# Form 5500

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

# Annual Return/Report of Employee Benefit Plan

This form is required to be filed for employee benefit plans under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6057(b) and 6058(a) of the Internal Revenue Code (the Code).

▶ **Complete all entries in accordance with the instructions to the Form 5500.**

OMB Nos. 1210-0110
1210-0089

**2022**

**This Form is Open to Public Inspection**

## Part I Annual Report Identification Information

For calendar plan year 2022 or fiscal plan year beginning 01/01/2022 and ending 12/31/2022

**A** This return/report is for:
- [ ] a multiemployer plan
- [ ] a multiple-employer plan (Filers checking this box must attach a list of participating employer information in accordance with the form instructions.)
- [X] a single-employer plan
- [ ] a DFE (specify) ____

**B** This return/report is:
- [ ] the first return/report
- [ ] the final return/report
- [ ] an amended return/report
- [ ] a short plan year return/report (less than 12 months)

**C** If the plan is a collectively-bargained plan, check here. . . . . ▶ [ ]

**D** Check box if filing under:
- [X] Form 5558
- [ ] automatic extension
- [ ] the DFVC program
- [ ] special extension (enter description)

**E** If this is a retroactively adopted plan permitted by SECURE Act section 201, check here. . . . . ▶ [ ]

## Part II Basic Plan Information—enter all requested information

**1a** Name of plan
IN-N-OUT BURGER ASSOCIATES' PROFIT SHARING PLAN

**1b** Three-digit plan number (PN) ▶ 001

**1c** Effective date of plan 06/01/1967

**2a** Plan sponsor's name (employer, if for a single-employer plan)
Mailing address (include room, apt., suite no. and street, or P.O. Box)
City or town, state or province, country, and ZIP or foreign postal code (if foreign, see instructions)
IN-N-OUT BURGER, INC.

4199 CAMPUS DRIVE, 9TH FLR
IRVINE, CA 92612

**2b** Employer Identification Number (EIN) 95-2246829

**2c** Plan Sponsor's telephone number 949-509-6200

**2d** Business code (see instructions) 722513

**Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.**

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements and attachments, as well as the electronic version of this return/report, and to the best of my knowledge and belief, it is true, correct, and complete.

| | | | |
|---|---|---|---|
| **SIGN HERE** | Filed with authorized/valid electronic signature. | 10/05/2023 | RANDY EDSON |
| | **Signature of plan administrator** | Date | Enter name of individual signing as plan administrator |
| **SIGN HERE** | | | |
| | **Signature of employer/plan sponsor** | Date | Enter name of individual signing as employer or plan sponsor |
| **SIGN HERE** | | | |
| | **Signature of DFE** | Date | Enter name of individual signing as DFE |

**3a** Plan administrator's name and address [X] Same as Plan Sponsor

**3b** Administrator's EIN

**3c** Administrator's telephone number

**4** If the name and/or EIN of the plan sponsor or the plan name has changed since the last return/report filed for this plan, enter the plan sponsor's name, EIN, the plan name and the plan number from the last return/report:
**a** Sponsor's name
**c** Plan Name

**4b** EIN

**4d** PN

| | | |
|---|---|---|
| **5** Total number of participants at the beginning of the plan year | **5** | 15940 |
| **6** Number of participants as of the end of the plan year unless otherwise stated (welfare plans complete only lines **6a(1), 6a(2), 6b, 6c,** and **6d**). | | |
| **a(1)** Total number of active participants at the beginning of the plan year | **6a(1)** | 11265 |
| **a(2)** Total number of active participants at the end of the plan year | **6a(2)** | 11750 |
| **b** Retired or separated participants receiving benefits | **6b** | 11 |
| **c** Other retired or separated participants entitled to future benefits | **6c** | 4941 |
| **d** Subtotal. Add lines **6a(2)**, **6b**, and **6c** | **6d** | 16702 |
| **e** Deceased participants whose beneficiaries are receiving or are entitled to receive benefits. | **6e** | 15 |
| **f** Total. Add lines **6d** and **6e** | **6f** | 16717 |
| **g** Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item) | **6g** | 16230 |
| **h** Number of participants who terminated employment during the plan year with accrued benefits that were less than 100% vested | **6h** | 77 |
| **7** Enter the total number of employers obligated to contribute to the plan (only multiemployer plans complete this item) | **7** | |

**8a** If the plan provides pension benefits, enter the applicable pension feature codes from the List of Plan Characteristics Codes in the instructions:
2F 2G 2J 2S 2T 2E 3D

**b** If the plan provides welfare benefits, enter the applicable welfare feature codes from the List of Plan Characteristics Codes in the instructions:

**9a** Plan funding arrangement (check all that apply)

| | | |
|---|---|---|
| **(1)** | [ ] | Insurance |
| **(2)** | [ ] | Code section 412(e)(3) insurance contracts |
| **(3)** | [X] | Trust |
| **(4)** | [ ] | General assets of the sponsor |

**9b** Plan benefit arrangement (check all that apply)

| | | |
|---|---|---|
| **(1)** | [ ] | Insurance |
| **(2)** | [ ] | Code section 412(e)(3) insurance contracts |
| **(3)** | [X] | Trust |
| **(4)** | [ ] | General assets of the sponsor |

**10** Check all applicable boxes in 10a and 10b to indicate which schedules are attached, and, where indicated, enter the number attached. (See instructions)

**a Pension Schedules**

| | | |
|---|---|---|
| **(1)** | [X] | **R** (Retirement Plan Information) |
| **(2)** | [ ] | **MB** (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) - signed by the plan actuary |
| **(3)** | [ ] | **SB** (Single-Employer Defined Benefit Plan Actuarial Information) - signed by the plan actuary |

**b General Schedules**

| | | | |
|---|---|---|---|
| **(1)** | [X] | | **H** (Financial Information) |
| **(2)** | [ ] | | **I** (Financial Information – Small Plan) |
| **(3)** | [ ] | 0 | **A** (Insurance Information) |
| **(4)** | [X] | | **C** (Service Provider Information) |
| **(5)** | [X] | | **D** (DFE/Participating Plan Information) |
| **(6)** | [ ] | | **G** (Financial Transaction Schedules) |

## Part III Form M-1 Compliance Information (to be completed by welfare benefit plans)

**11a** If the plan provides welfare benefits, was the plan subject to the Form M-1 filing requirements during the plan year? (See instructions and 29 CFR 2520.101-2.) ..... ☐ Yes ☐ No

If "Yes" is checked, complete lines 11b and 11c.

**11b** Is the plan currently in compliance with the Form M-1 filing requirements? (See instructions and 29 CFR 2520.101-2.) ..... ☐ Yes ☐ No

**11c** Enter the Receipt Confirmation Code for the 2022 Form M-1 annual report. If the plan was not required to file the 2022 Form M-1 annual report, enter the Receipt Confirmation Code for the most recent Form M-1 that was required to be filed under the Form M-1 filing requirements. (Failure to enter a valid Receipt Confirmation Code will subject the Form 5500 filing to rejection as incomplete.)

Receipt Confirmation Code_____

| SCHEDULE C (Form 5500) | Service Provider Information | OMB No. 1210-0110 |
|---|---|---|
| Department of the Treasury<br>Internal Revenue Service<br>Department of Labor<br>Employee Benefits Security Administration<br>Pension Benefit Guaranty Corporation | This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).<br>▶ **File as an attachment to Form 5500.** | **2022**<br>**This Form is Open to Public Inspection.** |

For calendar plan year 2022 or fiscal plan year beginning 01/01/2022 and ending 12/31/2022

| **A** Name of plan | **B** Three-digit plan number (PN) ▶ |
|---|---|
| IN-N-OUT BURGER ASSOCIATES' PROFIT SHARING PLAN | 001 |

| **C** Plan sponsor's name as shown on line 2a of Form 5500 | **D** Employer Identification Number (EIN) |
|---|---|
| IN-N-OUT BURGER, INC. | 95-2246829 |

## Part I Service Provider Information (see instructions)

You must complete this Part, in accordance with the instructions, to report the information required for **each person** who received, directly or indirectly, $5,000 or more in total compensation (i.e., money or anything else of monetary value) in connection with services rendered to the plan or the person's position with the plan during the plan year. If a person received **only** eligible indirect compensation for which the plan received the required disclosures, you are required to answer line 1 but are not required to include that person when completing the remainder of this Part.

### 1 Information on Persons Receiving Only Eligible Indirect Compensation

**a** Check "Yes" or "No" to indicate whether you are excluding a person from the remainder of this Part because they received only eligible indirect compensation for which the plan received the required disclosures (see instructions for definitions and conditions).. . . . . [X] Yes [ ] No

**b** If you answered line 1a "Yes," enter the name and EIN or address of each person providing the required disclosures for the service providers who received only eligible indirect compensation. Complete as many entries as needed (see instructions).

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

FIDELITY INVESTMENTS INSTITUTIONAL

04-2647786

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**(b)** Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation

**2. Information on Other Service Providers Receiving Direct or Indirect Compensation.** Except for those persons for whom you answered "Yes" to line 1a above, complete as many entries as needed to list each person receiving, directly or indirectly, $5,000 or more in total compensation (i.e., money or anything else of value) in connection with services rendered to the plan or their position with the plan during the plan year. (See instructions).

**(a)** Enter name and EIN or address (see instructions)

STRATEGIC ADVISORS, INC.

04-2654524

| (b) Service Code(s) | (c) Relationship to employer, employee organization, or person known to be a party-in-interest | (d) Enter direct compensation paid by the plan. If none, enter -0-. | (e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | (f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | (g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | (h) Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| 27 | ADVISOR | 220272 | Yes [ ] No [X] | Yes [ ] No [ ] | | Yes [ ] No [ ] |

**(a)** Enter name and EIN or address (see instructions)

FIDELITY INVESTMENTS INSTITUTIONAL

04-2647786

| (b) Service Code(s) | (c) Relationship to employer, employee organization, or person known to be a party-in-interest | (d) Enter direct compensation paid by the plan. If none, enter -0-. | (e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | (f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | (g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | (h) Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| 37 60 64 65 | RECORDKEEPER | 35303 | Yes [X] No [ ] | Yes [X] No [ ] | 0 | Yes [X] No [ ] |

**(a)** Enter name and EIN or address (see instructions)

| (b) Service Code(s) | (c) Relationship to employer, employee organization, or person known to be a party-in-interest | (d) Enter direct compensation paid by the plan. If none, enter -0-. | (e) Did service provider receive indirect compensation? (sources other than plan or plan sponsor) | (f) Did indirect compensation include eligible indirect compensation, for which the plan received the required disclosures? | (g) Enter total indirect compensation received by service provider excluding eligible indirect compensation for which you answered "Yes" to element (f). If none, enter -0-. | (h) Did the service provider give you a formula instead of an amount or estimated amount? |
|---|---|---|---|---|---|---|
| | | | Yes [ ] No [ ] | Yes [ ] No [ ] | | Yes [ ] No [ ] |

**Part I Service Provider Information (continued)**

**3.** If you reported on line 2 receipt of indirect compensation, other than eligible indirect compensation, by a service provider, and the service provider is a fiduciary or provides contract administrator, consulting, custodial, investment advisory, investment management, broker, or recordkeeping services, answer the following questions for (a) each source from whom the service provider received $1,000 or more in indirect compensation and (b) each source for whom the service provider gave you a formula used to determine the indirect compensation instead of an amount or estimated amount of the indirect compensation. Complete as many entries as needed to report the required information for each source.

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| FIDELITY INVESTMENTS INSTITUTIONAL | 60 | 0 |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| ABF SM CAP VAL R5 - SS&C GIDS, INC<br>300 MADISON AVENUE<br>NEW YORK, NY 10017 | 0.04% |

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| FIDELITY INVESTMENTS INSTITUTIONAL | 60 | 0 |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| ARTISAN INTL - DST ASSET MANAGER S<br>430 W 7TH STREET STE 219432<br>KANSAS CITY, MO 64105 | 0.40% |

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| FIDELITY INVESTMENTS INSTITUTIONAL | 60 | 0 |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| FROST LOW DUR BD IS - DST SYSTEMS<br>43-1581814 | 0.15% |

**Part I Service Provider Information (continued)**

**3.** If you reported on line 2 receipt of indirect compensation, other than eligible indirect compensation, by a service provider, and the service provider is a fiduciary or provides contract administrator, consulting, custodial, investment advisory, investment management, broker, or recordkeeping services, answer the following questions for (a) each source from whom the service provider received $1,000 or more in indirect compensation and (b) each source for whom the service provider gave you a formula used to determine the indirect compensation instead of an amount or estimated amount of the indirect compensation. Complete as many entries as needed to report the required information for each source.

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| FIDELITY INVESTMENTS INSTITUTIONAL | 60 | 0 |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| H & W HIGH YIELD I - US BANCORP FU<br>39-0281260 | 0.15% |

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| FIDELITY INVESTMENTS INSTITUTIONAL | 60 | 0 |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| METWEST TOT RTN BD I - BNY MELLON<br>301 BELLEVUE PARKWAY<br>WILMINGTON, DE 19809 | 0.10% |

| **(a)** Enter service provider name as it appears on line 2 | **(b)** Service Codes (see instructions) | **(c)** Enter amount of indirect compensation |
|---|---|---|
| FIDELITY INVESTMENTS INSTITUTIONAL | 60 | 0 |

| **(d)** Enter name and EIN (address) of source of indirect compensation | **(e)** Describe the indirect compensation, including any formula used to determine the service provider's eligibility for or the amount of the indirect compensation. |
|---|---|
| VRTS C LGCP VAL EQ I - VIRTUS FUND<br>4400 COMPUTER DRIVE<br>WESTBOROUGH, MA 01581 | 0.40% |

## Part II Service Providers Who Fail or Refuse to Provide Information

**4** Provide, to the extent possible, the following information for each service provider who failed or refused to provide the information necessary to complete this Schedule.

