

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)

10000 E. Geddes Avenue, Suite 500  
Englewood, CO 80112  
(Address of principal executive offices)

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

80112  
(Zip code)

G.J. Hart  
President and Chief Executive Officer  
10000 E. Geddes Avenue, Suite 500  
Englewood, CO 80112  
(Name and address of agent for service)

(303) 846-6000  
(Telephone number, including area code, of agent for service)

Red Robin Gourmet Burgers, Inc. Amended and Restated Employee Stock Purchase Plan, as amended  
2022 Employment Inducement Grant  
(Full title of the Plan)

Copies to:

David S. Huntington, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This registration statement is filed by Red Robin Gourmet Burgers, Inc. (the "Company" or "Registrant") to register (i) 350,000 additional shares of the Company's common stock, par value \$0.001 per share (the "Common Stock") issuable under the Red Robin Gourmet Burgers, Inc. Amended and Restated Employee Stock Purchase Plan, as amended (the "ESPP"), and (ii) 19,035 shares of Common Stock that are reserved for issuance upon the vesting of restricted stock units granted to Sarah Mussetter, the Company's recently appointed Executive Vice President and Chief Legal Officer (the "Inducement Grant"). The Inducement Grant has been granted outside of the Company's long-term incentive plan as an inducement material to Ms. Mussetter entering into employment with the Company in accordance with Nasdaq Listing Rule 5635(c)(4).

**INFORMATION REQUIRED IN THE  
SECTION 10(a) PROSPECTUS**

The document(s) containing the information specified in Part I of Form S-8 (plan information and Company information) will be sent or given to employees as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). Such documents need not be filed with the Securities and Exchange Commission (the "Commission") either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Securities Act Rule 424. These documents, which include the statement of availability required by Item 2 of Form S-8, and the documents incorporated by reference in this registration statement pursuant to Item 3 of Form S-8 (Part II hereof), taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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**PART II  
INFORMATION REQUIRED IN THE  
REGISTRATION STATEMENT**

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

The following documents, previously filed by the Company with the Commission, are hereby incorporated in this registration statement by reference as of their date of filing with the Commission:

- The Company's Annual Report on [Form 10-K](#) for the fiscal year ended December 26, 2021, filed with the Commission on March 10, 2022;
- The Company's Quarterly Report on [Form 10-Q](#) for the quarter ended April 17, 2022, filed with the Commission on May 26, 2022;
- The Company's Quarterly Report on [Form 10-Q](#) for the quarter ended July 10, 2022, filed with the Commission on August 10, 2022;
- The Company's Quarterly Report on [Form 10-Q](#) for the quarter ended October 2, 2022, filed with the Commission on November 2, 2022;
- The Company's Current Reports on Form 8-K filed on [February 3, 2022](#), [March 10, 2022](#) (Film No. 22729009), [May 20, 2022](#), [June 23, 2022](#), [June 29, 2022](#), [July 14, 2022](#), [September 16, 2022](#), [October 31, 2022](#), [November 3, 2022](#) (as amended on [November 17, 2022](#) and [November 25, 2022](#)) and [November 15, 2022](#); and
- The description of the Company's Common Stock contained in its Registration Statement on [Form S-3](#), filed with the SEC on May 29, 2020 (File No. 333-238806), and any other amendment or report filed for the purpose of updating such description.

All other documents filed by the Company pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") subsequent to the date of this registration statement and prior to the filing of a post-effective amendment to this registration statement indicating that all securities offered under the registration statement have been sold, or deregistering all securities then remaining unsold, are also incorporated herein by reference and shall be a part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated by, or deemed 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 statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

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**Item 4. Description of Securities.**

The Common Stock is registered pursuant to Section 12 of the Exchange Act and, therefore, the description of securities is omitted

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

Not applicable.

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

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify directors and officers as well as other employees and agents against expenses (including attorneys' fees) and (other than in actions by or in the right of the corporation to procure a judgment in its favor) judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent of the registrant. The DGCL provides that Section 145 is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise. Section 1 of Article VIII of the registrant's Fourth Amended and Restated Bylaws provides for mandatory indemnification by the registrant of its present and former directors and officers and permits indemnification by the registrant of its employees and agents to the fullest extent permitted by the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases or redemptions, or (iv) for any transaction from which the director derived an improper personal benefit. The registrant's certificate of incorporation provides that:

*A director of [the Company] shall not be personally liable to [the Company] or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to [the Company] or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.*

The Company maintains standard policies of insurance under which coverage is provided (a) to its directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, and (b) to the Company with respect to payments which may be made by the registrant to such officers and directors pursuant to the above indemnification provision or otherwise as a matter of law.

#### Item 7. Exemption from Registration Claimed.

Not applicable.

#### Item 8. Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1*	<a href="#">Restated Certificate of Incorporation of Red Robin Gourmet Burgers, Inc., dated as of May 28, 2015. Incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed on May 29, 2015.</a>
3.2*	<a href="#">Fourth Amended and Restated Bylaws dated May 24, 2012. Incorporated by reference to Exhibit 3.2 to our Quarterly Report on Form 10-Q filed on August 10, 2012 (File No. 001-34851).</a>
3.3*	<a href="#">Amendment No. 1 dated February 13, 2013 to Fourth Amended and Restated Bylaws dated May 24, 2012. Incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed on February 19, 2013 (File No. 001-34851).</a>
3.4*	<a href="#">Specimen stock certificate. Incorporated by reference to Exhibit 4.1 to Amendment No. 1 of our Registration Statement on Form S-1 filed on June 10, 2002 (Registration No. 333-87044).</a>
5.1	<a href="#">Opinion of Paul, Weiss, Rifkind, Wharton &amp; Garrison LLP.</a>
10.1	<a href="#">Red Robin Gourmet Burgers, Inc. Employment Inducement Award Restricted Stock Unit Grant Agreement</a>
23.1	<a href="#">Consent of Paul, Weiss, Rifkind, Wharton &amp; Garrison LLP (included in Exhibit 5.1).</a>
23.2	<a href="#">Consent of KPMG LLP.</a>
23.3	<a href="#">Consent of Deloitte &amp; Touche LLP.</a>
24.1	<a href="#">Power of Attorney (included on signature page of this registration statement).</a>
99.1	<a href="#">Red Robin Gourmet Burgers, Inc. Amended and Restated Employee Stock Purchase Plan (as Further Amended).</a>
107	<a href="#">Filing Fee Table</a>

\* Incorporated herein by reference as indicated

#### 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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in this registration statement.
  - (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) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to section 13 or section 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 section 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.

- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, 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 of 1933, as amended, 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 registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Greenwood Village, State of Colorado, on this 8th day of December, 2022.

