

RED ROBIN GOURMET BURGERS INC
Form DEF 14A
April 16, 2004

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)

of the Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

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RED ROBIN GOURMET BURGERS, INC.

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RED ROBIN GOURMET BURGERS, INC.

6312 South Fiddler s Green Circle, Suite 200N

Greenwood Village, CO 80111

(303) 846-6000

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held On June 2, 2004

To our Stockholders:

You are cordially invited to attend the annual meeting of stockholders of Red Robin Gourmet Burgers, Inc. to be held at 9:00 a.m. mountain daylight saving time, on Wednesday, June 2, 2004, at our corporate headquarters, located at 6312 South Fiddler s Green Circle, Suite 200N, Greenwood Village, Colorado. The meeting will be convened for the following purposes:

1. To elect two (2) Class II directors for three-year terms;
2. To approve our 2004 performance incentive plan;
3. To ratify the appointment of Deloitte & Touche LLP as our independent auditors for the fiscal year ending December 26, 2004; and
4. To transact such other business as may properly come before the meeting or any postponement or adjournment thereof.

Only stockholders of record at the close of business on April 5, 2004 are entitled to notice of, and to vote at, the annual meeting or any postponement or adjournment thereof.

Your attention is directed to the accompanying proxy statement, which includes information about the matters to be considered at the annual meeting and certain other important information. We encourage you to carefully review the entire proxy statement.

We cordially invite you to attend the annual meeting. Whether or not you plan to attend, please sign and return the enclosed proxy as promptly as possible in the envelope enclosed for your convenience. Should you receive more than one proxy because your shares are registered in different names and addresses, each proxy should be signed and returned to assure that all your shares will be voted. Mailing your completed proxy card will not prevent you from voting in person at the meeting if you wish to do so.

Accompanying this notice and proxy statement is a copy of our 2003 annual report to stockholders.

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By Order of the Board of Directors,

Michael J. Snyder

Chairman of the Board

and Chief Executive Officer

April 12, 2004

Greenwood Village, CO

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RED ROBIN GOURMET BURGERS, INC.

6312 South Fiddler s Green Circle, Suite 200N

Greenwood Village, Colorado 80111

(303) 846-6000

PROXY STATEMENT

FOR

ANNUAL MEETING OF STOCKHOLDERS

To Be Held On June 2, 2004

This proxy statement is solicited by the board of directors of Red Robin Gourmet Burgers, Inc. and contains information relating to the annual meeting of our stockholders to be held on Wednesday, June 2, 2004, beginning at 9:00 a.m. mountain daylight saving time, at our corporate headquarters, located at 6312 South Fiddler s Green Circle, Suite 200N, Greenwood Village, Colorado. This proxy statement and accompanying proxy card are being distributed on or about April 19, 2004.

ABOUT THE MEETING

What is the purpose of the annual meeting?

At our annual meeting, stockholders will vote on the following three items of business:

1. The election of two (2) Class II directors for three-year terms;
2. Approval of our 2004 performance incentive plan; and
3. Ratification of the appointment of Deloitte & Touche LLP as our independent auditors for the fiscal year ending December 26, 2004.

You will also vote on such other matters as may properly come before the meeting or any postponement or adjournment thereof.

What shares are entitled to vote?

As of April 5, 2004, the record date for the meeting, we had 16,019,460 shares of common stock outstanding. Each share of our common stock outstanding on the record date is entitled to one vote on all items being voted on at the meeting. You can vote all the shares that you owned on the record date. These shares include: (1) shares held directly in your name as the stockholder of record, and (2) shares held for you as the beneficial owner through a stockbroker, bank or other nominee.

What is the difference between holding shares as a stockholder of record and as a beneficial owner?

Most stockholders hold their shares through a broker or other nominee rather than directly in their own name. As summarized below, there are some distinctions between shares held of record and those owned beneficially.

Stockholder of Record. If your shares are registered directly in your name with our transfer agent, American Stock Transfer & Trust Company, you are considered, with respect to those shares, the stockholder of record, and we are sending these proxy materials directly to you. As the stockholder of record, you have the right to grant your voting proxy directly to the named proxy holder or to vote in person at the meeting. We have enclosed a proxy card for you to use.

Beneficial Owner. If your shares are held in a brokerage account or by another nominee, you are considered the beneficial owner of shares held in street name, and these proxy materials are being forwarded to you together with a voting instruction card. As the beneficial owner, you have the right to direct your broker, trustee or nominee how to vote and are also invited to attend the annual meeting.

Since a beneficial owner is not the stockholder of record, you may not vote these shares in person at the meeting unless you obtain a legal proxy from the broker, trustee or nominee that holds your shares, giving you the right to vote the shares at the meeting. Your broker, trustee or nominee has enclosed or provided voting instructions for you to use in directing the broker, trustee or nominee how to vote your shares.

Who can attend the meeting?

All stockholders as of the record date, or their duly appointed proxies, may attend the meeting. If you are not a stockholder of record but hold shares through a broker or nominee (i.e., in street name), you should provide proof of beneficial ownership on the record date, such as your most recent account statement prior to April 5, 2004, a copy of the voting instruction card provided by your broker, trustee or nominee, or other similar evidence of ownership. Registration and seating will begin at 8:30 a.m. Cameras, recording devices and other electronic devices will not be permitted at the meeting.

How can I vote my shares in person at the annual meeting?

Shares held in your name as the stockholder of record may be voted in person at the annual meeting. Shares held beneficially in street name may be voted in person only if you obtain a legal proxy from the broker, trustee or nominee that holds your shares giving you the right to vote the shares. Even if you plan to attend the annual meeting, we recommend that you also submit your proxy or voting instructions as described below so that your vote will be counted if you later decide not to attend the meeting.

How can I vote my shares without attending the annual meeting?

Whether you hold shares directly as the stockholder of record or beneficially in street name, you may direct how your shares are voted without attending the meeting. If you are a stockholder of record, you may vote by submitting a proxy. If you hold shares beneficially in street name, you may vote by submitting voting instructions to your broker, trustee or nominee. For directions on how to vote, please refer to the instructions included on your proxy card or, for shares held beneficially in street name, the voting instruction card provided by your broker, trustee or nominee.

Can I change my vote or revoke my proxy after I return my proxy card?

Yes. Even after you have submitted your proxy, you may change the votes you cast or revoke your proxy at any time before the votes are cast at the meeting by: (1) delivering a written notice of your revocation to our corporate secretary at our principal executive office, 6312 South Fiddler's Green Circle, Suite 200N, Greenwood Village, Colorado 80111; or (2) executing and delivering a later dated proxy. In addition, the powers of the proxy holders will be suspended if you attend the meeting in person and so request, although attendance at the meeting will not by itself revoke a previously granted proxy.

What constitutes a quorum?

The presence at the meeting, in person or by proxy, of the holders of a majority of the shares of our common stock outstanding as of the record date will constitute a quorum. There must be a quorum for any action to be taken at the meeting (other than an adjournment or postponement of the meeting). If you submit a properly executed proxy card, even if you abstain from voting, then your shares will be counted for purposes of determining the presence of a quorum. If a broker indicates on a proxy that it lacks discretionary authority as to

certain shares to vote on a particular matter, commonly referred to as broker non-votes, those shares will still be counted for purposes of determining the presence of a quorum at the meeting.

What are the Board's recommendations?

Our board of directors recommends that you vote:

- **FOR** election of each of the two nominated directors (see Proposal 1);
- **FOR** approval of our 2004 performance incentive plan (see Proposal 2); and
- **FOR** ratification of the appointment of Deloitte & Touche LLP as our independent auditors for the fiscal year ending December 26, 2004 (see Proposal 3).

With respect to any other matter that properly comes before the meeting, the proxy holders will vote as recommended by the board of directors or, if no recommendation is given, in their own discretion.

What vote is required to approve each item?

Election of Director. In the election of directors, the two persons receiving the highest number of **FOR** votes will be elected.

Other Items. For each other item to be considered at the annual meeting, the affirmative vote of the majority of votes cast in person or by proxy on the matter (excluding abstentions and broker non-votes) will be required for approval.

If you hold your shares beneficially in street name and do not provide your broker or nominee with voting instructions, your shares may constitute broker non-votes. Generally, broker non-votes occur on a matter when a broker is not permitted to vote on that matter without instructions from the beneficial owners and instructions are not given. In tabulating the voting result for any particular proposal, abstentions and shares that constitute broker non-votes will not have any effect on the outcome of the vote.

What does it mean if I receive more than one proxy card?

If you receive more than one proxy card, it means that you hold shares registered in more than one name or brokerage account. You should sign and return all proxies for each proxy card that you receive in order to ensure that all of your shares are voted.

How can I vote on each of the proposals?

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In the election of directors, you may vote **FOR** each of the two nominees, or your vote may be **WITHHELD** with respect to either or both of the nominees. For the other matters, you may vote **FOR** or **AGAINST** the proposal, or you may indicate that you wish to **ABSTAIN** from voting on the proposal.

Each of your shares will be voted according to your directions on the proxy card. If you sign your proxy card or broker voting instruction card with no further instructions, your shares will be voted in accordance with the recommendations of our board of directors (**FOR** each of the two Class II director nominees named in the proxy statement and **FOR** each of the other two proposals).

Who will count the proxy votes?

Votes will be counted by our transfer agent, American Stock Transfer & Trust Company, which has been appointed to act as the inspector of election for the annual meeting.

How will voting on any other business be conducted?

We do not expect any matters to be presented for a vote at the meeting other than the three matters described in the proxy statement. If you grant a proxy, either of the officers named as proxy holder, Michael J. Snyder or James P. McCloskey, or their nominee(s) or substitute(s), will have the discretion to vote your shares on any additional matters that are properly presented for a vote at the meeting. If a nominee is not available as a candidate for Class II director, the person named as the proxy holder will vote your proxy for another candidate nominated by our board of directors.