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

| **(a)** Enter name and EIN or address of service provider (see instructions) | **(b)** Nature of Service Code(s) | **(c)** Describe the information that the service provider failed or refused to provide |
|---|---|---|
| | | |

## Part III Termination Information on Accountants and Enrolled Actuaries (see instructions)

(complete as many entries as needed)

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

| | |
|---|---|
| **a** Name: | **b** EIN: |
| **c** Position: | |
| **d** Address: | **e** Telephone: |

Explanation:

# SCHEDULE D (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

## DFE/Participating Plan Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).

▶ **File as an attachment to Form 5500.**

OMB No. 1210-0110

**2022**

**This Form is Open to Public Inspection.**

For calendar plan year 2022 or fiscal plan year beginning 01/01/2022 and ending 12/31/2022

**A** Name of plan
IN-N-OUT BURGER ASSOCIATES' PROFIT SHARING PLAN

**B** Three-digit plan number (PN) ▶ 001

**C** Plan or DFE sponsor's name as shown on line 2a of Form 5500
IN-N-OUT BURGER, INC.

**D** Employer Identification Number (EIN)
95-2246829

**Part I** **Information on interests in MTIAs, CCTs, PSAs, and 103-12 IEs (to be completed by plans and DFEs)**
(Complete as many entries as needed to report all interests in DFEs)

**a** Name of MTIA, CCT, PSA, or 103-12 IE: FID CONTRAFUND POOL

**b** Name of sponsor of entity listed in (a): FIDELITY MANAGEMENT TRUST COMPANY

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| 04-3022712-133 | C | 37644041 |

**a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2040 T

**b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| 20-4659714-082 | C | 26707929 |

**a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2055 T

**b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| 20-4659714-112 | C | 64776886 |

**a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2025 T

**b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| 20-4659714-079 | C | 12561408 |

**a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2060 T

**b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| 20-4659714-146 | C | 56405005 |

**a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX INC T

**b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| 20-4659714-074 | C | 1001266 |

**a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2020 T

**b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY

| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) |
|---|---|---|
| 20-4659714-078 | C | 6567955 |

| | | | |
|---|---|---|---|
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2045 T | | | |
| **b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY | | | |
| **c** EIN-PN 20-4659714-083 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 18076401 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2005 T | | | |
| **b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY | | | |
| **c** EIN-PN 20-4659714-075 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 116060 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2010 T | | | |
| **b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY | | | |
| **c** EIN-PN 20-4659714-076 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 626081 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2015 T | | | |
| **b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY | | | |
| **c** EIN-PN 20-4659714-077 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 1875735 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2050 T | | | |
| **b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY | | | |
| **c** EIN-PN 20-4659714-084 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 48184813 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2035 T | | | |
| **b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY | | | |
| **c** EIN-PN 20-4659714-081 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 22176242 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2065 T | | | |
| **b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY | | | |
| **c** EIN-PN 20-4659714-169 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 15527241 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: FID FRDM INX 2030 T | | | |
| **b** Name of sponsor of entity listed in (a): FIAM TRUST COMPANY | | | |
| **c** EIN-PN 20-4659714-080 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 15412759 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: CEREDEX LG CP VAL EQ | | | |
| **b** Name of sponsor of entity listed in (a): VIRTUS COLLECTIVE INVESTMENT TRUST II | | | |
| **c** EIN-PN 45-1287076-001 | **d** Entity code C | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | 6496134 |
| **a** Name of MTIA, CCT, PSA, or 103-12 IE: | | | |
| **b** Name of sponsor of entity listed in (a): | | | |
| **c** EIN-PN | **d** Entity code | **e** Dollar value of interest in MTIA, CCT, PSA, or 103-12 IE at end of year (see instructions) | |

## Part II Information on Participating Plans (to be completed by DFEs)

(Complete as many entries as needed to report all participating plans)

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

**a** Plan name

| **b** Name of plan sponsor | **c** EIN-PN |
|---|---|

# SCHEDULE H (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

## Financial Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 6058(a) of the Internal Revenue Code (the Code).

▶ **File as an attachment to Form 5500.**

OMB No. 1210-0110

**2022**

**This Form is Open to Public Inspection**

For calendar plan year 2022 or fiscal plan year beginning 01/01/2022 and ending 12/31/2022

**A** Name of plan
IN-N-OUT BURGER ASSOCIATES' PROFIT SHARING PLAN

**B** Three-digit plan number (PN) ▶ 001

**C** Plan sponsor's name as shown on line 2a of Form 5500
IN-N-OUT BURGER, INC.

**D** Employer Identification Number (EIN)
95-2246829

## Part I Asset and Liability Statement

**1** Current value of plan assets and liabilities at the beginning and end of the plan year. Combine the value of plan assets held in more than one trust. Report the value of the plan's interest in a commingled fund containing the assets of more than one plan on a line-by-line basis unless the value is reportable on lines 1c(9) through 1c(14). Do not enter the value of that portion of an insurance contract which guarantees, during this plan year, to pay a specific dollar benefit at a future date. **Round off amounts to the nearest dollar.** MTIAs, CCTs, PSAs, and 103-12 IEs do not complete lines 1b(1), 1b(2), 1c(8), 1g, 1h, and 1i. CCTs, PSAs, and 103-12 IEs also do not complete lines 1d and 1e. See instructions.

| Assets | | (a) Beginning of Year | (b) End of Year |
|---|---|---|---|
| **a** Total noninterest-bearing cash | 1a | 0 | 0 |
| **b** Receivables (less allowance for doubtful accounts): | | | |
| **(1)** Employer contributions | 1b(1) | 21287889 | 23906300 |
| **(2)** Participant contributions | 1b(2) | 1259336 | 1409743 |
| **(3)** Other | 1b(3) | 0 | 0 |
| **c** General investments: | | | |
| **(1)** Interest-bearing cash (include money market accounts & certificates of deposit) | 1c(1) | 23498823 | 29038505 |
| **(2)** U.S. Government securities | 1c(2) | 0 | 0 |
| **(3)** Corporate debt instruments (other than employer securities): | | | |
| **(A)** Preferred | 1c(3)(A) | 0 | 0 |
| **(B)** All other | 1c(3)(B) | 0 | 0 |
| **(4)** Corporate stocks (other than employer securities): | | | |
| **(A)** Preferred | 1c(4)(A) | 0 | 0 |
| **(B)** Common | 1c(4)(B) | 0 | 0 |
| **(5)** Partnership/joint venture interests | 1c(5) | 0 | 0 |
| **(6)** Real estate (other than employer real property) | 1c(6) | 0 | 0 |
| **(7)** Loans (other than to participants) | 1c(7) | 0 | 0 |
| **(8)** Participant loans | 1c(8) | 15850152 | 16398844 |
| **(9)** Value of interest in common/collective trusts | 1c(9) | 0 | 334155956 |
| **(10)** Value of interest in pooled separate accounts | 1c(10) | 0 | 0 |
| **(11)** Value of interest in master trust investment accounts | 1c(11) | 0 | 0 |
| **(12)** Value of interest in 103-12 investment entities | 1c(12) | 0 | 0 |
| **(13)** Value of interest in registered investment companies (e.g., mutual funds) | 1c(13) | 646560417 | 208544108 |
| **(14)** Value of funds held in insurance company general account (unallocated contracts) | 1c(14) | 0 | 0 |
| **(15)** Other | 1c(15) | 0 | 0 |

| | | (a) Beginning of Year | (b) End of Year |
|---|---|---|---|
| **1d** Employer-related investments: | | | |
| **(1)** Employer securities | 1d(1) | 0 | 0 |
| **(2)** Employer real property | 1d(2) | 0 | 0 |
| **e** Buildings and other property used in plan operation | 1e | 0 | 0 |
| **f** Total assets (add all amounts in lines 1a through 1e) | 1f | 708456617 | 613453456 |
| **Liabilities** | | | |
| **g** Benefit claims payable | 1g | 0 | 0 |
| **h** Operating payables | 1h | 0 | 0 |
| **i** Acquisition indebtedness | 1i | 0 | 0 |
| **j** Other liabilities | 1j | 0 | 0 |
| **k** Total liabilities (add all amounts in lines 1g through1j) | 1k | 0 | 0 |
| **Net Assets** | | | |
| **l** Net assets (subtract line 1k from line 1f) | 1l | 708456617 | 613453456 |

## Part II Income and Expense Statement

**2** Plan income, expenses, and changes in net assets for the year. Include all income and expenses of the plan, including any trust(s) or separately maintained fund(s) and any payments/receipts to/from insurance carriers. Round off amounts to the nearest dollar. MTIAs, CCTs, PSAs, and 103-12 IEs do not complete lines 2a, 2b(1)(E), 2e, 2f, and 2g.

| Income | | (a) Amount | (b) Total |
|---|---|---|---|
| **a Contributions:** | | | |
| **(1)** Received or receivable in cash from: **(A)** Employers | 2a(1)(A) | 23906300 | |
| **(B)** Participants | 2a(1)(B) | 38897497 | |
| **(C)** Others (including rollovers) | 2a(1)(C) | 1459586 | |
| **(2)** Noncash contributions | 2a(2) | 0 | |
| **(3)** Total contributions. Add lines **2a(1)(A), (B), (C),** and line **2a(2)** | 2a(3) | | 64263383 |
| **b Earnings on investments:** | | | |
| **(1)** Interest: | | | |
| **(A)** Interest-bearing cash (including money market accounts and certificates of deposit) | 2b(1)(A) | 424929 | |
| **(B)** U.S. Government securities | 2b(1)(B) | 0 | |
| **(C)** Corporate debt instruments | 2b(1)(C) | 0 | |
| **(D)** Loans (other than to participants) | 2b(1)(D) | 0 | |
| **(E)** Participant loans | 2b(1)(E) | 916562 | |
| **(F)** Other | 2b(1)(F) | 0 | |
| **(G)** Total interest. Add lines **2b(1)(A)** through **(F)** | 2b(1)(G) | | 1341491 |
| **(2)** Dividends: **(A)** Preferred stock | 2b(2)(A) | 0 | |
| **(B)** Common stock | 2b(2)(B) | 0 | |
| **(C)** Registered investment company shares (e.g. mutual funds) | 2b(2)(C) | 5248223 | |
| **(D)** Total dividends. Add lines **2b(2)(A)**, **(B)**, and **(C)** | 2b(2)(D) | | 5248223 |
| **(3)** Rents | 2b(3) | | 0 |
| **(4)** Net gain (loss) on sale of assets: **(A)** Aggregate proceeds | 2b(4)(A) | 0 | |
| **(B)** Aggregate carrying amount (see instructions) | 2b(4)(B) | 0 | |
| **(C)** Subtract line **2b(4)(B)** from line **2b(4)(A)** and enter result | 2b(4)(C) | | 0 |
| **(5)** Unrealized appreciation (depreciation) of assets: **(A)** Real estate | 2b(5)(A) | 0 | |
| **(B)** Other | 2b(5)(B) | 0 | |
| **(C)** Total unrealized appreciation of assets. Add lines **2b(5)(A)** and **(B)** | 2b(5)(C) | | 0 |

| | | (a) Amount | (b) Total |
|---|---|---|---|
| (6) Net investment gain (loss) from common/collective trusts | 2b(6) | | -8809427 |
| (7) Net investment gain (loss) from pooled separate accounts | 2b(7) | | 0 |
| (8) Net investment gain (loss) from master trust investment accounts | 2b(8) | | 0 |
| (9) Net investment gain (loss) from 103-12 investment entities | 2b(9) | | 0 |
| (10) Net investment gain (loss) from registered investment companies (e.g., mutual funds) | 2b(10) | | -117685764 |
| c Other income | 2c | | 0 |
| d Total income. Add all **income** amounts in column (b) and enter total | 2d | | -55642094 |
| **Expenses** | | | |
| e Benefit payment and payments to provide benefits: | | | |
| (1) Directly to participants or beneficiaries, including direct rollovers | 2e(1) | 38911167 | |
| (2) To insurance carriers for the provision of benefits | 2e(2) | 0 | |
| (3) Other | 2e(3) | 0 | |
| (4) Total benefit payments. Add lines **2e(1)** through **(3)** | 2e(4) | | 38911167 |
| f Corrective distributions (see instructions) | 2f | | 0 |
| g Certain deemed distributions of participant loans (see instructions) | 2g | | 194325 |
| h Interest expense | 2h | | 0 |
| i Administrative expenses: (1) Professional fees | 2i(1) | 0 | |
| (2) Contract administrator fees | 2i(2) | 0 | |
| (3) Investment advisory and management fees | 2i(3) | 220272 | |
| (4) Other | 2i(4) | 35303 | |
| (5) Total administrative expenses. Add lines **2i(1)** through **(4)** | 2i(5) | | 255575 |
| j Total expenses. Add all **expense** amounts in column (b) and enter total | 2j | | 39361067 |
| **Net Income and Reconciliation** | | | |
| k Net income (loss). Subtract line **2j** from line **2d** | 2k | | -95003161 |
| l Transfers of assets: | | | |
| (1) To this plan | 2l(1) | | 0 |
| (2) From this plan | 2l(2) | | 0 |

## Part III Accountant's Opinion

**3** Complete lines 3a through 3c if the opinion of an independent qualified public accountant is attached to this Form 5500. Complete line 3d if an opinion is not attached.

