they are delisted. Procedures for exercise of the currency warrants will be set out in the applicable prospectus supplement. In addition, if you hold your interest in a currency warrant indirectly, either because it has been issued in global form or because you otherwise hold it in street name, you should check with the institution through which you hold your interest in the currency warrant to determine how these provisions will apply to you. See [Legal Ownership](#) for a general description of the procedures and rights that may be applicable to indirect owners of currency warrants.

-24-

## **Table of Contents**

### **Listing**

Unless otherwise provided in any applicable prospectus supplement, each issue of currency warrants will be listed on a national securities exchange as specified in that prospectus supplement, subject only to official notice of issuance, as a precondition to the sale of any of the currency warrants. If the currency warrants are delisted from, or permanently suspended from trading on, that exchange, and, at or before the delisting or suspension, the currency warrants have not been listed on another national securities exchange, currency warrants not previously exercised will be deemed automatically exercised on the date the delisting or permanent trading suspension becomes effective (Section 2.03). The cash settlement value to be paid if the currency warrants are thus deemed automatically exercised will be as described in the applicable prospectus supplement. UTC will notify holders of currency warrants as soon as practicable of the delisting or permanent trading suspension. The applicable currency warrant agreement will contain a covenant of UTC not to seek delisting of the currency warrants from, or permanent suspension of their trading on, the exchange on which they are listed (Section 2.04).

### **Modifications**

The currency warrant agreement and the terms of the currency warrants may be amended by UTC and the currency warrant agent, without the consent of the beneficial owners or the registered holder, for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provision contained in the currency warrant agreement and the terms of the currency warrants, or in any other manner which UTC may deem necessary or desirable and which will not adversely affect the interests of the beneficial owners (Section 6.01).

UTC and the currency warrant agent also may modify or amend the currency warrant agreement and the terms of the currency warrants with the consent of the owners of not less than a majority in number of the then outstanding unexercised currency warrants affected, *provided* that no modification or amendment that increases the strike price in the case of a currency put warrant, decreases the strike price in the case of a currency call warrant, shortens the period of time during which the currency warrants may be exercised or otherwise materially and adversely affects the exercise rights of the owners of the currency warrants or reduces the number of outstanding currency warrants the consent of whose owners is required for modification or amendment of the currency warrant agreement or the terms of the currency warrants may be made without the consent of the owners affected by the modification or amendment (Section 6.01).

### **Merger, Consolidation, Sale or Other Dispositions**

If at any time there is a merger, consolidation, sale, transfer, conveyance or other disposition of substantially all of the assets of UTC, then the successor or assuming corporation will succeed to and be substituted for UTC, with the same effect as if it had been named in the currency warrant agreement and in the currency warrants as UTC. UTC will then be relieved of any further obligation under the currency warrant agreement or under the currency warrants, and UTC as the predecessor corporation may then or at any later time be dissolved, wound up or liquidated (Section 3.02).

### **Enforceability of Rights by Owners; Governing Law**

The currency warrant agent will act solely as an agent of UTC in connection with the issuance and exercise of currency warrants and will not assume any obligation or relationship of agency or trust for or with any owner of a beneficial interest in currency warrants or with the registered holder of the currency warrants (Section 5.02). The currency warrant agent will have no duty or responsibility in case of any default by UTC in the performance of its obligations under the currency warrant agreement or currency warrant certificate including, without limitation, any duty or responsibility to initiate any proceedings at law or otherwise or to make any demand upon UTC (Section 5.02). Owners may, without the consent of the currency warrant agent, enforce by appropriate legal action, on their own behalf, their right to exercise, and to receive payment for, their currency warrants (Section 3.01). Except as may otherwise be provided in the applicable prospectus supplement, each issue of currency warrants and the applicable currency warrant agreement will be governed by and construed in accordance with the law of the State of New York (Section 6.05).

