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

**FORM 10-Q**

(X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2013

OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

**Commission file number: 1-2207**

**THE WENDY'S COMPANY**  
(Exact name of registrants as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

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

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

**43017**  
(Zip Code)

**(614) 764-3100**  
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes [x] No [ ]

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

Large accelerated filer [x]    Accelerated filer [ ]    Non-accelerated filer [ ]    Smaller reporting company [ ]

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

There were 393,307,777 shares of The Wendy's Company common stock outstanding as of August 2, 2013.

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**THE WENDY'S COMPANY AND SUBSIDIARIES**  
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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements.**

**THE WENDY'S COMPANY AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In Thousands)

	<b>June 30, 2013</b>	<b>December 30, 2012</b>
	<b>(Unaudited)</b>	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 489,017	\$ 453,361
Accounts and notes receivable	65,810	61,164
Inventories	11,715	13,805
Prepaid expenses and other current assets	51,468	24,231
Deferred income tax benefit	86,501	91,489
Advertising funds restricted assets	71,284	65,777
Total current assets	<u>775,795</u>	<u>709,827</u>
Properties	1,226,532	1,250,338
Goodwill	872,883	876,201
Other intangible assets	1,300,585	1,301,537
Investments	107,445	113,283
Deferred costs and other assets	33,455	52,013
Total assets	<u>\$ 4,316,695</u>	<u>\$ 4,303,199</u>
<b>LIABILITIES AND EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 248,876	\$ 12,911
Accounts payable	86,646	70,826
Accrued expenses and other current liabilities	128,212	137,348
Advertising funds restricted liabilities	71,284	65,777
Total current liabilities	<u>535,018</u>	<u>286,862</u>
Long-term debt	1,222,285	1,444,651
Deferred income taxes	440,364	438,217
Other liabilities	155,226	147,614
Commitments and contingencies		
Equity:		
The Wendy's Company stockholders' equity:		
Common stock, \$0.10 par value; 1,500,000 shares authorized; 470,424 shares issued	47,042	47,042
Additional paid-in capital	2,785,952	2,782,765
Accumulated deficit	(484,115)	(467,007)
Common stock held in treasury, at cost; 76,655 and 78,051 shares	(376,159)	(382,926)
Accumulated other comprehensive (loss) income	(6,587)	5,981
Total stockholders' equity	<u>1,966,133</u>	<u>1,985,855</u>
Noncontrolling interests	(2,331)	—
Total equity	<u>1,963,802</u>	<u>1,985,855</u>
Total liabilities and equity	<u>\$ 4,316,695</u>	<u>\$ 4,303,199</u>

See accompanying notes to condensed consolidated financial statements.

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

	Three Months Ended		Six Months Ended	
	June 30, 2013	July 1, 2012	June 30, 2013	July 1, 2012
	(Unaudited)			
Revenues:				
Sales	\$ 571,198	\$ 566,116	\$ 1,101,871	\$ 1,086,045
Franchise revenues	79,346	79,752	152,355	153,010
	<u>650,544</u>	<u>645,868</u>	<u>1,254,226</u>	<u>1,239,055</u>
Costs and expenses:				
Cost of sales	473,298	483,080	934,126	938,547
General and administrative	74,795	73,345	140,105	145,649
Depreciation and amortization	38,719	35,947	90,516	68,258
Impairment of long-lived assets	—	3,270	—	7,781
Facilities action charges, net	6,377	9,988	9,415	16,131
Other operating expense, net	365	1,847	610	3,382
	<u>593,554</u>	<u>607,477</u>	<u>1,174,772</u>	<u>1,179,748</u>
Operating profit	56,990	38,391	79,454	59,307
Interest expense	(18,964)	(28,002)	(39,928)	(56,237)
Loss on early extinguishment of debt	(21,019)	(25,195)	(21,019)	(25,195)
Investment income and other income (expense), net	48	640	(2,223)	29,571
Income (loss) before income taxes and noncontrolling interests	17,055	(14,166)	16,284	7,446
(Provision for) benefit from income taxes	(5,053)	8,673	(2,149)	1,795
Net income (loss)	12,002	(5,493)	14,135	9,241
Net loss (income) attributable to noncontrolling interests	222	—	222	(2,384)
Net income (loss) attributable to The Wendy's Company	<u>\$ 12,224</u>	<u>\$ (5,493)</u>	<u>\$ 14,357</u>	<u>\$ 6,857</u>
Basic and diluted net income (loss) per share attributable to The Wendy's Company				
	\$ .03	\$ (.01)	\$ .04	\$ .02
Dividends per share	\$ .04	\$ .02	\$ .08	\$ .04

See accompanying notes to condensed consolidated financial statements.

**THE WENDY'S COMPANY AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
(In Thousands)

	Three Months Ended		Six Months Ended	
	June 30, 2013	July 1, 2012	June 30, 2013	July 1, 2012
	(Unaudited)			
Net income (loss)	\$ 12,002	\$ (5,493)	\$ 14,135	\$ 9,241
Other comprehensive (loss) income, net:				
Foreign currency translation adjustment	(6,811)	(3,353)	(11,880)	1,389
Change in unrecognized pension loss, net of income tax benefits of \$37 and \$127, respectively	—	—	(62)	(217)
Other comprehensive (loss) income, net	(6,811)	(3,353)	(11,942)	1,172
Comprehensive income (loss)	5,191	(8,846)	2,193	10,413
Comprehensive income attributable to noncontrolling interests	(404)	—	(404)	(2,384)
Comprehensive income (loss) attributable to The Wendy's Company	<u>\$ 4,787</u>	<u>\$ (8,846)</u>	<u>\$ 1,789</u>	<u>\$ 8,029</u>

See accompanying notes to condensed consolidated financial statements.

**THE WENDY'S COMPANY AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In Thousands)

	Six Months Ended	
	June 30, 2013	July 1, 2012
	(Unaudited)	
Cash flows from operating activities:		
Net income	\$ 14,135	\$ 9,241
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	91,470	69,558
Loss on early extinguishment of debt	21,019	25,195
Distributions received from TimWen joint venture	6,026	6,694
Share-based compensation	6,960	5,164
Impairment of long-lived assets	—	7,781
System Optimization Remeasurement	5,938	—
Net receipt of deferred vendor incentives	15,769	12,486
Accretion of long-term debt	3,747	4,148
Amortization of deferred financing costs	1,407	2,718
Non-cash rent expense	4,530	874
Equity in earnings in joint ventures, net	(4,071)	(4,914)
Deferred income tax	5,736	(3,586)
Gain on sale of investment, net	—	(27,407)
Gain on sale of restaurants	(1,276)	—
Other, net	(4,396)	1,747
Changes in operating assets and liabilities:		
Accounts and notes receivable	(1,829)	(3,115)
Inventories	1,540	730
Prepaid expenses and other current assets	(2,389)	(6,740)
Accounts payable	776	(7,140)
Accrued expenses and other current liabilities	(21,728)	(24,904)
Net cash provided by operating activities	<u>143,364</u>	<u>68,530</u>
Cash flows from investing activities:		
Capital expenditures	(81,770)	(84,079)
Acquisitions	(812)	(21,779)
Dispositions	16,011	907
Franchise loans, net	257	(1,001)
Proceeds from sales of investments	151	24,374
Other, net	—	(564)
Net cash used in investing activities	<u>(66,163)</u>	<u>(82,142)</u>
Cash flows from financing activities:		
Proceeds from long-term debt	350,000	619,437
Repayments of long-term debt	(357,419)	(602,823)
Deferred financing costs	(5,811)	(15,602)
Premium payment on redemption of Senior Notes	—	(10,093)
Dividends	(31,440)	(15,597)
Distribution to noncontrolling interests	—	(3,667)
Proceeds from stock option exercises	5,539	1,544
Other, net	219	52
Net cash used in financing activities	<u>(38,912)</u>	<u>(26,749)</u>
Net cash provided by (used in) operations before effect of exchange rate changes on cash	38,289	(40,361)
Effect of exchange rate changes on cash	(2,633)	230
Net increase (decrease) in cash and cash equivalents	35,656	(40,131)
Cash and cash equivalents at beginning of period	453,361	475,231
Cash and cash equivalents at end of period	<u>\$ 489,017</u>	<u>\$ 435,100</u>

**THE WENDY'S COMPANY AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS—CONTINUED**  
(In Thousands)

	<b>Six Months Ended</b>	
	<b>June 30,</b>	<b>July 1,</b>
	<b>2013</b>	<b>2012</b>
	<b>(Unaudited)</b>	
<b>Supplemental cash flow information:</b>		
<b>Cash paid for:</b>		
Interest	\$ 39,670	\$ 51,678
Income taxes, net of refunds	\$ 778	\$ 8,271
<b>Supplemental non-cash investing and financing activities:</b>		
Capital expenditures included in accounts payable	\$ 38,859	\$ 6,486
Capitalized lease obligations	\$ 4,628	\$ 14,961

See accompanying notes to condensed consolidated financial statements.

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

**(1) Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements (the "Financial Statements") of The Wendy's Company ("The Wendy's Company" and, together with its subsidiaries, the "Company," "we," "us" or "our") have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and therefore, do not include all information and footnotes required by GAAP for complete financial statements. In our opinion, the Financial Statements contain all adjustments necessary to present fairly our financial position as of June 30, 2013 and the results of our operations for the three and six months ended June 30, 2013 and July 1, 2012 and our cash flows for the six months ended June 30, 2013 and July 1, 2012. The results of operations for the three and six months ended June 30, 2013 are not necessarily indicative of the results to be expected for the full 2013 fiscal year. These Financial Statements should be read in conjunction with the audited consolidated financial statements for The Wendy's Company and notes thereto, included in our Annual Report on Form 10-K for the fiscal year ended December 30, 2012 (the "Form 10-K").

The principal subsidiary of the Company is Wendy's International, Inc. ("Wendy's") and its subsidiaries. The Company manages and internally reports its business geographically. The operation and franchising of Wendy's<sup>®</sup> restaurants in North America (defined as the U.S. and Canada) comprises virtually all of our current operations and represents a single reportable segment. The revenues and operating results of Wendy's restaurants outside of North America are not material.

We report on a fiscal year consisting of 52 or 53 weeks ending on the Sunday closest to December 31. All three and six month periods presented herein contain 13 and 26 weeks, respectively. All references to years and quarters relate to fiscal periods rather than calendar periods.

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

In connection with the reimagining of restaurants as part of our Image Activation program, we have recorded \$4,246 and \$18,754 of accelerated depreciation and amortization during the three and six months ended June 30, 2013, respectively, on certain long-lived assets to reflect their use over shortened estimated useful lives. We describe the circumstances under which we record accelerated depreciation and amortization for properties in our Form 10-K.

**(2) Acquisitions and Dispositions**

*Consolidation of a Joint Venture in Japan*

A wholly-owned subsidiary of Wendy's owned a 49% share in a joint venture for the operation of Wendy's restaurants in Japan (the "Japan JV") with Ernest M. Higa and Higa Industries, Ltd., a corporation organized under the laws of Japan (collectively, the "Higa Partners"). In January 2013, Wendy's and the Higa Partners agreed to fund approximately \$3,000 and \$657, respectively, of future anticipated cash requirements of the Japan JV, of which \$1,000 and \$219, respectively, were contributed in April 2013. In conjunction with the additional capital contributions in April 2013, the partners executed an amendment to the original joint venture agreement which includes revised rights and obligations of the partners and changes to the ownership and profit distribution percentages. The ownership and profit distribution percentages, as defined, are 60.9% and 58.5% and 39.1% and 41.5%, respectively for Wendy's and the Higa Partners and will change as future contributions are made to fund the Japan JV. As a result of the changes in the ownership rights and obligations of the partners, Wendy's is consolidating the Japan JV beginning in the second quarter of 2013 and we have reflected our \$1,000 capital contribution, net of cash acquired of \$188, in "Acquisitions" in our condensed consolidated statements of cash flows. Prior to our acquisition of this additional interest, the Japan JV was accounted for as an unconsolidated affiliate under the equity method of accounting.

Under the equity method of accounting, we previously reported our 49% share of the net loss of the Japan JV in "Other operating expense, net." Beginning in the second quarter of 2013, we have reported the Japan JV's results of operations in the appropriate line items in our condensed consolidated statements of operations. Net loss attributable to the Higa Partners' ownership percentage is recorded in "Net loss (income) attributable to noncontrolling interests." The consolidation of the Japan JV's existing three restaurants did not have a material impact on our condensed consolidated financial statements.



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

*Acquisitions*

During the six months ended June 30, 2013, Wendy's acquired one franchised restaurant; such transaction was not significant.

On June 11, 2012, Wendy's acquired 30 franchised restaurants in the Austin, Texas area from Pisces Foods, L.P. and Near Holdings, L.P. The allocation of the total purchase price of \$18,915, including closing adjustments, to the fair value of assets acquired and liabilities assumed was finalized during the first quarter of 2013 and unchanged from our Form 10-K disclosure.

In addition, during the six months ended July 1, 2012, Wendy's acquired two franchised restaurants along with certain other equipment and franchise rights. The total net cash consideration for this acquisition was \$2,594. The total consideration was allocated to net tangible and identifiable intangible assets acquired, primarily properties, and liabilities assumed based on their estimated fair values, with the excess of \$485 recognized as goodwill.

*Dispositions*

During the six months ended June 30, 2013, Wendy's received cash proceeds of \$13,211 from dispositions, consisting of (1) \$8,653 resulting from franchisees exercising options to purchase previously subleased properties and (2) \$4,558 primarily from the sale of surplus properties. These sales resulted in a net gain of \$3,163 which is included as a reduction to "Depreciation and amortization." See Note 4 for discussion of restaurant dispositions in connection with our system optimization initiative.

During the six months ended July 1, 2012, Wendy's received cash proceeds of \$907 from dispositions, consisting of (1) \$653 from the sale of one company-owned restaurant to a franchisee and (2) \$254 from the sale of surplus properties and other equipment. These sales resulted in a net gain of \$187 which is included as a reduction to "Depreciation and amortization."

**(3) Investments**

*Investment in Joint Venture with Tim Hortons Inc.*

Wendy's is a partner in a Canadian restaurant real estate joint venture ("TimWen") with Tim Hortons Inc. Wendy's 50% share of the joint venture is accounted for using the equity method of accounting. Our equity in earnings from TimWen is included in "Other operating expense, net."

Presented below is an unaudited summary of activity related to our investment in TimWen included in our unaudited condensed consolidated financial statements:

	<b>Six Months Ended</b>	
	<b>June 30, 2013</b>	<b>July 1, 2012</b>
Balance at beginning of period	\$ 89,370	\$ 91,742
Equity in earnings for the period	6,700	6,545
Amortization of purchase price adjustments (a)	(1,540)	(1,554)
	5,160	4,991
Distributions received	(6,026)	(6,694)
Foreign currency translation adjustment included in "Other comprehensive (loss) income, net"	(4,820)	475
Balance at end of period (b)	<u>\$ 83,684</u>	<u>\$ 90,514</u>

(a) Based upon an average original aggregate life of 21 years.

(b) Included in "Investments."

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

Presented below is a summary of certain unaudited interim income statement information of TimWen:

	<b>Six Months Ended</b>	
	<b>June 30, 2013</b>	<b>July 1, 2012</b>
Revenues	\$ 19,039	\$ 19,283
Income before income taxes and net income	13,400	13,090

*Sale of Investment in Jurlique International Pty Ltd.*

On February 2, 2012, Jurl Holdings, LLC (“Jurl”), a 99.7% owned subsidiary, completed the sale of our investment in Jurlique International Pty Ltd. (“Jurlique”) for which we received proceeds of \$27,287, net of the amount held in escrow and recorded a gain on sale of this investment of \$27,407, which included a loss of \$2,913 on the settlement of a related derivative transaction. The gain was included in “Investment income and other income (expense), net” in our condensed consolidated statement of operations for the six months ended July 1, 2012. The amount held in escrow as of June 30, 2013 was \$2,969, which was adjusted for foreign currency translation and was included in “Deferred costs and other assets.”

We have reflected net income attributable to noncontrolling interests of \$2,384, net of an income tax benefit of \$1,283, for the six months ended July 1, 2012 in connection with the equity and profit interests discussed below. As a result of this sale and the distributions to the minority shareholders, there are no remaining noncontrolling interests in this consolidated subsidiary.

Prior to 2009 when our predecessor entity was a diversified company active in investments, we had provided our Chairman, who was also our then Chief Executive Officer, and our Vice Chairman, who was our then President and Chief Operating Officer (the “Former Executives”), and certain other former employees, equity and profit interests in Jurl. In connection with the gain on sale of Jurlique, we distributed, based on the related agreement, approximately \$3,667 to Jurl’s minority shareholders, including approximately \$2,296 to the Former Executives.

**(4) Facilities Action Charges, Net**

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>June 30, 2013</b>	<b>July 1, 2012</b>	<b>June 30, 2013</b>	<b>July 1, 2012</b>
System optimization initiative	\$ 4,799	\$ —	\$ 4,799	\$ —
Facilities relocation and other transition costs	1,154	9,426	3,324	14,957
Breakfast discontinuation	361	—	1,029	—
Arby’s transaction related costs	63	562	263	1,174
	<u>\$ 6,377</u>	<u>\$ 9,988</u>	<u>\$ 9,415</u>	<u>\$ 16,131</u>

***System Optimization Initiative***

In July 2013, the Company announced a system optimization initiative, as part of its brand transformation, which includes a plan to sell approximately 425 company-owned restaurants to franchisees by mid-year 2014. The Company’s system optimization initiative also includes the consolidation of regional and divisional territories. As a result of the system optimization initiative, the Company anticipates recognizing the following costs during 2013 and 2014: (1) losses on remeasuring long-lived assets to fair value upon determination that the assets will be leased and/or subleased to franchisees in connection with the sale or anticipated sale of restaurants (“System Optimization Remeasurement”), (2) professional fees and (3) severance and related employee costs. These costs, as well as gains or losses recognized on the sale of restaurants under the system optimization initiative will be recorded to “Facilities action charges, net” in our condensed consolidated statement of operations. The Company estimates severance and related employee costs will total between \$7,000 and \$10,000. The Company cannot estimate the other components of the system optimization initiative resulting from future sales of restaurants.

The effects of the sale of eight restaurants which occurred prior to the announcement of our system optimization initiative, as well as losses on remeasuring long-lived assets to fair value upon determination that the assets will be leased and/or subleased to franchisees in connection with the anticipated sale of restaurants in the third quarter of 2013 have been presented as system

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

optimization and included in "Facilities action charges, net" in our condensed consolidated statement of operations for the three and six months ended June 30, 2013.

The following is a summary of the activity recorded under our system optimization initiative:

	<b>Three Months Ended June 30, 2013</b>
Gain on the sale of restaurants (a)	\$ (1,276)
System Optimization Remeasurement (b)	5,938
Professional fees	125
Other	12
<b>Total system optimization initiative</b>	<b>\$ 4,799</b>

(a) During the three months ended June 30, 2013, Wendy's sold eight restaurants to franchisees for \$2,800. Net assets sold totaled \$843 and consisted primarily of cash, inventory and equipment. In addition, goodwill of \$681 was written off in connection with the sales.

(b) Represents the loss on remeasurement of long-lived assets (including land, buildings, leasehold improvements and favorable lease assets) at certain company-owned restaurants to fair value as a result of the Company's decision to lease and/or sublease such land and/or buildings and sell certain other restaurant assets to franchisees in connection with our system optimization initiative. See Note 6 for more information on non-recurring fair value measurements.

*Restaurant Assets Held for Sale*

	<b>June 30, 2013</b>
Number of restaurants classified as assets held for sale (a)	54
Restaurant assets held for sale (b)	\$ 10,050

(a) Represents the number of restaurants which have assets classified as held for sale and included in "Prepaid expenses and other current assets" as of June 30, 2013.

(b) Net restaurant assets held for sale primarily consist of cash, inventory and equipment.

In the third quarter of 2013, the Company completed the sale of certain assets used in the operation of 22 Wendy's restaurants which were classified as held for sale as of June 30, 2013, for cash proceeds of approximately \$9,310, subject to customary purchase price adjustments. This sale is expected to result in an estimated pre-tax gain of approximately \$4,300.