Date: December 8, 2022

#### RED ROBIN GOURMET BURGERS, INC.

By: /s/ G.J. Hart  
Name: G.J. Hart  
Title: President and Chief Executive Officer

### POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints G.J. Hart, Todd Wilson and Jeffrey Hoban and each of them, 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) to this registration statement, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ G. J. HART</u> G.J. Hart	President and Chief Executive Officer; Director (Principal Executive Officer and Director)	December 8, 2022
<u>/s/ TODD WILSON</u> Todd Wilson	Executive Vice President, Chief Financial Officer (Principal Financial Officer)	December 8, 2022
<u>/s/ CHERI KINDER</u> CHERI KINDER	Chief Accounting Officer (Principal Accounting Officer)	December 8, 2022
<u>/s/ DAVID A. PACE</u> David A. Pace	Chairperson of the Board	December 8, 2022
<u>/s ANTHONY S. ACKIL</u> Anthony S. Ackil	Director	December 8, 2022
<u>/s/ THOMAS G. CONFORTI</u> Thomas G. Conforti	Director	December 8, 2022
<u>/s/ CAMBRIA W. DUNAWAY</u> Cambria W. Dunaway	Director	December 8, 2022
<u>/s/ KALEN F. HOLMES</u> Kalen F. Holmes	Director	December 8, 2022
<u>/s/ STEVEN K. LUMPKIN</u> Steven K. Lumpkin	Director	December 8, 2022
<u>/s/ ALLISON PAGE</u> Allison Page	Director	December 8, 2022
<u>/s/ ANDDRIA VARNADO</u> Anddria Varnado	Director	December 8, 2022

[LETTERHEAD OF PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON LLP]

212-373-3000

212-757-3990

December 8, 2022

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

Registration Statement on Form S-8

Red Robin Gourmet Burgers, Inc. Employee Stock Purchase Plan (ESPP) Shares and Sarah Mussetter Inducement Grant

Ladies and Gentlemen:

We have acted as special counsel to Red Robin Gourmet Burgers, Inc., a Delaware corporation (the "Company"), in connection with the Registration Statement on Form S-8 (the "Registration Statement") of the Company, filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Act"), and the rules and regulations thereunder (the "Rules"). You have asked us to furnish our

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opinion as to the legality of the securities being registered under the Registration Statement. The Registration Statement relates to the registration under the Act of (i) 19,035 shares (the "Inducement Grant Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), reserved for issuance upon vesting of restricted stock units (the "RSUs") granted to Sarah Mussetter, the Company's Executive Vice President and Chief Legal Officer, and (ii) 350,000 shares of Common Stock (the "ESPP Shares," and the ESPP Shares together with the Inducement Grant Shares, the "Shares") issuable under the Red Robin Gourmet Burgers, Inc. Amended and Restated Employee Stock Purchase Plan (as amended by the ESPP Amendment (as defined below), the "ESPP").

In connection with the furnishing of this opinion, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the "Documents"):

1. the Registration Statement;
2. the Restricted Stock Unit Award Agreement between the Company and Sarah Mussetter relating to the RSUs (the "RSU Agreement");
3. the ESPP; and
4. that certain amendment to the ESPP, adopted by the Company's board of directors on December 6, 2022 (the "ESPP Amendment").

In addition, we have examined (i) such corporate records of the Company that we have considered appropriate, including a copy of the certificate of incorporation, as amended, and by-laws, as amended, of the Company, certified by the Company as in effect on the date of this letter and copies of resolutions of the board of directors of the Company relating to the issuance of the Shares, certified by the Company and (ii) such other certificates, agreements and documents as we deemed relevant and necessary as a basis for the opinion expressed below. We have also relied upon the factual matters contained in the representations and warranties of the Company

Red Robin Gourmet Burgers, Inc.

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made in the Documents and upon certificates of public officials and the officers of the Company.

In our examination of the documents referred to above, we have assumed, without independent investigation, the genuineness of all signatures, the legal capacity of all individuals who have executed any of the documents reviewed by us, the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as certified, photostatic, reproduced or conformed copies of valid existing agreements or other documents, the authenticity of all the latter documents and that the statements regarding matters of fact in the certificates, records, agreements, instruments and documents that we have examined are accurate and complete.

Based upon the above, and subject to the stated assumptions, exceptions and qualifications, 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 and delivered in accordance with the terms of the RSU Agreement and the ESPP, respectively, the Shares will be validly issued, fully paid and non-assessable.

Red Robin Gourmet Burgers, Inc.

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The opinion expressed above is limited to the General Corporation Law of the State of Delaware. Our opinion is rendered only with respect to the laws, and the rules, regulations and orders under those laws, that are currently in effect. We hereby consent to use of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we come within the category of persons whose consent is required by the Act or the Rules.

Very truly yours,



**RED ROBIN GOURMET BURGERS, INC.  
EMPLOYMENT INDUCEMENT AWARD  
RESTRICTED STOCK UNIT GRANT AGREEMENT**

**THIS RESTRICTED STOCK UNIT GRANT AGREEMENT (this “Agreement”) between RED ROBIN GOURMET BURGERS, INC. (the “Company”) and Sarah Mussetter (“Grantee”) is dated effective December 8, 2022 (the “Date of Grant”).**

Grantee has been granted an award of 19,035 restricted stock units. These units are restricted until the vest date(s) shown below, at which time you will receive shares of Red Robin Gourmet Burgers, Inc. common stock.

**Vesting Schedule:** This award will vest in accordance with the following:

<u>Shares</u>	<u>Vest Date</u>
6,345	December 8, 2023
6,345	December 8, 2024
6,345	December 8, 2025

**RECITALS**

A. The Board has adopted, and the stockholders have approved, the Red Robin Gourmet Burgers, Inc. 2017 Performance Incentive Plan, as may be amended from time to time (the “Plan”);

B. Although this Agreement is not made under the Plan, this Agreement will be granted subject to and in accordance with the terms and conditions of the Plan as if the award were granted under the Plan, to the extent applicable; and

C. The Committee has determined that Grantee is eligible to receive a restricted stock unit award as an inducement award to induce the Grantee to become, and to retain Grantee as, Executive Vice President and Chief Legal Officer of the Company and has determined that it would be in the best interest of the Company to grant the restricted stock unit award provided for herein.

**AGREEMENT**

1. Grant of Restricted Stock Unit.

(a) Award. As an employment inducement award, Grantee is hereby awarded the number of Restricted Stock Units set forth above, each of which represents the right to receive one share of the Company’s common stock, \$.001 par value per share (the “Common Stock”), subject to the conditions of the Plan and this Agreement (the “Restricted Stock Units”). Unless and until the Restricted Stock Units vest, Grantee will have no right to receive shares of Common Stock under such Restricted Stock Units.

(b) Plan Incorporated. Grantee acknowledges receipt of a copy of the Plan, and agrees that this award of Restricted Stock Units shall be subject to all of the terms and conditions set forth in the Plan, including future amendments thereto, if any, pursuant to the terms thereof, which Plan is incorporated herein by reference as a part of this Agreement. Except as defined herein, capitalized terms shall have the same meanings ascribed to them under the Plan.

2. Vesting Schedule: The Restricted Stock Units awarded by this Agreement will vest in accordance with the vesting schedule set forth above. Each date upon which vesting occurs is referred to herein as a “Vesting”

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Date”. The foregoing notwithstanding, vesting pursuant to the foregoing schedule shall occur on a Vesting Date only if Grantee remains employed by or provides services to the Company from the Date of Grant to such Vesting Date. If Grantee ceases to be employed by or ceases to provide services to the Company at any time prior to the final Vesting Date, all unvested Restricted Stock Units shall be canceled immediately on the date that Grantee’s employment or service is terminated and Grantee shall cease to have any right or entitlement to receive any shares of Common Stock under such canceled Restricted Stock Units.

3. Accelerated Vesting of Restricted Stock Units.

(a) As provided in Section 5.3 of the Plan, if a Change in Control occurs, any unvested Restricted Stock Units held by Grantee will become fully vested. However, if Grantee is designated on the Company’s payroll records as a Tier 1 or Tier 2 executive or above, or an executive officer, on the date of the Change in Control no Restricted Stock Units will vest solely on account of a Change in Control unless Grantee’s employment with the Company is terminated without Cause (as defined below) within the two-year period following such Change in Control.