How do I submit a stockholder proposal for consideration at next year's annual meeting?

Proposals for Inclusion in Proxy Statement. For your proposal or director nomination to be considered for inclusion in our proxy statement for next year's meeting, your written proposal must be received by our corporate secretary at our principal executive office no later than December 20, 2004. If we change the date of next year's meeting by more than 30 days from the date of this year's meeting, then the deadline is a reasonable time before we begin to print and mail our proxy materials. You should also be aware that your proposal must comply with Securities and Exchange Commission (SEC) regulations regarding inclusion of stockholder proposals in company-sponsored proxy materials.

Proposals to be Addressed at Meeting (but not included in proxy statement). In order for you to raise a proposal (including director nominations) from the floor during next year's meeting, our corporate secretary must receive a written notice of the proposal no later than March 7, 2005 and no earlier than February 3, 2005, and it must contain the additional information required by our bylaws. You may obtain a complete copy of our bylaws by submitting a written request to our corporate secretary at our principal executive office. If we change the date of next year's meeting by more than 30 days from the date contemplated at this year's meeting, in order for the proposal to be timely, we must receive your written proposal at least 90 days before the date of next year's meeting or no more than 10 days following the day on which the meeting date is publicly announced.

STOCK OWNERSHIP

Stock Ownership of Certain Persons

The following table contains information about the beneficial ownership (unless otherwise indicated) of our common stock as of March 26, 2004 by:

- each person who is known to us to beneficially own more than 5.0% of our common stock;
- each of our directors, and the board's nominees for director;
- each executive officer named in the Summary Compensation Table; and
- all directors and executive officers as a group.

Unless otherwise indicated, the address for each person or entity named below is c/o Red Robin Gourmet Burgers, Inc., 6312 South Fiddler's Green Circle, Suite 200N, Greenwood Village, Colorado 80111.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Except as indicated by footnote, and except for community property laws where applicable, the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. The percentage of beneficial ownership is based on 16,018,786 shares of common stock outstanding as of March 26, 2004.

Name	Shares Beneficially	
	Owned as of March 26, 2004 (1)	
	Number	Percent (2)
Terrence D. Daniels (3)	1,938,543	12.1%
Quad-C Partners V, L.P.(4)	1,863,020	11.6
Michael J. Snyder (5)	1,502,052	9.4
Forstmann-Leff Associates, LLC (6)	1,681,666	10.5
FMR Corp. (7)	1,007,500	6.3
Michael E. Woods (8)	222,142	1.4
Robert J. Merullo (9)	161,797	1.0
James P. McCloskey (10)	148,576	1.0
Todd A. Brighton(11)	42,543	*
Eric C. Houseman (12)	20,552	*
Gary J. Singer (13)	6,518	*
Dennis B. Mullen (14)	6,500	*
Benjamin D. Graebel (15)	2,500	*
Edward T. Harvey, Jr. (16)	1,000	*
Directors and Executive Officers as a group (11 persons)(17)	4,052,723	25.3

* Represents beneficial ownership of less than one percent (1.0%) of the outstanding shares of our common stock.

- (1) This table gives effect to the exercise of stock options by certain of our executive officers as discussed in Certain Relationships and Related Transactions that may be subject to a right of repurchase.
- (2) If a stockholder holds options or other securities that are exercisable or otherwise convertible into our common stock within 60 days of March 26, 2004, we treat the common stock underlying those securities as owned by that stockholder, and as outstanding shares when we calculate the stockholder's percentage ownership of our common stock. However, we do not consider that common stock to be outstanding when we calculate the percentage ownership of any other stockholder.
- (3) Consists of 1,863,020 shares of common stock held by RR Investors, LLC and 74,523 shares of common stock held by RR Investors II, LLC. Mr. Daniels is the vice president and secretary of each of RR Investors and RR Investors II and, as such, shares voting and dispositive power as to the shares held by RR Investors and RR Investors II. In addition, Mr. Daniels has an indirect membership interest in RR Investors as a holder of a 40.0% membership interest in Quad-C Advisors V, L.L.C., the general partner of Quad-C Partners V, L.P., which is the sole member of RR Investors. Mr. Daniels also has a membership interest in RR Investors II equal to 22.5% and his four children collectively own an additional 20.8% of the outstanding membership interests of RR Investors II. Mr. Daniels disclaims beneficial ownership of the shares held by RR Investors, LLC and RR Investors II, LLC except to the extent of Mr. Daniels' pecuniary interest therein. This amount also includes 1,000 shares of common stock subject to options that are exercisable within 60 days of March 26, 2004.
- (4) 1,863,020 shares of our common stock are owned of record by RR Investors, LLC. As the sole member of RR Investors, Quad-C Partners V, L.P. has the sole power to vote and dispose of the shares held by RR Investors. Quad-C Advisors V, L.L.C. is the general partner of Quad-C Partners V. Stephen M. Burns is the president and a director of RR Investors. In addition, Mr. Burns has an indirect management interest in RR Investors as a holder of a 15.0% membership interest in Quad-C Advisors V. Terrence D. Daniels, one of our directors, is the vice president and secretary of RR Investors. In addition, Mr. Daniels has an indirect

- membership interest in RR Investors as a holder of a 40.0% membership interest in Quad-C Advisors V. This amount excludes 74,523 shares of common stock held by RR Investors II, LLC. See footnote 3 above, for more information regarding RR Investors II. The address of this stockholder is c/o Quad-C Management, Inc., 230 East High Street, Charlottesville, Virginia 22902.
- (5) Includes 34,483 shares held by Amalfi Kapital, LLC, a wholly owned subsidiary of Bunch Grass Leasing, LLC. Mr. Snyder is a 50.0% owner of Bunch Grass Leasing. Mr. Snyder disclaims beneficial ownership of these shares. This amount also includes 18,750 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (6) This disclosure is based on a Schedule 13-G filed by Forstmann-Leff Associates, LLC on February 29, 2004. The address of this stockholder is 590 Madison Avenue, New York, New York 10022.
 - (7) This disclosure is based on a Schedule 13-G filed by FMR Corp. on February 17, 2004. The address of this stockholder is 82 Devonshire Street, Boston, Massachusetts 02109.
 - (8) Includes an aggregate of 3,448 shares held by Mr. Woods' minor children. This amount also includes 6,250 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (9) Includes an aggregate of 5,172 shares held by Mr. Merullo's minor children. This amount also includes 6,250 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (10) Includes 3,034 shares held by the Claire C. McCloskey Trust, 2,534 shares held by the Megan L. McCloskey Trust and 3,034 shares held by the James P. McCloskey, Jr. Trust, the sole beneficiaries of which are Mr. McCloskey's children. This amount also includes 9,760 shares held by the James P. McCloskey Retained Annuity Trust, and 6,250 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (11) Consists of 42,543 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (12) Includes 16,104 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (13) Includes 1,000 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (14) Includes 2,500 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (15) Consists of 2,500 shares of common stock subject to options exercisable within 60 days of March 26, 2004.
 - (16) Consists of 1,000 shares of common stock subject to options exercisable within 60 days of March 26, 2004. This amount excludes 1,863,020 shares of common stock held by RR Investors, LLC and 74,523 shares of common stock held by RR Investors II, LLC. On December 31, 2003, Mr. Harvey retired from Quad-C and resigned his position as president and director of each of RR Investors and RR Investors II, and no longer shares voting and dispositive power as to the shares held by RR Investors and RR Investors II. Mr. Harvey has an indirect membership interest in RR Investors as a holder of a 15.0% membership interest in Quad-C Advisors V, L.L.C., the general partner of the sole member of RR Investors, Quad-C Partners V, L.P. Mr. Harvey also has an indirect membership interest in RR Investors II through High Street Holdings, L.C., in which he is the manager and has an 80.0% ownership interest. High Street Holdings has a 16.3% membership interest in RR Investors II. Mr. Harvey disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein.
 - (17) Includes 104,147 shares of common stock subject to options exercisable within 60 days of March 26, 2004.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934 requires our directors and executive officers, and persons who own more than ten percent of a registered class of our equity securities, to file with the SEC initial reports of ownership and reports of changes in ownership of common stock and other equity securities of our company. Officers, directors and greater than ten percent stockholders are required by SEC regulations to furnish us with copies of all Section 16(a) forms they file.

To our knowledge, based solely on a review of the copies of such reports furnished to us and representations that no other reports were required, during fiscal year 2003, all of our officers, directors and greater than ten percent beneficial owners timely complied with all Section 16(a) filing requirements, except that

Eric C. Houseman filed a late Form 4 to report a purchase of stock through the directed share program at the time of our initial public offering, and Robert J. Merullo filed a late Form 4 to report a purchase of stock by his mother that was later sold resulting in a loan repayment to Mr. Merullo.

BOARD OF DIRECTORS

During the fiscal year ended December 28, 2003, the board of directors held eleven meetings. Each of our current directors attended at least 75% of the aggregate total of meetings of the board of directors and committees on which he served. The board of directors strongly encourages each of the directors to attend the annual meeting of stockholders. All directors attended the company's 2003 annual meeting of stockholders. The independent directors of the company meet quarterly throughout the year and as necessary or appropriate in executive sessions at which members of management are not present. The board has determined that each of Benjamin D. Graebel, Dennis B. Mullen, Gary J. Singer, Edward T. Harvey, Jr. and Terrence D. Daniels qualifies as an independent director under The Nasdaq Stock Market's National Market listing standards.

Committees of the Board of Directors

Our board of directors has established an audit committee and a compensation committee.