**a** The attached opinion of an independent qualified public accountant for this plan is (see instructions):

**(1)** [X] Unmodified **(2)** [ ] Qualified **(3)** [ ] Disclaimer **(4)** [ ] Adverse

**b** Check the appropriate box(es) to indicate whether the IQPA performed an ERISA section 103(a)(3)(C) audit. Check both boxes (1) and (2) if the audit was performed pursuant to both 29 CFR 2520.103-8 and 29 CFR 2520.103-12(d). Check box (3) if pursuant to neither.

**(1)** [X] DOL Regulation 2520.103-8 **(2)** [ ] DOL Regulation 2520.103-12(d) **(3)** [ ] neither DOL Regulation 2520.103-8 nor DOL Regulation 2520.103-12(d).

**c** Enter the name and EIN of the accountant (or accounting firm) below:

**(1)** Name: BDO USA, P.C. **(2)** EIN: 13-5381590

**d** The opinion of an independent qualified public accountant is **not attached** because:

**(1)** [ ] This form is filed for a CCT, PSA, or MTIA. **(2)** [ ] It will be attached to the next Form 5500 pursuant to 29 CFR 2520.104-50.

## Part IV Compliance Questions

**4** CCTs and PSAs do not complete Part IV. MTIAs, 103-12 IEs, and GIAs do not complete lines 4a, 4e, 4f, 4g, 4h, 4k, 4m, 4n, or 5. 103-12 IEs also do not complete lines 4j and 4l. MTIAs also do not complete line 4l.

During the plan year:

| | | Yes | No | Amount |
|---|---|---|---|---|
| **a** Was there a failure to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102? Continue to answer "Yes" for any prior year failures until fully corrected. (See instructions and DOL's Voluntary Fiduciary Correction Program.) | 4a | | X | |

| | | Yes | No | Amount |
|---|---|---|---|---|
| **b** Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectible? Disregard participant loans secured by participant's account balance. (Attach Schedule G (Form 5500) Part I if "Yes" is checked.) | 4b | | X | |
| **c** Were any leases to which the plan was a party in default or classified during the year as uncollectible? (Attach Schedule G (Form 5500) Part II if "Yes" is checked.) | 4c | | X | |
| **d** Were there any nonexempt transactions with any party-in-interest? (Do not include transactions reported on line 4a. Attach Schedule G (Form 5500) Part III if "Yes" is checked.) | 4d | | X | |
| **e** Was this plan covered by a fidelity bond? | 4e | X | | 10000000 |
| **f** Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond, that was caused by fraud or dishonesty? | 4f | | X | |
| **g** Did the plan hold any assets whose current value was neither readily determinable on an established market nor set by an independent third party appraiser? | 4g | | X | |
| **h** Did the plan receive any noncash contributions whose value was neither readily determinable on an established market nor set by an independent third party appraiser? | 4h | | X | |
| **i** Did the plan have assets held for investment? (Attach schedule(s) of assets if "Yes" is checked, and see instructions for format requirements.) | 4i | X | | |
| **j** Were any plan transactions or series of transactions in excess of 5% of the current value of plan assets? (Attach schedule of transactions if "Yes" is checked and see instructions for format requirements.) | 4j | | X | |
| **k** Were all the plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of the PBGC? | 4k | | X | |
| **l** Has the plan failed to provide any benefit when due under the plan? | 4l | | X | |
| **m** If this is an individual account plan, was there a blackout period? (See instructions and 29 CFR 2520.101-3.) | 4m | | X | |
| **n** If 4m was answered "Yes," check the "Yes" box if you either provided the required notice or one of the exceptions to providing the notice applied under 29 CFR 2520.101-3. | 4n | | X | |

**5a** Has a resolution to terminate the plan been adopted during the plan year or any prior plan year? ☐ Yes ☒ No
If "Yes," enter the amount of any plan assets that reverted to the employer this year _____.

**5b** If, during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)

| **5b(1)** Name of plan(s) | **5b(2)** EIN(s) | **5b(3)** PN(s) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

**5c** Was the plan a defined benefit plan covered under the PBGC insurance program at any time during this plan year? (See ERISA section 4021 and instructions.) ☐ Yes ☐ No ☐ Not determined
If "Yes" is checked, enter the My PAA confirmation number from the PBGC premium filing for this plan year _____.

# SCHEDULE R (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

## Retirement Plan Information

This schedule is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 6058(a) of the Internal Revenue Code (the Code).

▶ **File as an attachment to Form 5500.**

OMB No. 1210-0110

**2022**

**This Form is Open to Public Inspection.**

For calendar plan year 2022 or fiscal plan year beginning 01/01/2022 and ending 12/31/2022

**A** Name of plan
IN-N-OUT BURGER ASSOCIATES' PROFIT SHARING PLAN

**B** Three-digit plan number (PN) ▶ 001

**C** Plan sponsor's name as shown on line 2a of Form 5500
IN-N-OUT BURGER, INC.

**D** Employer Identification Number (EIN)
95-2246829

## Part I Distributions

**All references to distributions relate only to payments of benefits during the plan year.**

**1** Total value of distributions paid in property other than in cash or the forms of property specified in the instructions ..... | **1** |

**2** Enter the EIN(s) of payor(s) who paid benefits on behalf of the plan to participants or beneficiaries during the year (if more than two, enter EINs of the two payors who paid the greatest dollar amounts of benefits):

EIN(s): 04-6568107

**Profit-sharing plans, ESOPs, and stock bonus plans, skip line 3.**

**3** Number of participants (living or deceased) whose benefits were distributed in a single sum, during the plan year ..... | **3** |

## Part II Funding Information (If the plan is not subject to the minimum funding requirements of section 412 of the Internal Revenue Code or ERISA section 302, skip this Part.)

**4** Is the plan administrator making an election under Code section 412(d)(2) or ERISA section 302(d)(2)? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

**If the plan is a defined benefit plan, go to line 8.**

**5** If a waiver of the minimum funding standard for a prior year is being amortized in this plan year, see instructions and enter the date of the ruling letter granting the waiver. **Date:** Month _____ Day _____ Year _____

**If you completed line 5, complete lines 3, 9, and 10 of Schedule MB and do not complete the remainder of this schedule.**

**6** **a** Enter the minimum required contribution for this plan year (include any prior year accumulated funding deficiency not waived) ..... | **6a** |

**b** Enter the amount contributed by the employer to the plan for this plan year ..... | **6b** |

**c** Subtract the amount in line 6b from the amount in line 6a. Enter the result (enter a minus sign to the left of a negative amount) ..... | **6c** |

**If you completed line 6c, skip lines 8 and 9.**

**7** Will the minimum funding amount reported on line 6c be met by the funding deadline? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

**8** If a change in actuarial cost method was made for this plan year pursuant to a revenue procedure or other authority providing automatic approval for the change or a class ruling letter, does the plan sponsor or plan administrator agree with the change? ..... ☐ **Yes** ☐ **No** ☐ **N/A**

## Part III Amendments

**9** If this is a defined benefit pension plan, were any amendments adopted during this plan year that increased or decreased the value of benefits? If yes, check the appropriate box. If no, check the "No" box. ..... ☐ **Increase** ☐ **Decrease** ☐ **Both** ☐ **No**

## Part IV ESOPs (see instructions). If this is not a plan described under section 409(a) or 4975(e)(7) of the Internal Revenue Code, skip this Part.

**10** Were unallocated employer securities or proceeds from the sale of unallocated securities used to repay any exempt loan? ..... ☐ **Yes** ☐ **No**

**11** **a** Does the ESOP hold any preferred stock? ..... ☐ **Yes** ☐ **No**

**b** If the ESOP has an outstanding exempt loan with the employer as lender, is such loan part of a "back-to-back" loan? (See instructions for definition of "back-to-back" loan.) ..... ☐ **Yes** ☐ **No**

**12** Does the ESOP hold any stock that is not readily tradable on an established securities market? ..... ☐ **Yes** ☐ **No**

## Part V Additional Information for Multiemployer Defined Benefit Pension Plans

**13** Enter the following information for each employer that (1) contributed more than 5% of total contributions to the plan during the plan year or (2) was one of the top-ten highest contributors (measured in dollars). See instructions. *Complete as many entries as needed to report all applicable employers.*

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box* ☐ *and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box* ☐ *and see instructions regarding required attachment. Otherwise, complete lines 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify):

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box* ☐ *and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box* ☐ *and see instructions regarding required attachment. Otherwise, complete lines 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify): _____

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box* ☐ *and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box* ☐ *and see instructions regarding required attachment. Otherwise, complete lines 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify): _____

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box* ☐ *and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box* ☐ *and see instructions regarding required attachment. Otherwise, complete lines 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify): _____

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box* ☐ *and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box* ☐ *and see instructions regarding required attachment. Otherwise, complete lines 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify): _____

---

**a** Name of contributing employer

**b** EIN **c** Dollar amount contributed by employer

**d** Date collective bargaining agreement expires *(If employer contributes under more than one collective bargaining agreement, check box* ☐ *and see instructions regarding required attachment. Otherwise, enter the applicable date.)* Month _____ Day _____ Year _____

**e** Contribution rate information *(If more than one rate applies, check this box* ☐ *and see instructions regarding required attachment. Otherwise, complete lines 13e(1) and 13e(2).)*
(1) Contribution rate (in dollars and cents) _____
(2) Base unit measure: ☐ Hourly ☐ Weekly ☐ Unit of production ☐ Other (specify): _____

**14** Enter the number of deferred vested and retired participants (inactive participants), as of the beginning of the plan year, whose contributing employer is no longer making contributions to the plan for:

| | | |
|---|---|---|
| **a** The current plan year. Check the box to indicate the counting method used to determine the number of inactive participants: ☐ last contributing employer ☐ alternative ☐ reasonable approximation (see instructions for required attachment) | **14a** | |
| **b** The plan year immediately preceding the current plan year. ☐ Check the box if the number reported is a change from what was previously reported (see instructions for required attachment) | **14b** | |
| **c** The second preceding plan year. ☐ Check the box if the number reported is a change from what was previously reported (see instructions for required attachment) | **14c** | |

**15** Enter the ratio of the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during the current plan year to:

| | | |
|---|---|---|
| **a** The corresponding number for the plan year immediately preceding the current plan year | **15a** | |
| **b** The corresponding number for the second preceding plan year | **15b** | |

**16** Information with respect to any employers who withdrew from the plan during the preceding plan year:

| | | |
|---|---|---|
| **a** Enter the number of employers who withdrew during the preceding plan year | **16a** | |
| **b** If line 16a is greater than 0, enter the aggregate amount of withdrawal liability assessed or estimated to be assessed against such withdrawn employers | **16b** | |

**17** If assets and liabilities from another plan have been transferred to or merged with this plan during the plan year, check box and see instructions regarding supplemental information to be included as an attachment ☐

## Part VI Additional Information for Single-Employer and Multiemployer Defined Benefit Pension Plans

**18** If any liabilities to participants or their beneficiaries under the plan as of the end of the plan year consist (in whole or in part) of liabilities to such participants and beneficiaries under two or more pension plans as of immediately before such plan year, check box and see instructions regarding supplemental information to be included as an attachment ☐

**19** If the total number of participants is 1,000 or more, complete lines (a) through (c)

**a** Enter the percentage of plan assets held as:
Stock: _____% Investment-Grade Debt: _____% High-Yield Debt: _____% Real Estate: _____% Other: _____%

**b** Provide the average duration of the combined investment-grade and high-yield debt:
☐ 0-3 years ☐ 3-6 years ☐ 6-9 years ☐ 9-12 years ☐ 12-15 years ☐ 15-18 years ☐ 18-21 years ☐ 21 years or more

**c** What duration measure was used to calculate line 19(b)?
☐ Effective duration ☐ Macaulay duration ☐ Modified duration ☐ Other (specify):

**20** **PBGC missed contribution reporting requirements.** If this is a multiemployer plan or a single-employer plan that is not covered by PBGC, skip line 20.

**a** Is the amount of unpaid minimum required contributions for all years from Schedule SB (Form 5500) line 40 greater than zero? ☐ Yes ☐ No

**b** If line 20a is "Yes," has PBGC been notified as required by ERISA sections 4043(c)(5) and/or 303(k)(4)? Check the applicable box:

☐ Yes.

☐ No. Reporting was waived under 29 CFR 4043.25(c)(2) because contributions equal to or exceeding the unpaid minimum required contribution were made by the 30th day after the due date.

☐ No. The 30-day period referenced in 29 CFR 4043.25(c)(2) has not yet ended, and the sponsor intends to make a contribution equal to or exceeding the unpaid minimum required contribution by the 30th day after the due date.

☐ No. Other. Provide explanation_____




# In-N-Out Burger Associates' Profit Sharing Plan

## Financial Statements and Supplemental Schedule

As of December 31, 2022 and 2021 and for the year ended December 31, 2022

The report accompanying these financial statements was issued by BDO USA, P.C., a Virginia professional service corporation and the U.S. member of BDO International Limited, a UK company limited by guarantee.