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

***Facilities Relocation and Other Transition Costs***

The relocation of the Company's Atlanta restaurant support center to Ohio was substantially completed during 2012. The Company expects to record any remaining costs related to the relocation, which are anticipated to aggregate approximately \$1,400, during the remainder of 2013.

	<u>Three Months Ended</u>		<u>Six Months Ended</u>		<u>Total Incurred Since Inception</u>	<u>Total Expected to be Incurred</u>
	<u>June 30, 2013</u>	<u>July 1, 2012</u>	<u>June 30, 2013</u>	<u>July 1, 2012</u>		
Severance, retention and other payroll costs	\$ 424	\$ 4,317	\$ 1,366	\$ 7,316	\$ 16,663	\$ 17,140
Relocation costs	444	1,505	1,261	2,081	6,483	7,405
Atlanta facility closure costs	177	133	395	177	4,936	4,936
Consulting and professional fees	21	1,933	128	2,818	5,056	5,056
Other	88	879	174	1,265	2,314	2,345
	<u>1,154</u>	<u>8,767</u>	<u>3,324</u>	<u>13,657</u>	<u>35,452</u>	<u>36,882</u>
Accelerated depreciation expense	—	659	—	1,300	2,118	2,118
Share-based compensation	—	—	—	—	271	271
Total	<u>\$ 1,154</u>	<u>\$ 9,426</u>	<u>\$ 3,324</u>	<u>\$ 14,957</u>	<u>\$ 37,841</u>	<u>\$ 39,271</u>

The table below presents a rollforward of our accruals for facility relocation costs, which are included in "Accrued expenses and other current liabilities" and "Other liabilities."

	<u>Balance December 30, 2012</u>	<u>Charges</u>	<u>Payments</u>	<u>Balance June 30, 2013</u>
	Severance, retention and other payroll costs			\$ 4,121
Relocation costs	500	1,261	(1,761)	—
Atlanta facility closure costs	4,170	395	(1,118)	3,447
Consulting and professional fees	80	128	(208)	—
Other	9	174	(183)	—
	<u>\$ 8,880</u>	<u>\$ 3,324</u>	<u>\$ (6,563)</u>	<u>\$ 5,641</u>

***Breakfast Discontinuation***

In January 2013, Wendy's announced that it was discontinuing the breakfast daypart at certain restaurants. During the three and six months ended June 30, 2013, we reflected \$361 and \$1,029, respectively, of costs for such discontinuance, primarily representing the remaining carrying value of breakfast related equipment no longer being used.

***Arby's Transaction Related Costs***

As disclosed in our Form 10-K, the remaining Arby's transaction related costs were associated with the relocation of a corporate executive that were being expensed over the three year period following the executive's relocation in accordance with the terms of the agreement. In accordance with the terms of a separation agreement with such executive, the remaining unamortized costs were recorded to severance expense and included in "General and administrative" during the second quarter of 2013. The Company does not expect to incur additional costs related to the sale of Arby's.

**(5) Long-Term Debt**

Except as described below, the Company did not have any significant changes to its long-term debt as disclosed in the notes to our consolidated financial statements included in the Form 10-K.

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Long-term debt consisted of the following:

	<b>June 30, 2013</b>	<b>December 30, 2012</b>
Term Loan A, due in 2018	\$ 350,000	\$ —
Term Loan B, due in 2019	769,375	1,114,826
6.20% senior notes, due in 2014 (a)	225,623	225,940
7% debentures, due in 2025	84,079	83,496
Capital lease obligations, due through 2040	36,743	32,594
Other (b)	5,341	706
	<u>1,471,161</u>	<u>1,457,562</u>
Less amounts payable within one year (a)	(248,876)	(12,911)
<b>Total long-term debt</b>	<b><u>\$ 1,222,285</u></b>	<b><u>\$ 1,444,651</u></b>

- (a) As of June 30, 2013, we classified our 6.20% senior notes in “Current portion of long-term debt” in our condensed consolidated balance sheet as the debt is due in June of 2014.
- (b) Other includes \$4,988 of debt resulting from the consolidation of the Japan JV in the second quarter of 2013. The carrying amount of the long-term debt approximates fair value.

*Refinancing of Credit Agreement*

On May 16, 2013, Wendy’s amended and restated (the “Restated Credit Agreement”) its Credit Agreement, dated as of May 15, 2012 (the “Credit Agreement”). The Restated Credit Agreement is comprised of (1) a \$350,000 senior secured term loan facility (“Term Loan A”) which will mature on May 15, 2018 and bears interest at the Eurodollar Rate (as defined in the Restated Credit Agreement) plus 2.25%, (2) a \$769,375 senior secured term loan facility (“Term Loan B”) which will mature on May 15, 2019 and bears interest at the Eurodollar Rate plus 2.50% with a floor of 0.75% and (3) a \$200,000 senior secured revolving credit facility which will mature on May 15, 2018. The proceeds from the Term Loan A were used to refinance a portion of our existing Term Loan B (formerly described in our Form 10-K as the “Term Loan”). The terms and amounts of the senior secured revolving credit facility are unchanged with the exception of the maturity date which was extended from May 15, 2017. The Restated Credit Agreement does not contain any material changes to existing covenants or other terms of the Credit Agreement, except as described above. The interest rates on Term Loan A and Term Loan B were 2.44% and 3.25%, respectively, as of June 30, 2013.

Wendy’s incurred \$5,811 in fees related to the refinancing, which are being amortized to “Interest expense” utilizing the effective interest rate method through the maturities of the related debt instruments.

As a result of the refinancing of its existing Credit Agreement, described above, Wendy’s incurred a loss on the early extinguishment of debt as follows:

	<b>Three Months Ended June 30, 2013</b>
Unaccreted discount on Term Loan B	\$ 9,561
Deferred costs associated with the Credit Agreement	11,458
<b>Loss on early extinguishment of debt</b>	<b><u>\$ 21,019</u></b>

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The Company incurred a loss on the early extinguishment of debt in 2012 related to the repayment of debt from the proceeds of the 2012 term loan under the May 15, 2012 Credit Agreement, as follows:

	<b>Three Months Ended</b>
	<b>July 1, 2012</b>
Premium payment to purchase Wendy's Restaurants 10.00% Senior Notes due in 2016 (the "Senior Notes")	\$ 10,093
Unaccreted discount on the Senior Notes	2,086
Deferred costs associated with the Senior Notes	2,796
Unaccreted discount on the 2010 term loan	1,695
Deferred costs associated with the 2010 term loan	8,525
Loss on early extinguishment of debt	\$ 25,195

**(6) Fair Value Measurements**

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

*Level 1 Inputs* - Quoted prices for identical assets or liabilities in active markets.

*Level 2 Inputs* - Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

*Level 3 Inputs* - Pricing inputs are unobservable for the assets or liabilities and include situations where there is little, if any, market activity for the assets or liabilities. The inputs into the determination of fair value require significant management judgment or estimation.

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**Financial Instruments**

The following table presents the carrying amounts and estimated fair values of the Company's financial instruments at June 30, 2013 and December 30, 2012:

	June 30, 2013		December 30, 2012		Fair Value Measurements
	Carrying Amount	Fair Value	Carrying Amount	Fair Value	
<b>Financial assets</b>					
Cash equivalents	\$ 275,078	\$ 275,078	\$ 264,925	\$ 264,925	Level 1
Non-current cost method investments (a)	23,761	51,009	23,913	50,761	Level 3
Interest rate swaps (b)	5,400	5,400	8,169	8,169	Level 2
<b>Financial liabilities</b>					
Term Loan A, due in 2018 (c)	350,000	349,125	—	—	Level 2
Term Loan B, due in 2019 (c)	769,375	766,251	1,114,826	1,130,434	Level 2
6.20% senior notes, due in 2014 (c)	225,623	230,063	225,940	240,750	Level 2
7% debentures, due in 2025 (c)	84,079	96,750	83,496	99,900	Level 2
Capital lease obligations (d)	36,743	35,605	32,594	33,299	Level 3
Guarantees of franchisee loan obligations (e)	920	920	940	940	Level 3

- (a) The fair value of our indirect investment in Arby's Restaurant Group, Inc. ("Arby's") is based on a review of its most recent unaudited financial information. The fair values of our remaining investments were based on our review of information provided by the investment managers or investees which was based on (1) valuations performed by the investment managers or investees, (2) quoted market or broker/dealer prices for similar investments and (3) quoted market or broker/dealer prices adjusted by the investment managers for legal or contractual restrictions, risk of nonperformance or lack of marketability, depending upon the underlying investments.
- (b) The fair values were based on information provided by the bank counterparties that is model-driven and where inputs were observable or where significant value drivers were observable.
- (c) The fair values were based on quoted market prices in markets that are not considered active markets.
- (d) The fair values were determined by discounting the future scheduled principal payments using an interest rate assuming the same original issuance spread over a current U.S. Treasury bond yield for securities with similar durations.
- (e) Wendy's has provided loan guarantees to various lenders on behalf of franchisees entering into pooled debt facility arrangements for new restaurant development and equipment financing. In 2012, Wendy's provided a guarantee to a lender for a franchisee in connection with the refinancing of the franchisee's debt. We have accrued a liability for the fair value of these guarantees, the calculation of which was based upon a weighted average risk percentage established at inception adjusted for a history of defaults.

The carrying amounts of cash, accounts payable and accrued expenses approximated fair value due to the short-term nature of those items. The carrying amounts of accounts and notes receivable (both current and non-current) approximated fair value due to the effect of the related allowance for doubtful accounts.

**Derivative Instruments**

Our derivative instruments for the periods presented included interest rate swaps on our 6.20% senior notes with notional amounts totaling \$225,000 that were all designated as fair value hedges. The fair value of our interest rate swaps of \$5,400 and \$8,169 at June 30, 2013 and December 30, 2012, respectively, was included in "Prepaid expenses and other current assets" and

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“Deferred costs and other assets,” respectively and as an adjustment to the carrying amount of our 6.20% senior notes. Interest income on the interest rate swaps was \$1,455 and \$2,890 for the three and six months ended June 30, 2013, respectively, and \$1,404 and \$2,730 for the three and six months ended July 1, 2012, respectively. No ineffectiveness has been recorded to net income related to our fair value hedges for the six months ended June 30, 2013 and July 1, 2012.

***Non-Recurring Fair Value Measurements***

The following tables present the fair values for those assets and liabilities measured at fair value on a non-recurring basis during the six months ended June 30, 2013 and the year ended December 30, 2012 and the resulting impact in the consolidated statements of operations.

Total losses for the six months ended June 30, 2013 reflect the impact of remeasuring long-lived assets (including land, buildings, leasehold improvements and favorable lease assets) at certain company-owned restaurants to fair value as a result of the Company’s decision to lease and/or sublease the land and/or buildings and sell certain other restaurant assets to franchisees. Such losses were determined prior to the announcement of our system optimization initiative in connection with the sale of eight restaurants during the second quarter of 2013 and the anticipated sale of restaurants in the third quarter of 2013 and have been presented as System Optimization Remeasurement and included in “Facilities action charges, net” in our condensed consolidated statement of operations for the six months ended June 30, 2013. The fair value of long-lived assets presented in the table below represents the remaining carrying value of the long-lived assets discussed above and was based upon discounted cash flows of future anticipated lease and sublease income. See Note 4 for more information on our system optimization initiative and the related activity included in “Facility action charges, net” including System Optimization Remeasurement.

Total losses for the year ended December 30, 2012 reflect the impact of remeasuring long-lived assets at company-owned restaurants and a company-owned aircraft to fair value and were recorded to “Impairment of long-lived assets” in the consolidated statements of operations. The fair value of long-lived assets presented in the table below substantially represents the remaining carrying value of land for Wendy’s properties that were impaired in 2012 and were estimated based on current market values as determined by sales prices of comparable properties and current market trends. As of December 30, 2012, the carrying value of the aircraft, which reflected current market conditions, approximated its fair value. See Note 7 for more information on the impairment of our long-lived assets.

	<b>June 30, 2013</b>	<b>Fair Value Measurements</b>			<b>Six Months Ended June 30, 2013 Total Losses</b>
		<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	
Long-lived assets	\$ 2,022	\$ —	\$ —	\$ 2,022	\$ 5,938
Total	<u>\$ 2,022</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2,022</u>	<u>\$ 5,938</u>

	<b>December 30, 2012</b>	<b>Fair Value Measurements</b>			<b>2012 Total Losses</b>
		<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	
Long-lived assets	\$ 7,311	\$ —	\$ —	\$ 7,311	\$ 19,469
Aircraft	5,926	—	—	5,926	1,628
Total	<u>\$ 13,237</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 13,237</u>	<u>\$ 21,097</u>

**(7) Impairment of Long-Lived Assets**

During the second quarter of 2012, we closed 15 company-owned restaurants in connection with our review of certain underperforming locations, which resulted in an impairment charge of \$3,270. In addition, we incurred costs related to these restaurant closings of \$1,477, primarily for continuing lease obligations, which are included in “Other operating expense, net.”

Our company-owned restaurant impairment losses of \$2,883 in the first quarter of 2012 predominantly reflected impairment charges on restaurant-level assets resulting from the deterioration in operating performance of certain restaurants and additional charges for capital improvements in restaurants impaired in prior years which did not subsequently recover. In addition, during



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the first quarter of 2012, we reclassified a company-owned aircraft as held and used from its previous held for sale classification and recorded an impairment charge of \$1,628 on the company-owned aircraft.

These impairment losses, as detailed in the following table, represented the excess of the carrying amount over the fair value of the affected assets and are included in "Impairment of long-lived assets."

	<b>Three Months Ended</b>	<b>Six Months Ended</b>
	<b>July 1, 2012</b>	<b>July 1, 2012</b>
Properties and intangible assets	\$ 3,270	\$ 6,153
Aircraft	—	1,628
	<u>\$ 3,270</u>	<u>\$ 7,781</u>

**(8) Income Taxes**

The Company's effective tax rate and effective tax rate benefit for the three months ended June 30, 2013 and July 1, 2012 was 29.6% and 61.2%, respectively. The Company's effective tax rate varies from the U.S. federal statutory rate of 35% due to the effect of (1) state income taxes net of federal benefit, (2) adjustments to our uncertain tax positions, (3) employment tax credits and (4) foreign rate differential.

The Company's effective tax rate and effective tax rate benefit for the six months ended June 30, 2013 and July 1, 2012 was 13.2% and 24.1%, respectively. The Company's effective tax rate varies from the U.S. federal statutory rate of 35% due to the effect of (1) state taxes net of federal benefit, (2) the reversal of deferred tax liabilities on temporary differences related to investments in foreign subsidiaries which the Company now considers permanently invested outside of the U.S., (3) adjustments to our uncertain tax positions and (4) employment tax credits.

During the first quarter of 2013, the Company finalized its long-term investment plan with respect to the Company's non-U.S. earnings. There are no plans to repatriate cash from, and Wendy's intends to indefinitely reinvest undistributed earnings of, its non-U.S. subsidiaries. As such, the Company reversed \$1,934 of deferred tax liabilities during the first quarter of 2013 relating to investments in foreign subsidiaries which the Company now considers permanently invested outside of the U.S.

There were no significant changes to unrecognized tax benefits or related interest and penalties for the Company during the six months ended June 30, 2013 and July 1, 2012.

The Company participates in the Internal Revenue Service Compliance Assurance Process. During the first quarter of 2013, we concluded, without adjustment, the examination of our January 1, 2012 tax return.

**(9) Net Income (Loss) Per Share**

Basic income (loss) per share for the three and six months ended June 30, 2013 and July 1, 2012 was computed by dividing net income (loss) attributable to The Wendy's Company by the weighted average number of common shares outstanding.

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

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>June 30, 2013</b>	<b>July 1, 2012</b>	<b>June 30, 2013</b>	<b>July 1, 2012</b>
Common stock:				
Weighted average basic shares outstanding	393,174	389,978	392,836	389,840
Dilutive effect of stock options and restricted shares	4,710	—	3,953	2,161
Weighted average diluted shares outstanding	<u>397,884</u>	<u>389,978</u>	<u>396,789</u>	<u>392,001</u>

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Diluted income (loss) per share for the three and six months ended June 30, 2013 and July 1, 2012 was computed by dividing net income (loss) attributable to The Wendy's Company by the weighted average number of basic shares outstanding plus the potential common share effect of dilutive stock options and restricted shares, computed using the treasury stock method. For the three and six months ended June 30, 2013, we excluded 13,145 and 15,488, respectively, of potential common shares from our diluted income per share calculation as they would have had anti-dilutive effects. Diluted loss per share for the three months ended July 1, 2012 was the same as basic loss per share since the Company reported a loss from continuing operations and therefore, the effect of all potentially dilutive securities would have been anti-dilutive. For the six months ended July 1, 2012, we excluded 19,541 of potential common shares from our diluted income per share calculation as they would have had anti-dilutive effects.

**(10) Equity**

The following tables present the changes in equity attributable to The Wendy's Company and noncontrolling interest for the six months ended June 30, 2013 and July 1, 2012:

	Attributable to The Wendy's Company						Total
	Common Stock	Additional Paid-In Capital	Accumulated Deficit	Common Stock Held in Treasury	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interest	
Balance at December 30, 2012	\$ 47,042	\$ 2,782,765	\$ (467,007)	\$ (382,926)	\$ 5,981	\$ —	\$ 1,985,855
Consolidation of the Japan JV	—	—	—	—	—	(2,735)	(2,735)
Net income	—	—	14,357	—	—	(222)	14,135
Foreign currency translation adjustment	—	—	—	—	(12,506)	626	(11,880)
Unrecognized pension loss	—	—	—	—	(62)	—	(62)
Cash dividends	—	—	(31,440)	—	—	—	(31,440)
Share-based compensation expense	—	6,960	—	—	—	—	6,960
Common stock issued related to share-based compensation	—	(1,685)	—	6,670	—	—	4,985
Tax charge from share-based compensation	—	(2,092)	—	—	—	—	(2,092)
Other	—	4	(25)	97	—	—	76
Balance at June 30, 2013	\$ 47,042	\$ 2,785,952	\$ (484,115)	\$ (376,159)	\$ (6,587)	\$ (2,331)	\$ 1,963,802

	Attributable to The Wendy's Company						Total
	Common Stock	Additional Paid-In Capital	Accumulated Deficit	Common Stock Held in Treasury	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interest	
Balance at January 1, 2012	\$ 47,042	\$ 2,779,871	\$ (434,999)	\$ (395,947)	\$ 102	\$ —	\$ 1,996,069
Net income	—	—	6,857	—	—	2,384	9,241
Distribution to noncontrolling interests	—	—	—	—	—	(2,384)	(2,384)
Foreign currency translation adjustment	—	—	—	—	1,389	—	1,389
Unrecognized pension loss	—	—	—	—	(217)	—	(217)
Cash dividends	—	—	(15,597)	—	—	—	(15,597)
Share-based compensation expense	—	5,164	—	—	—	—	5,164
Common stock issued related to share-based compensation	—	(2,561)	—	3,595	—	—	1,034
Tax charge from share-based compensation	—	(1,186)	—	—	—	—	(1,186)
Other	—	(22)	(23)	106	—	—	61
Balance at July 1, 2012	\$ 47,042	\$ 2,781,266	\$ (443,762)	\$ (392,246)	\$ 1,274	\$ —	\$ 1,993,574

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**(11) Guarantees and Other Commitments and Contingencies**

Except as described below, the Company did not have any significant changes to its guarantees, other commitments and contingencies as disclosed in the notes to our consolidated financial statements included in the Form 10-K.

*Franchisee Image Activation Financing Program*

In order to encourage franchisees to participate in our Image Activation program, Wendy's has executed an agreement to partner with a third party lender to establish a financing program. Under the program, the lender will provide loans to franchisees to be used for the reimagining of restaurants according to the guidelines and specifications under the Image Activation initiative. To support the program, Wendy's has provided to the lender a \$6,000 irrevocable stand-by letter of credit, which was issued on July 1, 2013.

*Japan JV Guarantee*

Wendy's and the Higa Partners have provided guarantees to certain lenders to the Japan JV. Both Wendy's and Higa Partners have agreed to reimburse and indemnify the other party, should it become necessary, for their respective share of each other's guarantees. Wendy's and the Higa Partners' share of each guarantee is based upon ownership percentages in effect at the time of the agreement. As of June 30, 2013, our portion of these contingent obligations totaled approximately \$2,800 based upon then current rates of exchange. The fair value of our guarantees is immaterial.