(b) For purposes of this Agreement, “Cause” means that Grantee:

(i) has been negligent in the discharge of his or her duties to the Company or any of its Subsidiaries, has refused to perform stated or assigned duties or is incompetent in or (other than by reason of a disability or analogous condition) incapable of performing those duties;

(ii) has been dishonest or committed or engaged in an act of theft, embezzlement or fraud, a breach of confidentiality, an unauthorized disclosure or use of inside information, customer lists, trade secrets or other confidential information; has breached a fiduciary duty, or willfully and materially violated any other duty, law, rule, regulation or policy of the Company, any of its Subsidiaries or any affiliate of the Company or any of its Subsidiaries; or has been convicted of a felony or misdemeanor (other than minor traffic violations or similar offenses);

(iii) has materially breached any of the provisions of any agreement with the Company, any of its Subsidiaries or any affiliate of the Company or any of its Subsidiaries; or

(iv) has engaged in unfair competition with, or otherwise acted intentionally in a manner injurious to the reputation, business or assets of, the Company, any of its Subsidiaries or any affiliate of the Company or any of its Subsidiaries; has improperly induced a vendor or customer to enter into, break or terminate any contract with the Company, any of its Subsidiaries or any affiliate of the Company or any of its Subsidiaries; or has induced a principal for whom the Company, any of its Subsidiaries or any affiliate of the Company or any of its Subsidiaries acts as agent to terminate such agency relationship.

4. Limits on Transferability. Restricted Stock Units shall not be transferable except by will or the laws of descent and distribution or pursuant to a beneficiary designation, or as otherwise permitted by the Plan. No right or benefit hereunder shall in any manner be liable for or subject to any debts, contracts, liabilities, or torts of Grantee. Grantee agrees that the Restricted Stock Units will not be sold or otherwise disposed of in any manner that would constitute a violation of any applicable federal or

state securities laws. Any purported assignment, alienation, pledge, attachment, sale, transfer or other encumbrance of shares of unvested Restricted Stock Units that does not satisfy the requirements of this Agreement and the Plan shall, prior to the lapse of the restrictions on such shares pursuant to Section 2, be void and unenforceable against the Company.

5. Issuance and Certificates. Unless the Restricted Stock Units are forfeited prior to the Vesting Date as provided in Section 2 above, the shares of Common Stock issuable upon vesting of the Restricted Stock Units shall be deemed issued as of the Vesting Date. As soon as administratively practicable following a Vesting Date, the Company shall cause a stock certificate or certificates (which may be in electronic form) to be delivered to or

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on behalf of Grantee for such number of shares equal to the number of Restricted Stock Units vested on such Vesting Date, subject to the Company's collection of applicable withholding taxes in accordance with Section 7 below. Notwithstanding any other provisions of this Agreement, the issuance or delivery of any shares of Common Stock may be postponed for such period as may be required to comply with any requirements under any law or regulation applicable to the issuance or delivery of such shares. The Company shall not be obligated to issue or deliver any shares of Common Stock if the issuance or delivery thereof shall constitute a violation of any provision of any law or of any regulation of any governmental authority.

6. Stockholder Rights. Grantee shall not have any stockholder rights, including voting or dividend rights, with respect to the shares of Common Stock subject to the Restricted Stock Units until such shares are issued on the applicable Vesting Date.

7. Withholding. In order to comply with all applicable federal or state income tax laws or regulations, the Company may take such action as it deems appropriate to ensure that all applicable federal or state payroll, withholding, income or other taxes, which are the sole and absolute responsibility of Grantee, are withheld or collected from Grantee. In accordance with the terms of the Plan, and such rules as may be adopted by the Committee under the Plan, to satisfy Grantee's federal and state tax withholding obligations arising from the vesting of the Restricted Stock Units, the Company shall be permitted in its discretion to withhold shares of Common Stock otherwise to be delivered to Grantee having a Fair Market Value equal to the amount of such taxes. The Company will not deliver any fractional shares of Common Stock. Any additional withholding amounts owed by Grantee due to the inability to deliver fractional shares will be deducted from Grantee's next paycheck.

8. Tax Consideration. The Company has advised Grantee to seek Grantee's own tax and financial advice with regard to the federal and state tax considerations resulting from Grantee's receipt of Restricted Stock Units pursuant to this Agreement. Grantee understands that the Company will report to appropriate taxing authorities the payment to Grantee of compensation income upon the vesting of the Restricted Stock Units. Grantee understands that he or she is solely responsible for the payment of all federal and state taxes resulting from this grant of Restricted Stock Units. With respect to tax withholding amounts, the Company has all of the rights specified in Section 7 of this Agreement and has no obligations to Grantee except as expressly stated in Section 7 of this Agreement.

9. Non-Solicitation. Grantee, for the twelve (12) month period immediately following the date of termination of Grantee's employment or services, shall not, either on his or her own account or jointly with or as a manager, agent, officer, employee, consultant, partner, joint venturer, owner, or shareholder, or otherwise on behalf of any other person, firm, or corporation, directly or indirectly solicit or attempt to solicit away from the Company any of its employees or offer employment to any person who, on or during the six (6) months immediately preceding the date of such solicitation or offer, is or was an employee of the Company. Grantee agrees that the covenant set forth in this Section 9 is reasonable with respect to its duration, geographical area and scope. In the event that the geographic or temporal scope of the covenant contained herein or the nature of the business or activities restricted hereby shall be declared by a court of competent jurisdiction to exceed the maximum restrictiveness such court deems enforceable, such provisions shall be deemed to be replaced herein by the maximum restriction deemed enforceable by such court.

10. Injunctive Relief. The parties hereto agree that either party hereto would suffer irreparable harm from a breach by the other party of any of the covenants or agreements contained in Section 9, for which there is no adequate remedy at law. Therefore, in the event of the actual or threatened breach by a party of any of the provisions of this Agreement, the other party, and in the case of the Company, its respective successors or assigns, may, in addition and supplementary to other rights and remedies existing in their favor, apply to any court of law or equity of competent jurisdiction for specific performance, injunctive or other relief (without the necessity of posting bond or security) in order to enforce compliance with, or prevent any violation of, the provisions hereof; and that, in the event of such breach or threat thereof by one party, the other party shall be entitled to obtain a

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temporary restraining order and/or a preliminary injunction restraining the other party from engaging in activities prohibited hereby or such other relief as may be required to specifically enforce any of the covenants contained herein.

11. Notices. Any notice to be given under the terms of this Agreement shall be in writing and addressed to the Company at its principal office to the attention of the Secretary, and to Grantee at the address last reflected on the Company's payroll records (including via e-mail if Grantee is then employed by the Company), or at such other address as either party may hereafter designate in writing to the other. Any such notice (if not sent via e-mail) shall be delivered in person or shall be enclosed in a properly sealed envelope addressed as aforesaid, registered or certified, and deposited (postage and registry or certification fee prepaid) in a post office or branch post office regularly maintained by the United States Government. Any such notice shall be given only when received, but if Grantee is no longer employed by the Company or a Subsidiary, shall be deemed to have been duly given five business days after the date mailed in accordance with the foregoing provisions in this Section 11.

12. Conflicts and Interpretation. In the event of a conflict or inconsistency between the terms and conditions of this Agreement and of the Plan, the terms and conditions of the Plan shall govern. Grantee agrees to be bound by the terms of the Plan and this Agreement. Grantee acknowledges having read and understanding the Plan, this Agreement, and the Prospectus for this Agreement. Unless otherwise expressly provided in other sections of this Agreement, provisions of the Plan that confer discretionary authority on the Board or the Committee do not and shall not be deemed to create any rights in Grantee unless such rights are expressly set forth herein or are otherwise in the sole discretion of the Board or the Committee so conferred by appropriate action of the Board or the Committee under the Plan after the date hereof.