---

**Table of Contents**

**DESCRIPTION OF STOCK-INDEX WARRANTS**

UTC may issue warrants entitling the owners of the warrants to receive, upon exercise, an amount in cash determined by reference to decreases or increases in the level of a specified stock index which may be based on one or more U.S. or foreign stocks or a combination of U.S. or foreign stocks. Stock-index warrants may be issued:

in the form of stock-index put warrants, entitling their owners to receive from UTC the stock-index cash settlement value in cash in U.S. dollars, which amount will be determined by reference to the amount, if any, by which the exercise price exceeds the index value at the time of exercise; and

in the form of stock-index call warrants, entitling their owners to receive from UTC the stock-index cash settlement value in cash in U.S. dollars, which amount will be determined by reference to the amount, if any, by which the index value at the time of exercise exceeds the exercise price.

The stock-index cash settlement value, the exercise price and the index value will be defined in the applicable prospectus supplement. Stock-index warrants may be issued separately or together with debt securities, debt warrants or currency warrants.

The prospectus supplement relating to a particular series of stock-index warrants will set forth the formula by which the stock-index cash settlement value will be determined, including any multipliers, if applicable. In addition, if so specified in the applicable prospectus supplement, following the occurrence of a market disruption event (as defined in that prospectus supplement), the stock-index cash settlement value may be determined on a different basis than upon normal exercise of a stock-index warrant. Unless otherwise indicated in the applicable prospectus supplement, a stock-index warrant will be settled only in cash in U.S. dollars, which is the only permissible method of settlement under exchange rules currently approved by the SEC. Accordingly, a stock-index warrant will not require or entitle an owner to sell, deliver, purchase or take delivery of any shares of any underlying stock or any other securities. The owners will not be entitled to any of the rights of the holders of any underlying stock.

We will issue any series of stock-index warrants under a separate stock-index warrant agreement to be entered into between UTC and one or more banks or trust companies, as stock-index warrant agents, all as will be described in the prospectus supplement relating to that series. A form of stock-index warrant agreement, including a form of stock-index warrant certificate, is incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part. See [Where You Can Find More Information](#) for information on how to obtain a copy of the form of stock-index warrant agreement.

The following description of the stock-index warrant agreements and the stock-index warrant certificates and summaries of some provisions of the stock-index warrants and the stock-index warrant certificates do not describe every aspect of the stock-index warrants and are subject to, and are qualified in their entirety by reference to, all of the provisions of the applicable stock-index warrant agreements and the stock-index warrant certificates, including definitions of terms used in the stock-index warrant agreements and not otherwise defined in this prospectus. For example, in this section we use some terms that have been given special meaning in the stock-index warrant agreements. We also include references in parentheses to some sections of the stock-index warrant agreements. Whenever we refer to particular sections or defined terms of the stock-index warrant agreements in this prospectus or in any applicable prospectus supplement, those sections or defined terms are incorporated by reference in this prospectus or in the applicable prospectus supplement.

**Terms of the Stock-Index Warrants To Be Described in the Prospectus Supplement**

The particular terms of each issue of stock-index warrants, the stock-index warrant agreement relating to the stock-index warrants and the stock-index warrant certificate representing the stock-index warrants will be described in the applicable prospectus supplement. This description will include:

the aggregate amount of the stock-index warrants;

**Table of Contents**

the initial offering price of the stock-index warrants;

the stock index for the stock-index warrants, which may be based on one or more U.S. or foreign stocks or a combination of U.S. or foreign stocks and may be a preexisting U.S. or foreign stock index compiled and published by a third party or an index based on one or more underlying stock or stocks selected by UTC solely in connection with the issuance of the stock-index warrants, and specified information regarding the stock index and the underlying stock or stocks;

whether the stock-index warrants are puts, calls or otherwise;

the date on which the right to exercise the stock-index warrants commences and the date on which this right expires;

the manner in which the stock-index warrants may be exercised;

the minimum number, if any, of the stock-index warrants exercisable at any one time;

the maximum number, if any, of the stock-index warrants that may, subject to UTC's election, be exercised by all owners (or by any person or entity) on any day;

any provisions for the automatic exercise of the stock-index warrants other than at expiration;

the method of providing for a substitute index or otherwise determining the amount payable in connection with the exercise of the stock-index warrants if the stock index changes or ceases to be made available by its publisher, which determination will be made by an independent expert;

if applicable, a discussion of United States federal income tax, accounting or other considerations applicable to the stock-index warrants;

any provisions permitting an owner to condition an exercise notice on the absence of specified changes in the index value after the exercise date; and

any other terms of the stock-index warrants.