Audit Committee. The audit committee is currently comprised of Benjamin D. Graebel (chairman), Edward T. Harvey, Jr., and Dennis B. Mullen, and operates pursuant to a written charter. Functions performed by the audit committee include: overseeing and reviewing the preparation and disclosure of the consolidated financial statements and the preparation and filing of periodic financial reports, including certification by the Chief Executive Officer and Chief Financial Officer, as required. The audit committee is also responsible for selecting and retaining the independent auditors; approving the budget for fees to be paid to the independent auditors for audit services and for appropriate non-audit services; and overseeing the relationship between the company and the independent auditors and acting as the board of directors primary avenue of communication with them. The audit committee's responsibilities also include other matters as set forth in its charter.

As of the date of this proxy statement, Mr. Graebel, Mr. Mullen, and Mr. Harvey are independent as such term is defined under Rule 4200, as amended, of the listing standards of the National Association of Securities Dealers (NASD). Prior to December 31, 2003, the effective date of Mr. Harvey's retirement and resignation as an officer and director of Quad-C, Mr. Harvey was not independent under NASD's definition based on his affiliation with Quad-C and its affiliates. However, one director who is not independent may serve on an audit committee under the NASD listing standards if a company meets the requirements set forth in Rule 4350(d)(2)(B) of the Nasdaq marketplace rules. Pursuant to Rule 4350(d)(2)(B), our board of directors determined that Mr. Harvey's membership on the audit committee is required by the best interests of our company and our stockholders due to Mr. Harvey's financial and accounting expertise and extensive knowledge of our company. Prior to becoming affiliated with our company, Mr. Harvey served on the board of directors and audit committee of Stimsonite Corporation, a publicly traded corporation, from 1990 to July 1999. Prior to 1990, Mr. Harvey also held various financial positions at W.R. Grace & Co., principally in corporate development, acquisitions and planning. In the corporate development function, Mr. Harvey, and persons reporting to Mr. Harvey, were responsible for performing detailed analyses on the financial statements and business prospects of potential acquisitions. Mr. Harvey has also gained extensive knowledge of our company during the past four years through his involvement in the legal and financial due diligence process prior to the Quad-C investment in our company and his service on our board of directors and audit committee since May 2000.

The board also has determined that each of Mr. Graebel, Mr. Mullen and Mr. Harvey is an audit committee financial expert as defined by rules adopted by the SEC. A discussion of the role of the audit committee is provided under Audit Committee Report.

The audit committee met eight times in fiscal year 2003.

Compensation Committee. The compensation committee is currently comprised of Terrence D. Daniels (chairman), Gary J. Singer, and Edward T. Harvey, Jr., and operates pursuant to a written charter. Functions performed by the compensation committee include: developing and recommending to the board of directors an annual performance evaluation of our chief executive officer and other executive officers; reviewing and recommending to our board of directors salary and short-term and long-term incentive compensation programs for all senior executives; and reviewing and recommending to our board of directors significant changes in the design of employee benefit plans.

The specific nature of the compensation committee's responsibilities as they relate to executive officers is set forth under Compensation Committee Report on Executive Compensation.

The compensation committee met five times in fiscal year 2003.

Nominating and Governance Committee. The nominating and governance committee is currently comprised of Edward T. Harvey, Jr. (chairman), Dennis B. Mullen, and Gary J. Singer, and operates pursuant to a written charter adopted on April 5, 2004. The full text of the charter is available on the company's website at <http://irpage.com/rrgb/>. The board has determined that each of the members of the committee qualifies as an independent director as defined under The Nasdaq Stock Market's National Market listing standards. The nominating and governance committee identifies, evaluates and recommends to the board of directors candidates for appointment or election to the board, as appropriate. The committee will meet annually during the fourth quarter to determine whether to recommend to the board to include the nomination of incumbent directors with expiring terms in the proxy statement. The committee will meet at other times as needed to consider candidates to fill any vacancies that may occur. At least once a year, the committee will consider whether the number of directors is appropriate for the company's needs and recommend to the board any changes in the number of directors, review the performance of the board, and review each director's performance. Because the Board first established the Nominating and Governance Committee in 2004, the Committee did not meet in 2003.

A stockholder may submit the name of a director candidate for consideration by the Nominating and Governance Committee by writing to: Nominating and Governance Committee, Red Robin Gourmet Burgers, Inc., 6312 South Fiddler's Green Circle, Suite 200N, Greenwood Village, CO 80111. The stockholder must submit the following information in support of the candidate: (a) the name and address of the stockholder recommending the candidate; (b) a representation that the stockholder recommending the candidate is a stockholder of record of the company's stock or other verification that the person recommending the candidate is a beneficial owner of the company's stock; (c) a description of any arrangement or understanding between the stockholder and the candidate and any other person or persons regarding the stockholder's submission of the candidate's name for consideration, and identifying such person or persons by name, address and affiliation with the stockholder, the candidate, and the company, if any; (d) such other information regarding the candidate as the company would be required to include in a proxy statement filed pursuant to the proxy rules of the SEC if the Board were to nominate the candidate for election as a director or if the Board were to appoint the candidate as a director; (e) the consent of the candidate to be identified to the board for consideration and to be identified in the proxy; and (f) the consent of the candidate to serve as a director if elected. The committee may refuse to consider any candidate for whom the stockholder fails to provide the information mentioned above.

In evaluating a director candidate, the Nominating and Governance Committee will consider the candidate's independence, character, corporate governance skills and abilities, business experience, training and education, commitment to performing the duties of a director, and other skills, abilities or attributes that fill specific needs of the board or its committees. The committee will use the same criteria in evaluating candidates suggested by stockholders as for candidates suggested by other sources.

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The nominating and governance committee recommends director candidates for nomination to the board. The board determines which candidates to nominate or appoint, as appropriate, after considering the recommendation of the committee.

Director Compensation

Base Compensation. Directors who are not employees of our company receive an annual retainer of \$25,000, payable quarterly, an annual award of 1,000 stock options, and each director may receive one or more awards of non-qualified stock options up to a maximum of 4,000 stock options per year at the discretion of the board of directors, for a total not to exceed 5,000 stock options per year. In addition, each director receives \$1,000 for each in-person board meeting, and each committee member receives \$1,000 for each in-person compensation or nominating committee meeting and \$2,000 for each in-person audit committee meeting. A director receives one-half of the compensation amount for scheduled in-person meetings attended by telephone. Directors are not compensated for scheduled telephonic meetings. We also reimburse directors for costs incurred by them in attending board and committee meetings. Director compensation for Terrence D. Daniels is paid to Quad-C.

Options. Stock options are granted pursuant to our 2002 stock incentive plan with an exercise price equal to the fair market value of the underlying common stock on the date of grant. Each annual grant of 1,000 stock options, and each discretionary grant of stock options shall become exercisable as to 100% of the total number of shares of common stock subject to the option on the earlier of the first anniversary of the date of grant or the first annual meeting of our stockholders that occurs more than ten months after the date of grant. A new director who is not an employee of our company will receive 5,000 stock options at the beginning of such director's term. Each initial grant of 5,000 stock options shall become exercisable as to 50% of the total number of shares of common stock subject to the option on each of the following dates: (a) the earlier of the first anniversary of the date of grant or the first annual meeting of our stockholders that occurs more than ten months after the date of grant, and (b) the earlier of the second anniversary of the date of grant or the first annual meeting of our stockholders that occurs more than twenty-two months after the date of grant.

The board of directors has adopted, subject to stockholder approval, our 2004 performance incentive plan. If stockholders approve the 2004 performance incentive plan, no new awards will be granted under the 2002 stock incentive plan after the Annual Meeting, and each director will be eligible to receive one or more awards of non-qualified stock options under the 2004 performance incentive plan up to a maximum of 5,000 stock options per year at the discretion of the board of directors. A new director who is not an employee of our company will receive stock options at the beginning of such director's term. The number of options will be determined by the board of directors at the time of grant. The exercise price and vesting of stock options granted to non-employee directors under the 2004 performance incentive plan shall be the same as described above under the 2002 stock incentive plan.

PROPOSAL 1

ELECTION OF DIRECTORS

General

Our amended and restated certificate of incorporation provides for three classes of directors with staggered three-year terms. Class I currently consists of two directors whose terms expire at our 2006 annual meeting; Class II currently consists of two directors whose terms expire at this annual meeting; and Class III currently consists of two directors whose terms expire at our 2005 annual meeting.

Our board of directors has nominated Edward T. Harvey, Jr. and Gary J. Singer to continue to serve as our Class II directors. If re-elected, Mr. Harvey and Mr. Singer will continue to serve in office until our annual meeting in 2007 and until their successors have been duly elected and qualified, or until the earlier of their death, resignation or retirement.

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Mr. Harvey and Mr. Singer have each consented to be named as a nominee in this proxy statement, and we expect that Mr. Harvey and Mr. Singer will be able to serve if elected. Should Mr. Harvey or Mr. Singer become unable or unwilling to accept his nomination for election, our board of directors can name a substitute nominee and the persons named in the proxy card, or their nominees or substitutes, will vote your shares for such substitute nominee unless an instruction to the contrary is written on your proxy card.

Directors and Nominees

Below, you can find the principal occupation and other information about each of the Class II directors and each of the other directors whose term of office will continue after the meeting.

Nominees for Term Ending Upon the 2007 Annual Meeting of Stockholders Class II Directors

Edward T. Harvey, Jr., 56, joined us as a director in May 2000. From April 1990 until his retirement in December 2003, Mr. Harvey was a partner with Quad-C, a private equity investment firm, in Charlottesville, Virginia. From 1975 to April 1990, Mr. Harvey held various financial positions at W.R. Grace & Co., principally in corporate development, acquisitions and planning. In October 2001, Nationwide Warehouse & Storage, LLC, et al., a portfolio company of Quad-C, filed a petition in bankruptcy. For the two years prior to the filing, Mr. Harvey served as a director and officer of Nationwide, but did not have any day-to-day management duties.