In January 2013, Wendy's and the Higa Partners agreed to finance approximately \$3,000 and \$657, respectively, of future anticipated cash requirements of the Japan JV, of which \$1,000 and \$219, respectively, were contributed in April 2013.

Our obligations, including the remaining funding of anticipated future cash requirements of the Japan JV of approximately \$2,000, could total up to approximately \$6,600 if the Higa Partners are unable to perform their reimbursement and indemnify obligations to us.

**(12) Transactions with Related Parties**

Except as described below, the Company did not have any changes in or transactions with its related parties during the current fiscal period since those reported in the Form 10-K.

*Transactions with Purchasing Cooperative*

Wendy's received \$95 of lease income from its purchasing cooperative, Quality Supply Chain Co-op, Inc. ("QSCC") during both the six months ended June 30, 2013 and July 1, 2012, which has been recorded as a reduction of "General and administrative."

*Transactions with a Management Company*

The Wendy's Company, through a wholly-owned subsidiary, is party to an aircraft management and lease agreement, which is expected to expire in March 2014, with CitationAir, a subsidiary of Cessna Aircraft Company, pursuant to which the Company leases a corporate aircraft to CitationAir to use as part of its Jet Card program fleet. The Company entered into the lease agreement as a means of offsetting the cost of owning and operating the corporate aircraft by receiving revenue from third parties' use of such aircraft. Under the terms of the lease agreement, the Company pays annual management and flight crew fees to CitationAir and reimburses CitationAir for maintenance costs and fuel usage related to the corporate aircraft. In return, CitationAir pays a negotiated fee to the Company based on the number of hours that the corporate aircraft is used by Jet Card members. This fee is reduced based on the number of hours that (1) the Company uses other aircraft in the Jet Card program fleet and (2) Jet Card members who are affiliated with the Company use the corporate aircraft or other aircraft in the Jet Card program fleet. The Company's participation in the aircraft management and lease agreement reduces the aggregate costs that the Company would otherwise incur in connection with owning and operating the corporate aircraft. Under the terms of the lease agreement, the Company's directors have the opportunity to become Jet Card members and to use aircraft in the Jet Card program fleet at the same negotiated fee paid by the Company as provided for under the lease agreement. During the six months ended June 30, 2013 and July 1, 2012, the Former Executives and a director, who was our former Vice Chairman, and members of their immediate families, used their Jet Card agreements for business and personal travel on aircraft in the Jet Card program fleet. A management company formed by the Former Executives and a director, who was our former Vice Chairman, paid CitationAir directly, and the

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Company received credit from CitationAir for charges related to such travel of approximately \$897 and \$502 during the six months ended June 30, 2013 and July 1, 2012, respectively.

**(13) Legal, Environmental and Other Matters**

We are involved in litigation and claims incidental to our current and prior businesses. We provide reserves for such litigation and claims when payment is probable and reasonably estimable. As of June 30, 2013, the Company had reserves for all of its legal and environmental matters aggregating \$3,770. We cannot estimate the aggregate possible range of loss due to most proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur, and significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of settlement discussions or judicial or arbitral decisions is thus inherently difficult. Based on currently available information, including legal defenses available to us, and given the aforementioned reserves and our insurance coverage, we do not believe that the outcome of these legal and environmental matters will have a material effect on our consolidated financial position or results of operations.

The Company had previously described in the Form 10-K a dispute between Wendy's and Tim Hortons Inc. related to a tax sharing agreement entered into in 2006. As described in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2013, the dispute was resolved by mutual agreement of the parties on April 25, 2013 and was recorded in the first quarter of 2013. The terms of the agreement were not material to the Company.

**(14) Multiemployer Pension Plan**

As further described in the Form 10-K, the unionized employees at The New Bakery Co. of Ohio, Inc. (the "Bakery"), a 100% owned subsidiary of Wendy's, are covered by the Bakery and Confectionery Union and Industry International Pension Fund (the "Union Pension Fund"), a multiemployer pension plan with a plan year end of December 31 that provides defined benefits to certain employees covered by a collective bargaining agreement (the "CBA") which expired on March 31, 2013. The completion of the current negotiations for a new CBA will determine our future pension costs.

There have been no changes to the critical status of the Union Pension Fund as further described in the Form 10-K.

**(15) Recent Accounting Pronouncements**

In July 2013, the Financial Accounting Standards Board issued an amendment that requires companies to present unrecognized tax benefits as a reduction to deferred tax assets when a net operating loss carryforward, a similar tax loss or a tax credit carryforward exists, with limited exceptions. The amendment is effective commencing with our 2014 fiscal year. The Company does not expect the adoption to have a material impact on the consolidated financial statements.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

### **Introduction**

This "Management's Discussion and Analysis of Financial Condition and Results of Operations" of The Wendy's Company ("The Wendy's Company" and, together with its subsidiaries, the "Company," "we," "us," or "our") should be read in conjunction with the accompanying unaudited condensed consolidated financial statements and the related notes included elsewhere herein and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the fiscal year ended December 30, 2012 (the "Form 10-K"). There have been no material changes as of June 30, 2013 to the application of our critical accounting policies as described in Item 7 of the Form 10-K. Certain statements we make under this Item 2 constitute "forward-looking statements" under the Private Securities Litigation Reform Act of 1995. See "Special Note Regarding Forward-Looking Statements and Projections" in "Part II - Other Information" preceding "Item 1." You should consider our forward-looking statements in light of our unaudited condensed consolidated financial statements, related notes and other financial information appearing elsewhere in this report, the Form 10-K and our other filings with the Securities and Exchange Commission.

The Wendy's Company is the parent company of its 100% owned subsidiary holding company, Wendy's Restaurants, LLC ("Wendy's Restaurants"). The principal 100% owned subsidiary of Wendy's Restaurants is Wendy's International, Inc. ("Wendy's") and its subsidiaries. Wendy's franchises and operates company-owned Wendy's® quick service restaurants throughout North America (defined as the United States of America (the "U.S.") and Canada) as well as Japan through our joint venture in Japan (the "Japan JV"). Wendy's also has franchised restaurants in 25 foreign countries and U.S. territories.

Wendy's restaurants offer an extensive menu specializing in hamburger sandwiches and featuring filet of chicken breast sandwiches, chicken nuggets, chili, french fries, baked potatoes, freshly prepared salads, soft drinks, Frosty® desserts and kids' meals. In addition, the restaurants sell a variety of promotional products on a limited basis.

The Company manages and internally reports its business geographically. The operation and franchising of Wendy's restaurants in North America comprises virtually all of our current operations and represents a single reportable segment. The revenues and operating results of Wendy's restaurants outside of North America, including the three restaurants operated by the Japan JV, are not material. The results of operations discussed below may not necessarily be indicative of future results.

### **Executive Overview**

#### *System Optimization Initiative*

In July 2013, the Company announced a system optimization initiative, as part of its brand transformation, which includes a plan to sell approximately 425 company-owned restaurants to franchisees by mid-year 2014. The Company's system optimization initiative also includes the consolidation of regional and divisional territories. As a result of the system optimization initiative, the Company anticipates recognizing the following costs during 2013 and 2014: (1) losses on remeasuring long-lived assets to fair value upon determination that the assets will be leased and/or subleased to franchisees in connection with the sale or anticipated sale of restaurants ("System Optimization Remeasurement"), (2) professional fees and (3) severance and related employee costs. These costs, as well as gains or losses recognized on the sale of restaurants under the system optimization initiative will be recorded to "Facilities action charges, net" in our condensed consolidated statement of operations. The Company estimates severance and related employee costs will total between \$7.0 million and \$10.0 million. The Company cannot estimate the other components of the system optimization initiative resulting from future sales of restaurants.

The effects of the sale of eight restaurants which occurred prior to the announcement of our system optimization initiative, as well as losses on remeasuring long-lived assets to fair value upon determination that the assets will be leased and/or subleased to franchisees in connection with the anticipated sale of restaurants in the third quarter of 2013 have been presented as system optimization and included in "Facilities action charges, net" in our condensed consolidated statement of operations for the three and six months ended June 30, 2013.

#### *Our Business*

As of June 30, 2013, the Wendy's restaurant system was comprised of 6,542 restaurants, of which 1,418 were owned and operated by the Company. Our company-owned restaurants are located principally in the U.S. and to a lesser extent in Canada and Japan through the Japan JV.

Wendy's operating results have been impacted by a number of external factors, including high unemployment, negative general economic trends and intense price competition, as well as continued increases in commodity costs through the second quarter of 2013.

Wendy's long-term growth opportunities, which in part will result from our system optimization initiative and as part of our brand transformation, include improving our North America business by elevating the total customer experience through continuing core menu improvement, step-change product innovation and focused execution of operational excellence and brand positioning, which will be supported by (1) investing in our Image Activation program, which includes innovative exterior and interior restaurant designs for our new and reimaged restaurants, (2) employing financial strategies to improve our net income and earnings per share and (3) building the brand worldwide.

Wendy's revenues for the first six months of 2013 include: (1) \$1,070.5 million of sales at company-owned restaurants, (2) \$31.4 million from our company-owned bakery, (3) \$139.8 million of royalty revenue from franchisees and (4) \$12.5 million of other franchise-related revenue and other revenues. Substantially all of our royalty agreements provide for royalties of 4.0% of franchisees' sales.

### *Key Business Measures*

We track our results of operations and manage our business using the following key business measures:

- **Same-Store Sales**

We report same-store sales commencing after new restaurants have been open for at least 15 continuous months and after remodeled restaurants have been reopened for three continuous months. This methodology is consistent with the metric used by our management for internal reporting and analysis. Same-store sales exclude the impact of currency translation.

- **Restaurant Margin**

We define restaurant margin as sales from company-owned restaurants less cost of sales divided by sales from company-owned restaurants. Cost of sales includes food and paper, restaurant labor and occupancy, advertising and other operating costs. Sales and cost of sales exclude amounts related to our company-owned bakery. Restaurant margin is influenced by factors such as restaurant openings and closures, price increases, the effectiveness of our advertising and marketing initiatives, featured products, product mix, the level of our fixed and semi-variable costs and fluctuations in food and labor costs.

### *Refinancing of Credit Agreement*

As further described in "Liquidity and Capital Resources - Refinancing of Credit Agreement," below, on May 16, 2013, Wendy's amended and restated (the "Restated Credit Agreement") its Credit Agreement, dated May 15, 2012 (the "Credit Agreement"). The Restated Credit Agreement, among other things, (1) lowered the interest rate margin and floor applicable to the existing term loan, (2) provided for a partial refinancing of the existing term loan with a new tranche of a term loan in an aggregate principal of \$350.0 million and (3) extended the maturity date of the revolving credit facility by one year. Wendy's recognized a loss on the early extinguishment of debt of \$21.0 million in the second quarter of 2013 in connection with this refinancing.

### *Guarantees and Other Commitments*

#### *Franchisee Image Activation Financing Program*

In order to encourage franchisees to participate in our Image Activation program, Wendy's has executed an agreement to partner with a third party lender to establish a financing program. Under the program, the lender will provide loans to franchisees to be used for the reimaging of restaurants according to the guidelines and specifications under the Image Activation initiative. To support the program, Wendy's has provided to the lender a \$6.0 million irrevocable stand-by letter of credit, which was issued on July 1, 2013.

#### *Japan JV Guarantee*

Wendy's and Ernest M. Higa and Higa Industries, Ltd., a corporation organized under the laws of Japan (collectively, the "Higa Partners") have provided guarantees to certain lenders to the Japan JV. Both Wendy's and Higa Partners have agreed to reimburse and indemnify the other party, should it become necessary, for their respective share of each other's guarantees. Wendy's

and the Higa Partners' share of each guarantee is based upon ownership percentages in effect at the time of the agreement. As of June 30, 2013, our portion of these contingent obligations totaled approximately \$2.8 million based upon then current rates of exchange. The fair value of our guarantees is immaterial.

In January 2013, Wendy's and the Higa Partners agreed to finance approximately \$3.0 million and \$0.7 million, respectively, of future anticipated cash requirements of the Japan JV, of which \$1.0 million and \$0.2 million, respectively, were contributed in April 2013.

Our obligations, including the remaining funding of anticipated future cash requirements of the Japan JV of approximately \$2.0 million, could total up to approximately \$6.6 million if the Higa Partners are unable to perform their reimbursement and indemnify obligations to us.

#### *Related Party Transactions*

##### *Transactions with a Management Company*

The Wendy's Company, through a wholly-owned subsidiary, is party to an aircraft management and lease agreement, which is expected to expire in March 2014, with CitationAir, a subsidiary of Cessna Aircraft Company, pursuant to which the Company leases a corporate aircraft to CitationAir to use as part of its Jet Card program fleet. The Company entered into the lease agreement as a means of offsetting the cost of owning and operating the corporate aircraft by receiving revenue from third parties' use of such aircraft. Under the terms of the lease agreement, the Company pays annual management and flight crew fees to CitationAir and reimburses CitationAir for maintenance costs and fuel usage related to the corporate aircraft. In return, CitationAir pays a negotiated fee to the Company based on the number of hours that the corporate aircraft is used by Jet Card members. This fee is reduced based on the number of hours that (1) the Company uses other aircraft in the Jet Card program fleet and (2) Jet Card members who are affiliated with the Company use the corporate aircraft or other aircraft in the Jet Card program fleet. The Company's participation in the aircraft management and lease agreement reduces the aggregate costs that the Company would otherwise incur in connection with owning and operating the corporate aircraft. Under the terms of the lease agreement, the Company's directors have the opportunity to become Jet Card members and to use aircraft in the Jet Card program fleet at the same negotiated fee paid by the Company as provided for under the lease agreement. During the first six months of 2013 and 2012, our Chairman, who was our former Chief Executive Officer, and our Vice Chairman, who was our former President and Chief Operating Officer (the "Former Executives") and a director, who was our former Vice Chairman, and members of their immediate families, used their Jet Card agreements for business and personal travel on aircraft in the Jet Card program fleet. A management company formed by the Former Executives and a director, who was our former Vice Chairman, paid CitationAir directly, and the Company received credit from CitationAir for charges related to such travel of approximately \$0.9 million and \$0.5 million during the first six months of 2013 and 2012, respectively.

#### **Presentation of Financial Information**

The Company reports on a fiscal year consisting of 52 or 53 weeks ending on the Sunday closest to December 31. All quarters presented contain 13 weeks. All references to years and quarters relate to fiscal periods rather than calendar periods. Certain percent changes between fiscal periods are considered not measurable or not meaningful ("n/m").

## Results of Operations

The following tables included throughout Results of Operations set forth in millions the Company's consolidated results of operations for the three months ended June 30, 2013 and July 1, 2012:

	<b>Three Months Ended</b>			
	<b>June 30, 2013</b>	<b>July 1, 2012</b>	<b>\$ Change</b>	<b>% Change</b>
Revenues:				
Sales	\$ 571.2	\$ 566.1	\$ 5.1	0.9 %
Franchise revenues	79.3	79.8	(0.5)	(0.6)
	<u>650.5</u>	<u>645.9</u>	<u>4.6</u>	<u>0.7</u>
Costs and expenses:				
Cost of sales	473.3	483.1	(9.8)	(2.0)
General and administrative	74.8	73.3	1.5	2.0
Depreciation and amortization	38.7	35.9	2.8	7.8
Impairment of long-lived assets	—	3.3	(3.3)	n/m
Facilities action charges, net	6.4	10.0	(3.6)	(36.0)
Other operating expense, net	0.3	1.9	(1.6)	(84.2)
	<u>593.5</u>	<u>607.5</u>	<u>(14.0)</u>	<u>(2.3)</u>
Operating profit	57.0	38.4	18.6	48.4
Interest expense	(19.0)	(28.0)	9.0	(32.1)
Loss on early extinguishment of debt	(21.0)	(25.2)	4.2	(16.7)
Investment income and other income (expense), net	0.1	0.6	(0.5)	(83.3)%
Income (loss) before income taxes and noncontrolling interests	17.1	(14.2)	31.3	n/m
(Provision for) benefit from income taxes	(5.1)	8.7	(13.8)	n/m
Net income (loss)	12.0	(5.5)	17.5	n/m
Net loss attributable to noncontrolling interests	0.2	—	0.2	n/m
Net income (loss) attributable to The Wendy's Company	<u>\$ 12.2</u>	<u>\$ (5.5)</u>	<u>\$ 17.7</u>	n/m



	<u>Second Quarter 2013</u>		<u>Second Quarter 2012</u>	
<i>Sales:</i>				
Wendy's	\$ 554.8		\$ 547.9	
Bakery	16.4		18.2	
Total sales	<u>\$ 571.2</u>		<u>\$ 566.1</u>	

		<u>% of Sales</u>		<u>% of Sales</u>
<i>Cost of sales:</i>				
Wendy's				
Food and paper	\$ 181.9	32.8%	\$ 181.4	33.1%
Restaurant labor	161.6	29.1%	162.9	29.7%
Occupancy, advertising and other operating costs	118.9	21.4%	126.4	23.1%
Total cost of sales	<u>462.4</u>	<u>83.3%</u>	<u>470.7</u>	<u>85.9%</u>
Bakery	10.9	n/m	12.4	n/m
Total cost of sales	<u>\$ 473.3</u>	<u>82.9%</u>	<u>\$ 483.1</u>	<u>85.3%</u>

	<u>Second Quarter 2013</u>		<u>Second Quarter 2012</u>	
<i>Margin \$:</i>				
Wendy's	\$ 92.4		\$ 77.2	
Bakery	5.5		5.8	
Total margin	<u>\$ 97.9</u>		<u>\$ 83.0</u>	
Wendy's restaurant margin %	16.7%		14.1%	

	<u>Second Quarter 2013</u>		<u>Second Quarter 2012</u>
<i>Wendy's restaurant statistics:</i>			
North America same-store sales:			
Company-owned restaurants	0.4%		3.2%
Franchised restaurants	0.3%		3.2%
Systemwide	0.4%		3.2%
Total same-store sales:			
Company-owned restaurants	0.4%		3.2%
Franchised restaurants (a)	0.3%		3.3%
Systemwide (a)	0.3%		3.3%

(a) Includes international franchised restaurants same-store sales.

	<u>Company-owned</u>	<u>Franchised</u>	<u>Systemwide</u>
<i>Restaurant count:</i>			
Restaurant count at March 31, 2013	1,427	5,117	6,544
Opened	4	12	16
Closed	(5)	(13)	(18)
Net (sold to) purchased by franchisees	(8)	8	—
Restaurant count at June 30, 2013	<u>1,418</u>	<u>5,124</u>	<u>6,542</u>

<i>Sales</i>	<u>Change</u>
Wendy's	\$ 6.9
Bakery	(1.8)
	<u>\$ 5.1</u>

The increase in sales during the second quarter of 2013 was partially due to an increase in our average per customer check amount, in part offset by a decrease in customer transactions. Our average per customer check amount increased primarily due to a benefit from strategic price increases on our menu items implemented in 2012 subsequent to the second quarter, as well as changes in the composition of our sales. Wendy's company-owned restaurants opened or acquired during the second quarter of 2012 and thereafter resulted in incremental sales of \$26.7 million in the second quarter of 2013, which were partially offset by a reduction in sales of \$18.0 million from locations closed or sold during that same time period. Sales during the second quarter of 2013 were negatively impacted by temporary closures of restaurants being remodeled under our Image Activation program. Sales were also negatively impacted by \$0.8 million due to changes in Canadian foreign currency rates.

<i>Franchise Revenues</i>	<u>Change</u>
Franchise revenues	<u>\$ (0.5)</u>

The decrease in franchise revenues during the second quarter of 2013 was primarily due to a net decrease in the number of franchise restaurants in operation during the second quarter of 2013 compared to 2012, as a result of the timing of openings and closures. The decrease in franchise revenues was partially offset by a 0.3% increase in franchise restaurant same-store sales, which was primarily impacted by the same factors described above for company-owned restaurants.

<i>Wendy's Cost of Sales</i>	<u>Change</u>
Food and paper	(0.3)%
Restaurant labor	(0.6)%
Occupancy, advertising and other operating costs	(1.7)%
	<u>(2.6)%</u>

The decrease in cost of sales, as a percent of sales, during the second quarter of 2013 was due to benefits from (1) strategic price increases on our menu items implemented in 2012 subsequent to the second quarter, (2) optimization of restaurant labor through changes in the composition of staffing, (3) a decrease in breakfast advertising expenses and (4) changes in the composition of our sales. As a percent of sales, these decreases in costs were partially offset by increased commodity costs.

