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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): **February 7, 2017**

**Cosi, Inc.**

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(Exact Name of Registrant as Specified in Its Charter)

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**Delaware**

(State or Other Jurisdiction of Incorporation)

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**000-50052**

(Commission File Number)

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**06-1393745**

(IRS Employer Identification No.)

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**294 Washington Street, Suite 510; Boston, Massachusetts**

(Address of Principal Executive Offices)

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**02108**

(Zip Code)

Registrant's telephone number, including area code: (857) 415-5000

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(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### **ITEM 1.03 Bankruptcy or Receivership**

#### ***Fast Casual Motion***

Cosi, Inc., the fast-casual restaurant company (the “Company”), today announced that, on February 7, 2017, the Company and its affiliated debtors (together with the Company, “Debtors”) filed, in the United States Bankruptcy Court for the District of Massachusetts (Eastern Division) (the “Court”), *Debtors’ Motion to Approve Settlement Agreement and Second Amendment to Master Franchise Agreement Among Cosi, Inc., Fast Casual LTDA f/k/a Fast Casual S.A. and Fast Casual Panama S. de RL* [Docket No. 660] (“FCA Motion”). By this FCA Motion, the Company is requesting the Court to issue an order approving the Settlement Agreement and Second Amendment to Master Franchise Agreement, dated as of February 4, 2017 (the “Settlement Agreement”). As set forth in more detail in the FCA Motion, the approval of the Settlement Agreement is in the best interests of and will result in significant benefits to the Debtors’ estates. First, the Settlement Agreement resolves the cure claim (the “FC Cure Claim”) filed by Fast Casual LTDA (f/k/a Fast Casual S.A.) (“Fast Casual”) and Fast Casual Panama S. de RL (together with Fast Casual, the “Franchisee Parties”) and related disputes regarding the Debtors’ proposed assumption of the Fast Casual Master Franchise Agreement, as amended (the “FC MFA”). Resolution of the FC Cure Claim also affords the estates significant savings in legal fees and expenses which the Debtors would have otherwise incurred in litigating the Cure Claim and related disputes with the Franchisee Parties. The Settlement Agreement also prevents delays and uncertainty regarding the probability of success in litigation. In addition, the Settlement Agreement maintains the pre-bankruptcy franchise relationship between the Company and Fast Casual which, among other benefits, ensures the Company’s ability to develop its brand and presence in Central America and to continue to generate royalties and franchise revenue under the FC MFA.

The foregoing description of the FCA Motion does not purport to be complete and is qualified in its entirety by reference to the FCA Motion, a copy of which is filed as Exhibit 99.1 to this Current Report on Form 8-K and incorporated in this Item 1.03 by reference.

#### ***Plan of Reorganization and Disclosure Statement Motion; Notice of Hearing; Supplement***

On February 7, 2017, the Company and its affiliated debtors-in-possession filed with the Court the following: (1) Proposed Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC [Docket No. 662] (the “Plan”); (2) Proposed Disclosure Statement with Respect to the Plan [Docket No. 663] (“Disclosure Statement”); and (3) *Debtors’ Motion for Entry of an Order (a) Approving the Disclosure Statement, (b) Approving Certain Balloting, Tabulation, Solicitation, Objection, and Notice Procedures, and (c) Scheduling a Hearing to Consider Confirmation of the Plan and Objection Deadlines* [Docket No. 664] (the “Disclosure Statement Motion”).

The Court has scheduled a hearing on the Disclosure Statement Motion to take place on March 21, 2017, at 2:00 p.m. (Eastern) before the Honorable Melvin S. Hoffman, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court located at Courtroom No. 2, 12<sup>th</sup> Floor of the John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts 02109. Objections and/or responses to the Disclosure Statement Motion are due by March 10, 2017, at 4:30 p.m. (Eastern).

Copies of the Plan, the Disclosure Statement, and the Disclosure Statement Motion, as filed with the Court on February 7, 2017, may be obtained free of charge by contacting: Kate P. Foley, Esq., Mirick, O’Connell, DeMallie & Lougee, LLP, 1800 West Park Drive, Suite 400, Westborough, MA 01581, Phone No. 508.860.1463, Email: [kfoley@mirickoconnell.com](mailto:kfoley@mirickoconnell.com).

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The foregoing description of the Disclosure Statement Motion does not purport to be complete and is qualified in its entirety by reference to the Disclosure Statement Motion, a copy of which is filed as Exhibit 99.2 to this Current Report on Form 8-K and incorporated in this Item 1.03 by reference.

**ITEM 7.01. Regulation FD Disclosure**

Additional information on the Chapter 11 Cases, including access to documents filed with the Court and other general information about the Chapter 11 Cases, is available at a subscription based service known as PACER at <https://pacer.mab.uscourts.gov/cgi-bin/login.pl>.

The information in Item 7.01 of this Form 8-K is being furnished and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of such section. The information in Item 7.01 of this Form 8-K shall not be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, regardless of any incorporation by reference language in any such filing.

**ITEM 9.01(d). Exhibits**

<b>Exhibit No.</b>	<b>Description</b>	<b>Paper (P) or Electronic (E)</b>
99.1	<i>Debtors' Motion to Approve Settlement Agreement and Second Amendment to Master Franchise Agreement Among Cosi, Inc., Fast Casual LTDA f/k/a Fast Casual S.A. and Fast Casual Panama S. de RL [Docket No. 660]</i>	E
99.2	<i>Debtors' Motion for Entry of an Order (a) Approving the Disclosure Statement, (b) Approving Certain Balloting, Tabulation, Solicitation, Objection, and Notice Procedure, and (c) Scheduling a Hearing to Consider Confirmation of the Plan and Objection Deadlines [Docket No. 664]</i>	E

**Signature**

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 hereunto duly authorized.

Cosi, Inc.

Date: February 13, 2017.

/s/ Vicki Baue

Name: Vicki Baue

Title: V. P. & General Counsel, CCO

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**EXHIBIT INDEX**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:

COSI, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-13704-MSH

(Jointly Administered)

**DEBTORS' MOTION TO APPROVE SETTLEMENT AGREEMENT AND SECOND AMENDMENT TO MASTER FRANCHISE AGREEMENT  
AMONG COSI, INC., FAST  
CASUAL LTDA F/K/A FAST CASUAL S.A. AND FAST CASUAL PANAMA S. de RL**

NOW COME Cosi, Inc. ("Cosi"), Xando Cosi of Maryland, Inc. ("Xando"), Cosi Sandwich Bar, Inc. ("CSB"), Hearthstone Associates, LLC ("HALLC"), and Hearthstone Partners, LLC ("HPLLC"; collectively, with Cosi, Xando, CSB, and HALLC, the "Debtors"), and, pursuant to 11 U.S.C. § 105(a) and Rule 9019 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule 9019") and MLBR 9019-1, hereby request (the "Motion") that this Court approve the Settlement Agreement and Second Amendment to Master Franchise Agreement entered into by and among Cosi, Inc. (i.e., Cosi), Fast Casual LTDA f/k/a Fast Casual S.A. ("Fast Casual") and Fast Casual Panama S. de RL ("Fast Casual Panama"; together with Fast Casual, the "Franchisee Parties") dated as of February 4, 2017 (the "Settlement Agreement"). The Debtors have filed a copy of the Settlement Agreement contemporaneously herewith.

In support of this Motion, the Debtors state as follows:

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<sup>1</sup> The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704-MSH), Xando Cosi of Maryland, Inc. (Case No. 16-13706-MSH), Cosi Sandwich Bar, Inc. (Case No. 16-13705-MSH), Hearthstone Associates, LLC (Case No. 16-13707-MSH), and Hearthstone Partners, LLC (Case No. 16-13708-MSH). The Debtors' corporate offices are located at 294 Washington Street, Suite 510, Boston, Massachusetts 02108. The cases are jointly administered under the Cosi, Inc. case number.

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. The statutory and legal predicates for the relief sought herein are 11 U.S.C. § 105(a) and Bankruptcy Rule 9019.

**Relevant Background**

**A. Bankruptcy Case Background.**

3. On September 28, 2016 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).
4. The Debtors continue to operate their business and manage their assets as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.
5. No trustee or examiner has been requested or appointed in these cases. On October 6, 2016, the Office of the United States Trustee filed the Appointment of the Official Committee of Unsecured Creditors and appointed an unsecured creditors’ committee (the “Committee”).

**B. The Debtors.**

6. The Debtors operate an international fast casual restaurant company specializing in a variety of made-to-order hot and cold sandwiches, salads, bowls, breakfast wraps, “Squagels®” (square bagels), melts, soups, flatbread pizzas, S’mores, snacks, desserts, and a large offering of handcrafted, coffee-based, and specialty beverages.

7. As of the date hereof, the Debtors operate restaurants at approximately 44 company-owned locations in multiple states, including Massachusetts, Connecticut, New Jersey, New York, Maryland, Virginia, Pennsylvania, Illinois, and Wisconsin. The Debtors currently employ more than 1,000 employees.

8. Earlier in the cases, the Debtors initially proposed to sell all of the Debtors' assets to the Debtors' debtor-in-possession lenders as the stalking horse bidder, or another bidder to be determined after an auction. On October 18, 2016, the Debtors entered into an Asset Purchase Agreement (collectively with the amendments thereto, the "APA") with LIMAB, LLC ("LIMAB"), as stalking horse bidder, dated October 18, 2016. LIMAB, as stalking horse bidder, submitted the only bid for the Debtors' assets prior to the November 28, 2016 bid deadline, and, as a result, the Debtors subsequently cancelled the auction and named LIMAB the winning bidder. LIMAB then exercised its rights under the APA to have the Debtors proceed pursuant to a plan of reorganization instead of by a purchase of assets (the "Plan Option").

9. As of the date hereof, LIMAB is operating the Debtors' business pursuant to the Court-approved Interim Operating Agreement effective December 21, 2016 (the "Operating Agreement").

**C. Background Related to Cosi's Relationship with the Franchisee Parties.**

10. Prior to the Petition Date, effective as of March 29, 2012, Cosi and Fast Casual entered into a Master Development and Franchise Agreement, as amended by Letter Agreement dated March 28, 2012 and by First Amendment to Master Development and Franchise Agreement dated February 15, 2016 (collectively, the "FC MFA").

11. On or about March 28, 2012, Luis Diego Escalante Vargas, Maria Cristina Escalante, Steven Aronson, and Gonzalo Soffia Bawarsky each executed an Owner and Personal Acknowledgment (collectively, the “Owner and Personal Acknowledgments”).

12. Also on or about March 28, 2012, Panem Vitae S.A., Hermanos Soffia Bawarsky Sociedad Anonima Co., Montemani LLC, Luis Diego Escalante Vargas, Maria Cristina Escalante, Steven Aronson, and Gonzalo Soffia Bawarsky (individually and collectively, the “Guarantors”) executed a Guarantee (the “Guarantee”) guaranteeing all of Fast Casual’s obligations under the FC MFA.

13. Prior to the Petition Date, effective as of February 22, 2016, Cosi and Fast Casual Panama entered into a Master Development and Franchise Agreement, as amended by First Amendment to Master Development and Franchise Agreement dated February 15, 2016 (the “Panama MFA”; together with the FC MFA, the “MFAs”).<sup>2</sup>

14. The MFAs collectively grant the Franchisee Parties the rights to operate and develop Cosi restaurants in Costa Rica and Panama. As of the date hereof, Fast Casual operates seven (7) Cosi restaurants in Costa Rica as a franchisor pursuant to the FC MFA. As of the date hereof, Fast Casual Panama has opened no Cosi restaurants in the Republic of Panama.

