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

FORM 10-K
☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED January 3, 2021

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM ______________ TO _______________

Commission file number: 1-2207

THE WENDY’S COMPANY
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

One Dave Thomas Blvd.
Dublin, Ohio
(Address of principal executive offices)

38-0471180
(I.R.S. Employer Identification No.)

43017
(Zip Code)

Registrant’s telephone number, including area code: (614) 764-3100

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

<table>
<thead>
<tr>
<th>Title of each class</th>
<th>Trading Symbol(s)</th>
<th>Name of each exchange on which registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Stock, $.10 par value</td>
<td>WEN</td>
<td>The Nasdaq Stock Market LLC</td>
</tr>
</tbody>
</table>

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to file such files). Yes ☒ No ☐

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management’s assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of common equity held by non-affiliates of The Wendy’s Company as of June 26, 2020 was approximately $3,782.5 million. As of February 23, 2021, there were 223,841,105 shares of The Wendy’s Company common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

The information required by Part III of this Form 10-K, to the extent not set forth herein, is incorporated herein by reference from The Wendy’s Company’s definitive proxy statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after January 3, 2021.
# Table of Contents

## PART I

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Business</td>
<td>6</td>
</tr>
<tr>
<td>1A.</td>
<td>Risk Factors</td>
<td>15</td>
</tr>
<tr>
<td>1B.</td>
<td>Unresolved Staff Comments</td>
<td>30</td>
</tr>
<tr>
<td>2.</td>
<td>Properties</td>
<td>30</td>
</tr>
<tr>
<td>3.</td>
<td>Legal Proceedings</td>
<td>31</td>
</tr>
<tr>
<td>4.</td>
<td>Mine Safety Disclosures</td>
<td>31</td>
</tr>
</tbody>
</table>

## PART II

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</td>
<td>32</td>
</tr>
<tr>
<td>6.</td>
<td>Selected Financial Data</td>
<td>33</td>
</tr>
<tr>
<td>7.</td>
<td>Management’s Discussion and Analysis of Financial Condition and Results of Operations</td>
<td>35</td>
</tr>
<tr>
<td>7A.</td>
<td>Quantitative and Qualitative Disclosures About Market Risk</td>
<td>58</td>
</tr>
<tr>
<td>8.</td>
<td>Financial Statements and Supplementary Data</td>
<td>60</td>
</tr>
<tr>
<td>9.</td>
<td>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</td>
<td>122</td>
</tr>
<tr>
<td>9A.</td>
<td>Controls and Procedures</td>
<td>122</td>
</tr>
<tr>
<td>9B.</td>
<td>Other Information</td>
<td>124</td>
</tr>
</tbody>
</table>

## PART III

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>Directors, Executive Officers and Corporate Governance</td>
<td>124</td>
</tr>
<tr>
<td>11.</td>
<td>Executive Compensation</td>
<td>124</td>
</tr>
<tr>
<td>13.</td>
<td>Certain Relationships and Related Transactions, and Director Independence</td>
<td>124</td>
</tr>
<tr>
<td>14.</td>
<td>Principal Accountant Fees and Services</td>
<td>124</td>
</tr>
</tbody>
</table>

## PART IV

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.</td>
<td>Exhibits and Financial Statement Schedules</td>
<td>124</td>
</tr>
<tr>
<td>16.</td>
<td>Form 10-K Summary</td>
<td>129</td>
</tr>
</tbody>
</table>
PART I

Special Note Regarding Forward-Looking Statements and Projections

This Annual Report on Form 10-K and oral statements made from time to time by representatives of the Company may contain or incorporate by reference certain statements that are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 (the “Reform Act”). Generally, forward-looking statements include the words “may,” “believes,” “plans,” “expects,” “anticipates,” “intends,” “estimate,” “goal,” “upcoming,” “outlook,” “guidance” or the negation thereof, or similar expressions. In addition, all statements that address future operating, financial or business performance, strategies or initiatives, future efficiencies or savings, anticipated costs or charges, future capitalization, anticipated impacts of recent or pending investments or transactions and statements expressing general views about future results or brand health are forward-looking statements contained in the Reform Act. Our actual results, performance and achievements may differ materially from any future results, performance or achievements expressed or implied by our forward-looking statements. Many important factors could affect our future results and cause those results to differ materially from those expressed in or implied by our forward-looking statements. Such factors include, but are not limited to, the following:

- the disruption to our business from the novel coronavirus (COVID-19) pandemic and the impact of the pandemic on our results of operations, financial condition and prospects;
- the impact of competition or poor customer experiences at Wendy’s restaurants;
- economic disruptions, including in regions with a high concentration of Wendy’s restaurants;
- changes in discretionary consumer spending and consumer tastes and preferences;
- impacts to our corporate reputation or the value and perception of our brand;
- the effectiveness of our marketing and advertising programs and new product development;
- our ability to manage the accelerated impact of social media;
- our ability to protect our intellectual property;
- food safety events or health concerns involving our products;
- our ability to achieve our growth strategy through new restaurant development and our Image Activation program;
- our ability to effectively manage the acquisition and disposition of restaurants or successfully implement other strategic initiatives;
- risks associated with leasing and owning significant amounts of real estate, including environmental matters;
- our ability to achieve and maintain market share in the breakfast daypart;
- risks associated with our international operations, including our ability to execute our international growth strategy;
- changes in commodity and other operating costs;
- shortages or interruptions in the supply or distribution of our products and other risks associated with our independent supply chain purchasing co-op;
- the impact of increased labor costs or labor shortages;
- the continued succession and retention of key personnel and the effectiveness of our leadership structure;
• risks associated with our digital commerce strategy, platforms and technologies, including our ability to adapt to changes in industry trends and consumer preferences;

• our dependence on computer systems and information technology, including risks associated with the failure, misuse, interruption or breach of our systems or technology or other cyber incidents or deficiencies;

• risks associated with our securitized financing facility and other debt agreements, including compliance with operational and financial covenants, restrictions on our ability to raise additional capital, the impact of our overall debt levels and our ability to generate sufficient cash flow to meet our debt service obligations and operate our business;

• risks associated with our capital allocation policy, including the amount and timing of equity and debt repurchases and dividend payments;

• risks associated with complaints and litigation, compliance with legal and regulatory requirements and an increased focus on environmental, social and governance issues;

• risks associated with the availability and cost of insurance, changes in accounting standards, the recognition of impairment or other charges, the impact of realignment and reorganization initiatives, changes in tax rates or tax laws and fluctuations in foreign currency exchange rates;

• conditions beyond our control, such as adverse weather conditions, natural disasters, hostilities, social unrest, health epidemics or pandemics or other catastrophic events; and

• other risks and uncertainties referred to in this Annual Report on Form 10-K (see especially “Item 1A. Risk Factors” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations”) and in our other current and periodic filings with the Securities and Exchange Commission.

In addition to the factors described above, there are risks associated with our predominantly franchised business model that could impact our results, performance and achievements. Such risks include our ability to identify, attract and retain experienced and qualified franchisees and effectively manage the transfer of restaurants between and among franchisees, the business and financial health of franchisees, the ability of franchisees to meet their royalty, advertising, development, reimaging and other commitments, participation by franchisees in brand strategies and the fact that franchisees are independent third parties that own, operate and are responsible for overseeing the operations of their restaurants. Our predominantly franchised business model may also impact the ability of the Wendy’s system to effectively respond and adapt to market changes. Many of these risks have been or in the future may be heightened due to the business disruption and impact from the COVID-19 pandemic.

All future written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to above. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. We assume no obligation to update any forward-looking statements after the date of this Annual Report on Form 10-K as a result of new information, future events or developments, except as required by federal securities laws, although we may do so from time to time. We do not endorse any projections regarding future performance that may be made by third parties.

Explanatory Note

The Wendy’s Company (“The Wendy’s Company”) is the parent company of its 100% owned subsidiary holding company, Wendy’s Restaurants, LLC (“Wendy’s Restaurants”). Wendy’s Restaurants is the parent company of Wendy’s International, LLC (formerly known as Wendy’s International, Inc.). Wendy’s International, LLC is the indirect parent company of (1) Quality Is Our Recipe, LLC (“Quality”), which is the owner and franchisor of the Wendy’s® restaurant system in the United States and all international jurisdictions except for Canada, and (2) Wendy’s Restaurants of Canada Inc., which is the owner and franchisor of the Wendy’s restaurant system in Canada. As used in this report, unless the context requires otherwise, the term “Company” refers to The Wendy’s Company and its direct and indirect subsidiaries, and “Wendy’s” refers to Quality when the context relates to ownership of or franchising the Wendy’s restaurant system and to Wendy’s International, LLC when the context refers to the Wendy’s brand. References in this Annual Report on Form 10-K (the “Form 10-K”) to restaurants that we “own” or that are “Company-operated” include owned and leased restaurants.
Item 1. Business.

Company Overview

Wendy’s is primarily engaged in the business of operating, developing and franchising a system of distinctive quick-service restaurants serving high quality food. Wendy’s opened its first restaurant in Columbus, Ohio in 1969. Today, Wendy’s is the #2 quick-service restaurant company in the hamburger sandwich segment in the United States (the “U.S.”) based on traffic share*, and the third largest globally with 6,828 restaurants in the United States and 30 foreign countries and U.S. territories as of January 3, 2021. (*Based on The NPD Group CREST® data for the twelve months ended December 2020.)

At January 3, 2021, there were 5,881 Wendy’s restaurants in operation in the United States. Of these restaurants, 361 were operated by the Company and 5,520 were operated by a total of 228 franchisees. In addition, at January 3, 2021, there were 947 Wendy’s restaurants in operation in 30 foreign countries and U.S. territories, all of which were franchised.

The Company’s principal executive offices are located at One Dave Thomas Blvd., Dublin, Ohio 43017, and its telephone number is (614) 764-3100.

Corporate History

The Wendy’s Company’s corporate predecessor was incorporated in Ohio in 1929 and was reincorporated in Delaware in June 1994. Effective September 29, 2008, in conjunction with the Wendy’s Merger (as defined below), the Company’s corporate name was changed from Triarc Companies, Inc. to Wendy’s/Arby’s Group, Inc. (“Wendy’s/Arby’s”). Effective July 5, 2011, in connection with the Company’s sale of Arby’s Restaurant Group, Inc. (“Arby’s”), the Company’s corporate name was changed to The Wendy’s Company.

Merger with Wendy’s

On September 29, 2008, Triarc Companies, Inc. and Wendy’s International, Inc. completed their merger (the “Wendy’s Merger”) in an all-stock transaction in which Wendy’s shareholders received 4.25 shares of Wendy’s/Arby’s Class A common stock for each Wendy’s common share owned. In the Wendy’s Merger, approximately 377,000,000 shares of Wendy’s/Arby’s Class A common stock were issued to Wendy’s shareholders. In addition, effective on the date of the Wendy’s Merger, Wendy’s/Arby’s Class B common stock was converted into Class A common stock. In connection with the May 28, 2009 amendment and restatement of Wendy’s/Arby’s Certificate of Incorporation, Wendy’s/Arby’s Class A common stock was redesignated as “Common Stock.”

Sale of Arby’s

On July 4, 2011, the Company completed the sale of 100% of the common stock of Arby’s to ARG IH Corporation (“ARG”), a wholly-owned subsidiary of ARG Holding Corporation (“ARG Parent”), for $130.0 million in cash (subject to customary purchase price adjustments) and 18.5% of the common stock of ARG Parent (through which the Company indirectly retained an 18.5% interest in Arby’s). Our 18.5% equity interest was diluted to 12.3% on February 5, 2018, when a subsidiary of ARG Parent acquired Buffalo Wild Wings, Inc. As a result, our diluted ownership interest included both the Arby’s® and Buffalo Wild Wings® brands under the newly formed combined company, Inspire Brands, Inc. (“Inspire Brands”). On August 16, 2018, the Company sold its remaining 12.3% ownership interest to Inspire Brands for $450.0 million. (Arby’s is a registered trademark of Arby’s IP Holder, LLC and Buffalo Wild Wings is a registered trademark of Buffalo Wild Wings, Inc.)

Fiscal Year

The Company’s fiscal reporting periods consist of 52 or 53 weeks ending on the Sunday closest to December 31 and are referred to herein as (1) “the year ended January 3, 2021” or “2020,” which consisted of 53 weeks, (2) “the year ended December 29, 2019” or “2019,” which consisted of 52 weeks, and (3) “the year ended December 30, 2018” or “2018,” which consisted of 52 weeks.
Business Strategy

Wendy’s long-term growth opportunities include investing in accelerated global growth through (1) building our breakfast daypart, (2) continued implementation of consumer-facing digital platforms and technologies and (3) expanding the Company’s footprint through targeted U.S. expansion and accelerated international expansion through same-restaurant sales growth and new restaurant development. Wendy’s vision is to become the world’s most thriving and beloved restaurant brand.

Business Segments

The Company is comprised of the following segments: (1) Wendy’s U.S., (2) Wendy’s International and (3) Global Real Estate & Development. Wendy’s U.S. includes the operation and franchising of Wendy’s restaurants in the U.S. and derives its revenues from sales at Company-operated restaurants and royalties, fees and advertising fund collections from franchised restaurants. Wendy’s International includes the franchising of Wendy’s restaurants in countries and territories other than the U.S. and derives its revenues from royalties, fees and advertising fund collections from franchised restaurants. Global Real Estate & Development includes real estate activity for owned sites and sites leased from third parties, which are leased and/or subleased to franchisees, and also includes our share of the income of our Canadian restaurant real estate joint venture (“TimWen”). In addition, Global Real Estate & Development earns fees from facilitating franchisee-to-franchisee restaurant transfers (“Franchise Flips”) and providing other development-related services to franchisees. See Management’s Discussion and Analysis of Financial Condition and Results of Operations contained in Item 7 herein and Note 26 of the Financial Statements and Supplementary Data contained in Item 8 herein for segment financial information.

The Wendy’s Restaurant System

The revenues from our restaurant business are derived from two principal sources: (1) sales at Company-operated restaurants and (2) franchise-related revenues, including royalties, national advertising funds contributions, rents and franchise fees received from Wendy’s franchised restaurants. Company-operated restaurants comprised approximately 5% of the total Wendy’s system as of January 3, 2021.

Restaurant Openings and Closings

During 2020, Wendy’s opened seven new Company-operated restaurants and closed two generally underperforming Company-operated restaurants. During 2020, Wendy’s franchisees opened 140 new restaurants and closed 105 generally underperforming restaurants.

The following table sets forth the number of Wendy’s restaurants in operation at the beginning and end of each fiscal year from 2018 to 2020:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurants open at beginning of period</td>
<td>6,788</td>
<td>6,711</td>
<td>6,634</td>
</tr>
<tr>
<td>Restaurants opened during period</td>
<td>147</td>
<td>182</td>
<td>159</td>
</tr>
<tr>
<td>Restaurants closed during period</td>
<td>(107)</td>
<td>(105)</td>
<td>(82)</td>
</tr>
<tr>
<td>Restaurants open at end of period</td>
<td>6,828</td>
<td>6,788</td>
<td>6,711</td>
</tr>
</tbody>
</table>

Restaurant Operations

Each Wendy’s restaurant offers an extensive menu specializing in hamburger sandwiches and featuring filet of chicken breast sandwiches, which are prepared to order with the customer’s choice of condiments. Wendy’s menu also includes chicken nuggets, chili, french fries, baked potatoes, freshly prepared salads, soft drinks, Frosty® desserts and kids’ meals. In addition, Wendy’s restaurants sell a variety of promotional products on a limited time basis. In March 2020, Wendy’s entered the breakfast daypart across the U.S. system. Wendy’s breakfast menu features a variety of breakfast sandwiches, biscuits and croissants, sides such as seasoned potatoes, oatmeal bars and seasonal fruit, and a beverage platform that includes hot coffee, cold brew iced coffee and our vanilla and chocolate Frosty-ccino iced coffee.

Free-standing Wendy’s restaurants generally include a pick-up window in addition to a dining room. In each of 2018 and 2019, approximately two-thirds of sales at Company-operated restaurants occurred through the pick-up window. In 2020, pick-up window sales represented approximately 83% of sales at Company-operated restaurants, reflecting the impact of the COVID-19 pandemic.
Wendy’s strives to maintain quality and uniformity throughout all restaurants by publishing detailed specifications for food products, preparation and service, continual in-service training of employees, restaurant operational audits and field visits from Wendy’s supervisors. In the case of franchisees, field visits are made by Wendy’s personnel who review operations, including quality, service and cleanliness and make recommendations to assist in compliance with Wendy’s specifications.

**Supply Chain, Distribution and Purchasing**

As of January 3, 2021, three independent processors (five total production facilities) supplied all of the beef used by Wendy’s restaurants in the United States. In addition, six independent processors (14 total production facilities) supplied all of the chicken used by Wendy’s restaurants in the United States. In addition, there was one main in-line distributor of food, packaging and beverage products; excluding breads, that serviced approximately 67% of Wendy’s restaurants in the United States and four additional in-line distributors that, in the aggregate, serviced approximately 32% of Wendy’s restaurants in the United States. Except as discussed below, Wendy’s and its franchisees have not experienced any material shortages of food, equipment, fixtures or other products that are necessary to maintain restaurant operations, and Wendy’s anticipates no such shortages of products and believes that alternate suppliers and distribution sources are available. During 2020, the COVID-19 pandemic led to interruptions in the delivery of certain products to Wendy’s restaurants. For example, we experienced disruptions to our beef supply beginning in early May 2020 as beef suppliers across North America faced production challenges. As a result, some menu items were occasionally in short supply at some Wendy’s system restaurants. While we and our supply chain partners effectively managed through this disruption and the beef supply subsequently returned to normal levels across the Wendy’s system, there can be no assurances that we will not see similar disruptions in the future. Suppliers and distributors to the Wendy’s system must comply with United States Department of Agriculture (“USDA”) and United States Food and Drug Administration (“FDA”) regulations governing the manufacture, packaging, storage, distribution and sale of all food and packaging products.

Wendy’s has a purchasing co-op relationship structure with its franchisees that establishes Quality Supply Chain Co-op, Inc. (“QSCC”). QSCC manages, for the Wendy’s system in the United States and Canada, contracts for the purchase and distribution of food, proprietary paper, operating supplies and equipment under national agreements with pricing based upon total system volume. QSCC’s supply chain management facilitates the continuity of supply and provides consolidated purchasing efficiencies while monitoring and seeking to minimize possible obsolete inventory throughout the Wendy’s supply chain in the United States and Canada. Wendy’s and its franchisees pay sourcing fees to third-party vendors on certain products sourced by QSCC. Such sourcing fees are remitted by these vendors to QSCC and are the primary means of funding QSCC’s operations. Should QSCC’s sourcing fees exceed its expected needs, QSCC’s board of directors may return some or all of the excess to its members in the form of a patronage dividend.

Wendy’s does not sell food or restaurant supplies to its franchisees.

**Quality Assurance**

Wendy’s quality assurance program is designed to verify that the food products supplied to our restaurants are processed in a safe, sanitary environment and in compliance with our food safety and quality standards. Wendy’s quality assurance personnel conduct multiple sanitation and production audits throughout the year for all of our core menu product processing facilities, which include beef, chicken, pork, buns, french fries, Frosty® dessert ingredients and produce. Animal welfare audits are also conducted at all beef, chicken and pork facilities to confirm compliance with our required animal welfare and handling policies and procedures. In addition to our facility audit program, weekly samples of beef, chicken and other core menu products from our distribution centers are randomly sampled and analyzed by a third-party laboratory to test conformance to our quality specifications. Wendy’s representatives, including third party auditors, regularly conduct evaluations and inspections of all Company-operated and franchise restaurants to test conformance to our sanitation, food safety and operational requirements. Wendy’s has the right to terminate franchise agreements if franchisees fail to comply with quality standards. In response to the COVID-19 pandemic, we adapted and evolved certain of our audits which were traditionally conducted onsite, taking advantage of various virtual tools and resources to engage effectively with our suppliers. We also reviewed and reinforced our strict policies and procedures related to food safety procedures, personal hygiene standards, handwashing requirements and sanitation protocols through frequent communications and retraining, and instituted a brand standard that restaurant employees should wear a mask or face covering and service gloves while working, unless an exception applies.
**Information Technology**

Wendy’s relies on computer systems and information technology to conduct its business. Wendy’s utilizes both commercially available third-party software and proprietary software owned by the Company to run the point-of-sale and kitchen delivery functions and certain other consumer-facing and back-office functions in Wendy’s restaurants. Wendy’s has invested significant resources to focus on consumer-facing technology, including installing a single point-of-sale system for Wendy’s U.S. and Canadian restaurants, activating mobile ordering via Wendy’s mobile apps, launching the Wendy’s Rewards loyalty program and establishing delivery arrangements with third-party vendors for Wendy’s U.S. and Canadian restaurants. We believe our digital platforms are critical to creating a more seamless user experience, providing insights to enhance our relationship with customers and meeting consumer demand for customization, speed and convenience. In December 2019, Wendy’s implemented a plan to realign and reinvest resources in our IT organization to strengthen our ability to accelerate growth. We are partnering with a third-party global IT consultant on this new structure to leverage their global capabilities and enable a more seamless integration between our digital and corporate IT assets.

**Trademarks and Service Marks**

Wendy’s or its subsidiaries have registered certain trademarks and service marks in the United States Patent and Trademark Office and in international jurisdictions, some of which include Wendy’s®, Old Fashioned Hamburgers® and Quality Is Our Recipe®. Wendy’s believes that these and other related marks are of material importance to its business. Domestic trademarks and service marks have their next required maintenance filings at various times from 2021 to 2031 in order to keep such registrations in force, while international trademarks and service marks have various durations of ten to 15 years. Wendy’s generally intends to maintain and renew its trademarks and service mark registrations in accordance with applicable deadlines.

Wendy’s entered into an Assignment of Rights Agreement with the Company’s founder, Dave Thomas, and his wife dated as of November 5, 2000 (the “Assignment”). Wendy’s had used Mr. Thomas, who was Senior Chairman of the Board until his death on January 8, 2002, as a spokesperson and focal point for its products and services for many years. With the efforts and attributes of Mr. Thomas, Wendy’s has, through its extensive investment in the advertising and promotional use of Mr. Thomas’ name, likeness, image, voice, caricature, endorsement rights and photographs (the “Thomas Persona”), made the Thomas Persona well known in the United States and throughout North America and a valuable asset for both Wendy’s and Mr. Thomas’ estate. Under the terms of the Assignment, Wendy’s acquired the entire right, title, interest and ownership in and to the Thomas Persona, including the sole and exclusive right to commercially use the Thomas Persona.

**Research and Development**

New product development is important to the Wendy’s system. The Company believes that the development and testing of new and improved products is critical to increasing sales, attracting new customers and differentiating the Wendy’s brand from competitors. The Company maintains a state-of-the-art research and development facility that includes a sensory lab, analytical labs, culinary kitchens and a Wendy’s test kitchen. The Company employs a variety of professionals from the culinary and food science disciplines to bring new and improved products to market.

**Seasonality**

Wendy’s restaurant operations are moderately seasonal. Wendy’s average restaurant sales are normally higher during the summer months than during the winter months. Because our business is moderately seasonal, results for any quarter are not necessarily indicative of the results that may be achieved for any other quarter or for the full fiscal year.

**Competition**

Each Wendy’s restaurant is in competition with other food service operations within the same geographical area. The quick-service restaurant segment is highly competitive and includes well-established competitors. Wendy’s competes with other restaurant companies and food outlets, primarily through the quality, variety, convenience, price and value perception of food products offered. The number and location of restaurants, quality and speed of service, attractiveness of facilities, effectiveness of marketing and new product development by Wendy’s and its competitors are also important factors. The price charged for each menu item may vary from market to market (and within markets) depending on competitive pricing and the local cost structure. Wendy’s also competes within the food service industry and the quick-service restaurant sector for customers as well as for personnel, suitable real estate sites and qualified franchisees.
Wendy’s competitive position is differentiated by a focus on quality, its use of fresh, never frozen ground beef* and fresh-cut vegetables in the United States, Canada and certain other countries, its unique and diverse menu, its promotional products, its choice of condiments and the atmosphere and décor of its restaurants. (*Fresh beef available in the contiguous U.S., Alaska and Canada.) Wendy’s continues to implement its Image Activation program, which includes reimagining existing Wendy’s restaurants and building new Wendy’s restaurants with innovative exterior and interior restaurant designs, with plans for a significant number of new and reimaged restaurants in 2021 and beyond. The Image Activation program also differentiates the Company from its competitors by its emphasis on selection and performance of restaurant employees that provide friendly and engaged customer service in Wendy’s restaurants.

Many of the leading restaurant chains continue to focus on new restaurant development as one strategy to increase market share through increased consumer awareness and convenience. This results in increased competition for available development sites and higher development costs for those sites. Competitors also employ marketing strategies such as frequent use of price discounting, frequent promotions and heavy advertising expenditures. Continued price discounting, including the use of coupons and offers, in the quick-service restaurant industry and the emphasis on value menus could have an adverse impact on Wendy’s business.

Other restaurant chains have also competed by offering high quality sandwiches made with fresh ingredients and artisan breads, and there are several emerging restaurant chains featuring high quality food served at in-line locations. Several chains have also sought to compete by targeting certain consumer groups, such as capitalizing on trends toward certain types of diets or dietary preferences (e.g., plant-based food, alternative proteins, low carbohydrate, low trans-fat, gluten free or antibiotic free) by offering menu items that are promoted as being consistent with such diets.

Additional competitive pressures for prepared food purchases come from operators outside the restaurant industry. A number of major grocery chains offer fresh deli sandwiches and fully prepared food and meals to go as part of their deli sections. Some of these chains also have in-store cafes with service counters and tables where consumers can order and consume a full menu of items prepared especially for that portion of the operation. Additionally, convenience stores and retail outlets at gas stations frequently offer a wide variety of sandwiches and other foods.

Wendy’s also competes with grocery chains and other retail outlets that sell food to be prepared at home. Competition with these chains and other outlets has increased due to the gap between the price of food at home compared to the price of food purchased at restaurants.

Technology and delivery are becoming increasingly critical parts of the restaurant consumer experience. In the quick-service restaurant category, technology initiatives include mobile interactive technology for brand and menu search information, mobile ordering, mobile payment, mobile offers, customer loyalty and rewards programs and other self-service technologies. An increasing number of restaurant chains have also introduced or expanded their restaurant delivery arrangements as another strategy to increase market share. If our digital commerce platforms or third-party delivery providers do not meet customers’ expectations in terms of security, speed, cost, attractiveness or ease of use, customers may be less inclined to use those platforms or providers and our competitive position could be adversely impacted.

System Optimization

The Company’s system optimization initiative included a shift from Company-operated restaurants to franchised restaurants over time, through acquisitions and dispositions, as well as by facilitating Franchise Flips. During 2016, the Company completed the sale of 310 Company-operated restaurants to franchisees, which resulted in the completion of its plan to reduce its ongoing Company-operated restaurant ownership to approximately 5% of the total Wendy’s system.

While the Company has no plans to reduce its ownership below the approximately 5% level, it expects to continue to optimize the Wendy’s system by facilitating Franchise Flips, as well as evaluating strategic acquisitions of franchised restaurants and strategic dispositions of Company-operated restaurants to existing and new franchisees, to further strengthen the franchisee base, drive new restaurant development and accelerate adoption of Wendy’s Image Activation program. Wendy’s generally retains a right of first refusal in connection with any proposed sale or transfer of franchised restaurants.

During 2018, the Company sold three Company-operated restaurants to franchisees and acquired 16 Wendy’s restaurants from franchisees. During 2019, the Company acquired five Wendy’s restaurants from franchisees. No Company-operated restaurants were sold to franchisees during 2019. One Company-operated restaurant was sold to a franchisee during 2020. In addition, during 2020, 2019 and 2018, the Company facilitated Franchise Flips covering 54, 37 and 96 restaurants, respectively.
Franchising

As of January 3, 2021, 228 Wendy’s U.S. franchisees operated 5,520 franchised restaurants in 50 states and the District of Columbia, and 102 Wendy’s international franchisees operated 947 franchised restaurants in 30 foreign countries and U.S. territories.

U.S. Franchise Arrangements

The rights and obligations governing the majority of franchised restaurants operating in the United States are set forth in the Wendy’s current Unit Franchise Agreement (the “Current Franchise Agreement”) (non-traditional locations may operate under an amended agreement). This agreement provides the franchisee the right to construct, own and operate a Wendy’s restaurant upon a site accepted by Wendy’s and to use the Wendy’s system in connection with the operation of the restaurant at that site. The Current Franchise Agreement provides for a 20-year term and a ten-year renewal subject to certain conditions. The initial term may be extended up to 25 years and the renewal extended up to 20 years for qualifying restaurants under the new restaurant development incentive and reimage programs described below in “Franchise Development and Other Relationships”. Wendy’s has in the past franchised under different agreements on a multi-unit basis; however, Wendy’s now grants new Wendy’s franchises on a unit-by-unit basis.

The Current Franchise Agreement requires that the franchisee pay a monthly royalty of 4.0% of sales, as defined in the agreement, from the operation of the restaurant. The agreement also typically requires that the franchisee pay Wendy’s an initial technical assistance fee. In the United States, the standard technical assistance fee required under a newly executed Current Franchise Agreement is currently $50,000 for each new restaurant opened.

The technical assistance fee is used to defray some of the costs to Wendy’s for training, start-up and transitional services related to new and existing franchisees acquiring Company-operated restaurants and in the development and opening of new restaurants. In certain limited instances (such as a reduced franchise agreement term or other unique circumstances), Wendy’s may charge a reduced technical assistance fee or may waive the technical assistance fee. Wendy’s does not select or employ personnel on behalf of franchisees.

International Franchise Arrangements

Wendy’s Restaurants of Canada Inc. (“WROC”), a 100% owned subsidiary of Wendy’s, holds master franchise rights for Canada. The rights and obligations governing the majority of franchised restaurants operating in Canada are set forth in a Single Unit Sub-Franchise Agreement (the “Single Unit Sub-Franchise Agreement”). This document provides the franchisee the right to construct, own and operate a Wendy’s restaurant upon a site accepted by WROC and to use the Wendy’s system in connection with the operation of the restaurant at that site. The Single Unit Sub-Franchise Agreement provides for a 20-year term and a ten-year renewal subject to certain conditions. The sub-franchisee pays to WROC a monthly royalty of 4.0% of sales, as defined in the agreement, from the operation of the restaurant. The agreement also typically requires that the franchisee pay WROC an initial technical assistance fee. The standard technical assistance fee is currently C$50,000 for each new restaurant opened.

Franchisees who wish to operate Wendy’s restaurants outside of the United States and Canada enter into franchise or license agreements with Wendy’s that generally provide franchise rights for each restaurant for an initial term of ten years or 20 years, depending on the country, and typically include a ten-year renewal provision, subject to certain conditions. The agreements grant a license to the franchisee to use the Wendy’s trademarks and know-how in the operation of a Wendy’s restaurant at a specified location. Generally, the franchisee pays Wendy’s an initial technical assistance fee or other per restaurant fee and monthly fees based on a percentage of gross monthly sales of each restaurant. In certain foreign markets, Wendy’s may grant the franchisee exclusivity to develop a territory in exchange for the franchisee undertaking to develop a specified number of new Wendy’s restaurants in the territory based on a negotiated schedule. In these instances, the franchisee generally pays Wendy’s an upfront development fee, annual development fees or a per restaurant development fee. In certain circumstances, Wendy’s may grant a franchisee the right to sub-franchise in a stated territory, subject to certain conditions.

Franchise Development and Other Relationships

In addition to its franchise and license agreements, Wendy’s also enters into development and/or relationship agreements with certain franchisees. The development agreement provides the franchisee with the right to develop a specified number of new Wendy’s restaurants using the Image Activation program design within a stated, non-exclusive territory for a specified period, subject to the franchisee meeting interim new restaurant development requirements. The relationship agreement
addresses other aspects of the franchisor-franchisee relationship, such as restrictions on operating competing restaurants, participation in brand initiatives such as
the Image Activation program, employment of approved operators, confidentiality and restrictions on engaging in sale/leaseback or debt refinancing transactions without Wendy’s prior consent.

In order to promote new restaurant development, Wendy’s has an incentive program for franchisees that provides for technical assistance fee waivers and
reductions in royalty and national advertising payments for up to the first two years of operation for qualifying new restaurants opened prior to December 31, 2022.
In addition, Wendy’s has a restaurant development incentive program that provides for incremental reductions in royalty and national advertising payments for up
to the first two years of operation for qualifying new restaurants for existing franchisees that sign up for the program under a new development agreement, or
through an extension of their existing development agreement, and commit to incremental development of new Wendy’s restaurants. Under any extended
development agreements, franchisees are also eligible for technical assistance fee waivers for restaurants opened one year in advance of their original development
schedule so long as the restaurants are opened prior to December 31, 2022. Wendy’s also provides franchisees with the option of an early 20-year or 25-year
renewal of their franchise agreement upon completion of reimagining utilizing certain approved Image Activation reimage designs.

Franchised restaurants are required to be operated under uniform operating standards and specifications relating to the selection, quality and preparation of
menu items, signage, decor, equipment, uniforms, suppliers, maintenance and cleanliness of premises and customer service. Wendy’s monitors franchisee
operations and inspects restaurants periodically to ensure that required practices and procedures are being followed.

See Note 7 and Note 21 of the Financial Statements and Supplementary Data contained in Item 8 herein, and the information under “Item 7. Management’s
Discussion and Analysis of Financial Condition and Results of Operations” herein, for information regarding certain guarantee obligations, reserves, commitments
and contingencies involving franchisees.

Advertising and Marketing

In the United States and Canada, Wendy’s advertises nationally through national advertising funds on network and cable television programs, including
nationally televised events, and advertises locally primarily through regional network and cable television, radio and social media. Wendy’s maintains two national
advertising funds established to collect and administer funds contributed for use in advertising through television, radio, the Internet and a variety of promotional
campaigns, including the increasing use of social media. Separate national advertising funds are administered for Wendy’s United States and Canadian restaurant
locations. Contributions to the national advertising funds are required to be made by both Company-operated and franchised restaurants and are based on a
percentage of restaurant retail sales. In addition to the contributions to the national advertising funds, Wendy’s requires additional contributions to be made for both
Company-operated and franchised restaurants based on a percentage of restaurant retail sales for the purpose of local and regional advertising programs. Required
franchisee contributions to the national advertising funds and for local and regional advertising programs are governed by the Current Franchise Agreement in the
United States and by the Single Unit Sub-Franchise Agreement in Canada. Required contributions by Company-operated restaurants for advertising and
promotional programs are at the same percentage of retail sales as franchised restaurants within the Wendy’s system. As of January 3, 2021, the contribution rate
for U.S. restaurants was generally 3.5% of retail sales for national advertising and 0.5% of retail sales for local and regional advertising. As of January 3, 2021, the
contribution rate for Canadian restaurants was generally 3.0% of retail sales for national advertising and 1.0% of retail sales for local and regional advertising, with
the exception of Quebec, for which there is no national advertising contribution rate and the local and regional advertising contribution rate is 4.0% of retail sales.
See Note 24 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information regarding advertising.

Human Capital

At Wendy’s, our vision is to become the world’s most thriving and beloved restaurant brand and every day we strive to live our purpose of creating joy and
opportunity through food, family and community. Our restaurants, our food, and the value and service we provide to our customers are all integral, but ultimately it
is our people that help us deliver our brand promise of “Fast Food Done Right” every single day.

From day one, the Wendy’s business has always been of, for and about people. Respect, equity and fair treatment for our team members, franchisees, supplier
partners and vendors is a central part of our business. So is staying true to our values established by our founder Dave Thomas, which include Doing the Right
Thing, Treating People with Respect and Giving Something Back. We strive to bring those values to life through daily interactions with our team members and
customers and in the communities where we do business. We also continue to invest in our people to ensure we are able to attract, hire and retain great talent
throughout our organization. We measure our effectiveness in these areas using various tools and metrics,
including administering an employee engagement survey twice a year and tracking our employee turnover rates compared to others in the restaurant industry. During 2020, we continued to outperform our peer group benchmarks and we saw consistent progress in both increased employee engagement and lower turnover.

As of January 3, 2021, the Company was comprised of approximately 14,000 employees, of which approximately two-thirds were part-time, and one-third were full-time. The vast majority of our employees are located in the United States and work in our Company-operated restaurants within our Wendy’s U.S. business segment. Outside of our restaurants, our largest population of employees work in our field support organization or at our Restaurant Support Center in Dublin, Ohio. Our workforce represents nearly all demographics, with diversity in age, race, ethnicity, gender, gender identity and sexual orientation. Specifically, we have more women than men, more employees that identify as persons of color than white, and more employees under the age of 30 than any other age group.

**Diversity, Equity and Inclusion**

We believe our strategic focus on diversity, equity and inclusion (“DE&I”) helps the Company deliver on our values as well as support our financial performance and global growth strategy. Creating and fostering inclusive work environments and teams allows us to create an engaging and welcoming culture for our employees, which we believe positively affects the quality of products and experience we deliver to our customers.

Our DE&I strategy is built around three pillars. First, we seek to increase our knowledge and accountability to ensure we have a diverse and inclusive mindset. Next, we work to ensure our recruiting and hiring initiatives are reaching a broad audience, so that our workforce represents the communities in which we serve. Third, we strive to expand and develop a strong, diverse pipeline of talent by providing opportunities for growth and development at all levels of our organization. Our senior management and Board of Directors serve an integral role in our DE&I strategy, providing guidance and oversight.

We are fortunate to have several thriving Employee Resource Groups (“ERGs”), which are voluntary employee-led groups, each sponsored by a Wendy’s senior leadership team member. Our ERGs serve an important role in support of our DE&I strategy, creating forums for learning and inclusion, opportunities to celebrate different backgrounds, empowering employees to bring their authentic self to work, and creating leadership and professional development opportunities. Our ERGs focus on employees and allies who identify as Women (Women of Wendy’s), LGBTQ+ (WeQual), Military Veterans & Families (WeVets), Culturally Diverse (WCDN), Black (WeBERG) and Young Professional (WenGEN).

**Compensation and Benefits**

We are committed to providing market-competitive and equitable pay and benefits to attract and retain great talent. We enable this by benchmarking and analyzing pay and benefits both externally and internally. In addition to competitive hourly rates and base salaries, all general managers and district managers of our Company-operated restaurants are eligible for performance-based cash incentive bonuses, along with all corporate management staff. For our restaurant-level employees, we offer the potential for raises at least twice annually based on individual performance reviews. At Wendy’s, we are committed to providing pay equity for all employees, regardless of gender or ethnicity.

We offer a robust set of benefits to help our employees and their families stay healthy and effectively manage spend related to health and financial well-being. This includes standard benefits, such as medical and prescription drug, dental and vision, 401(k) savings and retirement plans and health savings accounts. In addition, we provide access to our Employee Assistance Program, paid sick leave, paid parental leave and adoption benefits for all employees globally at all levels. For employees based in the U.S., we also provide telehealth visits at no cost to employees enrolled in a Wendy’s health care plan, and telehealth access at a discounted cost to all employees not enrolled in a Company health care plan.

**Safety and Well-Being**

We are committed to providing safe work environments and providing our employees with the resources they need to promote their well-being. Given the significant impact of the COVID-19 pandemic, 2020 presented a unique set of challenges. We took several actions during the year to support the safety and well-being of our employees, such as providing enhanced safety training and personal protective equipment (PPE), social distancing measures, the ability to take advantage of emergency paid sick leave, recognition pay for our front-line restaurant employees and protection of bonus payments for our restaurant General Managers and District Managers when the COVID-19 pandemic was impacting financial performance outside of the managers’ control.
Talent Development

To set our employees up for success and help them achieve their personal development needs and career growth, we invest in training and development programs at all levels within the Company. We also leverage annual processes that support individual performance planning, individual professional development planning and a broad review of talent throughout our organization. Restaurant-level employees take advantage of an extensive online learning curriculum, as well as hands-on training led by crew trainers, managers and field support staff. Restaurant managers and multi-unit operators participate in Wendy’s University, which includes targeted training to develop management and leadership skills. Wendy’s University also provides targeted programming for corporate management staff, including diversity training, people manager training, leadership dialogues and the opportunity to participate in third party conferences and training.

We also share information about our people and human capital initiatives on our website at www.wendys.com/what-we-value, in our annual Corporate Social Responsibility report and on The Square Deal™ Wendy’s Blog at www.squaredealblog.com. The contents of our website and these additional information sources are not incorporated by reference in this Form 10-K or any other report or document we file with the Securities and Exchange Commission.

Governmental Regulations

U.S. Operations

The Company and our franchisees are subject to various federal, state and local laws and regulations affecting the operation of our respective businesses, including laws and regulations relating to building and zoning, health, fire and safety, sanitation, food preparation, nutritional content and menu labeling, advertising, information security, privacy and consumer protection, as well as laws, regulations, recommendations and guidelines related to the COVID-19 pandemic. Each Wendy’s restaurant is subject to licensing and regulation by a number of governmental authorities in the state or municipality in which the restaurant is located. The Company is also subject to federal, state and local laws governing labor and employment matters, including minimum wage requirements, overtime and other working conditions, family leave and health care mandates, union organizing, work authorization requirements, insurance and workers’ compensation rules and anti-discrimination and anti-harassment laws applicable to Company employees, and our franchisees are subject to labor and employment laws with respect to their employees. Additionally, the Company and our franchisees are subject to the Americans with Disabilities Act and other similar laws that provide civil rights protections to individuals with disabilities in the context of public accommodations and other areas.

The Company’s franchising activities are subject to the rules and regulations of the Federal Trade Commission (the “FTC”) and various state laws regulating the offer and sale of franchises. The FTC requires that franchisors furnish a franchise disclosure document (“FDD”) containing certain information to prospective franchisees before the execution of a franchise agreement. Several states require registration and disclosure of the FDD in connection with franchise offers and sales and have laws regulating the franchisor-franchisee relationship. These state laws often limit, among other things, the duration and scope of non-competition provisions and the ability of franchisors to terminate franchise agreements or withhold consent to the renewal or transfer of franchise agreements. The Company believes that our FDD, together with applicable state versions or supplements, and franchising procedures comply in all material respects with the FTC’s franchise rules and applicable state franchise laws.

International Operations

Internationally, the Company and our franchisees are subject to national, provincial and local laws and regulations that often are similar to those impacting us and our franchisees in the U.S., including laws and regulations concerning franchises, labor and employment, building and zoning, health, fire and safety, sanitation, food preparation, nutritional content, menu labeling, advertising, information security, privacy and consumer protection, as well as laws, regulations, recommendations and guidelines related to the COVID-19 pandemic. Wendy’s restaurants outside the U.S. are also often subject to tariffs and regulations on imported commodities and equipment and laws regulating foreign investment, as well as anti-bribery and anti-corruption laws. The Company believes that our international franchise disclosure documents and franchising procedures comply in all material respects with the laws of the applicable countries.
Environmental Matters

The Company’s operations, including the selection and development of properties that we own or lease and any construction or improvements made at those properties, are subject to a variety of federal, state, local and international environmental laws and regulations, including laws and regulations concerning the storage, handling and disposal of hazardous or toxic substances. Our properties are sometimes located in developed commercial or industrial areas and might previously have been occupied by more environmentally significant operations, such as gas stations. Environmental laws and regulations sometimes require owners or operators of contaminated property to remediate that property, regardless of fault, and could give rise to significant fines, penalties and liabilities, as well as third-party claims. The Company believes that our restaurant operations comply substantially with all applicable environmental laws and regulations.

Legal Matters

The Company is involved in litigation and claims incidental to our business. We provide accruals for such litigation and claims when payment is probable and reasonably estimable. We believe we have adequate accruals for continuing operations for all of our legal and environmental matters. See Item 3 “Legal Proceedings” for additional information.

The Company does not believe that compliance with applicable laws and regulations, including environmental laws and regulations, or the outcome of any legal matters in which we are involved, will have a material adverse effect on our results of operations, financial condition, capital expenditures, earnings or competitive position. However, the Company cannot predict what laws or regulations will be enacted in the future or how existing or future laws or regulations will be administered or interpreted. See Item 1A “Risk Factors” for a discussion of certain risks relating to legal and regulatory requirements, litigation and claims and related matters affecting our business.

Available Information

We make our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to such reports, as well as our annual proxy statement, available, free of charge, on our Investor Relations website as soon as reasonably practicable after such reports are electronically filed with, or furnished to, the Securities and Exchange Commission. We also provide our Code of Business Conduct and Ethics, free of charge, on our website. Our corporate website address is www.wendys.com and our Investor Relations website address is www.irwendys.com. Information contained on those websites is not part of this Form 10-K.

Item 1A. Risk Factors.

We wish to caution readers that in addition to the important factors described elsewhere in this Form 10-K, we have included below certain material factors that have affected, or in the future could affect, our actual results and could cause our actual consolidated results during fiscal 2021, and beyond, to differ materially from those expressed in or implied by any forward-looking statements made by us or on our behalf.

Risks Related to Macroeconomic and Industry Conditions

The novel coronavirus (COVID-19) pandemic has disrupted and is expected to continue to disrupt our business, which has materially affected and could continue to materially affect our results of operations, financial condition and prospects for an extended period of time.

In March 2020, the World Health Organization declared the novel coronavirus (COVID-19) a global pandemic, and governmental authorities around the world implemented measures to reduce the spread of COVID-19. These measures adversely affected customers, workforces, economies and financial markets, and, along with decreased consumer spending, led to an economic downturn in many of our markets. Governmental restrictions and public perceptions of the risks associated with COVID-19 have caused consumers to avoid or limit travel, gatherings in public places and other social interactions, which has adversely affected, and could continue to adversely affect, our business.

In response to the COVID-19 pandemic, in March 2020, we updated our brand standard to include the closure of all dining rooms except where there were specific needs, or a drive-thru or pick-up window option was not available, subject to applicable federal, state and local requirements. Substantially all Wendy’s restaurants continued to offer drive-thru and delivery service to our customers. During the second quarter of 2020, we began implementing our restaurant and dining room reopening process through a phased approach in accordance with federal, state and local requirements, with customer and team member safety as
our top priority. Dining rooms have been re-opening at each restaurant owner’s discretion, subject to applicable regulatory restrictions. As of January 3, 2021, approximately 75% of dining rooms were open across the Wendy’s system offering carryout and, in some cases, dine in services. The COVID-19 pandemic has also resulted in the temporary closure of certain restaurants across the Wendy’s system. As of January 3, 2021, more than 99% of our global systemwide restaurants were operating.

As a result of the COVID-19 pandemic, our customer counts and systemwide sales have been significantly negatively impacted. Even as mobility continues to increase, customers have been and may continue to be reluctant to return to in-restaurant dining, and consumer spending may continue to be adversely impacted for an extended period of time as a result of decreased consumer confidence and the impact of lost wages due to increased unemployment. During the fourth quarter and full year of 2020, global same-restaurant sales increased 4.7% and 1.2%, respectively, primarily driven by the positive impact of our new breakfast daypart in the United States and higher average check, partially offset by a decline in customer counts.

The COVID-19 pandemic has also adversely affected new restaurant development and restaurant reimaging. Due to the uncertain and challenging economic and market conditions, we delayed construction of certain new Company-operated restaurants and reimaging of existing Company-operated restaurants and also extended the new restaurant development and Image Activation requirements of our franchisees by one year. These delays could affect our ability to drive future growth in our business.

The impact of the COVID-19 pandemic has had, and could continue to have, an adverse effect on our franchisees’ operations and financial condition. Following the onset of the pandemic, we took certain actions to support our franchisees, including extending payment terms for royalties, extending or abating payment terms for advertising fund contributions and offering to defer base rent payments on properties owned by the Company and leased to franchisees. To the extent our franchisees experience financial distress, including as a result of the COVID-19 pandemic, it could negatively affect our results of operations, cash flows and financial condition through delayed or reduced payments of royalties, advertising fund contributions or rent.

The COVID-19 pandemic led, and could again lead, to interruptions in the delivery of food or other supplies to Wendy’s restaurants arising from delays or restrictions on shipping or manufacturing, closures of supplier or distributor facilities or financial distress or insolvency of suppliers or distributors. These delays or interruptions could impact the availability of certain food items at Wendy’s restaurants, including beef, chicken, pork and other core menu products. For example, we experienced disruptions to our beef supply beginning in early May 2020 as beef suppliers across North America faced production challenges. As a result, some menu items were occasionally in short supply at some Wendy’s system restaurants. While we and our supply chain partners effectively managed through this disruption and the beef supply subsequently returned to normal levels across the Wendy’s system, there can be no assurances that we will not see similar disruptions in the future. Our results of operations and those of our franchisees could be adversely affected if our key suppliers or distributors are unable to fulfill their responsibilities and we are unable to identify alternative suppliers or distributors in a timely manner or effectively transition the impacted business to new suppliers or distributors.

The COVID-19 pandemic could also lead to labor shortages or increased labor costs. The risk or perceived risk of contracting the virus could adversely affect the ability or cost of adequately staffing restaurants, which could be exacerbated to the extent that the Company or franchisees have employees who test positive for the virus. If a significant percentage of our or our franchisees’ workforce is unable to work, whether because of illness, quarantine, travel limitations or other governmental actions or restrictions, our operations and the operations of our franchisees may be negatively impacted, which could materially affect our results of operations and financial condition. We took several actions to help support our employees and protect the health and safety of our employees and customers, such as implementing a new emergency sick leave policy, providing temporary wage increases to restaurant employees and purchasing additional sanitation supplies and personal protective materials, which contributed to increased operating costs.

The impacts from the COVID-19 pandemic could have a material adverse effect on our liquidity and capital resources. We currently believe we have the ability to pursue additional sources of liquidity if needed or desired to fund operating cash requirements or for other purposes. However, there can be no assurance that additional liquidity will be readily available or available on terms acceptable to us. If the disruptions caused by COVID-19 worsen, our ability to comply with certain debt covenants under our securitized financing facility could be adversely affected. Additionally, negative changes to our credit ratings due to the impact or expected impact of COVID-19 could have an adverse effect on our existing indebtedness, our ability to access additional capital, our cost of borrowing and our overall liquidity position and financial condition.
In addition to the risks described above, the COVID-19 pandemic has had, and could continue to have, the effect of heightening other risks disclosed in this risk factors section, including, but not limited to, risks related to competition, economic conditions and disruptions, brand value and perception, consumer preferences and spending, commodity costs, labor, supply chain and purchasing, new restaurant development and reimaging, performance of the breakfast daypart, franchisees, leasing and ownership of real estate, international operations, digital commerce and technology, cybersecurity, our securitized financing facility and levels of indebtedness, complaints or litigation, legal and regulatory requirements, impairment charges and payment of future dividends. We cannot predict the ultimate duration, scope or severity of the COVID-19 pandemic or its ultimate impact on our results of operations, financial condition and prospects.

**Competition from other restaurant companies, as well as grocery chains and other retail food outlets, or poor customer experience at Wendy’s restaurants, could hurt our brand.**

The market segments in which Wendy’s restaurants compete are highly competitive with respect to, among other things, price, food quality and presentation, service, location, convenience, and the nature and condition of the restaurant facility. If customers have a poor experience at a Wendy’s restaurant, whether at a Company-operated or franchised restaurant, we may experience a decrease in customer counts. Further, Wendy’s restaurants compete with a variety of locally owned restaurants, as well as competitive regional, national and global restaurant chains. Several of these chains compete by offering menu items that are targeted at certain consumer groups or dietary trends. Additionally, many of our competitors have introduced lower cost value meal menu options and have employed marketing strategies that include frequent use of price discounting (including through the use of coupons and other offers), frequent promotions and heavy advertising expenditures. Some of our competitors have substantially greater financial, marketing, personnel and other resources than we do, which may allow them to react to changes in pricing and marketing strategies better than we can and drive higher levels of brand awareness among consumers. This product and price competition could result in reduced revenues and loss of market share.

Moreover, new companies, including operators outside the quick-service restaurant industry, may enter market areas in which Wendy’s restaurants operate and target our customer base. For example, additional competitive pressures for prepared food purchases have come from deli sections and in-store cafes of a number of major grocery store chains, as well as from convenience stores and casual dining outlets. Such competitors may have, among other things, lower operating costs, better locations, better facilities, more effective marketing and more efficient operations. Wendy’s also competes with grocery chains and other retail outlets that sell food to be prepared at home. Competition with these chains and other outlets has increased due to the gap between the price of food prepared at home compared to the price of food purchased at restaurants. This increased product and price competition could put deflationary pressure on the selling price of products offered at Wendy’s restaurants. All such competition may adversely affect our brand, business, results of operations and financial condition.

**Disruptions in the national and global economies, or in regions that have a high concentration of Wendy’s restaurants, could adversely impact our business, results of operations and financial condition.**

Disruptions in the national and global economies could result in higher unemployment rates and declines in consumer confidence and spending. If such disruptions occur, they may result in significant declines in consumer food-away-from-home spending and customer counts in our restaurants and those of our franchisees. There can be no assurance that government responses to economic disruptions will restore consumer confidence. Ongoing disruptions in the national and global economies may adversely impact our business, results of operations and financial condition. Additionally, adverse economic conditions in regions that contain a high concentration of Wendy’s restaurants, including markets in which our Company-operated restaurants are located, could also have a material adverse impact on our results of operations.

**Changes in discretionary consumer spending, and in consumer tastes and preferences, could adversely affect our business, results of operations and financial condition.**

The success of the Wendy’s system depends to a significant extent on discretionary consumer spending, which is influenced by general economic conditions and the availability of discretionary income. Any material decline in the amount of discretionary spending or a decline in consumer food-away-from-home spending could hurt our business, results of operations and financial condition. Our success also depends to a large extent on continued consumer acceptance of our offerings, the success of our operating, promotional, marketing and new product development initiatives and the reputation of our brand. If we are unable to continue to achieve consumer acceptance or adapt to changes in consumer preferences, including with respect to nutrition, health or dietary trends or environmental or social concerns, Wendy’s restaurants may lose customers, and the resulting revenues from Company-operated restaurants and the royalties that we receive from franchisees may decline.
Risks Related to Brand Perception and Value

Our success depends substantially on our corporate reputation and on the value and perception of our brand.

Our success depends in large part upon our ability to maintain and enhance the value of our brand, our customers’ loyalty to our brand and a positive relationship with our franchisees and other business partners. Brand value is based in part on consumer perceptions on a variety of subjective qualities. Business incidents, whether isolated or recurring, and whether originating from us, our franchisees or our business partners, can significantly reduce brand value and consumer trust, particularly if the incidents receive considerable publicity or result in litigation. For example, our brand could be damaged by claims or perceptions about the quality or safety of our products or the quality or reputation of our franchisees or other business partners, regardless of whether such claims or perceptions are true. Our brand could also be adversely impacted by other incidents described in this risk factors section, including incidents related to customer service, customer health or safety, a failure to attract and retain qualified employees, food safety or other health concerns regarding our products, the impact of social media, data privacy violations, cyber incidents or reports of our employees, franchisees or business partners taking controversial positions or acting in an unethical, illegal or socially irresponsible manner. Any such incidents could cause a decline in consumer confidence in our brand and reduce consumer demand for our products, which could have a material adverse impact on our business, results of operations and financial condition.

Our results of operations depend in part on the effectiveness of our marketing and advertising programs and the successful development and launch of new products.

Our results of operations are heavily influenced by brand marketing and advertising and by our ability to develop and launch new and innovative products. Our marketing and advertising programs may not be successful or we may fail to develop commercially successful new products, which may impact our ability to attract new customers and retain existing customers, which, in turn, could materially and adversely affect our results of operations. Moreover, because franchisees contribute to advertising funds based on a percentage of gross sales at their franchise restaurants, advertising fund expenditures are dependent upon sales volumes across the Wendy’s system. If systemwide sales decline, this could result in a reduced amount of funds available for our marketing and advertising programs. In addition, to the extent we use value offerings or other promotions or discounts in our marketing and advertising programs to drive customer counts, these actions may condition our customers to resist higher menu prices or result in reduced demand for premium products.

Our inability or failure to recognize, respond to and effectively manage the accelerated impact of social media could adversely impact our brand, business and results of operations.

In recent years, there has been a significant increase in the use of social media platforms, including social media and news aggregation websites and other forms of internet-based communications that allow individuals access to a broad audience. The rising popularity of social media has increased the speed and accessibility of information dissemination and given users the ability to more effectively organize collective actions such as boycotts and other brand-damaging behaviors. The dissemination of information via social media, whether accurate or inaccurate, could harm our business, brand, reputation, results of operation and financial condition. This damage may be immediate, without an opportunity to correct inaccurate information or respond to or address particular issues. In addition, as part of our marketing efforts, we frequently use social media to communicate with consumers in order to build their awareness of, engagement with, and loyalty to us. Failure to use social media effectively or appropriately, particularly as compared to our competitors, could lead to a decline in brand value, customer visits and revenues. Laws and regulations governing the use of social media continue to rapidly evolve. A failure by us, our employees, our franchisees or third parties acting on our behalf to abide by applicable laws and regulations in the use of social media could adversely impact our reputation, brand, results of operations and financial condition or subject us to litigation, fines or other penalties. Social media risks could also arise from employees not following defined policies for the use of social media during business operations, or actions taken by employees during personal activities outside of their employment, but which could still reflect negatively on the Wendy’s brand.

We may be unable to adequately protect our intellectual property, which could harm the value of our brand and hurt our business.

Our intellectual property is material to the conduct of our business. We rely on a combination of trademarks, copyrights, service marks, trade secrets and similar intellectual property rights to protect our brand and other intellectual property. The success of our business strategy depends, in part, on our continued ability to use our trademarks and service marks to increase brand awareness and further develop our branded products in existing and new markets. If our efforts to protect our intellectual property are not adequate, or if any third party misappropriates, infringes, dilutes or otherwise violates our intellectual property,
the value of our brand may be harmed, which could have a material adverse effect on our business. While we try to ensure that the quality of our brand is maintained by all of our franchisees, we cannot ensure that franchisees will not take actions that hurt the value of our intellectual property or the reputation of the Wendy’s brand or restaurant system. Any damage or violation of our intellectual property could harm our image, brand or competitive position and, if we commence litigation to enforce our rights, cause us to incur significant legal fees and diversion of resources. Also, if we do not attempt or are unable to successfully protect, maintain or enforce our intellectual property rights, there could be a material adverse effect on our business or results of operations as a result of, among other things, consumer confusion, dilution of the Wendy’s brand or increased competition from unauthorized users of our brand.

We have registered certain trademarks and have other trademark registrations pending in the United States and certain foreign jurisdictions. Not all of the trademarks that are used in the Wendy’s system have been registered in all of the countries in which we do business or may do business in the future, and some trademarks will never be registered in all of these countries. Rights in trademarks are generally national in character and are obtained on a country-by-country basis by the first person to obtain protection through use or registration in that country in connection with specific products or services. Some countries’ laws do not protect unregistered trademarks at all, or make them more difficult to enforce, and third parties have filed, or may in the future file, for “Wendy’s” or similar marks. Accordingly, we may not be able to adequately protect the Wendy’s brand everywhere in the world and use of the Wendy’s brand may result in liability for trademark infringement, trademark dilution or unfair competition. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. We cannot ensure that all of the steps we have taken to protect our intellectual property in the United States and foreign countries will be adequate.

We cannot ensure that third parties will not bring infringement claims against us in the future. Any such claim, whether or not it has merit, could be time-consuming, cause delays in introducing new menu items, require costly modifications to advertising and promotional materials, harm our brand, image, competitive position or ability to expand our operations into other jurisdictions, cause us to incur significant costs related to defense or settlement or require us to enter into royalty or licensing agreements. As a result, any such claim could harm our business and adversely impact our results of operations and financial condition. In addition, third parties may assert that certain of our intellectual property, or our rights therein, are invalid or unenforceable. If our rights in any of our intellectual property were found to infringe third-party rights, or portions thereof were deemed invalid or unenforceable, we may be forced to defend or resolve related claims and incur related expenses. In addition, such loss of rights could permit competing uses of such intellectual property which, in turn, could harm our business and adversely impact our results of operations and financial condition.

Food safety events or health concerns regarding our products could create negative publicity and adversely affect our brand, business and results of operations.

Food safety is a top priority for Wendy’s, and we dedicate substantial resources to food safety matters to ensure our customers enjoy safe, quality food products. However, food safety events, including instances of food-borne illness (such as salmonella or E. coli), have occurred in the food industry in the past, and could occur in the future. Food safety events, whether or not involving Wendy’s restaurants or other restaurant companies, could adversely affect the price and availability of certain products and result in negative publicity for Wendy’s or the restaurant industry. This negative publicity may reduce demand for Wendy’s food and could result in a decrease in customer counts to Wendy’s restaurants as consumers shift their preferences to our competitors or to other products or food types. Any report linking our restaurants or suppliers to food-borne illnesses or food tampering, contamination, mislabeling or other food-safety issues could damage the value of our brand immediately and severely hurt sales of our products and possibly lead to product liability claims, litigation (including class actions) or other damages. The Wendy’s system may also be adversely impacted by consumer concerns regarding the nutritional aspects of the products we sell, the ingredients in our products or the cooking processes used in our restaurants. These or similar concerns could result in less demand for our products and a decline in sales at Company-operated restaurants and in royalties from sales at franchised restaurants.

Risks Related to Our Business Strategy

Our predominantly franchised business model presents a number of risks.

As of January 3, 2021, approximately 95% of restaurants in the Wendy’s system were operated by franchisees. Wendy’s franchisees are contractually obligated to operate their restaurants in accordance with the standards set forth in our franchise and other agreements with them. Wendy’s also provides training and support to franchisees. However, franchisees are independent third parties that we do not control, and franchisees own, operate and oversee the daily operations of their restaurants. Specifically, franchisees are solely responsible for developing and utilizing their own policies and procedures,
making their own hiring, firing and disciplinary decisions, scheduling hours and establishing wages, and managing their day-to-day employment processes and procedures, all of which is done independent of Wendy’s and in compliance with all applicable laws, rules or regulations. Further, franchisees have discretion as to the prices charged to customers. As a result, the ultimate success and quality of any franchise restaurant rests with the franchisee. If franchisees do not successfully operate their restaurants in a manner consistent with required standards, their royalty payments to us could be adversely affected and our brand’s image and reputation could be harmed, both of which in turn could hurt our business and results of operations. In addition, the failure of franchisees to adequately engage in succession planning may adversely affect their restaurant operations and development of new Wendy’s restaurants, which in turn could hurt our business and results of operations.

Wendy’s franchisees are an integral part of our business and growth strategy. We may be unable to successfully implement our growth strategies if franchisees do not participate in the implementation of those strategies. Our business and results of operations could be adversely affected if a significant number of franchisees do not participate in brand strategies, such as new restaurant development, Image Activation, digital commerce platforms and technologies and the execution of breakfast across the U.S. system, which in turn may harm our business and financial condition. In addition, Wendy’s current franchise model, and the way our brand strategies are executed across the system, may make it difficult for our brand to respond and adapt to the speed of change in technology, consumer preferences, the regulatory environment or other factors as quickly as may be required to maintain and grow market share and remain competitive. Certain of our competitors that have a significantly higher percentage of company-operated restaurants than we do may have greater influence over their respective restaurant systems and greater ability to implement operational initiatives and business strategies.

We receive revenues in the form of royalties and national advertising funds contributions (both of which are generally based on a percentage of sales at franchised restaurants), as well as rent and fees from franchisees. Accordingly, a substantial portion of our financial results is to a large extent dependent upon the operational and financial success of our franchisees. If sales trends or economic conditions worsen for franchisees, or if the overall business or financial health of franchisees deteriorates, their results of operations or financial condition may worsen and our royalty, national advertising funds, rent and other fee revenues may decline and our accounts receivable and related allowance for doubtful accounts may increase. Additionally, when Company-operated restaurants with leased real estate are sold to franchisees, we are often required to remain responsible for lease payments for these restaurants in the event the purchasing franchisees default on their leases. During periods of declining sales and profitability, the incidence of franchisee defaults for these lease payments may increase and we may be required to make payments and seek recourse against the franchisee. In addition, if franchisees fail to renew their franchise agreements or we are unable to identify, attract and retain new franchisees who meet our criteria, then our royalty revenues may decrease and our future growth could be adversely affected.

**The growth of our business is dependent on new restaurant openings, which could be affected by factors beyond our control.**

Our business derives earnings from sales at Company-operated restaurants as well as royalties and other fees received from franchised restaurants. Growth in our revenues and earnings is dependent on new restaurant openings. Numerous factors beyond our control may adversely affect new restaurant openings, which in turn could hurt our business and results of operations. These factors include, among others, (i) our ability to attract new franchisees; (ii) the availability of site locations for new restaurants; (iii) the ability of restaurant owners to obtain financing; (iv) the ability of restaurant owners to attract, train and retain qualified operating personnel; (v) construction and development costs, particularly in highly competitive markets; (vi) the ability of restaurant owners to secure required governmental approvals and permits in a timely manner, or at all; and (vii) adverse weather conditions. Our growth strategy also includes an increased focus on non-traditional development, such as fuel and transportation centers, food courts and other retail locations, military bases, dark kitchens and delivery-only locations. Our inability to identify suitable locations, achieve consumer acceptance or otherwise execute our non-traditional development strategy could have an adverse impact on our results of operation and financial condition.

**Our Image Activation program may not positively affect sales or improve our results of operations, and franchisees may not participate in our Image Activation program to the extent expected by us.**

We continue to implement our Image Activation program, which includes reimaging existing Wendy’s restaurants and building new Wendy’s restaurants with innovative exterior and interior restaurant designs. Our Image Activation program may not positively affect sales at Wendy’s restaurants or improve our results of operations. There can also be no assurance that franchisees will participate in the Image Activation program to the extent expected by the Company. In order to support our Image Activation program and promote new restaurant development, we have provided franchisees with certain incentive programs for qualifying new and reimaged restaurants, including reductions in royalty and national advertising payments and options for the early renewal of franchise agreements. It is possible we may provide additional financial incentives to
franchisees, which could result in additional expenses, a reduction of royalties or other revenues or the incurrence of other costs or liabilities, such as loan guarantees, interest rate subsidies or collectability of loans. Some franchisees may need to borrow funds in order to participate in the Image Activation program. If franchisees are unable to obtain financing at commercially reasonable rates, or at all, they may be unwilling or unable to invest in the reimaging of their existing restaurants or the development of new restaurants, and our future growth and results of operations could be adversely affected.

We may be unable to manage effectively the acquisition and disposition of restaurants, or successfully implement other strategic initiatives, which could adversely affect our business, results of operations and financial results.

We continue to optimize the Wendy’s system through our system optimization initiative, which includes facilitating the transfer of restaurants between and among franchisees, as well as evaluating strategic acquisitions of franchised restaurants and strategic dispositions of Company-operated restaurants to existing and new franchisees, to further strengthen the franchisee base, drive new restaurant development and accelerate adoption of our Image Activation program. The success of this initiative is dependent upon many factors, such as the availability of sellers and buyers, the availability of financing, the ability to negotiate transactions on terms deemed acceptable and the ability to successfully transition and integrate restaurant operations. Acquisitions of franchised restaurants pose various risks to our operations, including (i) diversion of management’s attention to the integration of acquired restaurant operations; (ii) increased operating expenses and the inability to achieve expected cost savings and operating efficiencies; (iii) exposure to liabilities arising out of prior operations of acquired restaurants; and (iv) the assumption of long-term, non-cancelable leases. Our system optimization initiative places demands on our operational and financial management resources and may require us to expand these resources. If we are unable to execute our system optimization initiative or effectively manage the acquisition and disposition of restaurants, our business and financial results could be adversely affected.

In addition, Wendy’s from time to time evaluates and may pursue other opportunities for growth through new and existing franchise partners, joint venture investments, expansion of our brand through other opportunities and strategic mergers, acquisitions and divestitures. These strategic initiatives involve various inherent risks, including, without limitation, general business risk, integration and synergy risk, market acceptance risk and risks associated with the potential distraction of management. Strategic transactions may not ultimately create value for us or our stockholders and may harm our reputation and materially adversely affect our business, results of operations and financial condition.

Our leasing and ownership of significant amounts of real estate exposes us to possible liabilities and losses, including liabilities associated with environmental matters.

We have significant real estate operations in connection with our business and are subject to all of the risks associated with leasing and owning real estate. Our real estate values and the costs associated with our real estate operations are impacted by a variety of factors, including changes in the investment climate for real estate, macroeconomic trends, governmental regulations, insurance, demographic trends, supply and demand for the ownership and operation of restaurants and environmental matters. A significant change in real estate values, or an increase in costs as result of any of these factors, could adversely affect our results of operations and financial condition.

We are subject to federal, state and local environmental, health and safety laws and regulations concerning the discharge, storage, handling, release and disposal of hazardous or toxic substances. These environmental laws provide for significant fines, penalties and liabilities, sometimes without regard to whether the owner, operator or occupant of the property knew of, or was responsible for, the release or presence of the hazardous or toxic substances. Third parties may also make claims against owners, operators or occupants of properties for personal injuries and property damage associated with releases of or exposure to such substances. A number of our restaurant sites were formerly gas stations or are adjacent to current or former gas stations or were used for other commercial activities that can create environmental impacts. We have not conducted a comprehensive environmental review of all of our properties and we may not have identified all of the potential environmental liabilities at our leased and owned properties, and any such liabilities identified in the future could cause us to incur significant costs, including costs associated with litigation, fines or clean-up responsibilities. We cannot predict the amount of future expenditures that may be required in order to comply with any environmental laws or regulations or to satisfy any such claims.

We generally secure long-term real estate interests for our leased restaurants and have limited flexibility to quickly alter our real estate portfolio. Many leases provide that the landlord may increase the rent over the term of the lease and any renewals of the term. Most leases require us to pay the costs of insurance, taxes, maintenance and utilities. We generally cannot cancel these leases prior to the expiration of their term. If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying rent for the balance of the lease term. In addition, as each lease expires, we may fail to negotiate additional renewals or renewal
options, either on commercially acceptable terms or at all, which could cause us to close restaurants in desirable locations, negatively impacting our results of operations.

The breakfast daypart is competitive across the restaurant industry and we may be unable to achieve or maintain market share or reach targeted levels of breakfast sales and profits.

Wendy’s entered the breakfast daypart across the U.S. system in March 2020. The Company and franchisee leadership worked closely to align on a breakfast program designed to drive incremental sales and profits through a strong economic model. However, we may be unable to achieve market share and reach targeted levels of breakfast sales and profits due to competitive pressures and responses from our competitors, some of whom are well-established in the breakfast daypart, or other factors, including operational complexity, food and labor costs, lack of consumer acceptance, discretionary spending patterns that differ from other dayparts and changes to customer mobility and daily routines, including as a result of the COVID-19 pandemic. In addition, breakfast sales could cannibalize sales during other parts of the day and may have negative impacts on restaurant margins. The continued active support and engagement of our franchisees is also critical for the successful performance of the breakfast daypart. The breakfast daypart may require significant financial resources, including the Company’s plans to fund incremental marketing and advertising campaigns. Our inability to successfully execute on our strategy for the breakfast daypart could have a material adverse impact on our business, results of operations and financial condition.

Our international operations are subject to various risks and uncertainties and there is no assurance that our international operations will be profitable.

In addition to many of the factors described in this risk factors section, our business outside of the United States is subject to a number of additional factors, including international economic and political conditions, risk of corruption and violations of the U.S. Foreign Corrupt Practices Act or similar laws of other countries, the inability to adapt to differing cultures or consumer preferences, inadequate brand infrastructure within foreign countries to support our international activities, inability to obtain adequate supplies meeting our quality standards and product specifications or interruptions in obtaining such supplies, challenges and risks associated with managing and monitoring suppliers, restrictions on our ability to move cash out of certain foreign countries, currency regulations and fluctuations, diverse government regulations and tax systems, uncertain or differing interpretations of rights and obligations in connection with international franchise agreements, the collection of royalties and other fees from international franchisees, the inability to protect technology, data or intellectual property rights, compliance with international privacy and information security laws and regulations, the availability and cost of land, construction costs, other legal, financial or regulatory impediments to the development or operation of new restaurants and the inability to identify, attract and retain experienced management, qualified franchisees and joint venture partners. Adverse conditions or unforeseen events in countries that contain a high concentration of Wendy’s restaurants (including Canada, our largest international market), could have a material adverse impact on our international growth strategy and results of operations. In addition, to the extent we invest in international Company-operated restaurants or joint ventures, we would also have the risk of operating losses related to those restaurants, which could adversely affect our results of operations and financial condition. There can be no assurance that our international growth strategy will be successful or that our international operations will be profitable.

As previously announced, Wendy’s intends to open Company-operated restaurants in the United Kingdom and, if successful, plans to expand into other anchor markets in Europe utilizing a franchise model. New markets may have low brand awareness as well as competitive conditions, consumer tastes, discretionary spending patterns and social and cultural differences that are more difficult to predict or satisfy than our existing markets. We may need to make greater investments than we originally planned in advertising and promotional activity to build brand awareness, which could negatively impact the profitability of our operations. In addition, we may be unable to obtain desirable locations for new restaurants at reasonable prices, or at all, and restaurants may have higher construction, occupancy, food and labor costs than we currently anticipate. Moreover, geopolitical risks, including the United Kingdom’s decision to leave the European Union, may result in increased regulatory complexities and economic uncertainty. Any of these risks and uncertainties, and other factors we cannot anticipate, could have a material adverse impact on our business, results of operations and financial condition.

Risks Related to Supply Chain and Labor

Changes in commodity costs and other operating costs could adversely affect our results of operations.

Our profitability depends in part on our ability to anticipate and react to changes in commodity costs (including beef, chicken, pork, cheese and grains), supplies, fuel, utilities, distribution and other operating costs. Increases in commodity costs, particularly beef or chicken prices, could adversely affect our future results of operations. Our business is susceptible to
increases in commodity and other operating costs as a result of various factors beyond our control, such as weather conditions and patterns, demand, food safety concerns, product recalls, federal ethanol policy, fuel costs and government regulations. Significant increases in expenses incurred by consumers, such as living expenses or gasoline prices, could also result in decreased customer counts at our restaurants, which could adversely affect our business. We cannot predict whether we will be able to anticipate and react to changing commodity costs by adjusting our purchasing practices and menu prices, and a failure to do so could adversely affect our results of operations. In addition, we may not seek to or be able to pass along price increases to our customers. If increased costs were passed to our customers, demand for our products may decrease, which in turn could adversely affect our results of operations.

Shortages or interruptions in the supply or distribution of perishable food products could damage our brand and adversely affect our business and results of operations.

Wendy’s and our franchisees are dependent on frequent deliveries of perishable food products that meet brand specifications. Shortages or interruptions in the supply of perishable food products caused by unanticipated demand, problems in production or distribution, disease or food-borne illnesses, political unrest, health epidemics or pandemics, inclement weather or other calamities or conditions could adversely affect the availability, quality and cost of ingredients, which could lower revenues, increase operating costs, damage brand reputation and otherwise harm our business and the businesses of our franchisees. Certain of the products sold in our restaurants, such as beef and chicken, are sourced from a limited number of suppliers, which may increase our reliance on those suppliers. In addition, our system relies on a limited number of in-line distributors to deliver certain food, packaging and beverage products to our restaurants. If a disruption of service from any of our key suppliers or distributors was to occur, we could experience short-term increases in our costs while supply and distribution channels were adjusted, and we may be unable to identify or negotiate with new suppliers or distributors on terms that are commercially reasonable to us. As discussed above, the COVID-19 pandemic led, and could again lead, to delays or interruptions in the delivery of food or other supplies to Wendy’s restaurants, which could impact the availability and cost of certain food items at Wendy’s restaurants.

We do not exercise ultimate control over purchasing for our restaurant system, which could harm our business, results of operations and financial condition.

While we require and seek to ensure that all suppliers to the Wendy’s system meet certain quality control standards, our franchisees ultimately control the purchasing of food, proprietary paper, equipment and other operating supplies from third party suppliers through QSCC, Wendy’s independent purchasing co-op. QSCC manages, for the Wendy’s system in the United States and Canada, contracts for the purchase and distribution of food, proprietary paper, equipment and other operating supplies under national agreements with pricing based on total system volume. We do not control the decisions and activities of QSCC. If QSCC does not properly estimate the product needs of the Wendy’s system, makes poor purchasing decisions or ceases its operations, or if our relationship with QSCC is terminated for any reason, system sales, operating costs and supply chain management could be adversely affected, which could harm our franchisees and have a material adverse impact on our business, results of operations and financial condition.

Our business could be hurt by increased labor costs or labor shortages.

Labor is a primary component in the cost of operating our restaurants. We devote significant resources to recruiting and training our managers and hourly employees. Increased labor costs due to competition, increased wages or employee benefits costs (including various federal, state and local actions to increase minimum wages), unionization activity or other factors would adversely impact our cost of sales and operating expenses. In addition, Wendy’s success depends on our ability to attract, motivate and retain qualified employees, including restaurant managers and staff as well as employees and key personnel at our restaurant support center, and our inability to do so could adversely affect our business and results of operations.

Our success depends in part upon the continued succession and retention of certain key personnel and the effectiveness of our leadership structure.

We believe that over time our success has been dependent to a significant extent upon the efforts and abilities of our senior leadership team and other key personnel. Our failure to retain members of our senior leadership team or other key personnel could adversely affect our ability to build on the efforts we have undertaken to increase the efficiency and performance of our business. In addition, changes to our leadership and organizational structure can be inherently difficult to manage, and if we are unable to implement any such changes effectively, our business, results of operations and financial results could be adversely affected.
Risks Related to Technology and Cybersecurity

There are risks and uncertainties associated with our increasing dependence on digital commerce platforms and technologies and alternative methods of delivery.

Advances in technologies, including advances in digital food ordering and delivery technologies, and changes in consumer behavior driven by such advances could have a negative effect on our business. Technology and consumer offerings continue to develop and evolve, and we expect that new and enhanced technologies and consumer offerings will be available in the future, including those with a focus on restaurant modernization, restaurant technology, digital engagement, online ordering and delivery. Our inability to predict consumer acceptance of new technology or our failure to adequately invest in new technology or adapt to technological developments and industry trends could result in a loss of customers and related market share. In addition, our competitors, some of whom have greater resources than we do, may be able to benefit from changes in technologies or consumer acceptance of such changes, which could harm our competitive position and brand.

An increasing amount of our sales and revenues is derived from digital orders, which includes online ordering and delivery. We have implemented technology and targeted advertising and promotions to support the growth of our digital business. If we are unable to continue to grow our digital business, it may be difficult for us to achieve our planned sales growth. If our digital commerce platforms, including the Wendy’s mobile app and online ordering system, do not meet customers’ expectations in terms of security, speed, attractiveness or ease of use, customers may be less inclined to return to those platforms, which could negatively impact our business, results of operations and financial condition. Our business could also be negatively impacted if we are unable to successfully implement or execute other consumer-facing digital initiatives, such as curbside pick-up and mobile carryout. We rely on third-party delivery services to fulfill delivery orders, and errors or failures by those providers to make timely deliveries could cause customers to stop ordering from us. The third-party restaurant delivery business is intensely competitive, with a number of companies competing for capital, market share, online traffic and delivery drivers. If the third-party delivery services that we utilize cease or curtail their operations, increase their fees or give greater priority or promotions on their platforms to our competitors, our delivery business and our sales may be negatively impacted. If we are unable to successfully respond to the challenges arising from our increased reliance on our digital business, this could have a material adverse impact on our brand, business, results of operations and financial condition.

We are heavily dependent on computer systems and information technology and any material failure, misuse, interruption or breach of our systems or technology could adversely affect our business, results of operations and financial condition.

We are heavily dependent on our computer systems and information technology to conduct our business, including point-of-sale processing in our restaurants, management of our supply chain, collection of cash, payment of obligations and various other processes and procedures. Our ability to efficiently manage our business depends significantly on the reliability and capacity of these systems and information technology. The failure of these systems and information technology to operate effectively, an interruption in such systems or technology or a breach in security of these systems could be harmful and cause delays in customer service, result in the loss of data, reduce efficiency or cause delays in operations. Significant capital investments might be required to remediate any such problems or to maintain or upgrade our computer systems and information technology or transition to replacement systems. Additionally, the success of certain of our strategic initiatives, including the expansion and acceleration of our consumer-facing digital capabilities to connect with customers and drive growth, is highly dependent on our technology systems. Any security breach involving our or our franchisees’ point-of-sale or other systems could result in a loss of consumer confidence and potential costs associated with fraud. Also, despite our considerable efforts and resources to secure our computer systems and information technology, security breaches, such as unauthorized access and computer viruses, may occur, resulting in system disruptions, shutdowns or unauthorized disclosure of confidential information, which in turn could adversely affect our business, results of operations and financial condition.

As previously announced, we have implemented a plan to realign and reinvest resources in our IT organization to strengthen our ability to accelerate growth. We are partnering with a third-party global IT consultant on this new structure to leverage their global capabilities and enable a more seamless integration between our digital and corporate IT assets. We are dependent to a significant extent on our ongoing relationship and engagement with the consultant, including their personnel and resources, technological expertise and ability to help execute our digital, restaurant technology and enterprise technology initiatives. The inability of us or the consultant to successfully execute our technology growth initiatives could have an adverse impact on our business, results of operations and financial condition.
The occurrence of cyber incidents, or a deficiency in cybersecurity, could negatively impact our brand, business, results of operations and financial condition.

A number of retailers and other companies have experienced serious cyber incidents and breaches of their information technology systems. As our reliance on technology has increased, so have the risks posed to our systems, both internal and those managed by third parties. Because we and our franchisees accept electronic forms of payment from customers, our business requires the collection and retention of customer data, including credit and debit card numbers and other personally identifiable information, in various information systems that we and our franchisees maintain and in those maintained by third parties with whom we and our franchisees contract to provide credit card processing and related services. We also maintain important internal data, such as personally identifiable information about our employees and franchisees and information relating to our operations. Our use of personally identifiable information is regulated by international, federal and state laws, as well as by certain third-party agreements. As privacy and information security laws and regulations change, we may incur additional costs to ensure that we remain in compliance with those laws and regulations. If our security and information systems are compromised or if our employees or franchisees fail to comply with these laws, regulations or contract terms, and this information is obtained by unauthorized persons or used inappropriately, it could adversely affect our reputation, disrupt our operations, damage our relationship with customers, franchisees or employees and result in costly litigation, judgments, or penalties resulting from violation of applicable laws and payment card industry regulations. A cyber incident could also require us to notify customers, employees or other groups, result in adverse publicity or a loss in consumer confidence, sales and profits, increase fees payable to third parties or cause us to incur penalties or remediation and other costs that could adversely affect our business, results of operations and financial condition. While we have implemented various processes, procedures and controls to help mitigate the risk of a cyber incident and maintain insurance coverage to address cyber incidents, these measures do not guarantee that a cyber incident could not occur or that our reputation and financial results will not be adversely affected by such an incident.

As previously reported, in 2015 and 2016, certain of our franchisees experienced cybersecurity incidents. As a result of those incidents, the Company was named as a defendant in separate class actions brought by consumers and financial institutions, and certain of our directors and executive officers were named as defendants in a shareholder derivative action. These civil proceedings sought damages and other relief allegedly arising from the cybersecurity incidents. In February 2019, the court granted final approval of the settlement of the consumer class action, and in November 2019, the court granted final approval of the settlement of the financial institutions class action. Both matters are now considered fully paid and closed. In January 2020, the court granted preliminary approval of the proposed settlement of the putative shareholder derivative action, which remains subject to certain notice and objection provisions and final court approval. These and any other claims or investigations related to cybersecurity incidents may adversely affect how we and our franchisees operate the business, divert the attention of management, have a negative effect on our reputation, and adversely affect our results of operations or financial condition.

Risks Related to Our Indebtedness

The Company and certain of our subsidiaries are subject to various restrictions, and substantially all of the assets of certain subsidiaries are security, under the terms of a securitized financing facility.

Wendy’s Funding, LLC, a limited-purpose, bankruptcy-remote, wholly owned indirect subsidiary of the Company, is the master issuer (the “Master Issuer”) of outstanding senior secured notes under a securitized financing facility entered into in June 2015. Under the facility, the Master Issuer issued and has outstanding certain series of fixed rate and variable funding notes (collectively, the “Senior Notes”). The Senior Notes are secured by a security interest in substantially all of the assets of the Master Issuer and certain other limited-purpose, bankruptcy-remote, wholly-owned indirect subsidiaries of the Company that act as guarantors (collectively, the “Securitization Entities”), except for certain real estate assets and subject to certain limitations as set forth in the indenture governing the Senior Notes (the “Indenture”) and the related guarantee and collateral agreement. The assets of the Securitization Entities include most of the domestic and certain of the international, federal and state laws, as well as by certain third-party agreements.

As previously reported, in 2015 and 2016, certain of our franchisees experienced cybersecurity incidents. As a result of those incidents, the Company was named as a defendant in separate class actions brought by consumers and financial institutions, and certain of our directors and executive officers were named as defendants in a shareholder derivative action. These civil proceedings sought damages and other relief allegedly arising from the cybersecurity incidents. In February 2019, the court granted final approval of the settlement of the consumer class action, and in November 2019, the court granted final approval of the settlement of the financial institutions class action. Both matters are now considered fully paid and closed. In January 2020, the court granted preliminary approval of the proposed settlement of the putative shareholder derivative action, which remains subject to certain notice and objection provisions and final court approval. These and any other claims or investigations related to cybersecurity incidents may adversely affect how we and our franchisees operate the business, divert the attention of management, have a negative effect on our reputation, and adversely affect our results of operations or financial condition.

Wendy’s Funding, LLC, a limited-purpose, bankruptcy-remote, wholly owned indirect subsidiary of the Company, is the master issuer (the “Master Issuer”) of outstanding senior secured notes under a securitized financing facility entered into in June 2015. Under the facility, the Master Issuer issued and has outstanding certain series of fixed rate and variable funding notes (collectively, the “Senior Notes”). The Senior Notes are secured by a security interest in substantially all of the assets of the Master Issuer and certain other limited-purpose, bankruptcy-remote, wholly-owned indirect subsidiaries of the Company that act as guarantors (collectively, the “Securitization Entities”), except for certain real estate assets and subject to certain limitations as set forth in the indenture governing the Senior Notes (the “Indenture”) and the related guarantee and collateral agreement. The assets of the Securitization Entities include most of the domestic and certain of the foreign revenue-generating assets of the Company and its subsidiaries, which principally consist of franchise-related agreements, certain Company-operated restaurants, intellectual property and license agreements for the use of intellectual property.

The Senior Notes are subject to a series of covenants and restrictions customary for transactions of this type, including (i) that the Master Issuer maintains specified reserve accounts to be used to make required payments in respect of the Senior Notes, (ii) provisions relating to optional and mandatory prepayments and the related payment of specified amounts, including specified make-whole payments under certain circumstances, (iii) certain indemnification payments in the event, among other things, the assets pledged as collateral for the Senior Notes are in stated ways defective or ineffective and (iv) covenants relating to recordkeeping, access to information and similar matters. The Senior Notes are subject to customary rapid
amortization events provided for in the Indenture, including events tied to failure to maintain stated debt service coverage ratios, the sum of global gross sales for specified restaurants being below certain levels on certain measurement dates, certain manager termination events, an event of default, and the failure to repay or refinance on the applicable scheduled maturity date. The Senior Notes are also subject to certain customary events of default, including events relating to non-payment of required interest, principal, or other amounts due on or with respect to the Senior Notes, failure to comply with covenants within certain time frames, certain bankruptcy events, breaches of specified representations and warranties, failure of security interests to be effective, and certain judgments. In the event that a rapid amortization event occurs under the Indenture (including, without limitation, upon an event of default under the Indenture or the failure to repay the securitized debt at the end of the applicable term), the funds available to the Company would be reduced or eliminated, which would in turn reduce our ability to operate or grow our business.

In addition, the Indenture and the related management agreement contain various covenants that limit the Company and its subsidiaries’ ability to engage in specified types of transactions, subject to certain exceptions, including, for example, to (i) incur or guarantee additional indebtedness, (ii) sell certain assets, (iii) create or incur liens on certain assets to secure indebtedness or (iv) consolidate, merge, sell or otherwise dispose of all or substantially all of their assets. As a result of these restrictions, the Company may not have adequate resources or flexibility to continue to manage the business and provide for growth of the Wendy’s system, which could have a material adverse effect on the Company’s future growth prospects, results of operations, financial condition and liquidity.

We have a significant amount of debt outstanding, and such indebtedness could adversely affect our business, results of operations and financial condition.

As of January 3, 2021, the Company had approximately $2.2 billion of outstanding debt on its balance sheet. Additionally, a subsidiary of the Company has issued variable funding notes, which allows for the borrowing of up to $250.0 million from time to time on a revolving basis. This level of debt could have significant consequences on the Company’s future operations, including: (i) making it more difficult to meet payment and other obligations under outstanding debt; (ii) resulting in an event of default if the Company’s subsidiaries fail to comply with the financial and other restrictive covenants contained in debt agreements, which event of default could result in all of the Company’s subsidiaries’ debt becoming immediately due and payable; (iii) reducing the availability of the Company’s cash flow to fund working capital, capital expenditures, equity and debt repurchases, dividends, acquisitions and other general corporate purposes, and limiting the Company’s ability to obtain additional financing for these purposes; (iv) subjecting the Company to the risk of increased sensitivity to interest rate increases on indebtedness with variable interest rates; (v) limiting the Company’s flexibility in planning for or reacting to, and increasing its vulnerability to, changes in the Company’s business, the industry in which it operates and the general economy; and (vi) placing the Company at a competitive disadvantage compared to its competitors that are less leveraged. Further, the Company’s outstanding variable funding notes may accrue interest based on the London interbank offered rate (“LIBOR”), which is expected to be discontinued after 2021. If LIBOR is discontinued, we may need to renegotiate certain loan documents and we cannot predict what alternative index would be negotiated with our lenders or the resulting impact on our interest expense.

The ability of the Company to make payments on, repay or refinance its debt, and any additional debt, and to fund planned capital expenditures, dividends and other cash needs will depend largely upon its future operating performance and ability to generate significant cash flows. In addition, the ability of the Company to borrow funds in the future to make payments on its debt will depend on the satisfaction of the covenants in the securitized financing facility and other debt agreements, and other agreements it may enter into in the future. Specifically, the Company will need to maintain specified financial ratios and satisfy financial condition tests. There can be no assurance that the Company’s business will generate sufficient cash flow from operations or that future borrowings will be available under the Company’s securitized financing facility or other debt agreements or from other sources in an amount sufficient to enable the Company to pay its debt or to fund its dividend and other liquidity needs. If the Company’s subsidiaries are not able to generate sufficient cash flow to service their debt obligations, they may need to refinance or restructure debt, sell assets, reduce or delay capital investments, or seek to raise additional capital. If the Company’s subsidiaries are unable to implement one or more of these alternatives, they may not be able to meet debt payment and other obligations.

In addition to the Company’s outstanding indebtedness, certain of the Company’s subsidiaries have significant contractual requirements for the purchase of soft drinks. If consumer preferences change and customers purchase fewer soft drinks than expected or estimated, such contractual commitments may adversely affect the financial condition of the Company. The Company has also provided loan guarantees to various lenders on behalf of franchisees entering into debt arrangements for new restaurant development and equipment financing. In addition, certain of the Company’s subsidiaries also guarantee or are contingently liable for certain leases of their respective franchisees for which they have been indemnified. These commitments,
guarantees and other liabilities could have an adverse effect on the Company’s liquidity and the ability of its subsidiaries to meet payment obligations.

The Company may incur additional indebtedness, guarantees, commitments or other liabilities in the future. If new debt, guarantees, commitments or other liabilities are added to the Company’s current consolidated debt levels, the related risks that the Company now faces could be amplified.

Risks Related to Our Common Stock

There can be no assurance regarding whether or to what extent we will pay dividends on our common stock in the future.

Holders of our common stock will only be entitled to receive such dividends as our Board of Directors may declare out of funds legally available for such payments. Any dividends will be made at the discretion of our Board of Directors and will depend on our earnings, financial condition, cash requirements and such other factors as the Board may deem relevant from time to time. In addition, because Wendy’s is a holding company, its ability to declare and pay dividends is dependent upon cash, cash equivalents and short-term investments on hand and cash flows from its subsidiaries. The ability of our subsidiaries to pay cash dividends to the holding company is dependent upon their ability to achieve sufficient cash flows after satisfying their respective cash requirements, including the requirements and restrictions under our securitized financing facility and other debt agreements.

A substantial amount of our common stock is concentrated in the hands of certain stockholders.

Nelson Peltz, our Chairman and former Chief Executive Officer, Peter May, our Vice Chairman and former President and Chief Operating Officer, Matthew Peltz, a director of the Company, and Edward Garden, a former director of the Company, beneficially own shares of our outstanding common stock that collectively constitute approximately 19% of the Company’s total voting power as of February 23, 2021. These individuals may, from time to time, acquire beneficial ownership of additional shares of common stock.

On December 1, 2011, the Company entered into an agreement (the “Trian Agreement”) with Messrs. N. Peltz, May and Garden, and several of their affiliates (the “Covered Persons”). Pursuant to the Trian Agreement, our Board of Directors, including a majority of the independent directors, approved, for purposes of Section 203 of the Delaware General Corporation Law, the Covered Persons becoming the owners (as defined in Section 203(c)(9)) of or acquiring an aggregate of up to (and including), but not more than, 32.5% (subject to certain adjustments set forth in the Trian Agreement) of the outstanding shares of the Company’s common stock, such that no such persons would be subject to the restrictions set forth in Section 203 solely as a result of such ownership. This concentration of ownership gives these individuals significant influence over the outcome of actions requiring stockholder approval, including the election of directors and the approval of mergers, consolidations and the sale of all or substantially all of the Company’s assets. They are also in a position to have significant influence to prevent or cause a change in control of the Company.

Our certificate of incorporation contains certain anti-takeover provisions and permits our Board of Directors to issue preferred stock without stockholder approval and limits our ability to raise capital from affiliates.

Certain provisions in our certificate of incorporation are intended to discourage or delay a hostile takeover of control of the Company. Our certificate of incorporation authorizes the issuance of shares of “blank check” preferred stock, which will have such designations, rights and preferences as may be determined from time to time by our Board of Directors. Accordingly, our Board of Directors is empowered, without stockholder approval, to issue preferred stock with dividend, liquidation, conversion, voting or other rights that could adversely affect the voting power and other rights of the holders of our common stock. The preferred stock could be used to discourage, delay or prevent a change in control of the Company that is determined by the Board of Directors to be undesirable. Our certificate of incorporation prohibits the issuance of preferred stock to affiliates, unless offered ratably to the holders of our common stock, subject to an exception in the event that the Company is in financial distress and the issuance is approved by the Audit Committee of our Board of Directors. This prohibition limits our ability to raise capital from affiliates.
General Business Risks

*Complaints or litigation could hurt our brand, business, results of operations and financial condition.*

Wendy’s customers may file from time to time complaints or lawsuits against us or our franchisees alleging that we are responsible for an illness or injury they suffered at or after a visit to a Wendy’s restaurant, or alleging that there was a problem with food quality or operations at a Wendy’s restaurant. We may also be subject to a variety of other claims arising in the ordinary course of our business, including personal injury claims, contract claims, claims from franchisees, intellectual property claims, data privacy claims and claims alleging violations of law regarding workplace and employment matters, discrimination and similar matters, including class action lawsuits. Regardless of whether any claims against us are valid or whether we are found to be liable, claims may be expensive to defend and may divert management’s attention away from operations, hurt our performance and have a negative impact on our brand. While we believe we have adequate accruals for all of our legal and environmental matters, we cannot estimate the aggregate possible range of loss for our existing litigation and claims due to most proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur, and significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions are thus inherently difficult. Insurance policies contain customary limitations, conditions and exclusions that can affect the amount of insurance proceeds ultimately received. A judgment significantly in excess of our insurance coverage for any claims could materially adversely affect our results of operations or financial condition. Additionally, the restaurant industry has been subject to a number of claims alleging that the menus and actions of restaurant chains have contributed to the obesity or otherwise adversely impacted the health of certain of their customers. Adverse publicity resulting from these allegations may harm the reputation of our restaurants, even if the allegations are not directed against our restaurants or are not valid. Moreover, complaints, litigation or adverse publicity experienced by one or more of our franchisees could also hurt our brand or business as a whole.

*Existing and changing legal and regulatory requirements, as well as an increasing focus on environmental, social and governance issues, could adversely affect our brand, business, results of operations and financial condition.*

Each Wendy’s restaurant is subject to licensing and regulation by health, sanitation, safety and other agencies in the state or municipality in which the restaurant is located, as well as to federal laws, rules and regulations and requirements of non-governmental entities such as payment card industry rules. State and local government authorities may enact laws, rules or regulations that impact restaurant operations and the cost of conducting those operations. There can be no assurance that we and our franchisees will not experience material difficulties or failures in obtaining the necessary licenses or approvals for new restaurants, which could delay the opening of such restaurants in the future. In addition, more stringent and varied requirements of local regulators with respect to tax, zoning, land use and environmental factors could delay or prevent development of new restaurants in particular locations.

We are subject to various laws and regulations that govern the offer and sale of a franchise, including rules by the U.S. Federal Trade Commission. Various state, provincial and foreign laws regulate certain aspects of the franchise relationship, including terminations and the refusal to renew franchises. The failure to comply with these laws and regulations in any jurisdiction or to obtain required government approvals could result in a ban or temporary suspension on future franchise sales, fines and penalties or require us to make offers of rescission or restitution, any of which could adversely affect our business and results of operations. We could also face lawsuits by franchisees based upon alleged violations of these laws. We and our franchisees are also subject to the Fair Labor Standards Act, which governs such matters as minimum wages, overtime and other working conditions, along with the ADA, family leave mandates and a variety of other state laws that govern these and other employment law matters. Changes in laws, rules, regulations and governmental policies could increase our costs, result in increased litigation, investigations, enforcement actions, fines or liabilities and adversely affect our business, results of operations and financial condition. The same consequences may result should any law, rule, regulation, governmental policy or judicial decision declare that Wendy’s is a joint employer with our franchisees. If we are unable to effectively manage the risks associated with our complex regulatory environment, it could have a material adverse effect on our business and financial condition.

We are also subject to legal and compliance risks and associated liability related to privacy and data collection, protection and management as it relates to information associated with our technology-related services and platforms made available to customers, employees, franchisees, business partners or other third parties. We are subject to a variety of U.S. federal and state foreign laws and regulations in this area. These laws and regulations have been subject to frequent change, and there may be jurisdictions that propose or enact new data privacy requirements in the future. Failure to meet applicable data privacy requirements could result in substantial penalties and materially adversely impact our financial results or brand perceptions. Additionally, changing laws and regulations could require us and our franchisees to change or limit the way we collect or use
information in operating our business, which may result in additional costs, limit our marketing or growth strategies and adversely affect our business and results of operations.

Additionally, there has been increasing public focus by investors, environmental activists, the media and governmental and nongovernmental organizations on social and environmental sustainability matters, including packaging and waste, animal health and welfare, human rights, climate change, carbon footprints and land, energy and water use. As a result, we have experienced increased pressure and expectations to make commitments, establish goals or set targets with respect to various environmental and social issues and to take the actions necessary to meet those commitments, goals and targets. If we are not effective in addressing social and environmental sustainability matters, consumer trust in our brand may suffer. In addition, the actions needed to achieve our sustainability goals could result in market, operational, execution and other costs, which could have a material adverse effect on our business and financial condition.

Our current insurance may not provide adequate levels of coverage against claims that have been or may be filed.

We currently maintain insurance that we believe to be adequate for businesses of our size and type. However, there are types of losses we could encounter that cannot be insured against or that we believe are not economically reasonable to insure, such as losses due to natural disasters or acts of terrorism. In addition, we currently self-insure a significant portion of expected losses under workers’ compensation, general liability, auto liability and property insurance programs. Unanticipated changes in the actuarial assumptions and management estimates underlying our reserves for these losses could result in materially different amounts of expense, which could harm our business and adversely affect our results of operations and financial condition. We also currently maintain insurance coverage to address cyber incidents. Applicable insurance policies contain customary limitations, conditions and exclusions, and there can be no assurance that our cyber insurance policies will cover substantially all of the costs and expenses related to any previous or future cyber incidents. In addition, our future insurance premiums may increase, and we may be unable to obtain similar levels of insurance on reasonable terms, or at all, due to challenging conditions in the insurance industry. Any inadequacy of, or inability to obtain, insurance coverage could have a material adverse effect on our results of operation and financial condition.

Changes in accounting standards, or the recognition of impairment or other charges, could adversely affect our future results of operations.

New accounting standards or changes in financial reporting requirements, accounting principles or practices, including with respect to our critical accounting estimates, could adversely affect our future results. We may also be affected by the nature and timing of decisions about underperforming markets or assets, including decisions that result in impairment or other charges that reduce our earnings. In assessing the recoverability of our long-lived assets, goodwill and intangible assets, we consider changes in economic conditions and make assumptions regarding estimated future cash flows and other factors. These estimates are highly subjective and can be significantly impacted by many factors such as business and economic conditions, operating costs, inflation, competition, consumer and demographic trends and restructuring activities. If our estimates or underlying assumptions change in the future, or if the operating performance or cash flows of our business decline, we may be required to record impairment charges, which could have a significant adverse effect on our reported results for the affected periods.

Tax matters, including changes in tax rates or laws, imposition of new taxes, disagreements with taxing authorities and unanticipated tax liabilities, could impact our results of operations and financial condition.

We are subject to income and other taxes in the United States and foreign jurisdictions, and our operations, plans and results are affected by tax matters and initiatives around the world. In particular, we are affected by the impact of changes to tax rates, laws or policies or related authoritative interpretations. We are also impacted by the settlement of adjustments proposed by taxing and governmental authorities in connection with our tax reviews and audits, all of which will depend on their timing, nature and scope. While we believe our recorded provision for income taxes properly reflects all applicable tax laws as currently enacted, there can be no assurance that we would be successful in challenging adjustments by the relevant tax authorities. Any significant increases in income tax rates, changes in income tax laws or unfavorable resolution of tax matters could have a material adverse impact on our results of operations and financial condition.

Our operations are subject to fluctuations in foreign currency exchange rates.

Most of our revenues, costs and indebtedness is denominated in U.S. dollars, which is also our reporting currency. Our international operations that are denominated in currencies other than the U.S. dollar are translated to U.S. dollars for our financial reporting purposes and are impacted by fluctuations in currency exchange rates and changes in currency regulations.
Our exposures to foreign currency risk are primarily related to fluctuations in the Canadian dollar relative to the U.S. dollar for our Canadian operations. Unfavorable currency fluctuations could reduce our royalty income and revenues. While we attempt to minimize our foreign currency risks, our risk management strategies may not be effective and our results of operations and financial condition could be adversely affected.

**Our operations are influenced by adverse weather conditions.**

Wendy’s restaurant operations are impacted by adverse weather conditions. Harsh weather conditions that keep customers from dining out can result in lost sales and revenues for our restaurants. For example, a heavy snowstorm in the Northeast or Midwest or a hurricane in the Southeast can shut down an entire metropolitan area, resulting in a reduction in sales in that area. Our first quarter includes winter months and historically has a lower level of sales at Company-operated restaurants. Because a significant portion of our restaurant operating costs is fixed or semi-fixed in nature, the loss of sales during these periods could hurt our operating margins and profits. For these reasons, quarter-to-quarter comparisons may not be a good indication of the Company’s performance or how we may perform in the future.

**Our results can be adversely affected by unforeseen events, such as natural disasters, hostilities, social unrest, health epidemics or pandemics or other catastrophic events.**

Unforeseen events, such as natural disasters, hostilities (including terrorist activities and public or workplace violence), social unrest, health epidemics or pandemics or other catastrophic events can adversely affect consumer spending, consumer confidence, restaurant sales and operations and our ability to perform corporate or support functions at our restaurant support center, any of which could affect our business, results of operations and financial condition.

**Item 1B. Unresolved Staff Comments.**

None.

**Item 2. Properties.**

We believe that our properties, taken as a whole, are generally well maintained and are adequate for our current and foreseeable business needs.

The following table contains information about our principal office facilities as of January 3, 2021:

<table>
<thead>
<tr>
<th>ACTIVE FACILITIES</th>
<th>FACILITIES LOCATION</th>
<th>LAND TITLE</th>
<th>APPROXIMATE SQ. FT. OF FLOOR SPACE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Headquarters</td>
<td>Dublin, Ohio</td>
<td>Owned</td>
<td>324,025 *</td>
</tr>
<tr>
<td>Wendy’s Restaurants of Canada Inc.</td>
<td>Burlington, Ontario, Canada</td>
<td>Leased</td>
<td>8,917 **</td>
</tr>
</tbody>
</table>

* QSCC, Wendy’s independent supply chain purchasing co-op, leases 14,493 square feet of this space from Wendy’s. The Corporate Headquarters serves all of our operating segments.

** The Wendy’s Restaurants of Canada Inc. facility primarily serves the International operating segment.

At January 3, 2021, Wendy’s and its franchisees operated 6,828 Wendy’s restaurants. Of the 361 Company-operated restaurants in the Wendy’s U.S. segment, Wendy’s owned the land and building for 142 restaurants, owned the building and held long-term land leases for 149 restaurants and held leases covering the land and building for 70 restaurants. Lease terms are generally initially between 15 and 20 years and, in most cases, provide for rent escalations and renewal options. Certain leases contain contingent rent provisions that require additional rental payments based upon restaurant sales volume in excess of specified amounts. As part of the Global Real Estate & Development segment, Wendy’s also owned 509 and leased 1,245 properties that were either leased or subleased principally to franchisees as of January 3, 2021. Surplus land and buildings are generally held for sale and are not material to our financial condition or results of operations.
Item 3. Legal Proceedings.

The Company is involved in litigation and claims incidental to our business. We provide accruals for such litigation and claims when payment is probable and reasonably estimable. The Company believes it has adequate accruals for continuing operations for all of its legal and environmental matters. We cannot estimate the aggregate possible range of loss for our existing litigation and claims for various reasons, including, but not limited to, many proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur and/or significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions is thus inherently difficult and future developments could cause these actions or claims, individually or in aggregate, to have a material adverse effect on the Company’s financial condition, results of operations, or cash flows of a particular reporting period.

Item 4. Mine Safety Disclosures.

Not applicable.
PART II

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

The Company’s common stock is traded on the Nasdaq Global Select Market (“Nasdaq”) under the symbol “WEN.”

The Company’s common stock is entitled to one vote per share on all matters on which stockholders are entitled to vote. The Company has no class of equity securities currently issued and outstanding except for its common stock. However, the Company is currently authorized to issue up to 100 million shares of preferred stock.

During the first three quarters of the 2019 fiscal year, the Company paid quarterly cash dividends of $0.10 per share of common stock. During the fourth quarter of the 2019 fiscal year, the Company paid a quarterly cash dividend of $0.12 per share of common stock. During the first quarter of the 2020 fiscal year, the Company paid quarterly cash dividends of $0.12 per share of common stock. During the second and third quarters of the 2020 fiscal year, the Company paid quarterly cash dividends of $0.05 per share of common stock. During the fourth quarter of 2020, the Company paid a quarterly cash dividend of $0.07 per share of common stock.

During the first quarter of 2021, the Company declared a dividend of $0.09 per share of common stock to be paid on March 15, 2021 to shareholders of record as of March 5, 2021. Although the Company currently intends to continue to declare and pay quarterly cash dividends, there can be no assurance that any additional quarterly cash dividends will be declared or paid or as to the amount or timing of such dividends, if any. Future dividend payments, if any, will be made at the discretion of our Board of Directors and will be based on such factors as the Company’s earnings, financial condition and cash requirements and other factors.

As of February 23, 2021, there were approximately 22,241 holders of record of the Company’s common stock.

The following table provides information with respect to repurchases of shares of our common stock by us and our “affiliated purchasers” (as defined in Rule 10b-18(a)(3) under the Exchange Act) during the fourth fiscal quarter of 2020:

<table>
<thead>
<tr>
<th>Issuer Repurchases of Equity Securities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Period</strong></td>
</tr>
<tr>
<td>September 28, 2020 through November 1, 2020</td>
</tr>
<tr>
<td>November 2, 2020 through November 29, 2020</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

(1) Includes 16,256 shares reacquired by the Company from holders of share-based awards to satisfy certain requirements associated with the vesting or exercise of the respective award. The shares were valued at the fair market value of the Company’s common stock on the vesting or exercise date of such awards, as set forth in the applicable plan document.

(2) In February 2020, our Board of Directors authorized the repurchase of up to $100.0 million of our common stock through February 28, 2021, when and if market conditions warranted and to the extent legally permissible. As previously announced, in March 2020, the Company temporarily suspended all share repurchase activity in connection with the Company’s response to the COVID-19 pandemic. In July 2020, our Board of Directors approved an extension of the February 2020 authorization by one year, through February 28, 2022, when and if market and economic conditions warrant and to the extent legally permissible. The Company resumed share repurchases in August 2020.
Subsequent to January 3, 2021 through February 23, 2021, the Company repurchased 0.5 million shares with an aggregate purchase price of $9.6 million, excluding commissions.

**Item 6. Selected Financial Data.**

The following selected financial data has been derived from our consolidated financial statements. The data set forth below should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and notes thereto.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales (3)</td>
<td>$722.8</td>
<td>$707.5</td>
<td>$651.6</td>
<td>$622.8</td>
<td>$920.8</td>
</tr>
<tr>
<td>Franchise royalty revenue and fees (3)</td>
<td>444.7</td>
<td>429.0</td>
<td>409.0</td>
<td>410.5</td>
<td>371.5</td>
</tr>
<tr>
<td>Franchise rental income (3) (4)</td>
<td>232.6</td>
<td>233.1</td>
<td>203.3</td>
<td>190.1</td>
<td>143.1</td>
</tr>
<tr>
<td>Advertising funds revenue</td>
<td>333.7</td>
<td>339.4</td>
<td>326.0</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Revenues</td>
<td>1,733.8</td>
<td>1,709.0</td>
<td>1,589.9</td>
<td>1,223.4</td>
<td>1,435.4</td>
</tr>
<tr>
<td>Cost of sales (3)</td>
<td>614.9</td>
<td>597.5</td>
<td>548.6</td>
<td>517.9</td>
<td>752.1</td>
</tr>
<tr>
<td>Advertising funds expense</td>
<td>345.4</td>
<td>338.1</td>
<td>321.9</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>System optimization (gains) losses, net (5)</td>
<td>(3.1)</td>
<td>(1.3)</td>
<td>(0.5)</td>
<td>39.1</td>
<td>(71.9)</td>
</tr>
<tr>
<td>Reorganization and realignment costs (6)</td>
<td>16.0</td>
<td>17.0</td>
<td>9.1</td>
<td>22.6</td>
<td>10.1</td>
</tr>
<tr>
<td>Impairment of long-lived assets (7)</td>
<td>8.0</td>
<td>7.0</td>
<td>4.7</td>
<td>4.1</td>
<td>16.2</td>
</tr>
<tr>
<td>Operating profit</td>
<td>269.3</td>
<td>262.6</td>
<td>249.9</td>
<td>214.8</td>
<td>314.8</td>
</tr>
<tr>
<td>Loss on early extinguishment of debt (8)</td>
<td>—</td>
<td>(8.5)</td>
<td>(11.5)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Investment (loss) income, net (9)</td>
<td>(0.2)</td>
<td>25.6</td>
<td>450.7</td>
<td>2.7</td>
<td>0.7</td>
</tr>
<tr>
<td>(Provision for) benefit from income taxes (10)</td>
<td>(35.0)</td>
<td>(34.6)</td>
<td>(114.8)</td>
<td>93.0</td>
<td>(72.1)</td>
</tr>
<tr>
<td>Net income</td>
<td>$117.8</td>
<td>$136.9</td>
<td>$460.1</td>
<td>$194.0</td>
<td>$129.6</td>
</tr>
<tr>
<td>Net income per share:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$.53</td>
<td>$.60</td>
<td>$1.93</td>
<td>$.79</td>
<td>$.49</td>
</tr>
<tr>
<td>Diluted</td>
<td>.52</td>
<td>.58</td>
<td>1.88</td>
<td>.77</td>
<td>.49</td>
</tr>
<tr>
<td>Dividends per share</td>
<td>$.29</td>
<td>$.42</td>
<td>$.34</td>
<td>$.28</td>
<td>$.245</td>
</tr>
<tr>
<td>Weighted average diluted shares outstanding</td>
<td>228.0</td>
<td>235.1</td>
<td>245.0</td>
<td>252.3</td>
<td>266.7</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>$284.4</td>
<td>$288.9</td>
<td>$224.2</td>
<td>$238.8</td>
<td>$193.8</td>
</tr>
<tr>
<td>Capital expenditures</td>
<td>69.0</td>
<td>74.5</td>
<td>69.9</td>
<td>81.7</td>
<td>150.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(In millions)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total assets (4)</td>
<td>$5,040.0</td>
<td>$4,994.5</td>
<td>$4,292.0</td>
<td>$4,096.9</td>
<td>$3,939.3</td>
</tr>
<tr>
<td>Long-term debt, including current portion</td>
<td>2,247.1</td>
<td>2,280.3</td>
<td>2,328.8</td>
<td>2,286.4</td>
<td>2,300.6</td>
</tr>
<tr>
<td>Finance lease liabilities, including current portion</td>
<td>518.2</td>
<td>491.9</td>
<td>455.6</td>
<td>468.0</td>
<td>211.7</td>
</tr>
<tr>
<td>Stockholders’ equity</td>
<td>549.6</td>
<td>516.4</td>
<td>648.4</td>
<td>573.2</td>
<td>527.7</td>
</tr>
</tbody>
</table>

(1) The Company’s fiscal reporting periods consist of 52 or 53 weeks ending on the Sunday closest to December 31 and are referred to herein as (1) “the year ended January 3, 2021” or “2021,” (2) “the year ended December 29, 2019” or “2019,” (3) “the year ended December 30, 2018” or “2018,” (4) “the year ended December 31, 2017” or “2017” and (5) “the year ended January 1, 2017” or “2016.” 2020 consisted of 53 weeks, while each of 2019, 2018, 2017 and 2016 consisted of 52 weeks.
(2) The Company applied the revenue recognition guidance effective at the beginning of 2018 using the modified retrospective method, whereby the cumulative effect of initially adopting the guidance was recognized as an adjustment to the opening balance of equity at January 1, 2018. Therefore, periods prior to 2018 do not reflect adjustments for the guidance and are not comparable.

(3) The decline in sales and cost of sales and the related increase in franchise royalty revenue and fees and franchise rental income during 2016 through 2017 is primarily a result of the sale of Wendy’s Company-operated restaurants to franchisees under our system optimization initiative, which began in 2013. As of January 1, 2017, the Company completed its plan to reduce its ongoing Company-operated restaurant ownership to approximately 5% of the total system.

(4) The Company adopted the new accounting guidance for leases during the first quarter of 2019 using the effective date as the date of initial application; therefore, periods prior to 2019 do not reflect adjustments for the guidance and are not comparable.

(5) System optimization (gains) losses, net includes all gains and losses recognized on dispositions of restaurants and other assets in connection with Wendy’s system optimization initiative. See Note 3 of the Financial Statements and Supplementary Data contained in Item 8 herein for further discussion.


(7) Impairment of long-lived assets primarily includes impairment charges on (1) restaurant-level assets resulting from the deterioration in operating performance of certain Company-operated restaurants, (2) restaurant-level assets resulting from the Company’s decision to lease and/or sublease properties to franchisees in connection with the sale or anticipated sale of Company-operated restaurants, including any subsequent lease modifications, and (3) restaurant-level assets resulting from the closing of Company-operated restaurants and classifying such surplus properties as held for sale. See Note 17 of the Financial Statements and Supplementary Data contained in Item 8 herein for further discussion.

(8) Loss on early extinguishment of debt primarily relates to refinancings, redemptions and repayments of long-term debt. See Note 12 of the Financial Statements and Supplementary Data contained in Item 8 herein for further discussion.

(9) Investment (loss) income, net includes (1) a cash settlement related to a previously held investment during 2019 and (2) the gain on sale of our remaining ownership interest in Inspire Brands, Inc. (“Inspire Brands”) (formerly Arby’s) during 2018. See Note 8 and Note 18 of the Financial Statements and Supplementary Data contained in Item 8 herein for further discussion.

(10) The benefit from income taxes in 2017 includes the impact of the Tax Cuts and Jobs Act. See Note 14 of the Financial Statements and Supplementary Data contained in Item 8 herein for further discussion.
Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

Introduction

This “Management’s Discussion and Analysis of Financial Condition and Results of Operations” of The Wendy’s Company (“The Wendy’s Company” and, together with its subsidiaries, the “Company,” “we,” “us,” or “our”) should be read in conjunction with the consolidated financial statements and the related notes that appear elsewhere within this report. Certain statements we make under this Item 7 constitute “forward-looking statements” under the Private Securities Litigation Reform Act of 1995. See “Special Note Regarding Forward-Looking Statements and Projections” in “Part I” preceding “Item 1 - Business.” You should consider our forward-looking statements in light of the risks discussed under the heading “Risk Factors” in Item 1A above, as well as our consolidated financial statements, related notes and other financial information appearing elsewhere in this report and our other filings with the Securities and Exchange Commission (the “SEC”).

The Wendy’s Company is the parent company of its 100% owned subsidiary holding company, Wendy’s Restaurants, LLC (“Wendy’s Restaurants”). The principal 100% owned subsidiary of Wendy’s Restaurants is Wendy’s International, LLC and its subsidiaries (“Wendy’s”). Wendy’s is primarily engaged in the business of operating, developing and franchising a system of distinctive quick-service restaurants serving high quality food. Wendy’s opened its first restaurant in Columbus, Ohio in 1969. Today, Wendy’s is the #2 quick-service restaurant company in the hamburger sandwich segment in the United States (the “U.S.”) based on traffic share*, and the third largest globally with 6,828 restaurants in the U.S and 30 foreign countries and U.S. territories as of January 3, 2021. (*Based on The NPD Group CREST® data for the twelve months ended December 2020.)

The Company is comprised of the following segments: (1) Wendy’s U.S., (2) Wendy’s International and (3) Global Real Estate & Development. Wendy’s U.S. includes the operation and franchising of Wendy’s restaurants in the U.S. and derives its revenues from sales at Company-operated restaurants and royalties, fees and advertising fund collections from franchised restaurants. Wendy’s International includes the franchising of Wendy’s restaurants in countries and territories other than the U.S. and derives its revenues from royalties, fees and advertising fund collections from franchised restaurants. Global Real Estate & Development includes real estate activity for owned sites and sites leased from third parties, which are leased and/or subleased to franchisees, and also includes our share of the income of our TimWen real estate joint venture. In addition, Global Real Estate & Development earns fees from facilitating franchisee-to-franchisee restaurant transfers (“Franchise Flips”) and providing other development-related services to franchisees. In this Item 7: “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” the Company reports on the segment profit for each of the three segments described above. The Company measures segment profit based on segment adjusted earnings before interest, taxes, depreciation and amortization (“EBITDA”). Segment adjusted EBITDA excludes certain unallocated general and administrative expenses and other items that vary from period to period without correlation to the Company’s core operating performance. See “Results of Operations” below and Note 26 of the Financial Statements and Supplementary Data contained in Item 8 herein for segment financial information.

The Company’s fiscal reporting periods consist of 52 or 53 weeks ending on the Sunday closest to December 31 and are referred to herein as (1) “the year ended January 3, 2021” or “2020,” which consisted of 53 weeks, (2) “the year ended December 29, 2019” or “2019,” which consisted of 52 weeks, and (3) “the year ended December 30, 2018” or “2018,” which consisted of 52 weeks. All references to years, quarters and months relate to fiscal periods rather than calendar periods.