13. Entire Agreement; Amendment. Except as may otherwise be provided in any employment, severance or other agreement between the Company and Grantee, or any Company plan in which Grantee participates, this Agreement and the Plan together constitute the entire agreement and supersede all prior understandings and agreements, written or oral, of the parties hereto with respect to the subject matter hereof. The Company may modify, amend or waive the terms of the Restricted Stock Unit award, prospectively or retroactively, but no such modification, amendment or waiver shall impair the rights of Grantee without his or her consent, except as required by applicable law, NASDAQ or stock exchange rules, tax rules or accounting rules. The waiver by either party of compliance with any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by such party of a provision of this Agreement.

14. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to conflict of law principles thereunder.

15. Binding Effect. This Agreement shall bind Grantee and the Company and their beneficiaries, survivors, executors, administrators and transferees.

16. No Employment/Service Commitment. Nothing contained in this Agreement or the Plan constitutes a continued employment or service commitment by the Company or any of its Subsidiaries, affects Grantee's status, if he or she is an employee, as an employee at will who is subject to termination without cause, confers upon

Grantee any right to remain employed by or in service to the Company or any Subsidiary, interferes in any way with the right of the Company or any Subsidiary at any time to terminate such employment or service, or affects the right of the Company or any Subsidiary to increase or decrease Grantee's other compensation. Payment of any Restricted Stock Unit Award amount is not secured by a trust, insurance contract or other funding medium, and Grantee does not have any interest in any fund or specific assets of the Company or any of its Affiliates by reason of this Restricted Stock Unit Award.

17. Compliance with Code Section 409A. The Restricted Stock Units granted under this Agreement are intended to fit within the "short-term deferral" exemption from section 409A of the Internal Revenue Code. In

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administering this Agreement, the Company shall interpret this Agreement in a manner consistent with such exemption.

18. Forfeiture. Grantee must reimburse or forfeit to the Company any payment received or to be received hereunder by Grantee to the extent required by the clawback policy adopted by the Board of Directors.

19. Definitions. To the extent not specifically defined in this Agreement, each capitalized term used in this Agreement has the meaning ascribed to such term in the Plan.

20. Committee Administration. The Committee has sole and exclusive responsibility for construing and interpreting this Agreement and for resolving all questions arising under this Agreement. Any decision or action taken by the Committee arising out of, or in connection with, the construction, administration, interpretation and effect of this Agreement will be conclusive and binding upon all persons.

21. Severability. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of the other provisions of this Agreement, which will remain in full force and effect. Moreover, if any provision is found to be excessively broad in duration, scope or covered activity, the provision will be construed so as to be enforceable to the maximum extent compatible with applicable law.

[Signature Appears on Following Page]

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**RED ROBIN GOURMET BURGERS, INC.**, a Delaware corporation

By: /s/ Wayne Davis  
Name: Wayne Davis  
Title: Senior Vice President and Chief People Officer

[Signature Page to RSU Agreement - Mussetter]

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**Consent of Independent Registered Public Accounting Firm**

We consent to the use of our report dated March 3, 2021, except as to paragraph (d) of Note 1, which is as of March 10, 2022, with respect to the consolidated financial statements of Red Robin Gourmet Burgers, Inc., and the effectiveness of internal control over financial reporting, incorporated herein by reference.

/s/ KPMG LLP

Denver, Colorado  
December 8, 2022

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated March 10, 2022 relating to the financial statements of Red Robin Gourmet Burgers, Inc. and the effectiveness of Red Robin Gourmet Burgers, Inc.'s internal control over financial reporting, appearing in the Annual Report on Form 10-K of Red Robin Gourmet Burgers, Inc. for the year ended December 26, 2021.

/s/ Deloitte & Touche LLP

Denver, Colorado  
December 8, 2022

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**RED ROBIN GOURMET BURGERS, INC.**  
**AMENDED AND RESTATED EMPLOYEE STOCK PURCHASE PLAN**

The following constitute the provisions of the Red Robin Gourmet Burgers, Inc. Amended and Restated Employee Stock Purchase Plan (the "**Plan**").

**1. PURPOSE**

The purpose of this Plan is to assist Eligible Employees in acquiring a stock ownership interest in the Corporation, at a favorable price and upon favorable terms, pursuant to a plan which is intended to qualify as an "employee stock purchase plan" under Section 423 of the Code. This Plan is also intended to encourage Eligible Employees to remain in the employ of the Corporation (or a Subsidiary which may be designated by the Committee as "Participating Subsidiary") and to provide them with an additional incentive to advance the best interests of the Corporation.

**2. DEFINITIONS**

Capitalized terms used herein which are not otherwise defined shall have the following meanings.

"**Account**" means the bookkeeping account maintained by the Corporation, or by a recordkeeper on behalf of the Corporation, for a Participant pursuant to Section 7(a).

"**Board**" means the Board of Directors of the Corporation.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time. "**Commission**" means the United States Securities and Exchange Commission.

"**Committee**" means the committee appointed by the Board to administer this Plan pursuant to Section 12.

"**Common Stock**" means the Common Stock, par value \$0.001 per share, of the Corporation, and such other securities or property as may become the subject of Options pursuant to an adjustment made under Section 17.

"**Company**" means, collectively, the Corporation, its Parent and its Subsidiaries (if any).

"**Compensation**" means an Eligible Employee's regular gross pay for a 40-hour week. Compensation includes any amounts contributed as salary reduction contributions to a plan qualifying under Section 401(k), 125 or 129 of the Code. Any other form of remuneration is excluded from Compensation, including (but not limited to) the following: overtime payments, commissions, prizes, awards, relocation or housing allowances, stock option exercises, stock appreciation rights, restricted stock exercises, performance awards, auto allowances, tuition reimbursement and other forms of imputed income, bonuses, incentive compensation, special payments, fees and allowances. Notwithstanding the foregoing, Compensation shall not include any amounts deferred under or paid from any nonqualified deferred compensation plan maintained by the Company.

"**Contributions**" means all bookkeeping amounts credited to the Account of a Participant pursuant to Section 7(a).

"**Corporation**" means Red Robin Gourmet Burgers, Inc., a Delaware corporation, and its successors.

"**Effective Date**" means **July 12, 2017**.

"**Eligible Employee**" means any employee of the Corporation or of any Subsidiary which has been designated in writing by the Committee as a "Participating Subsidiary" (including any Subsidiaries which have become such after the date that this Plan is approved by the stockholders of the Corporation). Notwithstanding the foregoing, "Eligible Employee" shall not include any employee:

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- (a) who has been employed by the Corporation or a Subsidiary for less than one year; or
  - (b) whose customary employment is for 20 hours or less per week.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time.

"**Exercise Date**" means, with respect to an Offering Period, the last day of that Offering Period.

"**Fair Market Value**" means, as of any date and unless the Committee determines otherwise, the value of Common Stock determined as follows:

- (a) if the Common Stock is listed on any established stock exchange or a national market system, including without limitation the New York Stock Exchange, NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market of The NASDAQ Stock Market, then Fair Market Value shall be the closing sales price for the Common Stock as quoted on such exchange or system on the date of determination (or the closing bid, if no sales were reported), as reported in a source the Committee deems reliable;
- (b) if the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, then Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or if no bids and asks were reported on that date, as applicable, on the last trading day that bids and asks for the Common Stock were reported), as reported in a source the Committee deems reliable; or
- (c) in the absence of an established market for the Common Stock, the Fair Market Value of the Common Stock shall be determined in good faith by the Committee.

"**Grant Date**" means the first day of each Offering Period, as determined by the Committee and announced to potential Eligible Employees.

"**Offering Period**" means the six-consecutive month period commencing on each Grant Date; provided, however, that the Committee may declare, as it deems appropriate and in advance of the applicable Offering Period, a shorter (not to be less than three months) Offering Period or a longer (not to exceed 27 months) Offering Period; provided further that the Grant Date for an Offering Period may not occur on or before the Exercise Date for the immediately preceding Offering Period.