Gary J. Singer, 51, joined us as a director in June 1993. Mr. Singer has been a partner with O Melveny & Myers LLP, an international law firm, since February 1985 and has been associated with O Melveny & Myers since 1977.

Continuing Directors for Term Ending Upon the 2005 Annual Meeting of Stockholders Class III Directors

Benjamin D. Graebel, 48, joined us as a director in September 2002. Currently, Mr. Graebel serves as vice chairman for the Graebel Companies, Inc. of Denver, Colorado, a privately held transportation and relocation service provider. Since joining the Graebel Companies in June 1979, and prior to his appointment as the vice chairman of the Graebel Companies, Mr. Graebel held a variety of management positions, including regional vice president, president of the moving and storage group, chief operating officer and chief executive officer.

Dennis B. Mullen, 60, joined us as a director in December 2002. Mr. Mullen has been a private investor for the past five years. Mr. Mullen currently serves as the chairman of the Janus Funds, chairs the Janus Funds nominating and governance committee, and serves on the Janus Funds audit and brokerage committees. Prior to his appointment as chairman, he served as the lead independent trustee for Janus Funds. As a trustee for Janus Funds, Mr. Mullen chaired the audit committee. Prior to 1998, Mr. Mullen had more than 30 years experience as a corporate executive in the restaurant industry, and has served as chief executive officer for several restaurant chains, including Cork & Cleaver Restaurants of Denver, Colorado; Pedro Verde s Mexican Restaurants, Inc. of Boulder, Colorado; Garcia s Restaurants, Inc. of Phoenix, Arizona; and BCNW, a franchise of Boston Chicken, Inc. in Seattle, Washington. Mr. Mullen started his professional career at PricewaterhouseCoopers and also served as the chief financial officer for Lange Ski Boots.

Continuing Directors for Term Ending Upon the 2006 Annual Meeting of Stockholders Class I Directors

Terrence D. Daniels, 61, joined us as a director in May 2000. Mr. Daniels has been a partner with Quad-C, a private equity investment firm, in Charlottesville, Virginia since its formation in November 1989. Prior to November 1989, Mr. Daniels served as vice chairman and director of W.R. Grace & Co., as chairman, president and chief executive officer of Western Publishing Company, Inc. and as senior vice president for corporate development of Mattel, Inc. In October 2001, Nationwide Warehouse & Storage, LLC, et al., a portfolio company of Quad-C, filed a petition in bankruptcy. For the two years prior to the filing, Mr. Daniels served as a director and officer of Nationwide, but did not have any day-to-day management duties.

Michael J. Snyder, 54, was elected as our president, chief operating officer and as a director in April 1996. In March 1997, Mr. Snyder was elected as our chief executive officer. In May 2000, Mr. Snyder was elected as our chairman of the board. From 1979 to May 2000, Mr. Snyder also served as president of The Snyder Group Company. Prior to being acquired by us in May 2000, The Snyder Group Company, under Mr. Snyder's leadership, was our leading franchisee with 14 units.

Required Vote

The two persons receiving the highest number of **FOR** votes from stockholders in the election of directors at the annual meeting will be elected.

Recommendation of the Board of Directors

Our board of directors recommends that you vote FOR the re-election of Mr. Harvey and FOR the re-election of Mr. Singer as Class II directors on our board of directors.

EXECUTIVE COMPENSATION

The following table sets forth summary information concerning compensation awarded to, earned by, or accrued for services rendered to us in all capacities by our chief executive officer and our other executive officers during fiscal years 2003, 2002 and 2001. The individuals listed in the table below are collectively referred to as the named executive officers.

Summary Compensation Table

Name and Principal Position	Year	Annual Compensation (1)			Long-Term Compensation	
		Salary(\$)	Bonus(\$)	Other Annual Compensation(\$)	Securities Underlying Options/SARs (#)	All Other Compensation (\$)(2)
Michael J. Snyder, Chief Executive Officer	2003	\$ 446,717	\$ 510,875		60,000	\$ 2,160
	2002	364,652	338,367			4,851
	2001	340,609	347,288			4,620
James P. McCloskey, Chief Financial Officer	2003	264,158	225,637(3)		20,000	1,011
	2002	243,101	163,161(3)		34,483	2,933
	2001	226,861	162,068(3)			2,793
Robert J. Merullo, Senior Vice President of Restaurant Operations	2003	254,683(4)	217,122(4)		20,000	1,826
	2002	246,753	165,612(4)			6,853
	2001	207,563	147,630			5,600
Michael E. Woods, Senior Vice President of Franchise Development	2003	253,221	217,122		20,000	1,003
	2002	208,739	140,099			2,690
	2001	196,568	140,498			2,562
Eric C. Houseman, Vice President of Restaurant Operations	2003	170,550(5)	64,250(5)		12,000	246
	2002	159,300	38,677(5)			1,461
	2001	128,942	48,300		8,621	1,391
Todd A. Brighton, Vice President of Development	2003	170,423	64,250	\$ 188,879(7)	12,000	238
	2002	156,999	39,211	29,275(8)		583
	2001	95,192(6)	30,000		51,724	1,400

(1) In accordance with the rules of the SEC, the compensation described in this table does not include a) medical, group life insurance or other benefits received by any of the named executive officers that are available generally to all of our salaried employees, or b) perquisites and other personal benefits received by the named executive officers that in the aggregate do not exceed the lesser of \$50,000 or 10% of the officer's salary and bonus disclosed in this table.

(2) Represents premiums paid for supplemental life insurance.

(3) Includes \$112,818 of bonus compensation earned during 2003, \$114,213 of bonus compensation earned during 2002 and \$50,000 of bonus compensation earned during 2001 that Mr. McCloskey has elected to defer.

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- (4) Includes \$12,337 of salary and \$43,434 of bonus compensation earned during 2003 and \$16,561 of bonus compensation earned during 2002 that Mr. Merullo has elected to defer.

- (5) Includes \$8,705 of salary and \$26,700 of bonus compensation earned during 2003 and \$34,809 of bonus compensation earned during 2002 that Mr. Houseman has elected to defer.

- (6) Mr. Brighton joined our company in April 2001. His annualized salary for 2001 was \$150,000.
- (7) Includes: (1) the payment of an automobile allowance for the benefit of Mr. Brighton; (2) the payment or reimbursement of fees and expenses incurred in connection with the sale of Mr. Brighton's previous residence, including \$41,027 for real estate commissions and miscellaneous closing costs and an aggregate of \$68,333 for the payment or reimbursement to Mr. Brighton and a third party relocation company on Mr. Brighton's behalf to compensate for the loss on the sale of Mr. Brighton's previous residence (together with an additional amount to reimburse Mr. Brighton for tax liabilities associated with this amount); (3) the payment or reimbursement of mortgage and other related costs and expenses during an interim period with respect to Mr. Brighton's former residence; (4) the payment or reimbursement of costs and expenses associated with the relocation of Mr. Brighton from Alpharetta, Georgia to Denver, Colorado; and (5) the payment or reimbursement of costs and expenses incurred by Mr. Brighton for temporary housing following his relocation to Denver, Colorado.
- (8) Includes: (1) the payment of an automobile allowance for the benefit of Mr. Brighton; (2) the payment of a \$20,000 relocation bonus paid to Mr. Brighton; and (3) the payment or reimbursement of costs and expenses incurred by Mr. Brighton for temporary housing following his relocation to Denver, Colorado.

Option Grants during Fiscal Year 2003

The following table sets forth information with respect to option grants to the named executive officers during fiscal year 2003:

Name	Individual Grants			Expiration Date (5)	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term (1)	
	Number of Securities Underlying Options Granted (2)	% of Total Options Granted to Employees in 2003 (3)	Exercise Price per Share (\$/Share) (4)		5.0%(\$)	10.0%(\$)
Michael J. Snyder	60,000	11.5	\$ 14.98	1/29/2013	565,250	1,432,456
James P. McCloskey	20,000	3.8	14.98	1/29/2013	188,417	477,485
Michael E. Woods	20,000	3.8	14.98	1/29/2013	188,417	477,485
Robert J. Merullo	20,000	3.8	14.98	1/29/2013	188,417	477,485
Todd A. Brighton	12,000	2.3	14.98	1/29/2013	113,050	286,491
Eric C. Houseman	12,000	2.3	14.98	1/29/2013	113,050	286,491

(1) The potential realizable values are based on an assumption that the stock price of our common stock will appreciate at the annual rates shown, compounded annually, from the date of grant until the end of the option term. These values do not take into account amounts required to be paid as income taxes under the Internal Revenue Code and any applicable state laws or option provisions providing for termination of an option following termination of employment, non-transferability or vesting. These amounts are calculated based on the requirements promulgated by the SEC and do not reflect our estimate of future stock price growth of the shares of our common stock.

(2) Represents options we granted under our 2002 stock incentive plan.

(3) Based on an aggregate of 520,300 shares of our common stock subject to options granted to employees during 2003.

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- (4) We grant options at an exercise price equal to the fair market value on the date of grant at the closing price as quoted by The Nasdaq Stock Market's National Market.
- (5) The term of each option we grant is ten years from the date of grant. Our options may terminate before their expiration date if the option holder's status as an employee is terminated or upon the option holder's death or disability.

Aggregated Option Exercises and Values for Fiscal Year 2003

The table below sets forth the following information with respect to option exercises by each of the named executive officers during fiscal year 2003 and the status of their options at December 28, 2003:

Name	Number of Shares Acquired Upon Exercise of Options	Value Realized Upon Exercise	Number of Unexercised Options at December 28, 2003		Value of Unexercised In-the-Money Options at December 28, 2003 (1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Michael J. Snyder		\$	0	60,000	\$	\$ 900,000
James P. McCloskey			0	20,000		300,000
Michael E. Woods			0	20,000		300,000
Robert J. Merullo			0	20,000		300,000
Todd A. Brighton			25,862	37,862	606,464	786,464
Eric C. Houseman	3,448	63,064	16,354	16,310	392,293	281,070

- (1) In accordance with SEC rules, values are calculated by subtracting the per share exercise price from the fair market value of the underlying common stock and multiplying such amount by the number of shares represented by the unexercised options. For purposes of this table, fair market value is deemed to be \$29.98 per share, the closing price reported by The Nasdaq Stock Market National Market on December 26, 2003.

