

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

**FORM S-8  
REGISTRATION STATEMENT**

*UNDER  
THE SECURITIES ACT OF 1933*

**Red Robin Gourmet Burgers, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

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

**84-1573084**  
(I.R.S. Employer  
Identification No.)

**6312 S. Fiddler's Green Circle, Suite 200N  
Greenwood Village, Colorado 80111**  
(Address, Including Zip Code, of Principal Executive Offices)

**Red Robin Gourmet Burgers, Inc.  
2004 Performance Incentive Plan**  
(Full Title of the Plan)

**Michael J. Snyder**  
**Chairman of the Board, President and Chief Executive Officer**  
**Red Robin Gourmet Burgers, Inc.**  
**6312 S. Fiddler's Green Circle, Suite 200N**  
**Greenwood Village, Colorado 80111**  
**(303) 846-6000**  
(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

**COPY TO:**

**Thomas J. Leary, Esq.**  
**O'Melveny & Myers LLP**  
**610 Newport Center Drive, Suite 1700**  
**Newport Beach, California 92660**

**CALCULATION OF REGISTRATION FEE**

Title Of Securities To Be Registered	Amount To Be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount Of Registration Fee
Common Stock, \$0.001 par value per share	1,500,000 <sup>(1)</sup> shares	\$54.75 <sup>(2)</sup>	\$82,125,000 <sup>(2)</sup>	\$9,666.11 <sup>(2)</sup>

<sup>(1)</sup> This Registration Statement covers, in addition to the number of shares of Red Robin Gourmet Burgers, Inc., a Delaware corporation (the "Company" or the "Registrant"), common stock, par value \$0.001 per share (the "Common Stock"), stated above, options and other rights to purchase or acquire the shares of Common Stock covered by this Registration Statement and, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act"), an additional indeterminate number of shares, options and rights that may be offered or issued pursuant to the Red Robin Gourmet Burgers, Inc. 2004 Performance Incentive Plan (the "Plan") as a result of one or more adjustments under the Plan to prevent dilution resulting from one or more stock splits, stock dividends or similar transactions.

<sup>(2)</sup> Pursuant to Securities Act Rule 457(h), the maximum offering price, per share and in the aggregate, and the registration fee were calculated based upon the average of the high and low prices of the Common Stock on May 26, 2005, as quoted on the Nasdaq National Market.

The Exhibit Index for this Registration Statement is at page 9.

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**PART I**

INFORMATION REQUIRED IN THE  
SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Securities Act Rule 428(b)(1).

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**PART II**

INFORMATION REQUIRED IN THE  
REGISTRATION STATEMENT

**Item 3. Incorporation of Certain Documents by Reference**

The following documents of the Company filed with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

- (a) The Company's Annual Report on Form 10-K for its fiscal year ended December 26, 2004, filed with the Commission on April 6, 2005 (Commission File No. 000-49916);
- (b) The Company's Quarterly Report on Form 10-Q for its fiscal quarter ended April 17, 2005, filed with the Commission on May 27, 2005 (Commission File No. 000-49916);
- (c) The Company's Current Reports on Form 8-K filed with the Commission on May 11, 2005, April 12, 2005, April 6, 2005 (only with respect to Item 8.01 included therein), March 31, 2005, March 28, 2005 and March 1, 2005 (each, Commission File No. 000-49916); and
- (d) The description of the Company's Common Stock contained in its Registration Statement on Form 8-A, filed with the Commission on July 16, 2002 (which incorporates such description of the Common Stock from the Company's Registration Statement on Form S-1, originally filed April 26, 2002 and as subsequently amended, which description is also hereby incorporated by reference) (Commission File No. 000-49916), and any other amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this Registration Statement.

**Item 4. Description of Securities**

Not applicable.

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**Item 5. Interests of Named Experts and Counsel**

The validity of the issuance of Common Stock registered hereby is passed on for the Company by O'Melveny & Myers LLP. Gary J. Singer is a partner in such law firm and is a member of the Company's Board of Directors. Mr. Singer owns 5,018 shares of Common Stock and Company stock options to acquire up to an additional 12,000 shares of Common Stock. Mr. Singer is eligible to receive stock awards by the Company under the Plan.

**Item 6. Indemnification of Directors and Officers**

Under Section 145 of the Delaware General Corporation Law (the "Delaware Law"), the Registrant has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act.

The Registrant's Amended and Restated Certificate of Incorporation, as amended, and Amended and Restated Bylaws include provisions to (i) eliminate the personal liability of its directors and officers for monetary damages resulting from breaches of their fiduciary duty to the extent permitted by Section 102(b)(7) of the Delaware Law, and (ii) require the Registrant to indemnify its directors and officers to the fullest extent permitted by Section 145 of the Delaware Law, including circumstances in which indemnification is otherwise discretionary. Pursuant to Section 145 of the Delaware Law, a corporation generally has the power to indemnify its present and former directors, officers, employees and agents against expenses incurred by them in connection with any suit to which they are or are threatened to be made, a party by reason of their serving in such positions so long as they acted in good faith and in a manner they reasonably believed to be in or not opposed to, the best interests of the corporation and with respect to any criminal action, they had no reasonable cause to believe their conduct was unlawful. The Registrant believes that these provisions are necessary to attract and retain qualified persons as directors and officers. These provisions do not eliminate the directors' duty of care, and, in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware Law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant, for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for acts or omissions that the director believes to be contrary to the best interests of the Registrant or its stockholders, for any transaction from which the director derived an improper personal benefit, for acts or omissions involving a reckless disregard for the director's duty to the Registrant or its stockholders when the director was aware or should have been aware of a risk of serious injury to the Registrant or its stockholders, for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the Registrant or its stockholders, for improper transactions between the director and the Registrant and for improper distributions to stockholders and loans to directors and officers. The provision also does not affect a director's responsibilities under any other law, such as federal securities laws or state or federal environmental laws.