"**Option**" means the stock option to acquire Shares granted to a Participant pursuant to Section 8.

"**Option Price**" means the per share exercise price of an Option as determined in accordance with Section 8(b).

"**Parent**" means any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation in which each corporation (other than the Corporation) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one or more of the other corporations in the chain.

"**Participant**" means an Eligible Employee who has elected to participate in this Plan and who has filed a valid and effective Subscription Agreement to make Contributions pursuant to Section 6.

"**Plan**" means this Red Robin Gourmet Burgers, Inc. Amended and Restated Employee Stock Purchase Plan, as amended from time to time.

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"**Rule 16b-3**" means Rule 16b-3 as promulgated by the Commission under Section 16 of the Exchange Act, as amended from time to time.

"**Share**" means a share of Common Stock.

"**Subscription Agreement**" means the written agreement filed by an Eligible Employee with the Corporation pursuant to Section 6 to participate in this Plan.

"**Subsidiary**" means any corporation (other than the Corporation) in an unbroken chain of corporations (beginning with the Corporation) in which each corporation (other than the last corporation) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one or more of the other corporations in the chain.

### 3. ELIGIBILITY

Any person employed as an Eligible Employee as of a Grant Date shall be eligible to participate in this Plan during the Offering Period in which such Grant Date occurs, subject to the Eligible Employee satisfying the requirements of Section 6.

### 4. STOCK SUBJECT TO THIS PLAN; SHARE LIMITATIONS

- (a) Subject to the provisions of Section 17, the capital stock that may be delivered under this Plan will be shares of the Corporation's authorized but unissued Common Stock and any shares of Common Stock held as treasury shares. The maximum number of Shares that may be delivered pursuant to Options granted under this Plan is 600,000 Shares, subject to adjustments pursuant to Section 17 (the "**Plan Limit**").

In the event that all of the Shares made available under this Plan are subscribed prior to the expiration of this Plan, this Plan shall terminate at the end of that Offering Period and the Shares available shall be allocated for purchase by Participants in that Offering Period on a pro-rata basis determined with respect to Participants' Account balances.

- (b) The maximum number of Shares that any one individual may acquire upon exercise of his or her Option with respect to any one Offering Period is 750, subject to adjustments pursuant to Section 17 (the "**Individual Limit**"); provided, however, that the Committee may establish a different Individual Limit in offering documents, in which case the 750 Share limit shall be superseded by the Individual Limit set forth in such offering documents. The Individual Limit shall be proportionately adjusted for any Offering Period of less than six months, and may, at the discretion of the Committee, be proportionately increased for any Offering Period of greater than six months.

### 5. OFFERING PERIODS

During the term of this Plan, the Corporation will offer Options to purchase Shares in each Offering Period to all Participants in that Offering Period. Unless otherwise specified by the Committee in advance of the Offering Period, an Offering Period that commences on or about July 1 will end the following December 31 and an Offering Period that commences on or about January 1 will end the following June 30. Each Option shall become effective on the Grant Date. The term of each Option shall be the duration of the related Offering Period and shall end on the Exercise Date. The first Offering Period shall commence as of a date determined by the Board or Committee, but no earlier than the Effective Date. Offering Periods shall continue until this Plan is terminated in accordance with Section 18 or 19, or, if earlier, until no Shares remain available for Options pursuant to Section 4.

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### 6. PARTICIPATION

- (a) An Eligible Employee may become a participant in this Plan by completing a Subscription Agreement on a form approved by and in a manner prescribed by the Committee (or its delegate). To become effective, a Subscription Agreement must be signed by the Eligible Person and filed with the Corporation at the time specified by the Committee, but in all cases prior to the start of the Offering Period with respect to which it is to become effective, and must set forth a whole percentage (or, if the Committee so provides, a stated amount) of the Eligible Employee's Compensation to be credited to the Participant's Account as Contributions each pay period.

- (b) Notwithstanding the foregoing, a Participant's Contribution election shall be subject to the following limitations:

- (i) the 5% ownership and the \$25,000 annual purchase limitations set forth in Section 8(c);
- (ii) a Participant may not elect to contribute more than 15% of his or her Compensation *each pay period* as Plan Contributions; and
- (iii) such other limits, rules, or procedures as the Committee may prescribe.

- (c) Subscription Agreements shall contain the Eligible Employee's authorization and consent to the Corporation's withholding from his or her Compensation the amount of his or her Contributions. An Eligible Employee's Subscription Agreement, and his or her participation election and withholding consent therein, shall remain valid for all Offering Periods until (i) the Eligible Employee's participation terminates pursuant to the terms hereof, (ii) the Eligible Employee files a new Subscription Agreement that becomes effective, or (iii) the Committee requires that a new Subscription Agreement be executed and filed with the Corporation.

### 7. METHOD OF PAYMENT OF CONTRIBUTIONS

- (a) The Corporation shall maintain on its books, or cause to be maintained by a recordkeeper, an Account in the name of each Participant. The percentage of Compensation elected to be applied as Contributions by a Participant shall be deducted from such Participant's Compensation on each payday during the period for payroll deductions set forth below and such payroll deductions shall be credited to that Participant's Account as soon as administratively practicable after such date. A Participant may not make any additional payments to his or her Account. A Participant's Account shall be reduced by any amounts used to pay the Option Price of Shares acquired, or by any other amounts distributed pursuant to the terms hereof.
  - (b) Subject to such other rules as the Committee may adopt, payroll deductions with respect to an Offering Period shall commence as of the first pay date which coincides with or immediately follows the applicable Grant Date and shall end on the last pay date which coincides with or immediately precedes the applicable Exercise Date, unless sooner terminated by the Participant as provided in this Section 7 or until his or her participation terminates pursuant to Section 11.
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- (c) A Participant may terminate his or her Contributions during an Offering Period (and receive a distribution of the balance of his or her Account in accordance with Section 11) by completing and filing with the Corporation, in such form and on such terms as the Committee (or its delegate) may prescribe, a written withdrawal form signed by the Participant. Such termination shall be effective as soon as administratively practicable after its receipt by the Corporation. A withdrawal election pursuant to this Section 7(c) with respect to an Offering Period shall only be effective, however, if it is received by the Corporation prior to the Exercise Date of that Offering Period (or such earlier deadline that the Committee may reasonably require to process the withdrawal prior to the applicable Exercise Date). Partial withdrawals of Accounts, and other modifications or suspensions of Subscription Agreements, except as provided in Section 7(e) or 7(f), are not permitted.
- (d) During leaves of absence approved by the Corporation and meeting the requirements of Regulation Section 1.421-1(h)(2) under the Code, a Participant may continue participation in this Plan by cash payments to the Corporation on his or her normal paydays equal to the reduction in his or her Plan Contributions caused by his or her leave.
- (e) A Participant may discontinue, increase, or decrease the level of his or her Contributions (within Plan limits) by completing and filing with the Corporation, on such terms as the Committee (or its delegate) may prescribe, a new Subscription Agreement which indicates such election. Subject to any other timing requirements that the Committee may impose, an election pursuant to this Section 7(e) shall be effective with the first Offering Period that commences after the Corporation's receipt of such election.
- (f) A Participant may discontinue (but not increase or otherwise decrease) the level of his or her Contributions, by filing with the Corporation, on such terms as the Committee (or its delegate) may prescribe, a new Subscription Agreement that indicates such election. Unless otherwise provided by the Committee, an election pursuant to this Section 7(f) shall be effective no earlier than the first payroll period that starts after the Corporation's receipt of such election.