We adopted the new accounting guidance for leases effective December 31, 2018, which had a material impact on our consolidated financial statements. Beginning with the first quarter of 2019, our financial condition and results of operations reflect adoption of this guidance; however, prior period results were not restated. See Note 1 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information.

Executive Overview

Our Business

As of January 3, 2021, the Wendy’s restaurant system was comprised of 6,828 restaurants, with 5,881 Wendy’s restaurants in operation in the U.S. Of the U.S. restaurants, 361 were operated by the Company and 5,520 were operated by a total of 228 franchisees. In addition, at January 3, 2021, there were 947 Wendy’s restaurants in operation in 30 foreign countries and U.S. territories, all of which were franchised.
The revenues from our restaurant business are derived from two principal sources: (1) sales at Company-operated restaurants and (2) franchise-related revenues, including royalties, national advertising funds contributions, rents and franchise fees received from Wendy’s franchised restaurants. Company-operated restaurants comprised approximately 5% of the total Wendy’s system as of January 3, 2021.

Wendy’s operating results are impacted by a number of external factors, including commodity costs, labor costs, intense price competition, unemployment and consumer spending levels, general economic and market trends and weather. The COVID-19 pandemic has had and may continue to have the effect of heightening the impact of many of these factors. See “Sales Trends and COVID-19 Update” below and “Special Note Regarding Forward-Looking Statements and Projections” in “Part I” preceding “Item 1 - Business” for additional information.

Wendy’s long-term growth opportunities include investing in accelerated global growth through (1) building our breakfast daypart, (2) continued implementation of consumer-facing digital platforms and technologies and (3) expanding the Company’s footprint through targeted U.S. expansion and accelerated international expansion through same-restaurant sales growth and new restaurant development, including the Company’s plan to open Company-operated restaurants in the United Kingdom (“U.K.”) in the first half of 2021.

**Key Business Measures**

We track our results of operations and manage our business using the following key business measures, which include non-GAAP financial measures:

- **Same-Restaurant Sales** - We report same-restaurant sales commencing after new restaurants have been open for 15 continuous months and as soon as reimaged restaurants reopen. Restaurants temporarily closed for more than one fiscal week are excluded from same-restaurant sales. Same-restaurant sales exclude the impact of the 53rd week of 2020. For 2020, same-restaurant sales compare the 52 weeks from December 30, 2019 through December 27, 2020 to the 52 weeks from December 31, 2018 through December 29, 2019. For fiscal 2021, same restaurant sales will compare the 52 weeks from January 4, 2021 through January 2, 2022 to the 52 weeks from January 6, 2020 through January 3, 2021. This methodology is consistent with the metric used by our management for internal reporting and analysis. The table summarizing same-restaurant sales below in “Results of Operations” provides the same-restaurant sales percent changes.

- **Restaurant Margin** - We define restaurant margin as sales from Company-operated restaurants less cost of sales divided by sales from Company-operated restaurants. Cost of sales includes food and paper, restaurant labor and occupancy, advertising and other operating costs. Restaurant margin is influenced by factors such as price increases, the effectiveness of our advertising and marketing initiatives, featured products, product mix, fluctuations in food and labor costs, restaurant openings, remodels and closures and the level of our fixed and semi-variable costs.

- **Systemwide Sales** - Systemwide sales is a non-GAAP financial measure, which includes sales by both Company-operated restaurants and franchised restaurants. Franchised restaurants’ sales are reported by our franchisees and represent their revenues from sales at franchised Wendy’s restaurants. The Company’s consolidated financial statements do not include sales by franchised restaurants to their customers. The Company’s royalty revenues are computed as percentages of sales made by Wendy’s franchisees. As a result, sales by Wendy’s franchisees have a direct effect on the Company’s royalty revenues and profitability.

- **Average Unit Volumes** - We calculate Company-operated restaurant average unit volumes by summing the average weekly sales of all Company-operated restaurants which reported sales during the week. Average unit volumes exclude the impact of the 53rd week of 2020. For 2020, average unit volumes are calculated using the 52 weeks from December 30, 2019 through December 27, 2020. Franchised restaurant average unit volumes is a non-GAAP financial measure, which includes sales by franchised restaurants, which are reported by our franchisees and represent their revenues from sales at franchised Wendy’s restaurants. The Company’s consolidated financial statements do not include sales by franchised restaurants to their customers. We calculate franchised restaurant average unit volumes by summing the average weekly sales of all franchised restaurants which reported sales during the week.
The Company calculates same-restaurant sales and systemwide sales growth on a constant currency basis. Constant currency results exclude the impact of foreign currency translation and are derived by translating current year results at prior year average exchange rates. The Company believes excluding the impact of foreign currency translation provides better year over year comparability.

Same-restaurant sales and systemwide sales exclude sales from Venezuela and, beginning in the third quarter of 2018, exclude sales from Argentina due to the highly inflationary economies of those countries. The Company considers economies that have had cumulative inflation in excess of 100% over a three-year period as highly inflationary.

The Company believes its presentation of same-restaurant sales, restaurant margin, systemwide sales and average unit volumes provide a meaningful perspective of the underlying operating performance of the Company’s current business and enables investors to better understand and evaluate the Company’s historical and prospective operating performance. The Company believes that these metrics are important supplemental measures of operating performance because they highlight trends in the Company’s business that may not otherwise be apparent when relying solely on GAAP financial measures. The Company believes investors, analysts and other interested parties use these metrics in evaluating issuers and that the presentation of these measures facilitates a comparative assessment of the Company’s operating performance. With respect to same-restaurant sales, systemwide sales and franchised restaurant average unit volumes, the Company also believes that the data is useful in assessing consumer demand for the Company’s products and the overall success of the Wendy’s brand.

The non-GAAP financial measures discussed above do not replace the presentation of the Company’s financial results in accordance with GAAP. Because all companies do not calculate non-GAAP financial measures in the same way, these measures as used by other companies may not be consistent with the way the Company calculates such measures.

Sales Trends and COVID-19 Update

On March 11, 2020, the World Health Organization declared the novel strain of coronavirus (COVID-19) a global pandemic and recommended containment and mitigation measures worldwide. We continue to monitor the dynamic nature of the COVID-19 pandemic on our business, results and financial condition; however, we cannot predict the ultimate duration, scope or severity of the COVID-19 pandemic or its ultimate impact on our results of operations, financial condition and prospects.

In response to the pandemic, in March 2020, Wendy’s updated its brand standard to include the closure of all dining rooms except where there were specific needs, or a drive-thru or pick-up window option was not available, subject to applicable federal, state and local requirements. Substantially all Wendy’s restaurants continued to offer drive-thru and delivery service to our customers.

During the second quarter of 2020, the Company began to implement its restaurant and dining room reopening process through a phased approach in accordance with federal, state and local requirements, with customer and team member safety as its top priority. Dining rooms have been re-opening at each restaurant owner’s discretion, subject to applicable regulatory restrictions. As of January 3, 2021, approximately 75% of dining rooms were open across the Wendy’s system offering carryout and, in some cases, dine in services.

The COVID-19 pandemic has resulted in the temporary closure of certain restaurants across the Wendy’s system. As of January 3, 2021, systemwide temporary restaurant closures totaled 17 and 45 in the U.S. and internationally, respectively, which represents less than 1% of all system restaurants.

The following table shows same-restaurant sales for the fiscal months of January through June and the third and fourth quarters of 2020:

<table>
<thead>
<tr>
<th>Same-restaurant sales:</th>
<th>January through February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>Third Quarter</th>
<th>Fourth Quarter (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. systemwide</td>
<td>3.7 %</td>
<td>(7.7)%</td>
<td>(14.0)%</td>
<td>(1.9)%</td>
<td>5.1 %</td>
<td>7.0 %</td>
<td>5.5 %</td>
</tr>
<tr>
<td>International</td>
<td>5.4 %</td>
<td>(17.0)%</td>
<td>(28.3)%</td>
<td>(15.7)%</td>
<td>(10.7)%</td>
<td>(2.1)%</td>
<td>(2.3)%</td>
</tr>
<tr>
<td>Global systemwide</td>
<td>3.9 %</td>
<td>(8.6)%</td>
<td>(15.3)%</td>
<td>(3.3)%</td>
<td>3.4 %</td>
<td>6.1 %</td>
<td>4.7 %</td>
</tr>
</tbody>
</table>


(a) Excludes the impact of the 53rd week in 2020.

As a result of the COVID-19 pandemic, global systemwide same-restaurant sales began to be materially adversely impacted in the fiscal month of March, with the fiscal month of April seeing the greatest impact. The decrease in same-restaurant sales was driven by a significant decline in customer count, partially offset by an increase in average check. Subsequently, global same-restaurant sales improved beginning in May, turned positive to 3.4% growth in June and increased 6.1% and 4.7% during the third and fourth quarters, respectively. Through the week ended February 21, 2021, U.S. and global systemwide same-restaurant sales increased approximately 6.0% and 5.0%, respectively. The improvement in same-restaurant sales since the lows seen in March and April has been primarily driven by a significant increase in customer counts since that time.

**Breakfast Launch**

Wendy’s long-term growth opportunities include investing in accelerated global growth, which includes building upon our breakfast daypart. Since the launch of breakfast across the U.S. system on March 2, 2020, same-restaurant sales have benefited from this new daypart, with breakfast contributing 6.2%, 6.4% and 6.3% to U.S. systemwide same-restaurant sales during the second, third and fourth quarters of 2020, respectively. The Company funded $14.6 million of incremental advertising to support the breakfast daypart during 2020.

**Digital**

Wendy’s long-term growth opportunities include accelerating same-restaurant sales through continued implementation of consumer-facing digital platforms and technologies. The Company has invested significant resources to focus on consumer-facing technology, including activating mobile ordering via Wendy’s mobile app, launching the Wendy’s Rewards loyalty program and establishing delivery agreements with third-party vendors for Wendy’s U.S. and Canadian restaurants. The Company’s digital business continues to grow and represented approximately 5% of U.S. systemwide sales during 2020, which is more than double the amount in 2019.

**Operations and Field Realignment**

In September 2020, the Company initiated a plan to reallocate resources to better support the long-term growth strategies for Company and franchise operations (the “Operations and Field Realignment Plan”). The Operations and Field Realignment Plan realigns the Company’s restaurant operations team, including transitioning from separate leaders of Company and franchise operations to a single leader of all U.S. restaurant operations. We also expect to incur contract termination charges, including the planned closure of certain field offices. The Company expects to incur total costs aggregating approximately $7.0 million to $9.0 million, of which approximately $6.5 million to $8.5 million will be cash expenditures, related to the Operations and Field Realignment Plan. Costs related to the Operations and Field Realignment Plan are recorded to “Reorganization and realignment costs.” During 2020, the Company recognized costs totaling $3.8 million, which primarily included severance and related employee costs and share-based compensation. The Company expects to incur additional costs aggregating approximately $3.0 million to $5.0 million, comprised primarily of third-party and other costs. The Company expects to recognize the majority of the remaining costs and make the majority of the remaining cash expenditures associated with the Operations and Field Realignment Plan during 2021.

**Information Technology (“IT”) Realignment**

In December 2019, our Board of Directors approved a plan to realign and reinvest resources in the Company’s IT organization to strengthen its ability to accelerate growth (the “IT Realignment Plan”). The Company has partnered with a third-party global IT consultant on this new structure to leverage their global capabilities, which will enable a more seamless integration between its digital and corporate IT assets. The IT Realignment Plan has reduced certain employee compensation and other related costs that the Company has reinvested back into IT to drive additional capabilities and capacity across all of its technology platforms. Additionally, in June 2020, the Company made changes to its leadership structure that included the elimination of the Chief Digital Experience Officer position and the creation of a Chief Information Officer position, for which the Company completed the hiring process in October 2020. Costs related to the IT Realignment Plan are recorded to “Reorganization and realignment costs.” During 2020 and 2019, the Company recognized costs totaling $7.3 million and $9.1 million, respectively, which primarily included third-party and other costs and recruitment and relocation costs in 2020 and severance and related employee costs and third-party and other costs in 2019. The Company does not expect to incur any material additional costs under the IT Realignment Plan.
NPC Quality Burgers, Inc. (“NPC”)

As previously announced, NPC, the Company’s largest franchisee, filed for chapter 11 bankruptcy in July 2020 and commenced a process to sell all or substantially all of its assets, including its interest in approximately 393 Wendy’s restaurants across eight different markets, pursuant to a court-approved auction process. On November 18, 2020, the Company submitted a consortium bid together with a group of pre-qualified franchisees to acquire NPC’s Wendy’s restaurants. Under the terms of the consortium bid, several existing and new franchisees would have been the ultimate purchasers of seven of the NPC markets, while the Company would have acquired one market.

On January 7, 2021, following a court-approved mediation process, NPC and certain affiliates of Flynn Restaurant Group (“FRG”) and the Company entered into separate asset purchase agreements under which all of NPC’s Wendy’s restaurants will be sold to Wendy’s approved franchisees. Under the proposed transaction, FRG will acquire approximately half of NPC’s Wendy’s restaurants in four markets, while several existing Wendy’s franchisees that were part of the Company’s consortium bid will acquire the other half of NPC’s Wendy’s restaurants in the other four markets. The Company does not expect to acquire and operate any restaurants as part of this transaction. The Company expects that the sale of the restaurants will be completed in the late first quarter or early second quarter of 2021, subject to the satisfaction of various closing conditions specified in the asset purchase agreements.
This section of this Form 10-K generally discusses 2020 and 2019 items and year-to-year comparisons between 2020 and 2019. For discussion related to 2018 items and year-to-year comparisons between 2019 and 2018 that are not included in this Form 10-K, please refer to Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations in our 2019 Form 10-K, filed with the United States Securities and Exchange Commission on February 26, 2020.

Results of Operations

The tables included throughout this Results of Operations section set forth in millions (except as otherwise indicated) the Company’s consolidated results of operations for the years ended January 3, 2021, December 29, 2019 and December 30, 2018. Except as noted below, the Company’s consolidated results of operations described below includes the benefit of the 53rd week in 2020.

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales</td>
<td>$722.8</td>
<td>$15.3</td>
<td>$707.5</td>
<td>$55.9</td>
<td>$651.6</td>
<td></td>
</tr>
<tr>
<td>Franchise royalty revenue and fees</td>
<td>444.7</td>
<td>15.7</td>
<td>429.0</td>
<td>20.0</td>
<td>409.0</td>
<td></td>
</tr>
<tr>
<td>Franchise rental income</td>
<td>232.6</td>
<td>(0.5)</td>
<td>233.1</td>
<td>29.8</td>
<td>203.3</td>
<td></td>
</tr>
<tr>
<td>Advertising funds revenue</td>
<td>333.7</td>
<td>(5.7)</td>
<td>339.4</td>
<td>13.4</td>
<td>326.0</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,733.8</td>
<td>24.8</td>
<td>1,709.0</td>
<td>119.1</td>
<td>1,589.9</td>
<td></td>
</tr>
<tr>
<td><strong>Costs and expenses:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of sales</td>
<td>614.9</td>
<td>17.4</td>
<td>597.5</td>
<td>48.9</td>
<td>548.6</td>
<td></td>
</tr>
<tr>
<td>Franchise support and other costs</td>
<td>26.5</td>
<td>(17.2)</td>
<td>43.7</td>
<td>18.5</td>
<td>25.2</td>
<td></td>
</tr>
<tr>
<td>Franchise rental expense</td>
<td>125.6</td>
<td>1.7</td>
<td>123.9</td>
<td>32.8</td>
<td>91.1</td>
<td></td>
</tr>
<tr>
<td>Advertising funds expense</td>
<td>345.4</td>
<td>7.3</td>
<td>338.1</td>
<td>16.2</td>
<td>321.9</td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>206.9</td>
<td>6.7</td>
<td>200.2</td>
<td>(17.3)</td>
<td>217.5</td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>132.8</td>
<td>1.1</td>
<td>131.7</td>
<td>2.8</td>
<td>128.9</td>
<td></td>
</tr>
<tr>
<td>System optimization gains, net</td>
<td>(3.1)</td>
<td>(1.8)</td>
<td>(1.3)</td>
<td>(0.8)</td>
<td>(0.5)</td>
<td></td>
</tr>
<tr>
<td>Reorganization and realignment costs</td>
<td>16.0</td>
<td>1.0</td>
<td>17.0</td>
<td>7.9</td>
<td>9.1</td>
<td></td>
</tr>
<tr>
<td>Impairment of long-lived assets</td>
<td>8.0</td>
<td>1.0</td>
<td>7.0</td>
<td>2.3</td>
<td>4.7</td>
<td></td>
</tr>
<tr>
<td>Other operating income, net</td>
<td>(8.5)</td>
<td>2.9</td>
<td>(11.4)</td>
<td>(4.9)</td>
<td>(6.5)</td>
<td></td>
</tr>
<tr>
<td><strong>Operating profit</strong></td>
<td>269.3</td>
<td>6.7</td>
<td>262.6</td>
<td>12.7</td>
<td>249.9</td>
<td></td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(117.7)</td>
<td>(1.7)</td>
<td>(116.0)</td>
<td>3.6</td>
<td>(119.6)</td>
<td></td>
</tr>
<tr>
<td>Loss on early extinguishment of debt</td>
<td>—</td>
<td>8.5</td>
<td>(8.5)</td>
<td>3.0</td>
<td>(11.5)</td>
<td></td>
</tr>
<tr>
<td>Investment (loss) income, net</td>
<td>(0.2)</td>
<td>(25.8)</td>
<td>25.6</td>
<td>(425.1)</td>
<td>450.7</td>
<td></td>
</tr>
<tr>
<td>Other income, net</td>
<td>1.4</td>
<td>(6.4)</td>
<td>7.8</td>
<td>2.4</td>
<td>5.4</td>
<td></td>
</tr>
<tr>
<td><strong>Income before income taxes</strong></td>
<td>152.8</td>
<td>(18.7)</td>
<td>171.5</td>
<td>(403.4)</td>
<td>574.9</td>
<td></td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>(35.0)</td>
<td>(0.4)</td>
<td>(34.6)</td>
<td>80.2</td>
<td>(114.8)</td>
<td></td>
</tr>
<tr>
<td><strong>Net income</strong></td>
<td>$117.8</td>
<td>(19.1)</td>
<td>$136.9</td>
<td>$323.2</td>
<td>$460.1</td>
<td></td>
</tr>
<tr>
<td>Key business measures:</td>
<td>2020</td>
<td>2019</td>
<td>2018</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>U.S. same-restaurant sales (a):</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Company-operated restaurants</td>
<td>(0.7)%</td>
<td>3.1%</td>
<td>1.3%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Franchised restaurants</td>
<td>2.3%</td>
<td>2.9%</td>
<td>0.5%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Systemwide</td>
<td>2.0%</td>
<td>2.9%</td>
<td>0.6%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>International same-restaurant sales (a) (b)</th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>(6.0)%</td>
<td>3.2%</td>
<td>4.7%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Global same-restaurant sales (a):</th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company-operated restaurants (0.7)%</td>
<td>3.1%</td>
<td>1.3%</td>
<td></td>
</tr>
<tr>
<td>Franchised restaurants (b)</td>
<td>1.4%</td>
<td>2.9%</td>
<td>1.0%</td>
</tr>
<tr>
<td>Systemwide (b)</td>
<td>1.2%</td>
<td>2.9%</td>
<td>1.0%</td>
</tr>
</tbody>
</table>

(a) Excludes the impact of the 53rd week in 2020.

(b) Includes international franchised restaurants same-restaurant sales (excluding Venezuela, and excluding Argentina beginning in the third quarter of 2018, due to the impact of the highly inflationary economies of those countries).
Key business measures (continued):

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Systemwide sales:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Company-operated</td>
<td>$722.8</td>
<td>$707.5</td>
<td>$651.6</td>
</tr>
<tr>
<td>U.S. franchised</td>
<td>9,508.5</td>
<td>9,055.2</td>
<td>8,719.1</td>
</tr>
<tr>
<td>U.S. systemwide</td>
<td>10,231.3</td>
<td>9,762.7</td>
<td>9,370.7</td>
</tr>
<tr>
<td>International franchised</td>
<td>1,107.2</td>
<td>1,181.6</td>
<td>1,141.9</td>
</tr>
<tr>
<td>Global systemwide</td>
<td>$11,338.5</td>
<td>$10,944.3</td>
<td>$10,512.6</td>
</tr>
</tbody>
</table>

Restaurant average unit volumes (in thousands): (c)

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company-operated</td>
<td>$1,978.5</td>
<td>$1,989.6</td>
<td>$1,918.0</td>
</tr>
<tr>
<td>U.S. franchised</td>
<td>1,708.9</td>
<td>1,664.1</td>
<td>1,612.8</td>
</tr>
<tr>
<td>U.S. systemwide</td>
<td>1,725.5</td>
<td>1,684.0</td>
<td>1,630.8</td>
</tr>
<tr>
<td>International franchised</td>
<td>1,199.5</td>
<td>1,357.5</td>
<td>1,359.2</td>
</tr>
<tr>
<td>Global systemwide</td>
<td>$1,654.7</td>
<td>$1,641.4</td>
<td>$1,596.1</td>
</tr>
</tbody>
</table>

(a) During 2020 and 2019, global systemwide sales increased 3.7% and 4.4%, respectively, U.S. systemwide sales increased 4.8% and 4.2%, respectively, and international franchised sales decreased 5.5% and increased 6.7%, respectively, on a constant currency basis. 2020 systemwide sales growth percentages include a positive impact of approximately 2.0% for the 53rd week in 2020.

(b) Excludes Venezuela, and excludes Argentina beginning in the third quarter of 2018, due to the impact of the highly inflationary economies of those countries.

(c) Excludes the impact of the 53rd week in 2020.

Restaurant count:

<table>
<thead>
<tr>
<th></th>
<th>Company-operated</th>
<th>U.S. Franchised</th>
<th>International Franchised</th>
<th>Systemwide</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant count at December 30, 2018</td>
<td>353</td>
<td>5,457</td>
<td>901</td>
<td>6,711</td>
</tr>
<tr>
<td>Opened</td>
<td>2</td>
<td>105</td>
<td>75</td>
<td>182</td>
</tr>
<tr>
<td>Closed</td>
<td>(3)</td>
<td>(62)</td>
<td>(40)</td>
<td>(105)</td>
</tr>
<tr>
<td>Net purchased from (sold by) franchisees</td>
<td>5</td>
<td>(5)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Restaurant count at December 29, 2019</td>
<td>357</td>
<td>5,495</td>
<td>936</td>
<td>6,788</td>
</tr>
<tr>
<td>Opened</td>
<td>7</td>
<td>91</td>
<td>49</td>
<td>147</td>
</tr>
<tr>
<td>Closed</td>
<td>(2)</td>
<td>(67)</td>
<td>(38)</td>
<td>(107)</td>
</tr>
<tr>
<td>Net (sold to) purchased by franchisees</td>
<td>(1)</td>
<td>1</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Restaurant count at January 3, 2021</td>
<td>361</td>
<td>5,520</td>
<td>947</td>
<td>6,828</td>
</tr>
</tbody>
</table>

Sales

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales</td>
<td>$722.8</td>
<td>$707.5</td>
<td>$651.6</td>
</tr>
</tbody>
</table>

The increase in sales during 2020 was primarily due to (1) sales during the 53rd week of 2020 of approximately $13.7 million and (2) a net increase in the number of Company-operated restaurants in operation during 2020 compared to 2019. These increases were partially offset by a 0.7% decrease in Company-operated same-restaurant sales. Company-operated same-restaurant sales declined due to a decrease in customer count as a result of the COVID-19 pandemic, partially offset by (1) the positive impact from the launch of breakfast and (2) higher average check.
## Franchise Royalty Revenue and Fees

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise royalty revenue</td>
<td>$416.5</td>
<td>$15.8</td>
<td>$400.7</td>
<td>$22.8</td>
<td>$377.9</td>
</tr>
<tr>
<td>Franchise fees</td>
<td>28.2</td>
<td>(0.1)</td>
<td>28.3</td>
<td>(2.8)</td>
<td>31.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$444.7</td>
<td>$15.7</td>
<td>$429.0</td>
<td>$20.0</td>
<td>$409.0</td>
</tr>
</tbody>
</table>

The increase in franchise royalty revenue during 2020 was primarily due to (1) royalties earned during the 53rd week of 2020 of approximately $7.8 million, (2) a 1.4% increase in global franchise same-restaurant sales and (3) a net increase in the number of franchise restaurants in operation during 2020 compared to 2019. The increase in franchise same-restaurant sales reflects (1) the positive impact from the launch of breakfast in the U.S. and (2) higher average check, partially offset by a decrease in customer count as a result of the COVID-19 pandemic.

## Franchise Rental Income

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise rental income</td>
<td>$232.6</td>
<td>$(0.5)</td>
<td>$233.1</td>
<td>$29.8</td>
<td>$203.3</td>
</tr>
</tbody>
</table>

The decrease in franchise rental income during 2020 was primarily due to assigning certain leases to franchisees during 2019.

## Advertising Funds Revenue

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising funds revenue</td>
<td>$333.7</td>
<td>$(5.7)</td>
<td>$339.4</td>
<td>$13.4</td>
<td>$326.0</td>
</tr>
</tbody>
</table>

The Company maintains two national advertising funds established to collect and administer funds contributed for use in advertising and promotional programs for Company-operated and franchised restaurants in the U.S. and Canada. Franchisees make contributions to the national advertising funds based on a percentage of sales of the franchised restaurants. The decrease in advertising funds revenue during 2020 was primarily due to the impact of the COVID-19 pandemic. The positive impact from the launch of breakfast did not impact advertising funds revenue due to the Company’s decision in March 2020 to abate national advertising fund contributions on breakfast sales for the remainder of 2020 in response to the COVID-19 pandemic. The decrease in advertising funds revenue was partially offset by revenues earned during the 53rd week of 2020 of approximately $6.4 million.

## Cost of Sales, as a Percent of Sales

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food and paper</td>
<td>30.7 %</td>
<td>(0.8) %</td>
<td>31.5 %</td>
<td>(0.3) %</td>
<td>31.8 %</td>
</tr>
<tr>
<td>Restaurant labor</td>
<td>32.3 %</td>
<td>2.0 %</td>
<td>30.3 %</td>
<td>0.5 %</td>
<td>29.8 %</td>
</tr>
<tr>
<td>Occupancy, advertising and other operating costs</td>
<td>22.1 %</td>
<td>(0.6) %</td>
<td>22.7 %</td>
<td>0.1 %</td>
<td>22.6 %</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>85.1 %</td>
<td>0.6 %</td>
<td>84.5 %</td>
<td>0.3 %</td>
<td>84.2 %</td>
</tr>
</tbody>
</table>

The increase in cost of sales, as a percent of sales, during 2020 was primarily due to (1) a decrease in customer count, reflecting the impact of the COVID-19 pandemic, (2) restaurant labor cost increases, which included incremental recognition pay during April and May, and (3) an increase in commodity costs. These impacts were partially offset by (1) higher average check and (2) lower insurance costs.
### Franchise Support and Other Costs

<table>
<thead>
<tr>
<th></th>
<th>2020 Amount</th>
<th>2019 Amount</th>
<th>2018 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise support and other costs</td>
<td>$26.5</td>
<td>$43.7</td>
<td>$25.2</td>
</tr>
</tbody>
</table>

The decrease in franchise support and other costs during 2020 was primarily due to (1) the prior year investments of $16.4 million to support U.S. franchisees in preparation of the launch of breakfast and (2) the prior year purchase of digital scanning equipment for franchisees of $5.3 million. These decreases were partially offset by further investments made in 2020 to support U.S. franchisees in preparation of the launch of breakfast.

### Franchise Rental Expense

<table>
<thead>
<tr>
<th></th>
<th>2020 Amount</th>
<th>2019 Amount</th>
<th>2018 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise rental expense</td>
<td>$125.6</td>
<td>$123.9</td>
<td>$91.1</td>
</tr>
</tbody>
</table>

The increase in franchise rental expense during 2020 was primarily due to the impact of assigning certain leases to franchisees in 2019.

### Advertising Funds Expense

<table>
<thead>
<tr>
<th></th>
<th>2020 Amount</th>
<th>2019 Amount</th>
<th>2018 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising funds expense</td>
<td>$345.4</td>
<td>$338.1</td>
<td>$321.9</td>
</tr>
</tbody>
</table>

The increase in advertising funds expense during 2020 was primarily due to the Company’s funding of $14.6 million of incremental advertising to support the breakfast daypart. This increase was partially offset by the impact of the COVID-19 pandemic.

### General and Administrative

<table>
<thead>
<tr>
<th></th>
<th>2020 Amount</th>
<th>2019 Amount</th>
<th>2018 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional fees</td>
<td>$32.3</td>
<td>$19.5</td>
<td>$19.6</td>
</tr>
<tr>
<td>Legal reserves</td>
<td>0.2</td>
<td>2.5</td>
<td>27.6</td>
</tr>
<tr>
<td>Travel-related expenses</td>
<td>5.8</td>
<td>12.4</td>
<td>12.8</td>
</tr>
<tr>
<td>Incentive compensation</td>
<td>23.0</td>
<td>26.0</td>
<td>10.4</td>
</tr>
<tr>
<td>Other, net</td>
<td>145.6</td>
<td>144.8</td>
<td>141.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$206.9</strong></td>
<td><strong>$200.2</strong></td>
<td><strong>$217.5</strong></td>
</tr>
</tbody>
</table>

The increase in general and administrative expenses during 2020 was primarily due to (1) an increase in professional fees, reflecting higher IT-related costs, and (2) the prior year reduction in legal reserves as a result of an increase in anticipated insurance proceeds available for use related to the settlement of the financial institutions class action. These increases were partially offset by (1) a decrease in travel-related expenses as a result of reduced travel during the COVID-19 pandemic and (2) a decrease in incentive compensation accruals due to lower operating performance in 2020 compared to 2019.
### Depreciation and Amortization

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>Change</td>
<td>Amount</td>
<td>Change</td>
<td>Amount</td>
</tr>
<tr>
<td>Restaurants</td>
<td>$84.9</td>
<td>$(0.9)</td>
<td>$85.8</td>
<td>2.9</td>
<td>$82.9</td>
</tr>
<tr>
<td>Corporate and other</td>
<td>47.9</td>
<td>2.0</td>
<td>45.9</td>
<td>(0.1)</td>
<td>46.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$132.8</td>
<td>1.1</td>
<td>$131.7</td>
<td>2.8</td>
<td>$128.9</td>
</tr>
</tbody>
</table>

The increase in depreciation and amortization during 2020 was primarily due to (1) changes in useful lives for certain asset categories, (2) the impact of the 53rd week in 2020, (3) the assignment of certain leases to a franchisee in 2019, resulting in the write-off of the related net investment in the leases, and (4) an increase in depreciation on assets newly added as part of our Image Activation program. These increases were partially offset by (1) assets becoming fully depreciated and (2) a decrease in depreciation on assets classified as held for sale resulting from the expected sale of 43 restaurants in New York to franchisees in the second quarter of 2021.

### System Optimization Gains, Net

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>Change</td>
<td>Amount</td>
<td>Change</td>
<td>Amount</td>
</tr>
<tr>
<td>System optimization gains, net</td>
<td>$(3.1)</td>
<td>$(1.8)</td>
<td>$(1.3)</td>
<td>$(0.8)</td>
<td>$(0.5)</td>
</tr>
</tbody>
</table>

System optimization gains, net during 2020 were primarily comprised of gains on the sale of surplus and other properties. System optimization gains, net during 2019 were primarily comprised of post-closing adjustments on previous sales of restaurants.

### Reorganization and Realignment Costs

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>Change</td>
<td>Amount</td>
<td>Change</td>
<td>Amount</td>
</tr>
<tr>
<td>Operations and field realignment</td>
<td>$3.8</td>
<td>$3.8</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>IT realignment</td>
<td>7.3</td>
<td>(1.8)</td>
<td>9.1</td>
<td>9.1</td>
<td>—</td>
</tr>
<tr>
<td>G&amp;A realignment</td>
<td>0.6</td>
<td>(7.2)</td>
<td>7.8</td>
<td>(1.0)</td>
<td>8.8</td>
</tr>
<tr>
<td>System optimization initiative</td>
<td>4.3</td>
<td>4.2</td>
<td>0.1</td>
<td>(0.2)</td>
<td>0.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$16.0</td>
<td>$(1.0)</td>
<td>$17.0</td>
<td>$7.9</td>
<td>$9.1</td>
</tr>
</tbody>
</table>

In September 2020, the Company initiated the Operations and Field Realignment Plan to reallocate resources to better support the long-term growth strategies for Company and franchise operations. During 2020, the Company recognized costs associated with the Operations and Field Realignment Plan totaling $3.8 million, which included severance and related employee costs of $3.1 million and share-based compensation of $0.6 million.

In December 2019, the Company’s Board of Directors approved the IT Realignment Plan to realign and reinvest resources in its IT organization to strengthen its ability to accelerate growth. Additionally, in June 2020, the Company made changes to its leadership structure that included the creation of a Chief Information Officer position and the elimination of the Chief Digital Experience Officer position. During 2020, the Company recognized costs associated with the IT Realignment Plan totaling $7.3 million, which included third-party and other costs of $5.2 million, recruitment and relocation costs of $1.3 million and severance and related employee costs of $0.8 million. During 2019, the Company recognized costs associated with the IT Realignment Plan totaling $9.1 million, which primarily included severance and related employee costs of $7.5 million and third-party and other costs of $1.4 million.

In May 2017, the Company initiated a plan to further reduce its G&A expenses (the “G&A Realignment Plan”). In addition, in May 2019, the Company announced changes to its management and operating structure. G&A realignment costs for 2020 were primarily comprised of share-based compensation. G&A realignment costs for 2019 were primarily comprised of severance and related employee costs and share-based compensation. The Company does not expect to incur any material additional costs under the G&A Realignment Plan.

As part of the Company’s system optimization initiative, the Company expects to continue to optimize the Wendy’s system through strategic restaurant acquisitions and dispositions, as well as by facilitating franchisee-to-franchisee restaurant transfers. During 2020, the Company recognized costs associated with its system optimization initiative totaling $4.3 million, which primarily included professional fees related to the NPC bankruptcy sale process.
Impairment of Long-Lived Assets

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Impairment of long-lived assets</td>
<td>$8.0 $1.0</td>
<td>$7.0 $2.3</td>
<td>$4.7</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The increase in impairment charges during 2020 was primarily driven by the deterioration in operating performance of certain Company-operated restaurants as a result of the COVID-19 pandemic.

Other Operating Income, Net

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity in earnings in joint ventures, net</td>
<td>$ (6.1) $2.6</td>
<td>$ (8.7) $0.6</td>
<td>$ (8.1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gains on sales-type leases</td>
<td>(2.0) 0.3</td>
<td>(2.3) 2.3</td>
<td>—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other, net</td>
<td>(0.4)  —</td>
<td>(0.4) 2.0</td>
<td>1.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$ (8.5) $2.9</td>
<td>$ (11.4) $ (4.9)</td>
<td>$ (6.5)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The change in other operating income, net during 2020 was primarily due to a decrease in the equity in earnings from our TimWen joint venture.

Interest Expense, Net

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest expense, net</td>
<td>$117.7 $1.7</td>
<td>$116.0 $ (3.6)</td>
<td>$119.6</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Interest expense, net increased during 2020 primarily due to the impact of the 53rd week in 2020 of approximately $1.9 million.

Loss on Early Extinguishment of Debt

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss on early extinguishment of debt</td>
<td>$ — $ (8.5)</td>
<td>$8.5 $ (3.0)</td>
<td>$11.5</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The change in loss on early extinguishment of debt was due to the Company refinancing a portion of its securitized financing facility in the prior year, in which the Company incurred a loss on the early extinguishment of debt of $7.2 million resulting from the write-off of certain deferred financing costs. In addition, the Company recognized a loss on early extinguishment of debt of $1.3 million during the fourth quarter of 2019 due to the repurchase of a portion of the Company’s 7% debentures.

Investment (Loss) Income, Net

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment (loss) income, net</td>
<td>$ (0.2) $ (25.8)</td>
<td>$25.6 $ (425.1)</td>
<td>$450.7</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The change in investment (loss) income, net during 2020 was due to a prior year $25.0 million cash settlement related to a previously held investment received in October 2019, of which $24.4 million was recorded to investment (loss) income, net. See Note 8 of the Financial Statements and Supplementary Data contained in Item 8 herein for further discussion.

Other Income, Net

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th></th>
<th>2019</th>
<th></th>
<th>2018</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Other income, net</td>
<td>$1.4 $ (6.4)</td>
<td>$7.8 $2.4</td>
<td>$5.4</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Other income, net decreased during 2020 primarily due to lower interest income earned on the Company’s cash equivalents.
Provision for Income Taxes

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income before income</td>
<td>$152.8</td>
<td>$(18.7)</td>
<td>$171.5</td>
<td>$(403.4)</td>
<td>$574.9</td>
</tr>
<tr>
<td>Provision for income tax</td>
<td>(35.0)</td>
<td>(0.4)</td>
<td>(34.6)</td>
<td>80.2</td>
<td>(114.8)</td>
</tr>
<tr>
<td>Effective tax rate on income</td>
<td>22.9%</td>
<td>2.8%</td>
<td>20.1%</td>
<td>0.1%</td>
<td>20.0%</td>
</tr>
</tbody>
</table>

The increase in the provision for income taxes from 2019 to 2020 was primarily due to a $6.1 million nonrecurring benefit for the reduction in uncertain tax benefits recorded in 2019, partially offset by lower income before income taxes during 2020. The increase in the effective tax rate in 2020 resulted from the $6.1 million nonrecurring benefit for the reduction in uncertain tax benefits in 2019, partially offset by changes to our deferred state taxes and valuation allowances on state net operating losses resulting from our system optimization initiative.

Segment Information

See Note 26 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information regarding the Company’s segments.

Wendy’s U.S.

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales</td>
<td>$722.8</td>
<td>$15.3</td>
<td>$707.5</td>
<td>$55.9</td>
<td>$651.6</td>
</tr>
<tr>
<td>Franchise royalty revenue</td>
<td>373.2</td>
<td>17.5</td>
<td>355.7</td>
<td>20.2</td>
<td>335.5</td>
</tr>
<tr>
<td>Franchise fees</td>
<td>22.1</td>
<td>0.2</td>
<td>21.9</td>
<td>2.9</td>
<td>19.0</td>
</tr>
<tr>
<td>Advertising fund revenue</td>
<td>313.3</td>
<td>(5.9)</td>
<td>319.2</td>
<td>12.8</td>
<td>306.4</td>
</tr>
<tr>
<td>Total revenues</td>
<td>$1,431.4</td>
<td>$27.1</td>
<td>$1,404.3</td>
<td>$91.8</td>
<td>$1,312.5</td>
</tr>
<tr>
<td>Segment profit</td>
<td>$393.3</td>
<td>$24.1</td>
<td>$369.2</td>
<td>$13.7</td>
<td>$355.5</td>
</tr>
</tbody>
</table>

The increase in Wendy’s U.S. revenues during 2020 was primarily due to (1) sales and royalty revenue during the 53rd week of 2020 of approximately $13.7 million and $7.0 million, respectively, (2) a net increase in the number of Company-operated and franchise restaurants in operation during 2020 compared to 2019 and (3) an increase in same-restaurant sales. The increase in same-restaurant sales reflects the positive impact from the launch of breakfast across the U.S. system and higher average check, partially offset by a decrease in customer count as a result of the COVID-19 pandemic.

The increase in Wendy’s U.S. segment profit during 2020 was primarily due to (1) higher royalty revenue, (2) a decrease in franchise support and other costs, reflecting the Company’s investments in 2019 to support U.S. franchisees in preparation of the launch of breakfast across the U.S. system and the purchase of digital scanning equipment for franchisees, and (3) lower general and administrative expenses. These changes were partially offset by the Company’s funding of $14.6 million of incremental advertising during 2020.

Wendy’s International

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise royalty revenue</td>
<td>$43.3</td>
<td>$(1.7)</td>
<td>$45.0</td>
<td>$2.6</td>
<td>$42.4</td>
</tr>
<tr>
<td>Franchise fees</td>
<td>2.0</td>
<td>(1.0)</td>
<td>3.0</td>
<td>(2.6)</td>
<td>5.6</td>
</tr>
<tr>
<td>Advertising fund revenue</td>
<td>20.3</td>
<td>0.1</td>
<td>20.2</td>
<td>0.6</td>
<td>19.6</td>
</tr>
<tr>
<td>Total revenues</td>
<td>$65.6</td>
<td>$(2.6)</td>
<td>$68.2</td>
<td>$0.6</td>
<td>$67.6</td>
</tr>
<tr>
<td>Segment profit</td>
<td>$20.1</td>
<td>$(0.1)</td>
<td>$20.2</td>
<td>$(5.4)</td>
<td>$25.6</td>
</tr>
</tbody>
</table>

The decrease in Wendy’s International revenues during 2020 was primarily due to a decrease in same-restaurant sales and the temporary closure of restaurants resulting from the impact of the COVID-19 pandemic. The decrease in same-restaurant sales was driven by a decrease in customer count, partially offset by higher average check. This decrease was partially offset by royalties during the 53rd week of 2020 of approximately $0.8 million.
The decrease in Wendy’s International segment profit during 2020 was primarily due to lower royalty revenue, partially offset by a decrease in travel-related expenses as a result of reduced travel during the COVID-19 pandemic.

**Global Real Estate & Development**

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise fees</td>
<td>$4.2</td>
<td>$0.8</td>
<td>$3.4</td>
<td>$(3.1)</td>
<td>$6.5</td>
</tr>
<tr>
<td>Franchise rental income</td>
<td>232.6</td>
<td>$(0.5)</td>
<td>233.1</td>
<td>29.8</td>
<td>203.3</td>
</tr>
<tr>
<td>Total revenues</td>
<td>$236.8</td>
<td>$0.3</td>
<td>$236.5</td>
<td>$26.7</td>
<td>$209.8</td>
</tr>
<tr>
<td>Segment profit</td>
<td>$100.7</td>
<td>$(6.4)</td>
<td>$107.1</td>
<td>$(3.5)</td>
<td>$110.6</td>
</tr>
</tbody>
</table>

The increase in Global Real Estate & Development revenues during 2020 was primarily due to higher other miscellaneous franchise fees, partially offset by lower franchise rental income. See “Franchise Rental Income” above for further information.

The decrease in Global Real Estate & Development segment profit during 2020 was primarily due to (1) a decrease in equity in earnings from the TimWen joint venture and (2) a decrease in net rental income, reflecting the impact of assigning certain leases to franchisees during 2019.

**Consolidated Outlook for 2021**

**Sales**

We expect sales at our Company-operated restaurants to be favorably impacted primarily by (1) an increase in customer counts as a result of the expected recovery from the COVID-19 pandemic, (2) a full year of operating in the breakfast daypart across the U.S. system, (3) a net increase in the number of Company-operated restaurants, including the Company’s plan to open Company-operated restaurants in the U.K in the first half of 2021, (4) our “Fast Food Done Right” strategy, which includes continuing core menu improvements, product innovation and strategic price increases on our menu items, (5) focused execution of operational excellence and (6) continued implementation of consumer-facing digital platforms and technologies. Sales at our Company-operated restaurants are expected to be negatively impacted by (1) the anticipated sale of certain Company-operated restaurants in New York to franchisees in the second quarter of 2021 and (2) lapping the impact of the 53rd week of 2020.

**Franchise Royalty Revenue and Fees**

We expect sales at franchised restaurants to generally benefit from the factors described above under “Sales.” In addition, we expect franchise royalty revenue and fees to be favorably impacted by (1) an increase in the number of franchise restaurants in operation due to new restaurant development, (2) an increase in IT-related franchise fees and (3) the anticipated sale of certain Company-operated restaurants in New York to franchisees in the second quarter of 2021.

**Cost of Sales**

We expect cost of sales, as a percent of sales to be favorably impacted by the same factors described above under “Sales,” and to also benefit from productivity initiatives. We expect these favorable impacts to be partially offset by higher restaurant labor-related costs, primarily due to increases in wages and investments in the U.K. as we plan to launch that market in the first half of 2021.

**Franchise Support and Other Costs**

We expect franchise support and other costs to increase primarily due to costs incurred to provide IT services to our franchisees, partially offset by the investments made in 2020 to support U.S. franchisees in preparation of the launch of breakfast.

**Advertising Funds Revenue and Expense**

We expect advertising funds expense to exceed advertising funds revenue as the Company plans to fund an incremental $15.0 million in advertising to continue to drive growth in our breakfast daypart.
General and Administrative

We expect general and administrative expense to be higher primarily due to increases in IT-related costs and travel-related expenses.

Liquidity and Capital Resources

Cash Flows

Our primary sources of liquidity and capital resources are cash flows from operations and borrowings under our securitized financing facility. Our principal uses of cash are operating expenses, capital expenditures, repurchases of common stock and dividends to stockholders.

During 2020, the Company made a payment of $24.7 million related to the settlement of the financial institutions class action. See Note 11 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information.

COVID-19 Actions

In response to the COVID-19 pandemic, the Company has taken the following actions impacting its liquidity and capital resources during 2020:

Long-Term Debt. The Company increased its cash position in March 2020 by drawdowns of its Series 2019-1 Variable Funding Senior Secured Notes, Class A-1 (the “2019-1 Class A-1 Notes”), its U.S. advertising fund revolving line of credit and its Canadian revolving credit facility. The Company fully repaid the drawdowns of the 2019-1 Class A-1 Notes and the U.S. advertising fund revolving line of credit in July 2020 and September 2020, respectively. The Company made partial repayments of the drawdown of the Canadian revolving credit facility in October 2020 and December 2020. In addition, the Company enhanced its debt capacity in June 2020 by issuing $100.0 million of Series 2020-1 Variable Funding Senior Secured Notes, Class A-1 (the “2020-1 Class A-1 Notes”). See “Long-Term Debt, Including Current Portion” below for additional information.

Dividends. The Company reduced its quarterly cash dividend from $.12 per share in the first quarter of 2020 to $.05 per share in the second and third quarters of 2020 and $.07 per share in the fourth quarter of 2020. See “Dividends” below for additional information.

Stock Repurchases. The Company temporarily suspended all share repurchase activity beginning in March 2020 under the February 2020 share repurchase authorization. The Company resumed share repurchases in August 2020 as discussed below in “Stock Repurchases.”

G&A and Capital Expenditures. In the first quarter of 2020, the Company evaluated its planned 2020 general and administrative expenses and capital expenditures and identified savings of approximately $10.0 million and $20.0 million, respectively, for a total of $30.0 million in savings. The Company ultimately realized approximately $5.0 million of the previously identified general and administrative expense savings, primarily as a result of a higher incentive compensation accrual, and approximately $5.0 million of the previously identified capital expenditures savings, primarily due to a decision to increase capital expenditures for new and existing Company-operated restaurants in light of our improved liquidity position.

Advertising Expenditures. The Company revised its planned 2020 advertising expenses in March 2020 to eliminate Company funding of incremental advertising. In June 2020, the Company reevaluated its marketing plans and funded $14.6 million of incremental advertising during 2020 to drive additional growth.

Franchise and System Support. To support the franchise system, the Company (1) extended payment terms for royalties and national advertising funds contributions by 45 days beginning in April for a three month period, (2) abated national advertising fund contributions on breakfast sales for the remainder of 2020, (3) offered to defer base rent payments on properties owned by Wendy’s and leased to franchisees by 50% beginning in May for a three month period, which are being repaid over a 12 month period beginning in August 2020, and (4) extended Image Activation and new restaurant development requirements by one year. As of January 3, 2021, substantially all franchisees are current on royalties and national advertising funds contributions due to the Company.

49
To support the health and well-being of our Company-operated restaurant employees, the Company (1) implemented a new emergency paid sick leave policy with up to 14 days paid leave in the event an employee is unable to work as a result of the COVID-19 pandemic and (2) increased hourly pay by 10% for the months of April and May for hourly crew members, shift managers and assistant general managers, and protected part of the monthly bonus through September for general managers and district managers.

CARES Act. The Company deferred payment of the Company’s share of Social Security payroll taxes as permitted under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), which allows for the deferral of these payments through the end of 2020 and requires repayment of the deferred amounts in 2021 and 2022. The Company ceased the deferral of payments in August 2020 and fully repaid the deferred amounts during the fourth quarter of 2020.

In addition, the Company expects to benefit from the technical amendments under the CARES Act by treating qualified improvement property (“QIP”) as 15-year property and allowing such property to be eligible for the 100 percent bonus depreciation for QIP placed in service after December 31, 2017.

Anticipated Cash Requirements

Our anticipated cash requirements for 2021 exclusive of operating cash flow requirements consist principally of:

- capital expenditures of approximately $80.0 million to $90.0 million as discussed below in “Capital Expenditures;”
- quarterly cash dividends aggregating approximately $80.6 million as discussed below in “Dividends;” and
- stock repurchases of up to $67.7 million under our February 2020 authorization as discussed below in “Stock Repurchases.”

Based on current levels of operations, the Company expects that available cash and cash flows from operations will provide sufficient liquidity to meet operating cash requirements for the next 12 months.

We currently believe we have the ability to pursue additional sources of liquidity if needed or desired to fund operating cash requirements or for other purposes. However, there can be no assurance that additional liquidity will be readily available or available on terms acceptable to us.

Cash Flows from Operating, Investing and Financing Activities

The table below summarizes our cash flows from operating, investing and financing activities for each of the past three fiscal years:

<table>
<thead>
<tr>
<th>Net cash provided by (used in):</th>
<th>2020</th>
<th>Change</th>
<th>2019</th>
<th>Change</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating activities</td>
<td>$284.4</td>
<td>$(4.5)</td>
<td>$288.9</td>
<td>$64.7</td>
<td>$224.2</td>
</tr>
<tr>
<td>Investing activities</td>
<td>(68.3)</td>
<td>(13.4)</td>
<td>(54.9)</td>
<td>(417.8)</td>
<td>362.9</td>
</tr>
<tr>
<td>Financing activities</td>
<td>(157.9)</td>
<td>207.4</td>
<td>(365.3)</td>
<td>(59.6)</td>
<td>(305.7)</td>
</tr>
<tr>
<td>Effect of exchange rate changes on cash</td>
<td>1.3</td>
<td>(2.2)</td>
<td>3.5</td>
<td>11.2</td>
<td>(7.7)</td>
</tr>
<tr>
<td>Net increase (decrease) in cash, cash equivalents and restricted cash</td>
<td>$59.5</td>
<td>$187.3</td>
<td>$(127.8)</td>
<td>$(401.5)</td>
<td>$273.7</td>
</tr>
</tbody>
</table>

Operating Activities

Cash provided by operating activities consists primarily of net income, adjusted for non-cash expenses such as depreciation and amortization, deferred income tax and share-based compensation, and the net change in operating assets and liabilities. Cash provided by operating activities was $284.4 million and $288.9 million in 2020 and 2019, respectively. The change was primarily due to (1) a cash payment of $24.7 million related to the settlement of the financial institutions class action in January 2020, (2) an increase in payments related to the Company’s reorganization and realignment plans, (3) an increase in payments for incentive compensation for the 2019 fiscal year paid in 2020 and (4) the timing of rental payments. These changes were partially offset by the timing of payments for marketing expenses of the national advertising funds.
Investing Activities

Cash used in investing activities was $68.3 million and $54.9 million in 2020 and 2019, respectively. The change was primarily due to a cash settlement received during 2019 related to a previously held investment of $24.4 million, which was partially offset by (1) a decrease in capital expenditures of $5.5 million, (2) a decrease in new notes receivable to franchisees of $2.7 million (3) and increase in proceeds from dispositions of $2.6 million.

Financing Activities

Cash used in financing activities was $157.9 million and $365.3 million in 2020 and 2019, respectively. The change was primarily due to (1) a decrease in repurchases of common stock of $155.6 million, (2) a decrease in dividends of $31.5 million and (3) a net decrease in cash used in long-term debt activities of $23.5 million, reflecting the impact of the completion of a debt refinancing transaction during 2019.

Capitalization

<table>
<thead>
<tr>
<th>Year End</th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long-term debt, including current portion</td>
<td>$2,247.1</td>
<td>$2,280.3</td>
</tr>
<tr>
<td>Stockholders’ equity</td>
<td>549.6</td>
<td>516.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,796.7</strong></td>
<td><strong>$2,796.7</strong></td>
</tr>
</tbody>
</table>

The Company’s total capitalization at January 3, 2021 was flat compared to December 29, 2019 and was impacted principally by the following:

- dividends paid of $64.9 million;
- stock repurchases, including the impact of the 2019 ASR Agreement, of $61.1 million; and
- a net decrease in long-term debt, including current portion, of $33.2 million; offset by
- comprehensive income of $122.0 million; and
- treasury share issuances of $26.8 million for exercises and vesting of share-based compensation awards.

Long-Term Debt, Including Current Portion

<table>
<thead>
<tr>
<th>Year End</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series 2019-1 Class A-2-I Notes</td>
<td>$386.0</td>
</tr>
<tr>
<td>Series 2019-1 Class A-2-II Notes</td>
<td>434.3</td>
</tr>
<tr>
<td>Series 2018-1 Class A-2-I Notes</td>
<td>436.5</td>
</tr>
<tr>
<td>Series 2018-1 Class A-2-II Notes</td>
<td>460.8</td>
</tr>
<tr>
<td>Series 2015-1 Class A-2-III Notes</td>
<td>473.7</td>
</tr>
<tr>
<td>Canadian revolving credit facility</td>
<td>2.0</td>
</tr>
<tr>
<td>7% debentures</td>
<td>84.0</td>
</tr>
<tr>
<td>Unamortized debt issuance costs</td>
<td>(30.2)</td>
</tr>
<tr>
<td><strong>Total long-term debt, including current portion</strong></td>
<td><strong>$2,247.1</strong></td>
</tr>
</tbody>
</table>

Except as described below, there were no material changes to the terms of any debt obligations since December 29, 2019. The Company was in compliance with its debt covenants as of January 3, 2021. See Note 12 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information related to our long-term debt obligations.
Wendy’s Funding, LLC, a limited-purpose, bankruptcy-remote, wholly-owned indirect subsidiary of The Wendy’s Company, is the master issuer (the “Master Issuer”) of outstanding senior secured notes under a securitized financing facility that was entered into in June 2015. Under this facility, in June 2019, the Master Issuer issued outstanding 2019-1 Class A-1 Notes, which allow for the borrowing of up to $150.0 million from time to time on a revolving basis using various credit instruments, including a letter of credit facility. In March 2020, the Company drew down $120.0 million under the 2019-1 Class A-1 Notes, which the Company fully repaid in July 2020. As a result, as of January 3, 2021, the Company had no outstanding borrowings under the 2019-1 Class A-1 Notes. In June 2020, the Master Issuer also issued outstanding 2020-1 Class A-1 Notes, which allow for the borrowing of up to $100.0 million from time to time on a revolving basis using various credit instruments. The Company had no outstanding borrowings under the 2020-1 Class A-1 Notes as of January 3, 2021.

A Canadian subsidiary of Wendy’s has a revolving credit facility of C$6.0 million. In March 2020, the Company drew down C$5.5 million under the revolving credit facility, of which the Company repaid C$1.0 million in October 2020 and C$2.0 million in December 2020. As a result, as of January 3, 2021, the Company had outstanding borrowings of C$2.5 million under the revolving credit facility. Subsequent to January 3, 2021, the Company repaid the C$2.5 million outstanding balance under the Canadian revolving credit facility.

Wendy’s U.S. advertising fund has a revolving line of credit of $25.0 million, which was established to support the advertising fund operations. Borrowings under the line of credit are guaranteed by Wendy’s. In February 2020, the Company drew down $4.4 million under the revolving line of credit, which the Company fully repaid in February 2020. In March 2020, the Company drew down $25.0 million under the revolving line of credit, which the Company fully repaid in September 2020. As a result, as of January 3, 2021, the Company had no outstanding borrowings under the revolving line of credit.

The increased borrowings and other actions described above were taken as precautionary measures to provide enhanced financial flexibility considering the uncertain market conditions arising from the COVID-19 pandemic.

We may from time to time seek to repurchase additional portions of our outstanding long-term debt, including our 7% debentures and/or our senior secured notes, through open market purchases, privately negotiated transactions or otherwise. Such repurchases, if any, will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. Whether or not we elect to repurchase any debt and the size and timing of any such repurchases will be determined at our discretion.

**Contractual Obligations**

The following table summarizes the expected payments under our outstanding contractual obligations at January 3, 2021:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Years</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
<td>2022-2023</td>
<td>2024-2025</td>
<td>After 2025</td>
<td>Total</td>
</tr>
<tr>
<td>Long-term debt obligations (a)</td>
<td>$124.7</td>
<td>$234.3</td>
<td>$1,162.1</td>
<td>$1,320.0</td>
<td>$2,841.1</td>
</tr>
<tr>
<td>Finance lease obligations (b)</td>
<td>52.3</td>
<td>109.5</td>
<td>112.6</td>
<td>687.3</td>
<td>961.7</td>
</tr>
<tr>
<td>Operating lease obligations (c)</td>
<td>89.9</td>
<td>179.1</td>
<td>178.5</td>
<td>867.2</td>
<td>1,314.7</td>
</tr>
<tr>
<td>Purchase obligations (d)</td>
<td>73.9</td>
<td>83.2</td>
<td>55.4</td>
<td>28.7</td>
<td>241.2</td>
</tr>
<tr>
<td>Other</td>
<td>6.5</td>
<td>0.2</td>
<td>—</td>
<td>—</td>
<td>6.7</td>
</tr>
<tr>
<td>Total (c)</td>
<td>$347.3</td>
<td>$606.3</td>
<td>$1,508.6</td>
<td>$2,903.2</td>
<td>$5,365.4</td>
</tr>
</tbody>
</table>

(a) Includes interest of approximately $557.9 million. These amounts exclude the fair value adjustment related to Wendy’s 7% debentures assumed in the Wendy’s Merger.

(b) Includes interest of approximately $443.5 million.

(c) Includes interest of approximately $404.1 million.

(d) Includes purchase obligations related to (1) the Company’s arrangement with a third-party global IT consultant and (2) the remaining beverage purchase requirement under a beverage agreement. Also includes other purchase obligations related primarily to marketing and information technology.
(e) Excludes obligation for unrecognized tax benefits, including interest and penalties, of $21.9 million. We are unable to predict when or if cash payments will be required.

**Capital Expenditures**

In 2020, cash capital expenditures amounted to $69.0 million. In 2021, we expect that cash capital expenditures will amount to approximately $80.0 million to $90.0 million, principally relating to (1) the opening of new Company-operated restaurants and the reimaging of existing Company-operated restaurants, (2) technology investments, including consumer-facing digital technology, (3) maintenance capital expenditures for our Company-operated restaurants and (4) various other capital projects. As of January 3, 2021, the Company had $3.7 million of outstanding commitments, included in “Accounts payable,” for capital expenditures expected to be paid in 2021.

**Dividends**

On March 16, 2020, June 15, 2020, September 15, 2020 and December 15, 2020, the Company paid quarterly cash dividends per share of $.12, $.05, $.05 and $.07, respectively, aggregating $64.9 million. On February 23, 2021, the Company announced a dividend of $0.09 per share to be paid on March 15, 2021 to shareholders of record as of March 5, 2021. If the Company pays regular quarterly cash dividends for the remainder of 2021 at the same rate as declared in the first quarter of 2021, the Company’s total cash requirement for dividends for all of 2021 would be approximately $80.6 million based on the number of shares of its common stock outstanding at February 23, 2021. The Company currently intends to continue to declare and pay quarterly cash dividends; however, there can be no assurance that any additional quarterly dividends will be declared or paid or of the amount or timing of such dividends, if any.

**Stock Repurchases**

The following table summarizes the Company’s repurchases of common stock for 2020, 2019 and 2018:

<table>
<thead>
<tr>
<th>Repurchases of common stock (a) (b) (c)</th>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>Repurchases of common stock</td>
<td>$76.1</td>
</tr>
<tr>
<td>Number of shares repurchased</td>
<td>3.5</td>
</tr>
</tbody>
</table>

(a) Excludes commissions of $0.04 million, $0.1 million and $0.2 million for 2020, 2019 and 2018, respectively.

(b) 2019 includes repurchases of $85.0 million under the 2019 ASR Agreement, representing 85% of the initial purchase price of $100.0 million. 2020 includes the remaining repurchases of $15.0 million under the 2019 ASR Agreement.

(c) In addition to the ASR repurchase activity, 2020 includes $32.3 million and $28.8 million, excluding commissions, of repurchases under the February 2020 and February 2019 repurchase authorizations, respectively.

In February 2020, our Board of Directors authorized a repurchase program for up to $100.0 million of our common stock through February 28, 2021, when and if market conditions warranted and to the extent legally permissible. As previously announced, beginning in March 2020, the Company temporarily suspended all share repurchase activity under the February 2020 authorization in connection with the Company’s response to the COVID-19 pandemic. In July 2020, the Company’s Board of Directors approved an extension of the February 2020 authorization by one year, through February 28, 2022, when and if market and economic conditions warrant and to the extent legally permissible. The Company resumed share repurchases in August 2020. During 2020, the Company repurchased 1.6 million shares under the February 2020 repurchase authorization with an aggregate purchase price of $32.3 million, of which $0.7 million was accrued at January 3, 2021, and excluding commissions. As of January 3, 2021, the Company had $67.7 million of availability remaining under its February 2020 authorization. Subsequent to January 3, 2021 through February 23, 2021, the Company repurchased 0.5 million shares under the February 2020 authorization with an aggregate purchase price of $9.6 million, excluding commissions.

In February 2019, our Board of Directors authorized a repurchase program for up to $225.0 million of our common stock through March 1, 2020, when and if market conditions warranted and to the extent legally permissible. In November 2019, the Company entered into an accelerated share repurchase agreement (the “2019 ASR Agreement”) with a third-party financial institution to repurchase common stock as part of the Company’s existing share repurchase program. Under the 2019 ASR Agreement, the Company paid the financial institution an initial purchase price of $100.0 million in cash and received an initial
delivery of 4.1 million shares of common stock, representing an estimated 85% of the total shares expected to be delivered under the 2019 ASR Agreement. In February 2020, the Company completed the 2019 ASR Agreement and received an additional 0.6 million shares of common stock at an average purchase price of $23.89. The total number of shares of common stock ultimately purchased by the Company under the 2019 ASR Agreement was based on the average of the daily volume-weighted average prices of the common stock during the term of the 2019 ASR Agreement, less an agreed upon discount. In total, 4.7 million shares were delivered under the 2019 ASR Agreement at an average purchase price of $21.37 per share.

In addition to the shares repurchased in connection with the 2019 ASR Agreement, during 2020, the Company repurchased 1.3 million shares with an aggregate purchase price of $28.8 million, excluding commissions, under the February 2019 authorization. After taking into consideration these repurchases, with the completion of the 2019 ASR Agreement in February 2020, the Company completed its February 2019 authorization.

In addition to the shares repurchased in connection with the 2019 ASR Agreement, during 2019, the Company repurchased 6.1 million shares with an aggregate purchase price of $117.7 million, of which $1.8 million was accrued at December 29, 2019, and excluding commissions of $0.1 million, under the February 2019 authorization and the Company’s November 2018 authorization referenced below.

In February 2018, our Board of Directors authorized a repurchase program for up to $175.0 million of our common stock through March 3, 2019, when and if market conditions warranted and to the extent legally permissible. In November 2018, our Board of Directors approved an additional share repurchase program for up to $220.0 million of our common stock through December 27, 2019, when and if market conditions warranted and to the extent legally permissible. In November 2018, the Company entered into an accelerated share repurchase agreement (the “2018 ASR Agreement”) with a third-party financial institution to repurchase common stock as part of the Company’s existing share repurchase programs. Under the 2018 ASR Agreement, the Company paid the financial institution an initial purchase price of $75.0 million in cash and received an initial delivery of 3.6 million shares of common stock, representing an estimated 85% of the total shares expected to be delivered under the 2018 ASR Agreement. In December 2018, the Company completed the 2018 ASR Agreement and received an additional 0.7 million shares of common stock. The total number of shares of common stock ultimately purchased by the Company under the 2018 ASR Agreement was based on the average of the daily volume-weighted average prices of the common stock during the term of the 2018 ASR Agreement, less an agreed upon discount. In addition to the shares repurchased in connection with the 2018 ASR Agreement, during 2018, the Company repurchased 10.1 million shares under the February 2018 and November 2018 authorizations with an aggregate purchase price of $172.6 million, of which $1.8 million was accrued at December 30, 2018, and excluding commissions of $0.1 million.

In February 2017, our Board of Directors authorized a repurchase program for up to $150.0 million of our common stock through March 4, 2018, when and if market conditions warranted and to the extent legally permissible. The Company completed the February 2017 authorization during 2018 with the repurchase of 1.4 million shares with an aggregate purchase price of $22.6 million, excluding commissions.

Guarantees and Other Contingencies

<table>
<thead>
<tr>
<th></th>
<th>Year End 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease guarantees (a)</td>
<td>$90.3</td>
</tr>
<tr>
<td>Letters of credit (b)</td>
<td>26.6</td>
</tr>
<tr>
<td>Total</td>
<td>$116.9</td>
</tr>
</tbody>
</table>

(a) Wendy’s has guaranteed the performance of certain leases and other obligations, primarily from former Company-operated restaurant locations now operated by franchisees. These leases extend through 2045.

(b) The Company has outstanding letters of credit with various parties. The Company does not expect any material loss to result from these letters of credit because we do not believe performance will be required.
General Inflation, Commodities and Changing Prices

We believe that general inflation did not have a significant effect on our consolidated results of operations. We attempt to manage any inflationary costs and commodity price increases through product mix and selective menu price increases. Delays in implementing such menu price increases and competitive pressures may limit our ability to recover such cost increases in the future. Inherent volatility experienced in certain commodity markets, such as those for beef, chicken, pork, cheese and grains, could have a significant effect on our results of operations and may have an adverse effect on us in the future. The extent of any impact will depend on our ability to manage such volatility through product mix and selective menu price increases.

Seasonality

Wendy’s restaurant operations are moderately seasonal. Wendy’s average restaurant sales are normally higher during the summer months than during the winter months. Because our business is moderately seasonal, results for a particular quarter are not necessarily indicative of the results that may be achieved for any other quarter or for the full fiscal year.

Off-Balance Sheet Arrangements

Other than the obligations for guarantees described above in “Guarantees and Other Contingencies,” we do not have any off-balance sheet arrangements that have, or are, in the opinion of management, reasonably likely to have, a current or future material effect on our financial condition or results of operations.

Critical Accounting Policies and Estimates

The preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions in applying our critical accounting policies that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amount of revenues and expenses during the reporting period. Our estimates and assumptions affect, among other things, impairment of goodwill and indefinite-lived intangible assets, impairment of long-lived assets, realizability of deferred tax assets, federal and state income tax uncertainties and legal and environmental accruals. We evaluate those estimates and assumptions on an ongoing basis based on historical experience and on various other factors which we believe are reasonable under the circumstances.

We believe that the following represent our more critical estimates and assumptions used in the preparation of our consolidated financial statements:

- Impairment of goodwill and indefinite-lived intangible assets:

  We test goodwill for impairment annually, or more frequently if events or changes in circumstances indicate that the asset may be impaired. Our annual impairment test of goodwill may be completed through a qualitative assessment to determine if the fair value of the reporting unit is more likely than not greater than the carrying amount. If we elect to bypass the qualitative assessment for any reporting units, or if a qualitative assessment indicates it is more likely than not that the estimated carrying value of a reporting unit exceeds its fair value, we perform a quantitative goodwill impairment test. Under the quantitative test, the fair value of the reporting unit is compared with its carrying value (including goodwill). If the carrying value of the reporting unit exceeds its fair value, an impairment loss is recognized in an amount equal to that excess, limited to the total amount of goodwill allocated to that reporting unit. The fair value of the reporting unit is determined by management and is based on the results of (1) estimates we made regarding the present value of the anticipated cash flows associated with each reporting unit (the “income approach”) and/or (2) the indicated value of the reporting units based on a comparison and correlation of the Company and other similar companies (the “market approach”).

  The income approach, which considers factors unique to each of our reporting units and related long range plans that may not be comparable to other companies and that are not yet publicly available, is dependent on several critical management assumptions. These assumptions include estimates of future sales growth, operating profit, income tax rates, terminal value growth rates, capital expenditures and the weighted average cost of capital (discount rate). Anticipated cash flows used under the income approach are developed every fourth quarter in conjunction with our annual budgeting process and also incorporate amounts and timing of future cash flows based on our long range plan.
The discount rates used in the income approach are an estimate of the rate of return that a market participant would expect of each reporting unit. To select an appropriate rate for discounting the future earnings stream, a review is made of short-term interest rate yields of long-term corporate and government bonds, as well as the typical capital structure of companies in the industry. The discount rates used for each reporting unit may vary depending on the risk inherent in the cash flow projections, as well as the risk level that would be perceived by a market participant. A terminal value is included at the end of the projection period used in our discounted cash flow analysis to reflect the remaining value that each reporting unit is expected to generate. The terminal value represents the present value in the last year of the projection period of all subsequent cash flows into perpetuity. The terminal value growth rate is a key assumption used in determining the terminal value as it represents the annual growth of all subsequent cash flows into perpetuity.

Under the market approach, we apply the guideline company method in estimating fair value. The guideline company method makes use of market price data of corporations whose stock is actively traded in a public market. The corporations we select as guideline companies are engaged in a similar line of business or are subject to similar financial and business risks, including the opportunity for growth. The guideline company method of the market approach provides an indication of value by relating the equity or invested capital (debt plus equity) of guideline companies to various measures of their earnings and cash flow, then applying such multiples to the business being valued. The result of applying the guideline company approach is adjusted based on the incremental value associated with a controlling interest in the business. This “control premium” represents the amount a new controlling shareholder would pay for the benefits resulting from synergies and other potential benefits derived from controlling the enterprise.

The negative impacts of the COVID-19 pandemic, including the decline in same-restaurant sales described in “Sales Trends and COVID-19 Update” above and the volatility in the price of our common stock, resulted in the Company performing a quantitative goodwill impairment test in March 2020. The Company’s goodwill impairment test in March 2020 included three reporting units, which were comprised of its (1) U.S. Company-operated and franchise restaurants, (2) Canada franchise restaurants and (3) global real estate and development operations. Based on the results of our goodwill impairment test, we determined the fair values of our U.S. Company-operated and franchise restaurants and our Canada franchise restaurants reporting units significantly exceeded their carrying values. The goodwill impairment test for our global real estate and development operations also indicated the fair value of the reporting unit exceeded its carrying value; however, the fair value exceeded the carrying value of the reporting unit by only a nominal amount. Given the limited excess of the fair value over carrying value, this reporting unit is more sensitive to changes in assumptions regarding its fair value. As of the date of our analysis in the first quarter of 2020, a 50 basis point increase in the discount rate, or a moderate decline in estimated future cash flows, would have resulted in the fair value of the reporting unit being less than its carrying value.

For the annual goodwill impairment test in the fourth quarter of 2020, we elected to perform a qualitative assessment for the U.S. Company-operated and franchise restaurants and the Canada franchise restaurants, and we performed a quantitative goodwill impairment test for the global real estate and development operations. The qualitative assessment indicated the fair value of goodwill of our U.S. Company-operated and franchise restaurants and the Canada franchise restaurants was more likely than not greater than the carrying amount. Our quantitative goodwill impairment test for our global real estate and development operations indicated that there had been no impairment and the fair value of this reporting unit of $1,314.7 million was approximately 13% in excess of its carrying value. A 100 basis point increase in the discount rate, or a moderate decline in estimated future cash flows, would have resulted in the fair value of the reporting unit being less than its carrying value. As of January 3, 2021, the goodwill balance associated with our global real estate and development operations was $122.5 million.

Our indefinite-lived intangible assets represent trademarks and totaled $903.0 million as of January 3, 2021. We test indefinite-lived intangible assets for impairment annually, or more frequently if events or changes in circumstances indicate that the assets may be impaired. Our annual impairment test may be completed through a qualitative assessment to determine if the fair value of the indefinite-lived intangible assets is more likely than not greater than the carrying amount. If we elect to bypass the qualitative assessment, or if a qualitative assessment indicates it is more likely than not that the estimated carrying value exceeds the fair value, we test for impairment using a quantitative process. Our quantitative process includes comparing the carrying value to the fair value of our indefinite-lived intangible assets, with any excess recognized as an impairment loss. Our critical estimates in the determination of the fair value of our indefinite-lived intangible assets include the anticipated future revenues of Company-operated and franchised restaurants and the resulting cash flows.
The Company performed a quantitative impairment test of our indefinite-lived intangible assets in March 2020 as a result of the negative impacts of the COVID-19 pandemic. Based on the results of our impairment test, we determined the fair value of our indefinite-lived intangible assets significantly exceeded their carrying value.

For the annual impairment test of our indefinite-lived intangible assets in the fourth quarter of 2020, we elected to perform a qualitative assessment. The qualitative assessment indicated the fair value of our indefinite-lived intangible assets was more likely than not greater than the carrying amount.

The estimated fair values of our goodwill reporting units and indefinite-lived intangible assets are subject to change as a result of many factors including, among others, any changes in our business plans, changing economic conditions and the competitive environment. Should actual cash flows and our future estimates vary adversely from those estimates we use, we may be required to recognize impairment charges in future years.

- Impairment of long-lived assets:

As of January 3, 2021, the total net carrying value of our long-lived tangible and definite-lived intangible assets was $2,265.5 million. Our long-lived assets include (1) properties and related definite-lived intangible assets (e.g., favorable leases) that are leased and/or subleased to franchisees, (2) Company-operated restaurant assets and related definite-lived intangible assets, which include reacquired rights under franchise agreements, and (3) finance and operating lease assets.

We review our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We assess the recoverability of our long-lived assets by comparing the carrying amount of the asset group to future undiscounted net cash flows expected to be generated through leases and/or subleases or by our individual Company-operated restaurants. If the carrying amount of the long-lived asset group is not recoverable on an undiscounted cash flow basis, then impairment is recognized to the extent that the carrying amount exceeds its fair value and is included in “Impairment of long-lived assets.” Our critical estimates in this review process include the anticipated future cash flows from leases and/or subleases or individual Company-operated restaurants, which is used in assessing the recoverability of the respective long-lived assets. Our impairment losses principally reflect impairment charges resulting from the deterioration in operating performance of certain Company-operated restaurants as a result of the COVID-19 pandemic.

Our fair value estimates are subject to change as a result of many factors including, among others, any changes in our business plans, changing economic conditions and the competitive environment. Should actual cash flows and our future estimates vary adversely from those estimates we used, we may be required to recognize additional impairment charges in future years.

- Our ability to realize deferred tax assets:

We account for income taxes under the asset and liability method. A deferred tax asset or liability is recognized whenever there are (1) future tax effects from temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and (2) operating loss, capital loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to the years in which those differences are expected to be recovered or settled.

Deferred tax assets are recognized to the extent the Company believes these assets will more likely than not be realized. In evaluating the realizability of deferred tax assets, the Company considers all available positive and negative evidence, including the interaction and the timing of future reversals of existing temporary differences, recent operating results, tax-planning strategies and projected future taxable income. In projecting future taxable income, we begin with historical results from continuing operations and incorporate assumptions including future operating income, the reversal of temporary differences and the implementation of feasible and prudent tax planning strategies. These assumptions require significant judgment and are consistent with the plans and estimates we are using to manage our underlying business. In evaluating the objective evidence that historical results provide, we consider three years of cumulative operating income.

When considered necessary, a valuation allowance is recorded to reduce the carrying amount of the deferred tax assets to their anticipated realizable value. Our evaluation of the realizability of our deferred tax assets is subject to change as a result of many factors including, among others, any changes in our business plans, changing economic
conditions, the competitive environment and the effect of future tax legislation. Should future taxable income vary from projected taxable income, we may be required to adjust our valuation allowance in future years.

Net operating loss and credit carryforwards are subject to various limitations and carryforward periods. As of January 3, 2021, we have foreign tax credits of $17.8 million and state tax credits of $0.7 million, which will begin to expire in 2022 and 2021, respectively. In addition, as of January 3, 2021, we have deferred tax assets for foreign net operating loss carryforwards of $0.3 million, as well as state and local net operating loss carryforwards of $43.4 million that will begin to expire in 2021. We believe it is more likely than not that the benefit from certain net operating loss carryforwards and tax credits will not be realized. In recognition of this risk, we have provided a valuation allowance of $50.0 million.

- Income tax uncertainties:

We measure income tax uncertainties in accordance with a two-step process of evaluating a tax position. We first determine if it is more likely than not that a tax position will be sustained upon examination based on the technical merits of the position. A tax position that meets the more-likely-than-not recognition threshold is then measured, for purposes of financial statement recognition, as the largest amount that has a greater than 50% likelihood of being realized upon effective settlement. We have unrecognized tax benefits of $21.0 million, which if resolved favorably would reduce our tax expense by $16.6 million at January 3, 2021.

We accrue interest related to uncertain tax positions in “Interest expense, net” and penalties in “General and administrative.” At January 3, 2021, we had $0.9 million accrued for interest and $0.04 million accrued for penalties.

The Company participates in the Internal Revenue Service (the “IRS”) Compliance Assurance Process (“CAP”). As part of CAP, tax years are examined on a contemporaneous basis so that all or most issues are resolved prior to the filing of the tax return. As such, our U.S. federal income tax returns for fiscal years 2009 through 2018 have been settled. The statute of limitations for the Company’s state tax returns vary, but generally the Company’s state income tax returns from its 2017 fiscal year forward remain subject to examination. We believe that adequate provisions have been made for any liabilities, including interest and penalties that may result from the completion of these examinations.

New Accounting Standards

See Note 1 of the Financial Statements and Supplementary Data contained in Item 8 herein for a summary of new or amended accounting standards applicable to us.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

Certain statements the Company makes under this Item 7A constitute “forward-looking statements” under the Private Securities Litigation Reform Act of 1995. See “Special Note Regarding Forward-Looking Statements and Projections” in “Part I” preceding “Item 1. Business.”

We are exposed to the impact of interest rate changes, changes in commodity prices and foreign currency fluctuations primarily related to the Canadian dollar. In the normal course of business, we employ established policies and procedures to manage our exposure to these changes using financial instruments we deem appropriate.

Interest Rate Risk

Our objective in managing our exposure to interest rate changes is to limit the impact on our earnings and cash flows. Our policies prohibit the use of derivative instruments for trading purposes and we had no outstanding derivative instruments as of January 3, 2021.

Our long-term debt, including the current portion, aggregated $2,283.2 million as of January 3, 2021 (excluding unamortized debt issuance costs and the effect of purchase accounting adjustments). The Company’s predominantly fixed-rate debt structure has reduced its exposure to interest rate increases that could adversely affect its earnings and cash flows. The Company is exposed to interest rate increases under its Series 2019-1 Class A-1 Notes and its 2020-1 Class A-1 Notes (collectively, the “Class A-1 Notes”), as well as its U.S. advertising fund revolving line of credit; however, the Company had no outstanding borrowings under the Class A-1 Notes or U.S. advertising fund revolving line of credit as of January 3, 2021.
The Company has outstanding borrowings of C$2.5 million under a Canadian subsidiary’s revolving credit facility as of January 3, 2021, which bears interest at the Bank of Montreal Prime Rate. An increase or decrease of 1.0% in the effective interest rate applied to the outstanding borrowings under our Canadian subsidiary’s revolving credit facility would not have a material effect on our consolidated results of operations. See Note 12 of the Financial Statements and Supplementary Data contained in Item 8 herein for further information on the Company’s debt structure and its securitized financing facility.

In addition, LIBOR is expected to be discontinued after 2021. If LIBOR is discontinued, we may need to renegotiate certain loan documents and we cannot predict what alternative index would be negotiated with our lenders or the resulting impact on our interest expense.

Commodity Price Risk

We purchase certain food products, such as beef, chicken, pork, cheese and grains, that are affected by changes in commodity prices and, as a result, we are subject to variability in our food costs. QSCC, our independent supply chain purchasing co-op, negotiates contracts with approved suppliers on behalf of the Wendy’s system in the U.S. and Canada to ensure favorable pricing for its major food products, as well as maintain an adequate supply of fresh food products. While price volatility can occur, which would impact profit margins, the purchasing contracts seek to limit the variability of these commodity costs without establishing any firm purchase commitments by us or our franchisees. In addition, we believe that alternative suppliers are generally available. Our ability to recover increased commodity costs through higher pricing is, at times, limited by the competitive environment in which we operate.

Foreign Currency Risk

Our exposures to foreign currency risk are primarily related to fluctuations in the Canadian dollar relative to the U.S. dollar for our Canadian operations. We monitor these exposures and periodically determine our need for the use of strategies intended to lessen or limit our exposure to these fluctuations. We have exposure related to our investment in a Canadian subsidiary which is subject to foreign currency fluctuations. The exposure to Canadian dollar exchange rates on the Company’s cash flows primarily includes imports paid for by Canadian operations in U.S. dollars and payments from the Company’s Canadian operations to the Company’s U.S. operations in U.S. dollars. Revenues from our Canadian operations for the year ended January 3, 2021 represented approximately 5% of our total revenues. An immediate 10% change in Canadian dollar exchange rates versus the U.S. dollar from their levels at January 3, 2021 would not have a material effect on our consolidated financial position or results of operations.
## Glossary of Defined Terms

- Glossary of Defined Terms: Page 61

## Report of Independent Registered Public Accounting Firm

- Report of Independent Registered Public Accounting Firm: Page 63

## Consolidated Financial Statements

- Consolidated Balance Sheets as of January 3, 2021 and December 29, 2019: Page 65
- Consolidated Statements of Operations for the years ended January 3, 2021, December 29, 2019 and December 30, 2018: Page 66
- Consolidated Statements of Comprehensive Income for the years ended January 3, 2021, December 29, 2019 and December 30, 2018: Page 67
- Consolidated Statements of Stockholders’ Equity for the years ended January 3, 2021, December 29, 2019 and December 30, 2018: Page 68
- Consolidated Statements of Cash Flows for the years ended January 3, 2021, December 29, 2019 and December 30, 2018: Page 69

## Notes to Consolidated Financial Statements

- Notes to Consolidated Financial Statements: Page 71
  - (1) Summary of Significant Accounting Policies: Page 81
  - (2) Revenue: Page 83
  - (3) System Optimization Gains, Net: Page 85
  - (4) Acquisitions: Page 86
  - (5) Reorganization and Realignment Costs: Page 89
  - (6) Income Per Share: Page 90
  - (7) Cash and Receivables: Page 92
  - (8) Investments: Page 93
  - (9) Properties: Page 94
  - (10) Goodwill and Other Intangible Assets: Page 95
  - (11) Accrued Expenses and Other Current Liabilities: Page 96
  - (12) Long-Term Debt: Page 99
  - (13) Fair Value Measurements: Page 101
  - (14) Income Taxes: Page 104
  - (15) Stockholders’ Equity: Page 106
  - (16) Share-Based Compensation: Page 110
  - (17) Impairment of Long-Lived Assets: Page 110
  - (18) Investment (Loss) Income, Net: Page 110
  - (19) Retirement Benefit Plans: Page 110
  - (20) Leases: Page 111
  - (21) Guarantees and Other Commitments and Contingencies: Page 115
  - (22) Transactions with Related Parties: Page 117
  - (23) Legal and Environmental Matters: Page 118
  - (24) Advertising Costs and Funds: Page 119
  - (25) Geographic Information: Page 119
  - (26) Segment Information: Page 120
  - (27) Quarterly Financial Information (Unaudited): Page 121
<table>
<thead>
<tr>
<th>Defined Term</th>
<th>Footnote Where Defined</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010 Plan</td>
<td>(16) Share-Based Compensation</td>
</tr>
<tr>
<td>2018 ASR Agreement</td>
<td>(15) Stockholders’ Equity</td>
</tr>
<tr>
<td>2019-1 Class A-1 Notes</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>2019 ASR Agreement</td>
<td>(15) Stockholders’ Equity</td>
</tr>
<tr>
<td>2020-1 Class A-1 Notes</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>2020 Plan</td>
<td>(16) Share-Based Compensation</td>
</tr>
<tr>
<td>401(k) Plan</td>
<td>(19) Retirement Benefit Plans</td>
</tr>
<tr>
<td>Advertising Funds</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Arby’s</td>
<td>(8) Investments</td>
</tr>
<tr>
<td>ARG Parent</td>
<td>(8) Investments</td>
</tr>
<tr>
<td>Black-Scholes Model</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Brazil JV</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>CAP</td>
<td>(14) Income Taxes</td>
</tr>
<tr>
<td>Caracci Case</td>
<td>(23) Legal and Environmental Matters</td>
</tr>
<tr>
<td>Class A-1 Notes</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>Class A-2 Notes</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>Company</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Contingent Rent</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>COVID-19</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>EBITDA</td>
<td>(26) Segment Information</td>
</tr>
<tr>
<td>Eligible Arby’s Employees</td>
<td>(19) Retirement Benefit Plans</td>
</tr>
<tr>
<td>Equity Plans</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>FASB</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Fountain Beverages</td>
<td>(21) Guarantees and Other Commitments and Contingencies</td>
</tr>
<tr>
<td>Franchise Flip</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>FRG</td>
<td>(4) Acquisitions</td>
</tr>
<tr>
<td>G&amp;A</td>
<td>(5) Reorganization and Realignment Costs</td>
</tr>
<tr>
<td>G&amp;A Realignment Plan</td>
<td>(5) Reorganization and Realignment Costs</td>
</tr>
<tr>
<td>GAAP</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>GILTI</td>
<td>(14) Income Taxes</td>
</tr>
<tr>
<td>Graham Case</td>
<td>(23) Legal and Environmental Matters</td>
</tr>
<tr>
<td>Indenture</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>Inspire Brands</td>
<td>(8) Investments</td>
</tr>
<tr>
<td>IRS</td>
<td>(14) Income Taxes</td>
</tr>
<tr>
<td>IT</td>
<td>(5) Reorganization and Realignment Costs</td>
</tr>
<tr>
<td>IT Realignment Plan</td>
<td>(5) Reorganization and Realignment Costs</td>
</tr>
<tr>
<td>LIBOR</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>Master Issuer</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>NPC</td>
<td>(4) Acquisitions</td>
</tr>
<tr>
<td>Operations and Field Realignment Plan</td>
<td>(5) Reorganization and Realignment Costs</td>
</tr>
<tr>
<td>QSCC</td>
<td>(22) Transactions with Related Parties</td>
</tr>
<tr>
<td>Rent Holiday</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Restricted Shares</td>
<td>(16) Share-Based Compensation</td>
</tr>
<tr>
<td>ROU</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>RSAs</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>RSUs</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Securitization Entities</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>Senior Notes</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>Defined Term</td>
<td>Footnote Where Defined</td>
</tr>
<tr>
<td>------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>SERP</td>
<td>(19) Retirement Benefit Plans</td>
</tr>
<tr>
<td>Straight-Line Rent</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Target</td>
<td>(16) Share-Based Compensation</td>
</tr>
<tr>
<td>Tax Act</td>
<td>(14) Income Taxes</td>
</tr>
<tr>
<td>The Wendy’s Company</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>TimWen</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>U.S.</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>VIE</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Wendy’s</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Wendy’s Co-op</td>
<td>(22) Transactions with Related Parties</td>
</tr>
<tr>
<td>Wendy’s Funding</td>
<td>(12) Long-Term Debt</td>
</tr>
<tr>
<td>Wendy’s Merger</td>
<td>(8) Investments</td>
</tr>
<tr>
<td>Wendy’s Restaurants</td>
<td>(1) Summary of Significant Accounting Policies</td>
</tr>
<tr>
<td>Yellow Cab</td>
<td>(22) Transactions with Related Parties</td>
</tr>
</tbody>
</table>

62
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of The Wendy’s Company

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of The Wendy’s Company and subsidiaries (the “Company”) as of January 3, 2021 and December 29, 2019, the related consolidated statements of operations, comprehensive income, stockholders’ equity, and cash flows, for each of the three years in the period ended January 3, 2021, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of January 3, 2021 and December 29, 2019, and the results of its operations and its cash flows for each of the three years in the period ended January 3, 2021, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company’s internal control over financial reporting as of January 3, 2021, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 3, 2021, expressed an unqualified opinion on the Company’s internal control over financial reporting.

Change in Accounting Principle

As discussed in Note 1 to the financial statements, during 2019, the Company adopted the Financial Accounting Standards Board’s (FASB) new standard related to leases using the modified retrospective approach.

Basis for Opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Goodwill - Global Real Estate and Development Operations Reporting Unit – Refer to Notes 1 and 10 to the financial statements

Critical Audit Matter Description

The Company’s evaluation of goodwill for impairment involves the comparison of the fair value of each reporting unit to its carrying value.
The Company used an income approach to estimate fair value of the global real estate and development operations reporting unit, which requires management to make significant estimates and assumptions including future sales growth, operating profit and the weighted average cost of capital (discount rate). Changes in these assumptions could have a significant impact on either the fair value, the amount of any goodwill impairment charge, or both. The goodwill balance was $751.0 million as of January 3, 2021, of which $122.5 million was allocated to the global real estate and development operations reporting unit. The fair value of the global real estate and development operations reporting unit exceeded its carrying value as of the measurement date and, therefore, no impairment was recognized.

We identified the impairment evaluation of goodwill for the global real estate and development operations reporting unit as a critical audit matter because of the significant judgments made by management to estimate the fair value of this reporting unit. This required a high degree of auditor judgment and an increased extent of effort, including the need to involve our fair value specialists, when performing audit procedures to evaluate the reasonableness of management’s estimates and assumptions, particularly related to future sales growth, operating profit and the selection of the discount rate.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the estimates of future sales growth, operating profit and discount rate used by management to estimate the fair value of the global real estate and development operations reporting unit included the following, among others:

• We tested the effectiveness of controls over management’s goodwill impairment evaluation, including those over the determination of the fair value of the global real estate and development operations reporting unit, such as controls related to management’s forecasts of future sales growth, operating profit and selection of the discount rate.

• We evaluated management’s ability to accurately forecast future sales growth and operating profit by comparing actual results to management’s historical forecasts.

• We evaluated the reasonableness of management’s sales and operating profit forecasts by comparing the forecasts to (1) historical sales and operating profit and (2) internal communications to management and the Board of Directors. We also considered the impact of changes in management’s forecasts from the annual measurement date in the fourth quarter to January 3, 2021.

• With the assistance of our fair value specialists, we evaluated the discount rate assumptions, including testing the underlying source information and the mathematical accuracy of the calculation, and by developing a range of independent estimates and comparing those to the discount rate selected by management.

/s/ Deloitte & Touche LLP
Columbus, Ohio
March 3, 2021

We have served as the Company’s auditor since 1994.
# THE WENDY’S COMPANY AND SUBSIDIARIES
## CONSOLIDATED BALANCE SHEETS
(In Thousands Except Par Value)

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$306,989</td>
<td>$300,195</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>33,973</td>
<td>34,539</td>
</tr>
<tr>
<td>Accounts and notes receivable, net</td>
<td>109,891</td>
<td>117,461</td>
</tr>
<tr>
<td>Inventories</td>
<td>4,732</td>
<td>3,891</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>89,732</td>
<td>15,585</td>
</tr>
<tr>
<td>Advertising funds restricted assets</td>
<td>142,306</td>
<td>82,376</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>$687,623</td>
<td>$554,047</td>
</tr>
<tr>
<td><strong>Properties</strong></td>
<td>915,889</td>
<td>977,000</td>
</tr>
<tr>
<td><strong>Finance lease assets</strong></td>
<td>206,153</td>
<td>200,144</td>
</tr>
<tr>
<td><strong>Operating lease assets</strong></td>
<td>821,480</td>
<td>857,199</td>
</tr>
<tr>
<td><strong>Goodwill</strong></td>
<td>751,049</td>
<td>755,911</td>
</tr>
<tr>
<td><strong>Other intangible assets</strong></td>
<td>1,224,960</td>
<td>1,247,212</td>
</tr>
<tr>
<td>Investments</td>
<td>44,574</td>
<td>45,949</td>
</tr>
<tr>
<td>Net investment in sales-type and direct financing leases</td>
<td>268,221</td>
<td>256,606</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>$5,040,006</td>
<td>$4,994,529</td>
</tr>
</tbody>
</table>

| LIABILITIES AND STOCKHOLDERS’ EQUITY | | |
| **Current liabilities:** | | |
| Current portion of long-term debt | $28,962 | $22,750 |
| Current portion of finance lease liabilities | 12,105 | 11,005 |
| Current portion of operating lease liabilities | 45,346 | 43,775 |
| Accounts payable | 31,063 | 22,701 |
| Accrued expenses and other current liabilities | 155,321 | 165,272 |
| Advertising funds restricted liabilities | 140,511 | 84,195 |
| **Total current liabilities** | 413,308 | 349,698 |
| Long-term debt | 2,218,163 | 2,257,561 |
| Long-term finance lease liabilities | 506,076 | 480,847 |
| Long-term operating lease liabilities | 865,325 | 897,737 |
| Deferred income taxes | 280,755 | 270,759 |
| Deferred franchise fees | 89,094 | 91,790 |
| **Total liabilities** | 4,490,410 | 4,478,170 |
| Commitments and contingencies | | |
| **Stockholders’ equity:** | | |
| Common stock, $0.10 par value; 1,500,000 shares authorized; 470,424 shares issued; 224,268 and 224,889 shares outstanding, respectively | 47,042 | 47,042 |
| Additional paid-in capital | 2,899,276 | 2,874,001 |
| Retained earnings | 238,674 | 185,725 |
| Common stock held in treasury, at cost; 246,156 and 245,535 shares, respectively | (2,585,755) | (2,536,581) |
| Accumulated other comprehensive loss | (49,641) | (53,828) |
| **Total stockholders’ equity** | 549,596 | 516,359 |
| **Total liabilities and stockholders’ equity** | $5,040,006 | $4,994,529 |

See accompanying notes to consolidated financial statements.
Table of Contents

THE WENDY’S COMPANY AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(In Thousands Except Per Share Amounts)

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>December 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales</td>
<td>$722,764</td>
<td>$707,485</td>
<td>$651,577</td>
</tr>
<tr>
<td>Franchise royalty revenue and fees</td>
<td>444,749</td>
<td>428,999</td>
<td>409,043</td>
</tr>
<tr>
<td>Franchise rental income</td>
<td>232,648</td>
<td>233,065</td>
<td>203,297</td>
</tr>
<tr>
<td>Advertising funds revenue</td>
<td>333,664</td>
<td>339,453</td>
<td>326,019</td>
</tr>
<tr>
<td></td>
<td>1,733,825</td>
<td>1,709,002</td>
<td>1,589,936</td>
</tr>
<tr>
<td>Costs and expenses:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of sales</td>
<td>614,907</td>
<td>597,530</td>
<td>548,588</td>
</tr>
<tr>
<td>Franchise support and other costs</td>
<td>26,464</td>
<td>43,686</td>
<td>25,203</td>
</tr>
<tr>
<td>Franchise rental expense</td>
<td>125,613</td>
<td>123,929</td>
<td>91,104</td>
</tr>
<tr>
<td>Advertising funds expense</td>
<td>345,360</td>
<td>338,116</td>
<td>321,866</td>
</tr>
<tr>
<td>General and administrative</td>
<td>206,876</td>
<td>200,206</td>
<td>217,489</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>132,775</td>
<td>131,693</td>
<td>128,879</td>
</tr>
<tr>
<td>System optimization gains, net</td>
<td>(3,148)</td>
<td>(1,283)</td>
<td>(463)</td>
</tr>
<tr>
<td>Reorganization and realignment costs</td>
<td>16,030</td>
<td>16,965</td>
<td>9,068</td>
</tr>
<tr>
<td>Impairment of long-lived assets</td>
<td>8,037</td>
<td>6,999</td>
<td>4,697</td>
</tr>
<tr>
<td>Other operating income, net</td>
<td>(8,397)</td>
<td>(11,418)</td>
<td>(6,387)</td>
</tr>
<tr>
<td></td>
<td>1,464,517</td>
<td>1,446,423</td>
<td>1,340,044</td>
</tr>
<tr>
<td>Operating profit</td>
<td>269,308</td>
<td>262,579</td>
<td>249,892</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(117,737)</td>
<td>(115,971)</td>
<td>(119,618)</td>
</tr>
<tr>
<td>Loss on early extinguishment of debt</td>
<td>—</td>
<td>(8,496)</td>
<td>(11,475)</td>
</tr>
<tr>
<td>Investment (loss) income, net</td>
<td>(225)</td>
<td>25,598</td>
<td>450,736</td>
</tr>
<tr>
<td>Other income, net</td>
<td>1,449</td>
<td>7,771</td>
<td>5,381</td>
</tr>
<tr>
<td>Income before income taxes</td>
<td>152,795</td>
<td>171,481</td>
<td>574,916</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>(34,963)</td>
<td>(34,541)</td>
<td>(114,801)</td>
</tr>
<tr>
<td>Net income</td>
<td>$117,832</td>
<td>$136,940</td>
<td>$460,115</td>
</tr>
<tr>
<td>Net income per share:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$.53</td>
<td>$.60</td>
<td>1.93</td>
</tr>
<tr>
<td>Diluted</td>
<td>.52</td>
<td>.58</td>
<td>1.88</td>
</tr>
</tbody>
</table>

See accompanying notes to consolidated financial statements.
# THE WENDY’S COMPANY AND SUBSIDIARIES
## CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In Thousands)

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>December 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net income</strong></td>
<td>$117,832</td>
<td>$136,940</td>
<td>$460,115</td>
</tr>
<tr>
<td><strong>Other comprehensive income (loss), net:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign currency translation adjustment</td>
<td>4,187</td>
<td>7,845</td>
<td>(16,524)</td>
</tr>
<tr>
<td>Change in unrecognized pension loss</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrealized gains arising during the period</td>
<td>—</td>
<td>—</td>
<td>156</td>
</tr>
<tr>
<td>Income tax provision</td>
<td>—</td>
<td>—</td>
<td>(39)</td>
</tr>
<tr>
<td>Final settlement of pension liability</td>
<td>—</td>
<td>—</td>
<td>932</td>
</tr>
<tr>
<td><strong>Other comprehensive income (loss), net</strong></td>
<td>4,187</td>
<td>7,845</td>
<td>(15,475)</td>
</tr>
<tr>
<td><strong>Comprehensive income</strong></td>
<td>$122,019</td>
<td>$144,785</td>
<td>$444,640</td>
</tr>
</tbody>
</table>

See accompanying notes to consolidated financial statements.
<table>
<thead>
<tr>
<th>Common Stock</th>
<th>Additional Paid-In Capital</th>
<th>Retained Earnings (Accumulated Deficit)</th>
<th>Common Stock Held in Treasury</th>
<th>Accumulated Other Comprehensive Loss</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>$47,042</td>
<td>$2,885,955</td>
<td>$(163,289)</td>
<td>$(2,150,307)</td>
<td>$(46,198)</td>
<td>$573,203</td>
</tr>
<tr>
<td>Net income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$460,115</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>comprehensive loss, net</td>
<td></td>
<td></td>
<td></td>
<td>$(15,475)</td>
<td>$(15,475)</td>
</tr>
<tr>
<td>Cash dividends</td>
<td></td>
<td></td>
<td>$(80,532)</td>
<td></td>
<td>$(80,532)</td>
</tr>
<tr>
<td>Repurchases of common stock, including accelerated share repurchase</td>
<td>$0</td>
<td></td>
<td></td>
<td>$(270,377)</td>
<td>$(270,377)</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>$17,918</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common stock issued upon exercises of stock options</td>
<td>$(9,582)</td>
<td></td>
<td></td>
<td></td>
<td>$38,819</td>
</tr>
<tr>
<td>Common stock issued upon vesting of restricted shares</td>
<td>$(9,711)</td>
<td></td>
<td></td>
<td></td>
<td>$(5,431)</td>
</tr>
<tr>
<td>Cumulative effect of change in accounting principle</td>
<td>$0</td>
<td></td>
<td></td>
<td>$(70,210)</td>
<td>$(70,210)</td>
</tr>
<tr>
<td>Other</td>
<td>$116</td>
<td>$193</td>
<td>$110</td>
<td></td>
<td>$419</td>
</tr>
<tr>
<td>Balance at December 30, 2018</td>
<td>$47,042</td>
<td>$2,884,696</td>
<td>$146,277</td>
<td>$(2,367,893)</td>
<td>$648,449</td>
</tr>
<tr>
<td>Net income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$136,940</td>
</tr>
<tr>
<td>Other comprehensive income, net</td>
<td>$0</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash dividends</td>
<td>$0</td>
<td></td>
<td></td>
<td></td>
<td>$7,845</td>
</tr>
<tr>
<td>Repurchases of common stock, including accelerated share repurchase</td>
<td>$(15,000)</td>
<td></td>
<td></td>
<td></td>
<td>$(217,771)</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>$18,676</td>
<td></td>
<td></td>
<td></td>
<td>$18,676</td>
</tr>
<tr>
<td>Common stock issued upon exercises of stock options</td>
<td>$(808)</td>
<td></td>
<td></td>
<td></td>
<td>$28,944</td>
</tr>
<tr>
<td>Common stock issued upon vesting of restricted shares</td>
<td>$(13,677)</td>
<td></td>
<td></td>
<td></td>
<td>$(8,627)</td>
</tr>
<tr>
<td>Cumulative effect of change in accounting principle</td>
<td>$0</td>
<td></td>
<td>$(1,105)</td>
<td></td>
<td>$(1,105)</td>
</tr>
<tr>
<td>Other</td>
<td>$114</td>
<td>$(23)</td>
<td>$89</td>
<td></td>
<td>$180</td>
</tr>
<tr>
<td>Balance at December 29, 2019</td>
<td>$47,042</td>
<td>$2,874,001</td>
<td>$185,725</td>
<td>$(2,536,831)</td>
<td>$516,359</td>
</tr>
<tr>
<td>Net income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$64,187</td>
</tr>
<tr>
<td>Other comprehensive income, net</td>
<td>$0</td>
<td></td>
<td></td>
<td></td>
<td>$4,187</td>
</tr>
<tr>
<td>Cash dividends</td>
<td>$0</td>
<td></td>
<td></td>
<td></td>
<td>$(64,866)</td>
</tr>
<tr>
<td>Repurchases of common stock, including accelerated share repurchase</td>
<td>$15,000</td>
<td></td>
<td></td>
<td></td>
<td>$(61,095)</td>
</tr>
<tr>
<td>Share-based compensation</td>
<td>$18,930</td>
<td></td>
<td></td>
<td></td>
<td>$18,930</td>
</tr>
<tr>
<td>Common stock issued upon exercises of stock options</td>
<td>$912</td>
<td></td>
<td></td>
<td></td>
<td>$23,351</td>
</tr>
<tr>
<td>Common stock issued upon vesting of restricted shares</td>
<td>$(7,889)</td>
<td></td>
<td></td>
<td></td>
<td>$(5,389)</td>
</tr>
<tr>
<td>Other</td>
<td>$146</td>
<td>$(17)</td>
<td>$158</td>
<td></td>
<td>$287</td>
</tr>
<tr>
<td>Balance at January 3, 2021</td>
<td>$47,042</td>
<td>$2,899,276</td>
<td>$238,674</td>
<td>$(2,585,755)</td>
<td>$549,596</td>
</tr>
</tbody>
</table>

See accompanying notes to consolidated financial statements.
# THE WENDY'S COMPANY AND SUBSIDIARIES
## CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

<table>
<thead>
<tr>
<th>Year Ended</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>December 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cash flows from operating activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income</td>
<td>$117,832</td>
<td>$136,940</td>
<td>$460,115</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>284,361</td>
<td>288,933</td>
<td>224,228</td>
</tr>
<tr>
<td><strong>Cash flows from investing activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital expenditures</td>
<td>(68,969)</td>
<td>(74,453)</td>
<td>(69,857)</td>
</tr>
<tr>
<td>Acquisitions</td>
<td>(4,879)</td>
<td>(5,052)</td>
<td>(21,401)</td>
</tr>
<tr>
<td>Dispositions</td>
<td>6,091</td>
<td>3,448</td>
<td>3,223</td>
</tr>
<tr>
<td>Proceeds from sale of investments</td>
<td>169</td>
<td>24,496</td>
<td>450,000</td>
</tr>
<tr>
<td>Net cash (used in) provided by investing activities</td>
<td>(68,250)</td>
<td>(54,931)</td>
<td>362,911</td>
</tr>
<tr>
<td><strong>Cash flows from financing activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds from long-term debt</td>
<td>153,315</td>
<td>850,000</td>
<td>934,837</td>
</tr>
<tr>
<td>Repayments of long-term debt</td>
<td>(191,462)</td>
<td>(899,800)</td>
<td>(894,501)</td>
</tr>
<tr>
<td>Repayments of finance lease liabilities</td>
<td>(8,383)</td>
<td>(6,835)</td>
<td>(5,571)</td>
</tr>
<tr>
<td>Deferred financing costs</td>
<td>(2,122)</td>
<td>(14,008)</td>
<td>(17,340)</td>
</tr>
<tr>
<td>Repurchases of common stock, including accelerated share repurchase</td>
<td>(62,173)</td>
<td>(217,797)</td>
<td>(269,809)</td>
</tr>
<tr>
<td>Dividends</td>
<td>(64,866)</td>
<td>(96,364)</td>
<td>(80,532)</td>
</tr>
<tr>
<td>Proceeds from stock option exercises</td>
<td>23,361</td>
<td>28,328</td>
<td>45,228</td>
</tr>
<tr>
<td>Payments related to tax withholding for share-based compensation</td>
<td>(5,577)</td>
<td>(8,820)</td>
<td>(11,805)</td>
</tr>
<tr>
<td>Contingent consideration payment</td>
<td>—</td>
<td>—</td>
<td>(6,269)</td>
</tr>
<tr>
<td>Net cash used in financing activities</td>
<td>(157,907)</td>
<td>(365,296)</td>
<td>(305,762)</td>
</tr>
<tr>
<td>Net cash provided by (used in) operations before effect of exchange rate changes on cash</td>
<td>58,204</td>
<td>(131,294)</td>
<td>281,377</td>
</tr>
<tr>
<td>Effect of exchange rate changes on cash</td>
<td>1,330</td>
<td>3,489</td>
<td>(7,689)</td>
</tr>
<tr>
<td>Net increase (decrease) in cash, cash equivalents and restricted cash</td>
<td>59,534</td>
<td>(127,805)</td>
<td>273,688</td>
</tr>
<tr>
<td>Cash, cash equivalents and restricted cash at the beginning of period</td>
<td>358,707</td>
<td>486,512</td>
<td>212,824</td>
</tr>
<tr>
<td>Cash, cash equivalents and restricted cash at the end of period</td>
<td>$418,241</td>
<td>$358,707</td>
<td>$486,512</td>
</tr>
</tbody>
</table>

69
### CONSOLIDATED STATEMENTS OF CASH FLOWS—CONTINUED

(In Thousands)

#### Year Ended

<table>
<thead>
<tr>
<th>Year Ended</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>December 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long-term debt-related activities, net:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loss on early extinguishment of debt</td>
<td>$ —</td>
<td>$ 8,496</td>
<td>$ 11,475</td>
</tr>
<tr>
<td>Accretion of long-term debt</td>
<td>$ 1,161</td>
<td>$ 1,272</td>
<td>$ 1,255</td>
</tr>
<tr>
<td>Amortization of deferred financing costs</td>
<td>$ 5,562</td>
<td>$ 5,549</td>
<td>$ 5,943</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 6,723</strong></td>
<td><strong>$ 15,317</strong></td>
<td><strong>$ 18,673</strong></td>
</tr>
</tbody>
</table>

#### Supplemental cash flow information:

<table>
<thead>
<tr>
<th>Cash paid for:</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>December 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest</td>
<td>$ 136,228</td>
<td>$ 138,270</td>
<td>$ 137,607</td>
</tr>
<tr>
<td>Income taxes, net of refunds</td>
<td>16,202</td>
<td>34,798</td>
<td>102,827</td>
</tr>
</tbody>
</table>

#### Supplemental non-cash investing and financing activities:

<table>
<thead>
<tr>
<th>Capital expenditures included in accounts payable</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>December 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance leases</td>
<td>$ 3,673</td>
<td>$ 6,026</td>
<td>$ 6,460</td>
</tr>
</tbody>
</table>

#### Reconciliation of cash, cash equivalents and restricted cash at end of period:

<table>
<thead>
<tr>
<th>Cash and cash equivalents</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>December 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restricted cash</td>
<td>$ 33,973</td>
<td>$ 34,539</td>
<td>$ 29,860</td>
</tr>
<tr>
<td>Restricted cash, included in Advertising funds restricted assets</td>
<td>$ 77,279</td>
<td>$ 23,973</td>
<td>$ 25,247</td>
</tr>
<tr>
<td><strong>Total cash, cash equivalents and restricted cash</strong></td>
<td><strong>$ 418,241</strong></td>
<td><strong>$ 358,707</strong></td>
<td><strong>$ 486,512</strong></td>
</tr>
</tbody>
</table>

See accompanying notes to consolidated financial statements.
(1) Summary of Significant Accounting Policies

Corporate Structure

The Wendy’s Company (“The Wendy’s Company” and, together with its subsidiaries, the “Company,” “we,” “us,” or “our”) is the parent company of its 100% owned subsidiary holding company, Wendy’s Restaurants, LLC (“Wendy’s Restaurants”). Wendy’s Restaurants is the parent company of Wendy’s International, LLC and its subsidiaries (“Wendy’s”). Wendy’s franchises and operates Wendy’s quick-service restaurants specializing in hamburger sandwiches throughout the United States of America (“U.S.”) and also franchises Wendy’s quick-service restaurants in 30 foreign countries and U.S. territories. At January 3, 2021, Wendy’s operated and franchised 361 and 6,467 restaurants, respectively.

The Company manages and internally reports its business in the following segments: (1) Wendy’s U.S., (2) Wendy’s International and (3) Global Real Estate & Development. See Note 26 for further information.

Principles of Consolidation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and include all of the Company’s subsidiaries. We also consider for consolidation entities in which we have certain interests, where the controlling financial interest may be achieved through arrangements that do not involve voting interests. Such an entity, known as a variable interest entity (“VIE”), is required to be consolidated by its primary beneficiary. The primary beneficiary is the entity that possesses the power to direct the activities of the VIE that most significantly impact its economic performance and has the obligation to absorb losses or the right to receive benefits from the VIE that are significant to it. The principal entities in which we possess a variable interest include the Company’s national advertising funds for the U.S. and Canada (the “Advertising Funds”). All intercompany balances and transactions have been eliminated in consolidation.

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ materially from those estimates.

On March 11, 2020, the World Health Organization declared the novel strain of coronavirus (“COVID-19”) a global pandemic and recommended containment and mitigation measures worldwide. We continue to monitor the dynamic nature of the COVID-19 pandemic on our business, results and financial condition; however, we cannot predict the ultimate duration, scope or severity of the COVID-19 pandemic or its ultimate impact on our results of operations, financial condition and prospects.

Reclassifications

Certain reclassifications have been made to the prior year presentation to conform to the current year presentation.

Fiscal Year

The Company’s fiscal reporting periods consist of 52 or 53 weeks ending on the Sunday closest to December 31 and are referred to herein as (1) “the year ended January 3, 2021” or “2020,” which consisted of 53 weeks, (2) “the year ended December 29, 2019” or “2019,” which consisted of 52 weeks, and (3) “the year ended December 30, 2018” or “2018,” which consisted of 52 weeks. All references to years, quarters and months relate to fiscal periods rather than calendar periods.

Cash and Cash Equivalents

All highly liquid investments with a maturity of three months or less when acquired are considered cash equivalents. The Company’s cash and cash equivalents principally consist of cash in bank and money market mutual fund accounts and are primarily not in Federal Deposit Insurance Corporation insured accounts.
We believe that our vulnerability to risk concentrations in our cash equivalents is mitigated by (1) our policies restricting the eligibility, credit quality and concentration limits for our placements in cash equivalents and (2) insurance from the Securities Investor Protection Corporation of up to $500 per account, as well as supplemental private insurance coverage maintained by substantially all of our brokerage firms, to the extent our cash equivalents are held in brokerage accounts.

Restricted Cash

In accordance with the Company’s securitized financing facility, certain cash accounts have been established with the trustee for the benefit of the trustee and the noteholders and are restricted in their use. Such restricted cash primarily represents cash collections and cash reserves held by the trustee to be used for payments of principal, interest and commitment fees required for the Company’s senior secured notes. Restricted cash also includes cash collected by the Advertising Funds, usage of which is restricted for advertising activities and is included in “Advertising funds restricted assets.” Refer to Note 7 for further information.

Accounts and Notes Receivable, Net

Accounts and notes receivable, net, consist primarily of royalties, rents, property taxes and franchise fees due principally from franchisees, credit card receivables, insurance receivables and refundable income taxes. Reserve estimates include consideration of the likelihood of default expected over the estimated life of the receivable. The Company periodically assesses the need for an allowance for doubtful accounts on its receivables based upon several key credit quality indicators such as outstanding past due balances, the financial strength of the obligor, the estimated fair value of any underlying collateral and agreement characteristics.

We believe that our vulnerability to risk concentrations in our receivables is mitigated by (1) favorable historical collectability on past due balances, (2) recourse to the underlying collateral regarding sales-type and direct financing lease receivables, and (3) our expectations for fluctuations in general market conditions. Receivables are considered delinquent once they are contractually past due under the terms of the underlying agreements. As of January 3, 2021, there were no material receivables more than one year past due.

Inventories

The Company’s inventories are stated at the lower of cost or net realizable value, with cost determined in accordance with the first-in, first-out method and consist primarily of restaurant food items and paper supplies.

Properties and Depreciation and Amortization

Properties are stated at cost, including capitalized internal costs of employees to the extent such employees are dedicated to specific restaurant construction projects, less accumulated depreciation and amortization. Depreciation and amortization of properties is computed principally on the straight-line basis using the following estimated useful lives of the related major classes of properties: 3 to 20 years for office and restaurant equipment (including technology), 3 to 15 years for transportation equipment and 7 to 30 years for buildings and improvements. When the Company commits to a plan to cease using certain properties before the end of their estimated useful lives, depreciation expense is accelerated to reflect the use of the assets over their shortened useful lives. Leasehold improvements are amortized over the shorter of their estimated useful lives or the terms of the respective leases, including periods covered by renewal options that the Company is reasonably assured of exercising.

The Company reviews properties for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. If such review indicates an asset group may not be recoverable, an impairment loss is recognized for the excess of the carrying amount over the fair value of an asset group to be held and used or over the fair value less cost to sell of an asset to be disposed. See “Impairment of Long-Lived Assets” below for further information.

The Company classifies assets as held for sale and ceases depreciation of the assets when there is a plan for disposal of the assets and those assets meet the held for sale criteria. Assets held for sale are included in “Prepaid expenses and other current assets” in the consolidated balance sheets.
Goodwill

Goodwill, representing the excess of the cost of an acquired entity over the fair value of the acquired net assets, is not amortized. Goodwill associated with our Company-operated restaurants is reduced as a result of restaurant dispositions based on the relative fair values and is included in the carrying value of the restaurant in determining the gain or loss on disposal. If a Company-operated restaurant is sold within two years of being acquired from a franchisee, the goodwill associated with the acquisition is written off in its entirety. Goodwill has been assigned to reporting units for purposes of impairment testing. The Company tests goodwill for impairment annually during the fourth quarter, or more frequently if events or changes in circumstances indicate that the asset may be impaired. Our annual impairment test of goodwill may be completed through a qualitative assessment to determine if the fair value of the reporting unit is more likely than not greater than the carrying amount. If we elect to bypass the qualitative assessment for any reporting units, or if a qualitative assessment indicates it is more likely than not that the estimated carrying value of a reporting unit exceeds its fair value, we perform a quantitative goodwill impairment test. Under the quantitative test, the fair value of the reporting unit is compared with its carrying value (including goodwill). If the carrying value of the reporting unit exceeds its fair value, an impairment loss is recognized in an amount equal to that excess, limited to the total amount of goodwill allocated to that reporting unit. Our critical estimates in this impairment test include future sales growth, operating profit, income tax rates, terminal value growth rates, capital expenditures and the weighted average cost of capital (discount rate).

Our fair value estimates are subject to change as a result of many factors including, among others, any changes in our business plans, changing economic conditions and the competitive environment. Should actual cash flows and our future estimates vary adversely from those estimates we use, we may be required to recognize goodwill impairment charges in future years.

Impairment of Long-Lived Assets

Our long-lived assets include (1) properties and related definite-lived intangible assets (e.g., favorable leases) that are leased and/or subleased to franchisees, (2) Company-operated restaurant assets and related definite-lived intangible assets, which include reacquired rights under franchise agreements, and (3) finance and operating lease assets.

We review our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We assess the recoverability of our long-lived assets by comparing the carrying amount of the asset group to future undiscounted net cash flows expected to be generated through leases and/or subleases or by our individual Company-operated restaurants. If the carrying amount of the long-lived asset group is not recoverable on an undiscounted cash flow basis, then impairment is recognized to the extent that the carrying amount exceeds its fair value and is included in “Impairment of long-lived assets.” Our critical estimates in this review process include the anticipated future cash flows from leases and/or subleases or individual Company-operated restaurants, which is used in assessing the recoverability of the respective long-lived assets.

Our fair value estimates are subject to change as a result of many factors including, among others, any changes in our business plans, changing economic conditions and the competitive environment. Should actual cash flows and our future estimates vary adversely from those estimates we used, we may be required to recognize additional impairment charges in future years.

Other Intangible Assets

Definite-lived intangible assets are amortized on a straight-line basis using the following estimated useful lives of the related classes of intangibles: for favorable leases, the terms of the respective leases, including periods covered by renewal options that the Company as lessor is reasonably certain the tenant will exercise; 1 to 5 years for computer software; 4 to 20 years for reacquired rights under franchise agreements; and 20 years for franchise agreements. Trademarks have an indefinite life and are not amortized.
The Company reviews definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the intangible asset may not be recoverable. Indefinite-lived intangible assets are tested for impairment at least annually, or more frequently if events or changes in circumstances indicate that the assets may be impaired. Our annual impairment test for indefinite-lived intangible assets may be completed through a qualitative assessment to determine if the fair value of the indefinite-lived intangible assets is more likely than not greater than the carrying amount. If we elect to bypass the qualitative assessment, or if a qualitative assessment indicates it is more likely than not that the estimated carrying value exceeds the fair value, we test for impairment using a quantitative process. If the Company determines that impairment of its intangible assets may exist, the amount of impairment loss is measured as the excess of carrying value over fair value. Our estimates in the determination of the fair value of indefinite-lived intangible assets include the anticipated future revenues of Company-operated and franchised restaurants and the resulting cash flows.

**Investments**

The Company has a 50% share in a partnership in a Canadian restaurant real estate joint venture (“TimWen”) with a subsidiary of Restaurant Brands International Inc., a quick-service restaurant company that owns the Tim Hortons® brand (Tim Hortons is a registered trademark of Tim Hortons USA Inc.). In addition, the Company has a 20% share in a joint venture in Brazil (the “Brazil JV”). The Company has significant influence over these investees. Such investments are accounted for using the equity method, under which our results of operations include our share of the income (loss) of the investees in “Other operating income, net.” Other investments in equity securities, including investments in limited partnerships, in which the Company does not have significant influence, and for which there is not a readily determinable fair value, are recorded at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. Realized gains and losses are reported as income or loss in the period in which the securities are sold or otherwise disposed. Cash distributions and dividends received that are determined to be returns of capital are recorded as a reduction of the carrying value of our investments and returns on our investments are recorded to “Investment (loss) income, net.”