**Exercise of Stock-Index Warrants**

Unless otherwise provided in the applicable prospectus supplement, each stock-index warrant will entitle the owner to the stock-index cash settlement value of the stock-index warrant on the applicable valuation date, in each case as these terms will further be defined in the applicable prospectus supplement (Section 2.02). If not exercised prior to 3:00 p.m., New York City time, on the stock-index warrant expiration date, stock-index warrants will be deemed automatically exercised on the stock-index warrant expiration date (Section 2.03). Procedures for exercise of the stock-index warrants will be described in the applicable prospectus supplement. In addition, if you hold your interest in a stock-index warrant indirectly, either because it has been issued in global form or because you otherwise hold it in street name, you should check with the institution through which you hold your interest in the stock-index warrant to determine how these provisions will apply to you. See "Legal Ownership" for a general description of the procedures and rights applicable to indirect holders of stock-index warrants.



**Listing**

Unless otherwise provided in any applicable prospectus supplement, each issue of stock-index warrants will be listed on a national securities exchange, as specified in that prospectus supplement, subject only to official notice of issuance, as a pre-condition to the sale of any of the stock-index warrants. It may be necessary in certain

## **Table of Contents**

circumstances for that national securities exchange to obtain the approval of the SEC in connection with any listing of the stock-index warrants. If the stock-index warrants are delisted from, or permanently suspended from trading on, the exchange, and, at or before the delisting or suspension, the stock-index warrants have not been listed on another national securities exchange, stock-index warrants not previously exercised will be deemed automatically exercised on the date the delisting or permanent trading suspension becomes effective (Section 2.03). The stock-index cash settlement value to be paid if the stock-index warrants are then deemed automatically exercised will be described in the applicable prospectus supplement. UTC will notify holders of stock-index warrants as soon as practicable of the delisting or permanent trading suspension. The applicable stock-index warrant agreement will contain a covenant of UTC not to seek delisting of the stock-index warrants from, or permanent suspension of their trading on the exchange on which they are listed (Section 2.05).

### **Modifications**

The stock-index warrant agreement and the terms of the stock-index warrants may be amended by UTC and the stock-index warrant agent, without the consent of the beneficial owners or the registered holder, for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provision contained in the stock-index warrant agreement and the terms of the stock-index warrants, or in any other manner which UTC may deem necessary or desirable and which will not adversely affect the interests of the owners (Section 6.01).

UTC and the stock-index warrant agent also may modify or amend the stock-index warrant agreement and the terms of the stock-index warrants, with the consent of the owners of not less than a majority in number of the then outstanding unexercised stock-index warrants affected, *provided* that no such modification or amendment that increases the exercise price in the case of a stock-index call warrant, decreases the exercise price in the case of a stock-index put warrant, shortens the period of time during which the stock-index warrants may be exercised or otherwise materially and adversely affects the exercise rights of the owners of the stock-index warrants or reduces the number of outstanding stock-index warrants the consent of whose owners is required for modification or amendment of the stock-index warrant agreement or the terms of the stock-index warrants may be made without the consent of the owners affected by the modification or amendment (Section 6.01).

### **Merger, Consolidation, Sale or Other Dispositions**

If at any time there is a merger, consolidation, sale, transfer, conveyance or other disposition of substantially all of the assets of UTC, then the successor or assuming corporation will succeed to and be substituted for UTC, with the same effect as if it had been named in the stock-index warrant agreement and in the stock-index warrants as UTC. UTC will then be relieved of any further obligation under the stock-index warrant agreement or under the stock-index warrants, and UTC as the predecessor corporation may then or at any later time be dissolved, wound up or liquidated (Section 3.02).