Employment Agreements, Termination of Employment and Change-in-Control Arrangements***Employment Agreements and Termination of Employment Agreements***

The following is a description of each employment agreement that we have with the named executive officers:

Michael J. Snyder. We entered into an employment agreement with Michael J. Snyder in May 2000. Pursuant to this agreement, Mr. Snyder serves as the chairman of our board of directors, our chief executive officer and our president. Mr. Snyder is entitled to receive a base salary of \$330,750, which is subject to annual review by our board of directors. Mr. Snyder is also entitled to participate in our annual incentive compensation plan and all other incentive, savings and retirement plans, practices, policies and programs to the same extent as other senior executive employees. The employment agreement has an initial term ending in May 2005, which will be automatically extended for additional one-year periods unless either we or Mr. Snyder gives written notice not to extend the agreement.

In the event Mr. Snyder's employment is terminated other than for cause, as defined in the agreement to include, among other things, neglect in the performance of his duties, engaging willfully in misconduct in the performance of his duties and failure to follow lawful directives from our board of directors, or Mr. Snyder terminates his employment with us for a substantial breach as defined in the agreement to include a reduction in his base salary, the removal of Mr. Snyder from his current officer positions other than for cause and a change in control, Mr. Snyder will receive severance pay which includes: payment of his base salary for one year, the bonus he would have received on the next bonus payment date, and participation in our health and welfare benefit plans for himself and his family for one year. In the event Mr. Snyder's employment is terminated by reason of his death or disability, Mr. Snyder's estate will receive all accrued but unpaid and deferred compensation and, in the event of his death, will have the right to require us to purchase common stock held by his estate having a fair market value of up to \$5.0 million.

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Mr. Snyder's family will also have the right to participate in our health and other welfare benefit plans for one year.

In addition, we entered into a non-interference, non-disclosure and non-competition agreement with Mr. Snyder in May 2000. Pursuant to this agreement, Mr. Snyder has agreed that he will not engage in any activity relating to the casual dining business anywhere in the United States until May 2005. Mr. Snyder has also agreed that he will not disclose any confidential information relating to our business or us. Finally, Mr. Snyder

has agreed that, until March 2005, he will not (i) solicit or induce any employee at the level of assistant restaurant manager or higher to terminate employment with us, (ii) hire any employee at the level of assistant restaurant manager or higher who was employed with us within the prior 12 months, or (iii) induce or attempt to induce any supplier or other business relationship of ours to cease doing business with us or otherwise interfere with our relationship with such suppliers or business relations.

Mr. Snyder has agreed not to engage in any activity relating to the casual dining business anywhere in the United States until two years following the termination of his employment.

Michael E. Woods. We entered into an employment agreement with Mike Woods, our senior vice president of franchise development in January 1997. Pursuant to this agreement, Mr. Woods is entitled to severance pay equal to his then current base salary paid monthly for one year if he is terminated by us without cause. Mr. Woods' current base annual salary is \$275,000. Mr. Woods' employment agreement does not have a termination date.

Change-in-Control Arrangements

The following is a description of each change-in-control provision that is contained within our stock option plans:

2000 Management Performance Common Stock Option Plan. Outstanding options under our 2000 management performance common stock option plan may become fully vested in connection with the sale or disposition of substantially all of our common stock or our assets. In addition, the plan administrator may provide for the assumption, substitution or settlement of the outstanding options under the 2000 management performance common stock option plan in the event of a control transfer. A control transfer is defined in the 2000 management performance common stock option plan and generally includes any person or group of persons who were not stockholders on April 30, 2000 becoming the owner of 50.0% or more of our outstanding voting shares, our merger, consolidation, or other reorganization in which any such person or group owns 50.0% or more of the outstanding voting shares of the surviving or resulting entity, or all or substantially all of our assets are sold or otherwise transferred to any such person or group.

2002 Stock Incentive Plan. Each award granted under the 2002 stock incentive plan may, at the discretion of our board of directors or a committee appointed by our board of directors to administer the plan, become fully vested, exercisable, or payable, as applicable, upon a change in control event if the award will not be assumed or substituted for or otherwise continued after the event. A change of control, as defined in the 2002 stock incentive plan, generally includes:

stockholder approval of our dissolution or liquidation;

certain changes in a majority of the membership of our board of directors over a period of two years or less;

the acquisition of more than 30.0% of our outstanding voting securities by any person other than a person who held more than 20.0% of our outstanding voting securities as of the date that the 2002 stock incentive plan was approved, a company benefit plan, or one of their affiliates, successors, heirs, relatives or certain donees or certain other affiliates;

certain transfers of all or substantially all of our assets; and

a merger, consolidation or reorganization (other than with an affiliate) whereby our stockholders do not own more than 50.0% of the outstanding voting securities of the resulting entity after such event.

In addition, if we terminate any participant's employment for any reason other than for cause either in express anticipation of, or within one year after a change in control event, then all awards held by that participant will vest in full immediately before his or her termination date. The plan administrator may also provide for

alternative settlements (including cash payments), the assumption or substitution of awards or other adjustments in the event of a change of control event or in the context of any other reorganization of the company.

Compensation Committee Interlocks and Insider Participation

During 2003, our compensation committee consisted of Terrence D. Daniels (chairman), Edward T. Harvey, Jr., and Gary J. Singer. Other than service on the board of directors, we did not employ any of the current members of the compensation committee during 2003. No member of our compensation committee and none of our executive officers serve as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee. Certain transactions and relationships between us and Mr. Singer, Mr. Daniels and Mr. Harvey, or one or more of their affiliates, are described below.

Transactions involving Mr. Singer. Mr. Singer is a partner of O Melveny & Myers LLP. We have engaged O Melveny & Myers to represent us on various legal matters, including SEC filings, acquisitions, financings, and other general corporate matters.

Transactions involving Mr. Daniels and Mr. Harvey. Pursuant to a registration rights agreement, we were required to bear substantially all expenses, other than underwriting discounts and commissions, of the selling stockholders in connection with our secondary offering that was completed in November 2003. In connection with this offering, we also agreed to reimburse the selling stockholders for a portion of the underwriting discounts and commissions otherwise payable by them. At the time of the offering, Mr. Daniels and Mr. Harvey were affiliated with two of the selling stockholders in the offering, and we paid \$2,858 in registration fees in connection with the registration and sale of 1,268,801 shares of our common stock held by these selling stockholders and we reimbursed them \$84,057 for underwriting discounts and commissions.

Compensation Committee Report on Executive Compensation

Overview

The compensation committee of the board of directors is currently composed of Terrence D. Daniels (chairman), Edward T. Harvey, Jr. and Gary J. Singer. The compensation committee is responsible for establishing our compensation program for all employees, including executive officers. For executive officers, the compensation committee evaluates performance and recommends compensation policies and levels for approval by the board of directors.

Compensation Philosophy

The goals of our compensation program are to align compensation with our company's business objectives and performance and to enable us to attract, retain and reward executive officers and other key employees who contribute to our long-term success and to motivate them to enhance long-term stockholder value. In this regard, the compensation committee focuses on the following three components in determining the overall compensation package for our executive officers: base salary, annual incentive bonus, and long-term equity incentives.

Annual Base Salary

The compensation committee annually reviews the president and chief executive officer's base salary and consults with the president and chief executive officer to review annually the base salary compensation of our other executive officers. If appropriate, the compensation committee recommends for approval by the board of directors adjustments to the base salaries of executive officers based upon individual executive officer performance, scope of responsibilities, salary levels paid by peer restaurant companies and market conditions. The compensation committee may from time to time also consider salary surveys and similar data prepared by

independent consulting firms. The compensation committee has utilized the services of Frederic W. Cook & Co., Inc., a nationally-recognized consulting firm, to advise it on various compensation matters, including the level of annual base salaries paid to our senior executive officers.

Annual Incentive Bonus

Under our annual cash bonus program, executive officers from the vice president level through the chief executive officer are assigned target bonuses that are expressed as a percentage of their respective base salaries and generally increase as their level of responsibility increases. The bonuses are directly tied to our annual financial performance and are based upon minimum, target and maximum EBITDA budget levels and bonus funding percentages that are tied to an officer's base salary that correspond to specified EBITDA levels. These officers receive their target bonuses if we achieve the targeted EBITDA budget and a graduated up or down percentage of their target bonuses if we exceed or do not meet the targeted EBITDA budget. No bonuses are given if the minimum EBITDA levels are not met, and bonuses are capped at a specified percentage of an officer's base salary that corresponds to the maximum prescribed EBITDA level. The EBITDA budget and the minimum, target and maximum EBITDA levels and bonus funding percentages are formulated by our management and presented to the compensation committee. If appropriate, the compensation committee recommends adjustments to such levels for approval by the board of directors. In recommending adjustments, the compensation committee considers, among other things, bonus levels paid by peer restaurant companies, market conditions and the advice of its compensation consultant. The compensation committee may from time to time also consider bonus surveys and similar data prepared by independent consulting firms.

Long Term Incentives

We believe that equity ownership by our employees is a significant incentive in building stockholder wealth and aligning the interests of employees and stockholders. Each year, our president and chief executive officer makes recommendations with respect to the level of stock options to be granted to eligible employees. The compensation committee reviews these recommendations and then makes its recommendations for approval by the board of directors based upon a variety of factors, including the committee's subjective assessment of the employee's performance, the amount of past option grants, and a comparison to total compensation paid to comparable-level employees at peer restaurant companies. During 2003, stock option awards were made under our 2002 stock incentive plan. Under the 2002 stock incentive plan, we also have the ability to award other equity-based incentives such as stock appreciation rights or restricted stock, but have not done so to date. In January 2004, in response to recommendations presented by the compensation committee's consulting firm, the compensation committee recommended, and the board of directors approved, annual option grants to our chief executive officer and other executive officers of options to purchase a total of 115,500 shares of our common stock.

