

CubeSmart  
Form 424B5  
October 02, 2014

Use these links to rapidly review the document

[TABLE OF CONTENTS](#)

[TABLE OF CONTENTS](#)

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities Offered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Aggregate Offering Price(2)</b>	<b>Amount of Registration Fee(1)</b>
Common Shares of Beneficial Interest	10,000,000	\$178,700,000	\$20,764.94

(1) The Company has previously paid \$1,400.88 in registration fees on 595,145 shares in connection with the prospectus supplement filed on May 5, 2014 to the base prospectus contained in an automatic shelf registration statement on Form S-3 (No. 333-194661) filed with the SEC on March 18, 2014.

(2) Estimated solely for the purpose of calculating the registration fee. Pursuant to Rule 457(c) under the Securities Act of 1933, as amended (the "Securities Act"), the proposed maximum offering price per share and the proposed maximum aggregate offering price have been determined on the basis of the average of the high and low prices reported on the New York Stock Exchange on September 29, 2014.

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**PROSPECTUS SUPPLEMENT**  
**(To prospectus dated March 18, 2014)**

**10,595,145 Shares**

## **Common Shares of Beneficial Interest**

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We and CubeSmart, L.P., our operating subsidiary, have entered into separate equity distribution agreements with each of Wells Fargo Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BMO Capital Markets Corp., Jefferies LLC and RBC Capital Markets, LLC (collectively, the "Sales Agents"), as amended (the "equity distribution agreements") relating to our common shares of beneficial interest, par value \$0.01 per share ("common shares") offered by this prospectus supplement and the accompanying prospectus. In accordance with the terms of the equity distribution agreements, we may offer and sell from time to time up to 30,000,000 common shares through the Sales Agents. Prior to this prospectus supplement, we had already sold approximately 19,404,855 common shares under the equity distribution agreements, resulting in a total of 10,595,145 common shares that remain available for offer and sale under the equity distribution agreements, of which 595,145 shares were previously registered but unsold under a prospectus supplement dated May 5, 2014 to the prospectus dated March 18, 2014.

Our common shares are listed on the New York Stock Exchange (the "NYSE") under the symbol "CUBE." The last reported sale price of our common shares on the NYSE on October 1, 2014 was \$18.01 per share.

Sales of our common shares, if any, under this prospectus supplement and the accompanying prospectus, may be made by means of ordinary brokers' transactions on the NYSE, in negotiated transactions or in transactions that are deemed to be "at the market" offerings as defined in Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), including sales made to or through a market maker other than on an exchange, at prices related to the prevailing market prices or at negotiated prices subject to certain minimum prices. Each Sales Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices, to sell the common shares on mutually agreed terms between each applicable Sales Agent and us.

Under the terms of each equity distribution agreement, we also may sell our common shares to each of the Sales Agents, as principal for its own account, at a price to be agreed upon at the time of sale. If we sell shares to any of the Sales Agents, as principal, we will enter into a separate sales agreement with such Sales Agent and we will describe the material terms of the agreement in a separate prospectus supplement or pricing supplement.

Each Sales Agent will receive from us a commission in an amount up to 1.5% of the gross sales price of all shares sold through it as Sales Agent under the applicable equity distribution agreement.

Our common shares are subject to certain restrictions on ownership and transfer designed to preserve our qualification as a real estate investment trust for federal income tax purposes, among other purposes. See "Description of CubeSmart's Capital Shares Restrictions on Ownership and Transfer" in the accompanying prospectus.

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**Investing in our common shares involves a high degree of risk. See "Forward-Looking Statements" beginning on page S-ii of this prospectus supplement, "Risk Factors" beginning on page S-4 of this prospectus supplement and "Risk Factors" set forth in our most recent Annual Report on Form 10-K and subsequently filed periodic reports which are incorporated by reference in this prospectus supplement and in the accompanying prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus supplement or the accompanying prospectus. Any representation to the contrary is a criminal offense.**

**Wells Fargo Securities**

**BofA Merrill Lynch**

**BMO Capital Markets**

**Jefferies**

**RBC Capital Markets**

**The date of this prospectus supplement is October 2, 2014.**

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## TABLE OF CONTENTS

### PROSPECTUS SUPPLEMENT

<u>About this Prospectus Supplement</u>	<u>S-ii</u>
<u>Forward-Looking Statements</u>	<u>S-ii</u>
<u>Summary</u>	<u>S-1</u>
<u>Risk Factors</u>	<u>S-4</u>
<u>Use of Proceeds</u>	<u>S-6</u>
<u>Plan of Distribution</u>	<u>S-7</u>
<u>Legal Matters</u>	<u>S-9</u>
<u>Experts</u>	<u>S-9</u>
<u>Incorporation of Certain Information by Reference</u>	<u>S-9</u>
<u>Where You Can Find More Information</u>	<u>S-10</u>

### PROSPECTUS

<u>About this Prospectus</u>	<u>1</u>
<u>Where You Can Find More Information</u>	<u>1</u>
<u>Incorporation of Certain Information by Reference</u>	<u>1</u>
<u>Forward-Looking Statements</u>	<u>3</u>
<u>CubeSmart And The Operating Partnership</u>	<u>5</u>
<u>Risk Factors</u>	<u>6</u>
<u>Use of Proceeds</u>	<u>6</u>
<u>Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preference Dividends</u>	<u>7</u>
<u>Description of CubeSmart's Capital Shares</u>	<u>8</u>
<u>Description of Depositary Shares</u>	<u>17</u>
<u>Description of Subscription Rights</u>	<u>20</u>
<u>Description of Warrants</u>	<u>21</u>
<u>Description of The Debt Securities</u>	<u>23</u>
<u>Material Federal Income Tax Considerations</u>	<u>38</u>
<u>Plan of Distribution</u>	<u>71</u>
<u>Legal Matters</u>	<u>73</u>
<u>Experts</u>	<u>73</u>

You should rely only on the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus or any applicable free writing prospectus filed with the Securities and Exchange Commission (the "SEC") in connection with this offering. We have not, and the Sales Agents have not, authorized anyone to provide you with additional or different information. If any person provides you with additional or different information, you should not rely on it. Neither we nor any Sales Agent is making an offer to sell common shares in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, any such free writing prospectus and the documents incorporated by reference herein and therein is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.

Table of Contents

**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of this offering and also adds to, or updates, information contained in the accompanying prospectus and the documents incorporated by reference into this prospectus supplement and the accompanying prospectus. The second part, the accompanying prospectus dated March 18, 2014, gives more general information about our common shares and other securities we may offer from time to time, some of which may not apply to this offering.

You should carefully read this prospectus supplement, the accompanying prospectus and the additional information incorporated by reference herein before investing in our common shares. See "Incorporation of Certain Information By Reference" and "Where You Can Find More Information" in this prospectus supplement and in the accompanying prospectus. These documents contain important information that you should consider before making your investment decision. This prospectus supplement and the accompanying prospectus contain the terms of this offering of common shares. This prospectus supplement may add, update or change information contained in or incorporated by reference in the accompanying prospectus. To the extent that there is a conflict between the information contained in this prospectus supplement, on the one hand, and the information contained in the accompanying prospectus or in a filing we make with the SEC under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the date hereof, on the other hand, the information in this prospectus supplement shall control. In addition, any statement in a filing we make with the SEC after the date of this prospectus supplement that adds to, updates or changes information contained in this prospectus supplement, the accompanying prospectus or an earlier filing we made with the SEC shall be deemed to modify and supersede such information in this prospectus supplement, the accompanying prospectus or the earlier filing.

As used in this prospectus supplement, unless the context otherwise requires, references to "CubeSmart" refer to CubeSmart, a Maryland real estate investment trust, or "REIT;" references to the "Operating Partnership" refer to CubeSmart, L.P., a Delaware limited partnership; and references to "we," "us," "our" or similar expressions refer collectively to CubeSmart and its consolidated subsidiaries (including the Operating Partnership).

**FORWARD-LOOKING STATEMENTS**

This prospectus supplement and the accompanying prospectus, together with other statements and information publicly disseminated by CubeSmart and the Operating Partnership, contain certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Exchange Act. Forward-looking statements include statements concerning our plans, objectives, goals, strategies, future events, future revenues or performance, capital expenditures, financing needs, plans or intentions relating to acquisitions and other information that is not historical information. In some cases, forward-looking statements can be identified by terminology such as "believes," "expects," "estimates," "may," "will," "should," "anticipates," or "intends" or the negative of such terms or other comparable terminology, or by discussions of strategy. Such statements are based on assumptions and expectations that may not be realized and are inherently subject to risks, uncertainties and other factors, many of which cannot be predicted with accuracy and some of which might not even be anticipated. Although we believe the expectations reflected in these forward-looking statements are based on reasonable assumptions, future events and actual results, performance, transactions or achievements, financial and otherwise, may differ materially from the results, performance, transactions or achievements expressed or implied by the forward-looking statements. As a result, you should not rely on or construe any forward-looking statements in this prospectus supplement or the accompanying prospectus, or which management may make orally or in writing from time to time, as predictions of future events or as guarantees of future performance. We caution you not to place undue reliance on forward-looking statements, which speak only as of the date of this prospectus supplement or as of the dates otherwise indicated in the statements. All of our forward-looking statements, including

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### Table of Contents

those in this prospectus supplement or the accompanying prospectus, are qualified in their entirety by this statement.

There are a number of risks and uncertainties that could cause our actual results to differ materially from the forward-looking statements contained in, contemplated by or incorporated by reference in this prospectus supplement or the accompanying prospectus. Any forward-looking statements should be considered in light of the risks and uncertainties referred to in this prospectus supplement, the accompanying prospectus, our most recent Annual Report on Form 10-K and subsequently filed reports with the SEC, which are incorporated by reference in this prospectus supplement and in the accompanying prospectus. These risks include, but are not limited to, the following:

national and local economic, business, real estate and other market conditions;

the competitive environment in which we operate, including our ability to maintain or raise occupancy and rental rates;

the execution of our business plan;

the availability of external sources of capital;

financing risks, including the risk of over-leverage and the corresponding risk of default on our mortgage and other debt and potential inability to refinance existing indebtedness;

increases in interest rates and operating costs;

counterparty non-performance related to the use of derivative financial instruments;

our ability to maintain CubeSmart's qualification as a REIT for federal income tax purposes;

acquisition and development risks, including the inability to close the Acquisitions (as defined below);

increases in taxes, fees, and assessments from state and local jurisdictions;

changes in real estate and zoning laws or regulations;

risks related to natural disasters;

potential environmental and other liabilities;

other factors affecting the real estate industry generally or the self-storage industry in particular; and

other risks identified in our most recent Annual Report on Form 10-K and, from time to time, in other reports that we file with the SEC or in other documents that we publicly disseminate.

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Given these uncertainties and risks, prospective investors are cautioned not to place undue reliance on these forward-looking statements. Except with respect to such material changes to our risk factors as may be reflected from time to time in our quarterly filings or as otherwise required by law, we are under no obligation to, and expressly disclaim any obligation to, update or revise any forward-looking statements included or incorporated by reference in this prospectus supplement or the accompanying prospectus, whether as a result of new information, future events or otherwise. Because of the factors referred to above, the future events discussed in or incorporated by reference in this prospectus supplement or the accompanying prospectus may not occur and actual results, performance or achievement could differ materially from that anticipated or implied in the forward-looking statements.

S-iii

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Table of Contents

**SUMMARY**

*The information below is only a summary of more detailed information included elsewhere or incorporated by reference in this prospectus supplement and the accompanying prospectus. This summary does not contain all the information that is important to you or that you should consider before you invest in our common shares. The other information is important, so please read carefully this prospectus supplement and the accompanying prospectus, as well as the information incorporated by reference, before you invest in our common shares.*

**Overview**

CubeSmart is a self-administered and self-managed real estate investment trust, or "REIT," focused primarily on the ownership, operation, management, acquisition and development of self-storage facilities in the United States.

**Facilities**

As of June 30, 2014, we owned 387 self-storage facilities located in 21 states and in the District of Columbia containing an aggregate of approximately 26.1 million rentable square feet. In addition, as of June 30, 2014, we managed 159 facilities for third parties, bringing the total number of facilities we owned and/or managed at June 30, 2014 to 546.

As of June 30, 2014 we owned facilities in the District of Columbia and the following 21 states: Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Utah and Virginia. In addition, as of June 30, 2014, we managed facilities for third parties in the following 23 states: Alabama, Arizona, California, Colorado, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

Our self-storage facilities are located in major metropolitan and rural areas and we have numerous tenants per facility. No single tenant represents a significant concentration of revenues.

**Recent Developments**

As previously disclosed in our Current Report on Form 8-K, filed on August 25, 2014, the Operating Partnership entered into an Agreement for Purchase and Sale with certain limited liability companies controlled by HSRE REIT I and HSRE REIT II, each Maryland real estate investment trusts (collectively, the "Sellers"), to acquire (the "HSRE Acquisition") 26 self-storage facilities for an aggregate purchase price of \$223.0 million plus customary closing costs. The HSRE Acquisition will close in two tranches, which are scheduled to occur no later than October 31, 2014 for 22 of the facilities and no later than March 31, 2015 for the remaining four facilities. In addition to the HSRE Acquisition, the Operating Partnership has entered into agreements for purchase and sale to acquire nine facilities (collectively with the HSRE Acquisition, the "Acquisitions") for an aggregate purchase price of \$153.7 million plus customary closing costs, which are scheduled to occur no later than December 31, 2015.

The material terms of the purchase agreements for the Acquisitions contain customary representations, warranties and covenants of the contracting parties. The Operating Partnership is entitled to inspect the facilities with respect to environmental, physical condition, title and survey matters. Subject to certain conditions and limitations, the Operating Partnership may disapprove the facilities and terminate any of the purchase agreements based on such due diligence results, in which event the deposit for such acquisition will be returned to the Operating Partnership. As a result, there can be no assurance that the Acquisitions will close on the terms described above or at all. The aggregate value of the deposits made by the Operating Partnership in connection with the Acquisitions is \$14.5 million.



## Edgar Filing: CubeSmart - Form 424B5

### Table of Contents

Subsequent to June 30, 2014, the Operating Partnership acquired three facilities for an aggregate purchase price of \$38.9 million.

Since June 30, 2014, we have sold 6,593,993 common shares pursuant to our at-the-market offering program at an average price of \$18.63 per share, raising net proceeds, after sales commissions, fees and expenses, of approximately \$121.0 million. We used the net proceeds from these sales for general business purposes, including facility acquisitions, capital expenditures, repayment of borrowings under our revolving credit facility and other corporate purposes.

### *Corporate*

We were formed in July 2004 as a Maryland REIT. We own our assets and conduct our business through the Operating Partnership and its subsidiaries. We control the Operating Partnership as its sole general partner and, as of June 30, 2014, we owned an approximately 98.5% interest in the Operating Partnership. The Operating Partnership has been engaged in virtually all aspects of the self-storage business, including the development, acquisition, management, ownership and operation of self-storage facilities.

Our executive offices are located at 5 Old Lancaster Road, Malvern, Pennsylvania 19355 and our telephone number is (610) 535-5700.

Table of Contents

**THE OFFERING**

Issuer	CubeSmart.
Common shares offered by us	Up to 30,000,000 common shares. Prior to this prospectus supplement, we had already sold approximately 19,404,855 common shares under the equity distribution agreements, resulting in 10,595,145 common shares remaining available for sale thereunder.
Manner of Offering	"At the market" offerings that may be made from time to time through Well Fargo Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BMO Capital Markets Corp., Jefferies LLC and RBC Capital Markets, LLC as Sales Agents using commercially reasonable efforts, consistent with their normal trading and sales practices, on mutually agreed terms between each applicable Sales Agent and us. See "Plan of Distribution" in this prospectus supplement.
Use of Proceeds	We intend to contribute the net proceeds from this offering to the Operating Partnership in exchange for partnership units of the Operating Partnership having identical economic terms. The Operating Partnership intends to use the net proceeds from this offering for general business purposes, including, without limitation, repayment of outstanding debt, facility acquisitions, including the funding of the Acquisitions if they close, developments, joint ventures, capital expenditures, working capital and other general corporate purposes. See "Use of Proceeds" in this prospectus supplement.
Restrictions on Ownership and Transfer	Our charter imposes restrictions on ownership and transfer of our common shares to assist us in complying with certain federal income tax requirements applicable to real estate investment trusts, among other purposes. See "CubeSmart's Capital Shares Restrictions on Ownership and Transfer" in the accompanying prospectus.
NYSE Symbol	"CUBE"
Risk Factors	Investing in our common shares involves a high degree of risk. See "Forward-Looking Statements" beginning on page S-ii of this prospectus supplement, "Risk Factors" beginning on page S-4 of this prospectus supplement and "Risk Factors" set forth in our most recent Annual Report on Form 10-K and subsequently filed periodic reports which are incorporated by reference in this prospectus supplement and in the accompanying prospectus.

For additional information concerning our common shares, see "Description of CubeSmart's Capital Shares" in the accompanying prospectus. For a description of the U.S. federal income tax considerations relating to the purchase, ownership and disposition of our common shares, see "Material Federal Income Tax Considerations" in the accompanying prospectus.

Table of Contents

**RISK FACTORS**

*An investment in our common shares involves a high degree of risk. In consultation with your own financial and legal advisers, you should consider carefully, among other matters, the factors set forth below as well as the risk factors set forth in our most recent Annual Report on Form 10-K and any subsequently filed periodic reports that are incorporated by reference in this prospectus supplement and in the accompanying prospectus before deciding whether an investment in our common shares is suitable for you. Additional risks not presently known to us or that we currently deem immaterial may also adversely affect our business operations. These risks could materially adversely affect, among other things, our business, financial condition or results of operations, and could cause the trading price of our common shares to decline, resulting in the loss of all or part of your investment.*

**Risks Related to the Offering**

*A large number of our common shares available for future sale could adversely affect the market price of our common shares and may be dilutive to current shareholders.*

The sales of a substantial number of our common shares, or the perception that such sales could occur, could adversely affect the price for our common shares. Our Board of Trustees may authorize the issuance of additional authorized but unissued common shares or other authorized but unissued securities at any time, including pursuant to equity incentive plans. In addition, we have filed a registration statement with the SEC, allowing us to offer, from time to time and at any time, an indefinite amount of equity securities (including common or preferred shares), subject to market conditions and other factors. Accordingly, we may, from time to time and at any time, seek to offer and sell our equity securities, including sales of our common shares in this offering, based upon market conditions and other factors.

*This offering may have a dilutive effect on our earnings per share and funds from operations per share.*

This offering may have a dilutive effect on our earnings per share and funds from operations per share after giving effect to the issuance of our common shares in this offering and the receipt of the expected net proceeds. The actual amount of dilution from this offering, or from any future offering of our equity securities, cannot be determined at this time. The market price of our common shares could decline as a result of sales of a large number of our common shares in the market pursuant to this offering, or otherwise, or as a result of the perception or expectation that such sales could occur.

*Future offerings of debt or equity securities may adversely affect the market price of our common shares.*

In the future, we may attempt to increase our capital resources by making offerings of debt or additional offerings of equity securities, including commercial paper, medium-term notes, senior or subordinated notes, and classes of preferred shares. If we decide to issue senior securities in the future, it is likely that they will be governed by an indenture or other instrument containing covenants restricting our operating flexibility. Holders of senior securities may be granted specific rights, including the right to hold a perfected security interest in certain of our assets, the right to accelerate payments due under an indenture, rights to restrict dividend payments, and rights to require approval to sell assets. Additionally, any convertible or exchangeable securities that we issue in the future may have rights, preferences, and privileges more favorable than those of our common shares and may result in dilution of owners of our common shares. We and, indirectly, our shareholders, will bear the cost of issuing and servicing such securities. Upon liquidation, holders of our debt securities and preferred shares, and lenders with respect to other borrowings, will receive a distribution of our available assets prior to the holders of our common shares. Additional equity offerings may dilute the holdings of our existing shareholders or reduce the market price of our common shares, or both. Our preferred shares, if issued, could have a preference on liquidating distributions or a preference on dividend payments that could limit our ability

Table of Contents

to make a dividend distribution to the holders of our common shares. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing, or nature of our future offerings. Thus, holders of our common shares bear the risk of our future offerings reducing the market price of our common shares and diluting their shareholdings in us.

**Risks Related to the Acquisitions**

***We may not complete the Acquisitions and our shareholders may not realize any benefits from the proposed transactions.***

The purchase agreements for the Acquisitions contain closing conditions that need to be satisfied before the Acquisitions can be consummated. The satisfaction of many of these conditions is outside of our control, and we therefore cannot assure you that any of the Acquisitions will be consummated. These conditions include, among other things, satisfactory examination of the title to the facilities, the ability to obtain title insurance and customary closing conditions.

Moreover, in the event we are unable to complete the Acquisitions, we will have incurred significant legal, accounting and other transaction costs in connection with the Acquisitions without realizing the expected benefits. In addition, following September 29, 2014, if we breach any of our representations or warranties set forth in the purchase agreement for the HSRE Acquisition through intentional acts or omissions in violation of the terms thereof, we may be required to pay certain amounts held in escrow as liquidated damages.

***Depending on the exact combination of financing sources we use to fund the Acquisitions, our key financial indicators may be negatively affected.***

We expect to fund the Acquisitions through a combination of cash on hand and advances under the Operating Partnership's undrawn portion of our \$300.0 million unsecured credit facility. We cannot assure you of which combination of funding sources we ultimately may use. Depending on the financing arrangements, our indebtedness may increase substantially and our interest and fixed charge coverage ratios and other key financial indicators may be negatively affected.

***We may not be able to successfully integrate the facilities to be acquired as part of the Acquisitions into our operations, which would adversely affect our results of operations and financial conditions.***

The success of the Acquisitions will depend, in part, on our ability to:

efficiently integrate the facilities being acquired in the Acquisitions into our organization; and

apply our business, operating, marketing, administrative, financial and accounting strategies and controls to these facilities.

If we are unable to successfully integrate these facilities into our operations, our results of operations and financial condition may be adversely affected.

***We may be responsible for unknown material liabilities associated with the HSRE Acquisition which would adversely affect our business and for which we have limited recourse against the Sellers.***

We may be exposed to liabilities relating to the facilities comprising the HSRE Acquisition that we may fail to discover prior to September 29, 2014 or that may arise after the HSRE Acquisition is completed. These liabilities may include liabilities that arise from litigation or non-compliance with environmental laws by prior owners for which we, as a successor owner, may be responsible. In the event that the Sellers breach any of their representations or warranties, our sole and exclusive remedy would be to pursue a claim against the Sellers for actual damages which may not exceed \$500,000, subject to a minimum of \$50,000 and other limitations. Such limited recourse may not be sufficient or available to cover our liabilities in which case our results of operations may be adversely affected.

Table of Contents

**USE OF PROCEEDS**

We intend to contribute the net proceeds from this offering to the Operating Partnership in exchange for partnership units of the Operating Partnership. The Operating Partnership intends to use the net proceeds from this offering for general business purposes, including, without limitation, repayment of debt, facility acquisitions, including the funding of the Acquisitions if they close, developments, joint ventures, capital expenditures, working capital and other general corporate purposes. We own our assets and conduct our operations through the Operating Partnership and its subsidiaries. We control the Operating Partnership as its sole general partner and, as of June 30, 2014, owned an approximate 98.5% interest in the Operating Partnership.

Certain affiliates of Wells Fargo Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BMO Capital Markets Corp and RBC Capital Markets, LLC are lenders and/or agents under our unsecured revolving credit facility and our term loan facilities. Certain affiliates of Wells Fargo Securities, LLC and certain of the other Sales Agents also act as lenders under mortgages on certain of our facilities. To the extent that we use the net proceeds from this offering to repay amounts we have borrowed, may borrow or re-borrow in the future under the unsecured revolving credit facility, term loan facilities or any mortgages, those lenders will receive their pro rata portion of any of the proceeds from this offering that we use to repay any such amounts.

Pending the uses described above, we may invest the net proceeds in short-term, interest-bearing securities or accounts, consistent with our intention to continue to qualify as a REIT.

Table of Contents

**PLAN OF DISTRIBUTION**

We and the Operating Partnership have entered into separate equity distribution agreements with each of Wells Fargo Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BMO Capital Markets Corp., Jefferies LLC and RBC Capital Markets, LLC, as Sales Agents, as amended, relating to our common shares of beneficial interest, par value \$0.01 per share offered by this prospectus supplement and the accompanying prospectus. In accordance with the terms of the equity distribution agreements, we may offer and sell from time to time up to 30,000,000 common shares through the Sales Agents. Prior to this prospectus supplement, we had already sold approximately 19,404,855 common shares under the equity distribution agreements, resulting in a total of 10,595,145 common shares that remain available for offer and sale under the equity distribution agreements.

From time to time during the term of the equity distribution agreements, we may deliver a placement notice to one of the Sales Agents specifying the length of the selling period, the amount of common shares to be sold, any limitation on the number of shares that may be sold in any one trading day and the minimum price below which sales may not be made. Upon its acceptance of the placement notice from us, the applicable Sales Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices to solicit offers to purchase our common shares, under the terms and subject to the conditions set forth in the applicable equity distribution agreement, by means of ordinary brokers' transactions on the NYSE, in negotiated transactions or in transactions that are deemed to be "at the market" offerings as defined in Rule 415 under the Securities Act, including sales made to or through a market maker other than on an exchange, at prices related to the prevailing market prices or at negotiated prices subject to certain minimum prices. We may instruct the Sales Agents not to sell our common shares if the sales cannot be effected at or above the price designated by us in any placement notice. We or any of the Sales Agents may suspend the offering of our common shares at any time upon proper notice and subject to other conditions.

Each Sales Agent will provide written confirmation to us no later than the opening of the trading day on the NYSE following the trading day in which our common shares are sold under the applicable equity distribution agreement. Each confirmation will include the number of our common shares sold on the preceding day, the net proceeds to us and the compensation payable by us to the applicable Sales Agent in connection with such sales.

We will pay each Sales Agent a commission for its services in acting as agent in the sale of our common shares. Each Sales Agent will be entitled to compensation in an amount up to 1.5% of the gross sales price of all of our common shares sold through it under an equity distribution agreement. We estimate that the total expenses for the offering, excluding compensation payable to the Sales Agents under the terms of the equity distribution agreements, will not exceed \$200,000.

Upon the terms of each equity distribution agreement, we also may sell common shares to each of the Sales Agents, as principal for its own account, at a price to be agreed upon at the time of sale. If we sell our common shares to any of the Sales Agents, as principal, we will enter into a separate sales agreement with such Sales Agent and we will describe the material terms of the agreement in a separate prospectus supplement or pricing supplement.

Settlement for sales of our common shares will occur on the third trading day following the date on which any sales are made, or on some other date that is agreed upon by us and the applicable Sales Agent in connection with a particular transaction, in return for payment of the net proceeds to us. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

We will report at least quarterly the number of our common shares sold through the Sales Agents under the equity distribution agreements, the net proceeds to us and the compensation paid by us to the Sales Agents in connection with the sale of our common shares.

In connection with the sale of our common shares on our behalf, each Sales Agent may be deemed to be an "underwriter" within the meaning of the Securities Act, and the compensation of the Sales

Table of Contents

Agents may be deemed to be underwriting commissions or discounts. We and the Operating Partnership have agreed to indemnify each of the Sales Agents against specified liabilities, including liabilities under the Securities Act, or to contribute to payments that the Sales Agents may be required to make because of those liabilities.

The offering of our common shares pursuant to the equity distribution agreements will terminate upon the earlier of (1) the sale of all common shares subject to the equity distribution agreements or (2) termination of the equity distribution agreements. The equity distribution agreements may be terminated by each of the respective Sales Agents or us at any time upon three days' notice, and by the respective Sales Agent at any time in certain circumstances, including suspension of trading of our common shares on the NYSE or the occurrence of a material adverse change in our company.

In the ordinary course of business, the Sales Agents and/or their affiliates have engaged, and each of the Sales Agents and/or their affiliates may in the future engage, in commercial banking or investment banking transactions with us and our affiliates for which they have received, and will in the future receive, customary compensation. Certain affiliates of Wells Fargo Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BMO Capital Markets Corp. and RBC Capital Markets, LLC are lenders and/or agents under our unsecured revolving credit facility and our term loan facilities. Certain affiliates of Wells Fargo Securities, LLC and certain of the other Sales Agents also act as lenders under mortgages on certain of our facilities. To the extent that we use the net proceeds from this offering to repay amounts we have borrowed, may borrow or re-borrow in the future under the unsecured revolving credit facility, term loan facilities or any mortgages, those lenders will receive their pro rata portion of any of the proceeds from this offering that we use to repay any such amounts. See "Use of Proceeds."

In addition, in the ordinary course of its business activities, the Sales Agents and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The Sales Agents and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

Table of Contents

**LEGAL MATTERS**

The validity of the common shares offered hereby, as well as certain legal matters relating to us, will be passed upon for us by Pepper Hamilton LLP. Certain legal matters related to the offering will be passed upon for the Sales Agents by Hunton & Williams LLP.

**EXPERTS**

The consolidated financial statements and financial statement schedules of CubeSmart and CubeSmart, L.P. as of December 31, 2013 and 2012 and for each of the years in the three-year period ended December 31, 2013 and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2013 have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

We incorporate information into this prospectus supplement and the accompanying prospectus by reference, which means that we disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus supplement and the accompanying prospectus, except to the extent superseded by information contained herein or by information contained in documents filed with the SEC after the date of this prospectus supplement and the accompanying prospectus. This prospectus supplement and the accompanying prospectus incorporate by reference the documents set forth below that have been previously filed with the SEC (other than, in each case, documents or information deemed to have been "furnished" and not "filed" in accordance with SEC rules):

the Annual Report on Form 10-K of CubeSmart and CubeSmart L.P. for the year ended December 31, 2013;

the Quarterly Reports on Form 10-Q of CubeSmart and CubeSmart L.P. for the quarters ended March 31, 2014 and June 30, 2014;

the Current Reports on Form 8-K of CubeSmart and CubeSmart L.P. filed with the SEC on January 28, 2014, May 5, 2014, May 29, 2014, and August 25, 2014;

the information specifically incorporated by reference into the Annual Report on Form 10-K of CubeSmart and CubeSmart L.P. for the year ended December 31, 2013 from our Definitive Proxy Statement on Schedule 14A filed with the SEC on April 10, 2014;

the description of the capital shares of CubeSmart in our Registration Statement on Form 8-A filed with the SEC on October 19, 2004; and

the description of the 7.75% Series A Cumulative Redeemable Preferred Shares of beneficial interest, par value \$0.01 per share, of CubeSmart in our Registration Statement on Form 8-A filed with the SEC on October 31, 2011.

We also incorporate by reference into this prospectus supplement and the accompanying prospectus additional documents that we may file with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, from the date of this prospectus supplement until all of the securities offered by this prospectus supplement have been sold or we otherwise terminate the offering of these securities; provided, however, that we are not incorporating by reference any additional documents or information "furnished" and not "filed" with the SEC. You may obtain copies of any of these filings by contacting us at the following address and phone number or by contacting the SEC or NYSE as described above. Documents incorporated by reference are available from us without charge, excluding all exhibits unless





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### Table of Contents

an exhibit has been specifically incorporated by reference into this prospectus supplement or the accompanying prospectus, by requesting them in writing, by telephone or via the Internet at:

CubeSmart  
Attention: Investor Relations  
5 Old Lancaster Road  
Malvern, PA 19355  
Phone: (610) 535-5700  
Internet Website: [www.cubesmart.com](http://www.cubesmart.com)

The information contained on our website does not constitute a part of this prospectus supplement or the accompanying prospectus except to the extent otherwise expressly provided for herein and therein, and our website address supplied above is intended to be an inactive textual reference only and not an active hyperlink to our website.

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

We are subject to the informational requirements of the Exchange Act. Accordingly, we file current, quarterly and annual reports, proxy statements and other information with the SEC. You may read and copy these reports, proxy statements and other information at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call 1-800-SEC-0330 for further information on the operation of the SEC's Public Reference Room. Our SEC filings also are available to the public at the Internet website maintained by the SEC at [www.sec.gov](http://www.sec.gov) and from commercial document retrieval services.

We also make available free of charge through our website our filings with the SEC, including our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, definitive proxy statements and Section 16 reports on Forms 3, 4 and 5, as soon as reasonably practicable after we electronically file such reports or amendments with, or furnish them to, the SEC. Our Internet website address is [www.cubesmart.com](http://www.cubesmart.com). The information located on, or hyperlinked or otherwise connected to, our website is not, and shall not be deemed to be, a part of this prospectus supplement or incorporated into any other filings that we make with the SEC. You may also inspect the information that we file with the NYSE, at the offices of the NYSE located at 20 Broad Street, New York, New York 10005.

We have filed with the SEC a registration statement on Form S-3 (Registration File No. 333-194661) covering the common shares offered by this prospectus supplement and the accompanying prospectus. You should be aware that this prospectus supplement and related prospectus do not contain all of the information contained or incorporated by reference in that registration statement and its exhibits and schedules. You may inspect and obtain the registration statement, including exhibits, schedules, reports and other information that we have filed with the SEC, as described in the preceding paragraph. Statements contained in this prospectus supplement concerning the contents of any document we refer you to are not necessarily complete and in each instance we refer you to the applicable document filed with the SEC for more complete information.