### **Enforceability of Rights by Owners; Governing Law**

The stock-index warrant agent will act solely as an agent of UTC in connection with the issuance and exercise of stock-index warrants and will not assume any obligation or relationship of agency or trust for or with any owner of a beneficial interest in stock-index warrants or with the registered holder of the stock-index warrants (Section 5.02). The stock-index warrant agent will have no duty or responsibility in case of any default by UTC in the performance of its obligations under the stock-index warrant agreement or stock-index warrant certificate including, without limitation, any duty or responsibility to initiate any proceedings at law or otherwise or to make any demand upon UTC (Section 5.02). Owners may, without the consent of the stock-index warrant agent, enforce by appropriate legal action, on their own behalf, their right to exercise, and to receive payment for, their stock-index warrants (Section 3.01). Except as may otherwise be provided in the applicable prospectus supplement, each issue of stock-index warrants and the applicable stock-index warrant agreement will be governed by and construed in accordance with the law of the State of New York (Section 6.05).

---

**Table of Contents**

**DESCRIPTION OF CAPITAL STOCK**

UTC's authorized capital stock consists of 4,000,000,000 shares of common stock, par value \$1.00 per share, and 250,000,000 shares of preferred stock, par value \$1.00 per share. The following briefly summarizes the material terms of UTC's common stock, preferred stock, restated certificate of incorporation and restated bylaws. These summaries do not describe every aspect of these securities and documents and are subject, and are qualified in their entirety by reference, to all the provisions of the restated certificate of incorporation and restated bylaws. Our restated certificate of incorporation and our amended and restated bylaws are incorporated by reference in the registration statement of which this prospectus forms a part. See "Where You Can Find More Information" for information on how to obtain a copy of these documents.

**Common Stock**

UTC's common stock is listed on the New York Stock Exchange under the symbol "UTX". As of March 31, 2012 there were 911,358,152 shares of common stock outstanding, all of which are fully paid and nonassessable.

Common stockholders are entitled to one vote for each share held on all matters submitted to a vote of stockholders. For the purpose of electing directors, common stockholders have cumulative voting rights. This means that each common stockholder has a number of votes equal to the number of shares of common stock held by that stockholder multiplied by the number of directors to be elected. A common stockholder may cast all votes for a single director or may distribute them among two or more of the directors to be elected.

Common stockholders are entitled to share equally in the dividends, if any, that may be declared by the board of directors out of funds that are legally available to pay dividends, but only after payment of any dividends required to be paid on outstanding preferred stock. Upon any voluntary or involuntary liquidation, dissolution or winding up of UTC, the common stockholders will be entitled to share ratably in all assets of UTC remaining after we pay:

all of our debts and other liabilities and

any amounts we may owe to the holders of our preferred stock.

Common stockholders do not have any preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of common stockholders are subject to the rights of the shareholders of any series of preferred stock that we have designated and issued or that we may designate and issue in the future.

Delaware law and our bylaws permit us to issue uncertificated shares of common stock. However, holders of uncertificated shares of our common stock may request certificates representing their ownership of common stock.

**Preferred Stock**

As noted above, the rights, preferences and privileges of common stockholders may be affected by the rights, preferences and privileges granted to holders of preferred stock. For this reason, you should be aware that UTC's board of directors has the authority, without further action by the stockholders, to issue shares of preferred stock in one or more series, and to fix the rights, preferences and privileges of each series, which may be greater than the rights of the common stock. It is not possible to state the actual effect of the issuance of any additional series of preferred stock upon the rights of common stockholders until the board of directors determines the specific rights of the holders of that series. However, the effects might include, among other things:

restricting dividends on the common stock;

diluting the voting power of the common stock;



## Table of Contents

impairing the liquidation rights of the common stock; or

delaying or preventing a change in control of UTC without further action by the stockholders.

As of April 27, 2012, UTC had no shares of preferred stock outstanding.

### **Charter and Bylaw Provisions**

At each annual meeting of stockholders, the entire board of directors is elected for a term of one year. UTC's restated bylaws provide that the board of directors may, from time to time, designate the number of directors; however, the number may not be less than 10 nor more than 19. Vacancies on the board resulting from an increase in the number of directors may generally be filled by a vote of the majority of the directors then in office, even if less than a quorum.