<i>General and Administrative</i>	<b>Change</b>
Severance expense	\$ 3.3
Incentive compensation	2.2
Capitalized internal labor costs	(1.4)
Employee compensation and related expenses	(1.0)
Other, net	(1.6)
	<u>\$ 1.5</u>

The increase in general and administrative expenses during the second quarter of 2013 was primarily due to increases in (1) severance expense as a result of the terms of a separation agreement with an executive and (2) incentive compensation accruals due to stronger operating performance as compared to plan in 2013 versus 2012. These increases were substantially offset by (1) an increase in capitalized internal labor costs as a result of our Image Activation program and (2) a decrease in employee compensation and related expenses primarily due to changes in staffing, partially offset by an increase in share-based compensation expense.

<i>Depreciation and Amortization</i>	<b>Change</b>
Restaurants	\$ 3.8
Other	(1.0)
	<u>\$ 2.8</u>

Depreciation and amortization during the second quarter of 2013 includes accelerated depreciation of \$4.2 million on existing assets that will be replaced in 2013 as part of our Image Activation program, compared to \$2.4 million of similar accelerated depreciation during the second quarter of 2012. The increase in restaurant depreciation and amortization during the second quarter of 2013 also includes a \$1.8 million increase on new and reimaged Image Activation restaurants.

<i>Impairment of Long-Lived Assets</i>	<b>Second Quarter 2012</b>
Restaurants, primarily properties	<u>\$ 3.3</u>

During the second quarter of 2012, we closed 15 company-owned restaurants in connection with our review of certain underperforming locations, which resulted in an impairment charge of \$3.3 million.

<i>Facilities Action Charges, Net</i>	<b>Second Quarter</b>	
	<b>2013</b>	<b>2012</b>
System optimization	\$ 4.8	\$ —
Facilities relocation and other transition costs	1.2	9.4
Breakfast discontinuation	0.4	—
Arby's transaction related costs	—	0.6
	<u>\$ 6.4</u>	<u>\$ 10.0</u>

During the second quarter of 2013, the Company recorded net expense totaling \$4.8 million related to its system optimization initiative which is primarily comprised of System Optimization Remeasurement of \$5.9 million partially offset by a \$1.3 million gain on the sale of restaurants.

During the second quarter of 2013 and 2012, the Company incurred costs aggregating \$1.2 million and \$9.4 million, respectively, related to the relocation of the Atlanta restaurant support center to Ohio, which was substantially completed during 2012.

As disclosed in our Form 10-K, the remaining Arby's transaction related costs were associated with the relocation of a corporate executive that were being expensed over the three year period following the executive's relocation in accordance with the terms

of the agreement. In accordance with the terms of a separation agreement with such executive, the remaining unamortized costs were recorded to severance expense and included in “General and administrative” during the second quarter of 2013.

<i>Interest Expense</i>	<b>Change</b>
Senior Notes	\$ (13.5)
Term loans	4.8
Other, net	(0.3)
	<u>\$ (9.0)</u>

The decrease in interest expense during the second quarter of 2013 was primarily due to the purchase and redemption of the Wendy’s Restaurants 10.00% Senior Notes (the “Senior Notes”) in May and July 2012, respectively. This decrease in interest expense was partially offset by the net effect of higher weighted average principal amounts outstanding and lower effective interest rates on the current term loans compared to the prior term loan. The decrease in our effective interest rates on our current term loans compared to the prior term loan is a result of the execution of the Credit Agreement in May 2012 and the Restated Credit Agreement in May 2013. See “Liquidity and Capital Resources - Refinancing of Credit Agreement” below for further discussion.

#### ***Loss on Early Extinguishment of Debt***

Wendy’s incurred a loss on the early extinguishment of debt as a result of refinancing its existing Credit Agreement on May 16, 2013, as described below in “Liquidity and Capital Resources - Refinancing of Credit Agreement,” as follows:

	<b>Second Quarter 2013</b>
Unaccreted discount on Term Loan B	\$ 9.6
Deferred costs associated with the Credit Agreement	11.4
Loss on early extinguishment of debt	<u>\$ 21.0</u>

Wendy’s incurred a loss on the early extinguishment of debt in 2012 of \$25.2 million and \$49.9 million in the second and third quarters of 2012, respectively, related to the repayment of debt with the proceeds of the 2012 term loan under the Credit Agreement. The components of the loss on the early extinguishment of debt incurred during the second quarter of 2012 were as follows:

	<b>Second Quarter 2012</b>
Premium payment to purchase the Senior Notes	\$ 10.1
Unaccreted discount on the Senior Notes	2.1
Deferred costs associated with the Senior Notes	2.8
Unaccreted discount on the 2010 term loan	1.7
Deferred costs associated with the 2010 term loan	8.5
Loss on early extinguishment of debt	<u>\$ 25.2</u>

<i>(Provision for) Benefit from Income Taxes</i>	<u>Change</u>
Federal and state (expense) benefit on variance in income (loss) before income taxes and noncontrolling interests	\$ (9.1)
State income taxes net of federal benefit	(4.0)
Other	(0.7)
	<u>\$ (13.8)</u>

Our income taxes in 2013 and 2012 were impacted by variations in income (loss) before income taxes and noncontrolling interests, adjusted for recurring items and state income taxes net of federal benefit.

***Net Loss Attributable to Noncontrolling Interests***

We have reflected a net loss attributable to noncontrolling interests of \$0.2 million in the second quarter of 2013 in connection with the consolidation of the Japan JV. A wholly-owned subsidiary of Wendy's owned a 49% share in a joint venture for the operation of Wendy's restaurants in Japan with the Higa Partners. In conjunction with the additional capital contributions in April 2013, the partners executed an amendment to the original joint venture agreement which includes revised rights and obligations of the partners and changes to the ownership and profit distribution percentages. The ownership and profit distribution percentages, as defined, are 60.9% and 58.5% and 39.1% and 41.5%, respectively for Wendy's and the Higa Partners and will change as future contributions are made to fund the Japan JV. As a result of the changes in the ownership rights and obligations of the partners, Wendy's is consolidating the Japan JV beginning in the second quarter of 2013. Prior to our acquisition of this additional interest, the Japan JV was accounted for as an unconsolidated affiliate under the equity method of accounting.

Under the equity method of accounting, we previously reported our 49% share of the net loss of the Japan JV in "Other operating expense, net." Beginning in the second quarter of 2013, we have reported its results of operations in the appropriate line items in our condensed consolidated statements of operations. Net loss attributable to the Higa Partners' ownership percentage is recorded in "Net loss attributable to noncontrolling interests."

## Results of Operations

The following tables included throughout this Results of Operations set forth in millions the Company's consolidated results of operations for the six months ended June 30, 2013 and July 1, 2012:

	<b>Six Months Ended</b>			
	<b>June 30, 2013</b>	<b>July 1, 2012</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Revenues:</b>				
Sales	\$ 1,101.9	\$ 1,086.0	\$ 15.9	1.5%
Franchise revenues	152.3	153.1	(0.8)	(0.5)
	<u>1,254.2</u>	<u>1,239.1</u>	<u>15.1</u>	<u>1.2</u>
<b>Costs and expenses:</b>				
Cost of sales	934.1	938.5	(4.4)	(0.5)
General and administrative	140.1	145.6	(5.5)	(3.8)
Depreciation and amortization	90.5	68.3	22.2	32.5
Impairment of long-lived assets	—	7.8	(7.8)	n/m
Facilities action charges, net	9.4	16.2	(6.8)	(42.0)
Other operating expense, net	0.6	3.4	(2.8)	(82.4)
	<u>1,174.7</u>	<u>1,179.8</u>	<u>(5.1)</u>	<u>(0.4)</u>
Operating profit	79.5	59.3	20.2	34.1
Interest expense	(39.9)	(56.2)	16.3	(29.0)
Loss on early extinguishment of debt	(21.0)	(25.2)	4.2	(16.7)
Investment income and other income (expense), net	(2.3)	29.5	(31.8)	n/m
Income before income taxes and noncontrolling interests	16.3	7.4	8.9	n/m
(Provision for) benefit from income taxes	(2.1)	1.8	(3.9)	n/m
Net income	14.2	9.2	5.0	54.3%
Net loss (income) attributable to noncontrolling interests	0.2	(2.3)	2.5	n/m
Net income attributable to The Wendy's Company	<u>\$ 14.4</u>	<u>\$ 6.9</u>	<u>\$ 7.5</u>	<u>n/m</u>

	<b>Six Months 2013</b>		<b>Six Months 2012</b>	
	<b>\$</b>	<b>% of Sales</b>	<b>\$</b>	<b>% of Sales</b>
<b>Sales:</b>				
Wendy's	\$ 1,070.5		\$ 1,049.7	
Bakery	31.4		36.3	
Total sales	<u>\$ 1,101.9</u>		<u>\$ 1,086.0</u>	
<b>Cost of sales:</b>				
Wendy's				
Food and paper	\$ 351.8	32.9%	\$ 350.1	33.4%
Restaurant labor	320.3	29.9%	317.5	30.2%
Occupancy, advertising and other operating costs	240.0	22.4%	245.8	23.4%
Total cost of sales	<u>912.1</u>	<u>85.2%</u>	<u>913.4</u>	<u>87.0%</u>
Bakery	22.0	n/m	25.1	n/m
Total cost of sales	<u>\$ 934.1</u>	<u>84.8%</u>	<u>\$ 938.5</u>	<u>86.4%</u>

	<u>Six Months 2013</u>	<u>Six Months 2012</u>
<i>Margin \$:</i>		
Wendy's	\$ 158.4	\$ 136.3
Bakery	9.4	11.2
Total margin	<u>\$ 167.8</u>	<u>\$ 147.5</u>
Wendy's restaurant margin %	14.8%	13.0%

	<u>Six Months 2013</u>	<u>Six Months 2012</u>
<i>Wendy's restaurant statistics:</i>		
North America same-store sales:		
Company-owned restaurants	0.7%	2.1%
Franchised restaurants	0.5%	2.0%
Systemwide	0.5%	2.0%
Total same-store sales:		
Company-owned restaurants	0.7%	2.1%
Franchised restaurants (a)	0.5%	2.1%
Systemwide (a)	0.6%	2.1%

(a) Includes international franchised restaurants same-store sales.

	<u>Company-owned</u>	<u>Franchised</u>	<u>Systemwide</u>
<i>Restaurant count:</i>			
Restaurant count at December 30, 2012	1,427	5,133	6,560
Opened	7	25	32
Closed	(9)	(41)	(50)
Net (sold to) purchased by franchisees	(7)	7	—
Restaurant count at June 30, 2013	<u>1,418</u>	<u>5,124</u>	<u>6,542</u>

<i>Sales</i>	<u>Change</u>
Wendy's	\$ 20.8
Bakery	(4.9)
	<u>\$ 15.9</u>

The increase in sales during the first six months of 2013 was partially due to an increase in our average per customer check amount, in part offset by a decrease in customer transactions. Our average per customer check amount increased primarily due to a benefit from strategic price increases on our menu items implemented in 2012 subsequent to the second quarter, as well as changes in the composition of our sales. Wendy's company-owned restaurants opened or acquired during the second quarter of 2012 and thereafter resulted in incremental sales of \$55.4 million in the first six months of 2013, which were partially offset by a reduction in sales of \$34.3 million from locations closed or sold during that same time period. Sales during the first six months of 2013 were negatively impacted by temporary closures of restaurants being remodeled under our Image Activation program. Sales were also negatively impacted by \$1.1 million due to changes in Canadian foreign currency rates.

<b>Franchise Revenues</b>	<b>Change</b>
Franchise revenues	\$ (0.8)

The decrease in franchise revenues during the first six months of 2013 was primarily due to a net decrease in the number of franchise restaurants in operation during the first six months of 2013 compared to the first six months of 2012, as a result of the timing of openings and closures. The decrease in franchise revenues was partially offset by a 0.5% increase in franchise restaurant same-store sales, which was primarily impacted by the same factors described above for company-owned restaurants.

<b>Wendy's Cost of Sales</b>	<b>Change</b>
Food and paper	(0.5)%
Restaurant labor	(0.3)%
Occupancy, advertising and other operating costs	(1.0)%
	(1.8)%

The decrease in cost of sales, as a percent of sales, during the first six months of 2013, was primarily due to a benefit from strategic price increases on our menu items implemented in 2012 subsequent to the second quarter, changes in the composition of our sales and a decrease in breakfast advertising expenses. As a percent of sales, these decreases in costs were partially offset by increased commodity costs.

<b>General and Administrative</b>	<b>Change</b>
Employee compensation and related expenses	\$ (4.9)
Capitalized internal labor costs	(1.5)
Franchise taxes	(1.5)
Professional services	(1.1)
Severance expense	3.5
Incentive compensation	2.5
Other, net	(2.5)
	\$ (5.5)

The decrease in general and administrative expenses during the first six months of 2013 was primarily due to (1) a decrease in employee compensation and related expenses primarily due to changes in staffing, partially offset by an increase in share-based compensation, (2) an increase in capitalized internal labor costs as a result of our Image Activation program, (3) a decrease in franchise taxes and (4) a decrease in professional services mostly resulting from lower legal fees and information technology consulting fees. These decreases were partially offset by increases in (1) severance expense as a result of the terms of a separation agreement with an executive and (2) incentive compensation accruals due to stronger operating performance as compared to plan in 2013 versus 2012.

<b>Depreciation and Amortization</b>	<b>Change</b>
Restaurants	\$ 21.3
Other	0.9
	\$ 22.2

Depreciation and amortization during the first six months of 2013 includes accelerated depreciation of \$18.8 million on existing assets that will be replaced in 2013 as part of our Image Activation program, compared to \$2.5 million of similar accelerated depreciation during the first six months of 2012. The increase in restaurant depreciation and amortization during the first six months of 2013 also includes a \$3.5 million increase on new and reimaged Image Activation restaurants. Other depreciation and amortization increased during the first six months of 2013 in part due to depreciation on a new building and renovations at our corporate headquarters.



**Impairment of Long-Lived Assets**

	<b>Six Months 2012</b>
Restaurants, primarily properties	\$ 6.2
Other	1.6
	<u>\$ 7.8</u>

During the first six months of 2012, the Company recorded an impairment charge of \$6.2 million primarily on restaurant-level assets resulting from the deterioration in operating performance of certain restaurants and the closing of 15 company-owned restaurants in connection with our review of certain underperforming locations.

During the first quarter 2012, the Company reclassified a company-owned aircraft as held and used from its previous held for sale classification and recorded an impairment charge of \$1.6 million on the company-owned aircraft.

**Facilities Action Charges, Net**

	<b>Six Months</b>	
	<b>2013</b>	<b>2012</b>
System optimization	\$ 4.8	\$ —
Facilities relocation and other transition costs	3.3	15.0
Breakfast discontinuation	1.0	—
Arby's transaction related costs	0.3	1.2
	<u>\$ 9.4</u>	<u>\$ 16.2</u>

During the first six months of 2013, the Company recorded net expense totaling \$4.8 million related to its system optimization initiative which is primarily comprised of System Optimization Remeasurement of \$5.9 million partially offset by a \$1.3 million gain on the sale of restaurants.

During the first six months of 2013 and 2012, the Company incurred facilities relocation and other transition costs aggregating \$3.3 million and \$15.0 million, respectively, related to the relocation of the Atlanta restaurant support center to Ohio, which was substantially completed during 2012.

As disclosed in our Form 10-K, the remaining Arby's transaction related costs were associated with the relocation of a corporate executive that were being expensed over the three year period following the executive's relocation in accordance with the terms of the agreement. In accordance with the terms of a separation agreement with such executive, the remaining unamortized costs were recorded to severance expense and included in "General and administrative" during the second quarter of 2013.

**Interest Expense**

	<b>Change</b>
Senior Notes	\$ (28.8)
Term loans	12.9
Other, net	(0.4)
	<u>\$ (16.3)</u>

The decrease in interest expense during the first six months of 2013 was primarily due to the purchase and redemption of the Senior Notes in May and July 2012, respectively. This decrease in interest expense was partially offset by the net effect of higher weighted average principal amounts outstanding and lower effective interest rates on the current term loans compared to the prior term loan. The decrease in our effective interest rates on our current term loans compared to the prior term loan is a result of the execution of the Credit Agreement in May 2012 and the Restated Credit Agreement in May 2013. See "Liquidity and Capital Resources - Refinancing of Credit Agreement" below for further discussion.

### ***Loss on Early Extinguishment of Debt***

Wendy's incurred a loss on the early extinguishment of debt as a result of refinancing its existing Credit Agreement on May 16, 2013, as described below in "Liquidity and Capital Resources - Refinancing of Credit Agreement," as follows:

	<b>Six Months 2013</b>
Unaccreted discount on Term Loan B	\$ 9.6
Deferred costs associated with the Credit Agreement	11.4
Loss on early extinguishment of debt	<u>\$ 21.0</u>

Wendy's incurred a loss on the early extinguishment of debt in 2012 of \$25.2 million and \$49.9 million in the second and third quarters of 2012, respectively, related to the repayment of debt with the proceeds of the 2012 term loan under the Credit Agreement. The components of the loss on the early extinguishment for the first six months of 2012 are as follows:

	<b>Six Months 2012</b>
Premium payment to purchase the Senior Notes	\$ 10.1
Unaccreted discount on the Senior Notes	2.1
Deferred costs associated with the Senior Notes	2.8
Unaccreted discount on the 2010 term loan	1.7
Deferred costs associated with the 2010 term loan	8.5
Loss on early extinguishment of debt	<u>\$ 25.2</u>

<b><i>(Provision for) Benefit from Income Taxes</i></b>	<b>Change</b>
Federal and state (expense) benefit on variance in income before income taxes and noncontrolling interests	\$ (2.0)
State income taxes net of federal benefit	(3.6)
Reversal of deferred taxes on investment in foreign subsidiaries now considered permanently invested outside of the U.S.	1.9
Other	(0.2)
	<u>\$ (3.9)</u>

Our income taxes in 2013 and 2012 were impacted by variations in income before income taxes and noncontrolling interests, adjusted for recurring items, state income taxes net of federal benefit and a reversal of deferred taxes on investments in foreign subsidiaries now considered permanently invested outside of the United States.

During the first quarter of 2013, the Company finalized its long-term investment plan with respect to the Company's non-U.S. earnings. There are no plans to repatriate cash from, and Wendy's intends to indefinitely reinvest undistributed earnings of, its non-U.S. subsidiaries. As such, the Company reversed \$1.9 million of deferred tax liabilities relating to investments in foreign subsidiaries which the Company now considers permanently invested outside of the U.S.

### ***Net Loss (Income) Attributable to Noncontrolling Interests***

We have reflected net loss attributable to noncontrolling interests of \$0.2 million during the first six months of 2013 in connection with the consolidation of the Japan JV. A wholly-owned subsidiary of Wendy's owned a 49% share in a joint venture for the operation of Wendy's restaurants in Japan with the Higa Partners. In conjunction with the additional capital contributions in April 2013, the partners executed an amendment to the original joint venture agreement which includes revised rights and obligations of the partners and changes to the ownership and profit distribution percentages. The ownership and profit distribution percentages, as defined, are 60.9% and 58.5% and 39.1% and 41.5%, respectively for Wendy's and the Higa Partners and will change as future contributions are made to fund the Japan JV. As a result of the changes in the ownership rights and obligations

of the partners, Wendy's is consolidating the Japan JV beginning in the second quarter of 2013. Prior to our acquisition of this additional interest, the Japan JV was accounted for as an unconsolidated affiliate under the equity method of accounting.

Under the equity method of accounting, we previously reported our 49% share of the net loss of the Japan JV in "Other operating expense, net." Beginning in the second quarter of 2013, we have reported its results of operations in the appropriate line items in our condensed consolidated statements of operations. Net loss attributable to the Higa Partners' ownership percentage is recorded in "Net loss (income) attributable to noncontrolling interests."