BDO

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Financial Statements and Supplemental Schedule

As of December 31, 2022 and 2021 and for the year ended December 31, 2022

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Contents


| | Page |
|---|---|
| **Independent Auditor's Report** | 3 - 6 |
| **Financial Statements** | |
| Statements of Net Assets Available for Benefits as of December 31, 2022 and 2021 | 8 |
| Statement of Changes in Net Assets Available for Benefits for the year ended December 31, 2022 | 9 |
| Notes to the Financial Statements | 10 - 16 |
| **ERISA Required Supplemental Schedule** | |
| Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022 | 18 |


*Note: Other schedules required by Section 2520.103.10 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA have been omitted because they are not applicable.*

BDO

Tel: 714-957-3200
Fax: 714-957-1080
www.bdo.com

600 Anton Blvd., Suite 500
Costa Mesa, CA 92626

## Independent Auditor's Report

To The Profit Sharing Committee
In-N-Out Burger Associates' Profit Sharing Plan
Irvine, California

### *Scope and Nature of the ERISA Section 103(a)(3)(C) Audit*

We have performed audits of the financial statements of the In-N-Out Burger Associates' Profit Sharing Plan (the Plan), an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), as permitted by ERISA Section 103(a)(3)(C). The financial statements comprise the statements of net assets available for benefits as of December 31, 2022 and 2021, and the related statement of changes in net assets available for benefits for the year ended December 31, 2022, and the related notes to the financial statements.

Management, having determined it is permissible in the circumstances, has elected to have the audits of the financial statements performed in accordance with ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's (DOL) Rules and Regulations for Reporting and Disclosure under ERISA (ERISA Section 103(a)(3)(C) audit). As permitted by ERISA Section 103(a)(3)(C), our audits need not extend to any statements or information related to assets held for investment of the Plan (investment information) by a bank or similar institution or insurance carrier that is regulated, supervised, and subject to periodic examination by a state or federal agency (qualified institution), provided that the investment information is prepared and certified to by the qualified institution in accordance with 29 CFR 2520.103-5 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

Management has obtained certifications from a qualified institution as of December 31, 2022 and 2021, and for the year ended December 31, 2022, stating that the certified investment information, as described in Note 5 to the financial statements, is complete and accurate.

### *Opinion*

In our opinion, based on our audits and the procedures performed as described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report

- the amounts and disclosures in the accompanying financial statements, other than those agreed to or derived from the certified investment information, are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (GAAP); and

- the certified investment information in the accompanying financial statements agrees to, or is derived from, in all material respects, the information prepared and certified by a qualified institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

BDO USA, P.C., a Virginia professional corporation, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.



*Basis for Opinion*

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are required to be independent of the Plan and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our ERISA Section 103(a)(3)(C) audit opinion.

*Responsibilities of Management for the Financial Statements*

Management is responsible for the preparation and fair presentation of the financial statements in accordance with GAAP, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management's election of the ERISA Section 103(a)(3)(C) audit does not affect management's responsibility for the financial statements.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern within one year after the date that the financial statements are issued or available to be issued.

Management is responsible for maintaining a current plan instrument, including all plan amendments. Management is also responsible for administering the Plan and determining that the Plan's transactions that are presented and disclosed in the financial statements are in conformity with the Plan's provisions, including maintaining sufficient records with respect to each of the participants, to determine the benefits due or which may become due to such participants.

*Auditor's Responsibilities for the Audit of the Financial Statements*

Except as described in the *Scope and Nature of the ERISA Section 103(a)(3)(C) Audit* section of our report, our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if, there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern for a reasonable period of time.

Our audits did not extend to the certified investment information, except for obtaining and reading the certifications, comparing the certified investment information with the related information presented and disclosed in the financial statements, and reading the disclosures relating to the certified investment information to assess whether they are in accordance with the presentation and disclosure requirements of GAAP.

Accordingly, the objective of an ERISA Section 103(a)(3)(C) audit is not to express an opinion about whether the financial statements as a whole are presented fairly, in all material respects, in accordance with GAAP.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*Other Matter —Supplemental Schedule Required by ERISA*

The supplemental schedule of Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022 is presented for purposes of additional analysis and is not a required part of the financial statements but is supplementary information required by the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information included in the supplemental schedule, other than that agreed to or derived from the certified investment information, has been subjected to auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS. For information included in the supplemental schedule that agreed to or is derived from the certified investment information, we compared such information to the related certified investment information.

In forming our opinion on the supplemental schedule, we evaluated whether the supplemental schedule, other than the information agreed to or derived from the certified investment information, including its form and content, is presented in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

In our opinion

- the form and content of the supplemental schedule, other than the information in the supplemental schedule that agreed to or is derived from the certified investment information, is presented, in all material respects, in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

- the certified investment information in the supplemental schedule agrees to, or is derived from, in all material respects, the information prepared and certified by a qualified institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

BDO USA, P.C.

October 4, 2023

# Financial Statements

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Statements of Net Assets Available for Benefits

| *December 31,* | 2022 | 2021 |
|---|---|---|
| ***Assets*** | | |
| Investments at fair value | | |
| Mutual funds | $ 208,544,110 | $ 646,560,417 |
| Common collective trusts | 334,155,954 | - |
| Money market fund | 29,038,505 | 23,498,823 |
| Total investments | 571,738,569 | 670,059,240 |
| Receivables: | | |
| Employer contributions | 23,906,300 | 21,287,889 |
| Employee contributions | 1,409,743 | 1,259,336 |
| Notes receivable from participants | 16,398,844 | 15,850,152 |
| Total receivables | 41,714,887 | 38,397,377 |
| **Net assets available for benefits** | $ 613,453,456 | $ 708,456,617 |

*See accompanying notes to the financial statements.*

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Statement of Changes in Net Assets Available for Benefits

| *For the year ended December 31,* | 2022 |
|---|---|
| **Changes to net assets attributed to:** | |
| Net investment income (loss): | |
| Net depreciation in fair value of investments | $ (126,495,191) |
| Interest and dividends | 5,673,152 |
| Total net investment loss | (120,822,039) |
| Interest income on notes receivable from participants | 916,562 |
| Contributions: | |
| Employer | 23,906,300 |
| Participant | 38,897,497 |
| Rollovers | 1,459,586 |
| Total contributions | 64,263,383 |
| Deductions: | |
| Benefits paid to participants | 39,105,492 |
| Administrative expense, net of revenue credit | 255,575 |
| Total deductions | 39,361,067 |
| **Net decrease** | (95,003,161) |
| **Net assets available for benefits,** beginning of year | 708,456,617 |
| **Net assets available for benefits,** end of year | $ 613,453,456 |

*See accompanying notes to the financial statements.*

## 1. Description of the Plan

The following description of the In-N-Out Burger Associates' Profit-Sharing Plan (the "Plan") provides only general information. Participants should refer to the Plan document for a more complete description of the Plan's provisions.

### *General*

The Plan is a defined contribution plan for the benefit of all eligible employees of In-N-Out Burger (the "Company" or "Plan Sponsor"). Eligible employees include those who have completed 1,000 hours of service during a one-year period and are at least 21 years of age. Unless they affirmatively opt out, newly eligible employees are automatically enrolled in the Plan with a 6% deferral rate on the next quarterly enrollment date. Such deferral rate is increased annually by 1% not to exceed 15%, unless the participant elects otherwise. Quarterly enrollment dates fall on the first day of the 1st, 4th, 7th, or 10th month of the Plan year. The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

### *Plan Administration*

The Plan's trustee and recordkeeper is Fidelity Management Trust Company ("Trustee"). The Plan is administered by an administrative committee appointed by the Board of Directors of the Company. The Trustee holds and executes investment transactions, makes payments as directed, and provides record keeping and other functions, as defined.

### *Contributions*

Each year, participants may contribute on a pretax or after-tax ("Roth 401(k)") basis up to 60% of their annual eligible compensation, subject to certain Internal Revenue Code ("IRC") limitations. Participants who have attained age 50 before the end of the Plan year, are eligible to make catch-up contributions, subject to certain IRC limitations. Participants may also contribute amounts representing distributions from other qualified defined benefit or defined contribution plans (rollover).

Contributions from the Company are discretionary. While there are no minimum contribution requirements under the Plan, contributions are limited to the maximum amount deductible by the Company for federal income tax purposes. The Company's discretionary profit sharing contributions are allocated to eligible participants who are employed on the last day of the Plan year in accordance with a formula which is based upon the participant's compensation as defined in the Plan document. Company discretionary supplemental age-weighted contributions ("Supplemental Contributions") are allocated in accordance with a formula which is based upon the participant's compensation, as defined in the Plan document and age. Supplemental Contributions are provided to eligible participants who have attained age 35, completed 10 or more years of uninterrupted consecutive service with the Company, and are employed on the last day of the Plan year. For the year ended December 31, 2022, the Company made both a discretionary profit sharing and supplemental age-weighted contributions totaling $23,906,300 which was remitted to the Plan in 2023 and is reflected as employer contributions receivable on the accompanying Statements of Net Assets Available for Benefits.

*Participant Accounts*

Individual accounts are maintained for each Plan participant. Each participant's account is credited with the participant's contributions, allocations of the Company's discretionary contributions, if any, Plan forfeitures, if applicable, and Plan earnings. Participant accounts are charged with an allocation of the Plan's administrative expenses, if applicable. Forfeitures are allocated annually to the accounts of eligible participants proportionately based on each participant's compensation, as defined in the Plan document. Allocations are based on participant earnings, account balances, or specific transactions, as defined. The benefit to which a participant is entitled is the benefit that can be provided from the participant's vested account.

*Investments*

Participants direct the investment of their contributions and Company contributions, if any, into various investment options offered by the Plan.

*Vesting*

Participants are vested immediately in their contributions plus actual earnings thereon. Participants vest in Company contributions after they have attained three years of service with the Company, at which time they become 100% vested. Participants also become fully vested upon reaching age 65, in the event of death, or upon suffering a permanent disability while in the employment of the Company.

*Notes Receivable from Participants*

Participants are permitted to borrow a minimum of $1,000 of their vested benefits under the Plan. Participants may borrow up to a maximum equal to the lesser of 50% of their vested account balance or $50,000, reduced by the highest outstanding loan balance in their account during the prior 12-month period. Loans are secured by the participant's account and bear an interest rate at prime rate plus 2% or at local prevailing rates as determined by the Plan Administrator, which would be made under similar circumstances and is fixed for the term of the loan. The notes are repaid ratably through payroll deductions over a period of five years or less, unless used to purchase a principal residence. These loans are subject to certain restrictions as defined by the Plan Document and applicable restrictions under the IRC.

*Payment of Benefits*

The payment of benefits can be made upon service or disability retirement, termination of the Plan, death, termination of employment, or financial hardship. Benefits to which participants are entitled are limited to the vested amount accumulated in each participant's account. The participant or beneficiary may be paid in a lump sum or on an installment basis at the option of the participant or beneficiary, or as specified below.

Upon termination of service, participants with account balances not in excess of $1,000 will receive an automatic lump-sum payout. Participants with account balances in excess of $1,000, but not in excess of $5,000, may elect to (1) receive a lump-sum payout, or (2) rollover the account to another qualified plan or an Individual Retirement Account ("IRA"). If the participant does not make an

election, the amount will be rolled over into an IRA selected by the Plan Sponsor on behalf of the participant. For participants with account balances in excess of $5,000, no distribution will occur until a withdrawal is requested from participants. A participant may elect to leave his or her account balance in the Plan, receive either a lump-sum amount equal to the value of the participant's vested interest in his or her account, or rollover the account to another qualified plan or an IRA.

***Forfeitures***

Amounts forfeited by terminated employees are allocated annually to participants as part of the discretionary profit sharing and supplemental age-weighted contributions (collectively, the "Profit Sharing Contribution"). During the 2022 Plan year, $307,271 in forfeitures were allocated to participants within the Profit Sharing Contribution. As of December 31, 2022 and 2021, there were $202,244 and $290,736 of unallocated forfeitures in the retirement money market portfolio fund, respectively.

## 2. Summary of Significant Accounting Policies

***Basis of Accounting***

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America ("GAAP").

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires Plan management to make estimates and assumptions that affect the reported amounts of assets and liabilities and changes therein, and disclosure of contingent assets and liabilities. Actual results could differ materially from those estimates.

***Risks and Uncertainties***

The Plan invests in various investment securities. Investment securities, in general are exposed to various risks such as interest rate, market and credit risks. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participants' account balances and the amounts reported in the Statements of Net Assets Available for Benefits and the Statement of Changes in Net Assets Available for Benefits.

***Investment Valuation and Income Recognition***

Investments are reported at fair value. Fair value is 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. The Plan's administrative committee determines the Plan's valuation policies utilizing information provided by the Trustee. See Note 3 for discussion of fair value measurements. Purchases and sales of investments are recorded on a trade-date basis. Interest income is recorded on an accrual basis. Dividends are recorded on the ex-dividend date. Net depreciation includes the Plan's gains and losses on investments bought and sold as well as held during the year.

***Notes Receivable from Participants***

Notes receivable from participants are measured at their unpaid principal balance. Any accrued but unpaid interest is de minimis. If a participant ceases to make loan repayments and the plan administrator deems the participant loan to be in default, the participant loan balance is reduced, and a benefit payment is recorded.

***Administrative Expenses***

Certain expenses of maintaining the Plan are paid by the Company and are excluded from these financial statements. There is no guarantee that the Company will continue to pay such expenses. Administrative expenses paid by the Plan for the year ended December 31, 2022 totaled $255,574.