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<sup>2</sup> Copies of the MFAs are available upon request.

**D. Background Regarding Disputes Among Cosi and the Franchisee Parties.**

15. During these cases, certain disputes have existed among Cosi and the Franchisee Parties related primarily to: (i) the Debtors' attempts to collect fees from Fast Casual which the Debtors' believe to be due and owing under the FC MFA and (ii) the Franchisee Parties' asserted "cure claims" in connection with the Debtors' proposed assumption and assignment of the MFAs to LIMAB under the APA or the reorganized Debtors under the Plan Option.<sup>3</sup>

16. Specifically, on or about November 10, 2016, Fast Casual sent Cosi, through counsel, a document entitled "Fast Casual Costa Rica Cure Claim" (the "Cure Claim"). In the Cure Claim, Fast Casual alleged that Cosi had breached certain alleged obligations under the Fast Casual MFA, which resulted in damages, including the alleged failure to provide training programs, prototype plans, pre-opening supervision and assistance, consulting assistance, and marketing materials. In addition, in the Cure Claim, Fast Casual alleged certain incurable non-monetary defaults.

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<sup>3</sup> As reflected in Amendment No. 4 to the APA, the Debtors and LIMAB negotiated holdbacks of \$975,000.00 and \$100,000.00 from the cash component of the Purchase Price under the APA (defined in Amendment No. 4 to the APA and referred to therein as the "FC Franchise Reserve" and the "FC Costs") to be withheld by LIMAB as a result of the disputes existing among Cosi and the Franchisee Parties. See Dkt. No. 608. The Debtors and LIMAB negotiated the conditions pursuant to which the FC Franchise Reserve (or a portion thereof) and the FC Costs would be released to the Debtors. Of significance to this Motion, Amendment No. 4 to the APA includes the following amendment in Section 9.01A(f):

If, prior to the Closing Date, Seller resolves the disputes related to the assignment of the FC Franchise Agreement on terms acceptable to Seller and Purchaser, then Purchaser shall direct and facilitate the immediate release of the FC Franchise Reserve to Seller, inclusive of a release of the remaining security for the FC Costs indemnity.

The Debtors' position is that Settlement Agreement described herein satisfies the conditions set forth in Section 9.01A(f) of the APA such that, upon this Court's approval of the Settlement Agreement, LIMAB will authorize the release of the FC Franchise Reserve and FC Costs (less any approved reduction regarding the FC Costs) to take place no later than the effective date of the Debtors' Chapter 11 plan.

17. On November 28, 2016, the Franchisee Parties filed a *Limited Opposition to Debtor's Motion for (1) Order Establishing Bidding Procedures and Granting Related Relief and (2) Order Approving Sale of Substantially All Assets Free and Clear of All Liens, Claim, Encumbrances and Interest and Granting Related Relief* [Dkt. No. 440] (the "Cure Objection"). In the Cure Objection, the Franchisee Parties asserted: (i) a cure claim in the amount of \$365,533.00 with respect to the Debtors' proposed assumption and assignment of the FC MFA and (ii) that the Panama MFA could not be assumed and assigned.<sup>4</sup>

18. Cosi disputes the allegations set forth in the Cure Claim and the Cure Objection.

19. On or about November 22, 2016, Cosi sent the Franchisee Parties a Notice of Default (the "Notice of Default") based on the Franchisee Parties' failure to pay certain fees due to Cosi under the MFAs.

20. The Franchisee Parties dispute the Notice of Default.

21. Cosi and the Franchisee Parties have engaged in extensive negotiations and now wish to consensually resolve all of the disputes and claims among them, including all claims set forth in the Cure Claim, as set forth herein and in the Settlement Agreement.

#### **Summary of the Settlement Agreement**<sup>5</sup>

22. The Settlement Agreement provides that:

- a. within three (3) business days of the execution of the Settlement Agreement, Fast Casual shall pay Cosi unpaid royalty fees, marketing fees, and franchise fees due under the MFA (the "Unpaid Fees") in the amount of \$21,664.58, which amount represents all Unpaid Fees owing for the fiscal December 2016 period as of January 21, 2017 (the "Measurement Date");
- b. Cosi waives its right to administrative fees and interest or other charge or fee on the Unpaid Fees;

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<sup>4</sup> The Franchisee Parties have also filed Proofs of Claim in the Cosi, Inc. case. On or about December 28, 2016, Fast Casual filed a Proof of Claim in the amount of \$365,533.00. See Claim No. 113-1. Also on or about December 28, 2016, Fast Casual Panama filed a Proof of Claim in the amount of \$34,380.50. See Claim No. 114-1.

<sup>5</sup> The description set forth in this section is only a summary. For the full terms of the Settlement Agreement, the Debtors direct parties in interest to a copy of the Settlement Agreement filed contemporaneously herewith.

- c. upon receipt of Fast Casual's payment of the Unpaid Fees, Cosi shall withdraw the Notice of Default;
- d. Fast Casual acknowledges and affirms its obligation to pay all fees owing under the MFA when they are due and that it will not withhold payment of any amounts owed to Cosi based on Cosi's alleged failure to perform any of its obligations under the Fast Casual MFA;
- e. The Panama MFA and all personal guarantees related thereto are terminated and of no further force or effect;
- f. Cosi waives its right to any sums due under the Panama MFA, including, without limitation, the \$50,000.00 Development Fee due under the Panama MFA;
- g. Cosi and Fast Casual agree to amend the FC MFA by including the provision as set forth in the Settlement Agreement entitled "Termination by Developer," which allows Fast Casual, provided that Fast Casual is in compliance with its obligations under the FC MFA, to terminate the FC MFA post-confirmation or sale (as applicable) in the event that the Franchisor under the FC MFA (i) commits a material breach of its obligations as they are expressly delineated in the FC MFA and (ii) fails to cure any such breach within sixty (60) days after Fast Casual notifies the Franchisor of the breach in accordance with the FC MFA;
- h. Fast Casual further agrees to (i) withdraw the Cure Claim (and the proofs of claim discussed in footnote 4 herein) and not assert any other claim in the Debtors' bankruptcy cases and (ii) subject to solicitation in accordance with the Bankruptcy Code, accept and otherwise fully support any Chapter 11 plan of Cosi that is not inconsistent with the Settlement Agreement;

- i. Fast Casual acknowledges and agrees that Cosi shall be deemed to be in full compliance with its obligations under the FC MFA and waives and releases any claim that Cosi has breached any of its prior obligations under the FC MFA;
- j. The Franchisee Parties and Cosi mutually release each other of and from any and all claims or causes of action against each other through the date of the Settlement Agreement, excepting only their respective obligations under the Settlement Agreement, their prospective obligations under the FC MFA, and their prospective obligations set forth in the Owner and Personal Acknowledgments and the Guarantee, which remain in full force and effect; and
- k. Fast Casual consents to the assumption of the Settlement Agreement (and assignment if applicable) by reorganized Cosi and its affiliates as of the effective date of Cosi's Chapter 11 plan.

**Reasonableness of the Settlement Agreement**

23. Under Bankruptcy Rule 9019, a bankruptcy court can approve a compromise or settlement if it is in the best interest of the debtor's estate. See, e.g., Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995). In evaluating a settlement, a bankruptcy court should "assess and balance the value of the claim that is being compromised against the value to the Estate of the acceptance of the compromise proposal." See id. (quoting In re GHR Cos., 50 B.R. 925, 931 (Bankr. D. Mass. 1985)) (additional citation omitted).

24. The Debtors believe that the resolution set forth in the Settlement Agreement is fair and reasonable under the standard applicable under Bankruptcy Rule 9019, which generally requires consideration of the following factors: (i) the probability success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise. See In re Genesys Research Institute, Inc., 2016 WL 3583229, at \*12 (Bankr. D. Mass. Jun. 24, 2016) (citing Jeffrey, 70 F.3d at 185).

25. The Debtors assert that the approval of the Settlement Agreement will result in significant benefits to the Debtors' estates. First, the Settlement Agreement resolves the Cure Claim and related disputes regarding the Debtors' proposed assumption of the FC MFA. The resolution of the Cure Claim affords the estates significant savings in legal fees and expenses, which the Debtors would have otherwise incurred in litigating the Cure Claim and related disputes with the Franchisee Parties. The Settlement Agreement also prevents delay and uncertainty regarding the probability of success in litigation, and the Debtors assert that the Settlement Agreement appropriately factors in the strengths and weaknesses of all claims and defenses.

26. In addition, the Settlement Agreement maintains the pre-bankruptcy franchise relationship between Cosi and Fast Casual, which, among other benefits, ensures Cosi's ability to develop its brand and presence in Central America and to continue to generate royalties and franchise revenue under the FC MFA. As a result, approval of the Settlement Agreement will trigger the release of the FC Franchise Reserve in the amount of \$975,000.00 and the FC Costs in the amount of \$100,000.00 (less any approved reduction regarding the FC Costs), which funds, together with the "Purchase Price" under the APA, will be utilized at plan confirmation, among other potential assets, to fund a distribution to creditors.<sup>6</sup>

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<sup>6</sup> The Debtors have conferred with LIMAB regarding the proposed Settlement Agreement and the Debtors believe that LIMAB finds the Settlement Agreement acceptable to satisfy the conditions necessary to warrant the release of the FC Franchise Reserve and the FC Costs (less any approved reduction regarding the FC Costs) no later than the effective date of the Chapter 11 plan.

27. Put simply, the proposed settlement substantially increases the likelihood that the Debtors' general unsecured creditors will receive a meaningful distribution under the Plan.

28. Based on the foregoing, the Debtors believe that the Settlement Agreement is fair and equitable and immensely beneficial to the Debtors' estates and, further, that it satisfies the applicable Bankruptcy Rule 9019 standards. As a result, the Debtors respectfully request that the Court approve the Settlement Agreement.

**Notice**

29. In accordance with Bankruptcy Rules 2002 and 9019, the Debtors shall serve a copy of this Motion and the Settlement Agreement on: (a) the Office of the United States Trustee for Region One; (b) counsel to LIMAB; (c) all creditors listed on the Debtors' Schedules, as amended; (d) the Securities and Exchange Commission; (e) the Office of the Attorney General for each of the states where the Debtors operate or operated; (f) the Internal Revenue Service and all other known taxing authorities in the states where the Debtors operate or operated; (g) the United States Department of Justice; (h) counsel to the Committee; and (i) any party which has filed, prior to the date of filing this Motion, a request for service of pleadings in this case.

22. The Debtors will utilize the standard "shareholder notice" measures for public companies in order to provide notice of the relief requested in this Motion to holders of shares of Common Stock. Specifically, within four (4) business days of filing this Motion, the Debtors will file a Current Report on Form 8-K with the SEC. This is the method by which public companies, including the Debtors, typically communicate information with shareholders in a consistent and cost-effective manner.<sup>7</sup>

23. The Debtors request that this Court determine that notice to shareholders by this method be deemed sufficient and that the notice requirements be deemed satisfied.