The difference between the carrying value of our TimWen equity investment and the underlying equity in the historical net assets of the investee is accounted for as if the investee were a consolidated subsidiary. Accordingly, the carrying value difference is amortized over the estimated lives of the assets of the investee to which such difference would have been allocated if the equity investment were a consolidated subsidiary. To the extent the carrying value difference represents goodwill, it is not amortized.

**Share-Based Compensation**

The Company has granted share-based compensation awards to certain employees under several equity plans (the “Equity Plans”). The Company measures the cost of employee services received in exchange for an equity award, which include grants of employee stock options and restricted shares, based on the fair value of the award at the date of grant. Share-based compensation expense is recognized net of estimated forfeitures, determined based on historical experience. The Company recognizes share-based compensation expense over the requisite service period unless the awards are subject to performance conditions, in which case we recognize compensation expense over the requisite service period to the extent performance conditions are considered probable. The Company determines the grant date fair value of stock options using a Black-Scholes-Merton option pricing model (the “Black-Scholes Model”). The grant date fair value of restricted share awards (“RSAs”), restricted share units (“RSUs”) and performance-based awards are determined using the fair market value of the Company’s common stock on the date of grant, as set forth in the applicable plan document, unless the awards are subject to market conditions, in which case we use a Monte Carlo simulation model. The Monte Carlo simulation model utilizes multiple input variables to estimate the probability that market conditions will be achieved.

**Foreign Currency Translation**

The Company’s primary foreign operations are in Canada where the functional currency is the Canadian dollar. Financial statements of foreign subsidiaries are prepared in their functional currency and then translated into U.S. dollars. Assets and liabilities are translated at the exchange rate as of the balance sheet date and revenues, costs and expenses are translated at a monthly average exchange rate. Net gains or losses resulting from the translation are recorded to the “Foreign currency translation adjustment” component of “Accumulated other comprehensive loss.” Gains and losses arising from the impact of foreign currency exchange rate fluctuations on transactions in foreign currency are included in “General and administrative.”

---

74
Income Taxes

The Company accounts for income taxes under the asset and liability method. A deferred tax asset or liability is recognized whenever there are (1) future tax effects from temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and (2) operating loss, capital loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to the years in which those differences are expected to be recovered or settled.

Deferred tax assets are recognized to the extent the Company believes these assets will more likely than not be realized. In evaluating the realizability of deferred tax assets, the Company considers all available positive and negative evidence, including the interaction and the timing of future reversals of existing temporary differences, projected future taxable income, recent operating results and tax-planning strategies. When considered necessary, a valuation allowance is recorded to reduce the carrying amount of the deferred tax assets to their anticipated realizable value.

The Company records uncertain tax positions on the basis of a two-step process whereby we first determine if it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. A tax position that meets the more-likely-than-not recognition threshold is then measured for purposes of financial statement recognition as the largest amount of benefit that is greater than 50% likely of being realized upon being effectively settled.

Interest accrued for uncertain tax positions is charged to “Interest expense, net.” Penalties accrued for uncertain tax positions are charged to “General and administrative.”

Restaurant Acquisitions and Dispositions

The Company accounts for the acquisition of restaurants from franchisees using the acquisition method of accounting for business combinations. The acquisition method of accounting involves the allocation of the purchase price to the estimated fair values of the assets acquired and liabilities assumed. This allocation process requires the use of estimates and assumptions to derive fair values and to complete the allocation. The excess of the purchase price over the fair values of the assets acquired and liabilities assumed represents goodwill derived from the acquisition. See “Goodwill” above for further information.

In connection with the sale of Company-operated restaurants to franchisees, the Company typically enters into several agreements, in addition to an asset purchase agreement, with franchisees including franchise, development, relationship and lease agreements. The Company typically sells restaurants’ cash, inventory and equipment and retains ownership or the leasehold interest to the real estate to lease and/or sublease to the franchisee. The Company has determined that its restaurant dispositions usually represent multiple-element arrangements, and as such, the cash consideration received is allocated to the separate elements based on their relative selling price. Cash consideration generally includes up-front consideration for the sale of the restaurants, technical assistance fees and development fees and future cash consideration for royalties and lease payments. The Company considers the future lease payments in allocating the initial cash consideration received. The Company obtains third-party evidence to estimate the relative selling price of the stated rent under the lease and/or sublease agreements which is primarily based upon comparable market rents. Based on the Company’s review of the third-party evidence, the Company records favorable or unfavorable lease assets/liabilities with a corresponding offset to the gain or loss on the sale of the restaurants. The cash consideration per restaurant for technical assistance fees and development fees is consistent with the amounts stated in the related franchise agreements which are charged for separate standalone arrangements. The Company recognizes the technical assistance and development fees over the contractual term of the franchise agreements. Future royalty income is also recognized in revenue as earned. See “Revenue Recognition” below for further information.

Revenue Recognition

“Sales” includes revenues recognized upon delivery of food to the customer at Company-operated restaurants. “Sales” excludes taxes collected from the Company’s customers. Revenue is recognized when the food is purchased by the customer, which is when our performance obligation is satisfied. “Sales” also includes income for gift cards. Gift card payments are recorded as deferred income when received and are recognized as revenue upon redemption.

“Franchise royalty revenue and fees” includes royalties, new build technical assistance fees, renewal fees, franchisee-to- franchisee restaurant transfer (“Franchise Flip”) technical assistance fees, Franchise Flip advisory fees and development fees.
Royalties from franchised restaurants are based on a percentage of sales of the franchised restaurant and are recognized as earned. New build technical assistance fees, renewal fees and Franchise Flip technical assistance fees are recorded as deferred revenue when received and recognized as revenue over the contractual term of the franchise agreements, once the restaurant has opened. Development fees are deferred when received, allocated to each agreed upon restaurant, and recognized as revenue over the contractual term of each respective franchise agreement, once the restaurant has opened. These franchise fees are considered highly dependent upon and interrelated with the franchise right granted in the franchise agreement. Franchise Flip advisory fees include valuation services and fees for selecting pre-approved buyers for Franchise Flips. Franchise Flip advisory fees are paid by the seller and are recognized as revenue at closing of the Franchise Flip transaction.

“Franchise rental income” includes rental income from properties owned and leased by the Company and leased or subleased to franchisees. Rental income is recognized on a straight-line basis over the respective operating lease terms. Favorable and unfavorable lease amounts related to the leased and/or subleased properties are amortized to rental income on a straight-line basis over the remaining term of the leases.

“Advertising funds revenue” includes contributions to the Advertising Funds by franchisees. Revenue related to these contributions is based on a percentage of sales of the franchised restaurants and is recognized as earned.

Cost of Sales

Cost of sales includes food and paper, restaurant labor and occupancy, advertising and other operating costs relating to Company-operated restaurants. Cost of sales excludes depreciation and amortization expense.

Vendor Incentives

The Company receives incentives from certain vendors. These incentives are recognized as earned and are classified as a reduction of “Cost of sales.”

Advertising Costs

Advertising costs are expensed as incurred and are included in “Cost of sales” and “Advertising funds expense.” Production costs of advertising are expensed when the advertisement is first released.

Franchise Support and Other Costs

The Company incurs costs to provide direct support services to our franchisees, as well as certain other direct and incremental costs to the Company’s franchise operations. These costs primarily relate to franchise development services, facilitating Franchise Flips and information technology services, which are charged to “Franchise support and other costs,” as incurred. 

Self-Insurance

The Company is self-insured for most workers’ compensation losses and health care claims and purchases insurance for general liability and automotive liability losses, all subject to a $500 per occurrence retention or deductible limit. The Company provides for their estimated cost to settle both known claims and claims incurred but not yet reported. Liabilities associated with these claims are estimated, in part, by considering the frequency and severity of historical claims, both specific to us, as well as industry-wide loss experience and other actuarial assumptions. We determine our insurance obligations with the assistance of actuarial firms. Since there are many estimates and assumptions involved in recording insurance liabilities and in the case of workers’ compensation a significant period of time elapses before the ultimate resolution of claims, differences between actual future events and prior estimates and assumptions could result in adjustments to these liabilities.
Leases

Determination of Whether a Contract Contains a Lease

The Company evaluates the contracts it enters into to determine whether such contracts contain leases. A contract contains a lease if the contract conveys the right to control the use of identified property, plant or equipment for a period of time in exchange for consideration. At commencement, contracts containing a lease are further evaluated for classification as an operating or finance lease where the Company is a lessee, or as an operating, sales-type or direct financing lease where the Company is a lessor, based on their terms.

ROU Model and Determination of Lease Term

The Company uses the right-of-use (“ROU”) model to account for leases where the Company is the lessee, which requires an entity to recognize a lease liability and ROU asset on the lease commencement date. A lease liability is measured equal to the present value of the remaining lease payments over the lease term and is discounted using the incremental borrowing rate, as the rate implicit in the Company’s leases is not readily determinable. The incremental borrowing rate is the rate of interest that the Company would have to pay to borrow, on a collateralized basis over a similar term, an amount equal to the lease payments in a similar economic environment. Lease payments include payments made before the commencement date and any residual value guarantees, if applicable. The initial ROU asset consists of the initial measurement of the lease liability, adjusted for any favorable or unfavorable terms for leases acquired from franchisees, as well as payments made before the commencement date, initial direct costs and lease incentives earned. When determining the lease term, the Company includes option periods that it is reasonably certain to exercise as failure to renew the lease would impose a significant economic detriment. For properties used for Company-operated restaurants, the primary economic detriment relates to the existence of unamortized leasehold improvements which might be impaired if we choose not to exercise the available renewal options. The lease term for properties leased or subleased to franchisees is determined based upon the economic detriment to the franchisee and includes consideration of the length of the franchise agreement, historical performance of the restaurant and the existence of bargain renewal options. Lease terms for real estate are generally initially between 15 and 20 years and, in most cases, provide for rent escalations and renewal options.

Operating Leases

For operating leases, minimum lease payments or receipts, including minimum scheduled rent increases, are recognized as rent expense where the Company is a lessee, or income where the Company is a lessor, as applicable, on a straight-line basis (“Straight-Line Rent”) over the applicable lease terms. There is a period under certain lease agreements referred to as a rent holiday (“Rent Holiday”) that generally begins on the possession date and ends on the rent commencement date. During a Rent Holiday, no cash rent payments are typically due under the terms of the lease; however, expense is recorded for that period on a straight-line basis. The excess of the Straight-Line Rent over the minimum rents received is recorded as a deferred lease asset and is included in “Other assets” where the Company is a lessee. Lease cost includes the amortization of the ROU asset and interest expense related to the operating lease liability. Variable lease cost for operating leases includes Contingent Rent and payments for executory costs such as real estate taxes, insurance and common area maintenance, which are excluded from the measurement of the lease liability. Short-term lease cost for operating leases includes rental expense for leases with a term of less than 12 months. Lease costs are recorded in the consolidated statements of operations based on the nature of the underlying lease as follows: (1) rental expense related to leases for Company-operated restaurants is recorded to “Cost of sales,” (2) rental expense for leased properties that are subsequently subleased to franchisees is recorded to “Franchise rental expense” and (3) rental expense related to leases for corporate offices and equipment is recorded to “General and administrative.”
Favorable and unfavorable lease amounts for operating leases where the Company is the lessor are recorded as components of “Other intangible assets” and “Other liabilities,” respectively. Favorable and unfavorable lease amounts are amortized on a straight-line basis over the term of the leases. When the expected term of a lease is determined to be shorter than the original amortization period, the favorable or unfavorable lease balance associated with the lease is adjusted to reflect the revised lease term.

Rental income and favorable and unfavorable lease amortization for operating leases on properties leased or subleased to franchisees is recorded to “Franchise rental income.” Lessees’ variable payments to the Company for executory costs under operating leases are recognized on a gross basis as “Franchise rental income” with a corresponding expense recorded to “Franchise rental expense.”

Finance Leases

Lease cost for finance leases where the Company is the lessee includes the amortization of the ROU asset, which is amortized on a straight-line basis and recorded to “Depreciation and amortization,” and interest expense on the finance lease liability, which is calculated using the interest method and recorded to “Interest expense, net.” Finance lease ROU assets are amortized over the shorter of their estimated useful lives or the terms of the respective leases, including periods covered by renewal options that the Company is reasonably certain of exercising.

Sales-Type and Direct Financing Leases

For sales-type and direct financing leases where the Company is the lessor, the Company records its investment in properties leased to franchisees on a net basis, which is comprised of the present value of the lease payments not yet received and the present value of the guaranteed and unguaranteed residual assets. The current and long-term portions of our net investment in sales-type and direct financing leases are included in “Accounts and notes receivable, net” and “Net investment in sales-type and direct financing leases,” respectively. Unearned income is recognized as interest income over the lease term and is included in “Interest expense, net.” Sales-type leases result in the recognition of gain or loss at the commencement of the lease, which is recorded to “Other operating income, net.” The gain or loss recognized upon commencement of the lease is directly affected by the Company’s estimate of the amount to be derived from the guaranteed and unguaranteed residual assets at the end of the lease term. The Company’s main component of this estimate is the expected fair value of the underlying assets, primarily the fair value of land. Lessees’ variable payments to the Company for executory costs under sales-type and direct financing leases are recognized on a gross basis as “Franchise rental income” with a corresponding expense recorded to “Franchise rental expense.”

Significant Assumptions and Judgments

Management makes certain estimates and assumptions regarding each new lease and sublease agreement, renewal and amendment, including, but not limited to, property values, market rents, property lives, discount rates and probable term, all of which can impact (1) the classification and accounting for a lease or sublease as operating or finance, including sales-type and direct financing, (2) the Rent Holiday and escalations in payment that are taken into consideration when calculating Straight-Line Rent, (3) the term over which leasehold improvements for each restaurant are amortized and (4) the values and lives of adjustments to the initial ROU asset where the Company is the lessee, or favorable and unfavorable leases where the Company is the lessor. The amount of depreciation and amortization, interest and rent expense and income reported would vary if different estimates and assumptions were used.

Concentration of Risk

Wendy’s had no customers which accounted for 10% or more of consolidated revenues in 2020, 2019 or 2018. As of January 3, 2021, Wendy’s had one main in-line distributor of food, packaging and beverage products, excluding breads, that serviced approximately 67% of Wendy’s restaurants in the U.S. and four additional in-line distributors that, in the aggregate, serviced approximately 32% of Wendy’s restaurants in the U.S. We believe that our vulnerability to risk concentrations related to significant vendors and sources of our raw materials is mitigated as we believe that there are other vendors who would be able to service our requirements. However, if a disruption of service from any of our main in-line distributors was to occur, we could experience short-term increases in our costs while distribution channels were adjusted.
Wendy’s restaurants are principally located throughout the U.S. and to a lesser extent, in 30 foreign countries and U.S. territories with the largest number in Canada. Wendy’s U.S. restaurants are located in 50 states and the District of Columbia, with the largest number in Florida, Texas, Ohio, Georgia, California, North Carolina, Pennsylvania and Michigan. Because our restaurant operations are generally located throughout the U.S. and to a much lesser extent, Canada and other foreign countries and U.S. territories, we believe the risk of geographic concentration is not significant. We could be adversely affected by changing consumer preferences resulting from concerns over nutritional or safety aspects of beef, chicken, french fries or other products we sell or the effects of food safety events or disease outbreaks. Our exposure to foreign exchange risk is primarily related to fluctuations in the Canadian dollar relative to the U.S. dollar for our Canadian operations. However, our exposure to Canadian dollar foreign currency risk is mitigated by the fact that there are no Company-operated restaurants in Canada and less than 10% of Wendy’s franchised restaurants are in Canada.

The Company is subject to credit risk through its accounts receivable consisting primarily of amounts due from franchisees for royalties, franchise fees and rent. In addition, we have notes receivable from certain of our franchisees. The financial condition of these franchisees is largely dependent upon the underlying business trends of the Wendy’s brand and market conditions within the quick-service restaurant industry. This concentration of credit risk is mitigated, in part, by the number of franchisees and the short-term nature of the franchise receivables.

New Accounting Standards Adopted

Income Taxes

In December 2019, the Financial Accounting Standards Board (“FASB”) issued new guidance to simplify the accounting for income taxes by removing certain exceptions to the general principles and the simplification of areas such as franchise taxes, transactions that result in a step-up in the tax basis of goodwill, separate entity financial statements and interim recognition of enactment of tax laws or tax rate changes. The Company early adopted this amendment during the first quarter of 2020. The adoption of this guidance did not have a material impact on our consolidated financial statements.

Fair Value Measurement

In August 2018, the FASB issued new guidance on disclosure requirements for fair value measurements. The objective of the new guidance is to provide additional information about assets and liabilities measured at fair value in the statement of financial position or disclosed in the notes to financial statements. New incremental disclosure requirements include the amount of fair value hierarchy level 3 changes in unrealized gains and losses and the range and weighted average used to develop significant unobservable inputs for level 3 fair value measurements. The Company adopted this guidance during the first quarter of 2020. The adoption of this guidance did not have a material impact on our consolidated financial statements.

Goodwill Impairment

In January 2017, the FASB issued new guidance that simplifies the accounting for goodwill impairment by eliminating step two from the goodwill impairment test. The Company adopted this amendment during the first quarter of 2020. The adoption of this guidance did not have a material impact on our consolidated financial statements.

Credit Losses

In June 2016, the FASB issued an amendment that requires the Company to use a current expected credit loss model that results in the immediate recognition of an estimate of credit losses that are expected to occur over the life of the financial instruments that are within the scope of the guidance, including trade receivables. The Company adopted this amendment during the first quarter of 2020. The adoption of this guidance did not have a material impact on our consolidated financial statements.
Leases

In February 2016, the FASB issued new guidance on leases, which outlines principles for the recognition, measurement, presentation and disclosure of leases applicable to both lessors and lessees. The new guidance requires lessees to recognize on the balance sheet the assets and liabilities for the rights and obligations created by finance and operating leases. The Company adopted the new guidance during the first quarter of 2019 using the effective date as the date of initial application; therefore, the comparative periods have not been adjusted and continue to be reported under the previous lease guidance.

The new standard provides a number of optional practical expedients in transition. The Company elected the package of practical expedients, which permits us not to reassess under the new standard our prior conclusions about lease identification, lease classification and initial direct costs. For those leases that fall under the definition of a short-term lease, the Company elected the short-term lease recognition exemption. Under this practical expedient, for those leases that qualify, we did not recognize ROU assets or liabilities, which included not recognizing ROU assets or lease liabilities for existing short-term leases of those assets in transition. The Company also elected the practical expedient for lessees to account for lease components and nonlease components as a single lease component for all underlying classes of assets. In addition, the Company elected the practical expedient for lessees to account for lease components and nonlease components as a single lease component in instances where the lease component is predominant, the timing and pattern of transfer for the lease component and nonlease component are the same and the lease component, if accounted for separately, would be classified as an operating lease. The Company did not elect the use-of-hindsight practical expedient.

The standard had a material impact on our consolidated balance sheets and related disclosures. Upon adoption at the beginning of 2019, we recognized operating lease liabilities of $1,011,000 based on the present value of the remaining minimum rental payments, with corresponding ROU assets of $934,000. The measurement of the operating lease ROU assets included, among other items, favorable lease amounts of $23,000 and unfavorable lease amounts of $30,000, which were previously included in “Other intangible assets” and “Other liabilities,” respectively, as well as the excess of rent expense recognized on a straight-line basis over the minimum rents paid of $67,000, which was previously included in “Other liabilities.” In addition, the standard requires lessors to recognize lessees’ payments to the Company for executory costs on a gross basis as revenue with a corresponding expense, which resulted in an increase of approximately $38,000 to our 2019 franchise rental income and expense. The Company also recognized a decrease to retained earnings of $1,105 as a result of impairing newly recognized ROU assets upon transition to the new guidance. The adoption of the guidance did not have a material impact on our consolidated statement of cash flows.

New Accounting Standards

Financial Instruments

In August 2020, the FASB issued an amendment that simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity’s own equity. The amendment simplifies accounting for convertible instruments by removing major separation models required under current accounting guidance. In addition, the amendment removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, which will permit more equity contracts to qualify for the exception, and also simplifies the diluted earnings per share calculation in certain areas. The amendment is effective commencing with our 2022 fiscal year. We are currently evaluating the impact of the adoption of this guidance on our consolidated financial statements.
(2) Revenue

Nature of Goods and Services

The Company generates revenues from sales at Company-operated restaurants and earns fees and rental income from franchised restaurants. Revenues are recognized upon delivery of food to the customer at Company-operated restaurants or upon the fulfillment of terms outlined in the franchise agreement for franchised restaurants. The franchise agreement provides the franchisee the right to construct, own and operate a Wendy’s restaurant upon a site accepted by Wendy’s and to use the Wendy’s system in connection with the operation of the restaurant at that site. The franchise agreement generally provides for a 20-year term and a 10-year renewal subject to certain conditions. The initial term may be extended up to 25 years and the renewal extended up to 20 years for qualifying restaurants under certain new restaurant development and reimaging programs.

The franchise agreement requires that the franchisee pay a royalty based on a percentage of sales at the franchised restaurant, as well as make contributions to the Advertising Funds based on a percentage of sales. Wendy’s may offer development incentive programs from time to time that provide for a discount or lesser royalty amount or Advertising Fund contribution for a limited period of time. The agreement also typically requires that the franchisee pay Wendy’s a technical assistance fee. The technical assistance fee is used to defray some of the costs to Wendy’s for training, start-up and transitional services related to new and existing franchisees acquiring restaurants and in the development and opening of new restaurants.

Wendy’s also enters into development agreements with certain franchisees. The development agreement generally provides the franchisee with the right to develop a specified number of new Wendy’s restaurants using the Image Activation design within a stated, non-exclusive territory for a specified period, subject to the franchisee meeting interim new restaurant development requirements.

Wendy’s owns and leases sites from third parties, which it leases and/or subleases to franchisees. Noncancelable lease terms are generally initially between 15 and 20 years and, in most cases, provide for rent escalations and renewal options. The initial lease term for properties leased or subleased to franchisees is generally set to be coterminous with the initial 20-year term of the related franchise agreement and any renewal term is coterminous with the 10-year renewal term of the related franchise agreement.

Royalties and contributions to the Advertising Funds are generally due within the month subsequent to which the revenue was generated through sales at the franchised restaurant. Technical assistance fees and renewal fees are generally due upon execution of the related franchise agreement. Rental income is due in accordance with the terms of each lease, which is generally at the beginning of each month.

Disaggregation of Revenue

The following tables disaggregate revenue by segment and source for 2020, 2019 and 2018:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales at Company-operated restaurants</td>
<td>$722,764</td>
<td>$—</td>
<td>$—</td>
</tr>
<tr>
<td>Franchise royalty revenue</td>
<td>$373,162</td>
<td>$43,346</td>
<td>$—</td>
</tr>
<tr>
<td>Franchise fees</td>
<td>$22,126</td>
<td>$1,962</td>
<td>$4,153</td>
</tr>
<tr>
<td>Franchise rental income</td>
<td>$—</td>
<td>$—</td>
<td>$232,648</td>
</tr>
<tr>
<td>Advertising funds revenue</td>
<td>$313,330</td>
<td>$20,334</td>
<td>$—</td>
</tr>
<tr>
<td>Total revenues</td>
<td>$1,431,382</td>
<td>$65,642</td>
<td>$236,801</td>
</tr>
</tbody>
</table>

Total

81
### Contract Balances

The following table provides information about receivables and contract liabilities (deferred franchise fees) from contracts with customers:

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2021 (a)</th>
<th>December 29, 2019 (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receivables, which are included in “Accounts and notes receivable, net” (b)</td>
<td>$57,677</td>
<td>$39,188</td>
</tr>
<tr>
<td>Receivables, which are included in “Advertising funds restricted assets”</td>
<td>63,252</td>
<td>54,394</td>
</tr>
<tr>
<td>Deferred franchise fees (c)</td>
<td>97,785</td>
<td>100,689</td>
</tr>
</tbody>
</table>

(a) Excludes funds collected from the sale of gift cards, which are primarily reimbursed to franchisees upon redemption at franchised restaurants and do not ultimately result in the recognition of revenue in the Company’s consolidated statements of operations.

(b) Includes receivables related to “Sales” and “Franchise royalty revenue and fees.”

(c) Deferred franchise fees are included in “Accrued expenses and other current liabilities” and “Deferred franchise fees” and totaled $8,691 and $89,094 as of January 3, 2021, respectively, and $8,899 and $91,790 as of December 29, 2019, respectively.

---

82
Significant changes in deferred franchise fees are as follows:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred franchise fees at beginning of period</td>
<td>$100,689</td>
<td>$102,205</td>
<td>$102,492</td>
</tr>
<tr>
<td>Revenue recognized during the period</td>
<td>(8,955)</td>
<td>(9,487)</td>
<td>(9,641)</td>
</tr>
<tr>
<td>New deferrals due to cash received and other</td>
<td>6,051</td>
<td>7,971</td>
<td>9,354</td>
</tr>
<tr>
<td>Deferred franchise fees at end of period</td>
<td>$97,785</td>
<td>$100,689</td>
<td>$102,205</td>
</tr>
</tbody>
</table>

**Anticipated Future Recognition of Deferred Franchise Fees**

The following table reflects the estimated franchise fees to be recognized in the future related to performance obligations that are unsatisfied at the end of the period:

**Estimate for fiscal year:**

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>$8,691</td>
</tr>
<tr>
<td>2022</td>
<td>6,140</td>
</tr>
<tr>
<td>2023</td>
<td>5,968</td>
</tr>
<tr>
<td>2024</td>
<td>5,770</td>
</tr>
<tr>
<td>2025</td>
<td>5,581</td>
</tr>
<tr>
<td>Thereafter</td>
<td>65,635</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$97,785</td>
</tr>
</tbody>
</table>

(3) System Optimization Gains, Net

The Company’s system optimization initiative included a shift from Company-operated restaurants to franchised restaurants over time, through acquisitions and dispositions, as well as facilitating Franchise Flips. As of January 1, 2017, the Company completed its plan to reduce its ongoing Company-operated restaurant ownership to approximately 5% of the total system. While the Company has no plans to reduce its ownership below the approximately 5% level, the Company expects to continue to optimize the Wendy’s system through Franchise Flips, as well as evaluating strategic acquisitions of franchised restaurants and strategic dispositions of Company-operated restaurants to existing and new franchisees, to further strengthen the franchisee base, drive new restaurant development and accelerate reimages. During 2020, 2019 and 2018, the Company facilitated 54, 37 and 96 Franchise Flips, respectively. Additionally, during 2020 and 2018, the Company completed the sale of one and three Company-operated restaurants to franchisees, respectively. No Company-operated restaurants were sold to franchisees during 2019. The Company expects to sell 43 Company-operated restaurants in New York to franchisees in the second quarter of 2021.

Gains and losses recognized on dispositions are recorded to “System optimization gains, net” in our consolidated statements of operations. Costs related to acquisitions and dispositions under our system optimization initiative are recorded to “Reorganization and realignment costs,” which are further described in Note 5. All other costs incurred related to facilitating Franchise Flips are recorded to “Franchise support and other costs.”
The following is a summary of the disposition activity recorded as a result of our system optimization initiative:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>Number of restaurants sold to franchisees</td>
<td>1</td>
</tr>
<tr>
<td>Proceeds from sales of restaurants</td>
<td>$50</td>
</tr>
<tr>
<td>Net assets sold (a)</td>
<td>(34)</td>
</tr>
<tr>
<td>Goodwill related to sales of restaurants</td>
<td>—</td>
</tr>
<tr>
<td>Net favorable leases</td>
<td>—</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
</tr>
<tr>
<td>Post-closing adjustments on sales of restaurants (b)</td>
<td>16</td>
</tr>
<tr>
<td>Gain on sales of restaurants, net</td>
<td>378</td>
</tr>
<tr>
<td>Gain (loss) on sales of other assets, net (c)</td>
<td>2,770</td>
</tr>
<tr>
<td>System optimization gains, net</td>
<td>$3,148</td>
</tr>
</tbody>
</table>

(a) Net assets sold consisted primarily of equipment.

(b) 2020, 2019 and 2018 include the recognition of deferred gains of $368, $911 and $1,029, respectively, as a result of the resolution of certain contingencies related to the extension of lease terms for restaurants previously sold to franchisees. 2018 also includes cash proceeds, net of payments, of $6 related to post-closing reconciliations with franchisees.

(c) During 2020, 2019 and 2018, Wendy’s received cash proceeds of $6,041, $3,448 and $1,781, respectively, primarily from the sale of surplus and other properties.

**Assets Held for Sale**

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2020</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of restaurants classified as held for sale</td>
<td>43</td>
<td>—</td>
</tr>
<tr>
<td>Net restaurant assets held for sale (a)</td>
<td>$20,587</td>
<td>$ —</td>
</tr>
<tr>
<td>Other assets held for sale (b)</td>
<td>$1,732</td>
<td>$1,437</td>
</tr>
</tbody>
</table>

(a) Net restaurant assets held for sale include the New York Company-operated restaurants we expect to sell in the second quarter of 2021 and consist primarily of cash, inventory, property and an estimate of allocable goodwill.

(b) Other assets held for sale primarily consist of surplus properties.

Assets held for sale are included in “Prepaid expenses and other current assets.”
(4) Acquisitions

No restaurants were acquired from franchisees during 2020. During 2019 and 2018, the Company acquired five restaurants and 16 restaurants from franchisees, respectively. The Company did not incur any material acquisition-related costs associated with the acquisitions and such transactions were not significant to our consolidated financial statements. The table below presents the allocation of the total purchase price to the fair value of assets acquired and liabilities assumed for restaurants acquired from franchisees:

<table>
<thead>
<tr>
<th>Restaurants acquired from franchisees</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2019</td>
<td>2018</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td>Total consideration paid, net of cash received</td>
<td>$5,052</td>
<td>$21,401</td>
</tr>
<tr>
<td>Identifiable assets acquired and liabilities assumed:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Properties</td>
<td>666</td>
<td>4,363</td>
</tr>
<tr>
<td>Acquired franchise rights</td>
<td>1,354</td>
<td>10,127</td>
</tr>
<tr>
<td>Finance lease assets</td>
<td>5,350</td>
<td>5,360</td>
</tr>
<tr>
<td>Other assets</td>
<td></td>
<td>621</td>
</tr>
<tr>
<td>Finance lease liabilities</td>
<td>(4,084)</td>
<td>(3,135)</td>
</tr>
<tr>
<td>Unfavorable leases</td>
<td></td>
<td>(733)</td>
</tr>
<tr>
<td>Other</td>
<td>(2,316)</td>
<td>(2,240)</td>
</tr>
<tr>
<td>Total identifiable net assets</td>
<td>970</td>
<td>14,363</td>
</tr>
<tr>
<td>Goodwill</td>
<td>$4,082</td>
<td>$7,038</td>
</tr>
</tbody>
</table>

(a) The fair values of the identifiable intangible assets related to restaurants acquired in 2018 were provisional amounts as of December 30, 2018, pending final purchase accounting adjustments. The Company finalized the purchase price allocation during the three months ended March 31, 2019, which resulted in a decrease in the fair value of acquired franchise rights of $2,989 and an increase in deferred tax assets of $140.

NPC Quality Burgers, Inc. (“NPC”)

As previously announced, NPC, the Company’s largest franchisee, filed for chapter 11 bankruptcy in July 2020 and commenced a process to sell all or substantially all of its assets, including its interest in approximately 393 Wendy’s restaurants across eight different markets, pursuant to a court-approved auction process. On November 18, 2020, the Company submitted a consortium bid together with a group of pre-qualified franchisees to acquire NPC’s Wendy’s restaurants. Under the terms of the consortium bid, several existing and new franchisees would have been the ultimate purchasers of seven of the NPC markets, while the Company would have acquired one market. As part of the consortium bid, the Company submitted a deposit of $43,240, which is included in “Prepaid expenses and other current assets” as of January 3, 2021. The deposit included $38,361 received from the group of prequalified franchisees, which was payable to the franchisees and included in “Accrued expenses and other current liabilities” as of January 3, 2021 pending resolution of the bankruptcy sale process.

On January 7, 2021, following a court-approved mediation process, NPC and certain affiliates of Flynn Restaurant Group (“FRG”) and the Company entered into separate asset purchase agreements under which all of NPC’s Wendy’s restaurants will be sold to Wendy’s approved franchisees. Under the proposed transaction, FRG will acquire approximately half of NPC’s Wendy’s restaurants in four markets, while several existing Wendy’s franchisees that were part of the Company’s consortium bid will acquire the other half of NPC’s Wendy’s restaurants in the other four markets. The Company does not expect to acquire and operate any restaurants as part of this transaction. The Company expects that the sale of the restaurants will be completed in the late first quarter or early second quarter of 2021, subject to the satisfaction of various closing conditions specified in the asset purchase agreements.
(5) Reorganization and Realignment Costs

The following is a summary of the initiatives included in “Reorganization and realignment costs:"

<table>
<thead>
<tr>
<th>Operations and field realignment</th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT realignment</td>
<td>7,288</td>
<td>9,127</td>
<td>—</td>
</tr>
<tr>
<td>G&amp;A realignment</td>
<td>614</td>
<td>7,749</td>
<td>8,785</td>
</tr>
<tr>
<td>System optimization initiative</td>
<td>4,327</td>
<td>89</td>
<td>283</td>
</tr>
<tr>
<td>Reorganization and realignment costs</td>
<td>$16,030</td>
<td>$16,965</td>
<td>$9,068</td>
</tr>
</tbody>
</table>

**Operations and Field Realignment**

In September 2020, the Company initiated a plan to reallocate resources to better support the long-term growth strategies for Company and franchise operations (the “Operations and Field Realignment Plan”). The Operations and Field Realignment Plan realigns the Company’s restaurant operations team, including transitioning from separate leaders of Company and franchise operations to a single leader of all U.S. restaurant operations. We also expect to incur contract termination charges, including the planned closure of certain field offices. The Company expects to incur total costs aggregating approximately $7,000 to $9,000 related to the Operations and Field Realignment Plan. During 2020, the Company recognized costs totaling $3,801, which primarily included severance and related employee costs and share-based compensation. The Company expects to incur additional costs aggregating approximately $3,000 to $5,000, comprised primarily of third-party and other costs. The Company expects to recognize the majority of the remaining costs associated with the Operations and Field Realignment Plan during 2021.

The following is a summary of the activity recorded as a result of the Operations and Field Realignment Plan:

<table>
<thead>
<tr>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
</tr>
<tr>
<td>Severance and related employee costs</td>
</tr>
<tr>
<td>Third party and other costs</td>
</tr>
<tr>
<td>Share-based compensation (a)</td>
</tr>
<tr>
<td><strong>Total operations and field realignment</strong></td>
</tr>
</tbody>
</table>

(a) Primarily represents incremental share-based compensation resulting from the modification of stock options in connection with the termination of employees under the Operations and Field Realignment Plan.

The accruals for the Operations and Field Realignment Plan are included in “Accrued expenses and other current liabilities” and “Other liabilities” and totaled $2,487 and $113 as of January 3, 2021. The table below presents a rollforward of our accruals for the Operations and Field Realignment Plan.

<table>
<thead>
<tr>
<th>Balance December 29, 2019</th>
<th>Charges</th>
<th>Payments</th>
<th>Balance January 3, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severance and related employee costs</td>
<td>$ —</td>
<td>$3,113</td>
<td>$ (513)</td>
</tr>
<tr>
<td>Third party and other costs</td>
<td>—</td>
<td>67</td>
<td>(67)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ —</strong></td>
<td><strong>$3,180</strong></td>
<td><strong>$ (580)</strong></td>
</tr>
</tbody>
</table>

86
**Information Technology (“IT”) Realignment**

In December 2019, our Board of Directors approved a plan to realign and reinvest resources in the Company’s IT organization to strengthen its ability to accelerate growth (the “IT Realignment Plan”). The Company has partnered with a third-party global IT consultant on this new structure to leverage their global capabilities, which will enable a more seamless integration between its digital and corporate IT assets. The IT Realignment Plan has reduced certain employee compensation and other related costs that the Company has reinvested back into IT to drive additional capabilities and capacity across all of its technology platforms. Additionally, in June 2020, the Company made changes to its leadership structure that included the elimination of the Chief Digital Experience Officer position and the creation of a Chief Information Officer position, for which the Company completed the hiring process in October 2020. During 2020 and 2019, the Company recognized costs totaling $7,288 and $9,127, respectively, which primarily included third-party and other costs and recruitment and relocation costs in 2020 and severance and related employee costs and third-party and other costs in 2019. The Company does not expect to incur any material additional costs under the IT Realignment Plan.

The following is a summary of the activity recorded as a result of the IT Realignment Plan:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
<th>Total Incurred Since Inception</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
<td>2019</td>
</tr>
<tr>
<td>Severance and related employee costs</td>
<td>$843</td>
<td>$7,548</td>
</tr>
<tr>
<td>Recruitment and relocation costs</td>
<td>1,296</td>
<td>—</td>
</tr>
<tr>
<td>Third-party and other costs</td>
<td>5,149</td>
<td>1,386</td>
</tr>
<tr>
<td>Share-based compensation (a)</td>
<td>7,288</td>
<td>8,934</td>
</tr>
<tr>
<td>Total IT realignment</td>
<td>$7,288</td>
<td>$9,127</td>
</tr>
</tbody>
</table>

(a) Primarily represents incremental share-based compensation resulting from the modification of stock options in connection with the termination of employees under the IT realignment plan.

As of January 3, 2021, the accruals for our IT Realignment Plan are included in “Accrued expenses and other current liabilities.” As of December 29, 2019, the accruals for our IT Realignment Plan are included in “Accrued expenses and other current liabilities” and “Other liabilities” and totaled $8,025 and $599, respectively. The tables below present a rollforward of our accruals for the IT Realignment Plan:

<table>
<thead>
<tr>
<th></th>
<th>Balance December 29, 2019</th>
<th>Charges</th>
<th>Payments</th>
<th>Balance January 3, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severance and related employee costs</td>
<td>$7,548</td>
<td>$843</td>
<td>$(6,883)</td>
<td>$1,508</td>
</tr>
<tr>
<td>Recruitment and relocation costs</td>
<td>—</td>
<td>1,296</td>
<td>(1,296)</td>
<td>—</td>
</tr>
<tr>
<td>Third-party and other costs</td>
<td>1,076</td>
<td>5,149</td>
<td>(6,225)</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8,624</strong></td>
<td><strong>7,288</strong></td>
<td><strong>(14,404)</strong></td>
<td><strong>1,508</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Balance December 30, 2018</th>
<th>Charges</th>
<th>Payments</th>
<th>Balance December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severance and related employee costs</td>
<td>—</td>
<td>$7,548</td>
<td>—</td>
<td>$7,548</td>
</tr>
<tr>
<td>Recruitment and relocation costs</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Third-party and other costs</td>
<td>—</td>
<td>1,386</td>
<td>(310)</td>
<td>1,076</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>—</strong></td>
<td><strong>$8,934</strong></td>
<td><strong>(310)</strong></td>
<td><strong>$8,624</strong></td>
</tr>
</tbody>
</table>
General and Administrative ("G&A") Realignment

In May 2017, the Company initiated a plan to further reduce its G&A expenses (the “G&A Realignment Plan”). Additionally, in May 2019, the Company announced changes to its management and operating structure that included the creation of two new positions, a President, U.S and Chief Commercial Officer and a President, International and Chief Development Officer, and the elimination of the Chief Operations Officer position. During 2020, 2019 and 2018, the Company recognized costs related to the plan totaling $614, $7,749 and $8,785, respectively, which primarily included recruitment and relocation costs and share-based compensation in 2020 and severance and related employee costs and share-based compensation in 2019 and 2018. The Company does not expect to incur any material additional costs under the G&A Realignment Plan.

The following is a summary of the activity recorded as a result of the G&A Realignment Plan:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
<th>Total Incurred Since Inception</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
<td>2019</td>
</tr>
<tr>
<td>Severance and related employee costs</td>
<td>$28</td>
<td>$5,485</td>
</tr>
<tr>
<td>Recruitment and relocation costs</td>
<td>360</td>
<td>950</td>
</tr>
<tr>
<td>Third-party and other costs</td>
<td>13</td>
<td>100</td>
</tr>
<tr>
<td>Share-based compensation (a)</td>
<td>213</td>
<td>1,214</td>
</tr>
<tr>
<td>Termination of defined benefit plans (b)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total G&amp;A realignment</strong></td>
<td>$614</td>
<td>$7,749</td>
</tr>
</tbody>
</table>

(a) Primarily represents incremental share-based compensation resulting from the modification of stock options in connection with the termination of employees under the G&A Realignment Plan.

(b) During 2018, the Company terminated two frozen defined benefit plans. See Note 19 for further information.

As of January 3, 2021, the accruals for the G&A Realignment Plan are included in “Accrued expenses and other current liabilities.” As of December 29, 2019, the accruals for the G&A Realignment Plan are included in “Accrued expenses and other current liabilities” and “Other liabilities” and totaled $4,504 and $855, respectively. The tables below present a rollforward of our accruals for the G&A Realignment Plan.

<table>
<thead>
<tr>
<th>Balance December 29, 2019</th>
<th>Charges</th>
<th>Payments</th>
<th>Balance January 3, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severance and related employee costs</td>
<td>$5,276</td>
<td>$28</td>
<td>$(4,372)</td>
</tr>
<tr>
<td>Recruitment and relocation costs</td>
<td>83</td>
<td>360</td>
<td>(443)</td>
</tr>
<tr>
<td>Third-party and other costs</td>
<td>—</td>
<td>13</td>
<td>(13)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$5,359</td>
<td>$401</td>
<td>$(4,828)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Balance December 30, 2018</th>
<th>Charges</th>
<th>Payments</th>
<th>Balance December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severance and related employee costs</td>
<td>$7,241</td>
<td>$5,485</td>
<td>$(7,450)</td>
</tr>
<tr>
<td>Recruitment and relocation costs</td>
<td>83</td>
<td>950</td>
<td>(950)</td>
</tr>
<tr>
<td>Third-party and other costs</td>
<td>—</td>
<td>100</td>
<td>(100)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$7,324</td>
<td>$6,535</td>
<td>$(8,500)</td>
</tr>
</tbody>
</table>
**System Optimization Initiative**

The Company recognizes costs related to acquisitions and dispositions under its system optimization initiative. During 2020, the Company recognized costs totaling $4,327, which were primarily comprised of professional fees related to the NPC bankruptcy sale process. See Note 4 for further information. The Company expects to incur additional costs of approximately $3,000 related to the NPC bankruptcy sale process during 2021.

The following is a summary of the costs recorded as a result of our system optimization initiative:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
<th>Total Incurred Since Inception</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
<td>2019</td>
</tr>
<tr>
<td>Severance and related employee costs</td>
<td>$329</td>
<td>$—</td>
</tr>
<tr>
<td>Professional fees</td>
<td>4,323</td>
<td>72</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>4,327</td>
<td>89</td>
</tr>
<tr>
<td>Accelerated depreciation and amortization (a)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Share-based compensation (b)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total system optimization initiative</td>
<td>$4,327</td>
<td>$89</td>
</tr>
</tbody>
</table>

---

(a) Primarily includes accelerated amortization of previously acquired franchise rights related to Company-operated restaurants in territories that have been sold to franchisees in connection with our system optimization initiative.

(b) Represents incremental share-based compensation resulting from the modification of stock options and performance-based awards in connection with the termination of employees under our system optimization initiative.

The table below presents a rollforward of our accruals for our system optimization initiative, which are included in “Accrued expenses and other current liabilities.”

<table>
<thead>
<tr>
<th></th>
<th>Balance December 29, 2019</th>
<th>Charges</th>
<th>Payments</th>
<th>Balance January 3, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional fees</td>
<td>$329</td>
<td>$4,323</td>
<td>$(3,093)</td>
<td>$1,230</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
<td>4</td>
<td>(4)</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>$329</td>
<td>$4,327</td>
<td>$(3,097)</td>
<td>$1,230</td>
</tr>
</tbody>
</table>

---

(6) Income Per Share

Basic income per share for 2020, 2019 and 2018 was computed by dividing net income amounts by the weighted average number of common shares outstanding.

The weighted average number of shares used to calculate basic and diluted income per share were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
<td>2019</td>
<td>2018</td>
</tr>
<tr>
<td>Common stock:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted average basic shares outstanding</td>
<td>223,684</td>
<td>229,944</td>
<td>237,797</td>
</tr>
<tr>
<td>Dilutive effect of stock options and restricted shares</td>
<td>4,330</td>
<td>5,131</td>
<td>7,166</td>
</tr>
<tr>
<td>Weighted average diluted shares outstanding</td>
<td>228,014</td>
<td>235,075</td>
<td>244,963</td>
</tr>
</tbody>
</table>
Diluted net income per share was computed by dividing net income by the weighted average number of basic shares outstanding plus the potential common share effect of dilutive stock options and restricted shares. We excluded potential common shares of 2,064, 2,518 and 1,520 for 2020, 2019 and 2018, respectively, from our diluted net income per share calculation as they would have had anti-dilutive effects.

(7) Cash and Receivables

<table>
<thead>
<tr>
<th>Cash and cash equivalents</th>
<th>Year End</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>January 3, 2021</td>
<td>$231,922</td>
<td>$185,203</td>
</tr>
<tr>
<td>Cash equivalents</td>
<td>December 29, 2019</td>
<td>75,067</td>
<td>114,992</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>306,989</td>
<td>300,195</td>
</tr>
</tbody>
</table>

**Restricted cash**

<table>
<thead>
<tr>
<th>Accounts held by trustee for the securitized financing facility</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts held by trustee for the securitized financing facility</td>
<td>33,635</td>
<td>34,209</td>
</tr>
<tr>
<td>Other</td>
<td>338</td>
<td>330</td>
</tr>
<tr>
<td>Advertising Funds (a)</td>
<td>33,973</td>
<td>34,539</td>
</tr>
<tr>
<td>Other</td>
<td>338</td>
<td>330</td>
</tr>
<tr>
<td>Total cash, cash equivalents and restricted cash</td>
<td>111,252</td>
<td>58,512</td>
</tr>
</tbody>
</table>

(a) Included in “Advertising funds restricted assets.”

<table>
<thead>
<tr>
<th>Accounts and Notes Receivable, Net</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current</td>
<td>Gross</td>
<td>Allowance for Doubtful Accounts</td>
</tr>
<tr>
<td>Accounts receivable (a) (b)</td>
<td>$97,399</td>
<td>$ (3,739)</td>
</tr>
<tr>
<td>Notes receivable from franchisees (c) (d)</td>
<td>21,227</td>
<td>(4,996)</td>
</tr>
<tr>
<td></td>
<td>$118,626</td>
<td>$ (8,735)</td>
</tr>
<tr>
<td>Non-current (e)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notes receivable from franchisees (d)</td>
<td>$6,759</td>
<td>$(629)</td>
</tr>
</tbody>
</table>

(a) Includes income tax refund receivables of $5,399 and $13,555 as of January 3, 2021 and December 29, 2019, respectively. Additionally, 2019 includes receivables of $25,350 related to insurance coverage for the financial institutions class action. See Note 11 for further information on our legal reserves.

(b) During 2020, rent receivables increased by $5,226 due to actions taken by the Company in response to the COVID-19 pandemic, which included offering to defer base rent payments on properties owned by Wendy’s and leased to franchisees by 50% and offering to pass along any deferrals that were obtained on properties leased by Wendy’s and subleased to franchisees by up to 100%, beginning in May for a three month period, which are being repaid over a 12 month period beginning in August 2020.

(c) Includes the current portion of sales-type and direct financing lease receivables of $5,965 and $3,146 as of January 3, 2021 and December 29, 2019, respectively. See Note 20 for further information.
Included a note receivable from a U.S. franchisee totaling $1,000 as of December 29, 2019. The note was repaid during 2020.

(d) Includes a note receivable from a franchisee in India, of which $356 and $1,000 are included in current notes receivable as of January 3, 2021 and December 29, 2019, respectively, and $629 which is included in non-current notes receivable as of January 3, 2021. As of January 3, 2021 and December 29, 2019, the Company had a reserve of $985 on the loan outstanding to the franchisee in India.

Includes a note receivable from a franchisee in Indonesia, of which $831 and $1,262 are included in current notes receivable and $1,780 and $1,617 are included in non-current notes receivable as of January 3, 2021 and December 29, 2019, respectively.

Includes notes receivable related to the Brazil JV, of which $12,775 and $15,920 are included in current notes receivable as of January 3, 2021 and December 29, 2019, respectively, and $4,350 is included in non-current notes receivable as of January 3, 2021. As of January 3, 2021 and December 29, 2019, the Company had reserves of $4,640 and $5,720, respectively, on the loans outstanding related to the Brazil JV. See Note 8 for further information.

(e) Included in “Other assets.”

The following is an analysis of the allowance for doubtful accounts:

<table>
<thead>
<tr>
<th></th>
<th>Accounts Receivable</th>
<th>Notes Receivable</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance at December 29, 2019</td>
<td>$3,314</td>
<td>$6,705</td>
<td>$10,019</td>
</tr>
<tr>
<td>Provision for doubtful accounts</td>
<td>647</td>
<td>206</td>
<td>853</td>
</tr>
<tr>
<td>Uncollectible accounts written off, net of recoveries</td>
<td>(222)</td>
<td>(1,286)</td>
<td>(1,508)</td>
</tr>
<tr>
<td>Balance at January 3, 2021</td>
<td>$3,739</td>
<td>$5,625</td>
<td>$9,364</td>
</tr>
<tr>
<td>2019</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance at December 30, 2018</td>
<td>$4,939</td>
<td>$2,000</td>
<td>$6,939</td>
</tr>
<tr>
<td>Provision for doubtful accounts</td>
<td>(1,618)</td>
<td>4,912</td>
<td>3,294</td>
</tr>
<tr>
<td>Uncollectible accounts written off, net of recoveries</td>
<td>(7)</td>
<td>(207)</td>
<td>(214)</td>
</tr>
<tr>
<td>Balance at December 29, 2019</td>
<td>$3,314</td>
<td>$6,705</td>
<td>$10,019</td>
</tr>
<tr>
<td>2018</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance at December 31, 2017</td>
<td>$4,546</td>
<td>—</td>
<td>$4,546</td>
</tr>
<tr>
<td>Provision for doubtful accounts</td>
<td>606</td>
<td>1,956</td>
<td>2,562</td>
</tr>
<tr>
<td>Uncollectible accounts written off, net of recoveries</td>
<td>(213)</td>
<td>44</td>
<td>(169)</td>
</tr>
<tr>
<td>Balance at December 30, 2018</td>
<td>$4,939</td>
<td>$2,000</td>
<td>$6,939</td>
</tr>
</tbody>
</table>
(8) Investments

The following is a summary of the carrying value of our investments:

<table>
<thead>
<tr>
<th>Year End</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity method investments</td>
<td>$44,574</td>
<td>$45,310</td>
</tr>
<tr>
<td>Other investments in equity securities</td>
<td>—</td>
<td>639</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$44,574</strong></td>
<td><strong>$45,949</strong></td>
</tr>
</tbody>
</table>

**Equity Method Investments**

Wendy’s has a 50% share in the TimWen real estate joint venture and a 20% share in the Brazil JV, both of which are accounted for using the equity method of accounting, under which our results of operations include our share of the income (loss) of the investees in “Other operating income, net.”

A wholly-owned subsidiary of Wendy’s entered into the Brazil JV during the second quarter of 2015 for the operation of Wendy’s restaurants in Brazil. Wendy’s, Starboard International Holdings B.V. and Infinity Holding E Participações Ltda. contributed $1, $2 and $2, respectively, each receiving proportionate equity interests of 20%, 40% and 40%, respectively. The Company did not receive any distributions and our share of the Brazil JV’s net losses was $417, $1,022 and $1,344 during 2020, 2019 and 2018, respectively. A wholly-owned subsidiary of Wendy’s has loans outstanding related to the Brazil JV totaling $17,125 and $15,920 as of January 3, 2021 and December 29, 2019, respectively. The loans are denominated in U.S. Dollars, which is also the functional currency of the subsidiary; therefore, there is no exposure to changes in foreign currency rates. The loans bear interest at rates ranging from 3.25% to 6.5% per year. Of the total loans outstanding as of January 3, 2021, $12,775 was due primarily in the fourth quarter of 2020 and $4,350 is due in 2024. As of January 3, 2021 and December 29, 2019, the Company had reserves of $4,640 on the past due loans and $5,720 on the current loans outstanding, respectively, related to the Brazil JV. The Company is currently pursuing collection of certain of the past due amounts. See Note 7 for further information.

The carrying value of our investment in TimWen exceeded our interest in the underlying equity of the joint venture by $23,433 and $25,160 as of January 3, 2021 and December 29, 2019, respectively, primarily due to purchase price adjustments from the 2008 merger of Triarc Companies, Inc. and Wendy’s International, Inc. (the “Wendy’s Merger”).

Presented below is activity related to our portion of TimWen and the Brazil JV included in our consolidated balance sheets and consolidated statements of operations as of and for the years ended January 3, 2021, December 29, 2019 and December 30, 2018.

<table>
<thead>
<tr>
<th>Year Ended</th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at beginning of period</td>
<td>$45,310</td>
<td>$47,021</td>
<td>$55,363</td>
</tr>
<tr>
<td>Investment</td>
<td>—</td>
<td>—</td>
<td>13</td>
</tr>
<tr>
<td>Equity in earnings for the period</td>
<td>8,389</td>
<td>10,943</td>
<td>10,402</td>
</tr>
<tr>
<td>Amortization of purchase price adjustments (a)</td>
<td>(2,293)</td>
<td>(2,270)</td>
<td>(2,326)</td>
</tr>
<tr>
<td></td>
<td>6,096</td>
<td>8,673</td>
<td>8,076</td>
</tr>
<tr>
<td>Distributions received</td>
<td>(8,376)</td>
<td>(13,400)</td>
<td>(13,390)</td>
</tr>
<tr>
<td>Foreign currency translation adjustment included in “Other comprehensive income (loss), net” and other</td>
<td>1,544</td>
<td>3,016</td>
<td>(3,041)</td>
</tr>
<tr>
<td>Balance at end of period</td>
<td>$44,574</td>
<td>$45,310</td>
<td>$47,021</td>
</tr>
</tbody>
</table>
(a) Purchase price adjustments that impacted the carrying value of the Company’s investment in TimWen are being amortized over the average original aggregate life of 21 years.

**Indirect Investment in Inspire Brands**

In connection with the sale of Arby’s Restaurant Group, Inc. (“Arby’s”) during 2011, Wendy’s Restaurants obtained an 18.5% equity interest in ARG Holding Corporation (“ARG Parent”) (through which Wendy’s Restaurants indirectly retained an 18.5% interest in Arby’s). The carrying value of our investment was reduced to zero during 2013 in connection with the receipt of a dividend that was determined to be a return of our investment.

Our 18.5% equity interest was diluted to 12.3% in February 2018, when a subsidiary of ARG Parent acquired Buffalo Wild Wings, Inc. As a result of the acquisition, our diluted ownership interest included both the Arby’s and Buffalo Wild Wings brands under the newly formed combined company, Inspire Brands, Inc. (“Inspire Brands”). In August 2018, the Company sold its remaining 12.3% ownership interest to Inspire Brands for $450,000 and incurred transaction costs of $55, which were recorded to “Investment (loss) income, net.” The Company recorded income tax expense of $97,501 on the transaction, of which $95,038 was paid during the fourth quarter of 2018.

**Other Investments in Equity Securities**

In October 2019, the Company received a $25,000 cash settlement related to a previously held investment. As a result, the Company recorded $24,366 to “Investment (loss) income, net” and $634 to “General and administrative” for the reimbursement of related costs during the fourth quarter of 2019.

(9) **Properties**

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$372,473</td>
<td>$375,109</td>
</tr>
<tr>
<td>Buildings and improvements</td>
<td>504,504</td>
<td>508,602</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>409,306</td>
<td>405,158</td>
</tr>
<tr>
<td>Office, restaurant and transportation equipment</td>
<td>255,469</td>
<td>279,799</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,541,752</td>
<td>1,568,668</td>
</tr>
<tr>
<td>Accumulated depreciation and amortization</td>
<td>(625,863)</td>
<td>(591,668)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$915,889</td>
<td>$977,000</td>
</tr>
</tbody>
</table>

Depreciation and amortization expense related to properties was $77,656, $81,219 and $79,009 during 2020, 2019 and 2018, respectively.
(10) Goodwill and Other Intangible Assets

Goodwill activity for 2020 and 2019 was as follows:

<table>
<thead>
<tr>
<th>Goodwill activity for 2020 and 2019</th>
<th>Wendy’s U.S.</th>
<th>Wendy’s International</th>
<th>Global Real Estate &amp; Development</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance at December 30, 2018:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goodwill, gross</td>
<td>$595,560</td>
<td>$39,173</td>
<td>$122,548</td>
<td>$757,281</td>
</tr>
<tr>
<td>Accumulated impairment losses (a)</td>
<td></td>
<td>(9,397)</td>
<td></td>
<td>(9,397)</td>
</tr>
<tr>
<td>Goodwill, net</td>
<td>595,560</td>
<td>29,776</td>
<td>122,548</td>
<td>747,884</td>
</tr>
<tr>
<td><strong>Changes in goodwill:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restaurant acquisitions (b)</td>
<td>6,931</td>
<td></td>
<td></td>
<td>6,931</td>
</tr>
<tr>
<td>Currency translation adjustment</td>
<td></td>
<td>1,096</td>
<td></td>
<td>1,096</td>
</tr>
<tr>
<td><strong>Balance at December 29, 2019:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goodwill, gross</td>
<td>602,491</td>
<td>40,269</td>
<td>122,548</td>
<td>765,308</td>
</tr>
<tr>
<td>Accumulated impairment losses (a)</td>
<td></td>
<td>(9,397)</td>
<td></td>
<td>(9,397)</td>
</tr>
<tr>
<td>Goodwill, net</td>
<td>602,491</td>
<td>30,872</td>
<td>122,548</td>
<td>755,911</td>
</tr>
<tr>
<td><strong>Changes in goodwill:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restaurant dispositions (c)</td>
<td>(5,394)</td>
<td></td>
<td></td>
<td>(5,394)</td>
</tr>
<tr>
<td>Currency translation adjustment and other</td>
<td></td>
<td>755</td>
<td></td>
<td>532</td>
</tr>
<tr>
<td><strong>Balance at January 3, 2021:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goodwill, gross</td>
<td>596,874</td>
<td>41,024</td>
<td>122,548</td>
<td>760,446</td>
</tr>
<tr>
<td>Accumulated impairment losses (a)</td>
<td></td>
<td>(9,397)</td>
<td></td>
<td>(9,397)</td>
</tr>
<tr>
<td>Goodwill, net</td>
<td>$596,874</td>
<td>$31,627</td>
<td>$122,548</td>
<td>$751,049</td>
</tr>
</tbody>
</table>

(a) Accumulated impairment losses resulted from the full impairment of goodwill of the Wendy’s international franchise restaurants during the fourth quarter of 2013.

(b) Includes an adjustment to the fair value of net assets acquired in connection with the acquisition of franchised restaurants during 2018. See Note 4 for further information.

(c) During 2020, in connection with the Company’s plan to sell 43 Company-operated restaurants in New York in the second quarter of 2021, goodwill of $5,394 was reclassified to assets held for sale. See Note 3 for further information.
The following is a summary of the components of other intangible assets and the related amortization expense:

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2021</th>
<th></th>
<th>December 29, 2019</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cost</td>
<td>Accumulated Amortization</td>
<td>Net</td>
<td>Cost</td>
</tr>
<tr>
<td>Indefinite-lived:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trademarks</td>
<td>$903,000</td>
<td>—</td>
<td>$903,000</td>
<td>$903,000</td>
</tr>
<tr>
<td>Franchise agreements</td>
<td>349,255</td>
<td>(203,938)</td>
<td>145,317</td>
<td>348,825</td>
</tr>
<tr>
<td>Favorable leases</td>
<td>163,015</td>
<td>(55,581)</td>
<td>107,434</td>
<td>166,098</td>
</tr>
<tr>
<td>Reacquired rights</td>
<td>9,872</td>
<td>(3,414)</td>
<td>6,458</td>
<td>10,172</td>
</tr>
<tr>
<td>Software</td>
<td>206,741</td>
<td>(143,990)</td>
<td>62,751</td>
<td>181,666</td>
</tr>
<tr>
<td></td>
<td>$1,631,883</td>
<td>(406,923)</td>
<td>$1,224,960</td>
<td>$1,609,761</td>
</tr>
</tbody>
</table>

Aggregate amortization expense:

Actual for fiscal year:

2018 $52,064  
2019 53,182  
2020 52,588  

Estimate for fiscal year:

2021 $47,669  
2022 42,612  
2023 39,419  
2024 34,889  
2025 28,095  
Thereafter 129,276  

(11) Accrued Expenses and Other Current Liabilities

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal reserves (a)</td>
<td>2,006</td>
<td>52,272</td>
</tr>
<tr>
<td>Accrued compensation and related benefits</td>
<td>44,264</td>
<td>56,010</td>
</tr>
<tr>
<td>Accrued taxes</td>
<td>27,162</td>
<td>23,926</td>
</tr>
<tr>
<td>NPC consortium bid</td>
<td>38,361</td>
<td>—</td>
</tr>
<tr>
<td>Other</td>
<td>43,528</td>
<td>33,064</td>
</tr>
<tr>
<td></td>
<td>155,321</td>
<td>165,272</td>
</tr>
</tbody>
</table>

(a) Included a legal reserve of $50,000 as of December 29, 2019 for a settlement of the financial institutions class action. The Company maintains insurance coverage for legal settlements, receivables for which are included in "Accounts and notes receivable, net." See Note 7 for further information.

After exhaustion of applicable insurance receivables of $25,350, the Company made a payment of $24,650 for the settlement of the financial institutions class action in January 2020.
(b) Represents amounts received from franchisees as part of the consortium bid to acquire NPC’s Wendy’s restaurants. See Note 4 for further information.

(12) Long-Term Debt

Long-term debt consisted of the following:

<table>
<thead>
<tr>
<th>Series 2019-1 Class A-2 Notes:</th>
<th>Year End</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3.783% Series 2019-1 Class A-2-I Notes, anticipated repayment date 2026</td>
<td>$386,000</td>
<td>$398,000</td>
</tr>
<tr>
<td>4.080% Series 2019-1 Class A-2-II Notes, anticipated repayment date 2029</td>
<td>434,250</td>
<td>447,750</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Series 2018-1 Class A-2 Notes:</th>
<th>Year End</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3.573% Series 2018-1 Class A-2-I Notes, anticipated repayment date 2025</td>
<td>436,500</td>
<td>441,000</td>
</tr>
<tr>
<td>3.884% Series 2018-1 Class A-2-II Notes, anticipated repayment date 2028</td>
<td>460,750</td>
<td>465,500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Series 2015-1 Class A-2 Notes:</th>
<th>Year End</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4.497% Series 2015-1 Class A-2-III Notes, anticipated repayment date 2025</td>
<td>473,750</td>
<td>478,750</td>
</tr>
</tbody>
</table>

| Canadian revolving credit facility | 1,962 |
| 7% debentures, due in 2025 | 83,998 | 82,837 |
| Unamortized debt issuance costs | (30,085) | (33,526) |

| Less amounts payable within one year | 2,247,125 | 2,280,311 |
| Total long-term debt | $2,218,163 | $2,257,561 |

Aggregate annual maturities of long-term debt, excluding the effect of purchase accounting adjustments, as of January 3, 2021 were as follows:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Year End</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>$28,962</td>
</tr>
<tr>
<td>2022</td>
<td>22,750</td>
</tr>
<tr>
<td>2023</td>
<td>22,750</td>
</tr>
<tr>
<td>2024</td>
<td>22,750</td>
</tr>
<tr>
<td>2025</td>
<td>975,500</td>
</tr>
<tr>
<td>Thereafter</td>
<td>1,210,500</td>
</tr>
<tr>
<td>Total</td>
<td>$2,283,212</td>
</tr>
</tbody>
</table>

Senior Notes

Wendy’s Funding, LLC (“Wendy’s Funding”), a limited-purpose, bankruptcy-remote, wholly-owned indirect subsidiary of The Wendy’s Company, is the master issuer (the “Master Issuer”) of outstanding senior secured notes under a securitized financing facility that was entered into in June 2015. As of January 3, 2021, the Master Issuer issued the following outstanding series of fixed rate senior secured notes: (i) 2019-1 Class A-2-I with an initial principal amount of $400,000; (ii) 2019-1 Class A-2-II with an initial principal amount of $450,000; (iii) 2018-1 Class A-2-I with an initial principal amount of $450,000; (iv) 2018-1 Class A-2-II with an initial principal amount of $475,000; and (v) 2015-1 Class A-2-III with an initial principal amount of $500,000 (collectively, the “Class A-2 Notes”). The Master Issuer also issued outstanding Series 2019-1 Variable Funding Senior Secured Notes, Class A-1 (the “2019-1 Class A-1 Notes”), which allow for the borrowing of up to $150,000 from time to time on a revolving basis using various credit instruments, including a letter of credit facility. In March 2020, the Company drew down $120,000 under the 2019-1 Class A-1 Notes, which the Company fully repaid in July 2020. As a result, as of January 3, 2021, the Company had no outstanding borrowings under the 2019-1 Class A-1 Notes. In June 2020, the Master Issuer also issued outstanding Series 2020-1 Variable Funding Senior Secured Notes, Class A-1 (the “2020-1 Class A-1 Notes”), which allow for the borrowing of up to $100,000 from time to time on a revolving basis using various credit
Table of Contents

THE WENDY’S COMPANY AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands Except Per Share Amounts)

instruments. The Company had no outstanding borrowings under the Series 2020-1 Class A-1 Notes as of January 3, 2021. The drawdown of the 2019-1 Class A-1 Notes in March 2020 and the issuance of the 2020-1 Class A-1 Notes in June 2020 were taken as precautionary measures to provide enhanced financial flexibility considering the uncertain market conditions arising from the COVID-19 pandemic. The 2019-1 Class A-1 Notes and the 2020-1 Class A-1 Notes are collectively the “Class A-1 Notes,” and the Class A-1 Notes and the Class A-2 Notes are collectively the “Senior Notes.”

The Senior Notes are secured by a security interest in substantially all of the assets of the Master Issuer and certain other limited-purpose, bankruptcy-remote, wholly-owned indirect subsidiaries of the Company that act as guarantors (collectively, the “Securitization Entities”), except for certain real estate assets and subject to certain limitations as set forth in the indenture governing the Senior Notes (the “Indenture”) and the related guarantee and collateral agreements. The assets of the Securitization Entities include most of the domestic and certain of the foreign revenue-generating assets of the Company and its subsidiaries, which principally consist of franchise-related agreements, certain Company-operated restaurants, intellectual property and license agreements for the use of intellectual property.

Interest and principal payments on the Class A-2 Notes are payable on a quarterly basis. The requirement to make such quarterly principal payments on the Class A-2 Notes is subject to certain financial conditions set forth in the Indenture. The legal final maturity dates for the Class A-2 Notes range from 2045 through 2049. If the Master Issuer has not repaid or refinanced the Class A-2 Notes prior to their respective anticipated repayment dates, which range from 2025 through 2029, additional interest will accrue pursuant to the Indenture.

The Class A-1 Notes accrue interest at a variable interest rate based on (i) the prime rate, (ii) overnight federal funds rates, (iii) the London interbank offered rate (“LIBOR”) for U.S. Dollars or (iv) with respect to advances made by conduit investors, the weighted average cost of, or related to, the issuance of commercial paper allocated to fund or maintain such advances, in each case plus any applicable margin and as specified in the respective purchase agreements for the Class A-1 Notes. There is a commitment fee on the unused portions of the Class A-1 Notes, which ranges from 0.40% to 0.75% based on utilization for the 2019-1 Class A-1 Notes, and is 1.50% for the 2020-1 Class A-1 Notes. As of January 3, 2021, $26,228 of letters of credit were outstanding against the 2019-1 Class A-1 Notes, which relate primarily to interest reserves required under the Indenture governing the 2019-1 Class A-1 Notes.

Covenants and Restrictions

The Senior Notes are subject to a series of covenants and restrictions customary for transactions of this type, including (i) that the Master Issuer maintains specified reserve accounts to be used to make required payments in respect of the Senior Notes, (ii) provisions relating to optional and mandatory prepayments and the related payment of specified amounts, including specified make-whole payments in the case of the Class A-2 Notes under certain circumstances, (iii) certain indemnification payments in the event, among other things, the assets pledged as collateral for the Senior Notes are in stated ways defective or ineffective and (iv) covenants relating to recordkeeping, access to information and similar matters. The Senior Notes are also subject to customary rapid amortization events provided for in the Indenture, including events tied to failure to maintain stated debt service coverage ratios, the sum of global gross sales for specified restaurants being below certain levels on certain measurement dates, certain manager termination events, an event of default, and the failure to repay or refinance the Class A-2 Notes on the applicable scheduled maturity date. The Senior Notes are also subject to certain customary events of default, including events relating to non-payment of required interest, principal, or other amounts due on or with respect to the Senior Notes, failure to comply with covenants within certain time frames, certain bankruptcy events, breaches of specified representations and warranties, failure of security interests to be effective, and certain judgments. In addition, the Indenture and the related management agreement contain various covenants that limit the Company and its subsidiaries’ ability to engage in specified types of transactions, subject to certain exceptions, including, for example, to (i) incur or guarantee additional indebtedness, (ii) sell certain assets, (iii) create or incur liens on certain assets to secure indebtedness or (iv) consolidate, merge, sell or otherwise dispose of all or substantially all of their assets.

In accordance with the Indenture, certain cash accounts have been established with the Indenture trustee for the benefit of the trustee and the noteholders, and are restricted in their use. As of January 3, 2021 and December 29, 2019, Wendy’s Funding had restricted cash of $33,635 and $34,209, respectively, which primarily represents cash collections and cash reserves held by the trustee to be used for payments of principal, interest and commitment fees required for the Class A-2 Notes.
Refinancing Transactions

In June 2019, the Master Issuer completed a refinancing transaction under which the Master Issuer issued the Series 2019-1 Class A-2-I Notes and the Series 2019-1 Class A-2-II Notes. The Master Issuer’s outstanding Series 2015-1 Class A-2-II Notes were redeemed as part of the transaction. As a result, the Company recorded a loss on early extinguishment of debt of $7,150 during 2019, which was comprised of the write-off of certain unamortized deferred financing costs. As part of the June 2019 refinancing transaction, the Master Issuer also issued the 2019-1 Class A-1 Notes. The Company’s previous Series 2018-1 Class A-1 Notes were canceled on the closing date and the letters of credit outstanding against the Series 2018-1 Class A-1 Notes were transferred to the 2019-1 Class A-1 Notes.

In January 2018, the Master Issuer completed a refinancing transaction under which the Master Issuer issued the Series 2018-1 Class A-2-I Notes and the Series 2018-1 Class A-2-II Notes. The net proceeds from the sale of the notes were used to redeem the Master Issuer’s outstanding Series 2015-1 Class A-2-I Notes, to pay prepayment and transaction costs and for general corporate purposes. As a result, the Company recorded a loss on early extinguishment of debt of $11,475 during 2018, which was comprised of the write-off of certain deferred financing costs and a specified make-whole payment.

Debt Issuance Costs

During 2020, 2019 and 2018, the Company incurred debt issuance costs of $2,122, $14,008 and $17,580 in connection with the issuance of the 2020-1 Class A-1 Notes and the June 2019 and January 2018 refinancing transactions, respectively. The debt issuance costs are being amortized to “Interest expense, net” through the anticipated repayment dates of the Class A-2 Notes utilizing the effective interest rate method. As of January 3, 2021, the effective interest rates, including the amortization of debt issuance costs, were 4.7%, 3.9%, 4.1%, 4.0% and 4.2% for the Series 2015-1 Class A-2-III Notes, Series 2018-1 Class A-2-I Notes, Series 2018-1 Class A-2-II Notes, Series 2019-1 Class A-2-I Notes and Series 2019-1 Class A-2-II Notes, respectively.

Other Long-Term Debt

Wendy’s 7% debentures are unsecured and were reduced to fair value in connection with the Wendy’s Merger based on their outstanding principal of $100,000 and an effective interest rate of 8.6%. The fair value adjustment is being accreted and the related charge included in “Interest expense, net” until the debentures mature. These debentures contain covenants that restrict the incurrence of indebtedness secured by liens and certain finance lease transactions. In December 2019, Wendy’s repurchased $10,000 in principal of its 7% debentures for $10,550, including a premium of $500 and transaction fees of $50. As a result, the Company recognized a loss on early extinguishment of debt of $1,346 during the fourth quarter of 2019.

A Canadian subsidiary of Wendy’s has a revolving credit facility of C$6,000, which bears interest at the Bank of Montreal Prime Rate. Borrowings under the facility are guaranteed by Wendy’s. In March 2020, the Company drew down C$5,500 under the revolving credit facility, of which the Company repaid C$1,000 in October 2020 and C$2,000 in December 2020. As a result, as of January 3, 2021, the Company had outstanding borrowings of C$2,500 under the revolving credit facility. Subsequent to January 3, 2021, the Company repaid the C$2,500 outstanding balance under the Canadian revolving credit facility.

Wendy’s U.S. advertising fund has a revolving line of credit of $25,000, which was established to support the advertising fund operations and bears interest at LIBOR plus 2.15%. Borrowings under the line of credit are guaranteed by Wendy’s. In February 2020, the Company drew down $4,397 under the revolving line of credit, which the Company fully repaid in February 2020. In March 2020, the Company drew down $25,000 under the revolving line of credit, which the Company fully repaid in September 2020. As a result, as of January 3, 2021, the Company had no outstanding borrowings under the revolving line of credit.

The increased borrowings were taken as precautionary measures to provide enhanced financial flexibility considering the uncertain market conditions arising from the COVID-19 pandemic.

Interest Expense

Interest expense on the Company’s long-term debt was $106,116, $105,829 and $107,929 during 2020, 2019 and 2018, respectively, which was recorded to “Interest expense, net.”
Pledged Assets

The following is a summary of the Company’s assets pledged as collateral for certain debt:

<table>
<thead>
<tr>
<th>Asset</th>
<th>Year End January 3, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 27,962</td>
</tr>
<tr>
<td>Restricted cash and other assets (including long-term)</td>
<td>33,641</td>
</tr>
<tr>
<td>Accounts and notes receivable, net</td>
<td>40,389</td>
</tr>
<tr>
<td>Inventories</td>
<td>3,897</td>
</tr>
<tr>
<td>Properties</td>
<td>60,794</td>
</tr>
<tr>
<td>Other intangible assets</td>
<td>1,043,640</td>
</tr>
<tr>
<td></td>
<td>$ 1,210,323</td>
</tr>
</tbody>
</table>

(13) Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Valuation techniques under the accounting guidance related to fair value measurements are based on observable and unobservable inputs. Observable inputs reflect readily obtainable data from independent sources, while unobservable inputs reflect our market assumptions. These inputs are classified into the following hierarchy:

- Level 1 Inputs - Quoted prices for identical assets or liabilities in active markets.
- Level 2 Inputs - Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.
- Level 3 Inputs - Pricing inputs are unobservable for the assets or liabilities and include situations where there is little, if any, market activity for the assets or liabilities. The inputs into the determination of fair value require significant management judgment or estimation.
Financial Instruments

The following table presents the carrying amounts and estimated fair values of the Company’s financial instruments:

<table>
<thead>
<tr>
<th>Financial assets</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>Fair Value Measurements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash equivalents</td>
<td>$ 75,067</td>
<td>$ 75,067</td>
<td></td>
</tr>
<tr>
<td>Other investments in equity securities (a)</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Financial liabilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Series 2019-1 Class A-2-I Notes (b)</td>
<td>386,000</td>
<td>409,778</td>
<td>Level 2</td>
</tr>
<tr>
<td>Series 2019-1 Class A-2-II Notes (b)</td>
<td>434,250</td>
<td>469,555</td>
<td>Level 2</td>
</tr>
<tr>
<td>Series 2018-1 Class A-2-I Notes (b)</td>
<td>436,500</td>
<td>450,381</td>
<td>Level 2</td>
</tr>
<tr>
<td>Series 2018-1 Class A-2-II Notes (b)</td>
<td>460,750</td>
<td>491,021</td>
<td>Level 2</td>
</tr>
<tr>
<td>Canadian revolving credit facility</td>
<td>1,962</td>
<td>1,962</td>
<td>Level 2</td>
</tr>
<tr>
<td>7% debentures, due in 2025 (b)</td>
<td>83,998</td>
<td>98,775</td>
<td>Level 2</td>
</tr>
</tbody>
</table>

(a) The fair values of our investments were not significant and were based on our review of information provided by the investment managers or investees, which was based on (1) valuations performed by the investment managers or investees, (2) quoted market or broker/dealer prices for similar investments and (3) quoted market or broker/dealer prices adjusted by the investment managers for legal or contractual restrictions, risk of nonperformance or lack of marketability, depending upon the underlying investments. In June 2020, the Company impaired a miscellaneous investment due to the deterioration in operating performance of the underlying assets. In July 2020, the Company sold its remaining interest in this investment.

(b) The fair values were based on quoted market prices in markets that are not considered active markets.

The carrying amounts of cash, accounts payable and accrued expenses approximate fair value due to the short-term nature of those items. The carrying amounts of accounts and notes receivable, net (both current and non-current) approximate fair value due to the effect of the related allowance for doubtful accounts. Our cash equivalents are the only financial assets measured and recorded at fair value on a recurring basis.

Non-Recurring Fair Value Measurements

Assets and liabilities remeasured to fair value on a non-recurring basis resulted in impairment that we have recorded to “Impairment of long-lived assets” in our consolidated statements of operations.

Total impairment losses may reflect the impact of remeasuring long-lived assets held and used (including land, buildings, leasehold improvements, favorable lease assets and ROU assets) to fair value as a result of (1) declines in operating performance at Company-operated restaurants and (2) the Company’s decision to lease and/or sublease the land and/or buildings to franchisees in connection with the sale or anticipated sale of restaurants, including any subsequent lease modifications. The fair values of long-lived assets held and used presented in the tables below represent the remaining carrying value and were estimated based on either discounted cash flows of future anticipated lease and sublease income or discounted cash flows of future anticipated Company-operated restaurant performance.
Total impairment losses may also include the impact of remeasuring long-lived assets held for sale, which primarily include surplus properties. The fair values of long-lived assets held for sale presented in the tables below represent the remaining carrying value and were estimated based on current market values. See Note 17 for further information on impairment of our long-lived assets.

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2021</th>
<th></th>
<th></th>
<th></th>
<th>2020 Total Losses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Level 1</td>
<td>Level 2</td>
<td>Level 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Held and used</td>
<td>$2,653</td>
<td>$—</td>
<td>$2,653</td>
<td></td>
<td>$7,586</td>
</tr>
<tr>
<td>Held for sale</td>
<td>$855</td>
<td>$—</td>
<td>$855</td>
<td></td>
<td>$451</td>
</tr>
<tr>
<td>Total</td>
<td>$3,508</td>
<td>$—</td>
<td>$3,508</td>
<td></td>
<td>$8,037</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>December 29, 2019</th>
<th></th>
<th></th>
<th>2019 Total Losses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Level 1</td>
<td>Level 2</td>
<td>Level 3</td>
<td></td>
</tr>
<tr>
<td>Held and used</td>
<td>$3,582</td>
<td>$—</td>
<td>$3,582</td>
<td>$5,602</td>
</tr>
<tr>
<td>Held for sale</td>
<td>$988</td>
<td>$—</td>
<td>$988</td>
<td>$1,397</td>
</tr>
<tr>
<td>Total</td>
<td>$4,570</td>
<td>$—</td>
<td>$4,570</td>
<td>$6,999</td>
</tr>
</tbody>
</table>

### Fair Value Measurements

#### (14) Income Taxes

Income before income taxes is set forth below:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic</td>
<td>$149,046</td>
<td>$160,474</td>
<td>$560,776</td>
</tr>
<tr>
<td>Foreign (a)</td>
<td>3,749</td>
<td>11,007</td>
<td>14,140</td>
</tr>
<tr>
<td>Total</td>
<td>$152,795</td>
<td>$171,481</td>
<td>$574,916</td>
</tr>
</tbody>
</table>

(a) Excludes foreign income of domestic subsidiaries.

The (provision for) benefit from income taxes is set forth below:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. federal</td>
<td>$(16,176)</td>
<td>$(18,421)</td>
<td>$(109,078)</td>
</tr>
<tr>
<td>State</td>
<td>(3,723)</td>
<td>(6,093)</td>
<td>(2,661)</td>
</tr>
<tr>
<td>Foreign</td>
<td>(4,798)</td>
<td>(9,190)</td>
<td>(9,630)</td>
</tr>
<tr>
<td>Current tax provision</td>
<td>(24,697)</td>
<td>(33,704)</td>
<td>(121,369)</td>
</tr>
<tr>
<td>Deferred:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. federal</td>
<td>(6,707)</td>
<td>1,585</td>
<td>5,071</td>
</tr>
<tr>
<td>State</td>
<td>(3,185)</td>
<td>(2,449)</td>
<td>441</td>
</tr>
<tr>
<td>Foreign</td>
<td>(374)</td>
<td>27</td>
<td>1,056</td>
</tr>
<tr>
<td>Deferred tax (provision) benefit</td>
<td>(10,266)</td>
<td>(837)</td>
<td>6,568</td>
</tr>
<tr>
<td>Income tax provision</td>
<td>$34,963</td>
<td>$34,541</td>
<td>$114,801</td>
</tr>
</tbody>
</table>
Deferred tax assets (liabilities) are set forth below:

<table>
<thead>
<tr>
<th></th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deferred tax assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating and finance lease liabilities</td>
<td>$365,005</td>
<td>$345,173</td>
</tr>
<tr>
<td>Net operating loss and credit carryforwards</td>
<td>62,210</td>
<td>59,597</td>
</tr>
<tr>
<td>Unfavorable leases</td>
<td>23,511</td>
<td>26,020</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>24,303</td>
<td>23,907</td>
</tr>
<tr>
<td>Accrued compensation and related benefits</td>
<td>16,443</td>
<td>18,477</td>
</tr>
<tr>
<td>Accrued expenses and reserves</td>
<td>7,673</td>
<td>13,786</td>
</tr>
<tr>
<td>Deferred rent</td>
<td>—</td>
<td>492</td>
</tr>
<tr>
<td>Other</td>
<td>5,869</td>
<td>3,757</td>
</tr>
<tr>
<td>Valuation allowances</td>
<td>(49,968)</td>
<td>(45,183)</td>
</tr>
<tr>
<td><strong>Total deferred tax assets</strong></td>
<td>455,046</td>
<td>446,026</td>
</tr>
</tbody>
</table>

| **Deferred tax liabilities:** |                   |                   |
| Operating and finance lease assets | (332,515)        | (313,803)         |
| Intangible assets              | (301,969)        | (311,596)         |
| Fixed assets                   | (63,826)         | (60,788)          |
| Other                          | (37,491)         | (30,598)          |
| **Total deferred tax liabilities** | (735,801) | (716,785) |
| **Valuation allowances**       |                   |                   |
| **Total**                      | (280,755)        | (270,759)         |

The amounts and expiration dates of net operating loss and tax credit carryforwards are as follows:

<table>
<thead>
<tr>
<th>Tax credit carryforwards:</th>
<th>Amount</th>
<th>Expiration</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. federal foreign tax credits</td>
<td>$13,681</td>
<td>2022-2030</td>
</tr>
<tr>
<td>State tax credits</td>
<td>708</td>
<td>2021-2023</td>
</tr>
<tr>
<td>Foreign tax credits of non-U.S. subsidiaries</td>
<td>4,125</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$18,514</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Net operating loss carryforwards:</th>
<th>Amount</th>
<th>Expiration</th>
</tr>
</thead>
<tbody>
<tr>
<td>State and local net operating loss carryforwards</td>
<td>$1,182,774</td>
<td>2021-2035</td>
</tr>
<tr>
<td>Foreign net operating loss carryforwards</td>
<td>1,044</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,183,818</td>
<td></td>
</tr>
</tbody>
</table>

The Company’s valuation allowances of $49,968 and $45,183 as of January 3, 2021 and December 29, 2019, respectively, relate to foreign and state tax credit and net operating loss carryforwards. Valuation allowances increased $4,785 and $3,008 during 2020 and 2019, respectively, and decreased $5,120 during 2018. The relative presence of Company-operated restaurants in various states impacts expected future state taxable income available to utilize state net operating loss carryforwards.
Major Tax Legislation

On December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (the “Tax Act”). The Tax Act made broad and complex changes to the U.S. tax code that affects 2017 and subsequent years, including but not limited to (1) requiring a one-time transition tax on certain unrepatriated earnings of foreign subsidiaries, (2) bonus depreciation that will allow for full expensing of qualified property, (3) reducing the U.S. federal corporate tax rate from 35% to 21% in years 2018 and forward, (4) a tax on global intangible low-taxed income (“GILTI”) and (5) limitations on the deductibility of certain executive compensation.

In 2018, we recorded a net tax expense of $2,159 related to the Tax Act consisting of $2,454 related to the impact of the corporate rate reduction on our net deferred tax liabilities and state taxes and a net expense of $991 related to the limitations on the deductibility of certain executive compensation, partially offset by $1,286 for the net benefit of foreign tax credits.

The current portion of refundable income taxes was $5,399 and $13,555 as of January 3, 2021 and December 29, 2019, respectively, and is included in “Accounts and notes receivable, net.” There were no long-term refundable income taxes as of January 3, 2021 and December 29, 2019.

The reconciliation of income tax computed at the U.S. federal statutory rate of 21% to reported income tax is set forth below:

<table>
<thead>
<tr>
<th>Income tax provision at the U.S. federal statutory rate</th>
<th>2020</th>
<th>2019</th>
<th>2018 (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>State income tax provision, net of U.S. federal income tax effect</td>
<td>$32,087</td>
<td>$36,011</td>
<td>$120,732</td>
</tr>
<tr>
<td>Prior years’ tax matters (b)</td>
<td>4,664</td>
<td>6,470</td>
<td>221</td>
</tr>
<tr>
<td>Excess federal tax benefits from share-based compensation</td>
<td>1,761</td>
<td>6,135</td>
<td>9,970</td>
</tr>
<tr>
<td>Foreign and U.S. tax effects of foreign operations</td>
<td>5,338</td>
<td>5,841</td>
<td>10,250</td>
</tr>
<tr>
<td>Valuation allowances</td>
<td>4,593</td>
<td>2,833</td>
<td>5,120</td>
</tr>
<tr>
<td>Non-deductible goodwill (c)</td>
<td>1,793</td>
<td>1,925</td>
<td>1,098</td>
</tr>
<tr>
<td>Tax credits</td>
<td>1901</td>
<td>879</td>
<td>1,089</td>
</tr>
<tr>
<td>Non-deductible executive compensation</td>
<td>(1,973)</td>
<td>(1,925)</td>
<td>(1,098)</td>
</tr>
<tr>
<td>Unrepatriated earnings</td>
<td>(283)</td>
<td>(402)</td>
<td>(326)</td>
</tr>
<tr>
<td>Non-deductible expenses and other</td>
<td>34</td>
<td>(5)</td>
<td>1,984</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2020</th>
<th>2019</th>
<th>2018 (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$34,963</td>
<td>$34,541</td>
<td>$114,801</td>
</tr>
</tbody>
</table>

(a) 2018 includes the following impacts associated with the Tax Act: (1) a net expense of $2,426 related to the impact of the corporate rate reduction on our net deferred tax liabilities, (2) a net expense of $991 related to the limitations on the deductibility of certain executive compensation, (3) a net expense of $28 of state income tax and (4) a net benefit of $1,286 related to foreign tax credits.

(b) 2019 primarily relates to a reduction in unrecognized tax benefits due to a lapse of statute of limitations. 2018 includes expense of $9,542 related to the Tax Act, which was partially offset by a $7,535 benefit reported in “Valuation allowances.”

(c) Substantially all of the goodwill included in the net gain (loss) on sales of restaurants in 2018 under our system optimization initiative was non-deductible for tax purposes. See Note 3 for further information.

The Company participates in the Internal Revenue Service (the “IRS”) Compliance Assurance Process (“CAP”). As part of CAP, tax years are examined on a contemporaneous basis so that all or most issues are resolved prior to the filing of the tax return. As such, our tax returns for fiscal years 2009 through 2018 have been settled. The statute of limitations for the Company’s state tax returns vary, but generally the Company’s state income tax returns from its 2017 fiscal year and forward
remain subject to examination. We believe that adequate provisions have been made for any liabilities, including interest and penalties that may result from the completion of these examinations.

**Unrecognized Tax Benefits**

As of January 3, 2021, the Company had unrecognized tax benefits of $20,973, which, if resolved favorably would reduce income tax expense by $16,601. A reconciliation of the beginning and ending amount of unrecognized tax benefits follows:

<table>
<thead>
<tr>
<th>Year End</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
<th>December 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning balance</td>
<td>$22,323</td>
<td>$27,632</td>
<td>$28,848</td>
</tr>
<tr>
<td>Additions:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax positions of current year</td>
<td>322</td>
<td>1,356</td>
<td>3,874</td>
</tr>
<tr>
<td>Tax positions of prior years</td>
<td>—</td>
<td>—</td>
<td>2,598</td>
</tr>
<tr>
<td>Reductions:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax positions of prior years</td>
<td>(1,183)</td>
<td>(227)</td>
<td>(7,553)</td>
</tr>
<tr>
<td>Settlements</td>
<td>(119)</td>
<td>—</td>
<td>(21)</td>
</tr>
<tr>
<td>Lapse of statute of limitations</td>
<td>(370)</td>
<td>(6,438)</td>
<td>(114)</td>
</tr>
<tr>
<td>Ending balance</td>
<td>$20,973</td>
<td>$22,323</td>
<td>$27,632</td>
</tr>
</tbody>
</table>

The reductions in unrecognized tax benefits in 2020 was primarily related to decreases as a result of settlements with various taxing jurisdictions. The additions in unrecognized tax benefits in 2019 was primarily related to the uncertainty of the income tax consequences of a cash settlement related to a previously held investment. The addition of unrecognized tax benefits in 2018 was primarily related to the sale of our ownership interest in Inspire Brands, and the reduction of unrecognized benefits in 2018 was primarily related to settlements with various taxing jurisdictions, including amended returns that were filed in 2017.

During 2021, we believe it is reasonably possible the Company will reduce unrecognized tax benefits by up to $220 due primarily to the lapse of statutes of limitations and expected settlements.

During 2020, 2019 and 2018, the Company recognized $159, $(489) and $(12) of expense (income) for interest and $81, $81 and $309 of income for penalties, respectively, related to uncertain tax positions. The Company has $873 and $946 accrued for interest and $37 and $118 accrued for penalties as of January 3, 2021 and December 29, 2019, respectively.

**(15) Stockholders’ Equity**

**Dividends**

During 2020, 2019 and 2018, the Company paid dividends per share of $0.29, $0.42 and $0.34, respectively.
Treasury Stock

There were 470,424 shares of common stock issued at the beginning and end of 2020, 2019 and 2018. Treasury stock activity for 2020, 2019 and 2018 was as follows:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of shares at beginning of year</td>
<td>245,535</td>
<td>239,191</td>
<td>229,912</td>
</tr>
<tr>
<td>Repurchases of common stock</td>
<td>3,512</td>
<td>10,158</td>
<td>15,808</td>
</tr>
<tr>
<td>Common shares issued:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock options, net</td>
<td>(2,358)</td>
<td>(2,912)</td>
<td>(5,824)</td>
</tr>
<tr>
<td>Restricted stock, net</td>
<td>(465)</td>
<td>(834)</td>
<td>(627)</td>
</tr>
<tr>
<td>Director fees</td>
<td>(15)</td>
<td>(14)</td>
<td>(15)</td>
</tr>
<tr>
<td>Other</td>
<td>(53)</td>
<td>(54)</td>
<td>(63)</td>
</tr>
<tr>
<td>Number of shares at end of year</td>
<td>246,156</td>
<td>245,535</td>
<td>239,191</td>
</tr>
</tbody>
</table>

Repurchases of Common Stock

In February 2020, our Board of Directors authorized a repurchase program for up to $100,000 of our common stock through February 28, 2021, when and if market conditions warranted and to the extent legally permissible. As previously announced, beginning in March 2020, the Company temporarily suspended all share repurchase activity under the February 2020 authorization in connection with the Company’s response to the COVID-19 pandemic. In July 2020, the Company’s Board of Directors approved an extension of the February 2020 authorization by one year, through February 28, 2022, when and if market and economic conditions warrant and to the extent legally permissible. The Company resumed share repurchases in August 2020. During 2020, the Company repurchased 1,572 shares under the February 2020 repurchase authorization with an aggregate purchase price of $32,285, of which $723 was accrued at January 3, 2021, and excluding commissions of $22. As of January 3, 2021, the Company had $67,715 of availability remaining under its February 2020 authorization. Subsequent to January 3, 2021 through February 23, 2021, the Company repurchased 457 shares under the February 2020 authorization with an aggregate purchase price of $9,570, excluding commissions of $6.

In February 2019, our Board of Directors authorized a repurchase program for up to $225,000 of our common stock through March 1, 2020, when and if market conditions warranted and to the extent legally permissible. In November 2019, the Company entered into an accelerated share repurchase agreement (the “2019 ASR Agreement”) with a third-party financial institution to repurchase common stock as part of the Company’s existing share repurchase program. Under the 2019 ASR Agreement, the Company paid the financial institution an initial purchase price of $100,000 in cash and received an initial delivery of 4,051 shares of common stock, representing an estimated 85% of the total shares expected to be delivered under the 2019 ASR Agreement. In February 2020, the Company completed the 2019 ASR Agreement and received an additional 628 shares of common stock at an average purchase price of $23.89. The total number of shares of common stock ultimately purchased by the Company under the 2019 ASR Agreement was based on the average of the daily volume-weighted average prices of the common stock during the term of the 2019 ASR Agreement, less an agreed upon discount. In total, 4,679 shares were delivered under the 2019 ASR Agreement at an average purchase price of $21.37 per share.

In February 2019, our Board of Directors authorized a repurchase program for up to $225,000 of our common stock through March 1, 2020, when and if market conditions warranted and to the extent legally permissible. In November 2019, the Company entered into an accelerated share repurchase agreement (the “2019 ASR Agreement”) with a third-party financial institution to repurchase common stock as part of the Company’s existing share repurchase program. Under the 2019 ASR Agreement, the Company paid the financial institution an initial purchase price of $100,000 in cash and received an initial delivery of 4,051 shares of common stock, representing an estimated 85% of the total shares expected to be delivered under the 2019 ASR Agreement. In February 2020, the Company completed the 2019 ASR Agreement and received an additional 628 shares of common stock at an average purchase price of $23.89. The total number of shares of common stock ultimately purchased by the Company under the 2019 ASR Agreement was based on the average of the daily volume-weighted average prices of the common stock during the term of the 2019 ASR Agreement, less an agreed upon discount. In total, 4,679 shares were delivered under the 2019 ASR Agreement at an average purchase price of $21.37 per share.

In addition to the shares repurchased in connection with the 2019 ASR Agreement, during 2020, the Company repurchased 1,312 shares with an aggregate purchase price of $28,770, excluding commissions of $18, under the February 2019 authorization. After taking into consideration these repurchases, with the completion of the 2019 ASR Agreement in February 2020, the Company completed its February 2019 authorization.

In addition to the shares repurchased in connection with the 2019 ASR Agreement, during 2019, the Company repurchased 6,107 shares with an aggregate purchase price of $117,685, of which $1,801 was accrued at December 29, 2019, and excluding commissions of $86, under the February 2019 authorization and the Company’s November 2018 authorization referenced below.
In February 2018, our Board of Directors authorized a repurchase program for up to $175,000 of our common stock through March 3, 2019, when and if market conditions warranted and to the extent legally permissible. In November 2018, our Board of Directors approved an additional share repurchase program for up to $220,000 of our common stock through December 27, 2019, when and if market conditions warranted and to the extent legally permissible. In November 2018, the Company entered into an accelerated share repurchase agreement (the “2018 ASR Agreement”) with a third-party financial institution to repurchase common stock as part of the Company’s existing share repurchase programs. Under the 2018 ASR Agreement, the Company paid the financial institution an initial purchase price of $75,000 in cash and received an initial delivery of 3,645 shares of common stock, representing an estimated 85% of the total shares expected to be delivered under the 2018 ASR Agreement. In December 2018, the Company completed the 2018 ASR Agreement and received an additional 720 shares of common stock. The total number of shares of common stock ultimately purchased by the Company under the 2018 ASR Agreement was based on the average of the daily volume-weighted average prices of the common stock during the term of the 2018 ASR Agreement, less an agreed upon discount. In addition to the shares repurchased in connection with the 2018 ASR Agreement, during 2018, the Company repurchased 10,058 shares under the February 2018 and November 2018 authorizations with an aggregate purchase price of $172,584, of which $1,827 was accrued at December 30, 2018, and excluding commissions of $141.

In February 2017, our Board of Directors authorized a repurchase program for up to $150,000 of our common stock through March 4, 2018, when and if market conditions warranted and to the extent legally permissible. The Company completed the February 2017 authorization during 2018 with the repurchase of 1,385 shares with an aggregate purchase price of $22,633, excluding commissions of $19.

Preferred Stock

There were 100,000 shares authorized and no shares issued of preferred stock throughout 2020, 2019 and 2018.

Accumulated Other Comprehensive Loss

The following table provides a rollforward of the components of accumulated other comprehensive income (loss), net of tax as applicable:

<table>
<thead>
<tr>
<th></th>
<th>Foreign Currency</th>
<th>Pension (a)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance at December 31, 2017</strong></td>
<td>$ (45,149)</td>
<td>$ (1,049)</td>
<td>$ (46,198)</td>
</tr>
<tr>
<td>Current-period other comprehensive (loss) income</td>
<td>(16,524)</td>
<td>1,049</td>
<td>(15,475)</td>
</tr>
<tr>
<td><strong>Balance at December 30, 2018</strong></td>
<td>(61,673)</td>
<td>—</td>
<td>(61,673)</td>
</tr>
<tr>
<td>Current-period other comprehensive income</td>
<td>7,845</td>
<td>—</td>
<td>7,845</td>
</tr>
<tr>
<td><strong>Balance at December 29, 2019</strong></td>
<td>(53,828)</td>
<td>—</td>
<td>(53,828)</td>
</tr>
<tr>
<td>Current-period other comprehensive income</td>
<td>4,187</td>
<td>—</td>
<td>4,187</td>
</tr>
<tr>
<td><strong>Balance at January 3, 2021</strong></td>
<td>$ (49,641)</td>
<td>—</td>
<td>$ (49,641)</td>
</tr>
</tbody>
</table>

(a) During 2018, the Company terminated two frozen defined benefit plans. See Note 19 for further information.

(16) Share-Based Compensation

The Company has the ability to grant stock options, stock appreciation rights, restricted stock, restricted stock units, other stock-based awards and performance compensation awards to current or prospective employees, directors, officers, consultants or advisors. During 2020, the Company’s Board of Directors and its stockholders approved the adoption of the 2020 Omnibus Award Plan (the “2020 Plan”) for the issuance of equity instruments as described above. The Company’s previous 2010 Omnibus Award Plan (as amended, the “2010 Plan”) expired in accordance with its terms in 2020. Equity grants in 2020 were issued from both the 2020 Plan and the 2010 Plan. All equity grants during 2019 and 2018 were issued from the 2010 Plan. The 2020 Plan is currently the only equity plan from which future equity awards may be granted, but outstanding awards granted under the 2010 Plan will continue to be governed by the terms of the 2010 Plan. As of January 3, 2021, there were approximately 26,691 shares of common stock available for future grants under the 2020 Plan. During the periods presented in

106
the consolidated financial statements, the Company settled all exercises of stock options and vesting of restricted shares, including performance shares, with treasury shares.

**Stock Options**

The Company’s current outstanding stock options have maximum contractual terms of 10 years and vest ratably over three years or cliff vest after three years. The exercise price of options granted is equal to the market price of the Company’s common stock on the date of grant. The fair value of stock options on the date of grant is calculated using the Black-Scholes Model. The aggregate intrinsic value of an option is the amount by which the fair value of the underlying stock exceeds its exercise price.

The following table summarizes stock option activity during 2020:

<table>
<thead>
<tr>
<th>Number of Options</th>
<th>Weighted Average Exercise Price</th>
<th>Weighted Average Remaining Contractual Life in Years</th>
<th>Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding at December 29, 2019</td>
<td>11,937</td>
<td>$13.92</td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>1,807</td>
<td>22.48</td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td>(2,395)</td>
<td>10.09</td>
<td></td>
</tr>
<tr>
<td>Forfeited and/or expired</td>
<td>(107)</td>
<td>19.48</td>
<td></td>
</tr>
<tr>
<td>Outstanding at January 3, 2021</td>
<td>11,242</td>
<td>$16.06</td>
<td>6.74</td>
</tr>
<tr>
<td>Vested or expected to vest at January 3, 2021</td>
<td>11,115</td>
<td>$16.01</td>
<td>6.72</td>
</tr>
<tr>
<td>Exercisable at January 3, 2021</td>
<td>7,240</td>
<td>$13.46</td>
<td>5.59</td>
</tr>
</tbody>
</table>

The total intrinsic value of options exercised during 2020, 2019 and 2018 was $28,111, $26,947 and $62,744, respectively. The weighted average grant date fair value of stock options granted during 2020, 2019 and 2018 was $6.02, $3.40 and $4.12, respectively.

The weighted average grant date fair value of stock options was determined using the following assumptions:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk-free interest rate</td>
<td>0.22 %</td>
<td>1.57 %</td>
<td>2.77 %</td>
</tr>
<tr>
<td>Expected option life in years</td>
<td>4.50</td>
<td>4.50</td>
<td>5.62</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>38.02 %</td>
<td>23.55 %</td>
<td>24.27 %</td>
</tr>
<tr>
<td>Expected dividend yield</td>
<td>1.72 %</td>
<td>2.03 %</td>
<td>1.84 %</td>
</tr>
</tbody>
</table>

The risk-free interest rate represents the U.S. Treasury zero-coupon bond yield correlating to the expected life of the stock options granted. The expected option life represents the period of time that the stock options granted are expected to be outstanding based on historical exercise trends for similar grants. The expected volatility is based on the historical market price volatility of the Company over a period equivalent to the expected option life. The expected dividend yield represents the Company’s annualized average yield for regular quarterly dividends declared prior to the respective stock option grant dates.

The Black-Scholes Model has limitations on its effectiveness including that it was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable and that the model requires the use of highly subjective assumptions, such as expected stock price volatility. Employee stock option awards have characteristics significantly different from those of traded options and changes in the subjective input assumptions can materially affect the fair value estimates.
Restricted Shares

The Company grants RSAs and RSUs, which primarily cliff vest after 1 to 3 years. For the purposes of our disclosures, the term “Restricted Shares” applies to RSAs and RSUs collectively unless otherwise noted. The fair value of Restricted Shares granted is determined using the fair market value of the Company’s common stock on the date of grant, as set forth in the applicable plan document.

The following table summarizes activity of Restricted Shares during 2020:

<table>
<thead>
<tr>
<th>Description</th>
<th>Number of Restricted Shares</th>
<th>Weighted Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-vested at December 29, 2019</td>
<td>1,071</td>
<td>$16.46</td>
</tr>
<tr>
<td>Granted</td>
<td>458</td>
<td>22.39</td>
</tr>
<tr>
<td>Vested</td>
<td>(401)</td>
<td>16.11</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(39)</td>
<td>18.37</td>
</tr>
<tr>
<td>Non-vested at January 3, 2021</td>
<td>1,089</td>
<td>$19.01</td>
</tr>
</tbody>
</table>

The total fair value of Restricted Shares that vested in 2020, 2019 and 2018 was $8,634, $9,996 and $10,060, respectively.

Performance Shares

The Company grants performance-based awards to certain officers and key employees. The vesting of these awards is contingent upon meeting one or more defined operational or financial goals (a performance condition) or common stock share prices (a market condition). The quantity of shares awarded ranges from 0% to 200% of “Target,” as defined in the award agreement as the midpoint number of shares, based on the level of achievement of the performance and market conditions.

The fair values of the performance condition awards granted in 2020, 2019 and 2018 were determined using the fair market value of the Company’s common stock on the date of grant, as set forth in the applicable plan document. Share-based compensation expense recorded for performance condition awards is reevaluated at each reporting period based on the probability of the achievement of the goal.

The fair value of market condition awards granted in 2020, 2019 and 2018 were estimated using the Monte Carlo simulation model. The Monte Carlo simulation model utilizes multiple input variables to estimate the probability that the market conditions will be achieved and is applied to the trading price of our common stock on the date of grant.

The input variables are noted in the table below:

<table>
<thead>
<tr>
<th>Description</th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk-free interest rate</td>
<td>1.38%</td>
<td>2.51%</td>
<td>2.38%</td>
</tr>
<tr>
<td>Expected life in years</td>
<td>3.00</td>
<td>3.00</td>
<td>3.00</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>23.26%</td>
<td>23.19%</td>
<td>24.97%</td>
</tr>
<tr>
<td>Expected dividend yield (a)</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
</tbody>
</table>

(a) The Monte Carlo method assumes a reinvestment of dividends.

Share-based compensation expense is recorded ratably for market condition awards during the requisite service period and is not reversed, except for forfeitures, at the vesting date regardless of whether the market condition is met.
The following table summarizes activity of performance shares at Target during 2020:

<table>
<thead>
<tr>
<th>Performance Condition Awards</th>
<th>Weighted Average Grant Date Fair Value</th>
<th>Market Condition Awards</th>
<th>Weighted Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares</td>
<td>Shares</td>
<td>Shares</td>
<td>Shares</td>
</tr>
<tr>
<td>Non-vested at December 29, 2019</td>
<td>439</td>
<td>$15.75</td>
<td>362</td>
</tr>
<tr>
<td>Granted</td>
<td>149</td>
<td>23.37</td>
<td>115</td>
</tr>
<tr>
<td>Dividend equivalent units issued (a)</td>
<td>7</td>
<td>—</td>
<td>6</td>
</tr>
<tr>
<td>Vested (b)</td>
<td>(148)</td>
<td>13.87</td>
<td>(130)</td>
</tr>
<tr>
<td>Forfeited</td>
<td>(18)</td>
<td>17.29</td>
<td>(7)</td>
</tr>
<tr>
<td>Non-vested at January 3, 2021</td>
<td>429</td>
<td>$19.06</td>
<td>346</td>
</tr>
</tbody>
</table>

(a) Dividend equivalent units are issued in lieu of cash dividends for non-vested performance shares. There is no weighted average fair value associated with dividend equivalent units.

(b) Market condition awards exclude the vesting of an additional 80 shares, which resulted from the performance of the awards exceeding Target.

The total fair value of performance condition awards that vested in 2020, 2019 and 2018 was $3,447, $7,720 and $3,681, respectively. The total fair value of market condition awards that vested in 2020, 2019 and 2018 was $4,910, $7,135 and $3,143, respectively.

**Modifications of Share-Based Awards**

During 2020, 2019 and 2018, the Company modified the terms of awards granted to seven, ten and eight employees, respectively, in connection with its Operations and Field Realignment Plan, IT Realignment Plan and G&A Realignment Plan discussed in Note 5. These modifications resulted in the accelerated vesting of certain stock options in connection with the termination of such employees. As a result, during 2020, 2019 and 2018, the Company recognized an increase in share-based compensation of $621, $1,011 and $1,238, respectively, which was included in “Reorganization and realignment costs.”

**Share-Based Compensation**

Total share-based compensation and the related income tax benefit recognized in the Company’s consolidated statements of operations were as follows:

<table>
<thead>
<tr>
<th>Stock options</th>
<th>Restricted shares (a)</th>
<th>Performance shares:</th>
<th>Market condition awards</th>
<th>Modifications, net</th>
<th>Share-based compensation</th>
<th>Less: Income tax benefit</th>
<th>Share-based compensation, net of income tax benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$15,972</td>
</tr>
<tr>
<td>$8,499</td>
<td>6,507</td>
<td>782</td>
<td>2,521</td>
<td>621</td>
<td>18,930</td>
<td>(2,958)</td>
<td>$15,012</td>
</tr>
<tr>
<td>$7,685</td>
<td>5,762</td>
<td>2,195</td>
<td>2,023</td>
<td>1,011</td>
<td>18,676</td>
<td>(2,990)</td>
<td>$15,686</td>
</tr>
<tr>
<td>$7,172</td>
<td>6,030</td>
<td>1,491</td>
<td>1,987</td>
<td>1,238</td>
<td>17,918</td>
<td>(3,418)</td>
<td>$14,500</td>
</tr>
</tbody>
</table>

109
(a) 2020, 2019 and 2018 include $213, $396 and $319, respectively, related to retention awards in connection with the Company’s G&A Realignment Plan, which is included in “Reorganization and realignment costs.” See Note 5 for further information.

As of January 3, 2021, there was $25,156 of total unrecognized share-based compensation, which will be recognized over a weighted average amortization period of 2.16 years.

(17) Impairment of Long-Lived Assets

The Company records impairment charges as a result of (1) the deterioration in operating performance of certain Company-operated restaurants, (2) the Company’s decision to lease and/or sublease properties to franchisees in connection with the sale or anticipated sale of Company-operated restaurants, including any subsequent lease modifications, and (3) closing Company-operated restaurants and classifying such surplus properties as held for sale. Impairment charges during 2020 were primarily due to the deterioration in operating performance of certain Company-operated restaurants as a result of the COVID-19 pandemic. Additional impairment charges may be recognized by the Company in the event of further deterioration in operating performance of Company-operated restaurants.

The following is a summary of impairment losses recorded, which represent the excess of the carrying amount over the fair value of the affected assets and are included in “Impairment of long-lived assets:"

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company-operated restaurants</td>
<td>$7,586</td>
<td>$294</td>
<td>$4,060</td>
</tr>
<tr>
<td>Restaurants leased or subleased to franchisees</td>
<td>—</td>
<td>$5,308</td>
<td>283</td>
</tr>
<tr>
<td>Surplus properties</td>
<td>$451</td>
<td>$1,397</td>
<td>354</td>
</tr>
<tr>
<td></td>
<td>$8,037</td>
<td>$6,999</td>
<td>$4,697</td>
</tr>
</tbody>
</table>

(18) Investment (Loss) Income, Net

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gain on sale of investments, net (a) (b)</td>
<td>$—</td>
<td>$24,496</td>
<td>$450,000</td>
</tr>
<tr>
<td>Impairment loss on other investments in equity securities</td>
<td>(471)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other, net</td>
<td>246</td>
<td>1,102</td>
<td>736</td>
</tr>
<tr>
<td></td>
<td>$ (225)</td>
<td>$25,598</td>
<td>$450,736</td>
</tr>
</tbody>
</table>

(a) In October 2019, the Company received a $25,000 cash settlement related to a previously held investment. As a result, the Company recorded $24,366 to “Investment (loss) income, net” and $634 to “General and administrative” for the reimbursement of related costs.

(b) During 2018, the Company sold its remaining ownership interest in Inspire Brands for $450,000. See Note 8 for further information.

(19) Retirement Benefit Plans

401(k) Plan

The Company has a 401(k) defined contribution plan (the “401(k) Plan”) for employees who meet certain minimum requirements and elect to participate. The 401(k) Plan permits employees to contribute up to 75% of their compensation, subject to certain limitations, and provides for matching employee contributions up to 4% of compensation and for discretionary profit sharing contributions. In connection with the matching and profit sharing contributions, the Company recognized compensation expense of $5,175, $4,631 and $4,619 in 2020, 2019 and 2018, respectively.
Pension Plans

The Company maintained two domestic qualified defined benefit plans, the benefits under which were frozen in 1988 and for which the Company had no unrecognized prior service cost. Arby’s employees who were eligible to participate through 1988 (the “Eligible Arby’s Employees”) were covered under one of these plans. Pursuant to the terms of the Arby’s sale agreement, Wendy’s Restaurants retained the liabilities related to the Eligible Arby’s Employees under these plans and received $400 from the buyer for the unfunded liability related to the Eligible Arby’s Employees. The measurement date used by the Company in determining amounts related to its defined benefit plans was the same as the Company’s fiscal year end. During 2018, the Company terminated the defined benefit plans, resulting in a settlement loss of $1,335 recorded to “Reorganization and realignment costs.”

Wendy’s Executive Plans

In conjunction with the Wendy’s Merger, amounts due under supplemental executive retirement plans (collectively, the “SERP”) were funded into a restricted account. As of January 1, 2011, participation in the SERP was frozen to new entrants and future contributions, and existing participants’ balances only earn annual interest. The corresponding SERP liabilities are included in “Accrued expenses and other current liabilities” and “Other liabilities” and, in the aggregate, were $432 and $662 as of January 3, 2021 and December 29, 2019, respectively.

Effective January 1, 2017, the Company implemented a non-qualified, unfunded deferred compensation plan for management and highly compensated employees, whereby participants may defer all or a portion of their base compensation and certain incentive awards on a pre-tax basis. The Company credits the amounts deferred with earnings based on the investment options selected by the participants. The Company may also make discretionary contributions to the plan. The total of participant deferrals was $1,108 and $774 at January 3, 2021 and December 29, 2019, respectively, which are included in “Other liabilities.”

(20) Leases

Nature of Leases

The Company operates restaurants that are located on sites owned by us and sites leased by us from third parties. In addition, the Company owns sites and leases sites from third parties, which it leases and/or subleases to franchisees. At January 3, 2021, Wendy’s and its franchisees operated 6,828 Wendy’s restaurants. Of the 361 Company-operated Wendy’s restaurants, Wendy’s owned the land and building for 142 restaurants, owned the building and held long-term land leases for 149 restaurants and held leases covering the land and building for 70 restaurants. Wendy’s also owned 509 and leased 1,245 properties that were either leased or subleased principally to franchisees. The Company also leases restaurant, office and transportation equipment.

Company as Lessee

The components of lease cost for 2020 and 2019 are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
</tr>
<tr>
<td><strong>Finance lease cost</strong></td>
<td></td>
</tr>
<tr>
<td>Amortization of finance lease assets</td>
<td>$13,395</td>
</tr>
<tr>
<td>Interest on finance lease liabilities</td>
<td>40,682</td>
</tr>
<tr>
<td><strong>Total finance lease cost</strong></td>
<td>54,077</td>
</tr>
<tr>
<td><strong>Operating lease cost</strong></td>
<td>91,475</td>
</tr>
<tr>
<td><strong>Variable lease cost (a)</strong></td>
<td>59,076</td>
</tr>
<tr>
<td><strong>Short-term lease cost</strong></td>
<td>4,641</td>
</tr>
<tr>
<td><strong>Total operating lease cost (b)</strong></td>
<td>155,192</td>
</tr>
<tr>
<td><strong>Total lease cost</strong></td>
<td>$209,269</td>
</tr>
</tbody>
</table>
(a) Includes expenses for executory costs of $38,652 and $37,758 for 2020 and 2019, respectively, for which the Company is reimbursed by sublessees.

(b) Includes $125,553 and $123,899 for 2020 and 2019, respectively, recorded to “Franchise rental expense” for leased properties that are subsequently leased to franchisees. Also includes $26,866 and $27,419 for 2020 and 2019, respectively, recorded to “Cost of sales” for leases for Company-operated restaurants.

The components of rental expense for operating leases for 2018, as accounted for under previous guidance, were as follows:

<table>
<thead>
<tr>
<th>Year Ended 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rental expense:</td>
</tr>
<tr>
<td>Minimum rentals</td>
</tr>
<tr>
<td>Contingent rentals</td>
</tr>
<tr>
<td>Total rental expense (a)</td>
</tr>
</tbody>
</table>

(a) Includes rental expense related to (1) leases for Company-operated restaurants recorded to “Cost of sales,” (2) leased properties that are subsequently leased to franchisees recorded to “Franchise rental expense” and (3) leases for corporate offices and equipment recorded to “General and administrative.”

Amortization of finance lease assets was $11,603 for 2018.

The following table includes supplemental cash flow and non-cash information related to leases:

<table>
<thead>
<tr>
<th>Year End</th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash paid for amounts included in the measurement of lease liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating cash flows from finance leases</td>
<td>$39,349</td>
<td>$39,887</td>
</tr>
<tr>
<td>Operating cash flows from operating leases</td>
<td>85,689</td>
<td>91,824</td>
</tr>
<tr>
<td>Financing cash flows from finance leases</td>
<td>8,383</td>
<td>6,835</td>
</tr>
<tr>
<td>Right-of-use assets obtained in exchange for lease obligations:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance lease liabilities</td>
<td>34,918</td>
<td>50,061</td>
</tr>
<tr>
<td>Operating lease liabilities</td>
<td>18,327</td>
<td>15,411</td>
</tr>
</tbody>
</table>
The following table includes supplemental information related to leases:

<table>
<thead>
<tr>
<th>Weighted-average remaining lease term (years):</th>
<th>Year End</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>January 3, 2021</td>
</tr>
<tr>
<td>Finance leases</td>
<td>16.2</td>
</tr>
<tr>
<td>Operating leases</td>
<td>14.6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Weighted average discount rate:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance leases</td>
</tr>
<tr>
<td>Operating leases</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Supplemental balance sheet information:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance lease assets, gross</td>
</tr>
<tr>
<td>Accumulated amortization</td>
</tr>
<tr>
<td>Finance lease assets</td>
</tr>
<tr>
<td>Operating lease assets</td>
</tr>
</tbody>
</table>

The following table illustrates the Company’s future minimum rental payments for non-cancelable leases as of January 3, 2021:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Finance Leases</th>
<th>Operating Leases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Company-Operated</td>
<td>Franchise and Other</td>
</tr>
<tr>
<td>2021 (a)</td>
<td>$ 4,779</td>
<td>$ 47,503</td>
</tr>
<tr>
<td>2022</td>
<td>4,963</td>
<td>49,000</td>
</tr>
<tr>
<td>2023</td>
<td>4,927</td>
<td>50,632</td>
</tr>
<tr>
<td>2024</td>
<td>5,045</td>
<td>51,007</td>
</tr>
<tr>
<td>2025</td>
<td>5,140</td>
<td>51,423</td>
</tr>
<tr>
<td>Thereafter</td>
<td>59,126</td>
<td>628,162</td>
</tr>
<tr>
<td>Total minimum payments</td>
<td>$ 83,980</td>
<td>$ 877,727</td>
</tr>
<tr>
<td>Less interest</td>
<td>(30,716)</td>
<td>(412,810)</td>
</tr>
<tr>
<td>Present value of minimum lease payments (b) (c)</td>
<td>$ 53,264</td>
<td>$ 464,917</td>
</tr>
</tbody>
</table>

(a) In addition to the 2021 future minimum rental payments, the Company expects to pay $5,439 primarily during 2021 related to rent deferrals obtained due to the COVID-19 pandemic. The related payable is included in “Accrued expenses and other current liabilities.” See Note 7 for further information.

(b) The present value of minimum finance lease payments of $12,105 and $506,076 are included in “Current portion of finance lease liabilities” and “Long-term finance lease liabilities,” respectively.