Table of Contents

As filed with the Securities and Exchange Commission on March 18, 2014

Registration No. 333-

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**CUBESMART  
CUBESMART, L.P.**

(Exact Name Of Registrant As Specified In Its Charter)

**Maryland  
Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**20-1024732  
34-1837021**  
(I.R.S. Employer  
Identification Number)

**5 Old Lancaster Road  
Malvern, Pennsylvania 19355  
(610) 535-5000**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Timothy M. Martin  
Chief Financial Officer  
5 Old Lancaster Road  
Malvern, Pennsylvania 19355  
(610) 535-5000**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

**Copy to:**

**Michael H. Friedman, Esquire  
Pepper Hamilton LLP  
3000 Two Logan Square  
Philadelphia, Pennsylvania 19103-2799  
(215) 981-4000**

**Approximate Date of Commencement of Proposed Sale to the Public:  
From time to time after this Registration Statement becomes effective.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

### Calculation of Registration Fee

Title of each class of securities to be registered(1)	Aggregate Amount to be registered(2)	Proposed maximum offering price per unit(2)	Proposed maximum aggregate offering price(2)	Amount of registration fee(2)
Common Shares, \$0.01 par value per share				
Preferred Shares, \$0.01 par value per share				
Depository Shares				
Subscription Rights				
Warrants				
Debt Securities(3)				
Guarantees				

(1) The debt securities will be issued by CubeSmart, L.P. The guarantees will be issued by CubeSmart. All other securities registered hereby will be issued by CubeSmart. Securities registered hereby may be offered for U.S. dollars or in foreign currencies or currency units, and may be sold separately or together in units with other securities registered hereby. This Registration Statement covers offers, sales and other distributions of the securities listed in this table from time to time at prices to be determined, as well as preferred shares distributable upon the termination of a deposit arrangement for depository shares so offered, sold or distributed, common shares issuable upon the exchange or conversion of preferred shares so offered, sold or distributed that are exchangeable for or convertible into common shares, and common shares, preferred shares or depository shares issuable upon the exercise of subscription rights or warrants so offered, sold or distributed. This Registration Statement also covers preferred shares, depository shares, common shares, subscription rights and warrants that may be offered, sold or distributed under delayed delivery contracts pursuant to which the counterparty may be required to purchase such securities, as well as such contracts themselves. Such contracts would be issued with the preferred shares, depository shares, common shares, subscription rights and/or warrants. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of common shares, preferred shares, depository shares, subscription rights or warrants.

(2) The information is not required to be included pursuant to Form S-3 General Instruction II.E. An indeterminate number of securities of each identified class is being registered that may be issued from time to time at indeterminate prices. The proposed maximum offering price for securities being registered will be determined from time to time by the registrants in connection with the issuance of the securities being registered. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities or that are issued together with other securities registered hereunder or represented by depository shares. In accordance with Rules 456(b) and 457(r), the registrants are deferring payment of all of the registration fee.

(3) Debt securities issued by CubeSmart, L.P. will be accompanied by guarantees issued by CubeSmart. None of the proceeds will be received by CubeSmart for the guarantees. Pursuant to Rule 457(n) under the Securities Act, no separate filing fee for the guarantees is required.



Table of Contents

PROSPECTUS  
**CUBESMART**  
**Common Shares**  
**Preferred Shares**  
**Depository Shares**  
**Subscription Rights**  
**Warrants**  
**Guarantees**

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**CUBESMART, L.P.**  
**Debt Securities**

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CubeSmart may from time to time offer, in one or more classes or series, separately or together, and in amounts, at prices and on terms to be set forth in one or more supplements to this prospectus, the following securities:

common shares of beneficial interest, par value \$0.01 per share;

preferred shares of beneficial interest, par value \$0.01 per share;

depository shares representing entitlement to all rights and preferences of fractions of preferred shares of a specified series and represented by depository receipts;

subscription rights to purchase common shares, preferred shares or depository shares; and

warrants to purchase common shares, preferred shares or depository shares.

CubeSmart, L.P. may from time to time offer, in one or more classes or series, separately or together, and in amounts, at prices and on terms to be set forth in one or more supplements to this prospectus, its debt securities. CubeSmart will unconditionally guarantee the payment obligations of the debt securities of CubeSmart, L.P.

We refer to the common shares, preferred shares, depository shares, subscription rights, warrants and guarantees of CubeSmart, together with the debt securities of CubeSmart, L.P. collectively as the "securities."

The common shares of CubeSmart are listed on the New York Stock Exchange, or NYSE, under the symbol "CUBE."

**Investing in the securities involves risks that are described on page 6 of this prospectus. You should carefully read and consider this prospectus, the applicable prospectus supplement and the risk factors included in the applicable prospectus supplement and/or in our periodic reports and other information that we file with the Securities and Exchange Commission before investing in the securities.**

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Neither the Securities and Exchange Commission nor any state securities regulators have approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

This prospectus is dated March 18, 2014.

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Table of Contents

**TABLE OF CONTENTS**

<u>ABOUT THIS PROSPECTUS</u>	<u>1</u>
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	<u>1</u>
<u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u>	<u>1</u>
<u>FORWARD-LOOKING STATEMENTS</u>	<u>3</u>
<u>CUBESMART AND THE OPERATING PARTNERSHIP</u>	<u>5</u>
<u>RISK FACTORS</u>	<u>6</u>
<u>USE OF PROCEEDS</u>	<u>6</u>
<u>RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERENCE DIVIDENDS</u>	<u>7</u>
<u>DESCRIPTION OF CUBESMART'S CAPITAL SHARES</u>	<u>8</u>
<u>DESCRIPTION OF DEPOSITARY SHARES</u>	<u>17</u>
<u>DESCRIPTION OF SUBSCRIPTION RIGHTS</u>	<u>20</u>
<u>DESCRIPTION OF WARRANTS</u>	<u>21</u>
<u>DESCRIPTION OF THE DEBT SECURITIES</u>	<u>23</u>
<u>MATERIAL FEDERAL INCOME TAX CONSIDERATIONS</u>	<u>38</u>
<u>PLAN OF DISTRIBUTION</u>	<u>71</u>
<u>LEGAL MATTERS</u>	<u>73</u>
<u>EXPERTS</u>	<u>73</u>

You should rely only on the information provided or incorporated by reference into this prospectus or any applicable prospectus supplement. We have not authorized anyone to provide you with different or additional information. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy by anyone in any jurisdiction in which such offer to sell is not authorized, or in which the person is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation. You should not assume that the information included in this prospectus, any prospectus supplement, or the documents incorporated by reference herein or therein is accurate as of any date other than the date of this prospectus, any prospectus supplement or incorporated document, as applicable. Our business, financial condition, results of operations and prospects may have changed since those dates.



Table of Contents

**ABOUT THIS PROSPECTUS**

This prospectus is part of a universal shelf registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or the SEC, under the Securities Act of 1933, as amended, or the Securities Act. To the extent required for any offer and sale, a prospectus supplement will set forth the type and number of securities being offered, the offering price, the names of any underwriters, dealers, brokers or agents and the applicable sales commission or discount. The prospectus supplement may also add, update or change information contained in this prospectus. You should read carefully the entire prospectus and any prospectus supplement, as well as the documents incorporated by reference into this prospectus and/or any prospectus supplement, before making an investment decision.

This prospectus and any accompanying prospectus supplement do not contain all of the information included in the registration statement. For further information, we refer you to the registration statement, including the exhibits. Statements contained in this prospectus and any accompanying prospectus supplement about the provisions or contents of any agreement or other document are not necessarily complete. If the rules and regulations of the SEC require that such agreement or document be filed as an exhibit to the registration statement, please see such agreement or document for a complete description of these matters.

As used in this prospectus and the registration statement on Form S-3 of which this prospectus is a part, unless the context otherwise requires, references to "CubeSmart" refer to CubeSmart, a Maryland real estate investment trust, or "REIT"; references to the "Operating Partnership" refer to CubeSmart, L.P., a Delaware limited partnership; and references to "we," "us," "our" or similar expressions refer collectively to CubeSmart and its consolidated subsidiaries (including the Operating Partnership).

**WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Accordingly, we file current, quarterly and annual reports, proxy statements and other information with the SEC. You may read and copy these reports, proxy statements and other information at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call 1-800-SEC-0330 for further information on the operation of the SEC's Public Reference Room. Our SEC filings also are available to the public at the Internet website maintained by the SEC at [www.sec.gov](http://www.sec.gov) and from commercial document retrieval services.

We also make available free of charge through our website the filings made by CubeSmart and the Operating Partnership with the SEC, including the Operating Partnership's Registration Statement on Form 10, as amended, and CubeSmart's and the Operating Partnership's annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, and CubeSmart's definitive proxy statements and Section 16 reports on Forms 3, 4 and 5, as soon as reasonably practicable after we electronically file such reports or amendments with, or furnish them to, the SEC. Our Internet website address is [www.cubesmart.com](http://www.cubesmart.com). The information located on, or hyperlinked or otherwise connected to, our website is not, and shall not be deemed to be, a part of this prospectus or incorporated into any other filings that we make with the SEC. You may also inspect the information that we file with the NYSE, at the offices of the NYSE located at 20 Broad Street, New York, New York 10005.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

We incorporate information into this prospectus by reference, which means that we disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, except to the extent superseded by information contained herein or by information contained in documents filed with the SEC after the date of this prospectus. This prospectus incorporates by reference the documents set

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### Table of Contents

forth below that have been previously filed with the SEC (other than, in each case, documents or information deemed to have been "furnished" and not "filed" in accordance with SEC rules):

Annual Report on Form 10-K of CubeSmart and the Operating Partnership for the year ended December 31, 2013;

Current Report on Form 8-K of CubeSmart and the Operating Partnership filed with the SEC on January 28, 2014;

The description of the capital stock of CubeSmart in its Registration Statement on Form 8-A filed with the SEC on October 19, 2004;

The description of CubeSmart's 7.75% Series A cumulative redeemable preferred shares of beneficial interest, par value \$0.01 per share, on Form 8-A filed with the SEC on October 31, 2011;

Registration Statement on Form 10 of CubeSmart, L.P. filed with the SEC on July 15, 2011; and

Amendment No. 1 to Registration Statement on Form 10 of CubeSmart, L.P. filed with the SEC on August 25, 2011.

We also incorporate by reference into this prospectus additional documents that we may file with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, from the date of this prospectus until all of the securities offered by this prospectus have been sold or we otherwise terminate the offering of these securities; provided, however, that we are not incorporating by reference any additional documents or information "furnished" and not "filed" with the SEC. You may obtain copies of any of these filings by contacting us at the following address and phone number or by contacting the SEC or NYSE as described above. Documents incorporated by reference are available from us without charge, excluding all exhibits unless an exhibit has been specifically incorporated by reference into this prospectus, by requesting them in writing, by telephone or via the Internet at:

CubeSmart  
Attention: Investor Relations  
5 Old Lancaster Road  
Malvern, PA 19355  
Phone: (610) 535-5000  
Internet Website: [www.cubesmart.com](http://www.cubesmart.com)

The information contained on our website does not constitute a part of this prospectus, and our website address supplied above is intended to be an inactive textual reference only and not an active hyperlink to our website.

You should rely only on the information contained or incorporated by reference in this prospectus, the prospectus supplement, any free writing prospectus that we authorize and any pricing supplement. We have not authorized any person, including any salesman or broker, to provide information other than that provided in this prospectus, any applicable prospectus supplement, any free writing prospectus that we authorize or any pricing supplement. We have not authorized anyone to provide you with different information. We do not take responsibility for, and can provide no assurance as to the reliability of, any information that others may give you. We are not making an offer of the securities in any jurisdiction where the offer is not permitted. You should assume that the information in this prospectus, any applicable prospectus supplement, any free writing prospectus that we authorize and any pricing supplement is accurate only as of the date on its cover page and that any information we have incorporated by reference is accurate only as of the date of such document incorporated by reference.

Table of Contents

Any statement contained in a document incorporated or deemed to be incorporated by reference into this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, any prospectus supplement, or any other subsequently filed document that is deemed to be incorporated by reference into this prospectus modifies or supersedes the statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

**FORWARD-LOOKING STATEMENTS**

This prospectus and any accompanying prospectus supplement, together with other documents and information incorporated by reference into this prospectus, contain certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Such statements are based on assumptions and expectations that may not be realized and are inherently subject to risks, uncertainties and other factors, many of which cannot be predicted with accuracy and some of which might not even be anticipated. Although we believe the expectations reflected in these forward-looking statements are based on reasonable assumptions, future events and actual results, performance, transactions or achievements, financial and otherwise, may differ materially from the results, performance, transactions or achievements expressed or implied by the forward-looking statements contained in or contemplated by this prospectus or any prospectus supplement. Any forward-looking statements should be considered in light of the risks and uncertainties referred to in Item 1A. "Risk Factors" in CubeSmart's and the Operating Partnership's Annual Report on Form 10-K for the year ended December 31, 2013. The most significant of these risks, uncertainties and other factors that might cause such differences include, but are not limited to:

national and local economic, business, real estate and other market conditions;

the competitive environment in which we operate, including our ability to maintain or raise occupancy and rental rates;

the execution of our business plan;

the availability of external sources of capital;

financing risks, including the risk of over-leverage and the corresponding risk of default on our mortgage and other debt and potential inability to refinance existing indebtedness;

increases in interest rates and operating costs;

counterparty non-performance related to the use of derivative financial instruments;

our ability to maintain CubeSmart's qualification as a REIT for federal income tax purposes;

acquisition and development risks;

increases in taxes, fees, and assessments from state and local jurisdictions;

changes in real estate and zoning laws or regulations;

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risks related to natural disasters;

potential environmental and other liabilities;

other factors affecting the real estate industry generally or the self-storage industry in particular; and

other risks identified in our Annual Report on Form 10-K and, from time to time, in other reports we file with the SEC or in other documents that we publicly disseminate.

Table of Contents

In light of these uncertainties and risks, prospective investors are cautioned not to place undue reliance on these forward-looking statements. Except with respect to such material changes to our risk factors as may be reflected from time to time in our quarterly filings or as otherwise required by law, we are under no obligation to, and expressly disclaim any obligation to, update or revise any forward-looking statements included or incorporated by reference in this prospectus or any accompanying prospectus supplement, whether as a result of new information, future events or otherwise. Because of the factors referred to above, the future events discussed in or incorporated by reference in this prospectus or any accompanying prospectus supplement may not occur and actual results, performance or achievement could differ materially from that anticipated or implied in the forward-looking statements.

Table of Contents

**CUBESMART AND THE OPERATING PARTNERSHIP**

CubeSmart is a self-administered and self-managed real estate investment trust, or REIT, focused primarily on the ownership, operation, management, acquisition and development of self-storage facilities in the United States. CubeSmart was organized and commenced operations in 2004 as a Maryland REIT. The Operating Partnership was formed and commenced operations in 1996 as a Delaware limited partnership.

CubeSmart owns its assets, and conducts its operations, through the Operating Partnership. CubeSmart controls the Operating Partnership as its sole general partner and, as of March 13, 2014, CubeSmart owned an approximately 98.45% interest in the Operating Partnership. The Operating Partnership has been engaged in virtually all aspects of the self-storage business, including the development, acquisition, management, ownership and operation of self-storage facilities.

Our self-storage facilities are designed to offer affordable and easily-accessible storage space for our residential and commercial customers. Our customers rent storage units for their exclusive use, typically on a month-to-month basis. Additionally, some of our facilities offer outside storage areas for vehicles and boats. Our facilities are designed to accommodate both residential and commercial customers, with features such as security systems and wide aisles and load-bearing capabilities for large truck access. All of our facilities have an on-site manager during business hours, and many have a manager who resides in an apartment at the facility. Our customers can access their storage units during business hours, and some of our facilities provide customers with 24-hour access through computer controlled access systems. Our goal is to provide customers with the highest standard of facilities and service in the industry. To that end, as of December 31, 2013, a majority of our facilities included climate controlled units.

Our executive offices are located at 5 Old Lancaster Road, Malvern, PA 19355 and our telephone number is (610) 535-5000.

Table of Contents

**RISK FACTORS**

Investing in our securities involves risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K and the other information contained or incorporated by reference in this prospectus, as updated by our subsequent filings under the Exchange Act, and the risk factors and other information contained in the applicable prospectus supplement before acquiring any of such securities. The occurrence of any of these risks might cause you to lose all or part of your investment in the offered securities. Please also refer to the section above entitled "Forward-Looking Statements."

**USE OF PROCEEDS**

Unless otherwise indicated in the applicable prospectus supplement, CubeSmart will contribute or otherwise transfer the net proceeds of any sale of securities to the Operating Partnership in exchange for additional partnership interests in the Operating Partnership, the economic terms of which will be substantially identical to those of the securities sold.

Unless otherwise indicated in the applicable prospectus supplement, the Operating Partnership will use those net proceeds and any net proceeds from any sale of its debt securities for general business purposes, including, without limitation, repayment of outstanding debt, acquisitions, developments, capital expenditures, working capital and other general corporate purposes.

Table of Contents**RATIO OF EARNINGS TO FIXED CHARGES AND RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERENCE DIVIDENDS****Ratio of Earnings to Fixed Charges**

The following table sets forth the Operating Partnership's ratios of earnings to fixed charges for the periods indicated.

	For the years ended December 31,				
	2013	2012	2011	2010	2009
<b>Ratio of earnings to fixed charges(a)</b>	<b>1.22</b>	<b>0.70</b>	<b>0.71</b>	<b>0.61</b>	<b>0.47</b>

For the purpose of calculating the ratio of earnings to fixed charges, earnings consist of income (loss) from continuing operations, plus fixed charges less capitalized interest. Fixed charges consist of interest expense, capitalized interest, amortized premiums, discounts and capitalized expenses relating to debt and an estimate of the interest component of rent expense.

- (a) In fiscal 2009, 2010, 2011 and 2012, earnings were insufficient to cover fixed charges. The Operating Partnership must generate additional earnings of \$25.4 million, \$17.6 million, \$13.5 million and \$13.5 million to achieve a fixed charge coverage ratio of 1:1 in fiscal 2009, 2010, 2011 and 2012, respectively.

**Ratio of Earnings to Combined Fixed Charges and Preference Dividends**

The following table sets forth CubeSmart's ratios of earnings to combined fixed charges and preference dividends for the periods indicated.

	For the years ended December 31,				
	2013	2012	2011	2010	2009
<b>Ratio of earnings to combined fixed charges and preference dividends(a)</b>	<b>1.07</b>	<b>0.61</b>	<b>0.69</b>	<b>0.61</b>	<b>0.47</b>

For the purpose of calculating the ratio of earnings to combined fixed charges and preference dividends, earnings consist of income (loss) from continuing operations, plus fixed charges less capitalized interest. Fixed charges consist of interest expense, capitalized interest, amortized premiums, discounts and capitalized expenses relating to debt and an estimate of the interest component of rent expense. Preference dividends includes income allocated to holders of CubeSmart's preferred shares.

- (a) In fiscal 2009, 2010, 2011 and 2012, earnings were insufficient to cover combined fixed charges and preference dividends. CubeSmart must generate additional earnings of \$25.4 million, \$17.6 million, \$14.7 million and \$19.5 million to achieve a coverage ratio of 1:1 in fiscal 2009, 2010, 2011 and 2012, respectively.



Table of Contents

**DESCRIPTION OF CUBESMART'S CAPITAL SHARES**

The following description of our capital shares, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the capital shares that may be offered under this prospectus. For the complete terms of our capital shares, please refer to our declaration of trust and bylaws that are filed as exhibits to our reports incorporated by reference into the registration statement of which this prospectus is a part. See "Where You Can Find More Information."

**Common Shares**

CubeSmart's declaration of trust provides that CubeSmart may issue up to 200,000,000 common shares of beneficial interest, par value \$0.01 per share. As of February 25, 2014, there were 140,289,967 common shares issued and outstanding.

Both Maryland statutory law governing real estate investment trusts formed under Maryland law, which we refer to as the Maryland REIT Law, and CubeSmart's declaration of trust provide that none of its shareholders will be personally liable, by reason of status as a shareholder, for any of its obligations.

Subject to the provisions of CubeSmart's declaration of trust regarding restrictions on the transfer and ownership of shares of beneficial interest, each outstanding common share entitles the holder to one vote on all matters submitted to a vote of shareholders, including the election of trustees, and, except as provided with respect to any other class or series of shares of beneficial interest that CubeSmart may issue, the holders of such common shares will possess exclusive voting power. There is no cumulative voting in the election of trustees. As a result, the holders of a majority of the outstanding common shares, voting as a single class, can elect all of the trustees then standing for election. CubeSmart's bylaws provide that a plurality of the votes cast at a meeting of shareholders duly called at which a quorum is present is sufficient to elect a trustee and that a majority of the votes cast at a meeting of shareholders duly called at which a quorum is present is sufficient to approve any other matter which may properly come before the meeting, unless a higher vote is required under CubeSmart's bylaws, CubeSmart's declaration of trust or applicable statute.

Under the Maryland REIT law, a Maryland REIT generally cannot amend its declaration of trust or merge with another entity without the affirmative vote of shareholders holding at least two-thirds of the shares entitled to vote on the matter unless a lesser percentage (but not less than a majority of all the votes entitled to be cast on the matter) is set forth in the REIT's declaration of trust. Our declaration of trust provides that amendments to the declaration of trust and our merger with another entity may be approved by the affirmative vote of the holders of not less than a majority of all votes entitled to be cast on the matter. Under the Maryland REIT law and CubeSmart's declaration of trust, its trustees will be permitted to amend the declaration of trust from time to time to maintain our qualification as a REIT under the Internal Revenue Code of 1986, as amended, or the Code, and under the Maryland REIT law, without the affirmative vote or written consent of the shareholders.

All common shares offered by this prospectus will be duly authorized, fully paid and nonassessable. Holders of CubeSmart's common shares are entitled to receive dividends and distributions when authorized by our board of trustees, and declared by CubeSmart out of assets legally available for the payment of dividends or distributions. They also are entitled to share ratably in CubeSmart's assets legally available for distribution to its shareholders in the event of CubeSmart's liquidation, dissolution or winding up, after payment of or adequate provision for all of its known debts and liabilities. These rights are subject to the preferential rights of the holders of the 7.75% Series A Preferred Shares and of any other class or series of CubeSmart's shares and to the provisions of CubeSmart's declaration of trust regarding restrictions on transfer of its shares.

Table of Contents

Holders of CubeSmart's common shares have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any of our securities. Subject to the restrictions on transfer of shares contained in CubeSmart's declaration of trust and to the power of the board of trustees to create common shares with differing voting rights, all common shares have equal dividend, liquidation and other rights.

**Preferred Shares**

CubeSmart's declaration of trust provides that it may issue up to 40,000,000 preferred shares of beneficial interest, par value \$0.01 per share. As of February 25, 2014, there were 3,220,000 authorized shares of CubeSmart's 7.75% Series A Preferred Shares, par value \$0.01 per value, of which 3,100,000 were issued and outstanding.

Holders of 7.75% Series A Preferred Shares do not have voting rights except (1) with respect to certain actions which would have a material adverse effect on the holders of such shares (including in a merger or consolidation) or (2) in the event we fail to pay quarterly distributions for six or more quarters to the holders of the 7.75% Series A Preferred Shares. If the conditions specified in (2) exist, the holders of 7.75% Series A Preferred Shares will have the right, voting as a single class with any other series of CubeSmart's preferred shares ranking on a parity with the 7.75% Series A Preferred Shares and upon which like voting rights have been conferred, to elect two additional members to CubeSmart's board of trustees.

The holders of 7.75% Series A Preferred Shares will be entitled to receive, when and as authorized by CubeSmart's board of trustees, cumulative preferential cash distributions at the rate of 7.75% per annum of the \$25.00 per share liquidation preference of the shares. Upon dissolution or liquidation, the holders of 7.75% Series A Preferred Shares will be entitled to be paid a liquidation preference in cash of \$25.00 per share plus all accumulated and unpaid distributions after payment or provision for payment of all debts and liabilities of CubeSmart but before any distribution of assets is made to holders of common shares or any other junior securities of CubeSmart as to liquidation rights.

CubeSmart's board of trustees is authorized to issue the preferred shares in one or more series and to fix and designate the rights, preferences, privileges and restrictions of the preferred shares, including:

dividend rights;

conversion rights;

voting rights;

redemption rights and terms of redemption; and

liquidation preferences.

The rights, preferences, privileges and restrictions of the preferred shares of each series will be fixed by articles supplementary relating to each series. We will describe the specific terms of a particular series of preferred shares in the prospectus supplement relating to that series, including:

the title of the series and the number of shares in the series;

the price at which the preferred shares will be offered;

the dividend rate or rates or method of calculating the rates, the dates on which the dividends will be payable, whether or not dividends will be cumulative or non-cumulative and, if cumulative, the dates from which dividends on the preferred shares being offered will cumulate;

the voting rights, if any, of the holders of preferred shares being offered;

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### Table of Contents

the provisions for a sinking fund, if any, and the provisions for redemption, if applicable, of the preferred shares being offered;

the liquidation preference per share;

the terms and conditions, if applicable, upon which the preferred shares being offered will be convertible into CubeSmart's common shares, including the conversion price, or the manner of calculating the conversion price, and the conversion period;

the terms and conditions, if applicable, upon which the preferred shares being offered will be exchangeable for debt securities, including the exchange price, or the manner of calculating the exchange price, and the exchange period;

any listing of the preferred shares being offered on any securities exchange;

whether interests in the shares of the series will be represented by depositary shares;

a discussion of any material U.S. federal income tax considerations applicable to the preferred shares being offered;

the relative ranking and preferences of the preferred shares being offered as to dividend rights and rights upon liquidation, dissolution or the winding up of CubeSmart's affairs;

any limitations on the issuance of any class or series of preferred shares ranking senior or equal to the series of preferred shares being offered as to dividend rights and rights upon liquidation, dissolution or the winding up of CubeSmart's affairs;

information with respect to book-entry procedures, if any; and

any additional rights, preferences, qualifications, limitations and restrictions of the series.

The description of preferred shares above and the description of the terms of a particular series of preferred shares in the prospectus supplement are not complete. You should refer to the applicable articles supplementary for complete information.

CubeSmart's board of trustees could authorize, without shareholder approval, the issuance of preferred shares with terms and conditions that could have the effect of discouraging a takeover or other transaction in which holders of some or a majority of CubeSmart's shares might receive a premium for their shares over the then-prevailing market price of its shares. We currently do not expect that the board of trustees would require shareholder approval prior to such a preferred issuance. In addition, any preferred shares that CubeSmart issues would rank senior to its common shares with respect to the payment of distributions, in which case CubeSmart could not pay any distributions on its common shares until full distributions have been paid with respect to such preferred shares.

### **Power to Reclassify Shares and Issue Additional Common Shares or Preferred Shares**

CubeSmart's declaration of trust authorizes its board of trustees to classify any authorized but unissued common and preferred shares and to reclassify any previously classified but unissued common shares and preferred shares of any series from time to time in one or more series, as authorized by the board of trustees. Prior to the issuance of shares of each class or series, the board of trustees is required by the Maryland REIT law and CubeSmart's declaration of trust to establish for each such class or series, subject to the provisions of CubeSmart's declaration of trust regarding the restrictions on transfer of shares of beneficial interest, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such class or series.

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As a result, CubeSmart's board of trustees could authorize the issuance of preferred shares that have priority over the common shares with respect to dividends, distributions and rights upon liquidation and with other terms and conditions that could have

## Table of Contents

the effect of delaying, deterring or preventing a transaction or a change in control that might involve a premium price for holders of common shares or otherwise might be in their best interest.

To permit us increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise, CubeSmart's declaration of trust allows us to issue additional common shares or preferred shares and to classify or reclassify unissued common shares or preferred shares and thereafter to issue the classified or reclassified shares without shareholder approval, unless shareholder approval is required by applicable law or the rules of any stock exchange or automated quotation system on which CubeSmart's securities may be listed or traded. Although we have no present intention of doing so, we could issue a class or series of shares that could delay, deter or prevent a transaction or a change in control that might involve a premium price for holders of common shares or might otherwise be in their best interests.

Holders of CubeSmart's 7.75% Series A Preferred Shares have the right to consent to the authorization, creation or issuance of equity securities that would rank senior to the 7.75% Series A Preferred Shares as to distributions or upon liquidation and the authorization, creation or issuance of convertible securities or obligations convertible into such senior securities, in each case, if such equity securities or convertible securities would materially or adversely affect the rights, preferences, privileges or voting powers of the 7.75% Series A Preferred Shares. This consent right shall not apply to the authorization, creation or issuance of equity securities on a parity with or junior to the 7.75% Series A Preferred Shares or to any increase in the number of 7.75% Series A Preferred Shares.

Holders of CubeSmart's common shares or 7.75% Series A Preferred Shares do not have preemptive rights, which means they have no right to acquire any additional shares that we may issue at a subsequent date.

### **Restrictions on Ownership and Transfer**

In order to qualify as a REIT under the Code, CubeSmart's shares must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. Also, no more than 50% of the value of CubeSmart's outstanding shares (after taking into account options to acquire shares) may be owned, directly, indirectly or through attribution, by five or fewer individuals (as defined in the Code to include certain entities).

Because CubeSmart's board of trustees believes that it is in CubeSmart's shareholders' best interests to continue to qualify as a REIT and for anti-takeover and other strategic reasons, its declaration of trust, subject to certain exceptions, contains restrictions on the number of CubeSmart's shares of beneficial interest that a person may own. CubeSmart's declaration of trust provides that:

no person, other than an excepted holder or a designated investment entity (each as defined in CubeSmart's declaration of trust), may own directly, or be deemed to own by virtue of the attribution provisions of the Code, more than 5%, in value or number of shares, whichever is more restrictive, of the issued and outstanding shares of any class or series of common shares;

no person may own directly or indirectly, or be deemed to own through attribution, more than 9.8% in value or number of shares, whichever is more restrictive, of the issued and outstanding shares of any class or series of preferred shares;

no excepted holder, which means certain members of the Amsdell family, certain trusts established for the benefit of members of the Amsdell family and certain related entities, may own directly or indirectly common shares if, under the applicable tax attribution rules of the Code, any single excepted holder who is treated as an individual would own more than 29%, in value or number of shares, whichever is more restrictive, of CubeSmart's outstanding common shares, any two excepted holders treated as individuals would own more than 34%, in value or number of shares, whichever is more restrictive, of CubeSmart's outstanding common shares, any

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### Table of Contents

three excepted holders treated as individuals would own more than 39%, in value or number of shares, whichever is more restrictive, of CubeSmart's outstanding common shares, any four excepted holders treated as individuals would own more than 44%, in value or number of shares, whichever is more restrictive, of CubeSmart's outstanding common shares, or any five excepted holders treated as individuals would own more than 49%, in value or number of shares, whichever is more restrictive, of CubeSmart's outstanding common shares;

no designated investment entity may acquire or hold, directly or indirectly (or through attribution), shares in excess of the designated investment entity limit of 9.8%, in value or number of shares, whichever is more restrictive, of the outstanding shares of any class or series of common shares;

no person shall beneficially or constructively own CubeSmart's shares of beneficial interest that would result in us being "closely held" under Section 856(h) of the Code or otherwise cause us to fail to qualify as a REIT; and

no person shall transfer CubeSmart's shares of beneficial interest if such transfer would result in CubeSmart's shares of beneficial interest being owned by fewer than 100 persons.

The excepted holder limit was established in light of the fact that Robert J. Amsdell, Barry L. Amsdell, Todd C. Amsdell and certain Amsdell Entities owned a substantial percentage of CubeSmart's common shares upon completion of its IPO. The excepted holder limit does not permit each excepted holder to own 29% of CubeSmart's common shares. Rather, the excepted holder limit prevents two or more excepted holders who are each treated as individuals under the applicable tax attribution rules from owning a higher percentage of CubeSmart's common shares than the maximum number of common shares that could be owned by any one excepted holder (29%), plus the maximum number of common shares that could be owned by any one or more other individual common shareholders who are not excepted holders (5%). We do not believe the 29% expected holder limit for certain members of the Amsdell family and certain related entities will jeopardize CubeSmart's REIT status because no other individual shareholder can own more than 5% of the value of CubeSmart's outstanding common shares. Accordingly, no five individuals can own more than 49% of CubeSmart's shares and, thus, we will be in compliance with the REIT qualification requirement prohibiting five or fewer individuals from owning more than 50% of the value of CubeSmart's outstanding shares.

The declaration of trust defines a "designated investment entity" as:

an entity that is a pension trust that qualifies for look-through treatment under Section 856(h)(3) of the Code;

an entity that qualifies as a regulated investment company under Section 851 of the Code; or

an entity that (i) for compensation engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities; (ii) purchases securities in the ordinary course of its business and not with the purpose or effect of changing or influencing control of us, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d-3(b) of the Exchange Act; and (iii) has or shares voting power and investment power under the Exchange Act; so long as each beneficial owner of such entity, or in the case of an asset management company, the individual account holders of the accounts managed by such entity, would satisfy the 5% ownership limit if such beneficial owner or account holder owned directly its proportionate share of the shares held by the entity.

CubeSmart's board of trustees may waive the 5% ownership limit, or the 9.8% designated investment entity limit, for a shareholder that is not an individual if such shareholder provides information and makes representations to the board of trustees that are satisfactory to the board of

Table of Contents

trustees, in its reasonable discretion, to establish that such person's ownership in excess of the 5% limit or the 9.8% limit, as applicable, would not jeopardize CubeSmart's qualification as a REIT.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of CubeSmart's shares that will or may violate any of the foregoing restrictions on transferability and ownership will be required to give notice immediately to us and provide us with such other information as we may request in order to determine the effect of such transfer on CubeSmart's status as a REIT. If any transfer of shares or any other event would otherwise result in any person violating the ownership limits described above, then CubeSmart's declaration of trust provides that (a) the transfer will be void and of no force or effect with respect to the prohibited transferee with respect to that number of shares that exceeds the ownership limits or that such number of shares will be automatically transferred to a charitable trust for the benefit of a charitable beneficiary and (b) the prohibited transferee would not acquire any right or interest in the shares. The foregoing restrictions on transferability and ownership will not apply if CubeSmart's board of trustees determines that it is no longer in CubeSmart's best interests to attempt to qualify, or to continue to qualify, as a REIT.