## 8. GRANT OF OPTION

- (a) On each Grant Date, each Eligible Employee who is a participant during that Offering Period shall be granted an Option to purchase a number of Shares. The Option shall be exercised on the Exercise Date. The number of Shares subject to the Option shall be determined by dividing the Participant's Account balance as of the applicable Exercise Date by the Option Price, subject to the maximum determined pursuant to Section 4(b).
- (b) The Committee shall determine the Option Price per Share of the Shares subject to an Option for an Offering Period; provided that such Option Price may not be less than the lesser of: (i) 85% of the Fair Market Value of a Share on the applicable Grant Date; and (ii) 85% of the Fair Market Value of a Share on the applicable Exercise Date.
- (c) Notwithstanding anything else contained herein, a person who is otherwise an Eligible Employee shall not be granted any Option (or any Option granted shall be subject to compliance with the following limitations) or other right to purchase Shares under this Plan to the extent:
  - (i) it would, if exercised, cause the person to own "stock" (as such term is defined for purposes of Section 423(b)(3) of the Code) possessing 5% or more of the total combined voting power or value of all classes of stock of the Corporation, or of any Parent, or of any Subsidiary; or

- (ii) such Option would cause such individual to have rights to purchase stock under this Plan (and any other plan of the Corporation, any Parent, or any Subsidiary which is qualified under Section 423 of the Code) that accrue at a rate that exceeds \$25,000 of the fair market value of the stock of the Corporation, of any Parent, or of any Subsidiary (determined at the time the right to purchase such Stock is granted, before giving effect to any discounted purchase price under any such plan) for each calendar year in which such right is outstanding at any time.

For purposes of the foregoing, a right to purchase stock accrues when it first become exercisable during the calendar year. In determining whether the stock ownership of an Eligible Employee equals or exceeds the 5% limit set forth above, the rules of Section 424(d) of the Code (relating to attribution of stock ownership) shall apply, and stock which the Eligible Employee may purchase under outstanding options shall be treated as stock owned by the Eligible Employee.

## 9. EXERCISE OF OPTION

Unless a Participant's Plan participation is terminated as provided in Section 11, his or her Option for the purchase of Shares shall be exercised automatically on the Exercise Date for that Offering Period, without any further action on the Participant's part, and the maximum number of whole Shares subject to such Option (subject to the Individual Limit set forth in Section 4(b) and the limitations contained in Section 8(c)) shall be purchased at the Option Price with the balance of such Participant's Account.

If any amount which is not sufficient to purchase a whole Share remains in a Participant's Account after the exercise of his or her Option on the Exercise Date: (i) such amount shall be credited to such Participant's Account for the next Offering Period, if he or she is then a Participant; or (ii) if such Participant is not a Participant in the next Offering Period, or if the Committee so elects, such amount shall be refunded to such Participant as soon as administratively practicable after such date. If the Share limit of Section 4(a) is reached, any amount that remains in a Participant's Account after the exercise of his or her Option on the Exercise Date to purchase the number of Shares that he or she is allocated shall be refunded to the Participant as soon as administratively practicable after such date.

If an amount which exceeds the Individual Limit established pursuant to Section 4(b) or one of the limitations set forth in Section 8(c) remains in a Participant's Account after the exercise of his or her Option on the Exercise Date, such amount shall be refunded to the Participant as soon as administratively practicable after such date.

## 10. DELIVERY

As soon as administratively practicable after the Exercise Date, the Corporation shall deliver to each Participant a certificate representing the Shares purchased upon exercise of his or her Option. The Corporation may make available an alternative arrangement for delivery of Shares to a recordkeeping service. The Committee (or its delegate), in its discretion, may either require or permit Participants to elect that such certificates representing the Shares purchased or to be purchased under the Plan be delivered to such recordkeeping service. In the event the Corporation is required to obtain from any commission or agency authority to issue any such certificate, the Corporation will seek to obtain such authority. If the Corporation is unable to obtain from any such commission or agency authority which counsel for the Corporation deems necessary for the lawful issuance of any such certificate, or if for any other reason the Corporation cannot issue or deliver Shares and satisfy Section 21, the Corporation shall be relieved from liability to any Participant except that the Corporation shall return to each Participant the amount of the balance credited to his or her Account.

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## 11. TERMINATION OF EMPLOYMENT; CHANGE IN ELIGIBLE STATUS

- (a) Except as provided in the next paragraph, if a Participant ceases to be an Eligible Employee for any reason, or if the Participant elects to terminate Contributions pursuant to Section 7(c), at any time prior to the last day of an Offering Period in which he or she participates, such Participant's Account shall be paid to him or her or in cash (or, in the event of the Participant's death, to the person or persons entitled thereto under Section 13 in cash), and such Participant's Option and participation in the Plan shall be automatically terminated.

If a Participant (i) ceases to be an Eligible Employee during an Offering Period but remains an employee of the Company through the Exercise Date, or (ii) during an Offering Period commences a sick leave, military leave, or other leave of absence approved by the Company, and the leave meets the requirements of Treasury Regulation Section 1.421-1(h)(2) and the Participant is an employee of the Company or on such leave as of the applicable Exercise Date, such Participant's Contributions shall cease (subject to Section 7(d)), and the Contributions previously credited to the Participant's Account for that Offering Period shall be used to exercise the Participant's Option as of the applicable Exercise Date in accordance with Section 9 (unless the Participant makes a timely election to terminate Contributions in accordance with Section 7(c), in which case such Participant's Account shall be paid to him or her in cash in accordance with the foregoing paragraph).

- (b) A Participant's termination from Plan participation precludes the Participant from again participating in this Plan during that Offering Period. However, such termination shall not have any effect upon his or her ability to participate in any succeeding Offering Period, provided that the applicable eligibility and participation requirements are again then met. A Participant's termination from Plan participation shall be deemed to be a revocation of that Participant's Subscription Agreement and such Participant must file a new Subscription Agreement to resume Plan participation in any succeeding Offering Period.
- (c) For purposes of this Plan, if a Participating Subsidiary ceases to be a Subsidiary, each person employed by that Subsidiary shall be deemed to have terminated employment for purposes of this Plan and shall no longer be an Eligible Employee, unless the person continues as an Eligible Employee in respect of another Company entity.

## 12. ADMINISTRATION

- (a) The Board shall appoint the Committee, which shall be composed of not less than two members of the Board. The Board may, at any time, increase or decrease the number of members of the Committee, may remove from membership on the Committee all or any portion of its members, and may appoint such person or persons as it desires to fill any vacancy existing on the Committee, whether caused by removal, resignation, or otherwise. The Board may also, at any time, assume the administration of this Plan, in which case references to the "Committee" shall be deemed to be references to the Board.
- (b) The Committee shall supervise and administer this Plan and shall have full power and discretion to adopt, amend and rescind any rules deemed desirable and appropriate for the administration of this Plan and not inconsistent with the terms of this Plan, and to make all other determinations necessary or advisable for the administration of this Plan. The Committee shall act by majority vote or by unanimous written consent. No member of the Committee shall be entitled to act on or decide any matter relating solely to himself or herself or solely to any of his or her rights or benefits under this Plan. The Committee shall have full power and discretionary authority to construe and interpret the terms and conditions of this Plan, which construction or interpretation shall be final and binding on all parties including the Company, Participants and beneficiaries. The Committee may delegate ministerial non-discretionary functions to third parties, including individuals who are officers or employees of the Corporation.

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- (c) Subject only to compliance with the express provisions hereof, the Board and Committee may act in their absolute discretion in matters within their authority related to this Plan. Any action taken by, or inaction of, the Corporation, any Participating Subsidiary, the Board or the Committee relating or pursuant to this Plan shall be within the absolute discretion of that entity or body and will be conclusive and binding upon all persons. In making any determination or in taking or not taking any action under this Plan, the Board or Committee, as the case may be, may obtain and may rely on the advice of experts, including professional advisors to the Corporation. No member of the Board or Committee, or officer or agent of the Company, shall be liable for any action, omission or decision under the Plan taken, made or omitted in good faith.