(c) The present value of minimum operating lease payments of $45,346 and $865,325 are included in “Current portion of operating lease liabilities” and “Long-term operating lease liabilities,” respectively.
Company as Lessor

The components of lease income for 2020 and 2019 are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>Sales-type and direct-financing leases:</td>
<td></td>
</tr>
<tr>
<td>Selling profit</td>
<td>$1,995</td>
</tr>
<tr>
<td>Interest income (a)</td>
<td>29,067</td>
</tr>
<tr>
<td>Operating lease income</td>
<td>174,452</td>
</tr>
<tr>
<td>Variable lease income</td>
<td>58,196</td>
</tr>
<tr>
<td>Franchise rental income (b)</td>
<td>$232,648</td>
</tr>
</tbody>
</table>

(a) Included in “Interest expense, net.”
(b) Includes sublease income of $169,921 and $171,126 recognized during 2020 and 2019, respectively. Sublease income includes lessees’ variable payments to the Company for executory costs of $38,636 and $37,739 for 2020 and 2019, respectively.

The components of rental income for operating leases and subleases for 2018, as accounted for under previous guidance, were as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018</td>
</tr>
<tr>
<td>Rental income:</td>
<td></td>
</tr>
<tr>
<td>Minimum rentals</td>
<td>$184,154</td>
</tr>
<tr>
<td>Contingent rentals</td>
<td>19,143</td>
</tr>
<tr>
<td>Total rental income (a)</td>
<td>$203,297</td>
</tr>
</tbody>
</table>

(a) Includes sublease income of $138,363.

During 2018, the Company recognized $27,638 in interest income related to our direct financing leases, which is included in “Interest expense, net.”
The following table illustrates the Company’s future minimum rental receipts for non-cancelable leases and subleases as of January 3, 2021:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Sales-Type and Direct Financing Leases</th>
<th>Operating Leases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Subleases</td>
<td>Owned Properties</td>
</tr>
<tr>
<td>2021 (a)</td>
<td>$31,128</td>
<td>$3,573</td>
</tr>
<tr>
<td>2022</td>
<td>31,953</td>
<td>2,037</td>
</tr>
<tr>
<td>2023</td>
<td>32,994</td>
<td>2,081</td>
</tr>
<tr>
<td>2024</td>
<td>34,965</td>
<td>2,089</td>
</tr>
<tr>
<td>2025</td>
<td>33,844</td>
<td>2,196</td>
</tr>
<tr>
<td>Thereafter</td>
<td>440,802</td>
<td>21,231</td>
</tr>
<tr>
<td>Total future minimum receipts</td>
<td>$605,686</td>
<td>$33,207</td>
</tr>
<tr>
<td>Unearned interest income</td>
<td>(348,692)</td>
<td>(16,015)</td>
</tr>
<tr>
<td>Net investment in sales-type and direct financing leases (b)</td>
<td>$256,994</td>
<td>$17,192</td>
</tr>
</tbody>
</table>

(a) In addition to the 2021 future minimum rental receipts, the Company expects to collect $5,226 primarily during 2021 related to the offer to defer base rent payments in response to the COVID-19 pandemic. The related receivable is included in “Accounts and notes receivable, net.” See Note 7 for further information.

(b) The present value of minimum direct financing rental receipts of $5,965 and $268,221 are included in “Accounts and notes receivable, net” and “Net investment in sales-type and direct financing leases,” respectively. The present value of minimum direct financing rental receipts includes a net investment in unguaranteed residual assets of $215.

Properties owned by the Company and leased to franchisees and other third parties under operating leases include:

<table>
<thead>
<tr>
<th>Year End</th>
<th>January 3, 2021</th>
<th>December 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$279,956</td>
<td>$281,792</td>
</tr>
<tr>
<td>Buildings and improvements</td>
<td>309,605</td>
<td>311,047</td>
</tr>
<tr>
<td>Restaurant equipment</td>
<td>1,701</td>
<td>1,727</td>
</tr>
<tr>
<td>Accumulated depreciation and amortization</td>
<td>(170,722)</td>
<td>(157,130)</td>
</tr>
<tr>
<td>$420,540</td>
<td>$437,436</td>
<td></td>
</tr>
</tbody>
</table>

(21) Guarantees and Other Commitments and Contingencies

Guarantees and Contingent Liabilities

Franchisee Image Activation Incentive Programs

In order to promote new restaurant development, Wendy’s has an incentive program for franchisees that provides for technical assistance fee waivers and reductions in royalty and national advertising payments for up to the first two years of operation for qualifying new restaurants opened prior to December 31, 2022. In addition, Wendy’s has a restaurant development incentive program that provides for incremental reductions in royalty and national advertising payments for up to the first two years of operation for qualifying new restaurants for existing franchisees that sign up for the program under a new development agreement, or through an extension of their existing development agreement, and commit to incremental development of new Wendy’s restaurants. Under any extended development agreements, franchisees are also eligible for technical assistance fee waivers for restaurants opened one year in advance of their original development schedule so long as
the restaurants are opened prior to December 31, 2022. Wendy’s also provides franchisees with the option of an early 20-year or 25-year renewal of their franchise agreement upon completion of reimaging utilizing certain approved Image Activation reimage designs.

Wendy’s also had incentive programs for 2017 available to franchisees that commenced Image Activation restaurant remodels by December 15, 2017. The remodel incentive programs provided for reductions in royalty payments for one year after the completion of construction.

**Lease Guarantees**

Wendy’s has guaranteed the performance of certain leases and other obligations, primarily from former Company-operated restaurant locations now operated by franchisees, amounting to $90,348 as of January 3, 2021. These leases extend through 2045. We have had no judgments against us as guarantor of these leases as of January 3, 2021. In the event of default by a franchise owner, Wendy’s generally retains the right to acquire possession of the related restaurant locations. The liability recorded for our probable exposure associated with these lease guarantees was not material as of January 3, 2021.

**Insurance**

Wendy’s is self-insured for most workers’ compensation losses and purchases insurance for general liability and automotive liability losses, all subject to a $500 per occurrence retention or deductible limit. Wendy’s determines its liability for claims incurred but not reported for the insurance liabilities on an actuarial basis. As of January 3, 2021, the Company had $18,687 recorded for these insurance liabilities. Wendy’s is self-insured for health care claims for eligible participating employees subject to certain deductibles and limitations and determines its liability for health care claims incurred but not reported based on historical claims runoff data. As of January 3, 2021, the Company had $3,396 recorded for these health care insurance liabilities.

**Letters of Credit**

As of January 3, 2021, the Company had outstanding letters of credit with various parties totaling $26,587. Substantially all of the outstanding letters of credit include amounts outstanding against the 2019-1 Class A-1 Notes. See Note 12 for further information. We do not expect any material loss to result from these letters of credit.

**Purchase and Capital Commitments**

**Beverage Agreement**

The Company has an agreement with a beverage vendor, which provides fountain beverage products and certain marketing support funding to the Company and its franchisees. This agreement requires minimum purchases of certain fountain beverages (“Fountain Beverages”) by the Company and its franchisees at agreed upon prices until the total contractual gallon volume usage is reached. This agreement also provides for an annual advance to be paid to the Company based on the vendor’s expectation of the Company’s annual Fountain Beverages usage, which is amortized over actual usage during the year. In January 2019, the Company amended its contract with the beverage vendor, which now expires at the later of reaching a minimum usage requirement or December 31, 2025. Beverage purchases made by the Company under this agreement during 2020, 2019 and 2018 were $10,986, $11,440 and $10,108, respectively. The Company estimates future annual purchases to be approximately $10,000 in 2021, $10,500 in 2022, $11,000 in 2023, $11,400 in 2024 and $11,900 in 2025 based on current pricing and the expected ratio of usage at Company-operated restaurants to franchised restaurants. As of January 3, 2021, $2,509 is due to the beverage vendor and is included in “Accounts payable,” principally for annual estimated payments that exceeded usage under this agreement.
IT Services Agreement

In December 2019, the Company entered into an agreement to partner with a third-party global IT consultant on the Company’s new IT organization structure to leverage the consultant’s global capabilities, which the Company believes will enable a more seamless integration between its digital and corporate IT assets. Costs incurred by the Company under this agreement were $16,961 and $1,386 during 2020 and 2019, respectively. The Company’s unconditional purchase obligations under the agreement are approximately $17,200 in 2021, $15,400 in 2022, $13,000 in 2023, $12,200 in 2024 and $6,600 in 2025. As of January 3, 2021, $448 is due to the consultant and is included in “Accrued expenses and other current liabilities.”

Marketing Agreement

The Company has an agreement with two national broadcasters that grants the Company certain marketing and media rights. Costs incurred by the Company under this agreement were approximately $11,000 in each of 2019 and 2018, which are included in “Advertising funds expense.” No costs were incurred under this agreement in 2020. The Company’s unconditional purchase obligations under the agreement are approximately $15,400 in 2021, $12,900 in 2022, $13,400 in 2023 and $12,700 in 2024.

(22) Transactions with Related Parties

The following is a summary of transactions between the Company and its related parties:

<table>
<thead>
<tr>
<th>Transactions with QSCC:</th>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>TimWen lease and management fee payments (c)</td>
<td>$16,130</td>
</tr>
<tr>
<td>Yellow Cab royalty, advertising fund, lease and other income (d)</td>
<td>$1,090</td>
</tr>
</tbody>
</table>

Transactions with QSCC

(a) Wendy’s has a purchasing co-op relationship structure (the “Wendy’s Co-op”) with its franchisees that establishes Quality Supply Chain Co-op, Inc. (“QSCC”). QSCC manages, for the Wendy’s system in the U.S. and Canada, contracts for the purchase and distribution of food, proprietary paper, operating supplies and equipment under national agreements with pricing based upon total system volume. QSCC’s supply chain management facilitates continuity of supply and provides consolidated purchasing efficiencies while monitoring and seeking to minimize possible obsolete inventory throughout the Wendy’s supply chain in the U.S. and Canada.

Wendy’s and its franchisees pay sourcing fees to third-party vendors on certain products sourced by QSCC. Such sourcing fees are remitted by these vendors to QSCC and are the primary means of funding QSCC’s operations. Should QSCC’s sourcing fees exceed its expected needs, QSCC’s board of directors may return some or all of the excess to its members in the form of a patronage dividend. Wendy’s recorded its share of patronage dividends of $504 and $470 in 2019 and 2018, respectively, which are included as a reduction of “Cost of sales.” There were no patronage dividends recorded during 2020.

(b) Pursuant to a lease agreement entered into on January 1, 2017, Wendy’s leased 14,333 square feet of office space to QSCC for an annual base rental of $215. In November 2018, the lease agreement was amended to increase the leased square footage to 14,493 and to increase the annual base rental to $217. The lease was further amended in December 2020 to extend the lease term by one year to December 31, 2021. The Company received $217, $217 and $215 of lease income from QSCC during 2020, 2019 and 2018, respectively, which has been recorded to “Franchise rental income.”
TimWen lease and management fee payments

(c) A wholly-owned subsidiary of Wendy’s leases restaurant facilities from TimWen, which are then subleased to franchisees for the operation of Wendy’s/Tim Hortons combo units in Canada. Wendy’s paid TimWen $16,339, $16,867 and $13,256 under these lease agreements during 2020, 2019 and 2018, respectively. In addition, TimWen paid Wendy’s a management fee under the TimWen joint venture agreement of $209, $207 and $212 during 2020, 2019 and 2018, respectively, which has been included as a reduction to “General and administrative.”

Transactions with Yellow Cab

(d) Certain family members and affiliates of Mr. Nelson Peltz, our Chairman, and Mr. Peter May, our Vice Chairman, as well as Mr. Matthew Peltz, a director of the Company, hold indirect, minority ownership interests in operating companies managed by Yellow Cab Holdings, LLC (“Yellow Cab”), a Wendy’s franchisee, that as of January 3, 2021 owned and operated 24 Wendy’s restaurants. During the three months ended January 3, 2021, the Company recognized $1,090 in royalty, advertising fund, lease and other income from Yellow Cab and related entities. As of January 3, 2021, $298 was due from Yellow Cab for such payments, which is included in “Accounts and notes receivable, net.”

In November 2020, the Company submitted a consortium bid together with a group of pre-qualified franchisees (of which Yellow Cab was a member) to acquire the Wendy’s restaurants owned by NPC, the Company’s largest franchisee, which filed for chapter 11 bankruptcy in July 2020. As part of the consortium bid, in November 2020, the Company received deposits from each of the pre-qualified franchisees (including Yellow Cab), which amounts were transferred to a third-party escrow account pending resolution of the bankruptcy sale process. The Yellow Cab deposit is included in “Accrued expenses and other current liabilities” and an amount equal to that deposit is being held in escrow and is included in “Prepaid expenses and other current assets” as of January 3, 2021. On January 7, 2021, following a court-approved mediation process, Yellow Cab was selected as the purchaser for 54 of NPC’s Wendy’s restaurants and, at closing, its deposit will be applied against the purchase price for the restaurants. See Note 4 for further information.

(23) Legal and Environmental Matters

The Company is involved in litigation and claims incidental to our business. We provide accruals for such litigation and claims when payment is probable and reasonably estimable. We believe we have adequate accruals for continuing operations for all of our legal and environmental matters. We cannot estimate the aggregate possible range of loss for our existing litigation and claims for various reasons, including, but not limited to, many proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur and/or significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions is inherently difficult and future developments could cause these actions or claims, individually or in aggregate, to have a material adverse effect on the Company’s financial condition, results of operations, or cash flows of a particular reporting period.

Certain of the Company’s present and former directors have been named in two putative shareholder derivative complaints arising out of the cybersecurity incidents that affected certain of our franchisees in 2015 and 2016. The first case, brought by James Graham in the U.S. District Court for the Southern District of Ohio (the “Graham Case”), asserts claims of breach of fiduciary duty, waste of corporate assets, unjust enrichment and gross mismanagement, and additionally names one non-director executive officer of the Company. The second case, brought by Thomas Caracci in the U.S. District Court for the Southern District of Ohio (the “Caracci Case”), asserts claims of breach of fiduciary duty and violations of Section 14(a) and Rule 14a-9 of the Securities Exchange Act of 1934. Collectively, the plaintiffs seek a judgment on behalf of the Company for all damages incurred or that will be incurred as a result of the alleged wrongful acts or omissions, a judgment ordering disgorgement of all profits, benefits, and other compensation obtained by the named individual defendants, a judgment directing the Company to reform its governance and internal procedures, attorneys’ fees and other costs. The Graham Case and the Caracci Case have been consolidated and on December 21, 2018, the court issued an order naming Graham and his counsel as lead in the case. On January 31, 2019, Graham filed a consolidated verified shareholder derivative complaint with the court. On January 24, 2020, the court granted preliminary approval of the settlement filed in this case. The settlement is subject to the notice and objection provisions set forth therein, and to final approval by the court. If approved, the settlement will resolve and dismiss the claims asserted in these actions.
(24) Advertising Costs and Funds

We maintain U.S. and Canadian national advertising funds established to collect and administer funds contributed for use in advertising and promotional programs. Contributions to the Advertising Funds are required from both Company-operated and franchised restaurants and are based on a percentage of restaurant sales. In addition to the contributions to the Advertising Funds, Company-operated and franchised restaurants make additional contributions to other local and regional advertising programs.

Restricted assets and related liabilities of the Advertising Funds at January 3, 2021 and December 29, 2019 are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year End</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>January 3, 2021</td>
<td>December 29, 2019</td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents (a)</td>
<td>$77,279</td>
<td>$23,973</td>
<td></td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>63,252</td>
<td>54,394</td>
<td></td>
</tr>
<tr>
<td>Other assets</td>
<td>1,775</td>
<td>4,009</td>
<td></td>
</tr>
<tr>
<td>Advertising funds restricted assets</td>
<td>$142,306</td>
<td>$82,376</td>
<td></td>
</tr>
<tr>
<td>Accounts payable (a)</td>
<td>$123,064</td>
<td>$66,749</td>
<td></td>
</tr>
<tr>
<td>Accrued expenses and other current liabilities</td>
<td>17,447</td>
<td>17,446</td>
<td></td>
</tr>
<tr>
<td>Advertising funds restricted liabilities</td>
<td>$140,511</td>
<td>$84,195</td>
<td></td>
</tr>
</tbody>
</table>

(a) Increases during 2020 are due to the timing of payments to vendors.

Advertising expenses included in “Cost of sales” totaled $29,671, $29,954 and $27,939 in 2020, 2019 and 2018, respectively.

(25) Geographic Information

The table below presents revenues and properties information by geographic area:

<table>
<thead>
<tr>
<th></th>
<th>U.S.</th>
<th>International</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>$1,635,696</td>
<td>$98,129</td>
<td>$1,733,825</td>
</tr>
<tr>
<td></td>
<td>879,806</td>
<td>36,083</td>
<td>915,889</td>
</tr>
<tr>
<td>2019</td>
<td>$1,606,619</td>
<td>$102,383</td>
<td>$1,709,002</td>
</tr>
<tr>
<td></td>
<td>941,607</td>
<td>35,393</td>
<td>977,000</td>
</tr>
<tr>
<td>2018</td>
<td>$1,495,639</td>
<td>$94,297</td>
<td>$1,589,936</td>
</tr>
<tr>
<td></td>
<td>990,992</td>
<td>32,275</td>
<td>1,023,267</td>
</tr>
</tbody>
</table>
(26) Segment Information

The Company is comprised of the following segments: (1) Wendy’s U.S., (2) Wendy’s International and (3) Global Real Estate & Development. Wendy’s U.S. includes the operation and franchising of Wendy’s restaurants in the U.S. and derives its revenues from sales at Company-operated restaurants and royalties, fees and advertising fund collections from franchised restaurants. Wendy’s International includes the franchising of Wendy’s restaurants in countries and territories other than the U.S. and derives its revenues from royalties, fees and advertising fund collections from franchised restaurants. Global Real Estate & Development includes real estate activity for owned sites and sites leased from third parties, which are leased and/or subleased to franchisees, and also includes our share of the income of our TimWen real estate joint venture. In addition, Global Real Estate & Development earns fees from facilitating Franchise Flips and providing other development-related services to franchisees. The Company measures segment profit based on segment adjusted earnings before interest, taxes, depreciation and amortization (“EBITDA”). Segment adjusted EBITDA excludes certain unallocated general and administrative expenses and other items that vary from period to period without correlation to the Company’s core operating performance. When the Company’s chief operating decision maker reviews balance sheet information, it is at a consolidated level. The accounting policies of the Company’s segments are the same as those described in Note 1.

Revenues by segment are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>Wendy’s U.S.</td>
<td>$1,431,382</td>
</tr>
<tr>
<td>Wendy’s International</td>
<td>65,642</td>
</tr>
<tr>
<td>Global Real Estate &amp; Development</td>
<td>236,801</td>
</tr>
<tr>
<td>Total revenues</td>
<td>$1,733,825</td>
</tr>
</tbody>
</table>

The following table reconciles profit by segment to the Company’s consolidated income before income taxes:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>Wendy’s U.S. (a)</td>
<td>$393,314</td>
</tr>
<tr>
<td>Wendy’s International</td>
<td>20,119</td>
</tr>
<tr>
<td>Global Real Estate &amp; Development</td>
<td>100,731</td>
</tr>
<tr>
<td>Total segment profit</td>
<td>514,164</td>
</tr>
<tr>
<td>Advertising funds surplus</td>
<td>2,904</td>
</tr>
<tr>
<td>Unallocated general and administrative (b)</td>
<td>(94,256)</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>(132,775)</td>
</tr>
<tr>
<td>System optimization gains, net</td>
<td>3,148</td>
</tr>
<tr>
<td>Reorganization and realignment costs</td>
<td>(16,030)</td>
</tr>
<tr>
<td>Impairment of long-lived assets</td>
<td>(8,037)</td>
</tr>
<tr>
<td>Unallocated other operating income, net</td>
<td>190</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(117,737)</td>
</tr>
<tr>
<td>Loss on early extinguishment of debt</td>
<td>—</td>
</tr>
<tr>
<td>Investment (loss) income, net</td>
<td>(225)</td>
</tr>
<tr>
<td>Other income, net</td>
<td>1,449</td>
</tr>
<tr>
<td>Income before income taxes</td>
<td>$152,795</td>
</tr>
</tbody>
</table>

(a) 2020 includes advertising funds expense of $14,600 related to the Company funding of incremental advertising.

(b) Includes corporate overhead costs, such as employee compensation and related benefits. 2018 also includes the impact of legal reserves for a settlement of the financial institutions class action of $27,500.
Net income (loss) of our equity method investments for the Brazil JV and TimWen are included in segment profit for the Wendy’s International and Global Real Estate & Development segments, respectively. Net income (loss) of equity method investments by segment was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year Ended</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2020</td>
<td>2019</td>
<td>2018</td>
</tr>
<tr>
<td>Wendy’s International</td>
<td>(417)</td>
<td>(1,022)</td>
<td>(1,344)</td>
</tr>
<tr>
<td>Global Real Estate &amp; Development</td>
<td>6,513</td>
<td>9,695</td>
<td>9,420</td>
</tr>
<tr>
<td>Total net income of equity method investments</td>
<td>6,096</td>
<td>8,673</td>
<td>8,076</td>
</tr>
</tbody>
</table>

(27) Quarterly Financial Information (Unaudited)

The tables below set forth summary unaudited consolidated quarterly financial information for 2020 and 2019. The Company reports on a fiscal year consisting of 52 or 53 weeks ending on the Sunday closest to December 31. During 2020, the Company’s first, second and third fiscal quarters contained 13 weeks and the Company’s fourth quarter contained 14 weeks. All of the Company’s fiscal quarters in 2019 contained 13 weeks.

**2020 Quarter Ended (a)**

<table>
<thead>
<tr>
<th></th>
<th>March 29</th>
<th>June 28</th>
<th>September 27</th>
<th>January 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$404,960</td>
<td>$402,306</td>
<td>$452,242</td>
<td>$474,317</td>
</tr>
<tr>
<td>Cost of sales</td>
<td>149,999</td>
<td>140,626</td>
<td>159,545</td>
<td>164,737</td>
</tr>
<tr>
<td>Operating profit</td>
<td>48,732</td>
<td>60,661</td>
<td>81,348</td>
<td>78,567</td>
</tr>
<tr>
<td>Net income</td>
<td>$14,441</td>
<td>$24,904</td>
<td>$39,753</td>
<td>$38,734</td>
</tr>
<tr>
<td>Basic income per share</td>
<td>$.06</td>
<td>$.11</td>
<td>$.18</td>
<td>$.17</td>
</tr>
<tr>
<td>Diluted income per share</td>
<td>$.06</td>
<td>$.11</td>
<td>$.17</td>
<td>$.17</td>
</tr>
</tbody>
</table>

**2019 Quarter Ended (b)**

<table>
<thead>
<tr>
<th></th>
<th>March 31</th>
<th>June 30</th>
<th>September 29</th>
<th>December 29</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$408,583</td>
<td>$435,348</td>
<td>$437,880</td>
<td>$427,191</td>
</tr>
<tr>
<td>Cost of sales</td>
<td>142,579</td>
<td>151,092</td>
<td>152,425</td>
<td>151,434</td>
</tr>
<tr>
<td>Operating profit</td>
<td>66,266</td>
<td>80,573</td>
<td>79,023</td>
<td>36,717</td>
</tr>
<tr>
<td>Net income</td>
<td>$31,894</td>
<td>$32,386</td>
<td>$46,127</td>
<td>$38,734</td>
</tr>
<tr>
<td>Basic income per share</td>
<td>$.14</td>
<td>$.14</td>
<td>$.18</td>
<td>$.17</td>
</tr>
<tr>
<td>Diluted income per share</td>
<td>$.14</td>
<td>$.14</td>
<td>$.17</td>
<td>$.17</td>
</tr>
</tbody>
</table>

(a) The Company’s consolidated statements of operation in fiscal 2020 were significantly impacted by the advertising funds deficit and reorganization and realignment costs. The pre-tax impact of the advertising funds deficit for the first, second and third quarters was $1,387, $3,205 and $7,293, respectively. The pre-tax impact of reorganization and realignment costs for the first, second, third, and fourth quarters was $3,910, $2,911, $3,375 and $5,834, respectively (see Note 5 for further information).

(b) The Company’s consolidated statements of operations in fiscal 2019 were significantly impacted by investment income, net, franchise support and other costs, reorganization and realignment costs and loss on early extinguishment of debt. The pre-tax impact of investment income, net for the fourth quarter was $24,599 (see Note 8 for further information). The pre-tax impact of franchise support and other costs for the fourth quarter included approximately $16,400 to support U.S. franchisees in preparation for the launch of breakfast across the U.S. system on March 2, 2020. The pre-tax impact of reorganization and realignment costs for the fourth quarter was $12,194 (see Note 5 for further information). The pre-tax impact of loss on early extinguishment of debt for the second and fourth quarters was $7,150 and $1,346, respectively (see Note 12 for further information).

Not applicable.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

The management of the Company, under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of its disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), as of January 3, 2021. Based on such evaluations, the Chief Executive Officer and Chief Financial Officer concluded that as of January 3, 2021, the disclosure controls and procedures of the Company were effective at a reasonable assurance level in (1) recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and (2) ensuring that information required to be disclosed by the Company in such reports is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Management’s Report on Internal Control Over Financial Reporting

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act). The management of the Company, under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer, carried out an assessment of the effectiveness of its internal control over financial reporting for the Company as of January 3, 2021. The assessment was performed using the criteria for effective internal control reflected in the Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Based on the assessment of the system of internal control for the Company, the management of the Company believes that as of January 3, 2021, internal control over financial reporting of the Company was effective.

Our independent registered public accounting firm, Deloitte & Touche LLP, has issued an attestation report dated March 3, 2021 on the Company’s internal control over financial reporting.

Changes in Internal Control Over Financial Reporting

There were no changes in the internal control over financial reporting of the Company during the fourth quarter of 2020 that materially affected, or are reasonably likely to materially affect, its internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

There are inherent limitations in the effectiveness of any control system, including the potential for human error and the possible circumvention or overriding of controls and procedures. Additionally, judgments in decision-making can be faulty and breakdowns can occur because of a simple error or mistake. An effective control system can provide only reasonable, not absolute, assurance that the control objectives of the system are adequately met. Accordingly, the management of the Company, including its Chief Executive Officer and Chief Financial Officer, does not expect that the control system can prevent or detect all error or fraud. Finally, projections of any evaluation or assessment of effectiveness of a control system to future periods are subject to the risks that, over time, controls may become inadequate because of changes in an entity’s operating environment or deterioration in the degree of compliance with policies or procedures.
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of The Wendy’s Company

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of The Wendy’s Company and subsidiaries (the “Company”) as of January 3, 2021, based on criteria established in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of January 3, 2021, based on criteria established in Internal Control-Integrated Framework (2013) issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended January 3, 2021, of the Company and our report dated March 3, 2021, expressed an unqualified opinion on those financial statements.

Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

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

/s/ Deloitte & Touche LLP
Columbus, Ohio
March 3, 2021
Item 9B. Other Information.

None.

PART III

Items 10, 11, 12, 13 and 14.

The information required by Items 10, 11, 12, 13 and 14 will be furnished on or prior to May 3, 2021 (and is hereby incorporated by reference) by an amendment hereto or pursuant to a definitive proxy statement involving the election of directors pursuant to Regulation 14A that will contain such information. Notwithstanding the foregoing, information appearing in the sections “Compensation Committee Report” and “Audit Committee Report” shall not be deemed to be incorporated by reference in this Form 10-K.

PART IV


(a) 1. Financial Statements:

See Index to Financial Statements (Item 8).

2. Financial Statement Schedules:

    All schedules have been omitted since they are either not applicable or the information is contained elsewhere in “Item 8. Financial Statements and Supplementary Data.”
3. Exhibits:

Exhibits that are incorporated by reference to documents filed previously by the Company under the Securities Exchange Act of 1934, as amended, are filed with the Securities and Exchange Commission under File No. 001-02207, or File No. 001-08116 for documents filed by Wendy’s International, Inc. We will furnish copies of any exhibit listed on the Exhibit Index upon written request to the Secretary of The Wendy’s Company at One Dave Thomas Boulevard, Dublin, Ohio 43017 for a reasonable fee to cover our expenses in furnishing such exhibits.

<table>
<thead>
<tr>
<th>EXHIBIT NO.</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.3</td>
<td>Purchase and Sale Agreement, dated as of June 13, 2011, by and among Wendy’s/Arby’s Restaurants, LLC, ARG Holding Corporation and ARG IH Corporation, incorporated herein by reference to Exhibit 2.1 of the Wendy’s/Arby’s Group, Inc. and Wendy’s/Arby’s Restaurants, LLC Current Reports on Form 8-K filed on June 13, 2011 (SEC file nos. 001-02207 and 333-161613, respectively).</td>
</tr>
<tr>
<td>2.4</td>
<td>Closing letter dated as of July 1, 2011 by and among Wendy’s/Arby’s Restaurants, LLC, ARG Holding Corporation, ARG IH Corporation, and Roark Capital Partners II, LP, incorporated by reference to Exhibit 2.2 of the Wendy’s/Arby’s Group, Inc. and Wendy’s/Arby’s Restaurants, LLC Current Reports on Form 8-K filed on July 8, 2011 (SEC file nos. 001-02207 and 333-161613, respectively).</td>
</tr>
<tr>
<td>3.1</td>
<td>Amended and Restated Certificate of Incorporation of The Wendy’s Company, as filed with the Secretary of State of the State of Delaware on May 26, 2016, incorporated herein by reference to Exhibit 3.1 of The Wendy’s Company Current Report on Form 8-K filed on May 27, 2016 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>3.2</td>
<td>By-Laws of The Wendy’s Company (as amended and restated through May 26, 2016), incorporated herein by reference to Exhibit 3.2 of The Wendy’s Company Form 10-Q for the quarter ended July 3, 2016 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>4.1</td>
<td>Base Indenture, dated as of June 1, 2015, by and between Wendy’s Funding, LLC, as Master Issuer, and Citibank, N.A., as Trustee and Securities Intermediary, incorporated herein by reference to Exhibit 4.1 of The Wendy’s Company Current Report on Form 8-K filed on June 2, 2015 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>4.2</td>
<td>Series 2015-1 Supplement to Base Indenture, dated as of June 1, 2015, by and between Wendy’s Funding, LLC, as Master Issuer of the Series 2015-1 fixed rate senior secured notes, Class A-2, and Series 2015-1 variable funding senior notes, Class A-1, and Citibank, N.A., as Trustee and Series 2015-1 Securities Intermediary, incorporated herein by reference to Exhibit 4.2 of The Wendy’s Company Current Report on Form 8-K filed on June 2, 2015 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>4.3</td>
<td>Series 2018-1 Supplement to Base Indenture, dated as of January 17, 2018, by and between Wendy’s Funding, LLC, as Master Issuer of the Series 2018-1 fixed rate senior secured notes, Class A-2, and Series 2018-1 variable funding senior notes, Class A-1, and Citibank, N.A., as Trustee and Series 2018-1 Securities Intermediary, incorporated herein by reference to Exhibit 4.3 of The Wendy’s Company Current Report on Form 8-K filed on January 17, 2018 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>4.5</td>
<td>First Supplement, dated as of February 10, 2017, to the Base Indenture, dated as of June 1, 2015, by and between Wendy’s Funding, LLC, as Master Issuer, and Citibank, N.A., as Trustee and Securities Intermediary, incorporated herein by reference to Exhibit 4.5 of The Wendy’s Company Form 10-K for the fiscal year ended January 1, 2017 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>4.6</td>
<td>Second Supplement to Base Indenture, dated as of January 17, 2018, by and between Wendy’s Funding, LLC, as Master Issuer, and Citibank, N.A., as Trustee and Securities Intermediary, incorporated herein by reference to Exhibit 4.6 of The Wendy’s Company Form 10-K for the fiscal year ended December 30, 2018 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>EXHIBIT NO.</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>4.8</td>
<td>Fourth Supplement to the Base Indenture, dated as of June 26, 2019, by and between Wendy’s Funding, LLC, as Master Issuer, and Citibank, N.A., as Trustee, incorporated herein by reference to Exhibit 4.2 of The Wendy’s Company Current Report on Form 8-K filed on June 26, 2019 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>4.9</td>
<td>Series 2020-1 Supplement to Base Indenture, dated as of June 17, 2020, by and between Wendy’s Funding, LLC, as Master Issuer of the Series 2020-1 variable funding senior notes, Class A-1, and Citibank, N.A., as Trustee and Series 2020-1 Securities Intermediary, incorporated herein by reference to Exhibit 4.1 of The Wendy’s Company Current Report on Form 8-K filed on June 18, 2020 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>4.10</td>
<td>Fifth Supplement to the Base Indenture, dated as of June 17, 2020, by and between Wendy’s Funding, LLC, as Master Issuer, and Citibank, N.A., as Trustee and Securities Intermediary, incorporated herein by reference to Exhibit 4.2 of The Wendy’s Company Current Report on Form 8-K filed on June 18, 2020 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>4.11</td>
<td>Sixth Supplement to the Base Indenture, dated as of January 3, 2021, by and between Wendy’s Funding, LLC, as Master Issuer, and Citibank, N.A., as Trustee and Securities Intermediary.*</td>
</tr>
<tr>
<td>4.12</td>
<td>Description of Securities of the Registrant.*</td>
</tr>
<tr>
<td>10.1</td>
<td>Wendy’s/Arby’s Group, Inc. 2010 Omnibus Award Plan, incorporated herein by reference to Annex A of the Wendy’s/Arby’s Group, Inc. Definitive 2010 Proxy Statement (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.2</td>
<td>First Amendment to Wendy’s/Arby’s Group, Inc. 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.2 to The Wendy’s Company Current Report on Form 8-K filed on June 2, 2015 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.3</td>
<td>Second Amendment to The Wendy’s Company 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.3 to The Wendy’s Company Current Report on Form 8-K filed on June 2, 2015 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.4</td>
<td>Form of Non-Incentive Stock Option Award Agreement under the Wendy’s/Arby’s Group, Inc. 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.3 of The Wendy’s Company Form 10-Q for the quarter ended July 1, 2012 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.5</td>
<td>Form of Nonqualified Stock Option Award Agreement under The Wendy’s Company 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Form 10-Q for the quarter ended October 1, 2017 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.6</td>
<td>Form of Long Term Performance Unit Award Agreement for 2018 under The Wendy’s Company 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Form 10-Q for the quarter ended April 1, 2018 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.7</td>
<td>Form of Long Term Performance Unit Award Agreement for 2019 under The Wendy’s Company 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Form 10-Q for the quarter ended March 31, 2019 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.8</td>
<td>Form of Long-Term Performance Unit Award Agreement for 2020 under The Wendy’s Company 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Form 10-Q for the quarter ended March 31, 2020 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.9</td>
<td>Form of Restricted Stock Unit Award Agreement under The Wendy’s Company 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.9 of The Wendy’s Company Form 10-K for the fiscal year ended December 29, 2019 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.10</td>
<td>Form of Non-Employee Director Restricted Stock Award Agreement under the Wendy’s/Arby’s Group, Inc. 2010 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.5 of The Wendy’s Company Form 10-Q for the quarter ended June 30, 2013 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.11</td>
<td>The Wendy’s Company 2020 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Current Report on Form 8-K filed on May 28, 2020 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.12</td>
<td>Form of Nonqualified Stock Option Award Agreement under The Wendy’s Company 2020 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.2 of The Wendy’s Company Current Report on Form 8-K filed on May 28, 2020 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.13</td>
<td>Form of Restricted Stock Unit Award Agreement under The Wendy’s Company 2020 Omnibus Award Plan (Cliff Vesting), incorporated herein by reference to Exhibit 10.3 of The Wendy’s Company Current Report on Form 8-K filed on May 28, 2020 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.14</td>
<td>Form of Restricted Stock Unit Award Agreement under The Wendy’s 2020 Omnibus Award Plan (Ratable Vesting), incorporated herein by reference to Exhibit 10.4 of The Wendy’s Company Current Report on Form 8-K filed on May 28, 2020 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.15</td>
<td>Form of Non-Employee Director Restricted Stock Award Agreement under The Wendy’s Company 2020 Omnibus Award Plan, incorporated herein by reference to Exhibit 10.5 of The Wendy’s Company Current Report on Form 8-K filed on May 28, 2020 (SEC file no. 001-02207).**</td>
</tr>
</tbody>
</table>
EXHIBIT NO. | DESCRIPTION
--- | ---
10.16 | Wendy’s International, LLC Executive Severance Pay Policy, effective as of December 14, 2015, incorporated herein by reference to Exhibit 10.41 to The Wendy’s Company Form 10-K for the fiscal year ended January 3, 2016 (SEC file no. 001-02207).**
10.17 | Wendy’s International, LLC Deferred Compensation Plan, effective as of January 1, 2017, incorporated herein by reference to Exhibit 10.34 to The Wendy’s Company Form 10-K for the fiscal year ended January 1, 2017 (SEC file no. 001-02207).**
10.18 | Wendy’s/Arby’s Group, Inc. 2009 Directors’ Deferred Compensation Plan, effective as of May 28, 2009, incorporated herein by reference to Exhibit 10.6 to Wendy’s/Arby’s Group’s Form 10-Q for the quarter ended June 28, 2009 (SEC file no. 001-02207).**
10.19 | Amendment No. 1 to the Wendy’s/Arby’s Group, Inc. 2009 Directors’ Deferred Compensation Plan, effective as of May 27, 2010, incorporated herein by reference to Exhibit 10.9 to Wendy’s/Arby’s Group’s Form 10-Q for the quarter ended July 4, 2010 (SEC file no. 001-02207).**
10.20 | Amendment No. 2 to the Wendy’s/Arby’s Group, Inc. 2009 Directors’ Deferred Compensation Plan, incorporated herein by reference to Exhibit 10.6 of The Wendy’s Company Form 10-Q for the quarter ended June 30, 2013 (SEC file no. 001-02207).**
10.21 | Amendment No. 3 to the Wendy’s/Arby’s Group, Inc. 2009 Directors’ Deferred Compensation Plan, incorporated herein by reference to Exhibit 10.7 to The Wendy’s Company Form 10-Q for the quarter ended June 28, 2020 (SEC file no. 001-02207).**
10.22 | 2015-1 Class A-2 Note Purchase Agreement, dated as of May 19, 2015, by and among The Wendy’s Company, the subsidiaries of The Wendy’s Company party thereto and Guggenheim Securities, LLC, acting on behalf of itself and as the representative of the initial purchasers, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Current Report on Form 8-K filed on May 20, 2015 (SEC file no. 001-02207).
10.23 | 2018-1 Class A-2 Note Purchase Agreement, dated as of December 6, 2017, by and among The Wendy’s Company, the subsidiaries of The Wendy’s Company party thereto and Guggenheim Securities, LLC and Citigroup Global Markets Inc., each acting on behalf of itself and as the representatives of the initial purchasers, incorporated herein by reference by Exhibit 10.1 of The Wendy’s Company Current Report on Form 8-K filed on December 6, 2017 (SEC file no. 001-02207).
10.25 | Class A-1 Note Purchase Agreement, dated as of June 26, 2019, by and among Wendy’s Funding, LLC, as Master Issuer, each of Quality Is Our Recipe, LLC, Wendy’s Properties, LLC and Wendy’s SPV Guarantor, LLC, as Guarantors, Wendy’s International, LLC, as Manager, the conduit investors party thereto, the financial institutions party thereto, certain funding agents, and Coöperatieve Rabobank, U.A., New York Branch, as L/C Provider, Swingline Lender and Administrative Agent, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Current Report on Form 8-K filed on June 26, 2019 (SEC file no. 001-02207).
10.26 | Class A-1 Note Purchase Agreement, dated as of June 17, 2020, by and among Wendy’s Funding, LLC, as Master Issuer, each of Quality Is Our Recipe, LLC, Wendy’s Properties, LLC and Wendy’s SPV Guarantor, LLC, as Guarantors, Wendy’s International, LLC, as Manager, the conduit investors party thereto, the financial institutions party thereto, certain funding agents, and Coöperatieve Rabobank, U.A., New York Branch, as L/C Provider, Swingline Lender and Administrative Agent, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Current Report on Form 8-K filed on June 18, 2020 (SEC file no. 001-02207).
10.27 | Guarantee and Collateral Agreement, dated as of June 1, 2015, by and among Quality Is Our Recipe, LLC, Wendy’s Properties, LLC, Wendy’s SPV Guarantor, LLC, each as a Guarantor, in favor of Citibank, N.A., as Trustee, incorporated herein by reference to Exhibit 10.2 to The Wendy’s Company Current Report on Form 8-K filed on June 2, 2015 (SEC file no. 001-02207).**
10.28 | Management Agreement, dated as of June 1, 2015, by and among Wendy’s Funding, LLC, Quality Is Our Recipe, LLC, Wendy’s Properties, LLC, Wendy’s SPV Guarantor, LLC, Wendy’s International, LLC, as Manager, and Citibank, N.A., as Trustee, incorporated herein by reference to Exhibit 10.3 to The Wendy’s Company Current Report on Form 8-K filed on June 2, 2015 (SEC file no. 001-02207).
<table>
<thead>
<tr>
<th>EXHIBIT NO.</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.29</td>
<td>Management Agreement Amendment, dated as of January 17, 2018, by and among Wendy’s Funding, LLC, as Master Issuer, certain subsidiaries of Wendy’s Funding, LLC party thereto, Wendy’s International, LLC, as Manager, and Citibank, N.A., as Trustee, incorporated herein by reference to Exhibit 10.2 of The Wendy’s Company Current Report on Form 8-K filed on January 17, 2018 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>10.30</td>
<td>Second Amendment to the Management Agreement, dated as of June 26, 2019, by and among Wendy’s Funding, LLC, as Master Issuer, certain subsidiaries of Wendy’s Funding, LLC party thereto, Wendy’s International, LLC, as Manager, and Citibank, N.A., as Trustee, incorporated herein by reference to Exhibit 10.2 of The Wendy’s Company Current Report on Form 8-K filed on June 26, 2019 (SEC file no. 001-02207).</td>
</tr>
<tr>
<td>10.31</td>
<td>Third Amendment to the Management Agreement, dated as of January 3, 2021, by and among Wendy’s Funding, LLC, as Master Issuer, certain subsidiaries of Wendy’s Funding, LLC party thereto, Wendy’s International, LLC, as Manager, and Citibank, N.A., as Trustee.*</td>
</tr>
<tr>
<td>10.32</td>
<td>Assignment of Rights Agreement between Wendy’s International, Inc. and Mr. R. David Thomas, incorporated herein by reference to Exhibit 10(c) of the Wendy’s Company Current Report on Form 8-K filed on January 17, 2018 (SEC file no. 001-08116).</td>
</tr>
<tr>
<td>10.34</td>
<td>Separation Agreement, dated as of April 30, 2007, between Triarc Companies, Inc. and Nelson Peltz, incorporated herein by reference to Exhibit 10.3 to Triarc’s Current Report on Form 8-K filed on April 30, 2007 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.35</td>
<td>Letter Agreement dated as of December 28, 2007, between Triarc Companies, Inc. and Nelson Peltz, incorporated herein by reference to Exhibit 10.2 to Triarc’s Current Report on Form 8-K filed on January 4, 2008 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.36</td>
<td>Separation Agreement, dated as of April 30, 2007, between Triarc Companies, Inc. and Peter W. May, incorporated herein by reference to Exhibit 10.4 to Triarc’s Current Report on Form 8-K filed on April 30, 2007 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.37</td>
<td>Letter Agreement dated as of December 28, 2007, between Triarc Companies, Inc. and Peter W. May, incorporated herein by reference to Exhibit 10.3 to Triarc’s Current Report on Form 8-K filed on January 4, 2008 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.40</td>
<td>Employment Letter between The Wendy’s Company and Todd Penegor dated as of May 8, 2013, incorporated herein by reference to Exhibit 10.3 to The Wendy’s Company Form 10-Q for the quarter ended June 30, 2013 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.41</td>
<td>Employment Letter between The Wendy’s Company and Liliana Esposito dated as of May 8, 2014, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Form 10-Q for the quarter ended June 29, 2014 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.42</td>
<td>Employment Letter between The Wendy’s Company and Kurt Kane dated as of March 27, 2015, incorporated herein by reference to Exhibit 10.8 of The Wendy’s Company Form 10-Q for the quarter ended June 28, 2015 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.43</td>
<td>Employment Letter between The Wendy’s Company and Gunther Plosch dated as of April 7, 2016, incorporated herein by reference to Exhibit 10.2 of The Wendy’s Company Form 10-Q for the quarter ended April 3, 2016 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.44</td>
<td>Employment Letter between The Wendy’s Company and E. J. Wunsch dated as of September 6, 2016, incorporated herein by reference to Exhibit 10.1 of The Wendy’s Company Form 10-Q for the quarter ended October 2, 2016 (SEC file no. 001-02207).**</td>
</tr>
<tr>
<td>10.45</td>
<td>Employment Letter between The Wendy’s Company and J. Kevin Vasconi dated as of September 28, 2020.**</td>
</tr>
</tbody>
</table>
EXHIBIT NO.  DESCRIPTION

10.46  Non-Compete and Confidentiality Agreement between The Wendy’s Company and Abigail Pringle dated as of October 27, 2020, incorporated herein by reference to Exhibit 10.1 to The Wendy’s Company Form 10-Q for the quarter ended September 27, 2020 (SEC file no. 001-02207).**

10.47  Non-Compete and Confidentiality Agreement between The Wendy’s Company and M. Coley O’Brien dated as of October 27, 2020, incorporated herein by reference to Exhibit 10.2 to The Wendy’s Company Form 10-Q for the quarter ended September 27, 2020 (SEC file no. 001-02207).**

10.48  Non-Compete and Confidentiality Agreement between The Wendy’s Company and Leigh Burnside dated as of October 27, 2020, incorporated herein by reference to Exhibit 10.3 to The Wendy’s Company Form 10-Q for the quarter ended September 27, 2020 (SEC file no. 001-02207)**

10.49  Form of Indemnification Agreement, between Wendy’s/Arby’s Group, Inc. and certain officers, directors, and employees thereof, incorporated herein by reference to Exhibit 10.47 to Wendy’s/Arby’s Group’s Annual Report on Form 10-K for the fiscal year ended December 28, 2008 (SEC file no. 001-02207).**

10.50  Form of Indemnification Agreement of The Wendy’s Company, incorporated herein by reference to Exhibit 10.5 of The Wendy’s Company and Wendy’s Restaurants, LLC Form 10-Q for the quarter ended October 2, 2011 (SEC file nos. 001-02207 and 333-161613, respectively).**

10.51  Form of Indemnification Agreement between Arby’s Restaurant Group, Inc. and certain directors, officers and employees thereof, incorporated herein by reference to Exhibit 10.40 to Triarc’s Annual Report on Form 10-K for the fiscal year ended December 30, 2007 (SEC file no. 001-02207).**

10.52  Form of Indemnification Agreement for officers and employees of Wendy’s International, Inc. and its subsidiaries, incorporated herein by reference to Exhibit 10 of the Wendy’s International, Inc. Current Report on Form 8-K filed on July 12, 2005 (SEC file no. 001-08116).**

10.53  Form of First Amendment to Indemnification Agreement between Wendy’s International, Inc. and its directors and certain officers and employees, incorporated herein by reference to Exhibit 10(b) of the Wendy’s International, Inc. Form 10-Q for the quarter ended June 29, 2008 (SEC file no. 001-08116).**

21.1  Subsidiaries of the Registrant.*

23.1  Consent of Deloitte & Touche LLP.*

31.1  Certification of the Chief Executive Officer of The Wendy’s Company, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*

31.2  Certification of the Chief Financial Officer of The Wendy’s Company, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*

32.1  Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*

101  The following financial information from The Wendy’s Company’s Annual Report on Form 10-K for the year ended January 3, 2021 formatted in Inline eXtensible Business Reporting Language: (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Comprehensive Income, (iv) the Consolidated Statements of Stockholders’ Equity, (v) the Consolidated Statements of Cash Flows, and (vi) Notes to Consolidated Financial Statements.

104  The cover page from The Wendy’s Company’s Annual Report on Form 10-K for the year ended January 3, 2021, formatted in Inline XBRL and contained in Exhibit 101.

*  Filed herewith.

**  Identifies a management contract or compensatory plan or arrangement.

Instruments defining the rights of holders of certain issues of long-term debt of the Company and its consolidated subsidiaries have not been filed as exhibits to this Form 10-K because the authorized principal amount of any one of such issues does not exceed 10% of the total assets of the Company and its subsidiaries on a consolidated basis. The Company agrees to furnish a copy of each of such instruments to the Commission upon request.

Item 16. Form 10-K Summary.

None.
SIGNATURES

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

THE WENDY’S COMPANY
(Registrant)

March 3, 2021

By: /s/ TODD A. PENEGOR

Todd A. Penegor
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below on March 3, 2021 by the following persons on behalf of the registrant and in the capacities indicated.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Titles</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ TODD A. PENEGOR</td>
<td>President, Chief Executive Officer and Director</td>
</tr>
<tr>
<td>(Todd A. Penegor)</td>
<td>(Principal Executive Officer)</td>
</tr>
<tr>
<td>/s/ GUNThER PLoSCh</td>
<td>Chief Financial Officer</td>
</tr>
<tr>
<td>(Gunther Plosch)</td>
<td>(Principal Financial Officer)</td>
</tr>
<tr>
<td>/s/ LEIGH A. BURNSIDE</td>
<td>Senior Vice President, Finance and Chief Accounting Officer</td>
</tr>
<tr>
<td>(Leigh A. Burnside)</td>
<td>(Principal Accounting Officer)</td>
</tr>
<tr>
<td>/s/ NELSON PELTZ</td>
<td>Chairman and Director</td>
</tr>
<tr>
<td>(Nelson Peltz)</td>
<td></td>
</tr>
<tr>
<td>/s/ PETER W. MAY</td>
<td>Vice Chairman and Director</td>
</tr>
<tr>
<td>(Peter W. May)</td>
<td></td>
</tr>
<tr>
<td>/s/ KRISTIN A. DOLAN</td>
<td>Director</td>
</tr>
<tr>
<td>(Kristin A. Dolan)</td>
<td></td>
</tr>
<tr>
<td>/s/ KENNETH W. GILBERT</td>
<td>Director</td>
</tr>
<tr>
<td>(Kenneth W. Gilbert)</td>
<td></td>
</tr>
<tr>
<td>/s/ DENNIS M. KASS</td>
<td>Director</td>
</tr>
<tr>
<td>(Dennis M. Kass)</td>
<td></td>
</tr>
<tr>
<td>/s/ JOSEPH A. LEvATO</td>
<td>Director</td>
</tr>
<tr>
<td>(Joseph A. Levato)</td>
<td></td>
</tr>
<tr>
<td>/s/ MICHELLe J. MATHeWS-SPrADLIN</td>
<td>Director</td>
</tr>
<tr>
<td>(Michelle J. Mathews-Spradlin)</td>
<td></td>
</tr>
<tr>
<td>/s/ MATTHew H. PELTZ</td>
<td>Director</td>
</tr>
<tr>
<td>(Matthew H. Peltz)</td>
<td></td>
</tr>
<tr>
<td>/s/ PETER H. ROTHSChILD</td>
<td>Director</td>
</tr>
<tr>
<td>(Peter H. Rothschild)</td>
<td></td>
</tr>
<tr>
<td>/s/ ARTHUr B. WINKLeBLAcK</td>
<td>Director</td>
</tr>
<tr>
<td>(Arthur B. Winkleblack)</td>
<td></td>
</tr>
</tbody>
</table>
WENDY’S FUNDING, LLC,
   as Master Issuer

   and

CITIBANK, N.A.,
   as Trustee and Securities Intermediary

SIXTH SUPPLEMENT
Dated as of January 3, 2021
to the
BASE INDENTURE
Dated as of June 1, 2015

Asset Backed Notes
(Issuable in Series)
SIXTH SUPPLEMENT TO BASE INDENTURE

SIXTH SUPPLEMENT, dated as of January 3, 2021 (this “Sixth Supplement”), to the Base Indenture, dated as of June 1, 2015, is by and among WENDY’S FUNDING, LLC, a Delaware limited liability company (the “Master Issuer”), and CITIBANK, N.A., as Trustee and Securities Intermediary (the “Trustee”).

PRELIMINARY STATEMENT

WHEREAS, the Master Issuer and the Trustee have entered into the Base Indenture, dated as of June 1, 2015 (as previously amended February 10, 2017, January 17, 2018, February 4, 2019, June 26, 2019 and June 17, 2020, the “Indenture”);

WHEREAS, Section 13.2(a) of the Indenture provides, among other things, that the provisions of the Indenture may, from time to time, be amended, modified or waived, including the amendments set forth in this Sixth Supplement, if such amendment, modification or waiver is in writing in a Supplement and consented to in writing by the Control Party (at the direction of the Controlling Class Representative);

WHEREAS, the execution and delivery of this Sixth Supplement has been duly authorized by the Master Issuer and all conditions and requirements set forth in the Indenture and necessary to make this Sixth Supplement a valid and binding agreement have been duly performed and complied with; and

WHEREAS, the Master Issuer has provided written notice to each Rating Agency of the proposed amendments described herein no less than ten (10) days prior to the date hereof;

WHEREAS, the Master Issuer wishes to amend the Indenture as set forth herein.

NOW, THEREFORE, in consideration of the provisions, covenants and the mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Unless otherwise defined herein, all capitalized terms used herein (including in the preamble and the recitals hereto) shall have the meanings assigned to such terms in the Indenture Definitions List attached to the Indenture as Annex A thereto (the “Indenture Definitions List”).
ARTICLE II
AMENDMENTS

Section 2.1. The Base Indenture is being amended and restated in its entirety in the form attached hereto as Exhibit A.

ARTICLE III
GENERAL

Section 3.1. Conditions to Effectiveness. The effectiveness of the amendments set forth herein are subject to the satisfaction of the following conditions precedent:

(a) the delivery on the date hereof to the Trustee of one or more Officer’s Certificates of the Master Issuer pursuant to Sections 13.6 and 14.3 of the Base Indenture, certifying that this Sixth Supplement is authorized or permitted by the Base Indenture and that all conditions precedent have been satisfied, and that it will be valid and binding upon the Master Issuer and the Guarantors in accordance with its terms; and

(b) the delivery on the date hereof to the Trustee of one or more Opinions of Counsel pursuant to Sections 13.3, 13.6 and 14.3 of the Base Indenture, confirming that this Sixth Supplement is authorized or permitted by the Base Indenture and that all conditions precedent have been satisfied, and that it will be valid and binding upon the Master Issuer and the Guarantors in accordance with its terms.

Section 3.2. Effect on Indenture. Subject to the satisfaction of the conditions precedent set forth in Section 3.1, upon the date hereof (i) the Indenture shall be amended in accordance herewith, (ii) this Sixth Supplement shall form part of the Indenture for all purposes and (iii) the parties and each Noteholder shall be bound by the Indenture, as so amended. Except as expressly set forth or contemplated in this Sixth Supplement, the terms and conditions of the Indenture shall remain in place and shall not be altered, amended or changed in any manner whatsoever, except by any further amendment to the Indenture made in accordance with the terms of the Indenture, as amended by this Sixth Supplement.

Section 3.3. Binding Effect. This Sixth Supplement shall inure to the benefit of and be binding on the respective successors and assigns of the parties hereto, each Noteholder and each other Secured Party.

Section 3.4. Counterparts. This Sixth Supplement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument.

Section 3.5. Governing Law. THIS SIXTH SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 3.6. Amendments. This Sixth Supplement may not be modified or amended except in accordance with the terms of the Indenture.
Section 3.7. **Trustee and Securities Intermediary.** The Trustee and the Securities Intermediary assume no responsibility for the correctness of the recitals contained herein, which shall be taken as the statements of the Master Issuer and neither the Trustee nor the Securities Intermediary shall be responsible or accountable in any way whatsoever for or with respect to the validity, execution or sufficiency of this Sixth Supplement and makes no representation with respect thereto. In entering into this Sixth Supplement, the Trustee and the Securities Intermediary shall be entitled to the benefit of every provision of the Indenture relating to the conduct of or affecting the liability of or affording protection to the Trustee or the Securities Intermediary.

**ARTICLE IV**
**REPRESENTATIONS AND WARRANTIES**

Each party hereto represents and warrants to each other party hereto that this Sixth Supplement has been duly and validly executed and delivered by such party and constitutes its legal, valid and binding obligation, enforceable against such party in accordance with its terms.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF, each of the Master Issuer and the Trustee have caused this Sixth Supplement to be executed and delivered by its respective duly authorized officer as of the day and year first written above.

WENDY'S FUNDING, LLC, as Master Issuer

By: /s/ Gavin P. Waugh
Name: Gavin P. Waugh
Title: Vice President and Treasurer

By: /s/ Jacqueline Suarez
Name: Jacqueline Suarez
Title: Senior Trust Officer

CONSENT OF CONTROL PARTY AND SERVICER:

In accordance with Section 2.4 and Section 8.4 of the Servicing Agreement, Midland Loan Services, a division of PNC Bank, National Association, as Control Party and as Servicer hereby consents to the execution and delivery by the Master Issuer and the Trustee of this Sixth Supplement to the Base Indenture.

MIDLAND LOAN SERVICES,
A DIVISION OF PNC BANK, NATIONAL ASSOCIATION

By: /s/ David Spotts
Name: David Spotts
Title:
EXHIBIT A

FORM OF AMENDED AND RESTATED BASE INDENTURE
WENDY’S FUNDING, LLC,
as Master Issuer,

and

CITIBANK, N.A.,
as Trustee and Securities Intermediary

AMENDED AND RESTATED
BASE INDENTURE

Dated as of January 3, 2021

Asset Backed Notes
(Issuable in Series)
# Table of Contents

ARTICLE I DEFINITIONS AND INCORPORATION BY REFERENCE

<table>
<thead>
<tr>
<th>Section 1.1</th>
<th>Definitions</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1.2</td>
<td>Cross-References</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.3</td>
<td>Accounting Terms; Accounting and Financial Determinations; No Duplication</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.4</td>
<td>Rules of Construction</td>
<td>2</td>
</tr>
</tbody>
</table>

ARTICLE II THE NOTES

<table>
<thead>
<tr>
<th>Section 2.1</th>
<th>Designation and Terms of Notes</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2.2</td>
<td>Notes Issuable in Series</td>
<td>5</td>
</tr>
<tr>
<td>Section 2.3</td>
<td>Series Supplement for Each Series</td>
<td>10</td>
</tr>
<tr>
<td>Section 2.4</td>
<td>Execution and Authentication</td>
<td>11</td>
</tr>
<tr>
<td>Section 2.5</td>
<td>Registrar and Paying Agent</td>
<td>12</td>
</tr>
<tr>
<td>Section 2.6</td>
<td>Paying Agent to Hold Money in Trust</td>
<td>13</td>
</tr>
<tr>
<td>Section 2.7</td>
<td>Noteholder List</td>
<td>14</td>
</tr>
<tr>
<td>Section 2.8</td>
<td>Transfer and Exchange</td>
<td>14</td>
</tr>
<tr>
<td>Section 2.9</td>
<td>Persons Deemed Owners</td>
<td>16</td>
</tr>
<tr>
<td>Section 2.10</td>
<td>Replacement Notes</td>
<td>16</td>
</tr>
<tr>
<td>Section 2.11</td>
<td>Treasury Notes</td>
<td>17</td>
</tr>
<tr>
<td>Section 2.12</td>
<td>Book-Entry Notes</td>
<td>17</td>
</tr>
<tr>
<td>Section 2.13</td>
<td>Definitive Notes</td>
<td>19</td>
</tr>
<tr>
<td>Section 2.14</td>
<td>Cancellation</td>
<td>20</td>
</tr>
<tr>
<td>Section 2.15</td>
<td>Principal and Interest</td>
<td>20</td>
</tr>
<tr>
<td>Section 2.16</td>
<td>Tax Treatment</td>
<td>21</td>
</tr>
</tbody>
</table>

ARTICLE III SECURITY

<table>
<thead>
<tr>
<th>Section 3.1</th>
<th>Grant of Security Interest</th>
<th>21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3.2</td>
<td>Certain Rights and Obligations of the Master Issuer Unaffected</td>
<td>24</td>
</tr>
<tr>
<td>Section 3.3</td>
<td>Performance of Collateral Transaction Documents</td>
<td>25</td>
</tr>
<tr>
<td>Section 3.4</td>
<td>Stamp, Other Similar Taxes and Filing Fees</td>
<td>25</td>
</tr>
<tr>
<td>Section 3.5</td>
<td>Authorization to File Financing Statements</td>
<td>26</td>
</tr>
</tbody>
</table>

ARTICLE IV REPORTS

<table>
<thead>
<tr>
<th>Section 4.1</th>
<th>Reports and Instructions to Trustee</th>
<th>26</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 4.2</td>
<td>Rule 144A Information</td>
<td>29</td>
</tr>
<tr>
<td>Section 4.3</td>
<td>Reports, Financial Statements and Other Information to Noteholders</td>
<td>29</td>
</tr>
<tr>
<td>Section 4.4</td>
<td>Manager</td>
<td>30</td>
</tr>
<tr>
<td>Section 4.5</td>
<td>No Constructive Notice</td>
<td>31</td>
</tr>
</tbody>
</table>

ARTICLE V ALLOCATION AND APPLICATION OF COLLECTIONS

| Section 5.1 | Management Accounts and Additional Accounts | 31 |
ARTICLE VIII COVENANTS

Section 8.1 Payment of Notes 76
Section 8.2 Maintenance of Office or Agency 77
Section 8.3 Payment and Performance of Obligations 77
Section 8.4 Maintenance of Existence 78
Section 8.5 Compliance with Laws 78
Section 8.6 Inspection of Property; Books and Records 78
Section 8.7 Actions under the Collateral Transaction Documents and Related Documents 79
Section 8.8 Notice of Defaults and Other Events 80
Section 8.9 Notice of Material Proceedings 80
Section 8.10 Further Requests 81
Section 8.11 Further Assurances 81
Section 8.12 Liens 83
Section 8.13 Other Indebtedness 83
Section 8.14 Employee Benefit Plans 83
Section 8.15 Mergers 83
Section 8.16 Asset Dispositions 83
Section 8.17 Acquisition of Assets 86
Section 8.18 Dividends, Officers’ Compensation, etc. 86
Section 8.19 Legal Name, Location Under Section 9-301 or 9-307 87
Section 8.20 Charter Documents 87
Section 8.21 Investments 87
Section 8.22 No Other Agreements 88
Section 8.23 Other Business 88
Section 8.24 Maintenance of Separate Existence 88
Section 8.25 Covenants Regarding the Securitization IP 90
Section 8.26 1940 Act. 92
Section 8.27 Real Property 92
Section 8.28 No Employees 92
Section 8.29 Insurance 93
Section 8.30 Litigation 93
Section 8.31 Environmental 93
Section 8.32 Enhancements 94
Section 8.33 Series Hedge Agreements; Derivatives Generally 94
Section 8.34 Additional Securitization Entity 94
Section 8.35 Subordinated Notes Repayments 95
Section 8.36 Tax Lien Reserve Amount 95
Section 8.37 Mortgages 96
Section 8.38 Bankruptcy Proceedings 97

ARTICLE IX REMEDIES 97

Section 9.1 Rapid Amortization Events 97
Section 9.2 Events of Default 98
Section 13.2  With Consent of the Controlling Class Representative or the Noteholders  
Section 13.3  Supplements  
Section 13.4  Revocation and Effect of Consents  
Section 13.5  Notation on or Exchange of Notes  
Section 13.6  The Trustee to Sign Amendments, etc.  
Section 13.7  Amendments and Fees  

ARTICLE XIV MISCELLANEOUS  
Section 14.1  Notices  
Section 14.2  Communication by Noteholders With Other Noteholders  
Section 14.3  Officer’s Certificate as to Conditions Precedent  
Section 14.4  Statements Required in Certificate  
Section 14.5  Rules by the Trustee  
Section 14.6  Benefits of Indenture  
Section 14.7  Payment on Business Day  
Section 14.8  Governing Law  
Section 14.9  Successors  
Section 14.10  Severability  
Section 14.11  Counterpart Originals  
Section 14.12  Table of Contents, Headings, etc.  
Section 14.13  No Bankruptcy Petition Against the Securitization Entities  
Section 14.14  Recording of Indenture  
Section 14.15  Waiver of Jury Trial  
Section 14.16  Submission to Jurisdiction; Waivers  
Section 14.17  Permitted Asset Dispositions; Release of Collateral  
Section 14.18  Calculation of Holdco Leverage Ratio and Senior ABS Leverage Ratio  

ANNEXES  
Annex A  Base Indenture Definitions List  
Annex B  Unsecured Debenture Indenture Definitions List  

EXHIBITS  
Exhibit A  Weekly Manager's Certificate  
Exhibit B-1  Form of Notice of Grant of Security Interest in Trademarks  
Exhibit B-2  Form of Notice of Grant of Security Interest in Patents  
Exhibit B-3  Form of Grant of Security Interest in Copyrights  
Exhibit C-1  Form of Supplemental Notice of Grant of Security Interest in Trademarks  
Exhibit C-2  Form of Supplemental Notice of Grant of Security Interest in Patents  
Exhibit C-3  Form of Supplemental Grant of Security Interest in Copyrights  
Exhibit D  Form of Investor Request Certification
Exhibit E
Notice Requesting Contact Information of Initial Note Owners

Exhibit F
CCR Election Notice

Exhibit G
CCR Nomination

Exhibit H
CCR Ballot

Exhibit I
CCR Acceptance Letter

Exhibit J
Form of Mortgage

Exhibit K
Form of Note Owner Certificate

SCHEDULES

Schedule 7.3  -  Consents
Schedule 7.7  -  Proposed Tax Assessments
Schedule 7.13(a)  -  Non-Perfected Liens
Schedule 7.19  -  Insurance
Schedule 7.21  -  Pending Actions or Proceedings Relating to the Securitization IP
AMENDED AND RESTATED BASE INDENTURE, dated as of January 3, 2021, by and among WENDY’S FUNDING, LLC, a Delaware limited liability company (the “Master Issuer”), and CITIBANK, N.A., a national banking association, as trustee (in such capacity, the “Trustee”) and as securities intermediary (in such capacity, the “Securities Intermediary”).

WITNESSETH:

WHEREAS, the Master Issuer and the Trustee entered into the Base Indenture, dated as of June 1, 2015, as amended by the First Supplement, dated February 10, 2017, the Second Supplement, dated January 17, 2018, the Third Supplement, dated February 4, 2019, the Fourth Supplement, dated June 26, 2019, and the Fifth Supplement, dated June 17, 2020 (collectively, the “2015 Base Indenture”);

WHEREAS, the Master Issuer desires to amend and restate the 2015 Base Indenture in its entirety as hereinafter provided and have satisfied the conditions precedent thereto set forth in Section 13.2 thereof;

WHEREAS, the Master Issuer has duly authorized the execution and delivery of this Base Indenture to provide for the issuance from time to time of one or more Series of asset backed notes (the “Notes”), as provided in this Base Indenture and any Series Supplement; and

WHEREAS, all things necessary to make this Base Indenture a legal, valid and binding agreement of the Master Issuer, in accordance with its terms, have been done, and the Master Issuer proposes to do all the things necessary to make the Notes, when executed by the Master Issuer and authenticated and delivered by the Trustee (or registered in the case of Uncertificated Notes) hereunder and duly issued by the Master Issuer, the legal, valid and binding obligations of the Master Issuer as hereinafter provided;

NOW, THEREFORE, for and in consideration of the premises and the receipt of the Notes by the Noteholders, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Noteholders (in accordance with the priorities set forth herein and in any Series Supplement), as follows:

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions.

Capitalized terms used herein and not otherwise defined herein (including the preamble and the recitals hereto) shall have the meanings assigned to such terms in the Base Indenture Definitions List attached hereto as Annex A (the “Base Indenture Definitions List”), as such Base Indenture Definitions List may be amended, supplemented or otherwise modified from time to time in accordance with the provisions hereof.
Section 1.2  **Cross-References.**

Unless otherwise specified, references in the Indenture and in each other Related Document to any Article or Section are references to such Article or Section of the Indenture or such other Related Document, as the case may be, and, unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition.

Section 1.3  **Accounting Terms; Accounting and Financial Determinations; No Duplication.**

(a) All accounting terms not specifically or completely defined in the Indenture or the Related Documents shall be construed in conformity with GAAP.

(b) Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any accounting computation is required to be made, for the purpose of the Indenture or any other Related Document, such determination or calculation shall be made, to the extent applicable and except as otherwise specified in the Indenture or such other Related Document, in accordance with GAAP. When used herein, the term “financial statement” shall include the notes and schedules thereto. All accounting determinations and computations hereunder or under any other Related Documents shall be made without duplication.

Section 1.4  **Rules of Construction.**

In the Indenture and the other Related Documents, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by the Indenture and the other applicable Related Documents, as the case may be, and reference to any Person in a particular capacity only refers to such Person in such capacity;

(c) reference to any gender includes the other gender;

(d) reference to any Requirement of Law means such Requirement of Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time;

(e) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;

(f) the word “or” is always used inclusively herein (for example, the phrase “A or B” means “A or B or both,” not “either A or B but not both”), unless used in an “either... or” construction;
(g) reference to any Related Document or other contract or agreement means such Related Document, contract or agreement as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, except (i) with respect to defined terms that define such Related Document or other contract or agreement as of certain amendments or other modifications thereto and (ii) as the context requires otherwise;

(h) with respect to the determination of any period of time, except as otherwise specified, “from” means “from and including” and “to” means “to but excluding”;

(i) each roman-numeral-denominated Tranche within a Class of Notes shall be deemed to have the same alphanumerical priority;

(j) if (i) any funds deposited to an Account are to be paid or allocated, or any action described in the Weekly Manager’s Certificate is to be taken on or prior to the “following Weekly Allocation Date”, the “Weekly Allocation Date immediately following” or on the “immediately following Weekly Allocation Date”, such payment, allocation or action shall occur on (or prior to, if applicable) the Weekly Allocation Date related to the Weekly Collection Period in which such deposit occurs or on (or prior to, if applicable) the Weekly Allocation Date to which the Weekly Manager’s Certificate relates, as applicable, and (ii) an action or event is to occur with respect to a Quarterly Fiscal Period immediately preceding a Weekly Allocation Date, such action or event shall occur with respect to the most recent Quarterly Fiscal Period ending prior to such Weekly Allocation Date;

(k) if any payment is due, or any action described in a Noteholders’ Report is to be taken, on (or prior to) the “related Quarterly Payment Date”, on the “following Quarterly Payment Date”, on the “immediately succeeding Quarterly Payment Date”, on the “next succeeding Quarterly Payment Date” or on the “immediately following Quarterly Payment Date”, such payment shall be due, or such action shall occur as applicable, either (i) on (or prior to, if applicable) the Quarterly Payment Date related to the Weekly Collection Period in which such Quarterly Noteholders’ Report relates or (ii) on the Quarterly Payment Date related to the applicable Quarterly Calculation Date on which such payment is calculated; and

(l) references to (i) the “Weekly Collection Period” means the most recent Weekly Collection Period ending prior to the indicated date, (ii) the “immediately preceding Quarterly Fiscal Period” means the most recent Quarterly Fiscal Period ending prior to the indicated date and (iii) “immediately preceding Quarterly Calculation Date” means the most recent Quarterly Calculation Date.
Article II
The Notes

Section 2.1 Designation and Terms of Notes.

(a) Each Series of Notes shall be substantially in the form specified in the applicable Series Supplement and shall bear, upon its face, the designation for such Series to which it belongs as selected by the Master Issuer, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted hereby or by the applicable Series Supplement and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined to be appropriate by the Authorized Officers of the Master Issuer executing such Notes, as evidenced by execution of such Notes by such Authorized Officers. All Notes of any Series shall, except as specified in the applicable Series Supplement and in the Base Indenture, be equally and ratably entitled as provided herein to the benefits hereof without preference, priority or distinction on account of the actual time or times of authentication and delivery (or registration in the case of Uncertificated Notes), all in accordance with the terms and provisions of this Base Indenture and any applicable Series Supplement. The aggregate principal amount of Notes which may be authenticated and delivered (or with respect to Uncertificated Notes, registered) under this Base Indenture is unlimited. The Notes of each Series shall be issued in the denominations set forth in the applicable Series Supplement.

(b) With respect to any Variable Funding Note Purchase Agreement entered into by the Master Issuer in connection with the issuance of any Series of Class A-1 Notes, whether or not any of the following shall have been specifically provided for in the applicable provision of the Indenture Documents, the following shall apply (except to the extent that the Series Supplement or Variable Funding Note Purchase Agreement with respect to such Series of Class A-1 Notes provides otherwise):

(i) for purposes of any provision of any Indenture Document relating to any vote, consent, direction, waiver or the like to be given by such Class on any date, with respect to each Series of Class A-1 Notes Outstanding, the relevant principal amount of each such Series of Notes to be used in tabulating the percentage of such Series voting, directing, consenting or waiving or the like (the “Class A-1 Notes Voting Amount”) will be deemed to be the greater of (1) the Class A-1 Notes Maximum Principal Amount for such Series (after giving effect to any cancelled commitments) and (2) the Outstanding Principal Amount of such Series of Class A-1 Notes;

(ii) for purposes of any provisions of any Indenture Document relating to termination, discharge or the like, such Series of Class A-1 Notes shall continue to be deemed Outstanding unless and until all commitments to extend credit under such Variable Funding Note Purchase Agreement have been terminated thereunder and the Outstanding Principal Amount of such Series of Class A-1 Notes shall have been reduced to zero; and
(iii) notwithstanding the foregoing, and for the avoidance of doubt, a Series Supplement or a Variable Funding Note Purchase Agreement may provide for different treatment of commitments of a Noteholder of a Class A-1 Note subject to such Series Supplement or Variable Funding Note Purchase Agreement that has failed to make a payment required to be made by it under the terms of the Variable Funding Note Purchase Agreement, that has provided written notification that it does not intend to make a payment required to be made by it thereunder when due or that has become the subject of an Event of Bankruptcy.

Section 2.2 Notes Issuable in Series.

(a) The Notes may be issued in one or more Series, including as Additional Notes of an existing Series, Class, Subclass or Tranche of Notes. Each Series of Notes shall be created by a Series Supplement. Additional Notes of an existing Series, Class, Subclass or Tranche of Notes shall be issued pursuant to a Supplement to the related Series Supplement. Any Series of Class A-1 Notes may be uncertificated if provided for in its Series Supplement.

(b) So long as each of the certifications described in clause (vi) below are true and correct as of the applicable Series Closing Date, Additional Notes to be issued (other than with respect to Uncertificated Notes, which may from time to time be registered in accordance with this Base Indenture and the related Series Supplement) may be executed by the Master Issuer and delivered to the Trustee for authentication and thereupon the same shall be authenticated and delivered by the Trustee upon the receipt by the Trustee of a Company Order at least five (5) Business Days (except in the case of the issuance of the Series of Notes on the Closing Date) in advance of the related Series Closing Date (which Company Order will be revocable by the Master Issuer upon notice to the Trustee no later than 5:00 p.m. (Eastern time) two (2) Business Days prior to the related Series Closing Date) and upon performance or delivery by the Master Issuer to the Trustee and the Control Party, and receipt by the Trustee and the Control Party, of the following:

(i) a Company Order authorizing and directing the authentication and delivery (or registration in the case of Uncertificated Notes) of the Notes of such Additional Notes by the Trustee and specifying the designation of such Additional Notes, the Initial Principal Amount (or the method for calculating the Initial Principal Amount) of such Additional Notes to be authenticated (or registered in the case of Uncertificated Notes) and the Note Rate with respect to such Additional Notes;

(ii) a Series Supplement for a new Series of Notes or a Supplement to the related Series Supplement for Additional Notes issued under an existing Series, Class, Subclass or Tranche of Notes, as applicable, satisfying the criteria set forth in Section 2.3 executed by the Master Issuer and the Trustee and specifying the Principal Terms of such Notes;

(iii) if there is one or more Series of Notes Outstanding (other than a Series of Notes Outstanding that will be repaid in full from the proceeds of issuance of such Additional Notes or otherwise on the applicable Series Closing Date), written confirmation from either the Manager or the Master Issuer that the Rating Agency Condition with respect to the issuance of such Additional Notes is satisfied;
(iv) any related Enhancement Agreement entered into in connection with such issuance and executed by each of the parties thereto in compliance with Section 8.32;

(v) any related Series Hedge Agreement entered into in connection with such issuance and executed by each of the parties thereto in compliance with Section 8.33;

(vi) one or more Officer’s Certificates, each executed by an Authorized Officer of the Master Issuer, dated as of the applicable Series Closing Date to the effect that:

(A) the Senior ABS Leverage Ratio as of the applicable Series Closing Date is less than or equal to 6.50x after giving pro forma effect to the issuance of such Additional Notes and any repayment of existing Indebtedness from such Additional Notes;

(B) the Holdco Leverage Ratio is less than or equal to 7.00x after giving pro forma effect to the issuance of such Additional Notes and any repayment of existing Indebtedness from such Additional Notes;

(C) no Potential Rapid Amortization Event, Rapid Amortization Event, Default or Event of Default has occurred and is continuing or will occur as a result of the issuance of such Additional Notes;

(D) all representations and warranties of the Master Issuer in this Base Indenture and the other Related Documents are true and correct, and will continue to be true and correct after giving effect to such issuance on the Series Closing Date, in all material respects (other than any representation or warranty that, by its terms, is made only as of an earlier date);

(E) no Cash Trapping Period is in effect or will commence as a result of the issuance of such Additional Notes;

(F) the New Series Pro Forma DSCR is greater than or equal to 2.00x;

(G) no Manager Termination Event or Potential Manager Termination Event has occurred and is continuing or will occur as a result of such issuance;

(H) the proposed issuance does not alter or change the terms of any Series of Notes Outstanding or the Series Supplement relating thereto without such consents as are required under this Base Indenture or the applicable Series Supplement; except for (i) increases in the aggregate Outstanding Principal Amount of any existing Series, Class, Subclass or Tranche of Notes and (ii) such changes that are permitted in accordance with the terms hereunder and the applicable Series Supplement, in each case, if such Additional Notes are issued thereunder;

(I) all costs, fees and expenses with respect to the issuance of such Additional Notes or relating to the actions taken in connection with such issuance that are required to be paid on the applicable Series Closing Date have been paid or will be paid from the proceeds of the issuance of such Additional Notes;
all conditions precedent with respect to the authentication and delivery (or registration in the case of Uncertificated Notes) of such Additional Notes provided in this Base Indenture, the related Series Supplement and, if applicable, the related Variable Funding Note Purchase Agreement and any other related note purchase agreement executed in connection with the issuance of such Additional Notes have been satisfied or waived;

the Guarantee and Collateral Agreement is in full force and effect as to such Additional Notes;

if such Additional Notes includes Subordinated Notes, the terms of any such Additional Notes include the Subordinated Notes Provisions to the extent applicable;

the legal final maturity date for any Additional Notes that are Senior Notes will not be prior to the legal final maturity of any Class of Senior Notes then Outstanding;

the legal final maturity date for any Additional Notes that are Senior Subordinated Notes will not be prior to the legal final maturity of any Class of Senior Notes or any Class of Senior Subordinated Notes then Outstanding;

the legal final maturity date for any new Additional Notes that are Subordinated Notes will not be prior to the legal final maturity of any Class of Senior Notes, any Class of Senior Subordinated Notes or any Class of Subordinated Notes then Outstanding;

each of the parties to the Related Documents with respect to such Additional Notes has covenanted and agreed in the Related Documents that, prior to the date which is one (1) year and one (1) day after the payment in full of the latest maturing Note, it will not institute against, or join with any other Person in instituting against, any Securitization Entity, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings, under any federal or state bankruptcy or similar law; and

there is no action, proceeding, or investigation pending or threatened against any Non-Securitization Entity before any court or administrative agency that would reasonably be expected to result in a Material Adverse Effect with respect to the Securitization Entities.

if such issuance is of a new Series of Senior Subordinated Notes or Subordinated Notes, the Master Issuer has established the applicable Collection Account Administrative Accounts set forth in Section 5.6(a) and such accounts are subject to an Account Control Agreement in accordance with the terms herein.

provided that none of the foregoing conditions shall apply and no Officer’s Certificates shall be required under this clause (vi) if there are no Series of Notes Outstanding (apart from the new Series of Notes being issued) on the applicable Series Closing Date, or if all Series of Notes Outstanding (apart from the Additional Notes) will be repaid in full from the proceeds of issuance of the Additional Notes or otherwise on the applicable Series Closing Date;
(vii) a Tax Opinion dated the applicable Series Closing Date; provided, however, that, if there are no Notes Outstanding or if all Series of Notes Outstanding will be repaid in full from the proceeds of issuance of the Additional Notes or otherwise on the applicable Series Closing Date or defeased in accordance with Section 12.1(c), only the opinions set forth in clauses (b) and (c) of the definition of Tax Opinion are required to be given in connection with the issuance of such Additional Notes;

(viii) an Officer’s Certificate and one or more Opinions of Counsel addressed to the Trustee and the Control Party, subject to customary assumptions and qualifications, and in a form reasonably acceptable to the Control Party, dated the applicable Series Closing Date, substantially to the effect that:

(A) all of the instruments described in this Section 2.2(b) furnished to the Trustee and the Control Party conform to the requirements of this Base Indenture and the related Series Supplement and the Additional Notes are permitted to be authenticated (or registered in the case of Uncertificated Notes) by the Trustee pursuant to the terms of this Base Indenture and the related Series Supplement (except that no such Opinion of Counsel shall be required to be delivered in connection with the issuance of Notes on the Closing Date);

(B) the related Series Supplement or Supplement to a Series Supplement, as the case may be, pursuant to which the Additional Notes are being issued has been duly authorized, executed and delivered by the Master Issuer and constitutes a legal, valid and binding agreement of the Master Issuer, enforceable against the Master Issuer in accordance with its terms;

(C) such new Additional Notes have been duly authorized by the Master Issuer, and, when such Notes have been duly authenticated and delivered (or registered in the case of Uncertificated Notes) by the Trustee, such Notes will be legal, valid and binding obligations of the Master Issuer, enforceable against the Master Issuer in accordance with their terms;

(D) none of the Securitization Entities is required to be registered under the 1940 Act;

(E) the Lien and the security interests created by this Base Indenture and the Guarantee and Collateral Agreement on the Collateral remain perfected as required by this Base Indenture and the Guarantee and Collateral Agreement and such Lien and security interests extend to any assets transferred to the Securitization Entities in connection with the issuance of such new Additional Notes;

(F) based on a reasoned analysis, the assets of a Securitization Entity as a debtor in bankruptcy would not be substantively consolidated with the assets and liabilities of Wendy’s, Oldemark and the Existing Real Estate Holders;

(G) neither the execution and delivery by the Master Issuer of such Notes (or registration in the case of Uncertificated Notes) and the related Series Supplement or
Supplement to a Series Supplement, as the case may be, nor the performance by the Master Issuer of its obligations under each of such Notes and the related Series Supplement or Supplement to a Series Supplement, as the case may be: (i) conflicts with the Charter Documents of the Master Issuer, (ii) constitutes a violation of, or a default under, any material agreement to which the Master Issuer is a party (which agreements may be set forth in a schedule to such opinion), or (iii) contravenes any order or decree that is applicable to the Master Issuer (which orders and decrees may be set forth in a schedule to such opinion);

(H) neither the execution and delivery by the Master Issuer of such Notes (or registration in the case of Uncertificated Notes) and the related Series Supplement or Supplement to a Series Supplement, as the case may be, nor the performance by the Master Issuer of its obligations under each of such Notes and the related Series Supplement or Supplement to a Series Supplement, as the case may be: (i) violates any law, rule or regulation of any relevant jurisdiction, or (ii) requires the consent, approval, licensing or authorization of, or any filing, recording or registration with, any Governmental Authority under any law, rule or regulation of any relevant jurisdiction except for those consents, approvals, licenses and authorizations already obtained and those filings, recordings and registrations already made;

(I) unless such Notes are being offered pursuant to a registration statement that has been declared effective under the 1933 Act, it is not necessary in connection with the offer and sale of such Notes by the Master Issuer to the initial purchaser thereof or by the initial purchaser to the initial investors in such Notes to register such Notes under the 1933 Act; and

(J) all conditions precedent to such issuance have been satisfied and that the related Series Supplement or Supplement to a Series Supplement, as the case may be, is authorized or permitted pursuant to the terms and conditions of this Base Indenture (except that no Opinion of Counsel relating to the satisfaction of conditions precedent shall be required to be delivered in connection with the issuance of Notes on the Closing Date); and

(ix) such other documents, instruments, certifications, agreements or other items as the Trustee may reasonably require.

(c) Upon satisfaction, or waiver by the Control Party (as directed by the Controlling Class Representative) (which waiver shall be in writing), of the conditions set forth in Section 2.2(b), the Trustee shall authenticate and deliver (or register in the case of Uncertificated Notes), as provided above, such Additional Notes upon execution thereof by the Master Issuer.

(d) With regard to any Additional Notes issued pursuant to this Section 2.2 that constitute Senior Notes, Senior Subordinated Notes or Subordinated Notes, the proceeds from such issuance may be used at any time prior to the Series Anticipated Repayment Date for such Additional Notes to repay either Senior Notes, Senior Subordinated Notes or Subordinated Notes; provided, however, that at any time on or after the Series Anticipated Repayment Date for any Series of Notes that remains Outstanding, the proceeds from such issuance may only be used
to repay (i) Senior Subordinated Notes if all Senior Notes have been repaid and (ii) Subordinated Notes if all Senior Notes and Senior Subordinated Notes have been repaid.

(e) The issuance of Additional Notes shall not be subject to the consent of the Holders of any Series of Notes Outstanding. Additional Notes may be issued for any purpose consistent with the Related Documents, including acquisitions by the Securitization Entities.

Section 2.3 Series Supplement for Each Series.

In conjunction with the issuance of a new Series or Additional Notes of an existing Series, Class, Subclass or Tranche of Notes, the parties hereto shall execute a Series Supplement for such new Series of Notes or a Supplement to the Series Supplement for such existing Series, Class, Subclass or Tranche of Notes, as applicable, which shall specify the relevant terms with respect to such new Notes, which may include, without limitation:

(a) its name or designation;
(b) the Initial Principal Amount with respect to such Notes;
(c) the Note Rate with respect to such Notes and the applicable default rate;
(d) the Series Closing Date;
(e) the Series Anticipated Repayment Date, if any;
(f) the Series Legal Final Maturity Date;
(g) the principal amortization schedule with respect to such Notes, if any;
(h) the Rating Agency rating such Notes;
(i) the name of the Clearing Agency for such Notes, if any;
(j) the names of the Series Distribution Accounts and any other Series Accounts to be used with respect to such Notes and the terms governing the operation of any such account and the use of moneys therein;
(k) the method of allocating amounts deposited into any Series Distribution Account with respect to such Notes;
(l) whether such Notes will be issued in multiple Classes or Subclasses and the rights and priorities of each such Class or Subclass;
(m) any deposit of funds to be made in any Base Indenture Account or any Series Account on the Series Closing Date;
(n) whether such Notes may be issued as either Definitive Notes, Uncertificated Notes and/or Book-Entry Notes and any limitations imposed thereon;
whether such Notes include Senior Notes, Senior Subordinated Notes and/or Subordinated Notes;

whether such Notes include Class A-1 Notes or subfacilities of Class A-1 Notes issued pursuant to a Variable Funding Note Purchase Agreement;

the terms of any related Enhancement and the Enhancement Provider thereof, if any;

the terms of any related Series Hedge Agreement and the applicable Hedge Counterparty, if any; and

any other relevant terms of such Notes (all such terms, the “Principal Terms” of such Series).

Section 2.4 Execution and Authentication.

(a) The Notes (other than Uncertificated Notes) shall, upon issuance pursuant to Section 2.2, be executed on behalf of the Master Issuer by an Authorized Officer of the Master Issuer and delivered by the Master Issuer to the Trustee for authentication and redelivery as provided herein. The signature of each such Authorized Officer on the Notes may be manual, scanned or facsimile. If an Authorized Officer of the Master Issuer whose signature is on a Note no longer holds that office at the time the Note is authenticated, the Note shall nevertheless be valid.

(b) At any time and from time to time after the execution and delivery of this Base Indenture, the Master Issuer may deliver Notes (other than Uncertificated Notes) of any particular Series (issued pursuant to Section 2.2) executed by the Master Issuer to the Trustee for authentication, together with one or more Company Orders for the authentication and delivery (or registration in the case of Uncertificated Notes) of such Notes, and the Trustee, in accordance with such Company Order and this Base Indenture, shall authenticate and deliver such Notes (or register such Notes, in the case of Uncertificated Notes).

(c) No Note (other than Uncertificated Notes) shall be entitled to any benefit under the Indenture or be valid for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for below, duly executed by the Trustee by the manual signature of a Trust Officer (and a Luxembourg agent (the “Luxembourg Agent”), if the Notes of the Series to which such Note belongs are listed on the Luxembourg Stock Exchange). Such signatures on such certificate shall be conclusive evidence, and the only evidence, that the Note has been duly authenticated under this Base Indenture. The Trustee may appoint an authenticating agent acceptable to the Master Issuer to authenticate Notes. Unless limited by the term of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Base Indenture to authentication by the Trustee includes authentication by such authenticating agent. The Trustee’s certificate of authentication shall be in substantially the following form:
“This is one of the Notes of a Series issued under the within mentioned indenture.

Citibank, N.A., as Trustee

By: ________________________________

Authorized Signatory”

(d) Each Note (other than Uncertificated Notes) shall be dated and issued as of the date of its authentication by the Trustee.

(e) Notwithstanding the foregoing, if any Note shall have been authenticated and delivered hereunder but never issued and sold by the Master Issuer, and the Master Issuer shall deliver such Note to the Trustee for cancellation together with a written statement to the Trustee and the Servicer (which need not comply with Section 14.3) stating that such Note has never been issued and sold by the Master Issuer, for all purposes of the Indenture such Note shall be deemed never to have been authenticated and delivered hereunder and shall not be entitled to the benefits of the Indenture.

Section 2.5 Registrar and Paying Agent.

(a) The Master Issuer shall (i) maintain an office or agency where Notes may be presented for registration of transfer or for exchange (or de-registration in the case of Uncertificated Notes) (the “Registrar”) and (ii) appoint a paying agent (which shall satisfy the eligibility criteria set forth in Section 10.8(a)) (the “Paying Agent”) at whose office or agency Notes (or evidence of ownership of Uncertificated Notes) may be presented for payment. The Registrar shall keep a register of the Notes (including the name and address of each such Noteholder) and of their transfer and exchange. The Trustee shall indicate in its books and records the commitment of each Noteholder, if applicable, and the principal (and stated interest) amount owing to each Noteholder from time to time. The Master Issuer may appoint one or more co-registrars and one or more additional paying agents. The term “Paying Agent” shall include any additional paying agent and the term “Registrar” shall include any co-registrars. The Master Issuer may change the Paying Agent or the Registrar without prior notice to any Noteholder. The Master Issuer shall notify the Trustee in writing of the name and address of any Agent not a party to this Base Indenture. The Trustee is hereby initially appointed as the Registrar and the Paying Agent and shall send copies of all notices and demands received by the Trustee (other than those sent by the Master Issuer to the Trustee and those addressed to the Master Issuer) in connection with the Notes to the Master Issuer. Upon any resignation or removal of the Registrar, the Master Issuer shall promptly appoint a successor Registrar or, in the absence of such appointment, the Master Issuer shall assume the duties of the Registrar.

(b) The Master Issuer shall enter into an appropriate agency agreement with any Agent not a party to this Base Indenture. Such agency agreement shall implement the provisions of this Base Indenture that relate to such Agent. If the Master Issuer fails to maintain a Registrar or Paying Agent, the Trustee hereby agrees to act as such, and shall be entitled to
appropriate compensation in accordance with this Base Indenture until the Master Issuer shall appoint a replacement Registrar or Paying Agent, as applicable.

Section 2.6  Paying Agent to Hold Money in Trust.

(a) The Master Issuer will cause the Paying Agent (if the Paying Agent is not the Trustee) to execute and deliver to the Trustee an instrument in which the Paying Agent shall agree with the Trustee (and if the Trustee is the Paying Agent, it hereby so agrees), subject to the provisions of this Section 2.6, that the Paying Agent will:

(i) hold all sums held by it for the payment of amounts due with respect to the Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and pay such sums to such Persons as herein provided;

(ii) give the Trustee notice of any default by the Master Issuer of which it has Actual Knowledge in the making of any payment required to be made with respect to the Notes;

(iii) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by the Paying Agent;

(iv) immediately resign as the Paying Agent and forthwith pay to the Trustee all sums held by it in trust for the payment of Notes if at any time it ceases to meet the standards required to be met by a Trustee hereunder at the time of its appointment; and

(v) comply with all requirements of the Code and other applicable Requirements of Law with respect to the withholding from any payments made by it on any Notes of any applicable withholding Taxes imposed thereon and with respect to any applicable reporting requirements in connection therewith.

(b) The Master Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of the Indenture or for any other purpose, by Company Order direct the Paying Agent to pay to the Trustee all sums held in trust by the Paying Agent, such sums to be held by the Trustee in trust upon the same terms as those upon which the sums were held in trust by the Paying Agent. Upon such payment by the Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to such money.

(c) Subject to applicable laws with respect to escheat of funds, any money held by the Trustee or the Paying Agent in trust for the payment of any amount due with respect to any Note and remaining unclaimed for two (2) years after such amount has become due and payable shall be discharged from such trust and be paid to the Master Issuer upon delivery of a Company Order. The Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Master Issuer for payment thereof (but only to the extent of the amounts so paid to the Master Issuer), and all liability of the Trustee or the Paying Agent with respect to such trust money paid to the Master Issuer shall thereupon cease; provided, however, that the Trustee or the Paying Agent, before being required to make any such repayment, may, at the expense of
the Master Issuer, cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in New York City, and in a newspaper customarily published on each Business Day and of general circulation in London and Luxembourg (if the related Series of Notes has been listed on the Luxembourg Stock Exchange), if applicable, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Master Issuer. The Trustee may also adopt and employ, at the expense of the Master Issuer, any other commercially reasonable means of notification of such repayment.

Section 2.7 Noteholder List.

(a) The Trustee will furnish or cause to be furnished by the Registrar to the Master Issuer, the Manager, the Back-Up Manager, the Control Party, the Controlling Class Representative, the Paying Agent or any Class A-1 Administrative Agent, within five (5) Business Days after receipt by the Trustee of a request therefor from the Master Issuer, the Manager, the Back-Up Manager, the Control Party, the Controlling Class Representative, the Paying Agent or such Class A-1 Administrative Agent, respectively, in writing, the names and addresses of the Noteholders of each Series as of the most recent Record Date for payments to such Noteholders. Unless otherwise provided in the applicable Series Supplement, the Trustee, after having been adequately indemnified by Note Owners satisfying the requirements set forth in Section 11.5(b) ("Applicants") for its costs and expenses, shall afford or shall cause the Registrar to afford such Applicants access during normal business hours to the most recent list of Noteholders held by the Trustee and shall give the Master Issuer notice that such request has been made, within five (5) Business Days after the receipt of such application. Such list shall be as of a date no more than forty-five (45) days prior to the date of receipt of such Applicants’ request. Every Noteholder, by receiving and holding a Note, agrees with the Trustee that neither the Trustee, the Registrar nor any of their respective agents shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Noteholders hereunder, regardless of the source from which such information was obtained.

(b) The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Noteholders of each Series of Notes. If the Trustee is not the Registrar, the Master Issuer shall furnish to the Trustee at least seven (7) Business Days before each Quarterly Payment Date and at such other time as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Noteholders of each Series of Notes.

Section 2.8 Transfer and Exchange.

(a) Upon surrender for registration of transfer of any Note (or as set forth in any Series Supplement with respect to the transfer and registration or de-registration of any Uncertificated Notes) at the office or agency of the Registrar, if the requirements of Section 2.8(f) and Section 8-401(a) of the New York UCC are met, the Master Issuer shall (except in the case of Uncertificated Notes) execute and, after the Master Issuer has executed, the Trustee shall authenticate and deliver to the Noteholder, in the name of the designated transferee or
transferees, one or more new Notes, in any authorized denominations, of the same Series and Class (and, if applicable, Subclass) and
a like original aggregate principal amount of the Notes so transferred. At the option of any Noteholder, Notes may be exchanged (or
de-registered) for other Notes (or in the case of an exchange for Uncertificated Notes, registered) of the same Series and Class in
authorized denominations of like original aggregate principal amount of the Notes so exchanged, upon surrender (or de-registration)
of the Notes to be exchanged at any office or agency of the Registrar maintained for such purpose. Whenever Notes of any Series are
so surrendered for exchange, if the requirements of Section 2.8(f) and Section 8-401(a) of the New York UCC are met, the Master
Issuer shall execute (other than Uncertificated Notes), and after the Master Issuer has executed, the Trustee shall authenticate and
deliver to the Noteholder, the Notes (other than Uncertificated Notes) which the Noteholder making the exchange is entitled to
receive.

(b) Every Note presented or surrendered for registration of transfer or exchange shall be (i) (other than
Uncertificated Notes) duly endorsed by, or be accompanied by a written instrument of transfer in form satisfactory to the Trustee, the
Issuer and the Registrar duly executed by, the Holder thereof or such Holder’s attorney duly authorized in writing with a
medallion signature guarantee and (ii) accompanied by such other documents as the Trustee and the Registrar may require. The
Issuer shall execute and deliver to the Trustee or the Registrar, as applicable, Notes in such amounts and at such times as are
necessary to enable the Trustee to fulfill its responsibilities under the Indenture and the Notes.

(c) All Notes issued and authenticated upon any registration of transfer or exchange of the Notes (including any
transfer of Uncertificated Notes) shall be the valid obligations of the Master Issuer, evidencing the same Indebtedness, and entitled to
the same benefits under the Indenture, as the Notes surrendered upon such registration of transfer or exchange.

(d) The preceding provisions of this Section 2.8 notwithstanding, (i) the Master Issuer or the Registrar shall not be
required (A) to issue, register the transfer of or exchange (or de-registration) any Note of any Series for a period beginning at the
opening of business fifteen (15) days preceding the selection of any Series of Notes for redemption and ending at the close of
business on the day of the mailing of the relevant notice of redemption or (B) to register the transfer of or exchange any Note so
selected for redemption, and (ii) no assignment or transfer of a Note or any commitment in respect thereof shall be effective until
such assignment or transfer shall have been recorded in the Note Register and in the books and records of the Trustee, as applicable,
pursuant to Section 2.5(a).

(e) Unless otherwise provided in the applicable Series Supplement with respect to Uncertificated Notes, no
service charge shall be payable for any registration of transfer or exchange (or de-registration) of Notes, but the Master Issuer, the
Registrar or the Trustee, as the case may be, may require payment by the Noteholder of a sum sufficient to cover any Tax or other
governmental charge that may be imposed in connection with any registration, de-registration, transfer or exchange of Notes.
Unless otherwise provided in the applicable Series Supplement, registration of transfer of Notes containing a legend relating to the restrictions on transfer of such Notes (which legend shall be set forth in the applicable Series Supplement) shall be effected only if the conditions set forth in such applicable Series Supplement are satisfied. Notwithstanding any other provision of this Section 2.8 and except as otherwise provided in Section 2.13 or any applicable Series Supplement with respect to Uncertificated Notes, the typewritten Note or Notes representing Book-Entry Notes for any Series may be transferred, in whole but not in part, only to another nominee of the Clearing Agency for such Series, or to a successor Clearing Agency for such Series selected or approved by the Master Issuer or to a nominee of such successor Clearing Agency, only if in accordance with this Section 2.8 and Section 2.12.

If the Notes of any Series are listed on the Luxembourg Stock Exchange, the Trustee or the Luxembourg Agent, as the case may be, shall send to the Master Issuer upon any transfer or exchange of any such Note information reflected in the copy of the register for the Notes maintained by the Registrar or the Luxembourg Agent, as the case may be.

Section 2.9  Persons Deemed Owners.

Prior to due presentment for registration of transfer of any Note (or any other transfer and de-registration of Uncertificated Notes), the Trustee, the Servicer, the Controlling Class Representative, any Agent and the Master Issuer shall deem and treat the Person in whose name any Note is registered (as of the day of determination) as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever (other than purposes in which the vote or consent of a Note Owner is expressly required pursuant to this Base Indenture or the applicable Series Supplement), whether or not such Note is overdue, and none of the Trustee, the Servicer, the Controlling Class Representative, any Agent nor the Master Issuer shall be affected by notice to the contrary.

Section 2.10  Replacement Notes.

If (i) any mutilated Note is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note and (ii) there is delivered to the Master Issuer and the Trustee such security or indemnity as may be required by them to hold the Master Issuer and the Trustee harmless then, provided that the requirements of Section 2.8(f) and Section 8-405 of the New York UCC are met, the Master Issuer shall execute and upon its request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a replacement Note; provided, however, that if any such destroyed, lost or stolen Note, but not a mutilated Note, shall have become, or within seven (7) days shall be, due and payable, instead of issuing a replacement Note, the Master Issuer may pay such destroyed, lost or stolen Note when so due or payable without surrender thereof. If, after the delivery of such replacement Note or payment of a destroyed, lost or stolen Note pursuant to the preceding sentence, a protected purchaser (within the meaning of Section 8-303 of the New York UCC) of the original Note in lieu of which such replacement Note was issued presents for payment such original Note, the Master Issuer and the Trustee shall be entitled to recover such replacement Note (or such payment) from the Person to whom it was delivered or any Person taking such
replacement Note from such Person to whom such replacement Note was delivered or any assignee of such Person, except a protected purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Master Issuer or the Trustee in connection therewith.

(b) Upon the issuance of any replacement Note (or registration of Uncertificated Notes) under this Section 2.10, the Master Issuer may require the payment by the Holder of such Note of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the fees and expenses of the Trustee and the Registrar) connected therewith.

(c) Every replacement Note (or registered in the case of Uncertificated Notes) issued pursuant to this Section 2.10 in replacement of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Master Issuer and such replacement Note shall be entitled to all the benefits of the Indenture equally and proportionately with any and all other Notes duly issued under the Indenture (in accordance with the priorities and other terms set forth herein and in each applicable Series Supplement).

(d) The provisions of this Section 2.10 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 2.11 Treasury Notes.

In determining whether the Noteholders of the required Aggregate Outstanding Principal Amount of Notes or the required Outstanding Principal Amount of any Series or any Class of any Series of Notes, as the case may be, have concurred in any direction, waiver or consent, Notes owned, legally or beneficially, by the Master Issuer or any Affiliate of the Master Issuer shall be considered as though they are not Outstanding, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes of which a Trust Officer has received written notice of such ownership shall be so disregarded. Absent written notice to a Trust Officer of such ownership, the Trustee shall not be deemed to have knowledge of the identity of the individual Note Owners.

Section 2.12 Book-Entry Notes.

(a) Unless otherwise provided in any applicable Series Supplement (including with respect to Uncertificated Notes), the Notes of each Class of each Series, upon original issuance, shall be issued in the form of typewritten Notes representing Book-Entry Notes and delivered to the depository (or its custodian) specified in such Series Supplement which shall be the Clearing Agency on behalf of such Series or such Class. The Notes of each Class of each Series shall, unless otherwise provided in the applicable Series Supplement (including with respect to Uncertificated Notes), initially be registered on the Note Register in the name of the Clearing Agency or the nominee of the Clearing Agency. No Note Owner will receive a definitive note representing such Note Owner’s interest in the related Series of Notes, except as provided in Section 2.13. Unless and until definitive, fully registered Notes of any Series or any
Class of any Series ("Definitive Notes") have been issued to Note Owners pursuant to Section 2.13 (or as otherwise set forth in any applicable Series Supplement with respect to Uncertificated Notes):

(i) the provisions of this Section 2.12 shall be in full force and effect with respect to each such Series;

(ii) the Master Issuer, the Paying Agent, the Registrar, the Trustee, the Servicer and the Controlling Class Representative shall deal with the Clearing Agency and the applicable Clearing Agency Participants for all purposes (including the payment of principal of, premium, if any, and interest on the Notes and the giving of instructions or directions hereunder or under the applicable Series Supplement) as the sole Holder of the Notes, and shall have no obligation to the Note Owners;

(iii) to the extent that the provisions of this Section 2.12 conflict with any other provisions of the Indenture, the provisions of this Section 2.12 shall control with respect to each such Class or Series of the Notes;

(iv) subject to the rights of the Servicer and the Controlling Class Representative under the Indenture, and except for the Initial CCR Election and the rights granted pursuant to Section 11.5, the rights of Note Owners of each such Class or Series of Notes shall be exercised only through the Clearing Agency and the applicable Clearing Agency Participants and shall be limited to those established by law and agreements between such Note Owners and the Clearing Agency and/or the Clearing Agency Participants, and all references in the Indenture to actions by the Noteholders shall refer to actions taken by the Clearing Agency upon instructions from the Clearing Agency Participants, and all references in the Indenture to distributions, notices, reports and statements to the Noteholders shall refer to distributions, notices, reports and statements to the Clearing Agency, as registered Holder of the Notes of such Series for distribution to the Note Owners in accordance with the Applicable Procedures of the Clearing Agency; and

(v) subject to the rights of the Servicer and the Controlling Class Representative under the Indenture, and except for the Initial CCR Election and the rights granted pursuant to Section 11.5, whenever the Indenture requires or permits actions to be taken based upon instructions or directions of Noteholders evidencing a specified percentage of the Aggregate Outstanding Principal Amount of Notes or the Outstanding Principal Amount of a Series or Class of a Series of Notes, the applicable Clearing Agency shall be deemed to represent such percentage only to the extent that it has received instructions to such effect from Note Owners and/or their related Clearing Agency Participants owning or representing, respectively, such required percentage of the beneficial interest in the Outstanding Notes or such Series or such Class of such Series of Notes Outstanding, as the case may be, and has delivered such instructions in writing to the Trustee.

(b) Pursuant to the Depository Agreement applicable to a Series, unless and until Definitive Notes of such Series are issued pursuant to Section 2.13 (or as otherwise set forth in any applicable Series Supplement with respect to Uncertificated Notes), the initial Clearing
Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit distributions of principal, premium, if any, and interest on the Notes to such Clearing Agency Participants.

(c) Except with respect to the Initial CCR Election, whenever notice or other communication to the Noteholders is required under the Indenture, unless and until Definitive Notes shall have been issued to Note Owners pursuant to Section 2.13, the Trustee and the Master Issuer shall give all such notices and communications specified herein to be given to Noteholders to the applicable Clearing Agency for distribution to the Note Owners in accordance with the Applicable Procedures of the Clearing Agency.

Section 2.13 Definitive Notes.

(a) The Notes of any Series or Class of any Series, to the extent provided in the related Series Supplement or Supplement to a Series Supplement pursuant to which any Additional Notes have been issued, as the case may be, upon original issuance, may be issued in the form of Definitive Notes. All Class A-1 Notes of any Series shall be issued in the form of Definitive Notes. The applicable Series Supplement or Supplement to a Series Supplement shall set forth the legend relating to the restrictions on transfer of such Definitive Notes (or transfer and de-registration with respect to Uncertificated Notes) and such other restrictions as may be applicable.

(b) With respect to the Notes of any Series or Class of any Series issued in the form of typewritten Notes representing Book-Entry Notes, if (i) (A) the Master Issuer advises the Trustee in writing that the Clearing Agency with respect to any such Series of Notes is no longer willing or able to discharge properly its responsibilities under the applicable Depository Agreement and (B) the Trustee or the Master Issuer are unable to locate a qualified successor or (ii) after the occurrence of a Rapid Amortization Event, with respect to any Series of Notes Outstanding, Note Owners holding a beneficial interest in excess of 50% of the aggregate Outstanding Principal Amount of such Series of Notes advise the Trustee and the applicable Clearing Agency through the applicable Clearing Agency Participants in writing that the continuation of a book-entry system through the applicable Clearing Agency is no longer in the best interests of such Note Owners, the Trustee shall notify all Note Owners of such Series, through the applicable Clearing Agency Participants, of the occurrence of any such event and of the availability of Definitive Notes (or Uncertificated Notes) to Note Owners of such Series. Upon surrender to the Trustee of the Notes of such Series by the applicable Clearing Agency, accompanied by registration instructions from the applicable Clearing Agency for registration, the Master Issuer shall execute (other than with respect to Uncertificated Notes) and the Trustee shall authenticate, upon receipt of a Company Order, and deliver an equal aggregate principal amount of Definitive Notes in accordance with the instructions of the Clearing Agency. Neither the Master Issuer nor the Trustee shall be liable for any delay in delivery of such instructions and may each conclusively rely on, and shall be protected in relying on, such instructions. Upon the issuance of Definitive Notes of such Series or Class of such Series of Notes all references herein to obligations imposed upon or to be performed by the applicable Clearing Agency shall be deemed to be imposed upon and performed by the Trustee, to the extent applicable with respect to...
to such Definitive Notes, and the Trustee shall recognize the Holders of the Definitive Notes of such Series or Class of such Series as Noteholders of such Series or Class of such Series hereunder and under the applicable Series Supplement.

Section 2.14  Cancellation.

The Master Issuer may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered (or registered in the case of Uncertificated Notes) hereunder which the Master Issuer or an Affiliate thereof may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled (or de-registered) by the Trustee. Immediately upon the delivery of any Notes by the Master Issuer to the Trustee for cancellation pursuant to this Section 2.14 (or as set forth in any applicable Series Supplement with respect to de-registration of Uncertificated Notes), the security interest of the Secured Parties in such Notes shall automatically be deemed to be released by the Trustee, and the Trustee shall execute and deliver to the Master Issuer any and all documentation reasonably requested and prepared by the Master Issuer at its expense to evidence such automatic release. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment (or de-registration of Uncertificated Notes). The Trustee shall cancel (or de-register) all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation. Except as provided in any Variable Funding Note Purchase Agreement executed and delivered in connection with the issuance of any Series or any Class of any Series of Notes, the Master Issuer may not issue new Notes to replace Notes that it has redeemed or paid or that have been delivered to the Trustee for cancellation (or de-registration). All cancelled Notes held by the Trustee shall be disposed of in accordance with the Trustee’s standard disposition procedures unless the Master Issuer shall direct that cancelled Notes be returned to it for destruction pursuant to a Company Order. No cancelled (or de-registered) Notes may be reissued. No provision of this Base Indenture or any Supplement that relates to prepayment procedures, penalties, fees, make-whole payments or any other related matters shall be applicable to any Notes cancelled (or de-registered) pursuant to and in accordance with this Section 2.14.

Section 2.15  Principal and Interest.

(a)  The principal of and premium, if any, on each Series of Notes shall be due and payable at the times and in the amounts set forth in the applicable Series Supplement and in accordance with the Priority of Payments.

(b)  Each Series of Notes shall accrue interest as provided in the applicable Series Supplement and such interest shall be due and payable for such Series on each Quarterly Payment Date in accordance with the Priority of Payments.

(c)  Except as provided in the following sentence, the Person in whose name any Note is registered at the close of business on any Record Date with respect to a Quarterly Payment Date for such Note shall be entitled to receive the principal, premium, if any, and interest payable on such Quarterly Payment Date notwithstanding the cancellation (or de-registration) of such Note upon any registration of transfer, exchange or substitution of such Note.
subsequent to such Record Date. Any interest payable at maturity shall be paid to the Person to whom the principal of such Note is payable.

(d) Pursuant to the authority of the Paying Agent under Section 2.6(a)(v), except as otherwise provided pursuant to a Variable Funding Note Purchase Agreement and only to the extent that the Paying Agent has been notified in writing of such exception by the Master Issuer or the applicable Class A-1 Administrative Agent, the Paying Agent shall make all payments of interest on the Notes net of any applicable withholding Taxes and Noteholders shall be treated as having received as payments of interest any amounts withheld with respect to such withholding Taxes.

Section 2.16 Tax Treatment.

The Master Issuer has structured this Base Indenture and the Notes have been (or will be) issued with the intention that the Notes will qualify under applicable tax law as Indebtedness of the Master Issuer or, if the Master Issuer is treated as a division of another entity for federal income tax purposes, such other entity, and any entity acquiring any direct or indirect interest in any Note by acceptance of its Notes (or, in the case of a Note Owner, by virtue of such Note Owner’s acquisition of a beneficial interest therein) (or registration of an Uncertificated Note) agrees to treat the Notes (or beneficial interests therein) for all purposes of United States federal, state, local and foreign income or franchise Taxes and any other Tax imposed on or measured by income, as Indebtedness of the Master Issuer or, if the Master Issuer is treated as a division of another entity for federal income tax purposes, such other entity.

ARTICLE III

SECURITY

Section 3.1 Grant of Security Interest.

(a) To secure the Obligations, the Master Issuer hereby pledges, assigns, conveys, delivers, transfers and sets over to the Trustee, for the benefit of the Secured Parties, and hereby grants to the Trustee, for the benefit of the Secured Parties, a security interest in the Master Issuer's right, title and interest in, to and under all accounts, chattel paper, commercial tort claims, deposit accounts, documents, equipment, fixtures, general intangibles, health-care-insurance receivables, instruments, inventory, securities, securities accounts and other investment property and letter-of-credit rights (in each case, as defined in the New York UCC), including all of the following property to the extent now owned or at any time hereafter acquired by the Master Issuer (collectively, the “Indenture Collateral”):

(i) the limited liability company membership interests and stock owned by the Master Issuer that represent the 100% ownership interest in the Securitization Entities owned by the Master Issuer;

(ii) the Accounts and all amounts on deposit in or otherwise credited to the Accounts;
(iii) any Interest Reserve Letter of Credit;

(iv) the books and records (whether in physical, electronic or other form) of the Master Issuer;

(v) the rights, powers, remedies and authorities of the Master Issuer under each of the Related Documents (other than the Indenture and the Notes) to which it is a party;

(vi) any and all other property of the Master Issuer now or hereafter acquired; and

(vii) all payments, proceeds, supporting obligations and accrued and future rights to payment with respect to the foregoing;

provided that (A) the Indenture Collateral shall exclude the Collateral Exclusions; (B) the Master Issuer shall not be required to pledge, and the Collateral shall not include, more than 65% of the Equity Interests (and any rights associated with such Equity Interests) of any foreign Subsidiary of the Master Issuer that is a corporation for U.S. federal income tax purposes and in no circumstance will any such foreign Subsidiary be required to pledge any assets, serve as Guarantor, or otherwise guarantee the Notes; (C) the security interest in (1) the Senior Notes Interest Reserve Account and the related property shall only be for the benefit of the Senior Noteholders and the Trustee, in its capacity as trustee for the Senior Noteholders, (2) the Senior Subordinated Notes Interest Reserve Account and the related property shall only be for the benefit of the Senior Subordinated Noteholders and the Trustee, in its capacity as trustee for the Senior Subordinated Noteholders and (3) each Series Distribution Account and the related property thereto shall only be for the benefit of the applicable Series Noteholders as set forth in the applicable Series Supplement; and (D) any Cash Collateral deposited by any Non-Securitization Entities with the Master Issuer to secure such Non-Securitization Entities’ obligations under the Letter of Credit Reimbursement Agreement shall not constitute Indenture Collateral until such time (if any) as the Master Issuer is entitled to withdraw such funds from the applicable bank account pursuant to the terms of the Letter of Credit Reimbursement Agreement to reimburse the Master Issuer for any amounts due by such Non-Securitization Entities to the Master Issuer pursuant to Section 4 or Section 5 of the Letter of Credit Reimbursement Agreement that such Non-Securitization Entities have not paid to the Master Issuer in accordance with the terms thereof.

“Collateral Exclusions” means the following property of the Master Issuer: (i) any lease, sublease, license, or other contract or permit, in each case if the grant of a Lien or security interest in any of the Master Issuer’s right, title and interest in, to or under such lease, sublease, license, contract or permit (or any rights or interests thereunder) in the manner contemplated by the Indenture (a) is prohibited by the terms of such lease, sublease, license, contract or permit (or any rights or interests thereunder) or would require the consent of a third party (unless such consent has been obtained), (b) would constitute or result in the abandonment, invalidation or unenforceability of any right, title or interest of the applicable Securitization Entity therein or (c) would otherwise result in a breach thereof or the termination or a right of termination thereof, except to the extent that any such prohibition, breach, termination or right of termination is
rendered ineffective pursuant to the UCC or any other applicable law, (ii) the Excepted Securitization IP Assets, (iii) any leasehold interests in real property and (iv) the Excluded Amounts. The Trustee, on behalf of the Secured Parties, acknowledges that it shall have no security interest in any Collateral Exclusions.

With respect to the limited liability company membership interests and stock owned by the Master Issuer that represent the 100% ownership interest in Wendy’s Properties, notwithstanding any of the other provisions set forth in this Article III or anything else contained in this Base Indenture or any other Related Document, the aggregate amount of all Obligations of the Master Issuer secured hereunder by such ownership interest in Wendy’s Properties and under any other Indenture Document by Principal Property (as defined in Annex B) owned by Wendy’s Properties or any shares of capital stock or evidences of Indebtedness (as defined in Annex B) issued by any Domestic Subsidiary (as defined in Annex B) and owned by Wendy’s or any Domestic Subsidiary (as defined in Annex B) (collectively, the “Debenture Restricted Assets”) shall not, at any time, exceed the aggregate amount (such amount, the “Indenture Threshold Amount”) of Indebtedness (as defined in Annex B) that may be secured by Debenture Restricted Assets under the Unsecured Debenture Indenture, determined in accordance with the terms of the Unsecured Debenture Indenture, without requiring holders of the Unsecured Debentures to be equally and ratably secured in accordance with the terms of the Unsecured Debenture Indenture. It is understood and acknowledged by the parties hereto that (v) as of the Closing Date, the total amount of Obligations is in excess of the Indenture Threshold Amount as of the Closing Date, (w) from time to time after the Closing Date, the total amount of the Obligations may be in excess of the Indenture Threshold Amount then in effect, (x) as of the Closing Date, the Obligations in excess of the Indenture Threshold Amount are not secured by any Debenture Restricted Assets hereunder or under any other Indenture Document or Related Document, (y) at any time after the Closing Date, any Obligations in excess of the Indenture Threshold Amount in effect at such time shall not be secured by any Debenture Restricted Assets hereunder or under any other Indenture Document or Related Document and (z) in no event shall any Lien (as defined in Annex B) on any Debenture Restricted Assets in favor of any Secured Party created hereunder or under any other Indenture Document at any time secure any Obligations in excess of the Indenture Threshold Amount then in effect. For the avoidance of doubt, the calculation of the Indenture Threshold Amount at any date of determination shall take into account all outstanding Attributable Value (as defined in Annex B) of all Sale and Lease-Back Transactions (as defined in Annex B) permitted pursuant to the last paragraph of Section 1009 of the Unsecured Debenture Indenture as of such date and all Indebtedness (as defined in Annex B) of Wendy’s and its Domestic Subsidiaries (as defined in Annex B) secured by Liens (as defined in Annex B) permitted pursuant to the last paragraph of Section 1008 of the Unsecured Debenture Indenture as of such date.

(b) The foregoing grant is made in trust to secure the Obligations and to secure compliance with the provisions of this Base Indenture and any Series Supplement. The Trustee, on behalf of the Secured Parties, acknowledges such grant, accepts the trusts under this Base Indenture in accordance with the provisions of this Base Indenture and agrees to perform its duties required in this Base Indenture. The Indenture Collateral shall secure the Obligations equally and ratably without prejudice, priority or distinction (except, with respect to any Series
of Notes, as otherwise stated in the applicable Series Supplement or in the applicable provisions of this Base Indenture).