24. The Debtors will continue to be available to address shareholder inquiries related to this Motion or the Debtors' bankruptcy cases generally.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that this Court enter an Order substantially in the form attached hereto: (i) approving the Settlement Agreement among Cosi and the Franchisee Parties as it is in the best interest of the Debtors' estates and (ii) granting such other and further relief as is just under the circumstances.

Respectfully submitted,

COSI, INC., *ET AL.*

By their counsel,

/s/ Kate P. Foley

Joseph H. Baldiga, BBO #549963  
Christine E. Devine, BBO #566990  
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Email: cdevine@mirickoconnell.com  
Email: kfoley@mirickoconnell.com

Dated: February 7, 2017

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<sup>7</sup> The Debtors estimate that the estates would likely incur costs in the range of approximately \$20,000 - \$25,000 in order to mail a copy of this Motion to all shareholders. The Debtors believe that expense is unwarranted.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:

COSI, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-13704-MSH

(Jointly Administered)

**ORDER APPROVING SETTLEMENT AGREEMENT AND SECOND AMENDMENT TO MASTER FRANCHISE AGREEMENT AMONG COSI, INC., FAST CASUAL LTDA F/K/A  
FAST CASUAL S.A. AND FAST CASUAL PANAMA S. de RL**

Upon consideration of the *Debtors' Motion to Approve Settlement Agreement and Second Amendment to Master Franchise Agreement Among Cosi, Inc., Fast Casual LTDA f/k/a Fast Casual S.A. and Fast Casual Panama S. de RL* (the "Motion"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) venue of these chapter 11 cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) notice of the Motion was sufficient under the circumstances; the Court determining that the legal and factual bases set forth in the Motion establish just cause for the relief granted by this Order; and it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors, and other parties in interest.

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<sup>1</sup> The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704-MSH), Xando Cosi of Maryland, Inc. (Case No. 16-13706-MSH), Cosi Sandwich Bar, Inc. (Case No. 16-13705-MSH), Hearthstone Associates, LLC (Case No. 16-13707-MSH), and Hearthstone Partners, LLC (Case No. 16-13708-MSH). The Debtors' corporate offices are located at 294 Washington Street, Suite 510, Boston, Massachusetts 02108. The cases are jointly administered under the Cosi, Inc. case number.

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NOW, IT IS HEREBY ORDERED, THAT:

1. The Motion is GRANTED in its entirety.
2. The settlement embodied in the Settlement Agreement is in the best interests of the Debtors' estates and otherwise satisfies the requirements of Bankruptcy Rule 9019.
3. The Settlement Agreement and Second Amendment to Master Franchise Agreement entered into by and among Cosi, Inc., Fast Casual LTDA f/k/a Fast Casual S.A. and Fast Casual Panama S. de RL dated as of February 4, 2017 are hereby approved.
3. In accordance with the APA<sup>2</sup> and the Debtors' Chapter 11 plan of reorganization, no later than the effective date of the Debtors' Chapter 11 plan or a closing under the APA (as applicable), LIMAB, LLC shall deliver the FC Franchise Reserve in the amount of \$975,000.00 and the FC Costs in the amount of \$100,000.00 (less any approved reduction regarding the FC Costs) to either the Debtors or to the Liquidating Trust.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Honorable Melvin S. Hoffman  
Chief United States Bankruptcy Judge

<sup>2</sup> Unless otherwise defined herein, initially capitalized terms shall have the meanings ascribed to them in the Motion.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:

COSI, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-13704-MSH

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF REORGANIZATION OF COSI, INC., XANDO COSI OF MARYLAND, INC., COSI SANDWICH BAR, INC., HEARTHSTONE ASSOCIATES, LLC, AND HEARTHSTONE PARTNERS, LLC, (II) APPROVING CERTAIN BALLOTING, TABULATION, SOLICITATION, OBJECTION, AND NOTICE PROCEDURES, AND (III) SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE PLAN AND OBJECTION DEADLINES**

[Hearing Date Requested: on or about March 15, 2017]

NOW COME Cosi, Inc. ("COSI"), Xando Cosi of Maryland, Inc. ("Xando"), Cosi Sandwich Bar, Inc. ("CSB"), Hearthstone Associates, LLC ("HALLC"), and Hearthstone Partners, LLC ("HPLLC"; collectively, with COSI, Xando, CSB, and HALLC, the "Debtors"), and, pursuant to 11 U.S.C. §§ 105(a), 1125(b), 1126, and 1128 and Rules 2002, 3016, 3017, 3018, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and MLBR 3017-1, hereby move (the "Motion") for entry of an Order substantially in the form attached hereto as **Exhibit A** (the "Proposed Disclosure Statement Order"): (i) approving, as containing adequate information, the *Disclosure Statement with Respect to Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC* (the "Disclosure Statement") filed in connection with the *Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC* (the "Plan"); (ii) approving the necessary procedures with respect to the confirmation process, including approving balloting and solicitation procedures, setting a deadline by which to file objections to confirmation of the Plan, and approving the form and manner of notice; (iii) scheduling a hearing to consider confirmation of the Plan; and (iv) granting related relief.

<sup>1</sup> The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704-MSH), Xando Cosi of Maryland, Inc. (Case No. 16-13706-MSH), Cosi Sandwich Bar, Inc. (Case No. 16-13705-MSH), Hearthstone Associates, LLC (Case No. 16-13707-MSH), and Hearthstone Partners, LLC (Case No. 16-13708-MSH). The Debtors' corporate offices are located at 294 Washington Street, Suite 510, Boston, Massachusetts 02108. The cases are jointly administered under the Cosi, Inc. case number.

In support of this Motion, the Debtors state as follows:

**I. Jurisdiction and Venue.**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L).
2. The statutory and legal predicates for the relief sought herein are 11 U.S.C. §§ 105(a), 1125, 1126, and 1128 and Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, and 9006, and MLBR 3017-1.

**II. Relevant Background.**

**A. Bankruptcy Case Background.**

3. On September 28, 2016 (the “Petition Date”), each of the Debtors filed a voluntary petition with this Court for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).
4. The Debtors continue to operate their business and manage their assets as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

5. No trustee or examiner has been requested or appointed in these cases. On October 6, 2016, the Office of the United States Trustee filed the Appointment of the Official Committee of Unsecured Creditors and appointed an unsecured creditors' committee (the "Committee").

**B. The Debtors.**

6. The Debtors operate an international fast casual restaurant company specializing in a variety of made-to-order hot and cold sandwiches, salads, bowls, breakfast wraps, "Squagels®" (square bagels), melts, soups, flatbread pizzas, S'mores, snacks, desserts, and a large offering of handcrafted, coffee-based, and specialty beverages.

7. As of the date hereof, the Debtors operate restaurants at approximately 44 company-owned locations in multiple states, including Massachusetts, Connecticut, New Jersey, New York, Maryland, Virginia, Pennsylvania, Illinois, and Wisconsin. The Debtors currently employ more than 1,000 employees.

8. Earlier in the cases, the Debtors initially proposed to sell all of the Debtors' assets to the Debtors' debtor-in-possession lenders as the stalking horse bidder, or another bidder to be determined after an auction. On October 18, 2016, the Debtors entered into an Asset Purchase Agreement (collectively with the amendments thereto, the "APA") with LIMAB, LLC ("LIMAB"), as stalking horse bidder, dated October 18, 2016. LIMAB, as stalking horse bidder, submitted the only bid for the Debtors' assets prior to the November 28, 2016 bid deadline, and, as a result, the Debtors subsequently cancelled the auction and named LIMAB as the winning bidder. LIMAB then exercised its rights under the APA to direct the Debtors proceed pursuant to a plan of reorganization rather than through an asset sale.

9. As of the date hereof, LIMAB is operating the Debtors' business pursuant to the Court-approved Interim Operating Agreement effective December 21, 2016 (the "Operating Agreement").

**C. The Proposed Plan and Disclosure Statement.**

10. The Debtors have contemporaneously filed herewith the Plan and associated Disclosure Statement.

11. In general terms, the Plan is structured as what is commonly referred to as a "pot plan" in that the Debtors have determined the value of their collective Business operations, and the Plan provides that the value will be paid into the Liquidating Trust<sup>2</sup> to be distributed by the Liquidating Trustee to the Debtors' creditors in accordance with the order of priority set forth in the Bankruptcy Code and as set forth in the Plan. The Liquidating Trust will be funded pursuant to the Plan Settlement, which is set forth in the Plan, specifically described in Article VII of the Plan, and accounted for in the treatment of the Noteholders' Class 5 and Class 6 Claims.

12. Specifically, the Plan Settlement is between the Debtors and the Supporting Parties. The Supporting Parties consist of LIMAB (i.e., the initial stalking horse bidder for the Debtors' assets) and the Noteholders in their capacities as both (i) pre-petition secured Claim Holders, with pre-petition Liens, the validity of which the Debtors dispute, and (ii) the DIP Lenders, with an undisputed superpriority DIP Facility Claim.

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<sup>2</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Plan.

13. Under the Plan Settlement, the Liquidating Trust will be funded by the Operating Agreement Payment, which is an approximation of the purchase price which LIMAB offered to pay as a stalking horse bidder in connection with the Asset Purchase Agreement. Subject to reductions for Administrative Expenses, the Operating Agreement Payment is ultimately expected to be between \$4,125,000 and \$4,650,000, which consists of the following components: (i) \$3,050,000, which was paid to the Debtors at the inception of the term of the Operating Agreement, (ii) \$1,075,000, which will be paid to the Debtors on the Effective Date subject to approval of the settlement agreement with franchisee Fast Casual (the “Fast Casual Settlement Agreement”)<sup>3</sup> and after reduction of approximately \$10,000 for expenses incurred by the Supporting Parties in connection with Fast Casual, and (iii) \$525,000, which will be paid subject to and upon the extension of a franchise agreement with a franchisee located in Dubai. The Liquidating Trust may also be supplemented with recoveries from those Avoidance Actions that do not qualify as Acquired Avoidance Actions under the Plan. The Operating Agreement Payment and such recoveries will be the sole source of payment for (i) Administrative Expenses not required to be paid by LIMAB under the Operating Agreement, (ii) Priority Claims, (iii) Priority Tax Claims, and (iv) General Unsecured Claims.

14. Under the Plan Settlement, (i) the Noteholders will receive, on account of their \$5,000,000 Allowed Noteholder Secured Claims, the New Stock in the Reorganized Debtors, (ii) LIMAB will receive a payment from the Liquidating Trustee in the amount of \$625,000, which will be treated as a reduction of the Operating Agreement Payment, and (iii) after General Unsecured Creditors other than the Noteholders receive aggregate Distributions of \$1,500,000, the Noteholders will receive, on account of their \$2,786,195.05 Allowed Noteholder General Unsecured Claims, 40% of any funds available for subsequent Distributions to General Unsecured Creditors, which shall be paid to LIMAB and treated as a reduction of the Operating Agreement Payment. The amount of the Noteholder Claims allocated in the Plan as between Noteholder Secured Claims and Noteholder General Unsecured Claims remains subject to reallocation.

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<sup>3</sup> Currently, the Fast Casual hold back funds are held by Debtors’ counsel (\$975,000) and LIMAB (\$100,000).

15. The Plan Settlement is expected to result in the full payment of all (i) Secured Claims held by Entities other than those held by the Supporting Parties, (ii) Administrative Claims (including Professional Fee Claims), and (iii) Priority Claims. In addition, the Plan Settlement provides for the Reorganized Debtors to assume and pay in the ordinary course all (i) Continuing Employment Claims and (ii) Customer Claims (held by customers).