During 2022, the Plan, through a revenue credit program with Fidelity, received revenue credits of $92,011. Such amounts were allocated to participants based on the election of eligible investments. Administrative expenses included in the Statement of Changes in Net Assets Available for Benefits are presented net of participant revenue credits. To the extent that this amount exceeds administrative expenses, the amount is presented as a net credit.

***Payment of Benefits***

Benefits are recorded when paid.

## 3. Fair Value Measurements

FASB Accounting Standards Codification ("ASC") 820, *Fair Value Measurement* ("ASC 820"), provides the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3). The three levels of the fair value hierarchy under ASC 820, are described as follows:

Level 1 - Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has the ability to access;

Level 2 - Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;
- Inputs other than quoted prices that are observable for the asset or liability;
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

Level 3 - Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

There have been no changes in the methodologies used at December 31, 2022 and 2021. The following is a description of the valuation methodologies used for investments measured at fair value.

**Mutual Funds and Money Market Funds**: Valued at the daily closing price as reported by the fund. Mutual funds held by the Plan are open-end mutual funds that are registered with the SEC. These funds are required to publish their daily net asset value (NAV) and to transact at that price. These funds held by the Plan are deemed to be actively traded.

**Common/Collective Trusts (CCTs)**: Common/collective trusts are valued at the net asset value (NAV) of units held. The NAV, as provided by the trustee of the CCTs, is used as a practical expedient to estimate fair value. The NAV is based on the fair value of the underlying investments held by the CCT less its liabilities. This practical expedient is not used when it is determined to be probable that the CCTs will sell for an amount different than the reported NAV. The CCTs provide for daily redemptions by the Plan at reported NAV with no advance notice. There are no unfunded commitments related to these investments. These are direct filing entities.

The valuation methods used by the Plan may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, although the Plan believes its valuation method is appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following tables set forth by level, within the fair value hierarchy, the Plan's investments at fair value as of December 31, 2022 and 2021:

| | Investments at Fair Value as of December 31, 2022 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Mutual funds | $ 208,544,110 | $ - | $ - | $ 208,544,110 |
| Money market fund | 29,038,505 | - | - | 29,038,505 |
| Investments measured at NAV | | | | 344,155,954 |
| Total investments at fair value | $ 237,582,615 | $ - | $ - | $ 571,738,569 |

| | Investments at Fair Value as of December 31, 2021 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Mutual funds | $ 646,560,417 | $ - | $ - | $ 646,560,417 |
| Money market fund | 23,498,823 | - | - | 23,498,823 |
| Total investments at fair value | $ 670,059,240 | $ - | $ - | $ 670,059,240 |

## 4. Tax Status

The plan document is a pre-approved prototype plan that received a favorable opinion letter from the Internal Revenue Service dated June 30, 2020, which stated that the Plan, as then designed, was in accordance with applicable sections of the Internal Revenue Code (IRC). Although the Plan has been amended since receiving the favorable opinion letter, the plan administrator believes that the Plan is designed and is currently being operated in compliance with the applicable requirements of the IRC and related state statutes, and that the trust, which forms a part of the Plan, is exempt from federal income and state franchise taxes.

In accordance with guidance on accounting for uncertainty in income taxes, the plan administrator has evaluated the Plan's tax positions and does not believe the Plan has any uncertain tax positions that require disclosure or adjustment to the financial statements. The Plan is subject to routine audits by taxing jurisdictions; however, there are currently no audits for any tax periods in progress.

## 5. Information Certified by the Trustee

The Plan Administrator elected the method of annual reporting compliance permitted by ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Accordingly, the Plan's Trustee has certified that the following information included in the accompanying financial statements and ERISA-required supplemental schedule is complete and accurate.

- Investments and notes receivable from participants as reflected in the Statements of Net Assets Available for Benefits as of December 31, 2022 and 2021;
- Net investment loss and interest income on notes receivable from participants as reflected in the Statement of Changes in Net Assets Available for Benefits for the year ended December 31, 2022.
- Investment values disclosed in Note 3; and
- Investments and notes receivable from participants, as reflected in Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022, as shown on the supplemental schedule.

The Plan Administrator instructed the Plan's independent auditors not to perform any auditing procedures with respect to this certified information, except for comparing such information to the related information included in the financial statements and supplemental schedule.

## 6. Party-In-Interest and Related-Party Transactions

Certain Plan investments are managed by a company affiliated with Fidelity Management Trust Company, the trustee of the Plan, and therefore, these transactions qualify as party-in-interest transactions as defined by ERISA. Expenses paid by the Plan to the trustee also qualify as party-in-interest transactions. The Plan makes loans to participants. Such transactions, while considered party-in-interest transactions under ERISA regulations, are permitted under the provisions of the Plan and are specifically exempt from the prohibition of party-in-interest transactions under ERISA.

## 7. Plan Termination

Although it has not expressed any intent to do so, the Company has the right under the Plan to discontinue its contributions at any time and to terminate the Plan subject to the provisions of ERISA. In the event of Plan termination, participants would become 100 percent vested in their employer contributions.

## 8. Subsequent Events

The financial statements and related disclosures include an evaluation of events up through and including October 4, 2023, which is the date the financial statements were available to be issued.

# ERISA Required Supplemental Schedule

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year)
## December 31, 2022

EIN: 95-2246829
Plan Number: 001

| (a) | (b) Identity of issue, borrower, lessor or similar party | (c) Description of investment including maturity date, rate of interest, collateral, par or maturity value | (d) Cost ** | (e) Current Value |
|---|---|---|---|---|
| | **Mutual Funds** | | | |
| | American Beacon Advisors Inc | American Beacon Small Cap Value Fund Class Institutional | | $ 2,147,262 |
| | Artisan | Artisan International Fund Investor Class | | 9,789,695 |
| | DFA Dimensional Funds | DFA Global Real Estate Securities Portfolio | | 1,486,997 |
| | Frost Investment Advisors, LLC | Frost Low Duration Bond Fund Class Institutional | | 563,817 |
| | Hotchkis & Wiley | H & W High Yield Fund Class I | | 1,202,623 |
| | Metropolitan West Asset Management, LLC | Metropolitan West Total Return Bond Fund Class Institutional | | 9,970,702 |
| | Vanguard Group | Vanguard Total International Bond Index Fund Admiral Shares | | 405,515 |
| | Vanguard Group | Vanguard Inflation-Protected Securities Fund Admiral Shares | | 1,879,119 |
| * | Fidelity Management Trust Company | Fidelity Mid Cap Inx | | 8,976,961 |
| * | Fidelity Management Trust Company | Fidelity Small Cap Inx | | 9,218,100 |
| * | Fidelity Management Trust Company | Fidelity US Bond Inx Fund | | 8,805,014 |
| * | Fidelity Management Trust Company | Fidelity Total International Inx Fund | | 13,595,787 |
| * | Fidelity Management Trust Company | Fidelity 500 Index | | 140,502,518 |
| | Total Mutual Funds | | | 208,544,110 |
| | **Common Collective Trusts** | | | |
| * | Fidelity Management Trust Company | Fidelity Freedom 2005 Inx Fund | | 116,060 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2010 Inx Fund | | 626,081 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2015 Inx Fund | | 1,875,735 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2020 Inx Fund | | 6,567,955 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2025 Inx Fund | | 12,561,408 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2030 Inx Fund | | 15,412,759 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2035 Inx Fund | | 22,176,242 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2040 Inx Fund | | 26,707,929 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2045 Inx Fund | | 18,076,401 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2050 Inx Fund | | 48,184,813 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2055 Inx Fund | | 64,776,886 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2060 Inx Fund | | 56,405,005 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2065 Inx Fund | | 15,527,241 |
| * | Fidelity Management Trust Company | Fidelity Freedom Income Fund | | 1,001,266 |
| * | Fidelity Management Trust Company | Fidelity Contrafund Pool | | 37,644,041 |
| | Ceredex Value Advisors | Ceredex Large-Cap Value Equity | | 6,496,132 |
| | Total Common Collective Trusts | | | 334,155,954 |
| | **Money Market Fund** | | | |
| | Vanguard Treasury Money Market Fund | Retirement Money Market Portfolio | | 29,038,505 |
| | **Total Investments** | | | 571,738,569 |
| * | Participant Loans | Notes receivable from participants, with interest rates of 5.25% - 10.25% | - | 16,398,844 |
| | Total | | | $ 588,137,413 |

* *Represents a party-in-interest to the Plan, as defined by ERISA (Fidelity Investments Institutional Services Company is a related company to Fidelity Management Trust Company).*

** *Cost information is not a required disclosure for participant-directed investments and therefore is not included.*




# In-N-Out Burger Associates' Profit Sharing Plan

## Financial Statements and Supplemental Schedule

As of December 31, 2022 and 2021 and for the year ended December 31, 2022

The report accompanying these financial statements was issued by BDO USA, P.C., a Virginia professional service corporation and the U.S. member of BDO International Limited, a UK company limited by guarantee.

BDO

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Financial Statements and Supplemental Schedule

As of December 31, 2022 and 2021 and for the year ended December 31, 2022

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Contents


| | Page |
|---|---|
| **Independent Auditor's Report** | 3 - 6 |
| **Financial Statements** | |
| Statements of Net Assets Available for Benefits as of December 31, 2022 and 2021 | 8 |
| Statement of Changes in Net Assets Available for Benefits for the year ended December 31, 2022 | 9 |
| Notes to the Financial Statements | 10 - 16 |
| **ERISA Required Supplemental Schedule** | |
| Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022 | 18 |


*Note: Other schedules required by Section 2520.103.10 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA have been omitted because they are not applicable.*

BDO

Tel: 714-957-3200
Fax: 714-957-1080
www.bdo.com

600 Anton Blvd., Suite 500
Costa Mesa, CA 92626

## Independent Auditor's Report

To The Profit Sharing Committee
In-N-Out Burger Associates' Profit Sharing Plan
Irvine, California

### *Scope and Nature of the ERISA Section 103(a)(3)(C) Audit*

We have performed audits of the financial statements of the In-N-Out Burger Associates' Profit Sharing Plan (the Plan), an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), as permitted by ERISA Section 103(a)(3)(C). The financial statements comprise the statements of net assets available for benefits as of December 31, 2022 and 2021, and the related statement of changes in net assets available for benefits for the year ended December 31, 2022, and the related notes to the financial statements.

Management, having determined it is permissible in the circumstances, has elected to have the audits of the financial statements performed in accordance with ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's (DOL) Rules and Regulations for Reporting and Disclosure under ERISA (ERISA Section 103(a)(3)(C) audit). As permitted by ERISA Section 103(a)(3)(C), our audits need not extend to any statements or information related to assets held for investment of the Plan (investment information) by a bank or similar institution or insurance carrier that is regulated, supervised, and subject to periodic examination by a state or federal agency (qualified institution), provided that the investment information is prepared and certified to by the qualified institution in accordance with 29 CFR 2520.103-5 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

Management has obtained certifications from a qualified institution as of December 31, 2022 and 2021, and for the year ended December 31, 2022, stating that the certified investment information, as described in Note 5 to the financial statements, is complete and accurate.

### *Opinion*

In our opinion, based on our audits and the procedures performed as described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report

- the amounts and disclosures in the accompanying financial statements, other than those agreed to or derived from the certified investment information, are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (GAAP); and

- the certified investment information in the accompanying financial statements agrees to, or is derived from, in all material respects, the information prepared and certified by a qualified institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

BDO USA, P.C., a Virginia professional corporation, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.



*Basis for Opinion*

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are required to be independent of the Plan and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our ERISA Section 103(a)(3)(C) audit opinion.

*Responsibilities of Management for the Financial Statements*

Management is responsible for the preparation and fair presentation of the financial statements in accordance with GAAP, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management's election of the ERISA Section 103(a)(3)(C) audit does not affect management's responsibility for the financial statements.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern within one year after the date that the financial statements are issued or available to be issued.

Management is responsible for maintaining a current plan instrument, including all plan amendments. Management is also responsible for administering the Plan and determining that the Plan's transactions that are presented and disclosed in the financial statements are in conformity with the Plan's provisions, including maintaining sufficient records with respect to each of the participants, to determine the benefits due or which may become due to such participants.

*Auditor's Responsibilities for the Audit of the Financial Statements*

Except as described in the *Scope and Nature of the ERISA Section 103(a)(3)(C) Audit* section of our report, our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if, there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern for a reasonable period of time.

Our audits did not extend to the certified investment information, except for obtaining and reading the certifications, comparing the certified investment information with the related information presented and disclosed in the financial statements, and reading the disclosures relating to the certified investment information to assess whether they are in accordance with the presentation and disclosure requirements of GAAP.

Accordingly, the objective of an ERISA Section 103(a)(3)(C) audit is not to express an opinion about whether the financial statements as a whole are presented fairly, in all material respects, in accordance with GAAP.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*Other Matter —Supplemental Schedule Required by ERISA*

The supplemental schedule of Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022 is presented for purposes of additional analysis and is not a required part of the financial statements but is supplementary information required by the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information included in the supplemental schedule, other than that agreed to or derived from the certified investment information, has been subjected to auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS. For information included in the supplemental schedule that agreed to or is derived from the certified investment information, we compared such information to the related certified investment information.

In forming our opinion on the supplemental schedule, we evaluated whether the supplemental schedule, other than the information agreed to or derived from the certified investment information, including its form and content, is presented in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

In our opinion

- the form and content of the supplemental schedule, other than the information in the supplemental schedule that agreed to or is derived from the certified investment information, is presented, in all material respects, in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

- the certified investment information in the supplemental schedule agrees to, or is derived from, in all material respects, the information prepared and certified by a qualified institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

BDO USA, P.C.