All certificates evidencing CubeSmart's shares bear a legend referring to the restrictions described above.

Every owner of more than 5% (or such lower percentage as required by the Code or the regulations promulgated thereunder) of all classes or series of CubeSmart's shares, including common shares, is required to give written notice to us within 30 days after the end of each taxable year stating the name and address of such owner, the number of shares of each class and series of shares that the owner beneficially owns and a description of the manner in which such shares are held. Each such owner shall provide to us such additional information as we may request in order to determine the effect, if any, of such beneficial ownership on CubeSmart's status as a REIT and to ensure compliance with the ownership limitations. In addition, each shareholder shall upon demand be required to provide to us such information as we may request, in good faith, in order to determine CubeSmart's status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

These ownership limitations could delay, deter or prevent a transaction or a change in control that might involve a premium price for the common shares or might otherwise be in the best interest of CubeSmart's shareholders.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common shares is American Stock Transfer & Trust Co., LLC. The transfer agent and registrar for our preferred shares will be set forth in the applicable prospectus supplement.

**Certain Provisions of Maryland Law and CubeSmart's Declaration of Trust and Bylaws**

The following description of certain provisions of Maryland law and of CubeSmart's declaration of trust and bylaws is only a summary. For a complete description, we refer you to the applicable Maryland law and CubeSmart declaration of trust and bylaws.

*Number of Trustees; Vacancies*

CubeSmart's declaration of trust and bylaws provide that the number of CubeSmart's trustees shall not be less than one and not more than 13, and will be established by a vote of a majority of the members of its board of trustees. Our bylaws provide that any vacancy, including a vacancy created by an increase in the number of trustees, may be filled only by a majority of the remaining trustees, even if the remaining trustees do not constitute a quorum. Pursuant to CubeSmart's declaration of trust,



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### Table of Contents

each of its trustees is elected by its shareholders to serve until the next annual meeting and until their successors are duly elected and qualify. Under Maryland law, CubeSmart's board of trustees may elect to create staggered terms for its members.

CubeSmart's bylaws provide that at least a majority of our trustees will be "independent," with independence being defined in the manner established by our board of trustees and in a manner consistent with listing standards established by the NYSE.

In the event CubeSmart fails to pay quarterly distributions for six or more quarters to the holders of the 7.75% Series A Preferred Shares, the holders of 7.75% Series A Preferred Shares will have the right, voting as a single class with any other series of CubeSmart's preferred shares ranking on a parity with the 7.75% Series A Preferred Shares and upon which like voting rights have been conferred, to elect two additional members to CubeSmart's board of trustees.

#### *Removal of Trustees*

CubeSmart's declaration of trust provides that a trustee may be removed only with cause and only upon the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of trustees. Absent removal of all of CubeSmart's trustees, this provision, when coupled with the provision in CubeSmart's bylaws authorizing CubeSmart's board of trustees to fill vacant trusteeships, may preclude shareholders from removing incumbent trustees and filling the vacancies created by such removal with their own nominees.

#### *Business Combinations*

CubeSmart's board of trustees has approved a resolution that exempts CubeSmart from the provisions of the Maryland business combination statute described below, but its board of trustees may opt to make these provisions applicable to CubeSmart in the future. Maryland law prohibits "business combinations" between CubeSmart and an interested shareholder (defined below) or an affiliate of an interested shareholder for five years after the most recent date on which the interested shareholder becomes an interested shareholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. Maryland law defines an interested shareholder as:

any person who beneficially owns 10% or more of the voting power of CubeSmart's shares; or

an affiliate or associate of CubeSmart's who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of CubeSmart's then outstanding voting shares.

A person is not an interested shareholder if CubeSmart's board of trustees approves in advance the transaction by which the person otherwise would have become an interested shareholder. However, in approving a transaction, CubeSmart's board of trustees may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by CubeSmart's board of trustees.

After the five-year prohibition, any business combination between CubeSmart and an interested shareholder generally must be recommended by CubeSmart's board of trustees and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of CubeSmart's then outstanding shares of beneficial interest; and

two-thirds of the votes entitled to be cast by holders of CubeSmart's voting shares other than shares held by the interested shareholder with whom or with whose affiliate the business

Table of Contents

combination is to be effected or shares held by an affiliate or associate of the interested shareholder.

These super-majority vote requirements do not apply if CubeSmart's common shareholders receive a minimum price, as described under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested shareholder for its shares.

The statute permits various exemptions from its provisions, including business combinations that are approved by CubeSmart's board of trustees before the time that the interested shareholder becomes an interested shareholder.

The consent of two-thirds of the holders of 7.75% Series A Preferred Shares outstanding at the time is required under certain circumstances for any amendment, alteration or repeal of CubeSmart's declaration of trust, including by merger or consolidation, which would materially and adversely affect any right, preference, privilege or voting power of the 7.75% Series A Preferred Shares unless such shares have been redeemed or called for redemption.

*Preferred Shares*

Upon the occurrence of a change of control, the holders of 7.75% Series A Preferred Shares will have the right to convert their shares into common shares unless CubeSmart elects to redeem these shares in connection with such change of control.

***Control Share Acquisitions***

CubeSmart's bylaws contain a provision exempting any and all acquisitions of CubeSmart's shares from the provisions of the Maryland Control Share Acquisition Act. However, CubeSmart board of trustees may opt to make these provisions applicable to an acquisition of CubeSmart's shares at any time by amending or repealing this provision in the future, and may do so on a retroactive basis. Maryland law provides that "control shares" of a Maryland REIT acquired in a "control share acquisition" have no voting rights unless approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares beneficially owned by the acquiring person in a control share acquisition or by CubeSmart's officers or employees who are CubeSmart's trustees are excluded from the shares entitled to vote in accordance with the immediately preceding sentence. "Control shares" are shares that, if aggregated with all other shares previously acquired by the acquiring person, or in respect of which the acquiring person is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiring person to exercise or direct the exercise of the voting power in electing trustees within one of the following ranges of voting power:

one-tenth or more but less than one-third;

one-third or more but less than a majority; or

a majority or more of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained shareholder approval. A "control share acquisition" means the acquisition of control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition may compel our board of trustees to call a special meeting of shareholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the special meeting. If no request for a special meeting is made, we may present the question at any shareholders' meeting.

Table of Contents

If voting rights are not approved at the shareholders' meeting or if the acquiring person does not deliver the statement required by Maryland law, then, subject to certain conditions and limitations, we may redeem any or all of the control shares, except those for which voting rights have previously been approved, for fair value. Fair value is determined without regard to the absence of voting rights for the control shares and as of the date of the last control share acquisition or of any meeting of shareholders at which the voting rights of the shares were considered and not approved. If voting rights for control shares are approved at a shareholders' meeting, the acquiror may then vote a majority of the shares entitled to vote, and all other shareholders may exercise appraisal rights. The fair value of the shares for purposes of these appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition. The control share acquisition statute does not apply to shares acquired in a merger, consolidation or share exchange if we are a party to the transaction, nor does it apply to acquisitions approved by or exempted by our declaration of trust or bylaws.

**Possible Anti-Takeover Effect of Certain Provisions of Maryland Law and CubeSmart's Declaration of Trust and Bylaws**

The business combination provisions of Maryland law (if CubeSmart's board of trustees opts to make them applicable to CubeSmart), the control share acquisition provisions of Maryland law (if the applicable provision in CubeSmart's bylaws is rescinded), the limitations on removal of trustees, the restrictions on the acquisition of CubeSmart's shares of beneficial interest, the power to issue additional common shares or preferred shares and the advance notice provisions for shareholder trustee nominations and other shareholder proposals of our bylaws could have the effect of delaying, deterring or preventing a transaction or a change in control that might involve a premium price for holders of the common shares or might otherwise be in their best interest. The "unsolicited takeovers" provisions of Maryland law permit our board of trustees, without shareholder approval and regardless of what is provided in our declaration of trust or bylaws, to implement takeover defenses that we may not yet have.

Table of Contents

**DESCRIPTION OF DEPOSITARY SHARES**

**General**

CubeSmart may elect to have shares of preferred shares represented by depositary shares. The shares of any series of the preferred shares underlying the depositary shares will be deposited under a separate deposit agreement between CubeSmart and a bank or trust company that we select. The prospectus supplement relating to a series of depositary shares will set forth the name and address of this preferred shares depositary. Subject to the terms of the deposit agreement, each owner of a depositary share will be entitled, proportionately, to all the rights, preferences and privileges of the preferred shares represented by such depositary share, including dividend, voting, redemption, conversion, exchange and liquidation rights. As of the date of this prospectus, there are no depositary shares outstanding.

The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement, each of which will represent the applicable interest in a number of shares of a particular series of the preferred shares described in the applicable prospectus supplement.

A holder of depositary shares will be entitled to receive the shares of preferred shares, but only in whole shares of preferred shares, underlying those depositary shares. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the whole number of shares of preferred shares to be withdrawn, the depositary will deliver to that holder at the same time a new depositary receipt for the excess number of depositary shares.

**Dividends and Other Distributions**

The preferred shares depositary will distribute all cash dividends or other cash distributions in respect of the series of preferred shares represented by the depositary shares to the record holders of depositary receipts in proportion, to the extent possible, to the number of depositary shares owned by those holders. The depositary, however, will distribute only the amount that can be distributed without attributing to any depositary share a fraction of one cent, and any undistributed balance will be added to and treated as part of the next sum received by the depositary for distribution to record holders of depositary receipts then outstanding.

If there is a distribution other than in cash in respect of the preferred shares, the preferred shares depositary will distribute property received by it to the record holders of depositary receipts in proportion, insofar as possible, to the number of depositary shares owned by those holders, unless the preferred shares depositary determines that it is not feasible to make such a distribution. In that case, the preferred shares depositary may, with our approval, adopt any method that it deems equitable and practicable to effect the distribution, including a public or private sale of the property and distribution of the net proceeds from the sale to the holders.

The amount distributed in any of the above cases will be reduced by any amount we or the preferred shares depositary are required to withhold on account of taxes.

**Conversion and Exchange**

If any series of preferred shares underlying the depositary shares is subject to provisions relating to its conversion or exchange as set forth in an applicable prospectus supplement, each record holder of depositary receipts will have the right or obligation to convert or exchange the depositary shares evidenced by the depositary receipts pursuant to those provisions.

Table of Contents

**Redemption of Depositary Shares**

If any series of preferred shares underlying the depositary shares is subject to redemption, the depositary shares will be redeemed from the proceeds received by the preferred shares depositary resulting from the redemption, in whole or in part, of the preferred shares held by the preferred shares depositary. Whenever CubeSmart redeems a share of preferred shares held by the preferred shares depositary, the preferred shares depositary will redeem as of the same redemption date a proportionate number of depositary shares representing the shares of preferred shares that were redeemed. The redemption price per depositary share will be equal to the aggregate redemption price payable with respect to the number of shares of preferred shares underlying the depositary shares. If fewer than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by lot or proportionately as CubeSmart may determine.

After the date fixed for redemption, the depositary shares called for redemption will no longer be deemed to be outstanding and all rights of the holders of the depositary shares will cease, except the right to receive the redemption price. Any funds that we deposit with the preferred shares depositary relating to depositary shares which are not redeemed by the holders of the depositary shares will be returned to us after a period of two years from the date the funds are deposited by CubeSmart.

**Voting**

Upon receipt of notice of any meeting at which the holders of any shares of preferred shares underlying the depositary shares are entitled to vote, the preferred shares depositary will mail the information contained in the notice to the record holders of the depositary receipts. Each record holder of the depositary receipts on the record date, which will be the same date as the record date for the preferred shares, may then instruct the preferred shares depositary as to the exercise of the voting rights pertaining to the number of shares of preferred shares underlying that holder's depositary shares. The preferred shares depositary will try to vote the number of shares of preferred shares underlying the depositary shares in accordance with the instructions, and we will agree to take all reasonable action which the preferred shares depositary deems necessary to enable the preferred shares depositary to do so. The preferred shares depositary will abstain from voting the preferred shares to the extent that it does not receive specific written instructions from holders of depositary receipts representing the preferred shares.

**Record Date**

Subject to the provisions of the deposit agreement, whenever

any cash dividend or other cash distribution becomes payable,

any distribution other than cash is made,

any rights, preferences or privileges are offered with respect to the preferred shares,

the preferred shares depositary receives notice of any meeting at which holders of preferred shares are entitled to vote or of which holders of preferred shares are entitled to notice, or

the preferred shares depositary receives notice of the mandatory conversion of or any election by us to call for the redemption of any preferred shares, the preferred shares depositary will in each instance fix a record date, which will be the same as the record date for the preferred shares, for the determination of the holders of depositary receipts:

who will be entitled to receive dividend, distribution, rights, preferences or privileges or the net proceeds of any sale, or

Table of Contents

who will be entitled to give instructions for the exercise of voting rights at any such meeting or to receive notice of the meeting or the redemption or conversion.

**Withdrawal of Preferred Shares**

Upon surrender of depositary receipts at the principal office of the preferred shares depositary, upon payment of any unpaid amount due the preferred shares depositary, and subject to the terms of the deposit agreement, the owner of the depositary shares evidenced by the depositary receipts is entitled to delivery of the number of whole shares of preferred shares and all money and other property, if any, represented by the depositary shares. Partial shares of preferred shares will not be issued. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole shares of preferred shares to be withdrawn, the preferred shares depositary will deliver to the holder at the same time a new depositary receipt evidencing the excess number of depositary shares. Holders of preferred shares that are withdrawn will not be entitled to deposit the shares that have been withdrawn under the deposit agreement or to receive depositary receipts.

**Amendment and Termination of the Deposit Agreement**

CubeSmart and the preferred shares depositary may at any time agree to amend the form of depositary receipt and any provision of the deposit agreement. However, any amendment that materially and adversely alters the rights of holders of depositary shares will not be effective unless the amendment has been approved by the holders of at least a majority of the depositary shares then outstanding. The deposit agreement may be terminated by CubeSmart or by the preferred shares depositary only if all outstanding shares have been redeemed or if a final distribution in respect of the underlying preferred shares has been made to the holders of the depositary shares in connection with our liquidation, dissolution or winding up.

**Charges of Preferred Shares Depositary**

CubeSmart will pay all charges of the preferred shares depositary including charges in connection with the initial deposit of the preferred shares, the initial issuance of the depositary receipts, the distribution of information to the holders of depositary receipts with respect to matters on which preference shares is entitled to vote, withdrawals of the preferred shares by the holders of depositary receipts or redemption or conversion of the preferred shares, except for taxes (including transfer taxes, if any) and other governmental charges and any other charges expressly provided in the deposit agreement to be at the expense of holders of depositary receipts or persons depositing preferred shares.

**Miscellaneous**

Neither CubeSmart nor the preferred shares depositary will be liable if either of us is prevented or delayed by law or any circumstance beyond our control in performing any obligations under the deposit agreement. The obligations of the preferred shares depositary under the deposit agreement are limited to performing its duties under the agreement without negligence or bad faith. Our obligations under the deposit agreement are limited to performing our duties in good faith. Neither CubeSmart nor the preferred shares depositary is obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred shares unless satisfactory indemnity is furnished. CubeSmart and the preferred shares depositary may rely on advice of or information from counsel, accountants or other persons that they believe to be competent and on documents that they believe to be genuine.

The preferred shares depositary may resign at any time or be removed by CubeSmart, effective upon the acceptance by its successor of its appointment. If CubeSmart has not appointed a successor preferred shares depositary and the successor depositary has not accepted its appointment within 60 days after the preferred shares depositary delivered a resignation notice to CubeSmart, the preferred shares depositary may terminate the deposit agreement. See " Amendment and Termination of the Deposit Agreement" above.

Table of Contents

**DESCRIPTION OF SUBSCRIPTION RIGHTS**

CubeSmart may issue subscription rights to purchase common shares, preferred shares, or depositary shares. CubeSmart may issue subscription rights independently or together with any other offered security, which may or may not be transferable by the shareholder. In connection with any offering of subscription rights, CubeSmart may enter into a standby arrangement with one or more underwriters or other purchasers pursuant to which the underwriters or other purchasers may be required to purchase any securities remaining unsubscribed for after such offering.

The prospectus supplement relating to any subscription rights CubeSmart may offer will contain the specific terms of the subscription rights. These terms may include the following:

the price, if any, for the subscription rights;

the exercise price payable for common shares, preferred shares, or depositary shares;

the number of subscription rights issued to each security holder;

the number and terms of the common shares, preferred shares or depositary shares which may be purchased per each subscription right;

the extent to which the subscription rights are transferable;

any provisions for adjustment of the number or amount of securities receivable upon exercise of the subscription rights or the exercise price of the subscription rights;

any other terms of the subscription rights, including the terms, procedures and limitations relating to the exchange and exercise of the subscription rights;

the date on which the right to exercise the subscription rights shall commence, and the date on which the subscription rights shall expire;

the extent to which the subscription rights may include an over-subscription privilege with respect to unsubscribed securities; and

if applicable, the material terms of any standby underwriting or purchase arrangement entered into by CubeSmart in connection with the offering of subscription rights.

The description in the applicable prospectus supplement of any subscription rights CubeSmart offers will not necessarily be complete and will be qualified in its entirety by reference to the applicable subscription rights certificate or subscription rights agreement, which will be filed with the SEC if CubeSmart offers subscription rights. For more information on how you can obtain copies of any subscription rights certificate or subscription rights agreement if CubeSmart offers subscription rights, see "Where You Can Find More Information." CubeSmart urges you to read the applicable subscription rights certificate, the applicable subscription rights agreement and any applicable prospectus supplement in their entirety.





Table of Contents

**DESCRIPTION OF WARRANTS**

CubeSmart may issue warrants for the purchase of common shares, preferred shares or depositary shares. CubeSmart may issue warrants independently or together with any offered securities. The warrants may be attached to or separate from those offered securities. CubeSmart will issue the warrants under one or more warrant agreements to be entered into between CubeSmart and a warrant agent to be named in the applicable prospectus supplement. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

The prospectus supplement relating to any warrants that CubeSmart may offer will contain the specific terms of the warrants. These terms may include the following:

the title of the warrants;

the price or prices at which the warrants will be issued;

the designation, amount and terms of the securities for which the warrants are exercisable;

the designation and terms of the other securities, if any, with which the warrants are to be issued and the number of warrants issued with each other security;

the aggregate number of warrants;

any provisions for adjustment of the number or amount of securities receivable upon exercise of the warrants or the exercise price of the warrants;

the price or prices at which the securities purchasable upon exercise of the warrants may be purchased;

if applicable, the date on and after which the warrants and the securities purchasable upon exercise of the warrants will be separately transferable;

a discussion of any material U.S. federal income tax considerations applicable to the exercise of the warrants;

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

the maximum or minimum number of warrants that may be exercised at any time;

information with respect to book-entry procedures, if any; and

any other terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

**Exercise of Warrants**

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Each warrant will entitle the holder of the warrant to purchase for cash the amount of CubeSmart's common shares, preferred shares and/or depositary shares, as the case may be, at the exercise price stated or determinable in the applicable prospectus supplement for the warrants. Warrants may be exercised at any time up to the close of business on the expiration date shown in the applicable prospectus supplement, unless otherwise specified in such prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void. Warrants may be exercised as described in the applicable prospectus supplement. When the warrant holder makes the payment and properly completes and signs the warrant certificate at the corporate trust office of the warrant agent or any other office indicated in the prospectus supplement, CubeSmart will, as soon as possible, forward the common shares, preferred shares and/or depositary shares that the warrant holder has purchased, as the case may be. If the warrant holder exercises the warrant for less than all of the

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### Table of Contents

warrants represented by the warrant certificate, CubeSmart will issue a new warrant certificate for the remaining warrants.

The description in the applicable prospectus supplement of any warrants CubeSmart offers will not necessarily be complete and will be qualified in its entirety by reference to the applicable warrant agreement and warrant certificate, which will be filed with the SEC if CubeSmart offers warrants. For more information on how you can obtain copies of any warrant certificate or warrant agreement if we offer warrants, see "Where You Can Find More Information." We urge you to read the applicable warrant certificate, the applicable warrant agreement and any applicable prospectus supplement in their entirety.

Table of Contents

**DESCRIPTION OF THE DEBT SECURITIES**

The following summary sets forth the general terms and provisions of the indenture under which the debt securities will be issued by the Operating Partnership. The debt securities will be issued by the Operating Partnership under an indenture, as amended or supplemented from time to time, among the Operating Partnership, CubeSmart, as guarantor, and U.S. Bank National Association, as trustee.

The debt securities may be issued from time to time in one or more series. The particular terms and provisions of the debt securities with respect to a specific offering of debt securities will be set forth in the applicable prospectus supplement. This summary of general terms and provisions of the indenture and the debt securities does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all provisions of the indenture and those debt securities.

The indenture is filed as an exhibit to the registration statement of which this prospectus is a part and will be available for inspection at the corporate trust office of the trustee or as described under "Where You Can Find More Information." The indenture will be qualified under, subject to, and governed by, the Trust Indenture Act of 1939, as amended, or the Trust Indenture Act.

All section references appearing herein are to sections of the indenture, and capitalized terms used but not defined herein will have the respective meanings set forth in the indenture.

**General**

The debt securities will be direct, unsecured obligations of the Operating Partnership. Except for any series of debt securities which is expressly subordinated to other indebtedness of the Operating Partnership, the debt securities will rank equally with all other unsecured and unsubordinated indebtedness of the Operating Partnership. Under the indenture, the debt securities may be issued without limit as to aggregate principal amount, in one or more series, as established from time to time pursuant to authority granted by a resolution of the board of trustees of CubeSmart as sole general partner of the Operating Partnership or as established in one or more supplemental indentures to the indenture. All of the debt securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of that series, for issuances of additional debt securities of that series. All debt securities of a particular series shall be substantially identical except as to denomination, date of issuance, issue price and the date from which interest, if any, shall accrue.

All of the debt securities will be fully and unconditionally guaranteed as to payment of principal and premium, if any, and interest by CubeSmart. The indenture allows certain of our subsidiaries from time to time to become guarantors of specific series of the debt securities.

The indenture provides that there may be more than one trustee for any one or more series of debt securities. Any trustee under the indenture may resign or be removed with respect to one or more series of debt securities, and a successor trustee may be appointed to act with respect to that series. Except as otherwise indicated in this prospectus or the applicable prospectus supplement, any action to be taken by the trustee may be taken by each such trustee with respect to, and only with respect to, the one or more series of debt securities for which it is trustee under the indenture.

**Terms**

The applicable prospectus supplement relating to the series of debt securities being offered will describe the specific terms and provisions of those debt securities, including the following:

- 1) the title of the debt securities;
- 2) any limit on the aggregate principal amount of the debt securities and whether any additional securities of such series may be issued without consent of the holders;

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### Table of Contents

- 3) the date or dates, or the manner of determining the date or dates, on which the principal of the debt securities will be payable;
- 4) the rate or rates, or the method by which the rate or rates will be determined, at which the debt securities will bear interest, if any, the date or dates from which interest will accrue, the interest payment date or dates and the regular record date for interest payments;
- 5) the place or places where the principal of and premium, if any, and interest, if any, on the debt securities will be payable and where notices or demands to or upon the Operating Partnership in respect of the debt securities and the indenture may be served;
- 6) any modification to the provisions of the indenture relating to satisfaction and discharge of the indenture with respect to the debt securities;
- 7) the period or periods within which, the price or prices at which and the terms and conditions upon which the debt securities may be redeemed, as a whole or in part, at the option of the Operating Partnership, if the Operating Partnership is to have such an option;
- 8) the obligation, if any, of the Operating Partnership to redeem, repay or repurchase the debt securities pursuant to any sinking fund or analogous provisions or at the option of the holders, and the period or periods within which, the currency or currency units in which and the terms and conditions upon which the debt securities are required to be redeemed or purchased, in whole or in part, pursuant to that obligation;
- 9) if other than \$2,000 and any integral multiple of \$1,000 in excess thereof, the denominations in which the debt securities shall be issuable;
- 10) the percentage or other principal amount at which the debt securities will be issued, and if different from the principal amount of the debt securities, the portion of the principal amount of the debt securities that will be payable upon acceleration of the maturity of such debt securities;
- 11) any addition or change to, or deletion from, any event of default or covenant or other provision set forth in the indenture;
- 12) the currency or currencies in which the debt securities are denominated and/or payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies, and the manner of determining the equivalent thereof in U.S. dollars;
- 13) if the amount of payments of principal of and premium, if any, or interest, if any, on the debt securities may be determined with reference to an index or pursuant to a formula, the manner in which those amounts will be determined;
- 14) if the debt securities do not bear interest, the applicable dates for delivery by the trustee of a list of the names and addresses of holders of such debt securities;
- 15) the applicability, if any, of the defeasance and covenant defeasance provisions of the indenture, or any modification thereof;
- 16) whether the debt securities will be issued in whole or in part in the form of a global security, and if a global security is issued, whether such form will be permanent or temporary;

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- 17) whether and under what circumstances the Operating Partnership will pay additional amounts as contemplated in the indenture on the debt securities in respect of any tax, assessment or governmental charge and, if so, whether the Operating Partnership will have the option to redeem the debt securities in lieu of paying additional amounts;
- 18) whether the debt securities will be issued in bearer form;

Table of Contents

- 19) any security provided for the debt securities,
- 20) any other trustee, depositaries, interest rate calculation agents, exchange rate calculation agents or other agents with respect to the debt securities,
- 21) the terms of conversion or exchange of the debt securities, including if applicable, the conversion or exchange price, the conversion or exchange period, provisions as to whether conversion or exchange will be mandatory, at the option of the holders thereof or at our option, the events requiring an adjustment of the conversion or exchange price and provisions affecting conversion or exchange if such debt securities are redeemed,
- 22) the extent and manner, if any, to which payments on the debt securities may be subordinated to other indebtedness of the Operating Partnership;
- 23) whether the debt securities are entitled to the benefits of the guarantee of any subsidiary guarantor, and whether any such guarantee is made on a senior or subordinated basis and, if applicable, a description of the subordination terms of any such guarantee, and
- 24) any other terms of the debt securities not inconsistent with the provisions of the indenture.

The debt securities may provide for less than the entire principal amount of those debt securities to be payable upon declaration of acceleration of the maturity thereof ("original issue discount securities"). The applicable prospectus supplement will describe special U.S. federal income tax, accounting and other considerations applicable to the original issue discount securities.

The indenture does not contain any provisions that would limit the ability of the Operating Partnership to incur indebtedness or that would afford holders of debt securities protection in the event of a highly leveraged or similar transaction involving the Operating Partnership. However, restrictions on ownership and transfers of CubeSmart's common shares and preferred shares, designed to preserve CubeSmart's status as a REIT, may prevent or hinder a change of control. Reference is made to the applicable prospectus supplement for information with respect to any deletions from, modifications of or additions to the events of default or covenants of the Operating Partnership that are described below, including any addition of a covenant or other provision providing event risk or similar protection.

**Guarantee**

CubeSmart will, under the indenture, fully and unconditionally guarantee the due and punctual payment of principal of and premium, if any, and interest on all debt securities issued by the Operating Partnership, and the due and punctual payment of any sinking fund payments on those debt securities, when and as the same will become due and payable, whether at a maturity date, by declaration of acceleration, call for redemption or otherwise.

From time to time, subsidiaries of the Operating Partnership may join as guarantors under the indenture. Such subsidiaries' guarantees will be limited to the series of debt securities for which they execute notations of guarantee in accordance with the terms of the indenture, and may be released in connection with:

- 1) the sale, by the Operating Partnership, of the equity interests that it holds in the subsidiary guarantor; and
- 2) the occurrence of certain conditions described in the supplemental indenture or related documents adopting the series of debt securities which are the subject of the subsidiary's guarantee.

Table of Contents

The obligations of each guarantor, other than CubeSmart, under its guarantee will be limited as necessary to prevent that guarantee from constituting a fraudulent conveyance or fraudulent transfer under applicable law.

**Denominations**

Unless otherwise specified in the applicable prospectus supplement, the debt securities of any series shall be issuable only in registered form without coupons and, other than securities in global form (which may be of any denomination), will be issuable in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

**Payments**

Unless otherwise specified in the applicable prospectus supplement, the principal of and premium, if any, and interest on any series of debt securities will be payable at the corporate trust office of the trustee. However, at the option of the Operating Partnership, payment of interest may be made by check mailed to the address of the person entitled thereto as it appears in the security register or by wire transfer of funds to that person at a bank account maintained within the United States.

All amounts paid by the Operating Partnership to a paying agent or a trustee for the payment of the principal of or premium, if any, or interest on any debt security which remains unclaimed at the end of two years after the principal, premium or interest has become due and payable will be repaid to the Operating Partnership, and the holder of the debt security thereafter may look only to the Operating Partnership for payment of these amounts.

Any interest not punctually paid or duly provided for on any interest payment date with respect to a debt security will forthwith cease to be payable to the holder on the applicable regular record date and may either be paid to the person in whose name that debt security is registered at the close of business on a special record date for the payment of that defaulted interest to be fixed by the trustee or may be paid at any time in any other lawful manner, all in accordance with the indenture. Notice of any special record date will be given to the holder of that debt security not less than 10 days prior to the special record date.

**Registration and Transfer**

Subject to certain limitations imposed upon debt securities issued in book-entry form, the debt securities of any series will be exchangeable for other debt securities of the same series, of a like aggregate principal amount and tenor, of different authorized denominations upon surrender of such debt securities at the corporate trust office of the trustee. In addition, subject to certain limitations imposed upon debt securities issued in book-entry form, the debt securities of any series may be surrendered for registration of transfer at the corporate trust office of the trustee.

Every debt security surrendered for registration of transfer or exchange will be duly endorsed or accompanied by a written instrument of transfer. No service charge will be made for any registration of transfer or exchange of any debt securities, but the Operating Partnership may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

If the applicable prospectus supplement refers to any transfer agent (in addition to the trustee) initially designated by the Operating Partnership and the guarantors with respect to any series of debt securities, the Operating Partnership may at any time rescind the designation of that transfer agent or approve a change in the location through which that transfer agent acts, except that the Operating Partnership and the guarantors will be required to maintain a transfer agent in each place of payment for that series. The Operating Partnership and the guarantors may at any time designate additional transfer agents with respect to any series of debt securities.



Table of Contents

Neither the Operating Partnership nor the trustee will be required to:

- 1) issue, register the transfer of or exchange debt securities of any series during a period beginning at the opening of business 15 days before any selection of debt securities of that series to be redeemed and ending at the close of business of the day of mailing of the relevant notice of redemption; or
- 2) register the transfer of or exchange any debt security, or portion thereof, called for redemption, except the unredeemed portion of any debt security being redeemed in part.

**Merger, Consolidation and Sale**

Unless otherwise provided in the applicable prospectus supplement, the Operating Partnership may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into, any other entity, provided that the following conditions are satisfied or fulfilled:

- 1) either the Operating Partnership is the continuing entity, or the successor (if other than the Operating Partnership) formed by or resulting from any such consolidation or merger or which has received the transfer of those assets is organized under the laws of the United States of America and expressly assumes the due and punctual payment of the principal of and premium, if any, and interest on all of the debt securities and the performance and observance of all of the covenants and conditions contained in the indenture;
- 2) immediately after giving effect to the transaction, no event of default under the indenture, and no event which, after notice or the lapse of time, or both, would become an event of default, has occurred and is continuing; and
- 3) an officer's certificate of CubeSmart as general partner of the Operating Partnership and a legal opinion covering compliance with these conditions is delivered to the trustee.

Unless otherwise provided in the applicable prospectus supplement, CubeSmart may consolidate with, or sell, lease or convey all or substantially all its assets to, or merge with or into, any other entity, provided that substantially the same conditions as above are satisfied or fulfilled.

**Covenants**

We will set forth in the applicable prospectus supplement any financial covenants applicable to any issue of debt securities.

***Provision of Financial Information***

Unless otherwise provided in the applicable prospectus supplement, so long as any debt securities are outstanding, CubeSmart and the Operating Partnership will furnish to the trustee such information, documents and other reports as may be required by the Trust Indenture Act, including filing with the trustee within 15 days information, documents or reports required to be filed by the Issuer with the SEC.

***Waiver of Certain Covenants***

The Operating Partnership and the guarantors may choose not to comply with any term, provision or condition of certain covenants if at any time the holders of at least a majority in principal amount of all the outstanding debt securities, by act of those holders, either waive compliance in that instance or generally waive compliance with that covenant. Except to the extent so expressly waived, and until any waiver becomes effective, the Operating Partnership's and the guarantors' obligations and the duties of the trustee in respect of any such term, provision or condition will remain in full force and effect.

Table of Contents

***Existence***

Unless otherwise provided in the applicable prospectus supplement, except as permitted under "Merger, Consolidation or Sale," each of the Operating Partnership and the guarantors will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (declaration and statutory) and franchises; provided, however, that neither the Operating Partnership nor any guarantor will be required to preserve any right or franchise if the board of directors of the Operating Partnership, or the board of trustees or analogous body of any subsidiary guarantor, determines that the preservation thereof is no longer necessary or desirable in the conduct of its business and that the loss of that right or franchise is not disadvantageous in any material respect to the holders of the debt securities.