We have reflected net income attributable to noncontrolling interests of \$2.3 million, net of an income tax benefit of \$1.3 million during the first six months of 2012 in connection with the equity and profit interests in Jurl Holdings, LLC ("Jurl"), a 99.7% owned subsidiary, which held our investment in Jurlique International Pty Ltd. ("Jurlique"). Prior to 2009 when our predecessor entity was a diversified company active in investments, we had provided the Former Executives and certain other former employees, equity and profits interests in Jurl. In connection with the gain on sale of Jurlique, we distributed, based on the related agreement, approximately \$3.7 million to Jurl's minority shareholders, including approximately \$2.3 million to the Former Executives in the first quarter of 2012. As a result of this sale and distributions to the minority shareholders, there are no remaining noncontrolling interests in this consolidated subsidiary.

## Liquidity and Capital Resources

### *Net Cash Provided by Operating Activities*

Cash provided by operating activities increased \$74.8 million in the first six months of 2013 as compared to the first six months of 2012, primarily due to changes in our net income and non-cash items as well as the following:

- a \$7.9 million favorable impact in accounts payable for the comparable periods. This favorable impact was primarily due to (1) an increase in accruals for capital expenditures due to the timing of restaurant construction activity in the first six months of 2013 versus 2012 and (2) changes in accounts payable due to the timing of payments between comparable periods; and
- a \$3.2 million favorable impact in accrued expenses and other current liabilities for the comparable periods. This favorable impact was primarily due to decreases in (1) payments for severance, retention and relocation associated with the sale of Arby's and the relocation of the Company's Atlanta restaurant support center to Ohio and (2) payments for income taxes, net of refunds. These favorable changes were partially offset by (1) a decrease in interest accruals partially offset by a decrease in payments due to the net effect of the May 15, 2012 Credit Agreement and the related purchase and redemption of the Wendy's Restaurants 10.00% Senior Notes in May and July 2012, respectively and (2) an increase in incentive compensation payments for the 2012 fiscal year partially offset by an increase in the accrual for the 2013 fiscal year due to stronger operating performance.

Additionally, during the first six months of 2013, the Company had the following significant uses and sources of cash other than from operating activities:

- Cash capital expenditures totaling \$81.8 million, which included \$44.6 million for Image Activation restaurants, \$1.6 million for other restaurants, \$5.2 million for the construction of a new building and renovations at our corporate headquarters and \$30.4 million for various capital projects;
- Proceeds from dispositions of \$16.0 million, including \$2.8 million from restaurant dispositions under our system optimization initiative;
- Proceeds from long-term debt of \$350.0 million which were offset by repayments of \$357.4 million primarily due to the partial refinancing of our existing term loan in connection with the Restated Credit Agreement;
- Dividend payments of \$31.4 million; and
- Financing cost payments of \$5.8 million resulting from the refinancing of our Credit Agreement.

The net cash provided by our business before the effect of exchange rate changes on cash was approximately \$38.3 million.

### *Sources and Uses of Cash for the Remainder of 2013*

Our anticipated sources of cash and cash requirements for the remainder of 2013, exclusive of operating cash flow requirements, consist principally of:

- Capital expenditures of approximately \$163.2 million, which would result in total cash capital expenditures for the year of approximately \$245.0 million;
- Quarterly cash dividends aggregating up to approximately \$39.3 million as discussed below in "Dividends;"
- Restaurant dispositions under our system optimization initiative;
- Stock repurchases of up to \$100.0 million, which includes repurchases of \$13.3 million made subsequent to the second quarter through August 2, 2013; and
- The cost of any potential financing activities.

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

### *Refinancing of Credit Agreement*

On May 16, 2013, Wendy's amended and restated its Credit Agreement, dated as of May 15, 2012. The Restated Credit Agreement is comprised of (1) a \$350.0 million senior secured term loan facility ("Term Loan A") which will mature on May 15,

2018 and bears interest at Eurodollar Rate (as defined in the Restated Credit Agreement) plus 2.25%, (2) a \$769.4 million senior secured term loan facility (“Term Loan B”) which will mature on May 15, 2019 and bears interest at Eurodollar Rate plus 2.50% with a floor of 0.75% and (3) a \$200.0 million senior secured revolving credit facility which will mature on May 15, 2018. The proceeds from the Term Loan A were used to refinance a portion of our existing Term Loan B (formerly described in our Form 10-K as the “Term Loan”). The terms and amounts of the senior secured revolving credit facility are unchanged with the exception of the maturity date which was extended from May 15, 2017. The Restated Credit Agreement does not contain any material changes to existing covenants or other terms of the Credit Agreement, except as described above. The interest rates on Term Loan A and Term Loan B were 2.44% and 3.25%, respectively, as of June 30, 2013.

Wendy’s incurred \$5.8 million in fees related to the refinancing, which are being amortized to “Interest expense” utilizing the effective interest rate method through the maturities of the related debt instruments.

In connection with the refinancing of its existing Credit Agreement, Wendy’s recorded debt extinguishment costs of \$21.0 million in the second quarter of 2013.

#### *Dividends*

On March 15, 2013 and June 17, 2013, The Wendy’s Company paid quarterly cash dividends of \$0.04 per share on its common stock, aggregating \$31.4 million. On July 19, 2013, The Wendy’s Company declared a dividend of \$0.05 per share to be paid on September 17, 2013 to shareholders of record as of September 3, 2013. If The Wendy’s Company pays a regular quarterly cash dividend for the fourth quarter of 2013 at the same rate as declared on July 19, 2013, The Wendy’s Company’s total cash requirement for dividends for the remainder of 2013 would be approximately \$39.3 million based on the number of shares of its common stock outstanding at August 2, 2013. The Wendy’s Company currently intends to continue to declare and pay quarterly cash dividends; however, there can be no assurance that any quarterly dividends will be declared or paid in the future or of the amount or timing of such dividends, if any.

#### *Treasury Stock Purchases*

Our Board of Directors has authorized the repurchase of up to \$100.0 million of our common stock through December 29, 2013, when and if market conditions warrant and to the extent legally permissible. No repurchases were made during the first six months of 2013. Subsequent to the second quarter through August 2, 2013, we repurchased 1.9 million shares for an aggregate purchase price of \$13.3 million, excluding commissions.

### **General Inflation, Commodities and Changing Prices**

We believe that general inflation did not have a significant effect on our consolidated results of operations, except as mentioned below for certain commodities, during the reporting periods. We manage any inflationary costs and commodity price increases through selective menu price increases. Delays in implementing such menu price increases and competitive pressures may limit our ability to recover such cost increases in the future. Inherent volatility experienced in certain commodity markets, such as those for beef, chicken, corn and wheat continued to have a significant effect on our results of operations through the second quarter of 2013 and is expected to continue to have an adverse effect on us in the future. The extent of any impact will depend in part on our ability to anticipate and react to changes in commodity costs.

### **Seasonality**

Our restaurant operations are moderately impacted by seasonality; Wendy’s restaurant revenues are normally higher during the summer months than during the winter months. Because our business is moderately seasonal, results for any future quarter will not necessarily be indicative of the results that may be achieved for any other quarter or for the full fiscal year.

### **Item 3. *Quantitative and Qualitative Disclosures about Market Risk***

As of June 30, 2013, there were no material changes from the information contained in the Company’s Form 10-K for the fiscal year ended December 30, 2012.

#### **Item 4. Controls and Procedures**

##### **Evaluation of Disclosure Controls and Procedures**

The management of the Company, under the supervision and with the participation of its Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of its disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), as of June 30, 2013. Based on such evaluations, the Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2013, the disclosure controls and procedures of the Company were effective at a reasonable assurance level in (1) recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and (2) ensuring that information required to be disclosed by the Company in such reports is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

##### **Changes in Internal Control Over Financial Reporting**

There were no changes to the design or operation of procedures related to internal control over financial reporting during the second quarter of 2013 that materially affected, or are reasonably likely to materially affect, its internal control over financial reporting.

##### **Inherent Limitations on Effectiveness of Controls**

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

## PART II. OTHER INFORMATION

### Special Note Regarding Forward-Looking Statements and Projections

This Quarterly Report on Form 10-Q and oral statements made from time to time by representatives of the Company may contain or incorporate by reference certain statements that are not historical facts, including, most importantly, information concerning possible or assumed future results of operations of the Company. Those statements, as well as statements preceded by, followed by, or that include the words “may,” “believes,” “plans,” “expects,” “anticipates,” or the negation thereof, or similar expressions, constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 (the “Reform Act”). All statements that address future operating, financial or business performance; strategies, initiatives or expectations; future synergies, efficiencies or overhead savings; anticipated costs or charges; future capitalization; and anticipated financial impacts of recent or pending transactions are forward-looking statements within the meaning of the Reform Act. The forward-looking statements are based on our expectations at the time such statements are made, speak only as of the dates they are made and are susceptible to a number of risks, uncertainties and other factors. Our actual results, performance and achievements may differ materially from any future results, performance or achievements expressed or implied by our forward-looking statements. For all of our forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Reform Act. Many important factors could affect our future results and could cause those results to differ materially from those expressed in or implied by the forward-looking statements contained herein. Such factors, all of which are difficult or impossible to predict accurately, and many of which are beyond our control, include, but are not limited to, the following:

- competition, including pricing pressures, couponing, aggressive marketing and the potential impact of competitors’ new unit openings on sales of Wendy’s restaurants;
- consumers’ perceptions of the relative quality, variety, affordability and value of the food products we offer;
- food safety events, including instances of food-borne illness (such as salmonella or E. coli) involving Wendy’s or its supply chain;
- consumer concerns over nutritional aspects of beef, poultry, french fries or other products we sell, or concerns regarding the effects of disease outbreaks such as “mad cow disease” and avian influenza or “bird flu”;
- the effects of negative publicity that can occur from increased use of social media;
- success of operating and marketing initiatives, including advertising and promotional efforts and new product and concept development by us and our competitors;
- the impact of general economic conditions and high unemployment rates on consumer spending, particularly in geographic regions that contain a high concentration of Wendy’s restaurants;
- changes in consumer tastes and preferences, and in discretionary consumer spending;
- changes in spending patterns and demographic trends, such as the extent to which consumers eat meals away from home;
- certain factors affecting our franchisees, including the business and financial viability of franchisees, the timely payment of such franchisees’ obligations due to us or to national or local advertising organizations, and the ability of our franchisees to open new restaurants in accordance with their development commitments, including their ability to finance restaurant development and remodels;
- changes in commodity costs (including beef, chicken and corn), labor, supply, fuel, utilities, distribution and other operating costs;
- availability, location and terms of sites for restaurant development by us and our franchisees;
- development costs, including real estate and construction costs;
- delays in opening new restaurants or completing reimages of existing restaurants, including risks associated with the Image Activation program;

- the timing and impact of acquisitions and dispositions of restaurants;
- our ability to successfully integrate acquired restaurant operations;
- anticipated or unanticipated restaurant closures by us and our franchisees;
- our ability to identify, attract and retain potential franchisees with sufficient experience and financial resources to develop and operate Wendy's restaurants successfully;
- availability of qualified restaurant personnel to us and to our franchisees, and the ability to retain such personnel;
- our ability, if necessary, to secure alternative distribution of supplies of food, equipment and other products to Wendy's restaurants at competitive rates and in adequate amounts, and the potential financial impact of any interruptions in such distribution;
- availability and cost of insurance;
- adverse weather conditions;
- availability, terms (including changes in interest rates) and deployment of capital;
- changes in, and our ability to comply with, legal, regulatory or similar requirements, including franchising laws, payment card industry rules, overtime rules, minimum wage rates, wage and hour laws, government-mandated health care benefits, tax legislation, federal ethanol policy and accounting standards;
- the costs, uncertainties and other effects of legal, environmental and administrative proceedings;
- the effects of charges for impairment of goodwill or for the impairment of other long-lived assets;
- the effects of war or terrorist activities;
- expenses and liabilities for taxes related to periods up to the date of sale of Arby's as a result of the indemnification provisions of the Arby's Purchase and Sale Agreement;
- the difficulty in predicting the ultimate costs associated with the sale of restaurants under the Company's system optimization initiative, employee termination costs, the timing of payments made and received, the results of negotiations with landlords, the impact of the sale of restaurants on ongoing operations, any tax impact from the sale of restaurants and the future benefits to the Company's earnings, restaurant operating margins, cash flow and depreciation; and
- other risks and uncertainties affecting us and our subsidiaries referred to in our Annual Report on Form 10-K for the fiscal year ended December 30, 2012 (the "Form 10-K") (see especially "Item 1A. Risk Factors" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations") and in our other current and periodic filings with the Securities and Exchange Commission.

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

### **Item 1. *Legal Proceedings.***

We are involved in litigation and claims incidental to our current and prior businesses. We provide reserves for such litigation and claims when payment is probable and reasonably estimable. We believe we have adequate reserves for all of our legal and environmental matters. We cannot estimate the aggregate possible range of loss due to most proceedings being in preliminary stages, with various motions either yet to be submitted or pending, discovery yet to occur, and significant factual matters unresolved. In addition, most cases seek an indeterminate amount of damages and many involve multiple parties. Predicting the outcomes of



settlement discussions or judicial or arbitral decisions is thus inherently difficult. Based on currently available information, including legal defenses available to us, and given the aforementioned reserves and our insurance coverage, we do not believe that the outcome of these legal and environmental matters will have a material effect on our consolidated financial position or results of operations.

The Company had previously described in the Form 10-K a dispute between Wendy’s International, Inc., an indirect subsidiary of the Company, and Tim Hortons Inc. related to a tax sharing agreement entered into in 2006. The dispute was resolved by mutual agreement of the parties on April 25, 2013. The terms of the agreement were not material to the Company.

**Item 1A. Risk Factors.**

In addition to the information contained in this report, you should carefully consider the risk factors disclosed in our Form 10-K, which could materially affect our business, financial condition or future results. Except as described elsewhere in this report, there have been no material changes from the risk factors previously disclosed in our Form 10-K.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

The following table provides information with respect to repurchases of shares of our common stock by us and our “affiliated purchasers” (as defined in Rule 10b-18(a)(3) under the Exchange Act) during the second quarter of 2013:

**Issuer Repurchases of Equity Securities**

<b>Period</b>	<b>Total Number of Shares Purchased (1)</b>	<b>Average Price Paid per Share</b>	<b>Total Number of Shares Purchased as Part of Publicly Announced Plan</b>	<b>Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plan (2)</b>
April 1, 2013 through May 5, 2013	30,083	\$ 5.56	—	\$ 100,000,000
May 6, 2013 through June 2, 2013	—	\$ —	—	\$ 100,000,000
June 3, 2013 through June 30, 2013	14,902	\$ 5.72	—	\$ 100,000,000
Total	44,985	\$ 5.62	—	\$ 100,000,000

- (1) All shares were reacquired by The Wendy’s Company from holders of share-based awards to satisfy certain requirements associated with the vesting or exercise of the respective award. The shares were valued at the average of the high and low trading prices of our common stock on the vesting or exercise date of such awards.
- (2) In November 2012, our Board of Directors authorized the repurchase of up to \$100.0 million of our common stock through December 29, 2013, when and if market conditions warrant and to the extent legally permissible. Subsequent to the second quarter through August 2, 2013, we repurchased 1.9 million shares for an aggregate purchase price of \$13.3 million, excluding commissions.

**Item 6. Exhibits.**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>
2.1	Agreement and Plan of Merger, dated as of April 23, 2008, by and among Triarc Companies, Inc., Green Merger Sub, Inc. and Wendy's International, Inc., incorporated herein by reference to Exhibit 2.1 to Triarc's Current Report on Form 8-K dated April 29, 2008 (SEC file no. 001-02207).
2.2	Side Letter Agreement, dated August 14, 2008, by and among Triarc Companies, Inc., Green Merger Sub, Inc. and Wendy's International, Inc., incorporated herein by reference to Exhibit 2.3 to Triarc's Registration Statement on Form S-4, Amendment No.3, filed on August 15, 2008 (Reg. no. 333-151336).
2.3	Purchase and Sale Agreement, dated as of June 13, 2011, by and among Wendy's/Arby's Restaurants, LLC, ARG Holding Corporation and ARG IH Corporation, incorporated herein by reference to Exhibit 2.1 of the Wendy's/Arby's Group, Inc. and Wendy's/Arby's Restaurants, LLC Current Reports on Form 8-K filed on June 13, 2011 (SEC file nos. 001-02207 and 333-161613, respectively).
2.4	Closing letter dated as of July 1, 2011 by and among Wendy's/Arby's Restaurants, LLC, ARG Holding Corporation, ARG IH Corporation, and Roark Capital Partners II, LP, incorporated herein by reference to Exhibit 2.2 of the Wendy's/Arby's Group, Inc. and Wendy's/Arby's Restaurants, LLC Current Reports on Form 8-K filed on July 8, 2011 (SEC file nos. 001-02207 and 333-161613, respectively).
2.5	Asset Purchase Agreement by and among Wendy's International, Inc., Pisces Foods, L.P., Near Holdings, L.P., David Near and Jason Near dated as of June 5, 2012, incorporated herein by reference to Exhibit 2.1 of The Wendy's Company Current Report on Form 8-K filed on June 12, 2012 (SEC file no. 001-02207).
2.6	Asset Purchase Agreement by and among Wendy's Old Fashioned Hamburgers of New York, Inc. and NPC Quality Burgers, Inc., dated as of June 12, 2013, incorporated herein by reference to Exhibit 2.1 of The Wendy's Company Current Report on Form 8-K filed on July 23, 2013 (SEC file no. 001-02207).
3.1	Restated Certificate of Incorporation of The Wendy's Company, as filed with the Secretary of State of the State of Delaware on May 24, 2012, incorporated herein by reference to Exhibit 3.1 of The Wendy's Company Current Report on Form 8-K filed on May 25, 2012 (SEC file no. 001-02207).
3.2	By-Laws of The Wendy's Company (as amended and restated through May 24, 2012), incorporated herein by reference to Exhibit 3.2 of The Wendy's Company Current Report on Form 8-K filed on May 25, 2012 (SEC file no. 001-02207).
10.1	Amended and Restated Credit Agreement, dated May 16, 2013, among Wendy's International, Inc., as borrower, Bank of America, N.A., as administrative agent, swing line lender and L/C issuer, Wells Fargo Bank, National Association, as syndication agent, and Fifth Third Bank, The Huntington National Bank, and Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, as co-documentation agents, and the lenders and issuers party thereto, incorporated herein by reference to Exhibit 10.1 of The Wendy's Company Current Report on Form 8-K filed on May 16, 2013 (SEC file no. 001-02207).
10.2	Amended and Restated Security Agreement, dated as of May 15, 2012, and amended and restated as of May 16, 2013, among Wendy's International, Inc., the guarantors from time to time party thereto, as pledgors, and Bank of America, N.A., as administrative agent, incorporated herein by reference to Exhibit 10.2 of The Wendy's Company Current Report on Form 8-K filed on May 16, 2013 (SEC file no. 001-02207).
10.3	Form of Restricted Stock Unit Award Agreement for 2013 (ratable vesting) under the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan.* **
10.4	Form of Restricted Stock Unit Award Agreement for 2013 (cliff vesting) under the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan.* **
10.5	Form of Non-Employee Director Restricted Stock Award Agreement for 2013 under the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan.* **
10.6	Amendment No. 2 to the Wendy's/Arby's Group, Inc. 2009 Directors' Deferred Compensation Plan.* **
10.7	Letter Agreement between The Wendy's Company and Stephen E. Hare dated as of May 7, 2013.* **
10.8	Consulting Agreement between The Wendy's Company and Stephen E. Hare dated as of May 7, 2013.* **
10.9	Employment Letter between The Wendy's Company and Todd Penegor dated as of May 8, 2013.* **
31.1	Certification of the Chief Executive Officer of The Wendy's Company pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.2	Certification of the Chief Financial Officer of The Wendy's Company pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
32.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, furnished as an exhibit to this Form 10-Q.*

**EXHIBIT  
NO.**

**DESCRIPTION**

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101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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\* Filed herewith

\*\* Identifies a management contract or compensatory plan or arrangement.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE WENDY'S COMPANY  
(Registrant)

Date: August 7, 2013

By: /s/Stephen E. Hare  
Stephen E. Hare  
Senior Vice President and  
Chief Financial Officer  
(On behalf of the Company)

Date: August 7, 2013

By: /s/Steven B. Graham  
Steven B. Graham  
Senior Vice President and  
Chief Accounting Officer  
(Principal Accounting Officer)