UTC's restated certificate of incorporation includes provisions eliminating the personal liability of our directors for monetary damages resulting from breaches of their fiduciary duty to the extent permitted by Delaware law. The restated bylaws include provisions indemnifying our directors, officers and employees to the fullest extent permitted by Delaware law including under circumstances in which indemnification is otherwise discretionary. The restated bylaws additionally include provisions relating to reimbursement by UTC of expenses reasonably incurred by our current and former directors and officers in advance of the final disposition of any such proceeding, and permitting the Chief Executive Officer or the General Counsel and the Chief Financial Officer acting together to reimburse the expenses of employees, agents and fiduciaries in advance of the final disposition of any such proceeding.

UTC's restated bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election of directors, other than nominations made by or at the direction of UTC's board of directors. In addition, special meetings of stockholders may be called only by the board of directors, the chairman of the board of directors or the Chief Executive Officer.

The restated certificate of incorporation contains a fair price provision, providing that certain business combinations with any interested stockholder or affiliate of an interested stockholder may not be consummated without the affirmative vote of at least 80% of the votes entitled to be cast by the holders of the then-outstanding shares of capital stock of UTC entitled to vote generally in the election of directors, voting as a single class. The term interested stockholder, as defined in the restated certificate of incorporation, generally means a person who owns at least 10% of the voting power of UTC's voting stock.

The business combinations to which the fair price provision applies include:

a merger or consolidation with an interested stockholder;

the sale or other disposition of assets having a fair market value of \$25,000,000 or more to an interested stockholder;

the issuance or transfer of securities having an aggregate fair market value of \$25,000,000 or more by UTC or any subsidiary of UTC to an interested stockholder;

the adoption of a plan of liquidation or dissolution proposed by or on behalf of an interested stockholder; and

any reclassification of securities, recapitalization or other transaction which increases, directly or indirectly, the proportionate share holdings of an interested stockholder.

A significant purpose of the fair price provision is to deter a purchaser from using two-tiered pricing and similar unfair or discriminatory tactics in an attempt to acquire UTC. The affirmative vote of the holders of at least 80% of the voting power of voting stock of UTC is required to amend or repeal the fair price provision or adopt any provision inconsistent with it.



## **Table of Contents**

Under Delaware law, the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. As described above, the affirmative vote of the holders of at least 80% of the voting power of the voting stock of UTC is required to amend or repeal certain provisions of UTC's restated certificate of incorporation.

Certain of the provisions of UTC's restated certificate of incorporation and restated bylaws discussed above could discourage a proxy contest or the acquisition of control of a substantial block of our stock. These provisions could also have the effect of discouraging a third party from making a tender offer or otherwise attempting to obtain control of UTC, even though an attempt to obtain control of UTC might be beneficial to UTC and its stockholders.

### **Change of Control**

Section 203 of the Delaware General Corporation Law, under certain circumstances, may make it more difficult for a person who is an Interested Stockholder, as defined in Section 203, to effect various business combinations with a corporation for a three-year period. Under Delaware law, a corporation's certificate of incorporation or bylaws may exclude a corporation from the restrictions imposed by Section 203. However, UTC's restated certificate of incorporation and restated bylaws do not exclude us from these restrictions, and these restrictions apply to us.

### **DESCRIPTION OF EQUITY UNITS AND STOCK PURCHASE CONTRACTS**

UTC may issue equity units consisting of a stock purchase contract and debt securities or debt or equity obligations of third parties, including U.S. Treasury securities, in each case securing holders' obligations to purchase shares of our common stock under the stock purchase contracts. The stock purchase contracts may require us to make periodic payments to holders of the equity units, or vice versa, and such payments may be unsecured or prefunded and may be paid on a current or on a deferred basis. The stock purchase contracts may require holders to secure their obligations thereunder in a specified manner, and, in certain circumstances, we may deliver newly issued prepaid stock purchase contracts upon release to a holder of any collateral securing such holder's obligations under the original stock purchase contract. Any one or more of the above securities, shares of our common stock or the stock purchase contracts or other collateral may be pledged as security for the holders' obligations to purchase or sell, as the case may be, the shares of our common stock under the stock purchase contracts. The stock purchase contracts may also allow the holders, under certain circumstances, to obtain the release of the security for their obligations under such contracts by depositing with the collateral agent as substitute collateral U.S. Treasury securities with a principal amount at maturity equal to the collateral so released or the maximum number of shares deliverable by such holders under stock purchase contracts requiring the holders to sell shares of our common stock to us. The stock purchase contracts may include, without limitation, contracts obligating holders to purchase from us, and obligating us to sell to holders, a fixed or varying number of shares of our common stock at a future date or dates. The consideration per share of our common stock may be fixed at the time that the stock purchase contracts are issued or may be determined by reference to a specific formula set forth in the stock purchase contracts. Any stock purchase contract may include anti-dilution provisions to adjust the number of shares issuable pursuant to such stock purchase contract upon the occurrence of certain events.