***Maintenance of Properties***

Unless otherwise provided in the applicable prospectus supplement, each of the Operating Partnership and the guarantors will cause all of its material properties used or useful in the conduct of its business or the business of any of its Subsidiaries to be maintained and kept in good condition, repair and working order, all as in the judgment of the Operating Partnership or the applicable guarantor may be necessary so that the business carried on in connection with those properties may be properly and advantageously conducted at all times; provided, however, that, subject to the covenant described under "Merger, Consolidation and Sale" above, neither the Operating Partnership nor any guarantor nor any of their respective Subsidiaries will be prevented from selling or otherwise disposing of their properties at any time.

***Payment of Taxes and Other Claims***

Unless otherwise provided in the applicable prospectus supplement, each of the Operating Partnership and the guarantors will pay or discharge or cause to be paid or discharged, before becoming delinquent:

- 1) all taxes, assessments and governmental charges levied or imposed upon it or any of its Subsidiaries or upon its income, profits or property or that of any of its Subsidiaries; and
- 2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon its property or the property of any of its Subsidiaries;

*provided, however,* that neither the Operating Partnership nor any guarantor will be required to pay or discharge or cause to be paid or discharged any tax, assessment, charge or claim whose amount or applicability is being contested in good faith.

***Payment of Additional Amounts***

Unless otherwise provided in the applicable prospectus supplement, each of the Operating Partnership and the guarantors will pay to any holder of debt securities that is a United States Alien such additional amounts as may be required such that every net payment on the debt securities held by such holder, after deduction or withholding on account of any present or future U.S. tax (other than taxes unrelated to the holder's ownership of the debt securities and certain other taxes), is not less than the amount provided in such debt securities as then due and payable.

***Additional Covenants***

The applicable prospectus supplement relating to the series of debt securities being offered will describe any additional covenants specific to that series.

Table of Contents

**Events of Default, Notice and Waiver**

Unless otherwise provided in the applicable prospectus supplement, the indenture provides that the following events will be "events of default" with respect to any series of debt securities issued under the indenture:

- 1) default for 30 days in the payment of any interest on any debt security of that series;
- 2) default in the payment of any principal of or premium, if any, on any debt security of that series when due;
- 3) default in making any sinking fund payment as required for any debt security of that series;
- 4) default in the performance of any other covenant or warranty of the Operating Partnership and/or any of the guarantors contained in the indenture with respect to any debt security of that series, which continues for 60 days after written notice as provided in the indenture;
- 5) default in the payment of an aggregate principal amount exceeding \$25,000,000 of any evidence of indebtedness of the Operating Partnership and/or any of the guarantors or any mortgage, indenture or other instrument under which that indebtedness is issued or by which that indebtedness is secured, such default having continued after the expiration of any applicable grace period or having resulted in the acceleration of the maturity of that indebtedness, but only if that indebtedness is not discharged or such acceleration is not rescinded or annulled within a period of 10 days after the Operating Partnership's receipt of written notice executed by holders of at least 25% in principal amount of the outstanding debt securities of that series;
- 6) certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of the Operating Partnership, CubeSmart, or any of their respective properties;
- 7) except as otherwise permitted in the indenture, any guarantee of the debt securities of any series is held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect, or CubeSmart or any subsidiary guarantor shall deny or disaffirm its obligations under its guarantee with respect to the debt securities of the applicable series; and
- 8) any other event of default provided with respect to a particular series of debt securities.

Unless otherwise provided in the applicable prospectus supplement, if an event of default (other than as described in clause (6) above) with respect to debt securities of any series at the time outstanding occurs and is continuing, then in each case the trustee or the holders of not less than 25% in principal amount of the outstanding debt securities of that series may declare the principal (or, if the debt securities of that series are original issue discount securities or indexed securities, that portion of the principal amount as may be specified in the terms thereof) of and premium, if any, and accrued and unpaid interest on all of the debt securities of that series to be due and payable immediately by written notice thereof to the Operating Partnership and CubeSmart (and to the trustee if given by the holders). If an event of default described in clause (6) above occurs and is continuing, the principal (or such portion thereof) of and premium, if any, and accrued and unpaid interest on all of the debt securities of that series will become and be immediately due and payable without any declaration or other act on the part of the trustee or any holders. However, at any time after any acceleration with respect to debt securities of that series, but before a judgment or decree for payment of the amounts due has been obtained by the trustee, the holders of not less than a majority in principal amount of outstanding debt securities of that series may rescind and annul that acceleration and its consequences if (1) the Operating Partnership or any guarantor has paid or deposited with the trustee all required payments of the principal of and premium, if any, and interest on the debt securities of that series

Table of Contents

(without giving effect to the acceleration) plus certain fees, expenses, disbursements and, premium, if any, advances of the trustee and (2) all events of default, other than the nonpayment of accelerated principal, premium, if any, or interest with respect to debt securities of that series, have been cured or waived as provided in the indenture. The indenture also provides that the holders of not less than a majority in principal amount of the outstanding debt securities of any series may waive any past default with respect to that series and its consequences, except a default (A) in the payment of the principal of or premium, if any, or interest on any debt security of that series or (B) in respect of a covenant or provision contained in the indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security affected thereby.

The trustee will be required to give notice to the holders of debt securities within 90 days of a default under the indenture unless such default has been cured or waived; provided, however, that the trustee may withhold notice to the holders of any series of debt securities of any default with respect to that series (except a default in the payment of the principal of or premium, if any, or interest on any debt securities of that series or in the payment of any sinking fund installment in respect of any debt securities of that series) if the responsible officers of the trustee consider withholding of notice to be in the interest of the holders.

The indenture provides that no holders of debt securities of any series may institute any judicial or other proceedings with respect to the indenture or for any remedy thereunder, except in the case of failure of the trustee, for 60 days, to act after it has received a written request to institute proceedings in respect of an event of default from the holders of not less than 25% in principal amount of the outstanding debt securities of that series, as well as an offer of reasonable security or indemnity. This provision will not prevent, however, any holder of debt securities from instituting suit for the enforcement of payment of the principal of and premium, if any, and interest on the debt securities at the respective due date or dates for payment.

Subject to provisions in the indenture relating to its duties in case of default, the trustee is under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any holders of debt securities of any series then outstanding under the indenture, unless the holders offer to the trustee reasonable security or indemnity. The holders of not less than a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or of exercising any trust or power conferred upon the trustee for that series. However, the trustee may refuse to follow any direction which is in conflict with any law or the indenture, which may involve the trustee in personal liability or which may be unduly prejudicial to the holders of debt securities of that series not joining in the proceeding.

Within 120 days after the end of each fiscal year, the Operating Partnership and CubeSmart must deliver to the trustee a certificate, signed by one of several specified officers of the general partner of the Operating Partnership and of CubeSmart, stating whether or not such officers have knowledge of any default under the indenture and, if so, specifying each such default and the nature and status thereof.

**Modification of the Indenture**

Modifications and amendments of provisions of the indenture applicable to any series may be made only with consent of the holders of more than 50% in principal amount of all outstanding debt securities which are affected by the modification or amendment; provided, however, that no such modification or amendment may, without the consent of the holder of each debt security affected thereby:

- 1) change the stated maturity of the principal of, or any installment of interest or premium, if any, on, that debt security;

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### Table of Contents

- 2) reduce the principal amount of, or the rate or amount of interest on, or any premium payable on redemption of, that debt security, or reduce the amount of principal of an original issue discount security that would be due and payable upon declaration of acceleration of the maturity thereof or would be provable in bankruptcy, or adversely affect any right of repayment of the holder of that debt security;
- 3) change the place of payment, or the coin or currency, for payment of principal of, premium, if any, or interest on that debt security;
- 4) impair the right to institute suit for the enforcement of any payment on or with respect to that debt security on or after the stated maturity thereof;
- 5) reduce the percentage of outstanding debt securities of any series necessary to modify or amend the indenture, to waive compliance with certain provisions thereof or specified defaults and consequences thereunder or to reduce the quorum or voting requirements set forth in the indenture;
- 6) modify or affect in any manner adverse to the holders the terms and conditions of the obligations of any of the guarantors in respect of the due and punctual payments of principal of (or premium, if any) or interest, if any, on or any sinking fund requirements or additional amounts under the guarantees applicable to that debt security; or
- 7) modify any of the foregoing provisions or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required percentage to effect that action or to provide that certain other provisions may not be modified or waived without the consent of the holder of that debt security.

Modifications and amendments of the indenture may be made by the Operating Partnership, the guarantors and the trustee without the consent of any holder of debt securities for any of the following purposes:

- 1) to evidence the succession of another person to the Operating Partnership as obligor, or to any of the guarantors under the indenture;
- 2) to add to the covenants of the Operating Partnership or any of the guarantors for the benefit of the holders of all or any series of debt securities or to surrender any right or power conferred upon the Operating Partnership or any of the guarantors in the indenture;
- 3) to add events of default for the benefit of the holders of all or any series of debt securities;
- 4) to pledge property to the trustee to secure, or add additional guarantees with respect to, the debt securities;
- 5) to change or eliminate any provisions of the indenture, provided that the change or elimination will become effective only when there are no outstanding debt securities of any series created prior thereto which are entitled to the benefit of such provision;
- 6) to provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trust under the indenture by more than one trustee;
- 7) to establish the form or terms of debt securities of any series;

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8)

to supplement any of the provisions of the indenture to the extent necessary to permit or facilitate defeasance and discharge of any series of such debt securities, provided that such action will not adversely affect the interests of the holders of the debt securities of any series in any material respect;

Table of Contents

- 9) to supplement any of the provisions of the indenture to the extent necessary to permit or facilitate a merger or consolidation of the Operating Partnership or any Guarantor, provided that such action will not adversely affect the interests of the holders of the debt securities of any series in any material respect;
- 10) to add to or change or eliminate any provisions of the indenture to the extent necessary or desirable in accordance with any amendments to the Trust Indenture Act or to maintain the qualification of the indenture under the Trust Indenture Act;
- 11) to cure any ambiguity, defect or inconsistency in the indenture or to make any other provision with respect to matters or questions arising under the indenture, provided that such action will not adversely affect the interests of holders of debt securities of any series in any material respect;
- 12) to provide for the issuance of any additional debt securities of a series with terms substantially identical to the issued debt securities of that series (which additional debt securities will be treated, together with the already issued debt securities of that series, as a single series of debt securities); or
- 13) to reflect the release of any guarantor (other than CubeSmart) from the indenture.

The indenture provides that, in determining whether the holders of the requisite principal amount of outstanding debt securities of a series have given any request, demand, authorization, direction, notice, consent or waiver thereunder or whether a quorum is present at a meeting of holders of debt securities:

- 1) debt securities owned by the Operating Partnership, any of the guarantors or any other obligor upon the debt securities or any affiliate of the Operating Partnership, any of the guarantors or of that other obligor will be disregarded;
- 2) the principal amount of an original issue discount security that is deemed to be outstanding will be the amount of the principal thereof (or the U.S. dollar equivalent thereof on the date of original issuance, in the case of debt securities denominated in one or more foreign currencies) that would be due and payable as of the date of determination upon declaration of acceleration of the maturity of that debt security;
- 3) the principal amount of a debt security denominated in a foreign currency that is deemed outstanding will be the U.S. dollar equivalent, determined on the issue date for that debt security, of the principal amount (or, in the case of an original issue discount security, the U.S. dollar equivalent on the issue date of that debt security of the amount determined as provided in clause (2) above); and
- 4) debt securities that have been cancelled or delivered to the trustee for cancellation, or for which payment has been made or the redemption amount has been deposited with the trustee as provided in the indenture, will be disregarded.

The indenture contains provisions for convening meetings of the holders of debt securities of a series. A meeting may be called at any time by the trustee, and also, upon request, by the Operating Partnership or the holders of at least 25% in principal amount of the outstanding debt securities of that series, in each case upon notice given as provided in the indenture. Except for any consent that must be given by the holder of each debt security affected by certain modifications and amendments of the indenture, any resolution presented at a meeting or adjourned meeting duly reconvened at which a quorum is present may be adopted by the affirmative vote of the holders of a majority in principal amount of the outstanding debt securities of that series; provided, however, that, except as referred to above, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that may be made, given or taken by the holders of a specified percentage,

Table of Contents

which is less than a majority, in principal amount of the outstanding debt securities of a series may be adopted at a meeting or adjourned meeting duly reconvened at which a quorum is present by the affirmative vote of the holders of the debt securities of that series. Any resolution passed or decision taken at any meeting of holders of debt securities of any series duly held in accordance with the indenture will be binding on all holders of debt securities of that series. The quorum at any meeting called to adopt a resolution, and at any reconvened meeting, will be persons holding or representing a majority in principal amount of the outstanding debt securities of a series; provided, however, that if any action is to be taken at such meeting with respect to a consent or waiver which may be given by the holders of not less than a specified percentage in principal amount of the outstanding debt securities of a series, the persons holding or representing such specified percentage in principal amount of the outstanding debt securities of such series will constitute a quorum.

Notwithstanding the foregoing provisions, if any action is to be taken at a meeting of holders of debt securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that the indenture expressly provides may be made, given or taken by the holders of a specified percentage in principal amount of all outstanding debt securities affected thereby, or of the holders of that series and one or more additional series:

- 1) there will be no minimum quorum requirement for the meeting; and
- 2) the principal amount of the outstanding debt securities of such series that vote in favor of the request, demand, authorization, direction, notice, consent, waiver or other action will be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under the indenture.

**Discharge; Legal Defeasance and Covenant Defeasance**

Unless otherwise provided in the applicable prospectus supplement, the Operating Partnership and the guarantors may discharge certain obligations to holders of any series of debt securities that have not already been delivered to the trustee for cancellation and that either have become due and payable or will become due and payable within one year (or are scheduled for redemption within one year) by irrevocably depositing with the trustee, in trust, funds in such currency or currencies, currency unit or units or composite currency or currencies in which such debt securities are payable in an amount sufficient to pay the entire indebtedness on such debt securities in respect of principal and premium, if any, and interest to the date of such deposit (if such debt securities have become due and payable) or to the stated maturity or redemption date, as the case may be.

In addition, the indenture provides that, unless otherwise provided in the applicable prospectus supplement, the Operating Partnership may elect either:

- 1) to defease and discharge itself and the guarantors from any and all obligations with respect to those debt securities (except for the obligation to pay additional amounts, if any, upon the occurrence of certain events of tax, assessment or governmental charge with respect to payments on such debt securities and the obligations to register the transfer or exchange of such debt securities, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of such debt securities and to hold moneys for payment in trust) ("legal defeasance"); or
- 2) to release itself and the guarantors from their obligations with respect to those debt securities under "Covenants" or their obligations with respect to any other covenant, and any omission to comply with such obligations will not constitute a default or an event of default with respect to those debt securities ("covenant defeasance");

in either case upon the irrevocable deposit by the Operating Partnership or the guarantors with the trustee, in trust, of any amount, in such currency or currencies, currency unit or units or composite



Table of Contents

currency or currencies in which those debt securities are payable at stated maturity, or Government Obligations, or both, applicable to those debt securities which through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient, based on a certification by officers of the Operating Partnership, to pay the principal of and premium, if any, and interest on such debt securities, and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates.

This trust may only be established if, among other conditions, the Operating Partnership has delivered to the trustee an opinion of counsel to the effect that the holders of the debt securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of legal defeasance or covenant defeasance, as the case may be, and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if legal defeasance or covenant defeasance, as the case may be, had not occurred, and the opinion of counsel, in the case of legal defeasance, must refer to and be based upon a ruling of the Internal Revenue Service or a change in applicable U.S. federal income tax law occurring after the date of the indenture.

In the event the Operating Partnership effects covenant defeasance with respect to the debt securities of any series and those debt securities are declared due and payable because of the occurrence of any event of default other than an event of default described in clause (4) under "Events of Default, Notice and Waiver" with respect to the covenants described under "Covenants" (which would no longer be applicable to those debt securities) or described in clause (7) under "Events of Default, Notice and Waiver" with respect to any other covenant as to which there has been covenant defeasance, the amount in the currency, currency unit or composite currency in which those debt securities are payable, and Government Obligations on deposit with the trustee, will be sufficient to pay amounts due on those debt securities at the time of their stated maturity but may not be sufficient to pay amounts due on those debt securities at the time of the acceleration resulting from such event of default. However, the Operating Partnership and the guarantors would remain liable to make payment of those amounts due at the time of acceleration.

The applicable prospectus supplement may further describe the provisions, if any, permitting legal defeasance or covenant defeasance, including any modifications to the provisions described above, with respect to the debt securities of a particular series.

**Subordination**

The terms and conditions, if any, upon which the debt securities of any series will be subordinated to other indebtedness of the Operating Partnership, including the debt securities of other series, will be set forth in the applicable prospectus supplement. These terms will include a description of the indebtedness ranking senior to the debt securities of that series, the restrictions on payments to the holders of the debt securities of that series while a default with respect to the senior indebtedness is continuing, the restrictions, if any, on payments to the holders of the debt securities of that series following an event of default, and provisions requiring holders of the debt securities of that series to remit certain payments to holders of senior indebtedness.

**Book-Entry System and Global Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more securities in global form that will be deposited with, or on behalf of, a depository identified in the applicable prospectus supplement relating to that series. Global securities, if any, issued in the United States are expected to be deposited with The Depository Trust Company, or "DTC," as depository. Unless otherwise indicated, global securities will be issued in fully registered form and in either temporary or permanent form. Unless the applicable prospectus supplement states otherwise, and until it is exchanged in whole or in part for the debt securities represented thereby, a global security may not

Table of Contents

be transferred except as a whole by the depository for that global security to a nominee of that depository or by a nominee of that depository to that depository or another nominee of such depository or by that depository or any nominee of that depository to a successor depository or any nominee of that successor.

The specific terms of the depository arrangement with respect to a series of debt securities will be described in the applicable prospectus supplement. We anticipate that, unless otherwise indicated in the applicable prospectus supplement, the following provisions will apply to depository arrangements.

The applicable prospectus supplement will state whether the global securities will be issued in certificated or book-entry form. If the global securities are to be issued in book-entry form, we expect that upon the issuance of a global security, the depository for the global security or its nominee will credit on its book-entry registration and transfer system the respective principal amounts of the individual debt securities represented by the global security to the accounts of persons that have accounts with such depository ("participants"). These accounts will be designated by the underwriters, dealers or agents with respect to the debt securities. Ownership of beneficial interests in a global security will be limited to participants or persons that may hold interests through participants.

We expect that, for the global securities deposited with DTC, pursuant to procedures established by DTC, ownership of beneficial interests in any global security with respect to which DTC is the depository will be shown on, and the transfer of that ownership will be effected only through, records maintained by DTC or its nominee (with respect to beneficial interests of participants) and records of participants (with respect to beneficial interests of persons who hold through participants). None of the Operating Partnership, the guarantors, the trustee, any paying agent and the security registrar will have any responsibility or liability for any aspect of the records of DTC or for maintaining, supervising or reviewing any records of DTC or any of its participants relating to beneficial ownership interests in the debt securities. The laws of some states require that certain purchasers of securities take physical delivery of such securities in definitive form. These limits and laws may impair the ability to own, pledge or transfer beneficial interest in a global security.

Unless otherwise specified in the applicable prospectus supplement or the actual global security, so long as the depository for a global security or its nominee is the registered owner of the book-entry global security, the depository or that nominee, as the case may be, will be considered the sole owner or holder of the debt securities represented by that global security for all purposes under the applicable indenture. Except as described below or in the applicable prospectus supplement or the global security, owners of beneficial interest in a global security will not be entitled to have any of the individual debt securities represented by the global security registered in their names, will not receive or be entitled to receive delivery of debt securities in definitive certificated form and will not be considered the owners or holders thereof under the applicable indenture. Beneficial owners of debt securities evidenced by a global security will not be considered the owners or holders thereof under the indenture for any purpose, including with respect to the giving of any direction, instructions or approvals to the trustee thereunder. Accordingly, each person owning a beneficial interest in a global security with respect to which DTC is the depository must rely on the procedures of DTC and, if that person is not a participant, on the procedures of the participant through which that person owns its interests, to exercise any rights of a holder under the applicable indenture. We understand that, under existing industry practice, if we request any action of holders or if an owner of a beneficial interest in a global security desires to give or take any action which a holder is entitled to give or take under the applicable indenture, DTC would authorize the participants holding the relevant beneficial interest to give or take that action, and the participants would authorize beneficial owners through the participants to give or take that action or would otherwise act upon the instructions of beneficial owners holding through them.

Table of Contents

Payments of principal of and premium, if any, and interest on debt securities represented by a global security registered in the name of a depository or its nominee will be made to or at the direction of the depository or its nominee, as the case may be, as the registered owner of the global security under the indenture. Under the terms of the indenture, the Operating Partnership, the guarantors, the trustee, any paying agent and the security registrar may treat the persons in whose name debt securities, including a global security, are registered as the owners thereof for the purpose of receiving such payments. Consequently, none of the Operating Partnership, the guarantors, the trustee, any paying agent and the security registrar has or will have any responsibility or liability for the payment of those amounts to beneficial owners of debt securities (including principal, premium, if any, and interest). We believe, however, that it is currently the policy of DTC to immediately credit the accounts of relevant participants with payments, in amounts proportionate to their respective holdings of beneficial interests in the relevant global security as shown on the records of DTC or its nominee. Payments by participants to owners of beneficial interests in the global security held through participants will be governed by standing instructions and customary practices, as is the case with securities held for the account of customers in bearer form or registered in street name, and will be the responsibility of the participants. Redemption notices with respect to any debt securities represented by a global security will be sent to the depository or its nominee. If less than all of the debt securities of any series are to be redeemed, we expect the depository to determine the amount of the interest of each participant in the debt securities to be redeemed to be determined by lot. None of the Operating Partnership, the guarantors, the trustee, any paying agent and the security registrar for the debt securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the global security for the debt securities or for maintaining any records with respect thereto.

None of the Operating Partnership, the guarantors, the trustee, any paying agent and the security registrar will be liable for any delay by the holders of a global security or the depository in identifying the beneficial owners of debt securities and the Operating Partnership, the guarantors and the trustee may conclusively rely on, and will be protected in relying on, instructions from the holder of a global security or the depository for all purposes. The rules applicable to DTC and its participants are on file with the SEC.

If a depository for any debt securities is at any time unwilling, unable or ineligible to continue as depository and a successor depository is not appointed by the Operating Partnership within 90 days, the Operating Partnership will issue definitive certificated debt securities in exchange for the global security representing those debt securities. If an event of default has occurred and is continuing with respect to the debt securities of any series, the Operating Partnership will issue definitive certificated debt securities in exchange for the global security or securities representing the debt securities of such series. In addition, the Operating Partnership may at any time and in its sole discretion, subject to any limitations described in the applicable prospectus supplement or the global security relating to the debt securities, determine not to have any of the debt securities represented by one or more global securities and in such event will issue definitive certificated debt securities in exchange for the global security or securities representing the debt securities.

The debt securities of a series may also be issued in whole or in part in the form of one or more bearer global securities that will be deposited outside of the United States with a depository, or with a nominee for the depository, identified in the applicable prospectus supplement and/or global security. Any such bearer global securities may be issued in temporary or permanent form. The specific terms and procedures, including the specific terms of the depository arrangement, with respect to any portion of a series of debt securities to be represented by one or more bearer global securities will be described in the applicable prospectus supplement and/or global security.

Table of Contents

**Certain Definitions**

The following are certain defined terms used in this prospectus and the indenture. We refer you to the indenture for the complete definition of all defined terms, as well as any other capitalized terms used in this prospectus or the applicable prospectus supplement for which no definition is provided (Section 101).

**For purposes of the following definitions and the indenture generally, all calculations and determinations will be made in accordance with generally accepted accounting principles and will be based upon the consolidated financial statements of the Operating Partnership and its Subsidiaries prepared in accordance with generally accepted accounting principles.**

"*Government Obligations*" means securities which are:

- 1) direct obligations of the United States of America or the government which issued the foreign currency in which the debt securities of a particular series are payable; or
- 2) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, or the government which issued the foreign currency in which the debt securities of that series are payable, the payment of which is unconditionally guaranteed by the United States of America or that other government;
- 3) which in either case, are full faith and credit obligations of the United States of America or that other government, and are not callable or redeemable at the option of the issuer thereof, and will also include a depositary receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by that custodian for the account of the holder of a depositary receipt, provided that (except as required by law) the custodian is not authorized to make any deduction from the amount payable to the holder of that depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depositary receipt.

"*Subsidiary*" means, as to any person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of stock of such corporation shall have or might have voting power by reason of the lapse of time or the happening of any contingency) is at the time owned by such person directly or indirectly through Subsidiaries, and (b) any partnership, association, joint venture, limited liability company, trust or other entity in which such person directly or indirectly through Subsidiaries has more than a 50% equity interest or 50% Capital Percentage at any time. For the purpose of this definition, "Capital Percentage" means, with respect to the interest of CubeSmart, the Operating Partnership or one of its Subsidiaries in any partnership, association, joint venture, limited liability company, trust or other entity, the percentage interest of such partnership, association, joint venture, limited liability company, trust or other entity based on the aggregate amount of net capital contributed by CubeSmart, the Operating Partnership or such Subsidiary in such partnership, association, joint venture, limited liability company, trust or other entity at the time of determination relative to all capital contributions made in such partnership, association, joint venture, limited liability company, trust or other entity at such time of determination.

"*United States Alien*" means any corporation, partnership, individual or fiduciary that is, as to the United States, a foreign corporation, a nonresident alien individual, a nonresident fiduciary of a foreign estate or trust, or a foreign partnership one or more of the members of which is, as to the United States, a foreign corporation, a nonresident alien individual or a nonresident fiduciary of a foreign estate or trust.

Table of Contents

**MATERIAL FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion describes the material U.S. federal income tax considerations relating to the purchase, ownership and disposition of common shares and preferred shares of CubeSmart and debt securities of the Operating Partnership, and the qualification and taxation of CubeSmart as a REIT under the Internal Revenue Code of 1986, as amended (the "Code").

This discussion is not exhaustive of all possible tax considerations and does not provide a detailed discussion of any state, local or foreign tax considerations. The discussion does not address all aspects of taxation that may be relevant to particular investors in light of their personal investment or tax circumstances, or to certain types of investors that are subject to special treatment under the federal income tax laws, such as insurance companies, regulated investment companies, REITs, tax-exempt organizations (except to the limited extent discussed below under "Taxation of Tax-Exempt Shareholders"), financial institutions or broker-dealers, non-U.S. individuals and foreign corporations (except to the limited extent discussed below under "Taxation of Non-U.S. Shareholders") and other persons subject to special tax rules. This summary deals only with investors who hold common shares or preferred shares of CubeSmart or debt securities of the Operating Partnership as "capital assets" within the meaning of Section 1221 of the Code. This discussion is not intended to be, and should not be construed as, tax advice.

The information in this summary is based on the Code, current, temporary and proposed Treasury regulations, the legislative history of the Code, current administrative interpretations and practices of the Internal Revenue Service (the "IRS"), including its practices and policies as endorsed in private letter rulings, which are not binding on the IRS, and existing court decisions. Future legislation, regulations, administrative interpretations and court decisions could change current law or adversely affect existing interpretations of current law. Any change could apply retroactively. We have not obtained any rulings from the IRS concerning the tax treatment of the matters discussed in this summary. Therefore, it is possible that the IRS could challenge the statements in this summary, which do not bind the IRS or the courts, and that a court could agree with the IRS.

**We urge you to consult your tax advisor regarding the specific tax consequences to you of ownership of common shares or preferred shares of CubeSmart and debt securities of the Operating Partnership, and of CubeSmart's election to be taxed as a REIT. Specifically, you should consult your tax advisor regarding the federal, state, local, foreign, and other tax consequences of such ownership and election, and regarding potential changes in applicable tax laws.**

**Taxation of CubeSmart**

*Qualification of CubeSmart as a REIT*

CubeSmart elected to be taxed as a REIT under the federal income tax laws beginning with its short taxable year ended December 31, 2004. CubeSmart believes that, beginning with such short taxable year, it has been organized and has operated in such a manner as to qualify for taxation as a REIT under the Code and intends to continue to operate in such a manner. However, there can be no assurance that CubeSmart has qualified or will remain qualified as a REIT.

CubeSmart's continued qualification and taxation as a REIT depend upon its ability to meet on a continuing basis, through actual annual operating results, certain qualification tests set forth in the federal income tax laws. Those qualification tests involve the percentage of income that CubeSmart earns from specified sources, the percentage of its assets that falls within specified categories, the diversity of its share ownership, and the percentage of its earnings that CubeSmart distributes. Accordingly, no assurance can be given that the actual results of CubeSmart's operations for any particular taxable year will satisfy such requirements. For a discussion of the tax consequences of its failure to qualify as a REIT, see "Requirements for Qualification Failure to Qualify" below.

Table of Contents

Pursuant to CubeSmart's declaration of trust, CubeSmart's board of trustees has the authority to make any tax elections on its behalf that, in its sole judgment, are in CubeSmart's best interest. This authority includes the ability to revoke or otherwise terminate CubeSmart's status as a REIT. CubeSmart's board of trustees has the authority under its declaration of trust to make these elections without the necessity of obtaining the approval of CubeSmart's shareholders. In addition, CubeSmart's board of trustees has the authority to waive any restrictions and limitations contained in its declaration of trust that are intended to preserve CubeSmart's status as a REIT during any period in which its board of trustees has determined not to pursue or preserve CubeSmart's status as a REIT.

*Taxation of CubeSmart as a REIT*

The sections of the Code relating to qualification and operation as a REIT, and the federal income taxation of a REIT, are highly technical and complex. The following discussion sets forth only the material aspects of those sections. This summary is qualified in its entirety by the applicable Code provisions and the related rules and regulations.

If CubeSmart qualifies as a REIT, it generally will not be subject to federal income tax on the taxable income that it distributes to its shareholders. The benefit of that tax treatment is that it avoids the "double taxation," or taxation at both the corporate and shareholder levels, that generally results from owning shares in a corporation. However, CubeSmart will be subject to federal tax in the following circumstances:

CubeSmart is subject to the corporate federal income tax on any taxable income, including net capital gain that it does not distribute to shareholders during, or within a specified time period after, the calendar year in which the income is earned.

CubeSmart may be subject to the corporate "alternative minimum tax" on any items of tax preference, including any deductions of net operating losses.

CubeSmart is subject to tax, at the highest corporate rate, on net income from the sale or other disposition of property acquired through foreclosure ("foreclosure property") that it holds primarily for sale to customers in the ordinary course of business, and other non-qualifying income from foreclosure property.

CubeSmart is subject to a 100% tax on net income from sales or other dispositions of property, other than foreclosure property, that it holds primarily for sale to customers in the ordinary course of business.

If CubeSmart fails to satisfy one or both of the 75% gross income test or the 95% gross income test, as described below under "Requirements for Qualification Gross Income Tests," but nonetheless continues to qualify as a REIT because it meets other requirements, CubeSmart will be subject to a 100% tax on: the greater of the amount by which it fails the 75% gross income test or the 95% gross income test multiplied, in either case, by a fraction intended to reflect its profitability.

If CubeSmart fails to distribute during a calendar year at least the sum of: (1) 85% of its REIT ordinary income for the year, (2) 95% of its REIT capital gain net income for the year, and (3) any undistributed taxable income required to be distributed from earlier periods, then CubeSmart will be subject to a 4% nondeductible excise tax on the excess of the required distribution over the amount it actually distributed.

If CubeSmart fails any of the asset tests, as described below under "Requirements for Qualification Asset Tests," other than certain de minimis failures, but its failure was due to reasonable cause and not to willful neglect, and it nonetheless maintains its REIT qualification because of specified cure provisions, CubeSmart will pay a tax equal to the greater of \$50,000 or

Table of Contents

35% of the net income from the nonqualifying assets during the period in which it failed to satisfy the asset tests. The amount of gain on which CubeSmart will pay tax generally is the lesser of the amount of gain that it recognizes at the time of the sale or disposition, and the amount of gain that it would have recognized if it had sold the asset at the time CubeSmart acquired it.

CubeSmart will pay a tax equal to the greater of \$50,000 or 35% of the net income from the nonqualifying assets during the period in which it failed to satisfy the asset tests.

If CubeSmart fails to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, and such failure is due to reasonable cause and not to willful neglect, it will be required to pay a penalty of \$50,000 for each such failure.

CubeSmart may elect to retain its net long-term capital gain and pay income tax on such gain.

CubeSmart will be subject to a 100% excise tax on transactions with a taxable REIT subsidiary that are not conducted on an arm's-length basis.

If CubeSmart acquires any asset from a C corporation (a corporation that generally is subject to full corporate-level tax) in a transaction in which the adjusted basis of the assets in CubeSmart's hands is determined by reference to the adjusted tax basis of the asset in the hands of the C corporation, CubeSmart will pay tax at the highest regular corporate rate then applicable if it recognizes gain on the sale or disposition of the asset during the 10-year period after it acquires the asset, unless the C corporation elects to treat the assets as if they were sold for their fair market value at the time of CubeSmart's acquisition.

CubeSmart may be required to pay monetary penalties to the IRS in certain circumstances, including if it fails to meet record-keeping requirements intended to monitor its compliance with rules relating to the composition of a REIT's shareholders, as described below in "Requirements for Qualification Recordkeeping Requirements."

The earnings of CubeSmart's lower-tier entities that are subchapter C corporations, including taxable REIT subsidiaries, are subject to federal corporate income tax.

In addition, we may be subject to a variety of taxes, including payroll taxes and state, local and foreign income, property and other taxes on our assets and operations. We could also be subject to tax in situations and on transactions not presently contemplated.

***Requirements for Qualification***

To qualify as a REIT, CubeSmart must elect to be treated as a REIT, and CubeSmart must meet various (a) organizational requirements, (b) gross income tests, (c) asset tests, and (d) annual distribution requirements.