## Exhibit Index

EXHIBIT NO.	DESCRIPTION
2.1	Agreement and Plan of Merger, dated as of April 23, 2008, by and among Triarc Companies, Inc., Green Merger Sub, Inc. and Wendy's International, Inc., incorporated herein by reference to Exhibit 2.1 to Triarc's Current Report on Form 8-K dated April 29, 2008 (SEC file no. 001-02207).
2.2	Side Letter Agreement, dated August 14, 2008, by and among Triarc Companies, Inc., Green Merger Sub, Inc. and Wendy's International, Inc., incorporated herein by reference to Exhibit 2.3 to Triarc's Registration Statement on Form S-4, Amendment No.3, filed on August 15, 2008 (Reg. no. 333-151336).
2.3	Purchase and Sale Agreement, dated as of June 13, 2011, by and among Wendy's/Arby's Restaurants, LLC, ARG Holding Corporation and ARG IH Corporation, incorporated herein by reference to Exhibit 2.1 of the Wendy's/Arby's Group, Inc. and Wendy's/Arby's Restaurants, LLC Current Reports on Form 8-K filed on June 13, 2011 (SEC file nos. 001-02207 and 333-161613, respectively).
2.4	Closing letter dated as of July 1, 2011 by and among Wendy's/Arby's Restaurants, LLC, ARG Holding Corporation, ARG IH Corporation, and Roark Capital Partners II, LP, incorporated herein by reference to Exhibit 2.2 of the Wendy's/Arby's Group, Inc. and Wendy's/Arby's Restaurants, LLC Current Reports on Form 8-K filed on July 8, 2011 (SEC file nos. 001-02207 and 333-161613, respectively).
2.5	Asset Purchase Agreement by and among Wendy's International, Inc., Pisces Foods, L.P., Near Holdings, L.P., David Near and Jason Near dated as of June 5, 2012, incorporated herein by reference to Exhibit 2.1 of The Wendy's Company Current Report on Form 8-K filed on June 12, 2012 (SEC file no. 001-02207).
2.6	Asset Purchase Agreement by and among Wendy's Old Fashioned Hamburgers of New York, Inc. and NPC Quality Burgers, Inc., dated as of June 12, 2013, incorporated herein by reference to Exhibit 2.1 of The Wendy's Company Current Report on Form 8-K filed on July 23, 2013 (SEC file no. 001-02207).
3.1	Restated Certificate of Incorporation of The Wendy's Company, as filed with the Secretary of State of the State of Delaware on May 24, 2012, incorporated herein by reference to Exhibit 3.1 of The Wendy's Company Current Report on Form 8-K filed on May 25, 2012 (SEC file no. 001-02207).
3.2	By-Laws of The Wendy's Company (as amended and restated through May 24, 2012), incorporated herein by reference to Exhibit 3.2 of The Wendy's Company Current Report on Form 8-K filed on May 25, 2012 (SEC file no. 001-02207).
10.1	Amended and Restated Credit Agreement, dated May 16, 2013, among Wendy's International, Inc., as borrower, Bank of America, N.A., as administrative agent, swing line lender and L/C issuer, Wells Fargo Bank, National Association, as syndication agent, and Fifth Third Bank, The Huntington National Bank, and Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, as co-documentation agents, and the lenders and issuers party thereto, incorporated herein by reference to Exhibit 10.1 of The Wendy's Company Current Report on Form 8-K filed on May 16, 2013 (SEC file no. 001-02207).
10.2	Amended and Restated Security Agreement, dated as of May 15, 2012, and amended and restated as of May 16, 2013, among Wendy's International, Inc., the guarantors from time to time party thereto, as pledgors, and Bank of America, N.A., as administrative agent, incorporated herein by reference to Exhibit 10.2 of The Wendy's Company Current Report on Form 8-K filed on May 16, 2013 (SEC file no. 001-02207).
10.3	Form of Restricted Stock Unit Award Agreement for 2013 (ratable vesting) under the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan.* **
10.4	Form of Restricted Stock Unit Award Agreement for 2013 (cliff vesting) under the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan.* **
10.5	Form of Non-Employee Director Restricted Stock Award Agreement for 2013 under the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan.* **
10.6	Amendment No. 2 to the Wendy's/Arby's Group, Inc. 2009 Directors' Deferred Compensation Plan.* **
10.7	Letter Agreement between The Wendy's Company and Stephen E. Hare dated as of May 7, 2013.* **
10.8	Consulting Agreement between The Wendy's Company and Stephen E. Hare dated as of May 7, 2013.* **
10.9	Employment Letter between The Wendy's Company and Todd Penegor dated as of May 8, 2013.* **
31.1	Certification of the Chief Executive Officer of The Wendy's Company pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.2	Certification of the Chief Financial Officer of The Wendy's Company pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
32.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, furnished as an exhibit to this Form 10-Q.*

**EXHIBIT  
NO.**

**DESCRIPTION**

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101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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\* Filed herewith

\*\* Identifies a management contract or compensatory plan or arrangement.

## CERTIFICATIONS

I, Emil J. Brolick, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Wendy's Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2013

/s/ Emil J. Brolick  
Emil J. Brolick  
President and Chief Executive Officer

## CERTIFICATIONS

I, Stephen E. Hare, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Wendy's Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2013

/s/ Stephen E. Hare

Stephen E. Hare

Senior Vice President and Chief Financial Officer



**Certification Pursuant to  
18 U.S.C. Section 1350  
As Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of The Wendy's Company, a Delaware corporation (the "Company"), does hereby certify, to the best of such officer's knowledge, that:

The Quarterly Report on Form 10-Q for the quarter ended June 30, 2013 (the "Form 10-Q") of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 7, 2013

/s/ Emil J. Brolick  
Emil J. Brolick  
President and Chief Executive Officer

Date: August 7, 2013

/s/ Stephen E. Hare  
Stephen E. Hare  
Senior Vice President and Chief Financial Officer

**RESTRICTED STOCK UNIT AWARD AGREEMENT  
UNDER THE WENDY'S/ARBY'S GROUP, INC.  
2010 OMNIBUS AWARD PLAN**

**RESTRICTED STOCK UNIT AWARD AGREEMENT** (this "Agreement"), made as of \_\_\_\_\_, 20\_\_ , by and between The Wendy's Company (the "Company") and \_\_\_\_\_ (the "Participant"):

**WHEREAS**, the Company maintains the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan (the "Plan") under which the Compensation Committee of the Company's Board of Directors or a subcommittee thereof (the "Committee") may, among other things, award shares of the Company's Common Stock, to such eligible persons under the Plan as the Committee may determine, subject to terms, conditions, or restrictions as it may deem appropriate;

**WHEREAS**, pursuant to the Plan, the Committee has awarded to the Participant a restricted stock unit award conditioned upon the execution by the Company and the Participant of a Restricted Stock Unit Agreement setting forth all the terms and conditions applicable to such award in accordance with Delaware law;

**NOW, THEREFORE**, in consideration of the mutual promises(s) and covenants(s) contained herein, it is hereby agreed as follows:

**1. Defined Terms.** Except as otherwise specifically provided herein, capitalized terms used herein shall have the meanings attributed thereto in the Plan.

**2. Award of Restricted Stock Units.** Subject to the terms of the Plan and this Agreement, the Committee hereby awards to the Participant a restricted stock unit award (the "Restricted Stock Unit Award") on \_\_\_\_\_, 20\_\_ (the "Award Date"), covering \_\_\_\_\_ shares of Common Stock (the "RSUs"). Each RSU represents the right to receive payment of one share of Common Stock as of the date the RSU is settled, to the extent the RSU is vested, subject to the terms of the Plan and this Agreement.

**3. Vesting and Settlement.** Subject to the Participant's continued employment with the Company and its Subsidiaries (other than as set forth in Section 6 below):

3.1 One-third of the RSUs shall vest and become nonforfeitable on the first anniversary of the Award Date;

3.2 One-third of the RSUs shall vest and become nonforfeitable on the second anniversary of the Award Date; and

3.3 One-third of the RSUs shall vest and become nonforfeitable on the third anniversary of the Award Date (each such anniversary is referred to as a "Vesting Date").

3.4 Promptly after each applicable Vesting Date (but in no event later than 74 days after the end of the calendar year in which the Vesting Date occurs), the Company shall distribute to the Participant one share of Common Stock for each vested RSU.

**4. Dividend Equivalent Rights.** Each RSU shall also have a dividend equivalent right (a “Dividend Equivalent Right”). Each Dividend Equivalent Right represents the right to receive all of the ordinary cash dividends that are or would be payable with respect to the RSUs. With respect to each Dividend Equivalent Right, any such cash dividends shall be converted into additional RSUs based on the Fair Market Value of a share of Common Stock on the date such dividend is paid. Such additional RSUs shall be subject to the same terms and conditions applicable to the RSU to which the Dividend Equivalent Right relates, including, without limitation, the restrictions on transfer, forfeiture, vesting and settlement provisions contained in this Agreement. In the event that a RSU is forfeited as provided in Section 6 below, then the related Dividend Equivalent Right shall also be forfeited.

**5. Transferability.** The RSUs shall not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or an Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance. The shares of Common Stock acquired by the Participant upon settlement of the RSUs may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant, unless in compliance with all applicable securities laws as set forth in Section 15 below. The Participant shall not be deemed for any purpose to be the owner of any shares of Common Stock subject to the RSUs prior to settlement of any vested RSUs.

**6. Effect of Termination of Employment.** In the event of (A) the termination of the Participant's employment or service by the Company other than for Cause (and other than due to death or Disability), or by the Participant for Good Reason, in each case within 12 months following a Change in Control, or (B) the termination of the Participant's employment or service due to death or Disability, outstanding RSUs hereby granted to the Participant shall become fully vested as of the date of such termination of employment or service. Upon voluntary termination of the Participant's employment with the Company or any of its Subsidiaries by the Participant other than for Good Reason, the Restricted Stock Unit Award, to the extent not already vested, shall be forfeited, unless otherwise determined by the Committee in its sole discretion.

**7. Beneficiary.** The Participant may designate in writing a beneficiary(ies) to receive the stock certificates representing those RSUs that become vested and non-forfeitable and settled upon the Participant's death. The Participant has the right to change such beneficiary designation at will.

**8. Withholding Taxes.** The Participant shall be required to pay to the Company, and the Company shall have the right and is hereby authorized to withhold, from any cash, shares of Common Stock, other securities or other property deliverable in respect of the RSUs or from any compensation or other amounts owing to the Participant, the amount (in cash, Common Stock, other securities or other property) of any required withholding taxes in respect of the RSUs, and to take such other action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such withholding and taxes. In addition, the Committee may, in its sole discretion, permit the Participant to satisfy, in whole or in part, the foregoing withholding liability (but no more than the minimum required statutory withholding liability) by (A) the delivery of shares of Common Stock (which are not subject to any pledge or other security interest) owned by the Participant having a Fair Market Value equal to such withholding liability or (B) having the Company withhold from the number of shares of Common Stock otherwise issuable or deliverable upon settlement of the RSUs a number of shares with a Fair Market Value equal to such withholding liability. The obligations of the Company under this Agreement will be conditional on such payment or arrangements, and the Company will, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant.

**9. Impact on Other Benefits.** The value of the Restricted Stock Unit Award (either on the Award Date or at the time any RSUs become vested and/or settled) shall not be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.

**10. Administration.** The Committee shall have full authority and discretion (subject only to the express provisions of the Plan) to decide all matters relating to the administration and interpretation of this Agreement. All such Committee determinations shall be final, conclusive, and binding upon the Company, the Participant, and any and all interested parties.

**11. Funding.** Dividends and distributions with respect to the RSUs shall be paid directly by the Company. The Company shall not be required to fund or otherwise segregate assets to be used for payment of these amounts under the Plan, and all obligations of the Company with respect to such amounts under the Plan shall remain subject to the claims of its general creditors.

**12. Right to Continued Employment.** This grant does not constitute an employment contract. Nothing in the Plan or this Agreement shall be deemed to be a modification or waiver of the terms and conditions set forth in a written employment agreement for the Participant that has been approved, ratified or confirmed by the Board of Directors of the Company or the Committee.

**13. Clawback.** Notwithstanding anything to the contrary contained herein, in the event of a material restatement of the Company's issued financial statements, the Committee shall review the facts and circumstances underlying the restatement (including, without limitation any potential wrongdoing by the Participant and whether the restatement was the result of negligence or intentional or gross misconduct) and may in its sole discretion direct the Company to recover all or a portion of the RSUs (which may be accomplished by the Company's cancellation of the RSUs) or the shares of Common Stock issued upon settlement of the RSUs or any gain realized on the subsequent sale of Common Stock acquired upon vesting and settlement of the RSUs with respect to any fiscal year in which the Company's financial results are negatively impacted by such restatement. If the Committee directs the Company to recover any such amount from the Participant, then the Participant agrees to and shall be required to repay any such amount to the Company within 30 days after the Company demands repayment. In addition, if the Company is required by law to include an additional "clawback" or "forfeiture" provision to outstanding awards, then such clawback or forfeiture provision shall also apply to the RSUs as if it had been included on the date of grant and the Company shall promptly notify the Participant of such additional provision. In addition, if a court determines that the Participant has engaged or is engaged in Detrimental Activities during the Participant's employment with the Company or its Subsidiaries or after the Participant's employment or service with the Company or its Subsidiaries has ceased, then the Participant, within 30 days after written demand by the Company, shall return the Common Stock received upon settlement of the RSUs, any gain realized on the settlement of the RSUs or the subsequent sale of Common Stock acquired upon vesting and settlement of the RSUs.

**14. Bound by Plan.** The Restricted Stock Unit Award has been granted subject to the terms and conditions of the Plan, a copy of which has been provided to the Participant and which the Participant acknowledges having received and reviewed. Any conflict between this Agreement and the Plan shall be decided in favor of the provisions of the Plan. Any conflict between this Agreement and the terms of a written employment agreement for the Participant that has been approved, ratified or confirmed by the Board of Directors of the Company or the Committee shall be decided in favor of the provisions of such employment agreement. This Agreement may not be amended, altered, suspended, discontinued, cancelled or terminated

in any manner that would materially and adversely affect the rights of the Participant except by a written agreement executed by the Participant and the Company.

**15. Securities Laws.** The Participant agrees that the obligation of the Company to issue Common Stock upon vesting of the Restricted Stock Unit Award shall also be subject, as conditions precedent, to compliance with applicable provisions of the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, state securities or corporation laws, rules and regulations under any of the foregoing and applicable requirements of any securities exchange upon which the Company's securities shall be listed.

**16. Electronic Delivery.** By accepting the Restricted Stock Unit Award, the Participant hereby consents to the electronic delivery of prospectuses, annual reports and other information required to be delivered by Securities and Exchange Commission rules. This consent may be revoked in writing by the Participant at any time upon three business days' notice to the Company, in which case subsequent prospectuses, annual reports and other information will be delivered in hard copy to the Participant.

**17. Force and Effect.** The various provisions of this Agreement are severable in their entirety. Any determination of invalidity or unenforceability of any one provision shall have no effect on the continuing force and effect of the remaining provisions.

**18. Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to contracts made and performed wholly within the State of Delaware, without giving effect to the conflict of laws provisions thereof.

**19. Successors.** This Agreement shall be binding and inure to the benefit of the successors, assigns and heirs of the respective parties.

**20. Notices.** Notices and communications under this Agreement must be in writing and either personally delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid. Notices to the Company must be addressed to The Wendy's Company, One Dave Thomas Blvd., Dublin, Ohio 43017, Attn: Corporate Secretary, or any other address designated by the Company in a written notice to the Participant. Notices to the Participant will be directed to the address of the Participant then currently on file with the Company, or at any other address given by the Participant in a written notice to the Company.

**21. Validity of Agreement.** This Agreement shall be valid, binding and effective upon the Company on the Award Date. However, the RSUs shall be forfeited by the Participant and this Agreement shall have no force and effect if it is duly rejected. The Participant may reject this Agreement and forfeit the RSUs by notifying the Company or its designee in the manner prescribed by the Company and communicated to the Participant; provided that such rejection must be received by the Company or its designee no later than the earlier of (i) \_\_\_\_\_, 20\_\_ and (ii) the date the RSUs first vest pursuant to the terms hereof. If this Agreement is rejected on or prior to such date, the RSUs evidenced by this Agreement shall be forfeited, and neither the Participant nor the Participant's heirs, executors, administrators and successors shall have any rights with respect thereto.

**22. Section 409A.** If any provision of this Agreement could cause the application of an accelerated or additional tax under Section 409A of the Code upon the vesting or settlement of the Restricted Stock Unit Award (or any portion thereof), such provision shall be restructured, to the minimum extent possible, in a manner determined by the Company (and reasonably acceptable to the Participant) that does not cause such an accelerated or additional tax. It is intended that this Agreement shall not be subject to Section 409A of

the Code by reason of the short-term deferral rule under Treas. Reg. section 1.409A-1(b)(4) and this Agreement shall be interpreted accordingly.

**IN WITNESS WHEREOF**, the Company has caused this Agreement to be signed by an officer duly authorized thereto as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE WENDY'S COMPANY**

By:  
Name:  
Title:

**RESTRICTED STOCK UNIT AWARD AGREEMENT  
UNDER THE WENDY'S/ARBY'S GROUP, INC.  
2010 OMNIBUS AWARD PLAN**

**RESTRICTED STOCK UNIT AWARD AGREEMENT** (this "Agreement"), made as of \_\_\_\_\_, 20\_\_ , by and between The Wendy's Company (the "Company") and \_\_\_\_\_ (the "Participant"):

**WHEREAS**, the Company maintains the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan (the "Plan") under which the Compensation Committee of the Company's Board of Directors or a subcommittee thereof (the "Committee") may, among other things, award shares of the Company's Common Stock, to such eligible persons under the Plan as the Committee may determine, subject to terms, conditions, or restrictions as it may deem appropriate;

**WHEREAS**, pursuant to the Plan, the Committee has awarded to the Participant a restricted stock unit award conditioned upon the execution by the Company and the Participant of a Restricted Stock Unit Agreement setting forth all the terms and conditions applicable to such award in accordance with Delaware law;

**NOW, THEREFORE**, in consideration of the mutual promises(s) and covenants(s) contained herein, it is hereby agreed as follows:

**1. Defined Terms.** Except as otherwise specifically provided herein, capitalized terms used herein shall have the meanings attributed thereto in the Plan.

**2. Award of Restricted Stock Units.** Subject to the terms of the Plan and this Agreement, the Committee hereby awards to the Participant a restricted stock unit award (the "Restricted Stock Unit Award") on \_\_\_\_\_, 20\_\_ (the "Award Date"), covering \_\_\_\_\_ shares of Common Stock (the "RSUs"). Each RSU represents the right to receive payment of one share of Common Stock as of the date the RSU is settled, to the extent the RSU is vested, subject to the terms of the Plan and this Agreement.

**3. Vesting and Settlement.** Subject to the Participant's continued employment with the Company and its Subsidiaries (other than as set forth in Section 6 below), all of the RSUs shall vest and become nonforfeitable on \_\_\_\_\_, 20\_\_ (the "Vesting Date").

Promptly after the Vesting Date (but in no event later than 74 days after the end of the calendar year in which the Vesting Date occurs), the Company shall distribute to the Participant one share of Common Stock for each vested RSU.

In the event that the RSUs vest earlier than the Vesting Date pursuant to Section 6 below, then promptly after such earlier vesting (but in no event later than 74 days after the end of the calendar year in which such earlier vesting occurs), the Company shall distribute to the Participant one share of Common Stock for each vested RSU.

**4. Dividend Equivalent Rights.** Each RSU shall also have a dividend equivalent right (a "Dividend Equivalent Right"). Each Dividend Equivalent Right represents the right to receive all of the ordinary cash dividends that are or would be payable with respect to the RSUs. With respect to each Dividend Equivalent

Right, any such cash dividends shall be converted into additional RSUs based on the Fair Market Value of a share of Common Stock on the date such dividend is paid. Such additional RSUs shall be subject to the same terms and conditions applicable to the RSU to which the Dividend Equivalent Right relates, including, without limitation, the restrictions on transfer, forfeiture, vesting and settlement provisions contained in this Agreement. In the event that a RSU is forfeited as provided in Section 6 below, then the related Dividend Equivalent Right shall also be forfeited.