### **LEGAL OWNERSHIP**

In this prospectus and in any applicable prospectus supplement, when we refer to the holders of securities as being entitled to specified rights or payments, we mean only the actual legal holders of the securities. While you will be the holder if you hold a security registered in your name, more often than not the holder actually will be a broker, bank or other financial institution or, in the case of a global security, the depository. Our obligations, as well as the obligations of the trustee, any warrant agent, any transfer agent, any registrar and any third parties employed by us, the trustee, any warrant agent, any transfer agent and any registrar, run only to persons who are registered as holders of UTC securities, except as may be specifically provided for in a warrant agreement, warrant certificate or

## **Table of Contents**

other contract governing the securities. For example, once we make payment to the registered holder, we have no further responsibility for the payment even if that holder is legally required to pass the payment along to you but does not do so.

### **Street Name and Other Indirect Holders**

Holding securities in accounts at banks, brokers or other financial institutions is called holding in street name. If you hold UTC securities in street name, we will recognize only the bank or broker, or the financial institution the bank or broker uses to hold the securities, as a holder. These intermediary banks, brokers, other financial institutions and depositaries pass along principal, interest, dividends and other payments, if any, on the securities, either because they agree to do so in their customer agreements or because they legally are required to do so. This means that if you are an indirect holder, you will need to coordinate with the institution through which you hold your interest in a security in order to determine how the provisions involving holders described in this prospectus and any applicable prospectus supplement actually will apply to you. For example, if the debt security in which you hold a beneficial interest in street name can be repaid at the option of the holder, you cannot redeem it yourself by following the procedures described in the prospectus supplement relating to that security. Instead, you would need to cause the institution through which you hold your interest to take those actions on your behalf. Your institution may have procedures and deadlines different from or additional to those described in the applicable prospectus supplement.

If you hold UTC securities in street name or through other indirect means, you should check with the institution through which you hold your interest in a security to find out:

how it handles payments and notices with respect to the securities;

whether it imposes fees or charges;

how it handles voting, if applicable;

how and when you should notify it to exercise on your behalf any rights or options that may exist under the securities;

whether and how you can instruct it to send you securities registered in your own name so you can be a direct holder as described below; and

how it would pursue rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests.

### **Book-Entry Issuance**

Unless otherwise specified in the applicable prospectus supplement, UTC securities will be book-entry securities that are cleared and settled through The Depository Trust Company, or DTC, a securities depository. Upon issuance, unless otherwise specified in the applicable prospectus supplement, all book-entry securities of the same series will be represented by one or more fully registered global securities. Each global security will be deposited with, or on behalf of, DTC and will be registered in the name of DTC or a nominee of DTC. DTC will thus be the only registered holder of any such securities and will be considered the sole owner of the securities.

Purchasers may only hold interests in the global securities through DTC if they are participants in the DTC system. Purchasers may also hold interests through a securities intermediary—a bank, brokerage house or other institution that maintains securities accounts for customers—that has an account with DTC or its nominee. DTC will maintain accounts showing the securities holdings of its participants, and these participants will in turn maintain accounts showing the securities holdings of their customers. Some of these customers may themselves be securities intermediaries holding securities for their customers. Thus, each beneficial owner of a book-entry security will hold that security indirectly through a hierarchy of intermediaries, with DTC at the top and the beneficial owner's own securities intermediary at the bottom.