The Registrant has entered into indemnification agreements with all of its directors and executive officers. Under these agreements, the Registrant will indemnify its directors and executive officers against amounts actually and reasonably incurred in connection with actual or threatened proceedings if any of them may be made a party because of their role as a director or officer. The Registrant is obligated to pay these amounts only if the officer or director acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the Registrant's best interests. For any criminal proceedings, the Registrant is obligated to pay these amounts only if the officer or director had no reasonable cause to believe his or her conduct was unlawful. The indemnification agreements also set forth procedures that will apply in the event of a claim for indemnification thereunder.

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The Registrant has obtained liability insurance coverage for its directors and executive officers with respect to actions arising out of the performance of such director's or executive officer's duty in his or her capacity as such.

At present, there is no pending litigation or proceeding involving a director or officer of the Registrant as to which indemnification is being sought nor is the Registrant aware of any threatened litigation that may result in claims for indemnification by any officer or director.

**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits**

See the attached Exhibit Index at page 9, which is incorporated herein by reference.

**Item 9. Undertakings**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

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(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers and controlling persons of the Registrant pursuant to the provisions described in Item 6 above, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Form S-8 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Greenwood Village, State of Colorado, on June 2, 2005.

RED ROBIN GOURMET BURGERS, INC.

By: /s/ Michael J. Snyder  
Michael J. Snyder  
President and Chief Executive Officer

**POWER OF ATTORNEY**

Each person whose signature appears below constitutes and appoints Michael J. Snyder and James P. McCloskey, and each of them, acting individually and without the other, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments, exhibits thereto and other documents in connection therewith) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them individually, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michael J. Snyder</u> Michael J. Snyder	Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)	June 2, 2005
<u>/s/ James P. McCloskey</u> James P. McCloskey	Chief Financial Officer (Principal Financial and Accounting Officer)	June 2, 2005

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<u>/s/ Edward T. Harvey</u> Edward T. Harvey	Director	June 2, 2005
<u>/s/ Gary J. Singer</u> Gary J. Singer	Director	June 2, 2005
<u>/s/ Dennis B. Mullen</u> Dennis B. Mullen	Director	June 2, 2005
<u>/s/ Benjamin D. Graebel</u> Benjamin D. Graebel	Director	June 2, 2005
<u>/s/ James T. Rothe</u> James T. Rothe, Ph.D	Director	June 2, 2005



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**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
4.	Red Robin Gourmet Burgers, Inc. 2004 Performance Incentive Plan. (Filed as Appendix I to the Company's Proxy Statement filed with the Commission pursuant to Section 14(a) of the Exchange Act on April 16, 2004 (Commission File No. 000-49916) and incorporated herein by this reference.)
5.	Opinion of O'Melveny & Myers LLP (opinion re legality).
23.1	Consent of Deloitte & Touche LLP (consent of independent registered public accounting firm).
23.2	Consent of Counsel (included in Exhibit 5).
24.	Power of Attorney (included in this Registration Statement under "Signatures").

[O'Melveny &amp; Myers LLP Letterhead]

June 2, 2005

Red Robin Gourmet Burgers, Inc.  
6312 S. Fiddler's Green Circle, Suite 200N  
Greenwood Village, Colorado 80111

Re: ***Registration of Securities of Red Robin Gourmet Burgers, Inc.***

Ladies and Gentlemen:

In connection with the registration of up to 1,500,000 shares of Common Stock of Red Robin Gourmet Burgers, Inc., a Delaware corporation (the "Company"), par value \$0.001 per share (the "Shares"), under the Securities Act of 1933, as amended, pursuant to a Registration Statement on Form S-8 (the "Registration Statement"), filed with the Securities and Exchange Commission on or about the date hereof, such Shares to be issued or delivered pursuant to the Red Robin Gourmet Burgers, Inc. 2004 Performance Incentive Plan (the "Plan"), you have requested our opinion set forth below.

In our capacity as counsel, we have examined originals or copies of those corporate and other records of the Company we considered appropriate.

On the basis of such examination and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that the Shares have been duly authorized by all necessary corporate action on the part of the Company and, when issued in accordance with such authorization, the provisions of the Plan and relevant agreements duly authorized by and in accordance with the terms of the Plan, and upon payment for and delivery of the Shares as contemplated in accordance with the Plan, and either (a) the countersigning of the certificate or certificates representing the Shares by a duly authorized signatory of the registrar for the Company's Common Stock, or (b) the book-entry of the Shares by the transfer agent for the Company's Common Stock in the name of The Depository Trust Company or its nominee, the Shares will be validly issued, fully paid and non-assessable.

We consent to your filing this opinion as an exhibit to the Registration Statement.

Respectfully submitted,  
/s/ O'Melveny & Myers LLP

**INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM CONSENT**

We consent to the incorporation by reference in this Registration Statement of Red Robin Gourmet Burgers, Inc. (the "Company") on Form S-8 of our reports dated April 6, 2005, relating to the consolidated financial statements of the Company (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the restatement discussed in Note 3), and management's report on the effectiveness of internal control over financial reporting (which report expresses an unqualified opinion on management's assessment of the effectiveness of the Company's control over financial reporting and an adverse opinion on the effectiveness of the Company's internal control over financial reporting because of a material weakness), appearing in the Annual Report on Form 10-K of Red Robin Gourmet Burgers, Inc. for the year ended December 26, 2004.

/s/ Deloitte & Touche LLP  
Denver, Colorado  
June 1, 2005