## 13. DESIGNATION OF BENEFICIARY

- (a) A Participant may file, on a form and in a manner prescribed by the Committee (or its delegate), a written designation of a beneficiary who is to receive any Shares or cash from such Participant's Account under this Plan in the event of such Participant's death. If a Participant's death occurs subsequent to the end of an Offering Period but prior to the delivery to him or her of any Shares deliverable under the terms of this Plan, (i) such Shares and any remaining balance of such Participant's Account shall be paid to such beneficiary (or such other person as set forth in Section 13(b)) as soon as administratively practicable after the Corporation receives notice of such Participant's death and (ii) any outstanding unexercised Option shall terminate. If a Participant's death occurs at any other time, the balance of such Participant's Account shall be paid to such beneficiary (or such other person as set forth in Section 13(b)) in cash as soon as administratively practicable after the Corporation receives notice of such Participant's death and such Participant's Option shall terminate. The Committee may rely on the last designation of a beneficiary filed by a Participant in accordance with this Plan.
- (b) Beneficiary designations may be changed by the Participant at any time on forms provided and in the manner prescribed by the Committee (or its delegate). If a Participant dies with no validly designated beneficiary under this Plan who is living at the time of such Participant's death, the Corporation shall deliver all Shares and/or cash payable pursuant to the terms hereof to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed, the Corporation, in its discretion, may deliver such Shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Corporation, then to such other person as the Corporation may designate.

#### 14. TRANSFERABILITY

Neither Contributions credited to a Participant's Account nor any Option or rights with respect to the exercise of any Option or right to receive Shares under this Plan may be anticipated, alienated, encumbered, assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution, or as provided in Section 13) by the Participant. Any such attempt at anticipation, alienation, encumbrance, assignment, transfer, pledge or other disposition shall be without effect and all amounts shall be paid and all Shares shall be delivered in accordance with the provisions of this Plan. Amounts payable or Shares deliverable pursuant to this Plan shall be paid or delivered only to the Participant or, in the event of the Participant's death, to the Participant's beneficiary pursuant to Section 13.

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#### 15. USE OF FUNDS; INTEREST

All Contributions received or held by the Corporation under this Plan will be included in the general assets of the Corporation and may be used for any corporate purpose. Notwithstanding anything else contained herein to the contrary, no interest will be paid to any Participant or credited to his or her Account under this Plan (in respect of Account balances, refunds of Account balances, or otherwise).

#### 16. REPORTS

Statements shall be provided to Participants as soon as administratively practicable following each Exercise Date. Each Participant's statement shall set forth, as of such Exercise Date, that Participant's Account balance immediately prior to the exercise of his or her Option, the Option Price, the number of whole Shares purchased and his or her remaining Account balance, if any.

#### 17. ADJUSTMENTS OF AND CHANGES IN THE STOCK

Upon or in contemplation of any reclassification, recapitalization, stock split (including a stock split in the form of a stock dividend), or reverse stock split, any merger, combination, consolidation, or other reorganization, any split-up, spin-off, or similar extraordinary dividend distribution in respect of the Common Stock (whether in the form of securities or property), any exchange of Common Stock or other securities of the Corporation, any similar, unusual or extraordinary corporate transaction in respect of the Common Stock, or any sale of substantially all the assets of the Corporation as an entirety occurs; the Committee shall, in such manner, to such extent (if any), and at such time as it deems appropriate and equitable in the circumstances:

- (a) proportionately adjust any or all of (i) the number and type of Shares or the number and type of other securities that thereafter may be made the subject of Options (including the specific maxima and numbers of Shares set forth elsewhere in this Plan), (ii) the number, amount and type of Shares (or other securities or property) subject to any or all outstanding Options, (iii) the Option Price of any or all outstanding Options, or (iv) the securities, cash or other property deliverable upon exercise of any outstanding Options; or
- (b) make provision for a cash payment or for the substitution or exchange of any or all outstanding Options for cash, securities or property to be delivered to the holders of any or all outstanding Options based upon the distribution or consideration payable to holders of the Common Stock upon or in respect of such event.

The Committee may adopt such valuation methodologies for outstanding Options as it deems reasonable in the event of a cash or property settlement and, without limitation on other methodologies, may base such settlement solely upon the excess (if any) of the amount payable upon or in respect of such event over the exercise or strike price of the Option.

In any of such events, the Committee may take such action sufficiently prior to such event to the extent that the Committee deems the action necessary to permit the Participant to realize the benefits intended to be conveyed with respect to the underlying shares in the same manner as is or will be available to stockholders generally.

#### 18. POSSIBLE EARLY TERMINATION OF PLAN AND OPTIONS

Upon a dissolution of the Corporation, or any other event described in Section 17 that the Corporation does not survive, the Plan and, if prior to the last day of an Offering Period, any outstanding Option granted with respect to that Offering Period shall terminate, subject to any provision that has been expressly made by the Board for the survival, substitution, assumption, exchange or other settlement of the Plan and Options. In the event a Participant's Option is terminated pursuant to this Section 18 without a provision having been made by the Board for a substitution, exchange or other settlement of the Option, such Participant's Account shall be paid to him or her in cash without interest.

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#### 19. TERM OF PLAN; AMENDMENT OR TERMINATION

- (a) This Plan shall be effective as of the Effective Date. No new Offering Periods shall commence on or after the day before the tenth anniversary of the Effective Date and this Plan shall terminate as of the later of (i) the tenth anniversary of the Effective Date and (ii) the Exercise Date of the last Offering Period commenced on or prior to the day before the tenth anniversary of the Effective Date, unless sooner terminated pursuant to Section 4, Section 18, or this Section 19.
- (b) The Board may, at any time, terminate or, from time to time, amend, modify or suspend this Plan, in whole or in part, without notice (including, without limitation, the limits of Sections 4(b) and 6(b)(ii)). Stockholder approval for any amendment or modification shall not be required, except to the extent required by applicable law or required under Section 423 of the Code in order to preserve the intended tax consequences of this Plan, or otherwise deemed necessary or advisable by the Board. No Options may be granted during any suspension of this Plan or after the termination of this Plan, but the Committee will retain jurisdiction as to Options then outstanding in accordance with the terms of this Plan. No amendment, modification, or termination pursuant to this Section 19(b) shall, without written consent of the Participant, affect in any manner materially adverse to the Participant any rights or benefits of such Participant or obligations of the Corporation under any Option granted under this Plan prior to the effective date of such change. Changes contemplated by Section 17 or Section 18 shall not be deemed to constitute changes or amendments requiring Participant consent. Notwithstanding the foregoing, the Committee shall have the right to designate from time to time the Subsidiaries whose employees may be eligible to participate in this Plan and such designation shall not constitute an amendment to this Plan requiring stockholder approval.

#### 20. NOTICES

All notices or other communications by a Participant to the Corporation contemplated by this Plan shall be deemed to have been duly given when received in the form and manner specified by the Committee (or its delegate) at the location, or by the person, designated by the Committee (or its delegate) for that purpose.

## 21. CONDITIONS UPON ISSUANCE OF SHARES

This Plan, the granting of Options under this Plan and the offer, issuance and delivery of Shares are subject to compliance with all applicable federal and state laws, rules and regulations (including but not limited to state and federal securities laws) and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Corporation, be necessary or advisable in connection therewith. The person acquiring any securities under this Plan will, if requested by the Corporation and as a condition precedent to the exercise of his or her Option, provide such assurances and representations to the Corporation as the Committee may deem necessary or desirable to assure compliance with all applicable legal and accounting requirements.