16. Finally, under the Plan Settlement, Holders of General Unsecured Claims (i.e., Class 6 Claims) will receive Distributions expected to be in the range of 15.4% to 19.2%, depending on the resolution of certain unresolved issues.

17. Detailed information regarding the Debtors, circumstances leading to the filings of their Chapter 11 petitions, significant events during the Bankruptcy Cases, including the initial proposal to sell substantially all assets pursuant to Bankruptcy Code § 363 and the events leading to the Operating Agreement, and the Plan are set forth in the Disclosure Statement.

18. The Plan provides for the following classifications and treatment of Claims and Interests:

<b>Class Number</b>	<b>Description of Class</b>	<b>Voting Status, Plan Treatment</b>
N/A	Administrative Claims (other than Professional Fee Claims)	<u>Voting Status:</u> Not Applicable <u>Plan Treatment:</u> Unimpaired
N/A	Professional Fee Administrative Claims	<u>Voting Status:</u> Not Applicable <u>Plan Treatment:</u> Unimpaired
N/A	Priority Tax Claims	<u>Voting Status:</u> Not Applicable <u>Plan Treatment:</u> Unimpaired
N/A	DIP Facility Claims	<u>Voting Status:</u> Not Applicable <u>Plan Treatment:</u> Unimpaired
N/A	Claims Under Bankruptcy Code Section 503(b)(9)	<u>Voting Status:</u> Not Applicable <u>Plan Treatment:</u> Unimpaired
1	Priority Claims	<u>Voting Status:</u> Deemed to Accept <u>Plan Treatment:</u> Unimpaired
2	JP Morgan Chase Secured Claim	<u>Voting Status:</u> Deemed to Accept <u>Plan Treatment:</u> Unimpaired

3	Continuing Employment Claims	<u>Voting Status:</u> Deemed to Accept <u>Plan Treatment:</u> Unimpaired
4	Customer Claims	<u>Voting Status:</u> Deemed to Accept <u>Plan Treatment:</u> Unimpaired
5	Noteholder Secured Claim	<u>Voting Status:</u> Entitled to Vote <u>Plan Treatment:</u> Impaired
6	General Unsecured Claims	<u>Voting Status:</u> Entitled to Vote <u>Plan Treatment:</u> Impaired
7	Intercompany Claims	<u>Voting Status:</u> Deemed to Accept <u>Plan Treatment:</u> Unimpaired
8	Existing Equity Interests	<u>Voting Status:</u> Deemed to Reject <u>Plan Treatment:</u> Impaired
9	Intercompany Interests	<u>Voting Status:</u> Deemed to Accept <u>Plan Treatment:</u> Unimpaired

19. As set forth above, Holders of Claims in Class 5 and Class 6 are the only Holders of Claims that are entitled to vote on the Plan. All other Holders of Claims or Interests are not entitled to vote on the Plan because such Holders either have a (i) a Claim that is not classified under the Plan, (ii) a Claim that is Unimpaired under the Plan or (iii) an Equity Interest that does not entitle them to receive or retain any property under the Plan.

**III. Relief Requested.**

20. By this Motion, the Debtors seek entry of the Disclosure Statement Order: (i) approving the form and content of the Disclosure Statement; (ii) approving the proposed solicitation procedures; (iii) approving the form of Ballots; (iv) establishing a voting deadline; (v) establishing tabulation procedures; (vi) establishing procedures regarding assumption of executory contracts and leases; (vii) setting the date for the hearing to consider confirmation of the Plan (the "Confirmation Hearing"); and (viii) establishing a deadline for objection to the Plan.

21. The dates and deadlines proposed by the Debtors, subject to the Court’s availability, are as follows:

Event	Proposed Date/Deadline
Service of Notice of Hearing and Objection Deadline Regarding Disclosure Statement	February 10, 2017
Disclosure Statement Objection Deadline	March 10, 2017
Voting Record Date	March 15, 2017
Disclosure Statement Hearing	On or about March 15, 2017
Commencement of Solicitation	On or about March 17, 2017 (within two business days after entry of the Disclosure Statement Order)
Deadline to File Plan Supplement	April 4, 2017
Deadline to Serve Assumption and Cure Notice	April 11, 2017
Voting Deadline	April 14, 2017
Plan Objection Deadline	April 14, 2017
Assumption and Cure Objection Deadline	April 18, 2017
Plan Confirmation Reply Deadline	April 21, 2017
Confirmation Hearing	April 25, 2017

**IV. Approval of the Proposed Disclosure Statement.**

22. Pursuant to Section 1125 of the Bankruptcy Code, a plan proponent must provide Holders of Impaired Claims and interests with “adequate information” regarding a debtor’s proposed plan of reorganization. Section 1125(a)(1) of the Bankruptcy Code provides, in pertinent part, as follows:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical reasonable investor of the relevant class to make an informed judgment about the plan . .

11 U.S.C. § 1125(a)(1); *see also In re Mahoney Hawkes, LLP*, 289 B.R. 285 (Bankr. D. Mass. 2002).

23. Thus, a debtor's disclosure statement must, as a whole, provide information that is reasonably calculated to permit an "informed judgment" by impaired creditors entitled to vote on the plan of reorganization. *See In re Dakota Rail, Inc.*, 104 B.R. 138, 142 (Bankr. D. Minn. 1989); *In re Copy Crafters Quickprint Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (adequacy of disclosure statement "is to be determined on a case specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties"). Fundamentally, a disclosure statement "must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

24. In examining and determining the adequacy of the information contained in a disclosure statement, the Court has broad discretion. *See Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988), *cert. denied*, 488 U.S. 926 (1988); *see also Dakota Rail*, 104 B.R. at 143 (courts have "wide discretion to determine . . . whether a disclosure statement contains adequate information without burdensome, unnecessary and cumbersome detail").

25. Courts generally examine whether the disclosure statement contains, if applicable, the following types of information:
- A. The circumstances that gave rise to the filing of the bankruptcy petition;
  - B. A complete description of the available assets and their value;
  - C. The anticipated future of the debtor;
  - D. The source of the information provided in the disclosure statement;

- E. A disclaimer, which typically indicates that no statements or information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement;
- F. The condition and performance of the debtor while in Chapter 11;
- G. Information regarding claims against the estate;
- H. A liquidation analysis setting forth the estimated return creditors would receive under Chapter 7;
- I. Information regarding the future management of the debtor;
- J. A summary of the plan of reorganization;
- K. An estimate of all administrative expenses, including attorneys' fees and accountants' fees;
- L. Any financial information, valuations, or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
- M. Information relevant to the risks being taken by the creditors and interest holders;
- N. The actual or projected value that can be obtained from avoidable transfers;
- O. The existence, likelihood, and possible success of non-bankruptcy litigation;
- P. The tax consequences of the plan; and
- Q. The relationship of the debtor with its affiliates.

*See, e.g., In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988). This list is not meant to be comprehensive and a debtor need not provide all of the information on the list. Rather, the court must decide what is appropriate in each case. *See Ferretti*, 128 B.R. at 18-19.

26. The proposed Disclosure Statement contains more than sufficient detail to permit Holders of Claims entitled to vote on the Plan to make an informed judgment whether to accept or reject the Plan. Indeed, the proposed Disclosure Statement contains information with respect to many applicable subject matter categories identified above.

27. Specifically, the Disclosure Statement contains a number of categories of information that courts consider “adequate information,” including:
- a. A summary of the Plan (Article 6);
  - b. A summary of the classifications and treatment of all Classes of Claims and Interests (Article 6.2-6.4);
  - c. Provisions governing distributions under the Plan (Articles 6.2—6.4 & 6.7);
  - d. A description of the Debtors’ prepetition indebtedness (Article 4.1.C);
  - e. The history of the Debtors’ Business, including the events leading up to the commencement of these Bankruptcy Cases (Articles 4.1.A—4.1.D);
  - f. A description of the Debtors’ projected financial information (Exhibit C);
  - g. A description of the solicitation procedures (Article 3);
  - h. A description of the voting procedures (Article 3);
  - i. A description of settlements in the Plan (Articles 2.1 & 6.7);
  - j. The means for implementation of the Plan (Article 6.7);
  - k. Certain federal income tax law consequences of the Plan (Article 7.2); and
  - l. The value of the Debtors’ assets (Article 4.2).

28. Accordingly, the Debtors submit that the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code and, therefore, should be approved. The Debtors have proposed a Disclosure Statement that renders the Plan and process understandable.<sup>4</sup> The Debtors believe that the proposed Disclosure Statement contains “adequate information,” as that phrase is defined in section 1125(a)(1) of the Bankruptcy Code. Accordingly, the Debtors request that the proposed Disclosure Statement be approved.

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<sup>4</sup> The Debtors reserve the right to amend and supplement the proposed Disclosure Statement prior to the Disclosure Statement Hearing to incorporate additional information, including additional exhibits thereto. The Debtors further request that this Court authorize the Debtors, with the reasonable consent of the Committee, to make non-material changes to the Disclosure Statement, including completing any blanks, making changes required for clarification or correcting grammatical and typographical errors, without further Order of this Court.

V. **Establishing Procedures for Solicitation of the Plan.**

A. **Record Holder Date for Holders of Claims.**

29. Bankruptcy Rule 3017(d) provides that, for the purposes of voting solicitation, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. The record date is typically the date that the disclosure statement is approved. The Debtors request that the Court establish the date upon which the Disclosure Statement is approved as the “Record Holder Date” for purposes of voting on the Plan.<sup>5</sup>

B. **Effect of Record Holder Date for the Holders of Claims.**

30. Pursuant to the Plan, the Holders of Claims in Classes 5 and 6 are Impaired and are entitled to vote (together, the “Voting Classes”). The Debtors propose that only the following parties within the Voting Classes be entitled to vote on the Plan: (a) the Holders of Claims that were not listed as contingent, unliquidated, or disputed on the Debtors’ Schedules; (b) the Holders of Claims who have filed timely proofs of Claim; and (c) the assignees of transferred and assigned Claims; provided, however, that such assignees will be permitted to vote such Claims only if evidence of the transfer and assignment has been filed in accordance with Federal Rule of Bankruptcy Procedure 3001 as of the close of business on the Record Holder Date.

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<sup>5</sup> The establishment of the Record Holder Date is for voting purposes only and shall have no preclusive effect regarding who is entitled to receive distributions under the Plan.

31. The Debtors further propose that Holders of Claims shall not be permitted to vote on the Plan if their Claims are subject to a pending objection on the Voting Deadline, as defined below, or, with respect to transferred and assigned Claims, there is an objection to the transfer, filed in accordance with Rule 3001 of the Federal Rules of Bankruptcy Procedure, pending on the close of business on the date of the Voting Deadline; provided, however, that the prohibition on voting in this paragraph be subject to motions filed pursuant to section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a) requesting temporary allowance of any Claim in an amount which the Court deems proper for the purpose of voting and a Court Order so authorizing temporary allowance for voting has been entered.

**C. Procedures for Solicitation of Votes and Limiting Notice.**

32. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to Holders of Claims for purposes of soliciting their votes on a plan of reorganization and providing adequate notice of the hearing on confirmation of a plan of reorganization. Bankruptcy Rule 3017(d) provides:

Upon approval of the disclosure statement,—except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors, equity security holders, and indenture trustees in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan . . .

Fed. R. Bankr. P. 3017(d).

33. Under the Plan, only Holders of Claims in the Voting Classes are entitled to vote to accept or reject the Plan.

34. As further discussed below, after the Court has approved the proposed Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code, the Debtors propose to distribute by first class mail to parties in the classes entitled to vote on the Plan (i.e., the Voting Classes) a package containing solicitation materials (the “Solicitation Package”) including:

- A. The Disclosure Statement Order;
- B. The applicable form of Ballot, substantially in the form approved by the Court;
- C. A pre-addressed return envelope;
- D. A copy of the Disclosure Statement, as approved by the Court, with the Plan and other exhibits attached thereto; and
- E. Such other materials as the Court may direct, if any.

35. In addition to the Voting Classes, the Debtors will also serve the Solicitation Package (without the Ballot materials) on: (i) the United States Trustee; (ii) counsel to LIMAB; (iii) the Debtors' secured creditors other than the Noteholders; (iv) the Internal Revenue Service and all other known taxing authorities with potential Claims against the estates; (v) the Attorneys General of any states where the Debtors have operated; (vi) the Securities and Exchange Commission; (vii) counsel to the Committee; and (viii) any party which has filed, prior to the date of the entry of the Disclosure Statement Order, a request for service of pleadings in this case (collectively, with the Voting Classes, the "Solicitation Package Recipients").

36. Under the Plan, Holders of Claims in (i) Class 1 (Priority Claims), (ii) Class 2 (JP Morgan Chase Secured Claim), (iii) Class 3 (Continuing Employment Claims), (iv) Class 4 (Customer Claims), (v) Class 7 (Intercompany Claims), and (vi) Class 9 (Intercompany Interests) (collectively, the "Unimpaired Creditors") are not impaired under the Plan. Such Holders are therefore deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Furthermore, consistent with section 1126(g)(1) of the Bankruptcy Code and Bankruptcy Rule 3017(d), Holders of Existing Equity Interests in Class 8 will receive nothing under the Plan and, therefore, all Holders of Class 8 Interests are conclusively presumed to reject the Plan (the "Rejecting Interest Holders").

37. The Debtors propose that with respect to the Holders of Unimpaired Claims, Unclassified Claims, the Rejecting Interest Holders, and all creditors whose Claims were listed in the Debtors' Schedules as being contingent, unliquidated, and/or disputed, unless a proof of Claim was timely filed (the "Contingent Claim"), receive a copy of a notice of the confirmation hearing (the "Confirmation Hearing Notice"), the form of which is attached as **Exhibit C**, in lieu of receiving a Solicitation Package. Holders of Unimpaired Claims, Unclassified Claims, Rejecting Interests, and Contingent Claims are referred to herein as the "Notice Parties".

38. The Confirmation Hearing Notice contains, among other things, the deadline to object to confirmation of the Plan, the date of the hearing on confirmation of the Plan, and instructions by which the Notice Parties may obtain copies, free of charge, of the Solicitation Package. The Confirmation Hearing Notice also identifies all deadlines related to Assumed Contracts and Leases including (i) the deadline for the Debtors to file the Schedule of Assumed Contracts and Lease, inclusive of cure amounts, if any and (ii) the deadline for counterparties to executory contracts and unexpired leases designated for assumption to file objections thereto.

39. The Debtors also propose that service requirements regarding Class 4 (Customer Claims) be modified such that notice will be deemed sufficient upon the issuance of a press release regarding the information contained within the Confirmation Hearing Notice. As a practical matter, the Debtors lack mailing addresses for most of the Holders of Customer Claims, many of whom have purchased gift cards redeemable for food or merchandise. The Debtors typically do not collect mailing information from customers who purchase gift cards. Therefore, the Debtors will, instead, provide notice to Holders of Customer Claims (who are Unimpaired under the Plan) by: (i) issuing a press release which will include substantially all of the information contained within the Confirmation Hearing Notice and (ii) posting the Confirmation Hearing Notice on the Debtors' website (together, the "Customer Notice Procedures"). The Debtors request that Customer Notice Procedures be deemed sufficient regarding Class 4 Customer Claims.

40. The Debtors submit that the notice procedures proposed regarding the Notice Parties (including notice to Holders of Customer Claims) satisfies the requirements of the Bankruptcy Code and Bankruptcy Rule 3017(d). Accordingly, the Debtors request that the Court approve the form and manner of notice described herein.

**D. Establishment of Voting Record Date and Timing of Distribution of Solicitation Packages.**

41. Within two (2) business days after entry of the Disclosure Statement Order (the "Solicitation Commencement Date"), the Debtors will commence distribution of the Solicitation Package to Voting Classes and to the Solicitation Package Recipients.

42. Also on the Solicitation Commencement Date, the Debtors will distribute the Confirmation Hearing Notice to the Notice Parties.

43. Further, on the Solicitation Commencement Date, the Debtors will implement the Customer Notice Procedures by issuing a press release and posting the Confirmation Hearing Notice on the Debtors' website.

**E. Approval of Forms of Ballots.**

44. Bankruptcy Rule 3017(d) requires the Debtors to mail a form of ballot to "creditors and equity security holders entitled to vote on the plan." Fed. R. Bankr. P. 3017(d). The Debtors propose to distribute to each of certain creditors, as described below, a Ballot substantially in the forms attached as **Exhibit B** (*i.e.*, Exhibit B-1 is the Class 5 Ballot Form and Exhibit B-2 is the Class 6 Ballot Form). The forms of the Ballots are based upon Official Form No. 14, but have been modified to address the particular aspects of these Bankruptcy Cases.

**F. Voting Deadline for Receipt of Ballots.**

45. Pursuant to Bankruptcy Rule 3017(c), the Debtors propose that, in order to be counted as votes to accept or reject the Plan, all Ballots must be properly executed, completed, and delivered to the Debtors by first-class mail, by overnight mail, or by personal delivery so that the Ballots are received by Debtors' counsel (the "Balloting Agent") no later than 4:30 p.m. Eastern Time on April 14, 2017 (the "Voting Deadline"). The Debtors believe that the proposed deadline for submitting Ballots is sufficient to provide creditors with the opportunity to review and analyze the Plan and Disclosure Statement.

**G. Tabulation Procedures with Regarding to Holders of Claims.**

46. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

47. Further, Bankruptcy Rule 3018(a) provides that the "court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting the plan." Fed. R. Bankr. P. 3018(a).

48. Solely for the purposes of voting to accept or reject the Plan (and not for the purpose of the allowance of, or distribution on account of, a Claim and without prejudice to the rights of the Debtors in any other context), the Debtors propose that each Claim within a Class of Claims entitled to vote to accept or reject the Plan be temporarily allowed in accordance with the following rules (the "Tabulation Procedures"):

- a. if a Holder of a Claim has filed a timely proof of Claim, the amount asserted in such proof of Claim shall be used to calculate the amount of such Claim for voting purposes unless an objection has been filed to such proof of Claim prior to the Voting Deadline, in which event the amount of such Claim shall be the greater of the amount of such Claim (i) listed on the Debtors' Schedules as non-contingent, liquidated, undisputed and (ii) that the Debtors state in such objection as being unobjectionable;
- b. if a Holder of a Claim that is listed on the Debtors' Schedules as non-contingent, liquidated, undisputed has not filed a timely proof of Claim, the amount listed on the Schedules as non-contingent, liquidated, undisputed shall be the amount of such Claim for voting purposes unless an objection has been filed to such Claim prior to the Voting Deadline, in which event the amount of such Claim shall be the amount, if any, that the Debtors state in such objection as being unobjectionable;
- c. the classification of a Claim as set forth on a Ballot submitted by the Holder of the Claim shall be deemed temporarily allowed for voting purposes only, and the Ballot will be counted, unless (i) the Debtors file an objection to the classification of such Claim prior to the Voting Deadline or (ii) the Bankruptcy Court temporarily disallows the alleged classification of the Claim or disallows the Claim, in part or in full, for the purpose of accepting or rejecting the Plan in accordance with Bankruptcy Rule 3018. In the event that the Debtors' objection to the classification of such Claim concedes that such Claim should be reclassified in a certain amount, then unless the Debtors or other party in interest have otherwise objected to the Claim, such Ballot shall be counted in such reclassified Class in such amount;
- d. if a Claim has been estimated or otherwise allowed for voting purposes by order of the Court, such Claim will be temporarily allowed for voting purposes in the amount so estimated or allowed by the Court; and
- e. if a Holder of a Claim identifies an amount on its Ballot that is less than the amount otherwise calculated in accordance with the Tabulation Rules, the Claim will be allowed for voting purposes only in the lesser amount identified on such Ballot.

49. Pursuant to sections 105 and 1126 of the Bankruptcy Code, the Debtors request that the Court direct as follows with respect to all Ballots submitted by the Holders of a Claim:

- a. Any Ballot that is properly completed, executed, and timely returned to the Balloting Agent that does not indicate an acceptance or rejection of the Plan shall be deemed to be a vote to accept the Plan;
- b. Any Ballot that is returned to the Balloting Agent indicating acceptance or rejection of the Plan but that is unsigned shall not be counted;
- c. Whenever a Holder of a Claim casts more than one Ballot voting the same Claim prior to the Voting Deadline, only the last timely Ballot received by the Balloting Agent shall be deemed to supersede the prior Ballot(s) and shall be counted;
- d. If a Holder of a Claim casts simultaneous duplicative Ballots that are voted inconsistently, such Ballots shall count as one vote accepting the Plan;
- e. Each Holder of more than one Claim in a particular Class shall be entitled to cast only one Ballot regardless of the number of timely-filed proofs of Claim in such Class by such Holder;
- f. each Holder of a Claim shall be deemed to have voted the full amount of its Claim or Claims in each particular Class, and such votes may not be split;
- g. Each Holder who holds a Claim or Claims in more than one Class shall be entitled to cast one Ballot per Class;
- h. Any Ballots (or group of Ballots within the same Class received from a single creditor) that partially reject and partially accept the Plan shall be deemed a vote to accept the Plan in the full amount of such Claim;
- i. A Ballot cast by a Holder of a Claim that is subject to a pending objection on the Voting Deadline shall be determined for voting purposes as the greater of the amount of such Claim (i) listed on the Debtors' Schedules as non-contingent, liquidated, undisputed and (ii) that the Debtors state in such objection as being unobjectionable;
- j. Any Ballot that is returned to the Balloting Agent indicating a vote for acceptance or rejection of the Plan and is signed but that fails to provide a complete mailing address shall be counted if the Balloting Agent can reasonably determine the identity of the Holder of the Claim by reference to the Creditor Matrix, Schedules, or otherwise; and

k. Any Ballot received by the Balloting Agent by telecopier, facsimile, or other electronic communication, including by email in portable document format (“pdf”) or other similar format, shall not be counted.

50. The Debtors submit that establishing the tabulation procedures set forth above is necessary to avoid any confusion resulting from incompletely or inconsistently executed Ballots and will simplify the voting and tabulation process.

**H. Procedures for Executory Contracts and Unexpired Leases to be Assumed Under the Plan.**

51. The Plan provides for the assumption of certain executory contracts and unexpired leases governed by section 365 of the Bankruptcy Code to which any of the Debtors are parties. Toward that end, the Plan provides that not less than ten (10) Business Days prior to the Confirmation Hearing, and consistent with the requirements of section 365 of the Bankruptcy Code, the Debtors shall file and serve a notice with the Court listing the cure amounts for all Assumed Contracts and Leases.<sup>6</sup> The parties to such Assumed Contracts and Leases shall have five (5) Business Days prior to the Confirmation Hearing to object to the cure amounts listed by the Debtors.