(c) Upon the occurrence of a Mortgage Recordation Event, unless such Mortgage Recordation Event is waived by the Control Party (at the direction of the Controlling Class Representative), the Trustee or its agent shall, at the direction of the Control Party, record each Mortgage in accordance with Section 8.37.

(d) The parties hereto agree and acknowledge that each certificated Equity Interest and each Mortgage may be held by a custodian on behalf of the Trustee.

Section 3.2 Certain Rights and Obligations of the Master Issuer Unaffected.

(a) Notwithstanding the grant of the security interest in the Indenture Collateral hereunder to the Trustee, on behalf of the Secured Parties, the Master Issuer acknowledges that the Manager, on behalf of the Securitization Entities, shall, subject to the terms and conditions of the Management Agreement, have the right, subject to the Trustee’s right to revoke such right, in whole or in part, in the event of the occurrence of an Event of Default, (i) to give, in accordance with the Managing Standard, all consents, requests, notices, directions, approvals, extensions or waivers, if any, which are required or permitted to be given by the Master Issuer under the Collateral Transaction Documents, and to enforce all rights, remedies, powers, privileges and claims of the Master Issuer under the Collateral Transaction Documents, (ii) to give, in accordance with the Managing Standard, all consents, requests, notices, directions and approvals, if any, which are required or permitted to be given by the Master Issuer under any IP License Agreement to which any Securitization Entity is a party and (iii) to take any other actions required or permitted under the terms of the Management Agreement.

(b) The grant of the security interest by the Master Issuer in the Indenture Collateral to the Trustee on behalf of and for the benefit of the Secured Parties shall not (i) relieve the Master Issuer from the performance of any term, covenant, condition or agreement on the Master Issuer’s part to be performed or observed under or in connection with any of the Collateral Transaction Documents or (ii) impose any obligation on the Trustee or any of the Secured Parties to perform or observe any such term, covenant, condition or agreement on the Master Issuer’s part to be so performed or observed or impose any liability on the Trustee or any of the Secured Parties for any act or omission on the part of the Master Issuer or from any breach of any representation or warranty on the part of the Master Issuer.

(c) The Master Issuer hereby agrees to indemnify and hold harmless the Trustee and each Secured Party (including its directors, officers, employees and agents) from and against any and all losses, liabilities (including liabilities for penalties), claims, demands, actions, suits, judgments, reasonable and documented out-of-pocket costs and expenses arising out of or resulting from the security interest granted hereby, whether arising by virtue of any act or omission on the part of the Master Issuer or otherwise, including, without limitation, the reasonable out-of-pocket costs, expenses and disbursements (including reasonable attorneys’ fees and expenses) incurred by the Trustee or any Secured Party in enforcing the Indenture or any other Related Document or preserving any of its rights to, or realizing upon, any of the Collateral.
or, to the extent permitted by applicable law, the Securitized Assets; provided, however, that the foregoing indemnification shall not extend to any action by the Trustee or any Secured Party which constitutes gross negligence, bad faith or willful misconduct by the Trustee or any Secured Party or any other indemnified person hereunder. The indemnification provided for in this Section 3.2 shall survive the removal of, or a resignation by, any Person as Trustee as well as the termination of this Base Indenture or any Series Supplement.

Section 3.3 Performance of Collateral Transaction Documents.

Upon the occurrence of a default or breach (after giving effect to any applicable grace or cure periods) by any Person party to (a) a Collateral Transaction Document or (b) a Collateral Business Document (only if a Manager Termination Event or an Event of Default has occurred and is continuing), promptly following a request from the Trustee to do so and at the Master Issuer’s expense, the Master Issuer agrees to take all such lawful action as permitted under this Base Indenture as the Trustee (acting at the direction of the Servicer) may reasonably request to compel or secure the performance and observance by such Person of its obligations to the Master Issuer, and to exercise any and all rights, remedies, powers and privileges lawfully available to the Master Issuer to the extent and in the manner directed by the Trustee (acting at the direction of the Servicer), including, without limitation, the transmission of notices of default and the institution of legal or administrative actions or proceedings to compel or secure performance by such Person of its obligations thereunder. If (i) the Master Issuer shall have failed, within fifteen (15) days of receiving the direction of the Trustee, to take action to accomplish such directions of the Trustee, (ii) the Master Issuer refuses to take any such action, as reasonably determined by the Trustee in good faith, or (iii) the Servicer reasonably determines that such action must be taken immediately, in any such case the Servicer may, but shall not be obligated to, take, and the Trustee shall take (if so directed by the Servicer), at the expense of the Master Issuer, such previously directed action and any related action permitted under this Base Indenture to direct the Master Issuer to take such action), on behalf of the Master Issuer and the Secured Parties.

Section 3.4 Stamp, Other Similar Taxes and Filing Fees.

The Master Issuer shall indemnify and hold harmless the Trustee and each Secured Party from any present or future claim for liability for any stamp, documentary or other similar tax and any penalties or interest and expenses with respect thereto, that may be assessed, levied or collected by any jurisdiction in connection with the Indenture, any other Related Document or the Securitized Assets. The Master Issuer shall pay, and indemnify and hold harmless each Secured Party against, any and all amounts in respect of all search, filing, recording and registration fees, excise taxes and other similar imposts that may be payable or determined to be payable in respect of the execution, delivery, performance and/or enforcement of the Indenture or any other Related Document.

25
Section 3.5 Authorization to File Financing Statements.

(a) The Master Issuer hereby irrevocably authorizes the Servicer on behalf of the Secured Parties at any time and from time to time to file or record in any filing office in any applicable jurisdiction financing statements and other filing or recording documents or instruments with respect to the Indenture Collateral to perfect the security interests of the Trustee for the benefit of the Secured Parties under this Base Indenture. The Master Issuer authorizes the filing of any such financing statement naming the Trustee as secured party and indicating that the Indenture Collateral includes “all assets” or words of similar effect or import regardless of whether any particular assets comprised in the Indenture Collateral fall within the scope of Article 9 of the UCC, including, without limitation, any and all Securitization IP. The Master Issuer agrees to furnish any information necessary to accomplish the foregoing promptly upon the Servicer’s request. The Master Issuer also hereby ratifies and authorizes the filing on behalf of the Secured Parties of any financing statement with respect to the Indenture Collateral made prior to the date hereof.

(b) The Master Issuer acknowledges that to the extent the Indenture Collateral includes certain rights of the Master Issuer as a secured party under the Related Documents, the Master Issuer hereby irrevocably appoints the Trustee as its representative with respect to all financing statements filed to perfect or record evidence of such security interests and authorizes the Servicer on behalf of and for the benefit of the Secured Parties to make such filings it deems necessary to reflect the Trustee as secured party of record with respect to such financing statements.

ARTICLE IV
REPORTS

Section 4.1 Reports and Instructions to Trustee.

(a) Weekly Manager’s Certificate. By 4:30 p.m. (Eastern time) on the day prior to each Weekly Allocation Date, the Master Issuer shall furnish, or cause the Manager to furnish, to the Trustee and the Servicer a certificate substantially in the form of Exhibit A specifying the allocation of Collections on the following Weekly Allocation Date (each a “Weekly Manager’s Certificate”); provided that such Weekly Manager’s Certificate shall be deemed confidential information and shall not be disclosed by the Trustee or the Servicer to any Noteholder, Note Owner or any other Person without the prior written consent of the Master Issuer or Manager.

(b) Quarterly Noteholders’ Report. On or before the third (3rd) Business Day prior to each Quarterly Payment Date, the Master Issuer shall furnish, or cause the Manager to furnish, a Quarterly Noteholders’ Report with respect to each Series of Notes Outstanding to the Trustee, the Rating Agency with respect to such Series, the Servicer and each Paying Agent, with a copy to the Back-Up Manager.

26
(c) **Quarterly Compliance Certificates.** On or before the third (3rd) Business Day prior to each Quarterly Payment Date, the Master Issuer shall deliver, or cause the Manager to deliver, to the Trustee and the Rating Agency with respect to each Series of Notes Outstanding (with a copy to each of the Servicer, the Manager and the Back-Up Manager) an Officer’s Certificate to the effect that, except as provided in a notice delivered pursuant to Section 8.8, no Potential Rapid Amortization Event, Rapid Amortization Event, Default or Event of Default has occurred or is continuing (each, a “Quarterly Compliance Certificate”).

(d) **Scheduled Principal Payments Deficiency Notices.** On the Quarterly Calculation Date with respect to any Quarterly Collection Period, the Master Issuer shall furnish, or cause the Manager to furnish, to the Trustee and the Rating Agency (with a copy to each of the Servicer and the Back-Up Manager) written notice of any Scheduled Principal Payments Deficiency Event with respect to any Class or Series of Notes that occurred with respect to such Quarterly Collection Period (any such notice, a “Scheduled Principal Payments Deficiency Notice”).

(e) **Annual Accountants’ Reports.** Within one hundred twenty (120) days after the end of each fiscal year, commencing with the fiscal year ending on or around December 31, 2015, the Master Issuer shall furnish, or cause to be furnished, to the Trustee, the Servicer and the Rating Agency with respect to each Series of Notes Outstanding the reports of the Independent Auditors or the Back-Up Manager required to be delivered to the Master Issuer by the Manager pursuant to Section 3.3 of the Management Agreement.

(f) **Securitization Entity Financial Statements.** The Manager on behalf of the Securitization Entities shall provide to the Trustee, the Servicer, the Back-Up Manager and the Rating Agency with respect to each Series of Notes Outstanding, the following financial statements:

   (i) within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year (commencing with the fiscal quarter ending September 27, 2015), an unaudited combined consolidated balance sheet of the Securitization Entities as of the end of such quarter and unaudited combined consolidated statements of income or operations, changes in members’ equity and cash flows of the Securitization Entities for such fiscal quarter and for the fiscal year-to-date period then ended (in the case of the second and third fiscal quarters of each fiscal year), which financial statements shall be accompanied by supplemental schedules combining and consolidating each of the Securitization Entities;

   (ii) within one hundred twenty (120) days after the end of the fiscal year ending January 3, 2016, an unaudited combined consolidated balance sheet of the Securitization Entities as of the end of such fiscal year and unaudited combined consolidated statements of income or operations, changes in members’ equity and cash flows of the Securitization Entities for the fiscal quarter ended on or about January 3, 2016, which financial statements shall be accompanied by supplemental schedules combining and consolidating each of the Securitization Entities; and
within one hundred twenty (120) days after the end of each fiscal year (commencing with the fiscal year ending on or around January 3, 2016), an audited combined consolidated balance sheet of the Securitization Entities as of the end of such fiscal year and audited combined consolidated statements of income or operations, changes in members’ equity and cash flows of the Securitization Entities for such fiscal year, setting forth in comparative form (where appropriate) the comparable amounts for the previous fiscal year, which financial statements shall be accompanied by supplemental schedules combining and consolidating each of the Securitization Entities, prepared in accordance with GAAP and accompanied by an opinion thereon of the Independent Auditors stating that such audited financial statements present fairly, in all material respects, the financial position of the Securitization Entities as of the end of such fiscal year and the results of their operations and cash flows for such fiscal year in accordance with GAAP.

(g) **TWC Financial Statements.** So long as Wendy’s is the Manager, the Master Issuer shall cause the Manager (on behalf of the Securitization Entities) to provide to the Trustee, the Servicer, the Back-Up Manager and the Rating Agency with respect to each Series of Notes Outstanding the following financial statements:

(i) within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year, an unaudited consolidated balance sheet of TWC and its Subsidiaries as of the end of such fiscal quarter and unaudited consolidated statements of income or operations, changes in stockholder’s equity and cash flows of TWC and its Subsidiaries for such fiscal quarter and for the fiscal year-to-date period then ended (in the case of the second and third fiscal quarters of each fiscal year); and

(ii) within ninety (90) days after the end of each fiscal year, an audited consolidated balance sheet of TWC and its Subsidiaries as of the end of such fiscal year and audited consolidated statements of income or operations, changes in stockholder’s equity and cash flows of TWC and its Subsidiaries for such fiscal year, setting forth in comparative form the comparable amounts for the previous fiscal year prepared in accordance with GAAP and accompanied by an opinion thereon of the Independent Auditors stating that such audited financial statements present fairly, in all material respects, the consolidated financial position of TWC and its Subsidiaries as of the end of such fiscal year and the consolidated results of their operations and cash flows for such fiscal year in accordance with GAAP.

(iii) Notwithstanding the foregoing, the obligations set forth in this Section 4.1(g) may be satisfied by furnishing TWC’s Form 10-K or 10-Q, as applicable, filed with the SEC.

(h) **Additional Information.** The Master Issuer will furnish, or cause to be furnished, from time to time such additional information regarding the financial position, results of operations or business of TWC or any Securitization Entity as the Trustee, the Servicer, the Manager or the Back-Up Manager may reasonably request, subject to Requirements of Law and to the confidentiality provisions of the Related Documents to which such recipient is a party.
Instructions as to Withdrawals and Payments. The Master Issuer will furnish, or cause to be furnished, to the Trustee or the Paying Agent, as applicable (with a copy to each of the Servicer, the Manager and the Back-Up Manager), written instructions to make withdrawals and payments from the Collection Account and any other Base Indenture Account or Series Account and to make drawings under any Enhancement, as contemplated herein and in any Series Supplement; provided that such written instructions (other than those contained in Quarterly Noteholders’ Reports) shall be considered confidential information and shall not be disclosed by such recipients to any other Person without the prior written consent of the Master Issuer; and provided further that such written instructions shall be subject in all respects to the confidentiality provisions of any Related Documents to which such recipient is a party. The Trustee and the Paying Agent shall promptly follow any such written instructions.

Copies to Rating Agency. The Master Issuer shall deliver, or shall cause the Manager to deliver, a copy of each report, certificate or instruction, as applicable, described in this Section 4.1 to the Rating Agency at its address as listed in or otherwise designated pursuant to Section 14.1 or in the applicable Series Supplement, including any e-mail address.

Section 4.2 Rule 144A Information.

The Master Issuer agrees to provide to any Noteholder or Note Owner, and to any prospective purchaser of Notes designated by such Noteholder or Note Owner upon the request of such Noteholder or Note Owner or prospective purchaser, any information required to be provided to such Noteholder or Note Owner or prospective purchaser to satisfy the conditions set forth in Rule 144A(d)(4) under the 1933 Act.

Section 4.3 Reports, Financial Statements and Other Information to Noteholders.

The Trustee will make this Base Indenture, the Guarantee and Collateral Agreement, each Series Supplement, the Quarterly Noteholders’ Reports, the Quarterly Compliance Certificates, the financial statements referenced in Section 4.1(f) and Section 4.1(g) and the reports referenced in Section 4.1(e) available to (a) the Rating Agency pursuant to Section 4.1(j) above and (b) the Noteholders and Note Owners (provided that each Series Supplement with respect to a Series of Notes shall only be made available to the Noteholders or Note Owners of such Series of Notes), the Servicer, the Manager, the Back-Up Manager and the Rating Agency via the Trustee’s internet website at www.sf.citidirect.com or such other address as the Trustee may specify from time to time. Assistance in using such website can be obtained by calling the Trustee’s customer service desk at 800-422-2066 or such other telephone number as the Trustee may specify from time to time. The foregoing materials will only be accessible in a password-protected area of the internet website and the Trustee will require each party (other than the Servicer, the Manager, the Back-Up Manager and the Rating Agency) accessing such password-protected area to register as a Noteholder or Note Owner and to make, for the benefit of the Master Issuer, the applicable representations and warranties described below in an Investor Request Certification in the form of Exhibit D. The Trustee may disclaim responsibility for any information distributed by it for which the Trustee was not the original source. Each time a Noteholder or Note Owner accesses the internet website, it will be deemed to have confirmed such representations and warranties as
of the date thereof. The Trustee will provide the Servicer and the Manager with copies of such Investor Request Certifications, including the identity, address, contact information, email address and telephone number of such Noteholder or such Note Owner upon request, but shall have no responsibility for any of the information contained therein. The Trustee shall have the right to change the way such statements are electronically distributed in order to make such distribution more convenient and/or more accessible to the above parties and the Trustee shall provide timely and adequate notification to all above parties regarding any such changes.

The Trustee will (or will request that the Manager) make available, upon reasonable advance notice and at the expense of the requesting party, copies of the Quarterly Noteholders’ Reports, the Quarterly Compliance Certificates, the financial statements referenced in Section 4.1(f) and Section 4.1(g) and the reports referenced in Section 4.1(e) to any Noteholder or any Note Owner and to any prospective investor that provides the Trustee with an Investor Request Certification in the form of Exhibit D to the effect that such party (i) is a Noteholder, a Note Owner or prospective investor, as applicable, (ii) understands that the items contain confidential information, (iii) is requesting the information solely for use in evaluating such party’s investment or potential investment, as applicable, in the Notes and will keep such information strictly confidential (provided, however, that such party may disclose such information only (A) to (1) those personnel employed by it who need to know such information which have agreed to keep such information strictly confidential and to use such information only for evaluating such party’s investment or potential investment in the Notes, (2) its attorneys and outside auditors which have agreed to keep such information strictly confidential and to use such information only for evaluating such party’s investment or possible investment in the Notes, or (3) a regulatory or self-regulatory authority pursuant to applicable law or regulation or (B) by judicial process; provided, that it may disclose to any and all persons without limitation of any kind, the tax treatment and tax structure of the transaction and any related tax strategies to the extent necessary to prevent the transaction from being described as a “confidential transaction” under U.S. Treasury Regulations Section 1.6011-4(b)(3)), and (iv) is not a Competitor.

Section 4.4 Manager.

Pursuant to the Management Agreement, the Manager has agreed to provide certain reports, notices, instructions and other services on behalf of the Master Issuer. The Note Owners and the Noteholders by their acceptance of the Notes consent to the provision of such reports and notices to the Trustee by the Manager in lieu of the Master Issuer. Any such reports and notices that are required to be delivered to the Noteholders hereunder shall be delivered by the Trustee. The Trustee shall have no obligation whatsoever to verify, reconfirm or recalculate any information or material contained in any of the reports, financial statements or other information delivered to it pursuant to this Article IV or the Management Agreement. All distributions, allocations, remittances and payments to be made by the Trustee or the Paying Agent hereunder or under any Series Supplement or Variable Funding Note Purchase Agreement shall be made based solely upon the most recently delivered written reports and instructions provided to the Trustee or Paying Agent, as the case may be, by the Manager.
Section 4.5  **No Constructive Notice.**

Delivery of reports, information, Officer’s Certificates and documents to the Trustee is for informational purposes only and the Trustee’s receipt of such reports, information, Officer’s Certificates and documents shall not constitute constructive notice to the Trustee of any information contained therein or determinable from information contained therein, including any Securitization Entity’s, the Manager’s or any other Person’s compliance with any of its covenants under the Indenture, the Notes or any other Related Document (as to which the Trustee is entitled to rely exclusively on the most recent Quarterly Compliance Certificate described above).

**ARTICLE V**

**ALLOCATION AND APPLICATION OF COLLECTIONS**

Section 5.1  **Management Accounts and Additional Accounts.**

(a)  **Establishment of the Management Accounts.** Each of the Concentration Accounts is owned by a Securitization Entity. The Franchisor Capital Account is owned by the Franchise Holder. The Contributed Restaurant Accounts are owned by Wendy’s Properties. The Asset Disposition Proceeds Account is owned by the Master Issuer. The Insurance Proceeds Account is owned by the Master Issuer. Such accounts, as of the Closing Date and at all times thereafter, shall be (A) pledged to the Trustee for the benefit of the Secured Parties pursuant to Section 3.1 or the Guarantee and Collateral Agreement and (B) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement. Each Management Account shall be an Eligible Account and, in addition, from time to time, the Master Issuer or any other Securitization Entity (other than the Holding Company Guarantor) may establish additional accounts for the purpose of depositing Collections or Residual Amounts or funds necessary to meet large-franchisor exemptions or similar exemptions under applicable franchise laws therein (each such account and any investment accounts related thereto into which funds are transferred for investment purposes pursuant to Section 5.1(b), an “Additional Management Account”); provided that each such Additional Management Account is (A) an Eligible Account, (B) pledged by the Master Issuer or such other Securitization Entity to the Trustee for the benefit of the Secured Parties pursuant to Section 3.1 or the Guarantee and Collateral Agreement and (C) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement. Each Additional Management Account that is to be a Franchisor Capital Account or a Contributed Restaurant Account shall be designated as such by the Manager. Notwithstanding anything to the contrary in this paragraph (a), in the case of any Management Account established after the Closing Date, the applicable Securitization Entity shall be permitted a period of five (5) Business Days after the establishment of such deposit account to cause such deposit account to be subject to an Account Control Agreement.

(b)  **Administration of the Management Accounts.** The Master Issuer may invest or reinvest any amounts held in the Management Accounts in Eligible Investments and such amounts may be transferred by the Master Issuer into an investment account for the sole
purpose of investing in Eligible Investments so long as such investment account is (A) an Eligible Account, (B) pledged by the applicable Securitization Entity to the Trustee for the benefit of the Secured Parties pursuant to Section 3.1 or the Guarantee and Collateral Agreement and (C) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement; provided, however, that any such investment in any Management Account (or in any such investment account) shall mature not later than the Business Day prior to the next succeeding Weekly Allocation Date. Notwithstanding anything herein or in any other Related Document, the Master Issuer and Manager shall not transfer any funds into any such investment account until such time as an Account Control Agreement is entered into with respect thereto (if such account is not established with the Trustee or otherwise controlled by the Trustee under the New York UCC). All income or other gain from such Eligible Investments shall be credited to the related Management Account, and any loss resulting from such investments shall be charged to the related Management Account. The Master Issuer shall not direct (or permit) the disposal of any Eligible Investments prior to the maturity thereof if such disposal would result in a loss of any portion of the initial purchase price of such Eligible Investment.

(c) Earnings from the Management Accounts. All interest and earnings (net of losses and investment expenses) paid on funds on deposit in the Management Accounts shall be deemed to be Investment Income on deposit for distribution to the Collection Account in accordance with Section 5.10.

(d) Franchisor Capital Accounts. The Franchise Holder and any Additional Securitization Entity that from time to time acts as the “franchisor” with respect to New Franchise Agreements and New Development Agreements entered into by the Additional Securitization Entity may (i) deposit to the Franchisor Capital Accounts the proceeds of capital contributions thereto directed to be made to such account necessary to meet large-franchisor exemptions or similar exemptions under applicable franchise laws therein and (ii) disburse funds from the Franchisor Capital Accounts to fund any loan or advance made in accordance with Section 8.21.

(e) No Duty to Monitor. The Trustee shall have no duty or responsibility to monitor the amounts of deposits into or withdrawals from any Management Account.

(f) Voluntary Deposits to the Residual Amounts Account. From time to time, the Master Issuer may direct that all or any portion of the Residual Amounts available to it pursuant to priority (xxix) of the Priority of Payments be deposited in the Residual Amounts Account. Any funds held in the Residual Amounts Account may be withdrawn at such times as the Master Issuer may elect and applied at the direction of the Master Issuer, including (i) to fund distributions, subject to Section 8.18, (ii) to make deposits to one or more of the Collection Account Administrative Accounts in accordance with Section 5.6(d) or (iii) for working capital purposes.
Section 5.2 Senior Notes Interest Reserve Account.

(a) Establishment of the Senior Notes Interest Reserve Account. The Master Issuer has established with the Trustee the Senior Notes Interest Reserve Account in the name of the Trustee for the benefit of the Senior Noteholders and the Trustee, solely in its capacity as trustee for the Senior Noteholders, bearing a designation clearly indicating that the funds deposited therein are held for the benefit of the foregoing Secured Parties. The Senior Notes Interest Reserve Account shall be an Eligible Account.

(b) Administration of the Senior Notes Interest Reserve Account. All amounts held in the Senior Notes Interest Reserve Account shall be invested in Eligible Investments at the written direction (which may be standing directions) of the Master Issuer and such amounts may be transferred by the Master Issuer into an investment account for the sole purpose of investing in Eligible Investments so long as such investment account is (A) an Eligible Account, (B) pledged by the Master Issuer to the Trustee for the benefit of the Secured Parties pursuant to Section 3.1, and (C) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement; provided, however, that any such investment in the Senior Notes Interest Reserve Account shall mature not later than the Business Day prior to the next succeeding Weekly Allocation Date. In the absence of written investment instructions hereunder, funds on deposit in the Senior Notes Interest Reserve Account shall be invested as fully as practicable in one or more Eligible Investments of the type described in clause (b) of the definition thereof. All income or other gain from such Eligible Investments shall be credited to the Senior Notes Interest Reserve Account, and any loss resulting from such investments shall be charged to the Senior Notes Interest Reserve Account. The Master Issuer shall not direct (or permit) the disposal of any Eligible Investments prior to the maturity thereof if such disposal would result in a loss of any portion of the initial purchase price of such Eligible Investment.

(c) Earnings from the Senior Notes Interest Reserve Account. All interest and earnings (net of losses and investment expenses) paid on funds on deposit in the Senior Notes Interest Reserve Account shall be deemed to be Investment Income on deposit for distribution to the Collection Account in accordance with Section 5.10.

Section 5.3 Senior Subordinated Notes Interest Reserve Account.

(a) Establishment of the Senior Subordinated Notes Interest Reserve Account. The Master Issuer will, prior to the issuance of any Series of Senior Subordinated Notes, establish with the Trustee the Senior Subordinated Notes Interest Reserve Account in the name of the Trustee for the benefit of the Senior Subordinated Noteholders and the Trustee, solely in its capacity as trustee for the Senior Subordinated Noteholders, bearing a designation clearly indicating that the funds deposited therein are held for the benefit of the foregoing Secured Parties. The Senior Subordinated Notes Interest Reserve Account, once established, shall be an Eligible Account.

(b) Administration of the Senior Subordinated Notes Interest Reserve Account. All amounts held in the Senior Subordinated Notes Interest Reserve Account shall be
invested in Eligible Investments at the written direction (which may be standing directions) of the Master Issuer and such amounts may be transferred by the Master Issuer into an investment account for the sole purpose of investing in Eligible Investments so long as such investment account is (A) an Eligible Account, (B) pledged by the Master Issuer to the Trustee for the benefit of the Secured Parties pursuant to Section 3.1 and (C) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement; provided, however, that any such investment in the Senior Subordinated Notes Interest Reserve Account shall mature not later than the Business Day prior to the next succeeding Weekly Allocation Date. In the absence of written investment instructions hereunder, funds on deposit in the Senior Subordinated Notes Interest Reserve Account shall be invested as fully as practicable in one or more Eligible Investments of the type described in clause (b) of the definition thereof. All income or other gain from such Eligible Investments shall be credited to the Senior Subordinated Notes Interest Reserve Account, and any loss resulting from such investments shall be charged to the Senior Subordinated Notes Interest Reserve Account. The Master Issuer shall not direct (or permit) the disposal of any Eligible Investments prior to the maturity thereof if such disposal would result in a loss of any portion of the initial purchase price of such Eligible Investment.

(c) **Earnings from the Senior Subordinated Notes Interest Reserve Account.** All interest and earnings (net of losses and investment expenses) paid on funds on deposit in the Senior Subordinated Notes Interest Reserve Account shall be deemed to be Investment Income on deposit for distribution to the Collection Account in accordance with Section 5.10.

Section 5.4 **Cash Trap Reserve Account.**

(a) **Establishment of the Cash Trap Reserve Account.** The Master Issuer has established the Cash Trap Reserve Account in the name of the Trustee for the benefit of the Secured Parties, bearing a designation clearly indicating that the funds deposited therein are held for the benefit of the Secured Parties. The Cash Trap Reserve Account shall be an Eligible Account.

(b) **Administration of the Cash Trap Reserve Account.** All amounts held in the Cash Trap Reserve Account shall be invested in Eligible Investments at the written direction (which may be standing directions) of the Master Issuer and such amounts may be transferred by the Master Issuer into an investment account for the sole purpose of investing in Eligible Investments so long as such investment account is (A) an Eligible Account, (B) pledged by the Master Issuer to the Trustee for the benefit of the Secured Parties pursuant to Section 3.1 and (C) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement; provided, however, that any such investment in the Cash Trap Reserve Account shall mature not later than the Business Day prior to the next succeeding Weekly Allocation Date. In the absence of written investment instructions hereunder, funds on deposit in the Cash Trap Reserve Account shall be invested as fully as practicable in one or more Eligible Investments of the type described in clause (b) of the definition thereof. All income or other gain from such Eligible Investments shall be credited to the Cash Trap Reserve Account, and any loss resulting from such investments shall be charged to
the Cash Trap Reserve Account. The Master Issuer shall not direct (or permit) the disposal of any Eligible Investments prior to the maturity thereof if such disposal would result in a loss of any portion of the initial purchase price of such Eligible Investment.

(c) **Earnings from the Cash Trap Reserve Account.** All interest and earnings (net of losses and investment expenses) paid on funds on deposit in the Cash Trap Reserve Account shall be deemed to be Investment Income on deposit for distribution to the Collection Account in accordance with [Section 5.10](#).

Section 5.5 **Collection Account.**

(a) **Establishment of Collection Account.** On or before the Closing Date, the Master Issuer has established with the Trustee the Collection Account in the name of the Trustee for the benefit of the Secured Parties, bearing a designation clearly indicating that the funds deposited therein are held for the benefit of the Secured Parties. The Collection Account shall be an Eligible Account.

(b) **Administration of the Collection Account.** All amounts held in the Collection Account shall be invested in Eligible Investments at the written direction (which may be standing directions) of the Master Issuer and such amounts may be transferred by the Master Issuer into an investment account for the sole purpose of investing in Eligible Investments so long as such investment account is (A) an Eligible Account, (B) pledged by the Master Issuer to the Trustee for the benefit of the Secured Parties pursuant to [Section 3.1](#) and (C) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement; provided, however, that any such investment in the Collection Account shall mature not later than the Business Day prior to the next succeeding Weekly Allocation Date. In the absence of written investment instructions hereunder, funds on deposit in the Collection Account shall be invested as fully as practicable in one or more Eligible Investments of the type described in clause (b) of the definition thereof. All income or other gain from such Eligible Investments shall be credited to the Collection Account, and any loss resulting from such investments shall be charged to the Collection Account. The Master Issuer shall not direct (or permit) the disposal of any Eligible Investments prior to the maturity thereof if such disposal would result in a loss of any portion of the initial purchase price of such Eligible Investment.

(c) **Earnings from Collection Account.** All interest and earnings (net of losses and investment expenses) paid on funds on deposit in the Collection Account shall be deemed to be Investment Income on deposit for distribution in accordance with [Section 5.11](#).

Section 5.6 **Collection Account Administrative Accounts.**

(a) **Establishment of Collection Account Administrative Accounts.** The Master Issuer has established, or, in the case of any account relating to any Series of Senior Subordinated Notes or Subordinated Notes, if such account has not already been established, will establish on or prior to the issuance of such Series of Senior Subordinated Notes or Subordinated Notes, the following administrative accounts associated with the Collection Account, each of
which shall be an Eligible Account, in the name of the Trustee for the benefit of the Secured Parties, bearing a designation clearly indicating that the funds deposited therein are held for the benefit of the Secured Parties (collectively, the “Collection Account Administrative Accounts”):

(i) an account no. 11455000 entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Senior Notes Interest Payment Account” for the deposit of the Senior Notes Quarterly Interest Amount (together with any successor account, the “Senior Notes Interest Payment Account”);

(ii) an account entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Senior Subordinated Notes Interest Payment Account” for the deposit of the Senior Subordinated Notes Quarterly Interest Amount (together with any successor account, the “Senior Subordinated Notes Interest Payment Account”);

(iii) an account entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Subordinated Notes Interest Payment Account” for the deposit of the Subordinated Notes Quarterly Interest Amount (together with any successor account, the “Subordinated Notes Interest Payment Account”);

(iv) an account no. 11455100 entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Class A-1 Notes Commitment Fees Account” for the deposit of the Class A-1 Quarterly Commitment Fee Amount (together with any successor account, the “Class A-1 Notes Commitment Fees Account”);

(v) an account no. 11455200 entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Senior Notes Principal Payment Account” for the deposit of the amounts allocable to the payment of principal of the Senior Notes (together with any successor account, the “Senior Notes Principal Payment Account”);

(vi) an account entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Senior Subordinated Notes Principal Payment Account” for the deposit of the amounts allocable to the payment of principal of the Senior Subordinated Notes (together with any successor account, the “Senior Subordinated Notes Principal Payment Account”);

(vii) an account entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Subordinated Notes Principal Payment Account” for the deposit of the amounts allocable to the payment of principal of the Subordinated Notes (together with any successor account, the “Subordinated Notes Principal Payment Account”);

(viii) an account no. 11455300 entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Senior Notes Post-ARD Contingent Interest Account” for the deposit of the Senior Notes Quarterly Post-ARD Contingent Interest Amount (together with any successor account, the “Senior Notes Post-ARD Contingent Interest Account”);

(ix) an account entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Senior Subordinated Notes Post-ARD Contingent Interest Account” for the deposit of the Senior
Subordinated Notes Quarterly Post-ARD Contingent Interest Amount (together with any successor account, the “Senior Subordinated Notes Post-ARD Contingent Interest Account”);  

(x) an account entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Subordinated Notes Post-ARD Contingent Interest Account” for the deposit of the Subordinated Notes Quarterly Post-ARD Contingent Interest Amount (together with any successor account, the “Subordinated Notes Post-ARD Contingent Interest Account”); and  

(xi) an account no. 11455400 entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Securitization Operating Expense Account” for the deposit of Securitization Operating Expenses (together with any successor account, the “Securitization Operating Expense Account”).  

(b) Administration of the Collection Account Administrative Accounts. All amounts held in the Collection Account Administrative Accounts shall be invested in Eligible Investments at the written direction (which may be standing directions) of the Master Issuer and such amounts may be transferred by the Master Issuer into an investment account for the sole purpose of investing in Eligible Investments so long as such investment account is (A) an Eligible Account, (B) pledged by the Master Issuer to the Trustee for the benefit of the Secured Parties pursuant to Section 3.1 and (C) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement; provided, however, that any such investment in the Collection Account Administrative Accounts shall mature not later than the Business Day prior to the next succeeding Weekly Allocation Date. In the absence of written investment instructions hereunder, funds on deposit in the Collection Account Administrative Accounts shall be invested as fully as practicable in one or more Eligible Investments of the type described in clause (b) of the definition thereof. All income or other gain from such Eligible Investments shall be credited to the related Collection Account Administrative Account, and any loss resulting from such investments shall be charged to the related Collection Account Administrative Account. The Master Issuer shall not direct (or permit) the disposal of any Eligible Investments prior to the maturity thereof if such disposal would result in a loss of any portion of the initial purchase price of such Eligible Investment.  

c) Earnings from the Collection Account Administrative Accounts. All interest and earnings (net of losses and investment expenses) paid on funds on deposit in the Collection Account Administrative Accounts shall be deposited therein and shall be deemed to be Investment Income on deposit for distribution in accordance with Section 5.10.  

d) Voluntary Deposits to the Collection Account Administrative Accounts. From time to time, the Master Issuer may direct that all or any portion of the Residual Amounts available to it pursuant to priority (xxix) of the Priority of Payments including any amounts previously deposited to the Residual Amounts Account pursuant to Section 5.1(f)) be deposited in one or more of the Collection Account Administrative Accounts. Any such amounts deposited in a Collection Account Administrative Account shall be disbursed in accordance with the applicable provisions of Section 5.12. In addition, if on any date, there is a Collection Account Administrative Account Surplus with respect to any Collection Account Administrative Account, the Master Issuer may request that the Trustee release from such Collection Account
Administrative Account an amount not to exceed the lesser of (I) the Collection Account Administrative Account Surplus with respect to such account and (II) the aggregate amount that was deposited into such account prior to such date pursuant to this Section 5.6(d); provided that, if the Master Issuer elects to include the Senior Principal and Interest Account Excess Amount in calculating the Senior ABS Leverage Ratio, pursuant to clause (a)(ii)(y) of the definition thereof, the Master Issuer may not elect to release any funds from the Senior Notes Interest Payment Amount of the Senior Notes Principal Payment Account until such time (if any) as the Master Issuer elects to calculate the Senior ABS Leverage Ratio without reference to the Senior Principal and Interest Account Excess Amount. Any amounts so released from the Collection Account Administrative Accounts shall be applied at the direction of the Master Issuer, which may include (i) the making of a distribution, subject to Section 8.18, (ii) their deposit in the Residual Amounts Account or (iii) for working capital purposes.

Section 5.7 Hedge Payment Account.

(a) Establishment of the Hedge Payment Account. On or before the Series Closing Date of the first Series of Notes issued pursuant to this Base Indenture providing for a Series Hedge Agreement, the Master Issuer, or the Manager on behalf of the Master Issuer, shall establish and maintain with the Trustee the Hedge Payment Account in the name of the Trustee for the benefit of the Secured Parties, bearing a designation clearly indicating that the funds deposited therein are held for the benefit of the Secured Parties.

(b) Administration of the Hedge Payment Account. All amounts held in the Hedge Payment Account shall be invested in Eligible Investments at the written direction (which may be standing directions) of the Master Issuer and such amounts may be transferred by the Master Issuer into an investment account for the sole purpose of investing in Eligible Investments so long as such investment account is (A) an Eligible Account, (B) pledged by the Master Issuer to the Trustee for the benefit of the Secured Parties pursuant to Section 3.1 and (C) if not established with the Trustee or otherwise controlled by the Trustee under the New York UCC, subject to an Account Control Agreement; provided, however, that any such investment in the Hedge Payment Account shall mature not later than the Business Day prior to the next succeeding Weekly Allocation Date. In the absence of written investment instructions hereunder, funds on deposit in the Hedge Payment Account shall be invested as fully as practicable in one or more Eligible Investments of the type described in clause (b) of the definition thereof. All income or other gain from such Eligible Investments shall be credited to the Hedge Payment Account, and any loss resulting from such investments shall be charged to the Hedge Payment Account. The Master Issuer shall not shall direct (or permit) the disposal of any Eligible Investments prior to the maturity thereof if such disposal would result in a loss of any portion of the initial purchase price of such Eligible Investment.

(c) Earnings from the Hedge Payment Account. All interest and earnings (net of losses and investment expenses) paid on funds on deposit in the Hedge Payment Account shall be deemed to be Investment Income on deposit for distribution to the Collection Account in accordance with Section 5.10.
Section 5.8  Trustee as Securities Intermediary.

(a) The Trustee or other Person holding any Base Indenture Account held in the name of the Trustee for the benefit of the Secured Parties (collectively the “Trustee Accounts”) shall be the “Securities Intermediary.” If the Securities Intermediary in respect of any Trustee Account is not the Trustee, the Master Issuer shall obtain the express agreement of such other Person to the obligations of the Securities Intermediary set forth in this Section 5.8.

(b) The Securities Intermediary agrees that:

(i) the Trustee Accounts are accounts to which “financial assets” within the meaning of Section 8-102(a)(9) (“Financial Assets”) of the UCC in effect in the State of New York (the “New York UCC”) will or may be credited;

(ii) the Trustee Accounts are “securities accounts” within the meaning of Section 8-501 of the New York UCC and the Securities Intermediary qualifies as a “securities intermediary” under Section 8-102(a) of the New York UCC;

(iii) all securities or other property (other than cash) underlying any Financial Assets credited to any Trustee Account shall be registered in the name of the Securities Intermediary, indorsed to the Securities Intermediary or in blank or credited to another securities account maintained in the name of the Securities Intermediary and in no case will any Financial Asset credited to any Trustee Account be registered in the name of the Master Issuer, payable to the Master Issuer or specially indorsed to the Master Issuer;

(iv) all property delivered to the Securities Intermediary pursuant to this Base Indenture will be promptly credited to the appropriate Trustee Account;

(v) each item of property (whether investment property, security, instrument or cash) credited to a Trustee Account shall be treated as a Financial Asset under Article 8 of the New York UCC;

(vi) if at any time the Securities Intermediary shall receive any entitlement order from the Trustee (including those directing transfer or redemption of any Financial Asset) relating to the Trustee Accounts, the Securities Intermediary shall comply with such entitlement order without further consent by the Master Issuer or any other Person;

(vii) the Trustee Accounts shall be governed by the laws of the State of New York, regardless of any provision of any other agreement. For purposes of all applicable UCCs, New York shall be deemed to be the Securities Intermediary’s jurisdiction and the Trustee Accounts (as well as the “securities entitlements” (as defined in Section 8-102(a)(17) of the New York UCC) related thereto) shall be governed by the laws of the State of New York;

(viii) the Securities Intermediary has not entered into, and until termination of this Base Indenture, will not enter into, any agreement with any other Person relating to the Trustee Accounts and/or any Financial Assets credited thereto pursuant to which it has agreed to
comply with entitlement orders (as defined in Section 8-102(a)(8) of the New York UCC) of such other Person and the Securities Intermediary has not entered into, and until the termination of this Base Indenture will not enter into, any agreement with the Master Issuer purporting to limit or condition the obligation of the Securities Intermediary to comply with entitlement orders as set forth in Section 5.8(b)(vi); and

(ix) except for the claims and interest of the Trustee, the Secured Parties, the Master Issuer and the other Securitization Entities in the Trustee Accounts, neither the Securities Intermediary nor, in the case of the Trustee, any Trust Officer knows of any claim to, or interest in, the Trustee Accounts or in any Financial Asset credited thereto. If the Securities Intermediary or, in the case of the Trustee, a Trust Officer has Actual Knowledge of the assertion by any other person of any Lien, encumbrance, or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any Trustee Account or in any Financial Asset carried therein, the Securities Intermediary will promptly notify the Trustee, the Servicer, the Manager, the Back-Up Manager and the Master Issuer thereof.

(c) At any time after the occurrence and during the continuation of an Event of Default, the Trustee shall possess all right, title and interest in all funds on deposit from time to time in the Trustee Accounts and in all Proceeds thereof, and (acting at the direction of the Controlling Class Representative) shall be the only Person authorized to originate entitlement orders in respect of the Trustee Accounts; provided, however, that at all other times the Master Issuer shall, subject to the terms of the Indenture and the other Related Documents, be authorized to instruct the Trustee to originate entitlement orders in respect of the Trustee Accounts.

Section 5.9 Establishment of Series Accounts; Legacy Accounts.

(a) Establishment of Series Accounts. To the extent specified in the Series Supplement with respect to any Series of Notes, the Trustee may establish and maintain one or more Series Accounts and/or administrative accounts of any such Series Account in accordance with the terms of such Series Supplement.

(b) Legacy Accounts. In the case of any mandatory or optional redemption in full of any Class or Series of Notes issued pursuant to this Base Indenture, on the Notes Discharge Date with respect to such Class or Series of Notes, the Master Issuer may (but is not required to) elect to have all or any portion of the funds held in any Legacy Account with respect to such Class or Series of Notes transferred to the applicable distribution account for such Class or Series of Notes, for application toward the prepayment of such Class or Series of Notes. If the Master Issuer does not elect to have such funds so transferred, or if the Master Issuer elects to have only a portion of such funds so transferred, any funds remaining in the applicable Legacy Account after the applicable Notes Discharge Date shall be deposited into the Collection Account for application in accordance with the Priority of Payments. When the balance of any Legacy Account has been reduced to zero, the Trustee may close such account. The Trustee shall make the distributions and transfers and shall close any accounts as contemplated by this Section 5.9 pursuant to instructions delivered by the Master Issuer to the Trustee.
Section 5.10 Collections and Investment Income.

(a) Deposits to the Contributed Restaurant Accounts. After the Cut-Off Date, the Manager (on behalf of Wendy’s Properties) will deposit (or cause to be deposited) the following amounts into the Contributed Restaurant Accounts:

(i) all Contributed Restaurant Collections generated by Contributed Restaurants and New Contributed Restaurants within two (2) Business Days following Wendy’s Properties’ receipt thereof;

(ii) all proceeds from credit card and debit card processors or armored carrier providers for Contributed Restaurant Collections at Contributed Restaurants and New Contributed Restaurants; provided that if such proceeds are not deposited directly into a Contributed Restaurant Account (including any applicable credit card and debit card sub-account of such Contributed Restaurant Account), such proceeds shall be deposited within two (2) Business Days following Wendy’s Properties’ receipt of such credit card and debit card proceeds; and

(iii) within fourteen (14) days of the redemption at any Contributed Restaurant or New Contributed Restaurant of any gift card or portion thereof under the Wendy’s Brand gift card program, the amount of such gift card redemption.

(b) Withdrawals from the Contributed Restaurant Accounts. The Manager may withdraw available amounts on deposit in the Contributed Restaurant Accounts at any time in accordance with the Managing Standard and as otherwise set forth in the Related Documents in order to pay any Restaurant Operating Expenses or to reimburse any working capital advances previously made from the Residual Amounts Account; provided that, after the occurrence and during the continuance of any Warm Back-Up Management Trigger Event, Cash Trapping Period or Rapid Amortization Period, (A) all Restaurant Operating Expenses withdrawn from the Contributed Restaurant Accounts shall be withdrawn substantially in accordance with a Monthly Fiscal Period budget submitted to, and approved by, the Control Party (in consultation with the Back-Up Manager) prior to such withdrawal and (B) withdrawals of any Restaurant Operating Expenses from the Contributed Restaurant Accounts in excess in any material respect of amounts set forth in the Monthly Fiscal Period budget will be subject to (i) the delivery by the Manager to the Control Party and Back-Up Manager of an explanation in reasonable detail for the variance together with related information and (ii) the prior approval of the Control Party (in consultation with the Back-Up Manager). All Restaurant Operating Expenses shall be paid only from the Contributed Restaurant Accounts.

(c) Deposits to the Concentration Accounts. Until the Indenture is terminated pursuant to Section 12.1, the Master Issuer, the Franchise Holder or Wendy’s Properties, as the case may be, shall deposit (or cause to be deposited) the following amounts to the applicable Concentration Account to the extent owed to it or (in the case of the Master Issuer) its Subsidiaries and promptly after receipt (unless otherwise specified below and, except in the case of Contributed Restaurant Accounts, amounts held as Contributed Restaurant Working Capital Reserve Amounts):
(i) all Franchisee Payments, Franchisee Lease Payments and Franchisee Note Payments shall be deposited directly to a Concentration Account (or, in the case of any misdirected payments, deposited to the applicable Concentration Account as soon as practicable, and in any event within three (3) Business Days of receipt (unless such deposit requires an international funds transfer, in which case such funds must be deposited to the applicable Concentration Account within five (5) Business Days of receipt by the Franchise Holder or the Manager, on behalf of the Franchise Holder));

(ii) on the first (1st) day of each Weekly Collection Period, an amount equal to all Contributed Restaurant Lease Payments and Retained Restaurant Lease Payments received during the previous Weekly Collection Period;

(iii) (A) for each Monthly Fiscal Period of the Securitization Entities ending prior to January 4, 2021, on or before the tenth (10th) Business Day following the last day of such Monthly Fiscal Period, an amount, if positive, equal to the Monthly Fiscal Period Estimated Contributed Restaurant Profits Amount plus the Monthly Fiscal Period Contributed Restaurant Profits True-up Amount, from amounts on deposit in the Contributed Restaurant Accounts and (B) for each Monthly Fiscal Period ending on or after January 4, 2021, on one or more occasions selected by the Manager (but no more frequently than weekly and in any event no later than the tenth (10th) Business Day following the last day of such Monthly Fiscal Period), the Contributed Restaurant Cash Profits Amount for such Monthly Fiscal Period (or, in the event that the Manager elects to make more than one deposit of Contributed Restaurant Cash Profits Amounts to the Concentration Accounts with respect to such Monthly Fiscal Period, the Contributed Restaurants Cash Profits Amount for the portion of such Monthly Fiscal Period selected by the Manager);

(iv) as soon as practicable, and in any event within five (5) Business Days of receipt, amounts repaid to the related Securitization Entity from any tax escrow account held by a landlord under a lease with such Securitization Entity;

(v) as soon as practicable, and in any event within three (3) Business Days of receipt, equity contributions, if any, made (directly or indirectly) by any Non-Securitization Entity to the Holding Company Guarantor and by the Holding Company Guarantor to the Master Issuer to the extent such equity contributions are directed to be made to a Concentration Account;

(vi) as soon as practicable, and in any event within three (3) Business Days of receipt (unless such deposit requires an international funds transfer, in which case such funds must be deposited to the applicable Concentration Account within five (5) Business Days of receipt), all amounts, including Company Restaurant License Fees and Canadian License Fees, received under the IP License Agreements and all other license fees and all other amounts received in respect of the Securitization IP, including recoveries from the enforcement of the Securitization IP; and

(vii) as soon as practicable, and in any event within five (5) Business Days of receipt, all other amounts constituting Collections not referred to in the preceding clauses other
than Indemnification Amounts, Insurance/Condemnation Proceeds, Asset Disposition Proceeds and other amounts required to be deposited directly to other Management Accounts or to the Collection Account.

(d) **Withdrawals from the Concentration Accounts.** The Manager may, and with respect to clause (iv) shall, withdraw available amounts on deposit in any Concentration Account to make the following payments and deposits:

(i) on a daily basis, as necessary, to the extent of amounts deposited to any Concentration Account that the Manager determines were required to be deposited to another account or were deposited to such Concentration Account in error;

(ii) on a daily basis, as necessary, to distribute any Excluded Amounts or to reimburse any working capital advances previously made from the Residual Amounts Account;

(iii) on a daily basis, as necessary, to make payments of any refunds, credits or other amounts owing to Franchisees; and

(iv) on a weekly basis at or prior to 10:00 a.m. (Eastern time) on each Weekly Allocation Date, all Retained Collections in excess of the Working Capital Reserve Amount with respect to the preceding Weekly Collection Period then on deposit in the Concentration Accounts to the Collection Account for application to make payments and deposits in the order of priority set forth in the Priority of Payments.

(e) **Deposits and Withdrawals from the Asset Disposition Proceeds Account.** All Asset Disposition Proceeds received by any Securitization Entity shall be deposited promptly following receipt thereof to the Asset Disposition Proceeds Account. At the election of any Securitization Entity, within one (1) year following the receipt of such Asset Disposition Proceeds by the Securitization Entities (each such period, an “Asset Disposition Reinvestment Period”), the Securitization Entities may either apply such Asset Disposition Proceeds retroactively against any purchase of Eligible Assets that occurred during the six (6) months immediately preceding the receipt of such Asset Disposition Proceeds by the Securitization Entities and/or direct the reinvestment of such Asset Disposition Proceeds in Eligible Assets; provided that after the occurrence and during the continuance of any Rapid Amortization Period, (A) all amounts withdrawn from the Asset Disposition Proceeds Account shall be withdrawn substantially in accordance with a Monthly Fiscal Period budget submitted to, and approved by, the Control Party (in consultation with the Back-Up Manager) prior to such withdrawal and (B) withdrawals of any amounts from the Asset Disposition Proceeds Account in excess in any material respect of amounts set forth in the Monthly Fiscal Period budget will be subject to (i) the delivery by the Manager to the Control Party and Back-Up Manager of an explanation in reasonable detail for the variance together with related information and (ii) the prior approval of the Control Party (in consultation with the Back-Up Manager). To the extent that, within the applicable Asset Disposition Reinvestment Period, any Asset Disposition Proceeds have not been either applied retroactively against a purchase of Eligible Assets that occurred during the six (6) months immediately preceding the receipt of such Asset Disposition Proceeds by the Securitization Entities or reinvested in Eligible Assets, the Master Issuer shall withdraw an
amount equal to all such uninvested Asset Disposition Proceeds no later than the Business Day immediately succeeding the expiration of the applicable Asset Disposition Reinvestment Period and deposit such amount to the Collection Account to be applied in accordance with priority (i) of the Priority of Payments on the Weekly Allocation Date immediately following the deposit of such Asset Disposition Proceeds to the Collection Account. In the event that such Securitization Entity has elected not to reinvest such Asset Disposition Proceeds, such Asset Disposition Proceeds shall be deposited to the Collection Account promptly following such decision and applied in accordance with priority (i) of the Priority of Payments on the following Weekly Allocation Date.

(f) **Deposits and Withdrawals from the Insurance Proceeds Account.** All Insurance/Condemnation Proceeds received by or on behalf of any Securitization Entity in respect of the Securitized Assets shall be deposited promptly following receipt thereof to the Insurance Proceeds Account. At the election of such Securitization Entity (as notified by the Manager to the Trustee, the Servicer and the Back-Up Manager promptly after receipt of the Insurance/Condemnation Proceeds) and so long as no Rapid Amortization Event shall have occurred and is continuing, within one (1) year following the receipt of such Insurance/Condemnation Proceeds by the Securitization Entities (each such period, a “Casualty Reinvestment Period”), the Securitization Entities may (x) apply such Insurance/Condemnation Proceeds retroactively against any repair of the assets with respect to which such Insurance/Condemnation Proceeds have been received and/or against the purchase of Eligible Assets, in each case that occurred during the six (6) months immediately preceding the receipt of such Insurance/Condemnation Proceeds by the Securitization Entities and/or (y) direct the application of such Insurance/Condemnation Proceeds to the repair of the assets with respect to which such Insurance/Condemnation Proceeds have been received and/or to the purchase of Eligible Asset; provided that in the event the Manager has repaired the assets with respect to which such Insurance/Condemnation Proceeds have been received, or purchased additional Eligible Assets on behalf of the Securitization Entities, prior to the receipt of such Insurance/Condemnation Proceeds, such Insurance/Condemnation Proceeds shall be used to reimburse the Manager for any expenditures in connection with such repair or purchase. To the extent that, within the applicable Casualty Reinvestment Period, any Insurance/Condemnation Proceeds have not been either applied retroactively against a repair or purchase of Eligible Assets that occurred during the six (6) months immediately preceding the receipt of such Insurance/Condemnation Proceeds by the Securitization Entities or applied to such a repair and/or to the purchase of Eligible Assets, the Master Issuer shall withdraw an amount equal to all such uninvested Insurance/Condemnation Proceeds no later than the Business Day immediately succeeding the expiration of the applicable Casualty Reinvestment Period and deposit such amounts to the Collection Account to be applied in accordance with priority (i) of the Priority of Payments on the following Weekly Allocation Date. In the event that such Securitization Entity has elected to not reinvest such Insurance/Condemnation Proceeds, such Insurance/Condemnation Proceeds shall instead be deposited to the Collection Account promptly following such decision to pay principal of each Series of Notes Outstanding in accordance with priority (i) of the Priority of Payments on the following Weekly Allocation Date.
(g) Deposits to the Collection Account. In addition to the weekly deposit of funds from the Concentration Accounts in accordance with Section 5.10(d)(iv), the Manager will also deposit or cause to be deposited to the Collection Account the following amounts, in each case promptly after receipt (unless otherwise specified below):

(i) Indemnification Amounts within two (2) Business Days following either (A) the receipt by the Manager of such amounts if Wendy’s is not the Manager or (B) if Wendy’s is the Manager, the date such amounts become payable by the related Indemnitor under the Management Agreement or any other Related Document, in each case if such Indemnification Amounts are required to be so paid;

(ii) Insurance/Condemnation Proceeds remaining in the Insurance Proceeds Account on the immediately succeeding Business Day following the expiration of the Casualty Reinvestment Period and Insurance/Condemnation Proceeds where the applicable Securitization Entity elects not to reinvest such amounts promptly upon the later of such election and receipt of such Insurance/Condemnation Proceeds;

(iii) Asset Disposition Proceeds remaining in the Asset Disposition Proceeds Account on the immediately succeeding Business Day following the expiration of the Asset Disposition Reinvestment Period and Asset Disposition Proceeds where the applicable Securitization Entity elects not to reinvest such amounts promptly upon the later of such election and receipt of such Asset Disposition Proceeds;

(iv) the Series Hedge Receipts, if any, received by the Securitization Entities in respect of any Series Hedge Agreements entered into by the Securitization Entities in connection with the issuance of Additional Notes following the Closing Date upon receipt thereof;

(v) the amounts on deposit on the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable, upon the occurrence of an Interest Reserve Release Event shall be deposited, to the extent that no Senior Notes Interest Reserve Account Deficiency Amount or Senior Subordinated Notes Interest Reserve Account Deficiency Amount, as applicable, is outstanding immediately following such deposit, directly to the Collection Account; and

(vi) any other amounts required to be deposited to the Collection Account hereunder or under any other Related Documents.

The Trustee will deposit or cause to be deposited into the Collection Account amounts obtained by the Trustee on account of or as a result of the exercise by the Trustee of any of its rights under the Indenture, including without limitation under Article IX hereof.

(h) Investment Income. At or prior to 10:00 a.m. (Eastern time) on each Weekly Allocation Date on which Investment Income in deposit in the Indenture Trust Accounts (other than the Collection Account) exceeds $1,000,000, the Master Issuer shall instruct (and for any amounts not exceeding $1,000,000, the Master Issuer may instruct) the Trustee in writing to transfer all Investment Income on deposit in the Indenture Trust Accounts (other than the
Collection Account) to the Collection Account for application as Collections on that Weekly Allocation Date.

   (i) Payment Instructions. In accordance with and subject to the terms of the Management Agreement, the Master Issuer shall cause the Manager to cause (i) each Franchisee obligated at any time to make any Franchisee Payments, Franchisee Lease Payments or Franchisee Note Payments to make such payment to a Concentration Account and (ii) any other Person (not an Affiliate of the Master Issuer) obligated at any time to make any payments with respect to the Securitized Assets, including, without limitation, the Securitization IP, to make such payment to a Concentration Account or the Collection Account, as determined by the Master Issuer or the Manager. Notwithstanding the foregoing, so long as no Hot Back-Up Management Trigger Event (as defined in the Back-Up Management Agreement), Event of Default or Manager Termination Event has occurred and is continuing, in the event that any Franchisee Payments, Franchisee Lease Payments, Franchisee Note Payments, Company Restaurant License Fees or any other payments with respect to the Securitized Assets are payable in a currency other than U.S. Dollars, the Manager may instruct the Franchisee or other Person obligated to make such payment to make such payment to a Segregated Account of the Manager or its agent that is capable of holding funds denominated in such currency; provided that, within five (5) Business Days of receipt thereof, the Manager shall (except with respect to Excluded Amounts) either (A) convert all non-U.S. Dollar payments received with respect to the Securitized Assets into U.S. Dollars at the applicable FX Conversion Rate and then deposit the resulting funds in the applicable Concentration Account or (B) deposit into the applicable Concentration Account an amount of U.S. Dollars equivalent to all such non-U.S. Dollar payments received with respect to the Securitized Assets (with such U.S. Dollar equivalent being calculated by the Manager at the applicable FX Conversion Rate) (a “Deemed Conversion”), following which Deemed Conversion the Manager may reimburse itself for such deposit by taking possession of the non-U.S. Dollar funds that were subject to such Deemed Conversion; provided, further that, at no time may the U.S. Dollar equivalent (calculated using the applicable FX Conversion Rate) of the aggregate amounts on deposit in all Segregated Accounts exceed five percent (5%) of Retained Collections.

   (j) Misdirected Collections. The Master Issuer agrees that if any Collections shall be received by the Master Issuer or any other Securitization Entity in an account other than an Account or in any other manner, such monies, instruments, cash and other proceeds will not be commingled by the Master Issuer or such other Securitization Entity with any of their other funds or property, if any, but will be held separate and apart therefrom and shall be held in trust by the Master Issuer or such other Securitization Entity for, and, within one (1) Business Day of the identification of such payment, paid over to, the Trustee, with any necessary endorsement. The Trustee shall withdraw from the Collection Account any monies on deposit therein that the Manager certifies to it and the Servicer are not Retained Collections and pay such amounts to or at the direction of the Manager. All monies, instruments, cash and other proceeds of the Securitized Assets received by the Trustee pursuant to the Indenture shall be immediately deposited in the Collection Account and shall be applied as provided in this Article V.
Section 5.11 Application of Weekly Collections on Weekly Allocation Dates. On each Weekly Allocation Date (unless the Manager shall have failed to deliver by 4:30 p.m. (Eastern time) on the day prior to such Weekly Allocation Date the Weekly Manager’s Certificate relating to such Weekly Allocation Date, in which case the application of Retained Collections relating to such Weekly Allocation Date shall occur on the Business Day immediately following the day on which such Weekly Manager’s Certificate is delivered), the Trustee shall, based solely on the information contained in the Weekly Manager’s Certificate, withdraw the amount on deposit in the Collection Account as of 10:00 a.m. (Eastern time) in respect of such preceding Weekly Collection Period for allocation or payment in the following order of priority:

(i) first, solely with respect to any funds on deposit in the Collection Account on such Weekly Allocation Date consisting of Indemnification Amounts, Asset Disposition Proceeds or Insurance/Condemnation Proceeds, in the following order of priority:

(A) to reimburse the Trustee, and then, the Servicer, for any unreimbursed Advances (and accrued interest thereon at the Advance Interest Rate); then

(B) to reimburse the Manager for any unreimbursed Manager Advances (and accrued interest thereon at the Advance Interest Rate); then

(C) if a Class A-1 Notes Amortization Event is continuing with respect to any Series of Class A-1 Notes Outstanding, to make an allocation to the Senior Notes Principal Payment Account, to prepay, until paid in full, and permanently reduce the commitments under all Class A-1 Notes of such Series of Class A-1 Notes on a pro rata basis based on commitment amounts and to cash collateralize any outstanding letters of credit; provided, that if a Class A-1 Notes Amortization Event is continuing with respect to more than one Series of Class A-1 Notes, the amounts available for allocation pursuant to this clause (C) shall be allocated (x) among all such Series of Class A-1 Notes on a pro rata basis based on the Outstanding Principal Amount of each such Series of Class A-1 Notes and (y) within each such Series of Class A-1 Notes on a pro rata basis based on commitment amounts; then

(D) to make an allocation to the Senior Notes Principal Payment Account to prepay the Outstanding Principal Amount of all Senior Notes of all Series other than Class A-1 Notes until paid in full; then

(E) provided clause (C) does not apply, to make an allocation to the Senior Notes Principal Payment Account, to prepay, until paid in full, and permanently reduce the commitments under all Class A-1 Notes on a pro rata basis based on commitment amounts and to cash collateralize any outstanding letters of credit; provided, that if there is more than one Series of Class A-1 Notes Outstanding, the amounts available for allocation pursuant to this clause (E) shall be allocated (x) among all such Series of
Class A-1 Notes on a pro rata basis based on the Outstanding Principal Amount of each such Series of Class A-1 Notes and (y) within each such Series of Class A-1 Notes on a pro rata basis based on commitment amounts; then

(F) to make an allocation to the Senior Subordinated Notes Principal Payment Account, to prepay, until paid in full, the Outstanding Principal Amount of all Senior Subordinated Notes; and then

(G) to make an allocation to the Subordinated Notes Principal Payment Account, to prepay, until paid in full, the Outstanding Principal Amount of all Subordinated Notes;

(ii) second, (A) to reimburse the Trustee, and then, the Servicer, for any unreimbursed Advances (and accrued interest thereon at the Advance Interest Rate), then (B) to reimburse the Manager for any unreimbursed Manager Advances (and accrued interest thereon at the Advance Interest Rate), and then (C) to pay the Servicer all Servicing Fees, Liquidation Fees, if any, and Workout Fees, if any, for such Weekly Allocation Date;

(iii) third, to pay Successor Manager Transition Expenses, if any;

(iv) fourth, to pay the Weekly Management Fee to the Manager;

(v) fifth, pro rata,

(A) to deposit to the Securitization Operating Expense Account, an amount equal to any previously accrued and unpaid Securitization Operating Expenses together with any Securitization Operating Expenses that are expected to be payable prior to the immediately following Weekly Allocation Date, in an aggregate amount not to exceed the Capped Securitization Operating Expense Amount with respect to the annual period in which such Weekly Allocation Date occurs after giving effect to all deposits previously made to the Securitization Operating Expense Account in such period, to be distributed pro rata based on the amount of each type of Securitization Operating Expense payable on such Weekly Allocation Date pursuant to this priority (v);

(B) so long as an Event of Default has occurred and is continuing, to pay to the Trustee the Post-Default Capped Trustee Expenses Amount for such Weekly Allocation Date;

(C) after a Mortgage Preparation Event, to the payment of any Mortgage Preparation Fees incurred by the Master Issuer, the Manager or the Servicer, as applicable; and

48
(D) after a Mortgage Recordation Event, to the Trustee, all Mortgage Recordation Fees.

(vi) **sixth**, to deposit to the applicable Indenture Trust Account, ratably according to the amounts required to be deposited as set forth in subclauses (A) through (C) below, the following amounts until the amount required to be deposited pursuant to each of subclauses (A) through (C) below is deposited in full:

(A) to allocate to the Senior Notes Interest Payment Account for each Series of Senior Notes, *pro rata* by amount due within each Series, an amount equal to the **Senior Notes Accrued Quarterly Interest Amount**;

(B) to allocate to the Class A-1 Notes Commitment Fees Account, the **Class A-1 Notes Accrued Quarterly Commitment Fee Amount**; and

(C) to allocate to the Hedge Payment Account, the amount of the accrued and unpaid **Series Hedge Payment Amount**, if any, payable on or before the next Quarterly Payment Date to a Hedge Counterparty, if any; *provided* that the deposit to the Hedge Payment Account pursuant to this subclause (C) will exclude any termination payment payable to a Hedge Counterparty, if any;

(vii) **seventh**, to pay to each Class A-1 Administrative Agent pursuant to the related Variable Funding Note Purchase Agreement an amount equal to the **Capped Class A-1 Notes Administrative Expenses Amount** due under such Variable Funding Note Purchase Agreement for such Weekly Allocation Date, *pro rata* based on the amounts owed under each such Variable Funding Note Purchase Agreement on such Weekly Allocation Date;

(viii) **eighth**, to allocate to the Senior Subordinated Notes Interest Payment Account, an amount equal to the **Senior Subordinated Notes Accrued Quarterly Interest Amount**, if any, in respect of the Senior Subordinated Notes;

(ix) **ninth**, first, to deposit in the Senior Notes Interest Reserve Account, an amount equal to any **Senior Notes Interest Reserve Account Deficiency Amount**; and second, to deposit in the Senior Subordinated Notes Interest Reserve Account, an amount equal to any **Senior Subordinated Notes Interest Reserve Account Deficiency Amount**; *provided*, however, that no amounts, with respect to any Series of Notes, will be deposited into the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable, pursuant to this priority (ix) on any Weekly Allocation Date that occurs during the Quarterly Collection Period immediately preceding the Series Legal Final Maturity Date relating to such Series of Notes;

(x) **tenth**, to allocate to the Senior Notes Principal Payment Account an amount equal to the sum of (1) any **Senior Notes Accrued Quarterly Scheduled Principal Amount**, (2) any **Senior Notes Quarterly Scheduled Principal Deficiency Amount** and (3) amounts then known by the Manager that will become due under each Variable Funding Note
Pursuant Agreement prior to the immediately succeeding Quarterly Payment Date with respect to the cash collateralization of letters of credit issued under each Variable Funding Note Purchase Agreement;

(xi) eleventh, to pay any Supplemental Management Fee, together with any previously accrued and unpaid Supplemental Management Fee;

(xii) twelfth, so long as no Rapid Amortization Period is continuing, if a Class A-1 Notes Amortization Event has occurred and is continuing with respect to any Series of Class A-1 Notes Outstanding, to the Senior Notes Principal Payment Account to allocate to such Class A-1 Notes, on a pro rata basis based on commitment amounts, in an amount sufficient to reduce the Outstanding Principal Amount of such Class A-1 Notes to zero and to fully cash collateralize all outstanding letters of credit thereunder on the next Quarterly Payment Date after giving effect to all deposits in the Senior Notes Principal Payment Account allocable to such Class A-1 Notes; provided, that if a Class A-1 Notes Amortization Event is continuing with respect to more than one Series of Class A-1 Notes, the amounts available for allocation pursuant to this priority (xii) shall be allocated (A) among all such Series of Class A-1 Notes on a pro rata basis based on the Outstanding Principal Amount of each such Series of Class A-1 Notes and (y) within each such Series of Class A-1 Notes on a pro rata basis based on commitment amounts;

(xiii) thirteenth, so long as (x) no Rapid Amortization Period is continuing and (y) such Weekly Allocation Date occurs during a Cash Trapping Period, to deposit into the Cash Trap Reserve Account an amount equal to the Cash Trapping Amount, if any, on such Weekly Allocation Date;

(xiv) fourteenth, so long as a Rapid Amortization Period is continuing, to allocate first, to the Senior Notes Principal Payment Account to allocate to the Class A Notes (sequentially, in alphanumerical order of Class A Notes) in an amount sufficient to reduce the Outstanding Principal Amount of the Class A Notes to zero and to fully cash collateralize all outstanding letters of credit thereunder on the next Quarterly Payment Date after giving effect to all deposits in the Senior Notes Principal Payment Account, and second, to the Senior Subordinated Notes Principal Payment Account in an amount sufficient to reduce the Outstanding Principal Balance of the Senior Subordinated Notes to zero (sequentially, in alphanumerical order of the Senior Subordinated Notes) on the next Quarterly Payment Date after giving effect to all deposits in the Senior Subordinated Notes Principal Payment Account;

(xv) fifteenth, so long as no Rapid Amortization Period is continuing, to allocate to the Senior Subordinated Notes Principal Payment Account, an amount equal to the sum of (1) the Senior Subordinated Notes Accrued Quarterly Scheduled Principal Amount, if any, and (2) the Senior Subordinated Notes Quarterly Scheduled Principal Deficiency Amount, if any;

(xvi) sixteenth, to deposit to the Securitization Operating Expense Account an amount equal to any accrued and unpaid Securitization Operating Expenses (together with any Securitization Operating Expenses that are expected to be payable prior to the immediately
following Weekly Allocation Date) in excess of the Capped Securitization Operating Expense Amount after giving effect to priority (v) above;

(xvii) seventeenth, to each Class A-1 Administrative Agent pursuant to the related Variable Funding Note Purchase Agreement for payment of the Excess Class A-1 Notes Administrative Expenses Amounts due under each Variable Funding Note Purchase Agreement for such Weekly Allocation Date pro rata based on amounts due under each such Variable Funding Note Purchase Agreement on such Weekly Allocation Date;

(xviii) eighteenth, to each Class A-1 Administrative Agent pursuant to the related Variable Funding Note Purchase Agreement for payment of the Class A-1 Notes Other Amounts due under such Variable Funding Note Purchase Agreement for such Weekly Allocation Date pro rata based on amounts due under each such Variable Funding Note Purchase Agreement;

(xix) nineteenth, to allocate to the Subordinated Notes Interest Payment Account, an amount equal to the Subordinated Notes Accrued Quarterly Interest Amount, if any, in respect of the Subordinated Notes;

(xx) twentieth, so long as no Rapid Amortization Period is continuing, to allocate to the Subordinated Notes Principal Payment Account, (1) an amount equal to the Subordinated Notes Accrued Quarterly Scheduled Principal Amount, if any, and then (2) an amount equal to the Subordinated Notes Quarterly Scheduled Principal Deficiency Amount, if any;

(xx) twenty-first, so long as a Rapid Amortization Period is continuing, to allocate to the Subordinated Notes Principal Payment Account, with respect to the Subordinated Notes (to be allocated sequentially, in alphanumerical order of the Subordinated Notes) until the Outstanding Principal Amount of the Subordinated Notes will be reduced to zero on the next Quarterly Payment Date after giving effect to all deposits in the Subordinated Notes Principal Payment Account;

(xxii) twenty-second, to allocate to the Senior Notes Post-ARD Contingent Interest Account, any Senior Notes Accrued Quarterly Post-ARD Contingent Interest Amount for such Weekly Allocation Date;

(xxiii) twenty-third, to allocate to the Senior Subordinated Notes Post-ARD Contingent Interest Account, any Senior Subordinated Notes Accrued Quarterly Post-ARD Contingent Interest Amount, for such Weekly Allocation Date;

(xxiv) twenty-fourth, to allocate to the Subordinated Notes Post-ARD Contingent Interest Account, any Subordinated Notes Accrued Quarterly Post-ARD Contingent Interest Amount, for such Weekly Allocation Date;

(xxv) twenty-fifth, to deposit to the Hedge Payment Account, (A) any accrued and unpaid Series Hedge Payment Amount that constitutes a termination payment payable to a
Hedge Counterparty and (B) **any other amount payable to a Hedge Counterparty**, pursuant to the related Series Hedge Agreement, in each case **pro rata** to each Hedge Counterparty, if any, according to the amount due and payable to each of them;

(xxvi) **twenty-sixth**, to allocate to the Senior Notes Principal Payment Account an amount equal to any **unpaid premiums and make-whole prepayment premiums** with respect to **Senior Notes**;

(xxvii) **twenty-seventh**, to allocate to the Senior Subordinated Notes Principal Payment Account, an amount equal to any **unpaid premiums and make-whole prepayment premiums** with respect to **Senior Subordinated Notes**;

(xxviii) **twenty-eighth**, to allocate to the Subordinated Notes Principal Payment Account, an amount equal to any **unpaid premiums and make-whole prepayment premiums** with respect to **Subordinated Notes**; and

(xxix) **twenty-ninth**, to pay the Residual Amount at the direction of the Master Issuer.

Section 5.12 **Quarterly Payment Date Applications**.

(a) **Senior Notes Interest Payment Account**.

(i) On each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing on the following Quarterly Payment Date to withdraw the funds allocated to the Senior Notes Interest Payment Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period (or, to the extent necessary to cover any Class A-1 Interest Adjustment Amount, the then-current Quarterly Collection Period), and, if applicable, funds allocated to the Senior Notes Interest Payment Account pursuant to subclause (ii) below, to be paid for the benefit of the Holders of the Senior Notes, up to the accrued and unpaid Senior Notes Quarterly Interest Amount due on such Quarterly Payment Date, sequentially in order of alphanumerical designation and **pro rata** among each Class of Senior Notes of the same alphanumerical designation based upon the amount of the Senior Notes Quarterly Interest Amount payable with respect to each such Class, and deposit such funds into the applicable Series Distribution Accounts.

(ii) If the amount of funds allocated to the Senior Notes Interest Payment Account referred to in subclause (i) is insufficient to pay the accrued and unpaid Senior Notes Quarterly Interest Amount due on such Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Senior Notes Interest Payment Account shall be distributed in accordance with subclause (i) above. If such insufficiency is not eliminated following the reallocation of funds as set forth in Section 5.12(p), the Master Issuer shall instruct the Trustee in writing to withdraw an amount equal to any remaining insufficiency from **first**, the Senior Notes Interest Reserve Account to the extent of funds on deposit therein and **second**, from funds available to be drawn under any Interest Reserve Letter of Credit relating to the Senior Notes, and deposit such funds into the
Senior Notes Interest Payment Account for further deposit to the applicable Series Distribution Accounts pursuant to subclause (i); provided that in the event that amounts on deposit in the Senior Notes Interest Reserve Account or funds available to be drawn under any Interest Reserve Letter of Credit relating to the Senior Notes are required to be withdrawn in connection with a Class A-1 Quarterly Commitment Fee Amount insufficiency under Section 5.12(b)(ii), the amounts withdrawn under this Section 5.12(a)(ii) and under Section 5.12(b)(ii) shall be allocated ratably based on the respective insufficiencies towards which such amounts are required to be allocated.

(iii) If the result of (i) the accrued and unpaid Senior Notes Quarterly Interest Amount for the Interest Accrual Period with respect to each Class of Senior Notes ending most recently prior to the next succeeding Quarterly Payment Date over (ii) the amount that will be available to make payments of interest on the Senior Notes in accordance with subclauses (i) and (ii) above on such Quarterly Payment Date, is greater than zero (a “Senior Notes Quarterly Interest Shortfall Amount”), then in accordance with the terms and conditions of the Servicing Agreement, by 3:00 p.m. (Eastern time) on the Business Day preceding such Quarterly Payment Date, the Servicer shall make a Debt Service Advance in such amount unless the Servicer notifies the Master Issuer, the Manager, the Back-Up Manager and the Trustee by such time that it has, reasonably and in good faith, determined such Debt Service Advance (and interest thereon) is a Nonrecoverable Advance. If the Servicer fails to make such Debt Service Advance (unless the Servicer has, reasonably and in good faith, determined that such Debt Service Advance (and interest thereon) would be a Nonrecoverable Advance), pursuant to Section 10.1(k), the Trustee shall make the Debt Service Advance unless it determines that such Debt Service Advance (and interest thereon) is a Nonrecoverable Advance. In determining whether any Debt Service Advance (and interest thereon) is a Nonrecoverable Advance, the Trustee may conclusively rely on the determination of the Servicer. All Debt Service Advances shall be deposited into the Senior Notes Interest Payment Account. If, after giving effect to all Debt Service Advances made with respect to any Quarterly Payment Date, the Senior Notes Quarterly Interest Shortfall Amount with respect to such Quarterly Payment Date remains greater than zero, then the payment of the Senior Notes Quarterly Interest Amount as reduced by such Senior Notes Quarterly Interest Shortfall Amount to be distributed on such Quarterly Payment Date to the Senior Notes shall be paid to the Senior Notes, sequentially in order of alphanumerical designation and pro rata among each Class of Senior Notes of the same alphanumerical designation based upon the amount of the Senior Notes Quarterly Interest Amount payable with respect to each such Class; provided that such reduction shall not be deemed to be a waiver of any default caused by the existence of such Senior Notes Quarterly Interest Shortfall Amount. An additional amount of interest may accrue on the Senior Notes Quarterly Interest Shortfall Amount for each subsequent Interest Accrual Period until the Senior Notes Quarterly Interest Shortfall Amount is paid in full, as set forth in the applicable Series Supplement.

(b) Class A-1 Notes Commitment Fees Account.

(i) On each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing on the following Quarterly Payment Date to withdraw the funds allocated to the Class A-1 Notes Commitment Fees Account on each Weekly Allocation Date with respect to
the immediately preceding Quarterly Collection Period (or, to the extent necessary to cover any Class A-1 Commitment Fee Adjustment Amount, the then-current Quarterly Collection Period), and, if applicable, funds allocated to the Class A-1 Notes Commitment Fees Account pursuant to subclause (ii) below, to be paid for the benefit of the Holders of the applicable Class A-1 Notes, up to the Class A-1 Quarterly Commitment Fee Amount accrued and unpaid with respect to the applicable Class A-1 Notes, pro rata among each Series of Class A-1 Notes based upon the Class A-1 Quarterly Commitment Fee Amount payable with respect to each such Series, and deposit such funds into the applicable Series Distribution Account.

(ii) If the amount of funds allocated to the Class A-1 Notes Commitment Fees Account referred to in subclause (i) with respect to the immediately preceding Quarterly Collection Period is insufficient to pay the accrued and unpaid Class A-1 Quarterly Commitment Fee Amount due on such Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Class A-1 Notes Commitment Fees Account shall be distributed in accordance with subclause (i) above. If such insufficiency is not eliminated following the reallocation of funds as set forth in Section 5.12(p), the Master Issuer shall instruct the Trustee in writing to withdraw an amount equal to any remaining insufficiency from first, the Senior Notes Interest Reserve Account to the extent of funds on deposit therein and second, from funds available to be drawn under any Interest Reserve Letter of Credit relating to the Senior Notes, and deposit such funds into the Class A-1 Notes Commitment Fees Account for further deposit to the applicable Series Distribution Accounts pursuant to subclause (i): provided that in the event that amounts on deposit in the Senior Notes Interest Reserve Account or funds available to be drawn under any Interest Reserve Letter of Credit relating to the Senior Notes are required to be withdrawn in connection with a Senior Notes Quarterly Interest Amount insufficiency under Section 5.12(a)(ii), the amounts withdrawn under this Section 5.12(b)(ii) and under Section 5.12(a)(ii) shall be allocated ratably based on the respective insufficiencies towards which such amounts are required to be allocated.

(iii) If the result of (i) the accrued and unpaid Class A-1 Quarterly Commitment Fee Amounts for the Interest Accrual Period ending most recently prior to the next succeeding Quarterly Payment Date over (ii) the amount that shall be available to make payments on the Class A-1 Quarterly Commitment Fee Amount in accordance with subclauses (i) and (ii) on such Quarterly Payment Date, is greater than zero (a “Class A-1 Quarterly Commitment Fees Shortfall Amount”), then such amount available to be distributed on such Quarterly Payment Date to the Class A-1 Notes shall be paid to the Class A-1 Notes, pro rata among each Series of Class A-1 Notes based upon the amount of Class A-1 Quarterly Commitment Fee Amounts payable with respect to each such Class; provided that such reduction shall not be deemed to be a waiver of any default caused by the existence of such Class A-1 Quarterly Commitment Fees Shortfall Amount. An additional amount of interest may accrue on each such Class A-1 Quarterly Commitment Fees Shortfall Amount for each subsequent Interest Accrual Period until each such Class A-1 Quarterly Commitment Fees Shortfall Amount is paid in full, as set forth in the applicable Series Supplement.

(c) Senior Subordinated Notes Interest Payment Account.
(i) To the extent any Series of Senior Subordinated Notes has been issued, on each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing on the following Quarterly Payment Date to withdraw the funds allocated to the Senior Subordinated Notes Interest Payment Account, on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period, and, if applicable, funds allocated to the Senior Subordinated Notes Interest Payment Account pursuant to subclause (ii) below, to be paid for the benefit of the Holders of the Senior Subordinated Notes, up to the accrued and unpaid Senior Subordinated Notes Quarterly Interest Amount due on such Quarterly Payment Date, sequentially in order of alphanumerical designation and pro rata among each Class of Senior Subordinated Notes of the same alphanumerical designation based upon the amount of the Senior Subordinated Notes Quarterly Interest Amount payable with respect to each such Class, and deposit such funds into the applicable Series Distribution Accounts.

(ii) If the amount of funds allocated to the Senior Subordinated Notes Interest Payment Account referred to in subclause (i) is insufficient to pay the accrued and unpaid Senior Subordinated Notes Quarterly Interest Amount due on such Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Senior Subordinated Notes Interest Payment Account shall be distributed in accordance with subclause (i) above. If such insufficiency is not eliminated following the reallocation of funds as set forth in Section 5.12(p), the Master Issuer shall instruct the Trustee in writing to withdraw an amount equal to any remaining insufficiency from first, the Senior Subordinated Notes Interest Reserve Account to the extent of funds on deposit therein and second, from funds available to be drawn under any Interest Reserve Letter of Credit relating to the Senior Subordinated Notes, and deposit such funds into the Senior Subordinated Notes Interest Payment Account for further deposit to the applicable Series Distribution Accounts pursuant to subclause (i).

(iii) If the result of (i) the accrued and unpaid Senior Subordinated Notes Quarterly Interest Amount due on such Quarterly Payment Date over (ii) the amount that shall be available to make payments of interest on the Senior Subordinated Notes on such Quarterly Payment Date in accordance with subclauses (i) and (ii) above, is greater than zero (a “Senior Subordinated Notes Quarterly Interest Shortfall”), then such amount available to be distributed on such Quarterly Payment Date to the Senior Subordinated Notes shall be paid to the Senior Subordinated Notes, sequentially in order of alphanumerical designation and pro rata among each Class of Senior Subordinated Notes of the same alphanumerical designation based upon the amount of the Senior Subordinated Notes Quarterly Interest Amount payable with respect to each such Class; provided that such reduction shall not be deemed to be a waiver of any default caused by the existence of such Senior Subordinated Notes Quarterly Interest Shortfall. An additional amount of interest may accrue on the Senior Subordinated Notes Quarterly Interest Shortfall for each subsequent Interest Accrual Period until the Senior Subordinated Notes Quarterly Interest Shortfall is paid in full, as set forth in the applicable Series Supplement.
(d) Senior Notes Principal Payment Account.

(i) On each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing on the following Quarterly Calculation Date to withdraw the funds allocated to the Senior Notes Principal Payment Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period, to be paid for the benefit of (A) in the case of funds allocated pursuant to priority (i) of the Priority of Payments, the Holders of each applicable Class of Senior Notes up to the aggregate amount of Indemnification Amounts, Asset Disposition Proceeds and Insurance/Condemnation Proceeds in the order of priority set forth in priority (i) of the Priority of Payments and (B) in the case of funds allocated pursuant to priorities (x), (xii), (xiv) and (xxvi) of the Priority of Payments and subclause (ii) below, if applicable, excluding any applicable Principal Release Amounts, the Holders of each applicable Class of Senior Notes in the order of priority set forth in the Priority of Payments with respect to such priorities (x), (xii), (xiv) and (xxvi), in each case sequentially in order of alphanumerical designation and pro rata among each such applicable Class of Senior Notes of the same alphanumerical designation based upon the Outstanding Principal Amount of the Senior Notes of such Class, and deposit such funds into the applicable Series Distribution Account.

(ii) If the aggregate amount of funds allocated to the Senior Notes Principal Payment Account pursuant to priorities (x), (xii), (xiv) and (xxvi) of the Priority of Payments on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period is insufficient to pay the sum (without duplication) of (A) the Senior Notes Quarterly Scheduled Principal Amounts or any Senior Notes Quarterly Scheduled Principal Deficiency Amounts due with respect to each applicable Class of Senior Notes on such Quarterly Payment Date, (B) so long as no Rapid Amortization Period is continuing, if a Class A-1 Notes Amortization Event has occurred and is continuing, the Outstanding Principal Amount of the Class A-1 Notes affected by such Class A-1 Notes Amortization Event and (C) if a Rapid Amortization Event has occurred and is continuing, the Outstanding Principal Amount of the Senior Notes, on the next Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Senior Notes Principal Payment Account shall be distributed in accordance with subclause (i) above.

(iii) If any payment of principal of any Class A-1 Notes of any Series pursuant to subclause (i) above is required pursuant to the applicable Series Supplement or Variable Funding Note Purchase Agreement to be deposited with the applicable L/C Provider to serve as collateral and act as security (the “Cash Collateral”) for any obligations of the Master Issuer relating to letters of credit issued thereunder (the “Collateralized Letters of Credit”), then upon the expiration of the Collateralized Letters of Credit the Cash Collateral shall be remitted in accordance with such Series Supplement or Variable Funding Note Purchase Agreement.

(e) Senior Subordinated Notes Principal Payment Account.

(i) To the extent any Series of Senior Subordinated Notes has been issued, on each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing to withdraw on the following Quarterly Payment Date the funds allocated to the Senior Subordinated Notes Principal Payment Account on each Weekly Allocation Date with respect to
the immediately preceding Quarterly Collection Period, to be paid for the benefit of (A) in the case of funds allocated pursuant to priority (i) of the Priority of Payments, the Holders of each applicable Class of Senior Subordinated Notes up to the aggregate amount of Indemnification Amounts, Asset Disposition Proceeds and Insurance/Condemnation Proceeds in the order of priority set forth in priority (i) of the Priority of Payments and (B) in the case of funds allocated pursuant to priorities (xiv), (xv) and (xxvii) of the Priority of Payments, and subclause (ii) below, if applicable, excluding any applicable Principal Release Amounts, the Holders of each applicable Class of Senior Subordinated Notes in the order of priority set forth in the Priority of Payments with respect to such priorities (xiv), (xv) and (xxvii), in each case sequentially in order of alphanumerical designation and pro rata among each such Class of Senior Subordinated Notes of the same alphanumerical designation based upon the Outstanding Principal Amount of the Senior Subordinated Notes of such Class, and deposit such funds into the applicable Series Distribution Account.

(ii) If the aggregate amount of funds allocated to the Senior Subordinated Notes Principal Payment Account pursuant to priorities (xiv), (xv) and (xxvii) of the Priority of Payments on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period is insufficient to pay the sum (without duplication) of (A) the Senior Subordinated Notes Quarterly Scheduled Principal Amount and any Senior Subordinated Notes Quarterly Scheduled Principal Deficiency Amounts due with respect to each applicable Class of Senior Subordinated Notes on such Quarterly Payment Date and (B) if a Rapid Amortization Period is continuing, the Outstanding Principal Amount of the Senior Subordinated Notes, on the next Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Senior Subordinated Notes Principal Payment Account shall be distributed in accordance with subclause (i) above.

(f) Subordinated Notes Interest Payment Account.

(i) To the extent any Series of Subordinated Notes has been issued, on each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing on the following Quarterly Payment Date to withdraw the funds allocated to the Subordinated Notes Interest Payment Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period, and, if applicable, funds allocated to the Subordinated Notes Interest Payment Account pursuant to subclause (ii) below, to be paid for the benefit of the Holders of the Subordinated Notes, up to the accrued and unpaid Subordinated Notes Quarterly Interest Amount, sequentially in order of alphanumerical designation and pro rata among each Class of Subordinated Notes of the same alphanumerical designation based upon the amount of the Subordinated Notes Quarterly Interest Amount payable with respect to each such Class, and deposit such funds into the applicable Series Distribution Accounts.

(ii) If the amount of funds allocated to the Subordinated Notes Interest Payment Account referred to in subclause (i) is insufficient to pay the accrued and unpaid Subordinated Notes Quarterly Interest Amount due on such Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds

57
reallocated as a result thereof into the Subordinated Notes Interest Payment Account shall be distributed in accordance with subclause (i) above.

(iii) If the result of (i) the accrued and unpaid Subordinated Notes Quarterly Interest Amounts due on such Quarterly Payment Date over (ii) the amount that shall be available to make payments of interest on the Subordinated Notes in accordance with subclauses (i) and (ii) on such Quarterly Payment Date, is greater than zero (a “Subordinated Notes Quarterly Interest Shortfall”), then such amount available to be distributed on such Quarterly Payment Date to the Subordinated Notes shall be paid to each Class of Subordinated Notes, sequentially in order of alphanumerical designation and pro rata among each Class of Subordinated Notes of the same alphanumerical designation based upon the amount of the Subordinated Notes Quarterly Interest Amount payable with respect to each such Class; provided that such reduction shall not be deemed to be a waiver of any default caused by the existence of such Subordinated Notes Quarterly Interest Shortfall. An additional amount of interest may accrue on the Subordinated Notes Quarterly Interest Shortfall for each subsequent Interest Accrual Period until the Subordinated Notes Quarterly Interest Shortfall is paid in full, as specified in the applicable Series Supplement.

(g) **Subordinated Notes Principal Payment Account.**

(i) To the extent any Series of Subordinated Notes has been issued, on each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing to withdraw on the following Quarterly Payment Date the funds allocated to the Subordinated Notes Principal Payment Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period, to be paid for the benefit of (A) in the case of funds allocated pursuant to priority (i) of the Priority of Payments, the Holders of each applicable Class of Subordinated Notes up to the aggregate amount of Indemnification Amounts, Asset Disposition Proceeds and Insurance/Condemnation Proceeds in the order of priority set forth in priority (i) of the Priority of Payments and (B) in the case of funds allocated pursuant to priorities (xx), (xxi) and (xxviii) of the Priority of Payments, and subclause (ii) below, if applicable, excluding any applicable Principal Release Amounts, the Holders of each applicable Class of Subordinated Notes in the order of priority set forth in the Priority of Payments with respect to such priorities (xx), (xxi) and (xxviii), in each case sequentially in order of alphanumerical designation and pro rata among each such Class of Subordinated Notes of the same alphanumerical designation based upon the Outstanding Principal Amount of the Subordinated Notes of such Class and deposit such funds into the applicable Series Distribution Account.

(ii) If the aggregate amount of funds allocated to the Subordinated Notes Principal Payment Account pursuant to priorities (xx), (xxi) and (xxviii) of the Priority of Payments on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period is insufficient to pay the sum (without duplication) of (A) the Subordinated Notes Quarterly Scheduled Principal Amounts and any Subordinated Notes Quarterly Scheduled Principal Deficiency Amounts due with respect to each applicable Class of Subordinated Notes on such Quarterly Payment Date and (B) if a Rapid Amortization Period is continuing, the Outstanding Principal Amount of the Subordinated Notes, on the next Quarterly Payment Date,
then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Subordinated Notes Principal Payment Account shall be distributed in accordance with subclause (i) above.

(h) Senior Notes Post-ARD Contingent Interest Account.

(i) On each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing to withdraw on the following Quarterly Payment Date the funds allocated to the Senior Notes Post-ARD Contingent Interest Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period, and, if applicable, funds allocated to the Senior Notes Post-ARD Contingent Interest Account pursuant to subclause (ii) below, to be paid for the benefit of the Holders of each applicable Class of Senior Notes, up to the accrued and unpaid Senior Notes Quarterly Post-ARD Contingent Interest Amount due on such Quarterly Payment Date, sequentially in order of alphanumerical designation and pro rata among each such Class of Senior Notes of the same alphanumerical designation based upon the Senior Notes Quarterly Post-ARD Contingent Interest Amount payable on each such Class, and deposit such funds into the applicable Series Distribution Accounts.

(ii) If the aggregate amount of funds allocated to the Senior Notes Post-ARD Contingent Interest Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period is insufficient to pay the Senior Notes Quarterly Post-ARD Contingent Interest Amount due on such Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Senior Notes Post-ARD Contingent Interest Account shall be distributed in accordance with subclause (i) above.

(i) Senior Subordinated Notes Post-ARD Contingent Interest Account.

(ii) To the extent any Series of Senior Subordinated Notes has been issued, on each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing to withdraw on the following Quarterly Payment Date the funds allocated to the Senior Subordinated Notes Post-ARD Contingent Interest Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period, and, if applicable, the funds allocated to the Senior Subordinated Notes Post-ARD Contingent Interest Account pursuant to subclause (ii) below, to be paid for the benefit of the Holders of each applicable Class of Senior Subordinated Notes, up to the accrued and unpaid Senior Subordinated Notes Quarterly Post-ARD Contingent Interest Amount due on such Quarterly Payment Date, sequentially in order of alphanumerical designation and pro rata among each such Class of Senior Subordinated Notes of the same alphanumerical designation based upon the Senior Subordinated Notes Quarterly Post-ARD Contingent Interest Amount payable on each such Class, and deposit such funds into the applicable Series Distribution Accounts.

(iii) If the aggregate amount of funds allocated to the Senior Subordinated Notes Post-ARD Contingent Interest Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period pursuant to subclause (i) above is insufficient to pay the Senior Subordinated Notes Quarterly Post-ARD Contingent Interest
Amount due on such Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Senior Subordinated Notes Post-ARD Contingent Interest Account shall be distributed in accordance with subclause (i) above.

(j) Subordinated Notes Post-ARD Contingent Interest Account.

(i) To the extent any Series of Senior Subordinated Notes has been issued, on each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing to withdraw on the following Quarterly Payment Date the funds allocated to the Subordinated Notes Post-ARD Contingent Interest Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period, and, if applicable, funds allocated to the Subordinated Notes Post-ARD Contingent Interest Account pursuant to subclause (ii) below, to be paid for the benefit of the Holders of each applicable Class of Subordinated Notes, up to the accrued and unpaid Subordinated Notes Quarterly Post-ARD Contingent Interest Amount due on such Quarterly Payment Date, sequentially in order of alphanumerical designation and pro rata among each such Class of Subordinated Notes of the same alphanumerical designation based upon the amount of Subordinated Notes Quarterly Post-ARD Contingent Interest Amount payable on each such Class, and deposit such funds into the applicable Series Distribution Accounts.

(ii) If the aggregate amount of funds allocated to the Subordinated Notes Post-ARD Contingent Interest Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period pursuant to subclause (i) above is insufficient to pay the Subordinated Notes Quarterly Post-ARD Contingent Interest Amount due on such Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Subordinated Notes Post-ARD Contingent Interest Account shall be distributed in accordance with subclause (i) above.

(k) Amounts on Deposit in the Senior Notes Interest Reserve Account, the Senior Subordinated Notes Interest Reserve Account and the Cash Trap Reserve Account.

(i) On each Quarterly Calculation Date (A) preceding any Quarterly Payment Date that is a Cash Trapping Release Date, the Master Issuer shall instruct the Trustee in writing to withdraw on such Quarterly Payment Date from funds then on deposit in the Cash Trap Reserve Account an amount equal to the applicable Cash Trapping Release Amount and (B) preceding the first Quarterly Payment Date occurring on or after the date on which all Senior Notes and all Senior Subordinated Notes have been paid in full, the Master Issuer shall instruct the Trustee in writing to withdraw on such Quarterly Payment Date all funds then on deposit in the Cash Trap Reserve Account (in each case, after giving effect to any allocations to be made as a result of a Quarterly Reallocation Event on such Quarterly Calculation Date) and deposit such funds into the Collection Account for distribution in accordance with the Priority of Payments.

(ii) On each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing to withdraw funds allocated to the Cash Trap Reserve Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period.
and (I) apply such funds on the following Quarterly Payment Date to the extent necessary to pay, in the following order of priority (A) unreimbursed Advances of the Trustee (with interest thereon at the Advance Interest Rate), (B) unreimbursed Advances of the Servicer (with interest thereon at the Advance Interest Rate) and (C) unreimbursed Manager Advances (with interest thereon at the Advance Interest Rate), (II) in the event of a Quarterly Reallocation Event, allocate such funds in excess of the funds required to be paid pursuant to subclause (ii)(I) in accordance with Section 5.12(p) and (III) if a Rapid Amortization Period is continuing or a Rapid Amortization Event will occur on the following Quarterly Payment Date, allocate any remaining funds to the Senior Notes Principal Payment Account until the Outstanding Principal Amount of the Senior Notes is paid in full, and allocate any remaining funds thereafter to the Collection Account for distribution in accordance with the Priority of Payments.

(iii) Amounts on deposit in the Cash Trap Reserve Account will be available to make optional prepayments of principal of the Senior Notes, at the sole discretion of the Master Issuer. Any such amounts used to make optional prepayments (1) will be allocated (after giving effect to all other payments to be made as of the related Quarterly Payment Date, including all other releases and payments from the Cash Trap Reserve Account) pursuant to priorities (ii) through (xxviii) of the Priority of Payments (except for priority (xiii) thereof), and then (2) will be allocated to the applicable Series Distribution Accounts to make optional prepayments of principal on the Senior Notes; provided that any such optional prepayment will be accompanied by the payment of any make-whole prepayment premiums related thereto, to the extent such prepayment premiums are otherwise payable in connection with the optional prepayment of such Notes in accordance with the applicable Series Supplement.

(iv) If the Master Issuer determines, with respect to any Series of Senior Notes, that the amount to be deposited in any Series Distribution Account in accordance with this Section 5.12 on any Series Legal Final Maturity Date related to such Series of Senior Notes is less than the Outstanding Principal Amount of such Series of Senior Notes, on the Quarterly Calculation Date immediately preceding such Series Legal Final Maturity Date, the Master Issuer shall instruct the Trustee thereof in writing, and the Trustee shall, in accordance with such instruction on such Series Legal Final Maturity Date, withdraw from the Senior Notes Interest Reserve Account an amount equal to such insufficiency (and, to the extent the amount in the Senior Notes Interest Reserve Account is insufficient, the Master Issuer shall instruct the Control Party to draw on the applicable Interest Reserve Letter of Credit) and deposit such amount into the applicable Series Distribution Accounts, to be paid to the Senior Notes sequentially in order of alphanumeric designation and pro rata among each Class of Senior Notes of the same alphanumeric designation based upon the Outstanding Principal Amount of the Senior Notes of each such Class.

(v) If the Master Issuer determines, with respect to any Series of Senior Subordinated Notes, that the amount to be deposited in any Series Distribution Account in accordance with this Section 5.12 on any Series Legal Final Maturity Date related to such Series of Senior Subordinated Notes is less than the Outstanding Principal Amount of such Series of Senior Subordinated Notes, on the Quarterly Calculation Date immediately preceding such Series Legal Final Maturity Date, the Master Issuer shall instruct the Trustee thereof in writing,
and the Trustee shall, in accordance with such instruction on such Series Legal Final Maturity Date, withdraw from the Senior Subordinated Notes Interest Reserve Account an amount equal to such insufficiency (and, to the extent the amount in the Senior Subordinated Notes Interest Reserve Account is insufficient, the Master Issuer shall instruct the Control Party to make a draw on the applicable Interest Reserve Letter of Credit) and deposit such amount into the applicable Series Distribution Accounts, to be paid to the Senior Subordinated Notes sequentially in order of alphanumerical designation and pro rata among each Class of Senior Subordinated Notes of the same alphanumerical designation based upon the Outstanding Principal Amount of the Senior Subordinated Notes of each such Class.

(vi) On any date on which no Senior Notes are Outstanding, the Master Issuer shall instruct the Trustee in writing to withdraw on such date any funds then on deposit in the Senior Notes Interest Reserve Account and to deposit all remaining funds into the Collection Account and/or to return any outstanding Interest Reserve Letter of Credit maintained with respect to the Senior Notes Interest Reserve Account to the issuer thereof for cancellation.

(vii) On any date on which no Senior Subordinated Notes are Outstanding, the Master Issuer shall instruct the Trustee in writing to withdraw on such date any funds then on deposit in the Senior Subordinated Notes Interest Reserve Account and to deposit all remaining funds into the Collection Account and/or to return any outstanding Interest Reserve Letter of Credit maintained with respect to the Senior Subordinated Notes Interest Reserve Account to the issuer thereof for cancellation.

(i) Principal Release Amount.

(ii) If a Rapid Amortization Period or Event of Default is continuing, each Principal Release Amount shall be applied in the order set forth in Section 5.12(d)(i), Section 5.12(e)(i) or Section 5.12(g)(i), as applicable, notwithstanding the exclusion of Principal Release Amounts therein.

(ii) So long as no Rapid Amortization Period, Event of Default or Class A-1 Notes Amortization Event is continuing, on each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing to withdraw on the following Quarterly Payment Date any Principal Release Amount from the Senior Notes Principal Payment Account, Senior Subordinated Notes Principal Payment Account or Subordinated Notes Principal Payment Account, as applicable, and apply such funds on such Quarterly Payment Date to the extent necessary to pay, in the following order of priority, (A) unreimbursed Advances of the Trustee (with interest thereon at the Advance Interest Rate), (B) unreimbursed Advances of the Servicer (with interest thereon at the Advance Interest Rate), (C) unreimbursed Manager Advances (with interest thereon at the Advance Interest Rate), (D) pro rata, Senior Notes Quarterly Interest Amounts, Class A-1 Quarterly Commitment Fee Amounts, and Series Hedge Payment Amounts, and (E) Senior Subordinated Notes Quarterly Interest Amounts, in each case, after giving effect to other amounts available for payment thereof as described in this Section 5.12. The Master Issuer shall instruct the Trustee in writing to distribute the remainder of such Principal Release Amount, if any, in the priority set forth in the Priority of Payments, beginning at priority (xi), but excluding (i) priority (xv) in the case of a Principal Release Amount with respect to any Series of
Senior Subordinated Notes or (ii) priority (xx) in the case of a Principal Release Amount with respect to any Series of Subordinated Notes.

(iii) If no Rapid Amortization Period or Event of Default is continuing, but a Class A-1 Notes Amortization Event is continuing with respect to any Series of Class A-1 Notes, on each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing to withdraw on the following Quarterly Payment Date any Principal Release Amount from the Senior Notes Principal Payment Account, Senior Subordinated Notes Principal Payment Account or Subordinated Notes Principal Payment Account, as applicable, to the extent necessary to pay the Outstanding Principal Amount of such Series of Class A-1 Notes, and deposit such funds into the applicable Series Distribution Account for distribution to the Holders of such Series of Class A-1 Notes, on a pro rata basis based on commitment amounts, after giving effect to other amounts available for payment thereof; provided, that if a Class A-1 Notes Amortization Event is continuing with respect to more than one Series of Class A-1 Notes, the amounts available for distribution pursuant to this clause (iii) shall be allocated (x) among all such Series of Class A-1 on a pro rata basis based on the Outstanding Principal Amount of each such Series of Class A-1 Notes and (y) within each such Series of Class A-1 Notes on a pro rata basis based on commitment amounts. The Master Issuer shall instruct the Trustee in writing to distribute the remainder of the Principal Release Amount, if any, in the priority set forth in the Priority of Payments, beginning at priority (xi), but excluding (i) priority (xx) in the case of a Principal Release Amount with respect to any Series of Senior Subordinated Notes or (ii) priority (xx) in the case of a Principal Release Amount with respect to any Series of Subordinated Notes.

(m) Securitization Operating Expense Account. On each Weekly Allocation Date, the Master Issuer shall instruct the Trustee in writing to withdraw on such date an amount equal to the lesser of (i) the sum of all Securitization Operating Expenses then due and payable and (ii) the amount on deposit in the Securitization Operating Expense Account after giving effect to any deposits thereto pursuant to the Priority of Payments on such date and apply such funds to pay any Securitization Operating Expenses then due and payable.

(n) Hedge Payment Account.

(i) On each Quarterly Calculation Date, the Master Issuer shall instruct the Trustee in writing on the following Quarterly Payment Date to withdraw the funds allocated to the Hedge Payment Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period and, if applicable, funds allocated to the Hedge Payment Account pursuant to subclause (ii) below, up to the accrued and unpaid amount of Series Hedge Payment Amount, and distribute such funds among each Hedge Counterparty, pro rata based upon the Series Hedge Payment Amount payable to each Hedge Counterparty.

(ii) if the amount of funds allocated to the Hedge Payment Account on each Weekly Allocation Date with respect to the immediately preceding Quarterly Collection Period is insufficient to pay the aggregate accrued and unpaid Series Hedge Payment Amount due and payable since the prior Quarterly Payment Date, then a Quarterly Reallocation Event pursuant to Section 5.12(p) shall be triggered and any funds reallocated as a result thereof into the Hedge Payment Account shall be distributed in accordance with subclause (i) above.
(o) **Optional Prepayments.** The Master Issuer shall have the right to optionally prepay the Outstanding Principal Amount of any Class or Tranche of Notes, in whole or in part in accordance with the related Series Supplement; provided that following a Series Anticipated Repayment Date for any Series of Notes that remains Outstanding, all optional prepayments must be applied first, to Senior Notes, second, to Senior Subordinated Notes and third, to Subordinated Notes. The Master Issuer shall instruct the Trustee in writing to withdraw on each applicable optional prepayment date, including such prepayment dates that do not occur on Quarterly Payment Dates, the prepayment amounts on deposit in the applicable Series Distribution Account in accordance with the applicable Series Supplement.

(p) **Quarterly Reallocation Events.** In the event that there exists any shortfall with respect to amounts payable under any subsection of this Section 5.12 that specifically refers to this clause (p) (a “Quarterly Reallocation Event”), then the Master Issuer shall instruct the Trustee to reallocate on the relevant Quarterly Calculation Date (subject to Section 5.12(k)(ii)) the aggregate funds on deposit in the Specified Indenture Trust Accounts that were allocated during the immediately preceding Quarterly Collection Period to the Specified Indenture Trust Accounts in sequential order in the aggregate amounts due under priorities (vi), (viii), (x), (xii), (xiv), (xv), (xx), (xxi), (xxii), (xxiii), (xxiv), (xxvi), (xxvii) and (xxviii) of the Priority of Payments for such Quarterly Collection Period.

Section 5.13 **Determination of Quarterly Interest.**

Quarterly payments of interest and fees on each Series of Notes shall be determined, allocated and distributed in accordance with the procedures set forth in the applicable Series Supplement.

Section 5.14 **Determination of Quarterly Principal.**

Quarterly payments of principal, if any, of each Series of Notes shall be determined, allocated and distributed in accordance with the procedures set forth in the applicable Series Supplement.

Section 5.15 **Prepayment of Principal.**

Mandatory prepayments of principal, if any, of each Series of Notes shall be determined, allocated and distributed in accordance with the procedures set forth in the applicable Series Supplement, if not otherwise described herein.

Section 5.16 **Retained Collections Contributions.**

At any time after the Closing Date, the Master Issuer may (but is not required to) designate Retained Collections Contributions to be included in Net Cash Flow, but not more than $15,000,000 in any Quarterly Collection Period or more than $30,000,000 during any period of four (4) consecutive Quarterly Collection Periods or more than $60,000,000 from the Closing Date to the Quarterly Payment Date occurring in June 2045; provided that any Retained Collections Contributions shall be excluded from the amount of Net Cash Flow for purposes of
calculations undertaken in the following circumstances: (a) to determine compliance with any Series Non-Amortization Test and (b) to determine the New Series Pro Forma DSCR. The amount of any Retained Collections Contribution included in Net Cash Flow for the purpose of calculating the DSCR shall be retained in the Collection Account until the Weekly Allocation Date on which either (i) the DSCR for the period of four (4) Quarterly Collection Periods ended immediately prior to such Weekly Allocation Date is at least 1.75x without giving effect to the inclusion of such Retained Collections Contribution or (ii) such Retained Collections Contribution is required to pay any shortfall in the amounts payable under priorities (ii) through (xxviii) of the Priority of Payments, to the extent of any shortfall on such Weekly Allocation Date.

Section 5.17 Interest Reserve Letters of Credit.

The Master Issuer may, in lieu of funding (or as partial replacement for funding) the Senior Notes Interest Reserve Account and/or the Senior Subordinated Notes Interest Reserve Account in the amounts required hereunder, maintain one or more Interest Reserve Letters of Credit issued under a Variable Funding Note Purchase Agreement for the benefit of the Trustee and the Senior Noteholders or the Senior Subordinated Noteholders, as applicable, each in a face amount equal to the amounts required to be funded in respect of such account(s) had such Interest Reserve Letter of Credit not been issued. Where on any Quarterly Calculation Date the Master Issuer instructs the Trustee to withdraw funds from the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable, for allocation or payment on the following Quarterly Payment Date, such funds shall be drawn, first, from amounts on deposit in the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable, on such Quarterly Calculation Date and second, from amounts available to be drawn under the applicable Interest Reserve Letter of Credit.

Each such Interest Reserve Letter of Credit (a) shall name each of the Trustee, for the benefit of the Senior Noteholders or the Senior Subordinated Noteholders, as applicable, and the Control Party as the beneficiary thereof; (b) shall allow the Trustee (or the Control Party on the Trustee’s behalf) to submit a notice of drawing in respect of such Interest Reserve Letter of Credit whenever amounts would otherwise be required to be withdrawn from the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable, pursuant to Section 5.12; (c) shall have an expiration date of no later than ten (10) Business Days prior to the Class A-1 Notes Renewal Date specified in the related Variable Funding Note Purchase Agreement pursuant to which such Interest Reserve Letter of Credit was issued; and (d) shall indicate by its terms that the proceeds in respect of drawings under such Interest Reserve Letter of Credit shall be paid directly into the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable.

Upon the occurrence and continuance of an Interest Reserve Release Event, at the election of the Manager the resulting excess funds on deposit in the Senior Notes Interest Reserve Account or Senior Subordinated Interest Reserve Account, as applicable, shall be withdrawn and released to the Collection Account as Collections in accordance with Section 5.10(g)(v) and/or the excess amount of the related Interest Reserve Letter of Credit may be

65
reduced by delivering a replacement or amended Interest Reserve Letter of Credit to the Control Party reflecting such reduced amount. If the existing Interest Reserve Letter of Credit is amended, the Trustee and the Control Party shall be entitled to execute or acknowledge such amendment based solely on the written confirmation from the Manager as to the amount reflected in such amendment being at least equal difference between the Senior Notes Interest Reserve Amount or Senior Subordinated Notes Interest Reserve Amount, as applicable, and the amount on deposit in the Senior Notes Interest Reserve Account or Senior Subordinated Notes Interest Reserve Account, as applicable, and without the consent of any Noteholder, the Trustee, the Controlling Class Representative or any other Secured Party. If a replacement Interest Reserve Letter of Credit is provided, the Control Party shall (without the consent of any Noteholder, the Trustee, the Controlling Class Representative or any other Secured Party) deliver to the L/C Provider the replaced Interest Reserve Letter of Credit for termination simultaneously with the receipt by the Control Party of such replacement Interest Reserve Letter of Credit, in each case to the extent that after the Control Party’s receipt thereof, no Senior Notes Interest Reserve Account Deficiency Amount or Senior Subordinated Notes Interest Reserve Account Deficiency Amount, as applicable, will exist for the immediately following Weekly Allocation Date.

If, on the date that is ten (10) Business Days prior to the expiration of any such Interest Reserve Letter of Credit, such Interest Reserve Letter of Credit has not been replaced or renewed and the Master Issuer has not otherwise deposited funds into the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable, in the amounts that would otherwise be required had such Interest Reserve Letter of Credit not been issued, the Trustee (at the direction of the Master Issuer) or the Control Party (on the Master Issuer’s behalf) shall submit a notice of drawing under such Interest Reserve Letter of Credit and use the proceeds thereof to fund a deposit into the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable, in an amount equal to the Senior Notes Interest Reserve Account Deficiency Amount or the Senior Subordinated Notes Interest Reserve Account Deficiency Amount on such date, as applicable, in each case calculated as if such Interest Reserve Letter of Credit had not been issued.

If, on any day an Interest Reserve Letter of Credit is outstanding, such Interest Reserve Letter of Credit becomes an Ineligible Interest Reserve Letter of Credit, then (a) on the fifth (5th) Business Day after such day, the Master Issuer shall fund a deposit into the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account, as applicable, in an amount equal to the Senior Notes Interest Reserve Account Deficiency Amount or the Senior Subordinated Notes Interest Reserve Account Deficiency Amount on such date, in each case calculated as if such Interest Reserve Letter(s) of Credit had not been issued or (b) prior to the fifth (5th) Business Day after such day, the Master Issuer shall obtain one or more replacement Interest Reserve Letters of Credit on substantially the same terms as each such Interest Reserve Letter of Credit being replaced.

The (i) Trustee (at the direction of the Master Issuer) shall or (ii) the Control Party (at the Master Issuer’s request and on the Master Issuer’s behalf) may submit a notice of drawing under such Interest Reserve Letter of Credit issued by such L/C Provider and the proceeds of any such
Section 5.18  Replacement of Ineligible Accounts.

If, at any time, any Management Account or any of the Senior Notes Interest Reserve Account, the Senior Subordinated Notes Interest Reserve Account, the Cash Trap Reserve Account, the Collection Account or any Collection Account Administrative Account shall cease to be an Eligible Account (each, an “Ineligible Account”), the Master Issuer shall (i) within five (5) Business Days of obtaining knowledge thereof, notify the Control Party thereof and (ii) within sixty (60) days of obtaining knowledge thereof, (A) establish, or cause to be established, a new account that is an Eligible Account in substitution for such Ineligible Account, (B) with the exception of any Management Account, following the establishment of such new Eligible Account, transfer, or with respect to the Trustee Accounts maintained at the Trustee, instruct the Trustee in writing to transfer, all cash and investments from such Ineligible Account into such new Eligible Account, (C) in the case of a Management Account, following the establishment of such new Eligible Account, transfer or cause to be transferred to such new Eligible Account, all cash and investments from such Ineligible Account into such new Eligible Account, (D) in the case of a Management Account, transfer or cause to be transferred all items deposited in the lock-box related to such Ineligible Account to a new lock-box related to such new Management Account, and (E) pledge, or cause to be pledged, such new Eligible Account to the Trustee for the benefit of the Secured Parties and, if such Ineligible Account is required to be subject to an Account Control Agreement in accordance with the terms of the Indenture, cause such new Eligible Account to be subject to an Account Control Agreement in form and substance reasonably acceptable to the Control Party and the Trustee. In the event that any of the Collection Account, any Management Account or any Collection Account Administrative Account becomes an Ineligible Account, the Manager shall, promptly following the establishment of such related new Eligible Account, notify each Franchisee of a change in payment instructions, if any.

Section 5.19  Hague Securities Convention.

The parties hereto agree that, with respect to each securities account, the law in force in the State of New York is applicable to all issues specified in Article 2(1) of the Hague Securities Convention. The Securities Intermediary represents that it has an office in the State of New York which is engaged in a business or other regular activity of maintaining securities accounts.

ARTICLE VI

DISTRIBUTIONS

Section 6.1  Distributions in General.

(a)  Unless otherwise specified in the applicable Series Supplement, on each Quarterly Payment Date, the Paying Agent shall pay to the Noteholders of each Series of record on the preceding Record Date (or in the case of optional prepayments made in accordance with a
Series Supplement, the Noteholders of each Series of record on the applicable prepayment date as specified therein) the amounts payable thereto (i) by wire transfer in immediately available funds released by the Paying Agent from the applicable Series Distribution Account no later than 12:30 p.m. (Eastern time) if a Noteholder has provided to the Paying Agent and the Trustee wiring instructions at least five (5) Business Days prior to the applicable Quarterly Payment Date or (ii) by check mailed first-class postage prepaid to such Noteholder at the address for such Noteholder appearing in the Note Register if such Noteholder has not provided wire instructions pursuant to clause (i) above; provided, however, that the final principal payment due on a Note shall only be paid upon due presentment and surrender of such Note for cancellation in accordance with the provisions of the Note at the applicable Corporate Trust Office.

(b) Unless otherwise specified in the applicable Series Supplement, in this Base Indenture or in any applicable Variable Funding Note Purchase Agreement, all distributions to Noteholders of all Classes within a Series of Notes shall be made from amounts allocated in accordance with the Priority of Payments among each Class of Notes in alphanumerical order (i.e., A-1, A-2, B-1, B-2 and not A-1, B-1, A-2, B-2) and pro rata among Holders of Notes within each Class or Tranche of the same alphanumerical designation; provided, however, that unless otherwise specified in the Series Supplement, in this Base Indenture or in any applicable Variable Funding Note Purchase Agreement, all distributions to Noteholders of all Classes or Tranches within a Series of Notes having the same alphabetical designation shall be pari passu with each other with respect to the distribution of Securitized Assets proceeds resulting from exercise of remedies upon an Event of Default.

(c) Unless otherwise specified in the applicable Series Supplement, the Trustee shall distribute all amounts owed to the Noteholders of any Class of Notes pursuant to the instructions of the Master Issuer whether set forth in a Quarterly Noteholders’ Report, Company Order or otherwise.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

The Master Issuer hereby represents and warrants, for the benefit of the Trustee and the Noteholders, as follows as of the date hereof and as of each Series Closing Date:

Section 7.1 Existence and Power.

Each Securitization Entity (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) is duly qualified to do business as a foreign entity and in good standing under the laws of each jurisdiction where the character of its property, the nature of its business or the performance of its obligations under the Related Documents make such qualification necessary, and (c) has all limited liability company, corporate or other powers and all governmental licenses, authorizations, consents and approvals required (i) to carry on its business as now conducted and (ii) for consummation of the transactions contemplated by the Indenture and the other Related Documents except, in the case

68
of clauses (b) and (c)(i), to the extent the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 7.2 Company and Governmental Authorization.

The execution, delivery and performance by the Master Issuer of this Base Indenture and any Series Supplement and by the Master Issuer and each other Securitization Entity of the other Related Documents to which it is a party (a) is within such Securitization Entity’s limited liability company, corporate or other powers and has been duly authorized by all necessary limited liability company, corporate or other action, (b) requires no action by or in respect of, or filing with, any Governmental Authority which has not been obtained (other than any actions or filings that may be undertaken after the Closing Date pursuant to the terms of this Base Indenture or any other Related Document, including actions or filings with respect to the Mortgages) and (c) does not contravene, or constitute a default under, any Requirements of Law with respect to such Securitization Entity or any Contractual Obligation with respect to such Securitization Entity or result in the creation or imposition of any Lien on any property of any Securitization Entity (other than Permitted Liens), except for Liens created by this Base Indenture or the other Related Documents, except in the case of clauses (b) and (c) above, as applied to the Contribution Agreements, the violation of which would not reasonably be expected to result in a Material Adverse Effect. This Base Indenture and each of the other Related Documents to which each Securitization Entity is a party has been executed and delivered by a duly Authorized Officer of such Securitization Entity.