**5. Transferability.** The RSUs shall not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or an Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance. The shares of Common Stock acquired by the Participant upon settlement of the RSUs may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant, unless in compliance with all applicable securities laws as set forth in Section 15 below. The Participant shall not be deemed for any purpose to be the owner of any shares of Common Stock subject to the RSUs prior to settlement of any vested RSUs.

**6. Effect of Termination of Employment.** In the event of (A) the termination of the Participant's employment or service by the Company other than for Cause (and other than due to death or Disability), or by the Participant for Good Reason, in each case within 12 months following a Change in Control, or (B) the termination of the Participant's employment or service due to death or Disability, outstanding RSUs hereby granted to the Participant shall become fully vested as of the date of such termination of employment or service. Upon voluntary termination of the Participant's employment with the Company or any of its Subsidiaries by the Participant other than for Good Reason, the Restricted Stock Unit Award, to the extent not already vested, shall be forfeited, unless otherwise determined by the Committee in its sole discretion.

In addition, in the event the Participant's employment or services to the Company and its Subsidiaries are terminated prior to the date the RSUs would otherwise vest in accordance with Section 3 above (i) upon the mutual agreement of the Company and the Participant in connection with the successful transition of the Participant's duties to a successor employee or (ii) by the Company other than for Cause (and other than due to death or Disability, or by the Company or its Subsidiaries other than for Cause or by the Participant for Good Reason within 12 months following a Change in Control, as described in the preceding paragraph), all of the RSUs shall vest and become nonforfeitable as of the date of such termination of employment or service.

**7. Beneficiary.** The Participant may designate in writing a beneficiary(ies) to receive the stock certificates representing those RSUs that become vested and non-forfeitable and settled upon the Participant's death. The Participant has the right to change such beneficiary designation at will.

**8. Withholding Taxes.** The Participant shall be required to pay to the Company, and the Company shall have the right and is hereby authorized to withhold, from any cash, shares of Common Stock, other securities or other property deliverable in respect of the RSUs or from any compensation or other amounts owing to the Participant, the amount (in cash, Common Stock, other securities or other property) of any required withholding taxes in respect of the RSUs, and to take such other action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such withholding and taxes. In addition, the Committee may, in its sole discretion, permit the Participant to satisfy, in whole or in part, the foregoing withholding liability (but no more than the minimum required statutory withholding liability) by (A) the delivery of shares of Common Stock (which are not subject to any pledge or other security



interest) owned by the Participant having a Fair Market Value equal to such withholding liability or (B) having the Company withhold from the number of shares of Common Stock otherwise issuable or deliverable upon settlement of the RSUs a number of shares with a Fair Market Value equal to such withholding liability. The obligations of the Company under this Agreement will be conditional on such payment or arrangements, and the Company will, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant.

**9. Impact on Other Benefits.** The value of the Restricted Stock Unit Award (either on the Award Date or at the time any RSUs become vested and/or settled) shall not be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.

**10. Administration.** The Committee shall have full authority and discretion (subject only to the express provisions of the Plan) to decide all matters relating to the administration and interpretation of this Agreement. All such Committee determinations shall be final, conclusive, and binding upon the Company, the Participant, and any and all interested parties.

**11. Funding.** Dividends and distributions with respect to the RSUs shall be paid directly by the Company. The Company shall not be required to fund or otherwise segregate assets to be used for payment of these amounts under the Plan, and all obligations of the Company with respect to such amounts under the Plan shall remain subject to the claims of its general creditors.

**12. Right to Continued Employment.** This grant does not constitute an employment contract. Nothing in the Plan or this Agreement shall be deemed to be a modification or waiver of the terms and conditions set forth in a written employment agreement for the Participant that has been approved, ratified or confirmed by the Board of Directors of the Company or the Committee.

**13. Clawback.** Notwithstanding anything to the contrary contained herein, in the event of a material restatement of the Company's issued financial statements, the Committee shall review the facts and circumstances underlying the restatement (including, without limitation any potential wrongdoing by the Participant and whether the restatement was the result of negligence or intentional or gross misconduct) and may in its sole discretion direct the Company to recover all or a portion of the RSUs (which may be accomplished by the Company's cancellation of the RSUs) or the shares of Common Stock issued upon settlement of the RSUs or any gain realized on the subsequent sale of Common Stock acquired upon vesting and settlement of the RSUs with respect to any fiscal year in which the Company's financial results are negatively impacted by such restatement. If the Committee directs the Company to recover any such amount from the Participant, then the Participant agrees to and shall be required to repay any such amount to the Company within 30 days after the Company demands repayment. In addition, if the Company is required by law to include an additional "clawback" or "forfeiture" provision to outstanding awards, then such clawback or forfeiture provision shall also apply to the RSUs as if it had been included on the date of grant and the Company shall promptly notify the Participant of such additional provision. In addition, if a court determines that the Participant has engaged or is engaged in Detrimental Activities during the Participant's employment with the Company or its Subsidiaries or after the Participant's employment or service with the Company or its Subsidiaries has ceased, then the Participant, within 30 days after written demand by the Company, shall return the Common Stock received upon settlement of the RSUs, any gain realized on the settlement of the RSUs or the subsequent sale of Common Stock acquired upon vesting and settlement of the RSUs.

**14. Bound by Plan.** The Restricted Stock Unit Award has been granted subject to the terms and conditions of the Plan, a copy of which has been provided to the Participant and which the Participant acknowledges having received and reviewed. Any conflict between this Agreement and the Plan shall be decided in favor of the provisions of the Plan. Any conflict between this Agreement and the terms of a written employment agreement for the Participant that has been approved, ratified or confirmed by the Board of Directors of the Company or the Committee shall be decided in favor of the provisions of such employment agreement. This Agreement may not be amended, altered, suspended, discontinued, cancelled or terminated in any manner that would materially and adversely affect the rights of the Participant except by a written agreement executed by the Participant and the Company.

**15. Securities Laws.** The Participant agrees that the obligation of the Company to issue Common Stock upon vesting of the Restricted Stock Unit Award shall also be subject, as conditions precedent, to compliance with applicable provisions of the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, state securities or corporation laws, rules and regulations under any of the foregoing and applicable requirements of any securities exchange upon which the Company's securities shall be listed.

**16. Electronic Delivery.** By accepting the Restricted Stock Unit Award, the Participant hereby consents to the electronic delivery of prospectuses, annual reports and other information required to be delivered by Securities and Exchange Commission rules. This consent may be revoked in writing by the Participant at any time upon three business days' notice to the Company, in which case subsequent prospectuses, annual reports and other information will be delivered in hard copy to the Participant.

**17. Force and Effect.** The various provisions of this Agreement are severable in their entirety. Any determination of invalidity or unenforceability of any one provision shall have no effect on the continuing force and effect of the remaining provisions.

**18. Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to contracts made and performed wholly within the State of Delaware, without giving effect to the conflict of laws provisions thereof.

**19. Successors.** This Agreement shall be binding and inure to the benefit of the successors, assigns and heirs of the respective parties.

**20. Notices.** Notices and communications under this Agreement must be in writing and either personally delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid. Notices to the Company must be addressed to The Wendy's Company, One Dave Thomas Blvd., Dublin, Ohio 43017, Attn: Corporate Secretary, or any other address designated by the Company in a written notice to the Participant. Notices to the Participant will be directed to the address of the Participant then currently on file with the Company, or at any other address given by the Participant in a written notice to the Company.

**21. Validity of Agreement.** This Agreement shall be valid, binding and effective upon the Company on the Award Date. However, the RSUs evidenced by this Agreement shall be forfeited by the Participant and this Agreement shall have no force and effect if it is duly rejected. The Participant may reject this Agreement and forfeit the RSUs by notifying the Company or its designee in the manner prescribed by the Company and communicated to the Participant; provided that such rejection must be received by the Company or its designee no later than the earlier of (i) \_\_\_\_\_, 20\_\_ and (ii) the date the RSUs first vest pursuant to the terms hereof. If this Agreement is rejected on or prior to such date, the RSUs evidenced by this

Agreement shall be forfeited, and neither the Participant nor the Participant's heirs, executors, administrators and successors shall have any rights with respect thereto.

**22. Section 409A.** If any provision of this Agreement could cause the application of an accelerated or additional tax under Section 409A of the Code upon the vesting or settlement of the Restricted Stock Unit Award (or any portion thereof), such provision shall be restructured, to the minimum extent possible, in a manner determined by the Company (and reasonably acceptable to the Participant) that does not cause such an accelerated or additional tax. It is intended that this Agreement shall not be subject to Section 409A of the Code by reason of the short-term deferral rule under Treas. Reg. section 1.409A-1(b)(4) and this Agreement shall be interpreted accordingly.

**IN WITNESS WHEREOF**, the Company has caused this Agreement to be signed by an officer duly authorized thereto as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE WENDY'S COMPANY**

By:  
Name:  
Title:

**NON-EMPLOYEE DIRECTOR RESTRICTED STOCK AWARD AGREEMENT  
UNDER THE WENDY'S/ARBY'S GROUP, INC.  
2010 OMNIBUS AWARD PLAN**

**NON-EMPLOYEE DIRECTOR RESTRICTED STOCK AWARD AGREEMENT** (this "Agreement"), made as of \_\_\_\_\_, 20\_\_, by and between The Wendy's Company (the "Company") and \_\_\_\_\_ ("Award Recipient"):

**WHEREAS**, the Company maintains the Wendy's/Arby's Group, Inc. 2010 Omnibus Award Plan (the "Plan") under which the Performance Compensation Subcommittee of the Company's Board of Directors (the "Committee") may, among other things, award shares of the Company's Common Stock, \$.10 par value (the "Common Stock"), to such eligible persons under the Plan as the Committee may determine, subject to terms, conditions, or restrictions as it may deem appropriate; and

**WHEREAS**, pursuant to the Plan, the Committee has awarded to the Award Recipient a restricted stock award conditioned upon the execution by the Company and the Award Recipient of a Restricted Stock Agreement setting forth all the terms and conditions applicable to such award in accordance with Delaware law.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:

1. **DEFINED TERMS:** Except as otherwise specifically provided herein, capitalized terms used herein shall have the meanings attributed thereto in the Plan.
2. **AWARD OF RESTRICTED SHARES:** Subject to the terms of the Plan and this Agreement, the Committee hereby awards to the Award Recipient a restricted stock award (the "Restricted Stock Award") on \_\_\_\_\_, 20\_\_ (the "Award Date"), covering \_\_\_\_\_ shares of Common Stock (the "Restricted Shares").
3. **VESTING:** Subject to the Award Recipient's continued service on the Board of Directors of the Company, the Restricted Shares shall vest and become nonforfeitable on the earlier of (i) the first anniversary of the Award Date or (ii) the date of the Company's 20\_\_ annual meeting of stockholders (the "Vesting Date").
4. **STOCK CERTIFICATES:** The Restricted Shares shall be issued by the Company and shall be registered in the Award Recipient's name on the stock transfer books of the Company promptly after the date hereof, but shall remain in the physical custody of the Company or its designee (including by means of segregated account on the books of the Company's transfer agent) at all times prior to, in the case of any particular Restricted Shares, the Vesting Date. As a condition to the receipt of this Restricted Stock Award, the Award Recipient shall at the request of the Company deliver to the Company one or more stock powers, duly endorsed in blank, relating to the Restricted Shares.
5. **TRANSFERABILITY; RIGHTS AS STOCKHOLDER:** Prior to the vesting of a Restricted Share, (i) such Restricted Share and the rights to dividends and interest provided under this Agreement shall not be transferable by the Award Recipient by means of sale, assignment, exchange, pledge, or otherwise; provided, however, that the Award Recipient shall have the right to tender the Restricted Share for sale or exchange with the Company's written consent in the event of any tender offer within the meaning

of Section 14(d) of the Securities Exchange Act of 1934 and (ii) unless and until such Restricted Share is forfeited pursuant to Section 6 of this Agreement, the Award Recipient shall be entitled to all rights of a stockholder of the Company, including the right to vote the Restricted Share; provided that (i) non-cash dividends and distributions in respect of such Restricted Share shall be held by the Company in escrow and paid to the Award Recipient if and when the Restricted Share vests (and forfeited back to the Company if it does not) and (ii) cash dividends paid in respect of such Restricted Share shall be withheld by the Company and credited to an account on the books of the Company (the "Dividend Account"), and paid to the Award Recipient, along with interest thereon as described in the following sentence, if and when the Restricted Share vests (and forfeited back to the Company if it does not). Each cash dividend credited to the Dividend Account shall earn interest at a floating rate equal to five percent (5%) plus the Base Rate (the aggregate rate referred to as the "Interest Rate"), with the initial Interest Rate being established on the date of the first dividend payment in respect of an unvested Restricted Share following the date hereof, and then subsequently adjusted on the first day of each January, April, July and October thereafter. "Base Rate" shall mean the rate published on the applicable day (or the preceding business day, if such day is not a business day) in the Wall Street Journal for notes maturing three (3) months after issuance under the caption "Money Rates, London Interbank Offered Rates (LIBOR)." Interest shall be calculated based on a 360 day year and credited for the actual number of days elapsed.

6. **AWARD RECIPIENT'S DEATH OR DISABILITY:** If the Award Recipient's service on the Board of Directors of the Company terminates on account of the Award Recipient's death or Disability, the Restricted Stock Award, to the extent not already vested, shall immediately vest. Upon termination of the Award Recipient's service on the Board of Directors of the Company for any other reason, the Restricted Stock Award, to the extent not already vested, shall be forfeited, unless otherwise determined by the Committee in its sole discretion.

7. **BENEFICIARY:** The Award Recipient may designate a beneficiary(ies) to receive the stock certificates representing those Restricted Shares that become vested and non-forfeitable upon the Award Recipient's death. The Award Recipient has the right to change such beneficiary designation at will.

8. **EFFECT OF CHANGE IN CONTROL:** Upon the occurrence of a Change in Control, any unvested Restricted Shares shall be deemed to have become vested and non-forfeitable as of immediately prior to the Change in Control.

9. **83(b) ELECTION:** The Award Recipient may make an election pursuant to Section 83(b) of the Code in respect of the Restricted Shares. The Award Recipient shall timely notify the Company of such election and send the Company a copy thereof. The Award Recipient shall be solely responsible for properly and timely completing and filing any such election.

10. **IMPACT ON OTHER BENEFITS:** The value of the Restricted Stock Award (either on the Award Date or at the time any Restricted Shares become vested and non-forfeitable) shall not be includable as compensation or earnings for purposes of any benefit or incentive plan offered by the Company or any of its subsidiaries.

11. **ADMINISTRATION:** The Committee shall have full authority and discretion (subject only to the express provisions of the Plan) to decide all matters relating to the administration and interpretation of this Agreement. All such Committee determinations shall be final, conclusive, and binding upon the Company, the Award Recipient, and any and all interested parties.

12. **FUNDING:** Dividends and distributions with respect to Restricted Shares, and interest credited thereon, payable under Section 5 of this Agreement to any person, shall be paid directly by the Company. The Company shall not be required to fund or otherwise segregate assets to be used for payment

of these amounts under the Plan, and all obligations of the Company with respect to such amounts under the Plan shall remain subject to the claims of its general creditors.

**13. RIGHT TO CONTINUED SERVICE AS A DIRECTOR:** Nothing in the Plan or this Agreement shall confer on an Award Recipient any right to continue as a member of the Board of Directors of the Company.

**14. BOUND BY PLAN:** This Agreement shall be subject to the terms and conditions of the Plan.

**15. FORCE AND EFFECT:** The various provisions of this Agreement are severable in their entirety. Any determination of invalidity or unenforceability of any on provision shall have no effect on the continuing force and effect of the remaining provisions.

**16. GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without giving effect to its conflict of laws principles.

**17. SUCCESSORS:** This Agreement shall be binding and inure to the benefit of the successors, assigns and heirs of the respective parties.

**18. NOTICE:** Unless waived by the Company, any notice to the Company required under or relating to this Agreement shall be in writing and addressed to the Secretary of the Company.

**19. ENTIRE AGREEMENT:** This Agreement contains the entire understanding of the parties and shall not be modified or amended except in writing and duly signed by the parties. No waiver by either party of any default under this Agreement shall be deemed a waiver of any later default.

**20. SECTION 409A:** The awards under this Agreement are intended to be exempt from Section 409A of the Code as short-term deferrals.

**IN WITNESS WHEREOF**, the parties have signed this Agreement as of the date hereof.

**THE WENDY'S COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Award Recipient:

\_\_\_\_\_

**AMENDMENT NO. 2 TO THE  
WENDY'S/ARBY'S GROUP, INC.  
2009 DIRECTORS' DEFERRED COMPENSATION PLAN**

This Amendment No. 2 to the Wendy's/Arby's Group, Inc. 2009 Directors' Deferred Compensation Plan (this "Amendment") is effective as of May 23, 2013 (the "Effective Date").

WHEREAS, the Board of Directors (the "Board") of The Wendy's Company (the "Company") previously adopted the 2009 Directors' Deferred Compensation Plan (as amended, the "Plan") effective as of May 28, 2009 to permit non-employee directors of the Company to defer certain cash amounts paid and equity grants awarded to such directors as fees in connection with their services to the Board; and

WHEREAS, the Board reserves the right to amend the Plan from time to time, in accordance with and subject to Article IX of the Plan; and

WHEREAS, the Board previously adopted Amendment No. 1 to the Plan effective as of May 27, 2010; and

WHEREAS, the Board wishes to amend the second sentence of Section 7.01 of the Plan as hereinafter set forth;

NOW, THEREFORE, the Plan is hereby amended as follows, effective as of the Effective Date:

1. The second sentence of Section 7.01 of the Plan is amended to read as follows:

"A Participant's Restricted Share Units Subaccount Attributable to Restricted Share Deferrals (including Plan Earnings thereon) shall vest separately with respect to each award of Restricted Shares deferred by the Participant, at the same time and rate as is applicable to such award of Restricted Shares, conditioned on the Participant's continued service on the Board, and shall also be fully vested upon the Participant's death, upon the Participant's total and permanent disability and upon a Change of Control."

IN WITNESS WHEREOF, this Amendment has been executed by a duly authorized officer of the Company effective as of the Effective Date.

**THE WENDY'S COMPANY**

By: /s/ R. Scott Toop  
R. Scott Toop  
Senior Vice President, General Counsel  
and Secretary

May 7, 2013

HAND DELIVERED

Steve Hare

Dear Steve:

Further to our recent discussions, I am pleased to provide you this letter agreement regarding the terms and conditions associated with the transition from your position as Chief Financial Officer of The Wendy's Company ("Wendy's" or the "Company") to a consulting role. In consideration of your continued employment and provision of consulting services as described herein, you and the Company have agreed to the following. Capitalized terms not defined in this letter will have the meanings assigned to them in the applicable document identified herein.

**A. Employment as CFO**

**1. Letter Agreement of December 18, 2008 between you and Wendy's/Arby's Group, Inc. (n/k/a The Wendy's Company) (the "2008 Letter Agreement").** You will continue to serve in your capacity as CFO under the terms of the 2008 Letter Agreement through September 1, 2013. Your termination on September 1, 2013 will be treated as a termination "without cause" entitling you to the severance and other benefits described in Section 2 of the 2008 Letter Agreement. The payment of severance and other benefits described in Section 2 of the 2008 Letter Agreement as well as the payments, vesting and other benefits set forth herein are subject to your execution and non-revocation of the Release pursuant to the terms and conditions of Section 2(c) of the 2008 Letter Agreement. The Company hereby acknowledges and agrees that your continued services as a non-employee director of Hanger, Inc. prior to or during the Second Year Payment Period shall not constitute grounds for the Company to offset any amounts payable to you under Section 2(a)(ii) of the 2008 Letter Agreement.

**2. Award Agreement of March 22, 2011 between you and Wendy's/Arby's Group, Inc. (n/k/a The Wendy's Company) (the "Award Agreement").** Pursuant to the Award Agreement, you received a lump sum payment of \$750,000, less applicable deductions (the "Lump Sum Payment"). The Company has elected to waive your obligation to pay back any portion of the Lump Sum Payment provided you do not resign other than by reason of a "Triggering Event" and are not terminated for "Cause" (as such terms are defined in the 2008 Letter Agreement) in either case prior to September 1, 2013 (and



otherwise perform your duties as CFO in accordance with the terms of the 2008 Letter Agreement).