October 4, 2023

# Financial Statements

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Statements of Net Assets Available for Benefits

| *December 31,* | 2022 | 2021 |
|---|---|---|
| ***Assets*** | | |
| Investments at fair value | | |
| Mutual funds | $ 208,544,110 | $ 646,560,417 |
| Common collective trusts | 334,155,954 | - |
| Money market fund | 29,038,505 | 23,498,823 |
| Total investments | 571,738,569 | 670,059,240 |
| Receivables: | | |
| Employer contributions | 23,906,300 | 21,287,889 |
| Employee contributions | 1,409,743 | 1,259,336 |
| Notes receivable from participants | 16,398,844 | 15,850,152 |
| Total receivables | 41,714,887 | 38,397,377 |
| **Net assets available for benefits** | $ 613,453,456 | $ 708,456,617 |

*See accompanying notes to the financial statements.*

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Statement of Changes in Net Assets Available for Benefits

| *For the year ended December 31,* | 2022 |
|---|---|
| **Changes to net assets attributed to:** | |
| Net investment income (loss): | |
| Net depreciation in fair value of investments | $ (126,495,191) |
| Interest and dividends | 5,673,152 |
| Total net investment loss | (120,822,039) |
| Interest income on notes receivable from participants | 916,562 |
| Contributions: | |
| Employer | 23,906,300 |
| Participant | 38,897,497 |
| Rollovers | 1,459,586 |
| Total contributions | 64,263,383 |
| Deductions: | |
| Benefits paid to participants | 39,105,492 |
| Administrative expense, net of revenue credit | 255,575 |
| Total deductions | 39,361,067 |
| **Net decrease** | (95,003,161) |
| **Net assets available for benefits,** beginning of year | 708,456,617 |
| **Net assets available for benefits,** end of year | $ 613,453,456 |

*See accompanying notes to the financial statements.*

## 1. Description of the Plan

The following description of the In-N-Out Burger Associates' Profit-Sharing Plan (the "Plan") provides only general information. Participants should refer to the Plan document for a more complete description of the Plan's provisions.

### *General*

The Plan is a defined contribution plan for the benefit of all eligible employees of In-N-Out Burger (the "Company" or "Plan Sponsor"). Eligible employees include those who have completed 1,000 hours of service during a one-year period and are at least 21 years of age. Unless they affirmatively opt out, newly eligible employees are automatically enrolled in the Plan with a 6% deferral rate on the next quarterly enrollment date. Such deferral rate is increased annually by 1% not to exceed 15%, unless the participant elects otherwise. Quarterly enrollment dates fall on the first day of the 1st, 4th, 7th, or 10th month of the Plan year. The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

### *Plan Administration*

The Plan's trustee and recordkeeper is Fidelity Management Trust Company ("Trustee"). The Plan is administered by an administrative committee appointed by the Board of Directors of the Company. The Trustee holds and executes investment transactions, makes payments as directed, and provides record keeping and other functions, as defined.

### *Contributions*

Each year, participants may contribute on a pretax or after-tax ("Roth 401(k)") basis up to 60% of their annual eligible compensation, subject to certain Internal Revenue Code ("IRC") limitations. Participants who have attained age 50 before the end of the Plan year, are eligible to make catch-up contributions, subject to certain IRC limitations. Participants may also contribute amounts representing distributions from other qualified defined benefit or defined contribution plans (rollover).

Contributions from the Company are discretionary. While there are no minimum contribution requirements under the Plan, contributions are limited to the maximum amount deductible by the Company for federal income tax purposes. The Company's discretionary profit sharing contributions are allocated to eligible participants who are employed on the last day of the Plan year in accordance with a formula which is based upon the participant's compensation as defined in the Plan document. Company discretionary supplemental age-weighted contributions ("Supplemental Contributions") are allocated in accordance with a formula which is based upon the participant's compensation, as defined in the Plan document and age. Supplemental Contributions are provided to eligible participants who have attained age 35, completed 10 or more years of uninterrupted consecutive service with the Company, and are employed on the last day of the Plan year. For the year ended December 31, 2022, the Company made both a discretionary profit sharing and supplemental age-weighted contributions totaling $23,906,300 which was remitted to the Plan in 2023 and is reflected as employer contributions receivable on the accompanying Statements of Net Assets Available for Benefits.

*Participant Accounts*

Individual accounts are maintained for each Plan participant. Each participant's account is credited with the participant's contributions, allocations of the Company's discretionary contributions, if any, Plan forfeitures, if applicable, and Plan earnings. Participant accounts are charged with an allocation of the Plan's administrative expenses, if applicable. Forfeitures are allocated annually to the accounts of eligible participants proportionately based on each participant's compensation, as defined in the Plan document. Allocations are based on participant earnings, account balances, or specific transactions, as defined. The benefit to which a participant is entitled is the benefit that can be provided from the participant's vested account.

*Investments*

Participants direct the investment of their contributions and Company contributions, if any, into various investment options offered by the Plan.

*Vesting*

Participants are vested immediately in their contributions plus actual earnings thereon. Participants vest in Company contributions after they have attained three years of service with the Company, at which time they become 100% vested. Participants also become fully vested upon reaching age 65, in the event of death, or upon suffering a permanent disability while in the employment of the Company.

*Notes Receivable from Participants*

Participants are permitted to borrow a minimum of $1,000 of their vested benefits under the Plan. Participants may borrow up to a maximum equal to the lesser of 50% of their vested account balance or $50,000, reduced by the highest outstanding loan balance in their account during the prior 12-month period. Loans are secured by the participant's account and bear an interest rate at prime rate plus 2% or at local prevailing rates as determined by the Plan Administrator, which would be made under similar circumstances and is fixed for the term of the loan. The notes are repaid ratably through payroll deductions over a period of five years or less, unless used to purchase a principal residence. These loans are subject to certain restrictions as defined by the Plan Document and applicable restrictions under the IRC.

*Payment of Benefits*

The payment of benefits can be made upon service or disability retirement, termination of the Plan, death, termination of employment, or financial hardship. Benefits to which participants are entitled are limited to the vested amount accumulated in each participant's account. The participant or beneficiary may be paid in a lump sum or on an installment basis at the option of the participant or beneficiary, or as specified below.

Upon termination of service, participants with account balances not in excess of $1,000 will receive an automatic lump-sum payout. Participants with account balances in excess of $1,000, but not in excess of $5,000, may elect to (1) receive a lump-sum payout, or (2) rollover the account to another qualified plan or an Individual Retirement Account ("IRA"). If the participant does not make an

election, the amount will be rolled over into an IRA selected by the Plan Sponsor on behalf of the participant. For participants with account balances in excess of $5,000, no distribution will occur until a withdrawal is requested from participants. A participant may elect to leave his or her account balance in the Plan, receive either a lump-sum amount equal to the value of the participant's vested interest in his or her account, or rollover the account to another qualified plan or an IRA.

***Forfeitures***

Amounts forfeited by terminated employees are allocated annually to participants as part of the discretionary profit sharing and supplemental age-weighted contributions (collectively, the "Profit Sharing Contribution"). During the 2022 Plan year, $307,271 in forfeitures were allocated to participants within the Profit Sharing Contribution. As of December 31, 2022 and 2021, there were $202,244 and $290,736 of unallocated forfeitures in the retirement money market portfolio fund, respectively.

## 2. Summary of Significant Accounting Policies

***Basis of Accounting***

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America ("GAAP").

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires Plan management to make estimates and assumptions that affect the reported amounts of assets and liabilities and changes therein, and disclosure of contingent assets and liabilities. Actual results could differ materially from those estimates.

***Risks and Uncertainties***

The Plan invests in various investment securities. Investment securities, in general are exposed to various risks such as interest rate, market and credit risks. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participants' account balances and the amounts reported in the Statements of Net Assets Available for Benefits and the Statement of Changes in Net Assets Available for Benefits.

***Investment Valuation and Income Recognition***

Investments are reported at fair value. Fair value is 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. The Plan's administrative committee determines the Plan's valuation policies utilizing information provided by the Trustee. See Note 3 for discussion of fair value measurements. Purchases and sales of investments are recorded on a trade-date basis. Interest income is recorded on an accrual basis. Dividends are recorded on the ex-dividend date. Net depreciation includes the Plan's gains and losses on investments bought and sold as well as held during the year.

***Notes Receivable from Participants***

Notes receivable from participants are measured at their unpaid principal balance. Any accrued but unpaid interest is de minimis. If a participant ceases to make loan repayments and the plan administrator deems the participant loan to be in default, the participant loan balance is reduced, and a benefit payment is recorded.

***Administrative Expenses***

Certain expenses of maintaining the Plan are paid by the Company and are excluded from these financial statements. There is no guarantee that the Company will continue to pay such expenses. Administrative expenses paid by the Plan for the year ended December 31, 2022 totaled $255,574.

During 2022, the Plan, through a revenue credit program with Fidelity, received revenue credits of $92,011. Such amounts were allocated to participants based on the election of eligible investments. Administrative expenses included in the Statement of Changes in Net Assets Available for Benefits are presented net of participant revenue credits. To the extent that this amount exceeds administrative expenses, the amount is presented as a net credit.

***Payment of Benefits***

Benefits are recorded when paid.

## 3. Fair Value Measurements

FASB Accounting Standards Codification ("ASC") 820, *Fair Value Measurement* ("ASC 820"), provides the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3). The three levels of the fair value hierarchy under ASC 820, are described as follows:

Level 1 - Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has the ability to access;

Level 2 - Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;
- Inputs other than quoted prices that are observable for the asset or liability;
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

Level 3 - Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

There have been no changes in the methodologies used at December 31, 2022 and 2021. The following is a description of the valuation methodologies used for investments measured at fair value.

**Mutual Funds and Money Market Funds**: Valued at the daily closing price as reported by the fund. Mutual funds held by the Plan are open-end mutual funds that are registered with the SEC. These funds are required to publish their daily net asset value (NAV) and to transact at that price. These funds held by the Plan are deemed to be actively traded.

**Common/Collective Trusts (CCTs)**: Common/collective trusts are valued at the net asset value (NAV) of units held. The NAV, as provided by the trustee of the CCTs, is used as a practical expedient to estimate fair value. The NAV is based on the fair value of the underlying investments held by the CCT less its liabilities. This practical expedient is not used when it is determined to be probable that the CCTs will sell for an amount different than the reported NAV. The CCTs provide for daily redemptions by the Plan at reported NAV with no advance notice. There are no unfunded commitments related to these investments. These are direct filing entities.

The valuation methods used by the Plan may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, although the Plan believes its valuation method is appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following tables set forth by level, within the fair value hierarchy, the Plan's investments at fair value as of December 31, 2022 and 2021:

| | Investments at Fair Value as of December 31, 2022 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Mutual funds | $ 208,544,110 | $ - | $ - | $ 208,544,110 |
| Money market fund | 29,038,505 | - | - | 29,038,505 |
| Investments measured at NAV | | | | 344,155,954 |
| Total investments at fair value | $ 237,582,615 | $ - | $ - | $ 571,738,569 |

| | Investments at Fair Value as of December 31, 2021 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Mutual funds | $ 646,560,417 | $ - | $ - | $ 646,560,417 |
| Money market fund | 23,498,823 | - | - | 23,498,823 |
| Total investments at fair value | $ 670,059,240 | $ - | $ - | $ 670,059,240 |

## 4. Tax Status

The plan document is a pre-approved prototype plan that received a favorable opinion letter from the Internal Revenue Service dated June 30, 2020, which stated that the Plan, as then designed, was in accordance with applicable sections of the Internal Revenue Code (IRC). Although the Plan has been amended since receiving the favorable opinion letter, the plan administrator believes that the Plan is designed and is currently being operated in compliance with the applicable requirements of the IRC and related state statutes, and that the trust, which forms a part of the Plan, is exempt from federal income and state franchise taxes.

In accordance with guidance on accounting for uncertainty in income taxes, the plan administrator has evaluated the Plan's tax positions and does not believe the Plan has any uncertain tax positions that require disclosure or adjustment to the financial statements. The Plan is subject to routine audits by taxing jurisdictions; however, there are currently no audits for any tax periods in progress.

## 5. Information Certified by the Trustee

The Plan Administrator elected the method of annual reporting compliance permitted by ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Accordingly, the Plan's Trustee has certified that the following information included in the accompanying financial statements and ERISA-required supplemental schedule is complete and accurate.

- Investments and notes receivable from participants as reflected in the Statements of Net Assets Available for Benefits as of December 31, 2022 and 2021;
- Net investment loss and interest income on notes receivable from participants as reflected in the Statement of Changes in Net Assets Available for Benefits for the year ended December 31, 2022.
- Investment values disclosed in Note 3; and
- Investments and notes receivable from participants, as reflected in Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022, as shown on the supplemental schedule.

The Plan Administrator instructed the Plan's independent auditors not to perform any auditing procedures with respect to this certified information, except for comparing such information to the related information included in the financial statements and supplemental schedule.

## 6. Party-In-Interest and Related-Party Transactions

Certain Plan investments are managed by a company affiliated with Fidelity Management Trust Company, the trustee of the Plan, and therefore, these transactions qualify as party-in-interest transactions as defined by ERISA. Expenses paid by the Plan to the trustee also qualify as party-in-interest transactions. The Plan makes loans to participants. Such transactions, while considered party-in-interest transactions under ERISA regulations, are permitted under the provisions of the Plan and are specifically exempt from the prohibition of party-in-interest transactions under ERISA.