In July 2002, the board of directors, upon recommendation of the compensation committee, approved the adoption of an employee stock purchase plan. The employee stock purchase plan is intended to provide a means by which our employees may purchase our common stock through payroll deductions. We began utilizing the employee stock purchase plan in January 2003.

Consulting Firm

In 2003, the compensation committee continued to utilize the services of Frederic W. Cook & Co., Inc. (Cook), a nationally-recognized consulting firm, to advise it on compensation matters. The committee originally engaged Cook in November 2002 to review our compensation program and compare the compensation programs of peer restaurant companies. In general, the consulting firm recommended that the annual salary of our executive and other officers be between the 50th and 75th percentile of peer restaurant companies. In this regard and as described below, the compensation committee recommended, and the board of directors approved, an increase in Mr. Snyder's base salary for 2004. The consulting firm also reviewed our bonus program and

confirmed that our use of EBITDA targets is an appropriate measure to use to formulate annual management bonuses. The consulting firm reviewed our stock option plan programs and concluded that potential dilution resulting from option grants, the current ownership levels of our executive and other officers, the history of past option grants to our executive and other officers and the number of options to be available for issuance under our proposed 2004 performance incentive plan are within a range that is normal in comparison to peer restaurant companies. The consulting firm also advised us on the changes made to our directors' compensation and concluded that those changes were within a range that is normal in comparison to peer restaurant companies.

Compensation of President and Chief Executive Officer

We entered into an employment agreement with Mr. Snyder, our president and chief executive officer, in May 2000. Pursuant to this employment agreement, the board of directors reviews Mr. Snyder's base salary annually. Mr. Snyder is also eligible to participate in our bonus program, as described above, and to participate in all incentive, savings and retirement plans, practices, policies and programs to the same extent as our other executive employees.

Salary, annual incentive and long term incentive compensation to Mr. Snyder were determined in accordance with the compensation committee's compensation policies, as described above. In January 2003, the compensation committee recommended, and the board of directors approved, an adjustment to Mr. Snyder's annual base salary from \$364,652 during fiscal year 2002 to \$450,000 during fiscal year 2003. This increase reflected the compensation committee's subjective assessment of Mr. Snyder's performance during the prior year and its objective of maintaining his base salary at competitive levels. During fiscal year 2003, Mr. Snyder also earned an annual bonus under our bonus program equal to \$510,875. Mr. Snyder was granted options to purchase 60,000 shares of our common stock during fiscal year 2003.

In January 2004, in response to recommendations presented by the compensation committee's consulting firm, the compensation committee recommended, and the board of directors approved, an additional increase in Mr. Snyder's annual base salary to \$475,000. This adjustment was made on the basis of the committee's subjective assessment of Mr. Snyder's performance and so that Mr. Snyder's base salary would continue to fall within the 50th to 75th percentile of base salary levels paid to presidents and chief executive officers of peer restaurant companies. The compensation committee also recommended, and the board of directors approved, an annual grant to Mr. Snyder of options to purchase 80,000 shares of our common stock.

2004 Performance Incentive Plan

We have reviewed and recommend to the board of directors the adoption of our 2004 performance incentive plan. The board has approved this recommendation. The recommendation was based on our historical and projected incentive grants to executives and employees and also was based on the advice of Cook.

Deductibility of Executive Compensation

Section 162(m) of the Internal Revenue Code under the Omnibus Budget Reconciliation Act of 1993 limits the deductibility of compensation over \$1 million paid by a company to an executive officer. The policy of the compensation committee is to establish and maintain a compensation program that maximizes the creation of long-term stockholder value. Action will be taken to qualify most compensation approaches to ensure deductibility, except in those limited cases in which the compensation committee believes stockholder interests are best served by retaining flexibility. In such cases, the compensation committee will consider various alternatives to preserving the deductibility of compensation payments and benefits to the extent reasonably practicable and to the extent consistent with its compensation objectives.

This compensation committee report will not be deemed to be incorporated by reference by any general statement incorporating this proxy statement into any of our filings under the Securities Act of 1933 or under the

Securities Exchange Act of 1934, except to the extent that we specifically incorporate this information by reference, and shall not be deemed soliciting material or be deemed filed under either such Acts.

Submitted on April 12, 2004 by the members of the compensation committee of our board of directors.

THE COMPENSATION COMMITTEE

Terrence D. Daniels, Chairman

Edward T. Harvey, Jr.

Gary J. Singer

STOCK PERFORMANCE GRAPH

The following graph compares the cumulative total stockholder return of our common stock from July 19, 2002 (the date our stock began trading after our initial public offering) through December 28, 2003, against the cumulative total stockholder return of the Russell 3000[®] Index and S&P SmallCap Restaurant Index. The graph assumes that \$100 was invested on July 19, 2002 in our common stock, the Russell 3000[®] Index and S&P SmallCap Restaurant Index, and that all dividends, if any, were reinvested.

This graph will not be deemed to be incorporated by reference by any general statement incorporating this proxy statement into any of our filings under the Securities Act of 1933 or under the Securities Exchange Act of 1934, except to the extent that we specifically incorporate this information by reference, and shall not be deemed soliciting material or be deemed filed under either such Acts.

Comparison of Cumulative Total Return

RELATED PARTY TRANSACTIONS

Certain Relationships and Related Transactions

See Compensation Committee Interlocks and Insider Participation elsewhere in this proxy statement for descriptions of certain transactions and relationships between us and Mr. Singer, Mr. Daniels and Mr. Harvey, and one or more of their affiliates.

The officer loans discussed below existed prior to the enactment of the Sarbanes-Oxley Act of 2002. We will not grant any new loans or renew or materially modify any existing loans, including these loans, to any of our executive officers or directors.

During 2002, our board of directors approved the early exercise of options to purchase 775,862 shares of our common stock and the exercise of an additional 146,552 fully vested options held by certain of our executive officers in exchange for full recourse promissory notes. Each executive officer has pledged the shares acquired by him as collateral for repayment of his respective note or notes. The shares acquired by each executive officer upon the early exercise are subject to a right of repurchase in our favor at the lower of the price paid by the executive officers for the shares acquired by them upon the early exercise or the fair market value of these shares on the date that we exercise our right of repurchase. This right lapses on the same schedule that the shares underlying the original options would have become vested and exercisable. The indebtedness represented by each executive officer's promissory note or notes becomes immediately due and payable in the event that the executive officer's employment is terminated for any reason. The transactions are further described below:

- Michael J. Snyder elected to exercise options to purchase an aggregate of 517,241 shares of common stock. Mr. Snyder paid the exercise price by delivering a full recourse promissory note in the principal amount of \$3,000,000. This promissory note bears interest at 4.65% per annum, with principal and accrued and unpaid interest due and payable on December 31, 2009. As of March 26, 2004, all of Mr. Snyder's exercised options are fully vested. Interest accrued on this note as of March 26, 2004 totaled \$275,513.
- Mr. McCloskey elected to exercise options to purchase an aggregate of 172,415 shares of common stock. Mr. McCloskey paid the exercise price by delivering three full recourse promissory notes in the aggregate principal amount of \$1,050,000. These promissory notes bear interest at 4.65% per annum, with principal and accrued and unpaid interest due and payable as follows: June 26, 2006 with respect to \$600,000 principal amount, December 31, 2009 with respect to \$200,000 principal amount and January 29, 2012 with respect to \$250,000 principal amount. As of March 26, 2004, 118,923 of Mr. McCloskey's remaining exercised options are fully vested, 11,494 shares will vest in January 2005, and the remaining 11,495 shares will vest in January 2006. In September 2003, Mr. McCloskey repaid \$78,721 of principal related to his \$600,000 note and \$40,139 of accrued interest thereon. In March 2004, Mr. McCloskey repaid \$51,342 of principal related to his \$600,000 note and \$12,258 of accrued interest thereon. The outstanding principal balance and interest accrued on these notes as of March 26, 2004 totaled \$919,937 and \$41,328, respectively.
- Robert J. Merullo elected to exercise options to purchase 86,207 shares of common stock. Mr. Merullo paid the exercise price by delivering a full recourse promissory note in the principal amount of \$500,000. This promissory note bears interest at 4.65% per annum, with principal and accrued and unpaid interest due and payable on December 31, 2009. As of March 26, 2004, all of Mr. Merullo's 86,207 options are fully vested. Interest accrued on this note as of March 26, 2004 totaled \$45,919.
- Michael E. Woods elected to exercise options to purchase an aggregate of 146,551 shares of common stock. Mr. Woods paid the exercise price by delivering two full recourse promissory notes in the aggregate principal amount of \$850,000. These promissory notes bear interest at 4.65% per annum, with principal and accrued and unpaid interest due and payable as follows: January 6, 2007 with respect to \$250,000 principal amount and December 31, 2009 with respect to \$600,000 principal

amount. As of March 26, 2004, all of Mr. Woods' 146,551 options are fully vested. Interest accrued on these notes as of March 26, 2004 totaled \$77,064.

Mr. Snyder has two additional loans outstanding pursuant to his employment agreement, each in the aggregate principal amount of \$300,000, as evidenced by promissory notes dated June 30, 2000 and February 27, 2001, which bear interest at 6.62% and 5.07%, respectively. These notes mature on May 11, 2005. Interest accrued under these loans as of March 26, 2004 totaled \$132,981.