**Organizational Requirements.** A REIT is a corporation, trust or association that meets each of the following requirements:

- 1) It is managed by one or more trustees or directors;
- 2) Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest;
- 3) It would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;
- 4) It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws;





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### Table of Contents

- 5) At least 100 persons are beneficial owners of its shares or ownership certificates (determined without reference to any rules of attribution);
- 6) Not more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the federal income tax laws define to include certain entities, during the last half of any taxable year;
- 7) It elects to be a REIT, or has made such election for a previous taxable year which has not been revoked or terminated, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;
- 8) It uses a calendar year for federal income tax purposes and complies with the recordkeeping requirements of the federal income tax laws; and
- 9) It meets certain other qualifications, tests described below, regarding the nature of its income and assets and the distribution of its income.

CubeSmart must meet requirements 1 through 4, 8 and 9 during its entire taxable year and must meet requirement 5 during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. If CubeSmart complies with all the requirements for ascertaining information concerning the ownership of its outstanding shares in a taxable year and has no reason to know that it violated requirement 6, CubeSmart will be deemed to have satisfied requirement 6 for that taxable year. CubeSmart's declaration of trust provides for restrictions regarding the ownership and transfer of its shares of beneficial interest that are intended to assist CubeSmart in continuing to satisfy requirements 5 and 6. However, these restrictions may not ensure that CubeSmart will, in all cases, be able to satisfy these requirements. The provisions of the declaration of trust restricting the ownership and transfer of its shares of beneficial interest are described in "Description of Our Shares Restrictions on Ownership and Transfer."

For purposes of determining share ownership under requirement 6, an "individual" generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An "individual," however, generally does not include a trust that is a qualified employee pension or profit sharing trust under the federal income tax laws, and beneficiaries of such a trust will be treated as holding CubeSmart's shares in proportion to their actuarial interests in the trust for purposes of requirement 6. CubeSmart believes it has issued sufficient shares of beneficial interest with enough diversity of ownership to satisfy requirements 5 and 6 set forth above.

To monitor compliance with the share ownership requirements, CubeSmart is required to maintain records regarding the actual ownership of its shares. To do so, CubeSmart must demand written statements each year from the record holders of certain percentages of its shares in which the record holders are to disclose the actual owners of the shares (the persons required to include in gross income the dividends paid by us). A list of those persons failing or refusing to comply with this demand must be maintained as part of CubeSmart's records. Failure by CubeSmart to comply with these record-keeping requirements could subject CubeSmart to monetary penalties. If CubeSmart satisfies these requirements and has no reason to know that condition (6) is not satisfied, CubeSmart will be deemed to have satisfied such condition. A shareholder that fails or refuses to comply with the demand is required by Treasury Regulations to submit a statement with its tax return disclosing the actual ownership of the shares and other information.

*Qualified REIT Subsidiaries.* A corporation that is a "qualified REIT subsidiary" is not treated as a corporation separate from its parent REIT. A "qualified REIT subsidiary" is a corporation, all of the capital stock of which is owned by the REIT and that has not elected to be a taxable REIT subsidiary. All assets, liabilities, and items of income, deduction, and credit of a "qualified REIT subsidiary" are treated as assets, liabilities, and items of income, deduction, and credit of the REIT. Thus, in applying

Table of Contents

the requirements described herein, any "qualified REIT subsidiary" that CubeSmart owns will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as Cubesmart's assets, liabilities, and items of income, deduction, and credit.

*Partnership Subsidiaries.* An unincorporated domestic entity, such as a partnership or limited liability company that has a single owner, generally is not treated as an entity separate from its parent for federal income tax purposes. An unincorporated domestic entity with two or more owners is generally treated as a partnership for federal income tax purposes. In the case of a REIT that is a partner in a partnership, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. Thus, CubeSmart's proportionate share of the assets, liabilities and items of income of the Operating Partnership and any other partnership, joint venture, or limited liability company that is treated as a partnership for federal income tax purposes in which CubeSmart acquires an interest, directly or indirectly, is treated as CubeSmart's assets and gross income for purposes of applying the various REIT qualification requirements.

*Taxable REIT Subsidiaries.* A REIT is permitted to own up to 100% of the stock of one or more "taxable REIT subsidiaries." A taxable REIT subsidiary is a corporation subject to U.S. federal income tax, and state and local income tax where applicable, as a regular "C" corporation. The subsidiary and the REIT must jointly elect to treat the subsidiary as a taxable REIT subsidiary. In addition, if a taxable REIT subsidiary owns, directly or indirectly, securities representing 35% or more of the vote or value of a subsidiary corporation, that subsidiary will also be treated as a taxable REIT subsidiary. Several provisions regarding the arrangements between a REIT and its taxable REIT subsidiaries ensure that a taxable REIT subsidiary will be subject to an appropriate level of United States federal income taxation. For example, the taxable REIT subsidiary rules limit the deductibility of interest paid or accrued by a taxable REIT subsidiary to its parent REIT. Further, the rules impose a 100% excise tax on transactions between a taxable REIT subsidiary and its parent REIT or the REIT's tenants that are not conducted on an arm's-length basis. CubeSmart may engage in activities indirectly through a taxable REIT subsidiary that would jeopardize its REIT status if CubeSmart engaged in the activities directly. For example, a taxable REIT subsidiary of CubeSmart may provide services to unrelated parties which might produce income that does not qualify under the gross income tests described below. A taxable REIT subsidiary may also engage in other activities that, if conducted by CubeSmart directly, could result in the receipt of non-qualified income or the ownership of non-qualified assets or the imposition of the 100% tax on income from prohibited transactions. See description below under "Prohibited Transactions."

**Gross Income Tests.** CubeSmart must satisfy two gross income tests annually to maintain its qualification as a REIT. First, at least 75% of its gross income for each taxable year must consist of defined types of income that CubeSmart derives, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income. Qualifying income for purposes of that 75% gross income test generally includes:

rents from real property;

interest on debt secured by mortgages on real property or on interests in real property (including certain types of mortgage-backed securities);

dividends or other distributions on, and gain from the sale of, shares in other REITs (excluding dividends from its taxable REIT subsidiaries);

gain from the sale of real estate assets;

income and gain derived from foreclosure property; and

Table of Contents

income derived from the temporary investment of new capital that is attributable to the issuance of CubeSmart's shares of beneficial interest or a public offering of its debt with a maturity date of at least five years and that CubeSmart receives during the one year period beginning on the date on which it receives such new capital.

Second, in general, at least 95% of CubeSmart's gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends (including dividends from its taxable REIT subsidiaries), gain from the sale or disposition of stock or securities, or any combination of these. Gross income from the sale of property that CubeSmart holds primarily for sale to customers in the ordinary course of business is excluded from both the numerator and the denominator in both income tests. See "Prohibited Transactions." In addition, certain gains from hedging transactions and certain foreign currency gains will be excluded from both the numerator and the denominator for purposes of one or both of the income tests. See "Hedging Transactions," and "Foreign Currency Gain."

*Rents from Real Property.* Rent that CubeSmart receives from its real property will qualify as "rents from real property," which is qualifying income for purposes of the 75% and 95% gross income tests, only if the following conditions are met:

First, the rent must not be based in whole or in part on the income or profits of any person. Participating rent, however, will qualify as "rents from real property" if it is based on percentages of receipts or sales and the percentages are fixed at the time the leases are entered into, are not renegotiated during the term of the leases in a manner that has the effect of basing percentage rent on income or profits, and conform with normal business practice.

Second, CubeSmart must not own, actually or constructively, 10% or more of the stock of any corporate tenant or the assets or net profits of any tenant, referred to as a related party tenant, other than a taxable REIT subsidiary. The constructive ownership rules generally provide that, if 10% or more in value of its shares is owned, directly or indirectly, by or for any person, CubeSmart is considered as owning the stock owned, directly or indirectly, by or for such person. CubeSmart does not own any stock or any assets or net profits of any tenant directly. However, because the constructive ownership rules are broad and it is not possible to monitor continually direct and indirect transfers of its shares, no absolute assurance can be given that such transfers or other events of which CubeSmart has no knowledge will not cause CubeSmart to own constructively 10% or more of a tenant (or a subtenant, in which case only rent attributable to the subtenant is disqualified) other than a taxable REIT subsidiary at some future date.

Under an exception to the related-party tenant rule described in the preceding paragraph, rent that CubeSmart receives from a taxable REIT subsidiary will qualify as "rents from real property" as long as (1) at least 90% of the leased space in the property is leased to persons other than taxable REIT subsidiaries and related-party tenants, and (2) the amount paid by the taxable REIT subsidiary to rent space at the property is substantially comparable to rents paid by other tenants of the property for comparable space. The "substantially comparable" requirement must be satisfied when the lease is entered into, when it is extended, and when the lease is modified, if the modification increases the rent paid by the taxable REIT subsidiary. If the requirement that at least 90% of the leased space in the related property is rented to unrelated tenants is met when a lease is entered into, extended, or modified, such requirement will continue to be met as long as there is no increase in the space leased to any taxable REIT subsidiary or related party tenant. Any increased rent attributable to a modification of a lease with a taxable REIT subsidiary in which CubeSmart owns directly or indirectly more than 50% of the voting power or value of the stock (a "controlled taxable REIT subsidiary") will not be treated as "rents from real property."

Third, the rent attributable to the personal property leased in connection with a lease of real property must not be greater than 15% of the total rent received under the lease. The rent attributable

Table of Contents

to personal property under a lease is the amount that bears the same ratio to total rent under the lease for the taxable year as the average of the fair market values of the leased personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real and personal property covered by the lease at the beginning and at the end of such taxable year (the "personal property ratio"). With respect to each of its leases, CubeSmart believes that the personal property ratio generally is less than 15%. Where that is not, or may in the future not be, the case, CubeSmart believes that any income attributable to personal property will not jeopardize its ability to qualify as a REIT. There can be no assurance, however, that the IRS would not challenge CubeSmart's calculation of a personal property ratio, or that a court would not uphold such assertion. If such a challenge were successfully asserted, CubeSmart could fail to satisfy the 75% or 95% gross income test and thus lose its REIT status.

Fourth, CubeSmart cannot furnish or render non-customary services to the tenants of its properties, or manage or operate its properties, other than through an independent contractor who is adequately compensated and from whom CubeSmart does not derive or receive any income. However, CubeSmart need not provide services through an "independent contractor," but instead may provide services directly to its tenants, if the services are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, CubeSmart may provide a minimal amount of "non-customary" services to the tenants of a property, other than through an independent contractor, as long as its income (valued at not less than 150% of our direct cost of performing such services) from the services does not exceed 1% of its income from the related property. Such income will not cause rents from tenants of the property to qualify as rents from real property but income from such services will not qualify as rents from real property. Finally, CubeSmart may own up to 100% of the stock of one or more taxable REIT subsidiaries, which may provide non-customary services to CubeSmart's tenants without tainting CubeSmart's rents from the related properties. CubeSmart has not performed, and does not intend to perform, any services other than customary ones for its tenants, other than services provided through independent contractors or taxable REIT subsidiaries.

Tenants may be required to pay, in addition to base rent, reimbursements for certain amounts CubeSmart is obligated to pay to third parties (such as a lessee's proportionate share of a property's operational or capital expenses), penalties for nonpayment or late payment of rent or additions to rent. These and other similar payments should qualify as "rents from real property." To the extent they do not, they should be treated as interest that qualifies for the 95% gross income test.

If a portion of the rent CubeSmart receives from a property does not qualify as "rents from real property" because the rent attributable to personal property exceeds 15% of the total rent for a taxable year, the portion of the rent attributable to personal property will not be qualifying income for purposes of either the 75% or 95% gross income test. Thus, if rent attributable to personal property, plus any other income that is nonqualifying income for purposes of the 95% gross income test, during a taxable year exceeds 5% of its gross income during the year, CubeSmart would lose its REIT status, unless CubeSmart qualified for certain statutory relief provisions. By contrast, in the following circumstances, none of the rent from a lease of property would qualify as "rents from real property": (1) the rent is considered based on the income or profits of the tenant; (2) the lessee is a related party tenant or fails to qualify for the exception to the related-party tenant rule for qualifying taxable REIT subsidiaries; or (3) CubeSmart furnishes non-customary services to the tenants of the property, or manages or operates the property, other than through a qualifying independent contractor or a taxable REIT subsidiary. In any of these circumstances, CubeSmart could lose its REIT status, unless CubeSmart qualified for certain statutory relief provisions, because it would be unable to satisfy either the 75% or 95% gross income test.

*Interest.* The term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of the amount depends in whole or in part on the income or profits

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### Table of Contents

of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely because it is based on a fixed percentage or percentages of receipts or sales. Furthermore, to the extent that interest from a loan that is based on the profit or net cash proceeds from the sale of the property securing the loan constitutes a "shared appreciation provision," income attributable to such participation feature will be treated as gain from the sale of the secured property.

*Dividends.* Our share of dividends received from any corporation (including any TRS, but excluding any REIT) in which we own any equity interest will qualify for purposes of the 95% gross income test but not for purposes of the 75% gross income test. Our share of any dividends received from any other REIT in which we own an equity interest, if any, will be qualifying income for purposes of both income tests.

*Prohibited Transactions.* A REIT will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. Whether a REIT holds an asset "primarily for sale to customers in the ordinary course of a trade or business" depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset. A safe harbor to the characterization of the sale of property by a REIT as a prohibited transaction and the 100% prohibited transaction tax is available if the following requirements are met:

the REIT has held the property for not less than two years (or, for sales made before July 30, 2008, four years);

the aggregate expenditures made by the REIT, or any partner of the REIT, during the two-year period (or, for sales made before July 30, 2008, four-year period) preceding the date of the sale that are includable in the basis of the property do not exceed 30% of the selling price of the property;

either (1) during the year in question, the REIT did not make more than seven sales of property other than foreclosure property or sales to which Section 1033 of the Code applies, (2) the aggregate adjusted bases of all such properties sold by the REIT during the year did not exceed 10% of the aggregate bases of all of the assets of the REIT at the beginning of the year or (3) for sales made after July 30, 2008, the aggregate fair market value of all such properties sold by the REIT during the year did not exceed 10% of the aggregate fair market value of all of the assets of the REIT at the beginning of the year;

in the case of property not acquired through foreclosure or lease termination, the REIT has held the property for at least two years (or, for sales made before July 30, 2008, four years) for the production of rental income; and

if the REIT has made more than seven sales of non-foreclosure property during the taxable year, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor from whom the REIT derives no income.

CubeSmart intends to hold properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing, owning and operating properties, and to make occasional sales of properties as are consistent with its investment objective. CubeSmart cannot assure you, however, that it can comply with the safe-harbor provisions that would prevent the imposition of the 100% tax or that it will avoid owning property that may be characterized as property held "primarily for sale to customers in the ordinary course of a trade or business." The 100% tax does not apply to gains from the sale of prople>

In July 2012, our Board of Directors ( Board ) approved the initiation of a cash dividend to our stockholders, which is subject to quarterly Board approval. Future decisions to pay, increase or decrease dividends continue to be at the discretion of the Board and will be dependent on our operating performance, financial condition, capital expenditure requirements and other such factors that the Board considers relevant. (See Note 10 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of our stockholders' equity.) Our credit facility limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio. (See Note 7 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of our long-term debt.)

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There were approximately 1,100 holders of record of our common stock at February 12, 2014, and we estimate there were approximately 20,320 beneficial stockholders on that date.

The following provides information regarding our purchase of our common stock during the thirteen weeks ended December 31, 2013 (in thousands, except per share amounts):

Period	Total Number of Shares Purchased (1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs (2)
October 2 – November 5, 2013	440	\$ 45.66	439	10,214
November 6 – December 3, 2013	583	48.07	583	9,630
December 4 – December 31, 2013	—	—	—	9,630
<b>Total</b>	<b>1,023</b>		<b>1,022</b>	

(1) The total number of shares purchased includes shares withheld upon vesting of restricted share awards to satisfy tax withholding obligations.

(2) On July 22, 2013, our Board increased the authorization to repurchase our common stock by 7.5 million shares to 48.5 million shares. Under this and all previous authorizations, we have cumulatively repurchased 38.9 million shares at a total cost of \$1,015.5 million through December 31, 2013, including 4.5 million shares of our common stock at a cost of \$183.7 million during fiscal year 2013. Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. (See Note 10 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of our repurchase authorization and methods.)

Table of Contents

As described in Item 9B of Part II, on February 27, 2014, we entered into a collared accelerated stock repurchase ( ASR ) agreement with a financial institution as part of our common stock repurchase authorization. The initial delivery to us of shares purchased under the ASR program will be reported in our Form 10-Q for the period ending April 1, 2014.

*Price Performance Graph*

The following graph compares the cumulative five-year total return provided stockholders on the Company's common stock relative to the S&P 400 Midcap Index, the NASDAQ Composite® (US) Index and the Nation's Restaurant News Index. The graph assumes a \$100 initial investment and the reinvestment of dividends in each of the indices. The measurement points utilized in the graph consist of the last trading day in each calendar year, which closely approximates the last day of the respective fiscal year of the Company. The historical stock performance presented below is not intended to and may not be indicative of future stock performance.

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	12/31/08	12/31/09	12/31/10	12/30/11	12/31/12	12/31/13
The Cheesecake Factory Incorporated	\$ 100	\$ 214	\$ 304	\$ 291	\$ 324	\$ 478
S&P 400 Midcap Index	\$ 100	\$ 135	\$ 169	\$ 163	\$ 190	\$ 249
NASDAQ Composite® (US) Index	\$ 100	\$ 144	\$ 170	\$ 171	\$ 202	\$ 282
Nation's Restaurant News Index (1)	\$ 100	\$ 124	\$ 163	\$ 207	\$ 209	\$ 267

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(1) The Nation's Restaurant News Index ( Index ) is a comprehensive restaurant industry index. In addition to fine and casual dining, the Index includes such fast growing segments as fast casual dining and quick-serve.



Table of Contents

This graph shall not be deemed incorporated by reference by any general statement incorporating by reference this Annual Report on Form 10-K into any filing under the Securities Act of 1933 or under the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporates this information by reference, and shall not otherwise be deemed filed under such Acts.

**ITEM 6. SELECTED FINANCIAL DATA**

The following selected financial data should be read in conjunction with our consolidated financial statements and related notes thereto, and with Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations.

	Fiscal Year (1) (2)				
	2013	2012	2011	2010	2009
	(In thousands, except per share data)				
<b>Statement of Comprehensive Income Data:</b>					
Revenues	\$ 1,877,910	\$ 1,809,017	\$ 1,757,624	\$ 1,659,404	\$ 1,602,020
Costs and expenses:					
Cost of sales	455,685	450,153	448,468	412,855	394,409
Labor expenses	603,069	580,192	567,358	536,954	528,578
Other operating costs and expenses	452,571	439,559	428,442	408,362	402,877
General and administrative expenses	114,728	104,156	96,263	95,729	97,432
Depreciation and amortization expenses	78,558	74,433	71,958	72,140	75,184
Impairment of assets and lease terminations	(561)	9,536	1,547	—	26,541
Preopening costs	12,906	12,289	10,138	5,153	3,282
Total costs and expenses	1,716,956	1,670,318	1,624,174	1,531,193	1,528,303
Income from operations	160,954	138,699	133,450	128,211	73,717
Interest and other expense, net	(4,504)	(4,725)	(4,307)	(17,122)	(22,410)
Income before income taxes	156,450	133,974	129,143	111,089	51,307
Income tax provision	42,094	35,551	33,423	29,376	8,474
Net income	\$ 114,356	\$ 98,423	\$ 95,720	\$ 81,713	\$ 42,833
Net income per share:					
Basic	\$ 2.19	\$ 1.85	\$ 1.70	\$ 1.39	\$ 0.72
Diluted	\$ 2.10	\$ 1.78	\$ 1.64	\$ 1.35	\$ 0.71
Weighted average shares outstanding:					
Basic	52,229	53,185	56,378	58,905	59,362
Diluted	54,377	55,211	58,190	60,446	60,082
	\$ 0.52	\$ 0.24	\$ —	\$ —	\$ —

Cash dividends declared  
per common share

**Balance Sheet Data (at  
end of period):**

Total cash and cash equivalents	\$ 61,751	\$ 83,569	\$ 48,211	\$ 81,619	\$ 73,715
Total assets	1,124,114	1,092,167	1,022,570	1,037,307	1,054,882
Total long-term debt and deemed landlord financing liability, including current portion	68,701	57,172	56,961	53,577	153,331
Total stockholders' equity	577,353	579,726	542,753	592,337	516,113

**Restaurant Data**

Percentage change in comparable sales	1.0%	1.9%	1.8%	2.0%	(2.6)%
Restaurants open at year end	180	177	170	163	160

(1) Fiscal 2011 consisted of 53 weeks. All other fiscal years presented consisted of 52 weeks.

(2) Fiscal 2013, 2012, 2011, 2010 and 2009 included \$14.1 million, \$10.8 million, \$9.6 million, \$10.9 million and \$14.6 million, respectively, of stock-based compensation expense.

Table of Contents**Non-GAAP Measures**

Adjusted net income and adjusted diluted net income per share are supplemental measures of our performance that are not required by or presented in accordance with GAAP. These non-GAAP measures may not be comparable to similarly titled measures used by other companies and should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP.

We calculate these non-GAAP measures by eliminating from net income and diluted net income per share the impact of items we do not consider indicative of our ongoing operations. We believe these adjusted measures provide additional information to facilitate the comparison of our past and present financial results. We utilize results that both include and exclude the identified items in evaluating business performance. However, our inclusion of these adjusted measures should not be construed as an indication that our future results will be unaffected by unusual or infrequent items. In the future, we may incur expenses or generate income similar to the adjusted items.

Following is a reconciliation from net income and diluted net income per share to the corresponding adjusted measures (in thousands, except per share data):

	Fiscal Year		
	2013	2012	2011
Net income	\$ 114,356	\$ 98,423	\$ 95,720
After-tax impact from:			
Impairment of assets and lease terminations (1)	(337)	5,722	928
Partial IRS settlement (2)	—	—	(1,506)
Proceeds from variable life insurance contract (3)	—	(419)	—
Adjusted net income	\$ 114,019	\$ 103,726	\$ 95,142
Diluted net income per share	\$ 2.10	\$ 1.78	\$ 1.64
After-tax impact from:			
Impairment of assets and lease terminations	0.01	0.11	0.02
Partial IRS settlement	—	—	(0.03)
Proceeds from variable life insurance contract	—	(0.01)	—
Adjusted diluted net income per share (4)	\$ 2.10	\$ 1.88	\$ 1.64

- (1) Represents impairment and lease termination expenses and income related to seven The Cheesecake Factory and four Grand Lux Cafe restaurants. The pre-tax amounts associated with these items were (\$561), \$9,536 and \$1,547 in fiscal years 2013, 2012 and 2011, respectively. These amounts were recorded in impairment of assets and lease terminations. (See Note 1 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of these charges.)
- (2) Represents partial settlement with the IRS as described in Note 13 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report. The pre-tax amount associated with this item was \$719 and was recorded in interest and other expense, net. The non-taxable amount associated with this item was \$1,075 and was recorded in income tax provision.
- (3) Represents proceeds realized from a variable life insurance contract used to support our Executive Savings Plan, a non-qualified deferred compensation plan. This item is non-taxable and was recorded in interest and other expense, net.
- (4) Diluted net income per share may not add due to rounding.

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

**General**

This discussion and analysis should be read in conjunction with our consolidated financial statements and related notes in Part IV, Item 15 of this report, the Risk Factors included in Part I, Item 1A of this report, and the cautionary statements included throughout this report. The inclusion of supplementary analytical and related information herein may require us to make estimates and assumptions to enable us to fairly present, in all material respects, our analysis of trends and expectations with respect to our results of operations and financial position.

Table of Contents

As of February 27, 2014, we operated 181 Company-owned restaurants: 169 under The Cheesecake Factory® mark, 11 under the Grand Lux Cafe® mark and one under the RockSugar Pan Asian Kitchen® mark. We also operated two bakery production facilities.

The Cheesecake Factory is an upscale casual dining concept that offers more than 200 menu items including appetizers, pizza, seafood, steaks, chicken, burgers, specialty items, pastas, salads, sandwiches, omelettes and desserts, including approximately 50 varieties of cheesecakes and other baked desserts. Grand Lux Cafe and RockSugar Pan Asian Kitchen are also upscale, casual dining concepts offering approximately 200 and 75 menu items, respectively. In contrast to many chain restaurant operations, substantially all of our menu items, except those desserts manufactured at our bakery production facilities, are handmade daily at our restaurants with high quality, fresh ingredients using innovative and proprietary recipes. We believe our The Cheesecake Factory and Grand Lux Cafe restaurants are recognized by consumers for offering value with freshly prepared menu items across a broad array of price points and generous food portions at moderate prices. Our restaurants' distinctive, contemporary design and decor create a high-energy ambiance in a casual setting. Our restaurants typically range in size from 7,000 to 17,000 interior square feet, provide full liquor service and are generally open seven days a week for lunch and dinner, as well as Sunday brunch.

We utilize a 52/53-week fiscal year ending on the Tuesday closest to December 31st for financial reporting purposes. Fiscal years 2013 and 2012 each consisted of 52 weeks, while fiscal 2011 consisted of 53 weeks. The estimated impact of the 53rd week in fiscal 2011 was an increase in revenue of approximately \$43 million. While certain expenses increased in direct relationship to additional revenue from the 53rd week, other expenses are incurred on a calendar month basis.

In fiscal 2011, we announced our initial expansion plans outside of the United States and entered into an exclusive licensing agreement with a restaurant and retail operator based in Kuwait to develop The Cheesecake Factory restaurants in the Middle East. This licensee currently operates four locations, two in the United Arab Emirates, and one each in Kuwait and the Kingdom of Saudi Arabia. Our licensee has plans to open additional restaurants in these countries as well as in Lebanon, Qatar and Bahrain. In February 2013, we entered into an exclusive licensing agreement with a restaurant operator based in Mexico to develop The Cheesecake Factory restaurants in Mexico and Chile. These licensing agreements include initial development fees, site and design fees and ongoing royalties on our licensees' restaurant sales. In addition, our licensees purchase bakery products branded under The Cheesecake Factory® trademark from us.

**Overview**

Our strategy is driven by our commitment to guest satisfaction and is focused primarily on menu innovation, service and operational execution to continue to differentiate ourselves from other restaurant concepts, as well as to drive competitively strong performance that is sustainable. Financially, we are focused on prudently managing expenses at our restaurants, bakery facilities and corporate support center, and leveraging our size to make the best use of our purchasing power.

We are also committed to allocating capital in a manner that will deliver returns that meet our high hurdle rates, which are significantly above our cost of capital. Returns are affected by the cost to build restaurants, the level of revenues that each restaurant can deliver and our ability to maximize the profitability of restaurants. Investing in new restaurant development that meets our return on investment criteria creates value for our Company. It is our top capital allocation priority with a focus on opening our restaurant concepts in premier locations within both new and existing markets in the United States, and potentially new markets internationally.

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Our goal is to deliver average annual mid-teens earnings per share growth over the next five years while also achieving our return objectives. The following are the key performance levers that we believe will contribute to achieving our earnings per share goal:

- *Growing Comparable Restaurant Sales and Overall Revenue.* Our overall revenue growth is primarily driven by increases in comparable restaurant sales, revenue from new restaurant openings, and royalties and bakery sales from additional licensed international locations.

Changes in comparable restaurant sales come from variations in guest traffic, as well as in check average. Our strategy is to grow guest traffic by continuing to offer innovative, high quality menu items that offer guests a wide range of options in terms of flavor, price and value. In addition, we focus on service and hospitality with the goal of delivering an exceptional guest experience. Check average is impacted by menu price increases and/or changes in menu mix. Our philosophy with regard to menu pricing is to use price increases to help offset key operating costs in a manner that balances protecting both our margins and guest traffic levels. In fiscal 2012, our menu mix was influenced by check management by our guests and a shifting of menu preferences as we evolved our menu and our guests tried new items. Over the last year, as the economy slowly improved, our menu mix stabilized, allowing us to capture more of the menu price increases we implemented.

Table of Contents

- Increasing Our Operating Margins (Income from Operations Expressed as a Percentage of Revenues).* Operating margins are subject to fluctuations in commodity costs, labor, restaurant-level occupancy expenses, general and administrative expenses ( G&A ), and preopening expenses. Our objective is to gradually increase our operating margins to return to peak levels by capturing fixed cost leverage from increases in comparable restaurant sales, growth in international royalties, maximizing our purchasing power as our business grows and operating our restaurants as productively as possible.

By efficiently scaling our restaurant and bakery support infrastructure and improving our internal processes, we work toward growing G&A expenses at a slower rate than revenue growth over the long-term, which also should contribute to operating margin expansion. However, G&A as a percentage of revenues may vary from quarter to quarter and may increase on a year-over-year comparative basis in the near term as we ramp up our infrastructure to support our growth.

- Share Repurchases.* We have historically generated a significant amount of free cash flow, which we define as cash flow from operations less capital expenditures. We utilize a substantial amount of our free cash flow for dividends and for share repurchases, the latter of which supports our earnings per share growth and offsets dilution from our equity compensation program.

**Results of Operations**

The following table sets forth, for the periods indicated, information from our consolidated statements of comprehensive income expressed as percentages of revenues.

	2013	Fiscal Year 2012	2011
Revenues	100.0%	100.0%	100.0%
Costs and expenses:			
Cost of sales	24.2	24.9	25.5
Labor expenses	32.1	32.1	32.3
Other operating costs and expenses	24.1	24.3	24.3
General and administrative expenses	6.1	5.7	5.5
Depreciation and amortization expenses	4.2	4.1	4.1
Impairment of assets and lease terminations	—	0.5	0.1
Preopening costs	0.7	0.7	0.6
Total costs and expenses	91.4	92.3	92.4
Income from operations	8.6	7.7	7.6
Interest and other expense, net	(0.3)	(0.3)	(0.3)
Income before income taxes	8.3	7.4	7.3
Income tax provision	2.2	2.0	1.9
Net income	6.1%	5.4%	5.4%

**Fiscal 2013 Compared to Fiscal 2012**

*Revenues*

Revenues increased 3.8% to \$1,877.9 million for fiscal 2013 compared to \$1,809.0 million for fiscal 2012.

Comparable restaurant sales increased by 1.0%, or \$16.2 million, from fiscal 2012 to fiscal 2013, driven by average check growth of 1.8% (based on an increase of 1.8% in pricing and flat mix), partially offset by a decrease in guest traffic of 0.8%.

Comparable sales at The Cheesecake Factory restaurants increased by 1.1% from the prior fiscal year driven by average check growth, partially offset by a decrease in guest traffic. We implemented effective menu price increases of approximately 1.0% during both the first and third quarter of fiscal 2013. On a weighted average basis, based on the timing of our menu roll outs within each quarter, The Cheesecake Factory menu included a 1.8% increase in pricing for fiscal year 2013. We plan to continue targeting menu price increases of 1% to 2% annually.



Table of Contents

Comparable sales at our Grand Lux Cafe restaurants decreased by 1.1% from the prior fiscal year driven by a decrease in guest traffic, partially offset by average check growth. With fewer restaurants in operation than The Cheesecake Factory and a number of locations that are proportionately larger in size, Grand Lux Cafe can experience greater variability in its comparable sales. We implemented effective menu price increases of approximately 0.7% and 1.3% during the second and fourth quarter of fiscal 2013, respectively. On a weighted average basis, based on the timing of our menu roll outs within each quarter, the Grand Lux Cafe menu included a 1.7% increase in pricing for fiscal year 2013. We plan to continue targeting menu price increases of 1% to 2% annually.

Restaurants become eligible to enter our comparable sales base in their 19th month of operation. At December 31, 2013, there were 14 The Cheesecake Factory restaurants and one Grand Lux Cafe not yet in our comparable sales base. International licensed locations and restaurants that are no longer in operation, including those which we have relocated, are excluded from our comparable sales calculations. Factors outside of our control, such as macroeconomic conditions, weather patterns, timing of holidays, competition and other factors, including those referenced in Part I, Item 1A, Risk Factors, can impact comparable sales.

We generally update and reprint our menus twice a year. As part of these menu updates, we evaluate the need for price increases based on those operating cost increases of which we are aware or that we can reasonably expect. While menu price increases can contribute to higher comparable restaurant sales in addition to offsetting margin pressure, we carefully consider all potential price increases in light of the extent to which we believe they will impact guest traffic.

Total restaurant operating weeks increased 2.3% to 9,160 in fiscal 2013 compared to the prior year. Average sales per restaurant operating week increased approximately 2.0% to \$198,535 in fiscal 2013 compared to fiscal 2012.

External bakery sales were \$55.3 million for fiscal 2013 compared to \$65.2 million in fiscal 2012, primarily due to lower sales to warehouse club customers.

*Cost of Sales*

Cost of sales consists of food, beverage, retail and bakery production supply costs incurred in conjunction with our restaurant and bakery revenues, and excludes depreciation, which is captured separately in depreciation and amortization expenses. As a percentage of revenues, cost of sales was 24.2% for fiscal 2013 compared to 24.9% for fiscal 2012. This improvement was driven primarily by a benefit from a higher mix of restaurant sales as compared to bakery sales, as well as lower general grocery costs.

Our restaurant menus are among the most diversified in the foodservice industry and, accordingly, are not overly dependent on a few select commodities. Changes in costs for one commodity sometimes can be offset by cost changes in other commodity categories. The principal commodity categories for our restaurants include produce, poultry, meat, fish and seafood, dairy, bread and general grocery items.