Section 7.3 No Consent.

Except as set forth on Schedule 7.3, no consent, action by or in respect of, approval or other authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required for the valid execution and delivery by the Master Issuer of this Base Indenture and any Series Supplement and by the Master Issuer and each other Securitization Entity of any Related Document to which it is a party or for the performance of any of the Securitization Entities’ obligations hereunder or thereunder other than such consents, approvals, authorizations, registrations, declarations or filings (a) as shall have been obtained or made by such Securitization Entity prior to the Closing Date or as are permitted to be obtained subsequent to the Closing Date in accordance with Section 7.13, Section 8.25 or Section 8.37 or (b) relating to the performance of any Collateral Business Document, the failure of which to obtain would not reasonably be expected to result in a Material Adverse Effect.

Section 7.4 Binding Effect.

This Base Indenture and each other Related Document to which a Securitization Entity is a party is a legal, valid and binding obligation of each such Securitization Entity enforceable against such Securitization Entity in accordance with its terms (except as may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors’ rights generally or by general equitable principles, whether considered in a proceeding at law or in equity and by an implied covenant of good faith and fair dealing).
Section 7.5  **Litigation.**

There is no action, suit, proceeding or investigation pending against or, to the knowledge of the Master Issuer, threatened against or affecting any Securitization Entity or of which any property or assets of such Securitization Entity is the subject before any court or arbitrator or any Governmental Authority that (a) would affect the validity or enforceability of this Base Indenture or any Series Supplement or (b) either individually or in the aggregate would reasonably be expected to result in a Material Adverse Effect.

Section 7.6  **Employee Benefit Plans.**

No Securitization Entity has established, maintains, contributes to, or has any liability in respect of (or has in the past six (6) years established, maintained, contributed to, or had any liability in respect of) any Pension Plan. No Securitization Entity has any contingent liability with respect to any post-retirement welfare benefits under a Welfare Plan, other than liability (i) for continuation coverage described in Part 6 of Subtitle B of Title I of ERISA or other applicable continuation of coverage laws, (ii) provided in connection with the payment of severance benefits or (iii) that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Each Employee Benefit Plan presently complies and has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations, including ERISA and the Code, except for such instances of noncompliance as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No “prohibited transaction” (within the meaning of Section 406 of ERISA or Section 4975 of the Code) has occurred with respect to any Employee Benefit Plan, other than transactions effected pursuant to a statutory or administrative exemption or such transactions as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, no Tax deficiency has been determined adversely to any Securitization Entity, nor does any Securitization Entity have any

Section 7.7  **Tax Filings and Expenses.**

Each Securitization Entity has filed, or caused to be filed, all United States federal, state and local Tax returns and all other material Tax returns which, to the knowledge of the Master Issuer, are required to be filed by Securitization Entity (whether information returns or not), and has paid, or caused to be paid, all Taxes due, if any, pursuant to said returns or pursuant to any assessment received by any Securitization Entity or any other material Taxes otherwise due and payable by it, except such Taxes, if any, as are being contested in good faith and by appropriate proceedings and for which adequate reserves have been set aside in accordance with GAAP. As of the Closing Date, except as set forth on Schedule 7.7, the Master Issuer is not aware of any Material Adverse Effect, no Tax deficiency has been determined adversely to any Securitization Entity, nor does any Securitization Entity have any

70
knowledge of any Tax deficiencies. Each Securitization Entity has paid all fees and expenses required to be paid by it in connection with the conduct of its business, the maintenance of its existence and its qualification as a foreign entity authorized to do business in each state and each foreign country in which it is required to so qualify, except to the extent that the failure to pay such fees and expenses is not reasonably likely to result in a Material Adverse Effect.

Section 7.8 Disclosure

No written report, financial statements, certificate or other information furnished in writing (other than projections, budgets, other estimates and general market, industry and economic data) to the Trustee or the Noteholders by or on behalf of the Securitization Entities pursuant to any provision of the Indenture or any other Related Document, or in connection with or pursuant to any amendment or modification of, or waiver under, the Indenture or any other Related Document (when taken together with all other information furnished by or on behalf of the Wendy’s Entities to the Trustee or the Noteholders, as the case may be), contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein not materially misleading in each case when taken as a whole and in the light of the circumstances under which they were made, and the furnishing of the same to the Trustee or the Noteholders, as the case may be, shall constitute a representation and warranty by the Master Issuer made on the date the same are furnished to the Trustee or the Noteholders, as the case may be, to the effect specified herein.

Section 7.9 1940 Act

The Master Issuer is not, and no Securitization Entity is an “investment company” as defined in Section 3(a)(1) of the 1940 Act.

Section 7.10 Regulations T, U and X

The proceeds of the Notes will not be used to purchase or carry any “margin stock” (as defined or used in the regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X thereof) in such a way that could cause the transactions contemplated by the Related Documents to fail to comply with the regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X thereof. No Securitization Entity owns or is engaged in the business of extending credit for the purpose of purchasing or carrying any margin stock.

Section 7.11 Solvency

Both before and after giving effect to the transactions contemplated by the Indenture and the other Related Documents, (i) the fair value of the assets of the Securitization Entities, when taken as a whole, will exceed their debts and liabilities, including contingent liabilities; (ii) the present fair saleable value of the property of the Securitization Entities, when taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities as such debts and other liabilities become absolute and matured; (iii) the Securitization Entities, taken as a whole, do not intend to, and do not believe that they will, incur
debts or liabilities beyond their ability to pay such debts and liabilities as they mature; and (iv) the Securitization Entities, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Closing Date, and no Event of Bankruptcy has occurred with respect to any Securitization Entity.

Section 7.12 Ownership of Equity Interests; Subsidiaries.

(a) All of the issued and outstanding limited liability company interests of the Master Issuer are directly owned by the Holding Company Guarantor, have been duly authorized and validly issued, are fully paid and non-assessable and are owned of record by Holding Company Guarantor free and clear of all Liens other than Permitted Liens.

(b) All of the issued and outstanding limited liability company interests of the Franchise Holder are directly owned by the Master Issuer, have been duly authorized and validly issued, are fully paid and non-assessable and are owned of record by the Master Issuer free and clear of all Liens other than Permitted Liens.

(c) All of the issued and outstanding limited liability company interests of Wendy’s Properties are directly owned by the Master Issuer, have been duly authorized and validly issued, are fully paid and non-assessable and are owned of record by the Master Issuer free and clear of all Liens other than Permitted Liens.

(d) As of the Closing Date, (i) the Holding Company Guarantor has no direct Subsidiaries and owns no Equity Interests in any other Person, other than the Master Issuer, (ii) the Master Issuer has no direct Subsidiaries and owns no Equity Interests in any other Person, other than the Franchise Holder and Wendy’s Properties, (iii) the Franchise Holder has no Subsidiaries and owns no Equity Interests in any other Person and (iv) Wendy’s Properties has no Subsidiaries and owns no Equity Interests in any other Person.

Section 7.13 Security Interests.

(a) The Master Issuer and each Guarantor owns and has good title to its Securitized Assets, free and clear of all Liens other than Permitted Liens, provided, however, that this sentence shall not apply to the Real Estate Assets until six (6) months after the Closing Date. Other than the Accounts, the Real Estate Assets and Intellectual Property, the Indenture Collateral consists of securities, loans, investments, accounts, commercial tort claims, inventory, equipment, fixtures, health care insurance receivables, chattel paper, money, deposit accounts, instruments, financial assets, documents, investment property, general intangibles, letter of credit rights, or other supporting obligations (in each case, as defined in the UCC). Except in the case of the Contributed Owned Real Property, the New Owned Real Property and Intellectual Property, which is subject to Section 8.25(c) and Section 8.25(d) or as described on Schedule 7.13(a), this Base Indenture and the Guarantee and Collateral Agreement constitute a valid and continuing Lien on the Collateral in favor of the Trustee on behalf of and for the benefit of the Secured Parties, which Lien on the Collateral has been perfected, and is prior to all other Liens (other than Permitted Liens), and is enforceable as such as against creditors of and purchasers.
from the Master Issuer and each Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors’ rights generally or by general equitable principles, whether considered in a proceeding at law or in equity, and by an implied covenant of good faith and fair dealing. Except as set forth in Schedule 7.13(a), the Master Issuer and the Guarantors have received all consents and approvals required by the terms of the Collateral to the pledge of the Collateral to the Trustee hereunder and under the Guarantee and Collateral Agreement. The Master Issuer and the Guarantors have caused, or shall have caused, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the first-priority security interest (subject to Permitted Liens) in the Collateral (other than the Accounts and Intellectual Property) granted to the Trustee hereunder or under the Guarantee and Collateral Agreement within ten (10) days of the date hereof.

(b) Other than the security interest granted to the Trustee in the Collateral hereunder or pursuant to the other Related Documents or any other Permitted Lien, the Master Issuer has not, and no Guarantor has, pledged, assigned, sold or granted a security interest in the Securitized Assets. All action necessary (including the filing of UCC-1 financing statements) to protect and evidence the Trustee’s security interest in the Collateral (other than the Intellectual Property) in the United States has been duly and effectively taken. No security agreement, financing statement, equivalent security or lien instrument or continuation statement authorized by the Master Issuer and any Guarantor and listing the Master Issuer or Guarantor as debtor covering all or any part of the Securitized Assets is on file or of record in any jurisdiction, except in respect of Permitted Liens or such as may have been filed, recorded or made by the Master Issuer or such Guarantor in favor of the Trustee on behalf of the Secured Parties in connection with this Base Indenture and the Guarantee and Collateral Agreement, and the Master Issuer has not, and no Guarantor has, authorized any such filing.

(c) All authorizations in this Base Indenture and the Guarantee and Collateral Agreement for the Trustee to endorse checks, instruments and securities and to execute financing statements, continuation statements, security agreements and other instruments with respect to the Collateral and to take such other actions with respect to the Securitized Assets authorized by this Base Indenture and the Guarantee and Collateral Agreement are powers coupled with an interest and are irrevocable.

Section 7.14 Related Documents.

The Indenture Documents, the Collateral Transaction Documents, the Account Agreements, the Depository Agreements, any Variable Funding Note Purchase Agreement, any Swap Contract, any Series Hedge Agreement and any Enhancement Agreement with respect to each Series of Notes (other than the Mortgages) are in full force and effect. There are no outstanding defaults thereunder nor have events occurred which, with the giving of notice, the passage of time or both, would constitute a default thereunder.
Section 7.15 Non-Existence of Other Agreements.

Other than as permitted by Section 8.22, (a) no Securitization Entity is a party to any contract or agreement of any kind or nature and (b) no Securitization Entity is subject to any material obligations or liabilities of any kind or nature in favor of any third party, including, without limitation, Contingent Obligations. No Securitization Entity has engaged in any activities since its formation (other than those incidental to its formation, the authorization and the issuance of Series of Notes, the execution of the Related Documents to which such Securitization Entity is a party and the performance of the activities referred to in or contemplated by such agreements).

Section 7.16 Compliance with Contractual Obligations and Laws.

No Securitization Entity is in violation of (a) its Charter Documents, (b) any Requirement of Law with respect to such Securitization Entity or (c) any Contractual Obligation with respect to such Securitization Entity except, solely with respect to clauses (b) and (c), to the extent such violation would not reasonably be expected to result in a Material Adverse Effect.

Section 7.17 Other Representations.

All representations and warranties of or about each Securitization Entity made in each other Related Document to which it is a party are true and correct (i) as of the date hereof or (ii) if made on a future date (A) if qualified as to materiality, in all respects, and (B) if not qualified as to materiality, in all material respects (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct in all respects or in all material respects, as applicable, as of such earlier date), and in each case are repeated herein as though fully set forth herein.

Section 7.18 No Employees.

Notwithstanding any other provision of the Indenture or any Charter Documents of any Securitization Entity to the contrary, no Securitization Entity has any employees.

Section 7.19 Insurance.

The Securitization Entities shall maintain, or cause to be maintained, the insurance coverages (or self-insurance for such risks) described on Schedule 7.19 hereto, in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance of the Securitization Entities are in full force and effect and the Securitization Entities are in compliance with the terms of such policies in all material respects. None of the Securitization Entities has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to result in a Material Adverse Effect. All such insurance is primary coverage, all premiums therefor due on or before the date hereof have been
paid in full, and the terms and conditions thereof are no less favorable to the Securitization Entities than the terms and conditions of insurance maintained by their Affiliates that are not Securitization Entities.

Section 7.20  Environmental Matters.

(a) None of the Securitization Entities is subject to any liabilities pursuant to any Environmental Law or with respect to any Materials of Environmental Concern that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) Other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect:

(i) The Securitization Entities: (x) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws, (y) hold all Environmental Permits (each of which is in full force and effect) required for their current operations and (z) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits.

(ii) Materials of Environmental Concern are not present at, on, under, in, or about any Real Estate Assets now or, to the knowledge of the Master Issuer, formerly owned, leased or operated by any Securitization Entity, or at any other location (including, without limitation, any location to which Materials of Environmental Concern have been sent by the Master Issuer for re-use or recycling or for treatment, storage or disposal) in a condition or circumstance that would reasonably be expected to (x) give rise to liability of any Securitization Entity under any applicable Environmental Law or otherwise result in costs to any Securitization Entity (y) interfere with any Securitization Entity’s continued operations or (z) impair the fair saleable value of any real property owned by any Securitization Entity.

(iii) There is no judicial, administrative, or arbitral proceeding (including, without limitation, any notice of violation or alleged violation) under or relating to any Environmental Law to which any Securitization Entity is, or to the knowledge of the Securitization Entities will be, named as a party that is pending or, to the knowledge of the Securitization Entities, threatened.

(iv) No Securitization Entity has received any written request for information, or been notified in writing that it is a potentially responsible party under or relating to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, or that it is liable under any other Environmental Law, or in either case, with respect to the release of any Materials of Environmental Concern to the environment.

(v) No Securitization Entity has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law that has not been fully and finally resolved.
Section 7.21  Intellectual Property.

(a) All of the registrations and applications included in the Securitization IP are subsisting, unexpired and have not been abandoned in any applicable jurisdiction except where such expiration or abandonment would not reasonably be expected to result in a Material Adverse Effect.

(b) Except as set forth on Schedule 7.21, (i) the use of the Securitization IP and the operation of the Wendy’s System do not infringe, misappropriate or otherwise violate the Intellectual Property rights of any third party in a manner that would reasonably be expected to result in a Material Adverse Effect, (ii) to the Master Issuer’s knowledge, the Securitization IP is not being infringed or violated by any third party in a manner that would reasonably be expected to result in a Material Adverse Effect and (iii) there is no action or proceeding pending or to the Master Issuer’s knowledge, threatened, alleging the same that would reasonably be expected to result in a Material Adverse Effect.

(c) Except as set forth on Schedule 7.21, no action or proceeding is pending or, to the Master Issuer’s knowledge, threatened, that seeks to limit, cancel, or challenge the validity of any Securitization IP, or the use thereof, that would reasonably be expected to result in a Material Adverse Effect.

(d) The Franchise Holder is the exclusive owner of the Securitization IP other than the IP License Agreements and licenses permitted pursuant to Section 8.16, free and clear of all Liens, encumbrances, set-offs, defenses and counterclaims of whatsoever kind or nature, other than the Permitted Liens.

(e) The Master Issuer has not made and will not hereafter make any assignment, pledge, mortgage, hypothecation or transfer of any of the Securitization IP other than Permitted Liens and Permitted Asset Dispositions under Section 8.16(d).

ARTICLE VIII
COVENANTS

Section 8.1  Payment of Notes.

(a) The Master Issuer shall pay or cause to be paid the principal of, and premium, if any, and interest, subject to Section 2.15(d), on the Notes when due pursuant to the provisions of this Base Indenture and any applicable Series Supplement. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent holds on that date money designated for and sufficient to pay all principal, premium, if any, and interest then due. Except as otherwise provided pursuant to a Variable Funding Note Purchase Agreement or any other Related Document, amounts properly withheld under the Code or any applicable state, local or foreign law by any Person from a payment to any Noteholder of interest or principal or premium, if any, shall be considered as having been paid by the Master Issuer to such Noteholder for all purposes of the Indenture and the Notes.
(b) By acceptance of its Notes, each Noteholder agrees that the failure to provide the Paying Agent with appropriate tax certifications (which includes but is not limited to (i) an IRS Form W-9 for United States persons (as defined under Section 7701(a)(30) of the Code) or any applicable successor form or (ii) an applicable IRS Form W-8 and any required attachments, for Persons other than United States persons, or applicable successor form) may result in amounts being withheld from payments to such Noteholder under this Base Indenture and any Series Supplement and that amounts withheld pursuant to applicable laws shall be considered as having been paid by the Master Issuer as provided in clause (a) above.

Section 8.2 Maintenance of Office or Agency.

(a) The Master Issuer shall maintain an office or agency (which, with respect to the surrender for registration of, or transfer or exchange or the payment of principal and premium, may be an office of the Trustee, the Registrar or co-registrar or Paying Agent) where Notes may be surrendered for registration of transfer or exchange, where notices and demands to or upon the Master Issuer in respect of the Notes and the Indenture may be served, and where, at any time when the Master Issuer is obligated to make a payment of principal of, and premium, if any, on the Notes, the Notes may be surrendered for payment. The Master Issuer shall give prompt written notice to the Trustee and the Servicer of the location, and any change in the location, of such office or agency. If at any time the Master Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee and the Servicer with the address thereof, such presentations and surrenders may be made or served at the Corporate Trust Office and notices and demands may be made at the address set forth in Section 14.1 hereof.

(b) The Master Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may, from time to time, rescind such designations. The Master Issuer shall give prompt written notice to the Trustee and the Servicer of any such designation or rescission and of any change in the location of any such other office or agency. The Master Issuer hereby designates the applicable Corporate Trust Office as one such office or agency of the Master Issuer.

Section 8.3 Payment and Performance of Obligations.

The Master Issuer shall, and shall cause each other Securitization Entity to, pay and discharge and fully perform, at or before maturity, all of their respective material obligations and liabilities, including, without limitation, Tax liabilities and other governmental claims levied or imposed upon each such Securitization Entity or upon the income, properties or operations of such Securitization Entity, judgments, settlement agreements and all obligations of each Securitization Entity under the Collateral Transaction Documents, except where the same may be contested in good faith by appropriate proceedings (and without derogation from the material obligations of the Master Issuer hereunder and the Guarantors under the Guarantee and Collateral Agreement regarding the protection of the Securitized Assets from Liens (other than Permitted Liens)), and shall maintain, in accordance with GAAP, reserves as appropriate for the accrual of any of the same.
Section 8.4  Maintenance of Existence.

The Master Issuer shall, and shall cause each other Securitization Entity to, maintain its existence as a limited liability company or corporation validly existing and in good standing under the laws of its state of organization and duly qualified as a foreign limited liability company or corporation licensed under the laws of each state in which the failure to so qualify would be reasonably likely to result in a Material Adverse Effect. The Master Issuer shall, and shall cause each other Securitization Entity (other than any Additional Securitization Entity that is a corporation) to, be treated as a disregarded entity within the meaning of U.S. Treasury regulations Section 301.7701-2(c)(2) and the Master Issuer shall not, and shall not permit any other Securitization Entity (other than any Additional Securitization Entity that is a corporation) to, be classified as an association taxable as a corporation or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

Section 8.5  Compliance with Laws.

The Master Issuer shall, and shall cause each other Securitization Entity to, comply in all respects with all Requirements of Law with respect to the Master Issuer or such other Securitization Entity except where such noncompliance would not be reasonably likely to result in a Material Adverse Effect; provided, however, such noncompliance will not result in a Lien (other than a Permitted Lien) on any of the Securitized Assets or any criminal liability on the part of any Securitization Entity, the Manager or the Trustee.

Section 8.6  Inspection of Property; Books and Records.

The Master Issuer shall, and shall cause each other Securitization Entity to, keep proper books of record and account in which full, true and correct entries in all material respects shall be made of all dealings and transactions, business and activities in accordance with GAAP. The Master Issuer shall, and shall cause each other Securitization Entity to, permit, at reasonable times upon reasonable notice, the Servicer, the Controlling Class Representative and the Trustee or any Person appointed by any of them to act as its agent to visit and inspect any of its properties (subject to the rights of tenants under applicable leases and subleases), to examine and make abstracts from any of its books and records and to discuss its affairs, finances and accounts with its officers, directors, managers, employees and independent certified public accountants, and the reasonable costs and documented out-of-pocket expenses of one such visit and inspection by each of the Servicer, the Controlling Class Representative and the Trustee, or any Person appointed by them, shall be reimbursable as a Securitization Operating Expense per calendar year, with any additional visit or inspection by any such Person being at such Person’s sole cost and expense; provided, however, that during the continuance of a Warm Back-Up Management Trigger Event, a Rapid Amortization Event or an Event of Default, or to the extent expressly required without the instruction of any other party under the terms of any Related Documents, any such Person may visit and conduct such activities at any time and all such visits and activities shall constitute a Securitization Operating Expense.
Section 8.7  **Actions under the Collateral Transaction Documents and Related Documents.**

(a) Except as otherwise provided in Section 8.7(d), the Master Issuer shall not, and will not permit any Securitization Entity to, take any action which would permit any Wendy’s Entity or any other Person party to a Collateral Transaction Document to have the right to refuse to perform any of its respective obligations under any of the Collateral Transaction Documents or that would result in the amendment, waiver, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any Collateral Transaction Document.

(b) Except as otherwise provided in Section 3.2(a) or Section 8.7(d), the Master Issuer shall not, and shall not permit any Securitization Entity to, take any action which would permit any other Person party to a Collateral Business Document to have the right to refuse to perform any of its respective obligations under such Collateral Business Document or that would result in the amendment, waiver, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, such Collateral Business Document if such action when taken on behalf of any Securitization Entity by the Manager would constitute a breach by the Manager of the Management Agreement.

(c) Except as otherwise provided in Section 3.2(a), the Master Issuer agrees that it shall not, and shall cause each Securitization Entity not to, without the prior written consent of the Control Party, exercise any right, remedy, power or privilege available to it with respect to any obligor under a Collateral Transaction Document or under any instrument or agreement included in the Securitized Assets, take any action to compel or secure performance or observance by any such obligor of its obligations to the Master Issuer or such other Securitization Entity or give any consent, request, notice, direction or approval with respect to any such obligor if such action when taken on behalf of any Securitization Entity by the Manager would constitute a breach by the Manager of the Management Agreement.

(d) The Master Issuer agrees that it shall not, and shall cause each Securitization Entity not to, without the prior written consent of the Control Party, amend, modify, waive, supplement, terminate or surrender, or agree to any amendment, modification, supplement, termination, waiver or surrender of, the terms of any of the Related Documents; provided, however, that the Securitization Entities may agree to any amendment, modification, supplement or waiver of any such term of any Related Document without any such consent (x) to the extent permitted under the terms of such other Related Documents, (y) as contemplated by Section 13.1 hereof and (z) as follows:

(i) to add to the covenants of any Securitization Entity for the benefit of the Secured Parties; or to add to the covenants of any Wendy’s Entity for the benefit of any Securitization Entity;

(ii) to terminate any Related Document if any party thereto (other than a Securitization Entity) becomes, in the reasonable judgment of the Master Issuer, unable to pay its debts as they become due, even if such party has not yet defaulted on its obligations under the
Related Document, so long as the Master Issuer enters into a replacement agreement with a new party within ninety (90) days of the
termination of the Related Document;

(iii) to make such other provisions in regard to matters or questions arising under the Related Documents as the
parties thereto may deem necessary or desirable, which are not inconsistent with the provisions thereof and which shall not
materially and adversely affect the interests of any Noteholder, any Note Owner or any other Secured Party; provided that an
Opinion of Counsel and an Officer’s Certificate shall be delivered to the Trustee, the Rating Agency and the Servicer to such effect;
or

(iv) in the case of any Variable Funding Note Purchase Agreement, to the extent that the consent of the Control
Party is not required, pursuant to the terms of such agreement, for such amendment, modification, supplement or waiver.

(e) Upon the occurrence of a Manager Termination Event under the Management Agreement, (i) the Master
Issuer shall not, and shall cause each other Securitization Entity not to, without the prior written consent of the Control Party,
terminate the Manager and appoint any Successor Manager in accordance with the Management Agreement and (ii) the Master
Issuer shall, and shall cause each other Securitization Entity to, terminate the Manager and appoint one or more Successor Managers
in accordance with the Management Agreement if and when so directed by the Control Party.

Section 8.8 Notice of Defaults and Other Events.

The Master Issuer shall give the Trustee, the Servicer, the Manager, the Back-Up Manager, the Controlling Class
Representative and the Rating Agency with respect to each Series of Notes Outstanding notice within three (3) Business Days upon
becoming aware of (i) any Potential Rapid Amortization Event, (ii) any Rapid Amortization Event, (iii) any Potential Manager
Termination Event, (iv) any Manager Termination Event, (v) any Default, (vi) any Event of Default or (vii) any default under any
Collateral Transaction Document, together with an Officer’s Certificate setting forth the details thereof and any action with respect
thereto taken or contemplated to be taken by the Master Issuer. The Master Issuer shall, at its expense, promptly provide to the
Servicer, the Manager, the Back-Up Manager, the Controlling Class Representative and the Trustee such additional information as
the Servicer, the Manager, the Back-Up Manager, the Controlling Class Representative or the Trustee may reasonably request from
time to time in connection with the matters so reported, and the actions so taken or contemplated to be taken.

Section 8.9 Notice of Material Proceedings.

Without limiting Section 8.30 or Section 8.25(b), promptly (and in any event within ten (10) days) upon the determination by
either the chief financial officer or the chief legal officer of Wendy’s that the commencement or existence of any litigation,
arbitration or other proceeding with respect to any Wendy’s Entity would reasonably be expected to result in a Material Adverse
Effect), the Master Issuer shall give written notice thereof to the Trustee, the Servicer, the
Manager, the Back-Up Manager, the Controlling Class Representative and the Rating Agency with respect to each Series of Notes Outstanding.

Section 8.10  Further Requests.

The Master Issuer shall, and shall cause each other Securitization Entity to, promptly furnish to the Trustee such other information as, and in such form as, the Trustee may reasonably request in connection with the transactions contemplated hereby or by any Series Supplement.

Section 8.11  Further Assurances.

(a) The Master Issuer shall, and shall cause each other Securitization Entity to, do such further acts and things, and execute and deliver to the Trustee and the Servicer such additional assignments, agreements, powers of attorney and instruments, as are necessary or desirable to obtain or maintain the security interest of the Trustee in the Collateral or the Securitized Assets required to be part of the Collateral on behalf of the Secured Parties as a perfected security interest subject to no prior Liens (other than Permitted Liens), to carry into effect the purposes of the Indenture or the other Related Documents or to better assure and confirm unto the Trustee, the Servicer, the Noteholders or the other Secured Parties their rights, powers and remedies hereunder including, without limitation, the filing of any financing or continuation statements or amendments under the UCC in effect in any jurisdiction with respect to the liens and security interests granted hereby and by the Guarantee and Collateral Agreement, in each case except as set forth on Schedule 7.13(a) and in accordance with Section 8.25(c), Section 8.25(d) or Section 8.37. If the Master Issuer fails to perform any of its agreements or obligations under this Section 8.11(a), then the Servicer may perform such agreement or obligation, and the expenses of the Servicer incurred in connection therewith shall be payable by the Master Issuer upon the Servicer’s demand therefor. The Servicer is hereby authorized to execute and file any financing statements, continuation statements, amendments or other instruments necessary or appropriate to perfect or maintain the perfection of the Trustee’s security interest in the Collateral or the Securitized Assets required to be part of the Collateral.

(b) If any amount payable under or in connection with any of the Securitized Assets shall be or become evidenced by any promissory note, chattel paper or other instrument, such note, chattel paper or instrument shall be deemed to be held in trust and immediately pledged and within two (2) Business Days physically delivered to the Trustee hereunder, and shall, subject to the rights of any Person in whose favor a prior Lien has been perfected, be duly endorsed in a manner satisfactory to the Trustee and delivered to the Trustee promptly; provided that no Securitization Entity shall be required to deliver any Franchisee Note.

(c) Notwithstanding the provisions set forth in clauses (a) and (b) above, the Master Issuer and the Guarantors shall not be required to perfect any security interest in any fixtures (other than through a central filing of a UCC financing statement), any Franchisee Note or, except as provided in Section 8.37, any real property, leases on real property owned or rents on real property owned.
(d) If during any Quarterly Collection Period, the Master Issuer or any Guarantor shall obtain an interest in any commercial tort claim or claims (as such term is defined in the New York UCC) and such commercial tort claim or claims (when added to any past commercial tort claim or claims that were obtained by any Securitization Entity prior to such Quarterly Collection Period that are still outstanding) have an aggregate value equal to or greater than $5,000,000 as of the last day of such Quarterly Collection Period, the Master Issuer or such Guarantor shall notify the Servicer on or before the third Business Day prior to the next succeeding Quarterly Payment Date that it has obtained such an interest and shall sign and deliver documentation reasonably acceptable to the Servicer granting a security interest under this Base Indenture or the Guarantee and Collateral Agreement, as the case may be, in and to such commercial tort claim or claims whether obtained during such Quarterly Collection Period or prior to such Quarterly Collection Period.

(e) The Master Issuer shall, and shall cause each other Securitization Entity to, warrant and defend the Trustee’s right, title and interest in and to the Securitized Assets, including the right to cause the Securitized Assets to become Collateral, and the income, distributions and Proceeds thereof, for the benefit of the Trustee on behalf of the Secured Parties, against the claims and demands of all Persons whomsoever.

(f) On or before April 30 of each calendar year, commencing with April 30, 2016, the Master Issuer shall furnish to the Trustee, the Rating Agency for each Series of Notes Outstanding and the Servicer (with a copy to the Back-Up Manager) an Opinion of Counsel either stating that, in the opinion of such counsel, such action has been taken with respect to the recording, filing, re-recording and refiling of this Base Indenture, any indentures supplemental hereto, the Guarantee and Collateral Agreement and any other requisite documents and with respect to the execution and filing of any financing statements, continuation statements and amendments to financing statements and such other documents as are, subject to clause (c) above, necessary to maintain the perfection of the Lien and security interest created by this Base Indenture and the Guarantee and Collateral Agreement under Article 9 of the New York UCC in the United States and reciting the details of such action or stating that in the opinion of such counsel no such action is necessary to maintain the perfection of such security interest. Each such Opinion of Counsel shall also describe the recording, filing, re-recording and refiling of this Base Indenture, any indentures supplemental hereto, the Guarantee and Collateral Agreement and any other requisite documents and the execution and filing of any financing statements, continuation statements and amendments or other documents that will, in the opinion of such counsel, be required, subject to clause (c) above, to maintain the perfection of the lien and security interest of such security interest of this Base Indenture and the Guarantee and Collateral Agreement under Article 9 of the New York UCC in the Collateral in the United States until April 30 in the following calendar year. For the avoidance of doubt, the Opinions of Counsel described in this clause (f) shall not be required to cover any matters related to the Real Estate Assets.
Section 8.12  Liens.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, create, incur, assume or permit to exist any Lien upon any of its property (including the Securitized Assets), other than (i) Liens in favor of the Trustee for the benefit of the Secured Parties and (ii) other Permitted Liens.

Section 8.13  Other Indebtedness.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, create, assume, incur, suffer to exist or otherwise become or remain liable in respect of any Indebtedness other than (i) Indebtedness hereunder or under the Guarantee and Collateral Agreement or any other Related Document, (ii) any Guarantee by any Securitization Entity of the obligations of any other Securitization Entity, (iii) Indebtedness of a Securitization Entity owed to a Securitization Entity, (iv) any purchase money Indebtedness incurred in order to finance the acquisition, lease or improvement of equipment in the ordinary course of business, or (v) guarantees for the benefit of Franchisees of Indebtedness in an aggregate principal amount at any time outstanding of up to the greater of (x) $20,000,000 and (y) 5.0% of the Net Cash Flow for the preceding four (4) Quarterly Collection Periods most recently ended as of such date and for which financial statements have been prepared.

Section 8.14  Employee Benefit Plans.

No Securitization Entity, and no member of a Controlled Group that includes a Securitization Entity shall, establish, sponsor, maintain, contribute to, incur any obligation to contribute to or incur any liability in respect of any Pension Plan to the extent the liabilities under such Pension Plan would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 8.15  Mergers.

On and after the Closing Date, the Master Issuer shall not, and shall not permit any other Securitization Entity to, merge or consolidate with or into any other Person (whether by means of a single transaction or a series of related transactions) other than any merger or consolidation of any Securitization Entity with any other Securitization Entity or any merger or consolidation of any Securitization Entity with any other entity to which the Control Party has given prior written consent.

Section 8.16  Asset Dispositions.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, sell, transfer, lease, license, liquidate or otherwise dispose of any of its property (whether by means of a single transaction or a series of related transactions), including any Equity Interests of any other Securitization Entity, except in the case of the following (each, a “Permitted Asset Disposition”):
(a) (i) any disposition of obsolete, surplus, damaged or worn out property or property that is no longer used or useful in the business of the Securitization Entities, and (ii) any abandonment, cancellation, or lapse of Securitization IP registrations or applications that in the reasonable good faith judgment of the Manager are no longer commercially reasonable to maintain;

(b) any disposition of (i) Eligible Investments and (ii) inventory in the ordinary course of business;

(c) any disposition of equipment or real property to the extent that (x) such property is exchanged for credit against the purchase price or other payment obligations in respect of similar replacement property or other Eligible Assets (including, without limitation, credit against rental obligations under a real estate lease) or (y) the proceeds thereof are applied to the purchase price of such replacement property or other Eligible Assets in accordance with this Base Indenture;

(d) (i) any licenses of Securitization IP under the IP License Agreements and to the Manager in connection with the performance of its Services under the Management Agreement and (ii) other non-exclusive licenses of Securitization IP (x) granted in the ordinary course of business, (y) that when effected on behalf of any Securitization Entity by the Manager would not constitute a breach by the Manager of the Management Agreement and (z) that would not reasonably be expected to materially and adversely impact the Securitization IP (taken as a whole);

(e) any disposions of equipment leased to Franchisees;

(f) any disposions of property of a Securitization Entity to any other Securitization Entity not otherwise prohibited under the Related Documents;

(g) any (x) leases or subleases of Real Estate Assets to Franchisees or (in the case of the location of a Company Restaurant) a Non-Securitization Entity and assignments, subleases and terminations of leases and subleases that do not materially interfere with the business of the Securitization Entities and (y) assignments that do not result in receipt of a cash payment to a Securitization Entity;

(h) any disposions of property relating to repurchases of Contributed Assets in exchange for the payment of Indemnification Amounts;

(i) Investments permitted under Section 8.21, Liens permitted under Section 8.12 and distributions permitted under Section 8.18;

(j) transfers of properties subject to condemnation or casualty events;

(k) any disposition of Franchisee Notes or accounts receivable in connection with the collection or compromise thereof;
(l) any termination, non-renewal, expiration, amendment or other modification of any Collateral Business Document that when effected on behalf of any Securitization Entity by the Manager would not constitute a breach by the Manager of the Management Agreement;

(m) any decision to abandon, fail to pursue, settle, or otherwise resolve any claim or cause of action to enforce or seek remedy for the infringement, misappropriation, dilution or other violation of any Securitization IP, or other remedy against any third party where it is not commercially reasonable to pursue such claim or remedy in light of the cost, potential remedy, or other factors; provided that such action (or failure to act) would not reasonably be expected to materially and adversely impact the Securitization IP (taken as whole);

(n) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims in the ordinary course of business, in each case that would not reasonably be expected to result in a Material Adverse Effect;

(o) with respect to the purchase of any land or building asset, the subsequent sale, assignment, transfer or other disposition of such land or building asset to a Franchisee within three (3) months of such purchase;

(p) any refranchising activities pursuant to any sale, transfer or other disposition of the operations and assets of a Contributed Restaurant or New Contributed Restaurant (as opposed to a disposition of fee simple real estate or a real estate lease) to a Franchisee;

(q) any dispositions pursuant to the sale or sale-leaseback of Contributed Owned Real Property or New Owned Real Property;

(r) any other sale, lease, license, transfer or other disposition of property to which the Control Party has given the relevant Securitization Entity prior written consent; or

(s) any other sale, lease, license, liquidation, transfer or other disposition of property not directly or indirectly constituting any asset dispositions permitted by clauses (a) through (r) above and so long as such disposition when effected on behalf of any Securitization Entity by the Manager does not constitute a breach by the Manager of the Management Agreement; it being understood that any delivery to the Trustee of any Note, at any time and in any amount, by the Manager or any Securitization Entity, together with any cancellation thereof pursuant to Section 2.14, shall be deemed to be a Permitted Asset Disposition.

All amounts received by any Securitization Entity upon a Permitted Asset Disposition pursuant to clauses (a) – (o) and any amounts of up to $5,000,000 in the aggregate during any fiscal year pursuant to clause (s) of the definition of “Permitted Asset Disposition” shall be treated as Collections (collectively, “Asset Disposition Collections”) with respect to the Quarterly Collection Period in which such amounts are received and not as Asset Disposition Proceeds.
All Asset Disposition Proceeds shall be deposited to the Asset Disposition Proceeds Account or, to the extent the applicable Securitization Entity elects not to reinvest such Asset Disposition Proceeds in Eligible Assets, shall be deposited to the Collection Account promptly following receipt thereof and applied in accordance with priority (i) of the Priority of Payments.

Upon any sale, transfer, lease, license, liquidation or other disposition of any property by any Securitization Entity permitted by this Section 8.16, all Liens with respect to such disposed property created in favor of the Trustee for the benefit of the Secured Parties under this Base Indenture and the other Related Documents shall be automatically released, and the Trustee, upon written request of the Master Issuer, at the written direction of the Control Party, shall provide evidence of such release as set forth in Section 14.17.

Section 8.17 Acquisition of Assets.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, acquire, by long-term or operating lease or otherwise, any property (i) if such acquisition when effected on behalf of any Securitization Entity by the Manager would constitute a breach by the Manager of the Management Agreement or (ii) that is a lease, sublease, license or other contract or permit, if the grant of a Lien or security interest in any of the Securitization Entities’ right, title and interest in, to or under such lease, sublease, license, contract or permit in the manner contemplated by the Indenture and the Guarantee and Collateral Agreement (a) would be prohibited by the terms of such lease, sublease, license, contract or permit, (b) would constitute or result in the abandonment, invalidation or unenforceability of any right, title or interest of the applicable Securitization Entity therein or (c) would otherwise result in a breach thereof or the termination or a right of termination thereof, except to the extent that any such prohibition, breach, termination or right of termination is rendered ineffective pursuant to the UCC or any other applicable law.

Section 8.18 Dividends, Officers’ Compensation, etc.

The Master Issuer will not declare or pay any distributions on any of its respective limited liability company interests; provided, however, that so long as no Potential Rapid Amortization Event, Rapid Amortization Event, Default or Event of Default has occurred and is continuing with respect to any Series of Notes Outstanding or would result therefrom, the Master Issuer may declare and pay distributions to the extent permitted under Section 18-607 of the Delaware Limited Liability Company Act and the Master Issuer’s Charter Documents. The Master Issuer shall not, and shall not permit any other Securitization Entity to, redeem, purchase, retire or otherwise acquire for value any Equity Interest in or issued by such Securitization Entity or set aside or otherwise segregate any amounts for any such purpose except as expressly permitted by the Indenture or as consented to by the Control Party. The Master Issuer may draw on Commitments with respect to any Series of Class A-1 Notes for general corporate purposes of the Securitization Entities and the Non-Securitization Entities, including to fund any acquisition by any Securitization Entity or Non-Securitization Entity or any dividend, distribution or share repurchase by any Securitization Entity or Non-Securitization Entity.
Section 8.19  Legal Name, Location Under Section 9-301 or 9-307.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, change its location (within the meaning of Section 9-301 or 9-307 of the applicable UCC) or its legal name without at least thirty (30) days’ prior written notice to the Trustee, the Servicer, the Manager, the Back-Up Manager and the Rating Agency with respect to each Series of Notes Outstanding. In the event that the Master Issuer or other Securitization Entity desires to so change its location or change its legal name, the Master Issuer will, or will cause such other Securitization Entity to, make any required filings and prior to actually changing its location or its legal name the Master Issuer will, or will cause such other Securitization Entity to, deliver to the Trustee and the Servicer (i) an Officer’s Certificate and an Opinion of Counsel confirming (a) that all required filings have been made, subject to Section 8.11(c), to continue the perfected interest of the Trustee on behalf of the Secured Parties in the Collateral under Article 9 of the applicable UCC in respect of the new location or new legal name of the Master Issuer or other Securitization Entity and (b) such change in location or change in name will not adversely affect the Lien under any Mortgage required to be delivered pursuant to Section 8.37 and (ii) copies of all such required filings with the filing information duly noted thereon by the office in which such filings were made.

Section 8.20  Charter Documents.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, amend, or consent to the amendment of, any of its Charter Documents to which it is a party as a member or shareholder unless, prior to such amendment, the Control Party shall have consented thereto and the Rating Agency Condition with respect to each Series of Notes Outstanding shall have been satisfied with respect to such amendment; provided, however, the Master Issuer and the other Securitization Entities shall be permitted to amend their Charter Documents without having to meet the Rating Agency Condition to cure any ambiguity, defect or inconsistency therein or if such amendments would not reasonably be deemed to be disadvantageous to any Noteholder in the reasonable judgment of the Control Party. The Control Party may rely on an Officer’s Certificate to make such determination. The Master Issuer shall provide written notice to the Rating Agency (with a copy to the Servicer) of any amendment of any Charter Document of any Securitization Entity.

Section 8.21  Investments.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, make, incur, or suffer to exist any loan, advance, extension of credit or other Investment if such Investment when made on behalf of any Securitization Entity by the Manager would constitute a breach by the Manager of the Management Agreement, other than (a) Investments in the Accounts and Eligible Investments, (b) any Franchisee Note, (c) Investments in any other Securitization Entity, (d) loans or advances by the Franchise Holder or any Additional Securitization Entity to any Non-Securitization Entity in accordance with Section 8.24(a)(ii) using funds on deposit in the Franchisor Capital Account, (e) the transactions described in the proviso to Section 8.24(a)(vi), (f) guarantees with respect to operating leases and product volumes and (g) guarantees for the benefit of Franchisees of Indebtedness in an aggregate
principal amount at any time outstanding of up to the greater of (x) $20,000,000 and (y) 5.0% of Net Cash Flow for the preceding four (4) Quarterly Collection Periods most recently ended as of such date and for which financial statements have been prepared.

Section 8.22 No Other Agreements.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, enter into or be a party to any agreement or instrument (other than any Related Document, any Collateral Business Document, any other document permitted by a Series Supplement or the Related Documents, as the same may be amended, supplemented or otherwise modified from time to time, any documents related to any Enhancement (subject to Section 8.32) or any Series Hedge Agreement (subject to Section 8.33), any documents relating to the transactions described in the proviso to Section 8.24(a)(vi) or any documents or agreements incidental thereto) if such agreement when effected on behalf of any Securitization Entity by the Manager would constitute a breach by the Manager of the Management Agreement.

Section 8.23 Other Business.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, engage in any business or enterprise or enter into any transaction other than the incurrence and payment of ordinary course operating expenses, the issuing and selling of the Notes, entry into and performance of the Collateral Business Documents and other agreements permitted pursuant to Section 8.22 and other activities related to or incidental to any of the foregoing or any other transaction which when effected on behalf of any Securitization Entity by the Manager would not constitute a breach by the Manager of the Management Agreement.

Section 8.24 Maintenance of Separate Existence.

(a) The Master Issuer shall, and shall cause each other Securitization Entity to, except as otherwise permitted hereunder or under the other Related Documents:

(i) maintain their own deposit and securities account, as applicable, or accounts, separate from those of any of its Affiliates (other than the other Securitization Entities), with commercial banking institutions and ensure that the funds of the Securitization Entities will not be diverted to any Person who is not a Securitization Entity or for other than the use of the Securitization Entities, nor will such funds be commingled with the funds of any of its Affiliates (other than the other Securitization Entities), other than as provided in the Related Documents;

(ii) ensure that all transactions between it and any of its Affiliates (other than the other Securitization Entities), whether currently existing or hereafter entered into, shall be only on an arm’s length basis, it being understood and agreed that the transactions contemplated in the Related Documents and the transactions described in the proviso to clause (vi) meet the requirements of this clause (ii):

(iii) to the extent that it requires an office to conduct its business, conduct its business from an office at a separate address from that of any of its Affiliates (other than the
other Securitization Entities); provided that segregated offices in the same building shall constitute separate addresses for purposes of this clause (iii). To the extent that any Securitization Entity and any of its members or Affiliates (other than the other Securitization Entities) have offices in the same location, there shall be a fair and appropriate allocation of overhead costs among them, and each such entity shall bear its fair share of such expenses;

(iv) issue separate financial statements from any of its Affiliates (other than the other Securitization Entities) prepared at least quarterly and prepared in accordance with GAAP;

(v) conduct its affairs in its own name and in accordance with its Charter Documents and observe all necessary, appropriate and customary limited liability company or corporate formalities (as applicable), including, but not limited to, holding all regular and special meetings appropriate to authorize all its actions, keeping separate and accurate minutes of its meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, but not limited to, payroll and intercompany transaction accounts;

(vi) not assume or guarantee any of the liabilities of any of its Affiliates (other than the other Securitization Entities); provided that the Securitization Entities may, pursuant to the Letter of Credit Reimbursement Agreement, cause letters of credit to be issued pursuant to Variable Funding Note Purchase Agreements that are for the sole benefit of one or more Non-Securitization Entities if the Master Issuer receives a fee from each Non-Securitization Entity whose obligations are secured by such letter of credit in an amount equal to the cost to the Master Issuer in connection with the issuance and maintenance of such letter of credit plus 25 basis points per annum, it being understood that such fee is an arms-length fair market fee;

(vii) take, or refrain from taking, as the case may be, all other actions that are necessary to be taken or not to be taken in order to (x) ensure that the assumptions and factual recitations set forth in the Specified Bankruptcy Opinion Provisions remain true and correct in all material respects with respect to it and (y) comply in all material respects with those procedures described in such provisions which are applicable to it;

(viii) maintain at least two Independent Managers, on its board of managers or its Board of Directors, as the case may be;

(ix) to the fullest extent permitted by law, so long as any Obligation remains outstanding, remove or replace any Independent Manager only for Cause and only after providing the Trustee and the Control Party with no less than three (3) days’ prior written notice of (A) any proposed removal of such Independent Manager, and (B) the identity of the proposed replacement Independent Manager, together with a certification that such replacement satisfies the requirements for an Independent Manager set forth in the Charter Documents of the applicable Securitization Entity; and

(x) (A) provide, or cause the Manager to provide, to the Trustee and the Control Party, a copy of the executed agreement with respect to the appointment of any replacement Independent Manager and (B) provide, or cause the Manager to provide, to the
Trustee, the Control Party and each Noteholder, written notice of the identity and contact information for each Independent Manager on an annual basis and at any time such information changes.

(b) The Master Issuer, on behalf of itself and each of the other Securitization Entities, confirms that the statements relating to the Master Issuer referenced in the opinion of Ropes & Gray LLP regarding substantive consolidation matters delivered to the Trustee on each Series Closing Date are true and correct with respect to itself and each other Securitization Entity, and that the Master Issuer will, and will cause each other Securitization Entity to, comply with any covenants or obligations assumed to be complied with by it therein as if such covenants and obligations were set forth herein.

Section 8.25 Covenants Regarding the Securitization IP.

(a) The Master Issuer shall not, and shall not permit any other Securitization Entity to, take or omit to take any action with respect to the maintenance, enforcement and defense of the Franchise Holder’s rights in and to the Securitization IP that would constitute a breach by the Manager of the Management Agreement if such action were taken or omitted by the Manager on behalf of any Securitization Entity.

(b) The Master Issuer shall notify the Trustee, the Back-Up Manager and the Servicer in writing within fifteen (15) Business Days of the Master Issuer first knowing or having reason to know that any application or registration relating to any material Securitization IP (now or hereafter existing) may become abandoned or dedicated to the public domain, or of any material adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the PTO, the United States Copyright Office, similar offices or agencies in any foreign countries in which the Securitization IP is located, or any court, but excluding office actions in the course of prosecution and any non-final determinations (other than in an adversarial proceeding) of the PTO, the United States Copyright Office or any similar office or agency in any such foreign country) regarding the validity of any Securitization Entity’s ownership of any material Securitization IP, its right to register the same, or to keep and maintain the same.

(c) With respect to the Securitization IP, the Master Issuer shall cause the Franchise Holder to: (i) execute, deliver and file (within fifteen (15) Business Days of the Closing Date as to the PTO or the United States Copyright Office, as applicable, or any similar office in Canada) instruments substantially in the form attached as Exhibit B-1 hereto with respect to Trademarks, Exhibit B-2 hereto with respect to Patents and Exhibit B-3 hereto with respect to Copyrights, or otherwise in form and substance satisfactory to the Control Party, and any other instruments or documents as may be reasonably necessary or, in the Control Party’s opinion, desirable to perfect or protect the Trustee’s security interest granted under this Base Indenture and the Guarantee and Collateral Agreement in the Trademarks, Patents and Copyrights included in the Securitization IP in the United States and Canada, (ii) notify the Trustee within thirty (30) days if a country becomes an Additional Perfection Country and (iii) use best efforts to execute, deliver and file with the applicable Governmental Authorities in each country other than the United States and Canada which, at the end of any fiscal year, represents
greater than $10,000,000 in Retained Collections in the aggregate during such fiscal year (each, an “Additional Perfection Country”) such instruments or documents as may be reasonably necessary (at the discretion of the Manager) under the laws of each such Additional Perfection Country to perfect or protect the Trustee’s security interest granted under the Base Indenture and the Guarantee and Collateral Agreement in the registered and applied-for Patents, Trademarks and Copyrights in such Additional Perfection Country included in the Securitization IP. The filings required by clause (iii) of the previous sentence will be made within one hundred fifty (150) days after a notice from the Master Issuer or the Franchise Holder that a country has become an Additional Perfection Country; provided that such documents need not be executed, filed or delivered in any Additional Perfection Country if (x) so doing would be reasonably likely to have an adverse effect on the validity, the enforceability or the Franchise Holder’s ownership of such Securitization IP, (y) the Manager determines that the filing fees are based upon a percentage of the Outstanding Principal Amount of the Notes or are otherwise unreasonably expensive in comparison to the benefits to be gained by the Secured Parties and the Control Party has been notified of such determination and has not objected within ten (10) Business Days to such determination, or (z) the “perfection” of the Trustee’s lien is not obtainable pursuant to the applicable law of such Additional Perfection Country through such filings.

(d) If the Master Issuer or any Guarantor, either itself or through any agent, licensee or designee, shall file or otherwise acquire an application for the registration of any Patent, Trademark or Copyright with the PTO, the United States Copyright Office or any successor office in Canada and any Additional Perfection Country, the Master Issuer or such Guarantor in a reasonable time after such filing (and in any event within (y) ninety (90) days of such filing in the United States and Canada and (z) for any Additional Perfection Country (A) where the filing takes place during the fiscal year in which such country becomes an Additional Perfection Country, within ninety (90) days after the end of the fiscal year of the Securitization Entities for the fiscal year in which such Additional Perfection Country became an Additional Perfection Country or (B) in any subsequent year, within ninety (90) days of such filing) (i) shall give the Trustee and the Control Party written notice thereof and (ii) execute and deliver all instruments and documents, and take all further action, that the Control Party may reasonably so request in order to continue, perfect or protect the security interest granted hereunder or under the Guarantee and Collateral Agreement in the United States and Canada and, consistent with the obligations set forth in Section 8.25(c), any Additional Perfection Country, including, without limitation, executing and delivering (x) the Supplemental Notice of Grant of Security Interest in Trademarks substantially in the form attached as Exhibit C-1 hereto, (y) the Supplemental Notice of Grant of Security Interest in Patents substantially in the form attached as Exhibit C-2 hereto and/or (z) the Supplemental Grant of Security Interest in Copyrights substantially in the form attached as Exhibit C-3 hereto, as applicable; provided, however, that with respect to Additional Perfection Countries, the aforesaid filings must be made within ninety (90) days of such written notice.

(e) In the event that any Securitization IP is infringed upon, misappropriated or diluted by a third party in a manner that would reasonably be expected to result in a Material Adverse Effect, the Franchise Holder within a reasonable period of its becoming aware of such infringement, misappropriation or dilution shall promptly notify the Trustee and the Control
Party in writing. The Franchise Holder shall take all reasonable and appropriate actions, at its expense, to protect or enforce such Securitization IP, including, if reasonable, suing for infringement, misappropriation or dilution and seeking an injunction (including, if appropriate, temporary and/or preliminary injunctive relief) against such infringement, misappropriation or dilution, unless the failure to take such actions on behalf of the Franchise Holder by the Manager would not constitute a breach by the Manager of the Management Agreement; provided that if the Franchise Holder decides not to take any action with respect to an infringement, misappropriation or dilution that would reasonably be expected to result in a Material Adverse Effect, the Franchise Holder shall deliver written notice to the Trustee, the Manager, the Back-Up Manager and the Control Party setting forth in reasonable detail the basis for its decision not to act, and none of the Manager, the Trustee, the Back-Up Manager or the Control Party will be required to take any actions on their behalf to protect or enforce the Securitization IP against such infringement, misappropriation or dilution; provided, further, that the Manager will be required to act if failure to do so would constitute a breach of the Managing Standard.

(f) With respect to licenses of third-party Intellectual Property entered into after the Closing Date by the Securitization Entities (including, for the avoidance of doubt, the Manager acting on behalf of the Securitization Entities, as applicable), the Securitization Entities shall use commercially reasonable efforts to include terms permitting the grant by the Securitization Entities of a security interest therein to the Trustee for the benefit of the Secured Parties and to allow the Manager (and any Successor Manager) the right to use such Intellectual Property in the performance of its duties under the Management Agreement.

Section 8.26 1940 Act.

The Master Issuer shall take or omit to take action as necessary in order to ensure the Master Issuer is not an “investment company” as set forth in Section 3(a)(1) of the 1940 Act, as such section may be amended from time to time.

Section 8.27 Real Property.

The Master Issuer shall not, and shall not permit any other Securitization Entity to, enter into any lease of real property (other than in connection with any Permitted Asset Disposition or New Contributed Restaurant Leases, New Franchised Restaurant Leases or New Retained Restaurant Leases). The Master Issuer shall not, and shall not permit any other Securitization Entity to, acquire any fee interest in real property (other than any fee interest in real property acquired by Wendy’s Properties).

Section 8.28 No Employees.

The Master Issuer and the other Securitization Entities shall have no employees.
Section 8.29 Insurance.

The Master Issuer shall cause the Manager to list each Securitization Entity as an “additional insured” or “loss payee” on any insurance maintained by the Manager for the benefit of each such Securitization Entity pursuant to the Management Agreement.

Section 8.30 Litigation.

If Wendy’s is not then subject to Section 13 or 15(d) of the 1934 Act, the Master Issuer shall, on each Quarterly Payment Date, provide a written report to the Servicer, the Manager, the Back-Up Manager and the Rating Agency for each Series of Notes Outstanding that sets forth all outstanding litigation, arbitration or other proceedings against any Wendy’s Entity that would have been required to be disclosed in Wendy’s annual reports, quarterly reports and other public filings which Wendy’s would have been required to file with the SEC pursuant to Section 13 or 15(d) of the 1934 Act if Wendy’s were subject to such Sections.

Section 8.31 Environmental.

The Master Issuer shall, and shall cause each other Securitization Entity to, promptly notify the Servicer, the Manager, the Back-Up Manager, the Trustee and the Rating Agency for each Series of Notes Outstanding, in writing, upon receipt of any written notice of which any Securitization Entity becomes aware from any source (including but not limited to a governmental entity) relating in any way to any possible material liability of any Securitization Entity pursuant to any Environmental Law that could reasonably be expected to have a Material Adverse Effect. In addition, other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Master Issuer shall, and shall cause each other Securitization Entity to:

(a) (i) comply with all applicable Environmental Laws, (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current operations or for any property owned, leased, or otherwise operated by any of them and obtain all Environmental Permits for any intended operations when such Environmental Permits are required and (iii) comply with all of their Environmental Permits; and

(b) undertake all investigative and remedial action required by Environmental Laws with respect to any Materials of Environmental Concern present at, on, under, in, or about any Real Estate Assets owned, leased or operated by the Master Issuer or any of its Affiliates, or at any other location (including, without limitation, any location to which Materials of Environmental Concern have been sent for re-use or recycling or for treatment, storage or disposal), which would reasonably be expected to (i) give rise to liability of the Master Issuer or any of its Affiliates under any applicable Environmental Law or otherwise result in costs to the Master Issuer or any of its Affiliates, (ii) interfere with the Master Issuer’s or any of its Affiliates’ continued operations or (iii) impair the fair saleable value of any Real Estate Assets owned by the Master Issuer or any of its Affiliates.
Section 8.32  **Enhancements.** No Enhancement shall be provided in respect of any Series of Notes, nor will any Enhancement Provider have any rights hereunder, as third-party beneficiary or otherwise, unless the Servicer has provided its prior written consent to such Enhancement, such consent not to be unreasonably withheld.

Section 8.33  **Series Hedge Agreements; Derivatives Generally.**

(a)  No Series Hedge Agreement shall be provided in respect of any Series of Notes, nor will any Hedge Counterparty have any rights hereunder, as third-party beneficiary or otherwise, unless the Control Party has provided its prior written consent to such Series Hedge Agreement, such consent not to be unreasonably withheld, and the Master Issuer has delivered a copy of such prior written consent to the Rating Agency for each Series of Notes Outstanding (with a copy to the Servicer).

(b)  Without the prior written consent of the Control Party, the Master Issuer shall not, and shall not permit any other Securitization Entity to, enter into any derivative contract, swap, option, hedging contract, forward purchase contract or other similar agreement or instrument if any such contract, agreement or instrument requires the Master Issuer to expend any financial resources to satisfy any payment obligations owed in connection therewith; provided that the Master Issuer shall deliver a copy of any such prior written consent to the Rating Agency for each Series of Notes Outstanding (with a copy to the Servicer).

Section 8.34  **Additional Securitization Entity.**

(a)  The Master Issuer in accordance with and as permitted under the Related Documents, may form or cause to be formed Additional Securitization Entities without the consent of the Control Party; provided that such Additional Securitization Entity is a Delaware limited liability company or a Delaware corporation (so long as the use of such corporate form is reasonably satisfactory to the Control Party) and has adopted Charter Documents substantially similar to the Charter Documents of the Securitization Entities that are Delaware limited liability companies as in existence on the Closing Date; provided, further, that such Additional Securitization Entity holds Franchise Assets or real property assets or is being established in order to act as a franchisor with respect to future New Franchise Agreements or hold such future assets.

(b)  If the Master Issuer desires to create, incorporate, form or otherwise organize an Additional Securitization Entity that does not comply with the requirements of the proviso set forth in clause (a) above, the Master Issuer shall first obtain the prior written consent of the Control Party, such consent not to be unreasonably withheld; provided that the Master Issuer shall deliver a copy of any such prior written consent to the Rating Agency for each Series of Notes Outstanding (with a copy to the Servicer).

(c)  In connection with the organization of any Additional Securitization Entity in conjunction with clause (a) or (b) above, the Master Issuer may (i) designate such Additional Securitization Entity as a “franchisor” or (ii) elect to apply the provisions hereunder
and under the other Related Documents applicable to any then-existing Securitization Entity to such Additional Securitization Entity;

(d) The Master Issuer shall cause each Additional Securitization Entity to promptly execute an Assumption Agreement in form set forth as Exhibit A to the Guarantee and Collateral Agreement pursuant to which such Additional Securitization Entity shall become jointly and severally obligated under the Guarantee and Collateral Agreement with the other Guarantors.

(e) Upon the execution and delivery of an Assumption Agreement as required in clause (d) above, each Additional Securitization Entity party thereto will become a party to the Guarantee and Collateral Agreement with the same force and effect as if originally named therein as a Guarantor and, without limiting the generality of the Guarantee and Collateral Agreement, will assume all Obligations and liabilities of a Guarantor thereunder.

Section 8.35 Subordinated Notes Repayments. The Master Issuer shall not repay any Subordinated Notes or Senior Subordinated Notes after the Series Anticipated Repayment Date with respect to any Series of Notes Outstanding with amounts obtained by the Master Issuer from the Holding Company Guarantor, Oldemark, Wendy’s or any other direct or indirect owner of Equity Interests of the Master Issuer in the form of any capital contributions or any portion of any Residual Amounts distributed to the Master Issuer pursuant to the Priority of Payments unless and until all Senior Notes Outstanding have been paid in full and are no longer Outstanding.

Section 8.36 Tax Lien Reserve Amount. Upon receipt of any Tax Lien Reserve Amount, Holding Company Guarantor will remit such amount to the Master Issuer to be held in a collateral deposit account established with and controlled by the Trustee, in which the Trustee shall have a security interest; provided that the Trustee will not release such Tax Lien Reserve Amount from such account unless: (a) the Servicer instructs the Trustee in writing to withdraw and pay all of such Tax Lien Reserve Amount in accordance with the written instructions of the Master Issuer which may include returning such amounts to the Holding Company Guarantor for refund to Wendy’s or an Affiliate thereof upon receipt by the Trustee, the Servicer, the Manager, the Back-Up Manager and the Controlling Class Representative of reasonably satisfactory evidence that the Lien for which such Tax Lien Reserve Amount was established has been released by the IRS; (b) the Master Issuer, or the Manager on behalf of the Master Issuer, delivers written instructions to the Trustee to withdraw and pay all or a portion of such Tax Lien Reserve Amount to the IRS on behalf of the Securitization Entities; provided that the Master Issuer shall deliver, or cause to be delivered, prior written notice of any such written instruction to the Servicer; or (c) the Control Party instructs the Trustee in writing to withdraw and pay all or a portion of such Tax Lien Reserve Amount to the IRS (i) upon the occurrence and during the continuation of an Event of Default or (ii) upon receipt of written notice from any Securitization Entity stating that the IRS intends to execute on the Lien for which such Tax Lien Reserve
Amount was established in respect of any assets of any Securitization Entity; provided that the Control Party shall deliver a copy of any such written instruction to Wendy’s.

Section 8.37 Mortgages.

(a) Upon the occurrence of a Mortgage Preparation Event, the Master Issuer shall cause the preparation of fully executed Mortgages for recordation against the Real Estate Assets (excluding the Contributed Restaurant Third-Party Leases). Within ninety (90) days of such Mortgage Preparation Event, the Master Issuer shall deliver such Mortgages to the Trustee, to be held for the benefit of the Secured Parties in the event a Mortgage Recordation Event occurs (subject to Section 3.1(c)). Upon the occurrence of a Mortgage Recordation Event, the Trustee shall, at the direction of the Control Party, deliver the Mortgages within twenty (20) Business Days following receipt of the properly executed Mortgages to the applicable recording office for recordation (unless such recordation requirement is waived by the Control Party, acting at the direction of the Controlling Class Representative); provided that the Trustee shall have no obligation to record a Mortgage until the later of (i) twenty (20) Business Days following delivery of a properly executed Mortgage to the Trustee and (ii) the Trustee’s Actual Knowledge of a Rapid Amortization Event. The Trustee may engage a third-party service provider (which shall be reasonably acceptable to the Control Party) to assist in delivering such Mortgages to the applicable Governmental Authority and the Trustee shall pay all Mortgage Recordation Fees in connection with such recordation. The Trustee shall be reimbursed by the Master Issuer for any and all reasonable costs and expenses in connection with such Mortgage Recordation Event, including all Mortgage Recordation Fees pursuant to and in accordance with the Priority of Payments. For the avoidance of doubt, Wendy’s Properties shall not be required to, and the Trustee may not, record or cause to be recorded any Mortgage until the occurrence of a Mortgage Recordation Event that has not been waived by the Control Party (at the direction of the Controlling Class Representative). Neither the Trustee nor any custodian on behalf of the Trustee shall be under any duty or obligation to inspect, review or examine any such Mortgages or to determine that the same are valid, binding, legally effective, properly endorsed, genuine, enforceable or appropriate for the represented purpose or that they are in recordable form. Neither the Trustee nor any agent on its behalf shall in any way be liable for any delays in the recordation of any Mortgage, for the rejection of a Mortgage by any recording office or for the failure of any Mortgage to create in favor of the Trustee, for the benefit of the Secured Parties, legal, valid and enforceable first priority Liens on (subject to Permitted Liens), and security interests in, Wendy’s Properties’ right, title and interest in and to each Contributed Owned Real Property and each New Owned Real Property, and the Proceeds thereof. Upon the request of Wendy’s Properties, and at the direction of the Manager, the Trustee shall execute and deliver a release of mortgage to be held in escrow pending a closing of a sale of any Contributed Owned Real Property or any New Owned Real Property; provided that if such closing shall not occur, such release of mortgage shall be returned by the escrow agent directly to the Trustee.

(b) Notwithstanding Section 8.37(a) above or anything else contained in this Base Indenture or any other Related Document, the aggregate amount of all Obligations of the Master Issuer and Wendy’s Properties secured under any Indenture Document by the Debenture Restricted Assets shall not, at any time, exceed the Indenture Threshold Amount of Indebtedness
(as defined in Annex B) that may be secured by Debenture Restricted Assets under the Unsecured Debenture Indenture, determined in accordance with the terms of the Unsecured Debenture Indenture, without requiring holders of the Unsecured Debentures to be equally and ratably secured in accordance with the terms of the Unsecured Debenture Indenture.

Section 8.38 Bankruptcy Proceedings. The Master Issuer shall, and shall cause the other Securitization Entities to, promptly object to the institution of any bankruptcy proceeding against it and to take all necessary or advisable steps to cause the dismissal of any such proceeding (including, without limiting the generality of the foregoing, to timely file an answer and any other appropriate pleading objecting to (i) the institution of any proceeding to have any Securitization Entity, as the case may be, adjudicated as bankrupt or insolvent or (ii) the filing of any petition seeking relief, reorganization, arrangement, adjustment or composition or in respect of any Securitization Entity, as the case may be, under applicable bankruptcy law or any other applicable law).

ARTICLE IX
REMEDIES

Section 9.1 Rapid Amortization Events.

The Notes shall be subject to rapid amortization, in whole and not in part, following the occurrence of any of the following events as declared by the Control Party (at the direction of the Controlling Class Representative) by written notice to the Master Issuer (with a copy to the Trustee) (each, a “Rapid Amortization Event”); provided that a Rapid Amortization Event described in clause (e) below will occur automatically without any declaration by the Control Party unless the Control Party and 100% of the Noteholders have agreed to waive such event in accordance with Section 9.7:

(a) the DSCR with respect to any Quarterly Payment Date is less than the Rapid Amortization DSCR Threshold;

(b) Wendy’s Systemwide Sales as calculated on any Quarterly Calculation Date are less than $5,500,000,000;

(c) a Manager Termination Event shall have occurred;

(d) an Event of Default shall have occurred; or

(e) the Master Issuer has not repaid or refinanced a Series of Notes (or Class or Tranche thereof) in full on or prior to the Series Anticipated Repayment Date relating to such Series of Notes (or Class or Tranche thereunder); provided that, if on the applicable Series Anticipated Repayment Date the Master Issuer certifies in writing to the Trustee and the Control Party that the DSCR is greater than 2.00x as of such Series Anticipated Repayment Date, and such Series of Notes (or Class or Tranche thereunder) is repaid or refinanced within one (1)
calendar year from such Series Anticipated Repayment Date, such Rapid Amortization Event shall no longer be in effect following such repayment or refinancing.

For the avoidance of doubt, any Scheduled Principal Payments set forth in any Series Supplement shall continue to be made when due and payable subsequent to the occurrence of a Rapid Amortization Event.

Section 9.2  Events of Default.

If any one of the following events shall occur (each an “Event of Default”):

(a) the Master Issuer defaults in the payment of interest on any Series of Notes Outstanding when the same becomes due and payable and such default continues for two (2) Business Days (or in the case of a failure to pay such interest when due resulting solely from an administrative error or omission by the Trustee, such default continues for a period of two (2) Business Days after the Trustee receives written notice or an Authorized Officer of the Trustee has Actual Knowledge of such administrative error or omission); provided that failure to pay any Post-ARD Contingent Interest on any Quarterly Payment Date (including on any applicable Series Legal Final Maturity Date) in excess of available amounts in accordance with the Priority of Payments will not be an Event of Default;

(b) the Master Issuer (i) defaults in the payment of any principal of any Series of Notes on its Series Legal Final Maturity Date or as and when due in connection with any mandatory or optional prepayment or (ii) fails to make any other principal payments or allocations due from funds available in the Collection Account in accordance with the Priority of Payments and the applicable Series Supplement on any Weekly Allocation Date; provided that in the case of a failure to pay or allocate principal under either clause (i) or (ii) resulting solely from an administrative error or omission by the Trustee, such default continues for a period of two (2) Business Days after the Trustee receives written notice or an Authorized Officer of the Trustee has Actual Knowledge of such administrative error or omission; provided that the failure to pay any prepayment premium on any prepayment of principal made during any Rapid Amortization Period occurring prior to the related Series Anticipated Repayment Date will not be an Event of Default;

(c) any Securitization Entity fails to perform or comply with any of the covenants (other than those covered by clause (a) or clause (b) above) (including any covenant to pay any amount other than interest on or principal of the Notes when due in accordance with the Priority of Payments), or any of its representations or warranties contained in any Related Document to which it is a party proves to be incorrect in any material respect as of the date made or deemed to be made, and such default, failure or breach continues for a period of thirty (30) consecutive days or, solely with respect to a failure to comply with (i) any obligation to deliver a notice, report or other communication within the specified time frame set forth in the applicable Related Document, such failure continues for a period of five (5) consecutive Business Days after the specified time frame for delivery has elapsed or (ii) Sections 8.7, 8.12, 8.13, 8.14, 8.15, 8.17, 8.18, 8.19, 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.27 and 8.28 such failure continues for a period of ten (10) consecutive Business Days, in each case, following the earlier
to occur of the Actual Knowledge of an Authorized Officer of such Securitization Entity of such breach or failure and the default caused thereby or written notice to such Securitization Entity by the Trustee, the Back-Up Manager or the Control Party (at the direction of the Controlling Class Representative) of such default, breach or failure; provided, however, that no Event of Default shall occur pursuant to this clause (c) if, with respect to any such representation deemed to have been false in any material respect when made which can be remedied by making a payment of an Indemnification Amount, (i) the relevant Indemnitor has paid the required Indemnification Amount in accordance with the terms of the Related Documents and (ii) such Indemnification Amount has been deposited into the Collection Account;

(d) the occurrence of an Event of Bankruptcy with respect to any Securitization Entity;

(e) the Interest-Only DSCR as calculated as of any Quarterly Calculation Date is less than 1.10x;

(f) the SEC or other regulatory body having jurisdiction reaches a final determination that any Securitization Entity is required to register as an “investment company” under the 1940 Act or is under the “control” of a Person that is required to register as an “investment company” under the 1940 Act;

(g) any of the Related Documents or any material portion thereof ceases to be in full force and effect or enforceable in accordance with its terms (other than in accordance with the express termination provisions thereof) or any Non-Securitization Entity or Securitization Entity so asserts in writing;

(h) other than with respect to Collateral with an aggregate fair market value of less than $25,000,000, the Trustee ceases to have for any reason a valid and perfected first-priority security interest (subject to Permitted Liens), in which perfection can be achieved under the UCC or other applicable law in the United States to the extent required by the Related Documents or any Securitization Entity or any Affiliate thereof so asserts in writing;

(i) any Securitization Entity fails to perform or comply with any material provision of its organizational documents or any provision of Section 8.24 or the Guarantee and Collateral Agreement relating to legal separateness of the Securitization Entities, which failure is reasonably likely to cause the contribution of the Securitized Assets to such Securitization Entity pursuant to the Contribution Agreements to fail to constitute a “true contribution” or other absolute transfer of such Securitized Assets pursuant to such Contribution Agreement or is reasonably likely to cause a court of competent jurisdiction to disregard the separate existence of such Securitization Entity relative to any Person other than another Securitization Entity and, in each case, such failure continues for more than thirty (30) consecutive days following the earlier to occur of the Actual Knowledge of an Authorized Officer of such Securitization Entity or written notice to such Securitization Entity from the Trustee, the Back-Up Manager or the Control Party (at the direction of the Controlling Class Representative) of such failure;
(j) a final non-appealable ruling has been made by a court of competent jurisdiction that the contribution of the Securitized Assets (other than any immaterial Securitized Assets and any Securitized Assets that has been disposed of to the extent permitted or required under the Related Documents) pursuant to a Contribution Agreement does not constitute a “true contribution" or other absolute transfer of such Securitized Assets pursuant to such agreement;

(k) one or more outstanding final non-appealable judgments are rendered against any Securitization Entity in an aggregate amount exceeding $20,000,000 (to the extent not covered by independent third-party insurance as to which the issuer is rated at least “A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), and either (i) enforcement proceedings are commenced by any creditor upon such judgment or order or (ii) there is any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, will not be in effect;

(l) the failure of (i) Wendy’s to own (directly or indirectly) 100% of the Equity Interests of the Holding Company Guarantor; (ii) the Holding Company Guarantor to own 100% of the Equity Interests of the Master Issuer; or (iii) the Master Issuer to own (directly or indirectly) 100% of the Equity Interests of each other Securitization Entity;

(m) other than as permitted hereunder or the other Related Documents, the Securitization Entities collectively fail to have good title in or to any material portion of the Securitized Assets; provided, however, that this clause (m) will only apply to the Real Estate Assets six (6) months after the Closing Date;

(n) (i) any Securitization Entity engages in any non-exempt “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Employee Benefit Plan, (ii) any “accumulated funding deficiency” or failure to meet the “minimum funding standard” (as defined in Section 302 of ERISA), whether or not waived, exists with respect to any Pension Plan and is not discharged within thirty (30) days thereafter, (iii) any Lien in an amount equal to at least $10,000,000 in favor of the PBGC or a Pension Plan arises on the assets of any Securitization Entity and is not discharged within thirty (30) days thereafter, (iv) a Reportable Event occurs with respect to, or proceedings are commenced in writing to have a trustee appointed, or a trustee is appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings in writing or appointment of a trustee is, in the reasonable opinion of the Control Party, likely to result in the termination of such Single Employer Plan for purposes of Title IV of ERISA, (v) any Single Employer Plan terminates for purposes of Title IV of ERISA or (vi) any Securitization Entity incurs, or in the reasonable opinion of the Control Party is likely to incur, any liability in connection with a complete or partial withdrawal from, or the Insolvency, Reorganization or termination of, a Multiemployer Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to result in a Material Adverse Effect on any Securitization Entity;

(o) the IRS files notice of a Lien pursuant to Section 6323 of the Code with regard to the assets of any Securitization Entity and such Lien has not been released within sixty (60) days, unless (i) TWC or a Subsidiary thereof has provided evidence that payment to satisfy
the full amount of the asserted liability has been provided to the IRS, and the IRS has released such asserted Lien within sixty (60) days of such payment, or (ii) such Lien or the asserted liability is being contested in good faith and TWC or a Subsidiary thereof has contributed to the Holding Company Guarantor the Tax Lien Reserve Amount, which such Tax Lien Reserve Amount is set aside and remitted to a collateral deposit account as provided in Section 8.36; or

(p) a final non-appealable non-monetary judgment has been made by a court of competent jurisdiction that materially impairs (i) the Securitization Entities’ ability to conduct the Contributed Franchised Restaurant Business and the Contributed Restaurant Business as of such date, taken as a whole, or (ii) the exercise of the Securitization Entities’ or of the Trustee’s rights with respect to the Securitized Assets,

then (i) in the case of any event described in each clause above (except for clause (d) thereof) that is continuing the Trustee, at the direction of the Control Party (at the direction of the Controlling Class Representative) and on behalf of the Noteholders, by written notice to the Master Issuer, shall declare the Notes of all Series to be immediately due and payable, and upon any such declaration the unpaid principal amount of the Notes of all Series, together with accrued and unpaid interest thereon through the date of acceleration, and all other amounts due to the Noteholders and the other Secured Parties under the Indenture Documents shall become immediately due and payable or (ii) in the case of any event described in clause (d) above, the unpaid principal amount of the Notes of all Series, together with interest accrued but unpaid thereon through the date of acceleration, and all other amounts due to the Noteholders and the other Secured Parties under the Indenture Documents, shall immediately and without further act become due and payable. Promptly following the Trustee’s receipt of written notice hereunder of any Event of Default, the Trustee shall send a copy thereof to the Master Issuer, the Servicer, the Rating Agency for each Series of Notes Outstanding, the Controlling Class Representative, the Manager, the Back-Up Manager, each Noteholder and each other Secured Party.

If any Securitization Entity obtains Actual Knowledge that a Default or an Event of Default has occurred and is continuing, such Securitization Entity shall promptly notify the Trustee and the Servicer.

At any time after such a declaration of acceleration of maturity has been made relating to the Notes and before a judgment or decree for payment of the money due has been obtained by the Trustee, as hereinafter provided in this Article IX, the Control Party (at the direction of the Controlling Class Representative), by written notice to the Master Issuer and to the Trustee, may rescind and annul such declaration and its consequences, if (i) the Master Issuer has paid or deposited with the Trustee a sum sufficient to pay (a) all overdue installments of interest and principal on the Notes (excluding principal amounts due solely as a result of the acceleration), and (b) all unpaid taxes, administrative expenses and other sums paid or advanced by the Trustee or Servicer under the Related Documents and the reasonable compensation, expenses, disbursements and Advances of the Trustee and the Servicer, their agents and counsel, and any unreimbursed Advances (with interest thereon at the Advance Interest Rate), Servicing Fees, Liquidation Fees or Workout Fees and (ii) all existing Events of Default, other than the non-

101
payment of the principal of the Notes which has become due solely by such declaration of acceleration, have been cured or waived as provided in Section 9.7. No such rescission shall affect any subsequent default or impair any right consequent thereon. Any acceleration resulting from any event described in clause (d) above may not be rescinded.

Section 9.3 Rights of the Control Party and Trustee upon Event of Default.

(a) **Payment of Principal and Interest.** The Master Issuer covenants that if (i) default is made in the payment of any interest on any Series of Notes Outstanding when the same becomes due and payable, (ii) the Notes are accelerated following the occurrence of an Event of Default or (iii) default is made in the payment of the principal of, or premium, if any, on any Series of Notes Outstanding when due and payable, the Master Issuer shall, to the extent of funds available, upon demand of the Trustee, at the direction of the Control Party (subject to Section 11.4(e), at the direction of the Controlling Class Representative), pay to the Trustee, for the benefit of the Noteholders, the whole amount then due and payable on the Notes for principal, premium, if any, and interest, and, to the extent payment at such rate of interest shall be legally enforceable, upon overdue installments of interest, at the applicable Note Rate and any default rate, as applicable, and in addition thereto such further amount as shall be sufficient to cover costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel.

(b) **Proceedings To Collect Money.** In case the Master Issuer shall fail forthwith to pay such amounts upon such demand, the Trustee at the direction of the Control Party (at the direction of the Controlling Class Representative), in its own name and as trustee of an express trust, may institute a Proceeding for the collection of the sums so due and unpaid, and may prosecute such Proceeding to judgment or final decree, and may enforce the same against the Master Issuer and collect in the manner provided by law out of the property of the Master Issuer, wherever situated, the moneys adjudged or decreed to be payable.

(c) **Other Proceedings.** If and when an Event of Default shall have occurred and is continuing, the Trustee, at the direction of the Control Party (subject to Section 11.4(e), at the direction of the Controlling Class Representative) pursuant to a Control Party request shall take one or more of the following actions:

(i) proceed to protect and enforce its rights and the rights of the Noteholders and the other Secured Parties, by such appropriate Proceedings as the Control Party (at the direction of the Controlling Class Representative) shall deem most effective to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in the Indenture or any other Related Document or in aid of the exercise of any power granted therein, or to enforce any other proper remedy or legal or equitable right vested in the Trustee by the Indenture or any other Related Document or by law, including any remedies of a secured party under applicable law;

(ii) (A) direct the Master Issuer to exercise (and the Master Issuer agrees to exercise) all rights, remedies, powers, privileges and claims of the Master Issuer against any party to any Collateral Transaction Document arising as a result of the occurrence of such Event

102
of Default or otherwise, including the right or power to take any action to compel performance or observance by any such party of its obligations to the Master Issuer, and any right of the Master Issuer to take such action independent of such direction shall be suspended, and (B) if (x) the Master Issuer shall have failed, within ten (10) Business Days of receiving the direction of the Trustee (given at the direction of the Control Party (at the direction of the Controlling Class Representative)), to take commercially reasonable action to accomplish such directions of the Trustee, (y) the Master Issuer refuses to take such action or (z) the Control Party (at the direction of the Controlling Class Representative) reasonably determines that such action must be taken immediately, take (or the Control Party on behalf of the Trustee shall take) such previously directed action (and any related action as permitted under the Indenture thereafter determined by the Trustee or the Control Party to be appropriate without the need under this provision or any other provision under the Indenture to direct the Master Issuer to take such action);

(iii) institute Proceedings from time to time for the complete or partial foreclosure of the Indenture or, to the extent applicable, any other Related Document, with respect to the Collateral and, to the extent permitted by applicable law, any other Securitized Assets; provided that the Trustee will not be required to take title to any real property in connection with any foreclosure or other exercise of remedies hereunder or under such Related Documents and title to such property will instead be acquired in an entity designated and (unless owned by a third party) controlled by the Control Party; and/or

(iv) sell all or a portion of the Collateral and, to the extent permitted by applicable law, any other Securitized Assets, at one or more public or private sales called and conducted in any manner permitted by law; provided, however, that the Trustee shall not proceed with any such sale without the prior written consent of the Control Party (at the direction of the Controlling Class Representative) and the Trustee will provide notice to the Master Issuer and each Holder of Subordinated Notes and Senior Subordinated Notes of a proposed sale of Collateral or Securitized Assets, to the extent permitted by applicable law.

(d) Sale of Securitized Assets. In connection with any sale of the Collateral hereunder, under the Guarantee and Collateral Agreement (which may proceed separately and independently from the exercise of remedies under the Indenture), Mortgage or under any judgment, order or decree in any judicial proceeding for the foreclosure or involving the enforcement of the Indenture, the Guarantee and Collateral Agreement or any other Related Document, or any sale of Securitized Assets, to the extent permitted by applicable law:

(i) any of the Trustee, any Noteholder, any Enhancement Provider, any Hedge Counterparty and/or any other Secured Party may bid for and purchase the property being sold, and upon compliance with the terms of the sale may hold, retain, possess and dispose of such property in its own absolute right without further accountability;

(ii) the Trustee (at the direction of the Control Party (at the direction of the Controlling Class Representative)) may make and deliver to the purchaser or purchasers a good and sufficient deed, bill of sale and instrument of assignment and transfer of the property sold;
(iii) all right, title, interest, claim and demand whatsoever, either at law or in equity or otherwise, of any Securitization Entity of, in and to the property so sold shall be divested; and such sale shall be a perpetual bar both at law and in equity against such Securitization Entity, its successors and assigns, and against any and all Persons claiming or who may claim the property sold or any part thereof from, through or under such Securitization Entity or its successors or assigns; and

(iv) the receipt of the Trustee or of the officer thereof making such sale shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money, and such purchaser or purchasers, and his or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Trustee or of such officer thereof, be obliged to see to the application of such purchase money or be in any way answerable for any loss, misapplication or non-application thereof.

(e) Application of Proceeds. Any amounts obtained by the Trustee or the Control Party on account of or as a result of the exercise by the Trustee or the Control Party of any right hereunder or under the Guarantee and Collateral Agreement (a) shall be deposited into the Collection Account and, other than with respect to amounts owed to a depositary bank under the related Account Control Agreement, shall be held by the Trustee as additional collateral for the repayment of the Obligations and (b) shall be applied first to pay a depositary bank in respect of amounts owed to it under the related Account Control Agreement and then as provided in the priority set forth in the Priority of Payments; provided, however, that unless otherwise provided in this Article IX, with respect to any distribution to any Class of Notes, notwithstanding the provisions of Article V, such amounts shall be distributed sequentially in order of alphabetical (as opposed to alphanumerical) designation and pro rata among each Class of Notes of the same alphabetical designation based upon the Outstanding Principal Amount of the Notes of each such Class.

(f) Additional Remedies. In addition to any rights and remedies now or hereafter granted hereunder or under applicable law (x) with respect to the Collateral, the Trustee shall have all of the rights and remedies of a secured party under the UCC as enacted in any applicable jurisdiction and (y) with respect to the other Securitized Assets, the Trustee shall have all of the rights and remedies of an unsecured creditor in any applicable jurisdiction.

(g) Proceedings. The Trustee may maintain a Proceeding even if it does not possess any of the Notes or does not produce any of them in the Proceeding, and any such Proceeding instituted by the Trustee shall be in its own name as trustee. All remedies are cumulative to the extent permitted by law.

(h) Power of Attorney. The Master Issuer hereby grants to the Trustee an absolute and irrevocable power of attorney to sign, upon the occurrence and during the continuance of an Event of Default, any document which may be required by the PTO, United States Copyright Office, any similar office or agency in Canada and in each foreign country in which any Securitization IP is located, or any other Governmental Authority in order to effect an absolute assignment of all right, title and interest in or to any Securitization IP, and record the same.
Section 9.4 Waiver of Appraisal, Valuation, Stay and Right to Marshaling. To the extent it may lawfully do so, the Master Issuer for itself and for any Person who may claim through or under it hereby:

(a) agrees that neither it nor any such Person will step up, plead, claim or in any manner whatsoever take advantage of any appraisal, valuation, stay, extension or redemption laws, now or hereafter in force in any jurisdiction, which may delay, prevent or otherwise hinder (i) the performance, enforcement or foreclosure of the Indenture or the Guarantee and Collateral Agreement, (ii) the sale of any of the Collateral or Securitized Assets, to the extent permitted by applicable law or (iii) the putting of the purchaser or purchasers thereof into possession of such property immediately after the sale thereof;

(b) waives all benefit or advantage of any such laws;

(c) waives and releases all rights to have the Collateral and/or the Securitized Assets marshaled upon any foreclosure, sale or other enforcement of the Indenture; and

(d) consents and agrees that, subject to the terms of the Indenture and the Guarantee and Collateral Agreement, all the Collateral and all of the Securitized Assets (to the extent permitted by applicable law) may at any such sale be sold by the Trustee as an entirety or in such portions as the Trustee may (upon direction by the Control Party (at the direction of the Controlling Class Representative)) determine.

Section 9.5 Limited Recourse.

Notwithstanding any other provision of the Indenture, the Notes or any other Related Document or otherwise, the liability of the Securitization Entities to the Noteholders and any other Secured Parties under or in relation to the Indenture, the Notes or any other Related Document or otherwise, is limited in recourse to the assets of the Securitization Entities. Following the proceeds of such assets having been applied in accordance with the terms hereof, none of the Noteholders or any other Secured Parties shall be entitled to take any further steps against any Securitization Entity to recover any sums due but still unpaid hereunder, under the Notes or under any of the other agreements or documents described in this Section 9.5, all claims in respect of which shall be extinguished.

Section 9.6 Optional Preservation of the Securitized Assets.

If the maturity of the Outstanding Notes of each Series has been accelerated pursuant to Section 9.2 following an Event of Default and such declaration and its consequences have not been rescinded and annulled, the Trustee, at the direction of the Control Party (acting at the direction of the Controlling Class Representative), shall elect to maintain possession of such portion, if any, of the Collateral and/or Securitized Assets (to the extent permitted by applicable law) as the Control Party (acting at the direction of the Controlling Class Representative) shall in its discretion determine.
Section 9.7 Waiver of Past Events.

Prior to the declaration of the acceleration of the maturity of each Series of Notes Outstanding as provided in Section 9.2 and subject to Section 13.2, the Control Party (at the direction of the Controlling Class Representative) by notice to the Trustee, the Rating Agency and the Servicer, may waive any existing Default or Event of Default described in any clause of Section 9.2 (except clause (d) thereof) and its consequences; provided, however, that before any waiver may be effective, the Trustee and the Servicer must have received any reimbursement then due or payable in respect of unreimbursed Advances (including interest thereon) or any other amounts then due to the Servicer or the Trustee hereunder or under the Related Documents; provided, further, that the Control Party shall provide written notice of any such waiver to the Rating Agency for each Series of Notes Outstanding (with a copy to the Servicer). Upon any such waiver, such Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon. A Default or an Event of Default described in Section 9.2(d) shall not be subject to waiver without the consent of the Control Party (acting at the direction of the Controlling Class Representative) and each Noteholder. Subject to Section 13.2, the Control Party (at the direction of the Controlling Class Representative), by notice to the Trustee, the Rating Agency for each Series of Notes Outstanding and the Servicer, may waive any existing Potential Rapid Amortization Event or any existing Rapid Amortization Event; provided however, that a Rapid Amortization Event described in Section 9.1(e) relating to a particular Series of Notes (or Class thereof) shall not be permitted to be waived by any party unless 100% of the Noteholders have consented to such waiver in writing.

Section 9.8 Control by the Control Party.

Notwithstanding any other provision hereof, the Control Party (subject to Section 11.4(e), at the direction of the Controlling Class Representative) may cause the institution of and direct the time, method and place of conducting any proceeding in respect of any enforcement of the Collateral (or, to the extent permitted by applicable law, other Securitized Assets) or conducting any proceeding in respect of any enforcement of Liens on the Collateral and other rights and remedies against the other Securitized Assets (to the extent permitted by applicable law) or conducting any proceeding for any contractual or legal remedy available to the Trustee or exercise any trust or power conferred on the Trustee; provided that:

(a) such direction of time, method and place shall not be in conflict with any rule of law, the Servicing Standard or the Indenture;

(b) the Control Party (at the direction of the Controlling Class Representative) may take any other action deemed proper by the Control Party (at the direction of the Controlling Class Representative) that is not inconsistent with such direction (as the same may be modified by the Control Party (with the consent of the Controlling Class Representative)); and

(c) such direction shall be in writing;
provided further that, subject to Section 10.1, the Trustee need not take any action that it determines might involve it in liability unless it has received an indemnity for such liability as provided herein. The Trustee shall take no action referred to in this Section 9.8 unless instructed to do so by the Control Party (at the direction of the Controlling Class Representative).

Section 9.9 Limitation on Suits.

Any other provision of the Indenture to the contrary notwithstanding, a Holder of Notes may pursue a remedy with respect to the Indenture or any other Related Document only if:

(a) the Noteholder gives to the Trustee, the Control Party and the Controlling Class Representative written notice of a continuing Event of Default;

(b) the Noteholders of at least 25% of the Aggregate Outstanding Principal Amount make a written request to the Trustee, the Control Party and the Controlling Class Representative to pursue the remedy;

(c) such Noteholder or Noteholders offer and, if requested, provide to the Trustee, the Control Party and the Controlling Class Representative indemnity satisfactory to the Trustee, the Control Party and the Controlling Class Representative against any loss, liability or expense;

(d) the Trustee does not comply with the request within sixty (60) days after receipt of the request and the offer and, if requested, the provision of indemnity reasonably satisfactory to it;

(e) during such sixty (60) day period, the Majority of Senior Noteholders do not give the Trustee a direction inconsistent with the request; and

(f) the Control Party (at the direction of the Controlling Class Representative) has consented to the pursuit of such remedy.

A Noteholder may not use the Indenture or any other Related Document to prejudice the rights of another Noteholder or to obtain a preference or priority over another Noteholder.

Section 9.10 Unconditional Rights of Noteholders to Receive Payment.

Notwithstanding any other provision of the Indenture, the right of any Holder of a Note to receive payment of principal of, and premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder of the Note.
Section 9.11  The Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel), the Noteholders and any other Secured Party (as applicable) allowed in any judicial proceedings relative to the Master Issuer (or any other obligor upon the Notes), its creditors or its property, and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claim and any custodian in any such judicial proceeding is hereby authorized by each Noteholder and each other Secured Party to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders or any other Secured Party, to pay the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 10.5. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 10.5 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money and other properties which any of the Noteholders or any other Secured Party may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Noteholder or any other Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Noteholder or any other Secured Party, or to authorize the Trustee to vote in respect of the claim of any Noteholder or any other Secured Party in any such proceeding.

Section 9.12  Undertaking for Costs.

In any suit for the enforcement of any right or remedy under the Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of any undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys’ fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 9.12 does not apply to a suit by the Trustee, a suit by a Noteholder pursuant to Section 9.9 or a suit by Noteholders of more than 10% of the Aggregate Outstanding Principal Amount of all Series of Notes.

Section 9.13  Restoration of Rights and Remedies.

If the Trustee, any Noteholder or any other Secured Party has instituted any Proceeding to enforce any right or remedy under the Indenture or any other Related Document and such Proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Trustee or to such Noteholder or other Secured Party, then and in every such case the Trustee and the Noteholders and any such other Secured Party shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder,
and thereafter all rights and remedies of the Trustee, the Noteholders and the other Secured Parties shall continue as though no such proceeding had been instituted.

Section 9.14 Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Notes or any other Secured Party is intended to be exclusive of any other right or remedy, and every right or remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given under the Indenture or any other Related Document or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy under the Indenture or any other Related Document, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 9.15 Delay or Omission Not Waiver.

No delay or omission of the Trustee, the Control Party, the Controlling Class Representative, any Holder of any Note or any other Secured Party to exercise any right or remedy accruing upon any Potential Rapid Amortization Event, Rapid Amortization Event, Default or Event of Default shall impair any such right or remedy or constitute a waiver of any such Potential Rapid Amortization Event, Rapid Amortization Event, Default or Event of Default or an acquiescence therein. Every right and remedy given by this Article IX or by law to the Trustee, the Control Party, the Controlling Class Representative, the Holders of Notes or any other Secured Party may be exercised from time to time to the extent not inconsistent with the Indenture, and as often as may be deemed expedient, by the Trustee, the Control Party, the Controlling Class Representative, the Holders of Notes or any other Secured Party, as the case may be.

Section 9.16 Waiver of Stay or Extension Laws.

The Master Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of the Indenture or any other Related Document; and the Master Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantages of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, the Control Party or the Controlling Class Representative, but will suffer and permit the execution of every such power as though no such law had been enacted.
Section 10.1  Duties of the Trustee

(a) If an Event of Default or Rapid Amortization Event known to a Trust Officer has occurred and is continuing, the Trustee shall (except in the case of the receipt of directions with respect to such matter from the Control Party in accordance with the terms of this Base Indenture or another Related Document in which event the Trustee’s sole obligation will be to await such direction and act or refrain from acting in accordance therewith) exercise such of the rights and powers vested in it by the Indenture and the other Related Documents, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person’s own affairs; provided, however, that the Trustee shall have no liability in connection with any action or inaction taken, or not taken, by it upon the deemed occurrence of an Event of Default, a Rapid Amortization Event, a Manager Termination Event or a Servicer Termination Event of which a Trust Officer has not received written notice; provided, further, that the Trustee shall have no liability in connection with any action or inaction due to the acts or failure to act of the Control Party or the Controlling Class Representative in connection with any Event of Default, Rapid Amortization Event, a Manager Termination Event or a Servicer Termination Event or for acting or failing to act due to any direction or lack of direction from the Control Party or the Controlling Class Representative. The preceding sentence shall not have the effect of insulating the Trustee from liability arising out of the Trustee’s negligence, bad faith or willful misconduct except as provided in Section 10.1(c). The Trustee, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Trustee which are specifically required to be furnished pursuant to any provision of the Indenture, shall examine them to determine whether they conform to the requirements of this Indenture; provided, however, that the Trustee shall not be responsible for the accuracy or content of any resolution, certificate, statement opinion, report, document, order or other instrument furnished by the Master Issuer under the Indenture.

(b) Except during the occurrence and continuance of an Event of Default, Rapid Amortization Event, Manager Termination Event or Servicer Termination Event of which a Trust Officer shall have Actual Knowledge:

(i) The Trustee undertakes to perform only those duties that are specifically set forth in the Indenture or any other Related Document to which it is a party and no others, the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into the Indenture or any other Related Document against the Trustee; and

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of the Indenture and any other applicable Related Document; provided, however, in the case of any
such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine such certificates or opinions to determine whether or not they conform to the requirements of the Indenture and shall promptly notify the party of any non-conformity.

(c) The Trustee may not be relieved from liability for its own negligent action, bad faith or willful misconduct, except that:

(i) This clause (c) does not limit the effect of clause (b) of this Section 10.1.

(ii) The Trustee shall not be liable in its individual capacity for any error of judgment made in good faith by a Trust Officer, unless it is proven that the Trustee was grossly negligent, acted in bad faith or engaged in willful misconduct in ascertaining the pertinent facts.

(iii) The Trustee shall not be liable in its individual capacity with respect to any action taken or omitted to be taken by it in good faith at the direction of the Control Party and/or a Noteholder under circumstances in which such direction is required or permitted by the terms of this Base Indenture or applicable law.

(iv) The Trustee shall not be charged with knowledge of any Mortgage Preparation Event, Mortgage Recordation Event, Default, Event of Default, Potential Rapid Amortization Event, Rapid Amortization Event, Manager Termination Event, Potential Manager Termination Event or Servicer Termination Event or the commencement and continuation of a Cash Trapping Period until such time as a Trust Officer shall have Actual Knowledge or have received written notice thereof. In the absence of such Actual Knowledge or receipt of such notice, the Trustee may conclusively assume that no such event has occurred or is continuing.

(d) Notwithstanding anything to the contrary contained in the Indenture or any of the other Related Documents, no provision of the Indenture or the other Related Documents shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or exercises of its rights or powers hereunder, if it has reasonable grounds for believing that the repayment of such funds or adequate security or indemnity against such risk or liability is not reasonably assured to it by the terms of the Indenture or the Guarantee and Collateral Agreement. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any risk, loss, liability or expense.

(e) In the event that the Paying Agent or the Registrar shall fail to perform any obligation, duty or agreement in the manner or on the day required to be performed by the Paying Agent or the Registrar, as the case may be, under the Indenture, the Trustee shall be obligated as soon as practicable upon Actual Knowledge of a Trust Officer thereof and receipt of appropriate records and information, if any, to perform such obligation, duty or agreement in the manner so required.

(f) Subject to Section 10.3, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were...
received, but need not be segregated from other funds except to the extent required by law or the Indenture or any of the other Related Documents.

(g) Whether or not therein expressly so provided, every provision of the Indenture and the other Related Documents relating to the conduct of, affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 10.1.

(h) The Trustee shall not be responsible for the existence, genuineness or value of any of the Securitized Assets or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes negligence, bad faith or willful misconduct on the part of the Trustee, for the validity or sufficiency of the Securitized Assets or any agreement or assignment contained therein, for the validity of the title of the Securitization Entities to the Securitized Assets, for insuring the Securitized Assets or for the payment of Taxes, charges, assessments or Liens upon the Securitized Assets or otherwise as to the maintenance of the Securitized Assets. Except as otherwise provided herein, the Trustee shall have no duty to inquire as to the performance or observance of any of the terms of the Indenture or the other Related Documents by the Securitization Entities.

(i) The Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the Indenture or at the direction of the Servicer, the Control Party, the Controlling Class Representative or the Holders of the requisite percentage of Notes, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under the Indenture or applicable law.

(j) The Trustee shall have no duty (i) to see to any recording, filing or depositing of this Base Indenture or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recordings or filing or depositing or to any rerecording, refiling or redepositing of any thereof (other than with respect to filings of the Mortgages as and to the extent provided in Section 3.1(c)); (ii) to see to any insurance, (iii) except as otherwise provided by Section 10.1(e), to see to the payment or discharge of any Tax, assessment or other governmental charge or any Lien or encumbrance of any kind or (iv) to confirm or verify the contents of any reports or certificates of the Manager, the Control Party, the Back-Up Manager or the Servicer delivered to the Trustee pursuant to this Base Indenture or any other Related Document believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties.

(k) The Trustee shall not be personally liable for special, indirect, consequential or punitive damages arising out of, in connection with or as a result of the performance of its duties under the Indenture.

(l)
(i) Notwithstanding anything to the contrary in this Section 10.1, the Trustee shall make Debt Service Advances to the extent and in the manner set forth in Section 5.12(a)(iii) hereof; provided, however, that notwithstanding anything herein or in any other Related Document to the contrary, the Trustee will not be responsible for advancing any principal on the Senior Notes, any make-whole prepayment premiums, any Series Hedge Payment Amounts, any Class A-1 Notes Administrative Expenses, any Class A-1 Quarterly Commitment Fee Amounts, any Post-ARD Contingent Interest or any reserve amounts or any interest or principal payable on, or any other amount due with respect to, the Senior Subordinated Notes or the Subordinated Notes.

(ii) Notwithstanding anything herein to the contrary, no Debt Service Advance shall be required to be made hereunder by the Trustee if the Trustee determines such Debt Service Advance (including interest thereon) would, if made, constitute a Nonrecoverable Advance. The determination by the Trustee that it has made a Nonrecoverable Advance or that any proposed Debt Service Advance, if made, would constitute a Nonrecoverable Advance, shall be made by the Trustee in its reasonable good faith judgment. The Trustee is entitled to conclusively rely on the determination of the Servicer that an Advance is or would be a Nonrecoverable Advance. Any such determination will be conclusive and binding on the Noteholders. The Trustee may update or change its nonrecoverability determination at any time, and may decide that a requested Debt Service Advance or Collateral Protection Advance that was previously deemed to be a Nonrecoverable Advance shall have become recoverable. Notwithstanding the foregoing, all outstanding Debt Service Advances and Collateral Protection Advances made by the Trustee and any accrued interest thereon will be paid strictly in accordance with the Priority of Payments, even if the Trustee determines that any such advance is a Nonrecoverable Advance after such Advance has been made.

(iii) The Trustee shall be entitled to receive interest at the Advance Interest Rate accrued on the amount of each Debt Service Advance made thereby (with its own funds) for so long as such Debt Service Advance is outstanding. Such interest with respect to any Debt Service Advance made pursuant to this Section 10.1(k) shall be payable out of Collections in accordance with the Priority of Payments pursuant to Section 5.11 hereof and the other applicable provisions of the Related Documents.

Section 10.2 Rights of the Trustee. Except as otherwise provided by Section 10.1:

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting based upon any resolution, Officer’s Certificate, Opinion of Counsel, certificate, instrument, report, consent, order, document or other paper reasonably believed by it to be genuine and to have been signed by or presented by the proper person.

(b) The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.
(c) The Trustee may act through agents, custodians and nominees and shall not be liable for any negligence, bad faith or willful misconduct on the part of, or for the supervision of, any such non-affiliated agent, custodian or nominee so long as such agent, custodian or nominee is appointed with due care; provided, however, the Trustee shall have received the consent of the Servicer prior to the appointment of any agent, custodian or nominee performing any material obligation of the Trustee hereunder.

(d) The Trustee shall not be liable for any action it takes, suffers or omits to take in the absence of negligence, bad faith or willful misconduct which it believes to be authorized or within the discretion or rights or powers conferred upon it by the Indenture or the applicable Related Documents.

(e) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Base Indenture, any Series Supplement or any other Related Document, or to institute, conduct or defend any litigation hereunder or thereunder or in relation hereto or thereto, at the request, order or direction of the Servicer, the Control Party, the Controlling Class Representative, any of the Noteholders or any other Secured Party, pursuant to the provisions of this Base Indenture or any Series Supplement, unless the Trustee shall have been offered security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby.

(f) Prior to the occurrence of an Event of Default or Rapid Amortization Event, the Trustee shall not be bound to make any investigation into the facts of matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing so to do by the Noteholders of at least 25% of the Aggregate Outstanding Principal Amount of all then Outstanding Notes. If the Trustee is so requested or determines in its own discretion to make such further inquiry or investigation into such facts or matters as it sees fit, the Trustee shall be entitled to examine the books, records and premises of the Securitization Entities, personally or by agent or attorney, at the sole cost of the Master Issuer and the Trustee shall incur no liability by reason of such inquiry or investigation.

(g) The right of the Trustee to perform any discretionary act enumerated in this Base Indenture shall not be construed as a duty, and the Trustee shall be not be liable in the absence of negligence, bad faith or willful misconduct for the performance of such act.

(h) In accordance with Section 326 of the U.S.A. Patriot Act, to help fight the funding of terrorism and money laundering activities, the Trustee will obtain, verify, and record information that identifies individuals or entities that establish a relationship or open an account with the Trustee. The Trustee will ask for the name, address, tax identification number and other information that will allow the Trustee to identify the individual or entity who is establishing the relationship or opening the account. The Trustee may also ask for formation documents such as articles of incorporation, an offering memorandum, or other identifying documents to be provided.
(i) Notwithstanding anything to the contrary herein, any and all communications (both text and attachments) by or from the Trustee that the Trustee in its sole discretion deems to contain confidential, proprietary or sensitive information and sent by electronic mail will be encrypted. The recipient of the email communication will be required to complete a one-time registration process.

(j) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service, accidents; labor disputes; acts of civil or military authority or governmental actions (it being understood that the Trustee shall use commercially reasonable efforts to resume performance as soon as practicable under the circumstances).

(k) The Trustee shall not be required to give any bond or surety in respect of the execution of the trust created hereby or the powers granted hereunder.

(l) All rights of action and claims under this Base Indenture may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, any such proceeding instituted by the Trustee shall be brought in its own name or in its capacity as Trustee. Any recovery of judgment shall, after provision for the payments to the Trustee provided for in Section 10.5, be distributed in accordance with the Priority of Payments.

(m) The Trustee may request written direction from any applicable party any time the Indenture provides that the Trustee may be directed to act.

(n) Any request or direction of the Master Issuer mentioned herein shall be sufficiently evidenced by a Company Order.

(o) Whenever in the administration of the Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith, gross negligence or willful misconduct on its part, rely upon an Officer’s Certificate of the Master Issuer, the Manager or the Servicer and shall incur no liability for its reliance thereon.

(p) The Trustee shall not be responsible for the accuracy of the books or records of, or for any acts or omissions of, DTC, any transfer agent (other than the Trustee itself acting in that capacity), Clearstream, Euroclear, any calculation agent (other than the Trustee itself acting in that capacity), or any agent appointed by it with due care or any Paying Agent (other than the Trustee itself acting in that capacity).

(q) The Trustee or its Affiliates are permitted to receive additional compensation that could be deemed to be in the Trustee’s economic self-interest for (i) serving as an investment advisor, administrator, shareholder servicing agent, custodian or sub-custodian
with respect to certain Eligible Investments, (ii) using Affiliates to effect transactions in certain Eligible Investments and (iii) effecting transactions in certain Eligible Investments. The Trustee does not guarantee the performance of any Eligible Investments.

(r) The Trustee shall have no obligation to invest and reinvest any cash held in the absence of timely and specific written investment direction from the Servicer or the Master Issuer. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Servicer or the Master Issuer to provide timely written investment direction.

(s) The Trustee shall have no obligation to calculate nor shall it be responsible or liable for any calculation of the DSCR, New Series Pro Forma DSCR or the Interest-Only DSCR.

(t) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee, in each case, with respect to its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(u) The Trustee shall be afforded, in each Related Document, all of the rights, powers, immunities and indemnities granted to it in this Base Indenture as if such rights, powers, immunities and indemnities were specifically set out in each such Related Document.

(v) For any purpose under the Related Documents, the Trustee may conclusively assume without incurring liability therefor that no Notes are held by any of the Securitization Entities, any other obligator upon the Notes, the Manager or any Affiliate of them unless a Trust Officer has received written notice at the Corporate Trust Office that any Notes are so held by any of the Securitization Entities, any other obligator upon the Notes, the Manager or any Affiliate of them.

(w) The Trustee shall not have any responsibility to make any inquiry or investigation as to, and shall have no obligation in respect of, the terms of an engagement of Independent Auditors by the Master Issuer (or the Manager on behalf of the Master Issuer) or the terms of any agreed upon procedures in respect of such engagement; provided, however, that the Trustee shall be authorized, upon receipt of a Company Order directing the same, to execute any acknowledgment or other agreement with the Independent Auditors required for the Trustee to receive any of the reports or instructions provided herein, which acknowledgment or agreement may include, among other things, (i) acknowledgment that the Master Issuer had agreed that the procedures to be performed by the Independent Auditors are sufficient for the Master Issuer’s purposes, (ii) releases by the Trustee (on behalf of itself and the Holders) of claims against the Independent Auditors, and (iii) restrictions or prohibitions on the disclosure of information or documents provided to it by such firm of Independent Auditors (including to the Holders). Notwithstanding the foregoing, in no event shall the Trustee be required to execute any agreement in respect of the Independent Auditors that the Trustee reasonably determines adversely affects it.
Section 10.3  Individual Rights of the Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Securitization Entities or an Affiliate of the Securitization Entities with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights.

Section 10.4  Notice of Events of Default and Defaults.

If an Event of Default, a Default, a Rapid Amortization Event or a Potential Rapid Amortization Event occurs and is continuing and if it is actually known to a Trust Officer, or written notice of the existence thereof has been delivered to a Trust Officer, the Trustee shall promptly provide the Noteholders, the Servicer, the Manager, the Back-Up Manager, the Master Issuer, any Class A-1 Administrative Agent and the Rating Agency for each Series of Notes Outstanding with notice of such Event of Default, Default, Rapid Amortization Event or Potential Rapid Amortization Event, to the extent that the Notes of such Series are Book-Entry Notes, by telephone and facsimile and otherwise by first class mail.

Section 10.5  Compensation and Indemnity.

(a) The Master Issuer shall promptly pay to the Trustee from time to time compensation for its acceptance of the Indenture and services hereunder and under the other Related Documents to which the Trustee is a party as the Trustee and the Master Issuer shall from time to time agree in writing. The Trustee’s compensation shall not be limited by any law on compensation of a trustee of an express trust. The Master Issuer shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services in accordance with the provisions of the Indenture (including, without limitation, the Priority of Payments). Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee’s agents and outside counsel. The Master Issuer shall not be required to reimburse any expense incurred by the Trustee through the Trustee’s own willful misconduct, bad faith or negligence. When the Trustee incurs expenses or renders services after an Event of Default or Rapid Amortization Event occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under the Bankruptcy Code.

(b) The Master Issuer shall indemnify and hold harmless the Trustee or any predecessor Trustee and their respective directors, officers, agents and employees from and against any loss, liability, claim, expense (including Taxes, other than Taxes based upon, measured by or determined by the income of the Trustee or such predecessor Trustee), damage or injury suffered or sustained by reason of any acts, omissions or alleged acts or omissions arising out of or in connection with (i) the activities of the Trustee or such predecessor Trustee pursuant to this Base Indenture, any Series Supplement or any other Related Documents to which the Trustee is a party and (ii) the security interest granted hereby, whether arising by virtue of any act or omission on the part of the Master Issuer or otherwise, including but not limited to any judgment, award, settlement, reasonable attorneys’ fees and other costs or expenses reasonably incurred in connection with the defense of any actual or threatened action, proceeding, claim.
(whether asserted by the Master Issuer, the Servicer, the Control Party or any Noteholder or any other Person), liability in connection with the exercise or performance of any of its powers or duties hereunder or under any Related Document, the preservation of any of its rights to, or the realization upon, any of the Collateral, or the Securitized Assets, to the extent permitted by applicable law, or in connection with enforcing the provisions of this Section 10.5(b); provided, however, that the Master Issuer shall not indemnify the Trustee, any predecessor Trustee or their respective directors, officers, employees or agents if such acts, omissions or alleged acts or omissions constitute willful misconduct, bad faith or negligence by the Trustee or such predecessor Trustee, as the case may be.

(c) The provisions of this Section 10.5 shall survive the termination of the Indenture and the resignation and removal of the Trustee.

Section 10.6 Replacement of the Trustee.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee’s acceptance of appointment as provided in this Section 10.6.

(b) The Trustee may, after giving thirty (30) days prior written notice to the Master Issuer, the Noteholders, the Servicer, the Manager, the Back-Up Manager, the Controlling Class Representative, each Class A-1 Administrative Agent and the Rating Agency for each Series of Notes Outstanding, resign at any time from its office and be discharged from the trust hereby created; provided, however, that no such resignation of the Trustee shall be effective until a successor trustee has assumed the obligations of the Trustee hereunder. The Control Party or the Master Issuer may remove the Trustee, or any Noteholder may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee, if at any time:

(i) the Trustee fails to comply with Section 10.8;

(ii) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under the Bankruptcy Code;

(iii) the Trustee fails generally to pay its debts as such debts become due; or

(iv) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of the Trustee for any reason, the Master Issuer shall promptly, with the prior written consent of the Control Party, appoint a successor Trustee. Within one (1) year after the successor Trustee takes office, the Majority of Noteholders of the Controlling Class (with the prior written consent of the Control Party) may appoint a successor Trustee to replace the successor Trustee appointed by the Master Issuer.
(c) If a successor Trustee is not appointed and an instrument of acceptance by a successor Trustee is not delivered to the Trustee within thirty (30) days after the retiring Trustee resigns or is removed, at the direction of the Control Party, the retiring Trustee, at the expense of the Master Issuer, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If the Trustee after written request by the Servicer or any Noteholder fails to comply with Section 10.8, the Servicer or such Noteholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee or removed Trustee and to the Servicer and the Master Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Base Indenture, any Series Supplement and any other Related Document to which the Trustee is a party. The successor Trustee shall mail a notice of its succession to the Noteholders and each Class A-1 Administrative Agent. The resigning Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; provided, however, that all sums owing to the retiring Trustee hereunder have been paid. Notwithstanding replacement of the Trustee pursuant to this Section 10.6, the Master Issuer’s obligations under Section 10.5 shall continue for the benefit of the retiring Trustee.

(f) No successor Trustee may accept its appointment unless at the time of such acceptance such successor is qualified and eligible under this Base Indenture and a Rating Agency Notification has been provided and the Control Party has provided its consent with respect to such appointment.

Section 10.7 Successor Trustee by Merger, etc.

Subject to Section 10.8, if the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee; provided that written notice of such consolidation, merger or conversion shall be provided to the Master Issuer, the Servicer, the Noteholders and each Class A-1 Administrative Agent; provided, further, that the resulting or successor corporation is eligible to be a Trustee under Section 10.8.

Section 10.8 Eligibility Disqualification.

(a) There shall at all times be a Trustee hereunder which shall (i) be a bank or trust company organized and doing business under the laws of the United States of America or of any state thereof authorized under such laws to exercise corporate trustee power, (ii) be subject to supervision or examination by federal or state authority, (iii) have a combined capital and surplus of at least $250,000,000 as set forth in its most recent published annual report of condition, (iv) be reasonably acceptable to the Servicer and (v) have a long-term unsecured debt rating of at least “BBB” and “Baa2” by Standard & Poor’s and Moody’s, respectively.
At any time the Trustee shall cease to satisfy the eligibility requirements of Section 10.8(a), the Trustee shall resign after written request that it do so by the Master Issuer, or by the Control Party at the direction of the Controlling Class Representative, in the manner and with the effect specified in Section 10.6.

**Section 10.9  Appointment of Co-Trustee or Separate Trustee.**

(a) Notwithstanding any other provisions of this Base Indenture, any Series Supplement or any other Related Document, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Securitized Assets may at the time be located, the Trustee shall have the power upon notice to the Control Party, the Master Issuer and each Class A-1 Administrative Agent and may execute and deliver all instruments to appoint one or more Persons to act as a co-trustee or co-trustees, or separate trustee or separate trustees, of all or any part of the Securitized Assets, and to vest in such Person or Persons, in such capacity and for the benefit of the Noteholders and the other Secured Parties, such title to the Collateral (or other rights in and to the Securitized Assets), or any part thereof, and, subject to the other provisions of this Section 10.9, such powers, duties, obligations, rights and trusts as the Trustee may consider necessary or desirable. Any co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 10.8 or shall be otherwise acceptable to the Servicer. No notice to Noteholders of the appointment of any co-trustee or separate trustee shall be required under Section 10.6. No co-trustee shall be appointed without the consent of the Servicer and the Master Issuer unless such appointment is required as a matter of state law or to enable the Trustee to perform its functions hereunder.

(b) Every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(i) the Notes of each Series (other than Uncertificated Notes) shall be authenticated and delivered solely by the Trustee or an authenticating agent appointed by the Trustee;

(ii) all rights, powers, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Collateral (or other rights in and to the Securitized Assets) or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Trustee;

(iii) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder and such appointment shall not, and shall not be deemed to, constitute any such trustee or co-trustee as an agent of the Trustee; and
the Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Base Indenture and the conditions of this Article X. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to all the provisions of this Base Indenture, any Series Supplement and any other Related Documents to which the Trustee is a party, specifically including every provision of this Base Indenture, any Series Supplement, or any other Related Document which the Trustee is a party relating to the conduct of, affecting the liability of, or affording protection to, the Trustee. Every such instrument shall be filed with the Trustee and a copy thereof given to the Servicer and the Master Issuer.

(d) Any separate trustee or co-trustee may at any time constitute the Trustee, its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect to this Base Indenture, any Series Supplement or any other Related Document on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

Section 10.10 Representations and Warranties of Trustee.

The Trustee represents and warrants to the Master Issuer and the Noteholders that:

(a) the Trustee is a national banking association, organized, existing and in good standing under the laws of the United States;

(b) the Trustee has full power, authority and right to execute, deliver and perform this Base Indenture, any Series Supplement issued concurrently with this Base Indenture and each other Related Document to which it is a party and to authenticate the Notes (other than Uncertificated Notes which shall be registered), and has taken all necessary action to authorize the execution, delivery and performance by it of this Base Indenture, any Series Supplement issued concurrently with this Base Indenture and any such other Related Document and to authenticate the Notes;

(c) this Base Indenture and each other Related Document to which it is a party has been duly executed and delivered by the Trustee; and

(d) the Trustee meets the requirements of eligibility as a trustee hereunder set forth in Section 10.8(a).
ARTICLE XI

CONTROLLING CLASS REPRESENTATIVE AND CONTROL PARTY

Section 11.1  Controlling Class Representative.

(a)  On the Closing Date and until a Controlling Class Representative shall have been elected pursuant to the terms set forth in this Article XI, (i) the Control Party shall exercise the rights of the Controlling Class Representative in accordance with the Servicing Standard; provided that the Control Party shall have no obligations to interact with any Noteholders and/or Note Owners (including providing any notices or deliverables) and (ii) any deliverable or notice that is required to be provided to the Controlling Class Representative under a Related Document shall be delivered to the Control Party. On the Closing Date, the initial purchasers of the Notes will use commercially reasonable efforts to provide the Trustee with the Initial Controlling Class Member List. Within five (5) Business Days following the Closing Date, the Trustee shall deliver a notice in the form of Exhibit E attached hereto, through the Applicable Procedures of the Clearing Agency for the related Series and posted to the Trustee’s internet website at www.sf.citidirect.com, announcing that there will be an election of a Controlling Class Representative and offering Controlling Class Members the opportunity to provide the Trustee with their contact information in writing within ten (10) Business Days of the date of such notice should they wish to participate in the election (such election, the “Initial CCR Election”). The Trustee shall provide any contact information that it receives, and any contact information in the Initial Controlling Class Member List, to the Manager and the Master Issuer upon request. During the Initial CCR Election, any notices and communications required to be sent by the Trustee pursuant to this Section 11.1 shall be sent directly to the Controlling Class Members solely at the mail and e-mail addresses provided to the Trustee in the Initial Controlling Class Member List (and the Trustee shall have no responsibility for the accuracy or effectiveness thereof) and by each Controlling Class Member individually, and all communications delivered to the Trustee by any Controlling Class Member shall be sent directly by such Controlling Class Member (and not through the Applicable Procedures of the Clearing Agency). The Trustee shall be entitled to conclusively rely on any communications from Controlling Class Members received from email addresses specifically set forth on the Initial Controlling Class Member List. To the extent the Trustee receives communications from individuals not listed on the Initial Controlling Class Member List, even if from the same institutions, the Trustee shall not consider such communication a valid communication. During any subsequent CCR Election Period or any communications with respect thereto, both the Trustee and the Controlling Class Members shall be entitled to rely on the Applicable Procedures of the Clearing Agency for all such notices and communications.