Mr. Snyder and Mr. Merullo own 31.0% and 7.0%, respectively, of Mach Robin, LLC ("Mach Robin"), which operates Red Robin restaurants under a franchise agreement. We recognized royalty income from Mach Robin of \$912,700 in 2003. Prior to January 2004, an entity controlled by Mach Robin had a 40.0% ownership interest in, and a right to share in up to 60.0% of the profits of Red Robin Restaurants of Canada, Ltd. ("RRRC"), which operated Red Robin restaurants in two Canadian provinces under franchise agreements. We recognized royalty income from RRRC of \$853,400 in 2003. In January 2004, an entity controlled by Mach Robin acquired the remaining 60% ownership interest in RRRC that it did not already hold after we waived our right of first refusal. The franchise agreements held by RRRC remain in place and RRRC is now controlled entirely by Mach Robin, or its subsidiaries.

Benjamin D. Graebel is the chief executive officer of Graebel Companies, Inc., a privately held transportation and relocation service provider. During 2003, we paid Graebel Companies \$79,800 for various relocation services and storage fees. We plan to continue using the services of Graebel Companies, Inc. in 2004.

Our indoor plant maintenance supplier for our Denver area restaurants and corporate office, Tropical Interiors, is operated by one of Mr. Snyder's brothers, Brad Snyder. We paid Tropical Interiors \$273,200 in 2003. We plan to continue using the services of Tropical Interiors in 2004.

Pursuant to a registration rights agreement, we were required to bear substantially all expenses, other than underwriting discounts and commissions, of the selling stockholders in connection with our secondary offering that was completed in November 2003. In connection with this offering, we also agreed to reimburse the selling stockholders for a portion of the underwriting discounts and commissions otherwise payable by them. We have paid or agreed to pay \$52,950 in registration and other expenses associated with the registration and sale of 1,958,673 shares of our common stock held by Skylark Co., Ltd and 355,255 shares of our common stock held by Hibari Guam Corporation, and reimbursed each of these two stockholders for \$129,762 in underwriting discounts and commissions.

AUDIT COMMITTEE REPORT

The audit committee is comprised solely of independent directors as required by and in compliance with the listing standards of The Nasdaq Stock Market National Market and applicable federal securities regulations. The audit committee operates pursuant to a written charter adopted by the board of directors. A copy of the audit committee's charter, which was most recently amended in August 2003, is available on the company's website at <http://irpage.com/rrgb/>. As of December 28, 2003, the members of the audit committee were Benjamin D. Graebel (chairman), Edward T. Harvey, Jr. and Dennis B. Mullen.

The audit committee is responsible for overseeing and evaluating the company's financial reporting process on behalf of the board of directors. This includes overseeing and reviewing the preparation and disclosure of the consolidated financial statements and the preparation and filing of periodic financial reports, including certification by the Chief Executive Officer and Chief Financial Officer, as required. The audit committee is also responsible for selecting and retaining the independent auditors; approving the budget for fees to be paid to the independent auditors for audit services and for appropriate non-audit services; and overseeing the relationship between the company and the independent auditors and acting as the board of directors' primary avenue of communication with them. The audit committee's responsibilities also include other matters as

set forth in its charter.

Management has the primary responsibility for the company's financial reporting process, accounting principles and internal controls as well as preparation of the company's financial statements. The independent auditors are responsible for performing an audit of the company's financial statements in accordance with accounting principles generally accepted in the U.S. It is not the audit committee's duty or responsibility to conduct auditing or accounting reviews or procedures. The audit committee's considerations and discussions with management and the independent auditors do not assure that the company's financial statements are presented in accordance with accounting principles generally accepted in the U.S., that the audit of the annual financial statements has been carried out in accordance with generally accepted accounting principles, or that the independent auditors are in fact independent.

The audit committee has met and held discussions with management and the independent auditors on a regular basis. The audit committee plans and schedules its meetings with a view to ensuring that it devotes appropriate attention to all of its responsibilities. The audit committee's meetings include, whenever appropriate, executive sessions with the independent auditors without the presence of the company's management. The audit committee has reviewed and discussed with both management and the independent auditors the company's financial statements as of and for the year ended December 28, 2003, including a discussion of the quality, not just the acceptability, of the accounting principles, the reasonableness of significant judgments and the clarity of the disclosures in the financial statements. Management advised the audit committee that the financial statements were prepared in accordance with accounting principles generally accepted in the U.S. The audit committee has relied, without independent verification, on this representation, and on the representations of the independent auditors included in their report on the financial statements.

The audit committee discussed with the independent auditors matters required to be discussed pursuant to Statement of Auditing Standards No. 61 Communication with Audit Committees, as amended by statement on Auditing Standards No. 89 Audit Adjustments and Statement on Auditing Standards No. 90 Audit Committee Communications. The independent auditors have provided to the audit committee the written disclosures and the letter required by Independence Standards Board No. 1 Independence Discussions with Audit Committees, and the audit committee has discussed with the auditors their independence. The audit committee has also considered whether the independent auditors provision of other non-audit services to the company is compatible with maintaining the auditors independence. The audit committee has concluded that the provision of non-audit services by the independent auditors was compatible with the maintenance of independence in the conduct of their auditing functions.

In reliance on the reviews and discussions referred to above, the audit committee recommended that the board of directors approve the audited financial statements for inclusion in the company's annual report on Form 10-K for the year ended December 28, 2003, and the board of directors accepted the audit committee's recommendations.

Submitted on March 9, 2004 by the members of the audit committee of the company's board of directors.

THE AUDIT COMMITTEE

Benjamin D. Graebel, Chairman

Edward T. Harvey, Jr.

Dennis B. Mullen

INDEPENDENT AUDITORS

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The audit committee has appointed Deloitte & Touche LLP (Deloitte) as our independent auditors for the fiscal years 2003 and 2004. Representatives of Deloitte are expected to be present at the annual meeting and will have the opportunity to make a statement if they desire to do so and are expected to be available to respond to appropriate questions.

Principal Accounting Fees and Services

The following table summarizes the aggregate fees billed by Deloitte for the fiscal years presented:

	<u>2003</u>	<u>2002</u>
Audit fees (a)	\$ 316,667	\$ 520,069
Audit-Related fees (b)	36,780	44,753
Tax fees (c)	45,148	122,141
All Other fees (d)		
Total	\$ 398,595	\$ 686,963

- (a) Fees for audit services billed in 2003 and 2002 consisted of the audit of our annual financial statements, reviews of our quarterly financial statements and fees related to a review of our Uniform Franchise Offering Circular. Audit services billed in 2003 also included fees of \$112,087 related to a review of our registration statement, which became effective in November 2003. Audit services billed in 2002 also included fees of \$328,093 related to a review of our registration statement, which became effective in July 2002.
- (b) Fees for audit-related services billed in 2003 and 2002 consisted of audits performed in connection with our employee 401(k) savings plan and agreed upon procedures related to our marketing funds.
- (c) Fees for tax services billed in 2003 and 2002 consisted of tax compliance assistance related to the preparation of our Federal and state corporate tax returns and franchise tax matters. Fees for tax services billed in 2003 and 2002 also included professional services with respect to cost segregation analysis.
- (d) There were no services provided by Deloitte in 2003 or 2002 other than those reported above.

The audit committee considered whether Deloitte's provision of other non-audit services to the company is compatible with maintaining Deloitte's independence. The audit committee discussed these services with the independent auditor and company management to determine that they are permitted under the rules and regulations concerning auditor independence promulgated by the SEC to implement the Sarbanes-Oxley Act of 2002, as well as the American Institute of Certified Public Accountants. The audit committee concluded that the provision of non-audit services by Deloitte was compatible with the maintenance of independence in the conduct of their auditing functions.

Pre-Approval Process

The audit committee pre-approves all audit and non-audit services to be performed by Deloitte, and has established policies and procedures to ensure that the company is in full compliance with the requirements for pre-approval set forth in the Sarbanes-Oxley Act of 2002 and the SEC rules regarding auditor independence. These policies and procedures provide a mechanism by which management can request and secure pre-approval of audit and non-audit services in an orderly manner with minimal disruption to normal business operations. The policies and procedures are detailed as to the particular service and do not delegate the audit committee's responsibility to management.

In accordance with these policies and procedures, management submits a matrix of the types of audit and non-audit services that management may wish to have Deloitte perform for the following fiscal year, accompanied by an estimated range of fees for each service to be performed. The service matrix categorizes the types of services by Audit, Audit-Related, Tax and All Other. The audit committee approves or rejects each of the listed services and approves a range of fees for each service to be performed. Any requests for Audit, Audit-Related, Tax, and Other services not contemplated on the service matrix must be submitted to the audit committee for specific pre-approval and cannot commence until such approval has been granted. Management is required to seek additional audit committee pre-approval when it becomes aware that any

pre-approved service

will result in actual fees greater than 10% of the initially approved fee. During the course of the year, the Chairman of the audit committee has the authority to pre-approve requests for services that were not approved in the annual pre-approval process. At each audit committee meeting subsequent to the annual pre-approval process, the Chairman of the audit committee reports any interim pre-approvals since the last meeting.

One-hundred percent (100%) of the Audit-Related fees, Tax fees and All Other fees billed by Deloitte in 2003 were approved by the audit committee pursuant to SEC regulations.

PROPOSAL 2

APPROVAL OF THE RED ROBIN GOURMET BURGERS, INC.

2004 PERFORMANCE INCENTIVE PLAN

At the Annual Meeting, stockholders will be asked to approve the Red Robin Gourmet Burgers, Inc. 2004 Performance Incentive Plan (the 2004 Plan), which was adopted, subject to stockholder approval, by the board of directors on April 13, 2004.

We believe that incentives and stock-based awards focus employees on the objective of creating stockholder value and promoting the success of the company, and that incentive compensation plans like the proposed 2004 Plan are an important attraction, retention and motivation tool for participants in the plan.