We attempt to negotiate short-term and long-term agreements for our principal commodity, supply and equipment requirements, depending on market conditions and expected demand. However, we are currently unable to contract for extended periods of time for certain of our

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commodities such as some fish and certain dairy items (excluding cream cheese used in our bakery operations). Consequently, these commodities can be subject to unforeseen supply and cost fluctuations.

As has been our past practice, we will carefully consider opportunities to introduce new menu items and implement selected menu price increases to help offset any expected cost increases for key commodities and other goods and services utilized by our operations. For new restaurants, cost of sales will typically be higher during the first three to four months of operations until our management team becomes more accustomed to predicting, managing and servicing the sales volumes at the new restaurants.

### *Labor Expenses*

As a percentage of revenues, labor expenses, which include restaurant-level labor costs and bakery direct production labor, including associated fringe benefits, were 32.1% in both fiscal 2013 and fiscal 2012.

### *Other Operating Costs and Expenses*

Other operating costs and expenses consist of restaurant-level occupancy expenses (rent, common area expenses, insurance, licenses, taxes and utilities), other operating expenses (excluding food costs and labor expenses, which are reported separately) and bakery production overhead, selling and distribution expenses. As a percentage of revenues, other operating costs and expenses decreased to 24.1% for fiscal 2013 from 24.3% for fiscal 2012. This decrease was primarily due to a benefit from a higher mix of restaurant sales as compared to bakery sales.

Table of Contents

*General and Administrative Expenses*

General and administrative ( G&A ) expenses consist of the restaurant management recruiting and training program, as well as the restaurant field supervision, corporate support and bakery administrative organizations. As a percentage of revenues, G&A expenses increased to 6.1% for fiscal 2013 versus 5.7% for fiscal 2012 due to an increase in stock-based compensation expense and higher professional and legal fees, primarily stemming from recoupment of legal expenses in fiscal 2012 resulting from an insurance settlement.

*Depreciation and Amortization Expenses*

As a percentage of revenues, depreciation and amortization expenses were 4.2% for fiscal 2013 compared to 4.1% for fiscal 2012.

*Impairment of Assets and Lease Terminations*

In fiscal 2013, we incurred final expenses of \$0.6 million for future rent and other closing costs associated with the closure of three Grand Lux Cafe restaurants and \$3.7 million of impairment, accelerated depreciation and closing costs related to the relocation of four The Cheesecake Factory restaurants, three of which were relocated during fiscal 2013. We also recorded \$4.9 million in income from a landlord in connection with the early termination of one of these leases and for waiving our right to exercise renewal options. During 2014, we expect to incur an additional \$0.3 million of expense related to the relocation of the fourth restaurant.

*Preopening Costs*

Preopening costs were \$12.9 million for fiscal 2013 compared to \$12.3 million in fiscal 2012. We opened nine The Cheesecake Factory restaurants in fiscal 2013 compared to seven The Cheesecake Factory restaurants and one Grand Lux Cafe in fiscal 2012. Preopening costs include all costs to relocate and compensate restaurant management employees during the preopening period, costs to recruit and train hourly restaurant employees, and wages, travel and lodging costs for our opening training team and other support staff members. Also included in preopening costs are expenses for maintaining a roster of trained managers for pending openings, the associated temporary housing and other costs necessary to relocate managers in alignment with future restaurant opening and operating needs, and corporate travel and support activities. Preopening costs can fluctuate significantly from period to period, based on the number and timing of restaurant openings and the specific preopening costs incurred for each restaurant.

*Interest and Other Expense, Net*

Interest and other expense, net decreased to \$4.5 million in fiscal 2013 compared to \$4.7 million in fiscal 2012. This net decrease was primarily due to lower interest expense related to taxes and a benefit in fiscal 2013 related to the exercise of an option to vest our ownership in land

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adjacent to our North Carolina bakery facility, partially offset by a benefit realized in fiscal 2012 from a variable life insurance contract used to support our Executive Savings Plan. Interest expense included \$3.3 million in fiscal 2013 compared to \$3.2 million in fiscal 2012 associated with landlord construction allowances deemed to be financing in accordance with accounting guidance.

### *Income Tax Provision*

Our effective income tax rate was 26.9% for fiscal 2013 compared to 26.5% for the comparable prior year period. This increase was attributable to a lower proportion of Federal Insurance Contributions Act ( FICA ) tip credits and our manufacturing deduction in relation to pre-tax income, partially offset by higher Work Opportunity Tax Credits due to the reinstatement of the program in 2013 and higher non-taxable gains on our investments in variable life insurance used to support our Executive Savings Plan.

### **Fiscal 2012 Compared to Fiscal 2011**

#### *Revenues*

Revenues increased 2.9% to \$1,809.0 million for fiscal 2012 compared to \$1,757.6 million for fiscal 2011. Excluding the impact of the 53rd week in fiscal 2011, revenues increased 5.5%.

Table of Contents

Comparable restaurant sales increased by 1.9%, or \$30.2 million, from fiscal 2011 to fiscal 2012, driven by an increase in guest traffic of 0.7% and average check growth of 1.2%. Increases in menu pricing were partially offset by changes in menu mix due to check management by our guests, as well as some shifting of menu preferences as our guests tried newer items. At January 1, 2013, there were 13 The Cheesecake Factory restaurants and one Grand Lux Cafe not included in the comparable sales base.

Comparable sales at The Cheesecake Factory restaurants increased 2.2% in fiscal 2012 driven primarily by average check growth, as well as improved guest traffic. We implemented effective menu price increases of approximately 1.0% and 0.8% during the first and third quarters of fiscal 2012, respectively. On a weighted average basis, based on the timing of our menu roll outs within each quarter, The Cheesecake Factory menu included a 1.9% increase in pricing for fiscal year 2012. This increase in menu pricing was partially offset by changes in menu mix due to check management by our guests, as well as some shifting of menu preferences as our guests tried newer items.

Comparable sales at our Grand Lux Cafe restaurants decreased 2.0% from fiscal year 2011 driven by lower guest traffic, partially offset by an increase in average check. We implemented effective menu price increases of approximately 1.0% and 0.8% during the second and fourth quarters of fiscal 2012, respectively. On a weighted average basis, based on the timing of our menu roll outs within each quarter, the Grand Lux Cafe menu included a 1.5% increase in pricing for fiscal year 2012. This increase in menu pricing was partially offset by changes in menu mix due to check management by our guests, as well as some shifting of menu preferences as our guests tried newer items.

Total restaurant operating weeks increased 2.1% to 8,957 in fiscal 2012 from the prior year due to the opening of ten new restaurants during the trailing 15-month period. Excluding the impact of the 53rd week in fiscal 2011, total operating weeks increased 4.1%. Average sales per restaurant operating week increased approximately 1.4% to \$194,700 in fiscal 2012 compared to fiscal 2011 due to an improvement in both guest traffic and average check.

External bakery sales decreased 10.2% to \$65.2 million in fiscal 2012 compared to \$72.6 million in the prior fiscal year due primarily to a decline in sales to our warehouse club accounts.

*Cost of Sales*

As a percentage of revenues, cost of sales decreased to 24.9% in fiscal 2012 compared to 25.5% in fiscal 2011. This improvement was primarily due to lower costs for dairy, produce and fish, as well as a benefit from a higher mix of restaurant sales as compared to bakery sales.

*Labor Expenses*

As a percentage of revenues, labor expenses decreased to 32.1% in fiscal 2012 compared to 32.3% in fiscal 2011. This variance is primarily due to lower group medical insurance costs stemming from lower claims experience.

*Other Operating Costs and Expenses*

As a percentage of revenues, other operating costs and expenses were 24.3% for both fiscal 2012 and fiscal 2011.

*General and Administrative Expenses*

As a percentage of revenues, G&A expenses increased to 5.7% for fiscal 2012 versus 5.5% for fiscal 2011 due primarily to achievement of a higher corporate bonus target in fiscal 2012 than in the prior year.

*Depreciation and Amortization Expenses*

As a percentage of revenues, depreciation and amortization expenses were 4.1% for both fiscal 2012 and fiscal 2011.

*Impairment of Assets and Lease Terminations*

In fiscal 2012, we recorded expense of \$5.5 million, representing a reduction in the carrying value of one The Cheesecake Factory restaurant. In fiscal 2011, we recorded expense of \$1.5 million, representing reductions to the carrying values of three previously impaired locations, consisting of one Grand Lux Cafe and two The Cheesecake Factory restaurants.

Table of Contents

Also in fiscal 2012, we made the business decision to discontinue operations in three of our Grand Lux Cafe restaurants, each of which had previously been fully impaired, because they were not delivering the necessary sales volumes to drive our required returns. We incurred \$4.0 million in the fourth quarter of fiscal 2012 for partial reimbursement to landlords of tenant improvement allowances and broker fees on these leases.

*Preopening Costs*

Preopening costs were \$12.3 million for fiscal 2012 compared to \$10.1 million for the prior fiscal year. We incurred preopening costs to open seven The Cheesecake Factory restaurants and one Grand Lux Cafe in fiscal 2012 compared to opening seven The Cheesecake Factory restaurants during fiscal 2011.

*Interest and Other Expense, Net*

Interest and other expense, net increased to \$4.7 million for fiscal 2012 compared to \$4.3 million in fiscal 2011. This increase was primarily due to an increase in net interest related to taxes, stemming largely from interest income recorded in fiscal 2011 in conjunction with a partial IRS settlement as described in Note 13 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report, as well as higher expense on asset disposals. These increases were partially offset by proceeds realized from a variable life insurance contract used to support our Executive Savings Plan and lower interest expense associated with landlord construction allowances deemed to be financing in accordance with accounting guidance (\$3.2 million in fiscal 2012 compared to \$3.8 million in fiscal 2011).

*Income Tax Provision*

Our effective income tax rate was 26.5% for fiscal 2012 compared to 25.9% for fiscal 2011. This increase was primarily attributable to the expiration of the Hiring Incentives to Restore Employment ( HIRE ) Act retention credit at the end of fiscal 2011 and the favorable resolution in fiscal 2011 of litigation we filed against the IRS. These increases were partially offset by non-taxable gains in fiscal 2012 as compared to non-deductible losses in the prior year on our investments in variable life insurance used to support our ESP. The increases were further offset by a higher FICA tip credit in fiscal 2012 as compared to the prior year driven by higher restaurant sales and state minimum wage increases. See Note 13 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further information on our income tax provision.

**Fiscal 2014 Outlook**

This discussion contains forward-looking statements and should be read in conjunction with our consolidated financial statements and related notes in Part IV, Item 15 of this report, the Risk Factors included in Part I, Item 1A of this report, and the cautionary statements included throughout this report.

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We estimate diluted earnings per share for fiscal 2014 will be between \$2.29 and \$2.41 based on an assumed increase in comparable restaurant sales of between 1% and 2%. We currently expect food cost inflation of between 3% and 4%, driven primarily by higher shrimp and, to a lesser extent, salmon prices, which we estimate will impact earnings per share for fiscal 2014 in a range of \$0.07 to \$0.10. We expect operating margins to be flat to slightly positive to fiscal 2013 and anticipate a fiscal 2014 corporate tax rate of approximately 29%.

In fiscal 2014, we plan to open as many as 10 to 12 new restaurants, including one relocation. In addition to these Company-owned locations, we expect as many as three to five restaurants to open in the Middle East and Mexico under our licensing agreements.

We expect cash capital expenditures in fiscal 2014 to range between \$110 million and \$120 million and anticipate utilizing substantially all of our free cash flow for dividends and share repurchases.

### **Liquidity and Capital Resources**

Our corporate financial objectives are to maintain a sufficiently strong and conservative balance sheet to support our operating initiatives and unit growth while maintaining financial flexibility, to provide the financial resources necessary to protect and enhance the competitiveness of our restaurant and bakery brands and to provide a prudent level of financial capacity to manage the risks and uncertainties of conducting our business operations in the current economic environment and through future economic and industry cycles. Our ongoing capital requirements are principally related to our restaurant expansion plan and ongoing maintenance of our restaurants and bakery facilities, as well as investment in our corporate and information technology infrastructures.



Table of Contents

Similar to many restaurant and retail chain store operations, we utilize operating lease arrangements for all of our restaurant locations. We believe that our operating lease arrangements continue to provide appropriate leverage for our capital structure in a financially efficient manner. However, we are not limited to the use of lease arrangements as our only method of opening new restaurants. While most of our operating lease obligations are not required to be reflected as indebtedness on our consolidated balance sheet, the minimum base rents and related fixed obligations under our lease agreements must be satisfied by cash flows from our ongoing operations. Accordingly, our lease arrangements reduce, to some extent, our capacity to utilize funded indebtedness in our capital structure.

Historically, we have obtained capital from our ongoing operations, public stock offerings, lines of credit, employee stock option exercises and construction contributions from our landlords. Our requirement for working capital is not significant, since our restaurant guests pay for their food and beverage purchases in cash or cash equivalents at the time of sale, and we are able to sell many of our food inventory items before payment is due to the suppliers of such items.

The following table presents, for the periods indicated, a summary of our key cash flows from operating, investing and financing activities (in millions):

	2013	Fiscal Year 2012	2011
Cash provided by operating activities	\$ 204.8	\$ 195.4	\$ 196.1
Capital expenditures	\$ (106.3)	\$ (86.4)	\$ (76.7)
Proceeds from exercise of stock options	\$ 72.9	\$ 39.3	\$ 16.1
Cash dividends paid	\$ (27.2)	\$ (12.8)	\$ —
Purchase of treasury stock	\$ (183.7)	\$ (101.4)	\$ (172.1)

During fiscal 2013, our cash and cash equivalents decreased by \$21.8 million to \$61.8 million at December 31, 2013. This decrease was primarily attributable to treasury stock purchases, capital expenditures and dividend payments, partially offset by cash provided by operating activities and proceeds from exercises of employee stock options. See Note 1 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of cash and cash equivalents.

Capital expenditures have increased over the last three fiscal years due primarily to the number of restaurants opened (nine, eight and seven in fiscal years 2013, 2012 and 2011, respectively.) Capital expenditures for new restaurants, including locations under development as of each fiscal year end were \$75.8 million, \$50.3 million and \$46.9 million for fiscal 2013, 2012 and 2011, respectively. Fiscal 2013 capital expenditures also included \$24.2 million for our existing restaurants and approximately \$6.3 million for bakery and corporate capacity and infrastructure investments.

For fiscal 2014, we currently estimate our cash outlays for capital expenditures to range between \$110 million and \$120 million, net of agreed-upon up-front cash landlord construction contributions and excluding \$14.2 million of expected non-capitalizable preopening costs for new restaurants. The amount reflected as additions to property and equipment in the consolidated statements of cash flows may vary from this estimate based on the accounting treatment of each lease. (See Note 1 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report.) Our estimate for capital expenditures for fiscal 2014 contemplates a net outlay of \$70 million to \$75 million for as many as ten to twelve restaurants expected to be opened during fiscal 2014 and estimated construction-in-progress disbursements for anticipated early fiscal 2015 openings. Expected fiscal 2014 capital expenditures also include \$25 million to \$27 million for maintenance, enhancements and capacity additions to our existing restaurants and \$15 million to \$18 million for bakery and corporate infrastructure investments, including the

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construction of a training center at our corporate site.

On October 16, 2013, we entered into a new loan agreement ( Facility ) which amended and restated in its entirety our prior loan agreement dated December 3, 2010. This Facility, which matures on October 16, 2018, provides us with revolving loan commitments totaling \$200 million, of which \$50 million may be used for issuances of letters of credit. Availability under the Facility is reduced by outstanding letters of credit, which are used to support our self-insurance programs. At December 31, 2013, we had net availability for borrowings of \$179 million, based on a zero outstanding debt balance and \$21 million in standby letters of credit. We did not withdraw or repay any amounts under the current or previous credit facility during fiscal 2013 or 2012. We were in compliance with the financial covenants in effect at December 31, 2013. The Facility also limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio. (See Note 7 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of our long-term debt.)

In July 2012, our Board approved the initiation of a cash dividend to our stockholders, which is subject to quarterly Board approval. Cash dividends were declared during the third and fourth quarters of fiscal 2012 and in each quarter during fiscal 2013.

Table of Contents

See Non-GAAP Measures in Part II, Item 6 Selected Financial Data for the reconciliation of GAAP net income to non-GAAP adjusted net income. Future decisions to pay, increase or decrease dividends continue to be at the discretion of the Board and will be dependent on our operating performance, financial condition, capital expenditure requirements and other such factors that the Board considers relevant.

On July 22, 2013, our Board increased the authorization to repurchase our common stock by 7.5 million shares to 48.5 million shares. Under this and all previous authorizations, we have cumulatively repurchased 38.9 million shares at a total cost of \$1,015.5 million through December 31, 2013. During fiscal 2013, 2012 and 2011, we repurchased 4.5 million, 3.2 million and 6.0 million shares of our common stock at a cost of \$183.7 million, \$101.4 million and \$172.1 million, respectively. Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. (See Note 10 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of our repurchase authorization and methods.)

Based on our current expansion objectives, we believe that during the upcoming 12 months our cash and cash equivalents, combined with expected cash flows provided by operations, available borrowings under our Facility and expected landlord construction contributions should be sufficient in the aggregate to finance our capital allocation strategy, including capital expenditures, share repurchases and cash dividends, and allow us to consider additional possible capital allocation strategies, such as the acquisition of other growth vehicles. We continue to plan to return a substantial amount of our free cash flow to stockholders in the form of dividends and share repurchases.

As of December 31, 2013, we had no financing transactions, arrangements or other relationships with any unconsolidated entities or related parties. Additionally, we had no financing arrangements involving synthetic leases or trading activities involving commodity contracts.

**Contractual Obligations and Commercial Commitments**

The following table summarizes our contractual obligations and commercial commitments as of December 31, 2013 (amounts in millions):

	Total	Payment Due by Period			More than 5 Years
		Less than 1 Year	1-3 Years	4-5 Years	
<b><u>Contractual obligations</u></b>					
Leases (1)	\$ 931.0	\$ 72.2	\$ 144.4	\$ 143.7	\$ 570.7
Long-term debt					
Purchase obligations (2)	96.9	94.4	2.5	0.0	0.0
Uncertain tax positions (3)	0.9		0.9		
Total	\$ 1,028.8	\$ 166.6	\$ 147.8	\$ 143.7	\$ 570.7
<b><u>Other commercial commitments</u></b>					
Standby letters of credit	\$ 21.0	\$	\$	\$ 21.0	\$

(1) Represents aggregate minimum lease payments for our restaurant operations, automobiles and certain equipment, including amounts characterized as deemed landlord financing payments in accordance with accounting guidance. (See Note 1 in Notes to Consolidated Financial Statements in Part IV, Item 15 of this report.) Most of our leases also require contingent rent in addition to the minimum base rent based on a percentage of sales ranging from 3% to 10% and require various expenses incidental to the use of the property.

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- (2) Purchasing obligations represent commitments for the purchase of goods and estimated construction commitments, net of agreed-upon up-front landlord construction contributions. Amounts exclude agreements that are cancelable without significant penalty.
- (3) Represents liability for uncertain tax positions. (See Note 13 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of income taxes.)

We expect to fund our contractual obligations primarily with operating cash flows generated in the normal course of business.

Table of Contents

**Critical Accounting Policies**

Critical accounting policies are those we believe are most important to portraying our financial condition and results of operations and also require the greatest amount of subjective or complex judgments by management. Judgments and uncertainties regarding the application of these policies may result in materially different amounts being reported under various conditions or using different assumptions. We consider the following policies to be the most critical in understanding the judgment that is involved in preparing our consolidated financial statements.

*Property and Equipment*

We record property and equipment at cost less accumulated depreciation. Improvements are capitalized while repairs and maintenance costs are expensed as incurred. Depreciation and amortization are calculated using the straight-line method over the estimated useful life of each asset or lease term, whichever is shorter. Leasehold improvements include the cost of our internal development and construction department. The useful life of property and equipment and the determination as to what constitutes a capitalized cost versus a repair and maintenance expense involves judgment by management, which may produce materially different amounts of repairs and maintenance or depreciation expense than if different assumptions were used.

*Impairment of Long-Lived Assets*

We assess the potential impairment of our long-lived assets whenever events or changes in circumstances indicate that the carrying value of the assets or asset group may not be recoverable. Factors considered include, but are not limited to, significant underperformance relative to historical or projected future operating results, significant changes in the manner in which an asset is being used, an expectation that an asset will be disposed of significantly before the end of its previously estimated useful life, and significant negative industry or economic trends. We regularly review restaurants that are cash flow negative for the previous four quarters and those that are being considered for closure or relocation to determine if impairment testing is warranted. At any given time, we may be monitoring a small number of locations, and future impairment charges could be required if individual restaurant performance does not improve.

We have determined that our asset group for impairment testing is comprised of the assets and liabilities of each of our individual restaurants, as this is the lowest level of identifiable cash flows. We have identified leasehold improvements as the primary asset because it is the most significant component of our restaurant assets, it is the principal asset from which our restaurants derive their cash flow generating capacity and it has the longest remaining useful life. The recoverability is assessed in most cases by comparing the carrying value of the assets to the undiscounted cash flows expected to be generated by these assets.

Impairment losses are measured as the amount by which the carrying values of the assets exceed their fair values. This assessment process requires the use of estimates and assumptions regarding future cash flows and estimated useful lives, which are subject to a significant degree of judgment based on our experience and knowledge. These estimates can be significantly impacted by changes in the economic environment, real estate market conditions and capital spending decisions. (See Note 1 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of impairment of long-lived assets.)

*Gift Card Revenue Recognition*

We recognize a liability upon the sale of our gift cards and recognize revenue when these gift cards are redeemed in our restaurants. Based on our historical gift card redemption patterns, we can reasonably estimate the amount of gift cards for which redemption is remote, which is referred to as breakage. Breakage is recognized in proportion to historical redemption trends, which is generally over a period of three years, and is classified as revenues in our consolidated statement of comprehensive income. Utilizing this method, we estimate both the amount of breakage and the time period of redemption. If actual redemption patterns vary from our estimates, actual gift card breakage income may differ from the amounts recorded.

*Leases*

We currently lease all of our restaurant locations. We evaluate each lease to determine its appropriate classification as an operating or capital lease for financial reporting purposes. All of our restaurant leases are classified as operating leases. Minimum base rent, which generally escalates over the term of the lease, is recorded on a straight-line basis over the lease term. The initial lease term includes the build-out, or rent holiday, period for our leases, where no rent payments are typically due under the terms of the lease. Contingent rent expense, which is based on a percentage of revenue, is recorded as incurred to the extent it exceeds minimum base rent per the lease agreement.

We expend cash for leasehold improvements and FF&E to build out and equip our leased premises. We may also expend cash for structural additions that we make to leased premises. Generally a portion of the leasehold improvements and building costs are reimbursed to us by our landlords as construction contributions. If obtained, landlord construction contributions usually take the form of up-front cash, full or partial credits against our future minimum or percentage rents, or a combination thereof. Depending on the specifics of the leased space and the lease agreement, amounts paid for structural components are recorded during the construction period as either prepaid rent or construction-in-progress and the landlord construction contributions are recorded as either an offset to prepaid rent or as a deemed landlord financing liability.

Table of Contents

Upon completion of construction, we perform an analysis on the leases for which the structural cost was initially recorded to construction-in-progress to determine if they qualify for sale-leaseback treatment. For those qualifying leases, the deemed landlord financing liability and the associated construction-in-progress are removed and the difference is reclassified to either prepaid or deferred rent and amortized over the lease term as an increase or decrease to rent expense. If the lease does not qualify for sale-leaseback treatment, the deemed landlord financing liability is amortized over the lease term based on the rent payments designated in the lease agreement.

*Self-Insurance Liabilities*

We retain the financial responsibility for a significant portion of our risks and associated liabilities with respect to workers' compensation, general liability, employee health benefits, employment practices and other insurable risks. The accrued liabilities associated with our self-insured programs are based on our estimate of the ultimate costs to settle known claims as well as claims incurred but not yet reported to us (IBNR) as of the balance sheet date. Our estimated liabilities are not discounted and are based on information provided by our insurance brokers and insurers, combined with our judgment regarding a number of assumptions and factors, including the frequency and severity of claims, claims development history, case jurisdiction, applicable legislation and our claims settlement practices. We maintain stop-loss coverage with third-party insurers to limit our individual claim exposure for many of our programs. Significant judgment is required to estimate IBNR amounts as parties have yet to assert such claims. If actual claims trends, including the severity or frequency of claims, differ from our estimates, our financial results could be impacted.

*Stock-Based Compensation*

We apply the Black-Scholes valuation model in determining the fair value of stock option grants, which requires the use of assumptions, including the volatility of our common stock price and the length of time staff members will retain their vested stock options prior to exercise. Additionally, we estimate the expected forfeiture rate related to stock options, restricted shares and restricted share units in determining the amount of stock-based compensation expense for each period. Changes in these assumptions can materially affect our results of operations. (See Note 11 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of stock-based compensation.)

*Income Taxes*

We provide for income taxes based on our estimate of federal and state tax liabilities. Our estimates include, but are not limited to, effective state and local income tax rates, allowable tax credits for items such as FICA taxes paid on reported tip income, and estimates related to depreciation expense allowable for tax purposes. Our estimates are made based on the best available information at the time we prepare our income tax provision. In making our estimates, we also consider the impact of legislative and judicial developments. As these developments evolve, we update our estimates, which, in turn, may result in adjustments to our effective tax rate. We generally file our income tax returns within nine to ten months after our fiscal year-end. All tax returns are subject to audit by federal and state governments, usually years after the returns are filed, and could be subject to differing interpretations of the tax laws.

We account for uncertain tax positions under Financial Accounting Standards Board guidance, which prescribes a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum threshold is defined as a tax position

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that is more likely than not to be sustained upon examination by the applicable taxing authority, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is more than 50% likely of being realized upon settlement. Assessment of uncertain tax positions requires significant judgments relating to the amounts, timing and likelihood of resolution. Our actual results could differ materially from these estimates. (See Note 13 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of income taxes.)

### **Recent Accounting Pronouncements**

See Note 1 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for a summary of new accounting standards.



Table of Contents

**Impact of Inflation**

The impact of inflation on food costs, labor, and other supplies and services could adversely impact our financial results. While we have been able to partially offset increases in the costs of key operating resources by gradually raising prices for our menu items and bakery products, coupled with more efficient purchasing practices, productivity improvements and greater economies of scale, there can be no assurance that we will be able to continue to do so in the future.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The following discussion of market risks contains forward-looking statements. Actual results may differ materially from the following discussion based on general conditions in the financial and commodity markets.

We are exposed to market risk from interest rate changes on our funded debt. This exposure relates to the component of the interest rate on our \$200 million revolving credit facility that is indexed to market rates. As of December 31, 2013 and January 1, 2013, we had no debt outstanding under the current or previous credit facility. Therefore, we had no exposure to interest rate fluctuations on funded debt at those dates. (See Note 7 of Notes to Consolidated Financial Statements in Part IV, Item 15 of this report for further discussion of our long-term debt.)

We are also subject to market risk related to our investments in variable life insurance contracts used to support our ESP, to the extent these investments are not equivalent to the related liability. In addition, because changes in these investments are not taxable, the full impact of gains or losses affects net income. Based on balances at December 31, 2013 and January 1, 2013, a hypothetical 10% decline in the market value of our deferred compensation asset and related liability would not have impacted income before income taxes. However, net income would have declined by \$1.5 million at December 31, 2013 and \$1.1 million at January 1, 2013.

We purchase food and other commodities for use in our operations, based on market prices established with our suppliers. Many of the commodities purchased by us can be subject to volatility due to market supply and demand factors outside of our control. We attempt to negotiate short-term and long-term agreements for our principal commodity, supply and equipment requirements, depending on market conditions and expected demand. However, we are currently unable to contract for extended periods of time for certain of our commodities such as some fish and certain dairy items (excluding cream cheese used in our bakery operations). Consequently, these commodities can be subject to unforeseen supply and cost fluctuations. Substantially all of our food and supplies are available from multiple qualified suppliers, which helps to diversify our overall commodity cost risk. In addition, we may have the ability to increase menu prices, or vary menu items, in response to food commodity price increases. We do not use financial instruments to hedge commodity prices, since our purchase arrangements with suppliers, to the extent that we can enter into such arrangements, help control the ultimate cost that we pay.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The consolidated financial statements required to be filed hereunder are set forth in Part IV, Item 15 of this report.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

We have established and maintain disclosure controls and procedures that are designed to ensure that material information relating to the Company and our subsidiaries required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only a reasonable assurance of achieving the desired control objectives, and management was necessarily required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of December 31, 2013.

Table of Contents

**Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. As defined in Exchange Act Rule 13a-15(f), internal control over financial reporting is a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by our Board of Directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we carried out an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2013 on the criteria in Internal Control - Integrated Framework (1992) issued by the Committee of Sponsoring Organizations of the Treadway Commission ( COSO ). Based on this evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2013.

The effectiveness of our internal control over financial reporting as of December 31, 2013 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears in Part IV, Item 15 of this report.

**Changes in Internal Control over Financial Reporting**

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) during our most recent fiscal quarter ended December 31, 2013 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

On February 27, 2014, we entered into an agreement with a financial institution to repurchase \$75 million of our common stock under a collared accelerated stock repurchase ( ASR ) program. The number of common shares to be repurchased under the ASR program generally will be based on the volume weighted average share price of our common stock. The program is subject to collar provisions that will establish minimum and maximum number of shares based on the volume weighted average share price over an initial hedge period. Under the terms of the program, the financial institution will deliver an initial number of shares of common stock to us on March 7, 2014 and will deliver the remaining balance of the minimum number of shares upon the completion of the hedge period by the end of March 2014. At the termination of the ASR program, we may receive additional common shares, depending on the share price of our common stock during the term of the program. The minimum and maximum number of common shares that we will repurchase pursuant to the program will not be known until the conclusion of the hedge period. The program will terminate no later than six months following the end of the hedge period and may in certain circumstances be

accelerated.

This ASR was entered into as part of, and pursuant to, our previously announced share repurchase program. We intend to fund the share repurchases with cash on hand and/or temporary borrowing on our credit facility.

### **PART III**

#### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

We have adopted a code of ethics which applies to our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer, who are the Company's principal executive, financial and accounting officers, respectively, and the Company's other executive officers and members of the Board of Directors, entitled "Code of Ethics for Executive Officers, Senior Financial Officers and Directors." The Code of Ethics is available on our corporate website at [www.thecheesecakefactory.com](http://www.thecheesecakefactory.com) in the "Corporate Governance" section of our "Investors" page. The contents of our website are not incorporated by reference into this Form 10-K. We intend to satisfy disclosure requirements under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of the Code of Ethics by posting such information on our website, at the address and location specified above, or as otherwise required by the NASDAQ Global Market.

Table of Contents

Information with respect to our executive officers is included in Part I, Item 1 of this report. Other information required by this item is hereby incorporated by reference from the sections entitled Election of Directors, Board of Directors and Corporate Governance, Designation of Audit Committee Financial Experts, Committees of the Board of Directors, and Section 16(a) Beneficial Ownership Reporting Compliance in our definitive Proxy Statement for the Annual Meeting of Stockholders to be held on May 29, 2014 (the Proxy Statement).

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item is hereby incorporated by reference to the sections entitled Board of Directors Compensation and Executive Compensation in the Proxy Statement.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item is hereby incorporated by reference to the sections entitled Proposal Two Approval of an Amendment to the 2010 Stock Incentive Plan to Increase Authorized Shares and Beneficial Ownership of Principal Stockholders and Management in the Proxy Statement.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this item is hereby incorporated by reference to the sections entitled Policies Regarding Review, Approval or Ratification of Transactions with Related Persons and Board of Directors and Corporate Governance in the Proxy Statement.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this item is hereby incorporated by reference to the section entitled Independent Registered Public Accounting Firm Fees and Services (in the proposal entitled Ratification of Selection of Independent Registered Public Accounting Firm) in the Proxy Statement.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

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The following documents are filed as a part of this Report:

(a) 1. Financial statements:

The consolidated financial statements required to be filed hereunder are listed in the Index to Consolidated Financial Statements on page 45 of this report.

2. Financial statement schedules:

None.

3. Exhibits:

The Exhibits required to be filed hereunder are listed in the exhibit index included herein at page 64.

Table of Contents

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

	<b>Page</b>
<u>Report of Independent Registered Public Accounting Firm</u>	45
<u>Consolidated Balance Sheets</u>	46
<u>Consolidated Statements of Comprehensive Income</u>	47
<u>Consolidated Statements of Stockholders' Equity</u>	48
<u>Consolidated Statements of Cash Flows</u>	49
<u>Notes to Consolidated Financial Statements</u>	50

Table of Contents

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of The Cheesecake Factory Incorporated

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of comprehensive income, of shareholders equity and of cash flows present fairly, in all material respects, the financial position of The Cheesecake Factory Incorporated and its subsidiaries at December 31, 2013 and January 1, 2013, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2013 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2013, based on criteria established in *Internal Control - Integrated Framework (1992)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting under Item 9A. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated 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 financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP  
Los Angeles, California  
February 27, 2014



Table of Contents**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES****CONSOLIDATED BALANCE SHEETS**

(In thousands, except share data)

<b>ASSETS</b>	<b>December 31, 2013</b>	<b>January 1, 2013</b>
Current assets:		
Cash and cash equivalents	\$ 61,751	\$ 83,569
Accounts receivable	10,081	14,558
Income tax receivable	4,529	
Other receivables	55,461	48,100
Inventories	35,478	28,836
Prepaid expenses	42,595	39,887
Deferred income taxes	16,008	15,257
<b>Total current assets</b>	<b>225,903</b>	<b>230,207</b>
Property and equipment, net	795,379	764,418
Other assets:		
Intangible assets, net	18,647	17,829
Prepaid rent	47,064	50,793
Other	37,121	28,920
<b>Total other assets</b>	<b>102,832</b>	<b>97,542</b>
<b>Total assets</b>	<b>\$ 1,124,114</b>	<b>\$ 1,092,167</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 35,418	\$ 46,998
Income tax payable		1,213
Other accrued expenses	228,829	204,823
<b>Total current liabilities</b>	<b>264,247</b>	<b>253,034</b>
Deferred income taxes	97,237	91,852
Deferred rent	74,690	76,144
Deemed landlord financing liability	66,197	55,123
Other noncurrent liabilities	44,390	36,288
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.01 par value, 5,000,000 shares authorized; none issued		
Junior participating cumulative preferred stock, \$.01 par value, 150,000 shares authorized; none issued		
Common stock, \$.01 par value, 250,000,000 shares authorized; 90,632,325 and 87,812,022 shares issued at December 31, 2013 and January 1, 2013, respectively	906	878
Additional paid-in capital	602,469	508,130
Retained earnings	989,451	902,532
Treasury stock 38,865,951 and 34,414,222 shares at cost at December 31, 2013 and January 1, 2013, respectively	(1,015,473)	(831,814)

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Total stockholders' equity	577,353	579,726
Total liabilities and stockholders' equity	\$ 1,124,114	\$ 1,092,167

See the accompanying notes to the consolidated financial statements.