52. The Plan provides that if there are any objections filed with respect to assumption or to the cure amount, the Court shall conduct a hearing to consider any objections thereto.

53. Under the Plan, to the extent that any non-Debtor party previously filed a timely objection to the Debtors’ proposed assumption and assignment of any executory contract or unexpired lease in connection with the Sale Motion, the substance of said objection is preserved and will be considered by the Court in connection with the Confirmation Hearing.

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<sup>6</sup> The Cure Notice will be in a format substantially similar to the form of Notices of Assumption and Assignment previously filed in connection with the Debtors’ proposed asset sale.

**VI. Confirmation Hearing and Objection Deadline.**

54. Pursuant to Bankruptcy Rule 3020(b)(2), the Debtors request that the Court enter an Order setting a date and time to consider confirmation of the Plan.

55. Pursuant to Bankruptcy Rule 2002, a plan proponent is required to give creditors and equity interest holders not less than twenty-eight (28) days' notice of the time fixed for filing objections to, and the hearing on, confirmation of a plan of reorganization, unless that time is shortened. The Debtor requests that the Court establish a deadline (the "Objection Deadline") for filing and serving objections to confirmation of the Plan ("Confirmation Objections") that is at least ten (10) days prior to the Confirmation Hearing, or April 14, 2017.

56. In order to avoid confusion regarding Confirmation Objections, the Debtors request that the Court direct that any Confirmation Objections (a) be in writing, (b) state the name and address of the objector, (c) comply with the Federal Rules of Bankruptcy Procedure and the Massachusetts Local Bankruptcy Rules, (d) state the amount of the objector's Claim or the nature of its interest, and the nature of the objection or modification sought and the legal basis therefor, (e) be filed and served on or before 4:30 p.m. Eastern Time on the Objection Deadline, and (f) be filed with the Clerk, United States Bankruptcy Court, John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts 02109, with copies served upon (i) counsel to the Debtors, Mirick, O'Connell, DeMallie & Lougee, LLP, 1800 West Park Drive, Westborough, Massachusetts, 01581 (Attn: Christine E. Devine, Esq. and Joseph H. Baldiga, Esq.); (ii) the Office of the United States Trustee for the District of Massachusetts, John W. McCormack Post Office & Courthouse, 5 Post Office Square, 10th Floor, Suite 1000, Boston, MA 02109 (Attn: Paula R.C. Bachtell, Esq.); (iii) counsel to the Committee, Nixon Peabody LLP, 100 Summer Street, Boston, MA 02110 (Attn: Lee Harrington, Esq.); and (iv) counsel to the DIP Lenders and Noteholders, Vinson & Elkins, LLP, 666 Fifth Avenue, 26th Floor, New York, NY 10103 (Attn: Steve M. Abramowitz, Esq.).

**VII. Notice of this Motion.**

57. The Debtors will serve a copy of this Motion, the proposed Disclosure Statement, and the proposed Plan upon (a) the Debtors, (b) the Office of the United States Trustee for the District of Massachusetts, (c) counsel to the Committee, (d) counsel to the DIP Lenders and Noteholders, and (e) any party, as of the date of the filing of this Motion, who has requested notice of pleadings in this case. The Debtors will provide notice of the hearing to consider the adequacy of the Disclosure Statement and the objection and/or response deadline related to this Motion on all creditors and parties in interest.

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form attached as **Exhibit A**, granting the relief requested in this Motion and awarding to the Debtors such other and further relief that the Court deems just and proper under the circumstances.

Respectfully submitted,

COSI, INC., *ET AL.*

By their counsel,

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Joseph H. Baldiga, BBO #549963  
Christine E. Devine, BBO #566990  
Kate P. Foley, BBO #682548  
Mirick, O'Connell, DeMallie & Lougee, llp  
1800 West Park Drive, Suite 400  
Westborough, MA 01581-3926  
Phone: (508) 898-1501  
Fax: (508) 898-1502  
Email: bankrupt@mirickoconnell.com  
Email: cdevine@mirickoconnell.com  
Email: kfoley@mirickoconnell.com

Dated: February \_\_\_\_\_, 2017

IN RE: COSI, INC. *ET AL.*

BANKRUPTCY CASE NO. 16-13704-MSH

EXHIBIT A TO

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF REORGANIZATION OF COSI, INC., XANDO COSI OF MARYLAND, INC., COSI SANDWICH BAR, INC., HEARTHSTONE ASSOCIATES, LLC, AND HEARTHSTONE PARTNERS, LLC, (II) APPROVING CERTAIN BALLOTING, TABULATION, SOLICITATION, OBJECTION, AND NOTICE PROCEDURES, AND (III) SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE PLAN AND OBJECTION DEADLINES

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:

COSI, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-13704-MSH

(Jointly Administered)

**ORDER (I) APPROVING DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF REORGANIZATION OF THE DEBTORS, (II) APPROVING CERTAIN BALLOTING, TABULATION, SOLICITATION, OBJECTION, AND NOTICE PROCEDURES, AND (III) SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE PLAN AND OBJECTION DEADLINES**

This matter coming before the Court on the *Debtors' Motion for Entry of An Order (I) Approving Disclosure Statement with Respect to Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC, (II) Approving Certain Balloting, Tabulation, Solicitation, Objection, and Notice Procedures, and (III) Scheduling a Hearing to Consider Confirmation of the Plan and Objection Deadlines* (the "Motion"), filed by Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC (collectively, the "Debtors"), pursuant to 11 U.S.C. §§ 105(a), 1125(b), 1126, and 1128 and Rules 2002, 3016, 3017, 3018, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure, and MLBR 3017-1; the Court having reviewed the Motion and all pleadings related thereto and after due deliberation and sufficient cause appearing therefor:

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<sup>1</sup> The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704-MSH), Xando Cosi of Maryland, Inc. (Case No. 16-13706-MSH), Cosi Sandwich Bar, Inc. (Case No. 16-13705-MSH), Hearthstone Associates, LLC (Case No. 16-13707-MSH), and Hearthstone Partners, LLC (Case No. 16-13708-MSH). The Debtors' corporate offices are located at 294 Washington Street, Suite 510, Boston, Massachusetts 02108. The cases are jointly administered under the Cosi, Inc. case number.

**THE COURT HEREBY FINDS, ORDERS, AND DETERMINES THAT:**

1. Pursuant to section 1125(b) of the Bankruptcy Code and Rule 3017(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) the Disclosure Statement<sup>2</sup> is approved as containing adequate information within the meaning of section 1125 of the Bankruptcy Code, and (b) to the extent not withdrawn, settled or resolved, all objections to the Disclosure Statement are overruled.
2. The Disclosure Statement and the relief requested in the Motion are hereby approved.
3. For voting purposes and for the purposes of the mailing of notices and Solicitation Packages (as defined below), \_\_\_\_\_, 2017 shall be the “Record Holder Date” for holders of Claims.
4. The forms of Ballots for Classes 5 and 6 attached as Exhibit B-1 and Exhibit B-2, respectively, are hereby approved.
5. The Confirmation Hearing Notice in substantially the form attached to the Motion as Exhibit C is hereby approved. The Debtors are directed to serve copies of the Confirmation Hearing Notice, along with the other materials comprising the Solicitation Package, in accordance with the procedures set forth herein and in the Motion.
6. On or before \_\_\_\_\_, 2017, the Debtors shall cause to be deposited in the United States mail, postage prepaid, a solicitation package (the “Solicitation Package”) that shall include the following: (a) a copy of the proposed *Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Partners, LLC, and Hearthstone Associates, LLC* (the “Plan”); (b) a copy of the Disclosure Statement, as approved by the Court in this Order (with exhibits); (c) an appropriate Ballot, substantially in the form of the respective Ballot attached to the Motion as Exhibit B-1 and Exhibit B-2 (as applicable); (d) a copy of this Order; and (e) a pre-addressed return envelope.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

7. The Solicitation Package shall be mailed to Solicitation Package Recipients, inclusive of the Voting Parties (i.e., Class 5 (Noteholder Secured Claims) and Class 6 (General Unsecured Claims), in accordance with the procedures set forth herein and in the Motion.

8. On or before \_\_\_\_\_, 2017, the Confirmation Hearing Notice shall be mailed to the Unimpaired Creditors (except for Holders of Customer Claims), Unclassified Creditors, and Rejecting Interest Holders in lieu of receiving a Solicitation Package.

9. On or before \_\_\_\_\_, 2017, the Debtors shall issue a press release regarding the information contained within the Confirmation Hearing Notice and post the full text of the Confirmation Hearing Notice on its website.

10. On or before, \_\_\_\_\_, 2017, the Debtors shall file and serve the Schedule of Assumed Contracts and Leases, which schedule shall identify executory contracts and unexpired leases to be assumed, or assumed and assigned to another Reorganized Debtor, under the Plan and the respective Cure Claim for each.

11. All persons and entities entitled to vote on the Plan must deliver their Ballots by mail, hand delivery, or overnight courier so as to be received no later than 4:30 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2017 (the "Voting Deadline") to Debtors' counsel (the "Balloting Agent") at:

Mirick, O'Connell, DeMallie & Lougee, llp  
Attn: Kate P. Foley, Esq.  
1800 West Park Drive, Suite 400  
Westborough, MA 01581

Any Ballot received after such time shall not be counted other than as provided for in this Order.

12. With respect to Ballots submitted by a Holder of a Claim:

- a. Any Ballot that is properly completed, executed, and timely returned to the Balloting Agent that does not indicate an acceptance or rejection of the Plan shall be deemed to be a vote to accept the Plan;
- b. Any Ballot that is returned to the Balloting Agent indicating acceptance or rejection of the Plan but that is unsigned shall not be counted;
- c. Whenever a Holder of a Claim casts more than one Ballot voting the same Claim prior to the Voting Deadline, only the last timely Ballot received by the Balloting Agent shall be deemed to supersede the prior Ballot(s) and shall be counted;
- d. If a holder of a Claim casts simultaneous duplicative Ballots that are voted inconsistently, such Ballots shall count as one vote accepting the Plan;
- e. Each holder of more than one Claim in a particular Class shall be entitled to cast only one Ballot regardless of the number of timely-filed proofs of claim in such Class by such holder;
- f. Each holder of a Claim shall be deemed to have voted the full amount of its Claim or Claims in each particular Class, and such votes may not be split;
- g. Each holder who holds a Claim or Claims in more than one Class shall be entitled to cast one Ballot per Class;
- h. Any Ballots (or group of Ballots within the same Class received from a single creditor) that partially reject and partially accept the Plan shall be deemed to vote to accept the Plan in the full amount of such Claim;
- i. A Ballot cast by a holder of a Claim that is subject to a pending objection on the Voting Deadline shall be determined for voting purposes as the greater of the amount of such Claim (i) listed on the Debtors' Schedules as non-contingent, liquidated, undisputed and (ii) that the Debtors state in such objection as being unobjectionable;
- j. Any Ballot that is returned to the Balloting Agent indicating a vote for acceptance or rejection of the Plan and is signed but that fails to provide a complete mailing address shall be counted if the Balloting agent can reasonably determine the identity of the holder of the Claim by reference to the Creditor Matrix, Schedules, or otherwise; and

- k. Any Ballot received by the Balloting Agent by telecopier, facsimile, or other electronic communication, including by email in portable document format (“pdf”) or other similar format, shall not be counted.