## 22. PLAN CONSTRUCTION

- (a) It is the intent of the Corporation that transactions involving Options under this Plan in the case of Participants who are or may be subject to the prohibitions of Section 16 of the Exchange Act satisfy the requirements for applicable exemptions under Rule 16 promulgated by the Commission under Section 16 of the Exchange Act so that such persons (unless they otherwise agree) will be entitled to the exemptive relief of Rule 16b-3 or other exemptive rules under Section 16 of the Exchange Act in respect of those transactions and will not be subject to avoidable liability thereunder.

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- (b) This Plan and Options are intended to qualify under Section 423 of the Code.
- (c) If any provision of this Plan or of any Option would otherwise frustrate or conflict with the intents expressed above, that provision to the extent possible shall be interpreted so as to avoid such conflict. If the conflict remains irreconcilable, the Committee may disregard the provision if it concludes that to do so furthers the interest of the Corporation and is consistent with the purposes of this Plan as to such persons in the circumstances.

## 23. EMPLOYEES' RIGHTS

- (a) Nothing in this Plan (or in any other documents related to this Plan) will confer upon any Eligible Employee or Participant any right to continue in the employ or other service of the Company, constitute any contract or agreement of employment or other service or effect an employee's status as an employee at will, or shall interfere in any way with the right of the Company to change such person's compensation or other benefits or to terminate his or her employment or other service with or without cause. Nothing contained in this Section 23(a), however, is intended to adversely affect any express independent right of any such person under a separate employment or service contract other than a Subscription Agreement.
- (b) No Participant or other person will have any right, title or interest in any fund or in any specific asset (including Shares) of the Company by reason of any Option hereunder. Neither the provisions of this Plan (or of any related documents), nor the creation or adoption of this Plan, nor any action taken pursuant to the provisions of this Plan will create, or be construed to create, a trust of any kind or a fiduciary relationship between the Company and any Participant or other person. To the extent that a Participant or other person acquires a right to receive payment pursuant to this Plan, such right will be no greater than the right of any unsecured general creditor of the Corporation. No special or separate reserve, fund or deposit will be made to assure any such payment.
- (c) A Participant will not be entitled to any privilege of stock ownership as to any Shares not actually delivered to and held of record by the Participant. No adjustment will be made for dividends or other rights as a stockholder for which a record date is prior to such date of delivery.

## 24. MISCELLANEOUS

- (a) This Plan, the Options, and related documents shall be governed by, and construed in accordance with, the laws of the State of Delaware. If any provision shall be held by a court of competent jurisdiction to be invalid and unenforceable, the remaining provisions of this Plan shall continue in effect.
- (b) Captions and headings are given to the sections of this Plan solely as a convenience to facilitate reference. Such captions and headings shall not be deemed in any way material or relevant to the construction of interpretation of this Plan or any provision hereof.
- (c) The adoption of this Plan shall not affect any other Company compensation or incentive plans in effect. Nothing in this Plan will limit or be deemed to limit the authority of the Board or Committee (i) to establish any other forms of incentives or compensation for employees of the Company (with or without reference to the Common Stock), or (ii) to grant or assume options (outside the scope of and in addition to those contemplated by this Plan) in connection with any proper corporate purpose, with respect to each of (i) and (ii), to the extent consistent with any other plan or authority.

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- (d) Benefits received by a Participant under an Option granted pursuant to this Plan shall not be deemed a part of the Participant's compensation for purposes of the determination of benefits under any other employee welfare or benefit plans or arrangements, if any, provided by the Company, except where the Committee or the Board expressly otherwise provides or authorizes in writing.

## 25. EFFECTIVE DATE

Notwithstanding anything else contained herein to the contrary, the effectiveness of this Plan is subject to the approval of this Plan by the stockholders of the Corporation within twelve months after the Effective Date. Notwithstanding anything else contained herein to the contrary, no Shares shall be issued or delivered under this Plan until such stockholder approval is obtained and, if such stockholder approval is not obtained within such twelve month period of time, all Contributions credited to a Participant's Account hereunder shall be refunded to such Participant (without interest) as soon as practicable after the end of such twelve month period.

## 26. TAX WITHHOLDING

Notwithstanding anything else contained in this Plan herein to the contrary, the Company may deduct from a Participant's Account balance as of an Exercise Date, before the exercise of the Participant's Option is given effect on such date, the amount of any taxes which the Company reasonably determines it may be required to withhold with respect to such exercise. In such event, the maximum number of whole Shares subject to such Option (subject to the other limits set forth in this Plan) shall be purchased at the Option Price with the balance of the Participant's Account (after reduction for the tax withholding amount).

Should the Company for any reason be unable, or elect not to, satisfy its tax withholding obligations in the manner described in the preceding paragraph with respect to a Participant's exercise of an Option, or should the Company reasonably determine that it has a tax withholding obligation with respect to a disposition of Shares acquired pursuant to the exercise of an Option prior to satisfaction of the holding period requirements of Section 423 of the Code, the Company shall have the right at its option to (i) require the Participant to pay or provide for payment of the amount of any taxes which the Company reasonably determines that it is required to withhold with respect to such

event or (ii) deduct from any amount otherwise payable to or for the account of the Participant the amount of any taxes which the Company reasonably determines that it is required to withhold with respect to such event.

**27. NOTICE OF SALE**

Any person who has acquired Shares under this Plan shall give prompt written notice to the Corporation of any sale or other transfer of the Shares if such sale or transfer occurs (i) within the two-year period after the Grant Date of the Offering Period with respect to which such Shares were acquired, or (ii) within the twelve month period after the Exercise Date of the Offering Period with respect to which such Shares were acquired.

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## Calculation of Filing Fee Table

S-8  
(Form Type)

**RED ROBIN GOURMET BURGERS, INC.**  
(Exact Name of Registrant as Specified in its Charter)

Table I: Newly Issued Securities

Security Type	Security Class Title <sup>(1)</sup>	Fee Calculation Rule	Amount Registered	Proposed Maximum Offering Price Per Share	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common stock, \$0.001 par value per share	Other <sup>(2)</sup>	369,035	\$7.18 <sup>(2)</sup>	\$2,649,671.30 <sup>(2)</sup>	\$110.20 per \$1,000,000	\$291.99
	Total Offering Amounts						\$291.99
	Total Fee Offsets						\$0.00
	Net Fee Due						\$291.99

- (1) Represents (i) 350,000 additional shares of common stock, par value \$0.001 per share (the “Common Stock”) of Red Robin Gourmet Burgers, Inc. (the “Company”) issuable under the Red Robin Gourmet Burgers, Inc. Amended and Restated Employee Stock Purchase Plan, as amended (the “ESPP”), and (ii) 19,035 shares of Common Stock that are reserved for issuance upon the vesting of restricted stock units granted to Sarah Mussetter, the Company’s Executive Vice President and Chief Legal Officer, as an inducement material to Ms. Mussetter’s appointment as described in the accompanying registration statement on Form S-8 (the “Inducement Grant”). Pursuant to Rule 416 of the Securities Act of 1933, as amended (the “Securities Act”), this registration statement on Form S-8 also includes additional shares of common stock in respect of the securities identified in the above table that may become issuable by reason of any stock dividend, stock split, recapitalization or similar adjustments.
- (2) Estimated in accordance with Rule 457(c) solely for purposes of calculating the registration fee. The maximum price per share of common stock and the maximum aggregate offering price are based on the average of the \$7.34 (high) and \$7.01 (low) sale price of the common stock as reported on The Nasdaq Stock Market LLC on 12/7/2022, which date is within five business days prior to filing this registration statement.