---

**Table of Contents**

The securities of each beneficial owner of a book-entry security will be evidenced solely by entries on the books of the beneficial owner's securities intermediary. The actual purchaser of the securities will generally not be entitled to have the securities represented by the global securities registered in its name and will not be considered the owner. In most cases, a beneficial owner will also not be able to obtain a paper certificate evidencing the holder's ownership of securities. The book-entry system for holding securities eliminates the need for physical movement of certificates. The laws of some jurisdictions require some purchasers of securities to take physical delivery of their securities in definitive form. These laws may impair the ability to transfer book-entry securities.

We may issue UTC common stock in the form of a global security, but you will nevertheless have the right to receive shares of common stock in certificated form registered in your name. You should consult your bank, broker or other financial institution to find out how to receive certificates in your name which represent your interests in common stock so that you will be a direct holder.

In a few special situations described below, a book-entry security representing UTC securities will terminate and interests in it will be exchanged for physical certificates representing the securities. After that exchange, the choice of whether to hold securities directly or in street name will be up to you. You must consult your bank, broker or other financial institution to find out how to have your interests in the securities transferred to your name, so that you will be a direct holder.

Unless we specify otherwise in any applicable prospectus supplement, the special situations for termination of a global security representing UTC securities are:

DTC notifies us that it is unwilling or unable to continue as depository for that global security or if at any time DTC ceases to be a clearing agency registered under the Exchange Act and we are unable to find a qualified replacement for DTC within 90 days;

We in our sole discretion determine to allow that global security to be exchangeable for definitive securities in registered form; or

Any event has occurred and is continuing, which after notice or lapse of time, would become an event of default with respect to those securities. (Defaults are discussed earlier under Description of Debt Securities Events of Default. )

Any global security that is exchangeable will be exchangeable in whole for definitive securities in registered form with the same terms, and in the case of debt securities, in an equal aggregate principal amount. Definitive securities will be registered in the name or names of the person or persons specified by DTC in a written instruction to the registrar of the securities. DTC may base its written instruction upon directions it receives from its participants.

In this prospectus and the applicable prospectus supplement, for book-entry securities, references to actions taken by security holders will mean actions taken by DTC upon instructions from its participants, and references to payments and notices of redemption to security holders will mean payments and notices of redemption to DTC as the registered holder of the securities for distribution to participants in accordance with DTC's procedures.

DTC is a limited-purpose trust company organized under the laws of the State of New York, a banking organization within the meaning of the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing agency registered under the Exchange Act. The rules applicable to DTC and its participants are on file with the SEC.

We will not have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the book-entry securities or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

**Table of Contents**

**PLAN OF DISTRIBUTION**

UTC may sell the securities covered by this prospectus in any of three ways (or in any combination):

to or through underwriters or dealers;

directly to a limited number of purchasers or to a single purchaser; or

through agents.

UTC may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement so indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third party may use securities pledged by UTC or borrowed from UTC or others to settle those sales or to close out any related open borrowings of stock and may use securities received from UTC in settlement of those derivatives to close out any related open borrowings of stock. The third party in such sale transactions will be an underwriter and, if not identified in this prospectus, will be identified in the applicable prospectus supplement (or a post-effective amendment to the registration statement of which this prospectus forms a part).

The accompanying prospectus supplement will set forth the terms of the offering of the securities covered by this prospectus, including:

the name or names of any underwriters, dealers or agents and the amounts of securities underwritten or purchased by each of them;

the initial public offering price of the securities and the proceeds to UTC and any discounts, commissions or concessions allowed or reallocated or paid to dealers; and

any securities exchanges on which the securities may be listed.

Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

Underwriters or the third parties described above may offer and sell the offered securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale (including at market prices prevailing at such time or at prices related to prevailing market prices). If UTC uses underwriters in the sale of any securities, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions described above. The securities may be offered to the public either through underwriting syndicates represented by managing underwriters or directly by underwriters. Generally, the underwriters' obligations to purchase the securities will be subject to customary conditions. The underwriters will be obligated to purchase all of the offered securities if they purchase any of the offered securities.

UTC may sell the securities through agents from time to time. The applicable prospectus supplement will name any agent involved in the offer or sale of the securities and any commissions UTC pays to them. Generally, any agent will be acting on a best efforts basis for the period of its appointment.