13. The hearing to consider confirmation of the Plan is scheduled for \_\_\_\_\_, 2017 at \_\_\_\_\_ p.m. (prevailing Eastern Time) (the “Confirmation Hearing”) before the Honorable Melvin S. Hoffman, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court located at Courtroom No. 2, 12<sup>th</sup> Floor of the John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts 02109. The Confirmation Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date(s) at said hearing and at any adjourned hearing(s).

14. Any objection to confirmation of the Plan must be filed with the Clerk of the Bankruptcy Court, United States Bankruptcy Court, John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts 02109, together with proof of service, no later than 4:30 pm. (prevailing Eastern Time) on or before \_\_\_\_\_, 2017 and must be served upon (i) counsel to the Debtors, Mirick, O’Connell, DeMallie & Lougee, llp, 1800 West Park Drive, Westborough, Massachusetts, 01581 (Attn: Christine E. Devine, Esq. and Joseph H. Baldiga, Esq.); (ii) the Office of the United States Trustee for the District of Massachusetts, John W. McCormack Post Office & Courthouse, 5 Post Office Square, 10th Floor, Suite 1000, Boston, MA 02109 (Attn: Paula R.C. Bachtell, Esq.); (iii) counsel to the Committee, Nixon Peabody LLP, 100 Summer Street, Boston, MA 02110 (Attn: Lee Harrington, Esq.); and (iv) counsel to the DIP Lenders and Noteholders, Vinson & Elkins, LLP, 666 Fifth Avenue, 26th Floor, New York, NY 10103 (Attn: Steve M. Abramowitz, Esq.) (collectively, the “Objection Notice Parties”). Any objection to confirmation of the Plan must (a) be in writing, (b) state the name and address of the objecting party, (c) comply with the Federal Rules of Bankruptcy Procedure and the Massachusetts Local Bankruptcy Rules, and (d) state the amount of the objector’s claim or the nature of its interest, the nature of the objection or modification sought, and the legal basis therefor.

15. Any objection to the assumption of an executory contract or unexpired lease designated for assumption on the Schedule of Assumed Contracts and Leases must be filed with the Clerk of the Bankruptcy Court, United States Bankruptcy Court, John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts 02109, together with proof of service, no later than 4:30 pm. (prevailing Eastern Time) on or before \_\_\_\_\_, 2017 and must be served upon the Objection Notice Parties. Any objection to assumption of Lease or Contract must (a) be in writing, (b) state the name and address of the objecting party, (c) comply with the Federal Rules of Bankruptcy Procedure and the Massachusetts Local Bankruptcy Rules, and (d) state the basis of the objection.

16. ANY CONFIRMATION OBJECTION NOT FILED AND SERVED AS SET FORTH IN THIS ORDER SHALL BE DEEMED WAIVED AND SHALL NOT BE CONSIDERED BY THE COURT.

17. Replies to any objections to confirmation must be filed no later April \_\_\_\_, 2017.

18. The period during which the Debtors may solicit votes to accept or reject the Plan as established by this Order provides sufficient time for creditors to make informed decisions to accept or reject the Plan.

19. The procedures for solicitation and tabulation of votes to accept or reject the Plan, as approved herein, provide a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

20. The contents of the Solicitation Package and the procedures for providing notice of the Confirmation Hearing and other matters set forth in the Confirmation Hearing Notice comply with Bankruptcy Rules 2002 and 3017 and with MLBR 3017-1.

21. Each Claim within Class 5 and Class 6 shall be temporarily allowed in accordance with the following rules (the "Tabulation Rules"), which are APPROVED:

- a. if a Holder of a Claim has filed a timely proof of claim, the amount asserted in such proof of Claim shall be used to calculate the amount of such Claim for voting purposes unless an objection has been filed to such proof of claim prior to the Voting Deadline, in which event the amount of such Claim shall be the greater of the amount of such Claim (i) listed on the Debtors' Schedules as non-contingent, liquidated, undisputed and (ii) that the Debtors state in such objection as being unobjectionable;
- b. if a Holder of a Claim that is listed on the Debtors' Schedules as non-contingent, liquidated, undisputed has not filed a timely proof of claim, the amount listed on the Schedules as non-contingent, liquidated, undisputed shall be the amount of such Claim for voting purposes unless an objection has been filed to such Claim prior to the Voting Deadline, in which event the amount of such Claim shall be the amount, if any, that the Debtors state in such objection as being unobjectionable;
- c. the classification of a Claim as set forth on a Ballot submitted by the holder of the Claim shall be deemed temporarily allowed for voting purposes only, and the Ballot will be counted, unless (i) the Debtors file an objection to the classification of such claim prior to the Voting Deadline or (ii) the Bankruptcy Court temporarily disallows the alleged classification of the Claim or disallows the Claim, in part or in full, for the purpose of accepting or rejecting the Plan in accordance with Bankruptcy Rule 3018. In the event that the Debtors' objection to the classification of such claim concedes that such Claim should be reclassified in a certain amount, then unless the Debtors or other party in interest have otherwise objected to the Claim, such Ballot shall be counted in such reclassified Class in such amount;
- d. if a Claim has been estimated or otherwise allowed for voting purposes by order of the Court, such Claim will be temporarily allowed for voting purposes in the amount so estimated or allowed by the Court; and
- e. if a Holder of a Class 5 or Class 6 Claim identifies a claim amount on its Ballot that is less than the amount otherwise calculated in accordance with the Tabulation Rules, the Claim will be allowed for voting purposes only in the lesser amount identified on such Ballot.

22. For purposes of determining whether the requirements of sections 1126(c) and 1126(d) of the Bankruptcy Code have been satisfied regarding requirements for number and amounts of accepting Claims, the Debtors shall tabulate only those Ballots cast by the Voting Deadline.

23. The terms of this Order shall be effective immediately upon its entry.

Dated: \_\_\_\_\_, 2017

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Honorable Melvin S. Hoffman  
Chief United States Bankruptcy Judge

IN RE: COSI, INC. *ET AL.*

BANKRUPTCY CASE NO. 16-13704-MSH

EXHIBIT B-1 TO

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF REORGANIZATION OF COSI, INC., XANDO COSI OF MARYLAND, INC., COSI SANDWICH BAR, INC., HEARTHSTONE ASSOCIATES, LLC, AND HEARTHSTONE PARTNERS, LLC, (II) APPROVING CERTAIN BALLOTING, TABULATION, SOLICITATION, OBJECTION, AND NOTICE PROCEDURES, AND (III) SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE PLAN AND OBJECTION DEADLINES

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:

COSI, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-13704-MSH

(Jointly Administered)

**CLASS 5 BALLOT (NOTEHOLDER SECURED CLAIMS) FOR  
ACCEPTING OR REJECTING PLAN OF REORGANIZATION**

Cosi, Inc. ("COSI"), Xando Cosi of Maryland, Inc. ("Xando"), Cosi Sandwich Bar, Inc. ("CSB"), Hearthstone Associates, LLC ("HALLC"), and Hearthstone Partners, LLC ("HPLLC"; collectively, with COSI, Xando, CSB, and HALLC, the "Debtors"), are soliciting votes with respect to the *Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC* (as may be amended, supplemented, or modified from time-to-time, the "Plan") under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. 101, *et seq.* (the "Bankruptcy Code") from the Holders of certain Impaired Claims against the Debtors.<sup>2</sup> The United States Bankruptcy Court for the District of Massachusetts (the "Court") has authorized the Debtors to disseminate the Plan and accompanying Disclosure Statement, together with this Ballot. The Disclosure Statement provides information to assist you in deciding how to vote. A copy of the Plan and Disclosure Statement are included with this Ballot. If you have not received a copy of the Plan and Disclosure Statement, you may obtain a copy of each at no cost by contacting Debtors' counsel, Mirick, O'Connell, DeMallie & Lougee, llp, Attn: Kate P. Foley, Esq., at (508) 898-1501 or kfoley@mirickoconnell.com.

Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court.

You should review the Plan and Disclosure Statement before you vote. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim under the Plan. Your Claim has been placed in Class 5 under the Plan. Pay specific attention to those provisions of the Plan that discuss the treatment of Class 5 claims.

<sup>1</sup> The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704-MSH), Xando Cosi of Maryland, Inc. (Case No. 16-13706-MSH), Cosi Sandwich Bar, Inc. (Case No. 16-13705-MSH), Hearthstone Associates, LLC (Case No. 16-13707-MSH), and Hearthstone Partners, LLC (Case No. 16-13708-MSH). The Debtors' corporate offices are located at 294 Washington Street, Suite 510, Boston, Massachusetts 02108. The cases are jointly administered under the Cosi, Inc. case number.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan.

THE DEBTORS [AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS] RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

IN ORDER FOR YOUR VOTE TO BE COUNTED, THE BALLOT MUST BE PROPERLY COMPLETED, SIGNED AND RETURNED SO THAT IT IS RECEIVED BY THE DEBTORS BY 4:30 P.M. PREVAILING EASTERN TIME ON APRIL \_\_\_\_\_, 2017 (THE "VOTING DEADLINE").

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PLEASE COMPLETE THE FOLLOWING:

**ITEM 1: Amount of Claim.** For purposes of voting to accept or reject the Plan, the undersigned holds a Class 5 Claim against one or more of the Debtors in the unpaid amount of \$ \_\_\_\_\_.

**ITEM 2: Vote on the Plan.** The undersigned Holder of a Class 5 Claim against one or more of the Debtors hereby votes to:

Check **one** box:  **ACCEPT** the Plan

**REJECT** the Plan

**ITEM 3:** Article X.F. of the Plan includes provisions that provide that Holders of Impaired Claims will release, to the maximum extent permitted by applicable law, any claims or causes of action against certain specified non-Debtor parties (*i.e.*, the Released Parties), which releases are included in the Plan in exchange for the funds such parties provided to fund creditor Distributions under the Plan and for settlements of those parties' Claims against the Debtors (such release, as set forth in Article X.F. of the Plan, the "Third-Party Release"). As a Holder of an Impaired Claim, you should read Article X.F. of the Plan carefully as it affects your rights. If you **do not consent** to the Third-Party Release being given by you in consideration for the value you will receive as a creditor under the Plan, you must return this Ballot with the box set forth below checked in order to "opt out" of the Third-Party Release. If you return this Ballot without the box checked below, you will be deemed to consent to the Third-Party Release.

Opt-Out (**optional**):  The undersigned does not consent to the Third-Party Release.

**ITEM 4: Acknowledgements and Certification.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, dated \_\_\_\_\_, 2017, including all exhibits thereto. The undersigned certifies that (i) it is the holder of the Claim against or Interest in the Debtor described in this Ballot, and (ii) the undersigned has full power and authority to vote to accept or reject the Plan. The undersigned understands that if the Ballot is validly executed but does not indicate either acceptance or rejection of the Plan, then this Ballot will be counted as an **acceptance** of the Plan. The undersigned further acknowledges that the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement.