## 7. Plan Termination

Although it has not expressed any intent to do so, the Company has the right under the Plan to discontinue its contributions at any time and to terminate the Plan subject to the provisions of ERISA. In the event of Plan termination, participants would become 100 percent vested in their employer contributions.

## 8. Subsequent Events

The financial statements and related disclosures include an evaluation of events up through and including October 4, 2023, which is the date the financial statements were available to be issued.

# ERISA Required Supplemental Schedule

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year)
## December 31, 2022

EIN: 95-2246829
Plan Number: 001

| (a) | (b) Identity of issue, borrower, lessor or similar party | (c) Description of investment including maturity date, rate of interest, collateral, par or maturity value | (d) Cost ** | (e) Current Value |
|---|---|---|---|---|
| | **Mutual Funds** | | | |
| | American Beacon Advisors Inc | American Beacon Small Cap Value Fund Class Institutional | | $ 2,147,262 |
| | Artisan | Artisan International Fund Investor Class | | 9,789,695 |
| | DFA Dimensional Funds | DFA Global Real Estate Securities Portfolio | | 1,486,997 |
| | Frost Investment Advisors, LLC | Frost Low Duration Bond Fund Class Institutional | | 563,817 |
| | Hotchkis & Wiley | H & W High Yield Fund Class I | | 1,202,623 |
| | Metropolitan West Asset Management, LLC | Metropolitan West Total Return Bond Fund Class Institutional | | 9,970,702 |
| | Vanguard Group | Vanguard Total International Bond Index Fund Admiral Shares | | 405,515 |
| | Vanguard Group | Vanguard Inflation-Protected Securities Fund Admiral Shares | | 1,879,119 |
| * | Fidelity Management Trust Company | Fidelity Mid Cap Inx | | 8,976,961 |
| * | Fidelity Management Trust Company | Fidelity Small Cap Inx | | 9,218,100 |
| * | Fidelity Management Trust Company | Fidelity US Bond Inx Fund | | 8,805,014 |
| * | Fidelity Management Trust Company | Fidelity Total International Inx Fund | | 13,595,787 |
| * | Fidelity Management Trust Company | Fidelity 500 Index | | 140,502,518 |
| | Total Mutual Funds | | | 208,544,110 |
| | **Common Collective Trusts** | | | |
| * | Fidelity Management Trust Company | Fidelity Freedom 2005 Inx Fund | | 116,060 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2010 Inx Fund | | 626,081 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2015 Inx Fund | | 1,875,735 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2020 Inx Fund | | 6,567,955 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2025 Inx Fund | | 12,561,408 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2030 Inx Fund | | 15,412,759 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2035 Inx Fund | | 22,176,242 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2040 Inx Fund | | 26,707,929 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2045 Inx Fund | | 18,076,401 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2050 Inx Fund | | 48,184,813 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2055 Inx Fund | | 64,776,886 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2060 Inx Fund | | 56,405,005 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2065 Inx Fund | | 15,527,241 |
| * | Fidelity Management Trust Company | Fidelity Freedom Income Fund | | 1,001,266 |
| * | Fidelity Management Trust Company | Fidelity Contrafund Pool | | 37,644,041 |
| | Ceredex Value Advisors | Ceredex Large-Cap Value Equity | | 6,496,132 |
| | Total Common Collective Trusts | | | 334,155,954 |
| | **Money Market Fund** | | | |
| | Vanguard Treasury Money Market Fund | Retirement Money Market Portfolio | | 29,038,505 |
| | **Total Investments** | | | 571,738,569 |
| * | Participant Loans | Notes receivable from participants, with interest rates of 5.25% - 10.25% | - | 16,398,844 |
| | Total | | | $ 588,137,413 |

* *Represents a party-in-interest to the Plan, as defined by ERISA (Fidelity Investments Institutional Services Company is a related company to Fidelity Management Trust Company).*

** *Cost information is not a required disclosure for participant-directed investments and therefore is not included.*




# In-N-Out Burger Associates' Profit Sharing Plan

## Financial Statements and Supplemental Schedule

As of December 31, 2022 and 2021 and for the year ended December 31, 2022

The report accompanying these financial statements was issued by BDO USA, P.C., a Virginia professional service corporation and the U.S. member of BDO International Limited, a UK company limited by guarantee.

BDO

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Financial Statements and Supplemental Schedule

As of December 31, 2022 and 2021 and for the year ended December 31, 2022

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Contents


| | Page |
|---|---|
| **Independent Auditor's Report** | 3 - 6 |
| **Financial Statements** | |
| Statements of Net Assets Available for Benefits as of December 31, 2022 and 2021 | 8 |
| Statement of Changes in Net Assets Available for Benefits for the year ended December 31, 2022 | 9 |
| Notes to the Financial Statements | 10 - 16 |
| **ERISA Required Supplemental Schedule** | |
| Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022 | 18 |


*Note: Other schedules required by Section 2520.103.10 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA have been omitted because they are not applicable.*

BDO

Tel: 714-957-3200
Fax: 714-957-1080
www.bdo.com

600 Anton Blvd., Suite 500
Costa Mesa, CA 92626

## Independent Auditor's Report

To The Profit Sharing Committee
In-N-Out Burger Associates' Profit Sharing Plan
Irvine, California

### *Scope and Nature of the ERISA Section 103(a)(3)(C) Audit*

We have performed audits of the financial statements of the In-N-Out Burger Associates' Profit Sharing Plan (the Plan), an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), as permitted by ERISA Section 103(a)(3)(C). The financial statements comprise the statements of net assets available for benefits as of December 31, 2022 and 2021, and the related statement of changes in net assets available for benefits for the year ended December 31, 2022, and the related notes to the financial statements.

Management, having determined it is permissible in the circumstances, has elected to have the audits of the financial statements performed in accordance with ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's (DOL) Rules and Regulations for Reporting and Disclosure under ERISA (ERISA Section 103(a)(3)(C) audit). As permitted by ERISA Section 103(a)(3)(C), our audits need not extend to any statements or information related to assets held for investment of the Plan (investment information) by a bank or similar institution or insurance carrier that is regulated, supervised, and subject to periodic examination by a state or federal agency (qualified institution), provided that the investment information is prepared and certified to by the qualified institution in accordance with 29 CFR 2520.103-5 of the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

Management has obtained certifications from a qualified institution as of December 31, 2022 and 2021, and for the year ended December 31, 2022, stating that the certified investment information, as described in Note 5 to the financial statements, is complete and accurate.

### *Opinion*

In our opinion, based on our audits and the procedures performed as described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report

- the amounts and disclosures in the accompanying financial statements, other than those agreed to or derived from the certified investment information, are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (GAAP); and

- the certified investment information in the accompanying financial statements agrees to, or is derived from, in all material respects, the information prepared and certified by a qualified institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

BDO USA, P.C., a Virginia professional corporation, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.



*Basis for Opinion*

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are required to be independent of the Plan and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our ERISA Section 103(a)(3)(C) audit opinion.

*Responsibilities of Management for the Financial Statements*

Management is responsible for the preparation and fair presentation of the financial statements in accordance with GAAP, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management's election of the ERISA Section 103(a)(3)(C) audit does not affect management's responsibility for the financial statements.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern within one year after the date that the financial statements are issued or available to be issued.

Management is responsible for maintaining a current plan instrument, including all plan amendments. Management is also responsible for administering the Plan and determining that the Plan's transactions that are presented and disclosed in the financial statements are in conformity with the Plan's provisions, including maintaining sufficient records with respect to each of the participants, to determine the benefits due or which may become due to such participants.

*Auditor's Responsibilities for the Audit of the Financial Statements*

Except as described in the *Scope and Nature of the ERISA Section 103(a)(3)(C) Audit* section of our report, our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if, there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern for a reasonable period of time.

Our audits did not extend to the certified investment information, except for obtaining and reading the certifications, comparing the certified investment information with the related information presented and disclosed in the financial statements, and reading the disclosures relating to the certified investment information to assess whether they are in accordance with the presentation and disclosure requirements of GAAP.

Accordingly, the objective of an ERISA Section 103(a)(3)(C) audit is not to express an opinion about whether the financial statements as a whole are presented fairly, in all material respects, in accordance with GAAP.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

*Other Matter —Supplemental Schedule Required by ERISA*

The supplemental schedule of Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022 is presented for purposes of additional analysis and is not a required part of the financial statements but is supplementary information required by the DOL's Rules and Regulations for Reporting and Disclosure under ERISA. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information included in the supplemental schedule, other than that agreed to or derived from the certified investment information, has been subjected to auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS. For information included in the supplemental schedule that agreed to or is derived from the certified investment information, we compared such information to the related certified investment information.

In forming our opinion on the supplemental schedule, we evaluated whether the supplemental schedule, other than the information agreed to or derived from the certified investment information, including its form and content, is presented in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

In our opinion

- the form and content of the supplemental schedule, other than the information in the supplemental schedule that agreed to or is derived from the certified investment information, is presented, in all material respects, in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under ERISA.

- the certified investment information in the supplemental schedule agrees to, or is derived from, in all material respects, the information prepared and certified by a qualified institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

BDO USA, P.C.

October 4, 2023

# Financial Statements

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Statements of Net Assets Available for Benefits

| *December 31,* | 2022 | 2021 |
|---|---|---|
| ***Assets*** | | |
| Investments at fair value | | |
| Mutual funds | $ 208,544,110 | $ 646,560,417 |
| Common collective trusts | 334,155,954 | - |
| Money market fund | 29,038,505 | 23,498,823 |
| Total investments | 571,738,569 | 670,059,240 |
| Receivables: | | |
| Employer contributions | 23,906,300 | 21,287,889 |
| Employee contributions | 1,409,743 | 1,259,336 |
| Notes receivable from participants | 16,398,844 | 15,850,152 |
| Total receivables | 41,714,887 | 38,397,377 |
| **Net assets available for benefits** | $ 613,453,456 | $ 708,456,617 |

*See accompanying notes to the financial statements.*

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Statement of Changes in Net Assets Available for Benefits

| *For the year ended December 31,* | 2022 |
|---|---|
| **Changes to net assets attributed to:** | |
| Net investment income (loss): | |
| Net depreciation in fair value of investments | $ (126,495,191) |
| Interest and dividends | 5,673,152 |
| Total net investment loss | (120,822,039) |
| Interest income on notes receivable from participants | 916,562 |
| Contributions: | |
| Employer | 23,906,300 |
| Participant | 38,897,497 |
| Rollovers | 1,459,586 |
| Total contributions | 64,263,383 |
| Deductions: | |
| Benefits paid to participants | 39,105,492 |
| Administrative expense, net of revenue credit | 255,575 |
| Total deductions | 39,361,067 |
| **Net decrease** | (95,003,161) |
| **Net assets available for benefits,** beginning of year | 708,456,617 |
| **Net assets available for benefits,** end of year | $ 613,453,456 |

*See accompanying notes to the financial statements.*

## 1. Description of the Plan

The following description of the In-N-Out Burger Associates' Profit-Sharing Plan (the "Plan") provides only general information. Participants should refer to the Plan document for a more complete description of the Plan's provisions.

### *General*

The Plan is a defined contribution plan for the benefit of all eligible employees of In-N-Out Burger (the "Company" or "Plan Sponsor"). Eligible employees include those who have completed 1,000 hours of service during a one-year period and are at least 21 years of age. Unless they affirmatively opt out, newly eligible employees are automatically enrolled in the Plan with a 6% deferral rate on the next quarterly enrollment date. Such deferral rate is increased annually by 1% not to exceed 15%, unless the participant elects otherwise. Quarterly enrollment dates fall on the first day of the 1st, 4th, 7th, or 10th month of the Plan year. The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

### *Plan Administration*

The Plan's trustee and recordkeeper is Fidelity Management Trust Company ("Trustee"). The Plan is administered by an administrative committee appointed by the Board of Directors of the Company. The Trustee holds and executes investment transactions, makes payments as directed, and provides record keeping and other functions, as defined.

### *Contributions*

Each year, participants may contribute on a pretax or after-tax ("Roth 401(k)") basis up to 60% of their annual eligible compensation, subject to certain Internal Revenue Code ("IRC") limitations. Participants who have attained age 50 before the end of the Plan year, are eligible to make catch-up contributions, subject to certain IRC limitations. Participants may also contribute amounts representing distributions from other qualified defined benefit or defined contribution plans (rollover).

Contributions from the Company are discretionary. While there are no minimum contribution requirements under the Plan, contributions are limited to the maximum amount deductible by the Company for federal income tax purposes. The Company's discretionary profit sharing contributions are allocated to eligible participants who are employed on the last day of the Plan year in accordance with a formula which is based upon the participant's compensation as defined in the Plan document. Company discretionary supplemental age-weighted contributions ("Supplemental Contributions") are allocated in accordance with a formula which is based upon the participant's compensation, as defined in the Plan document and age. Supplemental Contributions are provided to eligible participants who have attained age 35, completed 10 or more years of uninterrupted consecutive service with the Company, and are employed on the last day of the Plan year. For the year ended December 31, 2022, the Company made both a discretionary profit sharing and supplemental age-weighted contributions totaling $23,906,300 which was remitted to the Plan in 2023 and is reflected as employer contributions receivable on the accompanying Statements of Net Assets Available for Benefits.