**3. Restricted Stock Award Agreement of August 3, 2011 (the “2011 Restricted Stock Agreement”).** As outlined in the 2011 Restricted Stock Agreement, Wendy’s awarded you Restricted Stock subject to certain vesting provisions. Notwithstanding Section 6 of the 2011 Restricted Stock Agreement, your Restricted Stock Award will vest on September 1, 2013, provided you do not resign other than by reason of a “Triggering Event” and are not terminated for “Cause” (as such terms are defined in the 2008 Letter Agreement) in either case prior to September 1, 2013 (and otherwise perform your duties as CFO in accordance with the terms of the 2008 Letter Agreement).

**4. Non-Incentive Stock Option Agreements.** Any unvested stock options will continue to vest through September 1, 2013 in accordance with the terms of the applicable Non-Incentive Stock Option Agreements (it being acknowledged and agreed by the parties that, for purposes of Section 4 of the Non-Incentive Stock Option Agreement dated July 2, 2012, the “number of full calendar months worked by [you] since the Date of Grant (with the month in which the Date of Grant occurred being the first month) to the date of termination of employment or service” shall be fourteen (14)). Each vested stock option held by you as of September 1, 2013 (taking into account any vesting triggered upon or in connection with your termination of employment) shall, notwithstanding your termination of employment, remain outstanding and exercisable (subject to the terms of the applicable Non-Incentive Stock Option Agreement) until September 1, 2014 in accordance with Section 2(a)(vi) of the 2008 Letter Agreement and consistent with the terms and conditions of the applicable Non-Incentive Stock Option Agreements.

**5. Long Term Performance Unit Award Agreements.** Any Performance Units granted on July 8, 2010 will be subject to the terms of the applicable Long Term Performance Unit Award Agreement (it being understood that, notwithstanding your termination of employment on September 1, 2013, any Shares earned by reason of the level of attainment of the performance criteria applicable to such Performance Units shall be delivered to you no later than October 31, 2013). The Company hereby agrees that any applicable minimum withholding taxes in respect of the vesting of the Performance Units may, at your election, be withheld from the number of shares of Common Stock otherwise issuable or deliverable pursuant to the settlement of such Performance Units in accordance with Section 6 of the applicable award agreements. Any Performance Units granted in 2011 and 2012 will be forfeited as of September 1, 2013.

## **B. Consulting Services**

**1. Consulting Services.** You agree to serve as a consultant to the Company for the period of September 2, 2013 through January 1, 2014 in accordance with the terms and conditions of the attached Consulting Agreement.

**2. Restricted Stock Unit Award Agreement of January 1, 2012 (the “2012 Restricted Stock Unit Agreement”).** Notwithstanding anything to the contrary in the 2012 Restricted Stock Unit Agreement, the Restricted Stock Units that remain unvested as of September 1, 2013 and that would have vested and become nonforfeitable on the second anniversary of the Award Date (January 1, 2014) had your employment continued through January 1, 2014 shall vest and become nonforfeitable on January 1, 2014, provided you do not resign other than by reason of a “Triggering Event” and are not terminated for “Cause” (as such terms are defined in the 2008 Letter Agreement) in either case prior to September 1, 2013 (and otherwise perform your duties as CFO in accordance with the terms of the 2008 Letter Agreement) and perform the consulting services in accordance with the terms and conditions of the Consulting Agreement through January 1, 2014 (unless such consulting services are earlier terminated by the Company). The Company hereby agrees that any applicable minimum withholding taxes in respect of the vesting of the Restricted Stock Units may, at your election, be withheld from the number of shares of Common Stock otherwise issuable or deliverable pursuant to the settlement of such Restricted Stock Units in accordance with Section 8 of the 2012 Restricted Stock Unit Agreement.

**3. Noncompete/Nonsolicitation/Employee No-Hire; Confidentiality.** The non-competition, nonsolicitation and employee no-hire covenants of Section 6, and the confidentiality requirements of Section 7, of the 2008 Letter Agreement shall continue in effect throughout the term of the Consulting Agreement and commencing January 2, 2014 (or commencing upon such earlier date, if any, on which your consulting services are terminated by the Company) and thereafter for the time periods stated in the 2008 Letter Agreement.

You (or your estate or beneficiary) shall be entitled to receive any vested benefits under The Wendy’s Company 401(K) Retirement Plan in accordance with the terms thereof.

Except as provided herein, all of the terms and conditions of the agreements referenced herein shall remain in full force and effect; however, if there is a conflict between the terms of this letter and such agreements, the terms of this letter will govern.

If you agree to the terms set forth herein, please return an executed a copy of this letter to me by no later than 5:00 p.m. (ET) on May 7, 2013.

Should you have any questions, please let me know.

Yours truly,

/s/ Scott A. Weisberg

Scott Weisberg  
Chief People Officer  
THE WENDY'S COMPANY

Accepted and agreed to:

/s/ Stephen E. Hare  
STEVE HARE

Date: 5/7/13

**CONSULTING AGREEMENT**

This Consulting Agreement (the “*Agreement*”) is entered into by and between The Wendy’s Company (the “*Company*”) and Stephen E. Hare as of May 7, 2013.

**WHEREAS**, Mr. Hare currently serves as the Chief Financial Officer of the Company and has extensive knowledge about the Company. Mr. Hare’s employment will terminate effective September 1, 2013; and

**WHEREAS**, the Company desires to engage Mr. Hare as a consultant following his departure to provide certain transition services to the Company and Mr. Hare is willing to provide such services for the Company, as more particularly described herein.

**NOW, THEREFORE**, the parties agree as follows:

1. Services to Be Performed. Mr. Hare will provide consulting services upon the reasonable request of the Chief Executive Officer or his delegate relating to knowledge and expertise Mr. Hare gained during his employment with the Company (the “*Consulting Services*”). Mr. Hare may perform the Consulting Services by phone, by in-person attendance at meetings, or in such other manner and at such other time or place as mutually agreed upon by the Company and Mr. Hare; provided that, to the extent that the Company does not require Mr. Hare to perform the Consulting Services from a specific location, Mr. Hare may perform the Consulting Services at a location of Mr. Hare’s choice so long as Mr. Hare is available to report by telephone or in person as reasonably requested by the Company.

2. Term. This Agreement will have a term commencing as of September 2, 2013 through January 1, 2014 (the “*Term*”).

3. Compensation. In consideration for the Consulting Services rendered by Mr. Hare during the Term, the Company agrees that Mr. Hare will be compensated at the rate of \$12,500 per month (for an aggregate total of \$50,000), regardless of the number of hours he is requested to provide Consulting Services in any month (subject to the immediately following sentence). The level of Consulting Services Mr. Hare will be required to provide during the Term will be no more than 20% of the average level of services performed by Mr. Hare during the 36-month period immediately prior to September 1, 2013. The monthly payment will be paid on a monthly basis, and no later than 30 days following the relevant month.

4. Expenses. Mr. Hare shall be reimbursed for all reasonable out-of-pocket expenses incurred by Mr. Hare in the course of performing his services hereunder, upon the submission of an expense report in which adequate support is provided for the expenses to be reimbursed.

5. Relationship. The parties hereto acknowledge and agree that Mr. Hare will act as an independent contractor and not as an employee in performing the Consulting Services. As an

independent contractor, Mr. Hare will not have the authority to act on the Company's behalf or otherwise commit the Company to any agreement or obligation. Mr. Hare will not be entitled to any of the benefits provided by the Company to its employees (for example, he will not be covered as an active employee in the Company's health, life, and disability plans, and he will not be eligible for continued participation in the Company's qualified and nonqualified retirement plans). Mr. Hare will be responsible for the payment of all income and employment taxes in connection with his remuneration for the Consulting Services, and the Company shall not withhold any amounts in respect thereof.

6. Non-Assignability of Contract. This Agreement is personal to Mr. Hare and he shall not have the right to assign any of his rights or delegate any of his duties without the express written consent of the Company.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Ohio, without regard to the choice of law principles of any jurisdiction.

8. Severability. In the event any provision of this Agreement shall be held invalid, the same shall not invalidate or otherwise affect in any respect any other term or terms of this Agreement, which term or terms shall remain in full force and effect.

9. Amendment. This Agreement may be amended or modified only by a written instrument executed by both the Company and Mr. Hare.

10. Complete Agreement. This Agreement contains the entire understanding between the parties and supersedes, replaces and takes precedence over any prior or contemporaneous understanding or oral or written agreement between the parties respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, nor understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument.

12. Code Section 409A. It is intended that this Agreement shall comply with the provisions of Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the Treasury regulations relating thereto, or an exemption to Section 409A of the Code. Any payments that qualify for the "short-term deferral" exception shall be paid under such exception. For purposes of Section 409A of the Code, each payment under this Agreement shall be treated as a separate payment for purposes of the exclusion for certain short-term deferral amounts. In no event may Mr. Hare, directly or indirectly, designate the calendar year of any payment under this Agreement. Notwithstanding anything to the contrary in this Agreement, all reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A of the Code, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Mr. Hare's lifetime (or during a shorter period of time specified in

this Agreement), (ii) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

This Agreement is executed and entered into on the date set forth in the preamble of this Agreement.

**CONSULTANT**

**THE WENDY'S COMPANY**

/s/ Stephen E. Hare  
\_\_\_\_\_  
**STEPHEN E. HARE**

/s/ R. Scott Toop  
\_\_\_\_\_  
Name: R. Scott Toop  
Title: SVP, General Counsel & Secretary

May 8, 2013

Via Email: Todd.Penegor@kellogg.com

Mr. Todd Penegor

Dear Todd:

The Wendy's Company (the "Company" or "Wendy's") is pleased to confirm the offer of employment for the position of Chief Financial Officer ("CFO") on the terms stated herein. Your start date is June 3, 2013.

**1. Compensation and Benefits.** The following is a summary of your compensation and benefits, but it does not contain all the details. The complete understanding between the Company and you regarding your benefits is governed by legal plan documents.

a. **Base Salary.** Your starting base annualized salary will be \$625,000, paid on a bi-weekly basis. Your base salary is subject to annual review by the Compensation Committee of the Company's Board of Directors.

b. **One-Time Sign-On Bonus.** The Company will pay you a one-time sign-on bonus in the lump sum of \$250,000. This payment will be made in the next regular pay cycle after you have completed 30 days of continued, active employment. Should your employment with the Company be terminated voluntarily or for cause, within one year of your hire date, you will be required to repay 100% of the after-tax portion of sign-on bonus.

c. **Annual Incentive.** You will be eligible to receive a bonus under the terms and conditions of the bonus plan provided to similarly situated senior officers of the Company, which currently provides for a target bonus of 75% of your annual base salary, provided targets and performance measures set by the Company are achieved. In recognition of your forfeiture of certain incentive payments from your prior employer, you will be entitled to a full year bonus for 2013.

d. **Benefits.** You shall be entitled to participate, in any retirement, deferred compensation, fringe benefit, or welfare benefit plan of the Company on the same terms as provided to similarly situated senior officers of the Company, including any plan providing prescription, dental, disability, employee life, group life, accidental death, travel accident insurance benefits and car allowance program that the Company may adopt for the benefit of similarly situated officers, in accordance with the terms of such plan.

e. **Equity Award at Start Date.** Upon commencement of your employment, you will be eligible to receive an award of restricted stock units with an award value of \$1,270,000 and non-qualified stock options with a value equal to \$130,000. The number of stock options and restricted stock units awarded will be based on award values on the date of grant by the Performance

Compensation Subcommittee (the "Subcommittee") determined in accordance with FASB ASC Topic 718.

f. **2013 Equity Award.** You will also be eligible for an equity award with an award value equal to \$950,000 on the date the Subcommittee grants awards to other similarly situated senior executives of the Company. The Subcommittee will determine how the award will be allocated between stock options and other forms of equity as the Subcommittee in its discretion determines.

g. **Subsequent Equity Awards.** Commencing in 2014, you will be eligible to receive awards under the terms and conditions of the Company's annual long-term incentive award program in effect for other similarly situated senior executives of the Company.

h. **Vacation.** You will be eligible for 4 weeks of vacation per year in accordance with the terms of Wendy's Vacation Policy.

i. **Deductions and withholding.** All forms of compensation referenced in this letter are subject to all applicable deductions and withholdings.

**2. Duties and Responsibilities.** While employed by the Company, you will devote your full business time, interests and effort to performance of your duties as CFO. Your services will be based from the Company's Dublin, Ohio location. You will also be expected to undertake a reasonable amount of travel in the performance of your duties.

**3. Relocation.** The Company will pay your relocation expenses in accordance with the applicable Relocation Policy. A copy of the Relocation Policy is available upon request.

**4. Noncompete/Nonsolicitation/Employee No-Hire.**

a. You acknowledge that as CFO you will be involved, at the highest level, in the development, implementation, and management of Wendy's business strategies and plans, including those which involve Wendy's finances, marketing and other operations, and acquisitions and, as a result, you will have access to Wendy's most valuable trade secrets and proprietary information. By virtue of your unique and sensitive position, your employment by a competitor of Wendy's represents a material unfair competitive danger to Wendy's and the use of your knowledge and information about Wendy's business, strategies and plans can and would constitute a competitive advantage over Wendy's. You further acknowledge that the provisions of this Section 4 are reasonable and necessary to protect Wendy's legitimate business interests.

b. In view of clause (a) above, you hereby covenant and agree that during your employment with Wendy's and either (x) in the event your employment with Wendy's is terminated "without cause", for a period of twenty-four (24) months following such termination, or (y) in the event your employment with Wendy's is terminated for Cause, for a period of twelve (12) months following such termination:



(i) in any state or territory of the United States (and the District of Columbia) or any country where Wendy's maintains restaurants, you will not engage or be engaged in any capacity, "directly or indirectly" (as defined below), except as a passive investor owning less than a two percent (2%) interest in a publicly held company, in any business or entity that is competitive with the business of Wendy's or its affiliates. This restriction includes, without limitation, any business engaged in drive through or food service restaurant business typically referred to as "Quick Service" restaurants (such as Burger King, McDonald's, Jack in the Box, Yum! Brands, Inc., Tim Hortons Inc. etc.), or "Fast Casual" restaurants (such as Panera Bread and Chipotle Grill, etc.) Notwithstanding anything to the contrary herein, this restriction shall not prohibit you from accepting employment, operating or otherwise becoming associated with a franchisee of Wendy's, any of its affiliates or any subsidiary of the foregoing, but only in connection with activities associated with the operation of such a franchise or activities that otherwise are not encompassed by the restrictions of this paragraph, subject to any confidentiality obligations contained herein;

(ii) you will not, directly or indirectly, without Wendy's prior written consent, hire or cause to be hired, solicit or encourage to cease to work with Wendy's or any of its subsidiaries or affiliates, any person who is at the time of such activity, or who was within the six (6) month period preceding such activity, an employee of Wendy's or any of its subsidiaries or affiliates at the level of director or any more senior level or a consultant under contract with Wendy's or any of its subsidiaries or affiliates and whose primary client is such entity or entities; and

(iii) you will not, directly or indirectly, solicit, encourage or cause any franchisee or supplier of Wendy's or any of its subsidiaries or affiliates to cease doing business with Wendy's or subsidiary or affiliate, or to reduce the amount of business such franchisee or supplier does with Wendy's or such subsidiary or affiliate.

c. For purposes of this Section 4, "directly or indirectly" means in your individual capacity for your own benefit or as a shareholder, lender, partner, member or other principal, officer, director, employee, agent or consultant of or to any individual, corporation, partnership, limited liability company, trust, association or any other entity whatsoever; provided, however, that you may own stock in Wendy's and may operate, directly or indirectly, Wendy's restaurants as a franchisee without violating Sections 4(b)(i) or 4(b)(iii).

d. If any competent authority having jurisdiction over this Section 4 determines that any of the provisions of this Section 4 is unenforceable because of the duration or geographical scope of such provision, such competent authority shall have the power to reduce the duration or scope, as the case may be, of such provision and, in its reduced form, such provision shall then be enforceable. In the event of your breach of your obligations under the post employment restrictive covenants, then the post employment restricted period shall be tolled and extended during the length of such breach, to the extent permitted by law.

**5. Confidential Information.** You agree to treat as confidential and not to disclose to anyone other than Wendy's and its subsidiaries and affiliates, and their respective officers, directors, employees and agents, and you agree that you will not at any time during your employment and for a period of four years thereafter, without the prior written consent of Wendy's, divulge, furnish, or make known or accessible to, or use for the benefit of anyone other than Wendy's, its subsidiaries, and affiliates, any information of a confidential nature relating in any way to the business of Wendy's or its subsidiaries or affiliates, or any of their respective franchisees, suppliers or distributors, unless (i) you are required to disclose such information by requirements of law, (ii) such information is in the public domain through no fault of yours, or (iii) such information has been lawfully acquired by you from other sources unless you know that such information was obtained in violation of an agreement of confidentiality. You further agree that during the period referred to in the immediately preceding sentence you will refrain from engaging in any conduct or making any statement, written or oral that is disparaging of Wendy's, any of its subsidiaries or affiliates or any of their respective directors or officers.

**6. Severance.** In the event the Company terminates your employment without Cause (with "Cause" being hereinafter defined), in exchange for your execution of a general release of any and all claims concerning your employment and termination thereof in favor of the Company (and its subsidiaries, agents, employees, directors, etc.), you shall receive the following:

a. One year of salary continuation (at your annual base rate of salary in effect as of the termination) without offset for subsequent employment from date of termination, paid on a biweekly basis. These biweekly payments would also include installments of annual incentive paid for the year prior to the year of termination;

b. Second year of salary continuation (at your annual base rate of salary in effect as of the termination), subject to offset for subsequent employment;

c. Prorated annual incentive payment for year of termination, payable when annual incentives are paid to other senior executives of the Company;

d. Unvested equity would vest pro rata (on a monthly basis) to the date of termination, unless terms of awards are more favorable. Any performance-based equity would be determined based on plan and award terms. Vested stock options would be exercisable for one year after the date of termination; and

e. Lump sum cash payment of \$30,000.

You shall not be entitled to severance in the event the Company terminates your employment for Cause or in the event you voluntarily resign or terminate your employment with the Company. For the purposes of this agreement, "Cause" may include (i) commission of any act of fraud or gross negligence by you in the course of your employment hereunder that, in the case of gross negligence, has an adverse effect on the business or financial condition of Wendy's or any of its affiliates; (ii) willful misrepresentation at any time by you to Wendy's or the Board; (iii) willful failure or refusal to comply with any of your obligations hereunder or to comply with a reasonable and lawful instruction of the President and/or Chief Executive Officer of Wendy's or the Board; (iv) engagement by you in any conduct or the commission by you of any act that is, in the reasonable opinion of the Board, injurious or detrimental to the substantial interest of Wendy's or any of its affiliates; (v) your commission of or indictment for any felony, whether of the United States or any state thereof or any similar foreign law to which you may be subject; (vi) any failure substantially to comply with any material written rules, regulations, policies or procedures of Wendy's furnished to you; (vii) any willful or negligent failure to comply with Wendy's policies regarding insider trading; (viii) your death; or (ix) your inability to perform all or a substantial part of your duties or responsibilities on account of your illness (either physical or mental) for more than ninety (90) consecutive calendar days or for an aggregate of one-hundred fifty (150) calendar days during any consecutive nine (9) month period. A termination for Cause shall include a determination by the Company within six (6) months following your termination without Cause that circumstances existed during your employment that would have justified a termination by the Company with Cause. In such event, the Company reserves the right to discontinue any severance payments described above and to require you to reimburse the Company any severance amounts already paid to you.

**6. Miscellaneous.** If there is a discrepancy between the information in this letter and the legal plan documents, the legal plan documents will govern. The Company reserves the right to amend, modify, suspend or terminate any of its benefit plans at any time for any reason without prior notice. By accepting this position of CFO on the terms stated herein, you acknowledge that your employment is "at-will." This means that you may resign from the Company, or the Company may end the employment relationship, at any time, with or without cause, and with or without notice.

Please consider the information contained in this letter. Once you have had an opportunity to consider this letter, and provided you wish to accept the position of CFO on the terms outlined herein, please return an executed copy of this letter to the undersigned on or before the close of business on **May 9, 2013**.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

/s/ Scott A. Weisberg

THE WENDY'S COMPANY  
Scott Weisberg  
Chief People Officer

**ACCEPTED AND AGREED:**

/s/ Todd Penegor

\_\_\_\_\_  
Todd Penegor

5/8/2013

\_\_\_\_\_  
Date