Print or Type Name of Claimant: \_\_\_\_\_  
Signature: \_\_\_\_\_  
If by Authorized Agent, Name and Title of Agent: \_\_\_\_\_  
If Agent is NOT an Individual, Name of Entity: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, and Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Date Completed: \_\_\_\_\_

IN RE: COSI, INC. *ET AL.*

BANKRUPTCY CASE NO. 16-13704-MSH

EXHIBIT B-2 TO

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF REORGANIZATION OF COSI, INC., XANDO COSI OF MARYLAND, INC., COSI SANDWICH BAR, INC., HEARTHSTONE ASSOCIATES, LLC, AND HEARTHSTONE PARTNERS, LLC, (II) APPROVING CERTAIN BALLOTING, TABULATION, SOLICITATION, OBJECTION, AND NOTICE PROCEDURES, AND (III) SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE PLAN AND OBJECTION DEADLINES

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:

COSI, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-13704-MSH

(Jointly Administered)

**CLASS 6 BALLOT (GENERAL UNSECURED CLAIMS) FOR  
ACCEPTING OR REJECTING PLAN OF REORGANIZATION**

Cosi, Inc. (“COSI”), Xando Cosi of Maryland, Inc. (“Xando”), Cosi Sandwich Bar, Inc. (“CSB”), Hearthstone Associates, LLC (“HALLC”), and Hearthstone Partners, LLC (“HPLLC”; collectively, with COSI, Xando, CSB, and HALLC, the “Debtors”), are soliciting votes with respect to the *Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC* (as may be amended, supplemented, or modified from time-to-time, the “Plan”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. 101, *et seq.* (the “Bankruptcy Code”) from the Holders of certain Impaired Claims against the Debtors.<sup>2</sup> The United States Bankruptcy Court for the District of Massachusetts (the “Court”) has authorized the Debtors to disseminate the Plan and accompanying Disclosure Statement, together with this Ballot. The Disclosure Statement provides information to assist you in deciding how to vote. A copy of the Plan and Disclosure Statement are included with this Ballot. If you have not received a copy of the Plan and Disclosure Statement, you may obtain a copy of each at no cost by contacting Debtors’ counsel, Mirick, O’Connell, DeMallie & Lougee, llp, Attn: Kate P. Foley, Esq., at (508) 898-1501 or kfoley@mirickoconnell.com.

Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court.

You should review the Plan and Disclosure Statement before you vote. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim under the Plan. Your Claim has been placed in Class 6 under the Plan. Pay specific attention to those provisions of the Plan that discuss the treatment of Class 6 claims.

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<sup>1</sup> The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704-MSH), Xando Cosi of Maryland, Inc. (Case No. 16-13706-MSH), Cosi Sandwich Bar, Inc. (Case No. 16-13705-MSH), Hearthstone Associates, LLC (Case No. 16-13707-MSH), and Hearthstone Partners, LLC (Case No. 16-13708-MSH). The cases are jointly administered under the Cosi, Inc. case number.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Plan.

THE DEBTORS [AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS] RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

IN ORDER FOR YOUR VOTE TO BE COUNTED, THE BALLOT MUST BE PROPERLY COMPLETED, SIGNED AND RETURNED SO THAT IT IS RECEIVED BY THE DEBTORS BY 4:30 P.M. PREVAILING EASTERN TIME ON APRIL \_\_\_\_\_, 2017 (THE "VOTING DEADLINE").

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PLEASE COMPLETE THE FOLLOWING:

**ITEM 1: Amount of Claim.** For purposes of voting to accept or reject the Plan, the undersigned holds a Class 6 Claim against one or more of the Debtors in the unpaid amount of \$ \_\_\_\_\_.

**ITEM 2: Vote on the Plan.** The undersigned Holder of a Class 6 Claim against one or more of the Debtors hereby votes to:

Check **one** box:  **ACCEPT** the Plan

**REJECT** the Plan

**ITEM 3:** Article X.F. of the Plan includes provisions that provide that Holders of Impaired Claims will release, to the maximum extent permitted by applicable law, any claims or causes of action against certain specified non-Debtor parties (*i.e.*, the Released Parties), which releases are included in the Plan in exchange for the funds such parties provided to fund creditor Distributions under the Plan and for settlements of those parties' Claims against the Debtors (such release, as set forth in Article X.F. of the Plan, the "Third-Party Release"). As a Holder of an Impaired Claim, you should read Article X.F. of the Plan carefully as it affects your rights. If you **do not consent** to the Third-Party Release being given by you in consideration for the value you will receive as a creditor under the Plan, you must return this Ballot with the box set forth below checked in order to "opt out" of the Third-Party Release. If you return this Ballot without the box checked below, you will be deemed to consent to the Third-Party Release.

Opt-Out (**optional**):  The undersigned does not consent to the Third-Party Release.

**ITEM 4: Acknowledgements and Certification.** By signing this Ballot, the undersigned acknowledges that the undersigned has been provided with a copy of the Disclosure Statement, dated \_\_\_\_\_, 2017, including all exhibits thereto. The undersigned certifies that (i) it is the holder of the Claim against or Interest in the Debtor described in this Ballot, and (ii) the undersigned has full power and authority to vote to accept or reject the Plan. The undersigned understands that if the Ballot is validly executed but does not indicate either acceptance or rejection of the Plan, then this Ballot will be counted as an **acceptance** of the Plan. The undersigned further acknowledges that the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement.

Print or Type Name of Claimant: \_\_\_\_\_  
Signature: \_\_\_\_\_  
If by Authorized Agent, Name and Title of Agent: \_\_\_\_\_  
If Agent is NOT an Individual, Name of Entity: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, and Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Date Completed: \_\_\_\_\_

IN RE: COSI, INC. *ET AL.*

BANKRUPTCY CASE NO. 16-13704-MSH

EXHIBIT C TO

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF REORGANIZATION OF COSI, INC., XANDO COSI OF MARYLAND, INC., COSI SANDWICH BAR, INC., HEARTHSTONE ASSOCIATES, LLC, AND HEARTHSTONE PARTNERS, LLC, (II) APPROVING CERTAIN BALLOTING, TABULATION, SOLICITATION, OBJECTION, AND NOTICE PROCEDURES, AND (III) SCHEDULING A HEARING TO CONSIDER CONFIRMATION OF THE PLAN AND OBJECTION DEADLINES

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:

COSI, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-13704-MSH

(Jointly Administered)

**NOTICE REGARDING (I) DISCLOSURE STATEMENT AND JOINT PLAN OF REORGANIZATION, (II) DEADLINE FOR FILING OBJECTIONS TO PLAN CONFIRMATION, (III) DEADLINE FOR FILING OBJECTIONS TO LEASE AND CONTRACT ASSUMPTION AND (IV) HEARING ON PLAN CONFIRMATION**

**PLEASE TAKE NOTICE THAT** on February \_\_\_\_, 2017, Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the District of Massachusetts (the “Court”) the *Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC*, dated \_\_\_\_\_, 2017 [Dkt. No. \_\_\_\_] and a *Disclosure Statement with Respect to Joint Plan of Reorganization of Cosi, Inc., Xando Cosi of Maryland, Inc., Cosi Sandwich Bar, Inc., Hearthstone Associates, LLC, and Hearthstone Partners, LLC*, dated \_\_\_\_\_, 2017 [Dkt. No. \_\_\_\_] (as may be amended, supplemented, or modified from time to time, the “Plan” and “Disclosure Statement,” respectively). On \_\_\_\_\_, 2017, the Court entered an Order approving the Disclosure Statement and certain procedures to be utilized in connection with the solicitation of votes on the Plan. [Dkt. No. \_\_\_\_].

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider confirmation of the Plan is scheduled for **April \_\_\_\_, 2017 at [\_\_\_\_] p.m.** (prevailing Eastern Time) before the Honorable Melvin S. Hoffman, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court located at Courtroom No. 2, 12<sup>th</sup> Floor of the John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts 02109 (the “Confirmation Hearing”). The Confirmation Hearing may be adjourned from time to time without further notice to creditors or other parties in interest, other than by an announcement of such an adjournment in open court at the Confirmation Hearing.

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<sup>1</sup> The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704-MSH), Xando Cosi of Maryland, Inc. (Case No. 16-13706-MSH), Cosi Sandwich Bar, Inc. (Case No. 16-13705-MSH), Hearthstone Associates, LLC (Case No. 16-13707-MSH), and Hearthstone Partners, LLC (Case No. 16-13708-MSH). The cases are jointly administered under the Cosi, Inc. case number.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the confirmation of the Plan must (a) be in writing, (b) state the name and address of the objector, (c) comply with the Federal Rules of Bankruptcy Procedure and the Massachusetts Local Bankruptcy Rules, (d) state the amount of the objector's claim or the nature of its interest, and the nature of the objection or modification sought and the legal basis therefor, (e) be filed and served on or before 4:30 p.m. Eastern Time on or before [April \_\_\_\_, 2017], and (f) be filed with the Clerk, United States Bankruptcy Court, John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts 02109, with copies served upon (i) counsel to the Debtors, Mirick, O'Connell, DeMallie & Lougee, llp, 1800 West Park Drive, Westborough, Massachusetts 01581 (Attn: Christine E. Devine, Esq. and Joseph H. Baldiga, Esq.); (ii) the Office of the United States Trustee for the District of Massachusetts, John W. McCormack Post Office & Courthouse, 5 Post Office Square, 10th Floor, Suite 1000, Boston, MA 02109 (Attn: Paula R.C. Bachtell, Esq.); (iii) counsel to the Committee, Nixon Peabody LLP, 100 Summer Street, Boston, MA 02110 (Attn: Lee Harrington, Esq.); and (iv) counsel to the DIP Lenders and Noteholders, Vinson & Elkins, LLP, 666 Fifth Avenue, 26th Floor, New York, NY 10103 (Attn: Steve M. Abramowitz, Esq.) (collectively, the "Objection Notice Parties"). ANY OBJECTIONS NOT FILED AND SERVED AS SET FORTH ABOVE WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND SHALL BE DEEMED WAIVED.

**PLEASE TAKE FURTHER NOTICE** that in accordance with Rule 3017(a) of the Federal Rules of Bankruptcy Procedure, requests for copies of the Disclosure Statement and/or Plan may be made to the undersigned counsel. Copies so requested will be provided free of charge.

**PLEASE TAKE FURTHER NOTICE** that objections to the assumption of executory contracts and unexpired leases as set forth on the Schedule of Assumed Contracts and Leases, including objections to Cure Claim amounts, must (a) be in writing, (b) state the name and address of the objector, (c) comply with the Federal Rules of Bankruptcy Procedure and the Massachusetts Local Bankruptcy Rules, (d) state the legal basis therefor, (e) be filed and served on or before 4:30 p.m. Eastern Time on or before [April \_\_\_\_, 2017], and (f) be filed with the Clerk, United States Bankruptcy Court, John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts 02109, with copies served upon the Objection Notice Parties. ANY OBJECTIONS NOT FILED AND SERVED AS SET FORTH ABOVE WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND SHALL BE DEEMED WAIVED.

**IF YOU BELIEVE THAT YOU MAY BE ENTITLED TO VOTE ON THE PLAN, YOU SHOULD IMMEDIATELY CONTACT THE UNDERSIGNED COUNSEL AND REQUEST A BALLOT.**

Respectfully submitted,

COSI, INC., *ET AL.*

By their counsel,

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Joseph H. Baldiga, BBO #549963  
Christine E. Devine, BBO #566990  
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Dated: \_\_\_\_\_, 2017