*Participant Accounts*

Individual accounts are maintained for each Plan participant. Each participant's account is credited with the participant's contributions, allocations of the Company's discretionary contributions, if any, Plan forfeitures, if applicable, and Plan earnings. Participant accounts are charged with an allocation of the Plan's administrative expenses, if applicable. Forfeitures are allocated annually to the accounts of eligible participants proportionately based on each participant's compensation, as defined in the Plan document. Allocations are based on participant earnings, account balances, or specific transactions, as defined. The benefit to which a participant is entitled is the benefit that can be provided from the participant's vested account.

*Investments*

Participants direct the investment of their contributions and Company contributions, if any, into various investment options offered by the Plan.

*Vesting*

Participants are vested immediately in their contributions plus actual earnings thereon. Participants vest in Company contributions after they have attained three years of service with the Company, at which time they become 100% vested. Participants also become fully vested upon reaching age 65, in the event of death, or upon suffering a permanent disability while in the employment of the Company.

*Notes Receivable from Participants*

Participants are permitted to borrow a minimum of $1,000 of their vested benefits under the Plan. Participants may borrow up to a maximum equal to the lesser of 50% of their vested account balance or $50,000, reduced by the highest outstanding loan balance in their account during the prior 12-month period. Loans are secured by the participant's account and bear an interest rate at prime rate plus 2% or at local prevailing rates as determined by the Plan Administrator, which would be made under similar circumstances and is fixed for the term of the loan. The notes are repaid ratably through payroll deductions over a period of five years or less, unless used to purchase a principal residence. These loans are subject to certain restrictions as defined by the Plan Document and applicable restrictions under the IRC.

*Payment of Benefits*

The payment of benefits can be made upon service or disability retirement, termination of the Plan, death, termination of employment, or financial hardship. Benefits to which participants are entitled are limited to the vested amount accumulated in each participant's account. The participant or beneficiary may be paid in a lump sum or on an installment basis at the option of the participant or beneficiary, or as specified below.

Upon termination of service, participants with account balances not in excess of $1,000 will receive an automatic lump-sum payout. Participants with account balances in excess of $1,000, but not in excess of $5,000, may elect to (1) receive a lump-sum payout, or (2) rollover the account to another qualified plan or an Individual Retirement Account ("IRA"). If the participant does not make an

election, the amount will be rolled over into an IRA selected by the Plan Sponsor on behalf of the participant. For participants with account balances in excess of $5,000, no distribution will occur until a withdrawal is requested from participants. A participant may elect to leave his or her account balance in the Plan, receive either a lump-sum amount equal to the value of the participant's vested interest in his or her account, or rollover the account to another qualified plan or an IRA.

***Forfeitures***

Amounts forfeited by terminated employees are allocated annually to participants as part of the discretionary profit sharing and supplemental age-weighted contributions (collectively, the "Profit Sharing Contribution"). During the 2022 Plan year, $307,271 in forfeitures were allocated to participants within the Profit Sharing Contribution. As of December 31, 2022 and 2021, there were $202,244 and $290,736 of unallocated forfeitures in the retirement money market portfolio fund, respectively.

## 2. Summary of Significant Accounting Policies

***Basis of Accounting***

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America ("GAAP").

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires Plan management to make estimates and assumptions that affect the reported amounts of assets and liabilities and changes therein, and disclosure of contingent assets and liabilities. Actual results could differ materially from those estimates.

***Risks and Uncertainties***

The Plan invests in various investment securities. Investment securities, in general are exposed to various risks such as interest rate, market and credit risks. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect participants' account balances and the amounts reported in the Statements of Net Assets Available for Benefits and the Statement of Changes in Net Assets Available for Benefits.

***Investment Valuation and Income Recognition***

Investments are reported at fair value. Fair value is 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. The Plan's administrative committee determines the Plan's valuation policies utilizing information provided by the Trustee. See Note 3 for discussion of fair value measurements. Purchases and sales of investments are recorded on a trade-date basis. Interest income is recorded on an accrual basis. Dividends are recorded on the ex-dividend date. Net depreciation includes the Plan's gains and losses on investments bought and sold as well as held during the year.

***Notes Receivable from Participants***

Notes receivable from participants are measured at their unpaid principal balance. Any accrued but unpaid interest is de minimis. If a participant ceases to make loan repayments and the plan administrator deems the participant loan to be in default, the participant loan balance is reduced, and a benefit payment is recorded.

***Administrative Expenses***

Certain expenses of maintaining the Plan are paid by the Company and are excluded from these financial statements. There is no guarantee that the Company will continue to pay such expenses. Administrative expenses paid by the Plan for the year ended December 31, 2022 totaled $255,574.

During 2022, the Plan, through a revenue credit program with Fidelity, received revenue credits of $92,011. Such amounts were allocated to participants based on the election of eligible investments. Administrative expenses included in the Statement of Changes in Net Assets Available for Benefits are presented net of participant revenue credits. To the extent that this amount exceeds administrative expenses, the amount is presented as a net credit.

***Payment of Benefits***

Benefits are recorded when paid.

## 3. Fair Value Measurements

FASB Accounting Standards Codification ("ASC") 820, *Fair Value Measurement* ("ASC 820"), provides the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1) and the lowest priority to unobservable inputs (level 3). The three levels of the fair value hierarchy under ASC 820, are described as follows:

Level 1 - Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has the ability to access;

Level 2 - Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;
- Inputs other than quoted prices that are observable for the asset or liability;
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

Level 3 - Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques maximize the use of relevant observable inputs and minimize the use of unobservable inputs.

There have been no changes in the methodologies used at December 31, 2022 and 2021. The following is a description of the valuation methodologies used for investments measured at fair value.

**Mutual Funds and Money Market Funds**: Valued at the daily closing price as reported by the fund. Mutual funds held by the Plan are open-end mutual funds that are registered with the SEC. These funds are required to publish their daily net asset value (NAV) and to transact at that price. These funds held by the Plan are deemed to be actively traded.

**Common/Collective Trusts (CCTs)**: Common/collective trusts are valued at the net asset value (NAV) of units held. The NAV, as provided by the trustee of the CCTs, is used as a practical expedient to estimate fair value. The NAV is based on the fair value of the underlying investments held by the CCT less its liabilities. This practical expedient is not used when it is determined to be probable that the CCTs will sell for an amount different than the reported NAV. The CCTs provide for daily redemptions by the Plan at reported NAV with no advance notice. There are no unfunded commitments related to these investments. These are direct filing entities.

The valuation methods used by the Plan may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, although the Plan believes its valuation method is appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following tables set forth by level, within the fair value hierarchy, the Plan's investments at fair value as of December 31, 2022 and 2021:

| | Investments at Fair Value as of December 31, 2022 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Mutual funds | $ 208,544,110 | $ - | $ - | $ 208,544,110 |
| Money market fund | 29,038,505 | - | - | 29,038,505 |
| Investments measured at NAV | | | | 344,155,954 |
| Total investments at fair value | $ 237,582,615 | $ - | $ - | $ 571,738,569 |

| | Investments at Fair Value as of December 31, 2021 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Mutual funds | $ 646,560,417 | $ - | $ - | $ 646,560,417 |
| Money market fund | 23,498,823 | - | - | 23,498,823 |
| Total investments at fair value | $ 670,059,240 | $ - | $ - | $ 670,059,240 |

## 4. Tax Status

The plan document is a pre-approved prototype plan that received a favorable opinion letter from the Internal Revenue Service dated June 30, 2020, which stated that the Plan, as then designed, was in accordance with applicable sections of the Internal Revenue Code (IRC). Although the Plan has been amended since receiving the favorable opinion letter, the plan administrator believes that the Plan is designed and is currently being operated in compliance with the applicable requirements of the IRC and related state statutes, and that the trust, which forms a part of the Plan, is exempt from federal income and state franchise taxes.

In accordance with guidance on accounting for uncertainty in income taxes, the plan administrator has evaluated the Plan's tax positions and does not believe the Plan has any uncertain tax positions that require disclosure or adjustment to the financial statements. The Plan is subject to routine audits by taxing jurisdictions; however, there are currently no audits for any tax periods in progress.

## 5. Information Certified by the Trustee

The Plan Administrator elected the method of annual reporting compliance permitted by ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Accordingly, the Plan's Trustee has certified that the following information included in the accompanying financial statements and ERISA-required supplemental schedule is complete and accurate.

- Investments and notes receivable from participants as reflected in the Statements of Net Assets Available for Benefits as of December 31, 2022 and 2021;
- Net investment loss and interest income on notes receivable from participants as reflected in the Statement of Changes in Net Assets Available for Benefits for the year ended December 31, 2022.
- Investment values disclosed in Note 3; and
- Investments and notes receivable from participants, as reflected in Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year) as of December 31, 2022, as shown on the supplemental schedule.

The Plan Administrator instructed the Plan's independent auditors not to perform any auditing procedures with respect to this certified information, except for comparing such information to the related information included in the financial statements and supplemental schedule.

## 6. Party-In-Interest and Related-Party Transactions

Certain Plan investments are managed by a company affiliated with Fidelity Management Trust Company, the trustee of the Plan, and therefore, these transactions qualify as party-in-interest transactions as defined by ERISA. Expenses paid by the Plan to the trustee also qualify as party-in-interest transactions. The Plan makes loans to participants. Such transactions, while considered party-in-interest transactions under ERISA regulations, are permitted under the provisions of the Plan and are specifically exempt from the prohibition of party-in-interest transactions under ERISA.

## 7. Plan Termination

Although it has not expressed any intent to do so, the Company has the right under the Plan to discontinue its contributions at any time and to terminate the Plan subject to the provisions of ERISA. In the event of Plan termination, participants would become 100 percent vested in their employer contributions.

## 8. Subsequent Events

The financial statements and related disclosures include an evaluation of events up through and including October 4, 2023, which is the date the financial statements were available to be issued.

# ERISA Required Supplemental Schedule

# In-N-Out Burger
# Associates' Profit Sharing Plan

## Form 5500 - Schedule H, Line 4i - Schedule of Assets (Held at End of Year)
## December 31, 2022

EIN: 95-2246829
Plan Number: 001

| (a) | (b) Identity of issue, borrower, lessor or similar party | (c) Description of investment including maturity date, rate of interest, collateral, par or maturity value | (d) Cost ** | (e) Current Value |
|---|---|---|---|---|
| | **Mutual Funds** | | | |
| | American Beacon Advisors Inc | American Beacon Small Cap Value Fund Class Institutional | | $ 2,147,262 |
| | Artisan | Artisan International Fund Investor Class | | 9,789,695 |
| | DFA Dimensional Funds | DFA Global Real Estate Securities Portfolio | | 1,486,997 |
| | Frost Investment Advisors, LLC | Frost Low Duration Bond Fund Class Institutional | | 563,817 |
| | Hotchkis & Wiley | H & W High Yield Fund Class I | | 1,202,623 |
| | Metropolitan West Asset Management, LLC | Metropolitan West Total Return Bond Fund Class Institutional | | 9,970,702 |
| | Vanguard Group | Vanguard Total International Bond Index Fund Admiral Shares | | 405,515 |
| | Vanguard Group | Vanguard Inflation-Protected Securities Fund Admiral Shares | | 1,879,119 |
| * | Fidelity Management Trust Company | Fidelity Mid Cap Inx | | 8,976,961 |
| * | Fidelity Management Trust Company | Fidelity Small Cap Inx | | 9,218,100 |
| * | Fidelity Management Trust Company | Fidelity US Bond Inx Fund | | 8,805,014 |
| * | Fidelity Management Trust Company | Fidelity Total International Inx Fund | | 13,595,787 |
| * | Fidelity Management Trust Company | Fidelity 500 Index | | 140,502,518 |
| | Total Mutual Funds | | | 208,544,110 |
| | **Common Collective Trusts** | | | |
| * | Fidelity Management Trust Company | Fidelity Freedom 2005 Inx Fund | | 116,060 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2010 Inx Fund | | 626,081 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2015 Inx Fund | | 1,875,735 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2020 Inx Fund | | 6,567,955 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2025 Inx Fund | | 12,561,408 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2030 Inx Fund | | 15,412,759 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2035 Inx Fund | | 22,176,242 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2040 Inx Fund | | 26,707,929 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2045 Inx Fund | | 18,076,401 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2050 Inx Fund | | 48,184,813 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2055 Inx Fund | | 64,776,886 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2060 Inx Fund | | 56,405,005 |
| * | Fidelity Management Trust Company | Fidelity Freedom 2065 Inx Fund | | 15,527,241 |
| * | Fidelity Management Trust Company | Fidelity Freedom Income Fund | | 1,001,266 |
| * | Fidelity Management Trust Company | Fidelity Contrafund Pool | | 37,644,041 |
| | Ceredex Value Advisors | Ceredex Large-Cap Value Equity | | 6,496,132 |
| | Total Common Collective Trusts | | | 334,155,954 |
| | **Money Market Fund** | | | |
| | Vanguard Treasury Money Market Fund | Retirement Money Market Portfolio | | 29,038,505 |
| | **Total Investments** | | | 571,738,569 |
| * | Participant Loans | Notes receivable from participants, with interest rates of 5.25% - 10.25% | - | 16,398,844 |
| | Total | | | $ 588,137,413 |

* *Represents a party-in-interest to the Plan, as defined by ERISA (Fidelity Investments Institutional Services Company is a related company to Fidelity Management Trust Company).*

** *Cost information is not a required disclosure for participant-directed investments and therefore is not included.*