Table of Contents**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME****(In thousands, except per share data)**

	2013	Fiscal Year 2012	2011
Revenues	\$ 1,877,910	\$ 1,809,017	\$ 1,757,624
Costs and expenses:			
Cost of sales	455,685	450,153	448,468
Labor expenses	603,069	580,192	567,358
Other operating costs and expenses	452,571	439,559	428,442
General and administrative expenses	114,728	104,156	96,263
Depreciation and amortization expenses	78,558	74,433	71,958
Impairment of assets and lease terminations	(561)	9,536	1,547
Preopening costs	12,906	12,289	10,138
Total costs and expenses	1,716,956	1,670,318	1,624,174
Income from operations	160,954	138,699	133,450
Interest and other expense, net	(4,504)	(4,725)	(4,307)
Income before income taxes	156,450	133,974	129,143
Income tax provision	42,094	35,551	33,423
Net income	\$ 114,356	\$ 98,423	\$ 95,720
Net income per share:			
Basic	\$ 2.19	\$ 1.85	\$ 1.70
Diluted	\$ 2.10	\$ 1.78	\$ 1.64
Weighted average shares outstanding:			
Basic	52,229	53,185	56,378
Diluted	54,377	55,211	58,190
Cash dividends declared per common share	\$ 0.52	\$ 0.24	\$

See the accompanying notes to the consolidated financial statements.

Table of Contents**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF STOCKHOLDERS EQUITY**

(In thousands)

	Shares of Common Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Treasury Stock	Total
Balance, December 28, 2010	84,912	\$ 849	\$ 428,527	\$ 721,257	\$ (558,296)	\$ 592,337
Net income				95,720		95,720
Issuance of common stock from stock options exercised	767	8	16,138			16,146
Tax impact of stock options exercised, net of cancellations			844			844
Stock-based compensation			9,830			9,830
Issuance of restricted stock, net of forfeitures	184	2				2
Purchase of treasury stock					(172,126)	(172,126)
Balance, January 3, 2012	85,863	859	455,339	816,977	(730,422)	542,753
Net income				98,423		98,423
Cash dividends declared				(12,868)		(12,868)
Issuance of common stock from stock options exercised	1,696	17	39,266			39,283
Tax impact of stock options exercised, net of cancellations			2,435			2,435
Stock-based compensation			11,090			11,090
Issuance of restricted stock, net of forfeitures	253	2				2
Purchase of treasury stock					(101,392)	(101,392)
Balance, January 1, 2013	87,812	878	508,130	902,532	(831,814)	579,726
Net income				114,356		114,356
Cash dividends declared				(27,437)		(27,437)
Issuance of common stock from stock options exercised	2,791	28	72,868			72,896
Tax impact of stock options exercised, net of cancellations			7,159			7,159
Stock-based compensation			14,312			14,312
Issuance of restricted stock, net of forfeitures	29					
Purchase of treasury stock					(183,659)	(183,659)
Balance, December 31, 2013	90,632	\$ 906	\$ 602,469	\$ 989,451	\$ (1,015,473)	\$ 577,353

See the accompanying notes to the consolidated financial statements.

Table of Contents**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF CASH FLOWS****(In thousands)**

	2013	Fiscal Year 2012	2011
<b>Cash flows from operating activities:</b>			
Net income	\$ 114,356	\$ 98,423	\$ 95,720
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	78,558	74,433	71,958
Deferred income taxes	4,633	(12,758)	7,907
Impairment of assets and lease terminations	3,294	5,469	1,547
Stock-based compensation	14,135	10,838	9,635
Tax impact of stock options exercised, net of cancellations	7,159	2,435	844
Excess tax benefit related to stock options exercised	(7,765)	(2,801)	(741)
Other	(464)	1,259	1,023
Changes in assets and liabilities:			
Accounts receivable	4,477	(3,224)	4,850
Other receivables	(6,486)	(16,004)	(4,800)
Inventories	(6,642)	(626)	(5,174)
Prepaid expenses	(2,708)	(3,389)	(8,153)
Other assets	(3,997)	(6,533)	(545)
Accounts payable	(11,580)	10,839	3,508
Income taxes receivable/payable	(5,742)	6,685	(1,632)
Other accrued expenses	23,557	30,325	20,117
Cash provided by operating activities	204,785	195,371	196,064
<b>Cash flows from investing activities:</b>			
Additions to property and equipment	(106,289)	(86,442)	(76,746)
Additions to intangible assets	(1,654)	(1,712)	(870)
Cash used in investing activities	(107,943)	(88,154)	(77,616)
<b>Cash flows from financing activities:</b>			
Deemed landlord financing proceeds	13,672	2,098	5,070
Deemed landlord financing payments	(2,143)	(1,887)	(1,687)
Proceeds from exercise of employee stock options	72,896	39,283	16,146
Excess tax benefit related to stock options exercised	7,765	2,801	741
Cash dividends paid	(27,191)	(12,762)	
Purchase of treasury stock	(183,659)	(101,392)	(172,126)
Cash used in financing activities	(118,660)	(71,859)	(151,856)
Net change in cash and cash equivalents	(21,818)	35,358	(33,408)
Cash and cash equivalents at beginning of period	83,569	48,211	81,619
Cash and cash equivalents at end of period	\$ 61,751	\$ 83,569	\$ 48,211
<b>Supplemental disclosures:</b>			
Interest paid	\$ 4,602	\$ 4,434	\$ 4,250
Income taxes paid	\$ 37,259	\$ 40,954	\$ 27,246
Change in construction payable	\$ 6,397	\$ 4,666	\$ 4,993

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See the accompanying notes to the consolidated financial statements.

Table of Contents

**THE CHEESECAKE FACTORY INCORPORATED AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Summary of Significant Accounting Policies**

*Description of Business*

As of February 27, 2014, The Cheesecake Factory Incorporated (referred to herein as the Company, we, us and our ) operated 181 Company-owned upscale, casual, full-service dining restaurants under The Cheesecake Factory®, Grand Lux Cafe® and RockSugar Pan Asian Kitchen® marks. We also operated two bakery production facilities whose primary role is to provide cheesecakes and other baked goods to our Company-owned and licensed restaurants. In addition, we utilize our bakery production excess capacity and leverage our brand identity with consumers through sales to external customers.

*Basis of Presentation*

The accompanying consolidated financial statements include the accounts of The Cheesecake Factory Incorporated and its wholly owned subsidiaries. All intercompany accounts and transactions for the periods presented have been eliminated in consolidation.

We utilize a 52/53-week fiscal year ending on the Tuesday closest to December 31st for financial reporting purposes. Fiscal years 2013 and 2012 each consisted of 52 weeks, while fiscal 2011 consisted of 53 weeks. Fiscal year 2014 will consist of 52 weeks.

*Use of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions for the reporting periods covered by the financial statements. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingent liabilities. Actual results could differ from those estimates.

*Cash and Cash Equivalents*

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Amounts receivable from credit card processors, totaling \$10.3 million and \$9.8 million at December 31, 2013 and January 1, 2013, respectively, are considered cash equivalents because they are both short-term and highly liquid in nature and are typically converted to cash within three days of the sales transaction. Checks issued, but not yet presented for payment to our bank, are reflected as a reduction of cash and cash equivalents.

### *Accounts and Other Receivables*

Our accounts receivable principally result from credit sales to bakery customers. Other receivables consist of various amounts due from our gift card resellers, insurance providers, landlords and others in the ordinary course of business.

### *Concentration of Credit Risk*

Financial instruments that potentially subject us to a concentration of credit risk are cash and cash equivalents and receivables. We maintain our day-to-day operating cash balances in non-interest-bearing transaction accounts, which are insured by the Federal Deposit Insurance Corporation ( FDIC ) up to \$250,000. We invest our excess cash in a money market deposit account, which is insured by the FDIC up to \$250,000. Although we maintain balances that exceed the federally insured limit, we have not experienced any losses related to this balance, and we believe credit risk to be minimal.

We consider the concentration of credit risk for accounts receivable to be minimal due to the payment histories and general financial condition of our larger outside bakery customers. Concentration of credit risk related to other receivables is limited as this balance is comprised primarily of amounts due from our gift card resellers, insurance providers and landlords for the reimbursement of tenant improvements.

### *Fair Value of Financial Instruments*

For cash and cash equivalents, the carrying amount approximates fair value because of the short maturity of these instruments. The fair value of deemed landlord financing liabilities is determined using current applicable rates for similar instruments as of the balance sheet date (fair value hierarchy Level 2 per ASC 820, Fair Value Measurement. ) At December 31, 2013, the fair value of our deemed landlord financing liabilities is \$66.7 million versus a carrying value of \$68.7 million.



Table of Contents

*Inventories*

Inventories consist of restaurant food and other supplies, bakery raw materials, and bakery finished goods and are stated at the lower of cost or market on an average cost basis at the restaurants and on a first-in, first-out basis at the bakeries.

*Property and Equipment*

We record property and equipment at cost less accumulated depreciation. Improvements are capitalized while repairs and maintenance costs are expensed as incurred. Depreciation and amortization are calculated using the straight-line method over the estimated useful life of the assets or the lease term, whichever is shorter. Leasehold improvements include the cost of our internal development and construction department. Depreciation and amortization periods are as follows:

Buildings and land improvements	25 to 30 years
Leasehold improvements	10 to 30 years
Restaurant fixtures and equipment	3 to 15 years
Bakery equipment	15 years
Computer software and equipment	3 to 5 years

*Indefinite-Lived Assets*

Our trademarks and transferable alcoholic beverage licenses have indefinite lives and, therefore, are not subject to amortization. At December 31, 2013, the amounts included in intangibles, net for these items were \$11.4 million and \$10.8 million, respectively. We test these assets for impairment at least annually by comparing the fair value of each asset with its carrying amount.

*Impairment of Long-Lived Assets and Lease Terminations*

We assess the potential impairment of our long-lived assets whenever events or changes in circumstances indicate that the carrying value of the assets or asset group may not be recoverable. Factors considered include, but are not limited to, significant underperformance relative to historical or projected future operating results, significant changes in the manner in which an asset is being used, an expectation that an asset will be disposed of significantly before the end of its previously estimated useful life, and significant negative industry or economic trends. We regularly review restaurants that are cash flow negative for the previous four quarters and those that are being considered for closure or relocation to determine if impairment testing is warranted. At any given time, we may be monitoring a small number of locations, and future impairment charges could be required if individual restaurant performance does not improve.

We have determined that our asset group for impairment testing is comprised of the assets and liabilities of each of our individual restaurants, as this is the lowest level of identifiable cash flows. We have identified leasehold improvements as the primary asset because it is the most

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significant component of our restaurant assets, it is the principal asset from which our restaurants derive their cash flow generating capacity and it has the longest remaining useful life. The recoverability is assessed in most cases by comparing the carrying value of the assets to the undiscounted cash flows expected to be generated by these assets. Impairment losses are measured as the amount by which the carrying values of the assets exceed their fair values.

In fiscal 2011, we recorded expense of \$1.5 million, representing reductions to the carrying values of three previously impaired restaurants, consisting of one Grand Lux Cafe and two The Cheesecake Factory locations. In fiscal 2012, we recorded expense of \$5.5 million, representing a reduction in the carrying value of one The Cheesecake Factory restaurant. Also in fiscal 2012, we made the business decision to discontinue operations in three of our Grand Lux Cafe restaurants, each of which had previously been fully impaired, because they were not delivering the necessary sales volumes to drive our required returns. Consequently, we incurred \$4.0 million for partial reimbursement to landlords of tenant improvement allowances and broker fees on these leases.

In fiscal 2013, we incurred final expenses of \$0.6 million for future rent and other closing costs associated with the Grand Lux Cafe closures. Also, in fiscal 2013, we recorded \$3.7 million of impairment, accelerated depreciation and closing costs related to the relocation of four The Cheesecake Factory restaurants, three of which were relocated during fiscal 2013. We also recorded \$4.9 million in income from a landlord in connection with the early termination of one of these leases and for waiving our right to exercise renewal options. During 2014, we expect to incur an additional \$0.3 million of expense related to the relocation of the fourth restaurant.

Table of Contents

These expenses were recorded in impairment of assets and lease terminations. If the economic recovery remains slow and/or we are unable to implement initiatives to reduce costs over time at certain of our locations, we may be required to record additional impairment charges in future periods.

*Revenue Recognition*

Our revenues consist of sales from our restaurant operations and sales from our bakery operations to other foodservice operators, retailers and distributors ( bakery sales ). Revenues from restaurant sales are recognized when payment is tendered at the point of sale. Revenues from bakery sales are recognized upon transfer of title to customers. Revenues are presented net of sales taxes. The obligation is included in other accrued expenses until the taxes are remitted to the appropriate taxing authorities.

We recognize a liability upon the sale of our gift cards and recognize revenue when these gift cards are redeemed in our restaurants. Based on our historical gift card redemption patterns, we can reasonably estimate the amount of gift cards for which redemption is remote, which is referred to as breakage. Breakage is recognized in proportion to historical redemption trends, which is generally over a period of three years, and is classified as revenues in our consolidated statement of comprehensive income. We recognized \$4.4 million, \$5.7 million and \$2.4 million of gift card breakage in fiscal years 2013, 2012 and 2011, respectively. Incremental direct costs related to gift card sales, including commissions and credit card fees, are deferred and recognized in earnings in the same pattern as the related gift card revenue.

Certain of our promotional programs have included multiple element arrangements that incorporate both delivered and undelivered components. We allocate revenue using the relative selling price of each deliverable and recognize it upon delivery of each component.

*Leases*

We currently lease all of our restaurant locations. We evaluate each lease to determine its appropriate classification as an operating or capital lease for financial reporting purposes. All of our restaurant leases are classified as operating leases. Minimum base rent, which generally escalates over the term of the lease, is recorded on a straight-line basis over the lease term. The initial lease term includes the build-out, or rent holiday, period for our leases, where no rent payments are typically due under the terms of the lease. Contingent rent expense, which is based on a percentage of revenue, is recorded to the extent it exceeds minimum base rent per the lease agreement.

We expend cash for leasehold improvements and FF&E to build out and equip our leased premises. We may also expend cash for structural additions that we make to leased premises. Generally a portion of the leasehold improvements and building costs are reimbursed to us by our landlords as construction contributions. If obtained, landlord construction contributions usually take the form of up-front cash, full or partial credits against our future minimum or percentage rents, or a combination thereof. Depending on the specifics of the leased space and the lease agreement, amounts paid for structural components are recorded during the construction period as either prepaid rent or construction-in-progress and the landlord construction contributions are recorded as either an offset to prepaid rent or as a deemed landlord financing liability.

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Upon completion of construction, we perform an analysis on the leases for which the structural cost was initially recorded to construction-in-progress to determine if they qualify for sale-leaseback treatment. For those qualifying leases, the deemed landlord financing liability and the associated construction-in-progress are removed and the difference is reclassified to either prepaid or deferred rent and amortized over the lease term as an increase or decrease to rent expense. If the lease does not qualify for sale-leaseback treatment, the deemed landlord financing liability is amortized over the lease term based on the rent payments designated in the lease agreement.

### *Self-Insurance Liabilities*

We retain the financial responsibility for a significant portion of our risks and associated liabilities with respect to workers' compensation, general liability, employee health benefits, employment practices and other insurable risks. The accrued liabilities associated with our self-insured programs are based on our estimate of the ultimate costs to settle known claims as well as claims incurred but not yet reported to us ( IBNR ) as of the balance sheet date and are recorded in other accrued expenses. Our estimated liabilities are not discounted and are based on information provided by our insurance brokers and insurers, combined with our judgment regarding a number of assumptions and factors, including the frequency and severity of claims, claims development history, case jurisdiction, applicable legislation and our claims settlement practices. We maintain stop-loss coverage with third-party insurers to limit our individual claim exposure for many of our programs. The estimated amounts receivable from our third-party insurers under this coverage are recorded in other receivables.

Table of Contents

*Stock-Based Compensation*

We maintain performance incentive plans under which equity awards may be granted to employees and consultants. Currently, we do not have a plan under which non-employee directors may be granted equity interests in the Company. We account for the awards based on fair value measurement guidance and amortize to expense over the vesting period. We reclassify the excess tax benefit resulting from the exercise of stock options out of cash flows from operating activities and into cash flows from financing activities on the consolidated statements of cash flows. See Note 11 for further discussion of specific accounting for stock-based compensation.

*Advertising Costs*

We expense advertising production costs at the time the advertising first takes place; all other advertising costs are expensed as incurred. Most of our advertising costs are included in other operating costs and expenses and were \$5.9 million, \$5.8 million and \$6.2 million in fiscal 2013, 2012 and 2011, respectively.

*Preopening Costs*

Preopening costs include all costs to relocate and compensate restaurant management employees during the preopening period, costs to recruit and train hourly restaurant employees, and wages, travel and lodging costs for our opening training team and other support staff members. Also included in preopening costs are expenses for maintaining a roster of trained managers for pending openings, the associated temporary housing and other costs necessary to relocate managers in alignment with future restaurant opening and operating needs, and corporate travel and support activities. We expense preopening costs as incurred.

*Income Taxes*

Deferred income tax assets and liabilities are recognized for the tax consequences of temporary differences based on the difference between the financial statement and tax basis of existing assets and liabilities using the statutory rates expected in the years in which the differences are expected to reverse. The effect on deferred taxes of a change in tax rates is recognized in income in the period that includes the enactment date.

We account for uncertain tax positions under Financial Accounting Standards Board guidance, which prescribes a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum threshold is defined as a tax position that is more likely than not to be sustained upon examination by the applicable taxing authority, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than 50% likely of being realized upon settlement. See Note 13 for information regarding changes in our unrecognized tax benefits during fiscal 2013.

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### *Net Income per Share*

Basic net income per share is computed by dividing net income available to common stockholders by the weighted average number of common shares outstanding during the period. At December 31, 2013, January 1, 2013 and January 3, 2012, 1.7 million, 1.3 million and 0.8 million shares, respectively, of restricted stock issued to employees were unvested, and therefore excluded from the calculation of basic earnings per share for each of the fiscal years ended on those dates. Diluted net income per share includes the dilutive effect of outstanding equity awards, calculated using the treasury stock method. Assumed proceeds from the in-the-money options include the windfall tax benefits, net of shortfalls, calculated under the as-if method as prescribed by FASB Accounting Standards Codification 718, Compensation - Stock Option Compensation.

	2013	Fiscal Year 2012		2011
	(In thousands, except per share data)			
Net income	\$ 114,356	\$ 98,423	\$	95,720
Basic weighted average shares outstanding	52,229	53,185		56,378
Dilutive effect of equity awards	2,148	2,026		1,812
Diluted weighted average shares outstanding	54,377	55,211		58,190
Basic net income per share	\$ 2.19	\$ 1.85	\$	1.70
Diluted net income per share	\$ 2.10	\$ 1.78	\$	1.64

Table of Contents

Shares of common stock equivalents of 1.2 million, 2.9 million and 3.4 million for fiscal 2013, 2012 and 2011, respectively, were excluded from the diluted calculation due to their anti-dilutive effect.

In July 2012, our Board approved the initiation of a cash dividend to our stockholders. Cash dividends were declared during the third and fourth quarters of fiscal 2012 and in each quarter during fiscal 2013. Certain of our restricted stock awards are considered participating securities as these awards include non-forfeitable rights to dividends with respect to unvested shares. As such, they must be included in the computation of earnings per share pursuant to the two-class method. Under the two-class method, a portion of net income is allocated to participating securities, and therefore is excluded from the calculation of earnings per share allocated to common shares. The calculation of basic and diluted earnings per share pursuant to the two-class method results in an immaterial difference from the amounts displayed in the consolidated statements of comprehensive income.

*Comprehensive Income*

Comprehensive income includes all changes in equity during a period except those resulting from investment by and distribution to owners. Comprehensive income reported on our consolidated statements of stockholders' equity consists of net income, the unrealized portion of changes in the fair value of our cash flow hedges and the losses reclassified into income due to cancellations of our cash flow hedges. For fiscal year 2013, our comprehensive income consisted solely of net income.

*Recent Accounting Pronouncements*

In July 2013, the Financial Accounting Standards Board ( FASB ) issued guidance that requires the netting of unrecognized tax benefits against a deferred tax asset for a loss or other carryforward that would apply in settlement of the uncertain tax positions. This guidance will be effective for fiscal years beginning after December 15, 2013, with early adoption permitted. The adoption of this new guidance will not have any effect on our financial statements.

In July 2012, the FASB issued guidance that provides entities with an option to perform a qualitative assessment to determine whether further impairment testing of indefinite-lived intangible assets is necessary. If an entity concludes that it is more likely than not that the fair value of an indefinite-lived intangible asset is less than its carrying amount, quantitative impairment testing is required. However, if an entity concludes otherwise, quantitative testing is not required. This standard became effective for us in the first quarter of fiscal 2013. The adoption of this standard did not have a material impact on our financial statements.

In June 2011, the FASB issued guidance that eliminated the previous option to report other comprehensive income and its components in the statement of changes in equity. Companies can elect to present items of net income and other comprehensive income in one continuous statement or in two separate but consecutive statements. There are no changes to the accounting for items within comprehensive income. This standard impacts presentation only and became effective for us in the first quarter of fiscal 2012. In February 2013, the FASB issued additional guidance that requires companies to present information about reclassification adjustments from accumulated other comprehensive income in a single note or on the face of the financial statements. This standard also impacts presentation only and became effective for us in the first quarter of fiscal 2013.

**2. Other Receivables**

Other receivables consisted of (in thousands):

	December 31, 2013	January 1, 2013
Receivable from gift card resellers	\$ 27,784	\$ 21,470
Other	27,677	26,630
Total	\$ 55,461	\$ 48,100

**3. Inventories**

Inventories consisted of (in thousands):

	December 31, 2013	January 1, 2013
Restaurant food and supplies	\$ 15,648	\$ 13,243
Bakery finished goods and work in progress	14,672	10,070
Bakery raw materials and supplies	5,158	5,523
Total	\$ 35,478	\$ 28,836



Table of Contents**4. Prepaid Expenses**

Prepaid expenses consisted of (in thousands):

	<b>December 31, 2013</b>		<b>January 1, 2013</b>	
Gift card costs	\$	16,401	\$	13,159
Rent		13,902		13,572
Other		12,292		13,156
Total	\$	42,595	\$	39,887

**5. Property and Equipment**

Property and equipment consisted of (in thousands):

	<b>December 31, 2013</b>		<b>January 1, 2013</b>	
Land and related improvements	\$	15,852	\$	15,632
Buildings		20,835		20,143
Leasehold improvements		977,873		934,493
Fixtures and equipment		335,294		336,273
Computer software and equipment		52,105		49,174
Restaurant smallwares		26,351		25,961
Construction in progress		21,517		10,727
Property and equipment, total		1,449,827		1,392,403
Less: accumulated depreciation		(654,448)		(627,985)
Property and equipment, net	\$	795,379	\$	764,418

Depreciation expenses related to property and equipment for fiscal 2013, 2012 and 2011 were \$78.1 million, \$74.0 million and \$71.4 million, respectively. Repair and maintenance expenses for fiscal 2013, 2012 and 2011 were \$40.8 million, \$40.8 million and \$38.1 million, respectively.

**6. Other Accrued Expenses**

Other accrued expenses consisted of (in thousands):

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	December 31, 2013	January 1, 2013
Gift cards	\$ 97,517	\$ 78,266
Self-Insurance	46,833	42,026
Salaries and wages	26,705	28,506
Employee benefits	15,390	14,591
Payroll and sales taxes	13,727	12,501
Other	28,657	28,933
Total	\$ 228,829	\$ 204,823

**7. Long-Term Debt**

On October 16, 2013, we entered into a new loan agreement ( Facility ) which amended and restated in its entirety our prior loan agreement dated December 3, 2010. This Facility, which matures on October 16, 2018, provides us with revolving loan commitments totaling \$200 million, of which \$50 million may be used for issuances of letters of credit. Availability under the Facility is reduced by outstanding letters of credit, which are used to support our self-insurance programs. The Facility contains a commitment increase feature that could provide for an additional \$100 million in available credit upon our request and the satisfaction of certain conditions. Our obligations under the Facility are unsecured. Certain of our material subsidiaries have guaranteed our obligations under the Facility. At December 31, 2013, we had net availability for borrowings of \$179 million, based on a zero outstanding debt balance and \$21 million in standby letters of credit. We did not withdraw or repay any amounts under the current or previous credit facilities during fiscal 2013 or fiscal 2012.

Table of Contents

We are subject to certain financial covenants under the Facility requiring us to maintain (i) a maximum Net Adjusted Leverage Ratio of 4.0, comprised of debt plus eight times rent minus unrestricted cash and cash equivalents in excess of \$25 million divided by EBITDAR (trailing 12-month earnings before interest, taxes, depreciation, amortization, noncash stock option expense, rent and permitted acquisition costs) and (ii) a trailing 12-month minimum EBITDAR to interest and rental expense ratio (EBITDAR Ratio) of 1.9. Our Net Adjusted Leverage and EBITDAR Ratios were 2.5 and 3.0, respectively, at December 31, 2013, and we were in compliance with the financial covenants in effect at that date. The Facility also limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on the Net Adjusted Leverage Ratio.

Borrowings under the Facility bear interest, at our option, at a rate equal to either (i) the Adjusted LIBO Rate plus a margin ranging from 1.00% to 1.75% based on our Net Adjusted Leverage Ratio or (ii) the highest of (a) the rate of interest publicly announced by JPMorgan Chase Bank as its prime rate in effect, (b) the Federal Funds Effective Rate from time to time plus 0.5% or (c) the one-month Adjusted LIBO Rate plus 1.0%, plus a margin ranging from 0.00% to 0.75% based on our Net Adjusted Leverage Ratio. Under the Facility, we paid certain customary loan origination fees and will pay a fee on the unused portion of the Facility ranging from 0.15% to 0.30% also based on our Net Adjusted Leverage Ratio.

**8. Other Noncurrent Liabilities**

Other noncurrent liabilities consisted of (in thousands):

	December 31, 2013	January 1, 2013
Executive Savings Plan	\$ 35,398	\$ 27,249
Other	8,992	9,039
Total	\$ 44,390	\$ 36,288

See Note 12 for further discussion of our Executive Savings Plan.

**9. Commitments and Contingencies**

We lease all of our restaurant locations under operating leases, with remaining terms ranging from less than one year to 20 years, excluding unexercised renewal options. The restaurant leases typically include land and building shells, require contingent rent above the minimum base rent payments based on a percentage of sales ranging from 3% to 10%, have escalating minimum rent requirements over the term of the lease and require various expenses incidental to the use of the property. A majority of our leases provide for a reduced level of overall rent obligation should specified co-tenancy requirements not be satisfied. Most leases have renewal options. Many of our leases also provide early termination rights permitting us to terminate the lease prior to expiration in the event our sales are below a stated level for a period of time, generally conditioned upon repayment of the unamortized allowances contributed by landlords to the build out of the leased premises. We also lease automobiles and certain equipment under operating lease agreements.

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As of December 31, 2013, the aggregate minimum annual lease payments under operating leases, including amounts characterized as deemed landlord financing payments are as follows (in thousands):

2014	\$	72,153
2015		72,406
2016		72,023
2017		71,609
2018		72,044
Thereafter		570,726
Total	\$	930,961

Table of Contents

Rent expense on all operating leases was as follows (in thousands):

	Fiscal Year		
	2013	2012	2011
Straight-lined minimum base rent	\$ 69,427	\$ 68,524	\$ 65,920
Contingent rent	20,698	20,104	19,909
Other charges	29,552	28,039	25,960
Total	\$ 119,677	\$ 116,667	\$ 111,789

We enter into various obligations for the purchase of goods and for the construction of restaurants. At December 31, 2013, our purchase obligations approximated \$96.9 million, \$94.4 million of which is due in fiscal 2014. (See Contractual Obligations and Commercial Commitments in Part II, Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations for more information on our purchase obligations.)

As credit guarantees to insurers, we have \$21.0 million in standby letters of credit related to our self-insurance liabilities. All standby letters of credit are renewable annually.

We retain the financial responsibility for a significant portion of our risks and associated liabilities with respect to workers' compensation, general liability, employee health benefits, employment practices and other insurable risks. The accrued liabilities associated with these programs are based on our estimate of the ultimate costs to settle known claims as well as claims incurred but not yet reported to us (IBNR) as of the balance sheet date. Our estimated liabilities are not discounted and are based on information provided by our insurance brokers and insurers, combined with our judgment regarding a number of assumptions and factors, including the frequency and severity of claims, claims development history, case jurisdiction, applicable legislation and our claims settlement practices. We maintain stop-loss coverage with third-party insurers to limit our individual claim exposure for many of our programs. Significant judgment is required to estimate IBNR amounts as parties have yet to assert such claims. If actual claims trends, including the severity or frequency of claims, differ from our estimates, our financial results could be impacted. At December 31, 2013, the total accrued liability for our self-insured plans was \$41.1 million.

On April 11, 2013, a current restaurant hourly employee filed a class action lawsuit in the California Superior Court, Placer County, alleging that the Company violated the California Labor Code and California Business and Professions Code, by requiring employees to purchase uniforms for work (*Sikora v. The Cheesecake Factory Restaurants, Inc.*, et al; Case No SCV0032820). A similar lawsuit covering a different period of time is also pending in Placer County (*Reed v. The Cheesecake Factory Restaurants, Inc.* et al; Case No. S CV 27073). We are also arbitrating similar uniform and related issues under federal law in separate collective actions in Alabama, Colorado, Ohio, Tennessee, and Texas (*Smith v. The Cheesecake Factory Restaurants, Inc.* et al; Case No. 3 06 0829). On October 24, 2013, the arbitrator in the Tennessee matter denied summary judgment motions filed both by the claimants and by us on the uniform issue. However, the arbitrator in the Ohio matter has ruled in favor of the Company on the material claims raised in the Ohio arbitration, including uniform, minimum wage and overtime issues, while finding in favor of the claimants on two non-material claims and awarding claimants' recovery of fees and costs for such matters in a non-material amount. On January 15, 2014, the Company filed a Motion for Reconsideration Re: Arbitration with the federal district court for the U.S. District Court for the Middle District of Tennessee (Case No. 3 06 0829). On February 7, 2014, claimants filed a motion to vacate the Ohio arbitrator's decision and, following mediation, the parties also agreed to a stay of all arbitration proceedings until the federal district court rules on the Company's motion. These lawsuits and arbitrations seek unspecified amounts of penalties and other monetary payments on behalf of the respective claimants and other purported class members. The claimants also seek attorneys' fees. We intend to vigorously defend these actions. Based on the current status of these matters, we have not reserved for any potential future payments.

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Within the ordinary course of our business, we are subject to private lawsuits, government audits, administrative proceedings and other claims. These matters typically involve claims from guests, staff members and others related to operational issues common to the foodservice industry. A number of these claims may exist at any given time, and some of the claims may be pled as class actions. From time to time, we are also involved in lawsuits with respect to infringements of, or challenges to, our trademarks. We could be affected by adverse publicity and litigation costs resulting from such allegations, regardless of whether these allegations are valid or whether we are legally determined to be liable. At this time, we believe that the final disposition of any pending lawsuits, audits, proceedings and claims will not have a material adverse effect individually or in the aggregate on our financial position, results of operations or liquidity. It is possible, however, that our future results of operations for a particular quarter or fiscal year could be impacted by changes in circumstances relating to lawsuits, audits, proceedings or claims.

We have employment agreements with certain of our executive officers that provide for payments to those officers in the event of an actual or constructive termination of their employment, including following a change in control of the Company or otherwise without cause or in the event of death or disability, as defined in those agreements. Aggregate payments totaling approximately \$3.0 million would have been required by those agreements had all such officers terminated their employment for reasons requiring such payments as of December 31, 2013. In addition, the employment agreement with our Chief Executive Officer ( CEO ), which is in effect through April 1, 2015, specifies an annual founder s retirement benefit of \$650,000 for ten years after termination of his full time employment. We incurred a benefit of \$0.2 million and expense of \$0.8 million in fiscal 2013 and 2012, respectively. No benefit or expense was recorded in fiscal 2011.