(b)  Within thirty (30) days after the Closing Date or any CCR Re-election Event, the Trustee will either send to each of the Controlling Class Members for which it has obtained contact information (in the case of the Initial CCR Election and with respect to any Noteholder of a Class A-1 Note) or send via the Applicable Procedures of the Clearing Agency (with respect to any other CCR Election) a written notice (with copies to the Manager and the Master Issuer) in the form attached as Exhibit F hereto, announcing an election and soliciting
nominations for a Controlling Class Representative (a “CCR Election Notice”). Each Controlling Class Member will be allowed to nominate itself as a CCR Candidate (and will not be permitted to nominate any other person or entity as a CCR Candidate) by submitting a nomination to the Trustee in the form attached as Exhibit G hereto (a “CCR Nomination”) within either (i) in the case of the Initial CCR Election, ten (10) Business Days of the date of the CCR Election Notice, or (ii) in the case of any subsequent election, thirty (30) calendar days (such period, as applicable, the “CCR Nomination Period”). Each Controlling Class Member submitting a CCR Nomination shall represent that as of (A) for the Initial CCR Election, the Closing Date or (B) in the case of any subsequent election, a date not more than ten (10) Business Days prior to the date of the CCR Election Notice as determined by the Trustee it was the Note Owner or Noteholder, as applicable, of the Outstanding Principal Amount of Notes of the Controlling Class specified by it in the CCR Nomination; provided, that for purposes of such nomination and determining the CCR Candidates pursuant to Section 11.1(b), with respect to any Series of Class A-1 Notes Outstanding, the Class A-1 Notes Voting Amount shall be used in place of the Outstanding Principal Amount of such Series.

(c) Based upon the CCR Nominations that are received by the Trustee, within three (3) Business Days following the end of the CCR Nomination Period, (i) the Trustee shall notify the Manager, the Master Issuer, the Servicer and the Controlling Class Members that no nominations have been received and that the election will not be held or (ii) the Trustee shall prepare and send to each applicable Controlling Class Member a ballot in the form of Exhibit H attached hereto (the “CCR Ballot”) naming the top three candidates based upon the highest aggregate Outstanding Principal Amount of Notes of Controlling Class Members nominating such candidate (or, if fewer than three (3) candidates are nominated, the CCR Ballot will list all candidates). Each Controlling Class Member shall, in its sole discretion, indicate its vote for Controlling Class Representative by returning a completed CCR Ballot directly to the Trustee within (i) in the case of the Initial CCR Election, ten (10) Business Days of the date of the CCR Ballot or (ii) in the case of any subsequent election, within thirty (30) calendar days (a “CCR Election Period”). Each Controlling Class Member returning a completed CCR Ballot will also be required to confirm that, as of the date of the CCR Ballot (the “CCR Voting Record Date”), such Controlling Class Member was the owner or beneficial owner of the Outstanding Principal Amount of Notes of the Controlling Class specified by such Controlling Class Member in the CCR Ballot; provided that for the purposes of such certification and the tabulation of votes pursuant to Section 11.1(d), with respect to any Series of Class A-1 Notes Outstanding, the Class A-1 Notes Voting Amount shall be used in place of the Outstanding Principal Amount of such Series.

(d) If a CCR Candidate receives votes from Controlling Class Members holding beneficial interests in excess of 50% of the sum of (i) the Class A-1 Notes Voting Amount with respect to each Series of Class A-1 Notes of the Controlling Class and (ii) the Outstanding Principal Amount of each Series of Notes of the Controlling Class (other than Class A-1 Notes) or any beneficial interest therein, in each case, that are Outstanding as of the CCR Voting Record Date and with respect to which votes were submitted (which may be less than the Outstanding Principal Amount of Notes of the Controlling Class as of the CCR Voting Record Date), such CCR Candidate shall be appointed the Controlling Class Representative. Notes of
the Controlling Class held by the Master Issuer or any Affiliate of the Master Issuer will not be considered Outstanding for such voting purposes. If two CCR Candidates both receive votes from Controlling Class Members holding beneficial interests in exactly 50% of the Aggregate Outstanding Principal Amount of Notes of the Controlling Class with respect to which votes were submitted, the Controlling Class Representative shall be the CCR Candidate chosen by the Manager, pursuant to the Management Agreement. In the event that no CCR Candidate receives 50% of the Aggregate Outstanding Principal Amount of Notes of the Controlling Class with respect to which votes were submitted, the Trustee will notify the Manager, the Securitization Entities, the Servicer, the Back-Up Manager, the Rating Agency and the Controlling Class Members that no Controlling Class Representative has been appointed. Until a CCR Re-election Event occurs and a new Controlling Class Representative is elected then (i) the Control Party shall exercise the rights of the Controlling Class Representative in accordance with the Servicing Standard and (ii) any deliverable or notice that is required to be provided to the Controlling Class Representative under a Related Document shall be delivered to the Control Party.

(e) In the event that a Controlling Class Representative is elected or chosen pursuant to Section 11.1(d), the Trustee shall forward an acceptance letter in the form of Exhibit I attached hereto (a “CCR Acceptance Letter”) to such Controlling Class Representative. No Person shall be appointed Controlling Class Representative unless it executes such CCR Acceptance Letter within fifteen (15) Business Days of receipt thereof, pursuant to which it shall (i) agree to act as the Controlling Class Representative, (ii) provide its name and contact information and permit such information to be shared with the Manager, the Securitization Entities, the Servicer, the Back-Up Manager, the Rating Agency and the Controlling Class Members and (iii) represent and warrant that it is a Controlling Class Member. Within two (2) Business Days of receipt of the acceptance letter, the Trustee shall promptly forward copies thereof, or provide notice of the identity and contact information of the new Controlling Class Representative, to the Manager, the Securitization Entities, the Servicer, the Back-Up Manager, the Rating Agency and the Controlling Class Members.

(f) Within two (2) Business Days of any other change in the name or address of the Controlling Class Representative of which the Trustee has received notice from the Controlling Class Representative or from a Majority of Controlling Class Members, as applicable, the Trustee shall deliver to each Noteholder, the Master Issuer, the Manager, the Back-Up Manager and the Servicer a notice setting forth the identity of the new Controlling Class Representative.

(g) The Trustee shall be entitled to conclusively rely on, and will be fully protected in all actions taken or not taken by it with respect to, (i) the Initial Controlling Class Member List for purposes of identifying the recipients of the CCR Election Notices and CCR Ballots and all subsequent communications related to the Initial CCR Election, (ii) with respect to any subsequent election of a Controlling Class Representative, the Applicable Procedures of the Clearing Agency for delivery of the CCR Election Notices and CCR Ballots to Note Owners of Notes of the Controlling Class and (iii) the representations and warranties of the Persons submitting CCR Nominations, CCR Ballots and CCR Acceptance Letters.
(h) The Servicer (in its capacity as Servicer and Control Party) shall be entitled to rely on the identity of the Controlling Class Representative provided by the Trustee with respect to any obligation or right hereunder or under the other Related Documents that the Servicer (in its capacity as Servicer and Control Party) may have to deliver information or otherwise communicate with the Controlling Class Representative or any of the Noteholders of the Controlling Class, with no liability to it for such reliance.

(i) The Controlling Class Representative shall be entitled to receive from the Trustee, upon request, any memoranda delivered to the Trustee by the Back-Up Manager pursuant to the Back-Up Management Agreement; provided that it shall have first executed a confidentiality agreement, in form and substance satisfactory to the Manager, and such confidentiality agreement remains in effect. Any such memoranda shall be deemed to contain confidential information.

Section 11.2 Resignation or Removal of the Controlling Class Representative. The Controlling Class Representative may at any time resign as such by giving written notice to the Trustee, the Servicer and to each Noteholder of the Controlling Class. As of any Record Date, a Majority of Controlling Class Members shall be entitled to remove any existing Controlling Class Representative by giving written notice to the Trustee, the Servicer and such existing Controlling Class Representative. No resignation or removal of the Controlling Class Representative shall be effective until a successor Controlling Class Representative has been appointed pursuant to Section 11.1 or until the end of the CCR Election Period following such resignation or removal; provided that any Controlling Class Representative that has been removed pursuant to this Section 11.2 may subsequently be nominated as a CCR Candidate and appointed as Controlling Class Representative pursuant to Section 11.1; provided, further, that an existing Controlling Class Representative shall cease to be the Controlling Class Representative at the end of a CCR Election Period, even if no successor is re-elected pursuant to Section 11.1, unless such Controlling Class Representative is elected during such CCR Election Period (except that, in the event of a CCR Re-election Event, if no CCR Nominations are received prior to the end of the CCR Nomination Period, the current Controlling Class Representative will remain the Controlling Class Representative and no further action will be taken with respect to such CCR Re-election Event). In addition to the foregoing, within two (2) Business Days of the selection, resignation or removal of the Controlling Class Representative, the Trustee shall notify the Servicer and the parties to this Base Indenture of such event.

Section 11.3 Expenses and Liabilities of the Controlling Class Representative.

(a) The Controlling Class Representative shall have no liability to the Note Owners for any action taken, or for refraining from the taking of any action, in good faith pursuant to the Indenture or for errors in judgment; provided, however, that the Controlling Class Representative shall not be protected against any liability that would otherwise be imposed by reason of gross negligence, bad faith or willful misconduct committed with respect to its obligations or duties under the Indenture. Each Note Owner acknowledges and agrees, by its acceptance of its Notes or interests therein, that (i) the Controlling Class Representative may have special relationships and interests that conflict with those of Note Owners of one or more
Classes of Notes, or that conflict with other Note Owners, (ii) the Controlling Class Representative may act solely in the interests of the Controlling Class Members or in its own interest, (iii) the Controlling Class Representative does not have any duties to Note Owners other than the Controlling Class Members, (iv) the Controlling Class Representative may take actions that favor the interests of the Controlling Class Members over the interests of Note Owners of one or more other Classes of Notes, or that favor its own interests over those of other Note Owners or other Controlling Class Members, (v) the Controlling Class Representative shall not be deemed to have been grossly negligent or reckless, or to have acted in bad faith or engaged in willful misfeasance, by reason of its having acted solely in the interests of the Controlling Class Members or in its own interests, and (vi) the Controlling Class Representative shall have no liability whatsoever for having so acted pursuant to clauses (i) through (v), and no Note Owner or Noteholder may take any action whatsoever against the Controlling Class Representative for having so acted or against any director, officer, employee, agent or principal thereof for having so acted.

(b) Any and all expenses of the Controlling Class Representative for acting in its capacity as Controlling Class Representative shall be borne by the Controlling Class Members, pro rata according to their respective Outstanding Principal Amounts. Notwithstanding the foregoing, if a claim is made against the Controlling Class Representative and the Servicer or the Trustee are also named parties to the same action and, in the sole judgment of the Servicer, the Controlling Class Representative had acted in good faith, without gross negligence or willful misconduct, with regard to the particular matter at issue, and there is no potential for the Servicer or the Trustee to be an adverse party in such action as regards the Controlling Class Representative, the Servicer on behalf of the Trustee shall be required to assume the defense (with any costs incurred in connection therewith being deemed to be reimbursable as a Collateral Protection Advance) of any such claim against the Controlling Class Representative.

Section 11.4 Control Party.

(a) Pursuant to the Indenture and the other Related Documents, the Control Party is authorized to consent to and implement, subject to the Servicing Standard, Consent Requests that do not require the consent of any Noteholder or the Controlling Class Representative.

(b) For any Consent Request that requires, pursuant to the terms of the Indenture and the other Related Documents, the consent or direction of the Controlling Class Representative, the Control Party, shall review such Consent Request and shall formulate and present a Consent Recommendation to the Controlling Class Representative (if a Controlling Class Representative exists at such time). Except as provided in the following sentence, until the Control Party receives the consent of the Controlling Class Representative, the Control Party shall not be authorized to implement any such Consent Request. Notwithstanding anything in any Related Document to the contrary, if the Controlling Class Representative fails to reject or approve a Consent Request within ten (10) Business Days after receipt of such Consent Request and the related Consent Recommendation, or if there is no Controlling Class Representative at
such time (including, without limitation, prior to the first CCR Election Period or following the resignation or removal of the Controlling Class Representative), the Control Party shall be authorized (but not required) to implement such Consent Request in accordance with the Servicing Standard, whether or not the Indenture or any Related Document indicates that the Control Party is required to act with the consent or at the direction of the Controlling Class Representative with respect to any specific matter relating to such Consent Request, other than with respect to Servicer Termination Events.

(c) For any Consent Requests that expressly require the consent of affected Noteholders or 100% of the Noteholders pursuant to Section 13.2 or the other Related Documents, the Control Party shall review such Consent Request and shall formulate and present a Consent Recommendation to the Trustee, which shall forward the Consent Request and the Consent Recommendation to each Noteholder or each affected Noteholder, as applicable. Subject to Section 11.4(e), until the consent of each Noteholder that is required to consent to any such Consent Request has been obtained and the Control Party has been provided with notice of such consents being obtained by the Trustee, the Control Party shall not be authorized to implement such Consent Requests, provided that the Control Party shall work in good faith with the Trustee to identify and deliver to the Trustee for delivery by the Trustee to such Noteholders such additional information and Consent Recommendations as may be appropriate in accordance with the Servicing Standard to obtain such consent.

(d) The Control Party shall promptly notify the Trustee, the Manager, the Back-Up Manager, the Master Issuer and the Controlling Class Representative if the Control Party determines, in accordance with the Servicing Standard, not to implement a Consent Request or has not received the requisite consent of the Controlling Class Representative or the Noteholders, if applicable, to implement a Consent Request. The Trustee shall promptly notify the Control Party, the Manager, the Back-Up Manager, the Master Issuer and the Controlling Class Representative if the Trustee has not received the requisite consent of the required percentage of Noteholders to implement a Consent Request.

(e) Notwithstanding anything herein to the contrary, no advice, direction or objection from or by the Controlling Class Representative may (i) require or cause the Trustee or the Control Party to violate applicable law, the terms of this Indenture, the Notes, the Servicing Agreement or the other Related Documents, including, without limitation with respect to the Control Party, the Control Party’s obligation to act in accordance with the Servicing Standard, (ii) expose the Control Party or the Trustee, or any of their respective Affiliates, officers, directors, members, managers, employees, agents or partners, to any material claim, suit or liability, or (iii) materially expand the scope of the Control Party’s responsibilities under the Servicing Agreement or the Trustee’s responsibility under this Indenture, the Notes and the other Related Documents. The Trustee and the Control Party will not be required to follow any such advice, direction, or objection. In addition, notwithstanding anything herein or in the other Related Documents to the contrary, the Controlling Class Representative shall not be able to prevent the Control Party from transferring the ownership of all or any portion of the Securitized Assets (including by way of foreclosure on the Equity Interests of the Master Issuer) if any Advance by the Servicer has been outstanding for twelve (12) months (or longer) and the Control
Party determines in accordance with the Servicing Standard that such transfer of ownership would be in the best interests of the Noteholders (taken as a whole).

Section 11.5 Note Owner List.

(a) To facilitate communication among Note Owners, the Manager, the Trustee, the Control Party and the Controlling Class Representative, a Note Owner may elect, but is not required, to notify the Trustee of its name, address and other contact information, which will be kept in a register maintained by the Trustee. The Trustee will be required to furnish the Manager, the Control Party and the Controlling Class Representative upon request with the information maintained in such register as of the most recent date of determination. Every Note Owner, by receiving and holding a beneficial interest in a Note, will agree that none of the Trustee, the Master Issuer, the Servicer, the Controlling Class Representative nor any of their respective agents will be held accountable by reason of any disclosure of any such information as to the names and addresses of the Note Owners in the register maintained by the Trustee.

(b) Noteholders under any Variable Funding Note Purchase Agreement (“VFN Noteholders”) having interests of not less than $50,000,000 in aggregate principal amount of Notes (including any unfunded commitments of any VFN Noteholder under any Variable Funding Note Purchase Agreement) or Note Owners having beneficial interests of not less than $50,000,000 in aggregate principal amount of Notes that wish to communicate with the other Note Owners and VFN Noteholders with respect to their rights under the Indenture or under the Notes may request in writing that the Trustee deliver a notice or communication to the other Note Owners through the Applicable Procedures of each Clearing Agency, and to the VFN Noteholders through the applicable Class A-1 Administrative Agents, with respect to all Series of Notes Outstanding. If such request states that such Note Owners or VFN Noteholders desire to communicate with other Note Owners and VFN Noteholders with respect to their rights under the Indenture or under the Notes and is accompanied by (i) a certificate substantially in the form of Exhibit K certifying that such Note Owners hold beneficial interests of not less than $50,000,000 in aggregate principal amount of Notes or that such VFN Noteholders hold interests of not less than $50,000,000 in aggregate principal amount of Notes (including any unfunded commitments of such VFN Noteholders under any Variable Funding Note Purchase Agreement) (each, a “Note Owner Certificate”) (upon which the Trustee may conclusively rely) and (ii) a copy of the communication which such Note Owners or VFN Noteholders propose to transmit, then the Trustee, after having been adequately indemnified by such Note Owners or VFN Noteholders, as applicable, for its costs and expenses, shall transmit the requested communication to all other Note Owners through the Applicable Procedures of each Clearing Agency and to all other VFN Noteholders through the applicable Class A-1 Administrative Agents, with respect to all Series of Notes Outstanding, and shall give the Master Issuer, the Servicer and the Controlling Class Representative notice that such request has been made, within five (5) Business Days after receipt of the request. The Trustee shall have no obligation of any nature whatsoever with respect to any requested communication other than to transmit it in accordance with and subject to the terms hereof and to give notice of such request and transmission to the Master Issuer, the Servicer and the Controlling Class Representative.
ARTICLE XII
DISCHARGE OF INDENTURE

Section 12.1 Termination of the Master Issuer’s and Guarantors’ Obligations.

(a) Satisfaction and Discharge. The Indenture and the Guarantee and Collateral Agreement shall be discharged when all Outstanding Notes have been delivered to the Trustee for cancellation (or de-registration), the Master Issuer has paid all sums payable hereunder and under each other Related Document, all commitments to extend credit under all Variable Funding Note Purchase Agreements have been terminated and all Series Hedge Agreements have been terminated and all payments by the Master Issuer thereunder have been paid or otherwise provided for; except that (i) the Master Issuer’s obligations under Section 10.5 and the Guarantors’ guaranty thereof, (ii) the Trustee’s and the Paying Agent’s obligations under Section 12.2 and 12.3 and (iii) the Noteholders’ and the Trustee’s obligations under Section 14.13 shall survive. The Trustee, on demand of the Securitization Entities, will execute proper instruments acknowledging confirmation of, and discharge under, the Indenture and the Guarantee and Collateral Agreement.

(b) Indenture Defeasance. The Master Issuer may terminate all of its obligations under the Indenture and all obligations of the Guarantors under the Guarantee and Collateral Agreement in respect thereof and release all Collateral if:

(i) the Master Issuer irrevocably deposits in trust with the Trustee or with a trustee reasonably satisfactory to the Control Party, the Trustee and the Master Issuer, U.S. Dollars and/or Government Securities in an amount sufficient (after giving effect to the application of funds on deposit in the Collection Account in accordance with the Priority of Payments), in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, to pay all principal, premiums (including make-whole prepayment premiums), if any, and interest on the Outstanding Notes (including additional interest that accrues after an anticipated repayment date or renewal date, if applicable) to the applicable prepayment date, redemption date or maturity date, as the case may be, and to pay other sums payable by them hereunder, under the Servicing Agreement and under each other Related Document and each Series Hedge Agreement; provided that any Government Securities must provide for the scheduled payment of all principal and interest thereon not later than the Business Day prior to the applicable prepayment date, redemption date or maturity date, as the case may be, and the Trustee must have been irrevocably instructed to apply such funds to the payment of principal, premiums, make-whole prepayment premiums and interest with respect to the Notes and such other sums;

(ii) all commitments under all Variable Funding Note Purchase Agreements and all Series Hedge Agreements are terminated on or before the date of deposit;

(iii) the Master Issuer delivers notice of prepayment, redemption or maturity of the Notes in full to the Noteholders of Outstanding Notes, the Manager, the Trustee, the Control Party, the Controlling Class Representative, the Back-Up Manager, the Rating Agency and the
Servicer, which notice is expressly stated to be, or has become as of the prepayment date, redemption date or maturity date, as applicable, irrevocable (provided that such notice may be conditioned upon the contemporaneous closing of a financing the proceeds of which will be used to fund all or a portion of such deposit), and the date of prepayment, redemption or maturity as specified in such notice when delivered was not longer than twenty (20) Business Days after the date of such notice;

(iv) the Master Issuer delivers notice of such deposit to the Control Party, the Manager, the Back-Up Manager and the Rating Agency, on or before the date of the deposit; and

(v) the Master Issuer delivers to the Trustee and the Servicer an Opinion of Counsel to the effect that all conditions precedent to such termination have been satisfied.

Upon satisfaction of such conditions, the Indenture and the Guarantee and Collateral Agreement shall cease to be of further effect; except that (i) the rights and obligations of the Trustee hereunder, including, without limitation, the Trustee’s rights to compensation and indemnity under Section 10.5, and the Guarantor’s guaranty thereof, (ii) the Trustee’s and the Paying Agent’s obligations under Section 12.2 and 12.3, (iii) the Noteholders’ and the Trustee’s obligations under Section 14.13, (iv) this Section 12.1(b) and (v) the Noteholders’ rights to registration of transfer and exchange under Section 2.8 and to replacement or substitution of mutilated, destroyed, lost or stolen Notes under Section 2.10(a) shall survive (or in each case, to de-registration and/or registration of Uncertificated Notes). The Trustee, on demand of the Securitization Entities, shall execute proper instruments acknowledging confirmation of and discharge under the Indenture and the Guarantee and Collateral Agreement.

(c) **Series Defeasance.** Except as may be provided to the contrary in any Series Supplement, the Master Issuer, solely in connection with an optional prepayment in full, a mandatory prepayment in full or a redemption in full of all Outstanding Notes of a particular Series or in connection with the Series Legal Final Maturity Date of such Series of Notes, may terminate all of its Obligations under the Indenture and all Obligations of the Guarantors in respect of such Series of Notes (the “Defeased Series”) on and as of any Business Day (the “Series Defeasance Date”), provided:

(i) the Master Issuer irrevocably deposits in trust with the Trustee, or with a trustee reasonably satisfactory to the Control Party, the Trustee and the Master Issuer, U.S. Dollars and/or Government Securities sufficient (after giving effect to the application of funds on deposit in the applicable Series Distribution Account), in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, to pay, without duplication:

1. all principal, premiums, if any, make-whole prepayment premiums, if any, Series Hedge Payment Amounts, commitment fees, administration expenses, Class A-1 Notes Other Amounts, interest on the Outstanding Notes of such Defeased Series (including additional interest that accrues after the anticipated repayment date or renewal date, if applicable) and any other amounts that will be due and payable by the Master Issuer solely with respect to the Defeased Series to the applicable prepayment
date, redemption date or maturity date, as the case may be, and to pay other sums payable by them under the Base Indenture, each other Related Document and each Series Hedge Agreement with respect to such Defeased Series;

(2) all Weekly Management Fees, Supplemental Management Fees, unreimbursed Advances (and outstanding interest thereon) and Manager Advances (and outstanding interest thereon), all fees, indemnities, reimbursements and expenses due to the Trustee, the Manager, the Servicer and the Back-Up Manager, and all Successor Manager Transition Expenses and Successor Servicer Transition Expenses, in each case that will be due and payable as of the following Quarterly Calculation Date; and

(3) all Securitization Operating Expenses, all Class A-1 Notes Administrative Expenses for the Defeased Series, all Class A-1 Interest Adjustment Amounts for the Defeased Series and all Class A-1 Notes Other Amounts for the Defeased Series, in each case, that are due and unpaid as of the Series Defeasance Date to the Actual Knowledge of the Manager;

provided, any Government Securities must provide for the scheduled payment of all principal and interest thereon not later than the Business Day prior to the applicable prepayment date, redemption date or maturity date, as the case may be, and the Trustee must have been irrevocably instructed to apply such funds to the payment of principal, premiums, make-whole prepayment premiums and interest with respect to the Notes of such Series and such other sums;

(ii) all commitments under all Variable Funding Note Purchase Agreements and Series Hedge Agreements with respect to such Defeased Series are terminated on or before the Series Defeasance Date;

(iii) the Master Issuer delivers notice of prepayment, redemption or maturity of such Series of Notes to the Noteholders of the Defeased Series, the Manager, the Trustee, the Control Party, the Controlling Class Representative, the Back-Up Manager and the Rating Agency not more than twenty (20) Business Days prior to the Series Defeasance Date, and such notice is expressly stated to be, or as of the date of the deposit has become, irrevocable; provided that such notice may be conditioned upon the contemporaneous closing of a financing the proceeds of which will be used to fund all or a portion of such deposit;

(iv) after giving effect to the deposit, if any other Series of Notes is Outstanding, the Master Issuer delivers to the Trustee an Officer’s Certificate of the Master Issuer stating that no Potential Rapid Amortization Event, Rapid Amortization Event, Default or Event of Default has occurred and will be continuing;

(v) the Master Issuer delivers to the Trustee an Officer’s Certificate stating that the defeasance was not made by the Master Issuer with the intent of preferring the Holders of the Defeased Series over other creditors of the Master Issuer or with the intent of defeating, hindering, delaying or defrauding other creditors;
(vi) the Master Issuer delivers notice of such deposit to the Control Party, the Manager, the Back-Up Manager and the Rating Agency on or before the date of the deposit;

(vii) such defeasance will not result in a breach or violation of, or constitute a default under, the Indenture or any Indenture Documents; and

(viii) the Master Issuer delivers to the Trustee an Opinion of Counsel to the effect that all conditions precedent to such termination have been satisfied.

Upon satisfaction of such conditions, the Indenture and the Guarantee and Collateral Agreement shall cease to be of further effect with respect to such Defeased Series, the Master Issuer and the Guarantors shall be deemed to have paid and been discharged from their Series Obligations with respect to such Defeased Series and thereafter such Defeased Series shall be deemed to be “Outstanding” only for purposes of (1) the Trustee’s and the Paying Agent’s obligations under Section 12.2 and Section 12.3, (2) the Noteholders’ and the Trustee’s obligations under Section 14.13 and (3) the Noteholders’ rights to registration of transfer and exchange under Section 2.8 and to replacement or substitution of mutilated, destroyed, lost or stolen Notes under Section 2.10(a) (or in each case, to de-registration and/or registration of Uncertificated Notes). The Trustee, on demand of the Securitization Entities, shall execute proper instruments acknowledging confirmation of and discharge under the Indenture and the Guarantee and Collateral Agreement of such Series Obligations.

(d) After the conditions set forth in Section 12.1(a) have been met, or after the irrevocable deposit is made pursuant to Section 12.1(b) and satisfaction of the other conditions set forth therein have been met, the Trustee upon request of the Securitization Entities shall reassign (without recourse upon, or any warranty whatsoever by, the Trustee) and deliver all Securitized Assets and documents then in the custody or possession of the Trustee promptly to the applicable Securitization Entities.

Section 12.2 Application of Trust Money.

The Trustee or a trustee satisfactory to the Servicer, the Trustee and the Master Issuer shall hold in trust money or Government Securities deposited with it pursuant to Section 12.1. The Trustee shall apply the deposited money and the money from Government Securities through the Paying Agent in accordance with this Base Indenture and the other Related Documents to the payment of principal, premium, if any, and interest on the Notes and the other sums referred to above. The provisions of this Section 12.2 shall survive the expiration or earlier termination of the Indenture.

Section 12.3 Repayment to the Master Issuer.

(a) The Trustee and the Paying Agent shall promptly pay to the Master Issuer upon written request any excess money or, pursuant to Sections 2.10 and 2.14, return any cancelled Notes held by them at any time.
Subject to Section 2.6(c), the Trustee and the Paying Agent shall pay to the Master Issuer upon written request any money held by them for the payment of principal, premium or interest that remains unclaimed for two (2) years after the date upon which such payment shall have become due.

(c) The provisions of this Section 12.3 shall survive the expiration or earlier termination of the Indenture.

Section 12.4 Reinstatement.

If the Trustee is unable to apply any funds received under this Article XII by reason of any proceeding, order or judgment of any court or Governmental Authority enjoining, restraining or otherwise prohibiting such application, the Master Issuer’s obligations under the Indenture or the other Indenture Documents and in respect of the Notes and the Guarantors’ obligations under the Guarantee and Collateral Agreement shall be revived and reinstated as though no deposit had occurred, until such time as the Trustee is permitted to apply all such funds or property in accordance with this Article XII. If the Master Issuer or Guarantors make any payment of principal, premium or interest on any Notes or any other sums under the Indenture Documents while such obligations have been reinstated, the Master Issuer and the Guarantors shall be subrogated to the rights of the Noteholders or Note Owners or other Secured Parties who received such funds or property from the Trustee to receive such payment in respect of the Notes.

ARTICLE XIII

AMENDMENTS

Section 13.1 Without Consent of the Controlling Class Representative or the Noteholders.

(a) Without the consent of any Noteholder, the Control Party, the Controlling Class Representative or any other Secured Party, the Master Issuer and the Trustee, at any time and from time to time, may enter into one or more Supplements hereto, in form satisfactory to the Trustee, for any of the following purposes:

(i) to create a new Series of Notes or issue Additional Notes of an existing Series, Class, Subclass or Tranche of Notes (except that the consent of the Control Party is only necessary to the extent required by Section 2.2);

(ii) to add to the covenants of the Securitization Entities for the benefit of any Noteholders or any other Secured Parties (and if such covenants are to be for the benefit of less than all Series of Notes, stating that such covenants are expressly being included solely for the benefit of such Series) or to surrender for the benefit of the Noteholders and the other Secured Parties any right or power herein conferred upon the Securitization Entities; provided, however, that the Master Issuer will not pursuant to this Section 13.1(a)(ii) surrender any right or power it has under the Related Documents;
(iii) to mortgage, pledge, convey, assign and transfer to the Trustee any property or assets as security for the Obligations and to specify the terms and conditions upon which such property or assets are to be held and dealt with by the Trustee and to set forth such other provisions in respect thereof as may be required by the Indenture or as may, consistent with the provisions of the Indenture, be deemed appropriate by the Master Issuer, the Servicer and the Trustee, or to correct or amplify the description of any such property or assets at any time so mortgaged, pledged, conveyed and transferred to the Trustee;

(iv) to correct any manifest error or defect or to cure any ambiguity, defect or inconsistency or to correct or supplement any provisions herein, in any Series Supplement or in any other Indenture Document to which the Trustee is a party which may be inconsistent with any other provision herein or therein or with any related offering memorandum in the case of a Series Supplement and each related offering memorandum in the case of this Base Indenture;

(v) to provide or supplement the provisions hereof in respect of Uncertificated Notes in addition to or in place of certificated Notes;

(vi) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes of one or more Series and to add to or change any of the provisions of the Indenture or the Guarantee and Collateral Agreement as shall be necessary to provide for or facilitate the administration of the trusts hereunder or thereunder by more than one Trustee;

(vii) to comply with Requirements of Law (as evidenced by an Opinion of Counsel);

(viii) to facilitate the transfer of Notes in accordance with applicable Requirements of Law (as evidenced by an Opinion of Counsel);

(ix) to take any action necessary or helpful to avoid the imposition, under and in accordance with applicable law, of any Tax, including withholding Tax; or

(x) to take any action necessary and appropriate to facilitate the origination of Collateral Business Documents or the management and preservation of the Collateral Business Documents, in each case, in accordance with the Managing Standard; or

provided, however, that in the case of any Supplement pursuant to any of clauses (iii), (iv), (ix) or (x) above, the Trustee and the Servicer shall have received an Officer’s Certificate certifying that such action could not reasonably be expected to adversely affect in any material respect the interests of any Noteholder, any Note Owner, the Servicer, the Trustee or any other Secured Party.

(b) Without the consent of any Noteholder, the Control Party, the Controlling Class Representative or any other Secured Party, the relevant parties may at any time, and from time to time, enter into one or more Supplements to the Base Indenture or amend, modify or
supplement any Supplement, the Guarantee and Collateral Agreement or any other Indenture Document, in form satisfactory to the Trustee, to:

(i) allow any Future Brand to be contributed to, or acquired by, the Securitization Entities in a manner that does not violate the Managing Standard; provided that any amendment, modification or supplement that alters the manner in which Net Cash Flow or DCSR is calculated (including by any amendment, modification or supplement of any defined terms contained therein) may not be effected unless the Rating Agency Condition is satisfied with respect thereto; or

(ii) correct or supplement any provision in the Base Indenture, in any Supplement, in the Guarantee and Collateral Agreement or any other Indenture Document that may be inconsistent with any other provision or to make consistent any other provisions with respect to matters or questions arising under the Base Indenture, in any Supplement, in the Guarantee and Collateral Agreement or any other Indenture Document;

provided that the execution of such amendment, modification or supplement shall be subject to a requirement that the Trustee and the Servicer have received an Officer’s Certificate certifying that such action could not reasonably be expected to adversely affect in any material respect the interests of any Noteholder, any Note Owner, the Servicer, the Trustee or any other Secured Party.

(c) Upon the request of the Master Issuer and receipt by the Servicer and the Trustee of the documents described in Section 2.2 and delivery by the Servicer of its consent thereto to the extent required by Section 2.2, the Trustee shall join with the Master Issuer in the execution of any Series Supplement authorized or permitted by the terms of this Base Indenture and shall make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into such Series Supplement which affects its own rights, duties or immunities under this Base Indenture or otherwise.

Section 13.2 With Consent of the Controlling Class Representative or the Noteholders.

(a) Except as provided in Section 13.1, the provisions of this Base Indenture, the Guarantee and Collateral Agreement, any Supplement and any other Indenture Document to which the Trustee is a party (unless otherwise provided in such Supplement) may, from time to time, be amended, modified or waived, if such amendment, modification or waiver is in writing in a Supplement and consented to in writing by the Control Party (at the direction of the Controlling Class Representative). Notwithstanding the foregoing:

(i) any amendment, waiver or other modification that would reduce the percentage of the Aggregate Outstanding Principal Amount or the Outstanding Principal Amount of any Series of Notes, the consent of the Noteholders of which is required for any Supplement under this Section 13.2 or the consent of the Noteholders of which is required for any waiver of compliance with the provisions of the Indenture or any other Related Document or defaults
hereunder or thereunder and their consequences provided for herein and therein or for any other action hereunder or thereunder shall require the consent of each affected Noteholder;

(ii) any amendment, waiver or other modification that would permit the creation of any Lien ranking prior to or on a parity with the Lien created by the Indenture, the Guarantee and Collateral Agreement or any other Related Documents with respect to any material part of the Collateral or except as otherwise permitted by the Related Documents, terminate the Lien created by the Indenture, the Guarantee and Collateral Agreement or any other Related Documents on any material portion of the Collateral at any time subject thereto or deprive any Secured Party of any material portion of the security provided by the Lien created by the Indenture, the Guarantee and Collateral Agreement or any other Related Documents, with respect to any material part of the Collateral or except as otherwise permitted by the Related Documents, terminate the Lien created by the Indenture, the Guarantee and Collateral Agreement or any other Related Documents on any material portion of the Collateral at any time subject thereto or deprive any Secured Party of any material portion of the security provided by the Lien created by the Indenture, the Guarantee and Collateral Agreement or any other Related Documents, require the consent of each affected Noteholder and each other affected Secured Party; provided that the consent of the Noteholders or any other Secured Party will not be required for the Control Party to consent to a grant of a pari passu lien in the Debenture Restricted Assets for the benefit of the Unsecured Debentures.

(iii) any amendment, waiver or other modification that would (A) extend the due date for, or reduce the amount of any scheduled repayment or prepayment of principal of, premium, if any, or interest on any Note and any other Obligations (or reduce the principal amount of, premium, if any, or rate of interest on any Note and any other Obligations); (B) affect adversely the interests, rights or obligations of any Noteholder individually in comparison to any other Noteholder; (C) change the provisions of the Priority of Payments or Section 5.12; (D) change any place of payment where, or the coin or currency in which, any Notes and the other Obligations or the interest thereon is payable; (E) impair the right to institute suit for the enforcement of the provisions of the Indenture requiring the application of funds available therefor, as provided in Article V, to the payment of any such amount due on the Notes and the other Obligations on or after the respective due dates thereof, (F) subject to the ability of the Control Party (acting at the direction of the Controlling Class Representative) to waive certain events as set forth in Section 9.7, amend or otherwise modify any of the specific language of the following definitions: “Default,” “Event of Default,” “Outstanding,” “Potential Rapid Amortization Event” or “Rapid Amortization Event” (as defined herein or any applicable Series Supplement) or (G) amend, waive or otherwise modify this Section 13.2, shall require the consent of the each affected Noteholder and each other affected Secured Party; and

(iv) any amendment, waiver or other modification that would change the time periods with respect to any requirement to deliver to Noteholders notice with respect to any repayment, prepayment, redemption or election of any Extension Period shall require the consent of each affected Noteholder.

(b) No failure or delay on the part of any Noteholder, the Trustee or any other Secured Party in exercising any power or right under the Indenture or any other Related Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right.
(c) The express requirement, in any provision hereof, that the Rating Agency Condition be satisfied as a condition to the taking of a specified action, shall not be amended, modified or waived by the parties hereto without satisfying the Rating Agency Condition.

(d) Notwithstanding anything to the contrary herein, in addition to any amendment, modification or waiver effected in accordance with the provisions of Section 13.1 or Section 13.2(a), the provisions of this Base Indenture or any Series Supplement may be amended, modified or waived in writing by the Master Issuer and the Trustee with the consent of the Noteholders required therefor pursuant to the related Variable Funding Note Purchase Agreements (but without the consent of any other Person), if such amendment, modification or waiver is with respect to any of the terms of the Base Indenture or such Series Supplement, as applicable, relating to a Series of Class A-1 Notes; provided, however, no such amendment may adversely affect (x) the Trustee without the Trustee’s prior consent or (y) the Servicer without the Servicer’s prior consent; provided, further, that no such amendment may change the text of the provisions of the Priority of Payments or Section 5.12.

Section 13.3 Supplements.

Each amendment or other modification to the Indenture, the Notes or the Guarantee and Collateral Agreement shall be set forth in a Supplement, a copy of which shall be delivered to the Rating Agency, the Servicer, the Controlling Class Representative, the Manager, the Back-Up Manager and the Master Issuer. The Master Issuer shall provide written notice to the Rating Agency of any amendment or modification to the Indenture, the Notes or the Guarantee and Collateral Agreement no less than ten (10) days prior to the effectiveness of the related Supplement; provided that such Supplement need not be in final form at the time such notice is given. The initial effectiveness of each Supplement shall be subject to the delivery to the Servicer and the Trustee of an Opinion of Counsel that such Supplement is authorized or permitted by this Base Indenture and the conditions precedent set forth herein with respect thereto have been satisfied. Each Series Supplement may be amended in accordance with the manner provided in Sections 13.1 and 13.2 and subject to additional requirements as set forth in such Series Supplement.

Section 13.4 Revocation and Effect of Consents.

Until an amendment or waiver becomes effective, a consent to it by a Noteholder of a Note is a continuing consent by the Noteholder and every subsequent Noteholder of a Note or portion of a Note that evidences the same debt as the consenting Noteholder’s Note, even if notation of the consent is not made on any Note. Any such Noteholder or subsequent Noteholder, however, may revoke the consent as to his Note or portion of a Note if the Trustee receives written notice of revocation before the date the amendment or waiver becomes effective. An amendment or waiver becomes effective in accordance with its terms and thereafter binds every Noteholder. The Master Issuer may fix a record date for determining which Noteholders must consent to such amendment or waiver.
Section 13.5  Notation on or Exchange of Notes.

The Trustee may place an appropriate notation about an amendment or waiver on any Note thereafter authenticated. The Master Issuer, in exchange for all Notes, may issue and the Trustee shall authenticate new Notes that reflect the amendment or waiver. Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment or waiver.

Section 13.6  The Trustee to Sign Amendments, etc.

The Trustee shall sign any Supplement authorized pursuant to this Article XIII if the Supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing such Supplement, the Trustee shall be entitled to receive, if requested, an indemnity reasonably satisfactory to it and to receive and, subject to Section 10.1, shall be fully protected in relying upon, an Officer’s Certificate of the Master Issuer and an Opinion of Counsel as conclusive evidence that such Supplement is authorized or permitted by this Base Indenture and that all conditions precedent have been satisfied, and that it will be valid and binding upon the Master Issuer and the Guarantors in accordance with its terms.

Section 13.7  Amendments and Fees.

The Master Issuer, the Control Party and the Controlling Class Representative shall negotiate any amendments, waivers or modifications to the Indenture or the other Related Documents that require the consent of the Control Party or the Controlling Class Representative in good faith, and any consent required to be given by the Control Party or the Controlling Class Representative shall not be unreasonably denied or delayed. The Control Party and the Controlling Class Representative shall be entitled to be reimbursed by the Master Issuer only for the reasonable counsel fees incurred by the Control Party or the Controlling Class Representative in reviewing and approving any amendment or in providing any consents, and except as provided in the Servicing Agreement, neither the Control Party nor the Controlling Class Representative shall be entitled to any additional compensation in connection with any amendments or consents to this Base Indenture or to any Related Document.

ARTICLE XIV

MISCELLANEOUS

Section 14.1  Notices.

(a) Any notice or communication by the Master Issuer, the Manager or the Trustee to any other party hereto shall be in writing and delivered in person, delivered by email (provided that such email may contain a link to a password-protected website containing such notice for which the recipient has granted access; provided, further, that any email notice to the Trustee other than an email containing a link to a password-protected website shall be in the form of an attachment of a .pdf or similar file) or mailed by first-class mail (registered or
certified, return receipt requested), facsimile or overnight air courier guaranteeing next day delivery, to such other party’s address:

If to the Master Issuer:

Wendy's Funding, LLC  
One Dave Thomas Blvd.  
Dublin, Ohio 43017  
Attention: General Counsel

If to the Manager:

Wendy's International, LLC  
One Dave Thomas Blvd.  
Dublin, Ohio 43017  
Attention: General Counsel

If to the Master Issuer with a copy to (which shall not constitute notice):

Ropes & Gray LLP  
800 Boylston Street  
Boston, MA 02199  
Attention: Patricia Lynch  
Facsimile: 617-235-9384

If to the Manager with a copy to (which shall not constitute notice):

Ropes & Gray LLP  
800 Boylston Street  
Boston, MA 02199  
Attention: Patricia Lynch  
Facsimile: 617-235-9384

If to the Back-Up Manager:

FTI Consulting, Inc.  
3 Times Square, 9th Floor  
New York, NY 10036  
Attention: Robert J. Darefsky  
Facsimile: 212 841-9350

If to the Servicer:

Midland Loan Services, a division of
PNC Bank, National Association
10851 Mastin Street
Building 82, Suite 700
Overland Park, Kansas 66210
Attention: President
Facsimile: 913-253-9709

If to the Trustee:

Citibank, N.A.
388 Greenwich Street
14th Floor
New York, NY 10013
Attention: Citibank Agency & Trust - Wendy's Funding, LLC
Facsimile: 212-816-5527

If to Standard & Poor's:

Standard & Poor's Rating Services
55 Water Street
42nd Floor
New York, NY 10041-0003
Attention: ABS Surveillance Group - New Assets
Email: Servicer_Reports@spglobal.com

If to an Enhancement Provider or an Hedge Counterparty: At the address provided in the applicable Enhancement Agreement or the applicable Series Hedge Agreement.

(b) The Master Issuer or the Trustee by notice to each other party may designate additional or different addresses for subsequent notices or communications; provided, however, the Master Issuer may not at any time designate more than a total of three (3) addresses to which notices must be sent in order to be effective.

(c) Any notice (i) given in person shall be deemed delivered on the date of delivery of such notice, (ii) given by first class mail shall be deemed given five (5) days after the date that such notice is mailed, (iii) delivered by facsimile shall be deemed given on the date of delivery of such notice, (iv) delivered by overnight air courier shall be deemed delivered one (1) Business Day after the date that such notice is delivered to such overnight courier, (v) when posted on a password-protected website shall be deemed delivered after notice of such posting has been provided to the recipient and (vi) delivered by email shall be deemed delivered on the date of delivery of such notice.
(d) Notwithstanding any provisions of the Indenture to the contrary, the Trustee shall have no liability based upon or arising from the failure to receive any notice required by or relating to the Indenture, the Notes or any other Related Document.

(e) If the Master Issuer delivers a notice or communication to Noteholders, it shall deliver a copy to the Back-Up Manager, the Servicer, the Controlling Class Representative and the Trustee at the same time.

(f) Where the Indenture provides for notice to Noteholders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if sent in writing and mailed, first-class postage prepaid, to each Noteholder affected by such event, at its address as it appears in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed (if any) for the giving of such notice. In any case where notice to a Noteholder is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Noteholder shall affect the sufficiency of such notice with respect to other Noteholders, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given. Where the Indenture provides for notice in any manner, such notice may be waived in writing by any Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In the case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made that is satisfactory to the Trustee shall constitute a sufficient notification for every purpose hereunder.

(g) Notwithstanding any other provision herein, for so long as Wendy’s is the Manager, any notice, communication, certificate, report, statement or other information required to be delivered by the Manager to the Master Issuer, or by the Master Issuer to the Manager, shall be deemed to have been delivered to both the Master Issuer and the Manager if the Manager has prepared or is otherwise in possession of such notice, communication, certificate, report, statement or other information, and in no event shall the Manager or the Master Issuer be in breach of any delivery requirements hereunder for constructive delivery pursuant to this Section 14.1(g).

Section 14.2 Communication by Noteholders With Other Noteholders.

Noteholders may communicate with other Noteholders with respect to their rights under the Indenture or the Notes.

Section 14.3 Officer’s Certificate as to Conditions Precedent.

Upon any request or application by the Master Issuer to the Controlling Class Representative, the Servicer or the Trustee to take any action under the Indenture or any other Related Document, the Master Issuer to the extent requested by the Controlling Class Representative, the Servicer or the Trustee shall furnish to the Controlling Class Representative, the Servicer and the Trustee (a) an Officer’s Certificate of the Master Issuer in form and
substance reasonably satisfactory to the Controlling Class Representative, the Servicer or the Trustee, as applicable (which shall include the statements set forth in Section 14.4), stating that all conditions precedent and covenants, if any, provided for in the Indenture or such other Related Documents relating to the proposed action have been complied with and (b) an Opinion of Counsel confirming the same. Such Opinion of Counsel shall be at the expense of the Master Issuer.

Section 14.4 Statements Required in Certificate.

Each certificate with respect to compliance with a condition or covenant provided for in the Indenture or any other Related Document shall include:

(a) a statement that the Person giving such certificate has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements contained in such certificate are based;

(c) a statement that, in the opinion of such Person, he has made such examination or investigation as is necessary to enable him to reach an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not such condition or covenant has been complied with.

Section 14.5 Rules by the Trustee.

The Trustee may make reasonable rules for action by or at a meeting of Noteholders.

Section 14.6 Benefits of Indenture.

Except as set forth in a Series Supplement, nothing in this Base Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders and the other Secured Parties, any benefit or any legal or equitable right, remedy or claim under the Indenture.

Section 14.7 Payment on Business Day.

In any case where any Quarterly Payment Date, redemption date or maturity date of any Note shall not be a Business Day, then (notwithstanding any other provision of the Indenture) payment of interest or principal (and premium, if any), as the case may be, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the Quarterly Payment Date, redemption date or maturity date; provided, however, that no interest shall accrue for the period from and after such Quarterly Payment Date, redemption date or maturity date, as the case may be.
Section 14.8  Governing Law.

THIS BASE INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

Section 14.9  Successors.

All agreements of the Master Issuer in the Indenture, the Notes and each other Related Document to which it is a party shall bind its successors and assigns; provided, however, the Master Issuer must not assign its obligations or rights under the Indenture or any other Related Document, except with the written consent of the Servicer. All agreements of the Trustee in the Indenture shall bind its successors.

Section 14.10  Severability.

In case any provision in the Indenture, the Notes or any other Related Document shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.11  Counterpart Originals.

This Base Indenture may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single agreement.

Section 14.12  Table of Contents, Headings, etc.

The Table of Contents and headings of the Articles and Sections of the Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 14.13  No Bankruptcy Petition Against the Securitization Entities.

Each of the Noteholders, the Trustee and the other Secured Parties hereby covenants and agrees that, prior to the date which is one (1) year and one (1) day after the payment in full of the latest maturing Note, it will not institute against, or join with any other Person in instituting against, any Securitization Entity any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings, under any federal or state bankruptcy or similar law; provided, however, that nothing in this Section 14.13 shall constitute a waiver of any right to indemnification, reimbursement or other payment from the Securitization Entities pursuant to the Indenture or any other Related Document. In the event that any such Noteholder or other Secured Party or the Trustee takes action in violation of this Section 14.13, each affected Securitization Entity shall file or cause to be filed an answer with the bankruptcy court or otherwise properly contesting the filing of such a petition by any such Noteholder or Secured
Section 14.13  Party or the Trustee against such Securitization Entity or the commencement of such action and raising the defense that such Noteholder or other Secured Party or the Trustee has agreed in writing not to take such action and should be estopped and precluded therefrom and such other defenses, if any, as its counsel advises that it may assert. The provisions of this Section 14.13 shall survive the termination of the Indenture and the resignation or removal of the Trustee. Nothing contained herein shall preclude participation by any Noteholder or any other Secured Party or the Trustee in the assertion or defense of its claims in any such proceeding involving any Securitization Entity.

Section 14.14  Recording of Indenture.

If the Indenture is subject to recording in any appropriate public recording offices, such recording is to be effected by the Master Issuer and at its expense.

Section 14.15  Waiver of Jury Trial.

THE MASTER ISSUER AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS BASE INDENTURE, THE NOTES, THE OTHER RELATED DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.

Section 14.16  Submission to Jurisdiction; Waivers.

The Master Issuer and the Trustee hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to the Indenture and the other Related Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York sitting in New York County, the courts of the United States for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Master Issuer or the Trustee, as the case may be, at its address set forth in Section 14.1 or at such other address of which the Trustee shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and
(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 14.16 any special, exemplary, punitive or consequential damages.

Section 14.17 Permitted Asset Dispositions; Release of Collateral.

After consummation of a Permitted Asset Disposition, upon request of the Master Issuer, the Trustee, at the written direction of the Control Party, shall execute and deliver to the Master Issuer any and all documentation reasonably requested and prepared by the Master Issuer at the Master Issuer’s expense to effect or evidence the release by the Trustee of the Secured Parties’ security interest in the property disposed of in connection with such Permitted Asset Disposition.

Section 14.18 Calculation of Holdco Leverage Ratio and Senior ABS Leverage Ratio.

(a) Holdco Leverage Ratio. For purposes of making the computation of the Holdco Leverage Ratio (including, without limitation the calculation of Adjusted EBITDA used therein), investments, acquisitions, mergers, amalgamations and consolidations, in each case with respect to an operating unit of a business, that any of the Wendy’s Entities has either determined to make or made during the preceding four Quarterly Fiscal Periods or subsequent to such preceding four Quarterly Fiscal Periods and on or prior to or simultaneously with the date as of which such computation is made (each, for purposes of the calculations described in this Section 14.18, a “pro forma event”) shall, at the discretion of the Manager, be calculated on a pro forma basis for Additional EBITDA only assuming that all such investments, acquisitions, mergers, amalgamations and consolidations (and the change in Adjusted EBITDA resulting therefrom) had occurred on the first day of such preceding four Quarterly Fiscal Periods. If since the beginning of such period any Person that subsequently became a Wendy’s Entity since the beginning of such preceding four Quarterly Fiscal Periods shall have made any investment, acquisition, disposition, merger, consolidation, discontinued operation, restructurings or reorganizations, in each case with respect to an operating unit of a business, that would have been subject to adjustment pursuant to this Section 14.18, then the Holdco Leverage Ratio shall, at the discretion of the Manager, be calculated giving pro forma effect for any Additional EBITDA related thereto for such period as if such investment, acquisition, discontinued operation, merger or consolidation had occurred at the beginning of the applicable preceding four Quarterly Fiscal Periods.

(b) Senior ABS Leverage Ratio. For purposes of making the computation of the Senior ABS Leverage Ratio (including, without limitation the calculation of Net Cash Flow used therein), any pro forma event shall, at the discretion of the Manager, be calculated on a pro forma basis for Additional Net Cash Flow only assuming that all such investments, acquisitions, mergers, amalgamations and consolidations (and the change in Net Cash Flow resulting therefrom) had occurred on the first day of such preceding four Quarterly Fiscal Periods. If since the beginning of such period any Person that subsequently became a Securitization Entity since the beginning of such preceding four Quarterly Fiscal Periods shall have made any investment, acquisition, merger or consolidation, in each case with respect to an operating unit of a business, that would have been subject to adjustment pursuant to this Section
then the Senior ABS Leverage Ratio shall, at the discretion of the Manager, be calculated giving pro forma effect for any Additional Net Cash Flow related thereto for such period as if such investment, acquisition, discontinued operation, merger or consolidation had occurred at the beginning of the applicable preceding four Quarterly Fiscal Periods.

(c) Calculations to be Made in Good Faith. For purposes of the calculations described in this Section 14.18 and the calculation of Additional EBITDA and Additional Net Cash Flow, whenever pro forma effect is to be given to any pro forma event, the pro forma calculations and the calculation of Additional EBITDA or Additional Net Cash Flow shall be made in good faith by a responsible financial or accounting officer of the Manager. Any such pro forma calculation that includes Additional EBITDA or Additional Net Cash Flow may include adjustments appropriate, in the reasonable good faith determination of the Manager as set forth in an Officer’s Certificate delivered to the Trustee (with respect to which the Trustee shall have no obligation of any nature whatsoever) to reflect all adjustments of the nature used in connection with the calculation of “Adjusted EBITDA” or “Additional Net Cash Flow” as set forth in the definition thereof, to the extent such adjustments, without duplication, continue to be applicable to such preceding four Quarterly Fiscal Periods.

(d) Changes in GAAP. If at any time any change in GAAP (including conversion to IFRS as described below) would affect the computation of any covenant, incurrence test or other restriction affecting any Securitization Entity or Non-Securitization Entity that is set forth in this Base Indenture or any Related Document (including the calculation of Adjusted EBITDA), and the Manager shall so request, the Control Party and the Manager shall negotiate in good faith to amend the provisions of the Related Documents related to such covenant, incurrence test or other restriction to preserve the original intent thereof in light of such change in GAAP, provided that, until so amended, such covenant, incurrence test or other restriction shall continue to be computed in accordance with GAAP or the application thereof prior to such change therein. If the Manager notifies the Control Party that Wendy’s is required to report under IFRS or has elected to do so through an early adoption policy, “GAAP” shall mean international financial reporting standards pursuant to IFRS (provided that after such conversion, Wendy’s cannot elect to report under U.S. generally accepted accounting principles).

Section 14.19 Electronic Signatures and Transmission. For purposes of this Base Indenture and any of the Indenture Documents or Related Documents, any reference to “written” or “in writing” means any form of written communication, including, without limitation, electronic signatures, and any such written communication may be transmitted by Electronic Transmission. “Electronic Transmission” means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. The Trustee is authorized to accept written instructions, directions, reports, notices or other communications delivered by Electronic Transmission and shall not have any duty or obligation to verify or confirm that the Person sending instructions, directions, reports, notices or other communications or information by Electronic Transmission is, in fact, a Person.
authorized to give such instructions, directions, reports, notices or other communications or information on behalf of the party purporting to send such Electronic Transmission, and the Trustee shall not have any liability for any losses, liabilities, costs or expenses incurred or sustained by any party as a result of such reliance upon or compliance with such instructions, directions, reports, notices or other communications or information to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions, notices, reports or other communications or information, and the risk of interception and misuse by third parties (except to the extent such action results from gross negligence, willful misconduct or fraud by the Trustee). Any requirement in the Indenture, Indenture Documents or Related Documents, that a document, including any Notes, is to be signed or authenticated by “manual signature” or similar language shall not be deemed to prohibit signature to be by facsimile or electronic signature and shall not be deemed to prohibit delivery thereof by Electronic Transmission; provided that upon the request of any Noteholder that any of its Notes be delivered in physical form, the Issuer and the Trustee shall cooperate to deliver such Notes to such Noteholder in physical form as soon as reasonably practicable, but in no more than ten (10) Business Days from the date of such request in any event. Notwithstanding anything to the contrary in this Base Indenture, any and all communications (both text and attachments) by or from the Trustee that the Trustee in its sole discretion deems to contain confidential, proprietary and/or sensitive information and sent by Electronic Transmission will be encrypted. The recipient of the Electronic Transmission will be required to complete a one-time registration process.

[Signature Pages Follow]
IN WITNESS WHEREOF, the Master Issuer, the Trustee and the Securities Intermediary have caused this Base Indenture to be duly executed by its respective duly Authorized Officer as of the day and year first written above.

WENDY'S FUNDING, LLC, as Master Issuer

By: 
Name: 
Title: 
CITIBANK, N.A., in its capacity as Trustee and as Securities Intermediary

By: 
Name: 
Title: 
ANNEX A

BASE INDENTURE DEFINITIONS LIST

“1933 Act” means the Securities Act of 1933, as amended.


“1940 Act” means the Investment Company Act of 1940, as amended.

“2015 Base Indenture” has the meaning set forth in the recitals hereto.

“Account Agreement” means each agreement governing the establishment and maintenance of any Management Account or any other Base Indenture Account or Series Account to the extent that any such account is not held at the Trustee.

“Account Control Agreement” means each control agreement, in form and substance reasonably satisfactory to the Servicer and the Trustee, pursuant to which the Trustee is granted the right to control deposits and withdrawals from, or otherwise give instructions or entitlement orders in respect of, a deposit and/or securities account and any lock-box related thereto.

“Accounts” means, collectively, the Indenture Trust Accounts, the Management Accounts and any other account subject to an Account Control Agreement and the Residual Amounts Account.

“Actual Knowledge” means the actual knowledge of (i) in the case of Wendy’s, in its individual capacity or in its capacity as Manager, the Chief Executive Officer, the President, the Chief Financial Officer, the General Counsel or any Senior Vice President of Wendy’s, (ii) in the case of any Securitization Entity, any manager or director (as applicable) or officer of such Securitization Entity who is also an officer of Wendy’s described in clause (i) above, (iii) in the case of the Manager or any Securitization Entity, with respect to a relevant matter or event, an Authorized Officer of the Manager or such Securitization Entity, as applicable, directly responsible for managing the relevant asset or for administering the transactions relevant to such matter or event, (iv) with respect to the Trustee, an Authorized Officer of the Trustee responsible for administering the transactions relevant to the applicable matter or event or (v) with respect to any other Person, any member of senior management of such Person.

“Additional EBITDA” means the EBITDA that would have actually been received by the Wendy’s Entities or Securitization Entities, as applicable, in connection with any pro forma event and the related pro forma calculation set forth in Section 14.18, without giving effect to any potential cost savings, operating expense reductions, operating improvements, synergies or other similar effects of such actions.

“Additional Net Cash Flow” means the Net Cash Flow that would have actually been received by the Wendy’s Entities or Securitization Entities, as applicable, in connection with any pro forma event and the related pro forma calculation set forth in Section 14.18, without giving
effect to any potential cost savings, operating expense reductions, operating improvements, synergies or other similar effects of such actions.

“Additional Management Account” has the meaning set forth in Section 5.1(a) of the Base Indenture.

“Additional Notes” means any additional Series, Classes, Subclasses and Tranches of Notes issued by the Master Issuer after the Closing Date and any additional Notes of an existing Series, Class, Subclass or Tranche of Notes issued by the Master Issuer after the Closing Date.

“Additional Securitization Entity” means any entity that becomes a direct or indirect wholly-owned Subsidiary of the Master Issuer or any other Securitization Entity after the Closing Date in accordance with and as permitted under the Related Documents and is designated by the Master Issuer as an “Additional Securitization Entity” pursuant to Section 8.34 of the Base Indenture.

“Adjusted EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Subsidiaries for such period (a) plus, without duplication, the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Expense; (ii) federal, state, local and foreign income taxes; (iii) other non-operating expense; (iv) losses attributable to asset dispositions; (v) losses attributable to early extinguishment of Indebtedness or Swap Contracts; (vi) impairment losses on assets (including intangible assets and goodwill); (vii) depreciation and amortization expense; (viii) costs incurred in connection with the issuance of Equity Interests, any recapitalization or the incurrence or repayment of Indebtedness (in each case, whether or not successful); (ix) costs incurred for reorganization, restructuring and realignment initiatives not in the ordinary course of business; and (x) other extraordinary or nonrecurring items, and (b) minus, without duplication, to the extent added in calculating such Consolidated Net Income, (i) gains attributable to asset dispositions, early extinguishment of Indebtedness or Swap Contracts, (ii) other non-operating income and (iii) other extraordinary or nonrecurring items; provided, however, that, with respect to the Securitization Entities, items that would have been accounted for as operating leases under GAAP as in effect on the Closing Date may be treated as operating leases for purposes of this definition irrespective of any change in GAAP subsequent to the Closing Date at the discretion of the Manager in accordance with the Managing Standard; provided, further, that, with respect to the Securitization Entities, the Manager, in accordance with the Managing Standard, may amend the definition of “Adjusted EBITDA” after the Closing Date with the consent of the Control Party.

“Advance” means a Collateral Protection Advance or a Debt Service Advance.

“Advance Interest Rate” means a rate equal to the Prime Rate plus 3.0% per annum.

“Advertising Fees” means any fees payable in respect of Contributed Restaurants to fund the national marketing and advertising activities and local advertising cooperatives with respect to the Wendy’s Brand.
“Affiliate” means, with respect to any specified Person, any other Person that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such specified Person; provided, however, that no equity holder of TWC or any Affiliate of such equity holder shall be deemed to be an Affiliate of any Wendy’s Entity. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other ownership or beneficial interests, by contract or otherwise; and the terms “controlling” and “controlled” have the meanings correlative to the meaning of “control.”

“After-Acquired Securitization IP” means all Intellectual Property (other than Excluded IP) created, developed, authored or acquired by or on behalf of, or licensed to or on behalf of, the Franchise Holder after the Closing Date pursuant to the IP License Agreements or otherwise, including, without limitation, all Manager-Developed IP and all Licensee-Developed IP.

“Agent” means any Registrar or Paying Agent.

“Aggregate Outstanding Principal Amount” means the sum of the Outstanding Principal Amounts with respect to all Series of Notes.

“Allocated Note Amount” means, as of any date of determination, an amount equal to the greater of (x) zero and (y) with respect to (i) any Franchise Asset, Contributed Restaurant (and the related Contributed Restaurant Assets) or Real Estate Asset in existence on the Closing Date, the pro rata portion of $2,275,000,000 allocated to such asset on the Closing Date based on such asset’s contribution to Retained Collections during the four Quarterly Fiscal Periods ending as of the second Quarterly Fiscal Period of 2015 and (ii) any Franchise Asset, New Contributed Restaurant (and the related Contributed Restaurant Assets) or Real Estate Asset arising after the Closing Date, the Outstanding Principal Amount of the Notes allocated to such asset, on the date such asset was included in the Securitized Assets, based on such asset’s contribution to Retained Collections during the then-most recently ended four Quarterly Fiscal Periods. With respect to any Franchise Asset, Contributed Restaurant or New Contributed Restaurant (and the related Contributed Restaurant Assets) or Real Estate Asset that does not have a four Quarterly Fiscal Period operating period as of the date such asset was included in the Securitized Assets, such asset’s contribution to Retained Collections during the then-most recently ended four Quarterly Fiscal Periods will equal (a) in the case of a New Franchise Agreement, the average of all collected Franchisee Payments under Franchise Agreements during the four Quarterly Fiscal Periods ending as of the date such Franchise Agreement was included in the Securitized Assets, (b) in the case of a New Franchisee Note, the aggregate scheduled payments due thereunder during the twelve-month period after such inclusion, (c) in the case of any Real Estate Asset, the aggregate scheduled lease payments due to the applicable Securitization Entity in respect thereof during the twelve-month period after such inclusion (if applicable, net of the aggregate scheduled lease payments payable by such Securitization Entity in respect thereof during such period) and (d) in the case of a Contributed Restaurant or New Contributed Restaurant, (x) for any date of determination that occurs in a Monthly Fiscal Period ending prior to January 4, 2021, the average of all Monthly Fiscal Period Contributed Restaurant...
Accrual Profits Amounts or (y) for any date of determination that occurs in a Monthly Fiscal Period ending on or after January 4, 2021, all Contributed Restaurant Cash Profits Amount.

“Applicable Procedures” means the provisions of the rules and procedures of DTC, the “Operating Procedures of the Euroclear System” and “Terms and Conditions Governing Use of Euroclear” and the “General Terms and Conditions of Clearstream Banking” and “Customer Handbook” of Clearstream, as in effect from time to time.

“Applicants” has the meaning set forth in Section 2.7(a) of the Base Indenture.

“Asset Disposition Proceeds” means, with respect to any disposition of property by a Securitization Entity, other than dispositions resulting in Asset Disposition Collections, the excess, if any, of (i) the sum of cash and cash equivalents actually received by the Securitization Entities in connection with such disposition (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable property and that is required to be repaid in connection with such disposition (other than Indebtedness under the Notes) to the extent such principal amount is actually repaid, (B) the reasonable and customary out-of-pocket expenses incurred by the Securitization Entities in connection with such disposition and (C) income Taxes reasonably estimated to be actually payable within two (2) years of such disposition as a result of any gain recognized in connection therewith.

“Asset Disposition Proceeds Account” means the account maintained in the name of the Master Issuer, subject to an Account Control Agreement, and pledged to the Trustee into which the Manager causes Asset Disposition Proceeds to be deposited pursuant to Section 5.10(e) of the Base Indenture or any successor account established for the Master Issuer by the Manager for such purpose pursuant to the Base Indenture and the Management Agreement, including any investment accounts related thereto into which funds are transferred for investment purposes pursuant to Section 5.1(b) of the Base Indenture.

“Asset Disposition Reinvestment Period” has the meaning specified in Section 5.10(e) of the Base Indenture.

“Authorized Officer” means, with respect to (i) any Securitization Entity, any officer who is authorized to act for such Securitization Entity in matters relating to such Securitization Entity, including an Authorized Officer of the Manager authorized to act on behalf of such Securitization Entity; (ii) Wendy’s, in its individual capacity and in its capacity as the Manager, the Chief Executive Officer, the President, the Chief Financial Officer, the General Counsel, the Treasurer or any Senior Vice President of Wendy’s or any other officer of Wendy’s who is directly responsible for managing the Contributed Franchised Restaurant Business, the Contributed Restaurant Business or otherwise authorized to act for the Manager in matters relating to, and binding upon, the Manager with respect to the subject matter of the request, certificate or order in question; (iii) the Trustee or any other bank or trust company acting as trustee of an express trust or as custodian, a Trust Officer; (iv) the Servicer, any officer of the Servicer who is duly authorized to act for the Servicer with respect to the relevant matter; or
(v) the Control Party, any officer of the Control Party who is duly authorized to act for the Control Party with respect to the relevant matter. Each party may receive and accept a certification of the authority of any other party as conclusive evidence of the authority of any Person to act, and such certification may be considered as in full force and effect until receipt by such other party of written notice to the contrary.

“Back-Up Management Agreement” means the Back-Up Management and Consulting Agreement, dated as of the Closing Date, by and among the Master Issuer, the other Securitization Entities party thereto, the Manager, the Trustee and the Back-Up Manager, as amended, supplemented or otherwise modified from time to time.

“Back-Up Manager” means FTI Consulting, Inc., a Maryland corporation, in its capacity as Back-Up Manager pursuant to the Back-Up Management Agreement, and any successor Back-Up Manager.

“Back-Up Manager Fees” means all reimbursements paid to the Back-Up Manager for reasonable out-of-pocket expenses and all fees paid based on the Back-Up Manager’s current rates per hour, in each case incurred by the Back-Up Manager in performing services under the Back-Up Management Agreement.


“Base Indenture” means the Amended and Restated Base Indenture, dated as of January 3, 2021, by and among the Master Issuer and the Trustee, as amended, supplemented or otherwise modified from time to time, exclusive of any Series Supplement.

“Base Indenture Account” means any account or accounts authorized and established pursuant to the Base Indenture for the benefit of the Secured Parties, including, without limitation, each account established pursuant to Article V of the Base Indenture, but excluding the Residual Amounts Account.

“Base Indenture Definitions List” has the meaning set forth in Section 1.1 of the Base Indenture.

“Board of Directors” means the Board of Directors of any corporation or any unlimited company, or any authorized committee of such Board of Directors.

“Book-Entry Notes” means beneficial interests in the Notes of any Series, ownership and transfers of which will be evidenced or made through book entries by a Clearing Agency as described in Section 2.12 of the Base Indenture; provided that, after the occurrence of a condition whereupon book-entry registration and transfer are no longer permitted and Definitive Notes are issued to the Note Owners, such Definitive Notes will replace Book-Entry Notes.
“Branded Restaurants” means, as of any date of determination, any restaurant, whether or not such restaurant offers sit-down dining, operated in the United States or internationally under the Wendy’s Brand.

“Business Day” means any day other than Saturday or Sunday or other day on which commercial banks are authorized to close under the laws of New York, New York or the city in which the Corporate Trust Office of any successor Trustee is located if so required by such successor.

“Canadian Franchisor IP License” means the Canadian Franchisor IP License, dated as of the Closing Date, by and between the Franchise Holder, as licensor, and Wendy’s Canada, as licensee, as amended, supplemented or otherwise modified from time to time.

“Canadian License Fees” means the licensing fees paid by Wendy’s Canada to the Franchise Holder pursuant to the Canadian Franchisor IP License.

“Capped Class A-1 Notes Administrative Expenses Amount” means, for each Weekly Allocation Date with respect to any Quarterly Collection Period, an amount equal to the lesser of (a) the Class A-1 Notes Administrative Expenses that have become due and payable prior to such Weekly Allocation Date and have not been previously paid and (b) the amount by which (i) $100,000 exceeds (ii) the aggregate amount of Class A-1 Notes Administrative Expenses previously paid on each preceding Weekly Allocation Date that occurred (x) in the case of a Weekly Allocation Date occurring during the period beginning on the Closing Date and ending on the date on which 52 full and consecutive Weekly Collection Periods have occurred, since the Closing Date and (y) in the case of a Weekly Allocation Date occurring during any successive period of 52 consecutive Weekly Collection Periods after the period in clause (x), since the beginning of such period.

“Capped Securitization Operating Expense Amount” means, for any Weekly Allocation Date that occurs (x) during the period beginning on the Closing Date and ending on January 3, 2016 and (y) each successive period of 52 (or 53, as applicable) consecutive Weekly Collection Periods after the period in clause (x), the amount by which $500,000 exceeds the aggregate Securitization Operating Expenses already paid during such period; provided, however, that during any period that the Back-Up Manager is required to provide Warm Back-Up Management Duties or Hot Back-Up Management Duties pursuant to the Back-Up Management Agreement, the Control Party, acting at the direction of the Controlling Class Representative, may increase the Capped Securitization Operating Expense Amount as calculated above in order to take account of any increased fees associated with the provision of such services.

“Cash Collateral” has the meaning set forth in Section 5.12(d)(iii) of the Base Indenture.

“Cash Trap Reserve Account” means the reserve account no. 11455600 entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Cash Trap Reserve Account”, which account is maintained by the Trustee for the purpose of trapping cash upon the occurrence of a Cash Trapping Event, or any successor securities account established pursuant to the Base Indenture.
“Cash Trapping Amount” means, for any Weekly Allocation Date during a Cash Trapping Period, an amount equal to the product of (i) the applicable Cash Trapping Percentage and (ii) the amount of funds available in the Collection Account on such Weekly Allocation Date after payment of priorities (i) through (xii) of the Priority of Payments (but with respect to the first Weekly Allocation Date on or after a Cash Trapping Release Date, net of the Cash Trapping Release Amount released on such Cash Trapping Release Date); provided that, for any Weekly Allocation Date following the occurrence and during the continuation of a Rapid Amortization Event, or an Event of Default, the Cash Trapping Amount will be zero.

“Cash Trapping DSCR Threshold” means a DSCR equal to 1.75x.

“Cash Trapping Event” means, as of any Quarterly Payment Date, that the DSCR calculated as of the immediately preceding Quarterly Calculation Date is less than the Cash Trapping DSCR Threshold.

“Cash Trapping Percentage” means, with respect to any Weekly Allocation Date during a Cash Trapping Period, a percentage equal to (i) 50%, if the DSCR as calculated as of the immediately preceding Quarterly Calculation Date is less than 1.75x but equal to or greater than 1.50x, and (ii) 100%, if the DSCR as calculated as of the immediately preceding Quarterly Calculation Date is less than 1.50x.

“Cash Trapping Period” means any period that begins on any Quarterly Payment Date on which a Cash Trapping Event occurs and ends on the first Quarterly Payment Date subsequent to the occurrence of such Cash Trapping Event on which the DSCR as calculated as of the immediately preceding Quarterly Calculation Date is equal to or exceeds the Cash Trapping DSCR Threshold.

“Cash Trapping Release Amount” means, (i) with respect to any Cash Trapping Release Date on which a Cash Trapping Period is no longer in effect, the full amount on deposit in the Cash Trap Reserve Account, and (ii) with respect to any other Cash Trapping Release Date, 50% of the aggregate amount deposited to the Cash Trap Reserve Account during the most recent period in which the applicable Cash Trapping Percentage was equal to 100%, after having been reduced ratably for any withdrawals made from the Cash Trap Reserve Account during such period for any other purpose.

“Cash Trapping Release Date” means any Quarterly Payment Date (i) on which a Cash Trapping Period is no longer continuing or (ii) on which the Cash Trapping Percentage is equal to 50% and on the prior Quarterly Payment Date, the applicable Cash Trapping Percentage was equal to 100%.

“Casualty Reinvestment Period” has the meaning specified in Section 5.10(f) of the Base Indenture.

“Cause” means, with respect to an Independent Manager, (i) acts or omissions by such Independent Manager constituting fraud, dishonesty, negligence, misconduct or other deliberate action which causes injury to any Securitization Entity or an act by such Independent Manager
involving moral turpitude or a serious crime, (ii) that such Independent Manager no longer meets the definition of “Independent Manager” as set forth in the applicable Securitization Entity’s Charter Documents or (iii) a material increase in fees charged by such Independent Manager; provided, that the Independent Manager may only be removed for Cause pursuant to this clause (iii) with the consent of the Control Party.

“CCR Acceptance Letter” has the meaning set forth in Section 11.1(e) of the Base Indenture.

“CCR Ballot” has the meaning set forth in Section 11.1(c) of the Base Indenture.

“CCR Candidate” means any nominee submitted to the Trustee on a CCR Nomination pursuant to Section 11.1(b) of the Base Indenture.

“CCR Election” means an election of a Controlling Class Representative as set forth in Section 11.1(a) and (b) of the Base Indenture.

“CCR Election Notice” has the meaning set forth in Section 11.1(b) of the Base Indenture.

“CCR Election Period” has the meaning set forth in Section 11.1(c) of the Base Indenture.

“CCR Nomination” has the meaning set forth in Section 11.1(b) of the Base Indenture.

“CCR Nomination Period” has the meaning set forth in Section 11.1(b) of the Base Indenture.

“CCR Re-election Event” means any of the following events: (i) an additional Series of Notes of the Controlling Class is issued, (ii) the Controlling Class changes, (iii) the Trustee receives written notice of the resignation or removal of any acting Controlling Class Representative, (iv) the Trustee receives a written request for an election for a Controlling Class Representative from a Controlling Class Member and such election has been consented to by the Control Party in its sole discretion, which election will be at the expense of such Controlling Class Members (including Trustee expenses), (v) the Trustee receives written notice that an Event of Bankruptcy has occurred with respect to the acting Controlling Class Representative or (vi) there is no Controlling Class Representative and the Control Party requests an election be held; provided that with respect to a CCR Re-election Event that occurs as a result of clauses (iv) and (vi), there will be deemed to be no CCR Re-election Event if it would result in more than two (2) CCR Re-election Events occurring in a single calendar year.

“CCR Voting Record Date” has the meaning set forth in Section 11.1(c) of the Base Indenture.

“Charter Documents” means, with respect to any entity and at any time, the certificate of incorporation, certificate of formation, operating agreement, by-laws, memorandum of
association, articles of association, or such other similar document, as applicable to such entity in effect at such time.

“Class” means, with respect to any Series of Notes, any one of the classes of Notes of such Series as specified in the applicable Series Supplement.

“Class A-1 Administrative Agent” means, with respect to any Series of Class A-1 Notes, the Person identified as the “Class A-1 Administrative Agent” in the applicable Series Supplement.

“Class A-1 Commitment Fee Adjustment Amount” means, for any Series of Class A-1 Notes for any Interest Accrual Period, the aggregate amount, if any, for such Interest Accrual Period that is identified as the “Class A-1 Commitment Fee Adjustment Amount” in the applicable Series Supplement.

“Class A-1 Interest Adjustment Amount” means, for any Series of Class A-1 Notes for any Interest Accrual Period, the aggregate amount, if any, for such Interest Accrual Period that is identified as a “Class A-1 Interest Adjustment Amount” in the applicable Series Supplement.

“Class A-1 Notes” means any Notes alphanumerically designated as “Class A-1” pursuant to the Series Supplement applicable to such Class of Notes.

“Class A-1 Notes Accrued Quarterly Commitment Fee Amount” means, for each Weekly Allocation Date with respect to a Quarterly Collection Period and the Interest Accrual Period beginning during such Quarterly Collection Period, and with respect to any Series of Class A-1 Notes Outstanding, the aggregate amount of commitment fees due and payable, with respect to such Weekly Allocation Date on such Series of Class A-1 Notes that is identified as “Class A-1 Notes Accrued Quarterly Commitment Fee Amount” in the applicable Series Supplement.

“Class A-1 Notes Administrative Expenses” means all amounts due and payable pursuant to any Variable Funding Note Purchase Agreement that are identified as “Class A-1 Notes Administrative Expenses” in each applicable Series Supplement.

“Class A-1 Notes Amortization Event” means any event designated as a “Class A-1 Notes Amortization Event” in any Series Supplement.

“Class A-1 Notes Commitment Fees Account” has the meaning set forth in Section 5.6(a)(iv) of the Base Indenture.

“Class A-1 Notes Maximum Principal Amount” means, with respect to each Series of Class A-1 Notes Outstanding, the aggregate maximum principal amount of such Series of Class A-1 Notes as identified in the applicable Series Supplement as reduced by any permanent reductions of commitments with respect to such Series of Class A-1 Notes and any cancellations of repurchased Class A-1 Notes thereunder.
“Class A-1 Notes Other Amounts” means all amounts due and payable pursuant to any Variable Funding Note Purchase Agreement that are identified as “Class A-1 Notes Other Amounts” in such Variable Funding Note Purchase Agreement.

“Class A-1 Notes Renewal Date” means, with respect to any Series of Class A-1 Notes, the date identified as the “Class A-1 Notes Renewal Date” in the applicable Series Supplement.

“Class A-1 Notes Voting Amount” has the meaning set forth in Section 2.1(b)(i) of the Base Indenture.

“Class A-1 Quarterly Commitment Fee Amounts” means, for any Interest Accrual Period, with respect to each Series of Class A-1 Notes Outstanding, the aggregate amount of commitment fees due and payable, with respect to such Interest Accrual Period, on such Series of Class A-1 Notes that is identified as “Class A-1 Quarterly Commitment Fee Amounts” in the applicable Series Supplement.

“Class A-1 Quarterly Commitment Fees Shortfall Amount” has the meaning set forth in Section 5.12(b)(iii) of the Base Indenture.

“Clearing Agency” means an organization registered as a “clearing agency” pursuant to Section 17A of the 1934 Act or any successor provision thereto or Euroclear or Clearstream.

“Clearing Agency Participant” means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects book-entry transfers and pledges of securities deposited with the Clearing Agency.

“Clearstream” means Clearstream Banking, societe anonyme.

“Closing Date” means June 1, 2015.

“Closing Date Securitization IP” means all Intellectual Property (other than the Excluded IP) created, developed, authored, acquired or owned by or on behalf of, or licensed to or on behalf of, Wendy’s, Oldemark, the Holding Company Guarantor, the Master Issuer or the Franchise Holder as of the Closing Date covering, reading on or embodied in (i) the Wendy’s Brand, (ii) products or services sold or distributed under the Wendy’s Brand, (iii) the Branded Restaurants, (iv) the Wendy’s System, (v) the Contributed Franchised Restaurant Business or (vi) the Contributed Restaurant Business, and also including the Wendy’s Mobile Apps.

“Code” means the U.S. Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time, and any successor statute of similar import, in each case as in effect from time to time.

“Collateral” means, collectively, the Indenture Collateral, the “Collateral” as defined in the Guarantee and Collateral Agreement and any property subject to any other Indenture Document that grants a Lien to secure any Obligations.
“Collateral Business Documents” means, collectively, the Franchise Documents, the Franchised Restaurant Leases, the New Franchised Restaurant Leases, the Contributed Restaurant Leases, the New Contributed Restaurant Leases, the Retained Restaurant Leases, the New Retained Restaurant Leases, the Franchisee Notes and the Company Restaurant Licenses.

“Collateral Exclusions” has the meaning set forth in Section 3.1(a) of the Base Indenture.

“Collateral Protection Advance” means any advance of (a) payment of Taxes, rent, assessments, insurance premiums and other costs and expenses necessary to protect, preserve or restore the Collateral (and, after the occurrence and continuance of a Mortgage Recordation Event, the Real Estate Assets (excluding the Contributed Restaurant Third-Party Leases)) and (b) payments of any expenses of any Securitization Entity, to the extent not previously paid pursuant to a Manager Advance, in each case made by the Servicer pursuant to the Servicing Agreement in accordance with the Servicing Standard, or by the Trustee pursuant to the Indenture.

“Collateral Transaction Documents” means the Contribution Agreements, the Charter Documents of each Securitization Entity, the IP License Agreements, the Servicing Agreement, the Account Control Agreements, the Management Agreement and the Back-Up Management Agreement.

“Collateralized Letters of Credit” has the meaning set forth in Section 5.12(d)(iii) of the Base Indenture.

“Collection Account” means account no. 11454900 entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Collection Account”, which account is maintained by the Trustee pursuant to Section 5.5 of the Base Indenture or any successor securities account maintained pursuant to Section 5.5 of the Base Indenture.

“Collection Account Administrative Account Surplus” means, with respect to any Collection Account Administrative Account on any date of determination, the amount, if positive, by which (x) the amount then on deposit in such account is greater than (y) the amount that would have been required to be on deposit in such account on the most recently occurring Weekly Allocation Date after application of the Priority of Payments, assuming that sufficient Retained Collections were available on such Weekly Allocation Date to make all payments required pursuant to priorities (i) through (xxviii) of the Priority of Payments.

“Collection Account Administrative Accounts” has the meaning set forth in Section 5.6 of the Base Indenture.

“Collections” means, with respect to each Weekly Collection Period, all amounts received by or for the account of the Securitization Entities during such Weekly Collection Period, including (without duplication):

(i) Franchisee Payments and Franchisee Note Payments deposited into any Concentration Account;
(ii) Franchisee Lease Payments, Contributed Restaurant Lease Payments and Retained Restaurant Lease Payments deposited into any Concentration Account;

(iii) all amounts received under the IP License Agreements and all other license fees, including Company Restaurant License Fees and Canadian License Fees, and other amounts received in respect of the Securitization IP, including recoveries from the enforcement of the Securitization IP;

(iv) without duplication of the amounts set forth in clause (ii), Contributed Restaurant Collections; including amounts in respect of Pass-Through Amounts;

(v) Indemnification Amounts, Insurance/Condemnation Proceeds, Asset Disposition Proceeds and (without duplication) all other amounts received upon the disposition of the Securitized Assets, including proceeds received upon the disposition of property expressly excluded from the definition of Asset Disposition Proceeds, in each case that are required to be deposited into any Concentration Account or the Collection Account;

(vi) the Series Hedge Receipts, if any, received by the Securitization Entities in respect of any Series Hedge Agreements entered into by the Securitization Entities in connection with the issuance of Additional Notes following the Closing Date;

(vii) Investment Income earned on amounts on deposit in the Accounts (other than the Residual Amounts Account); provided that Investment Income will only be considered “Collections” if it is greater than or equal to $1,000,000 in aggregate for all Accounts (other than the Residual Amounts Account) with respect to such Weekly Collection Period or if the Master Issuer elects to transfer a smaller amount of Investment Income to the Collection Account;

(viii) equity contributions made to the Master Issuer directed to be deposited to any Concentration Account;

(ix) to the extent not otherwise included above, payments from Franchisees or any other Person in respect of Excluded Amounts deposited in any Concentration Account or otherwise included in Collections; and

(x) any other payments or proceeds received with respect to the Securitized Assets.

“Commitment” has the meaning set forth in the applicable Series Supplement.

“Company Order” means a written order or request signed in the name of the Master Issuer by any Authorized Officer of the Master Issuer and delivered to the Trustee, the Control Party or the Paying Agent.

“Company Restaurant License Fees” means the licensing fee payable to the Franchise Holder pursuant to the Company Restaurant Licenses, which, (i) in the case of Wendy’s
Properties and certain Non-Securitization Entities that hold Company Restaurants in the United States, will be payable weekly and
equal to four percent (4.0%) of the Gross Sales of each Wendy’s Brand Company Restaurant, (ii) in the case of Wendy’s Canada, as
owner of Company Restaurants in Canada, will be payable weekly and equal to the U.S. dollar equivalent of three percent (3.0%)
of the Gross Sales of each Wendy’s Brand Company Restaurant and (iii) in the case of any Non-Securitization Entities that hold
Company Restaurants in one or more countries other than the United States and Canada, will be calculated at an arm’s length rate
and otherwise payable on arm’s length terms (including as to the timing of payments, which in any event shall occur no less
frequently than monthly) determined by the Manager in accordance with the Managing Standard.

“Company Restaurant Licenses” means (i) the Wendy’s International Company Restaurant License, dated as of the Closing
Date, by and between the Franchise Holder, as licensor, and Wendy’s, as licensee, as amended, supplemented or otherwise modified
from time to time, (ii) the WOFHNY Company Restaurant License, dated as of the Closing Date, by and between the Franchise
Holder, as licensor, and Wendy’s Old Fashioned Hamburgers of New York, LLC, as licensee, as amended, supplemented, or
otherwise modified from time to time, (iii) the WRONY Company Restaurant License, dated as of the Closing Date, by and between the Franchise
Holder, as licensor, and Wendy’s Restaurants of New York, LLC, as licensee, as amended, supplemented or otherwise modified from time to time,
(iv) the WOD Company Restaurant License, dated as of the Closing Date, by and between the Franchise Holder, as licensor, and Wendy’s of Denver, LLC, as licensee, as amended, supplemented or otherwise modified from time to time, (v) the WONEF Company Restaurant License, dated as of the Closing Date, by and between the Franchise Holder, as licensor, and Wendy’s of N.E. Florida, LLC, as licensee, as amended, supplemented or otherwise modified from time to time, (vi) the Wendy’s Properties Company Restaurant License, dated as of the Closing Date, by and between the Franchise Holder, as licensor, and Wendy’s Properties, as licensee, as amended, supplemented or otherwise modified from time to time (the “Wendy’s Properties
Company Restaurant License”), (vii) the Wendy’s Canada Company Restaurant License, dated as of the Closing Date, by and between the Franchise Holder, as licensor, and Wendy’s Canada, as licensee, as amended, supplemented or otherwise modified from time to time (the “Wendy’s Canada Company Restaurant License”) and (viii) any other licenses for Intellectual Property provided to
a Non-Securitization Entity for use in connection with any Retained Restaurant or Reacquired Restaurant.

“Company Restaurants” means, collectively, the Retained Restaurants, the Contributed Restaurants, the New Contributed
Restaurants and the Reacquired Restaurants.

“Competitor” means any Person that is a direct or indirect franchisor, franchisee, owner or operator of a large regional or
national quick service restaurant concept (including a Franchisee); provided, however, that (i) a Person will not be a “Competitor”
solely by virtue of its direct or indirect ownership of less than 5.0% of the Equity Interests in a “Competitor” and (ii) a franchisee
shall only be a “Competitor” if it, or its Affiliates, directly or indirectly, owns, franchises or licenses, in the aggregate, ten or more
individual locations of a particular concept; and provided, further, that (iii) a Person will not be a “Competitor” solely by virtue of its direct
or indirect ownership of between 5.0% and 15% of the Equity Interests in a “Competitor” so long as (a) such Person has policies and procedures that prohibit such Person from disclosing or making available any confidential information that such Person may receive as a Noteholder or prospective investor in the Notes, to individuals involved in the business of buying, selling, holding or analyzing the Equity Interests of a “Competitor” or in the business of being a franchisor, franchisee, owner or operator of a large regional or national quick service restaurant concept and (b) such Person is a passive investor in a “Competitor” as described in Rule 13d-1(b)(1) of the 1934 Act (or would be described as a passive investor under such rule if the “Competitor” were a publicly-traded company and the securities held were publicly-traded equity securities) and is not a franchisor, franchisee, owner (other than in its capacity as a passive investor as described in Rule 13d-1(b)(1) of the 1934 Act) or operator of a large regional or national quick service restaurant concept (including a Franchisee).

“Concentration Accounts” means one or more accounts maintained in the name of the Master Issuer, the Franchise Holder or Wendy’s Properties, as applicable, subject to an Account Control Agreement, and pledged to the Trustee into which the Manager causes amounts to be deposited pursuant to Section 5.10(c) of the Base Indenture or any successor account established for the Master Issuer, the Franchise Holder or Wendy’s Properties, as applicable, for such purpose pursuant to the Base Indenture and the Management Agreement, including any investment accounts related thereto into which funds are transferred for investment purposes pursuant to Section 5.1(b) of the Base Indenture.

“Consent Recommendation” means a written recommendation by the Control Party to the Controlling Class Representative with respect to any Consent Request that requires the consent of the Controlling Class Representative.

“Consent Request” means any request for a waiver, amendment, consent or certain other action under the Related Documents.

“Consolidated Interest Expense” means, with respect to any Person for any period, consolidated interest expense, whether paid or accrued, of such Person and its Subsidiaries for such period, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit, net costs under interest rate hedging agreements, amortization of discount, that portion of interest obligations with respect to any lease of any property (whether real, personal or mixed) that is properly classified as a liability on a balance sheet in conformity with GAAP, including all Finance Lease Obligations incurred by such Person, commitment fees and acceleration of fees and expenses payable in connection with Indebtedness.

“Consolidated Net Income” means, with respect to any Person for any period, the consolidated net income of such Person and its Subsidiaries (whether positive or negative), determined in accordance with GAAP, for such period.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person (a) with respect to any indebtedness, lease, declared but unpaid dividends, letter of credit or other obligation of another if the primary purpose or intent
thereof by the Person incurring the Contingent Obligation is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof or (b) under any letter of credit issued for the account of that Person or for which that Person is otherwise liable for reimbursement thereof. Contingent Obligation will include (x) the direct or indirect guarantee, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another and (y) any liability of such Person for the obligations of another through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such obligation- or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise), (ii) to maintain the solvency of any balance sheet item, level of income or financial condition of another or (iii) to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement, if in the case of any agreement described under subclause (i) or (ii) of this clause (y) the primary purpose or intent thereof is as described in the preceding sentence. The amount of any Contingent Obligation will be equal to the amount of the obligation so guaranteed or otherwise supported.

“Contractual Obligation” means, with respect to any Person, any provision of any security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Contributed Assets” means all assets contributed under the Contribution Agreements.

“Contributed Development Agreements” means all of Development Agreements and all related guaranty agreements existing as of the Closing Date that are contributed to the Franchise Holder on the Closing Date pursuant to the applicable Contribution Agreements.

“Contributed Franchise Agreements” means all Franchise Agreements and related guaranty agreements existing as of the Closing Date that are contributed to the Franchise Holder on the Closing Date pursuant to the applicable Contribution Agreements.

“Contributed Franchised Restaurant Business” means the business of franchising or licensing Branded Restaurants located in the United States and internationally. For the avoidance of doubt, the Contributed Franchised Restaurant Business does not include any Company Restaurants.

“Contributed Franchised Restaurants” means the Branded Restaurants that are owned and operated by Franchisees that are unaffiliated with Wendy’s and its Affiliates pursuant to a Franchise Agreement that are contributed to the Franchise Holder on the Closing Date pursuant to the applicable Contribution Agreements.

“Contributed Owned Real Property” means the real property (including the land, buildings and fixtures) owned in fee by Wendy’s or its Subsidiaries that are contributed to
Wendy’s Properties on the Closing Date pursuant to the applicable Contribution Agreements. For the avoidance of doubt, the corporate campus located in Dublin, Ohio will not constitute Contributed Owned Real Property.

“Contributed Real Estate Assets” means (i) the Contributed Owned Real Property, (ii) the Franchised Restaurant Leases, (iii) the Contributed Restaurant Leases, (iv) the Retained Restaurant Leases and (v) the Contributed Restaurant Third-Party Leases.

“Contributed Restaurant Accounts” means one or more accounts maintained in the name of Wendy’s Properties, subject to an Account Control Agreement, and pledged to the Trustee into which the Manager causes amounts to be deposited pursuant to Section 5.10(a) of the Base Indenture or any successor account established for Wendy’s Properties for such purpose pursuant to the Base Indenture and the Management Agreement, including any investment accounts related thereto into which funds are transferred for investment purposes pursuant to Section 5.1(b) of the Base Indenture.

“Contributed Restaurant Assets” means all of the assets associated with owning and operating the Contributed Restaurants or New Contributed Restaurants (such as furnishings, cooking equipment, cooking supplies and computer equipment), other than (i) the Real Estate Assets and (ii) the Securitization IP.

“Contributed Restaurant Business” means the business of owning and operating the Contributed Restaurants and New Contributed Restaurants and the provision of ancillary goods and services in connection therewith.

“Contributed Restaurant Cash Profits Amount” means, with respect to any Monthly Fiscal Period of the Securitization Entities ending on or after January 4, 2021 (or any portion thereof, not to be less than one week, selected by the Manager), the amount (not less than zero) equal to (a) Contributed Restaurant Collections (excluding Pass-Through Amounts) over such period; minus (b) all Restaurant Operating Expenses (excluding Pass-Through Amounts) paid in cash out of funds in deposit in the Contributed Restaurant Accounts in connection with the operation of the Contributed Restaurants and New Contributed Restaurants over such period.

“Contributed Restaurant Collections” means all cash revenues (including gift card redemption amounts, but excluding proceeds of the initial sale of gift cards), credit card and debit card proceeds generated by Contributed Restaurants and New Contributed Restaurants.

“Contributed Restaurant Lease Payments” means each amount, allocated by the Manager on behalf of a Securitization Entity, pursuant to a Contributed Restaurant Lease or New Contributed Restaurant Lease.

“Contributed Restaurant Leases” means, with respect to each Contributed Restaurant located on Contributed Owned Real Property, an agreement whereby the Manager, on behalf of Wendy’s Properties as owner of such Contributed Restaurants, agrees to allocate amounts with respect to each such Contributed Restaurant from the Contributed Restaurant Accounts to the Concentration Accounts.
“Contributed Restaurant Third-Party Leases” means leases from landlords unaffiliated with Wendy’s, in respect of which a Wendy’s Entity is the prime lessee, which are contributed to Wendy’s Properties on the Closing Date pursuant to the applicable Contribution Agreement.

“Contributed Restaurant Working Capital Reserve Amount” means, as of any date of determination, an amount determined by the Manager to be retained in a Contributed Restaurant Account for working capital expenses not to exceed in the aggregate for all Contributed Restaurant Accounts the greater of (i) $7,500,000 and (ii) 1.5% of the aggregate Retained Collections for the preceding four (4) Quarterly Collection Periods. For the avoidance of doubt, the Contributed Restaurant Working Capital Reserve Amount is exclusive of the Working Capital Reserve Amount.

“Contributed Restaurants” means Company Restaurants existing on the Closing Date that are contributed to Wendy’s Properties on the Closing Date pursuant to the applicable Contribution Agreement.

“Contribution Agreements” means the following agreements:

(a) Oldemark Contribution Agreement (Manager), dated as of the Closing Date, by and between the Manager and Oldemark;

(b) Oldemark Contribution Agreement (WOD), dated as of the Closing Date, by and between Wendy’s of Denver, LLC and Oldemark;

(c) Oldemark Contribution Agreement (WOFHNY), dated as of the Closing Date, by and between Wendy’s Old Fashioned Hamburgers of New York, LLC and Oldemark;

(d) Oldemark Contribution Agreement (WONEFL), dated as of the Closing Date, by and between Wendy’s of N.E. Florida, LLC and Oldemark;

(e) Oldemark Contribution Agreement (WRONY), dated as of the Closing Date, by and between Wendy’s Restaurants of New York, LLC and Oldemark;

(f) First Tier Contribution Agreement (Note Receivable), dated as of the Closing Date, by and between Oldemark and Holding Company Guarantor;

(g) First Tier Contribution Agreement (Wendy’s Properties), dated as of the Closing Date, by and between Oldemark and Holding Company Guarantor;

(h) Second Tier Contribution Agreement (Note Receivable), dated as of the Closing Date, by and between Holding Company Guarantor and the Master Issuer;

(i) Second Tier Contribution Agreement (Wendy’s Properties), dated as of the Closing Date, by and between Holding Company Guarantor and the Master Issuer;
Third Tier Contribution Agreement (Franchise Holder), dated as of the Closing Date, by and between the Master Issuer and the Franchise Holder;

Third Tier Contribution Agreement (Note Receivable), dated as of the Closing Date, by and between the Master Issuer and Wendy’s Properties;

Master Issuer Contribution Agreement (WOD), dated as of the Closing Date, by and between Wendy’s of Denver, LLC and the Master Issuer;

Master Issuer Contribution Agreement (WOFHNY), dated as of the Closing Date, by and between Wendy’s Old Fashioned Hamburgers of New York, LLC and the Master Issuer;

Master Issuer Contribution Agreement (WONEFL), dated as of the Closing Date, by and between Wendy’s of N.E. Florida, LLC and the Master Issuer;

Master Issuer Contribution Agreement (WRONY), dated as of the Closing Date, by and between Wendy’s Restaurants of New York, LLC and the Master Issuer;

Wendy’s Properties Contribution Agreement (Manager), dated as of the Closing Date, by and between the Manager and Wendy’s Properties;

Wendy’s Properties Contribution Agreement (WOD), dated as of the Closing Date, by and between Wendy’s of Denver, LLC and Wendy’s Properties;

Wendy’s Properties Contribution Agreement (WOFHNY), dated as of the Closing Date, by and between Wendy’s Old Fashioned Hamburgers of New York, LLC and Wendy’s Properties;

Wendy’s Properties Contribution Agreement (WONEFL), dated as of the Closing Date, by and between Wendy’s of N.E. Florida, LLC and Wendy’s Properties; and

Wendy’s Properties Contribution Agreement (WRONY), dated as of the Closing Date, by and between Wendy’s Restaurants of New York, LLC and Wendy’s Properties.

“Control Party” means, at any time, the Servicer, who will direct the Trustee to act (or refrain from acting) or will act on behalf of the Trustee in connection with Consent Requests.

“Controlled Group” means a group of trades or businesses (whether or not incorporated) under common control that is treated as a single employer for purposes of Section 302 or Title IV of ERISA.

“Controlling Class” means the most senior Class of Notes then Outstanding among all Series; provided that, as of the Closing Date, the “Controlling Class” will be the Senior Notes.
“Controlling Class Member” means, with respect to a Book-Entry Note of the Controlling Class, a Note Owner of such Note, and with respect to a Definitive Note of the Controlling Class, a Noteholder of such Definitive Note (excluding, in each case, any Securitization Entity or Affiliate thereof).

“Controlling Class Representative” means, at any time during which one or more Series of Notes is outstanding, the representative, if any, that has been elected pursuant to Section 11.1 of the Base Indenture by the Majority of Controlling Class Members; provided that, if no Controlling Class Representative has been elected or if the Controlling Class Representative does not respond to a Consent Request within the time period specified in Section 11.4 of the Base Indenture, the Control Party will be entitled (but not required) to exercise the rights of the Controlling Class Representative with respect to such Consent Request other than with respect to Servicer Termination Events.

“Copyrights” has the meaning set forth in the definition of “Intellectual Property.”

“Corporate Trust Office” means the corporate trust office of the Trustee at (a) for Note transfer purposes and presentment of the Notes for final payment thereon, Citibank, N.A., 480 Washington Boulevard, 30th Floor, Jersey City, New Jersey 07310, Attention: Citibank Agency & Trust – Wendy’s Funding, LLC and (b) for all other purposes, Citibank, N.A., 388 Greenwich Street, 14th Floor, New York, New York 10013, Attention: Citibank Agency & Trust – Wendy’s Funding, LLC, telecopy no.: (212) 816-5527, or such other address as the Trustee may designate from time to time by notice to the Holders, the Rating Agency and the Master Issuer or the principal corporate trust office of any successor Trustee.

“Cut-Off Date” means on or about June 1, 2015.

“Debenture Restricted Assets” has the meaning set forth in Section 3.1(a) of the Base Indenture.

“Debt Service” means, with respect to any Quarterly Payment Date, the sum of (i) the Senior Notes Quarterly Interest Amount plus (ii) the Senior Subordinated Notes Quarterly Interest Amount plus (iii) the Class A-1 Quarterly Commitment Fee Amount plus (iv) with respect to each Class of Senior Notes and Senior Subordinated Notes Outstanding, the aggregate amount of Scheduled Principal Payments due and payable on such Quarterly Payment Date, as ratably reduced by the aggregate amount of any (A) payments of Indemnification Amounts, Asset Disposition Proceeds or Insurance/Condemnation Proceeds, (B) repurchases and cancellations of such Class of Notes or (C) optional prepayments of principal of such Class of Notes, but without giving effect to any reductions of Scheduled Principal Payments available due to the satisfaction of the applicable Series Non-Amortization Test.

“Debt Service Advance” means an advance made by the Servicer (or, if the Servicer fails to do so, the Trustee) on a Quarterly Payment Date in respect of the Senior Notes Quarterly Interest Shortfall Amount on any Quarterly Payment Date.

“Deemed Conversion” has the meaning set forth in Section 5.10(i) of the Base Indenture.
“Default” means any Event of Default or any occurrence that with notice or the lapse of time or both would become an Event of Default.

“Defeased Series” has the meaning set forth in Section 12.1(c) of the Base Indenture.

“Definitive Notes” has the meaning set forth in Section 2.12(a) of the Base Indenture.

“Depository Agreement” means, with respect to a Series or Class of a Series of Notes having Book-Entry Notes, the agreement among the Master Issuer, the Trustee and the Clearing Agency governing the deposit of such Notes with the Clearing Agency, or as otherwise provided in the applicable Series Supplement.

“Development Agreements” means all development agreements for Branded Restaurants pursuant to which a Franchisee, developer or other Person obtains the rights to develop (in order to operate as a Franchisee) one or more Branded Restaurants within a designated geographical area.

“DSCR” means, as of any Quarterly Payment Date, an amount equal to (i) the Net Cash Flow over the four (4) immediately preceding Quarterly Collection Periods, divided by (ii) the Debt Service with respect to such four (4) Quarterly Collection Periods; provided that for purposes of calculating the DSCR as of the first four (4) Quarterly Calculation Dates, (a) “Net Cash Flow” for the Quarterly Collection Period ended September 28, 2014 shall be deemed to be $85,386,000, “Net Cash Flow” for the Quarterly Collection Period ended December 28, 2014 shall be deemed to be $84,617,000, “Net Cash Flow” for the Quarterly Collection Period ended March 29, 2015 shall be deemed to be $80,785,000 and “Net Cash Flow” for the Quarterly Collection Period ended June 28, 2015 shall be calculated by the Manager at the time of the first Quarterly Calculation Date and will be based on TWC’s financial results for the fiscal quarter ended June 28, 2015 and (b) clause (ii) of such DSCR calculation will be deemed to equal the Debt Service measured for the most recently ended Quarterly Collection Period times four (4). For the purposes of calculating the DSCR as of the first four (4) Quarterly Payment Dates, the Debt Service for the first Quarterly Collection Period will be deemed to be the sum of (A) the product of (x) the sum of the amounts referred to in clauses (i), (ii) and (iii) of the definition of “Debt Service” multiplied by (y) a fraction the numerator of which is ninety (90) and the denominator of which is the actual number of days elapsed during the period commencing on and including the Closing Date and ending on but excluding the first Quarterly Payment Date plus (B) 5,687,500. “Interest-Only DSCR” means the calculation of DSCR without any application of clause (iv) of the definition of “Debt Service.”

“DTC” means The Depository Trust Company and any successor thereto.

“EBITDA” represents net income (loss), adjusted to exclude interest expense, income tax expense or benefit and depreciation and amortization.

“Eligible Account” means (a) a segregated identifiable trust account established in the trust department of a Qualified Trust Institution or (b) a separately identifiable deposit or securities account established at a Qualified Institution.
“Eligible Assets” means any real property or other asset useful to the Securitization Entities in the operation of their business or assets, including, without limitation, (i) capital assets, capital expenditures, renovations and improvements and (ii) assets intended to generate revenue for the Securitization Entities.

“Eligible Investments” means (a) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank or trust company that (i) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) whose short-term debt is rated at least “P-1” (or then equivalent grade) by Moody’s and at least “A-1+” (or then equivalent grade) by S&P and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than one (1) year from the date of acquisition thereof; (b) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than one (1) year from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof; (c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “P-1” (or the then equivalent grade) by Moody’s and at least “A-1+” (or the then equivalent grade) by S&P, with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the type described in clauses (a) and (b) above entered into with any financial institution meeting the qualifications specified in clause (a) above and (e) investments, classified in accordance with GAAP as current assets of the relevant Person making such investment, in money market investment programs registered under the 1940 Act, which have the highest rating obtainable from Moody’s and S&P, and the portfolios of which are invested primarily in investments of the character, quality and maturity described in clauses (a) through (d) of this definition. Notwithstanding the foregoing, all Eligible Investments must either (A) be at all times available for withdrawal or liquidation at par (or for commercial paper issued at a discount, at the applicable purchase price) or (B) mature on or prior to the Business Day prior to the immediately succeeding Weekly Allocation Date.

“Employee Benefit Plan” means any “employee benefit plan,” as such term is defined in Section 3(3) of ERISA, established, maintained or contributed to by a Securitization Entity, or with respect to which any Securitization Entity has any liability.

“Enhancement” means, with respect to any Series of Notes, the rights and benefits provided to the Noteholders of such Series of Notes pursuant to any letter of credit, surety bond, cash collateral account, spread account, guaranteed rate agreement, maturity guaranty facility, tax protection agreement, interest rate swap or any other similar arrangement entered into by the Master Issuer in connection with the issuance of such Series of Notes as provided for in the applicable Series Supplement in accordance with the terms of the Base Indenture.
“Enhancement Agreement” means any contract, agreement, instrument or document governing the terms of any Enhancement or pursuant to which any Enhancement is issued or outstanding.

“Enhancement Provider” means the Person providing any Enhancement as designated in the applicable Series Supplement.

“Environmental Law” means any and all applicable laws, rules, orders, regulations, statutes, ordinances, binding guidelines, codes, decrees, agreements or other legally enforceable requirements (including common law) of any international authority, foreign government, the United States, or any state, local, municipal or other governmental authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health (as it relates to exposure to Materials of Environmental Concern), or employee health and safety (as it relates to exposure to Materials of Environmental Concern), as has been, is now, or may at any time hereafter be, in effect.

“Environmental Permits” means any and all permits, licenses, approvals, registrations, notifications, exemptions and other authorizations required under any Environmental Law.

“Equity Interest” means any (a) membership interest in any limited liability company, (b) general or limited partnership interest in any partnership, (c) common, preferred or other stock interest in any corporation, (d) share, participation, unit or other interest in the property or enterprise of an issuer that evidences ownership rights therein, (e) ownership or beneficial interest in any trust or (f) option, warrant or other right to convert any interest into or otherwise receive any of the foregoing.

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

“Euroclear” means Euroclear Bank, S.A./N.V., or any successor thereto, as operator of the Euroclear System.

“Event of Bankruptcy” will be deemed to have occurred with respect to a Person if:

(a) a case or other proceeding is commenced, without the application or consent of such Person, in any court, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or all or any substantial part of its assets, or any similar action with respect to such Person under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding continues undismissed, or unstayed and in effect, for a period of sixty (60) consecutive days; or an order for relief in respect of such Person is entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect; or
(b) such Person commences a voluntary case or other proceeding under any applicable bankruptcy, insolvency, reorganization, debt arrangement, dissolution or other similar law now or hereafter in effect, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or for any substantial part of its property, or makes any general assignment for the benefit of creditors; or

(c) the Board of Directors or board of managers (or similar body) of such Person votes to implement any of the actions set forth in clause (b) above.

“Event of Default” means any of the events set forth in Section 9.2 of the Base Indenture.

“Excepted Securitization IP Assets” means (i) any right to use third-party Intellectual Property pursuant to a license to the extent such rights are not able to be pledged; and (ii) any application for registration of a Trademark that would be invalidated, canceled, voided or abandoned due to the grant and/or enforcement of an assignment or security interest, including intent-to-use applications filed with the PTO pursuant to 15 U.S.C. Section 1051(b) prior to the filing of a statement of use or amendment to allege use pursuant to 15 U.S.C. 1051(c) or (d); provided that at such time as the grant and/or enforcement of the assignment or security interest would not cause such application to be invalidated, canceled, voided or abandoned, such Trademark application will cease to be considered an Excepted Securitization IP Asset.

“Excess Class A-1 Notes Administrative Expenses Amount” means, for each Weekly Allocation Date, an amount equal to the amount by which (a) the Class A-1 Notes Administrative Expenses that have become due and payable prior to such Weekly Allocation Date and have not been previously paid exceed (b) the Capped Class A-1 Notes Administrative Expenses Amount for such Weekly Allocation Date.

“Excluded Amounts” means (i) fees and expenses paid by or on behalf of any Securitization Entity in connection with registering, maintaining and enforcing the Securitization IP and paying third-party licensing fees, (ii) account expenses and fees paid to the banks at which the Management Accounts are held, (iii) Advertising Fees, (iv) insurance and condemnation proceeds payable by the Securitization Entities to Franchisees, (v) amounts in respect of sales Taxes and other comparable Taxes and other amounts received from Franchised Restaurants that are due and payable to a Governmental Authority or other unaffiliated third party, (vi) any statutory Taxes included in Collections, but required to be remitted to a Governmental Authority, (vii) amounts paid by Franchisees in respect of fees or expenses payable to unaffiliated third parties for services provided to Franchisees, (viii) amounts paid by Franchisees relating to corporate services provided by the Manager, including repairs and maintenance, gift card administration, employee training, point-of-sale system maintenance and support and maintenance of other information technology systems, to the extent such services are not provided by the Manager pursuant to the Management Agreement, (ix) tenant improvement allowances and similar amounts received from landlords, (x) any amounts that cannot be transferred to a Concentration Account due to applicable law and (xi) any other amounts deposited into any Concentration Account or otherwise included in Collections that are not required to be deposited into the Collection Account.
“Excluded IP” means (i) any commercially available Software licensed to or on behalf of any Non-Securitization Entity and (ii) all proprietary software owned by TWC and its Subsidiaries (other than the Wendy’s Mobile Apps).

“Existing Real Estate Holders” means, collectively, Wendy’s, Wendy’s Old Fashioned Hamburgers of New York, LLC, Wendy’s Restaurants of New York, LLC, Wendy’s of Denver, LLC and Wendy’s of N.E. Florida, LLC.

“Extension Period” means, with respect to any Series or any Class of any Series of Notes, the period from the Series Anticipated Repayment Date (or any previously extended Series Anticipated Repayment Date) with respect to such Series or Class to the Series Anticipated Repayment Date with respect to such Series or Class as extended in connection with the provisions of the applicable Series Supplement.

“FDIC” means the U.S. Federal Deposit Insurance Corporation.

“Finance Lease Obligations” means the obligations of a Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as finance leases on a balance sheet of such Person under GAAP and, for the purposes of the Indenture, the amount of such obligations will be the amount of such liability determined in accordance with GAAP. For the avoidance of doubt, obligations or liabilities that are considered operating leases under GAAP shall not be considered Finance Lease Obligations.

“Financial Assets” has the meaning set forth in Section 5.8(b) of the Base Indenture.

“Franchise Agreement” means a franchise agreement (including any related service or license agreement) whereby a Franchisee agrees to operate a Branded Restaurant.

“Franchise Assets” means, with respect to the Franchise Holder, (a) the Contributed Franchise Agreements and all Franchisee Payments thereon; (b) the Contributed Development Agreements and all Franchisee Payments thereon; (c) the New Franchise Agreements and all Franchisee Payments thereon; (d) the New Development Agreements and all Franchisee Payments thereon; (e) all rights to enter into New Franchise Agreements and New Development Agreements; (f) any and all other property of every nature, now or hereafter transferred, mortgaged, pledged, or assigned as security for payment or performance of any obligation of the Franchisees or other Persons, as applicable, to the Franchise Holder under the Franchise Agreements or the Development Agreements and all guarantees of such obligations and the rights evidenced by or reflected in the Franchise Agreements or the Development Agreements; and (g) all payments, proceeds and accrued and future rights to payment on the items described in clauses (a) through (f).

“Franchise Documents” means all Franchise Agreements (including master franchise agreements and related service or license agreements), Development Agreements and agreements related thereto, together with any modifications, amendments, extensions or replacements of the foregoing.
“Franchise Holder” means Quality Is Our Recipe, LLC, a Delaware limited liability company, and its successors and assigns.

“Franchised Restaurant Leases” means leases in respect of which Wendy’s Properties is the lessor and a Franchisee is the lessee.

“Franchised Restaurants” means, collectively, the Contributed Franchised Restaurants and the New Franchised Restaurants.

“Franchisee” means any Person that is a franchisee under a Franchise Agreement.

“Franchisee Lease Payments” means all lease payments, Taxes and any other amounts payable by Franchisees to a Securitization Entity in respect of Real Estate Assets.

“Franchisee Note” means any franchisee note or other franchisee financing agreement entered into in order to finance the payment of franchisee fees or other amounts owing by a Franchisee.

“Franchisee Note Payments” means all amounts payable to a Securitization Entity by a Franchisee pursuant to a Franchisee Note.

“Franchisee Payments” means all amounts payable to a Securitization Entity by Franchisees pursuant to the Franchise Documents other than Excluded Amounts.

“Franchisor Capital Account” means the account maintained in the name of the Franchise Holder and any Additional Securitization Entity that from time to time acts as the “franchisor” with respect to New Franchise Agreements and New Development Agreements, as applicable, into which such Securitization Entity causes amounts to be deposited pursuant to Section 5.1(d) of the Base Indenture or any successor account established by such Securitization Entity for such purpose pursuant to the Base Indenture.

“Future Brand” means any name or Trademark (including any Trademarks related to, based on or derivative thereof) but excluding the Wendy’s Brand or any Trademark owned by the Securitization Entities as of the Closing Date) that (i) is acquired or developed by The Wendy’s Company or any of its Subsidiaries and subsequently contributed to one or more Securitization Entities in a manner consistent with the terms of the Related Documents or (ii) that is acquired or developed by the Master Issuer or any one or more Securitization Entities in a manner consistent with the terms of the Related Documents.

“FX Conversion Rate” means, as of any date, with respect to any conversion or Deemed Conversion into U.S. Dollars on such date, pursuant to Section 5.10(i), of an amount denominated in a currency other than U.S. Dollars, a conversion rate as selected by the Manager in accordance with the Managing Standard, which rate shall be either (i) the prevailing spot rate (as selected by the Manager using a consistent methodology) for purchases of U.S. Dollars with the applicable non-U.S. dollar currency on such date or (ii) a conversion rate previously
negotiated by the Manager with a counterparty that is not an Affiliate of the Manager pursuant to a foreign exchange hedging agreement.

“GAAP” means the generally accepted accounting principles in the United States promulgated or adopted by the Financial Accounting Standards Board and its predecessors and successors in effect from time to time.

“Government Securities” means readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof and as to which obligations the full faith and credit of the United States of America is pledged in support thereof.

“Governmental Authority” means the government of the United States of America or any other nation or any political subdivision of the foregoing, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Gross Sales” means, with respect to a restaurant, the total amount of revenue received from the sale of all food, products, merchandise and performance of all services (except Manager-approved promotional items) and all other income of every kind and nature (including gift certificates when redeemed but not when purchased), whether for cash or credit and regardless of collection in the case of credit; provided, however, that Gross Sales shall not include (i) refunds and allowances; (ii) any sales Taxes or other Taxes, in each case collected from customers for transmittal to the appropriate taxing authority or (iii) revenues that are not subject to royalties in accordance with the related Franchise Agreement, Company Restaurant License or other applicable agreement.

“Guarantee” means, as to any Person, any (a) obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “Primary Obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be (i) with respect to a Guarantee pursuant to clause (a) above, an amount equal to the stated or determinable amount of the related primary obligation, or portion
thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith or (ii) with respect to a Guarantee pursuant to clause (b) above, the fair market value of the assets subject to (or that could be subject to) the related Lien. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement, dated as of the Closing Date, by and among the Guarantors in favor of the Trustee, as amended, supplemented or otherwise modified from time to time.

“Guarantors” means the Subsidiary Guarantors and the Holding Company Guarantor.


“Hedge Counterparty” means an institution that enters into a Swap Contract with one or more Securitization Entities to provide certain financial protections with respect to changes in interest rates applicable to a Series of Notes if and as specified in the applicable Series Supplement.

“Hedge Payment Account” means an account entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Hedge Payment Account”, which account is maintained by the Trustee pursuant to Section 5.7 of the Base Indenture or any successor securities account maintained pursuant to Section 5.7 of the Base Indenture.

“Holdco Leverage Ratio” means, as of any date of determination, the ratio of (a)(i) Indebtedness of the Non-Securitization Entities and the Securitization Entities (provided that the aggregate Outstanding Principal Amount of each Series of Class A1 Notes shall be deemed to be the Class A-1 Notes Maximum Principal Amount of such Series of Class A-1 Notes) as of the end of the most recently ended Quarterly Fiscal Period less (ii) the sum of (u) the cash and Eligible Investments of the Securitization Entities credited to the Senior Notes Interest Reserve Account, the Senior Subordinated Notes Interest Reserve Account, the Cash Trap Reserve Account and the Franchisor Capital Accounts as of the end of the most recently ended Quarterly Fiscal Period, (v) the Principal and Interest Account Excess Amount, (w) the cash and Eligible Investments of the Securitization Entities maintained in the Management Accounts as of the end of the most recently ended Quarterly Fiscal Period that, pursuant to a Weekly Manager’s Certificate delivered on or prior to such date, will be paid to the Manager or constitute the Residual Amount on the next succeeding Weekly Allocation Date, (x) any cash and Eligible Investments held in the Residual Amounts Account, (y) the Unrestricted Cash and Eligible Investments of the Non-Securitization Entities as of the end of the most recently ended Quarterly Fiscal Period and (z) the available amount of each Interest Reserve Letter of Credit as of the end of the most recently ended Quarterly Fiscal Period to (b) the sum of theAdjusted EBITDA of the Non-Securitization Entities and the Securitization Entities, for the immediately preceding four (4) Quarterly Fiscal Periods most recently ended as of such date and for which financial statements have been prepared. The Holdco Leverage Ratio shall be calculated in accordance with Section 14.18(a) of the Base Indenture.
“Holding Company Guarantor” means Wendy’s SPV Guarantor, LLC, a Delaware limited liability company, and its successors and assigns.