UTC may authorize underwriters, dealers or agents to solicit offers by certain purchasers to purchase the securities from UTC at the public offering price set forth in the applicable prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. The contracts will be subject only to those conditions set forth in the applicable prospectus supplement, and the applicable prospectus supplement will set forth any commissions UTC pays for solicitation of these contracts.



## **Table of Contents**

Certain persons participating in this offering may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. Specifically, in connection with underwritten offerings of the offered securities and in accordance with applicable law and industry practice, the underwriters may over-allot and may bid for, and purchase, the securities in the open market.

Agents, underwriters and other third parties described above that participate in the distribution of the offered securities may be underwriters as defined in the Securities Act, and any discounts or commissions they receive from UTC and any profit on their resale of the securities may be treated as underwriting discounts and commissions under the Securities Act. UTC may have agreements with the agents, underwriters and those other third parties to indemnify them against specified civil liabilities, including liabilities under the Securities Act or to contribute to payments they may be required to make in respect of those liabilities. Agents, underwriters and those other third parties may engage in transactions with or perform services for UTC in the ordinary course of their businesses.

In compliance with guidelines of the Financial Industry Regulatory Authority, or FINRA, the maximum consideration or discount to be received by any FINRA member will not exceed 8% of the aggregate amount of the securities offered pursuant to this prospectus and any accompanying prospectus supplement.

### **VALIDITY OF THE SECURITIES**

The validity of the unsubordinated debt securities, junior subordinated debt securities, debt warrants, currency warrants, stock-index warrants, common stock, stock purchase contracts and equity units have been passed upon for UTC by Wachtell, Lipton, Rosen & Katz, New York, New York. In connection with any offering, the validity of the securities described in this prospectus will be passed upon for any underwriters or agents, as the case may be, by Sullivan & Cromwell LLP, New York, New York.

### **INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The financial statements, financial statement schedule and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this prospectus by reference to our Annual Report on Form 10-K for the year ended December 31, 2011 have been so incorporated in reliance on the reports of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

We maintain a web site at <http://www.utc.com> that contains information regarding our company, including copies of reports, proxy statements and other information we file with the SEC. Our web site, and the information contained on that site, or linked to that site, are not incorporated by reference into this prospectus and do not constitute a part of this prospectus.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by

**Table of Contents**

reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act prior to the termination of the offering of the securities described in this prospectus (other than, in each case, unless otherwise indicated, documents or information deemed to have been furnished and not filed in accordance with SEC rules).

Annual Report on Form 10-K for the year ended December 31, 2011.

Current Reports on Form 8-K filed on February 17, 2012, March 15, 2012 and April 13, 2012.

Proxy Statement filed on February 24, 2012 pursuant to Section 14 of the Securities Exchange Act of 1934, as amended. You may request a copy of these filings at no cost, by writing or telephoning us at the following address:

Charles D. Gill

Senior Vice President and General Counsel

United Technologies Corporation

One Financial Plaza

Hartford, Connecticut

06103 (860) 728-7000

**We are responsible for the information contained and incorporated by reference in this prospectus, any accompanying prospectus supplement, and in any related free-writing prospectus we prepare or authorize. We have not authorized anyone to give you any other information, and we take no responsibility for any other information that others may give you. We are not making an offer to sell or seeking offers to buy these debt securities, warrants, common stock, stock purchase contracts and/or equity units in any jurisdiction where the offer or sale is not permitted. You should not assume that the information in this prospectus, any accompanying prospectus supplement or in any related free writing prospectus we prepare or authorize is accurate as of any date other than the date of the applicable document.**

Table of Contents

\$

\$ % Notes due 2015

\$ % Notes due 2017

\$ % Notes due 2022

\$ % Notes due 2042

\$ Floating Rate Notes due 2013

\$ Floating Rate Notes due 2015

Prospectus Supplement

May , 2012

*Joint Book-Running Managers*

**BofA Merrill Lynch**

**HSBC**

**J.P. Morgan**

**BNP PARIBAS**

**Citigroup**

**Deutsche Bank Securities**

**Goldman, Sachs & Co.**

**RBS**