Table of Contents

**10. Stockholders Equity**

On July 23, 2012, our Board approved the initiation of a cash dividend to our stockholders, which is subject to quarterly Board approval. A cash dividend of \$0.12 per common share was declared during the third quarter of fiscal 2012 and in each subsequent fiscal quarter through the second quarter of 2013. In July 2013, our Board increased the dividend to \$0.14 per common share, equating to a 17% increase. A cash dividend of \$0.14 per common share was also declared during the fourth quarter of fiscal 2013 and the first quarter of fiscal 2014. Future decisions to pay, increase or decrease dividends continue to be at the discretion of the Board and will be dependent on our operating performance, financial condition, capital expenditure requirements and other such factors that the Board considers relevant.

On July 22, 2013, our Board increased the authorization to repurchase our common stock by 7.5 million shares to 48.5 million shares. Under this and all previous authorizations, we have cumulatively repurchased 38.9 million shares at a total cost of \$1,015.5 million through December 31, 2013. During fiscal 2013, 2012 and 2011, we repurchased 4.5 million, 3.2 million and 6.0 million shares of our common stock at a cost of \$183.7 million, \$101.4 million and \$172.1 million, respectively. Repurchased common stock is reflected as a reduction of stockholders equity. Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. On October 21, 2013, our Board approved the adoption of a prearranged share repurchase plan under Rule 10b5-1 of the Securities Exchange Act of 1934 (the Act), effective from January 2, 2014 through July 1, 2014.

The timing and number of shares repurchased pursuant to the share repurchase authorization are subject to a number of factors, including legal constraints and financial covenants under our Facility that limit share repurchases based on a defined ratio. See Note 7 for further discussion of our long-term debt. Shares may be repurchased in the open market or through privately negotiated transactions at times and prices considered appropriate by us. Purchases in the open market are made in compliance with Rule 10b-18 of the Act. We make the determination to repurchase shares based on several factors, including an evaluation of current and future capital needs associated with new restaurant development, current and forecasted cash flows, including dividend payments, a review of our capital structure and cost of capital, our share price and current market conditions. Our objectives with regard to share repurchases are to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth.

**11. Stock-Based Compensation**

We maintain performance incentive plans under which incentive stock options, non-qualified stock options, stock appreciation rights, restricted shares, restricted share units, deferred shares, performance shares and performance units may be granted to employees and consultants. Our current practice is to issue new shares, rather than treasury shares, upon stock option exercises and for restricted share grants. To date, we have only granted non-qualified stock options, restricted shares and restricted share units of common stock under these plans. Non-employee directors have received only non-qualified stock options under a non-employee director equity plan, which expired in May 2007. Currently, we do not have a plan under which non-employee directors may be granted stock options or other equity interests in the Company.

In April 2011, our Board approved an amendment to our 2010 Stock Incentive Plan to increase the number of shares of common stock authorized for issuance under the plan to 4.8 million shares from 3.8 million shares. This amendment was approved by our stockholders at our Annual Meeting held on June 1, 2011. In May 2013, our Board approved an amendment to our 2010 Stock Incentive Plan to increase the number of shares of common stock authorized for issuance under the plan to 6.6 million shares from 4.8 million shares. This amendment was approved by our stockholders at our Annual Meeting held on May 29, 2013. This is our only active performance incentive plan, and approximately 1.7 million of these shares were available for grant as of December 31, 2013.

Stock options generally vest at 20% per year and expire eight to ten years from the date of grant. Restricted shares and restricted share units generally vest between three to five years from the date of grant and require that the staff member remains employed in good standing with the Company as of the vesting date. Since restricted shares and restricted share units provide strong retention power through economic value to our staff members even when our stock price remains flat or declines, and it also reduces our total share usage, we have generally increased the proportion of restricted shares and restricted share units versus stock option grants over the past several years. Equity awards for certain executive officers may vest earlier in the event of a change of control, as defined in the plan.



Table of Contents

The following table presents information related to stock-based compensation (in thousands):

	2013	Fiscal Year 2012	2011
Labor expenses	\$ 4,478	\$ 3,445	\$ 3,186
Other operating costs and expenses	195	187	138
General and administrative expenses	9,462	7,206	6,311
Total stock-based compensation	14,135	10,838	9,635
Income tax benefit	5,407	4,146	3,685
Total stock-based compensation, net of taxes	\$ 8,728	\$ 6,692	\$ 5,950
Capitalized stock-based compensation (1)	\$ 177	\$ 255	\$ 197

(1) It is our policy to capitalize the portion of stock-based compensation costs for our internal development and construction, legal, and facilities departments that relates to capitalizable activities such as the design and construction of new restaurants, remodeling existing locations, lease, intellectual property and liquor license acquisition activities and equipment installation. Capitalized stock-based compensation is included in property and equipment, net and other assets on the consolidated balance sheets.

*Stock Options*

The weighted average fair value at the grant date for options issued during fiscal 2013, 2012 and 2011 was \$10.83, \$12.00 and \$12.62 per option, respectively. The fair value of options at the grant date was estimated utilizing the Black-Scholes valuation model with the following weighted average assumptions for fiscal 2013, 2012 and 2011, respectively: (a) an expected option term of 6.4 years, 6.1 years and 6.0 years, (b) expected stock price volatility of 33.5%, 40.5% and 39.7% , (c) a risk-free interest rate of 1.4%, 1.4% and 2.0%, and (d) a dividend yield on our stock of 1.3%, 0.2% and 0.0%.

The expected option term represents the estimated period of time until exercise and is based on historical experience of similar options, giving consideration to the contractual terms, vesting schedules and expectations of future employee behavior. Expected stock price volatility is based on a combination of the historical volatility of our stock and the implied volatility of actively traded options on our common stock. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant with an equivalent remaining term. The dividend yield is based on anticipated cash dividend payouts. Compensation expense is recognized only for those options expected to vest, with forfeitures estimated based on our historical experience and future expectations.

Stock option activity during fiscal 2013 was as follows:

Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value(1)
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	(In thousands)	(Per share)	(In years)	(In thousands)
Outstanding at beginning of year	7,414	\$ 23.98	4.2	\$ 66,682
Granted	386	\$ 35.62		
Exercised	(2,791)	\$ 26.10		
Forfeited or cancelled	(186)	\$ 23.63		
Outstanding at end of year	4,823	\$ 23.70	4.1	\$ 118,505
Exercisable at end of year	2,449	\$ 23.84	3.3	\$ 59,826

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(1) Aggregate intrinsic value is calculated as the difference between our closing stock price at fiscal year end and the exercise price, multiplied by the number of in-the-money options and represents the pretax amount that would have been received by the option holders, had they all exercised their options on the fiscal year end date.

The total intrinsic value of options exercised during fiscal years 2013, 2012 and 2011 was \$40.1 million, \$16.3 million and \$6.4 million, respectively. As of December 31, 2013, total unrecognized stock-based compensation expense related to nonvested stock options was \$12.0 million, which we expect to recognize over a weighted average period of approximately 2.1 years.

Table of Contents*Restricted Shares and Restricted Share Units*

Restricted share and restricted share unit activity during fiscal 2013 was as follows:

	Shares (In thousands)		Weighted Average Fair Value (Per share)
Outstanding at beginning of year	1,316	\$	26.91
Granted	651	\$	39.42
Vested	(175)	\$	14.66
Forfeited	(120)	\$	30.43
Outstanding at end of year	1,672	\$	32.81

Fair value of our restricted shares and restricted share units is based on our closing stock price on the date of grant. The weighted average fair value at the grant date for restricted shares and restricted share units issued during fiscal 2013, 2012 and 2011 was \$39.42, \$31.38 and \$29.12, respectively. The fair value of shares that vested during fiscal years 2013, 2012 and 2011 was \$2.6 million, \$2.5 million and \$1.2 million, respectively. As of December 31, 2013, total unrecognized stock-based compensation expense related to unvested restricted shares and restricted share units was \$31.9 million, which we expect to recognize over a weighted average period of approximately 3.4 years.

**12. Employee Benefit Plans**

We have a defined contribution benefit plan in accordance with section 401(k) of the Internal Revenue Code ( 401(k) Plan ) that is open to our staff members who meet certain compensation and eligibility requirements. Participation in the 401(k) Plan is currently open to staff members from our three restaurant concepts, our bakery facilities and our corporate office. The 401(k) Plan allows participating staff members to defer the receipt of a portion of their compensation and contribute such amount to one or more investment options. Our executive officers and a select group of management and/or highly compensated staff members are not eligible to participate in the 401(k) Plan. We currently match in cash a certain percentage of the employee contributions to the 401(k) Plan and also pay a portion of the administrative expenses, neither of which were material amounts during fiscal 2013, 2012 and 2011.

We have also established The Cheesecake Factory Incorporated Executive Savings Plan ( ESP ), a non-qualified deferred compensation plan for our executive officers and a select group of management and/or highly compensated staff members as defined in the plan document. The ESP allows participating staff members to defer the receipt of a portion of their base compensation and up to 100% of their eligible bonuses. Non-employee directors may also participate in the ESP and defer the receipt of their earned director fees. We currently match in cash a certain percentage of the base compensation and bonus deferred by participating staff members and also pay for the ESP administrative expenses, neither of which were material amounts during fiscal 2013, 2012 and 2011.

ESP employee deferrals and matching funds are deposited into a rabbi trust, and are generally invested in individual variable life insurance contracts owned by us that are specifically designed to informally fund savings plans of this nature. Our consolidated balance sheets reflect our investment in variable life insurance contracts in other assets and our obligation to participating staff members in other noncurrent liabilities. All

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income and expenses related to the rabbi trust are reflected in our consolidated statements of operations.

We maintain a self-insured medical and dental benefit plan for our staff members and utilize stop-loss coverage to limit our financial exposure from any individual medical claim. The accrued liabilities associated with these programs are based on our estimate of the ultimate costs to settle known claims as well as claims incurred but not yet reported to us as of the balance sheet date. The accrued liability for our self-insured medical benefit plan, which is included in other accrued expenses, as of December 31, 2013 and January 1, 2013, \$4.9 million for both years. See Note 1 for further discussion of accounting for our self-insurance liabilities.

Our estimated liabilities are not discounted and are based on information provided by our insurance brokers and insurers, combined with our judgment regarding a number of assumptions and factors, including the frequency and severity of claims, claims development history, case jurisdiction, applicable legislation and our claims settlement practices.

Table of Contents**13. Income Taxes**

The provision for income taxes consisted of the following (in thousands):

	2013	Fiscal Year 2012	2011
Income before income taxes	\$ 156,450	\$ 133,974	\$ 129,143
Income tax provision:			
Current:			
Federal	\$ 28,754	\$ 39,792	\$ 17,093
State	8,707	8,517	8,423
Total current	37,461	48,309	25,516
Deferred:			
Federal	5,342	(11,055)	9,284
State	(709)	(1,703)	(1,377)
Total deferred	4,633	(12,758)	7,907
Total provision	\$ 42,094	\$ 35,551	\$ 33,423

The following is a reconciliation between the U.S. federal statutory rate and the effective tax rate:

	2013	Fiscal Year 2012	2011
Tax at U.S. federal statutory rate	35.0%	35.0%	35.0%
State and district income taxes, net of federal income tax benefit	3.3	3.3	3.6
FICA tip credit	(7.0)	(7.7)	(6.9)
HIRE Act retention tax credit			(1.4)
Other credits and incentives	(1.2)	(0.6)	(0.8)
Change in uncertain tax positions			(1.3)
Manufacturing deduction	(2.4)	(2.8)	(2.7)
Deferred compensation	(1.0)	(0.7)	0.2
Other	0.2		0.2
Effective tax rate	26.9%	26.5%	25.9%

Following are the temporary differences that created our deferred tax assets and liabilities (in thousands):

	December 31, 2013	January 1, 2013
Deferred tax assets:		
Employee benefits	\$ 23,707	\$ 20,135
Insurance reserves	15,622	15,284
Accrued rent	22,954	23,945
Stock-based compensation	13,822	18,908
Deferred income	7,922	7,060
Tax credit carryforwards	1,977	1,751

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Other		1,320		853
Subtotal		87,324		87,936
Less: Valuation allowance		(185)		(258)
Total		\$ 87,139	\$	87,678
Deferred tax liabilities:				
Property and equipment		\$ (150,226)	\$	(146,763)
Inventory		(9,299)		(9,160)
Prepaid expenses		(8,843)		(8,350)
Total		\$ (168,368)	\$	(164,273)
Net deferred tax liability		\$ (81,229)	\$	(76,595)
Reported in consolidated balance sheets as:				
Deferred income taxes	current asset	\$ 16,008	\$	15,257
Deferred income taxes	noncurrent liability	(97,237)		(91,852)
Total		\$ (81,229)	\$	(76,595)

Table of Contents

We had \$3.0 million and \$2.7 million of state tax credit carryforwards at December 31, 2013 and January 1, 2013, respectively. These credits began to expire in 2013. Management assesses the available evidence to estimate if sufficient future taxable income will be generated to use these carryforwards. Based on this evaluation, we recorded a valuation allowance relating to hiring and investment tax credits in North Carolina of \$0.2 million and \$0.3 million as of December 31, 2013 and January 1, 2013, respectively, to reflect the amount that more likely than not will not be realized. We believe it is more likely than not that all other state tax credit carryforwards will be realized. However, this assessment could change if estimates of future taxable income during the carryforward period are revised. The earliest tax year still subject to examination by a significant taxing jurisdiction is 2010.

At December 31, 2013, we had \$0.8 million of unrecognized tax benefits. If recognized, this amount would affect our effective income tax rate. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows (in thousands):

	2013	Fiscal Year 2012	2011
Balance at beginning of year	\$ 695	\$ 590	\$ 2,135
Additions based on tax positions taken during a prior period			
Reductions based on tax positions taken during a prior period			
Additions based on tax positions taken during the current period	254	230	199
Reductions related to settlements with taxing authorities and lapses of statutes of limitations	(147)	(125)	(1,744)
Balance at end of year	\$ 802	\$ 695	\$ 590

We recognize interest related to uncertain tax positions in income tax expense. Penalties related to uncertain tax positions are part of general and administrative expenses. At both December 31, 2013 and January 1, 2013, we had approximately \$0.1 million of accrued interest and penalties related to uncertain tax positions. Included in the balance of unrecognized tax benefits at December 31, 2013 is \$0.1 million related to tax positions for which it is reasonably possible that the total amount could decrease during the next twelve months based on the lapses of statutes of limitations for certain jurisdictions.

In 2008, the IRS issued a Notice of Proposed Adjustment to us disallowing, under Internal Revenue Code section 162(m), the deduction of approximately \$5.1 million of compensation expense with respect to the exercise of stock options by certain current and former executive officers during 2003 through 2006. In 2010, we agreed to a resolution of this dispute as to tax years 2005 and 2006, and in 2011, we agreed to a resolution as to tax years 2003 and 2004.

**14. Stockholder Rights Plan**

We have a stockholder rights plan that provides for the distribution to stockholders of one right to purchase a unit equal to 1/100th of a share of junior participating cumulative preferred stock. The rights are evidenced by our common stock certificates and automatically trade with our common stock. The rights are not exercisable unless a person or group acquires (or commences a tender or exchange offer or announces an intention to acquire) 15% or more of our common stock (or 20% or more if such person or group was beneficial owner of 10% or more of our common stock on August 4, 1998 or any time thereafter) without the approval of our Board. When declared exercisable, holders of the rights (other than the acquiring person or group) would have the right to purchase units of junior participating cumulative preferred stock having a market value equal to two times the exercise price of each right, which is \$110. Additionally, if we are thereafter merged into another entity, or if more than 50% of our consolidated assets or earnings power is sold or transferred, holders of the rights will be entitled to buy common stock

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of the acquiring person or group equal to two times the exercise price of each right. During fiscal 2008, our Board extended the rights expiration date to August 4, 2018, unless redeemed earlier by us.

### 15. Segment Information

For decision-making purposes, our management reviews discrete financial information for The Cheesecake Factory, Grand Lux Cafe and RockSugar Pan Asian Kitchen restaurants, our bakery division and our international licensing operations. Based on quantitative thresholds set forth in ASC 280, Segment Reporting, The Cheesecake Factory is our only business that meets the criteria of a reportable operating segment. We formerly disclosed segment information for our bakery operations. However, as we expanded our domestic restaurants and international licensing arrangements, our bakery segment became a smaller proportion of our operations and now falls below the thresholds of a reportable segment. Therefore, we are no longer reporting this component separately. Grand Lux Cafe, RockSugar Pan Asian Kitchen and international licensing were previously combined with The Cheesecake Factory in a segment named Restaurants. These components are now combined with our bakery operations in Other. Unallocated corporate expenses, assets and capital expenditures are presented below as reconciling items to the amounts presented in the consolidated financial statements.



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## Table of Contents

Segment information is presented below (in thousands):

	2013	Fiscal Year 2012	2011
<b>Revenue:</b>			
The Cheesecake Factory restaurants	\$ 1,688,036	\$ 1,604,825	\$ 1,543,040
Other	189,874	204,192	214,584
	\$ 1,877,910	\$ 1,809,017	\$ 1,757,624
<b>Income from operations:</b>			
The Cheesecake Factory restaurants (1)	\$ 250,230	\$ 225,920	\$ 208,449
Other (2)	19,985	10,857	16,024
Corporate	(109,261)	(98,078)	(91,023)
	\$ 160,954	\$ 138,699	\$ 133,450
<b>Total assets:</b>			
The Cheesecake Factory restaurants	\$ 813,780	\$ 764,208	\$ 746,683
Other	155,231	165,274	150,092
Corporate	155,103	162,685	125,795
	\$ 1,124,114	\$ 1,092,167	\$ 1,022,570
<b>Capital expenditures:</b>			
The Cheesecake Factory restaurants	\$ 98,660	\$ 60,300	\$ 64,960
Other	3,621	15,363	9,171
Corporate	4,008	10,779	2,615
	\$ 106,289	\$ 86,442	\$ 76,746
<b>Depreciation and amortization:</b>			
The Cheesecake Factory restaurants	\$ 63,549	\$ 60,358	\$ 58,170
Other	10,514	9,811	9,611
Corporate	4,495	4,264	4,177
	\$ 78,558	\$ 74,433	\$ 71,958

(1) Includes impairment and lease termination expenses/(income) related to seven The Cheesecake Factory restaurants. The pre-tax amounts associated with these items were (\$1,204), \$5,469 and \$643 in fiscal years 2013, 2012 and 2011, respectively. These amounts were recorded in impairment of assets and lease terminations. (See Note 1 for further discussion of these charges.)

(2) Includes impairment and lease termination expenses related to four Grand Lux Cafe restaurants. The pre-tax amounts associated with these items were \$643, \$4,067 and \$904 in fiscal years 2013, 2012 and 2011, respectively. These amounts were recorded in impairment of assets and lease terminations. (See Note 1 for further discussion of these charges.)

## **16. Quarterly Financial Data (unaudited)**

Summarized unaudited quarterly financial data for fiscal 2013 and 2012, is as follows (in thousands, except per share data):

Quarter Ended:	April 2, 2013(3)	July 2, 2013(3)	October 1, 2013(3)	December 31, 2013(3)
Revenues	\$ 463,018	\$ 470,118	\$ 469,699	\$ 475,075
Income from operations	\$ 36,787	\$ 41,170	\$ 38,631	\$ 44,366

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Net income	\$	25,292	\$	28,583	\$	27,481	\$	33,000
Basic net income per share (1)	\$	0.48	\$	0.54	\$	0.52	\$	0.64
Diluted net income per share (1)	\$	0.47	\$	0.52	\$	0.50	\$	0.62
Cash dividends declared per common share	\$	0.12	\$	0.12	\$	0.14	\$	0.14

Quarter Ended:		April 3, 2012		July 3, 2012(2)		October 2, 2012		January 1, 2013(3)
Revenues	\$	435,754	\$	454,749	\$	453,819	\$	464,695
Income from operations	\$	30,219	\$	40,970	\$	39,324	\$	28,186
Net income	\$	20,722	\$	28,399	\$	27,163	\$	22,139
Basic net income per share (1)	\$	0.39	\$	0.53	\$	0.51	\$	0.42
Diluted net income per share (1)	\$	0.37	\$	0.52	\$	0.49	\$	0.40
Cash dividends declared per common share	\$	—	\$	—	\$	0.12	\$	0.12

(1) Net income per share calculations for each quarter are based on the weighted average diluted shares outstanding for that quarter and may not total to the full year amount.

(2) Net income included \$419 in proceeds from a variable life insurance contract used to support our ESP.

(3) Income from operations included impairment and lease termination expenses/(income) of \$644, \$1,505, \$1,097, (\$3,807) and \$9,536 in the four quarters of fiscal 2013 and the fourth quarter of fiscal 2012, respectively, related to seven The Cheesecake Factory and four Grand Lux Cafe restaurants. The impact of these amounts on net income was \$386, \$903, \$658, (\$2,284) and \$5,722, respectively. (See Note 1 for further discussion of impairment of assets and lease terminations.)

Table of Contents

While seasonal fluctuations generally do not have a material impact on our quarterly results, the year-over-year comparison of our quarterly results can be significantly impacted by the number and timing of new restaurant openings and associated preopening costs, the calendar days of the week on which holidays occur and other variations in revenues and expenses. As a result of these factors, our financial results for any quarter are not necessarily indicative of the results that may be achieved for the full fiscal year.

**17. Subsequent Event**

*Dividends*

On February 10, 2014, our Board of Directors approved a quarterly cash dividend of \$0.14 per share to be paid on March 11, 2014 to the stockholders of record on February 26, 2014.

*Accelerated Stock Repurchase Program*

On February 27, 2014, we entered into an agreement with a financial institution to repurchase \$75 million of our common stock under a collared accelerated stock repurchase ( ASR ) program. The number of common shares to be repurchased under the ASR program generally will be based on the volume weighted average share price of our common stock. The program is subject to collar provisions that will establish minimum and maximum number of shares based on the volume weighted average share price over an initial hedge period. Under the terms of the program, the financial institution will deliver an initial number of shares of common stock to us on March 7, 2014 and will deliver the remaining balance of the minimum number of shares upon the completion of the hedge period by the end of March 2014. At the termination of the ASR program, we may receive additional common shares, depending on the share price of our common stock during the term of the program. The minimum and maximum number of common shares that we will repurchase pursuant to the program will not be known until the conclusion of the hedge period. The program will terminate no later than six months following the end of the hedge period and may in certain circumstances be accelerated.

This ASR was entered into as part of, and pursuant to, our previously announced share repurchase program. We intend to fund the share repurchases with cash on hand and/or temporary borrowing on our credit facility.

Table of Contents**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Item</b>	<b>Form</b>	<b>File Number</b>	<b>Incorporated by Reference from Exhibit Number</b>	<b>Filed with SEC</b>
2.1	Form of Reorganization Agreement	Amend. No. 1 to Form S-1	33-479336	2.1	8/17/92
3.1	Restated Certificate of Incorporation including Certificate of Designation of Series A Junior Participating Cumulative Preferred Stock	10-K	000-20574	3.1	2/23/11
3.2	Amended and Restated Bylaws as of May 20, 2009	8-K	000-20574	3.8	5/27/09
3.3	Form of Rights Agreement dated as of August 4, 1998 between The Cheesecake Factory Incorporated and U.S. Stock Transfer Corporation	8-A	000-20574	1	8/18/98
3.4	Amendment No. 1 to Rights Agreement dated as of November 4, 2003 between The Cheesecake Factory Incorporated and U.S. Stock Transfer Corporation	Amend. No. 1 to Form 8-A	000-20574	2	11/13/03
3.5	Amendment No. 2 to Rights Agreement dated as of August 1, 2008 between The Cheesecake Factory Incorporated and Computershare Trust Company	Amend. No 2 to Form 8-A	000-25074	3	8/1/08
10.1	David Overton Employment Agreement effective June 30, 2009*	8-K	000-20574	10.1	7/20/09
10.2	The Cheesecake Factory Incorporated 1992 Performance Employee Stock Option Plan *	S-1	33-479336	10.3	5/15/92
10.3	Amendment to The Cheesecake Factory Incorporated 1992 Performance Employee Stock Option Plan*	S-8	033-88414	99.1	1/28/99
10.4	Second Amendment to The Cheesecake Factory Incorporated 1992 Performance Employee Stock Option Plan*	10-Q	000-25074	10.1	12/8/06
10.5	The Cheesecake Factory Incorporated 1997 Non-Employee Director Stock Option Plan (as amended)*	S-8	333-118757	99.3	9/2/04
10.6	Nonqualified Stock Option Agreement under the Company's 1997 Non-Employee Director Stock Option Plan*	10-Q	000-25074	99.1	10/26/04
10.7	Amended and Restated Year 2000 Omnibus Performance	S-8	333-118757	99.1	9/2/04

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10.8	Stock Incentive Plan* First Amendment to Amended and Restated Year 2000 Omnibus Performance Stock Incentive Plan*	10-Q	000-25074	10.2	12/8/06
10.9	Second Amendment to Amended and Restated Year 2000 Omnibus Performance Stock Incentive Plan*	10-K	000-25074	10.10	2/22/07

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Table of Contents

<b>Exhibit No.</b>	<b>Item</b>	<b>Form</b>	<b>File Number</b>	<b>Incorporated by Reference from Exhibit Number</b>	<b>Filed with SEC</b>
10.10	Third Amendment to Amended and Restated Year 2000 Omnibus Performance Stock Incentive Plan*	8-K	000-25074	99.1	7/25/08
10.11	Amended and Restated 2001 Omnibus Stock Incentive Plan*	S-8	333-118757	99.2	9/2/04
10.12	First Amendment to Amended and Restated Year 2001 Omnibus Performance Stock Incentive Plan*	8-K	000-25074	99.2	7/25/08
10.13	Form of Notice of Grant of Stock Option and/or Restricted Share Award *	8-K	000-25074	99.1	1/5/07
10.14	Amended Form of Notice of Grant of Stock Option and/or Restricted Share Award*	10-K	000-25074	10.17	2/27/09
10.15	Amended and Restated Annual Performance Incentive Plan*	10-K	000-25074	10.3	4/4/05
10.16	Form of Employment Agreements with Debby R. Zurzolo and Max S. Byfuglin*	8-K	000-25074	99.1	3/28/06
10.17	Form of First Amendment to Employment Agreements with Debby R. Zurzolo and Max S. Byfuglin*	8-K	000-25074	99.2	12/10/07
10.18	Form of Second Amendment to Employment Agreement with Debby R. Zurzolo*	8-K	000-25074	99.3	1/5/09
10.19	Form of Second Amendment to Employment Agreement with Max S. Byfuglin*	8-K	000-25074	99.2	1/5/09
10.20	Amended and Restated Executive Savings Plan*	8-K	000-25074	99.3	7/25/08
10.21	First Amendment to Amended and Restated Executive Savings Plan*	10-K	000-25074	10.34	2/27/09
10.22	Second Amendment to Amended and Restated Executive Savings Plan*	10-Q	000-25074	10.2	5/6/10
10.23	Employment Agreement between the Company and Michael E. Jannini dated February 11, 2010*	8-K	000-25074	10.1	2/17/10
10.24	Form of Indemnification Agreement*	8-K	000-25074	99.1	12/14/07
10.25	Real Estate Option Agreement dated April 22, 2005	8-K	000-25074	99.1	8/2/05
10.26	First Amendment to Option Agreement dated as of June 28, 2005	8-K	000-25074	99.2	8/2/05
10.27	Inducement Agreement dated as of July 27, 2005	8-K	000-25074	99.3	8/2/05
10.28	First Amendment to Inducement Agreement dated as of March 1,	10-K	000-25074	10.36	2/23/11

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Table of Contents

<b>Exhibit No.</b>	<b>Item</b>	<b>Form</b>	<b>File Number</b>	<b>Incorporated by Reference from Exhibit Number</b>	<b>Filed with SEC</b>
10.29	Amended Agreement of Grant of Stock Option to Debby R. Zurzolo*	8-K	000-25074	99.2	12/18/06
10.30	Amended Agreement of Grant of Stock Option to Debby R. Zurzolo*	8-K	000-25074	99.3	12/18/06
10.31	Stipulation of Settlement	8-K	000-25074	10.1	2/28/08
10.32	Form of Employment Agreement with W. Douglas Benn dated January 19, 2009*	8-K	000-25074	99.1	1/23/09
10.33	Notice and Agreement of Grant of Stock Option and/or Restricted Share Award between the Company and David Overton dated May 7, 2009*	8-K	000-20574	99.1	5/9/09
10.34	2010 Stock Incentive Plan as amended April 7, 2011*	DEF 14A	000-20574	Appendix A	4/21/11
10.35	2010 Amended and Restated Annual Performance Incentive Plan, as amended and restated on June 2, 2010*	DEF 14A	000-20574	Appendix B	4/23/10
10.36	Form of Grant Agreement for Executive Officers under 2010 Stock Incentive Plan*	10-Q	000-20574	10.1	11/4/10
10.37	Annual Management Performance Incentive Plan effective December 31, 2010*	10-Q	000-20574	10.2	11/4/2010
10.38	Loan Agreement dated as of December 3, 2010 between The Cheesecake Factory Incorporated and JPMorgan Chase Bank NA as Administrative Agent, Bank of the West as Syndication Agent, and Bank of America NA, Wells Fargo Bank and Rabobank Nederland, as Documentation Agents	10-K	000-20574	10.46	2/23/2011
10.39	First Amendment to Employment Agreement effective as of February 29, 2012 between The Cheesecake Factory Incorporated and David M. Overton*	8-K	000-20574	10.1	3/6/2012
10.40	Second Amendment to Employment Agreement dated as of November 11, 2013, between The Cheesecake Factory Incorporated and David M. Overton *	8-K	000-20574	99.1	11/12/2013
10.41	Amended and Restated Loan Agreement dated as of October 16, 2013, among The Cheesecake Factory	8-K	000-20574	99.1	10/22/13



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10.42	Incorporated, the Lenders party thereto and JP Morgan Chase Bank, National Association as Administrative Agent The Cheesecake Factory 2010 Stock Incentive Plan as amended effective as of May 30, 2013*	DEF 14A	000-20574	Appendix A	04/19/13
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Table of Contents

<b>Exhibit No.</b>	<b>Item</b>	<b>Form</b>	<b>File Number</b>	<b>Incorporated by Reference from Exhibit Number</b>	<b>Filed with SEC</b>
10.43	Employment Agreement effective as of April 18, 2013, between The Cheesecake Factory Incorporated and David M. Gordon*	8-K	000-20574	10.1	4/19/13
10.44	Form of Grant Agreement for Executive Officers under the 2010 Stock Incentive Plan, for equity grants made after August 2, 2012*	10-K	000-20574	10.1	8/10/12
10.45	Master Confirmation dated as of February 27, 2014 between The Cheesecake Factory Incorporated and Goldman, Sachs & Co.				Filed herewith
10.46	Supplemental Confirmation dated as of February 27, 2014 between The Cheesecake Factory Incorporated and Goldman, Sachs & Co.				Filed herewith
10.47	Third Amendment to Amended and Restated Executive Savings Plan*				Filed herewith
10.48	Fourth Amendment to Amended and Restated Executive Savings Plan*				Filed herewith
21.0	List of Subsidiaries				Filed herewith
23.1	Consent of Independent Registered Public Accounting Firm				Filed herewith
31.1	Rule 13a-14(a)/15d-14(a) Certification of the Principal Executive Officer				Filed herewith
31.2	Rule 13a-14(a)/15d-14(a) Certification of the Principal Financial Officer				Filed herewith
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for Principal Executive Officer				Filed herewith
32.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for Principal Financial Officer				Filed herewith

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### Table of Contents

<b>Exhibit No.</b>	<b>Item</b>	<b>Form</b>	<b>File Number</b>	<b>Incorporated by Reference from Exhibit Number</b>	<b>Filed with SEC Filed herewith</b>
Exhibit 101	XBRL (Extensible Business Reporting Language) The following materials from The Cheesecake Factory Incorporated's Annual Report on Form 10-K for the years ended December 31, 2013, formatted in Extensive Business Reporting Language (XBRL), (i) consolidated balance sheets, (ii) consolidated statements of operations, (iii) consolidated statement of stockholders' equity, (iv) consolidated statements of cash flows, and (v) the notes to the consolidated financial statements.				

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\* Management contract or compensatory plan or arrangement required to be filed as an exhibit.

Table of Contents

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on the 27th day of February 2014.

**THE CHEESECAKE FACTORY INCORPORATED**

By: **/s/ DAVID OVERTON**  
David Overton  
*Chairman of the Board and  
Chief Executive Officer (principal executive officer)*

By: **/s/ W. DOUGLAS BENN**  
W. Douglas Benn  
*Executive Vice President and Chief Financial Officer  
(principal financial officer)*

By: **/s/ CHERYL M. SLOMANN**  
Cheryl M. Slomann  
*Vice President, Controller and Chief Accounting  
Officer  
(principal accounting officer)*

Table of Contents**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David Overton and W. Douglas Benn, and each of them, as his true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

<b>Name</b>	<b>Title</b>	<b>Date</b>
/s/ DAVID OVERTON David Overton	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	February 27, 2014
/s/ W. DOUGLAS BENN W. Douglas Benn	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	February 27, 2014
/s/ CHERYL M. SLOMANN Cheryl M. Slomann	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)	February 27, 2014
/s/ ALEXANDER L. CAPPELLO Alexander L. Cappello	Director	February 27, 2014
/s/ JEROME I. KRANSDORF Jerome I. Kransdorf	Director	February 27, 2014
/s/ LAURENCE B. MINDEL Laurence B. Mindel	Director	February 27, 2014
/s/ DAVID B. PITTAWAY David B. Pittaway	Director	February 27, 2014
/s/ DOUGLAS L. SCHMICK Douglas L. Schmick	Director	February 27, 2014
/s/ HERBERT SIMON Herbert Simon	Director	February 27, 2014