“Hot Back-Up Management Duties” has the meaning set forth in the Back-Up Management Agreement.

“IFRS” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“Improvements” means, with respect to Intellectual Property, proprietary rights in any additions, modifications, developments, variations, refinements, enhancements or improvements that are derivative works as defined and recognized by applicable Requirements of Law or, with respect to real estate, the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the real property constituting a part of each property.

“Indebtedness” means, as to any Person as of any date, without duplication, (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all Capitalized Lease Obligations of such Person (other than (A) leases from landlords, in respect of which Wendy’s or any of its Affiliates is the lessee where the related property (i) is or becomes subject to a lease from Wendy’s or any of its Affiliates, in respect of which a Franchisee is the lessee or (ii) is a Company Restaurant and (B) leases identified in contracts or other similar obligations in respect of which Wendy’s or any of its Affiliates is the lessee) (c) the net obligations of such Person under any swap contract, (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business, (ii) any earn-out obligation until such obligation appears in the liabilities section of the balance sheet of such Person, and (iii) liabilities associated with customer prepayments and deposits); and (e) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit, in the case of the foregoing clauses (a), (b), (c) and (d), to the extent such item would be classified as a liability on a consolidated balance sheet of TWC as of such date (and, for the avoidance of doubt, to the extent such item is not classified as a liability on a consolidated balance sheet of TWC, such item shall not be considered Indebtedness); provided, however, that guarantees for the benefit of Franchisees by Securitization Entities in an aggregate principal amount at any time outstanding of up to the greater of (x) $20,000,000 and (y) 5.0% of Net Cash Flow for the preceding four (4) Quarterly Collection Periods most recently ended as of such date and for which financial statements have been prepared shall not be considered Indebtedness. For purposes of the foregoing clause (b), the amount of any net obligation under any swap contract on any date shall be deemed to the swap termination value thereof. For the avoidance of doubt, obligations or liabilities that are considered operating leases under GAAP, and guarantees of product volumes, shall not be considered Indebtedness.

“Indemnification Amount” means, with respect to any Franchise Asset, Contributed Restaurant or New Contributed Restaurant (and the related Contributed Restaurant Assets) or Real Estate Asset, an amount equal to the Allocated Note Amount for such asset and with respect
to any Securitization IP, any amount required to reimburse the applicable Securitization Entity for the expenses related to defending or enforcing its rights in such Securitization IP.

“Indemnitor” means Wendy’s, as the Manager, Oldemark or any Existing Real Estate Holder.

“Indenture” means the Base Indenture, together with all Series Supplements, as amended, supplemented or otherwise modified from time to time by Supplements thereto in accordance with its terms.

“Indenture Collateral” has the meaning set forth in Section 3.1 of the Base Indenture.

“Indenture Documents” means, collectively, with respect to any Series of Notes, the Base Indenture, the related Series Supplement, the Notes of such Series, the Guarantee and Collateral Agreement, the related Account Control Agreements, any related Variable Funding Note Purchase Agreement and any other agreements relating to the issuance or the purchase of the Notes of such Series or the pledge of Collateral under any of the foregoing.

“Indenture Trust Accounts” means each of the Collection Account, the Collection Account Administrative Accounts, the Senior Notes Interest Reserve Account, the Senior Subordinated Notes Interest Reserve Account, the Cash Trap Reserve Account, the Hedge Payment Account, the Series Distribution Accounts and such other accounts as the Master Issuer may establish with the Trustee or the Trustee may establish from time to time pursuant to its authority to establish additional accounts pursuant to the Indenture.

“Independent” means, as to any Person, any other Person (including, in the case of an accountant, or lawyer, a firm of accountants or lawyers and any member thereof or an investment bank and any member thereof) who (i) does not have and is not committed to acquire any material direct or any material indirect financial interest in such Person or in any Affiliate of such Person and (ii) is not connected with such Person or an Affiliate of such Person as an officer, employee, promoter, underwriter, voting trustee, partner, director or Person performing similar functions. “Independent” when used with respect to any accountant may include an accountant who audits the books of such Person if, in addition to satisfying the criteria set forth above, the accountant is independent with respect to such Person within the meaning of Rule 101 of the Code of Ethics of the American Institute of Certified Public Accountants. Whenever any Independent Person’s opinion or certificate is to be furnished to the Trustee, such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning hereof.

“Independent Auditors” means the firm of Independent accountants appointed pursuant to the Management Agreement or any successor Independent accountant.

“Independent Manager” means, with respect to any corporation, partnership, limited liability company, association or other business entity, an individual who has prior experience as an independent director, independent manager or independent member with at least three (3) years of employment experience and who is provided by Corporation Service Company, CT
Corporation, Global Securitization Services, LLC, Lord Securities Corporation, National Registered Agents, Inc., Stewart Management Company, Wilmington Trust Company, or, if none of those companies is then providing professional independent managers, another nationally recognized company reasonably approved by the Trustee, in each case that is not an Affiliate of the company and that provides professional independent managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Manager and is not, and has never been, and will not while serving as Independent Manager be, any of the following:

(i) a member, partner, equityholder, manager, director, officer or employee of the company, the member thereof, or any of their respective equityholders or Affiliates (other than as an Independent Manager of the company or an Affiliate of the company that is not in the direct chain of ownership of the company and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Manager is employed by a company that routinely provides professional independent managers in the ordinary course of its business);

(ii) a creditor, supplier or service provider (including provider of professional services) to the company, or any of its equityholders or Affiliates (other than a nationally recognized company that routinely provides professional independent managers and other corporate services to the company or any of its equityholders or Affiliates in the ordinary course of its business);

(iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(iv) a Person that controls (whether directly, indirectly or otherwise) any of (i), (ii) or (iii) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being the Independent Manager (or independent manager or director) of a “special purpose entity” which is an Affiliate of the company shall be qualified to serve as an Independent Manager of the company, provided that the fees that such individual earns from serving as Independent Manager (or independent manager or director) of any Affiliate of the company in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year.

“Indenture Threshold Amount” has the meaning set forth in Section 3.1(a) of the Base Indenture.

“Ineligible Account” has the meaning set forth in Section 5.18 of the Base Indenture.

“Ineligible Interest Reserve Letter of Credit” means an Interest Reserve Letter of Credit with respect to which (i) the short-term debt credit rating of the L/C Provider with respect to such Interest Reserve Letter of Credit is withdrawn by S&P or downgraded by S&P below “A-2” or is withdrawn by Moody’s or downgraded by Moody’s below “P-2” or (ii) the long-term debt credit
rating of such L/C Provider is withdrawn by S&P or downgraded by S&P below “BBB” or is withdrawn by Moody’s or downgraded by Moody’s below “Baa2.”

“Initial CCR Election” has the meaning set forth in Section 11.1(a) of the Base Indenture.

“Initial Controlling Class Member List” means the list of contact information to be provided to the Trustee on the Closing Date by the initial purchasers of the Series of Notes issued on such date and upon which the Trustee can conclusively rely.

“Initial Principal Amount” means, with respect to any Series or Class (or Subclass) of Notes, the aggregate initial principal amount of such Series or Class (or Subclass) of Notes specified in the applicable Series Supplement.

“Insolvency” means liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization or conservation; and, when used as an adjective, “Insolvent.”

“Insurance/Condemnation Proceeds” means an amount equal to: (i) any cash payments or proceeds received by the Securitization Entities (a) by reason of theft, physical destruction or damage or any other similar event with respect to any properties or assets of the Securitization Entities under any policy of insurance (other than liability insurance) in respect of a covered loss thereunder or (b) as a result of any non-temporary condemnation, taking, seizing or similar event with respect to any properties or assets of the Securitization Entities by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking minus (ii)(a) any actual and reasonable costs incurred by the Securitization Entities in connection with the adjustment or settlement of any claims of the Securitization Entities in respect thereof and (b) any bona fide direct costs incurred in connection with any disposition of such assets as referred to in clause (i) of this definition, including Taxes (or distributions to a direct or indirect parent for Taxes) paid or reasonably expected to be actually payable with respect to the Securitization Entities’ consolidated group as a result of any gain recognized in connection therewith. For the avoidance of doubt, “Insurance/Condemnation Proceeds” shall not include any proceeds of policies of insurance not described above, such as business interruption insurance, food safety insurance coverage and other insurance procured in the ordinary course of business, which shall be treated as Collections.

“Insurance Proceeds Account” means the account maintained in the name of the Master Issuer, subject to an Account Control Agreement, and pledged to the Trustee into which the Manager causes Insurance/Condemnation Proceeds to be deposited.

“Intellectual Property” or “IP” means all rights in intellectual property of any type throughout the world, including: (i) Trademarks; (ii) Patents; (iii) rights in computer programs, including in both source code and object code therefor, together with related documentation and explanatory materials and databases, including any Copyrights (as defined below), Patents and Trade Secrets (as defined below) therein (“Software”); (iv) copyrights (whether registered or unregistered) in unpublished and published works (“Copyrights”); (v) trade secrets and other confidential or proprietary information, including with respect to recipes, unpatented inventions,
operating procedures, know how, procedures and formulas for preparing food and beverage products, specifications for certain food and beverage products, inventory methods, customer service methods, financial control methods, and training techniques ("Trade Secrets"); (vi) all Improvements of or to any of the foregoing; (vii) all social media account names or identifiers (e.g., Twitter® handle or FaceBook® account name); (viii) all registrations, applications for registration or issuances, recordings, renewals and extensions relating to any of the foregoing; and (ix) for the avoidance of doubt, the sole and exclusive rights to prosecute and maintain any of the foregoing, to enforce any past, present or future infringement, misappropriation or other violation of any of the foregoing, and to defend any pending or future challenges to any of the foregoing.

“Interest Accrual Period” means (a) solely with respect to any Series of Class A-1 Notes of any Series of Notes, a period commencing on and including the first day of a Quarterly Fiscal Period and ending on but excluding the first day of the immediately following Quarterly Fiscal Period and (b) with respect to any other Class of Notes of any Series of Notes, the period from and including the 15th day of the calendar month in which the immediately preceding Quarterly Payment Date occurred to but excluding the 15th day of the calendar month which includes the then-current Quarterly Payment Date; provided, however, that the initial Interest Accrual Period for any Series will commence on and include the Series Closing Date and end on the date specified above, unless otherwise specified in the applicable Series Supplement; provided, further, that the Interest Accrual Period, with respect to each Series of Notes Outstanding, immediately preceding the Quarterly Payment Date on which the last payment on the Notes of such Series is to be made will end on such Quarterly Payment Date.”

“Interest-Only DSCR” has the meaning assigned to such term under the definition of “DSCR.”

“Interest Reserve Letter of Credit” means any letter of credit issued under a Variable Funding Note Purchase Agreement for the benefit of the Trustee and the Senior Noteholders or the Senior Subordinated Noteholders, as applicable.

“Interest Reserve Release Event” means, as of any date of determination, and with respect to each Series of Senior Notes or Senior Subordinated Notes Outstanding, as applicable, any reduction in (i) the Class A-1 Notes Maximum Principal Amount with respect to any Series of Class A-1 Notes Outstanding or (ii) the Outstanding Principal Amount of such Series of Notes, disregarding any Series of Class A-1 Notes.

“Investment Income” means the investment income earned on a specified account during a specified period, in each case net of all losses and expenses allocable thereto.

“Investments” means, with respect to any Person(s), all investments by such Person(s) in other Persons in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel, moving and other similar advances to officers, directors, employees and consultants of such Person(s) (including Affiliates) made in the ordinary course of business) and purchases or other
acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person.

“IP License Agreements” means the Wendy’s IP License, the Canadian Franchisor IP License, the Company Restaurant Licenses and any other licenses for Intellectual Property that are provided to a Non-Securitization Entity in connection with the franchising of Branded Restaurants in countries other than the United States and Canada.

“IRS” means the U.S. Internal Revenue Service.

“L/C Provider” means, with respect to any Series of Class A-1 Notes, the party identified as the “L/C Provider” or the “L/C Issuing Bank,” as the context requires, in the applicable Variable Funding Note Purchase Agreement.

“Legacy Account” means, on or after the date that any Class or Series of Notes issued pursuant to the Base Indenture is no longer Outstanding, any account maintained by the Trustee to which funds have been allocated in accordance with the Priority of Payments for the payment of interest, fees or other amounts in respect of such Class or Series of Notes.

“Letter of Credit Reimbursement Agreement” means the Letter of Credit Reimbursement Agreement, dated as of the Closing Date, by and among TWC, Wendy’s and the Master Issuer, as amended, supplemented or otherwise modified from time to time.

“Licensee-Developed IP” means all Intellectual Property (other than Excluded IP) created, developed, authored, acquired or owned by or on behalf of any licensee under any IP License Agreement related to (i) the Wendy’s Brand, (ii) products or services sold or distributed under the Wendy’s Brand, (iii) Branded Restaurants, (iv) the Wendy’s System, (v) the Contributed Franchised Restaurant Business or (vi) the Contributed Restaurant Business, including, without limitation, all Improvements to any Securitization IP.

“Lien” means, when used with respect to any Person, any interest in any real or personal property, asset or other right held, owned or being purchased or acquired by such Person which secures payment or performance of any obligation, and will include any mortgage, lien, pledge, encumbrance, charge, retained security title of a conditional vendor or lessor, or other security interest of any kind, whether arising under a security agreement, mortgage, lease, deed of trust, chattel mortgage, assignment, pledge, retention or security title, financing or similar statement, or arising as a matter of law, judicial process or otherwise.

“Liquidation Fees” has the meaning set forth in the Servicing Agreement.

“Luxembourg Agent” has the meaning specified in Section 2.4(c) of the Base Indenture.

“Majority of Controlling Class Members” means, (x) except as set forth in clause (y), with respect to the Controlling Class Members (or, if specified, any subset thereof) and as of any day of determination, Controlling Class Members that hold in excess of 50% of the sum of (i) the Class A-1 Notes Voting Amount with respect to each Series of Class A-1 Notes of the
Controlling Class and (ii) the Outstanding Principal Amount of each Series of Notes of the Controlling Class (other than Class A-1 Notes) or any beneficial interest therein as of such day of determination (excluding any Notes or beneficial interests in Notes held by any Securitization Entity or any Affiliate of any Securitization Entity) and (y) with respect to the election of a Controlling Class Representative, Controlling Class Members that hold beneficial interests in excess of 50% of the sum of (i) the Class A-1 Notes Voting Amount with respect to each Series of Class A-1 Notes of the Controlling Class and (ii) the Outstanding Principal Amount of each Series of Notes of the Controlling Class (other than Class A-1 Notes) or any beneficial interest therein, in each case, that are Outstanding as of the CCR Voting Record Date and with respect to which votes were submitted (which may be less than the Outstanding Principal Amount of Notes of the Controlling Class as of the CCR Voting Record Date).

“Majority of Noteholders” means Noteholders holding in excess of 50% of the sum of (i) the Class A-1 Notes Voting Amount with respect to each Series of Class A-1 Notes Outstanding and (ii) the Outstanding Principal Amount of each Series of Notes other than Class A-1 Notes (excluding any Notes or beneficial interests in Notes held by any Securitization Entity or any Affiliate of any Securitization Entity).

“Majority of Senior Noteholders” means Senior Noteholders holding in excess of 50% of the sum of (i) the Class A-1 Notes Voting Amount with respect to each Series of Class A-1 Notes Outstanding and (ii) the Outstanding Principal Amount of each Series of Senior Notes other than Class A-1 Notes (excluding any Senior Notes or beneficial interests in Senior Notes held by any Securitization Entity or any Affiliate of any Securitization Entity).

“Managed Assets” means the assets that the Manager has agreed to manage and service pursuant to the Management Agreement in accordance with the standards and the procedures described therein.

“Management Accounts” means, collectively, the Contributed Restaurant Accounts, the Franchisor Capital Accounts, the Concentration Accounts, the Asset Disposition Proceeds Account, the Insurance Proceeds Account and such other accounts as may be established by the Manager from time to time pursuant to the Management Agreement that the Manager designates as a “Management Account” for purposes of the Management Agreement; provided each such other account is established with the Trustee or otherwise controlled by the Trustee under the New York UCC, or subject to an Account Control Agreement.

“Management Agreement” means the Management Agreement, dated as of the Closing Date, by and among the Securitization Entities, the Trustee and the Manager, as amended, supplemented or otherwise modified from time to time.

“Manager” means Wendy’s, as Manager, under the Management Agreement, and any successor thereto.

“Manager Advances” has the meaning set forth in the Management Agreement.
“Manager Deposit Requirements” has the meaning set forth in the Management Agreement.

“Manager-Developed IP” means all Intellectual Property (other than Excluded IP) created, developed, authored, acquired or owned by or on behalf of the Manager related to or intended to be used by (i) the Wendy’s Brand, (ii) products or services sold or distributed under the Wendy’s Brand, (iii) Branded Restaurants, (iv) the Wendy’s System, (v) the Contributed Franchised Restaurant Business or (vi) the Contributed Restaurant Business, including without limitation all Improvements to any Securitization IP.

“Manager Termination Event” means the occurrence of an event specified in Section 6.1 of the Management Agreement.

“Managing Standard” has the meaning set forth in the Management Agreement.

“Master Issuer” means Wendy’s Funding, LLC, a Delaware limited liability company, and its successors and assigns.

“Material Adverse Effect” means

(a) with respect to the Manager, a material adverse effect on (i) its results of operations, business, properties or financial condition, taken as a whole, (ii) its ability to conduct its business or to perform in any material respect its obligations under the Management Agreement or any other Related Document, (iii) the Collateral, taken as a whole, or (iv) the ability of the Securitization Entities to perform in any material respect their obligations under the Related Documents;

(b) with respect to the Collateral, a material adverse effect with respect to the Collateral taken as a whole, the enforceability of the terms thereof, the likelihood of the payment of the amounts required with respect thereto in accordance with the terms thereof, the value thereof, the ownership thereof by the Securitization Entities (as applicable) or the Lien of the Trustee thereon;

(c) with respect to the Securitization Entities, a materially adverse effect on the results of operations, business, properties or financial condition of the Securitization Entities, taken as a whole, or the ability of the Securitization Entities, taken as a whole, to conduct their business or to perform in any material respect their obligations under the Related Documents; or

(d) with respect to any Person or matter, a material impairment to the rights of or benefits available to, taken as a whole, the Securitization Entities, the Trustee, or the Noteholders under any Related Document or the enforceability of any material provision of any Related Document;

provided that where “Material Adverse Effect” is used without specific reference, such term will have the meaning specified in clauses (a) through (d), as the context may require.
“Materials of Environmental Concern” means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products (virgin or unused), polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, pollutants, contaminants, radioactivity and any other materials or substances of any kind, whether or not any such material or substance is defined as hazardous or toxic under any Environmental Law, that is regulated pursuant to or could reasonably be expected to give rise to liability under any Environmental Law.

“Monthly Fiscal Period” means the following monthly fiscal periods of the Securitization Entities: (a) eight 4-week fiscal periods and four 5-week fiscal periods of the Securitization Entities in connection with their 52-week fiscal years and (b) eight 4-week fiscal periods, three 5-week fiscal periods and one 6-week fiscal period of the Securitization Entities in connection with their 53-week fiscal years, whereby the 6-week period is the last fiscal period in such fiscal year.

“Monthly Fiscal Period Contributed Restaurant Accrual Profits Amount” means, with respect to each Monthly Fiscal Period of the Securitization Entities ending prior to January 4, 2021, the amount (not less than zero) equal to (a) all revenues accrued in respect of all Contributed Restaurants and New Contributed Restaurants (excluding Pass-Through Amounts); minus (b) all Restaurant Operating Expenses (excluding Pass-Through Amounts) accrued over such period in connection with the operation of the Contributed Restaurants and New Contributed Restaurants over such period.

“Monthly Fiscal Period Contributed Restaurant Cash Profits Amount” means, with respect to each Monthly Fiscal Period of the Securitization Entities ending prior to January 4, 2021, the amount (not less than zero) equal to (a) Contributed Restaurant Collections (excluding Pass-Through Amounts) over such period; minus (b) all Restaurant Operating Expenses (excluding Pass-Through Amounts) paid in cash out of funds in deposit in the Contributed Restaurant Accounts in connection with the operation of the Contributed Restaurants and New Contributed Restaurants over such period.

“Monthly Fiscal Period Contributed Restaurant Profits True-up Amount” means, with respect to each Monthly Fiscal Period of the Securitization Entities ending prior to January 4, 2021, the sum of (a) the amount (whether positive or negative) equal to (i) the Monthly Fiscal Period Contributed Restaurant Accrual Profits Amount for such Monthly Fiscal Period minus (ii) the Monthly Fiscal Period Estimated Contributed Restaurant Profits Amount for such Monthly Fiscal Period plus (b) the unpaid amount of all Monthly Fiscal Period Contributed Restaurant Profits True-up Amounts for all prior Monthly Fiscal Periods.

“Monthly Fiscal Period Estimated Contributed Restaurant Profits Amount” means, with respect to each Monthly Fiscal Period of the Securitization Entities ending prior to January 4, 2021, the lesser of (or, at the option of the Master Issuer, the greater of) (x) an estimate of the Monthly Fiscal Period Contributed Restaurant Accrual Profits Amount for such period and (y) an estimate of the Monthly Fiscal Period Contributed Restaurant Cash Profits Amount for such period, in each case, as set forth in the relevant Weekly Manager’s Certificate.

“Moody’s” means Moody’s Investors Service, Inc. or any successor thereto.
“Mortgage Preparation Event” means the earlier to occur of (i) the failure of the Master Issuer to maintain a DSCR of at least 1.75x as calculated on any Quarterly Calculation Date or (ii) a Rapid Amortization Event that has not been waived.

“Mortgage Preparation Fees” means any reasonable expenses incurred by the Master Issuer, the Manager or the Servicer, in connection with the preparation of any Mortgages as required by the Base Indenture.

“Mortgage Recordation Event” means the occurrence of the first Business Day in a Rapid Amortization Period that is at least sixty (60) days following a Mortgage Preparation Event.

“Mortgage Recordation Fees” means any fees, taxes or other amounts required to be paid to any applicable Governmental Authority, or any reasonable expenses incurred by the Trustee, in connection with the recording of any Mortgages as required by the Base Indenture.

“Mortgages” means the mortgages (including assignments of leases and rents for any lease), substantially in the form of Exhibit J to the Base Indenture (or otherwise in form reasonably acceptable to the Control Party and the Trustee and in recordable form).

“Multiemployer Plan” means any Pension Plan that is a “multiemployer plan” as defined in Section 3(37) or Section 4001(a)(3) of ERISA.

“Net Cash Flow” means, except as described in the definition of “DSCR” for the first four (4) Quarterly Calculation Dates, with respect to any Quarterly Payment Date and the immediately preceding Quarterly Collection Period, the positive difference, if any, of:

(a) the Retained Collections for such Quarterly Collection Period; minus

(b) the amount (without duplication) equal to the sum of (i) the Securitization Operating Expenses paid on each Weekly Allocation Date with respect to such Quarterly Collection Period pursuant to priority (v) of the Priority of Payments, (ii) the Weekly Management Fees and Supplemental Management Fees paid on each Weekly Allocation Date to the Manager with respect to such Quarterly Collection Period, (iii) the Servicing Fees, Liquidation Fees, and Workout Fees paid to the Servicer on each Weekly Allocation Date with respect to such Quarterly Collection Period; and (iv) the amount of Class A-1 Notes Administrative Expenses paid on each Weekly Allocation Date with respect to such Quarterly Collection Period; minus

(c) the amount, if any, by which equity contributions included in such Retained Collections exceeds the relevant amount of Retained Collections Contributions permitted to be included in Net Cash Flow pursuant to Section 5.16 of the Base Indenture;

provided that funds released from the Cash Trap Reserve Account, the Senior Notes Interest Reserve Account or the Senior Subordinated Notes Interest Reserve Account shall not constitute Retained Collections for purposes of this definition.
“New Contributed Assets” means any assets contributed by the Manager to any Securitization Entity after the Closing Date.

“New Contributed Restaurant Leases” means, with respect to (i) each New Contributed Restaurant located on Contributed Owned Real Property or New Owned Real Property or (ii) each Contributed Restaurant located on New Owned Real Property, an agreement whereby the Manager, on behalf of any Securitization Entity, as owner of such Contributed Restaurant or New Contributed Restaurant, agrees to allocate amounts with respect to each such Contributed Restaurant or New Contributed Restaurant from the Contributed Restaurant Accounts to the Concentration Accounts.

“New Contributed Restaurant Third-Party Leases” means leases from landlords unaffiliated with Wendy’s, in respect of which a Wendy’s Entity is the prime lessee, contributed to, or otherwise entered into or acquired by, a Securitization Entity following the Closing Date.

“New Contributed Restaurants” means all Branded Restaurants that are acquired or opened by a Securitization Entity after the Closing Date.

“New Development Agreements” means all Development Agreements and related guaranty agreements contributed to, or otherwise entered into or acquired by, a Securitization Entity following the Closing Date.

“New Franchise Agreements” means all Franchise Agreements and related guaranty agreements contributed to, or otherwise entered into or acquired by, a Securitization Entity following the Closing Date, in its capacity as franchisor for Branded Restaurants (including all renewals for Contributed Franchised Restaurants).

“New Franchised Restaurant Leases” means leases in respect of which a Securitization Entity is the lessor and a Franchisee is the lessee contributed to, or otherwise entered into or acquired by, a Securitization Entity following the Closing Date.

“New Franchised Restaurants” means the Branded Restaurants opened after the Closing Date that are owned and operated by a Franchisee that is unaffiliated with Wendy’s and its Affiliates.

“New Franchisee Notes” means all Franchisee Notes and related guaranty and collateral agreements contributed to, or otherwise entered into or acquired by, a Securitization Entity following the Closing Date.

“New Owned Real Property” means real property (including the land, buildings and fixtures) that is (i) acquired in fee after the Closing Date by a Securitization Entity or (ii) acquired in fee after the Closing Date by a Non-Securitization Entity and contributed to, or otherwise acquired by, a Securitization Entity pursuant to a contribution agreement in form and substance reasonably acceptable to the Trustee.
“New Real Estate Assets” means, collectively, (i) the New Owned Real Property, (ii) the New Franchised Restaurant Leases, (iii) the New Contributed Restaurant Leases and (iv) the New Retained Restaurant Leases.

“New Retained Restaurant Leases” means leases in respect of which a Securitization Entity is the lessor and a Retained Restaurant is the lessee, contributed to, or otherwise entered into or acquired by, a Securitization Entity following the Closing Date.

“New Series Pro Forma DSCR” means, at any time of determination and with respect to the issuance of any Additional Notes, the ratio calculated by dividing (i) the Net Cash Flow over the four immediately preceding Quarterly Collection Periods most recently ended over (ii) the Debt Service due during such period, in each case on a pro forma basis, calculated as if (a) such Additional Notes had been outstanding and any assets acquired with the proceeds of such Additional Notes had been acquired at the commencement of such period, and (b) any Notes that have been paid, prepaid or repurchased and cancelled during such period, or any Notes that will be paid, prepaid or repurchased and cancelled using the proceeds of such issuance, were so paid, prepaid or repurchased and cancelled as of the commencement of such period.

“New York UCC” has the meaning set forth in Section 5.8(b) of the Base Indenture.

“Nonrecoverable Advance” means any portion of an Advance previously made and not previously reimbursed, or proposed to be made, which, together with any then-outstanding Advances, and the interest accrued or that would reasonably be expected to accrue thereon, in the reasonable and good faith judgment of the Servicer or the Trustee, as applicable, would not be ultimately recoverable from subsequent payments or collections from any funds on deposit in the Collection Account or funds reasonably expected to be deposited in the Collection Account following such date of determination, giving due consideration to allocations and disbursements of funds in such accounts and the limited assets of the Securitization Entities.

“Note Owner” means, with respect to a Book-Entry Note, the Person who is the beneficial owner of such Book-Entry Note, as reflected on the books of the Clearing Agency that holds such Book-Entry Note, or on the books of a Person maintaining an account with such Clearing Agency (directly or as an indirect participant, in accordance with the rules of such Clearing Agency).

“Note Owner Certificate” has the meaning specified in Section 11.5(b) of the Base Indenture.

“Note Rate” means, with respect to any Series or any Class of any Series of Notes, the annual rate at which interest (other than contingent additional interest) accrues on the Notes of such Series or such Class of such Series of Notes (or the formula on the basis of which such rate will be determined) as stated in the applicable Series Supplement.

“Note Register” means the register maintained pursuant to Section 2.5(a) of the Base Indenture, providing for the registration of the Notes and transfers and exchanges thereof, subject to such reasonable regulations as the Master Issuer may prescribe.
“Noteholder” and “Holder” mean the Person in whose name a Note is registered in the Note Register.

“Notes” has the meaning specified in the recitals to the Base Indenture.

“Notes Discharge Date” means, with respect to any Class or Series of Notes, the first date on which such Class or Series of Notes is no longer Outstanding.

“Obligations” means (a) all principal, interest and premium, if any, at any time and from time to time, owing by the Master Issuer on the Notes or owing by the Guarantors pursuant to the Guarantee and Collateral Agreement, (b) the payment and performance of all other obligations, covenants and liabilities of the Master Issuer or the Guarantors arising under the Indenture, the Notes, any other Indenture Document or the Servicing Agreement or of the Guarantors under the Guarantee and Collateral Agreement and (c) the obligation of the Master Issuer to pay to the Trustee all fees and expenses payable to the Trustee under the Indenture and the other Related Documents to which it is a party when due and payable as provided in the Indenture and all Mortgage Preparation Fees and Mortgage Recordation Fees when due and payable as provided in the Indenture.

“Officer’s Certificate” means a certificate signed by an Authorized Officer of the party delivering such certificate.

“Oldemark” means Oldemark LLC, a Delaware limited liability company, and its successors and assigns.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably acceptable to the Trustee and the Control Party. The counsel may be an employee of, or counsel to, the Securitization Entities, TWC, the Manager or the Back-Up Manager, as the case may be.

“Outstanding” means, with respect to the Notes, as of any time, all of the Notes of any one or more Series, as the case may be, theretofore authenticated and delivered (or registered for Uncertificated Notes) under the Indenture except:

(i) Notes theretofore canceled (or de-registered) by the Registrar or delivered to the Registrar for cancellation (or de-registration for Uncertificated Notes);

(ii) Notes, or portions thereof, for whose payment or redemption funds in the necessary amount have been theretofore irrevocably deposited with the Trustee in trust for the Noteholders of such Notes pursuant to the Indenture; provided that, if such Notes or portions thereof are to be redeemed, notice of such redemption has been duly given pursuant to the Indenture or provision therefore reasonably satisfactory to the Trustee has been made;

(iii) Notes in exchange for, or in lieu of which other Notes have been authenticated and delivered (or registered in the case of Uncertificated Notes) pursuant to
the Indenture, unless proof reasonably satisfactory to the Trustee is presented that any such Notes are held by a Holder in due course;

(iv) Notes that have been defeased in accordance with the Base Indenture; and

(v) Notes alleged to have been mutilated, destroyed, lost or stolen for which replacement Notes have been issued as provided in the Indenture;

provided that, (A) in determining whether the Noteholders of the requisite Outstanding Principal Amount have given any request, demand, authorization, direction, notice, consent, waiver or vote under the Indenture, the following Notes shall be disregarded and deemed not to be Outstanding: (x) Notes owned by the Securitization Entities or any other obligor upon the Notes or any Affiliate of any of them and (y) Notes held in any accounts with respect to which the Manager or any Affiliate thereof exercises discretionary voting authority; provided, further, that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or vote, only Notes as described under clause (x) or (y) above that a Trust Officer actually knows to be so owned shall be so disregarded; and (B) Notes owned in the manner indicated in clause (x) or (y) above that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Notes and that the pledgee is not a Securitization Entity or any other obligor or the Manager, an Affiliate thereof, or an account for which the Manager or an Affiliate of the Manager exercises discretionary voting authority.

“Outstanding Principal Amount” means, with respect to each Series of Notes, the amount calculated in accordance with the applicable Series Supplement, which amount with respect to any Series of Class A-1 Notes may include outstanding amounts under swingline or letter of credit subfacilities thereunder.

“Pass-Through Amounts” means amounts in respect of sales Taxes and other comparable Taxes, payroll Taxes, wage garnishments and other amounts received by Contributed Restaurants and New Contributed Restaurants that are due and payable to a Governmental Authority or other unaffiliated third party.

“Patents” means United States and non-U.S. patents (including, during the term of the patent, the inventions claimed thereunder), patent disclosures, industrial designs, inventions (whether or not patentable or reduced to practice), invention disclosures, and applications, divisions, continuations, continuations-in-part, provisionals, reexaminations and reissues for any of the foregoing.

“Paying Agent” has the meaning specified in Section 2.5(a) of the Base Indenture.

“PBGC” means the Pension Benefit Guaranty Corporation established under Section 4002 of ERISA.
“Pension Plan” means any “employee pension benefit plan,” as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA and to which any company in the same Controlled Group as the Master Issuer has liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA for any time within the preceding five (5) years or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“Permitted Asset Dispositions” has the meaning set forth in Section 8.16 of the Base Indenture.

“Permitted Lien” means (a) Liens for (i) Taxes, assessments or other governmental charges not delinquent or (ii) Taxes, assessments or other charges being contested in good faith and by appropriate proceedings and with respect to which adequate reserves have been established, and are being maintained, in accordance with GAAP, (b) all Liens created or permitted under the Related Documents in favor of the Trustee for the benefit of the Secured Parties, (c) Liens existing on the Closing Date, which shall be released on such date, provided that Intellectual Property recordations need not have been terminated of record on the Closing Date so long as such Intellectual Property recordations are terminated of record within sixty (60) days of the Closing Date, (d) encumbrances in the nature of (i) a lessor’s fee interest, (ii) zoning, building code and similar restrictions, (iii) easements, covenants, restrictions, leases, subleases, rights of way and other title matters whether or not shown by the public records, (iv) overlaps, encroachments and any matters not of record which would be disclosed by an accurate survey or a personal inspection of the property, (v) title to any portion of any premises lying within the right of way or boundary of any public road or private road, (vi) landlords’ and lessors’ Liens on rented premises, and which, in each case (as described in clauses (d)(i) through (vi) above), do not materially detract from the value of the encumbered property or impair the use thereof in the business of any Securitization Entity and (vii) the interest of a lessee in property leased to a Franchisee, (e) in the case of any interest in real estate consisting of a Contributed Restaurant Third-Party Lease or New Contributed Restaurant Third-Party Lease, (i) the terms of the applicable Contributed Restaurant Third-Party Lease or New Contributed Restaurant Third-Party Lease, (ii) Liens affecting the underlying fee interest in the real estate and/or any of the property of the lessor grantor under the applicable lease (including, without limitation, any mortgages on the landlord’s fee interest in the leased real estate) and (iii) Liens with respect to which the Contributed Restaurant Third-Party Lease or New Contributed Restaurant Third-Party Lease has priority, (f) deposits or pledges made (i) in connection with casualty insurance maintained in accordance with the Related Documents, (ii) to secure the performance of bids, tenders, contracts or leases, (iii) to secure statutory obligations or surety or appeal bonds or (iv) to secure indemnity, performance or other similar bonds in the ordinary course of business of any Securitization Entity, (g) Liens of carriers, warehouses, mechanics and similar Liens, in each case securing obligations (i) that are not yet due and payable or not overdue for more than forty-five (45) days from the date of creation thereof or (ii) being contested in good faith by any Securitization Entity in appropriate proceedings (so long as such Securitization Entity shall, in accordance with GAAP, have set aside on its books adequate reserves with respect thereto), (h) restrictions under federal, state or foreign securities laws on the transfer of securities, (i) any Liens arising under law or pursuant to documentation governing
permitted accounts in connection with the Securitization Entities’ cash management system (including credit card and processing arrangements), (j) defects of title, survey defects, easements, rights-of-way, covenants, restrictions and other similar charges or encumbrances with respect to each real property, which (1) do not constitute Permitted Liens under any other clause of this definition and (2) neither have nor would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business or operations as currently conducted at such real property, (k) Liens arising from judgment, decrees or attachments in circumstances not constituting an Event of Default, (l) Liens arising in connection with any Finance Lease Obligations, operating lease liabilities, sale-leaseback transaction or in connection with any Indebtedness, in each case that is permitted under the Indenture, (m) Liens not securing Indebtedness that attach to any Collateral in an aggregate outstanding amount not exceeding $1,000,000 at any time, (n) Liens on Collateral that has been pledged pursuant to a Variable Funding Note Purchase Agreement with respect to letters of credit issued thereunder, and (o) any encumbrance on Securitization IP created by entering into (i) any licenses of Securitization IP under the Canadian Franchisor IP License, the Company Restaurant Licenses and the Wendy’s IP License and to the Manager in connection with the performance of its Services under the Management Agreement and (ii) other non-exclusive licenses of Securitization IP (A) granted in the ordinary course of business, (B) that when effected on behalf of any Securitization Entity by the Manager would not constitute a breach by the Manager of the Management Agreement and (C) that would not reasonably be expected to materially and adversely impact the Securitization IP (taken as a whole).

“Person” means an individual, corporation (including a business trust), partnership, limited liability partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

“Plan” means (i) any “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (ii) any “plan” (as defined in Section 4975(e)(1) of the Code) that is subject to Section 4975 of the Code and (iii) any entity whose underlying assets are deemed to include assets of a plan described in (i) or (ii) for purposes of Title I of ERISA and/or Section 4975 of the Code.

“Post-ARD Contingent Interest” means any Senior Notes Quarterly Post-ARD Contingent Interest Amount, Senior Subordinated Notes Quarterly Post-ARD Contingent Interest Amount and Subordinated Notes Quarterly Post-ARD Contingent Interest Amount.

“Post-Default Capped Trustee Expenses” has the meaning set forth in the definition of “Post-Default Capped Trustee Expenses Amount.”

“Post-Default Capped Trustee Expenses Amount” means an amount equal to the lesser of (a) all reasonable expenses payable by the Master Issuer to the Trustee pursuant to the Indenture (excluding Mortgage Recordation Fees) after the occurrence and during the continuation of an Event of Default in connection with any obligations of the Trustee in connection with such Event of Default that are in excess of the Capped Securitization Operating Expense Amount (“Post-Default Capped Trustee Expenses”) and (b) the amount by which (i) $100,000 exceeds (ii) the

43
aggregate amount of Post-Default Capped Trustee Expenses previously paid on each Weekly Allocation Date that occurred in the annual period (measured from the Closing Date to the anniversary thereof and from each anniversary thereof to the next succeeding anniversary thereof) in which such Weekly Allocation Date occurs. For the avoidance of doubt, Mortgage Recordation Fees will not be considered Trustee expenses for purposes of determining the Post-Default Capped Trustee Expenses Amount.

“Potential Manager Termination Event” means any occurrence or event which, with the giving of notice, the passage of time or both, would constitute a Manager Termination Event.

“Potential Rapid Amortization Event” means any occurrence or event which, with the giving of notice, the passage of time or both, would constitute a Rapid Amortization Event; provided that any occurrence or event which, with the giving of notice, the passage of time or both, would constitute a Rapid Amortization Event as described in clause (e) of the definition of Rapid Amortization Event, shall not constitute a Potential Rapid Amortization Event.

“Prime Rate” means the rate of interest publicly announced from time to time by a commercial bank mutually agreed upon by the Manager and the Servicer as its reference rate, base rate or prime rate.

“Principal and Interest Account Excess Amount” means, as of any date of determination, the excess, if positive, of (A) the aggregate amount of cash and Eligible Investments of the Securitization Entities credited to the Senior Notes Interest Payment Account, the Senior Subordinated Notes Interest Payment Account, the Subordinated Notes Interest Payment Account, the Senior Notes Principal Payment Account, the Senior Subordinated Notes Principal Payment Account and the Subordinated Notes Principal Payment Account as of the end of the most recently ended Quarterly Fiscal Period over (B) the aggregate of (I) the sum of the Quarterly Interest Amounts for the Quarterly Payment Date immediately following such Quarterly Fiscal Period with respect to each Class of Senior Notes Outstanding, each Class of Senior Subordinated Notes Outstanding and each Class of Subordinated Notes Outstanding and (II) the sum of the Scheduled Principal Payments that are required to be made on such Quarterly Payment Date with respect to each Class of Senior Notes Outstanding, each Class of Senior Subordinated Notes Outstanding and each Class of Subordinated Notes Outstanding.

“Principal Release Amount” means, with respect to any Series and any Quarterly Payment Date on which the related Series Non-Amortization Test is satisfied in accordance with the applicable Series Supplement, all or part of the amounts allocated with respect to such Scheduled Principal Payment to the applicable Collection Account Administrative Account pursuant to the Priority of Payments during the immediately preceding Quarterly Collection Period which the Master Issuer does not elect to make as a Scheduled Principal Payment with respect to such Series on such Quarterly Payment Date.

“Principal Terms” has the meaning specified in Section 2.3 of the Base Indenture.

“Priority of Payments” means the allocation and payment obligations described in Section 5.11 and Section 5.12 of this Base Indenture as supplemented by the allocation and
payment obligations with respect to each Series of Notes described in each Series Supplement. For the avoidance of doubt, references to priorities of the Priority of Payments shall refer to the priorities set forth in Section 5.11.

“pro forma event” has the meaning set forth in Section 14.18 of the Base Indenture.

“Proceeding” means any suit in equity, action at law or other judicial or administrative proceeding.

“Proceeds” has the meaning specified in Section 9-102(a)(64) of the applicable UCC.

“PTO” means the U.S. Patent and Trademark Office and any successor U.S. Federal office.

“Qualified Institution” means a depository institution organized under the laws of the United States of America or any state thereof or incorporated under the laws of a foreign jurisdiction with a branch or agency located in the United States of America or any state thereof and subject to supervision and examination by federal or state banking authorities that at all times has the Required Rating and, in the case of any such institution organized under the laws of the United States of America, whose deposits are insured by the FDIC.

“Qualified Trust Institution” means an institution organized under the laws of the United States of America or any state thereof or incorporated under the laws of a foreign jurisdiction with a branch or agency located in the United States of America or any state thereof subject to supervision and examination by federal or state banking authorities that at all times (i) is authorized under such laws to act as a trustee or in any other fiduciary capacity, (ii) has capital, surplus and undivided profits of not less than $250,000,000 as set forth in its most recent published annual report of condition and (iii) has a long term deposits rating of not less than “Baa1” by Moody’s and “BBB+” by S&P.

“Quarterly Calculation Date” means the date two (2) Business Days prior to each Quarterly Payment Date. Any reference to a Quarterly Calculation Date relating to a Quarterly Payment Date means the Quarterly Calculation Date occurring in the same calendar month as the Quarterly Payment Date and any reference to a Quarterly Calculation Date relating to a Quarterly Collection Period means the Quarterly Collection Period most recently ended on or prior to the related Quarterly Payment Date.

“Quarterly Collection Period” means each period commencing on and including the first day of a Quarterly Fiscal Period and ending on but excluding the first day of the immediately following Quarterly Fiscal Period. The first Quarterly Collection Period will be from the Cut-Off Date to and including June 28, 2015.

“Quarterly Compliance Certificate” has the meaning specified in Section 4.1(c) of the Base Indenture.
“Quarterly Fiscal Period” means the following quarterly fiscal periods of the Securitization Entities: (a) with respect to each of the Securitization Entities’ 52-week fiscal years, four 13-week quarters of the Securitization Entities and (b) with respect to each of the Securitization Entities’ 53-week fiscal years, three 13-week quarters followed by one 14-week quarter. The last day of the fourth Quarterly Fiscal Period of each fiscal year of the Securitization Entities is the Sunday that is closest to December 31. References to “weeks” mean the Securitization Entities’ fiscal weeks, which commence on and include each Monday of a week and end on but exclude Monday of the following week.

“Quarterly Interest Amounts” means the Senior Notes Quarterly Interest Amounts, the Senior Subordinated Notes Quarterly Interest Amounts or the Subordinated Notes Quarterly Interest Amounts, as applicable.

“Quarterly Noteholders’ Report” means, with respect to any Series of Notes, a statement substantially in the form of an Exhibit C to the applicable Series Supplement, including the Manager’s statement specified in such exhibit.

“Quarterly Payment Date” means, unless otherwise specified in any Series Supplement for the related Series of Notes, the 15th day of each of March, June, September and December, or if such date is not a Business Day, the next succeeding Business Day, commencing on September 15, 2015. Any reference to a Quarterly Collection Period relating to a Quarterly Payment Date means the Quarterly Collection Period most recently ended prior to such Quarterly Payment Date, and any reference to an Interest Accrual Period relating to a Quarterly Payment Date means the Interest Accrual Period most recently ended prior to such Quarterly Payment Date.

“Rapid Amortization DSCR Threshold” means a DSCR equal to 1.20x.

“Rapid Amortization Event” has the meaning specified in Section 9.1 of the Base Indenture.

“Rapid Amortization Period” means the period commencing on the date on which a Rapid Amortization Event occurs and ending on the earlier to occur of the waiver of the occurrence of such Rapid Amortization Event in accordance with Section 9.7 of the Base Indenture and the date on which there are no Notes Outstanding.

“Rating Agency” means S&P and any successor or successors thereto. In the event that at any time the rating agency rating the Notes do not include S&P, references to rating categories of S&P in the Indenture shall be deemed instead to be references to the equivalent categories of such other rating agency as then is rating the Notes as of the most recent date on which such other rating agency and S&P published ratings for the type of security in respect of which such alternative rating agency is used. If the applicable Series Supplement specifies an additional rating agency, then “Rating Agency” as used herein also refers to such additional rating agency.

“Rating Agency Condition” means, with respect to any Outstanding Series of Notes and any event or action to be taken or proposed to be taken requiring satisfaction of the Rating Agency Condition in the Indenture or in any other Related Document, a condition that is satisfied.
if the Manager has notified the Master Issuer, the Servicer and the Trustee in writing that the Manager has provided the Rating Agency and the Servicer with a written notification setting forth in reasonable detail such event or action and has actively solicited (by written request and by request via email and telephone) a Rating Agency Confirmation from the Rating Agency, and the Rating Agency has either provided the Manager with a Rating Agency Confirmation with respect to such event or action or informed the Manager that it declines to review such event or action; provided that:

(i) except in connection with the issuance of Additional Notes, as to which the conditions of clause (ii) below will apply in all cases, the Rating Agency Condition in respect of any Rating Agency will be required to be satisfied in connection with any such event or action only if the Manager determines in its sole discretion (and provides an Officer’s Certificate to the Trustee evidencing such determination) that the policies of such Rating Agency permit it to deliver such Rating Agency Confirmation;

(ii) the Rating Agency Condition will not be required to be satisfied in respect of any Rating Agency if the Manager provides an Officer’s Certificate (along with copies of all written requests for such Rating Agency Confirmation and copies of all related email correspondence) to the Master Issuer, the Servicer and the Trustee certifying that:

(a) the Manager has not received any response from such Rating Agency after the Manager has repeated such active solicitation (by request via telephone and by email) on or about the tenth (10th) Business Day and the fifteenth (15th) Business Day following the date of delivery of the initial solicitation;

(b) the Manager has no reason to believe that such event or action would result in such Rating Agency withdrawing its credit ratings on such Outstanding Series of Notes or assigning credit ratings on such Outstanding Series of Notes below the lower of (1) the then-current credit ratings on such Outstanding Series of Notes or (2) the initial credit ratings assigned to such Outstanding Series of Notes by such Rating Agency (in each case, without negative implications); and

(c) solely in connection with any issuance of Additional Notes, either:

(1) at least one (1) Rating Agency has provided a Rating Agency Confirmation; or

(2) the Rating Agency has rated the Additional Notes no lower than the lower of (x) the then-current credit rating assigned by such Rating Agency or (y) the initial credit rating assigned by such Rating Agency (in each case, without negative implications) to each Outstanding Series of Notes ranking on the same priority as the Additional Notes, or, if no Outstanding Series of Notes ranks on the same priority as such Additional
Notes, the Control Party shall have provided its written consent to the issuance of such Additional Notes.

“Rating Agency Confirmation” means, with respect to any Outstanding Series of Notes, a confirmation from a Rating Agency that a proposed event or action will not result in (i) a withdrawal of its credit ratings on such Outstanding Series of Notes or (ii) the assignment of credit ratings on such Outstanding Series of Notes below the lower of (A) the then-current credit ratings on such Outstanding Series of Notes or (B) the initial credit ratings assigned to such Outstanding Series of Notes by such Rating Agency (in each case, without negative implications).

“Rating Agency Notification” means, with respect to any prospective action or occurrence, a written notification to the Rating Agency for each Series of Notes Outstanding setting forth in reasonable detail such action or occurrence.

“Reacquired Restaurants” means Branded Restaurants that were previously Franchised Restaurants and are subsequently reacquired by a Non-Securitization Entity for financial or other reasons until such time as the restaurants are re-franchised to third-party Franchisees.

“Real Estate Assets” means the Contributed Real Estate Assets and the New Real Estate Assets.

“Record Date” means, with respect to any Quarterly Payment Date the close of business on the last Business Day of the calendar month immediately preceding the calendar month in which such Quarterly Payment Date occurs.

“Registrar” has the meaning specified in Section 2.5(a) of the Base Indenture.

“Related Documents” means the Indenture, the Notes, the Guarantee and Collateral Agreement, each Account Control Agreement, any Mortgages, the Management Agreement, the Servicing Agreement, the Back-Up Management Agreement, any Series Hedge Agreement, the Contribution Agreements, any agreement pursuant to which New Contributed Assets are contributed to, or otherwise entered into or acquired by, the Securitization Entities, any Variable Funding Note Purchase Agreement, each other note purchase agreement pursuant to which Notes are purchased, the IP License Agreements, any Enhancement Agreement, the Charter Documents, the Letter of Credit Reimbursement Agreement and any additional document identified as a “Related Document” in the Series Supplement for any Series of Notes Outstanding and any other material agreements entered into, or certificates delivered, pursuant to the foregoing documents.

“Reorganization” means, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

“Reportable Event” means any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Single Employer Plan (other than an event for which the 30-day notice period is waived).
“Required Rating” means (i) a short-term certificate of deposit rating from Moody’s of “P-2” and from S&P of at least “A-2” and (ii) a long-term unsecured debt rating of not less than “Baa3” by Moody’s and “BBB-” by S&P.

“Requirements of Law” means, with respect to any Person or any of its property, the certificate of incorporation or articles of association and by-laws, limited liability company agreement, partnership agreement or other organizational or governing documents of such Person or any of its property, and any law, treaty, rule or regulation, or determination of any arbitrator or Governmental Authority, in each case applicable to, or binding upon, such Person or any of its property or to which such Person or any of its property is subject, whether federal, state, local or foreign (including, without limitation, usury laws, the Federal Truth in Lending Act, state franchise laws and retail installment sales acts).

“Residual Amount” means for any Weekly Allocation Date with respect to any Quarterly Collection Period the amount, if any, by which the amount allocated to the Collection Account on such Weekly Allocation Date exceeds the sum of the amounts to be paid and/or allocated on such Weekly Allocation Date pursuant to priorities (i) through (xxviii) of the Priority of Payments.

“Residual Amounts Account” means an account owned by a Securitization Entity that is used solely for the receipt of Residual Amounts.

“Restaurant Operating Expenses” means, collectively, (i) operating expenses that are incurred by or allocated, in accordance with the Managing Standard, to Contributed Restaurants and New Contributed Restaurants in the ordinary course of business relating to the operation of Contributed Restaurants and New Contributed Restaurants, such as the cost of goods sold (including vendor rebates), labor (including wages, incentive compensation, workers’ compensation-related expenses and other labor-related expenses for employees of Contributed Restaurants and New Contributed Restaurants), repair and maintenance expenses to the extent not capitalized, insurance (including self-insurance), local advertising expenses, Advertising Fees allocable to such Company Restaurants, litigation and settlement costs relating to the Managed Assets and other restaurant operating costs included in cost of sales, (ii) Company Restaurant License Fees, (iii) payments pursuant to Contributed Restaurant Third-Party Leases or New Contributed Restaurant Third-Party Leases and (iv) Pass-Through Amounts.

“Retained Collections” means, with respect to any specified period of time, the amount equal to (i) Collections (other than Contributed Restaurant Collections) received over such period plus, without duplication, (ii) (x) with respect to any Monthly Fiscal Period ending prior to January 4, 2021, the Monthly Fiscal Period Estimated Contributed Restaurant Profits Amounts plus, without duplication, the Monthly Fiscal Period Contributed Restaurant Profits True-up Amounts and (y) with respect to any Monthly Fiscal Period ending on and after January 4, 2021 (or any portion thereof selected by the Manager), the Contributed Restaurant Cash Profits Amount, minus, without duplication, (iii) the Excluded Amounts over such period; provided that, any funds transferred from or reimbursed to the Residual Amounts Account shall not be included or deducted in calculating Retained Collections. Funds released from the Cash Trap Reserve Account shall not constitute Retained Collections for purposes of this definition.
“Retained Collections Contribution” means, with respect to any Quarterly Collection Period, an equity contribution made to the Master Issuer, at any time prior to the Series Legal Final Maturity Date with respect to the last Series of Notes Outstanding, to be included in Net Cash Flow in accordance with Section 5.16 of the Base Indenture, which for all purposes of the Related Documents, except as otherwise specified therein, will be treated as Retained Collections received during such Quarterly Collection Period; provided that any Retained Collections Contribution made will be excluded from Net Cash Flow for purposes of calculations undertaken in the following circumstances: (i) the New Series Pro Forma DSCR or (ii) compliance with the applicable Series Non-Amortization Test.

“Retained Restaurant Lease Payments” means all amounts payable to a Securitization Entity under a lease constituting a Retained Restaurant Lease or New Retained Restaurant Lease.

“Retained Restaurant Leases” means leases in respect of which Wendy’s Properties is the lessor and a Retained Restaurant is the lessee.

“Retained Restaurants” means Branded Restaurants owned and operated by Non-Securitization Entities.

“Rule 144A” means Rule 144A under the 1933 Act.

“S&P” or “Standard & Poor’s” means Standard & Poor’s Rating Group, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

“Scheduled Principal Payments” means, with respect to each Series or any Class of any Series of Notes, each payment scheduled to be made pursuant to the applicable Series Supplement that reduces the amount of principal Outstanding with respect to such Series or Class on a periodic basis that is identified as “Scheduled Principal Payments” in the applicable Series Supplement.

“Scheduled Principal Payments Deficiency Event” means, with respect to any Quarterly Collection Period, as of the last Weekly Allocation Date with respect to such Quarterly Collection Period, the occurrence of the following event: the amount of funds on deposit in the Senior Notes Principal Payment Account after the last Weekly Allocation Date with respect to such Quarterly Collection Period is less than the aggregate amount of Senior Notes Quarterly Scheduled Principal Amounts due and payable on all such Senior Notes for the next succeeding Quarterly Payment Date.

“Scheduled Principal Payments Deficiency Notice” has the meaning specified in Section 4.1(d) of the Base Indenture.

“SEC” means the United States Securities and Exchange Commission.

“Secured Parties” means the Trustee, for the benefit of (i) itself, (ii) the Noteholders, (iii) the Servicer, (iv) the Control Party, (v) the Manager, (vi) the Back-Up Manager, (vii) each
Hedge Counterparty, if any, and (viii) the Enhancement Provider, if any, together with their respective successors and assigns.

“Securities Intermediary” has the meaning set forth in Section 5.8(a) of the Base Indenture.

“Securitization Entities” means, collectively, the Master Issuer and the Guarantors, and each Subsidiary thereof.

“Securitization IP” means, collectively, the Closing Date Securitization IP and the After-Acquired Securitization IP, except that “Securitization IP” shall not include, solely for purposes of the licenses granted under the IP License Agreements, any rights to use licensed third-party Intellectual Property to the extent that such rights are not sublicensable without the consent of or any payment to such third party, or any other action by the licensee thereof, unless such consent has been obtained or payment has been made.

“Securitization Operating Expense Account” has the meaning set forth in Section 5.6(a)(xi) of the Base Indenture.

“Securitization Operating Expenses” means all expenses incurred by the Securitization Entities and payable to third parties in connection with the maintenance and operation of the Securitization Entities and the transactions contemplated by the Related Documents to which they are a party (other than those paid for from the Concentration Accounts or Contributed Restaurant Accounts as provided for herein), including (i) accrued and unpaid Taxes (other than United States federal, state, local and foreign Taxes based on income, profits or capital, including franchise, excise, withholding or similar Taxes), filing fees and registration fees payable by and attributable to the Securitization Entities to any federal, state, local or foreign Governmental Authority; (ii) fees and expenses payable to (A) the Trustee under the Indenture or the other Related Documents to which it is a party (excluding Mortgage Recordation Fees), (B) the Back-Up Manager as Back-Up Manager Fees, (C) the Rating Agency, (D) independent certified public accountants (including, for the avoidance of doubt, any incremental auditor costs) or external legal counsel and (E) any stock exchange on which the Notes may be listed; (iii) the indemnification obligations of the Securitization Entities under the Related Documents to which they are a party (including any interest thereon at the Advance Interest Rate, if applicable); and (iv) independent director and independent manager fees. Mortgage Preparation Fees and Mortgage Recordation Fees shall not be Securitization Operating Expenses.

“Securitized Assets” means all assets owned by the Securitization Entities, including but not limited to the Collateral and the Real Estate Assets.

“Segregated Account” means an account of the Manager or its agent used exclusively to receive payments with respect to the Securitized Assets (it being understood that the Manager or its agent, as the case may be, may establish multiple Segregated Accounts to hold payments received in different currencies or payments received with respect to different types of assets, but are not required to do so).
“Senior ABS Leverage Ratio” means, as of any date of determination, the ratio of (a)(i) the aggregate Outstanding Principal Amount of each Series of Senior Notes Outstanding (provided that, with respect to each Series of Class A-1 Notes Outstanding, the aggregate Outstanding Principal Amount of each such Series of Class A-1 Notes will be deemed to be the Class A-1 Notes Maximum Principal Amount of such Series of Class A-1 Notes) as of the end of the most recently ended Quarterly Fiscal Period less (ii) the sum of (x) the cash and Eligible Investments of the Securitization Entities credited to the Senior Notes Interest Reserve Account, the Cash Trap Reserve Account and the Franchisor Capital Accounts as of the end of the most recently ended Quarterly Fiscal Period, (y) at the Master Issuer’s election, the Senior Principal and Interest Account Excess Amount and (z) the available amount of the Interest Reserve Letter of Credit with respect to the Senior Notes as of the end of the most recently ended Quarterly Fiscal Period to (b) the sum of the Net Cash Flow for the preceding four (4) Quarterly Collection Periods most recently ended as of such date and for which financial statements have been prepared. The Senior ABS Leverage Ratio shall be calculated in accordance with Section 14.18(b) of the Base Indenture.

“Senior Noteholder” means any Holder of Senior Notes of any Series.

“Senior Notes” or “Class A Notes” means the issuance of Notes under the Indenture by the Master Issuer that by its terms (through its alphabetical designation as “Class A” pursuant to the Series Supplement applicable to such Indebtedness) is senior in the right to receive interest and principal on such Notes to the right to receive interest and principal on any Subordinated Notes.

“Senior Notes Accrued Quarterly Interest Amount” means, for each Weekly Allocation Date with respect to a Quarterly Collection Period, and with respect to any Senior Notes Outstanding, the amount identified as “Senior Notes Accrued Quarterly Interest Amount” in the applicable Series Supplement.

“Senior Notes Accrued Quarterly Post-ARD Contingent Interest Amount” means, for each Weekly Allocation Date with respect to a Quarterly Collection Period, and with respect to any Senior Notes Outstanding, the amount identified as “Senior Notes Accrued Quarterly Post-ARD Contingent Interest Amount” in the applicable Series Supplement.

“Senior Notes Accrued Quarterly Scheduled Principal Amount” means with respect to each Weekly Allocation Date, and with respect to all Senior Notes Outstanding, the aggregate amounts identified as the “Senior Notes Accrued Quarterly Scheduled Principal Amount” in each applicable Series Supplement.

“Senior Notes Interest Payment Account” has the meaning set forth in Section 5.6(a)(i) of the Base Indenture.

“Senior Notes Interest Reserve Account” means account no. 11455500 entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Senior Notes Interest Reserve Account”, which account is maintained by the Trustee pursuant to Section 5.2 of the Base Indenture or any successor securities account maintained pursuant to Section 5.2 of the Base Indenture.
“Senior Notes Interest Reserve Account Deficiency Amount” means, as of any date of determination the excess, if any, of the Senior Notes Interest Reserve Amount over the sum of (a) the amount on deposit in the Senior Notes Interest Reserve Account and (b) the amount available under any Interest Reserve Letter of Credit relating to the Senior Notes.

“Senior Notes Interest Reserve Amount” means, with respect to any Quarterly Payment Date (and any Weekly Allocation Date related thereto), an amount equal to the Senior Notes Quarterly Interest Amount due on the next Quarterly Payment Date (assuming that amounts available under each Variable Funding Note Purchase Agreement at such time (after giving effect to any commitment reductions on such date) are fully drawn)); provided that, with respect to the first Interest Accrual Period following the Closing Date, the Senior Notes Interest Reserve Amount will be an amount equal to $23,125,000.

“Senior Notes Post-ARD Contingent Interest Account” has the meaning set forth in Section 5.6 of the Base Indenture.

“Senior Notes Principal Payment Account” has the meaning set forth in Section 5.6 of the Base Indenture.

“Senior Notes Quarterly Interest Amount” means for each Quarterly Payment Date, with respect to each Class of Senior Notes Outstanding, the aggregate amounts identified as the “Senior Notes Quarterly Interest Amount” in the applicable Series Supplement.

“Senior Notes Quarterly Interest Shortfall Amount” has the meaning set forth in Section 5.12(a)(iii) of the Base Indenture.

“Senior Notes Quarterly Post-ARD Contingent Interest Amount” means for each Quarterly Payment Date, with respect to each Class of Senior Notes Outstanding, the amounts identified as “Senior Notes Quarterly Post-ARD Contingent Interest Amount” in the applicable Series Supplement.

“Senior Notes Quarterly Scheduled Principal Amounts” means, with respect to each Class of Senior Notes Outstanding, each Scheduled Principal Payment with respect to such Class of Senior Notes.

“Senior Notes Quarterly Scheduled Principal Deficiency Amount” means with respect to each Weekly Allocation Date, and with respect to all Senior Notes Outstanding, the aggregate amounts identified as the “Senior Notes Quarterly Scheduled Principal Deficiency Amount” in each applicable Series Supplement.

“Senior Principal and Interest Account Excess Amount” means, as of any date of determination, the excess, if positive, of (A) the aggregate amount of cash and Eligible Investments of the Securitization Entities credited to the Senior Notes Interest Payment Account and the Senior Notes Principal Payment Account as of the end of the most recently ended Quarterly Fiscal Period over (B) the aggregate of (I) the sum of the Senior Notes Quarterly Interest Amounts for the Quarterly Payment Date immediately following such Quarterly Fiscal
Period with respect to each Class of Senior Notes Outstanding and (II) the sum of the Scheduled Principal Payments that are required to be made on such Quarterly Payment Date with respect to each Class of Senior Notes Outstanding.

“Senior Subordinated Noteholder” means any Holder of Senior Subordinated Notes of any Series.

“Senior Subordinated Notes” means any issuance of Notes under the Indenture by the Master Issuer that are part of a Class with an alphanumerical designation that contains any letter from “B” through “L” of the alphabet.

“Senior Subordinated Notes Accrued Quarterly Interest Amount” means, for each Weekly Allocation Date with respect to a Quarterly Collection Period, and with respect to any Senior Subordinated Notes Outstanding, the amount identified as the “Senior Subordinated Notes Accrued Quarterly Interest Amount” in the applicable Series Supplement.

“Senior Subordinated Notes Accrued Quarterly Post-ARD Contingent Interest Amount” means, for each Weekly Allocation Date with respect to a Quarterly Collection Period, and with respect to any Senior Subordinated Notes Outstanding, the amount identified as “Senior Subordinated Notes Accrued Quarterly Post-ARD Contingent Interest Amount” in the applicable Series Supplement.

“Senior Subordinated Notes Accrued Quarterly Scheduled Principal Amount” means, with respect to each Weekly Allocation Date, and with respect to all Senior Subordinated Notes Outstanding, the aggregate amounts identified as the “Senior Subordinated Notes Accrued Quarterly Scheduled Principal Amount” in each applicable Series Supplement.

“Senior Subordinated Notes Interest Payment Account” has the meaning set forth in Section 5.6(a)(ii) of the Base Indenture.

“Senior Subordinated Notes Interest Reserve Account” means an account entitled “Citibank, N.A. f/b/o Wendy’s Funding, LLC, Senior Subordinated Notes Interest Reserve Account” maintained by the Trustee pursuant to Section 5.3(a) of the Base Indenture or any successor securities account maintained pursuant to Section 5.3(a) of the Base Indenture.

“Senior Subordinated Notes Interest Reserve Account Deficiency Amount” means, as of any date of determination, the excess, if any, of the Senior Subordinated Notes Interest Reserve Account and (b) the amount available under any Interest Reserve Letter of Credit relating to the Senior Subordinated Notes.

“Senior Subordinated Notes Interest Reserve Amount” means, with respect to any Quarterly Payment Date (and any Weekly Allocation Date related thereto), an amount equal to the Senior Subordinated Notes Quarterly Interest Amount due on the next Quarterly Payment Date.
“Senior Subordinated Notes Post-ARD Contingent Interest Account” has the meaning set forth in Section 5.6 of the Base Indenture.

“Senior Subordinated Notes Principal Payment Account” has the meaning set forth in Section 5.6 of the Base Indenture.

“Senior Subordinated Notes Quarterly Interest Amount” means, for each Quarterly Payment Date, with respect to each Class of Senior Subordinated Notes Outstanding, the aggregate amounts identified as the “Senior Subordinated Notes Quarterly Interest Amount” in the applicable Series Supplement.

“Senior Subordinated Notes Quarterly Post-ARD Contingent Interest Amount” means, for each Quarterly Payment Date, with respect to each Class of Senior Subordinated Notes Outstanding, the amounts identified as “Senior Subordinated Notes Quarterly Post-ARD Contingent Interest Amount” in the applicable Series Supplement.

“Senior Subordinated Notes Quarterly Scheduled Principal Amounts” means, with respect to each Class of Senior Subordinated Notes Outstanding, each Scheduled Principal Payment with respect to such Class of Senior Subordinated Notes.

“Senior Subordinated Notes Quarterly Scheduled Principal Deficiency Amount” means with respect to each Weekly Allocation Date, and with respect to all Senior Subordinated Notes Outstanding, the aggregate amounts identified as the “Senior Subordinated Notes Quarterly Scheduled Principal Deficiency Amount” in each applicable Series Supplement.

“Series Account” means any account or accounts established pursuant to a Series Supplement for the benefit of a Series of Notes (or any Class thereof).

“Series Anticipated Repayment Date” means, with respect to any Series of Notes, or Class or Tranche thereunder, the “Anticipated Repayment Date” as set forth in the related Series Supplement, which will be the Series Anticipated Repayment Date for such Series of Notes, or Class or Tranche thereunder, as adjusted pursuant to the terms of the applicable Series Supplement.

“Series Closing Date” means, with respect to (i) any Series of Notes, the date of issuance of such Series of Notes, as specified in the applicable Series Supplement and (ii) Additional Notes of an existing Series, Class, Subclass or Tranche of Notes, the date of issuance of such Additional Notes, as specified in the applicable Supplement to a Series Supplement.

“Series Defeasance Date” has the meaning set forth in Section 12.1(c) of the Base Indenture.

“Series Distribution Account” means, with respect to any Series of Notes or any Class of any Series of Notes, an account established to receive distributions to be paid to the Noteholders of such Class or such Series of Notes pursuant to the applicable Series Supplement.
“Series Hedge Agreement” means, with respect to any Series of Notes, the relevant Swap Contract, if any, described in the applicable Series Supplement.

“Series Hedge Payment Amount” means all amounts payable by the Master Issuer under a Series Hedge Agreement including any termination payment payable by the Master Issuer.

“Series Hedge Receipts” means all amounts received by the Securitization Entities under a Series Hedge Agreement.

“Series Legal Final Maturity Date” means, with respect to any Series, the “Legal Final Maturity Date” set forth in the related Series Supplement.

“Series Non-Amortization Test” means, with respect to any Series or Class of Notes, the test specified in the applicable Series Supplement or, if not specified therein, means a test that will be satisfied on any Quarterly Payment Date only if both (a) the Holdco Leverage Ratio is less than or equal to 5.00x as calculated on the Quarterly Calculation Date immediately preceding such Quarterly Payment Date and (b) no Rapid Amortization Event has occurred and is continuing.

“Series Obligations” means, with respect to a Series of Notes, (a) all principal, interest, premiums, make-whole payments and Series Hedge Payment Amounts, at any time and from time to time, owing by the Master Issuer on such Series of Notes or owing by the Guarantors pursuant to the Guarantee and Collateral Agreement on such Series of Notes and (b) the payment and performance of all other obligations, covenants and liabilities of the Master Issuer or the Guarantors arising under the Indenture, the Notes or any other Indenture Document, in each case, solely with respect to such Series of Notes.

“Series of Notes” or “Series” means each series of Notes issued and authenticated pursuant to the Base Indenture and the applicable Series Supplement.

“Series Supplement” means a supplement to the Base Indenture in conjunction with the issuance of a Series, Classes, Subclasses and/or Tranches of Notes complying (to the extent applicable) with the terms of Section 2.3 of the Base Indenture.

“Servicer” means Midland Loan Services, a division of PNC Bank, National Association, as servicer under the Servicing Agreement, and any successor thereto.

“Servicer Termination Event” has the meaning set forth in the Servicing Agreement.

“Services” has the meaning set forth in the Management Agreement.

“Servicing Agreement” means the Servicing Agreement, dated as of the Closing Date, by and among the Master Issuer, the other Securitization Entities party thereto, the Manager, the Servicer and the Trustee, as amended, supplemented or otherwise modified from time to time.

“Servicing Fees” has the meaning set forth in the Servicing Agreement.
“Servicing Standard” has the meaning set forth in the Servicing Agreement.

“Single Employer Plan” means any Pension Plan that is covered by Title IV of ERISA, but that is not a Multiemployer Plan.

“Software” has the meaning set forth in the definition of “Intellectual Property.”

“Specified Bankruptcy Opinion Provisions” means the provisions contained in the legal opinion(s) delivered in connection with the issuance of each Series of Notes relating to the non-substantive consolidation of the Securitization Entities with Wendy’s.

“Specified Indenture Trust Accounts” shall mean the Senior Notes Interest Payment Account, the Class A-1 Notes Commitment Fees Account, the Senior Subordinated Notes Interest Payment Account, the Subordinated Notes Interest Payment Account, the Senior Notes Principal Payment Account, the Senior Subordinated Notes Principal Payment Account, the Subordinated Notes Principal Payment Account, the Senior Notes Post-ARD Contingent Interest Account, the Senior Subordinated Notes Post-ARD Contingent Interest Account, the Subordinated Notes Post-ARD Contingent Interest Account, the Hedge Payment Account and the Cash Trap Reserve Account.

“Subclass” means, with respect to any Class of any Series of Notes, any one of the subclasses of Notes of such Class as specified in the applicable Series Supplement.

“Subordinated Notes” means any issuance of Notes under the Indenture by the Master Issuer that are part of a Class with an alphanumerical designation that contains any letter from “M” through “Z” of the alphabet.

“Subordinated Notes Accrued Quarterly Interest Amount” means, for each Weekly Allocation Date with respect to a Quarterly Collection Period, and with respect to any Subordinated Notes Outstanding, the amount identified as “Subordinated Notes Accrued Quarterly Interest Amount” in the applicable Series Supplement.

“Subordinated Notes Accrued Quarterly Post-ARD Contingent Interest Amount” means, for each Weekly Allocation Date with respect to a Quarterly Collection Period, and with respect to any Subordinated Notes Outstanding, the amount identified as “Subordinated Notes Accrued Quarterly Post-ARD Contingent Interest Amount” in the applicable Series Supplement.

“Subordinated Notes Accrued Quarterly Scheduled Principal Amount” means, with respect to each Weekly Allocation Date, and with respect to all Subordinated Notes Outstanding, the aggregate amounts identified as the “Subordinated Notes Accrued Quarterly Scheduled Principal Amount” in each applicable Series Supplement.

“Subordinated Notes Interest Payment Account” has the meaning set forth in Section 5.6(a)(iii) of the Base Indenture.

“Subordinated Notes Post-ARD Contingent Interest Account” has the meaning set forth in Section 5.6 of the Base Indenture.
“Subordinated Notes Principal Payment Account” has the meaning set forth in Section 5.6 of the Base Indenture.

“Subordinated Notes Provisions” means, with respect to the issuance of any Series of Notes that includes Subordinated Notes, the terms of such Subordinated Notes will include the following provisions: (a) if there is an Extension Period in effect with respect to the Senior Notes issued on the Closing Date, the principal of any Subordinated Notes will not be permitted to be repaid out of the Priority of Payments unless such Senior Notes are no longer Outstanding, (b) if the Senior Notes issued on the Closing Date are refinanced on or prior to the Series Anticipated Repayment Date of such Senior Notes and any such Subordinated Notes having a Series Anticipated Repayment Date on or before the Series Anticipated Repayment Date of such Senior Notes are not refinanced on or prior to the Series Anticipated Repayment Date of such Senior Notes, such Subordinated Notes will begin to amortize on the date that the Senior Notes are refinanced pursuant to a scheduled principal payment schedule to be set forth in the applicable Series Supplement and (c) if the Senior Notes issued on the Closing Date are refinanced on or prior to the Quarterly Payment Date following the seventh anniversary of the Closing Date, such Subordinated Notes will not be permitted to be refinanced.

“Subordinated Notes Quarterly Interest Amount” means for each Quarterly Payment Date, with respect to each Class of Subordinated Notes Outstanding, the aggregate amounts identified as the “Subordinated Notes Quarterly Interest Amount” in the applicable Series Supplement.

“Subordinated Notes Quarterly Interest Shortfall” has the meaning set forth in Section 5.12(f)(iii) of the Base Indenture.

“Subordinated Notes Quarterly Post-ARD Contingent Interest Amount” means, for each Quarterly Payment Date, with respect to each Class of Subordinated Notes Outstanding, the amounts identified as “Subordinated Notes Quarterly Post-ARD Contingent Interest Amount” in the applicable Series Supplement.

“Subordinated Notes Quarterly Scheduled Principal Amounts” means, with respect to each Class of Subordinated Notes Outstanding, each Scheduled Principal Payment with respect to such Class of Subordinated Notes.

“Subordinated Notes Quarterly Scheduled Principal Deficiency Amount” means with respect to each Weekly Allocation Date, and with respect to all Subordinated Notes Outstanding, the aggregate amounts identified as the “Subordinated Notes Quarterly Scheduled Principal Deficiency Amount” in each applicable Series Supplement.

“Subsidiary” means, with respect to any Person (herein referred to as the “parent”), any corporation, partnership, limited liability company, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned, controlled or held by the parent or (b) that
is, at the time any determination is being made, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary Guarantors” means, collectively, the Franchise Holder, Wendy’s Properties and the Additional Securitization Entities.

“Successor Manager” means any successor to the Manager selected by the Control Party (at the direction of the Controlling Class Representative) upon the resignation or removal of the Manager pursuant to the terms of the Management Agreement.

“Successor Manager Transition Expenses” means all costs and expenses incurred by a Successor Manager in connection with the termination, removal and replacement of the Manager under the Management Agreement.

“Successor Servicer Transition Expenses” means all costs and expenses incurred by a successor Servicer in connection with the termination, removal and replacement of the Servicer under the Servicing Agreement.

“Supplement” means a supplement to the Base Indenture complying (to the extent applicable) with the terms of Article XIII of the Base Indenture.

“Supplemental Management Fee” means for each Weekly Allocation Date with respect to any Quarterly Collection Period the amount, approved in writing by the Control Party acting at the direction of the Controlling Class Representative, by which, with respect to any Quarterly Collection Period, (i) the sum of the expenses incurred or other amounts charged by the Manager since the beginning of such Quarterly Collection Period in connection with the performance of the Manager’s obligations under the Management Agreement and the amount of any current or projected Tax Payment Deficiency, if applicable, exceed (ii) the Weekly Management Fees received and to be received by the Manager on such Weekly Allocation Date and each preceding Weekly Allocation Date with respect to such Quarterly Collection Period.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.
“Tax” means (i) any U.S. federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, environmental, customs duties, capital stock, profits, documentary, property, franchise, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, or other tax of any kind whatsoever, including any interest, penalty, fine, assessment or addition thereto and (ii) any transferee liability in respect of any items described in clause (i) above.

“Tax Lien Reserve Amount” means any funds contributed by TWC or a Subsidiary thereof to satisfy Liens filed by the IRS pursuant to Section 6323 of the Code against any Securitization Entity.

“Tax Opinion” means an opinion of tax counsel of nationally recognized standing in the United States experienced in such matters to be delivered in connection with the issuance of each new Series of Notes to the effect that, for U.S. federal income tax purposes, (a) the issuance of such new Series of Notes will not affect adversely the U.S. federal income tax characterization of any Series of Notes Outstanding or Class thereof that was (based upon an Opinion of Counsel) treated as debt at the time of their issuance, (b) each Securitization Entity organized in the United States in existence as of the date of the delivery of such opinion (other than any Additional Securitization Entity that is a corporation) (i) will as of the date of issuance be treated as a disregarded entity for U.S. federal income tax purposes and (ii) will not as of the date of issuance be classified as a corporation or as an association or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes and (c) such new Series of Notes will as of the date of issuance be treated as debt for U.S. federal income tax purposes.

“Tax Payment Deficiency” means any Tax liability of TWC (or, if TWC is not the taxable parent entity of any Securitization Entity, such other taxable parent entity) (including Taxes imposed under U.S. Treasury regulations Section 1.1502-6 (or any similar provision of state, local or foreign law)) attributable to the operations of the Securitization Entities that the Manager determines cannot be satisfied by TWC (or such other taxable parent entity) from its available funds.

“Trademarks” means all United States, state and non-U.S. trademarks, service marks, trade names, trade dress, designs, logos, slogans and other indicia of source or origin, whether registered or unregistered, registrations and pending applications to register the foregoing, internet domain names, and all goodwill of any business connected with the use of or symbolized thereby.

“Trade Secrets” has the meaning set forth in the definition of “Intellectual Property.”

“Tranche” means, with respect to any Class of Notes, any one of the tranches of Notes of such Class as specified in the applicable Series Supplement.

“Trust Officer” means any officer within the corporate trust department of the Trustee, including any Vice President, Assistant Vice President or Assistant Treasurer of the Corporate Trust Office, or any trust officer, or any officer customarily performing functions similar to those
performed by the person who at the time will be such officers, in each case having direct responsibility for the administration of this Indenture, and also any officer to whom any corporate trust matter is referred because of his knowledge of and familiarity with a particular subject.

“Trustee” means the party named as such in the Indenture until a successor replaces it in accordance with the applicable provisions of the Indenture and thereafter means the successor serving thereunder. On the Closing Date, the Trustee shall be Citibank, N.A., a national banking association.

“Trustee Accounts” has the meaning set forth in Section 5.8(a) of the Base Indenture.

“TWC” means The Wendy’s Company.

“UCC” means the Uniform Commercial Code as in effect from time to time in the specified jurisdiction or any applicable jurisdiction, as the case may be.

“Uncertificated Note” means any Note issued in uncertificated, fully registered form evidenced by entry in the Note Register.

“United States” or “U.S.” means the United States of America, its fifty states and the District of Columbia.

“Unrestricted Cash” means as of any date, unrestricted cash and Eligible Investments owned by the Non-Securitization Entities that are not, and are not presently required under the terms of any agreement or other arrangement binding any Non-Securitization Entity on such date to be, (a) pledged to or held in one or more accounts under the control of one or more creditors of any Non-Securitization Entity or (b) otherwise segregated from the general assets of the Non-Securitization Entities, in one or more special accounts or otherwise, for the purpose of securing or providing a source of payment for Indebtedness or other obligations that are or from time to time may be owed to one or more creditors of the Non-Securitization Entities. It is agreed that cash and Eligible Investments held in ordinary deposit or security accounts and not subject to any existing or contingent restrictions on transfer by any Non-Securitization Entity will not be excluded from Unrestricted Cash by reason of setoff rights or other Liens created by law or by applicable account agreements in favor of the depositary institutions or security intermediaries.

“Unsecured Debenture Indenture” means the indenture dated as of December 14, 1995 by and between Wendy’s, as issuer, and The Huntington National Bank, as trustee, as amended, with respect to the Unsecured Debentures.

“Unsecured Debentures” means the 7.00% Debentures due December 15, 2025.

“U.S. Dollars” or “$” refers to lawful money of the United States of America.

“Variable Funding Note Purchase Agreement” means any note purchase agreement entered into by the Master Issuer in connection with the issuance of Class A-1 Notes that is
identified as a “Variable Funding Note Purchase Agreement” in the applicable Series Supplement.

“Warm Back-Up Management Duties” has the meaning set forth in the Back-Up Management Agreement.

“Warm Back-Up Management Trigger Event” means the occurrence and continuation of (i) any event that causes a Cash Trapping Period to begin and that continues for at least two (2) consecutive Quarterly Calculation Dates or (ii) a Rapid Amortization Event, in each case, that has not been waived or approved by the Controlling Class Representative, provided that any Rapid Amortization Event pursuant to clause (ii) of the definition thereof shall not be a Warm Back-Up Management Trigger Event unless such Rapid Amortization Event has not been cured within six (6) months from the date of such Rapid Amortization Event.

“Weekly Allocation Date” means the last Business Day of the week following the last day of each Weekly Collection Period or, upon not less than two (2) Business Days’ notice to the Trustee, such other Business Day during such week that has been designated by the Manager and consented to by the Trustee (such consent not to be unreasonably withheld).

“Weekly Collection Period” means each weekly period commencing at 12:00 a.m. (Eastern time) on each Monday and ending at 11:59:59 p.m. (Eastern time) on each Sunday except that the first such period will be from 12:00 a.m. (Eastern time) on the Cut-Off Date to 11:59:59 p.m. (Eastern time) on June 1, 2015.

“Weekly Management Fee” has the meaning set forth in the Management Agreement.

“Weekly Manager’s Certificate” has the meaning specified in Section 4.1(a) of the Base Indenture.

“Welfare Plan” means any “employee welfare benefit plan” as such term is defined in Section 3(1) of ERISA.

“Wendy’s” means Wendy’s International, LLC, an Ohio limited liability company, and its successors and assigns.

“Wendy’s Brand” means the Wendy’s® name and Wendy’s Trademarks, whether alone or in combination with other words or symbols, and any variations or derivatives of any of the foregoing.


“Wendy’s Entities” or “Non-Securitization Entity” mean Wendy’s and each of its Affiliates (including each of their Subsidiaries but excluding any Securitization Entity) now existing or hereafter created.
“Wendy’s IP License” means the Wendy’s IP License, dated as of the Closing Date, between the Franchise Holder, as licensor, and Wendy’s, as licensee, as amended, supplemented or otherwise modified from time to time.

“Wendy’s Mobile Apps” means all consumer-facing Wendy’s Brand mobile applications, including those contributed to the Franchise Holder on the Closing Date or acquired by the Franchise Holder following the Closing Date.

“Wendy’s Properties” means Wendy’s Properties, LLC, a Delaware limited liability company, and its successors and assigns.

“Wendy’s System” means the system of restaurants operating under the Wendy’s Brand.

“Wendy’s Systemwide Sales” means, with respect to any Quarterly Calculation Date, global Gross Sales (which will be permitted to include estimated Gross Sales of up to 5.0% of the total) of the Franchised Restaurants and Contributed Restaurants for the four Quarterly Fiscal Periods ended immediately prior to such Quarterly Calculation Date.

“Working Capital Reserve Amount” means, as of any date of determination, an amount determined by the Manager to be retained in a Concentration Account for working capital expenses not to exceed in the aggregate for all Concentration Accounts the greater of (i) $15,000,000 and (ii) 2.0% of the aggregate Retained Collections for the preceding four (4) Quarterly Collection Periods. For the avoidance of doubt, the Working Capital Reserve Amount is exclusive of the Contributed Restaurant Working Capital Reserve Amount.

“Workout Fees” has the meaning set forth in the Servicing Agreement.
ANNEX B

UNSECURED DEBENTURE INDENTURE DEFINITIONS

“Attributable Value” in respect of any Sale and Lease-Back Transaction means, as of the time of determination, the lesser of (i) the sale price of the Principal Property so leased multiplied by a fraction the numerator of which is the remaining portion of the base term of the lease included in such Sale and Lease-Back Transaction and the denominator of which is the base term of such lease, and (ii) the total obligation (discounted to present value at the highest rate of interest specified by the terms of any series of Securities then Outstanding compounded semi-annually) of the lessee for rental payments (other than amounts required to be paid on account of property taxes as well as maintenance, repairs, insurance, water rates and other items which do not constitute payments for property rights) during the remaining portion of the base term of the lease included in such Sale and Lease-Back Transaction.

“Domestic Subsidiary” means any Subsidiary which owns any Principal Property.

“Indebtedness” of any person means (without duplication), with respect to any person, (i) every obligation of such person for money borrowed, (ii) every obligation of such person evidenced by bonds, debentures, notes or other similar instruments, (iii) every reimbursement obligation of such person with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of such person and (iv) every obligation of the type referred to in clauses (i) through (iii) of another person the payment of which such person has guaranteed or is responsible or liable for, directly or indirectly, as obligor, guarantor or otherwise (but only, in the case of clause (iv), to the extent such person has guaranteed or is responsible or liable for such obligations).

“Lien” means, with respect to any property or assets, any mortgage or deed of trust, pledge, hypothecation, assignment, security interest, lien, encumbrance, or other security arrangement of any kind or nature whatsoever on or with respect to such property or assets (including any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“Original Issue Discount Security” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 502 of the Unsecured Debenture Indenture.

“Outstanding”, when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under the Unsecured Debenture Indenture, except:

(1) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
(2) Securities for whose payment or redemption money in the necessary amount has been heretofore deposited with the Trustee or any paying agent (other than Wendy’s) in trust or set aside and segregated in trust by Wendy’s (if Wendy’s shall act as its own paying agent) for the holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to the Unsecured Debenture Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Securities as to which defeasance (as specified in Section 1302 of the Unsecured Debenture Indenture) has been effected pursuant to Section 1302 of the Unsecured Debenture Indenture; and

(4) Securities which have been paid pursuant to Section 306 of the Unsecured Debenture Indenture or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to the Unsecured Debenture Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of Wendy’s;

provided, however, that in determining whether the holders of the requisite principal amount of the Outstanding Securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date, (A) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the maturity thereof to such date pursuant to Section 502 of the Unsecured Debenture Indenture, (B) if, as of such date, the principal amount payable at the stated maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 301 of the Unsecured Debenture Indenture, (C) the principal amount of a Security denominated in one or more foreign currencies or currency units which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 301 of the Unsecured Debenture Indenture, of the principal amount of such Security (or, in the case of a Security described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) Securities owned by Wendy’s or any other obligor upon the Securities or any affiliate of Wendy’s or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not Wendy’s or any other obligor upon the Securities or any affiliate of Wendy’s or of such other obligor.
“Principal Property” means all restaurant or related equipment and all real property owned by Wendy’s or a Subsidiary constituting all or part of any restaurant located within one of the 50 states of the United States or the District of Columbia.

“Sale and Lease-Back Transaction” of any person means an arrangement with any lender or investor or to which such lender or investor is a party providing for the leasing by such person of any Principal Property that, more than 12 months after (i) the completion of the acquisition, construction, development or improvement of such Principal Property or (ii) the placing in operation of such Principal Property or (iii) such Principal Property as so constructed, developed or improved, has been or is being sold, conveyed, transferred or otherwise disposed of by such person to such lender or investor or to any person to whom funds have been or are to be advanced by such lender on the security of such Principal Property. The term of such arrangement, as of any date (the “measurement date”), shall end on the date of the last payment of rent or any other amount due under such arrangement on or prior to the first date after the measurement date on which such arrangement may be terminated by the lessee, at its sole option, without payment of a penalty.

“Securities” means unsecured debentures, notes or other evidence of indebtedness, authorized to be issued from time to time by Wendy’s, and more particularly means any Securities authenticated and delivered under the Unsecured Debenture Indenture.

“Subsidiary” means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by Wendy’s or by one or more other Subsidiaries, or by Wendy’s and one or more other Subsidiaries. For the purposes of this definition, “voting stock” means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.
DESCRIPTION OF THE REGISTRANT’S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934

The following summary describes the securities of The Wendy’s Company (the “Company,” “we,” “us,” or “our”) that are registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, and the applicable provisions of our amended and restated certificate of incorporation (the “certificate of incorporation”), our amended and restated by-laws (the “by-laws”) and Delaware law. The following summary does not purport to be complete and is subject to, and is qualified in its entirety by reference to, such applicable provisions of our certificate of incorporation, our by-laws and Delaware law.

Description of Capital Stock

Our authorized capital stock currently consists of 1,500,000,000 shares of common stock, par value $0.10 per share (the “common stock”), and 100,000,000 shares of preferred stock, par value $0.10 per share (the “preferred stock”).

Common Stock

Holders of our common stock are entitled to one vote for each share held of record on all matters on which stockholders are entitled to vote, including the election of directors. The outstanding shares of common stock are fully paid and nonassessable. Additional authorized but unissued shares of common stock may be issued by our board of directors without the approval of our stockholders.

Dividend Rights

Our by-laws provide that our board of directors, from time to time, may determine whether any, and, if any, what part of the net profits of the Company, or of its net assets in excess of its capital, available therefor pursuant to law and our certificate of incorporation, shall be declared as dividends on the stock of the Company.

Voting Rights

The holders of our common stock possess voting power for the election of directors and for all other corporate purposes. Each share of common stock is entitled to one vote on each matter properly brought before the stockholders for their vote. Holders of common stock are not entitled to cumulate votes in director elections.

Except as otherwise provided by law, as addressed in “Amendment of Certificate of Incorporation and By-laws” below or with respect to elections of directors, at any meeting of the Company's stockholders at which a quorum is present, the affirmative vote of the holders of a majority in voting power present in person or represented by proxy and entitled to vote shall be required to effect action by the stockholders. At any meeting for the election of directors at which a quorum is present, each nominee for director will be elected by the affirmative vote of a majority of the votes cast with respect to that nominee’s election; provided that, at any Contested Election (as such term is defined in our by-laws), directors will be elected by the vote of a plurality of the votes cast.

Liquidation Rights

In the event of the liquidation, dissolution or winding up of the Company, the prior rights of creditors and the aggregate liquidation preference of any preferred stock then outstanding must first be satisfied in full. Following such payments, the holders of our common stock will be entitled to receive their ratable and proportionate share of any remaining assets of the Company.

Other Rights

Holders of our common stock have no subscription, redemption, conversion or exchange rights. No sinking fund provisions are applicable to our common stock. Holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that the Company may designate and issue in the future.
Pre-emptive Rights

Under Delaware law, a stockholder is not entitled to pre-emptive rights to subscribe for additional issuances of common stock or any security convertible into such stock in proportion to the shares that are owned unless there is a provision to the contrary in our certificate of incorporation. Our certificate of incorporation does not provide that the stockholders are entitled to pre-emptive rights. Under our certificate of incorporation, the Company is prohibited from issuing its preferred stock to affiliates of the Company, unless offered ratably to the holders of its common stock, subject to an exception in the case that the Company is in financial distress and the reliance on the exception is approved by the audit committee of the board of directors.

Listing

Our common stock is listed on The Nasdaq Stock Market under the trading symbol “WEN”.

Transfer Agent and Registrar

The transfer agent and registrar for the Company’s common stock is American Stock Transfer & Trust Company.

Certain Anti-Takeover and other Provisions of our Certificate of Incorporation

Certain provisions in our certificate of incorporation are intended to discourage or delay a hostile takeover of control of the Company. These provisions, in general terms, provide (i) that the number of directors shall not be less than seven nor more than 15, with the exact number to be determined from time to time by a majority of the board of directors then in office; (ii) that vacancies on the board of directors resulting from an increase in size, removal of directors or otherwise may be filled only by a majority of the remaining directors then in office; (iii) certain advance notice procedures for stockholder proposals and director nominations; (iv) certain advance notice procedures for stockholders wishing to utilize the “proxy access” provisions to nominate candidates for election as a director at an annual stockholders’ meeting; and (v) certain limitations and requirements on the ability of stockholders to call special meetings. Each of the provisions has particular anti-takeover effects associated with it, and these effects together with a more detailed description of each provision are set forth below. In addition, the anti-takeover provisions are interrelated and have cumulative anti-takeover effects.

The principal purpose of these provisions is to provide a measure of assurance that a stockholder or group of stockholders owning a controlling interest in the Company’s stock does not exercise its voting power in a manner which our board of directors believes would be to the detriment of the remaining stockholders. The provisions are further intended to make it more difficult for a hostile or unfriendly party to obtain control over the Company by replacing the board of directors.

Size of the Board of Directors and Filling Vacancies on the Board of Directors

Our certificate of incorporation states that our board of directors must consist of not less than seven nor more than 15 members; provided, however, that the maximum number may be increased to reflect the rights of holders of preferred stock to elect directors in certain circumstances. The exact number of directors is to be fixed by a majority vote of the directors then in office and such authority of the board of directors is exclusive. Under our certificate of incorporation, vacancies that may occur between annual meetings, including vacancies caused by an increase in the number of directors, may be filled only by a majority of the remaining directors then in office, even if less than a quorum, subject to the rights of holders of any class or series of preferred stock to elect directors. In addition, our certificate of incorporation provides that any new director elected to fill a vacancy on the board of directors will serve for the remainder of the full term of the director for which the vacancy occurred and that no decrease in the number of directors shall shorten the term of any incumbent director. The purpose of including these provisions with respect to the size of the board of directors and the filling of vacancies in our certificate of incorporation is to prevent the elimination of such provisions through an amendment to our by-laws by a stockholder or group of stockholders owning or controlling a substantial voting block that would permit stockholders directly to increase the size of the board of directors and to fill vacancies resulting therefrom or otherwise, and thereby enable such stockholder or group of stockholders to elect its own nominees to the vacancies. Such an amendment to our by-laws would be possible because, under Delaware law, stockholders may amend our by-laws without prior approval of our board of directors, whereas our certificate of incorporation may be amended only if our board of directors first approves and recommends such action to stockholders.
Advance Notice Requirements for Stockholder Proposals and Director Nominations

Our certificate of incorporation establishes advance notice procedures for:

• stockholders to nominate candidates for election as a director; and

• stockholders to propose topics at annual stockholders’ meetings.

Stockholders must notify the secretary of the Company in writing prior to the meeting at which the matters are to be acted upon or the directors are to be elected. The notice must contain the information specified in our certificate of incorporation, including, but not limited to, information with respect to the beneficial ownership of our stock by the proposing stockholder and its associates and any voting or similar agreement the proposing stockholder has entered into with respect to our stock. To be timely, the notice must be received at our principal executive office not less than 90 days nor more than 120 days prior to the first anniversary of the date of the prior year’s annual meeting of stockholders. If the annual meeting is advanced by more than 30 days, or delayed by more than 60 days, from the anniversary of the prior year’s annual meeting or no annual meeting of stockholders was held during the prior year, to be timely, notice by the stockholder must be received not earlier than the 120th day prior to the annual meeting and not later than the later of the 90th day prior to the annual meeting and the 10th day following the day on which we notify stockholders of the date of the annual meeting by mail or other public disclosure. In the case of a special meeting of stockholders called to elect directors, the stockholder notice must be received not earlier than the 120th day prior to the special meeting and not later than the later of the 90th day prior to the special meeting and the 10th day following the day on which we notify stockholders of the date of the special meeting by mail or other public disclosure. These provisions may preclude some stockholders from bringing matters before the stockholders at an annual or special meeting or from nominating candidates for director at an annual or special meeting.

Proxy Access

Our certificate of incorporation provides that a stockholder or a group of stockholders meeting certain conditions may nominate and include up to a specified number of director nominees in our proxy materials for an annual stockholders’ meeting using “proxy access” provisions in our certificate of incorporation. These provisions allow a stockholder, or a group of up to 25 stockholders, to nominate up to 20%, or 25% (if the number of directors serving on the Board of Directors is less than ten), of the number of directors in office (or the closest whole number of directors that is below 20% or 25%, as applicable) for inclusion in our proxy statement if the stockholder or group of stockholders has owned continuously for at least three years a number of shares equal to at least three percent of our outstanding common stock. Stockholders must notify the secretary of the Company in writing prior to the meeting at which the directors are to be elected. The notice must contain the information specified in our certificate of incorporation. To be timely, the notice must be received by the secretary of the Company at our principal executive office no earlier than 150 days and no later than 120 days prior to the first anniversary of the filing date of the Company’s definitive proxy statement for the prior year’s annual meeting of stockholders. If the annual meeting is advanced by more than 30 days, or delayed by more than 60 days after the first anniversary of the prior year’s annual meeting, to be timely, notice by the stockholder must be received no earlier than 120 days prior to such annual meeting and no later than the later of 90 days prior to such annual meeting and the 10th day following the day on which the notice of such annual meeting was made by mail or other public disclosure.

Special Meetings of Stockholders

Our certificate of incorporation provides that special meetings of stockholders may be called only (i) at the direction of (a) a majority of our entire board of directors, (b) the chairman of our board of directors, (c) the vice chairman of our board of directors or (d) our chief executive officer or (ii) by our secretary at the written request of holders of record of at least 20% in voting power of our outstanding capital stock entitled to vote on the matter or matters to be brought before the proposed special meeting as of the record date fixed in accordance with our certificate of incorporation, subject to the notice, information and other requirements set forth in our certificate of incorporation. These provisions may preclude some stockholders from calling a special meeting or bringing matters before the stockholders at a special meeting.
Amendment of Certificate of Incorporation and By-laws

Our certificate of incorporation may be amended in accordance with Delaware law. Our by-laws may be altered, amended or repealed, or new by-laws adopted, by (i) the affirmative vote of stockholders holding not less than a majority of the shares entitled to vote on the election of directors, or (ii) the affirmative vote of not less than two-thirds of the entire board of directors that would then be in office if no vacancies existed.

Preferred Stock

Our board of directors has the authority, without further action by the stockholders, to issue up to 100,000,000 shares of preferred stock in one or more series and to fix the designations, powers, preferences, privileges and relative participation, optional or special rights and the qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption and liquidation preferences, any or all of which may be greater than the rights of our common stock. There are no shares of preferred stock outstanding currently outstanding.
This Third Amendment to Management Agreement (the “Amendment”), dated as of January 3, 2021, is made pursuant to that certain Management Agreement dated as of June 1, 2015, (as previously amended by the First Amendment to Management Agreement, dated as of January 17, 2018 and the Second Amendment to Management Agreement, dated as of June 26, 2019, the “Agreement”), among Wendy’s Funding, LLC, a Delaware limited liability company (the “Master Issuer”), Wendy’s International, LLC, an Ohio limited liability company (the “Manager”), the Securitization Entities party thereto, and Citibank, N.A., as trustee (the “Trustee”).

Witnesseth:

Whereas, the Master Issuer, the Manager, the Securitization Entities and the Trustee have entered into the Agreement;

Whereas, Section 8.3 of the Agreement provides, among other things, that the provisions of the Agreement may, from time to time, be amended, in writing, upon the written consent of the Trustee (acting at the direction of the Control Party), the Securitization Entities and the Manager; provided that any amendment that would materially adversely affect the interest of the Noteholders shall require the consent of the Control Party, which consent shall not be unreasonably withheld or delayed;

Whereas, the execution and delivery of this Amendment has been duly authorized and all conditions and requirements necessary to make this Amendment a valid and binding agreement have been duly performed and complied with.

Whereas, the Master Issuer and the Securitization Entities wish to amend the Agreement as set forth herein;

Whereas, the Control Party has directed the Trustee to consent to the amendments set forth herein;

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

Section 1. Defined Terms. Unless otherwise amended by the terms of this Amendment, terms used in this Amendment shall have the meanings assigned in the Agreement.

Section 2. Amendments.¹

2.1. The Agreement is hereby amended to amend and restate Section 5.6 thereof in its entirety as follows:

¹ All modifications to existing provisions of the Agreement are indicated herein by adding the inserted text (indicated in the same manner as the following example: inserted text, deleted text).
“Section 5.6 Competition. The Manager shall not, and shall not permit Non-Securitization Entities to, purchase Branded Restaurants or other assets similar to the Contributed Assets with the intention of competing with the Securitization Entities; provided the foregoing will not limit the Manager or the Non-Securitization Entities from (i) operating Retained Restaurants, Reacquired Restaurants or any other asset intended at the time of acquisition of such asset to be contributed to the Securitization Entities, or (ii) franchising Branded Restaurants in jurisdictions outside of the United States so long as the relevant Non-Securitization Entities pay the Franchise Holder or other applicable Securitization Entity an arm’s length royalty for use of the Securitization IP in connection therewith; provided, further, that the foregoing will not limit the Manager or the Non-Securitization Entities from operating any brand prior to such brand becoming a Future Brand.”

Section 3. Effectiveness of Amendment. Upon the date hereof (i) the Agreement shall be amended in accordance herewith, (ii) this Amendment shall form part of the Agreement for all purposes and (iii) the parties and each Noteholder shall be bound by the Agreement, as so amended. Except as expressly set forth or contemplated in this Amendment, the terms and conditions of the Agreement shall remain in place and shall not be altered, amended or changed in any manner whatsoever, except by any further amendment to the Agreement made in accordance with the terms of the Agreement, as amended by this Amendment.

Section 4. Representations and Warranties. Each party hereto represents and warrants to each other party hereto that this Amendment has been duly and validly executed and delivered by such party and constitutes its legal, valid and binding obligation, enforceable against such party in accordance with its terms.

Section 5. Binding Effect. This Amendment shall inure to the benefit of and be binding on the respective successors and assigns of the parties hereto, each Noteholder and each other Secured Party.

Section 6. Execution in Counterparts. This Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument.

Section 7. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 8. Trustee. The Trustee assumes no responsibility for the correctness of the recitals contained herein, which shall be taken as the statements of the Securitization Entities and the Trustee shall not be responsible or accountable in any way whatsoever for or with respect to the validity, execution or sufficiency of this Amendment and makes no representation with respect thereto. In entering into this Amendment, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct of or affecting the liability of or affording protection to the Trustee.

[Signature Pages to Follow]
In Witness Whereof, the parties hereto have caused this Third Amendment to Management Agreement to be executed and delivered by their duly authorized officers as of the date hereof.

WENDY'S INTERNATIONAL, LLC, as Manager

By: /s/ Gavin P. Waugh  
Name: Gavin P. Waugh  
Title: Vice President and Treasurer

WENDY'S SPV GUARANTOR, LLC, as a Securitization Entity

By: /s/ Gavin P. Waugh  
Name: Gavin P. Waugh  
Title: Vice President and Treasurer

WENDY'S FUNDING, LLC, as Master Issuer

By: /s/ Gavin P. Waugh  
Name: Gavin P. Waugh  
Title: Vice President and Treasurer

QUALITY IS OUR RECIPE, LLC, as a Securitization Entity

By: /s/ Gavin P. Waugh  
Name: Gavin P. Waugh  
Title: Vice President and Treasurer

-4-
WENDY'S PROPERTIES, LLC, as a Securitization Entity

By: /s/ Gavin P. Waugh
Name: Gavin P. Waugh
Title: Vice President and Treasurer

-5-
CITIBANK, N.A., in its capacity as Trustee

By: /s/ Jacqueline Suarez

Name: Jacqueline Suarez
Title: Senior Trust Officer
CONSENT OF CONTROL PARTY AND SERVICER:

In accordance with Section 2.4 and Section 8.4 of the Servicing Agreement, Midland Loan Services, a division of PNC Bank, National Association, as Control Party (in accordance with Section 8.3 of the Management Agreement) and as Servicer hereby consents to the execution and delivery by the Master Issuer, the Securitization Entities and the Trustee of, and as Control Party hereby directs the Trustee to execute and deliver, this First Amendment to Management Agreement.

MIDLAND LOAN SERVICES,
A DIVISION OF PNC BANK, NATIONAL ASSOCIATION

/s/ David Spotts

Name: David Spotts

Title:
September 28, 2020

Via Email: kevin@vasconi.net
Kevin Vasconi

Dear Kevin:

On behalf of The Wendy’s Company, I am delighted to confirm the offer of employment for the position of Chief Information Officer, reporting directly to the Chief Executive Officer. For quick reference, a few key points are also outlined in the attached term sheet. We believe you will contribute to the Company’s overall success and trust that Wendy’s will provide you with the career environment and opportunities you seek. We look forward to you joining the team on October 19, 2020.

COMPENSATION AND BENEFITS. The following is a summary of your compensation and benefits, but it does not contain all the details. The complete understanding between the Company and you regarding your compensation and benefits is governed by legal plan documents. If there is a discrepancy between the information in this letter and the legal plan documents, the legal plan documents will prevail. All forms of compensation referenced in this letter are subject to all applicable deductions and withholdings.

1. **Base Salary.** Your starting base annualized salary will be $600,000, paid on a bi-weekly basis.

2. **Annual Incentive.** You will be eligible to receive an incentive under the terms and conditions of the incentive plan provided to similarly situated officers of the Company, which currently provides for a target bonus of 100% of your annual base salary, provided performance measures set by the Company are achieved. Any bonus to which you are entitled in your initial year of employment will be prorated based on the number of full calendar months you are employed from your start date.

3. **Benefits.** You shall be entitled to participate in any retirement, fringe benefit, or welfare benefit plan of the Company on the same terms as provided to similarly situated officers of the Company, including any plan providing prescription, dental, disability, employee life, group life, accidental death, travel accident insurance benefits and car allowance program that the Company may adopt for the benefit of similarly situated officers, in accordance with the terms of such plan. You will be eligible to participate in medical, dental, vision and life insurance programs after 30 days of service.
4. **Executive Physical.** Wendy’s wants to ensure that its leaders are provided with comprehensive health exams to help them maintain their health and peak performance. Wendy’s provides all officers of the company with the opportunity to receive an Executive Physical and will cover up to $4,000 for an annual executive physical exam.

5. **Vacation.** You will be eligible for four weeks of vacation per year.

6. **Annual Equity Awards.** Commencing in 2021, you will be eligible to receive awards under the terms and conditions of the Company’s annual long-term incentive award program in effect for other similarly situated senior executives of the Company, subject to approval by the Performance Compensation Subcommittee (the “Subcommittee”). The target value of your 2021 Long-Term Incentive award is $750,000 and future awards will be determined in consideration of competitive market practices and individual performance and contributions.

7. **One-Time Equity Award.** You will be eligible to receive a one-time award of restricted stock units, subject to Subcommittee approval, with an award value of $1,000,000 upon commencement of your active employment. The restricted stock unit award will vest in full on the fourth anniversary of the grant. You will also be eligible to receive a one-time award of non-incentive stock options, subject to Subcommittee approval, with an award value of $1,000,000 upon commencement of your active employment. The stock option award will vest pro-rata over a three year period commencing on the date of grant, with one-third of the award vesting on each of the first three anniversaries of the date of grant.

8. **Relocation Assistance.** You are eligible for relocation assistance, and may elect to have your relocation expenses: (i) paid in a lump sum in the amount of $100,000, less any and all applicable taxes and payable within the first 30 days of your employment, or (ii) covered by the Company through its third party service provider, Cartus Corporation, subject to the provisions outlined in the Relocation 2 - Homeowners policy, a copy of which has been provided to you.

9. **Severance.** The Company’s Executive Severance Pay Policy provides for certain pay and benefits in the event the Company terminates your employment without cause or within twelve (12) months following a change in control. Such pay and benefits would be provided in exchange for your execution of a Severance Agreement and Release in the form approved by the Company, including a general release of any and all claims concerning your employment and termination in favor of the Company. You will not be entitled to severance in the event the Company terminates your employment for cause or in the event you voluntarily resign or terminate your employment with the Company.
In accepting this offer, you agree to the attached Non-Compete and Confidentiality Addendum. Please note that this offer is contingent upon its successful outcome.

We look forward to you becoming a part of the Wendy’s team and are confident that you can have a long-term, positive impact on our business. Nonetheless, please understand that Wendy’s is an at-will employer. That means that either you or Wendy’s are free to end the employment relationship at any time, with or without notice or cause. This offer letter, including all attachments, is governed by Ohio law and will be binding upon and enforceable by the Company’s successors and assigns, if applicable.

Please review the information contained in this letter. Once you have had an opportunity to consider this letter, and provided you wish to accept the position on the terms outlined, please return an executed copy of this letter to me by October 9, 2020.

I’m excited about the prospect of working with you on the Wendy’s leadership team. Should you have any questions, please do not hesitate to contact me.

Yours truly,

/s/ M. Coley O’Brien
THE WENDY’S COMPANY
M. Coley O’Brien
Chief People Officer

Accepted and Agreed:

/s/ Kevin Vasconi
Kevin Vasconi

October 9, 2020
Date
<table>
<thead>
<tr>
<th>PROVISION</th>
<th>TERM</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Salary</td>
<td>$600,000/year</td>
<td>Reviewed annually.</td>
</tr>
<tr>
<td>Annual Incentive</td>
<td>Target annual bonus percentage equal to 100% of base salary</td>
<td>Company performance assessed for each fiscal year relative to pre-established performance measures.</td>
</tr>
<tr>
<td>Annual Equity Awards</td>
<td>2021 Target Equity Award Value of $750,000</td>
<td>Commencing in 2021, during your employment you are eligible to be granted awards under the Wendy’s annual long-term award program in effect for other executives of Wendy’s.</td>
</tr>
<tr>
<td>One-Time Equity Award</td>
<td>Value of $2,000,000</td>
<td>You are eligible to receive, subject to Subcommittee approval, and upon commencement of your employment: (1) a one-time award of restricted stock units with an award value of $1,000,000. The restricted stock unit award will vest in full on the fourth anniversary of the grant. AND (2) a one-time award of stock options, with an award value of $1,000,000. The stock option award will vest pro-rata over a three year period, with 1/3 of the award vesting on each of the first three anniversaries of the date of grant.</td>
</tr>
<tr>
<td>Benefits/Car Allowance</td>
<td></td>
<td>Benefits as are generally made available to other senior executives of Wendy’s, including participation in Wendy’s health/medical and insurance programs and $16,800/year car allowance, paid bi-weekly.</td>
</tr>
<tr>
<td>Vacation</td>
<td>Four weeks per year</td>
<td></td>
</tr>
<tr>
<td>Severance</td>
<td>Executive Severance Policy</td>
<td>Position covered under Executive Severance Policy.</td>
</tr>
</tbody>
</table>
CONFIDENTIAL INFORMATION. You agree that you will not at any time during your employment and anytime thereafter, divulge, furnish, or make known or accessible to, or use for the benefit of anyone other than Wendy’s, its subsidiaries affiliates and their respective officers, directors and employee, any information of a confidential nature relating in any way to the business of Wendy’s or its subsidiaries or affiliates, or any of their respective franchisees, suppliers or distributors. You further agree that you are not subject to any agreement that would restrict you from performing services to Wendy’s and that you will not disclose to Wendy’s or use on its behalf, any confidential information or material that is the property of a former employer or third party.

NONCOMPETE/NONSOLICITATION/EMPLOYEE NO-HIRE. You acknowledge that you will be involved, at the highest level, in the development, implementation, and management of Wendy’s business strategies and plans, including those which involve Wendy’s finances, marketing and other operations, and acquisitions and, as a result, you will have access to Wendy’s most valuable trade secrets and proprietary information. By virtue of your unique and sensitive position, your employment by a competitor of Wendy’s represents a material unfair competitive danger to Wendy’s and the use of your knowledge and information about Wendy’s business, strategies and plans can and would constitute a competitive advantage over Wendy’s. You further acknowledge that the provisions of this section are reasonable and necessary to protect Wendy’s legitimate business interests.

You agree that during your employment with Wendy’s and either (x) in the event you resign or your employment with Wendy’s is terminated “without cause”, for a period of eighteen (18) months following such termination, or (y) in the event your employment with Wendy’s is terminated for cause, for a period of twelve (12) months following such termination:

(i) in any state or territory of the United States (and the District of Columbia) or any country where Wendy’s maintains restaurants, you will not engage or be engaged in any capacity, “directly or indirectly” (as defined below), except as a passive investor owning less than a two percent (2%) interest in a publicly held company, in any business or entity that is competitive with the business of Wendy’s or its affiliates. This restriction includes any business engaged in drive through or food service restaurant business where hamburgers, chicken sandwiches or entree salads are predominant products (15% or more, individually or in the aggregate, of food products not including beverages). Notwithstanding anything to the contrary herein, this restriction shall not prohibit you from accepting employment, operating or otherwise becoming associated with a franchisee of Wendy’s, any of its affiliates or any subsidiary of the foregoing, but only in connection with activities associated with the operation of such a franchise or activities that otherwise are not encompassed by the restrictions of this paragraph, subject to any confidentiality obligations contained herein;

(ii) you will not, directly or indirectly, without Wendy’s prior written consent, hire or cause to be hired, solicit or encourage to cease to work with Wendy’s or any of its subsidiaries or affiliates, any person who is at the time of such activity, or who was within the six (6) month period preceding such activity, an employee of Wendy’s or any of its subsidiaries or affiliates at the level of director or any more senior level or a consultant under contract with Wendy’s or any of its subsidiaries or affiliates and whose primary client is such entity or entities; and

(iii) you will not, directly or indirectly, solicit, encourage or cause any franchisee or supplier of Wendy’s or any of its subsidiaries or affiliates to cease doing business with Wendy’s or
subsidiary or affiliate, or to reduce the amount of business such franchisee or supplier does with Wendy’s or such subsidiary or affiliate.

For purposes of this section, “directly or indirectly” means in your individual capacity for your own benefit or as a shareholder, lender, partner, member or other principal, officer, director, employee, agent or consultant of or to any individual, corporation, partnership, limited liability company, trust, association or any other entity whatsoever; provided, however, that you may own stock in Wendy’s and may operate, directly or indirectly, Wendy’s restaurants as a franchisee without violating sections (i) or (iii).

If any competent authority having jurisdiction over this Addendum determines that any of the provisions is unenforceable because of the duration or geographical scope of such provision, such competent authority shall have the power to reduce the duration or scope, as the case may be, of such provision and, in its reduced form, such provision shall then be enforceable. In the event of your breach of your obligations under the post-employment restrictive covenants, then the post-employment restricted period shall be tolled and extended during the length of such breach, to the extent permitted by law.
**THE WENDY’S COMPANY**  
**LIST OF SUBSIDIARIES AS OF**  
**January 3, 2021**

<table>
<thead>
<tr>
<th>SUBSIDIARY</th>
<th>STATE OR JURISDICTION UNDER WHICH ORGANIZED</th>
</tr>
</thead>
<tbody>
<tr>
<td>256 Gift Card Inc.</td>
<td>Tennessee</td>
</tr>
<tr>
<td>Adams Packing Association, Inc.</td>
<td>Delaware</td>
</tr>
<tr>
<td>Citrus Acquisition Corporation</td>
<td>Florida</td>
</tr>
<tr>
<td>Oldemark LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Quality Is Our Recipe, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>SEPSCO, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>The Wendy’s National Advertising Program, Inc.</td>
<td>Delaware</td>
</tr>
<tr>
<td>TIMWEN Partnership (1)</td>
<td>Delaware</td>
</tr>
<tr>
<td>TXL Corp.</td>
<td>Ontario</td>
</tr>
<tr>
<td>Wendy Restaurant, Inc.</td>
<td>South Carolina</td>
</tr>
<tr>
<td>Wendy’s Brasil Servicios de Consultoria em Restaurantes Ltda.</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Brazil Holdings Partner, LLC</td>
<td>Brazil</td>
</tr>
<tr>
<td>Wendy’s Canadian Advertising Program Inc.</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Digital, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Funding, LLC</td>
<td>Ontario</td>
</tr>
<tr>
<td>Wendy’s Global Financing LP</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Global Financing Partner, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Global Holdings C.V.</td>
<td>Netherlands</td>
</tr>
<tr>
<td>Wendy’s Global Holdings Partner, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s International Finance, Inc.</td>
<td>Ohio</td>
</tr>
<tr>
<td>Wendy’s International, LLC</td>
<td>Ireland</td>
</tr>
<tr>
<td>Wendy’s Ireland Financing Limited</td>
<td>Netherlands</td>
</tr>
<tr>
<td>Wendy’s Netherlands B.V.</td>
<td>Nederland</td>
</tr>
<tr>
<td>Wendy’s Netherlands Holdings B.V.</td>
<td>Ontario</td>
</tr>
<tr>
<td>Wendy’s Old Fashioned Hamburgers of New York, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Properties, LLC</td>
<td>Singapore</td>
</tr>
<tr>
<td>Wendy’s Restaurants of Canada Inc.</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Restaurants of New York, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Restaurants of U.K. Limited</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Restaurants, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Singapore Pte. Ltd.</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s SPV Guarantor, LLC</td>
<td>Delaware</td>
</tr>
<tr>
<td>Wendy’s Technology, LLC</td>
<td>Delaware</td>
</tr>
</tbody>
</table>

(1) 50% owned by Wendy’s Restaurants of Canada Inc.
CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-167170 on Form S-8 and Registration Statement No. 333-228979 on Form S-3 of our reports dated March 3, 2021, relating to the financial statements of The Wendy's Company and the effectiveness of The Wendy’s Company’s internal control over financial reporting appearing in this Annual Report on Form 10-K of The Wendy’s Company for the year ended January 3, 2021.

/s/ Deloitte & Touche LLP
Columbus, Ohio
March 3, 2021
I, Todd A. Penegor, certify that:

1. I have reviewed this annual report on Form 10-K of The Wendy’s Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting;

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: March 3, 2021

/s/ Todd A. Penegor
Todd A. Penegor
President and Chief Executive Officer
I, Gunther Plosch, certify that:

1. I have reviewed this annual report on Form 10-K of The Wendy’s Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: March 3, 2021

/s/ Gunther Plosch
Gunther Plosch
Chief Financial Officer
CERTIFICATIONS OF THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of
the undersigned officers of The Wendy’s Company, a Delaware corporation (the “Company”), does hereby certify, to the best of such officer’s knowledge, that in
connection with the Annual Report on Form 10-K of the Company for the fiscal year ended January 3, 2021 (the “Form 10-K”):

1. the Form 10-K fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 3, 2021

/s/ Todd A. Penegor
Todd A. Penegor
President and Chief Executive Officer

Date: March 3, 2021

/s/ Gunther Plosch
Gunther Plosch
Chief Financial Officer