We currently maintain the Red Robin Gourmet Burgers, Inc. 1996 stock option plan (the 1996 Plan), the Red Robin Gourmet Burgers, Inc. 2000 management performance common stock option plan (the 2000 Plan), and the Red Robin Gourmet Burgers, Inc. 2002 stock incentive plan (the 2002 Plan). As of March 26, 2004, a total of 817,137 shares of our common stock were then subject to outstanding awards granted under the 2002 Plan, and an additional 73,933 shares of our common stock were then available for new award grants under the 2002 Plan. As of March 26, 2004, a total of 75,680 shares of our common stock were then subject to outstanding awards granted under the 1996 Plan, and a total of 230,863 shares of our common stock were then subject to outstanding awards granted under the 2000 Plan. No additional awards may be granted under the 1996 Plan or under the 2000 Plan. (The 1996 Plan, the 2000 Plan and the 2002 Plan are referred to collectively in this proposal as the Existing Plans.)

The board of directors approved the 2004 Plan based, in part, on a belief that the number of our shares currently available under the 2002 Plan does not give the company sufficient authority and flexibility to adequately provide for future incentives. If stockholders approve the 2004 Plan, no new awards will be granted under 2002 Plan after the Annual Meeting. In that case, the number of shares of our common stock that remain available for award grants under the 2002 Plan immediately prior to the Annual Meeting will become available for award grants under the 2004 Plan. An additional 1,500,000 shares of our common stock will also be made available for award grants under the 2004 Plan, so that if stockholders approve the 2004 Plan, a total of 1,573,933 shares will initially be available for award grants under that plan. In addition, if stockholders approve the 2004 Plan, any shares of common stock subject to stock option grants under the Existing Plans that expire, are cancelled or otherwise terminate after the Annual Meeting will also be available for award grant purposes under the 2004 Plan.

If stockholders do not approve the 2004 Plan, we will continue to have the authority to grant awards under the 2002 Plan. If stockholders approve the 2004 Plan, the termination of our grant authority under the 2002 Plan will not affect awards then outstanding under that plan.

Summary Description of the 2004 Performance Incentive Plan

The principal terms of the 2004 Plan are summarized below. The following summary is qualified in its entirety by the full text of the 2004 Plan, which appears as Appendix I to this Proxy Statement.

Purpose. The purpose of the 2004 Plan is to promote the success of the company and the interests of our stockholders by providing an additional means for us to attract, motivate, retain and reward directors, officers, employees and other eligible persons through the grant of awards and incentives for high levels of individual performance and improved financial performance of the company. Equity-based awards are also intended to further align the interests of award recipients and our stockholders.

Administration. Our board of directors or one or more committees appointed by our board of directors will administer the 2004 Plan. Our board of directors has delegated general administrative authority for the 2004 Plan to the compensation committee. A committee may delegate some or all of its authority with respect to the 2004 Plan to another committee of directors and certain limited award grant authority to grant awards to employees may be delegated to one or more officers of the company. (The appropriate acting body, be it the board of directors, a committee within its delegated authority, or an officer within his or her delegated authority, is referred to in this proposal as the Administrator).

The Administrator has broad authority under the 2004 Plan with respect to award grants including, without limitation, the authority:

to select participants and determine the type(s) of award(s) that they are to receive;

to determine the number of shares that are to be subject to awards and the terms and conditions of awards, including the price (if any) to be paid for the shares or the award;

to cancel, modify, or waive our rights with respect to, or modify, discontinue, suspend, or terminate any or all outstanding awards, subject to any required consents;

to accelerate or extend the vesting or exercisability or extend the term of any or all outstanding awards;

subject to the other provisions of the 2004 Plan, to make certain adjustments to an outstanding award and to authorize the conversion, succession or substitution of an award;

to allow the purchase price of an award or shares of our common stock to be paid in the form of cash, check, or electronic funds transfer, by the delivery of already-owned shares of our common stock or by a reduction of the number of shares deliverable pursuant to the award, by services rendered by the recipient of the award, by notice in third party payment or cashless exercise on such terms as the Administrator may authorize, or any other form permitted by law.

No Repricing. In no case (except due to an adjustment to reflect a stock split or similar event or any repricing that may be approved by stockholders) will any adjustment be made to a stock option or stock appreciation right award under the 2004 Plan (by amendment, cancellation and regrant, exchange or other means) that would constitute a repricing of the per share exercise or base price of the award.

Eligibility. Persons eligible to receive awards under the 2004 Plan include officers or employees of the company or any of our subsidiaries, directors of the company, and certain consultants and advisors to the company or any of our subsidiaries. Currently, approximately 270 officers and employees of the company and our subsidiaries (including all of our named executive officers), and each of our five non-employee directors, are considered eligible under the 2004 Plan at the present time.

Authorized Shares; Limits on Awards. The maximum number of shares of our common stock that may be issued or transferred pursuant to awards under the 2004 Plan equals the sum of: (1) 1,500,000 shares, plus (2) the number of shares available for additional award grant purposes

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under the 2002 Plan as of the date of the Annual Meeting and determined immediately prior to the termination of the authority to grant new awards under the 2002 Plan as of the date of the Annual Meeting, plus (3) the number of any shares subject to stock options granted under the Existing Plans and outstanding as of the date of the Annual Meeting which expire, or for any reason are cancelled or terminated, after the date of the Annual Meeting without being exercised. As of

March 26, 2004, 73,933 shares were available for additional award grant purposes under the 2002 Plan, and 1,123,680 shares were subject to awards then outstanding under the Existing Plans. As noted above, no new awards may be granted under the 1996 and 2000 Plans, and no new awards will be granted under the 2002 Plan after the annual meeting if stockholders approve the 2004 Plan.

The following other limits are also contained in the 2004 Plan:

The maximum number of shares that may be delivered pursuant to options qualified as incentive stock options granted under the plan is 2,697,613 shares.

The maximum number of shares subject to those options and stock appreciation rights that are granted during any calendar year to any individual under the plan is 170,000 shares.

The maximum number of shares that may be delivered pursuant to awards granted under the plan, other than in the circumstances described in the next sentence, is 600,000 shares. This limit on so-called full-value awards does not apply, however, to the following: (1) shares delivered in respect of compensation earned but deferred, and (2) shares delivered pursuant to option or stock appreciation right grants the per share exercise or base price, as applicable, of which is at least equal to the fair market value of a share of our common stock at the time of grant of the award.

The maximum number of shares that may be delivered pursuant to awards granted to non-employee directors under the plan is 300,000 shares. This limit does not apply, however, to shares delivered in respect of compensation earned but deferred.

Performance-Based Awards under Section 5.2 of the 2004 Plan payable only in cash and not related to shares and granted to a participant in any one calendar year will not provide for payment of more than \$1,500,000.

To the extent that an award is settled in cash or a form other than shares, the shares that would have been delivered had there been no such cash or other settlement will not be counted against the shares available for issuance under the 2004 Plan. In the event that shares are delivered in respect of a dividend equivalent, stock appreciation right, or other award, only the actual number of shares delivered with respect to the award will be counted against the share limits of the 2004 Plan. Shares that are subject to or underlie awards which expire or for any reason are cancelled or terminated, are forfeited, fail to vest, or for any other reason are not paid or delivered under the 2004 Plan will again be available for subsequent awards under the 2004 Plan. Shares that are exchanged by a participant or withheld by the company as full or partial payment in connection with any award under the 2004 Plan or the Existing Plans, as well as any shares exchanged by a participant or withheld by the company to satisfy the tax withholding obligations related to any award under the 2004 Plan or the Existing Plans, will be available for subsequent awards under the 2004 Plan. In addition, the 2004 Plan generally provides that shares issued in connection with awards that are granted by or become obligations of the company through the assumption of awards (or in substitution for awards) in connection with an acquisition of another company will not count against the shares available for issuance under the 2004 Plan.

Types of Awards. The 2004 Plan authorizes stock options, stock appreciation rights, restricted stock, stock bonuses and other forms of awards granted or denominated in our common stock or units of our common stock, as well as cash bonus awards pursuant to Section 5.2 of the 2004 Plan. The 2004 Plan retains flexibility to offer competitive incentives and to tailor benefits to specific needs and circumstances. Any award may be paid or settled in cash.

A stock option is the right to purchase shares of our common stock at a future date at a specified price per share (the exercise price). The per share exercise price of an option generally may not be less than the fair market value of a share of our common stock on the date of grant. The maximum term of an option is ten years from the date of grant. An option may either be an incentive stock option or a nonqualified stock option. Incentive stock option benefits are taxed differently from nonqualified stock options, as described under Federal

Income Tax Consequences of Awards Under the 2004 Plan below. Incentive stock options are also subject to more restrictive terms and are limited in amount by the U.S. Internal Revenue Code and the 2004 Plan. Incentive stock options may only be granted to employees of the company or a subsidiary.

A stock appreciation right is the right to receive payment of an amount equal to the excess of the fair market value of shares of our common stock on the date of exercise of the stock appreciation right over the base price of the stock appreciation right. The base price will be established by the Administrator at the time of grant of the stock appreciation right and generally cannot be less than the fair market value of a share of our common stock on the date of grant. Stock appreciation rights may be granted in connection with other awards or independently. The maximum term of a stock appreciation right is ten years from the date of grant.

The per share exercise price of an option or the per share base price of a stock appreciation right may, however, be less than the fair market value of a share of our common stock on the date of grant in the case of (1) awards granted retroactively in tandem with or as a substitution for another award, or (2) if the option or stock appreciation right will be counted against the plan's limit on full-value awards (that is, the limit on the number of shares that can be issued under the 2004 Plan in respect of awards other than options and stock appreciation rights).

The other types of awards that may be granted under the 2004 Plan include, without limitation, stock bonuses, restricted stock, performance stock, stock units, dividend